

Public Law 108–199
108th Congress

An Act

Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

Jan. 23, 2003
[H.R. 2673]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consolidated
Appropriations
Act, 2004.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consolidated Appropriations Act, 2004”.

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1 USC 1 note.

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to “this Act” contained in any division of this Act shall be treated as referring only to the provisions of that division.

Agriculture,
 Rural
 Development,
 Food and Drug
 Administration,
 and Related
 Agencies
 Appropriations
 Act, 2004.

**DIVISION A—AGRICULTURE, RURAL DEVELOPMENT,
 FOOD AND DRUG ADMINISTRATION, AND RELATED
 AGENCIES APPROPRIATIONS ACT, 2004**

An Act

Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I

AGRICULTURAL PROGRAMS

PRODUCTION, PROCESSING, AND MARKETING

OFFICE OF THE SECRETARY

For necessary expenses of the Office of the Secretary of Agriculture, \$5,092,000: *Provided*, That not to exceed \$11,000 of this amount shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary.

EXECUTIVE OPERATIONS

CHIEF ECONOMIST

For necessary expenses of the Chief Economist, including economic analysis, risk assessment, cost-benefit analysis, energy and new uses, and the functions of the World Agricultural Outlook Board, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1622g), \$8,707,000.

NATIONAL APPEALS DIVISION

For necessary expenses of the National Appeals Division, \$13,670,000.

OFFICE OF BUDGET AND PROGRAM ANALYSIS

For necessary expenses of the Office of Budget and Program Analysis, \$7,740,000.

HOMELAND SECURITY STAFF

For necessary expenses of the Homeland Security Staff, \$499,000.

OFFICE OF THE CHIEF INFORMATION OFFICER

For necessary expenses of the Office of the Chief Information Officer, \$15,493,000.

COMMON COMPUTING ENVIRONMENT

For necessary expenses to acquire a Common Computing Environment for the Natural Resources Conservation Service, the Farm and Foreign Agricultural Service and Rural Development mission areas for information technology, systems, and services, \$119,289,000, to remain available until expended, for the capital asset acquisition of shared information technology systems, including services as authorized by 7 U.S.C. 6915–16 and 40 U.S.C. 1421–28: *Provided*, That obligation of these funds shall be consistent with the Department of Agriculture Service Center Modernization Plan of the county-based agencies, and shall be with the concurrence of the Department's Chief Information Officer.

OFFICE OF THE CHIEF FINANCIAL OFFICER

Reports. For necessary expenses of the Office of the Chief Financial Officer, \$5,684,000: *Provided*, That the Chief Financial Officer shall actively market and expand cross-servicing activities of the National Finance Center: *Provided further*, That no funds made available by this appropriation may be obligated for FAIR Act or Circular A–76 activities until the Secretary has submitted to the Committees on Appropriations of both Houses of Congress a report on the Department’s contracting out policies, including agency budgets for contracting out.

OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

For necessary salaries and expenses of the Office of the Assistant Secretary for Civil Rights, \$808,000.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, \$17,450,000.

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

For necessary salaries and expenses of the Office of the Assistant Secretary for Administration, \$673,000.

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

(INCLUDING TRANSFERS OF FUNDS)

For payment of space rental and related costs pursuant to Public Law 92–313, including authorities pursuant to the 1984 delegation of authority from the Administrator of General Services to the Department of Agriculture under 40 U.S.C. 486, for programs and activities of the Department which are included in this Act, and for alterations and other actions needed for the Department and its agencies to consolidate unneeded space into configurations suitable for release to the Administrator of General Services, and for the operation, maintenance, improvement, and repair of Agriculture buildings and facilities, and for related costs, as follows: for payments to the General Services Administration, \$123,910,000, and for buildings operations and maintenance, \$32,559,000, to remain available until expended: *Provided*, That not to exceed 5 percent of amounts which are made available for space rental and related costs for the Department of Agriculture in this Act may be transferred between such appropriations to cover the costs of new or replacement space 15 days after notice thereof is transmitted to the Appropriations Committees of both Houses of Congress.

HAZARDOUS MATERIALS MANAGEMENT

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.),

\$15,611,000, to remain available until expended: *Provided*, That appropriations and funds available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

DEPARTMENTAL ADMINISTRATION

(INCLUDING TRANSFERS OF FUNDS)

For Departmental Administration, \$23,031,000, to provide for necessary expenses for management support services to offices of the Department and for general administration, security, repairs and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department: *Provided*, That this appropriation shall be reimbursed from applicable appropriations in this Act for travel expenses incident to the holding of hearings as required by 5 U.S.C. 551–558.

OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL
RELATIONS

(INCLUDING TRANSFERS OF FUNDS)

For necessary salaries and expenses of the Office of the Assistant Secretary for Congressional Relations to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison within the executive branch, \$3,796,000: *Provided*, That these funds may be transferred to agencies of the Department of Agriculture funded by this Act to maintain personnel at the agency level: *Provided further*, That no funds made available by this appropriation may be obligated after 30 days from the date of enactment of this Act, unless the Secretary has notified the Committees on Appropriations of both Houses of Congress on the allocation of these funds by USDA agency: *Provided further*, That no other funds appropriated to the Department by this Act shall be available to the Department for support of activities of congressional relations.

OFFICE OF COMMUNICATIONS

For necessary expenses to carry out services relating to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department, \$9,228,000: *Provided*, That not to exceed \$2,000,000 may be used for farmers' bulletins.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General, including employment pursuant to the Inspector General Act of 1978, \$77,281,000, including such sums as may be necessary for contracting and other arrangements with public agencies and private persons pursuant to section 6(a)(9) of the Inspector General Act of 1978, and including not to exceed \$125,000 for certain confidential operational expenses, including the payment of informants,

to be expended under the direction of the Inspector General pursuant to Public Law 95–452 and section 1337 of Public Law 97–98.

OFFICE OF THE GENERAL COUNSEL

For necessary expenses of the Office of the General Counsel, \$34,700,000.

OFFICE OF THE UNDER SECRETARY FOR RESEARCH, EDUCATION AND ECONOMICS

For necessary salaries and expenses of the Office of the Under Secretary for Research, Education and Economics to administer the laws enacted by the Congress for the Economic Research Service, the National Agricultural Statistics Service, the Agricultural Research Service, and the Cooperative State Research, Education, and Extension Service, \$596,000.

ECONOMIC RESEARCH SERVICE

For necessary expenses of the Economic Research Service in conducting economic research and analysis, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) and other laws, \$71,402,000.

NATIONAL AGRICULTURAL STATISTICS SERVICE

For necessary expenses of the National Agricultural Statistics Service in conducting statistical reporting and service work, including crop and livestock estimates, statistical coordination and improvements, marketing surveys, and the Census of Agriculture, as authorized by 7 U.S.C. 1621–1627 and 2204g, and other laws, \$128,922,000, of which up to \$25,279,000 shall be available until expended for the Census of Agriculture.

AGRICULTURAL RESEARCH SERVICE

SALARIES AND EXPENSES

For necessary expenses to enable the Agricultural Research Service to perform agricultural research and demonstration relating to production, utilization, marketing, and distribution (not otherwise provided for); home economics or nutrition and consumer use including the acquisition, preservation, and dissemination of agricultural information; and for acquisition of lands by donation, exchange, or purchase at a nominal cost not to exceed \$100, and for land exchanges where the lands exchanged shall be of equal value or shall be equalized by a payment of money to the grantor which shall not exceed 25 percent of the total value of the land or interests transferred out of Federal ownership, \$1,088,892,000: *Provided*, That appropriations hereunder shall be available for the operation and maintenance of aircraft and the purchase of not to exceed one for replacement only: *Provided further*, That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for the construction, alteration, and repair of buildings and improvements, but unless otherwise provided, the cost of constructing any one building shall not exceed \$375,000, except for headhouses or greenhouses which shall each be limited to \$1,200,000, and except

for 10 buildings to be constructed or improved at a cost not to exceed \$750,000 each, and the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building or \$375,000, whichever is greater: *Provided further*, That the limitations on alterations contained in this Act shall not apply to modernization or replacement of existing facilities at Beltsville, Maryland: *Provided further*, That appropriations hereunder shall be available for granting easements at the Beltsville Agricultural Research Center: *Provided further*, That the foregoing limitations shall not apply to replacement of buildings needed to carry out the Act of April 24, 1948 (21 U.S.C. 113a): *Provided further*, That funds may be received from any State, other political subdivision, organization, or individual for the purpose of establishing or operating any research facility or research project of the Agricultural Research Service, as authorized by law: *Provided further*, That all rights and title of the United States in the 1.0664-acre parcel of land including improvements, as recorded at Book 1320, Page 253, records of Larimer County, State of Colorado, shall be conveyed to the Board of Governors of the Colorado State University for the benefit of Colorado State University.

Maryland.

Colorado State
University.

None of the funds appropriated under this heading shall be available to carry out research related to the production, processing or marketing of tobacco or tobacco products.

BUILDINGS AND FACILITIES

For acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities as necessary to carry out the agricultural research programs of the Department of Agriculture, where not otherwise provided, \$63,810,000, to remain available until expended.

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

RESEARCH AND EDUCATION ACTIVITIES

For payments to agricultural experiment stations, for cooperative forestry and other research, for facilities, and for other expenses, \$621,447,000, as follows: to carry out the provisions of the Hatch Act of 1887 (7 U.S.C. 361a-i), \$180,148,000; for grants for cooperative forestry research (16 U.S.C. 582a through a-7), \$21,884,000; for payments to the 1890 land-grant colleges, including Tuskegee University and West Virginia State College (7 U.S.C. 3222), \$36,000,000, of which \$1,507,496 shall be made available only for the purpose of ensuring that each institution shall receive no less than \$1,000,000; for special grants for agricultural research (7 U.S.C. 450i(c)), \$111,312,000; for special grants for agricultural research on improved pest control (7 U.S.C. 450i(c)), \$13,675,000; for competitive research grants (7 U.S.C. 450i(b)), \$165,000,000; for the support of animal health and disease programs (7 U.S.C. 3195), \$4,559,000; for supplemental and alternative crops and products (7 U.S.C. 3319d), \$1,069,000; for grants for research pursuant to the Critical Agricultural Materials Act (7 U.S.C. 178 et seq.), \$1,118,000, to remain available until expended; for the 1994 research grants program for 1994 institutions pursuant to section 536 of Public Law 103-382 (7 U.S.C. 301 note), \$1,093,000, to

remain available until expended; for rangeland research grants (7 U.S.C. 3333), \$900,000; for higher education graduate fellowship grants (7 U.S.C. 3152(b)(6)), \$2,900,000, to remain available until expended (7 U.S.C. 2209b); for higher education challenge grants (7 U.S.C. 3152(b)(1)), \$4,888,000; for a higher education multicultural scholars program (7 U.S.C. 3152(b)(5)), \$992,000, to remain available until expended (7 U.S.C. 2209b); for an education grants program for Hispanic-serving Institutions (7 U.S.C. 3241), \$4,673,000; for noncompetitive grants for the purpose of carrying out all provisions of 7 U.S.C. 3242 (section 759 of Public Law 106-78) to individual eligible institutions or consortia of eligible institutions in Alaska and in Hawaii, with funds awarded equally to each of the States of Alaska and Hawaii, \$3,150,000; for a secondary agriculture education program and 2-year post-secondary education (7 U.S.C. 3152(j)), \$895,000; for aquaculture grants (7 U.S.C. 3322), \$4,024,000; for sustainable agriculture research and education (7 U.S.C. 5811), \$12,295,000; for a program of capacity building grants (7 U.S.C. 3152(b)(4)) to colleges eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321-326 and 328), including Tuskegee University and West Virginia State College, \$11,479,000, to remain available until expended (7 U.S.C. 2209b); for payments to the 1994 Institutions pursuant to section 534(a)(1) of Public Law 103-382, \$1,689,000; and for necessary expenses of Research and Education Activities, \$37,704,000.

None of the funds appropriated under this heading shall be available to carry out research related to the production, processing or marketing of tobacco or tobacco products: *Provided*, That this paragraph shall not apply to research on the medical, biotechnological, food, and industrial uses of tobacco.

NATIVE AMERICAN INSTITUTIONS ENDOWMENT FUND

For the Native American Institutions Endowment Fund authorized by Public Law 103-382 (7 U.S.C. 301 note), \$9,000,000.

EXTENSION ACTIVITIES

For payments to States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Micronesia, Northern Marianas, and American Samoa, \$441,731,000, as follows: payments for cooperative extension work under the Smith-Lever Act, to be distributed under sections 3(b) and 3(c) of said Act, and under section 208(c) of Public Law 93-471, for retirement and employees' compensation costs for extension agents, \$279,390,000; payments for extension work at the 1994 Institutions under the Smith-Lever Act (7 U.S.C. 343(b)(3)), \$2,946,000; payments for the nutrition and family education program for low-income areas under section 3(d) of the Act, \$52,366,000; payments for the pest management program under section 3(d) of the Act, \$9,620,000; payments for the farm safety program under section 3(d) of the Act, \$4,940,000; payments to upgrade research, extension, and teaching facilities at the 1890 land-grant colleges, including Tuskegee University and West Virginia State College, as authorized by section 1447 of Public Law 95-113 (7 U.S.C. 3222b), \$15,000,000, to remain available until expended; payments for youth-at-risk programs under section 3(d) of the Smith-Lever Act, \$7,583,000; for youth farm safety education and certification extension grants, to be awarded competitively under section 3(d) of the Act, \$446,000; payments for carrying

out the provisions of the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.), \$4,064,000; payments for Indian reservation agents under section 3(d) of the Smith-Lever Act, \$1,785,000; payments for sustainable agriculture programs under section 3(d) of the Act, \$4,359,000; payments for rural health and safety education as authorized by section 502(i) of Public Law 92–419 (7 U.S.C. 2662(i)), \$2,345,000; payments for cooperative extension work by the colleges receiving the benefits of the second Morrill Act (7 U.S.C. 321–326 and 328) and Tuskegee University and West Virginia State College, \$31,908,000, of which \$1,724,884 shall be made available only for the purpose of ensuring that each institution shall receive no less than \$1,000,000; for grants to youth organizations pursuant to section 7630 of title 7, United States Code, \$2,683,000; and for necessary expenses of Extension Activities, \$22,296,000.

INTEGRATED ACTIVITIES

For the integrated research, education, and extension grants programs, including necessary administrative expenses, \$50,493,000, as follows: for competitive grants programs authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626), \$39,793,000, including \$11,598,000 for the water quality program, \$13,384,000 for the food safety program, \$4,052,000 for the regional pest management centers program, \$4,371,000 for the Food Quality Protection Act risk mitigation program for major food crop systems, \$1,338,000 for the crops affected by Food Quality Protection Act implementation, \$3,150,000 for the methyl bromide transition program, and \$1,900,000 for the organic transition program; for a competitive international science and education grants program authorized under section 1459A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3292b), to remain available until expended, \$900,000; for grants programs authorized under section 2(c)(1)(B) of Public Law 89–106, as amended, \$1,800,000, including \$447,000, to remain available until September 30, 2005 for the critical issues program, and \$1,353,000 for the regional rural development centers program; and \$8,000,000 for the homeland security program authorized under section 1484 of the National Agricultural Research, Extension, and Teaching Act of 1977, to remain available until September 30, 2005.

OUTREACH FOR SOCIALLY DISADVANTAGED FARMERS

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279), \$5,970,000, to remain available until expended.

OFFICE OF THE UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS

For necessary salaries and expenses of the Office of the Under Secretary for Marketing and Regulatory Programs to administer programs under the laws enacted by the Congress for the Animal and Plant Health Inspection Service; the Agricultural Marketing Service; and the Grain Inspection, Packers and Stockyards Administration, \$725,000.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For expenses, not otherwise provided for, necessary to prevent, control, and eradicate pests and plant and animal diseases; to carry out inspection, quarantine, and regulatory activities; and to protect the environment, as authorized by law, \$720,580,000, of which \$4,112,000 shall be available for the control of outbreaks of insects, plant diseases, animal diseases and for control of pest animals and birds to the extent necessary to meet emergency conditions; of which \$51,000,000 shall be used for the boll weevil eradication program for cost share purposes or for debt retirement for active eradication zones: *Provided*, That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 percent: *Provided further*, That this appropriation shall be available for the operation and maintenance of aircraft and the purchase of not to exceed four, of which two shall be for replacement only: *Provided further*, That, in addition, in emergencies which threaten any segment of the agricultural production industry of this country, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department such sums as may be deemed necessary, to be available only in such emergencies for the arrest and eradication of contagious or infectious disease or pests of animals, poultry, or plants, and for expenses in accordance with sections 10411 and 10417 of the Animal Health Protection Act (7 U.S.C. 8310 and 8316) and sections 431 and 442 of the Plant Protection Act (7 U.S.C. 7751 and 7772), and any unexpended balances of funds transferred for such emergency purposes in the preceding fiscal year shall be merged with such transferred amounts: *Provided further*, That appropriations hereunder shall be available pursuant to law (7 U.S.C. 2250) for the repair and alteration of leased buildings and improvements, but unless otherwise provided the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

In fiscal year 2004, the agency is authorized to collect fees to cover the total costs of providing technical assistance, goods, or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity's liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the agency, and such fees shall be credited to this account, to remain available until expended, without further appropriation, for providing such assistance, goods, or services.

BUILDINGS AND FACILITIES

For plans, construction, repair, preventive maintenance, environmental support, improvement, extension, alteration, and purchase of fixed equipment or facilities, as authorized by 7 U.S.C. 2250, and acquisition of land as authorized by 7 U.S.C. 428a, \$4,996,000, to remain available until expended.

AGRICULTURAL MARKETING SERVICE

MARKETING SERVICES

For necessary expenses to carry out services related to consumer protection, agricultural marketing and distribution, transportation, and regulatory programs, as authorized by law, and for administration and coordination of payments to States, \$75,430,000, including funds for the wholesale market development program for the design and development of wholesale and farmer market facilities for the major metropolitan areas of the country: *Provided*, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building: *Provided further*, That, in the case of the term of protection for the variety for which certificate number 8200179 was issued, on the date of enactment of this Act, the Secretary of Agriculture shall issue a new certificate for a term of protection of 10 years for the variety, except that the Secretary may terminate the certificate (at the end of any calendar year that is more than 5 years after the date of issuance of the certificate) if the Secretary determines that a new variety of seed (that is substantially based on the genetics of the variety for which the certificate was issued) is commercially viable and available in sufficient quantities to meet market demands.

Certificates.

Fees may be collected for the cost of standardization activities, as established by regulation pursuant to law (31 U.S.C. 9701).

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed \$62,577,000 (from fees collected) shall be obligated during the current fiscal year for administrative expenses: *Provided*, That if crop size is understated and/or other uncontrollable events occur, the agency may exceed this limitation by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

Notification.

FUNDS FOR STRENGTHENING MARKETS, INCOME, AND SUPPLY
(SECTION 32)

(INCLUDING TRANSFERS OF FUNDS)

Funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be used only for commodity program expenses as authorized therein, and other related operating expenses, except for: (1) transfers to the Department of Commerce as authorized by the Fish and Wildlife Act of August 8, 1956; (2) transfers otherwise provided in this Act; and (3) not more than \$15,392,000 for formulation and administration of marketing agreements and orders pursuant to the Agricultural Marketing Agreement Act of 1937 and the Agricultural Act of 1961.

PAYMENTS TO STATES AND POSSESSIONS

For payments to departments of agriculture, bureaus and departments of markets, and similar agencies for marketing activities under section 204(b) of the Agricultural Marketing Act of 1946

(7 U.S.C. 1623(b)), \$3,338,000, of which not less than \$2,000,000 shall be used to make noncompetitive grants under this heading.

GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the United States Grain Standards Act, for the administration of the Packers and Stockyards Act, for certifying procedures used to protect purchasers of farm products, and the standardization activities related to grain under the Agricultural Marketing Act of 1946, \$35,890,000: *Provided*, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

LIMITATION ON INSPECTION AND WEIGHING SERVICES EXPENSES

Notification.

Not to exceed \$42,463,000 (from fees collected) shall be obligated during the current fiscal year for inspection and weighing services: *Provided*, That if grain export activities require additional supervision and oversight, or other uncontrollable factors occur, this limitation may be exceeded by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

OFFICE OF THE UNDER SECRETARY FOR FOOD SAFETY

For necessary salaries and expenses of the Office of the Under Secretary for Food Safety to administer the laws enacted by the Congress for the Food Safety and Inspection Service, \$599,000.

FOOD SAFETY AND INSPECTION SERVICE

For necessary expenses to carry out services authorized by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, including not to exceed \$50,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), \$784,511,000, of which no less than \$701,823,000 shall be available for Federal food safety inspection; and in addition, \$1,000,000 may be credited to this account from fees collected for the cost of laboratory accreditation as authorized by section 1327 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 138f): *Provided*, That no fewer than 50 full time equivalent positions above the fiscal year 2002 level shall be employed during fiscal year 2004 for purposes dedicated solely to inspections and enforcement related to the Humane Methods of Slaughter Act: *Provided further*, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

OFFICE OF THE UNDER SECRETARY FOR FARM AND FOREIGN
AGRICULTURAL SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Farm and Foreign Agricultural Services to administer the laws enacted by Congress for the Farm Service Agency, the Foreign Agricultural Service, the Risk Management Agency, and the Commodity Credit Corporation, \$635,000.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs administered by the Farm Service Agency, \$988,768,000: *Provided*, That the Secretary is authorized to use the services, facilities, and authorities (but not the funds) of the Commodity Credit Corporation to make program payments for all programs administered by the Agency: *Provided further*, That other funds made available to the Agency for authorized activities may be advanced to and merged with this account.

STATE MEDIATION GRANTS

For grants pursuant to section 502(b) of the Agricultural Credit Act of 1987, as amended (7 U.S.C. 5101–5106), \$3,974,000.

DAIRY INDEMNITY PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses involved in making indemnity payments to dairy farmers and manufacturers of dairy products under a dairy indemnity program, \$100,000, to remain available until expended: *Provided*, That such program is carried out by the Secretary in the same manner as the dairy indemnity program described in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106–387; 114 Stat. 1549A–12).

AGRICULTURAL CREDIT INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C. 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, Indian tribe land acquisition loans (25 U.S.C. 488), and boll weevil loans (7 U.S.C. 1989), to be available from funds in the Agricultural Credit Insurance Fund, as follows: farm ownership loans, \$1,079,158,000, of which \$950,000,000 shall be for guaranteed loans and \$129,158,000 shall be for direct loans; operating loans, \$2,083,752,000, of which \$1,200,000,000 shall be for unsubsidized guaranteed loans, \$266,249,000 shall be for subsidized guaranteed loans and \$617,503,000 shall be for direct loans; Indian tribe land acquisition loans, \$2,000,000; and for boll weevil eradication program loans, \$100,000,000.

For the cost of direct and guaranteed loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, as follows: farm ownership loans, \$33,648,000, of which \$5,130,000 shall be for guaranteed loans, and \$28,518,000 shall be for direct loans; operating loans, \$163,004,000, of which \$39,960,000 shall be for unsubsidized guaranteed loans, \$34,000,000 shall be for subsidized guaranteed loans, and \$89,044,000 shall be for direct loans.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$290,968,000, of which \$283,020,000 shall be transferred to and merged with the appropriation for “Farm Service Agency, Salaries and Expenses”.

Funds appropriated by this Act to the Agricultural Credit Insurance Program Account for farm ownership and operating direct loans and guaranteed loans may be transferred among these programs: *Provided*, That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer.

Notification.
Deadline.

RISK MANAGEMENT AGENCY

For administrative and operating expenses, as authorized by section 226A of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6933), \$71,422,000: *Provided*, That not to exceed \$1,000 shall be available for official reception and representation expenses, as authorized by 7 U.S.C. 1506(i).

CORPORATIONS

The following corporations and agencies are hereby authorized to make expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided.

FEDERAL CROP INSURANCE CORPORATION FUND

For payments as authorized by section 516 of the Federal Crop Insurance Act (7 U.S.C. 1516), such sums as may be necessary, to remain available until expended.

COMMODITY CREDIT CORPORATION FUND

REIMBURSEMENT FOR NET REALIZED LOSSES

For the current fiscal year, such sums as may be necessary to reimburse the Commodity Credit Corporation for net realized losses sustained, but not previously reimbursed, pursuant to section 2 of the Act of August 17, 1961 (15 U.S.C. 713a-11).

HAZARDOUS WASTE MANAGEMENT

(LIMITATION ON EXPENSES)

For the current fiscal year, the Commodity Credit Corporation shall not expend more than \$5,000,000 for site investigation and

cleanup expenses, and operations and maintenance expenses to comply with the requirement of section 107(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(g)), and section 6001 of the Resource Conservation and Recovery Act (42 U.S.C. 6961).

TITLE II

CONSERVATION PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT

For necessary salaries and expenses of the Office of the Under Secretary for Natural Resources and Environment to administer the laws enacted by the Congress for the Forest Service and the Natural Resources Conservation Service, \$745,000.

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION OPERATIONS

For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests therein for use in the plant materials program by donation, exchange, or purchase at a nominal cost not to exceed \$100 pursuant to the Act of August 3, 1956 (7 U.S.C. 428a); purchase and erection or alteration or improvement of permanent and temporary buildings; and operation and maintenance of aircraft, \$853,004,000, to remain available until expended (7 U.S.C. 2209b), of which not less than \$9,250,000 is for snow survey and water forecasting, and not less than \$11,500,000 is for operation and establishment of the plant materials centers, and of which not less than \$23,500,000 shall be for the grazing lands conservation initiative: *Provided*, That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for construction and improvement of buildings and public improvements at plant materials centers, except that the cost of alterations and improvements to other buildings and other public improvements shall not exceed \$250,000: *Provided further*, That when buildings or other structures are erected on non-Federal land, that the right to use such land is obtained as provided in 7 U.S.C. 2250a: *Provided further*, That this appropriation shall be available for technical assistance and related expenses to carry out programs authorized by section 202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. 1592(c)): *Provided further*, That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: *Provided further*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance

with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED SURVEYS AND PLANNING

For necessary expenses to conduct research, investigation, and surveys of watersheds of rivers and other waterways, and for small watershed investigations and planning, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1009), \$10,562,000: *Provided*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures, including but not limited to research, engineering operations, methods of cultivation, the growing of vegetation, rehabilitation of existing works and changes in use of land, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1005 and 1007-1009), the provisions of the Act of April 27, 1935 (16 U.S.C. 590a-f), and in accordance with the provisions of laws relating to the activities of the Department, \$87,000,000, to remain available until expended; of which up to \$10,000,000 may be available for the watersheds authorized under the Flood Control Act (33 U.S.C. 701 and 16 U.S.C. 1006a): *Provided*, That not to exceed \$40,000,000 of this appropriation shall be available for technical assistance: *Provided further*, That not to exceed \$1,000,000 of this appropriation is available to carry out the purposes of the Endangered Species Act of 1973 (Public Law 93-205), including cooperative efforts as contemplated by that Act to relocate endangered or threatened species to other suitable habitats as may be necessary to expedite project construction: *Provided further*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED REHABILITATION PROGRAM

For necessary expenses to carry out rehabilitation of structural measures, in accordance with section 14 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012), and in accordance with the provisions of laws relating to the activities of the Department, \$29,805,000, to remain available until expended: *Provided*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

RESOURCE CONSERVATION AND DEVELOPMENT

For necessary expenses in planning and carrying out projects for resource conservation and development and for sound land use pursuant to the provisions of sections 31 and 32 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010-1011; 76 Stat. 607); the Act of April 27, 1935 (16 U.S.C. 590a-f); and subtitle H of title

XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451–3461), \$51,947,000, to remain available until expended: *Provided*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)): *Provided further*, That the Secretary shall enter into a cooperative or contribution agreement with a national association regarding a Resource Conservation and Development program and such agreement shall contain the same matching, contribution requirements, and funding level, set forth in a similar cooperative or contribution agreement with a national association in fiscal year 2002: *Provided further*, That not to exceed \$3,504,300, the same amount as in the budget, shall be available for national headquarters activities. Contracts.

TITLE III

RURAL DEVELOPMENT PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR RURAL DEVELOPMENT

For necessary salaries and expenses of the Office of the Under Secretary for Rural Development to administer programs under the laws enacted by the Congress for the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service of the Department of Agriculture, \$636,000.

RURAL COMMUNITY ADVANCEMENT PROGRAM

(INCLUDING TRANSFERS OF FUNDS)

For the cost of direct loans, loan guarantees, and grants, as authorized by 7 U.S.C. 1926, 1926a, 1926c, 1926d, and 1932, except for sections 381E–H and 381N of the Consolidated Farm and Rural Development Act, \$757,425,000, to remain available until expended, of which \$75,919,000 shall be for rural community programs described in section 381E(d)(1) of such Act; of which \$605,006,000 shall be for the rural utilities programs described in sections 381E(d)(2), 306C(a)(2), and 306D of such Act, of which not to exceed \$500,000 shall be available for the rural utilities program described in section 306(a)(2)(B) of such Act, and of which not to exceed \$1,000,000 shall be available for the rural utilities program described in section 306E of such Act; and of which \$76,500,000 shall be for the rural business and cooperative development programs described in sections 381E(d)(3) and 310B(f) of such Act: *Provided*, That of the amount appropriated for rural business and cooperative development programs, \$100,000 shall be for a pilot program in the State of Alaska to assist communities with community planning: *Provided further*, That of the total amount appropriated in this account, \$24,000,000 shall be for loans and grants to benefit federally recognized Native American tribes, including grants for drinking water and waste disposal systems pursuant to section 306C of such Act, of which \$4,000,000 shall be available for community facilities grants to tribal colleges, as authorized by section 306(a)(19) of the Consolidated Farm and Rural Development Act, and of which \$250,000 shall be available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development:

Provided further, That of the amount appropriated for rural community programs, \$6,000,000 shall be available for a Rural Community Development Initiative: *Provided further*, That such funds shall be used solely to develop the capacity and ability of private, non-profit community-based housing and community development organizations, low-income rural communities, and federally recognized Native American tribes to undertake projects to improve housing, community facilities, community and economic development projects in rural areas: *Provided further*, That such funds shall be made available to qualified private, nonprofit and public intermediary organizations proposing to carry out a program of financial and technical assistance: *Provided further*, That such intermediary organizations shall provide matching funds from other sources, including Federal funds for related activities, in an amount not less than funds provided: *Provided further*, That of the amount appropriated for the rural business and cooperative development programs, not to exceed \$500,000 shall be made available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development; \$1,750,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.); and not less than \$2,000,000 shall be available for grants in accordance with section 310B(f) of the Consolidated Farm and Rural Development Act: *Provided further*, That of the amount appropriated for rural utilities programs, not to exceed \$25,000,000 shall be for water and waste disposal systems to benefit the Colonias along the United States/Mexico border, including grants pursuant to section 306C of such Act; not to exceed \$28,000,000 shall be for water and waste disposal systems for rural and native villages in Alaska pursuant to section 306D of such Act, with up to 1 percent available to administer the program and up to 1 percent available to improve interagency coordination may be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”, of which \$100,000 shall be provided to develop a regional system for centralized billing, operation, and management of rural water and sewer utilities through regional cooperatives, of which 25 percent shall be provided for water and sewer projects in regional hubs, and the State of Alaska shall provide a 25 percent cost share; not to exceed \$17,733,000 shall be for technical assistance grants for rural water and waste systems pursuant to section 306(a)(14) of such Act, of which \$5,513,000 shall be for Rural Community Assistance Programs; and not to exceed \$13,000,000 shall be for contracting with qualified national organizations for a circuit rider program to provide technical assistance for rural water systems: *Provided further*, That of the amount appropriated for the circuit rider program, Alaska shall receive two additional full circuit rider contracts and not less than \$750,000 shall be for contracting with qualified national organizations to establish a Native American circuit rider program to provide technical assistance for rural water systems: *Provided further*, That of the total amount appropriated, not to exceed \$22,132,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones; of which \$1,000,000 shall be for the rural community programs described in section 381E(d)(1) of such Act, of which \$12,582,000 shall be for the rural utilities programs described in section 381E(d)(2) of such Act, and

of which \$8,550,000 shall be for the rural business and cooperative development programs described in section 381E(d)(3) of such Act: *Provided further*, That of the amount appropriated for rural community programs, not to exceed \$22,000,000 shall be to provide grants for facilities in rural communities with extreme unemployment and severe economic depression (Public Law 106–387), with 5 percent for administration and capacity building in the State rural development offices: *Provided further*, That of the amount appropriated, \$28,000,000 shall be transferred to and merged with the “Rural Utilities Service, High Energy Cost Grants Account” to provide grants authorized under section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 918a): *Provided further*, That any prior year balances for high cost energy grants authorized by section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 901(19)) shall be transferred to and merged with the “Rural Utilities Service, High Energy Costs Grants Account”.

RURAL DEVELOPMENT SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs in the Rural Development mission area, including activities with institutions concerning the development and operation of agricultural cooperatives; and for cooperative agreements, \$141,869,000: *Provided*, That notwithstanding any other provision of law, funds appropriated under this section may be used for advertising and promotional activities that support the Rural Development mission area: *Provided further*, That not more than \$10,000 may be expended to provide modest nonmonetary awards to non-USDA employees: *Provided further*, That any balances available from prior years for the Rural Utilities Service, Rural Housing Service, and the Rural Business-Cooperative Service salaries and expenses accounts shall be transferred to and merged with this appropriation.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, as follows: \$4,091,634,000 for loans to section 502 borrowers, as determined by the Secretary, of which \$1,366,462,000 shall be for direct loans, and of which \$2,725,172,000 shall be for unsubsidized guaranteed loans; \$35,004,000 for section 504 housing repair loans; \$116,545,000 for section 515 rental housing; \$100,000,000 for section 538 guaranteed multi-family housing loans; \$5,045,000 for section 524 site loans; \$11,500,000 for credit sales of acquired property, of which up to \$1,500,000 may be for multi-family credit sales; and \$2,400,000 for section 523 self-help housing land development loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: section 502 loans,

\$165,921,000, of which \$126,018,000 shall be for direct loans, and of which \$39,903,000, to remain available until expended, shall be for unsubsidized guaranteed loans; section 504 housing repair loans, \$9,612,000; section 515 rental housing, \$50,126,000; section 538 multi-family housing guaranteed loans, \$5,950,000; multi-family credit sales of acquired property, \$663,000; and section 523 self-help housing land development loans, \$75,000: *Provided*, That of the total amount appropriated in this paragraph, \$7,100,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$443,302,000, which shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

RENTAL ASSISTANCE PROGRAM

For rental assistance agreements entered into or renewed pursuant to the authority under section 521(a)(2) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Housing Act of 1949, \$584,000,000; and, in addition, such sums as may be necessary, as authorized by section 521(c) of the Act, to liquidate debt incurred prior to fiscal year 1992 to carry out the rental assistance program under section 521(a)(2) of the Act: *Provided*, That of this amount, not more than \$5,900,000 shall be available for debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Act, and not to exceed \$20,000 per project for advances to nonprofit organizations or public agencies to cover direct costs (other than purchase price) incurred in purchasing projects pursuant to section 502(c)(5)(C) of the Act: *Provided further*, That agreements entered into or renewed during the current fiscal year shall be funded for a 4-year period: *Provided further*, That any unexpended balances remaining at the end of such 4-year agreements may be transferred and used for the purposes of any debt reduction; maintenance, repair, or rehabilitation of any existing projects; preservation; and rental assistance activities authorized under title V of the Act.

Contracts.

MUTUAL AND SELF-HELP HOUSING GRANTS

For grants and contracts pursuant to section 523(b)(1)(A) of the Housing Act of 1949 (42 U.S.C. 1490c), \$34,000,000, to remain available until expended: *Provided*, That of the total amount appropriated, \$1,000,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

RURAL HOUSING ASSISTANCE GRANTS

For grants and contracts for very low-income housing repair, supervisory and technical assistance, compensation for construction defects, and rural housing preservation made by the Rural Housing Service, as authorized by 42 U.S.C. 1474, 1479(c), 1490e, and 1490m, \$46,222,000, to remain available until expended, of which

\$5,000,000 shall be available for a processing and/or fishery workers housing demonstration project in Alaska, Mississippi, Utah, and Wisconsin: *Provided*, That of the total amount appropriated, \$1,800,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

FARM LABOR PROGRAM ACCOUNT

For the cost of direct loans, grants, and contracts, as authorized by 42 U.S.C. 1484 and 1486, \$36,307,000, to remain available until expended, for direct farm labor housing loans and domestic farm labor housing grants and contracts.

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL DEVELOPMENT LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the principal amount of direct loans, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), \$40,000,000.

For the cost of direct loans, \$17,308,000, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), of which \$1,724,000 shall be available through June 30, 2004, for Federally Recognized Native American Tribes and of which \$3,449,000 shall be available through June 30, 2004, for the Delta Regional Authority (7 U.S.C. 1921 et seq.): *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That of the total amount appropriated, \$2,447,000 shall be available through June 30, 2004, for the cost of direct loans for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

In addition, for administrative expenses to carry out the direct loan programs, \$4,272,000 shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

RURAL ECONOMIC DEVELOPMENT LOANS PROGRAM ACCOUNT

(INCLUDING RESCISSION OF FUNDS)

For the principal amount of direct loans, as authorized under section 313 of the Rural Electrification Act, for the purpose of promoting rural economic development and job creation projects, \$15,002,000.

For the cost of direct loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, \$2,792,000.

Of the funds derived from interest on the cushion of credit payments in the current fiscal year, as authorized by section 313 of the Rural Electrification Act of 1936, \$2,792,000 shall not be obligated and \$2,792,000 are rescinded.

RURAL COOPERATIVE DEVELOPMENT GRANTS

For rural cooperative development grants authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932), \$24,000,000, of which \$2,500,000 shall be for cooperative agreements for the appropriate technology transfer for rural areas program: *Provided*, That not to exceed \$1,500,000 shall be for cooperatives or associations of cooperatives whose primary focus is to provide assistance to small, minority producers and whose governing board and/or membership is comprised of at least 75 percent minority; and of which not to exceed \$15,000,000, to remain available until expended, shall be for value-added agricultural product market development grants, as authorized by section 6401 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1621 note).

RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES GRANTS

For grants in connection with second and third rounds of empowerment zones and enterprise communities, \$12,667,000, to remain available until expended, for designated rural empowerment zones and rural enterprise communities, as authorized by the Taxpayer Relief Act of 1997 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277): *Provided*, That of the funds appropriated, \$1,000,000 shall be made available to third round empowerment zones, as authorized by the Community Renewal Tax Relief Act (Public Law 106–554).

RENEWABLE ENERGY PROGRAM

For the cost of a program of direct loans, loan guarantees, and grants, under the same terms and conditions as authorized by section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106), \$23,000,000 for direct and guaranteed renewable energy loans and grants: *Provided*, That the cost of direct loans and loan guarantees, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

RURAL UTILITIES SERVICE

RURAL ELECTRIFICATION AND TELECOMMUNICATIONS LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

Insured loans pursuant to the authority of section 305 of the Rural Electrification Act of 1936 (7 U.S.C. 935) shall be made as follows: 5 percent rural electrification loans, \$240,000,000; municipal rate rural electric loans, \$1,000,000,000; loans made pursuant to section 306 of that Act, rural electric, \$2,000,000,000; Treasury rate direct electric loans, \$750,000,000; 5 percent rural telecommunications loans, \$145,000,000; cost of money rural telecommunications loans, \$250,000,000; loans made pursuant to section 306 of that Act, rural telecommunications loans, \$120,000,000; and for guaranteed underwriting loans pursuant to section 313A, \$1,000,000,000.

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, including the cost of modifying loans, of direct

and guaranteed loans authorized by sections 305 and 306 of the Rural Electrification Act of 1936 (7 U.S.C. 935 and 936), as follows: cost of rural electric loans, \$60,000, and the cost of telecommunication loans, \$125,000: *Provided*, That notwithstanding section 305(d)(2) of the Rural Electrification Act of 1936, borrower interest rates may exceed 7 percent per year.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$37,853,000 which shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

RURAL TELEPHONE BANK PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

The Rural Telephone Bank is hereby authorized to make such expenditures, within the limits of funds available to such corporation in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out its authorized programs. During fiscal year 2004 and within the resources and authority available, gross obligations for the principal amount of direct loans shall be \$173,503,000.

In addition, for administrative expenses, including audits, necessary to carry out the loan programs, \$3,171,000, which shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

For the principal amount of direct distance learning and telemedicine loans, \$300,000,000; and for the principal amount of direct broadband telecommunication loans, \$602,000,000.

For grants for telemedicine and distance learning services in rural areas, as authorized by 7 U.S.C. 950aaa et seq., \$39,000,000, to remain available until expended: *Provided*, That \$14,000,000 shall be made available to convert analog to digital operation those noncommercial educational television broadcast stations that serve rural areas and are qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934, including associated translators, repeaters, and studio-to-transmitter links.

For the cost of broadband loans, as authorized by 7 U.S.C. 901 et seq., \$13,116,000: *Provided*, That the interest rate for such loans shall be the cost of borrowing to the Department of the Treasury for obligations of comparable maturity: *Provided further*, That the cost of direct loans shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, \$9,000,000, to remain available until expended, for a grant program to finance broadband transmission in rural areas eligible for Distance Learning and Telemedicine Program benefits authorized by 7 U.S.C. 950aaa.

TITLE IV

DOMESTIC FOOD PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR FOOD, NUTRITION AND
CONSUMER SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Food, Nutrition and Consumer Services to administer the laws enacted by the Congress for the Food and Nutrition Service, \$599,000.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

Study.

For necessary expenses to carry out the National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21; \$11,417,441,000, to remain available through September 30, 2005, of which \$6,717,780,000 is hereby appropriated and \$4,699,661,000 shall be derived by transfer from funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c): *Provided*, That \$5,000,000 shall be available for the Food and Nutrition Service to conduct a study of over and under certification errors and the effect on expenditures in the National School Lunch and School Breakfast Programs and an assessment of the feasibility of using income data matching in those programs: *Provided further*, That except as specifically provided under this heading, none of the funds made available under this heading shall be used for studies and evaluations: *Provided further*, That up to \$5,235,000 shall be available for independent verification of school food service claims.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS,
AND CHILDREN (WIC)

For necessary expenses to carry out the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), \$4,639,232,000, to remain available through September 30, 2005: *Provided*, That of the total amount available, the Secretary shall obligate not less than \$15,000,000 for a breastfeeding support initiative in addition to the activities specified in section 17(h)(3)(A) and up to \$25,000,000 for a management information system initiative upon a determination by the Secretary that funds are available to meet caseload requirements: *Provided further*, That up to \$4,000,000 shall be available for pilot projects to prevent childhood obesity upon a determination by the Secretary that funds are available to meet caseload requirements: *Provided further*, That of the total amount available, the Secretary shall obligate \$23,000,000 for the farmers' market nutrition program: *Provided further*, That notwithstanding section 17(h)(10)(A) of such Act, \$14,000,000 shall be available for the purposes specified in section 17(h)(10)(B): *Provided further*, That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further*, That none of the funds in this Act shall be available to pay administrative expenses of WIC clinics

except those that have an announced policy of prohibiting smoking within the space used to carry out the program: *Provided further*, That none of the funds provided in this account shall be available for the purchase of infant formula except in accordance with the cost containment and competitive bidding requirements specified in section 17 of such Act: *Provided further*, That none of the funds provided shall be available for activities that are not fully reimbursed by other Federal Government departments or agencies unless authorized by section 17 of such Act.

FOOD STAMP PROGRAM

For necessary expenses to carry out the Food Stamp Act (7 U.S.C. 2011 et seq.), \$30,945,981,000, of which \$3,000,000,000 shall be placed in reserve for use only in such amounts and at such times as may become necessary to carry out program operations: *Provided*, That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further*, That of the funds made available under this heading and not already appropriated to the Food Distribution Program on Indian Reservations (FDPIR) established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)), not to exceed \$4,000,000 shall be used to purchase bison meat for the FDPIR from Native American bison producers as well as from producer-owned cooperatives of bison ranchers: *Provided further*, That funds provided herein shall be expended in accordance with section 16 of the Food Stamp Act: *Provided further*, That this appropriation shall be subject to any work registration or workfare requirements as may be required by law: *Provided further*, That funds made available for Employment and Training under this heading shall remain available until expended, as authorized by section 16(h)(1) of the Food Stamp Act.

Bison meat.

COMMODITY ASSISTANCE PROGRAM

For necessary expenses to carry out disaster assistance and the commodity supplemental food program as authorized by section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); the Emergency Food Assistance Act of 1983; and special assistance (in a form determined by the Secretary of Agriculture) for the nuclear affected islands, as authorized by section 103(h)(2) of the Compact of Free Association Act of 1985 (48 U.S.C. 1903(h)(2)) (or a successor law), \$150,000,000, to remain available through September 30, 2005: *Provided*, That none of these funds shall be available to reimburse the Commodity Credit Corporation for commodities donated to the program.

NUTRITION PROGRAMS ADMINISTRATION

For necessary administrative expenses of the domestic nutrition assistance programs funded under this Act, \$138,304,000, of which \$5,000,000 shall be available only for simplifying procedures, reducing overhead costs, tightening regulations, improving food stamp benefit delivery, and assisting in the prevention, identification, and prosecution of fraud and other violations of law; and of which not less than \$4,000,000 shall be available to improve integrity in the Food Stamp and Child Nutrition programs.

TITLE V

FOREIGN ASSISTANCE AND RELATED PROGRAMS

FOREIGN AGRICULTURAL SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Foreign Agricultural Service, including carrying out title VI of the Agricultural Act of 1954 (7 U.S.C. 1761-1769), market development activities abroad, and for enabling the Secretary to coordinate and integrate activities of the Department in connection with foreign agricultural work, including not to exceed \$158,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), \$132,148,000: *Provided*, That the Service may utilize advances of funds, or reimburse this appropriation for expenditures made on behalf of Federal agencies, public and private organizations and institutions under agreements executed pursuant to the agricultural food production assistance programs (7 U.S.C. 1737) and the foreign assistance programs of the United States Agency for International Development.

PUBLIC LAW 480 TITLE I PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of agreements under the Agricultural Trade Development and Assistance Act of 1954, and the Food for Progress Act of 1985, including the cost of modifying credit arrangements under said Acts, \$103,887,000, to remain available until expended.

In addition, for administrative expenses to carry out the credit program of title I, Public Law 83-480, and the Food for Progress Act of 1985, to the extent funds appropriated for Public Law 83-480 are utilized, \$2,134,000, of which \$1,075,000 may be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses", and of which \$1,059,000 may be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".

PUBLIC LAW 480 TITLE I OCEAN FREIGHT DIFFERENTIAL GRANTS

(INCLUDING TRANSFER OF FUNDS)

For ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985, \$28,000,000, to remain available until expended: *Provided*, That funds made available for the cost of agreements under title I of the Agricultural Trade Development and Assistance Act of 1954 and for title I ocean freight differential may be used interchangeably between the two accounts with prior notice to the Committees on Appropriations of both Houses of Congress.

Notification.

PUBLIC LAW 480 TITLE II GRANTS

For expenses during the current fiscal year, not otherwise recoverable, and unrecovered prior years' costs, including interest thereon, under the Agricultural Trade Development and Assistance Act of 1954, for commodities supplied in connection with dispositions abroad under title II of said Act, \$1,192,000,000, to remain available until expended.

MCGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD
NUTRITION PROGRAM GRANTS

For necessary expenses to carry out the provisions of section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1), \$50,000,000, to remain available until expended: *Provided*, That the Commodity Credit Corporation is authorized to provide the services, facilities, and authorities for the purpose of implementing such section, subject to reimbursement from amounts provided herein.

COMMODITY CREDIT CORPORATION EXPORT LOANS PROGRAM ACCOUNT
(INCLUDING TRANSFERS OF FUNDS)

For administrative expenses to carry out the Commodity Credit Corporation's export guarantee program, GSM 102 and GSM 103, \$4,152,000; to cover common overhead expenses as permitted by section 11 of the Commodity Credit Corporation Charter Act and in conformity with the Federal Credit Reform Act of 1990, of which \$3,306,000 may be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses", and of which \$846,000 may be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".

TITLE VI

RELATED AGENCIES AND FOOD AND DRUG
ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Food and Drug Administration, including hire and purchase of passenger motor vehicles; for payment of space rental and related costs pursuant to Public Law 92–313 for programs and activities of the Food and Drug Administration which are included in this Act; for rental of special purpose space in the District of Columbia or elsewhere; for miscellaneous and emergency expenses of enforcement activities, authorized and approved by the Secretary and to be accounted for solely on the Secretary's certificate, not to exceed \$25,000; and notwithstanding section 521 of Public Law 107–188; \$1,673,441,000: *Provided*, That of the amount provided under this heading, \$249,825,000 shall be derived from prescription drug user fees authorized by 21 U.S.C. 379h, and shall be credited to this account and remain available until expended; \$31,654,000 shall be derived from medical device

user fees authorized by 21 U.S.C. 379j, and shall be credited to this account and remain available until expended; and \$5,000,000 shall be derived from animal drug user fees (subject to enactment of legislation authorizing such fees), and shall be credited to this account and remain available until expended: *Provided further*, That fees derived from prescription drug, medical device, and animal drug assessments received during fiscal year 2004, including any such fees assessed prior to the current fiscal year but credited during the current year, shall be subject to the fiscal year 2004 limitation: *Provided further*, That none of these funds shall be used to develop, establish, or operate any program of user fees authorized by 31 U.S.C. 9701: *Provided further*, That of the total amount appropriated: (1) \$413,112,000 shall be for the Center for Food Safety and Applied Nutrition and related field activities in the Office of Regulatory Affairs; (2) \$477,966,000 shall be for the Center for Drug Evaluation and Research and related field activities in the Office of Regulatory Affairs; (3) \$169,429,000 shall be for the Center for Biologics Evaluation and Research and for related field activities in the Office of Regulatory Affairs; (4) \$89,396,000 shall be for the Center for Veterinary Medicine and for related field activities in the Office of Regulatory Affairs; (5) \$209,420,000 shall be for the Center for Devices and Radiological Health and for related field activities in the Office of Regulatory Affairs; (6) \$39,887,000 shall be for the National Center for Toxicological Research; (7) \$39,276,000 shall be for Rent and Related activities, other than the amounts paid to the General Services Administration for rent; (8) \$119,594,000 shall be for payments to the General Services Administration for rent; and (9) \$115,361,000 shall be for other activities, including the Office of the Commissioner; the Office of Management and Systems; the Office of External Relations; the Office of Policy and Planning; and central services for these offices: *Provided further*, That funds may be transferred from one specified activity to another with the prior approval of the Committees on Appropriations of both Houses of Congress.

In addition, mammography user fees authorized by 42 U.S.C. 263b may be credited to this account, to remain available until expended.

In addition, export certification user fees authorized by 21 U.S.C. 381 may be credited to this account, to remain available until expended.

BUILDINGS AND FACILITIES

For plans, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of or used by the Food and Drug Administration, where not otherwise provided, \$7,000,000 to remain available until expended.

INDEPENDENT AGENCIES

COMMODITY FUTURES TRADING COMMISSION

For necessary expenses to carry out the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), including the purchase and hire of passenger motor vehicles, and the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, \$90,435,000, including not to exceed \$3,000 for official reception and representation expenses.

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed \$40,900,000 (from assessments collected from farm credit institutions and from the Federal Agricultural Mortgage Corporation) shall be obligated during the current fiscal year for administrative expenses as authorized under 12 U.S.C. 2249: *Provided*, That this limitation shall not apply to expenses associated with receiverships.

TITLE VII—GENERAL PROVISIONS

SEC. 701. Within the unit limit of cost fixed by law, appropriations and authorizations made for the Department of Agriculture for the current fiscal year under this Act shall be available for the purchase, in addition to those specifically provided for, of not to exceed 398 passenger motor vehicles, of which 396 shall be for replacement only, and for the hire of such vehicles.

SEC. 702. Funds in this Act available to the Department of Agriculture shall be available for uniforms or allowances therefor as authorized by law (5 U.S.C. 5901–5902).

SEC. 703. Funds appropriated by this Act shall be available for employment pursuant to the second sentence of section 706(a) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2225) and 5 U.S.C. 3109.

SEC. 704. The Secretary of Agriculture may transfer unobligated balances of discretionary funds appropriated by this Act or other available unobligated discretionary balances of the Department of Agriculture to the Working Capital Fund for the acquisition of plant and capital equipment necessary for the delivery of financial, administrative, and information technology services of primary benefit to the agencies of the Department of Agriculture: *Provided*, That none of the funds made available by this Act or any other Act shall be transferred to the Working Capital Fund without the prior approval of the agency administrator: *Provided further*, That none of the funds transferred to the Working Capital Fund pursuant to this section shall be available for obligation without the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 705. New obligational authority provided for the following appropriation items in this Act shall remain available until expended: Animal and Plant Health Inspection Service, the contingency fund to meet emergency conditions, information technology infrastructure, fruit fly program, emerging plant pests, boll weevil program, and up to 25 percent of the screwworm program; Food Safety and Inspection Service, field automation and information management project; Cooperative State Research, Education, and Extension Service, funds for competitive research grants (7 U.S.C. 450i(b)), funds for the Research, Education, and Economics Information System (REEIS), and funds for the Native American Institutions Endowment Fund; Farm Service Agency, salaries and expenses funds made available to county committees; Foreign Agricultural Service, middle-income country training program and up to \$2,000,000 of the Foreign Agricultural Service appropriation solely for the purpose of offsetting fluctuations in international currency exchange rates, subject to documentation by the Foreign Agricultural Service.

7 USC 2209b.

SEC. 706. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 707. Not to exceed \$50,000 of the appropriations available to the Department of Agriculture in this Act shall be available to provide appropriate orientation and language training pursuant to section 606C of the Act of August 28, 1954 (7 U.S.C. 1766b).

SEC. 708. No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties. This does not preclude appropriate payment of indirect costs on grants and contracts with such institutions when such indirect costs are computed on a similar basis for all agencies for which appropriations are provided in this Act.

SEC. 709. None of the funds in this Act shall be available to restrict the authority of the Commodity Credit Corporation to lease space for its own use or to lease space on behalf of other agencies of the Department of Agriculture when such space will be jointly occupied.

SEC. 710. None of the funds in this Act shall be available to pay indirect costs charged against competitive agricultural research, education, or extension grant awards issued by the Cooperative State Research, Education, and Extension Service that exceed 20 percent of total Federal funds provided under each award: *Provided*, That notwithstanding section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310), funds provided by this Act for grants awarded competitively by the Cooperative State Research, Education, and Extension Service shall be available to pay full allowable indirect costs for each grant awarded under section 9 of the Small Business Act (15 U.S.C. 638).

SEC. 711. Notwithstanding any other provision of this Act, all loan levels provided in this Act shall be considered estimates, not limitations.

SEC. 712. Appropriations to the Department of Agriculture for the cost of direct and guaranteed loans made available in the current fiscal year shall remain available until expended to cover obligations made in the current fiscal year for the following accounts: the Rural Development Loan Fund program account, the Rural Telephone Bank program account, the Rural Electrification and Telecommunication Loans program account, the Rural Housing Insurance Fund program account, and the Rural Economic Development Loans program account.

SEC. 713. None of the funds in this Act may be used to retire more than 5 percent of the Class A stock of the Rural Telephone Bank or to maintain any account or subaccount within the accounting records of the Rural Telephone Bank the creation of which has not specifically been authorized by statute: *Provided*, That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available in this Act may be used to transfer to the Treasury or to the Federal Financing Bank any unobligated balance of the Rural Telephone Bank telephone liquidating account which is in excess of current requirements and

such balance shall receive interest as set forth for financial accounts in section 505(c) of the Federal Credit Reform Act of 1990.

SEC. 714. Of the funds made available by this Act, not more than \$1,800,000 shall be used to cover necessary expenses of activities related to all advisory committees, panels, commissions, and task forces of the Department of Agriculture, except for panels used to comply with negotiated rule makings and panels used to evaluate competitively awarded grants.

SEC. 715. None of the funds appropriated by this Act may be used to carry out section 410 of the Federal Meat Inspection Act (21 U.S.C. 679a) or section 30 of the Poultry Products Inspection Act (21 U.S.C. 471).

SEC. 716. No employee of the Department of Agriculture may be detailed or assigned from an agency or office funded by this Act to any other agency or office of the Department for more than 30 days unless the individual's employing agency or office is fully reimbursed by the receiving agency or office for the salary and expenses of the employee for the period of assignment.

SEC. 717. None of the funds appropriated or otherwise made available to the Department of Agriculture shall be used to transmit or otherwise make available to any non-Department of Agriculture employee questions or responses to questions that are a result of information requested for the appropriations hearing process.

SEC. 718. None of the funds made available to the Department of Agriculture by this Act may be used to acquire new information technology systems or significant upgrades, as determined by the Office of the Chief Information Officer, without the approval of the Chief Information Officer and the concurrence of the Executive Information Technology Investment Review Board: *Provided*, That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by this Act may be transferred to the Office of the Chief Information Officer without the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 719. (a) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes offices, programs, or activities; or (6) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or

Notifications.
Deadlines.

expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$500,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(c) The Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission shall notify the Committees on Appropriations of both Houses of Congress before implementing a program or activity not carried out during the previous fiscal year unless the program or activity is funded by this Act or specifically funded by any other Act.

SEC. 720. With the exception of funds needed to administer and conduct oversight of grants awarded and obligations incurred in prior fiscal years, none of the funds appropriated or otherwise made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out the provisions of section 401 of Public Law 105-185, the Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).

SEC. 721. None of the funds appropriated by this or any other Act shall be used to pay the salaries and expenses of personnel who prepare or submit appropriations language as part of the President's Budget submission to the Congress of the United States for programs under the jurisdiction of the Appropriations Subcommittees on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies that assumes revenues or reflects a reduction from the previous year due to user fees proposals that have not been enacted into law prior to the submission of the Budget unless such Budget submission identifies which additional spending reductions should occur in the event the user fees proposals are not enacted prior to the date of the convening of a committee of conference for the fiscal year 2005 appropriations Act.

SEC. 722. None of the funds made available by this or any other Act may be used to close or relocate a State Rural Development office unless or until cost effectiveness and enhancement of program delivery have been determined.

SEC. 723. In addition to amounts otherwise appropriated or made available by this Act, \$3,000,000 is appropriated for the purpose of providing Bill Emerson and Mickey Leland Hunger Fellowships, as authorized by Public Law 108-58.

SEC. 724. Notwithstanding section 412 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f), any balances available to carry out title III of such Act as of the date of enactment of this Act, and any recoveries and reimbursements that become available to carry out title III of such Act, may be used to carry out title II of such Act.

HIV/AIDS.

SEC. 725. Of any shipments of commodities made pursuant to section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), the Secretary of Agriculture shall, to the extent practicable, direct that tonnage equal in value to not more than \$25,000,000 shall

be made available to foreign countries to assist in mitigating the effects of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome on communities, including the provision of—

(1) agricultural commodities to—

(A) individuals with Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome in the communities; and

(B) households in the communities, particularly individuals caring for orphaned children; and

(2) agricultural commodities monetized to provide other assistance (including assistance under microcredit and microenterprise programs) to create or restore sustainable livelihoods among individuals in the communities, particularly individuals caring for orphaned children.

SEC. 726. Section 375(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j(e)(6)(B)) is amended by striking “\$26,499,000” and inserting “\$26,998,000”.

SEC. 727. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide financial and technical assistance through the Watershed and Flood Prevention Operations program for the Kuhn Bayou and Ditch 26 Improvement projects in Arkansas, the Matanuska River erosion control project in Alaska, the DuPage County Sawmill Creek Watershed project in Illinois, and the Coal Creek project in Utah, and four flood control structures in Marmaton, Kansas.

SEC. 728. Notwithstanding any other provision of law, the Secretary shall consider the County of Lawrence, Ohio; the City of Havelock, North Carolina; the City of Portsmouth, Ohio; the City of Binghamton, New York; the Town of Vestal, New York; the City of Ithaca, New York; the City of Casa Grande, Arizona; the City of Clarksdale, Mississippi; the City of Coachella, California; the City of Salinas, California; the City of Watsonville, California; the City of Hollister, California; the Municipality of Carolina, Puerto Rico; and the City of Kinston, North Carolina, as meeting the eligibility requirements for loans and grants programs in the Rural Development mission area.

State listing.

SEC. 729. Notwithstanding any other provision of law, the Natural Resources Conservation Service shall provide financial and technical assistance to the DuPage County, Illinois, Kress Creek Watershed Plan, from funds available for the Watershed and Flood Prevention Operations program, not to exceed \$1,600,000 and Rockhouse Creek Watershed, Leslie County, Kentucky, not to exceed \$1,000,000.

Illinois.
Kentucky.

SEC. 730. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this or any other appropriation Act.

SEC. 731. None of the funds made available to the Food and Drug Administration by this Act shall be used to close or relocate, or to plan to close or relocate, the Food and Drug Administration Division of Pharmaceutical Analysis in St. Louis, Missouri, outside the city or county limits of St. Louis, Missouri.

Missouri.

SEC. 732. Agencies and offices of the Department of Agriculture may utilize any unobligated salaries and expenses funds to reimburse the Office of the General Counsel for salaries and

expenses of personnel, and for other related expenses, incurred in representing such agencies and offices in the resolution of complaints by employees or applicants for employment, and in cases and other matters pending before the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or the Merit Systems Protection Board with the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 733. Notwithstanding any other provision of law, of the funds made available in this Act for competitive research grants (7 U.S.C. 450i(b)), the Secretary may use up to 20 percent of the amount provided to carry out a competitive grants program under the same terms and conditions as those provided in section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621), including requests for proposals for grants for critical emerging issues described in section 401(c)(1) of that Act for which the Secretary has not issued requests for proposals for grants in fiscal year 2002 or 2003.

SEC. 734. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)).

West Virginia.

SEC. 735. Notwithstanding any other provision of law, the Natural Resources Conservation Service shall provide financial and technical assistance through the Watershed and Flood Prevention Operations program to carry out the Upper Tygart Valley Watershed project, West Virginia: *Provided*, That the Natural Resources Conservation Service is authorized to provide 100 percent of the engineering assistance and 75 percent cost share for installation of the water supply component of this project.

SEC. 736. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out subtitle I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009dd through dd-7).

SEC. 737. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6405 of Public Law 107-171 (7 U.S.C. 2655).

SEC. 738. None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel to carry out the provisions of sections 7404(a)(1) and 7404(c)(1) of Public Law 107-171.

SEC. 739. The Agricultural Marketing Service and the Grain Inspection, Packers and Stockyards Administration, that have statutory authority to purchase interest bearing investments outside of the Treasury, are not required to establish obligations and outlays for those investments, provided those investments are insured by the Federal Deposit Insurance Corporation or are collateralized at the Federal Reserve with securities approved by the Federal Reserve, operating under the guidelines of the United States Department of the Treasury.

SEC. 740. Of the funds made available under section 27(a) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), the Secretary may use up to \$10,000,000 for costs associated with the distribution of commodities.

SEC. 741. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries

and expenses of personnel to enroll in excess of 189,144 acres in the calendar year 2004 wetlands reserve program as authorized by 16 U.S.C. 3837.

SEC. 742. None of the funds made available in fiscal year 2004 or preceding fiscal years for programs authorized under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) in excess of \$20,000,000 shall be used to reimburse the Commodity Credit Corporation for the release of eligible commodities under section 302(f)(2)(A) of the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f–1): *Provided*, That any such funds made available to reimburse the Commodity Credit Corporation shall only be used pursuant to section 302(b)(2)(B)(i) of the Bill Emerson Humanitarian Trust Act.

SEC. 743. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel who carry out an environmental quality incentives program authorized by chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) in excess of \$975,000,000.

SEC. 744. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide from appropriated funds financial and technical assistance to the Dry Creek project, Utah.

SEC. 745. The Secretary of Agriculture is authorized to permit employees of the United States Department of Agriculture to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties.

SEC. 746. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the \$23,000,000 made available by section 9006(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106(f)).

SEC. 747. ACCESS TO BROADBAND TELECOMMUNICATIONS SERVICES IN RURAL AREAS. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the \$20,000,000 made available by section 601(j)(1)(A) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(j)(1)(A)) for fiscal year 2004.

SEC. 748. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the \$40,000,000 made available by section 231(b)(4) of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1621 note) for fiscal year 2004.

SEC. 749. Section 285 of the Agricultural Marketing Act of 1946 (16 U.S.C. 1638d et seq.) is amended by striking “2004” and inserting “2006, except for ‘farm-raised fish’ and ‘wild fish’ which shall be September 30, 2004”.

SEC. 750. (a) Notwithstanding subsections (c) and (e)(2) of section 313A of the Rural Electrification Act (7 U.S.C. 940c(c) and (e)(2)) in implementing section 313A of that Act, the Secretary shall, with the consent of the lender, structure the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees under that section.

Publication.
Regulations.
Deadline.
7 USC 740c-1
note.

(b) The Secretary shall publish a proposed rule to carry out section 313A of the Rural Electrification Act of 1936 within 60 days of enactment of this Act.

SEC. 751. Any unobligated balances in the Alternative Agricultural Research and Commercialization Revolving Fund are hereby rescinded.

SEC. 752. Not more than \$41,443,000 for fiscal year 2004 of the funds appropriated or otherwise made available by this or any other Act shall be used to carry out the conservation security program established under subchapter A of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838 et seq.).

SEC. 753. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out a ground and surface water conservation program authorized by section 2301 of Public Law 107-171, the Farm Security and Rural Investment Act of 2002, in excess of \$51,000,000.

SEC. 754. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2502 of Public Law 107-171, the Farm Security and Rural Investment Act of 2002, in excess of \$42,000,000.

SEC. 755. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2503 of Public Law 107-171, the Farm Security and Rural Investment Act of 2002, in excess of \$112,044,000.

New York.

SEC. 756. (a) ASSISTANCE FOR COMMERCIAL TREE LOSSES.—The Secretary of Agriculture shall use \$5,000,000 of the funds of the Commodity Credit Corporation to provide assistance under the Tree Assistance Program, subtitle C of title X of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8201 et seq.), to tree-fruit growers located in a federally declared disaster area in the State of New York who suffered tree losses in 2003 as a result of an April 4-6, 2003, icestorm.

Florida.

(b) The Secretary of Agriculture shall use \$10,000,000 of the funds of the Commodity Credit Corporation, to remain available until expended, to compensate commercial citrus and lime growers in the State of Florida for tree replacement and for lost production with respect to trees removed to control citrus canker, and with respect to certified citrus nursery stocks within the citrus canker quarantine areas, as determined by the Secretary. For a grower to receive assistance for a tree under this section, the tree must have been removed after September 30, 2001.

SEC. 757. There is hereby appropriated \$1,500,000 to carry out section 6028 of Public Law 107-171, the Farm Security and Rural Investment Act of 2002: *Provided*, That notwithstanding section 383B(g)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb-1(g)(1)), the Federal share of the administrative expenses of the Northern Great Plains Regional Authority for fiscal year 2004 shall be 100 percent.

SEC. 758. Section 204(a)(3) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1724(a)(3)) is amended

by striking “the Committee on Foreign Affairs” through “the Committee on” and inserting “the Committees on International Relations, Agriculture and Appropriations of the House of Representatives, and the Committees on Appropriations and”.

SEC. 759. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6029 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002: *Provided*, That this section shall not apply to activities related to the promulgation of regulations or the receipt and review of applications for the Rural Business Investment Program.

SEC. 760. None of the funds appropriated or otherwise made available in this Act shall be expended to violate Public Law 105–264.

SEC. 761. COST-SHARING FOR ANIMAL AND PLANT HEALTH EMERGENCY PROGRAMS. None of the funds made available by this Act may be used to issue a final rule in furtherance of, or otherwise implement, the proposed rule on cost-sharing for animal and plant health emergency programs of the Animal and Plant Health Inspection Service published on July 8, 2003 (Docket No. 02–062–1; 68 Fed. Reg. 40541).

SEC. 762. Agencies and offices of the Department of Agriculture may utilize any available discretionary funds to cover the costs of preparing, or contracting for the preparation of, final agency decisions regarding complaints of discrimination in employment or program activities arising within such agencies and offices.

SEC. 763. Notwithstanding any other provision of law, for any fiscal year, in the case of a high cost isolated rural area in Alaska that is not connected to a road system, the maximum level for the single family housing assistance shall be 150 percent of the average income level in the metropolitan areas of the State and 115 percent of all other eligible areas of the State.

Alaska.
42 USC 1472
note.

SEC. 764. There is hereby appropriated \$1,000,000, to remain available until expended, for the Denali Commission to address deficiencies in solid waste disposal sites which threaten to contaminate rural drinking water supplies.

SEC. 765. Notwithstanding any other provision of law, the Secretary shall consider the City of Vicksburg, Mississippi; the City of Aberdeen, South Dakota; and the City of Starkville, Mississippi as meeting the requirements of a rural area contained in section 520 of the Housing Act of 1949 (42 U.S.C. 1490) until receipt of the decennial Census for the year 2010.

Mississippi.
South Dakota.

SEC. 766. Notwithstanding any other provision of law, the Secretary shall consider the City of Berlin, New Hampshire; the City of Guymon, Oklahoma; the City of Shawnee, Oklahoma; and the City of Altus, Oklahoma, to be eligible for loans and grants provided through the Rural Community Advancement Program until receipt of the decennial Census in the year 2010.

New Hampshire.
Oklahoma.

SEC. 767. None of the funds made available in this Act may be used to study, complete a study of, or enter into a contract with a private party to carry out, without specific authorization in a subsequent Act of Congress, a competitive sourcing activity of the Secretary of Agriculture, including support personnel of the Department of Agriculture, relating to rural development or farm loan programs.

SEC. 768. Section 501(b)(5)(B) of the Housing Act of 1949 (42 U.S.C. 1471(b)(5)(B)) is amended by striking “for fiscal years 2002 and 2003,”.

SEC. 769. AGRICULTURAL MANAGEMENT ASSISTANCE. Section 524(b)(4)(B) of the Federal Crop Insurance Act (7 U.S.C. 1524(b)(4)(B)) is amended—

(1) in clause (i), by striking “clause (ii)” and inserting “clauses (ii) and (iii)”;

(2) by adding at the end the following:

“(iii) CERTAIN USES.—Of the amounts made available to carry out this subsection for each of fiscal years 2004 through 2007 the Commodity Credit Corporation shall use not less than—

“(I) \$14,000,000 to carry out subparagraphs (A), (B), and (C) of paragraph (2) through the Natural Resources Conservation Service;

“(II) \$1,000,000 to provide organic certification cost share assistance through the Agricultural Marketing Service; and

“(III) \$5,000,000 to conduct activities to carry out subparagraph (F) of paragraph (2) through the Risk Management Agency.”.

7 USC 5603 note.

SEC. 770. Hereafter, no funds provided in this or any other Act shall be available to the Secretary of Agriculture acting through the Foreign Agricultural Service to promote the sale or export of tobacco or tobacco products.

SEC. 771. (a) IN GENERAL.—Section 3(o)(4) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2012(o)(4)), is amended by inserting before the period at the end the following: “, and except that on October 1, 2003, in the case of households residing in Alaska and Hawaii the Secretary may not reduce the cost of such diet in effect on September 30, 2002”.

7 USC 2012 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective beginning on September 30, 2003.

SEC. 772. Section 601(b)(2) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(b)(2)) is amended to read as follows:

“(2) ELIGIBLE RURAL COMMUNITY.—The term ‘eligible rural community’ means any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants.”.

SEC. 773. Notwithstanding any other provision of law, for all activities under programs of the Rural Development Mission Area within the County of Honolulu, Hawaii, the Secretary may designate any portion of the county as a rural area or eligible rural community that the Secretary determines is not urban in character: *Provided*, That the Secretary shall not include in any such rural area or eligible rural community any area included in the Honolulu Census Designated Place as determined by the Secretary of Commerce.

SEC. 774. The first sentence of section 306(g)(1) of the National Housing Act (12 U.S.C. 1721(g)(1)) is amended—

(1) by striking “or title V of the Housing Act of 1949”; and

(2) by inserting after “1944” the following: “, title V of the Housing Act of 1949.”.

SEC. 775. Notwithstanding the provisions of the Consolidated Farm and Rural Development Act (including the associated regulations) governing the Community Facilities Program, the Secretary

may allow all Community Facility Program facility borrowers and grantees to enter into contracts with not-for-profit third parties for services consistent with the requirements of the Program, grant, and/or loan: *Provided*, That the contracts protect the interests of the Government regarding cost, liability, maintenance, and administrative fees.

SEC. 776. Notwithstanding any other provision of law, the Secretary of Agriculture may use appropriations available to the Secretary for activities authorized under sections 426–426c of title 7, United States Code, under this or any other Act, to enter into cooperative agreements, with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, to lease aircraft if the Secretary determines that the objectives of the agreement will: (1) serve a mutual interest of the parties to the agreement in carrying out the programs administered by the Animal Plant Health Inspection Service, Wildlife Service; and (2) all parties will contribute resources to the accomplishment of these objectives; award of a cooperative agreement authorized by the Secretary may be made for an initial term not to exceed 5 years.

SEC. 777. CITRUS CANCKER ASSISTANCE. Section 211 of the Agricultural Assistance Act of 2003 (117 Stat. 545) is amended—

(1) in the section heading, by inserting “**TREE REPLACEMENT AND**” after “**FOR**”; and

(2) in subsection (a), by inserting “tree replacement and” after “Florida for”.

SEC. 778. SUN GRANT RESEARCH INITIATIVE. (a) SHORT TITLE.—This section may be cited as the “Sun Grant Research Initiative Act of 2003”.

(b) RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.—Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101 et seq.) is amended by adding at the end the following:

Sun Grant
Research
Initiative Act of
2003.
7 USC 8101 note.

“**SEC. 9011. RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.**

7 USC 8109.

“(a) **PURPOSES.**—The purposes of the programs established under this section are—

“(1) to enhance national energy security through the development, distribution, and implementation of biobased energy technologies;

“(2) to promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;

“(3) to promote economic diversification in rural areas of the United States through biobased energy and product technologies; and

“(4) to enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration between the Department of Agriculture, the Department of Energy, and the land-grant colleges and universities.

“(b) **DEFINITIONS.**—In this section:

“(1) **LAND-GRANT COLLEGES AND UNIVERSITIES.**—The term ‘land-grant colleges and universities’ means—

“(A) 1862 Institutions (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601));

“(B) 1890 Institutions (as defined in section 2 of that Act) and West Virginia State College; and

“(C) 1994 Institutions (as defined in section 2 of that Act).

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture.

“(c) ESTABLISHMENT.—To carry out the purposes described in subsection (a), the Secretary shall establish programs under which—

Grants.

“(1) the Secretary shall provide grants to sun grant centers specified in subsection (d); and

“(2) the sun grant centers shall use the grants in accordance with this section.

“(d) GRANTS TO CENTERS.—The Secretary shall use amounts made available for a fiscal year under subsection (j) to provide a grants in equal amounts to each of the following sun grant centers:

South Dakota
State University.

“(1) NORTH-CENTRAL CENTER.—A north-central sun grant center at South Dakota State University for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

University of
Tennessee.

“(2) SOUTHEASTERN CENTER.—A southeastern sun grant center at the University of Tennessee at Knoxville for the region composed of—

“(A) the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia;

“(B) the Commonwealth of Puerto Rico; and

“(C) the United States Virgin Islands.

Oklahoma State
University.

“(3) SOUTH-CENTRAL CENTER.—A south-central sun grant center at Oklahoma State University for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

Oregon State
University.

“(4) WESTERN CENTER.—A western sun grant center at Oregon State University for the region composed of—

“(A) the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and

“(B) territories and possessions of the United States (other than the territories referred to in subparagraphs (B) and (C) of paragraph (2)).

Cornell
University.

“(5) NORTHEASTERN CENTER.—A northeastern sun grant center at Cornell University for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

“(e) USE OF FUNDS.—

“(1) CENTERS OF EXCELLENCE.—Of the amount of funds that are made available for a fiscal year to a sun grant center under subsection (d), the center shall use not more than 25 percent of the amount for administration to support excellence in science, engineering, and economics at the center to promote the purposes described in subsection (a) through the State

agricultural experiment station, cooperative extension services, and relevant educational programs of the university.

“(2) GRANTS TO LAND-GRANT COLLEGES AND UNIVERSITIES.—

“(A) IN GENERAL.—The sun grant center established for a region shall use the funds that remain available for a fiscal year after expenditures made under paragraph (1) to provide competitive grants to land-grant colleges and universities in the region of the sun grant center to conduct, consistent with the purposes described in subsection (a), multiinstitutional and multistate—

“(i) research, extension, and educational programs on technology development; and

“(ii) integrated research, extension, and educational programs on technology implementation.

“(B) PROGRAMS.—Of the amount of funds that are used to provide grants for a fiscal year under subparagraph (A), the center shall use—

“(i) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(i); and

“(ii) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(ii).

“(3) INDIRECT COSTS.—A sun grant center may not recover the indirect costs of making grants under paragraph (2) to other land-grant colleges and universities.

“(f) PLAN.—

“(1) IN GENERAL.—Subject to the availability of funds under subsection (j), in cooperation with other land-grant colleges and universities and private industry in accordance with paragraph (2), the sun grant centers shall jointly develop and submit to the Secretary, for approval, a plan for addressing at the State and regional levels the bioenergy, biomass, and gasification research priorities of the Department of Agriculture and the Department of Energy for the making of grants under paragraphs (1) and (2) of subsection (e).

“(2) GASIFICATION COORDINATION.—

“(A) IN GENERAL.—In developing the plan under paragraph (1) with respect to gasification research, the sun grant centers identified in paragraphs (1) and (2) of subsection (d) shall coordinate with land grant colleges and universities in their respective regions that have ongoing research activities with respect to the research.

“(B) FUNDING.—Funds made available under subsection (d) to the sun grant center identified in subsection (e)(2) shall be available to carry out planning coordination under paragraph (1) of this subsection.

“(g) GRANTS TO OTHER LAND-GRANT COLLEGES AND UNIVERSITIES.—

“(1) PRIORITY FOR GRANTS.—In making grants under subsection (e)(2), a sun grant center shall give a higher priority to programs that are consistent with the plan approved by the Secretary under subsection (f).

“(2) TERM OF GRANTS.—The term of a grant provided by a sun grant center under subsection (e)(2) shall not exceed 5 years.

“(h) GRANT INFORMATION ANALYSIS CENTER.—The sun grant centers shall maintain a Sun Grant Information Analysis Center

at the sun grant center specified in subsection (d)(1) to provide sun grant centers analysis and data management support.

“(i) ANNUAL REPORTS.—Not later than 90 days after the end of a year for which a sun grant center receives a grant under subsection (d), the sun grant center shall submit to the Secretary a report that describes the policies, priorities, and operations of the program carried out by the center during the year, including a description of progress made in facilitating the priorities described in subsection (f).

“(j) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

“(A) \$25,000,000 for fiscal year 2005;

“(B) \$50,000,000 for fiscal year 2006; and

“(C) \$75,000,000 for each of fiscal years 2007 through 2010.

“(2) GRANT INFORMATION ANALYSIS CENTER.—Of amounts made available under paragraph (1), not more than \$4,000,000 for each fiscal year shall be made available to carry out subsection (h).”.

SEC. 779. RURAL ELECTRIFICATION. For fiscal year 2004, the Secretary of Agriculture may use any unobligated carryover funds made available for any program administered by the Rural Utilities Service (not including funds made available under the heading “RURAL COMMUNITY ADVANCEMENT PROGRAM” in any Act of appropriation) to carry out section 315 of the Rural Electrification Act of 1936 (7 U.S.C. 940e).

SEC. 780. LIMITATION ON ALLOCATION OF PURCHASE PRICES FOR BUTTER AND NONFAT DRY MILK. None of the funds made available by this Act may be used to pay the salaries or expenses of employees of the Department of Agriculture to allocate the rate of price support between the purchase prices for nonfat dry milk and butter in a manner that does not support the price of milk in accordance with section 1501(b) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7981(b)).

SEC. 781. EMERGENCY WATERSHED PROTECTION PROGRAM. Notwithstanding any other provision of law, the Secretary of Agriculture is authorized to make funding and other assistance available through the emergency watershed protection program under section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) to repair and prevent damage to non-Federal land in watersheds that have been impaired by fires initiated by the Federal Government and to waive cost sharing requirements for the funding and assistance.

SEC. 782. The Secretary may waive the requirements regarding small and emerging rural business as authorized under the Rural Business Enterprise Grant program for the purpose of a lease for the Oakridge Oregon Industrial Park.

SEC. 783. WATER AND WASTE DISPOSAL GRANT TO THE ALASKA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT. Notwithstanding any other provision of law—

(1) the Alaska Department of Community and Economic Development shall be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is equal to not more than 75 percent of the total cost

of providing water and sewer service to the proposed hospital in the Matanuska-Susitna Borough, Alaska; and

(2) the Alaska Department of Community and Economic Development shall be allowed to pass the grant funds through to the local government entity that will provide water and sewer service to the hospital.

SEC. 784. None of the funds provided in this Act may be used for salaries and expenses to carry out any regulation or rule insofar as it would make ineligible for enrollment in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) land that is planted to hardwood trees as of the date of enactment of this Act and was enrolled in the conservation reserve program under a contract that expired prior to calendar year 2002.

SEC. 785. WATER AND WASTE DISPOSAL GRANT TO THE CITY OF POSTVILLE, IOWA. Notwithstanding any other provision of law, the City of Postville, Iowa, shall be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is equal to not more than 75 percent of the total cost of providing water and sewer service in the city.

SEC. 786. None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel to implement a reorganization of regional conservationists and/or regional offices of the Natural Resources Conservation Service without the prior approval of the Committees on Appropriations.

SEC. 787. Of the unobligated balance available to the Food Safety and Inspection Service for the field automation and information management project at the beginning of fiscal year 2004, \$5,000,000 is hereby rescinded.

SEC. 788. The matter under the heading “Integrated Activities” in division A—Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs Appropriations, 2003, title I—Agricultural Programs, in Public Law 108-7 is amended by striking “7 U.S.C. 3291” and inserting “7 U.S.C. 3292b”.

SEC. 789. Notwithstanding any other provision of law, the City of Great Falls, Montana, shall be considered a rural area for purposes of eligibility for business and industry guaranteed loans under section 310B(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(a)(1)).

This division may be cited as the “Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2004”.

117 Stat. 19.

Montana.

Departments of
Commerce,
Justice, and
State, the
Judiciary, and
Related Agencies
Appropriations
Act, 2004.

**DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE,
AND STATE, THE JUDICIARY, AND RELATED AGEN-
CIES APPROPRIATIONS ACT, 2004**

An Act

Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, and for other purposes, namely:

Department of
Justice
Appropriations
Act, 2004.

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, \$106,687,000, of which not to exceed \$3,317,000 is for the Facilities Program 2000, to remain available until expended: *Provided*, That not to exceed 43 permanent positions and 44 full-time equivalent workyears and \$10,172,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 2003: *Provided further*, That not to exceed 26 permanent positions, 21 full-time equivalent workyears and \$3,114,000 shall be expended for the Office of Legislative Affairs: *Provided further*, That not to exceed 15 permanent positions, 20 full-time equivalent workyears and \$1,875,000 shall be expended for the Office of Public Affairs: *Provided further*, That the latter two aforementioned offices may utilize non-reimbursable details of career employees within the caps described in the preceding two provisos.

JOINT AUTOMATED BOOKING SYSTEM

For expenses necessary for the nationwide deployment of a Joint Automated Booking System including automated capability to transmit fingerprint and image data, \$19,176,000, to remain available until September 30, 2005.

INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

For necessary expenses for the planning, development, and deployment of an integrated fingerprint identification system, including automated capability to transmit fingerprint and image data, \$5,100,000, to remain available until September 30, 2005.

LEGAL ACTIVITIES OFFICE AUTOMATION

For necessary expenses related to the design, development, engineering, acquisition, and implementation of office automation systems for the organizations funded under the headings “Salaries

and Expenses, General Legal Activities”, and “General Administration, Salaries and Expenses”, and the United States Attorneys, the United States Marshals Service, the Antitrust Division, the United States Trustee Program, the Executive Office for Immigration Review, the Community Relations Service, the Bureau of Prisons, the Office of Justice Programs and the United States Parole Commission, \$27,034,000, to remain available until September 30, 2005.

NARROWBAND COMMUNICATIONS

For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile Radio legacy systems, \$103,171,000, to remain available until September 30, 2005: *Provided*, That the Attorney General shall transfer to the “Narrowband Communications” account all funds made available to the Department of Justice for the purchase of portable and mobile radios: *Provided further*, That any transfer made under the preceding proviso shall be subject to section 605 of this Act.

COUNTERTERRORISM FUND

For necessary expenses, as determined by the Attorney General, \$1,000,000, to remain available until expended, to reimburse any Department of Justice organization for: (1) the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as a result of any domestic or international terrorist incident; and (2) the costs of providing support to counter, investigate or prosecute domestic or international terrorism, including payment of rewards in connection with these activities: *Provided*, That any Federal agency may be reimbursed for the costs of detaining in foreign countries individuals accused of acts of terrorism that violate the laws of the United States: *Provided further*, That funds provided under this paragraph shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

Notification.

ADMINISTRATIVE REVIEW AND APPEALS

For expenses necessary for the administration of pardon and clemency petitions and immigration-related activities, \$193,530,000.

DETENTION TRUSTEE

For necessary expenses of the Federal Detention Trustee who shall exercise all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service, \$814,097,000, to remain available until expended: *Provided*, That the Trustee shall be responsible for managing the Justice Prisoner and Alien Transportation System and for overseeing housing related to such detention; the management of funds appropriated to the Department of Justice for the exercise of any detention functions; and the direction of the United States Marshals Service with respect to the exercise of detention policy setting and operations for the Department: *Provided further*, That any unobligated balances available in prior years from the funds appropriated under the heading “Federal Prisoner Detention” shall be transferred to and merged

Plan.
Deadline.

with the appropriation under the heading “Detention Trustee” and shall be available until expended: *Provided further*, That the Trustee, working in consultation with the Bureau of Prisons, shall submit a plan for collecting information related to evaluating the health and safety of Federal prisoners in non-Federal institutions no later than 180 days following the enactment of this Act.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, \$60,840,000, including not to exceed \$10,000 to meet unforeseen emergencies of a confidential character.

UNITED STATES PAROLE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States Parole Commission as authorized, \$10,609,000.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed \$20,000 for expenses of collecting evidence, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; and rent of private or Government-owned space in the District of Columbia, \$620,533,000, of which not to exceed \$10,000,000 for litigation support contracts shall remain available until expended, and of which not less than \$1,996,000 shall be available for necessary administrative expenses in accordance with the Radiation Exposure Compensation Act: *Provided*, That of the total amount appropriated, not to exceed \$1,000 shall be available to the United States National Central Bureau, INTERPOL, for official reception and representation expenses: *Provided further*, That notwithstanding any other provision of law, upon a determination by the Attorney General that emergent circumstances require additional funding for litigation activities of the Civil Division, the Attorney General may transfer such amounts to “Salaries and Expenses, General Legal Activities” from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: *Provided further*, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

In addition, for reimbursement of expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed \$4,028,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

SALARIES AND EXPENSES, ANTITRUST DIVISION

For expenses necessary for the enforcement of antitrust and kindred laws, \$133,133,000, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, not

to exceed \$112,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2004, so as to result in a final fiscal year 2004 appropriation from the general fund estimated at not more than \$21,133,000.

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For necessary expenses of the Offices of the United States Attorneys, including inter-governmental and cooperative agreements, \$1,526,253,000; of which not to exceed \$2,500,000 shall be available until September 30, 2005, for: (1) training personnel in debt collection; (2) locating debtors and their property; (3) paying the net costs of selling property; and (4) tracking debts owed to the United States Government: *Provided*, That of the total amount appropriated, not to exceed \$8,000 shall be available for official reception and representation expenses: *Provided further*, That not to exceed \$10,000,000 of those funds available for automated litigation support contracts shall remain available until expended: *Provided further*, That not to exceed \$2,500,000 for the operation of the National Advocacy Center shall remain available until expended: *Provided further*, That, in addition to reimbursable full-time equivalent workyears available to the Offices of the United States Attorneys, not to exceed 10,113 positions and 10,298 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the United States Attorneys: *Provided further*, That of the funds made available under this heading, \$1,500,000 shall only be available to continue “Operation Streetsweeper”: *Provided further*, That of the total amount appropriated, \$6,898,000 shall be for Project Seahawk and shall remain available until expended.

UNITED STATES TRUSTEE SYSTEM FUND

For necessary expenses of the United States Trustee Program, as authorized, \$166,157,000, to remain available until expended and to be derived from the United States Trustee System Fund: *Provided*, That, notwithstanding any other provision of law, deposits to the Fund shall be available in such amounts as may be necessary to pay refunds due depositors: *Provided further*, That, notwithstanding any other provision of law, \$166,157,000 of offsetting collections pursuant to 28 U.S.C. 589a(b) shall be retained and used for necessary expenses in this appropriation and remain available until expended: *Provided further*, That the sum herein appropriated from the Fund shall be reduced as such offsetting collections are received during fiscal year 2004, so as to result in a final fiscal year 2004 appropriation from the Fund estimated at \$0.

SALARIES AND EXPENSES, FOREIGN CLAIMS SETTLEMENT COMMISSION

For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission, including services as authorized by 5 U.S.C. 3109, \$1,206,000.

SALARIES AND EXPENSES, UNITED STATES MARSHALS SERVICE

For necessary expenses of the United States Marshals Service, \$719,777,000; of which not less than \$11,476,000 shall only be available for fugitive apprehension task forces; of which \$17,403,000 shall be available for 106 supervisory deputy marshal positions for courthouse security; of which not to exceed \$6,000 shall be available for official reception and representation expenses; of which \$4,000,000 shall remain available until expended; of which not less than \$13,394,000 shall be available for the costs of courthouse security equipment, including furnishings, relocations, and telephone systems and cabling, and shall remain available until September 30, 2005: *Provided*, That, in addition to reimbursable full-time equivalent workyears available to the United States Marshals Service, not to exceed 4,400 positions and 4,259 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the United States Marshals Service.

CONSTRUCTION

For planning, constructing, renovating, equipping, and maintaining United States Marshals Service prisoner-holding space in United States courthouses and Federal buildings, including the renovation and expansion of prisoner movement areas, elevators, and sallyports, \$14,066,000, to remain available until September 30, 2006.

FEES AND EXPENSES OF WITNESSES

For fees and expenses of witnesses, for expenses of contracts for the procurement and supervision of expert witnesses, for private counsel expenses, including advances, \$156,145,000, to remain available until expended; of which not to exceed \$8,000,000 may be made available for planning, construction, renovations, maintenance, remodeling, and repair of buildings, and the purchase of equipment incident thereto, for protected witness safesites; of which not to exceed \$1,000,000 may be made available for the purchase and maintenance of armored vehicles for transportation of protected witnesses; and of which not to exceed \$5,000,000 may be made available for the purchase, installation, and maintenance of secure telecommunications equipment and a secure automated information network to store and retrieve the identities and locations of protected witnesses.

SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE

For necessary expenses of the Community Relations Service, \$9,526,000 and, in addition, up to \$1,000,000 of funds made available to the Department of Justice in this Act may be transferred by the Attorney General to this account: *Provided*, That notwithstanding any other provision of law, upon a determination by the Attorney General that emergent circumstances require additional funding for conflict resolution and violence prevention activities of the Community Relations Service, the Attorney General may transfer such amounts to the Community Relations Service, from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: *Provided further*, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section

605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524(c)(1)(B), (F), and (G), \$21,759,000, to be derived from the Department of Justice Assets Forfeiture Fund.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For necessary expenses of the Federal Bureau of Investigation for detection, investigation, and prosecution of crimes against the United States; including purchase for police-type use of not to exceed 2,454 passenger motor vehicles, of which 1,843 will be for replacement only; and not to exceed \$70,000 to meet unforeseen emergencies of a confidential character pursuant to 28 U.S.C. 530C, \$4,566,798,000; of which not to exceed \$65,000,000 for automated data processing and telecommunications and technical investigative equipment, and not to exceed \$1,000,000 for undercover operations, shall remain available until September 30, 2005; of which \$490,104,000 shall be for counterterrorism investigations, foreign counterintelligence, and other activities related to our national security; of which not less than \$153,812,000 shall only be for Joint Terrorism Task Forces; and of which not to exceed \$10,000,000 is authorized to be made available for making advances for expenses arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities related to violent crime, terrorism, organized crime, and drug investigations: *Provided*, That not to exceed \$200,000 shall be available for official reception and representation expenses: *Provided further*, That, in addition to reimbursable full-time equivalent workyears available to the Federal Bureau of Investigation, not to exceed 28,900 positions and 27,096 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the Federal Bureau of Investigation.

FOREIGN TERRORIST TRACKING TASK FORCE/TERRORIST THREAT INTEGRATION CENTER

For expenses necessary for the Foreign Terrorist Tracking Task Force, including salaries and expenses, operations, equipment, and facilities, \$61,597,000: *Provided*, That funds appropriated in previous fiscal years under the heading “Federal Bureau of Investigation, Salaries and Expenses” may be available for activities associated with the Terrorist Threat Integration Center.

CONSTRUCTION

For necessary expenses to construct or acquire buildings and sites by purchase, or as otherwise authorized by law (including equipment for such buildings); conversion and extension of federally-owned buildings; and preliminary planning and design of projects; \$11,174,000, to remain available until September 30, 2006.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Drug Enforcement Administration, including not to exceed \$70,000 to meet unforeseen emergencies of a confidential character pursuant to 28 U.S.C. 530C; expenses for conducting drug education and training programs, including travel and related expenses for participants in such programs and the distribution of items of token value that promote the goals of such programs; and purchase of not to exceed 982 passenger motor vehicles, of which 886 will be for replacement only, for police-type use, \$1,601,327,000; of which not to exceed \$33,000,000 for permanent change of station shall remain available until September 30, 2005; of which not to exceed \$1,800,000 for research shall remain available until expended; of which not to exceed \$4,000,000 for purchase of evidence and payments for information, not to exceed \$10,000,000 for contracting for automated data processing and telecommunications equipment, and not to exceed \$2,000,000 for laboratory equipment, \$4,000,000 for technical equipment, and \$2,000,000 for aircraft replacement retrofit and parts, shall remain available until September 30, 2005; and of which not to exceed \$50,000 shall be available for official reception and representation expenses: *Provided*, That, in addition to reimbursable full-time equivalent workyears available to the Drug Enforcement Administration, not to exceed 8,358 positions and 8,018 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the Drug Enforcement Administration.

INTERAGENCY DRUG ENFORCEMENT

For necessary expenses for the identification, investigation, and prosecution of individuals associated with the most significant drug trafficking and affiliated money laundering organizations not otherwise provided for, to include inter-governmental agreements with State and local law enforcement agencies engaged in the investigation and prosecution of individuals involved in organized crime drug trafficking, \$556,465,000, of which \$50,000,000 shall remain available until September 30, 2005: *Provided*, That any amounts obligated from appropriations under this heading may be used under authorities available to the organizations reimbursed from this appropriation: *Provided further*, That any unobligated balances remaining available at the end of the fiscal year shall revert to the Drug Enforcement Administrator for reallocation among participating organizations in succeeding fiscal years, subject to the reprogramming procedures set forth in section 605 of this Act.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

SALARIES AND EXPENSES

For necessary expenses of the Bureau of Alcohol, Tobacco, Firearms and Explosives, including the purchase of not to exceed 822 vehicles for police-type use, of which 650 shall be for replacement only; not to exceed \$18,000 for official reception and representation expenses; for training of State and local law enforcement agencies with or without reimbursement, including training in connection

with the training and acquisition of canines for explosives and fire accelerants detection; and for provision of laboratory assistance to State and local law enforcement agencies, with or without reimbursement, \$836,087,000, of which not to exceed \$1,000,000 shall be available for the payment of attorneys' fees as provided by 18 U.S.C. 924(d)(2): *Provided*, That no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees: *Provided further*, That no funds appropriated herein shall be used to pay administrative expenses or the compensation of any officer or employee of the United States to implement an amendment or amendments to 27 CFR 178.118 or to change the definition of "Curios or relics" in 27 CFR 178.11 or remove any item from ATF Publication 5300.11 as it existed on January 1, 1994: *Provided further*, That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c): *Provided further*, That such funds shall be available to investigate and act upon applications filed by corporations for relief from Federal firearms disabilities under section 925(c) of title 18, United States Code: *Provided further*, That no funds made available by this or any other Act may be used to transfer the functions, missions, or activities of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to other agencies or Departments in fiscal year 2004: *Provided further*, That no funds appropriated under this or any other Act may be used to disclose to the public the contents or any portion thereof of any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of section 923(g) of title 18, United States Code, except that this provision shall apply to any request for information made by any person or entity after January 1, 1998: *Provided further*, That no funds made available by this or any other Act shall be expended to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code: *Provided further*, That no funds under this Act may be used to electronically retrieve information gathered pursuant to 18 U.S.C. 923(g)(4) by name or any personal identification code: *Provided further*, That subparagraphs (A) and (B) of 28 U.S.C. 530C(b)(2), are amended by inserting "for the Bureau of Alcohol, Tobacco, Firearms and Explosives," after "Marshals Service," in each subparagraph.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For expenses necessary for the administration, operation, and maintenance of Federal penal and correctional institutions, including purchase (not to exceed 838, of which 535 are for replacement only) and hire of law enforcement and passenger motor vehicles, and for the provision of technical assistance and advice on corrections related issues to foreign governments, \$4,461,257,000: *Provided*, That the Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions:

42 USC 250a.

Provided further, That the Director of the Federal Prison System, where necessary, may enter into contracts with a fiscal agent/fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the Federal Prison System, furnish health services to individuals committed to the custody of the Federal Prison System: *Provided further*, That not to exceed \$6,000 shall be available for official reception and representation expenses: *Provided further*, That not to exceed \$50,000,000 shall remain available for necessary operations until September 30, 2005: *Provided further*, That, of the amounts provided for Contract Confinement, not to exceed \$20,000,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements, and other expenses authorized by section 501(c) of the Refugee Education Assistance Act of 1980, for the care and security in the United States of Cuban and Haitian entrants: *Provided further*, That the Director of the Federal Prison System may accept donated property and services relating to the operation of the prison card program from a not-for-profit entity which has operated such program in the past notwithstanding the fact that such not-for-profit entity furnishes services under contracts to the Federal Prison System relating to the operation of pre-release services, halfway houses or other custodial facilities.

BUILDINGS AND FACILITIES

For planning, acquisition of sites and construction of new facilities; purchase and acquisition of facilities and remodeling, and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account, \$397,700,000, to remain available until expended, of which not to exceed \$14,000,000 shall be available to construct areas for inmate work programs: *Provided*, That labor of United States prisoners may be used for work performed under this appropriation: *Provided further*, That not to exceed 10 percent of the funds appropriated to “Buildings and Facilities” in this or any other Act may be transferred to “Salaries and Expenses”, Federal Prison System, upon notification by the Attorney General to the Committees on Appropriations of the House of Representatives and the Senate in compliance with provisions set forth in section 605 of this Act.

Notification.

FEDERAL PRISON INDUSTRIES, INCORPORATED

The Federal Prison Industries, Incorporated, is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available, and in accord with the law, and to make such contracts and commitments, without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation, including purchase (not to exceed five for replacement only) and hire of passenger motor vehicles.

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON
INDUSTRIES, INCORPORATED

Not to exceed \$3,429,000 of the funds of the corporation shall be available for its administrative expenses, and for services as authorized by 5 U.S.C. 3109, to be computed on an accrual basis to be determined in accordance with the corporation's current prescribed accounting system, and such amounts shall be exclusive of depreciation, payment of claims, and expenditures which such accounting system requires to be capitalized or charged to cost of commodities acquired or produced, including selling and shipping expenses, and expenses in connection with acquisition, construction, operation, maintenance, improvement, protection, or disposition of facilities and other property belonging to the corporation or in which it has an interest.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, the Missing Children's Assistance Act, including salaries and expenses in connection therewith, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108–21), and the Victims of Crime Act of 1984, \$190,125,000, to remain available until expended.

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) (“the 1994 Act”); the Omnibus Crime Control and Safe Streets Act of 1968 (“the 1968 Act”); the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386); and other programs; \$1,297,684,000 (including amounts for administrative costs, which shall be transferred to and merged with the “Justice Assistance” account): *Provided*, That all balances under this heading for programs to address violence against women may be transferred to and merged with the appropriation for “Violence Against Women Prevention and Prosecution Programs”: *Provided further*, That funding provided under this heading shall remain available until expended as follows:

(1) \$225,000,000 for Local Law Enforcement Block Grants, pursuant to H.R. 728 as passed by the House of Representatives on February 14, 1995, except that for purposes of this Act and retroactive to October 1, 2000, Guam shall be considered as one “State” for all purposes under H.R. 728, notwithstanding any provision of section 108(3) thereof, the Commonwealth of Puerto Rico shall be considered a “unit of local government” as well as a “State”, for the purposes set forth in paragraphs (A), (B), (D), (F), and (I) of section 101(a)(2) of H.R. 728, and for establishing crime prevention programs involving cooperation between community residents and law enforcement personnel in order to control, detect, or investigate crime or the prosecution of criminals: *Provided*, That funding shall be available for the purposes authorized by part E of title I of the 1968 Act: *Provided further*, That no funds provided under this

heading may be used as matching funds for any other Federal grant program, of which—

(A) \$80,000,000 shall be for Boys and Girls Clubs in public housing facilities and other areas in cooperation with State and local law enforcement, as authorized by section 401 of Public Law 104–294 (42 U.S.C. 13751 note);

(B) \$10,000,000 shall be available for grants, contracts, and other assistance to carry out section 102(c) of H.R. 728; and

(C) \$2,981,000 for USA Freedom Corps activities;

(2) \$300,000,000 for the State Criminal Alien Assistance Program, as authorized by section 242(j) of the Immigration and Nationality Act: *Provided*, That funds shall be disbursed only as a direct reimbursement for each State's documented cost for incarcerating undocumented criminal aliens;

(3) \$2,000,000 for the Cooperative Agreement Program for the improvement of State and local correctional facilities holding prisoners in custody of the United States Marshals Service;

(4) \$15,000,000 for assistance to Indian tribes, of which—

(A) \$2,000,000 shall be available for grants under section 20109(a)(2) of subtitle A of title II of the 1994 Act;

(B) \$8,000,000 shall be available for the Tribal Courts Initiative; and

(C) \$5,000,000 shall be available for demonstration projects on alcohol and crime in Indian Country;

(5) \$659,117,000 for programs authorized by part E of title I of the 1968 Act, notwithstanding the provisions of section 511 of said Act, of which \$159,117,000 shall be for discretionary grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs;

(6) \$10,000,000 for victim services programs for victims of trafficking, as authorized by section 107(b)(2) of Public Law 106–386;

(7) \$892,000 for the Missing Alzheimer's Disease Patient Alert Program, as authorized by section 240001(c) of the 1994 Act;

(8) \$38,500,000 for Drug Courts, as authorized by part EE of title I of the 1968 Act;

(9) \$2,000,000 for public awareness programs addressing marketing scams aimed at senior citizens, as authorized by section 250005(3) of the 1994 Act;

(10) \$7,000,000 for a prescription drug monitoring program;

(11) \$37,175,000 for prison rape prevention and prosecution programs as authorized by the Prison Rape Elimination Act of 2003 (Public Law 108–79), of which \$2,175,000 shall be transferred to the National Prison Rape Reduction Commission for authorized activities; and

(12) \$1,000,000 for a State and local law enforcement hate crimes training and technical assistance program: *Provided*, That funds made available in fiscal year 2004 under subpart 1 of part E of title I of the 1968 Act may be obligated for programs to assist States in the litigation processing of death penalty Federal habeas corpus petitions and for drug testing initiatives: *Provided further*, That, if a unit of local government uses any of the funds made available under this title to increase

the number of law enforcement officers, the unit of local government will achieve a net gain in the number of law enforcement officers who perform nonadministrative public safety service.

WEED AND SEED PROGRAM FUND

For necessary expenses, including salaries and related expenses of the Executive Office for Weed and Seed, to implement “Weed and Seed” program activities, \$58,542,000, to remain available until September 30, 2005, for inter-governmental agreements, including grants, cooperative agreements, and contracts, with State and local law enforcement agencies, non-profit organizations, and agencies of local government engaged in the investigation and prosecution of violent crimes and drug offenses in “Weed and Seed” designated communities, and for either reimbursements or transfers to appropriation accounts of the Department of Justice and other Federal agencies which shall be specified by the Attorney General to execute the “Weed and Seed” program strategy: *Provided*, That funds designated by Congress through language for other Department of Justice appropriation accounts for “Weed and Seed” program activities shall be managed and executed by the Attorney General through the Executive Office for Weed and Seed: *Provided further*, That the Attorney General may direct the use of other Department of Justice funds and personnel in support of “Weed and Seed” program activities only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

Notification.

COMMUNITY ORIENTED POLICING SERVICES

For activities authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) (including administrative costs), \$756,283,000, to remain available until expended: *Provided*, That funds that become available as a result of deobligations from prior year balances may not be obligated except in accordance with section 605 of this Act: *Provided further*, That of the funds under this heading, not to exceed \$1,972,000 shall be available for the Office of Justice Programs for reimbursable services associated with programs administered by the Community Oriented Policing Services Office: *Provided further*, That section 1703(b) and (c) of the Omnibus Crime Control and Safe Streets Act of 1968 (“the 1968 Act”) shall not apply to non-hiring grants made pursuant to part Q of title I thereof (42 U.S.C. 3796dd et seq.). Of the amounts provided—

(1) \$120,000,000 for the hiring of law enforcement officers, including \$60,000,000 for school resource officers;

(2) \$25,000,000 for the matching grant program for Law Enforcement Armor Vests pursuant to section 2501 of part Y of the 1968 Act;

(3) \$25,000,000 to improve tribal law enforcement including equipment and training;

(4) \$54,050,000 for policing initiatives to combat methamphetamine production and trafficking and to enhance policing initiatives in “drug hot spots”;

(5) \$15,000,000 for Police Corps education and training: *Provided*, That the out-year program costs of new recruits shall be fully funded from funds currently available;

(6) \$158,407,000 for a law enforcement technology program;

(7) \$30,000,000 for grants to upgrade criminal records, as authorized under the Crime Identification Technology Act of 1998 (42 U.S.C. 14601);

(8) \$100,000,000 for a DNA analysis and backlog reduction formula program, of which—

(A) \$55,000,000 shall be for eliminating casework backlogs;

(B) \$5,000,000 shall be for eliminating the offender backlog;

(C) \$30,000,000 shall be for strengthening crime lab capacity;

(D) \$5,000,000 shall be for training the criminal justice community; and

(E) \$5,000,000 shall be for using DNA to identify missing persons;

(9) \$10,000,000 for Paul Coverdell Forensic Sciences Improvement Grants under part BB of title I of the 1968 Act (42 U.S.C. 3797j et seq.);

(10) \$30,000,000 for the Southwest Border Prosecutor Initiative to reimburse State, county, parish, tribal, or municipal governments only for costs associated with the prosecution of criminal cases declined by local United States Attorneys offices;

(11) \$5,000,000 for an offender re-entry program, as authorized by Public Law 107–273;

(12) \$10,000,000 for a police integrity program;

(13) \$30,000,000 for Project Safe Neighborhoods to reduce gun violence, and gang and drug-related crime;

(14) \$24,226,000 for grants, contracts and other assistance to States under section 102(b) of the Crime Identification Technology Act of 1998 (42 U.S.C. 14601), of which \$5,000,000 is for the National Institute of Justice for grants, contracts, and other agreements to develop school safety technologies and training;

(15) \$85,000,000 for the COPS Interoperable Communications Technology Program;

(16) \$4,600,000 for the Safe Schools Initiative; and

(17) not to exceed \$30,000,000 for program management and administration.

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

For grants, contracts, cooperative agreements, and other assistance for the prevention and prosecution of violence against women as authorized by the Omnibus Crime Control and Safe Streets Act of 1968 (“the 1968 Act”); the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) (“the 1994 Act”); the Victims of Child Abuse Act of 1990 (“the 1990 Act”); the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108–21); and the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386); \$387,629,000 (including amounts for administrative costs, which shall be transferred to and merged with the “Justice Assistance” account), to remain available until expended.

Of the amount provided—

(1) \$11,897,000 for the court appointed special advocate program, as authorized by section 217 of the 1990 Act;

(2) \$2,281,000 for child abuse training programs for judicial personnel and practitioners, as authorized by section 222 of the 1990 Act;

(3) \$994,000 for grants for televised testimony, as authorized by part N of the 1968 Act;

(4) \$168,334,000 for grants to combat violence against women, as authorized by part T of the 1968 Act, of which—

(A) \$5,200,000 shall be for the National Institute of Justice for research and evaluation of violence against women; and

(B) \$10,000,000 shall be for the Office of Juvenile Justice and Delinquency Prevention for the Safe Start Program, as authorized by the Juvenile Justice and Delinquency Act of 1974;

(5) \$64,503,000 for grants to encourage arrest policies as authorized by part U of the 1968 Act;

(6) \$39,685,000 for rural domestic violence and child abuse enforcement assistance grants, as authorized by section 40295 of the 1994 Act;

(7) \$4,957,000 for training programs as authorized by section 40152 of the 1994 Act, and for related local demonstration projects;

(8) \$2,981,000 for grants to improve the stalking and domestic violence databases, as authorized by section 40602 of the 1994 Act;

(9) \$9,935,000 to reduce violent crimes against women on campus, as authorized by section 1108(a) of Public Law 106–386;

(10) \$39,740,000 for legal assistance for victims, as authorized by section 1201 of Public Law 106–386;

(11) \$4,968,000 for enhancing protection for older and disabled women from domestic violence and sexual assault as authorized by section 40802 of the 1994 Act;

(12) \$14,903,000 for the safe havens for children pilot program as authorized by section 1301 of Public Law 106–386;

(13) \$15,000,000 shall be for transitional housing assistance grants for victims of domestic violence, stalking or sexual assault as authorized by Public Law 108–21; and

(14) \$7,451,000 for education and training to end violence against and abuse of women with disabilities, as authorized by section 1402 of Public Law 106–386.

JUVENILE JUSTICE PROGRAMS

For grants, contracts, cooperative agreements, and other assistance authorized by the Juvenile Justice and Delinquency Prevention Act of 1974 (“the Act”), and other juvenile justice programs, including salaries and expenses in connection therewith to be transferred to and merged with the appropriations for Justice Assistance, \$352,700,000, to remain available until expended, as follows—

(1) \$3,600,000 for concentration of Federal efforts, as authorized by section 204 of the Act;

(2) \$84,000,000 for State and local programs authorized by section 221 of the Act, including training and technical assistance to assist small, non-profit organizations with the Federal grants process;

(3) \$2,500,000 for research, evaluation, training and technical assistance, as authorized by sections 251 and 252 of the Act;

(4) \$79,600,000 for demonstration projects as authorized by sections 261 and 262 of the Act;

(5) \$80,000,000 for delinquency prevention, as authorized by section 505 of the Act, of which—

(A) \$10,000,000 shall be for the Tribal Youth program;

(B) \$20,000,000 shall be for a gang resistance education and training program to be coordinated with the Bureau of Alcohol, Tobacco, Firearms and Explosives; and

(C) \$25,000,000 shall be for grants of \$360,000 to each State and \$6,640,000 shall be available for discretionary grants to States, for programs and activities to enforce State laws prohibiting the sale of alcoholic beverages to minors or the purchase or consumption of alcoholic beverages by minors, prevention and reduction of consumption of alcoholic beverages by minors, and for technical assistance and training;

(6) \$5,000,000 for Project Childsafe;

(7) \$10,000,000 for the Secure Our Schools Act as authorized by Public Law 106-386;

(8) \$15,000,000 for Project Sentry to reduce youth gun violence, and gang and drug-related crime;

(9) \$13,000,000 for programs authorized by the Victims of Child Abuse Act of 1990; and

(10) \$60,000,000 for the Juvenile Accountability Block Grants program as authorized by Public Law 107-273 and Guam shall be considered a State:

Provided, That not more than 10 percent of each amount in this section may be used for research, evaluation, and statistics activities designed to benefit the programs or activities authorized, and not more than 2 percent of each amount may be used for training and technical assistance.

PUBLIC SAFETY OFFICERS BENEFITS

To remain available until expended, for payments authorized by part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796), such sums as are necessary, as authorized by section 6093 of Public Law 100-690 (102 Stat. 4339-4340); and \$3,000,000, to remain available until expended for payments as authorized by section 1201(b) of said Act.

GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

(INCLUDING RESCISSION)

SEC. 101. In addition to amounts otherwise made available in this title for official reception and representation expenses, a total of not to exceed \$45,000 from funds appropriated to the Department of Justice in this title shall be available to the Attorney General for official reception and representation expenses.

Abortion.

SEC. 102. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape: *Provided*, That should this prohibition be

declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

SEC. 103. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion. Abortion.

SEC. 104. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: *Provided*, That nothing in this section in any way diminishes the effect of section 103 intended to address the philosophical beliefs of individual employees of the Bureau of Prisons.

SEC. 105. Notwithstanding any other provision of law, not to exceed \$10,000,000 of the funds made available in this Act may be used to establish and publicize a program under which publicly advertised, extraordinary rewards may be paid, which shall not be subject to spending limitations contained in sections 3059 and 3072 of title 18, United States Code: *Provided*, That any reward of \$100,000 or more, up to a maximum of \$2,000,000, may not be made without the personal approval of the President or the Attorney General and such approval may not be delegated: *Provided further*, That rewards made pursuant to section 501 of Public Law 107–56 shall not be subject to this section.

SEC. 106. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section.

SEC. 107. Section 114 of Public Law 107–77 shall remain in effect during fiscal year 2004.

SEC. 108. (a) Hereafter, the Attorney General is authorized to transfer, under such terms and conditions as the Attorney General shall specify, forfeited real or personal property of limited or marginal value, as such value is determined by guidelines established by the Attorney General, to a State or local government agency, or its designated contractor or transferee, for use to support drug abuse treatment, drug and crime prevention and education, housing, job skills, and other community-based public health and safety programs. 28 USC 524 note.

(b) Any transfer under the preceding proviso shall not create or confer any private right of action in any person against the United States, and shall be treated as a reprogramming under section 605 of this Act.

SEC. 109. Authorities contained in the 21st Century Department of Justice Appropriations Authorization Act (Public Law 107–273) shall remain in effect until the effective date of a subsequent Department of Justice appropriations authorization Act.

SEC. 110. None of the funds appropriated or otherwise made available by this Act or any other Act to the Department of Justice shall be expended for the purpose of reimbursement or direct payments for the legal fees of an individual employed as an attorney in the Department of Justice for a matter in which the individual

is the subject of a disciplinary recommendation for ethical misconduct by the Counsel for Professional Responsibility.

SEC. 111. In addition to the amounts provided under “Salaries and Expenses, United States Attorneys”, \$15,000,000 shall be for Project Seahawk and shall remain available until expended.

25 USC 3651
note.

SEC. 112. (a)(1) None of the funds provided in this Act or hereafter may be used for courts or law enforcement officers for a tribe or village—

(A) in which fewer than 25 Native members live in the village year round; or

(B) that is located within the boundaries of the Fairbanks North Star Borough, the Matanuska Susitna Borough, the Municipality of Anchorage, the Kenai Peninsula Borough, the City and Borough of Juneau, the Sitka Borough, or the Ketchikan Borough.

Establishment.
Alaska.

(2)(A) There is established an Alaska Rural Justice and Law Enforcement Commission (hereinafter “Justice Commission”). The United States Attorney General shall appoint the Justice Commission which shall include a Federal Co-chairman, the Attorney General for the State of Alaska or his designee who shall act as the State Co-Chairman, the Commissioner of Public Safety for the State of Alaska, a representative from the Alaska Municipal League, a representative from an organized borough, a representative of the Alaska Federation of Natives, a tribal representative, a representative from a non-profit Native corporation that operates Village Public Safety Officer programs, and a representative from the Alaska Native Justice Center. The chief judge for the Federal District Court for the District of Alaska may also appoint a non-voting representative to provide technical support. The Justice Commission may hire such staff as is necessary to assist with its work.

(B) The Justice Commission shall review Federal, State, local, and tribal jurisdiction over civil and criminal matters in Alaska but outside the Municipality of Anchorage, the Fairbanks North Star Borough, the Kenai Peninsula Borough, the Matanuska-Susitna Borough, the City and Borough of Juneau, the Sitka Borough, and the Ketchikan Borough. It shall make recommendations to Congress and the Alaska State Legislature no later than May 1, 2004, on options which shall include the following—

Deadline.

(i) create a unified law enforcement system, court system, and system of local laws or ordinances for Alaska Native villages and communities of varying sizes including the possibility of first, second, and third class villages with different powers;

(ii) meet the law enforcement and judicial personnel needs in rural Alaska including the possible use of cross deputization in a way that maximizes the existing resources of Federal, State, local, and tribal governments;

(iii) address the needs to regulate alcoholic beverages including the prohibition of the sale, importation, use, or possession of alcoholic beverages and to provide restorative justice for persons who violate such laws including treatment; and

(iv) address the problem of domestic violence and child abuse including treatment options and restorative justice.

(b)(1) The General Accounting Office shall immediately begin a review of Federal programs benefitting rural communities in Alaska including the name of each program and the department or agency that administers it, the amount of funds provided to

Alaska through each program, a list of the statutes and regulations governing use of funds for each program, and any data demonstrating the performance of each program. With respect to housing programs, the study shall determine the number of houses built by each Native housing authority including the cost per house. The Office shall submit a report of its findings to the House and Senate Committees on Appropriations, and to the Alaska Federation of Natives no later than April 30, 2004.

Reports.
Deadline.

(2) The Alaska Federation of Natives, in consultation with the Alaska Municipal League, may review the delivery of Federal programs in Alaska and make recommendations to the Congress to reduce duplication, improve and consolidate delivery of services, streamline application and administrative procedures, improve accountability, mandate performance measures, and other actions to reduce costs and improve efficiency.

(c) The Federal Advisory Committee Act shall not apply to this section.

(d) Amend the Denali Commission Act (title III of Public Law 105-277) by adding a new section as follows:

“SEC. 310. (a) The Federal Co-chairman of the Denali Commission shall appoint an Economic Development Committee to be chaired by the president of the Alaska Federation of Natives which shall include the Commissioner of Community and Economic Affairs for the State of Alaska, a representative from the Alaska Bankers Association, the chairman of the Alaska Permanent Fund, a representative from the Alaska State Chamber of Commerce, and a representative from each region. Of the regional representatives, at least two each shall be from Native regional corporations, Native non-profit corporations, tribes, and borough governments.

Establishment.
42 USC 3121
note.

“(b) The Economic Development Committee is authorized to consider and approve applications from Regional Advisory Committees for grants and loans to promote economic development and promote private sector investment to reduce poverty in economically distressed rural villages. The Economic Development Committee may make mini-grants to individual applicants and may issue loans under such terms and conditions as it determines.

“(c) The State Co-chairman of the Denali Commission shall appoint a Regional Advisory Committee for each region which may include representatives from local, borough, and tribal governments, the Alaska Native non-profit corporation operating in the region, local Chambers of Commerce, and representatives of the private sector. Each Regional Advisory Committee shall develop a regional economic development plan for consideration by the Economic Development Committee.

Establishment.

“(d) The Economic Development Committee, in consultation with the First Alaskans Institute, may develop rural development performance measures linking economic growth to poverty reduction to measure the success of its program which may include economic, educational, social, and cultural indicators. The performance measures will be tested in one region for 2 years and evaluated by the University of Alaska before being deployed statewide. Thereafter, performance in each region shall be evaluated using the performance measures, and the Economic Development Committee shall not fund projects which do not demonstrate success.

“(e) Within the amounts made available annually to the Denali Commission for training, the Commission may make a grant to the First Alaskans Foundation upon submittal of an acceptable

work plan to assist Alaska Natives and other rural residents in acquiring the skills and training necessary to participate fully in private sector business and economic and development opportunities through fellowships, scholarships, internships, public service programs, and other leadership initiatives.

“(f) The Committee shall sponsor a statewide economic development summit in consultation with the World Bank to evaluate the best practices for economic development worldwide and how they can be incorporated into regional economic development plans.

“(g) There is authorized to be appropriated such sums as may be necessary to the following agencies which shall be transferred to the Denali Commission as a direct lump sum payment to implement this section—

“(1) Department of Commerce, Economic Development Administration,

“(2) Department of Housing and Urban Development,

“(3) Department of the Interior, Bureau of Indian Affairs,

“(4) Department of Agriculture, Rural Development Administration, and

“(5) Small Business Administration.”

SEC. 113. For an additional amount for the “Local Law Enforcement Block Grant” program to be provided to the City of San Juan, Puerto Rico, \$550,000.

SEC. 114. Of the unobligated balances available to the Department of Justice from prior year appropriations with the exception of funds provided for counterterrorism activities, counterintelligence activities, white collar crime enforcement, organized crime enforcement, and drug enforcement, \$100,000,000 are rescinded: *Provided*, That within 30 days after the date of the enactment of this section the Attorney General shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the amount of each rescission made pursuant to this section.

This title may be cited as the “Department of Justice Appropriations Act, 2004”.

Deadline.
Reports.

Department of
Commerce and
Related Agencies
Appropriations
Act, 2004.

TITLE II—DEPARTMENT OF COMMERCE AND RELATED AGENCIES

TRADE AND INFRASTRUCTURE DEVELOPMENT

RELATED AGENCIES

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SALARIES AND EXPENSES

For necessary expenses of the Office of the United States Trade Representative, including the hire of passenger motor vehicles and the employment of experts and consultants as authorized by 5 U.S.C. 3109, \$41,994,000, of which \$1,000,000 shall remain available until expended: *Provided*, That not to exceed \$124,000 shall be available for official reception and representation expenses: *Provided further*, That not less than \$2,000,000 provided under this heading shall be for expenses authorized by 19 U.S.C. 2451 and 1677b(c): *Provided further*, That negotiations shall be conducted within the World Trade Organization to recognize the right of

members to distribute monies collected from antidumping and countervailing duties.

INTERNATIONAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the International Trade Commission, including hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, and not to exceed \$2,500 for official reception and representation expenses, \$58,295,000, to remain available until expended.

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For necessary expenses for international trade activities of the Department of Commerce provided for by law, and for engaging in trade promotional activities abroad, including expenses of grants and cooperative agreements for the purpose of promoting exports of United States firms, without regard to 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas; travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 40118; employment of Americans and aliens by contract for services; rental of space abroad for periods not exceeding 10 years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed \$327,000 for official representation expenses abroad; purchase of passenger motor vehicles for official use abroad, not to exceed \$30,000 per vehicle; obtaining insurance on official motor vehicles; and rental of tie lines, \$395,123,000, to remain available until expended, of which \$13,000,000 is to be derived from fees to be retained and used by the International Trade Administration, notwithstanding 31 U.S.C. 3302: *Provided*, That \$46,669,000 shall be for Manufacturing and Services; \$38,204,000 shall be for Market Access and Compliance; \$68,160,000 shall be for the Import Administration of which \$3,000,000 is to establish an Office of China Compliance; \$217,040,000 shall be for the United States and Foreign Commercial Service of which \$1,500,000 is for the Advocacy Center, \$2,500,000 is for the Trade Information Center, and \$2,100,000 is for a China and Middle East Business Center; and \$25,050,000 shall be for Executive Direction and Administration: *Provided further*, That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties: *Provided further*, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15

Establishment.

Applicability.

U.S.C. 4912); and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 shall include payment for assessments for services provided as part of these activities.

BUREAU OF INDUSTRY AND SECURITY

OPERATIONS AND ADMINISTRATION

Applicability.

For necessary expenses for export administration and national security activities of the Department of Commerce, including costs associated with the performance of export administration field activities both domestically and abroad; full medical coverage for dependent members of immediate families of employees stationed overseas; employment of Americans and aliens by contract for services abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed \$15,000 for official representation expenses abroad; awards of compensation to informers under the Export Administration Act of 1979, and as authorized by 22 U.S.C. 401(b); and purchase of passenger motor vehicles for official use and motor vehicles for law enforcement use with special requirement vehicles eligible for purchase without regard to any price limitation otherwise established by law, \$68,203,000, to remain available until September 30, 2005, of which \$7,203,000 shall be for inspections and other activities related to national security: *Provided*, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities: *Provided further*, That payments and contributions collected and accepted for materials or services provided as part of such activities may be retained for use in covering the cost of such activities, and for providing information to the public with respect to the export administration and national security activities of the Department of Commerce and other export control programs of the United States and other governments.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For grants for economic development assistance as provided by the Public Works and Economic Development Act of 1965, and for trade adjustment assistance, \$288,115,000, to remain available until expended.

SALARIES AND EXPENSES

For necessary expenses of administering the economic development assistance programs as provided for by law, \$30,565,000: *Provided*, That these funds may be used to monitor projects approved pursuant to title I of the Public Works Employment Act of 1976, title II of the Trade Act of 1974, and the Community Emergency Drought Relief Act of 1977.

MINORITY BUSINESS DEVELOPMENT AGENCY

MINORITY BUSINESS DEVELOPMENT

For necessary expenses of the Department of Commerce in fostering, promoting, and developing minority business enterprise, including expenses of grants, contracts, and other agreements with public or private organizations, \$28,859,000.

ECONOMIC AND INFORMATION INFRASTRUCTURE

ECONOMIC AND STATISTICAL ANALYSIS

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, of economic and statistical analysis programs of the Department of Commerce, \$75,000,000, to remain available until September 30, 2005.

BUREAU OF THE CENSUS

SALARIES AND EXPENSES

For expenses necessary for collecting, compiling, analyzing, preparing, and publishing statistics, provided for by law, \$194,811,000.

PERIODIC CENSUSES AND PROGRAMS

For necessary expenses related to the 2010 decennial census, \$255,200,000, to remain available until September 30, 2005: *Provided*, That, of the total amount available related to the 2010 decennial census, \$107,090,000 is for the Re-engineered Design Process for the Short-Form Only Census, \$64,800,000 is for the American Community Survey, and \$83,310,000 is for the Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) system.

In addition, for expenses to collect and publish statistics for other periodic censuses and programs provided for by law, \$180,853,000, to remain available until September 30, 2005, of which \$80,082,000 is for economic statistics programs and \$100,771,000 is for demographic statistics programs: *Provided*, That regarding engineering and design of a facility at the Suitland Federal Center, quarterly reports regarding the expenditure of funds and project planning, design and cost decisions shall be provided by the Bureau, in cooperation with the General Services Administration, to the Committees on Appropriations of the Senate and the House of Representatives: *Provided further*, That none of the funds provided in this or any other Act under the heading “Bureau of the Census, Periodic Censuses and Programs” shall be used to fund the construction and tenant build-out costs of a facility at the Suitland Federal Center.

Reports.

NATIONAL TELECOMMUNICATIONS AND INFORMATION
ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, as provided for by law, of the National Telecommunications and Information Administration (NTIA),

\$14,604,000, to remain available until September 30, 2005: *Provided*, That, notwithstanding 31 U.S.C. 1535(d), the Secretary of Commerce shall charge Federal agencies for costs incurred in spectrum management, analysis, and operations, and related services and such fees shall be retained and used as offsetting collections for costs of such spectrum services, to remain available until expended: *Provided further*, That the Secretary of Commerce is authorized to retain and use as offsetting collections all funds transferred, or previously transferred, from other Government agencies for all costs incurred in telecommunications research, engineering, and related activities by the Institute for Telecommunication Sciences of NTIA, in furtherance of its assigned functions under this paragraph, and such funds received from other Government agencies shall remain available until expended.

PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND
CONSTRUCTION

For grants authorized by section 392 of the Communications Act of 1934, \$22,000,000, to remain available until expended as authorized by section 391 of the Act: *Provided*, That not to exceed \$2,000,000 shall be available for program administration as authorized by section 391 of the Act: *Provided further*, That, notwithstanding the provisions of section 391 of the Act, the prior year unobligated balances may be made available for grants for projects for which applications have been submitted and approved during any fiscal year.

INFORMATION INFRASTRUCTURE GRANTS

For grants authorized by section 392 of the Communications Act of 1934, \$15,000,000, to remain available until expended as authorized by section 391 of the Act: *Provided*, That not to exceed \$3,000,000 shall be available for program administration and other support activities as authorized by section 391: *Provided further*, That, of the funds appropriated herein, not to exceed 5 percent may be available for telecommunications research activities for projects related directly to the development of a national information infrastructure: *Provided further*, That, notwithstanding the requirements of sections 392(a) and 392(c) of the Act, these funds may be used for the planning and construction of telecommunications networks for the provision of educational, health care, or public information: *Provided further*, That, notwithstanding any other provision of law, no entity that receives telecommunications services at preferential rates under section 254(h) of the Act (47 U.S.C. 254(h)) or receives assistance under the regional information sharing systems grant program of the Department of Justice under part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h) may use funds under a grant under this heading to cover any costs of the entity that would otherwise be covered by such preferential rates or such assistance, as the case may be.

UNITED STATES PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

For necessary expenses of the United States Patent and Trademark Office provided for by law, including defense of suits instituted against the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, \$1,222,460,000, to remain available until expended, which amount shall be derived from offsetting collections assessed and collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41 and 376, and shall be retained and used for necessary expenses in this appropriation: *Provided*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2004, so as to result in a fiscal year 2004 appropriation from the general fund estimated at \$0: *Provided further*, That during fiscal year 2004, should the total amount of offsetting fee collections be less than \$1,222,460,000, the total amounts available to the United States Patent and Trademark Office shall be reduced accordingly: *Provided further*, That from amounts provided herein, not to exceed \$1,000 shall be made available in fiscal year 2004 for official reception and representation expenses: *Provided further*, That, notwithstanding section 1353 of title 31, United States Code, no employee of the United States Patent and Trademark Office may accept payment or reimbursement from a non-Federal entity for travel, subsistence, or related expenses for the purpose of enabling an employee to attend and participate in a convention, conference, or meeting when the entity offering payment or reimbursement is a person or corporation subject to regulation by the Office, or represents a person or corporation subject to regulation by the Office, unless the person or corporation is an organization exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986.

SCIENCE AND TECHNOLOGY

TECHNOLOGY ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Under Secretary for Technology Office of Technology Policy, \$6,411,000.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the National Institute of Standards and Technology, \$344,366,000, to remain available until expended, of which not to exceed \$282,000 may be transferred to the “Working Capital Fund”.

INDUSTRIAL TECHNOLOGY SERVICES

For necessary expenses of the Manufacturing Extension Partnership of the National Institute of Standards and Technology, \$39,607,000, to remain available until expended.

In addition, for necessary expenses of the Advanced Technology Program of the National Institute of Standards and Technology,

\$179,175,000, to remain available until expended, of which \$60,700,000 shall be expended for the award of new grants before September 30, 2004.

CONSTRUCTION OF RESEARCH FACILITIES

For construction of new research facilities, including architectural and engineering design, and for renovation and maintenance of existing facilities, not otherwise provided for the National Institute of Standards and Technology, as authorized by 15 U.S.C. 278c–278e, \$64,954,000, to remain available until expended.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration, including maintenance, operation, and hire of aircraft; grants, contracts, or other payments to nonprofit organizations for the purposes of conducting activities pursuant to cooperative agreements; and relocation of facilities as authorized, \$2,686,520,000, to remain available until September 30, 2005, except for funds provided for cooperative enforcement which shall remain available until September 30, 2006: *Provided*, That fees and donations received by the National Ocean Service for the management of the national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302: *Provided further*, That, in addition, \$62,000,000 shall be derived by transfer from the fund entitled “Promote and Develop Fishery Products and Research Pertaining to American Fisheries”: *Provided further*, That grants to States pursuant to sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, shall not exceed \$2,000,000, unless funds provided for “Coastal Zone Management Grants” exceed funds provided in the previous fiscal year: *Provided further*, That if funds provided for “Coastal Zone Management Grants” exceed funds provided in the previous fiscal year, then no State shall receive more than 5 percent or less than 1 percent of the additional funds: *Provided further*, That, of the \$2,748,520,000 provided for in direct obligations under this heading (of which \$2,686,520,000 is appropriated from the General Fund and \$62,000,000 is provided by transfer), \$513,910,000 shall be for the National Ocean Service, \$639,990,000 shall be for the National Marine Fisheries Service, \$400,813,000 shall be for Oceanic and Atmospheric Research, \$729,685,000 shall be for the National Weather Service, \$153,827,000 shall be for the National Environmental Satellite, Data, and Information Service, and \$310,295,000 shall be for Program Support: *Provided further*, That no general administrative charge shall be applied against an assigned activity included in this Act or the report accompanying this Act: *Provided further*, That deobligated balances of funds provided under this heading in previous years shall be deposited in the United States Treasury General Fund: *Provided further*, That payments of funds made available under this heading to the Department of Commerce Working Capital Fund shall not exceed \$38,758,000: *Provided further*, That none of the funds under this

heading are available to alter the existing structure, organization, function, and funding of the National Marine Fisheries Service Southwest Region and Fisheries Science Center and Northwest Region and Fisheries Science Center: *Provided further*, That, hereafter, the Secretary of Commerce may enter into cooperative agreements with the Joint and Cooperative Institutes as designated by the Secretary to use the personnel, services, or facilities of such organizations for research, education, training, and outreach: *Provided further*, That of the amounts appropriated under this heading, \$1,207,000 shall be transferred to and merged with funds appropriated under the heading, “Salaries and Expenses, Marine Mammal Commission”, of which \$500,000 shall remain available until September 30, 2005: *Provided further*, That none of the funds in this Act may be used for the National Oceanic and Atmospheric Administration to implement the Department of Commerce’s E-Government initiatives.

15 USC 1540
note.

In addition, for necessary retired pay expenses under the Retired Serviceman’s Family Protection and Survivor Benefits Plan, and for payments for medical care of retired personnel and their dependents under the Dependents Medical Care Act (10 U.S.C. ch. 55), such sums as may be necessary.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For procurement, acquisition and construction of capital assets, including alteration and modification costs, of the National Oceanic and Atmospheric Administration, \$990,127,000, to remain available until September 30, 2006, except for funds appropriated for the National Marine Fisheries Service Honolulu Laboratory and the Marine Environmental Health Research Laboratory, which shall remain available until expended: *Provided*, That of the amounts provided for the National Polar-orbiting Operational Environmental Satellite System, funds shall only be made available on a dollar for dollar matching basis with funds provided for the same purpose by the Department of Defense: *Provided further*, That none of the funds provided in this Act or any other Act under the heading “National Oceanic and Atmospheric Administration, Procurement, Acquisition and Construction” shall be used to fund the General Services Administration’s standard construction and tenant build-out costs of a facility at the Suitland Federal Center.

PACIFIC COASTAL SALMON RECOVERY

For necessary expenses associated with the restoration of Pacific salmon populations, \$90,000,000.

FISHERIES FINANCE PROGRAM ACCOUNT

For the costs of direct loans as authorized by the Merchant Marine Act of 1936: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in the Federal Credit Reform Act of 1990: *Provided further*, That these funds are available to subsidize gross obligations for the principle amount of direct loans not to exceed \$5,000,000 for Individual Fishing Quota loans, and not to exceed \$59,000,000 for traditional direct loans, of which \$40,000,000 may be used for direct loans to the United States distant water tuna fleet, and of which \$19,000,000 may be used for direct loans to the United States menhaden fishery: *Provided*

further, That none of the funds made available under this heading may be used for direct loans for any new fishing vessel that will increase the harvesting capacity in any United States fishery.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For expenses necessary for the departmental management of the Department of Commerce provided for by law, including not to exceed \$5,000 for official entertainment, \$47,289,000: *Provided*, That not to exceed 12 full-time equivalents and \$1,621,000 shall be expended for the legislative affairs function of the Department.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.), \$21,116,000.

GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

(INCLUDING RESCISSION)

SEC. 201. During the current fiscal year, applicable appropriations and funds made available to the Department of Commerce by this Act shall be available for the activities specified in the Act of October 26, 1949 (15 U.S.C. 1514), to the extent and in the manner prescribed by the Act, and, notwithstanding 31 U.S.C. 3324, may be used for advanced payments not otherwise authorized only upon the certification of officials designated by the Secretary of Commerce that such payments are in the public interest.

SEC. 202. During the current fiscal year, appropriations made available to the Department of Commerce by this Act for salaries and expenses shall be available for hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; services as authorized by 5 U.S.C. 3109; and uniforms or allowances therefore, as authorized by law (5 U.S.C. 5901-5902).

15 USC 313 note.

SEC. 203. Hereafter, none of the funds made available by this or any other Act for the National Oceanic and Atmospheric Administration may be used to support the hurricane reconnaissance aircraft and activities that are under the control of the United States Air Force or the United States Air Force Reserve.

Notification.

SEC. 204. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section: *Provided further*, That the Secretary of Commerce shall notify the Committees on Appropriations at least 15 days in advance of the acquisition or disposal of any capital asset (including land, structures, and equipment) not specifically provided for in this or any other Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act.

SEC. 205. Any costs incurred by a department or agency funded under this title resulting from personnel actions taken in response

to funding reductions included in this title or from actions taken for the care and protection of loan collateral or grant property shall be absorbed within the total budgetary resources available to such department or agency: *Provided*, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: *Provided further*, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 206. Hereafter, the Secretary of Commerce may use the Commerce franchise fund for expenses and equipment necessary for the maintenance and operation of such administrative services as the Secretary determines may be performed more advantageously as central services, pursuant to section 403 of Public Law 103–356: *Provided*, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made for the purpose of providing capital shall be used to capitalize such fund: *Provided further*, That such fund shall be paid in advance from funds available to the Department and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of fund plant and equipment, amortization of automated data processing software and systems (either acquired or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the Secretary: *Provided further*, That such fund shall provide services on a competitive basis: *Provided further*, That an amount not to exceed 4 percent of the total annual income to such fund may be retained in the fund for fiscal year 2004 and each fiscal year thereafter, to remain available until expended, to be used for the acquisition of capital equipment, and for the improvement and implementation of department financial management, automated data processing, and other support systems: *Provided further*, That such amounts retained in the fund for fiscal year 2004 and each fiscal year thereafter shall be available for obligation and expenditure only in accordance with section 605 of this Act: *Provided further*, That no later than 30 days after the end of each fiscal year, amounts in excess of this reserve limitation shall be deposited as miscellaneous receipts in the Treasury.

31 USC 501 note.

Deadline.

SEC. 207. Notwithstanding any other provision of law, of the amounts made available elsewhere in this title to the “National Institute of Standards and Technology, Construction of Research Facilities”, \$14,000,000 is appropriated to fund a cooperative agreement with the Medical University of South Carolina, \$5,000,000 is appropriated to the Thayer School of Engineering, of which \$1,000,000 is for research relating to intelligent control of distributed systems, \$2,000,000 is for a smart laser beam project, and \$2,000,000 is for research relating to nanomagnetism, \$500,000 is appropriated to the Institute for Information Infrastructure Protection at the Institute for Security and Technology Studies, \$1,000,000 is appropriated for the Institute of Politics, and \$500,000 is appropriated for the Coastal Conservation Center.

SEC. 208. Of the amount available from the fund entitled “Promote and Develop Fishery Products and Research Pertaining to

American Fisheries”, \$10,000,000 shall be provided to the Alaska Fisheries Marketing Board, \$2,000,000 shall be available to the Gulf and South Atlantic Fisheries Foundation, \$2,000,000 shall be available to the South Carolina Seafood Alliance, \$1,500,000 shall be available to the Oregon Trawl Commission, and \$1,500,000 shall be available to the Oregon State University Seafood Laboratory: *Provided*, That: (1) the Alaska Fisheries Marketing Board (hereinafter “the Board”) shall be a nonprofit organization and not an agency or establishment of the United States; (2) the Secretary may appoint, assign, or otherwise designate as Executive Director an employee of the Department of Commerce, who may serve in an official capacity in such position, with or without reimbursement, and such appointment or assignment shall be without interruption or loss of civil service status or privilege; and (3) the Board may adopt bylaws consistent with the purposes of this section, and may undertake other acts necessary to carry out the provisions of this section.

SEC. 209. (a) Notwithstanding the provisions of the Public Works and Economic Development Act as amended (42 U.S.C. 3121, et seq.) or any other provision of law, the Economic Development Administration shall approve the sale, transfer, or conveyance, without compensation to the agency, of any land on the former Charleston Naval Base, located north of Viaduct Road which was improved by EDA project numbers 04-49-04196, 04-49-04280, 04-49-04462, and 04-49-04461 and funds obligated but not yet disbursed in connection with EDA project number 04-49-04347 shall remain available until expended and, as of September 30, 2003, shall be exempt from the application of section 1552 of title 31, United States Code.

Alabama.
Alabama Real
Estate Holdings,
Inc.

(b) Notwithstanding any other provision of law, the Secretary of Commerce shall approve, without compensation to the Agency, a lease to be entered into by the City of Florence, Alabama, and Alabama Real Estate Holdings, Inc., containing such terms and conditions as the city of Florence determines appropriate, for use of the parcel of land (including improvements thereon) located in Florence, Alabama, that was improved using assistance from the Economic Development Administration under EDA project number 04-01-03963.

South Carolina.
Memorandum.

SEC. 210. (a) The Secretary of Commerce is authorized to operate a marine laboratory in South Carolina in accordance with a memorandum of agreement, including any future amendments, among the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, the State of South Carolina, the Medical University of South Carolina, and the College of Charleston as a partnership for collaborative, interdisciplinary marine scientific research.

(b) To carry out subsection (a), the agencies that are partners in the Laboratory may accept, apply for, use, and spend Federal, State, private and grant funds as necessary to further the mission of the Laboratory without regard to the source or of the period of availability of these funds and may apply for and hold patents, as well as share personnel, facilities, and property. Any funds collected or accepted by any partner may be used to offset all or portions of its costs, including overhead, without regard to 31 U.S.C. 143302(b); to reimburse other participating agencies for all or portions of their costs; and to fund research and facilities expansion. Funds for management and operation of the Laboratory may

be used to sustain basic laboratory operations for all participating entities. The Secretary of Commerce is authorized to charge fees and enter into contracts, grants, cooperative agreements and other arrangements with Federal, State, private entities, and other entities, domestic and foreign, to further the mission of the Laboratory. Any funds collected from such fees or arrangements shall be used to support cooperative research, basic operations, and facilities enhancement at the Laboratory.

SEC. 211. EXTENSION OF GUARANTEE AUTHORITY. (a) IN GENERAL.—Section 101(k) of the Emergency Steel Loan Guarantee Act of 1999 (Public Law 106–51; 15 U.S.C. 1841 note) is amended by striking “2003” and inserting “2005”.

(b) SALARIES AND EXPENSES.—In addition to funds made available under section 101(j) of Emergency Steel Loan Guarantee Act of 1999 (15 U.S.C. 1841 note), up to \$2,000,000 in funds made available under section 101(f) of such Act may be used for salaries and administrative expenses to administer the Emergency Steel Loan Guarantee Program.

SEC. 212. In addition to amounts made available under the heading “Procurement, Acquisition and Construction, National Oceanic and Atmospheric Administration” \$1,500,000 shall be available for the Western Carolina University, \$1,000,000 shall be available for the South Florida Museum, \$140,000 shall be available for the French and Indian War Foundation, \$1,000,000 shall be available for the City of Chattanooga, Tennessee, \$1,000,000 shall be available for the University of Mississippi, \$1,000,000 shall be available for the City of Charlotte, North Carolina, and \$489,000 shall be available for a public safety marine docking facility for Hampton, New Hampshire.

SEC. 213. In addition to amounts appropriated or otherwise made available by this Act or any other Act, \$500,000 shall be provided until expended for the Federal Credit Reform Act cost of a reduction loan under sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g), not to exceed \$50,000,000 in principal, that—

(1) notwithstanding 46 U.S.C. App. 1279f(b), shall have a term of not less than 30 years;

(2) carries out a New England lobster fishing capacity reduction program which may include fewer than all management areas of the fishery;

(3) permanently revokes all fishery licenses, fishery permits, area and species endorsements, and any other fishery privileges issued to a vessel or vessels (or to persons on the basis of their operation or ownership of that vessel or vessels) removed under the program; and

(4) ensures that all vessels removed from the fishery under the program are made permanently ineligible to participate in any fishery worldwide, and that the owners of such vessels will operate only under the United States flag or such vessels shall be scrapped as a reduction vessel pursuant to section 600.1011(c) of title 50, Code of Federal Regulations.

SEC. 214. In addition to amounts appropriated or otherwise made available by this Act or any other Act, \$500,000 shall be provided until expended for the Federal Credit Reform Act cost of a reduction loan under sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g), not to exceed \$50,000,000 in principal, that—

(1) notwithstanding 46 U.S.C. App. 1279f(b), shall have a term of not less than 30 years;

(2) carries out a Bering Sea and Aleutian Islands non-pollock groundfish capacity reduction program which may include fewer than all management areas of the fishery;

(3) permanently revokes all fishery licenses, fishery permits, area and species endorsements, and any other fishery privileges issued to a vessel or vessels (or to persons on the basis of their operation or ownership of that vessel or vessels) removed under the program; and

(4) ensures that all vessels removed from the fishery under the program are made permanently ineligible to participate in any fishery worldwide, and that the owners of such vessels will operate only under the United States flag or such vessels shall be scrapped as a reduction vessel pursuant to section 600.1011(c) of title 50, Code of Federal Regulations.

SEC. 215. Of the unobligated balances available to the Department of Commerce from prior year appropriations with the exception of funds provided for coral reef activities, fisheries enforcement, the Ocean Health Initiative, land acquisition, and lab construction, \$100,000,000 are rescinded: *Provided*, That within 30 days after the date of enactment of this section the Secretary of Commerce shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the amount of each rescission made pursuant to this section.

This title may be cited as the “Department of Commerce and Related Agencies Appropriations Act, 2004”.

Deadline.
Reports.

Judiciary
Appropriations
Act, 2004.

TITLE III—THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

SALARIES AND EXPENSES

For expenses necessary for the operation of the Supreme Court, as required by law, excluding care of the building and grounds, including purchase or hire, driving, maintenance, and operation of an automobile for the Chief Justice, not to exceed \$10,000 for the purpose of transporting Associate Justices, and hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; not to exceed \$10,000 for official reception and representation expenses; and for miscellaneous expenses, to be expended as the Chief Justice may approve, \$55,360,000.

CARE OF THE BUILDING AND GROUNDS

For such expenditures as may be necessary to enable the Architect of the Capitol to carry out the duties imposed upon the Architect as authorized by law, \$10,591,000, which shall remain available until expended.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SALARIES AND EXPENSES

For salaries of the chief judge, judges, and other officers and employees, and for necessary expenses of the court, as authorized by law, \$20,662,000.

UNITED STATES COURT OF INTERNATIONAL TRADE

SALARIES AND EXPENSES

For salaries of the chief judge and eight judges, salaries of the officers and employees of the court, services, and necessary expenses of the court, as authorized by law, \$14,068,000.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the United States Court of Federal Claims, bankruptcy judges, magistrate judges, and all other officers and employees of the Federal Judiciary not otherwise specifically provided for, and necessary expenses of the courts, as authorized by law, \$3,994,176,000 (including the purchase of firearms and ammunition); of which not to exceed \$27,817,000 shall remain available until expended for space alteration projects and for furniture and furnishings related to new space alteration and construction projects: *Provided*, That any funds appropriated in this Act to be used for the United States District Court for the Eastern District of Texas will also be made available for the Sherman Division's expansion into Plano, Texas, and the Sherman Division is also granted authority to hold court proceedings there.

In addition, for expenses of the United States Court of Federal Claims associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed \$3,193,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

DEFENDER SERVICES

For the operation of Federal Public Defender and Community Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964; the compensation and reimbursement of expenses of persons furnishing investigative, expert and other services under the Criminal Justice Act of 1964 (18 U.S.C. 3006A(e)); the compensation (in accordance with Criminal Justice Act maximums) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of travel expenses of guardians ad litem acting on behalf of financially eligible minor or incompetent offenders in connection with transfers from the United States to foreign countries with which the United States has a treaty for the execution of penal sentences; the compensation of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. 1875(d); and for necessary training and general administrative expenses, \$604,477,000, to remain available until expended.

FEES OF JURORS AND COMMISSIONERS

For fees and expenses of jurors as authorized by 28 U.S.C. 1871 and 1876; compensation of jury commissioners as authorized by 28 U.S.C. 1863; and compensation of commissioners appointed in condemnation cases pursuant to rule 71A(h) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix Rule 71A(h)), \$57,822,000, to remain available until expended: *Provided*, That the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code.

COURT SECURITY

For necessary expenses, not otherwise provided for, incident to providing protective guard services for United States courthouses and the procurement, installation, and maintenance of security equipment for United States courthouses and other facilities housing Federal court operations, including building ingress-egress control, inspection of mail and packages, directed security patrols, and other similar activities as authorized by section 1010 of the Judicial Improvement and Access to Justice Act (Public Law 100–702), \$277,500,000, of which not to exceed \$10,000,000 shall remain available until expended, to be expended directly or transferred to the United States Marshals Service, which shall be responsible for administering the Judicial Facility Security Program consistent with standards or guidelines agreed to by the Director of the Administrative Office of the United States Courts and the Attorney General.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

SALARIES AND EXPENSES

For necessary expenses of the Administrative Office of the United States Courts as authorized by law, including travel as authorized by 31 U.S.C. 1345, hire of a passenger motor vehicle as authorized by 31 U.S.C. 1343(b), advertising and rent in the District of Columbia and elsewhere, \$66,000,000, of which not to exceed \$8,500 is authorized for official reception and representation expenses.

FEDERAL JUDICIAL CENTER

SALARIES AND EXPENSES

For necessary expenses of the Federal Judicial Center, as authorized by Public Law 90–219, \$21,440,000; of which \$1,800,000 shall remain available through September 30, 2005, to provide education and training to Federal court personnel; and of which not to exceed \$1,000 is authorized for official reception and representation expenses.

JUDICIAL RETIREMENT FUNDS

PAYMENT TO JUDICIARY TRUST FUNDS

For payment to the Judicial Officers' Retirement Fund, as authorized by 28 U.S.C. 377(o), \$25,700,000; to the Judicial Survivors' Annuities Fund, as authorized by 28 U.S.C. 376(c), \$700,000; and to the United States Court of Federal Claims Judges' Retirement Fund, as authorized by 28 U.S.C. 178(l), \$2,600,000.

UNITED STATES SENTENCING COMMISSION

SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, \$12,354,000, of which not to exceed \$1,000 is authorized for official reception and representation expenses.

GENERAL PROVISIONS—THE JUDICIARY

SEC. 301. Appropriations and authorizations made in this title which are available for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

SEC. 302. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Judiciary in this Act may be transferred between such appropriations, but no such appropriation, except “Courts of Appeals, District Courts, and Other Judicial Services, Defender Services” and “Courts of Appeals, District Courts, and Other Judicial Services, Fees of Jurors and Commissioners”, shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 303. Notwithstanding any other provision of law, the salaries and expenses appropriation for District Courts, Courts of Appeals, and Other Judicial Services shall be available for official reception and representation expenses of the Judicial Conference of the United States: *Provided*, That such available funds shall not exceed \$11,000 and shall be administered by the Director of the Administrative Office of the United States Courts in the capacity as Secretary of the Judicial Conference.

This title may be cited as the “Judiciary Appropriations Act, 2004”.

TITLE IV—DEPARTMENT OF STATE AND RELATED AGENCY

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

For necessary expenses of the Department of State and the Foreign Service not otherwise provided for, including employment, without regard to civil service and classification laws, of persons on a temporary basis (not to exceed \$700,000 of this appropriation),

Department of
State and
Related Agency
Appropriations
Act, 2004.

as authorized by section 801 of the United States Information and Educational Exchange Act of 1948; representation to certain international organizations in which the United States participates pursuant to treaties ratified pursuant to the advice and consent of the Senate or specific Acts of Congress; arms control, non-proliferation and disarmament activities as authorized; acquisition by exchange or purchase of passenger motor vehicles as authorized by law; and for expenses of general administration, \$3,420,000,000: *Provided*, That not to exceed 69 permanent positions and \$7,311,000 shall be expended for the Bureau of Legislative Affairs: *Provided further*, That, of the amount made available under this heading, not to exceed \$4,000,000 may be transferred to, and merged with, funds in the “Emergencies in the Diplomatic and Consular Service” appropriations account, to be available only for emergency evacuations and terrorism rewards: *Provided further*, That, of the amount made available under this heading, \$301,563,000 shall be available only for public diplomacy international information programs: *Provided further*, That of the amount made available under this heading, \$3,000,000 shall be available only for the establishment and operations of an Office on Right-Sizing the United States Government Overseas Presence: *Provided further*, That funds available under this heading may be available for a United States Government interagency task force to examine, coordinate and oversee United States participation in the United Nations headquarters renovation project: *Provided further*, That no funds may be obligated or expended for processing licenses for the export of satellites of United States origin (including commercial satellites and satellite components) to the People’s Republic of China unless, at least 15 days in advance, the Committees on Appropriations of the House of Representatives and the Senate are notified of such proposed action.

Establishment.

China.
Notification.

In addition, not to exceed \$1,371,000 shall be derived from fees collected from other executive agencies for lease or use of facilities located at the International Center in accordance with section 4 of the International Center Act; in addition, as authorized by section 5 of such Act, \$490,000, to be derived from the reserve authorized by that section, to be used for the purposes set out in that section; in addition, as authorized by section 810 of the United States Information and Educational Exchange Act, not to exceed \$6,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from English teaching, library, motion pictures, and publication programs and from fees from educational advising and counseling and exchange visitor programs; and, in addition, not to exceed \$15,000, which shall be derived from reimbursements, surcharges, and fees for use of Blair House facilities.

Establishment.

In addition, for the costs of worldwide security upgrades, \$646,701,000, to remain available until expended: *Provided*, That, of the amounts made available under this paragraph, \$5,000,000 is for the State Department to establish the Center for Antiterrorism and Security Training.

In addition, for the costs of worldwide OpenNet and classified connectivity infrastructure, \$40,000,000, to remain available until expended.

CAPITAL INVESTMENT FUND

For necessary expenses of the Capital Investment Fund, \$80,000,000, to remain available until expended, as authorized: *Provided*, That section 135(e) of Public Law 103–236 shall not apply to funds available under this heading.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, \$31,703,000, notwithstanding section 209(a)(1) of the Foreign Service Act of 1980 (Public Law 96–465), as it relates to post inspections.

EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

For expenses of educational and cultural exchange programs, as authorized, \$320,000,000, to remain available until expended: *Provided*, That not to exceed \$2,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from or in connection with English teaching, educational advising and counseling programs, and exchange visitor programs as authorized.

REPRESENTATION ALLOWANCES

For representation allowances as authorized, \$9,000,000.

PROTECTION OF FOREIGN MISSIONS AND OFFICIALS

For expenses, not otherwise provided, to enable the Secretary of State to provide for extraordinary protective services, as authorized, \$10,000,000, to remain available until September 30, 2005.

EMBASSY SECURITY, CONSTRUCTION, AND MAINTENANCE

For necessary expenses for carrying out the Foreign Service Buildings Act of 1926 (22 U.S.C. 292–303), preserving, maintaining, repairing, and planning for buildings that are owned or directly leased by the Department of State, renovating, in addition to funds otherwise available, the Harry S Truman Building, and carrying out the Diplomatic Security Construction Program as authorized, \$530,000,000, to remain available until expended as authorized, of which not to exceed \$20,000 may be used for domestic and overseas representation as authorized: *Provided*, That none of the funds appropriated in this paragraph shall be available for acquisition of furniture, furnishings, or generators for other departments and agencies.

In addition, for the costs of worldwide security upgrades, acquisition, and construction as authorized, \$861,400,000, to remain available until expended.

EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE

For expenses necessary to enable the Secretary of State to meet unforeseen emergencies arising in the Diplomatic and Consular Service, \$1,000,000, to remain available until expended as authorized, of which not to exceed \$1,000,000 may be transferred to and merged with the Repatriation Loans Program Account, subject to the same terms and conditions.

REPATRIATION LOANS PROGRAM ACCOUNT

For the cost of direct loans, \$612,000, as authorized: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974. In addition, for administrative expenses necessary to carry out the direct loan program, \$607,000, which may be transferred to and merged with the Diplomatic and Consular Programs account under Administration of Foreign Affairs.

PAYMENT TO THE AMERICAN INSTITUTE IN TAIWAN

For necessary expenses to carry out the Taiwan Relations Act (Public Law 96–8), \$18,782,000.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For payment to the Foreign Service Retirement and Disability Fund, as authorized by law, \$134,979,000.

INTERNATIONAL ORGANIZATIONS

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

22 USC 269a
note.

Notification.

For expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties ratified pursuant to the advice and consent of the Senate, conventions or specific Acts of Congress, \$1,010,463,000: *Provided*, That the Secretary of State shall transmit to the Committees on Appropriations of the Senate and of the House of Representatives the most recent biennial budget prepared by the United Nations for the operations of the United Nations: *Provided further*, That the Secretary of State shall notify the Committees on Appropriations at least 15 days in advance (or in an emergency, as far in advance as is practicable) of any United Nations action to increase funding for any United Nations program without identifying an offsetting decrease elsewhere in the United Nations budget and cause the United Nations to exceed the adopted budget for the biennium 2002–2003 of \$2,891,000,000: *Provided further*, That any payment of arrearages under this title shall be directed toward special activities that are mutually agreed upon by the United States and the respective international organization: *Provided further*, That none of the funds appropriated in this paragraph shall be available for a United States contribution to an international organization for the United States share of interest costs made known to the United States Government by such organization for loans incurred on or after October 1, 1984, through external borrowings: *Provided further*, That funds appropriated under this paragraph may be obligated and expended to pay the full United States assessment to the civil budget of the North Atlantic Treaty Organization.

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

For necessary expenses to pay assessed and other expenses of international peacekeeping activities directed to the maintenance or restoration of international peace and security, \$550,200,000, of which 10 percent shall remain available until September 30,

2005: *Provided*, That of the amount provided under this heading, \$95,358,000 shall be derived from prior year unobligated balances from funds previously appropriated under this heading: *Provided further*, That none of the funds made available under this Act shall be obligated or expended for any new or expanded United Nations peacekeeping mission unless, at least 15 days in advance of voting for the new or expanded mission in the United Nations Security Council (or in an emergency as far in advance as is practicable): (1) the Committees on Appropriations of the House of Representatives and the Senate and other appropriate committees of the Congress are notified of the estimated cost and length of the mission, the vital national interest that will be served, and the planned exit strategy; and (2) a reprogramming of funds pursuant to section 605 of this Act is submitted, and the procedures therein followed, setting forth the source of funds that will be used to pay for the cost of the new or expanded mission: *Provided further*, That funds shall be available for peacekeeping expenses only upon a certification by the Secretary of State to the appropriate committees of the Congress that American manufacturers and suppliers are being given opportunities to provide equipment, services, and material for United Nations peacekeeping activities equal to those being given to foreign manufacturers and suppliers: *Provided further*, That none of the funds made available under this heading are available to pay the United States share of the cost of court monitoring that is part of any United Nations peacekeeping mission.

Notification.

Certification.

INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided for, to meet obligations of the United States arising under treaties, or specific Acts of Congress, as follows:

22 USC 269a note.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

For necessary expenses for the United States Section of the International Boundary and Water Commission, United States and Mexico, and to comply with laws applicable to the United States Section, including not to exceed \$6,000 for representation; as follows:

SALARIES AND EXPENSES

For salaries and expenses, not otherwise provided for, \$26,000,000.

CONSTRUCTION

For detailed plan preparation and construction of authorized projects, \$3,551,000, to remain available until expended, as authorized.

AMERICAN SECTIONS, INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided, for the International Joint Commission and the International Boundary Commission, United States and Canada, as authorized by treaties between the United States and Canada or Great Britain, and for the Border Environment Cooperation Commission as authorized

by Public Law 103–182, \$8,944,000, of which not to exceed \$9,000 shall be available for representation expenses incurred by the International Joint Commission.

INTERNATIONAL FISHERIES COMMISSIONS

For necessary expenses for international fisheries commissions, not otherwise provided for, as authorized by law, \$19,300,000: *Provided*, That the United State's share of such expenses may be advanced to the respective commissions pursuant to 31 U.S.C. 3324.

OTHER

PAYMENT TO THE ASIA FOUNDATION

For a grant to the Asia Foundation, as authorized by the Asia Foundation Act (22 U.S.C. 4402), \$13,000,000, to remain available until expended, as authorized.

INTERNATIONAL CENTER FOR MIDDLE EASTERN-WESTERN DIALOGUE TRUST FUND

Establishment.

For a grant to the International Center for Middle Eastern-Western Dialogue Trust Fund, \$7,000,000, for operation of the International Center for Middle Eastern-Western Dialogue, Istanbul, Turkey, to remain available until expended, of which \$250,000 shall be made available out of such Trust Fund for the establishment and operation of a steering committee, which the Secretary of State shall appoint to establish the International Center for Middle Eastern-Western Dialogue.

INTERNATIONAL CENTER FOR MIDDLE EASTERN-WESTERN DIALOGUE

For necessary expenses of the International Center for Middle Eastern-Western Dialogue, out of the International Center for Middle Eastern-Western Dialogue Trust Fund, the total amount of the interest and earnings accruing to such Fund before October 1, 2004, to remain available until expended.

EISENHOWER EXCHANGE FELLOWSHIP PROGRAM

For necessary expenses of Eisenhower Exchange Fellowships, Incorporated, as authorized by sections 4 and 5 of the Eisenhower Exchange Fellowship Act of 1990 (20 U.S.C. 5204–5205), all interest and earnings accruing to the Eisenhower Exchange Fellowship Program Trust Fund on or before September 30, 2004, to remain available until expended: *Provided*, That none of the funds appropriated herein shall be used to pay any salary or other compensation, or to enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376; or for purposes which are not in accordance with OMB Circulars A–110 (Uniform Administrative Requirements) and A–122 (Cost Principles for Non-profit Organizations), including the restrictions on compensation for personal services.

ISRAELI ARAB SCHOLARSHIP PROGRAM

For necessary expenses of the Israeli Arab Scholarship Program as authorized by section 214 of the Foreign Relations Authorization

Act, Fiscal Years 1992 and 1993 (22 U.S.C. 2452), all interest and earnings accruing to the Israeli Arab Scholarship Fund on or before September 30, 2004, to remain available until expended.

EAST-WEST CENTER

To enable the Secretary of State to provide for carrying out the provisions of the Center for Cultural and Technical Interchange Between East and West Act of 1960, by grant to the Center for Cultural and Technical Interchange Between East and West in the State of Hawaii, \$17,880,000: *Provided*, That none of the funds appropriated herein shall be used to pay any salary, or enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376: *Provided further*, That, notwithstanding any other provision of law, the funds appropriated to the East-West Center appropriation in Public Law 108–7 may be obligated and expended notwithstanding section 15 of the State Department Basic Authorities Act of 1956, as amended.

NATIONAL ENDOWMENT FOR DEMOCRACY

For grants made by the Department of State to the National Endowment for Democracy as authorized by the National Endowment for Democracy Act, \$40,000,000 to remain available until expended.

RELATED AGENCY

BROADCASTING BOARD OF GOVERNORS

INTERNATIONAL BROADCASTING OPERATIONS

For expenses necessary to enable the Broadcasting Board of Governors, as authorized, to carry out international communication activities, including the purchase, installation, rent, and improvement of facilities for radio and television transmission and reception to Cuba, \$546,038,000, of which not to exceed \$16,000 may be used for official receptions within the United States as authorized, not to exceed \$35,000 may be used for representation abroad as authorized, and not to exceed \$39,000 may be used for official reception and representation expenses of Radio Free Europe/Radio Liberty; and in addition, notwithstanding any other provision of law, not to exceed \$2,000,000 in receipts from advertising and revenue from business ventures, not to exceed \$500,000 in receipts from cooperating international organizations, and not to exceed \$1,000,000 in receipts from privatization efforts of the Voice of America and the International Broadcasting Bureau, to remain available until expended for carrying out authorized purposes: *Provided*, That of the amount made available under this heading, \$42,250,000 shall be available to make and supervise grants to the Middle East Television Network, including Radio Sawa, for radio and television broadcasting to the Middle East.

BROADCASTING CAPITAL IMPROVEMENTS

For the purchase, rent, construction, and improvement of facilities for radio transmission and reception, and purchase and installation of necessary equipment for radio and television transmission

and reception as authorized, \$11,395,000, to remain available until expended, as authorized.

GENERAL PROVISIONS—DEPARTMENT OF STATE AND RELATED
AGENCY

SEC. 401. Funds appropriated under this title shall be available, except as otherwise provided, for allowances and differentials as authorized by subchapter 59 of title 5, United States Code; for services as authorized by 5 U.S.C. 3109; and for hire of passenger transportation pursuant to 31 U.S.C. 1343(b).

SEC. 402. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of State in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided*, That not to exceed 5 percent of any appropriation made available for the current fiscal year for the Broadcasting Board of Governors in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided further*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 403. None of the funds made available in this Act may be used by the Department of State or the Broadcasting Board of Governors to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

Citizenship.

SEC. 404. For the purposes of registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary of State shall, upon request of the citizen, record the place of birth as Israel.

117 Stat. 595.

SEC. 405. Section 2502 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11) is repealed.

SEC. 406. An application for a visa shall be denied without prejudice under section 221(g) of the Immigration and Nationality Act (8 U.S.C. 1201(g)) if the application is delayed for a period of more than 60 days from the date of application due to administrative processing by any agency in making a determination of inadmissibility under section 212(a)(3) of that Act (8 U.S.C. 1182(a)(3)).

SEC. 407. Funds appropriated by this Act for the Broadcasting Board of Governors and the Department of State may be obligated and expended notwithstanding section 15 of the State Department Basic Authorities Act of 1956, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

SEC. 408. (a) The Senior Policy Operating Group on Trafficking in Persons, established under section 406 of division B of Public Law 108-7 to coordinate agency activities regarding policies (including grants and grant policies) involving the international trafficking in persons, shall coordinate all such policies related to the activities of traffickers and victims of severe forms of trafficking.

(b) None of the funds provided in this or any other Act shall be expended to perform functions that duplicate coordinating responsibilities of the Operating Group.

(c) The Operating Group shall continue to report only to the authorities that appointed them pursuant to section 406 of division B of Public Law 108–7.

SEC. 409. The Secretary of State shall provide to a member of the Committee on Appropriations of the Senate or the Committee on Appropriations of the House of Representatives a copy of each cable sent to or by a Department of State employee that pertains to any topic specified by the requesting member, regardless of the level of classification of the cable, not later than 15 days after the date on which the member makes a written or verbal request for such copies.

Records.
Deadline.

This title may be cited as the “Department of State and Related Agency Appropriations Act, 2004”.

TITLE V—RELATED AGENCIES

ANTITRUST MODERNIZATION COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Antitrust Modernization Commission, as authorized by Public Law 107–273, \$1,200,000, to remain available until expended.

COMMISSION FOR THE PRESERVATION OF AMERICA’S HERITAGE ABROAD

SALARIES AND EXPENSES

For expenses for the Commission for the Preservation of America’s Heritage Abroad, \$496,000, as authorized by section 1303 of Public Law 99–83.

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

For necessary expenses of the Commission on Civil Rights, including hire of passenger motor vehicles, \$9,096,000: *Provided*, That not to exceed \$50,000 may be used to employ consultants: *Provided further*, That none of the funds appropriated in this paragraph shall be used to employ in excess of four full-time individuals under Schedule C of the Excepted Service exclusive of one special assistant for each Commissioner: *Provided further*, That none of the funds appropriated in this paragraph shall be used to reimburse Commissioners for more than 75 billable days, with the exception of the chairperson, who is permitted 125 billable days.

COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

SALARIES AND EXPENSES

For necessary expenses for the United States Commission on International Religious Freedom, as authorized by title II of the International Religious Freedom Act of 1998 (Public Law 105–292), \$3,000,000, to remain available until expended.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

SALARIES AND EXPENSES

For necessary expenses of the Commission on Security and Cooperation in Europe, as authorized by Public Law 94-304, \$1,615,000, to remain available until expended as authorized by section 3 of Public Law 99-7.

CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S
REPUBLIC OF CHINA

SALARIES AND EXPENSES

For necessary expenses of the Congressional-Executive Commission on the People's Republic of China, as authorized, \$1,800,000, including not more than \$3,000 for the purpose of official representation, to remain available until expended: *Provided*, That \$300,000 shall be for the Political Prisoners Registry.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Equal Employment Opportunity Commission as authorized by title VII of the Civil Rights Act of 1964 (29 U.S.C. 206(d) and 621-634), the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); non-monetary awards to private citizens; and not to exceed \$33,000,000 for payments to State and local enforcement agencies for services to the Commission pursuant to title VII of the Civil Rights Act of 1964, sections 6 and 14 of the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, \$328,400,000: *Provided*, That the Commission is authorized to make available for official reception and representation expenses not to exceed \$2,500 from available funds.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Communications Commission, as authorized by law, including uniforms and allowances therefor, as authorized by 5 U.S.C. 5901-5902; not to exceed \$600,000 for land and structure; not to exceed \$500,000 for improvement and care of grounds and repair to buildings; not to exceed \$4,000 for official reception and representation expenses; purchase and hire of motor vehicles; special counsel fees; and services as authorized by 5 U.S.C. 3109, \$273,958,000: *Provided*, That \$272,958,000 of offsetting collections shall be assessed and collected pursuant to section 9 of title I of the Communications Act of 1934, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced as such offsetting collections are received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation estimated at \$1,000,000: *Provided further*, That any offsetting collections

received in excess of \$272,958,000 in fiscal year 2004 shall remain available until expended, but shall not be available for obligation until October 1, 2004: *Provided further*, That notwithstanding 47 U.S.C. 309(j)(8)(B), proceeds from the use of a competitive bidding system that may be retained and made available for obligation shall not exceed \$85,000,000 for fiscal year 2004.

FEDERAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed \$2,000 for official reception and representation expenses, \$186,041,000, to remain available until expended: *Provided*, That not to exceed \$300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718: *Provided further*, That, notwithstanding any other provision of law, not to exceed \$112,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further*, That \$23,100,000 in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telephone Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2004, so as to result in a final fiscal year 2004 appropriation from the general fund estimated at not more than \$50,941,000: *Provided further*, That none of the funds made available to the Federal Trade Commission may be used to enforce subsection (e) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) or section 151(b)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831t note): *Provided further*, That, not later than 60 days after the date of enactment of this Act, the Federal Trade Commission shall amend the Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Sales Rule to obtain from the Federal Trade Commission the list of telephone numbers on the “do-not-call” registry once a month.

Deadline.
Telemarketers.
Records.

HELP COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the HELP Commission, \$3,000,000, to remain available until expended.

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974,

\$338,848,000, of which \$317,471,000 is for basic field programs and required independent audits; \$2,600,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$13,300,000 is for management and administration; \$2,977,000 is for client self-help and information technology; and \$2,500,000 is for grants to offset losses due to census adjustments.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105–119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2003 and 2004, respectively, and except that section 501(a)(1) of Public Law 104–134 (110 Stat. 1321–51, et seq.) shall not apply to the use of the \$2,500,000 to address loss of funding due to Census-based reallocations.

MARINE MAMMAL COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Marine Mammal Commission as authorized by title II of Public Law 92–522, \$1,856,000.

NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION

For necessary expenses of the National Veterans Business Development Corporation as authorized under section 33(a) of the Small Business Act, \$2,000,000, to remain available until expended.

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission, including services as authorized by 5 U.S.C. 3109, the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, and not to exceed \$3,000 for official reception and representation expenses, \$811,500,000; of which not to exceed \$10,000 may be used toward funding a permanent secretariat for the International Organization of Securities Commissions; and of which not to exceed \$100,000 shall be available for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to securities matters, development and implementation of cooperation agreements concerning securities matters and provision of technical assistance for the development of foreign securities markets, such expenses to include necessary logistic and administrative expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including: (1) such incidental expenses as meals taken in the course of such attendance; (2)

any travel and transportation to or from such meetings; and (3) any other related lodging or subsistence: *Provided*, That fees and charges authorized by sections 6(b) of the Securities Exchange Act of 1933 (15 U.S.C. 77f(b)), and 13(e), 14(g) and 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e), 78n(g), and 78ee), shall be credited to this account as offsetting collections: *Provided further*, That not to exceed \$691,500,000 of such offsetting collections shall be available until expended for necessary expenses of this account: *Provided further*, That \$120,000,000 shall be derived from prior year unobligated balances from funds previously appropriated to the Securities and Exchange Commission: *Provided further*, That the total amount appropriated under this heading from the general fund for fiscal year 2004 shall be reduced as such offsetting fees are received so as to result in a final total fiscal year 2004 appropriation from the general fund estimated at not more than \$0.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the Small Business Administration as authorized by Public Law 105–135, including hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344, and not to exceed \$3,500 for official reception and representation expenses, \$325,750,000: *Provided*, That the Administrator is authorized to charge fees to cover the cost of publications developed by the Small Business Administration, and certain loan servicing activities: *Provided further*, That, notwithstanding 31 U.S.C. 3302, revenues received from all such activities shall be credited to this account, to be available for carrying out these purposes without further appropriations: *Provided further*, That \$89,000,000 shall be available to fund grants for performance in fiscal year 2004 or fiscal year 2005 as authorized.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, \$13,000,000.

BUSINESS LOANS PROGRAM ACCOUNT

For the cost of direct loans, \$1,910,000, to be available until expended; and for the cost of guaranteed loans, \$79,132,000, as authorized by 15 U.S.C. 631 note, of which \$45,000,000 shall remain available until September 30, 2005: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That during fiscal year 2004 commitments to guarantee loans under section 503 of the Small Business Investment Act of 1958, shall not exceed \$4,500,000,000: *Provided further*, That during fiscal year 2004 commitments for general business loans authorized under section 7(a) of the Small Business Act, shall not exceed \$10,000,000,000 without prior notification of the Committees on Appropriations of the House of Representatives and Senate in accordance with section 605 of this Act: *Provided further*, That

during fiscal year 2004 commitments to guarantee loans for debentures and participating securities under section 303(b) of the Small Business Investment Act of 1958, shall not exceed the levels established by section 20(i)(1)(C) of the Small Business Act.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, \$128,000,000, which may be transferred to and merged with the appropriations for Salaries and Expenses.

DISASTER LOANS PROGRAM ACCOUNT

For the cost of direct loans authorized by section 7(b) of the Small Business Act, \$56,188,000, to remain available until expended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, for administrative expenses to carry out the direct loan program, \$114,363,000, which may be transferred to and merged with appropriations for Salaries and Expenses, of which \$500,000 is for the Office of Inspector General of the Small Business Administration for audits and reviews of disaster loans and the disaster loan program and shall be transferred to and merged with appropriations for the Office of Inspector General; of which \$105,363,000 is for direct administrative expenses of loan making and servicing to carry out the direct loan program; and of which \$8,500,000 is for indirect administrative expenses: *Provided*, That any amount in excess of \$8,500,000 to be transferred to and merged with appropriations for Salaries and Expenses for indirect administrative expenses shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

ADMINISTRATIVE PROVISION—SMALL BUSINESS ADMINISTRATION

Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Small Business Administration in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this paragraph shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

STATE JUSTICE INSTITUTE

SALARIES AND EXPENSES

For necessary expenses of the State Justice Institute, as authorized by the State Justice Institute Authorization Act of 1992 (Public Law 102–572), \$2,250,000: *Provided*, That not to exceed \$2,500 shall be available for official reception and representation expenses.

UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW
COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States-China Economic and Security Review Commission, \$2,000,000.

TITLE VI—GENERAL PROVISIONS

(INCLUDING RESCISSIONS)

SEC. 601. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 602. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 603. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Contracts.
Public
information.

SEC. 604. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of each provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 605. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2004, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes or renames offices; (6) reorganizes programs or activities; or (7) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

Notifications.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2004, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$500,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects (including construction projects), or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel

which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

SEC. 606. None of the funds made available in this Act may be used for the construction, repair (other than emergency repair), overhaul, conversion, or modernization of vessels for the National Oceanic and Atmospheric Administration in shipyards located outside of the United States.

SEC. 607. If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

Religious
harassment.

SEC. 608. None of the funds made available in this Act may be used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission covering harassment based on religion, when it is made known to the Federal entity or official to which such funds are made available that such guidelines do not differ in any respect from the proposed guidelines published by the Commission on October 1, 1993 (58 Fed. Reg. 51266).

SEC. 609. None of the funds appropriated or otherwise made available by this Act or any other Act may be used to implement, enforce, or otherwise abide by the Memorandum of Agreement signed by the Federal Trade Commission and the Antitrust Division of the Department of Justice on March 5, 2002.

United Nations.

SEC. 610. None of the funds made available by this Act may be used for any United Nations undertaking when it is made known to the Federal official having authority to obligate or expend such funds that: (1) the United Nations undertaking is a peace-keeping mission; (2) such undertaking will involve United States Armed Forces under the command or operational control of a foreign national; and (3) the President’s military advisors have not submitted to the President a recommendation that such involvement is in the national security interests of the United States and the President has not submitted to the Congress such a recommendation.

Records.

SEC. 611. The Departments of Commerce, Justice, and State, the Judiciary and the Small Business Administration shall provide to the Committees on Appropriations of the Senate and of the House of Representatives a quarterly accounting of the cumulative balances of any unobligated funds that were received by such agency during any previous fiscal year.

SEC. 612. (a) None of the funds appropriated or otherwise made available by this Act shall be expended for any purpose for which appropriations are prohibited by section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999.

Applicability.

(b) The requirements in subparagraphs (A) and (B) of section 609 of that Act shall continue to apply during fiscal year 2004.

SEC. 613. Any costs incurred by a department or agency funded under this Act resulting from personnel actions taken in response

to funding reductions included in this Act shall be absorbed within the total budgetary resources available to such department or agency: *Provided*, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: *Provided further*, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 614. Of the funds appropriated in this Act under the heading “Office of Justice Programs—State and Local Law Enforcement Assistance”, not more than 90 percent of the amount to be awarded to an entity under the Local Law Enforcement Block Grant shall be made available to such an entity when it is made known to the Federal official having authority to obligate or expend such funds that the entity that employs a public safety officer (as such term is defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968) does not provide such a public safety officer who retires or is separated from service due to injury suffered as the direct and proximate result of a personal injury sustained in the line of duty while responding to an emergency situation or a hot pursuit (as such terms are defined by State law) with the same or better level of health insurance benefits at the time of retirement or separation as they received while on duty.

SEC. 615. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

Tobacco and tobacco products.

SEC. 616. (a) None of the funds appropriated or otherwise made available by this Act shall be expended for any purpose for which appropriations are prohibited by section 616 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999.

(b) The requirements in subsections (b) and (c) of section 616 of that Act shall continue to apply during fiscal year 2004.

Applicability.

SEC. 617. (a) None of the funds appropriated pursuant to this Act or any other provision of law may be used for—

Firearms.

(1) the implementation of any tax or fee in connection with the implementation of subsection 922(t) of title 18, United States Code; and

(2) any system to implement subsection 922(t) of title 18, United States Code, that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law.

(b) Subsection (a)(2) shall take effect not later than 180 days after enactment of this Act.

Effective date.

SEC. 618. Notwithstanding any other provision of law, amounts deposited or available in the Fund established under 42 U.S.C.

42 USC 10601 note.

10601 in any fiscal year in excess of \$625,000,000 shall not be available for obligation until the following fiscal year.

Discrimination.

SEC. 619. None of the funds made available to the Department of Justice in this Act may be used to discriminate against or denigrate the religious or moral beliefs of students who participate in programs for which financial assistance is provided from those funds, or of the parents or legal guardians of such students.

SEC. 620. None of the funds appropriated or otherwise made available to the Department of State shall be available for the purpose of granting either immigrant or nonimmigrant visas, or both, consistent with the determination of the Secretary of State under section 243(d) of the Immigration and Nationality Act, to citizens, subjects, nationals, or residents of countries that the Secretary of Homeland Security has determined deny or unreasonably delay accepting the return of citizens, subjects, nationals, or residents under that section.

SEC. 621. For additional amounts under the heading “Small Business Administration, Salaries and Expenses”, \$1,592,000 shall be available for the Advanced and Applied Polymer Processing Institute; \$500,000 shall be available for Northeast South Dakota Tech-Based Skills Development; \$750,000 shall be available for the Southern Methodist University Law School Rule of Law; \$1,000,000 shall be available for the Accelerated Entrepreneur “AcE” Program; \$500,000 shall be available for the National Mass Fatalities Institute; \$1,000,000 shall be available for the Textile Tracers Program; \$500,000 shall be available for the Maryland Technology-Based Rural Business Incubation Initiative; \$1,000,000 shall be available for the Northeast Indiana Innovation Center; \$750,000 shall be available for the Lewis and Clark Bicentennial Bi-State Safety Project; \$1,000,000 shall be available for the Greenville Automotive Research Park; \$1,000,000 shall be available for the Indiana University Kokomo Business Incubator; \$1,593,000 shall be available for the Tuck School of Business for its partnership with the Minority Business Development Administration; \$500,000 shall be available for Project Restore; \$325,000 shall be available for the School of the Building Arts Trade Program; \$500,000 shall be available for the South Carolina Export Consortium; \$500,000 shall be available for the Freewoods Farm Living Farm Museum in Horry County, South Carolina; \$1,590,000 shall be available for the Alaska InvestNet/Technology Venture Center and Tech Ranch in Montana; \$1,000,000 shall be available for Youth and Family with Promises; \$500,000 shall be available for the Wisconsin Procurement Institute; \$1,000,000 shall be available for the Next Generation Economy Initiative; \$1,000,000 shall be available for the Westside Intercept Project; \$250,000 shall be available for the International Trade Data Network; \$1,000,000 shall be available for the University of Missouri-St. Louis Information Technology Incubator Project; \$750,000 shall be available for the Idaho Virtual Incubator/Lewis-Clark State College; \$850,000 shall be available for the UNI Student Business Incubator; \$1,500,000 shall be available for the promotion and operation of the grant to the Adelante Development Center, Inc., in Albuquerque, New Mexico; \$250,000 shall be available for the Mississippi Delta Technology Council; \$2,250,000 shall be available for a grant to the Virginia Community College System (VCCS) for improvement of distance learning programs; \$175,000 shall be available for a grant to the Loudoun Convention and Visitors Association in Virginia; \$100,000 shall

be available for a grant to The Cedar Creek Battlefield Foundation; \$100,000 shall be available for a grant to Belle Grove Plantation; \$750,000 shall be available for a grant to Shenandoah University to develop a historical and tourism development facility; \$1,000,000 shall be available for a grant to the Northern Virginia Technology Council for a technology entrepreneurship development and resource center; \$100,000 shall be available for a grant to the Washington Airports Task Force to promote small business growth of passenger, cargo and other aviation services; \$100,000 shall be available for a grant to Team Northeast Ohio; \$500,000 shall be available for a grant to Wilberforce University for a technology initiative; \$250,000 shall be available for a grant for REI Rural Business Resources Center in Seminole, Oklahoma; \$1,100,000 shall be available for a grant to Iowa State University for the development of a research park biologics facility; \$200,000 shall be available for a grant to the Clarion County Economic Development Corporation; \$200,000 shall be available for a grant to the Venango Economic Development Corporation; \$900,000 shall be available for a grant to the Illinois Institute of Technology to examine and assess advancements in biotechnologies; \$1,000,000 shall be available for the Illinois Coalition for technology development assistance activities; \$200,000 shall be available for a grant for the Port of Benton for the planning of a science and technology park in Richland, Washington; \$1,500,000 shall be available for a grant to Rockford Area Ventures, Rockford, Illinois, to establish a small manufacturing business incubator and technology research and development center; \$100,000 shall be available for a grant to Western Kentucky University for a business incubator; \$200,000 shall be available for a grant for the Chicago Field Museum for a collections resource center; \$100,000 shall be available for a grant for the Purdue University School of Pharmacy for the development of a national center for pharmaceutical technology; \$100,000 shall be available for a grant to the Cedarbridge Development Urban Renewal Corporation for facilities development; \$100,000 shall be available for a grant for Concourse Village in the Bronx, New York; \$500,000 shall be available for a grant to Pro Co Technology Computer Training Center in the Bronx, New York, for a computer learning center; \$200,000 shall be available for a grant for the Promesa Foundation in South Bronx, New York, to provide community growth funding; \$560,000 shall be available for a grant to Bronx Shepherds for a community resource center; \$200,000 shall be available for a grant to HOGAR, Inc., in the Bronx, New York; \$100,000 shall be available for a grant to the Alliance for Community Services for economic development in the Bronx, New York; \$300,000 shall be available for a grant to Promesa Enterprises to provide services and support to community based organizations in the Bronx, New York; \$300,000 shall be available for a grant to Bronx Overall Economic Development Corporation for technical assistance opportunities for businesses; \$250,000 shall be available for a grant to St. Mary's College for a telecommunications initiative; \$1,200,000 shall be available for a grant to the MountainMade Foundation to fulfill its charter purposes and to continue the initiative developed by the NTTC for outreach and promotion, business and sites development, the education of artists and craftspeople, and to promote small businesses, artisans and their products through market development, advertisement, commercial sale and other promotional means; \$1,000,000 shall be available for the

Providence, Rhode Island Center for Women and Enterprise for infrastructure development; \$1,200,000 shall be available for a grant for Northwest Shoals Community College to establish a Center for Business and Industry; \$950,000 shall be available for a grant to the Family and Children's Service in Minneapolis, Minnesota for community support and development programs; \$1,000,000 shall be available for a grant to the Wisconsin Procurement Institute to develop an electronic based system to provide access and opportunity to Federal funding; \$200,000 shall be for a grant to the National Association of Development Organizations Research Foundation to provide training and education assistance to small business development finance professionals; \$750,000 shall be for a grant to the North Carolina Rural Economic Development Center for expenses and activities in support of the Capital Access Program; \$500,000 shall be for a grant for the Women's Initiative for Self Employment in San Francisco, California; \$400,000 shall be for a grant to Johnstown Area Regional Industries in Pennsylvania for workforce development training programs and Small Business Technology Centers; \$400,000 shall be for a grant to Seton Hill University for expenses in support of the Virtual Entrepreneurial Center; \$200,000 shall be for a grant to the Economic Growth Connection Paperless Procurement Program; \$200,000 shall be for a grant for the Ridgewood Myrtle Avenue Business Improvement District to conduct a redevelopment study; \$400,000 shall be for a grant to Progress, Inc., to establish a Community Technology Center; \$150,000 shall be for a grant for UPROSE for the "Sunset Youth Industries" project; \$415,000 shall be available for a grant to the Southern and Eastern Kentucky Tourism Development Association for continuation of a regional tourism promotion initiative; and \$300,000 shall be for the Arthur Avenue Retail Market in the Bronx, New York, for facility, improvement, and maintenance needs to meet the Market's business requirements: *Provided*, That section 625 of title I of division B of Public Law 108-7 is amended with respect to a grant of: (1) \$450,000 to the Bronx Council on the Arts by striking "help promote stabilization of small arts organizations" and inserting "provide financial assistance to small arts organizations to help promote stabilization"; and (2) \$500,000 to the City of Merrill, Wisconsin by striking all that follows after "Wisconsin" and inserting "for the capitalization of a business development fund."

117 Stat. 103.

Prisons and
prisoners.

SEC. 622. None of the funds made available to the Department of Justice in this Act may be used for the purpose of transporting an individual who is a prisoner pursuant to conviction for crime under State or Federal law and is classified as a maximum or high security prisoner, other than to a prison or other facility certified by the Federal Bureau of Prisons as appropriately secure for housing such a prisoner.

Prisons and
prisoners.

SEC. 623. (a) None of the funds appropriated by this Act may be used by Federal prisons to purchase cable television services, to rent or purchase videocassettes, videocassette recorders, or other audiovisual or electronic equipment used primarily for recreational purposes.

(b) The preceding sentence does not preclude the renting, maintenance, or purchase of audiovisual or electronic equipment for inmate training, religious, or educational programs.

Government
organization.

SEC. 624. A Deputy Assistant Administrator for non-contiguous States and territories shall, through the Senior Executive Service,

administer Small Business Administration programs in Alaska, Hawaii, and the territories, including disaster loans to fishermen, programs benefitting Alaska Native Corporations and Native Hawaiians, including but not limited to section 8(a) and Historically Underutilized Business Zones, and all other programs serving Alaska Natives and Native Hawaiians. All disaster loans issued in Alaska shall be administered by the Small Business Administration and shall not be sold during fiscal year 2004.

SEC. 625. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 626. The Secretary of Commerce shall negotiate or reevaluate, with the consent of the President, international agreements affecting international ocean policy.

SEC. 627. The Departments of Commerce, Justice, State, the Judiciary, and the Small Business Administration shall each establish a policy under which eligible employees may participate in telecommuting to the maximum extent possible without diminished employee performance: *Provided*, That, not later than 6 months after the date of the enactment of this Act, each of the aforementioned entities shall provide that the requirements of this section are applied to 100 percent of the workforce: *Provided further*, That, of the funds appropriated in this Act for the Departments of Commerce, Justice, and State, the Judiciary, and the Small Business Administration, \$200,000 shall be available to each Department or agency only to implement telecommuting programs: *Provided further*, That, every 6 months, each Department or agency shall provide a report to the Committees on Appropriations on the status of telecommuting programs, including the number of Federal employees eligible for, and participating in, such programs, and uses of funds designated under this section: *Provided further*, That each Department or agency shall designate a “Telework Coordinator” to be responsible for overseeing the implementation of telecommuting programs and serve as a point of contact on such programs for the Committees on Appropriations.

SEC. 628. The paragraph under the heading “Small Business Administration—Disaster Loans Program Account” in chapter 2 of division B of Public Law 107–117 is amended by inserting “or section 7(b) of the Small Business Act” after “September 11, 2001”.

SEC. 629. The Telecommunications Act of 1996 is amended as follows—

(1) in section 202(c)(1)(B) by striking “35 percent” and inserting “39 percent”;

(2) in section 202(c) by adding the following new paragraphs at the end:

“(3) DIVESTITURE.—A person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B) through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation. This divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth.

Telecommuni-
cating.
5 USC 6120 note.

Deadline.

Deadline.
Reports.

Establishment.

115 Stat. 2297.

47 USC 303 note.

110 Stat. 110.

Broadcasting.

“(4) FORBEARANCE.—Section 10 of the Communications Act of 1934 (47 U.S.C. 160) shall not apply to any person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B);” and

110 Stat. 110.

(3) in section 202(h) by striking “biennially” and inserting “quadrennially” and by adding the following new flush sentence at the end:

“This subsection does not apply to any rules relating to the 39 percent national audience reach limitation in subsection (c)(1)(B).”.

SEC. 630. (a) Tracing studies conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives are released without adequate disclaimers regarding the limitations of the data.

(b) The Bureau of Alcohol, Tobacco, Firearms, and Explosives shall include in all such data releases, language similar to the following that would make clear that trace data cannot be used to draw broad conclusions about firearms-related crime:

(1) Firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any reason, and those reasons are not necessarily reported to the Federal Government. Not all firearms used in crime are traced and not all firearms traced are used in crime.

(2) Firearms selected for tracing are not chosen for purposes of determining which types, makes or models of firearms are used for illicit purposes. The firearms selected do not constitute a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe. Firearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.

SEC. 631. Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) shall be amended by substituting “March 15, 2004” for the last date that appears in the subsection.

SEC. 632. In addition to amounts otherwise appropriated in this Act, the unobligated balances previously made available by section 507(g) of Public Law 105–135 shall be available until expended for the cost of general business loans under section 7(a) of the Small Business Act.

22 USC 2078.

SEC. 633. (a) There is established in the Treasury of the United States a trust fund to be known as the International Center for Middle Eastern-Western Dialogue Trust Fund. The income from the fund shall be used for operations of the International Center for Middle Eastern-Western Dialogue to promote dialogue and scholarship in the Middle East. The fund may accept contributions and gifts from public and private sources.

(b) It shall be the duty of the Secretary of the Treasury to invest in full amounts made available to the fund. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The interest on, and the proceeds from the sale or redemption of, any obligations held in the fund shall be credited to and form a part of the fund and shall remain available without fiscal year limitation.

(c) For each fiscal year, there is authorized to be appropriated from the fund for the operations of the International Center for

Middle Eastern-Western Dialogue the total amount of the interest and earnings credited to the fund under subsection (b).

(d) There are authorized to be appropriated to the International Center for Middle Eastern-Western Dialogue Trust Fund, without fiscal year limitation, such sums as may be necessary to carry out the provisions of this section and to provide for the permanent endowment for the International Center for Middle Eastern-Western Dialogue established under this section.

(e) The United States, through the Department of State, shall retain ownership of the Palazzo Corpi building in Istanbul, Turkey, and the Secretary of State shall be responsible for maintaining the International Center for Middle Eastern-Western Dialogue at such location. Turkey.

(f) Section 1321(a) of title 31, United States Code, is amended by inserting after “(58) Inmates’ fund, workhouse and reformatory, District of Columbia.” the following new paragraph:

“(59) International Center for Middle Eastern-Western Dialogue Trust Fund.”.

SEC. 634. None of the funds appropriated or otherwise made available under this Act may be used to issue patents on claims directed to or encompassing a human organism.

SEC. 635. None of the funds made available in this Act may be used to pay expenses for any United States delegation to the United Nations Human Rights Commission if such commission is chaired or presided over by a country, the government of which the Secretary of State has determined, for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), has repeatedly provided support for acts of international terrorism.

SEC. 636. None of the funds made available in this Act may be used in violation of section 212(a)(10)(C) of the Immigration and Nationality Act.

SEC. 637. (a) This section may be cited as the “HELP Commission Act”.

HELP
Commission Act.
22 USC 2394b.

(b)(1) The Congress finds that, despite the long-standing efforts and resources of the United States dedicated to helping needy people around the world, despair remains and in many areas is growing.

(2) Therefore, a commission should be established to bring together the best minds associated with development and humanitarian assistance to make a comprehensive review of—

(A) policy decisions, including why certain development projects are funded and others are not, successes, and best practices, including their applicability to other existing programs and projects;

(B) delivery obstacles, including the roles of United States agencies and other governmental and nongovernmental organizations;

(C) methodology, including whether the delivery of United States development assistance always represents best practices and whether it can be improved; and

(D) results, including measuring improvements in human capacity instead of in purely economic terms.

(3) An examination of these issues should present new approaches and ideas to ensure that United States development assistance reaches and benefits its intended recipients.

Establishment.

(c)(1) There is established the Helping to Enhance the Livelihood of People (HELP) Around the Globe Commission (in this section referred to as the “Commission”).

(2) The Commission shall—

(A) identify the past and present objectives of United States development assistance, identify cases in which those objectives have been met, identify the beneficiaries of such assistance, and what percentage of the funds provided actually reached the intended beneficiaries;

(B) identify cases in which United States development assistance has been most successful, and analyze how such successes may be transferable to other countries or areas;

(C) study ways to expand educational opportunities and investments in people, and assess infrastructure needs;

(D) analyze how the United States could place conditions on governments in countries receiving United States development assistance, in light of and notwithstanding the objectives of the Millennium Challenge Account;

(E) analyze ways in which the United States can coordinate its development assistance programs with those of other donor countries and international organizations;

(F) analyze ways in which the safety of development assistance workers can be ensured, particularly in the midst of conflicts;

(G) compare the effectiveness of increased and open trade with development assistance, and analyze the advantages and disadvantages of such trade and whether such trade could be a more effective alternative to United States development assistance;

(H) analyze ways in which the United States can strengthen the capacity of indigenous nongovernmental organizations to be more effective in grassroots development;

(I) analyze ways in which decisions on providing development assistance can involve more of the people of the recipient countries;

(J) analyze ways in which results can be measured if United States development assistance is targeted to the least developed countries;

(K) recommend standards that should be set for “graduating” recipient countries from United States development assistance;

(L) analyze whether United States development assistance should be used as a means to achieve United States foreign policy objectives;

(M) analyze how the United States can evaluate the performance of its development assistance programs not only against economic indicators, but in other ways, including how to measure the success of United States development assistance in democratization efforts; and evaluate the existing foreign assistance framework to ascertain the degree of coordination, or lack thereof, of the disparate foreign development programs as administered by the various Federal agencies, to identify and assess the redundancies of programs and organizational structures engaged in foreign assistance, and to recommend revisions to authorizing legislation for foreign assistance that would seek to reconcile competing foreign policy and foreign aid goals; and

(N) study any other areas that the Commission considers necessary relating to United States development assistance.

(d)(1) The Commission shall be composed of 21 members as follows:

(A) Six members shall be appointed by the President, of whom at least two shall be representatives of nongovernmental organizations.

(B) Four members shall be appointed by the majority leader of the Senate, and three members shall be appointed by the minority leader of the Senate.

(C) Four members shall be appointed by the Speaker of the House of Representatives, and three members shall be appointed by the minority leader of the House of Representatives.

(D) The Administrator of the United States Agency for International Development shall serve as a member of the Commission, *ex officio*.

(2) Members under subparagraphs (A) through (C) of paragraph (1) shall be appointed for the life of the Commission.

(3) Members of the Commission shall be selected from among individuals noted for their knowledge and experience in foreign assistance, particularly development and humanitarian assistance.

(4) The appointments under paragraph (1) shall be made not later than 60 days after the date of the enactment of this section.

Deadline.

(5) The President shall designate one of the members of the Commission not currently in Government service as the Chair of the Commission.

President.

(6) In order to facilitate the workload of the Commission, the Commission shall divide the membership of the Commission into three subcommittees representing the different regions of the world to which the United States provides development assistance, the membership of each subcommittee to be proportional to the percentage of United States development assistance provided to the region represented by the subcommittee. Each subcommittee shall elect one of its members as Chair of the subcommittee.

(7)(A) Eleven members of the Commission shall constitute a quorum for purposes of transacting the business of the Commission. The Commission shall meet at the call of the Chair.

(B) A majority of the members of each regional subcommittee shall constitute a quorum for purposes of transacting the business of the subcommittee. Each subcommittee shall meet at the call of the Chair of the subcommittee.

(8) Any vacancy of the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment was made.

(9) The Administrator of General Services shall provide to the Commission on a reimbursable basis (or, in the discretion of the Administrator, on a nonreimbursable basis) such administrative support services as the Commission may request to carry out this section.

(10)(A) Subject to subparagraph (B), members of the Commission shall serve without pay.

(B) Members of the Commission who are full-time officers or employees of the United States or Members of Congress may not receive additional pay, allowances, or benefits by reason of their service on the Commission.

(11) Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(12)(A) The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(B) To the extent or in the amounts provided in advance in appropriations Acts—

(i) the executive director shall be compensated at the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(ii) the Chairman of the Commission may fix the compensation of other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(e)(1) The Commission may, for the purpose of carrying out its functions under this section, hold hearings, sit and act at times and places in the United States and in countries that receive United States development assistance, take testimony, and receive evidence as the Commission considers advisable to carry out the purposes of this section.

(2) The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission, subject to applicable law.

(3) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) The Commission may adopt such rules and regulations, relating to administrative procedure, as may be reasonably necessary to enable it to carry out the provisions of this section.

(5) The Members of the Commission may, with the approval of the Commission, conduct such travel as is necessary to carry out the purposes of this section. Each trip must be approved by a majority of the Commission.

(6) Upon the request of the Commission, the head of any Federal department or agency may detail, on a reimbursable or nonreimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its functions under this section. The detail of any such personnel shall be without interruption or loss of civil service or Foreign Service status or privilege.

(f)(1) Not later than 2 years after the members of the Commission are appointed under subsection (d)(1), the Commission shall

submit a report to the President, the Secretary of State, the Committee on Appropriations and the Committee on International Relations of the House of Representatives, and the Committee on Appropriations and the Committee on Foreign Relations of the Senate, setting forth its findings and recommendations under section (c)(2).

(2) The report may be submitted in classified form, together with a public summary of recommendations, if the classification of information would further the purposes of this section.

(3) Each member of the Commission may include the individual or dissenting views of the member.

(g) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(h) In this section, the term “United States development assistance” means—

(1) assistance provided by the United States under chapters 1, 10, 11, and 12 of part I of the Foreign Assistance Act of 1961; and

(2) assistance provided under any other provision of law to carry out purposes comparable to those set forth in the provisions referred to in paragraph (1).

(i)(1) There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this section.

(2) Amounts authorized to be appropriated under subsection (a) are authorized to remain available until expended, but not later than the date of termination of the Commission.

(j) The Commission shall terminate 30 days after the submission of its report under subsection (f).

Termination.

(k)(1) Not later than April 1, 2004, and April 1 of each third year thereafter, the President shall transmit to the Congress a report that analyzes, on a country-by-country basis, the impact and effectiveness of United States economic assistance furnished to each country during the preceding 3 fiscal years. The report shall include the following for each recipient country:

Deadlines.
Reports.

(A) An analysis of the impact of United States economic assistance during the preceding 3 fiscal years on economic development in that country, with a discussion of the United States interests that were served by the assistance. The analysis shall be done on a sector-by-sector basis to the extent possible and shall identify any economic policy reforms that were promoted by the assistance. The analysis shall—

(i) include a description, quantified to the extent practicable, of the specific objectives the United States sought to achieve in providing economic assistance for that country; and

(ii) specify the extent to which those objectives were not achieved, with an explanation of why they were not achieved.

(B) A description of the amount and nature of economic assistance provided by other donors during the preceding 3 fiscal years, set forth by development sector to the extent possible.

(C) A discussion of the commitment of the host government to addressing the country’s needs in each development sector, including a description of the resources devoted by that government to each development sector during the preceding 3 fiscal years.

(D) A description of the trends, both favorable and unfavorable, in each development sector.

(E) Statistical and other information necessary to evaluate the impact and effectiveness of United States economic assistance on development in the country.

(F) A comparison of the analysis provided in the report with relevant analyses by international financial institutions, other international organizations, other donor countries, or non-governmental organizations.

(2) The report required by this section shall identify—

(A) each country in which United States economic assistance has been most successful, as indicated by the extent to which the specific objectives the United States sought to achieve in providing the assistance for the country, as referred to in paragraph (1)(A)(i), were achieved; and

(B) each country in which United States economic assistance has been least successful, as indicated by the extent to which the specific objectives the United States sought to achieve in providing the assistance for the country, as referred to in paragraph (1)(A)(i), were not achieved; and, for each such country, an explanation of why the assistance was not more successful and a specification of what the United States has done as a result.

(3) Information under paragraphs (1) and (2) for a fiscal year shall not be required with respect to a country for which United States economic assistance for the country for the fiscal year is less than \$5,000,000.

(4) In this subsection, the term “United States economic assistance” means any bilateral economic assistance, from any budget functional category, that is provided by any department or agency of the United States to a foreign country, including such assistance that is intended—

(A) to assist the development and economic advancement of friendly foreign countries and peoples;

(B) to promote the freedom, aspirations, or sustenance of friendly peoples under oppressive rule by unfriendly governments;

(C) to promote international trade and foreign direct investment as a means of aiding economic growth;

(D) to save lives and alleviate suffering of foreign peoples during or following wars, natural disasters, or complex crises;

(E) to assist in recovery and rehabilitation of countries or peoples following disaster or war;

(F) to protect refugees and promote durable solutions to aid refugees;

(G) to promote sound environmental practices;

(H) to assist in development of democratic institutions and good governance by the people of foreign countries;

(I) to promote peace and reconciliation or prevention of conflict;

(J) to improve the technical capacities of governments to reduce production of and demand for illicit narcotics; and

(K) to otherwise promote through bilateral foreign economic assistance the national objectives of the United States.

SEC. 638. (a) There is hereby rescinded an amount equal to 0.465 percent of the budget authority provided for fiscal year 2004 for any discretionary account in this Act.

(b) Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in subsection (a); and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

TITLE VII—RESCISSIONS

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

WORKING CAPITAL FUND

(RESCISSION)

Of the unobligated balances available under this heading, \$67,326,000 are rescinded.

COUNTERTERRORISM FUND

(RESCISSION)

Of the unobligated balances available under this heading, \$40,000,000 are rescinded.

LEGAL ACTIVITIES

ASSET FORFEITURE FUND

(RESCISSION)

Of the unobligated balances available under this heading, \$61,608,000 are rescinded.

FEDERAL PRISON SYSTEM

BUILDINGS AND FACILITIES

(RESCISSION)

Of the unobligated balances available under this heading, \$51,895,000 are rescinded.

OFFICE OF JUSTICE PROGRAMS

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

(RESCISSION)

Of the unobligated balances available under this heading, \$21,600,000 are rescinded.

COMMUNITY ORIENTED POLICING SERVICES

(RESCISSION)

Of the unobligated balances available under this heading, \$6,378,000 are rescinded.

JUVENILE JUSTICE PROGRAMS

(RESCISSION)

Of the unobligated balances available under this heading, \$15,900,000 are rescinded.

DEPARTMENT OF COMMERCE AND RELATED AGENCIES

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

(RESCISSION)

Of the appropriations made available for travel and tourism by section 210 of Public Law 108–7, \$40,000,000 are rescinded.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

COASTAL AND OCEAN ACTIVITIES

(RESCISSION)

Of the appropriations made available for coastal and ocean activities by Public Law 106–553, \$2,500,000 are rescinded.

TITLE VIII—ALASKAN FISHERIES

SEC. 801. BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION. Section 313 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as amended, is further amended by adding at the end thereof the following:

16 USC 1862.

“(j) BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION.—

Deadline.

“(1) By not later than January 1, 2005, the Secretary shall approve and hereafter implement by regulation the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003. This section shall not preclude the Secretary from approving by January 1, 2005, and implementing any subsequent program amendments approved by the Council.

“(2) Notwithstanding any other provision of this Act, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph. Further, no part of such Program may be implemented if, as approved by the North Pacific Fishery Management Council, individual fishing quotas, processing quotas, community development

quota allocation, voluntary cooperatives, binding arbitration, regional landing and processing requirements, community protections, economic data collection, or the loan program for crab fishing vessel captains and crew members, is invalidated subject to a judicial determination not subject to judicial appeal. If the Secretary determines that a processor has leveraged its Individual Processor Quota shares to acquire a harvesters open-delivery “B shares”, the processor’s Individual Processor Quota shares shall be forfeited.

“(3) Subsequent to implementation pursuant to paragraph (1), the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this Act as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.

“(4) The loan program referred to in paragraph (2) shall be carried out pursuant to the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g).

“(5) For purposes of implementing this section \$1,000,000 shall be made available each year until fully implemented from funds otherwise made available to the National Marine Fisheries Service for Alaska fisheries activities.

“(6) Nothing in this Act shall constitute a waiver, either express or implied, of the antitrust laws of the United States. The Secretary, in consultation with the Department of Justice and the Federal Trade Commission, shall develop and implement a mandatory information collection and review process to provide any and all information necessary for the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program. The Secretary may revoke any individual processing quota held by any person found to have violated a provision of the antitrust laws of the United States.

“(7) An individual processing quota issued under the Program shall be considered a permit for the purposes of sections 307, 308, and 309, and may be revoked or limited at any time in accordance with this Act. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota if it is revoked or limited and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is purchased from an individual fishing quota holder.

“(8) The restriction on the collection of economic data in section 303 shall not apply with respect to any fish processor who is eligible for, or who has received, individual processing quota under the Program. The restriction on the disclosure of information in section 402(b)(1) shall not apply when the information is used to determine eligibility for or compliance with an individual processing quota program.

“(9) The provisions of sections 308, 310, and 311 shall apply to the processing facilities and fish products of any person

Applicability.

holding individual processing quota, and the provisions of subparagraphs (D), (E), and (L) of section 307(l) shall apply to any facility owned or controlled by a person holding individual processing quota.”.

Establishment.
16 USC 1851
note.

SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM. The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall: (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; and (2) establish catch limits for non-rockfish species and non-target rockfish species currently harvested with pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species. The pilot program will sunset when a Gulf of Alaska Groundfish comprehensive rationalization plan is authorized by the Council and implemented by the Secretary, or 2 years from date of implementation, whichever is earlier.

16 USC 1851
note.
Effective date.

SEC. 803. ALEUTIAN ISLANDS FISHERIES DEVELOPMENT. (a) ALEUTIAN ISLANDS POLLOCK ALLOCATION.—Effective January 1, 2004 and thereafter, the directed pollock fishery in the Aleutian Islands Subarea [AI] of the BSAI (as defined in 50 CFR 679.2) shall be allocated to the Aleut Corporation (incorporated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)). Except with the permission of the Aleut Corporation or its authorized agent, the fishing or processing of any part of such allocation shall be prohibited by section 307 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857), subject to the penalties and sanctions under section 308 of such Act (16 U.S.C. 1858), and subject to the forfeiture of any fish harvested or processed.

(b) ELIGIBLE VESSELS.—Only vessels that are 60 feet or less in length overall and have a valid fishery endorsement, or vessels that are eligible to harvest pollock under section 208 of title II of division C of Public Law 105-277, shall be eligible to form partnerships with the Aleut Corporation (or its authorized agents) to harvest the allocation under subsection (a). During the years 2004 through 2008, up to 25 percent of such allocation may be harvested by vessels 60 feet or less in length overall. During the years 2009 through 2013, up to 50 percent of such allocation may be harvested by vessels 60 feet or less in length overall. After the year 2012, 50 percent of such allocation shall be harvested by vessels 60 feet or less in length overall, and 50 percent shall be harvested by vessels eligible under such section of Public Law 105-277.

(c) GROUNDFISH OPTIMUM YIELD LIMITATION.—The optimum yield for groundfish in the Bering Sea and Aleutian Islands Management Area shall not exceed 2 million metric tons. For the purposes of implementing subsections (a) and (b) without adversely affecting current fishery participants, the allocation under subsection (a) may be in addition to such optimum yield during the years 2004 through 2008 upon recommendation by the North Pacific Council

and approval by the Secretary of Commerce (if consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)).

(d) MANAGEMENT AND ALLOCATION.—For the purposes of this section, the North Pacific Fishery Management Council shall recommend and the Secretary shall approve an allocation under subsection (a) to the Aleut Corporation for the purposes of economic development in Adak, Alaska pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 804. A Council or the Secretary may not consider or establish any program to allocate or issue an individual processing quota or processor share in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands.

This division may be cited as the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004”.

DIVISION C—DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2004

District of
Columbia
Appropriations
Act, 2004.

An Act

Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2004, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the District of Columbia and related agencies for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I—FEDERAL FUNDS

FEDERAL PAYMENT FOR RESIDENT TUITION SUPPORT

For a Federal payment to the District of Columbia, to be deposited into a dedicated account, for a nationwide program to be administered by the Mayor, for District of Columbia resident tuition support, \$17,000,000, to remain available until expended: *Provided*, That such funds, including any interest accrued thereon, may be used on behalf of eligible District of Columbia residents to pay an amount based upon the difference between in-State and out-of-State tuition at public institutions of higher education, or to pay up to \$2,500 each year at eligible private institutions of higher education: *Provided further*, That the awarding of such funds may be prioritized on the basis of a resident’s academic merit, the income and need of eligible students and such other factors as may be authorized: *Provided further*, That the District of Columbia government shall maintain a dedicated account for the Resident Tuition Support Program that shall consist of the Federal funds appropriated to the Program in this Act and any subsequent appropriations, any unobligated balances from prior fiscal years, and any interest earned in this or any fiscal year: *Provided further*, That the account shall be under the control of the District of

Columbia Chief Financial Officer who shall use those funds solely for the purposes of carrying out the Resident Tuition Support Program: *Provided further*, That the Office of the Chief Financial Officer shall provide a quarterly financial report to the Committees on Appropriations of the House of Representatives and Senate for these funds showing, by object class, the expenditures made and the purpose therefor: *Provided further*, That not more than 7 percent of the total amount appropriated for this program may be used for administrative expenses.

FEDERAL PAYMENT FOR EMERGENCY PLANNING AND SECURITY
COSTS IN THE DISTRICT OF COLUMBIA

For necessary expenses, as determined by the Mayor of the District of Columbia in written consultation with the elected county or city officials of surrounding jurisdictions, \$11,000,000, to remain available until expended, to reimburse the District of Columbia for the costs of providing public safety at events related to the presence of the national capital in the District of Columbia and for the costs of providing support to respond to immediate and specific terrorist threats or attacks in the District of Columbia or surrounding jurisdictions: *Provided*, That any amount provided under this heading shall be available only after notice of its proposed use has been transmitted by the President to Congress and such amount has been apportioned pursuant to chapter 15 of title 31, United States Code.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA COURTS

For salaries and expenses for the District of Columbia Courts, \$167,765,000, to be allocated as follows: for the District of Columbia Court of Appeals, \$8,775,000, of which not to exceed \$1,500 is for official reception and representation expenses; for the District of Columbia Superior Court, \$83,387,000, of which not to exceed \$1,500 is for official reception and representation expenses; for the District of Columbia Court System, \$40,006,000, of which not to exceed \$1,500 is for official reception and representation expenses; and \$35,597,000, to remain available until September 30, 2005, for capital improvements for District of Columbia courthouse facilities: *Provided*, That funds made available for capital improvements shall be expended consistent with the General Services Administration master plan study and building evaluation report: *Provided further*, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies, with payroll and financial services to be provided on a contractual basis with the General Services Administration (GSA), said services to include the preparation of monthly financial reports, copies of which shall be submitted directly by GSA to the President and to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate: *Provided further*, That 30 days after providing written notice to the Committees on Appropriations of the House of Representatives and Senate, the District of Columbia Courts may reallocate not more than

\$1,000,000 of the funds provided under this heading among the items and entities funded under such heading.

DEFENDER SERVICES IN DISTRICT OF COLUMBIA COURTS

For payments authorized under section 11-2604 and section 11-2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act), payments for counsel appointed in proceedings in the Family Court of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code, or pursuant to contractual agreements to provide guardian ad litem representation, training, technical assistance and/or such other services as are necessary to improve the quality of guardian ad litem representation, payments for counsel appointed in adoption proceedings under chapter 3 of title 16, D.C. Code, and payments for counsel authorized under section 21-2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986), \$32,000,000, to remain available until expended: *Provided*, That the funds provided in this Act under the heading “Federal Payment to the District of Columbia Courts” (other than the \$35,597,000 provided under such heading for capital improvements for District of Columbia courthouse facilities) may also be used for payments under this heading: *Provided further*, That in addition to the funds provided under this heading, the Joint Committee on Judicial Administration in the District of Columbia shall use funds provided in this Act under the heading “Federal Payment to the District of Columbia Courts” (other than the \$35,597,000 provided under such heading for capital improvements for District of Columbia courthouse facilities), to make payments described under this heading for obligations incurred during any fiscal year: *Provided further*, That funds provided under this heading shall be administered by the Joint Committee on Judicial Administration in the District of Columbia: *Provided further*, That notwithstanding any other provision of law, this appropriation shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for expenses of other Federal agencies, with payroll and financial services to be provided on a contractual basis with the General Services Administration (GSA), said services to include the preparation of monthly financial reports, copies of which shall be submitted directly by GSA to the President and to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate.

FEDERAL PAYMENT TO THE COURT SERVICES AND OFFENDER
SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

(INCLUDING TRANSFER OF FUNDS)

For salaries and expenses, including the transfer and hire of motor vehicles, of the Court Services and Offender Supervision Agency for the District of Columbia and the Public Defender Service for the District of Columbia, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, \$168,435,000, of which not to exceed \$2,000 is for official reception

and representation expenses related to Community Supervision and Pretrial Services Agency programs; of which not to exceed \$25,000 is for dues and assessments relating to the implementation of the Court Services and Offender Supervision Agency Interstate Supervision Act of 2002; of which \$105,814,000 shall be for necessary expenses of Community Supervision and Sex Offender Registration, to include expenses relating to the supervision of adults subject to protection orders or the provision of services for or related to such persons; of which \$37,411,000 shall be available to the Pretrial Services Agency; and of which \$25,210,000 shall be transferred to the Public Defender Service for the District of Columbia: *Provided*, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies: *Provided further*, That notwithstanding chapter 12 of title 40, United States Code, the Director may acquire by purchase, lease, condemnation, or donation, and renovate as necessary, Building Number 17, 1900 Massachusetts Avenue, Southeast, Washington, District of Columbia to house or supervise offenders and defendants, with funds made available for this purpose in Public Law 107–96: *Provided further*, That the Director is authorized to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs, and equipment and vocational training services to educate and train offenders and defendants: *Provided further*, That the Director shall keep accurate and detailed records of the acceptance and use of any gift or donation under the previous proviso, and shall make such records available for audit and public inspection.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA WATER AND
SEWER AUTHORITY

For a Federal payment to the District of Columbia Water and Sewer Authority, \$30,000,000, to remain available until expended, to continue implementation of the Combined Sewer Overflow Long-Term Plan: *Provided*, That the District of Columbia Water and Sewer Authority provides a 100 percent match for this payment.

FEDERAL PAYMENT FOR HOSPITAL BIOTERRORISM PREPAREDNESS IN
THE DISTRICT OF COLUMBIA

For a Federal payment to the District of Columbia Department of Health to support hospital bioterrorism preparedness in the District of Columbia, \$7,500,000, of which \$3,750,000 shall be for the Children's National Medical Center in the District of Columbia for the expansion of quarantine facilities and the establishment of a decontamination facility, and \$3,750,000 shall be for the Washington Hospital Center for construction of containment facilities.

FEDERAL PAYMENT FOR THE ANACOSTIA WATERFRONT INITIATIVE

For a Federal payment to the District of Columbia Department of Transportation, \$5,000,000, to remain available until September 30, 2005, for design and construction of a continuous pedestrian and bicycle trail system from the Potomac River to the District's border with Maryland.

FEDERAL PAYMENT TO THE CRIMINAL JUSTICE COORDINATING
COUNCIL

For a Federal payment to the Criminal Justice Coordinating Council, \$1,300,000, to support initiatives related to the coordination of Federal and local criminal justice resources in the District of Columbia.

FEDERAL PAYMENT FOR CAPITAL DEVELOPMENT IN THE DISTRICT OF
COLUMBIA

For a Federal payment to the District of Columbia for capital development, \$8,150,000, to remain available until expended, of which \$150,000 shall be for renovations at Eastern Market and \$8,000,000 shall be for the Unified Communications Center.

FEDERAL PAYMENT FOR PUBLIC SCHOOL FACILITIES

For a Federal payment to the District of Columbia Public Schools, \$4,500,000, of which \$500,000 shall be for a window repair and reglazing program and \$4,000,000 shall be for a playground repair and replacement program.

FEDERAL PAYMENT FOR A FAMILY LITERACY PROGRAM

For a Federal payment to the District of Columbia, \$2,000,000 for a family literacy program to address the needs of literacy-challenged parents while endowing their children with an appreciation for literacy and strengthening familial ties: *Provided*, That the District of Columbia shall provide a 100 percent match with local funds as a condition of receiving this payment.

FEDERAL PAYMENT FOR TRANSPORTATION ASSISTANCE

For a Federal payment to the District of Columbia Department of Transportation, \$3,500,000, of which \$500,000 shall be allocated to implement a downtown circulator transit system, and of which \$3,000,000 shall be to offset a portion of the District of Columbia's allocated operating subsidy payment to the Washington Metropolitan Area Transit Authority.

FEDERAL PAYMENT FOR FOSTER CARE IMPROVEMENTS IN THE
DISTRICT OF COLUMBIA

For a Federal payment to the District of Columbia for foster care improvements, \$14,000,000: *Provided*, That \$9,000,000 shall be for the Child and Family Services Agency, of which \$2,000,000 shall be to establish an early intervention program to provide intensive and immediate services for foster children; of which \$1,000,000 shall be to establish an emergency support fund to purchase items necessary to allow children to remain in the care of an approved and licensed family member; of which \$3,000,000 shall be for a loan repayment program for social workers who meet certain agency-established requirements; of which \$3,000,000 shall be to upgrade the agency's computer database to a web-based technology and to provide computer technology for social workers: *Provided further*, That \$3,900,000 shall be for the Department of Mental Health to provide all court-ordered or agency-required mental health screenings, assessments and treatments

for children under the supervision of the Child and Family Services Agency: *Provided further*, That the Director of the Department of Mental Health shall initiate court-ordered or agency-required mental health services within 3 days of notification that service is needed: *Provided further*, That the Director of the Department of Mental Health shall ensure that court-ordered or agency-required mental health assessments are completed within 15 days of the request and that all assessments be provided to the Court within 5 days of completion of the assessment: *Provided further*, That \$1,100,000 shall be for the Washington Metropolitan Council of Governments, to develop a program in conjunction with the Foster and Adoptive Parents Advocacy Center, to provide respite care for and recruitment of foster parents: *Provided further*, That the Mayor shall submit a detailed expenditure plan for the use of funds provided under this heading within 15 days of enactment of this legislation to the Committees on Appropriations of the House of Representatives and Senate: *Provided further*, That the funds provided under this heading shall not be made available until 30 calendar days after the submission of a spending plan to the Committees on Appropriations of the House of Representatives and Senate: *Provided further*, That with the exception of funds provided for the Department of Mental Health and the Washington Metropolitan Council of Governments, no part of this appropriation may be used for contractual community-based services: *Provided further*, That the Comptroller General shall prepare and submit to the Committees on Appropriations of the House of Representatives and Senate an accounting of all obligations and expenditures of the funds provided under this heading: *Provided further*, That the Comptroller General shall initiate management reviews of the Child and Family Services Agency and the Department of Mental Health and shall submit a report to the Committees on Appropriations of the House of Representatives and Senate no later than 6 months after enactment of this Act.

FEDERAL PAYMENT TO THE OFFICE OF THE CHIEF FINANCIAL
OFFICER OF THE DISTRICT OF COLUMBIA

For a Federal payment to the Office of the Chief Financial Officer of the District of Columbia, \$32,350,000: *Provided*, That these funds shall be available for the projects and in the amounts specified in the statement of the managers on the conference report accompanying this Act: *Provided further*, That each entity that receives funding under this heading shall submit to the Office of the Chief Financial Officer of the District of Columbia and the Committees on Appropriations of the House of Representatives and Senate a report on the activities carried out with such funds no later than March 15, 2004.

FEDERAL PAYMENT FOR EMERGENCY PERSONNEL CROSS TRAINING

For a Federal payment to the Emergency Management Agency, \$500,000 for activities related to the cross training of police officers, firefighters, emergency medical technicians, and other emergency personnel: *Provided*, That this funding shall not be obligated until the Agency submits a detailed cross training plan for the District's public safety workforce to the Committees on Appropriations of the House of Representatives and Senate.

FEDERAL PAYMENT FOR SCHOOL IMPROVEMENT

For a Federal payment for a School Improvement Program in the District of Columbia, \$40,000,000, to be allocated as follows: for the District of Columbia Public Schools, \$13,000,000 to improve public school education in the District of Columbia, as specified in the statement of the managers on the conference report accompanying this Act; for the State Education Office, \$13,000,000 to expand quality charter schools in the District of Columbia, as specified in the statement of the managers on the conference report accompanying this Act; for the Secretary of the Department of Education, \$14,000,000 to provide opportunity scholarships for students in the District of Columbia in accordance with title III of this Act, of which up to \$1,000,000 may be used to administer and fund assessments for title III of this Act: *Provided*, That the District of Columbia Public Schools shall submit a plan for the use of funds provided under this heading for public school education to the Committees on Appropriations of the House of Representatives and Senate, and the Committee on Education and the Workforce and the Committee on Government Reform of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate: *Provided further*, That the funds provided under this heading for public school education shall not be made available until 30 calendar days after the submission of a spending plan by the District of Columbia Public Schools to the Committees on Appropriations of the House of Representatives and Senate.

TITLE II—DISTRICT OF COLUMBIA FUNDS

OPERATING EXPENSES

DIVISION OF EXPENSES

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the general fund of the District of Columbia, except as otherwise specifically provided: *Provided*, That notwithstanding any other provision of law, except as provided in section 450A of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1–204.50a) and section 417 and section 436 of this Act, the total amount appropriated in this Act for operating expenses for the District of Columbia for fiscal year 2004 under this heading shall not exceed the lesser of the sum of the total revenues of the District of Columbia for such fiscal year or \$6,326,138,000 (of which \$3,832,734,000 shall be from local funds, \$1,568,734,000 shall be from Federal grant funds, \$910,904,000 shall be from other funds, and \$13,766,000 shall be from private funds), in addition, \$119,650,000 from funds previously appropriated in this Act as Federal payments: *Provided further*, That this amount may be increased by proceeds of one-time transactions, which are expended for emergency or unanticipated operating or capital needs: *Provided further*, That such increases shall be approved by enactment of local District law and shall comply with all reserve requirements contained in the District of Columbia Home Rule Act as amended by this Act: *Provided further*, That the Chief Financial Officer of the District of Columbia shall take such steps as are necessary to assure that the District of Columbia meets these requirements, including the apportioning by the Chief

Financial Officer of the appropriations and funds made available to the District during fiscal year 2004, except that the Chief Financial Officer may not reprogram for operating expenses any funds derived from bonds, notes, or other obligations issued for capital projects.

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, \$284,415,000 (including \$206,825,000 from local funds, \$57,440,000 from Federal grant funds, and \$20,150,000 from other funds), in addition, \$32,350,000 from funds previously appropriated in this Act under the heading “Federal Payment to the Office of the Chief Financial Officer of the District of Columbia”, \$11,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for Emergency Planning and Security Costs in the District of Columbia”, \$2,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for a Family Literacy Program”, and \$1,100,000 from funds previously appropriated in this Act under the heading “Federal Payment for Foster Care Improvements in the District of Columbia”: *Provided*, That not to exceed \$2,500 for the Mayor, \$2,500 for the Chairman of the Council of the District of Columbia, \$2,500 for the City Administrator, and \$2,500 for the Office of the Chief Financial Officer shall be available from this appropriation for official reception and representation expenses: *Provided further*, That any program fees collected from the issuance of debt shall be available for the payment of expenses of the debt management program of the District of Columbia: *Provided further*, That no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission: *Provided further*, That the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally generated revenues: *Provided further*, That notwithstanding any other provision of law, or Mayor’s Order 86-45, issued March 18, 1986, the Office of the Chief Technology Officer’s delegated small purchase authority shall be \$500,000: *Provided further*, That the District of Columbia government may not require the Office of the Chief Technology Officer to submit to any other procurement review process, or to obtain the approval of or be restricted in any manner by any official or employee of the District of Columbia government, for purchases that do not exceed \$500,000: *Provided further*, That not to exceed \$25,000, to remain available until expended, of the funds in the District of Columbia Antitrust Fund established pursuant to section 820 of the District of Columbia Procurement Practices Act of 1985 (D.C. Law 6-85; D.C. Official Code, sec. 2-308.20) is hereby made available for the use of the Office of the Corporation Counsel of the District of Columbia in accordance with the laws establishing this fund.

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, \$276,647,000 (including \$53,336,000 from local funds, \$91,077,000 from Federal grant funds, \$132,109,000 from other funds, and \$125,000 from private funds), of which \$15,000,000 collected by the District of Columbia in the form of BID tax revenue shall be paid to the respective BIDs pursuant to the Business Improvement Districts Act of 1996 (D.C.

Law 11-134; D.C. Official Code, sec. 2-1215.01 et seq.), and the Business Improvement Districts Amendment Act of 1997 (D.C. Law 12-26; D.C. Official Code, sec. 2-1215.15 et seq.): *Provided*, That such funds are available for acquiring services provided by the General Services Administration: *Provided further*, That Business Improvement Districts shall be exempt from taxes levied by the District of Columbia.

PUBLIC SAFETY AND JUSTICE

Public safety and justice, \$745,958,000 (including \$716,715,000 from local funds, \$10,290,000 from Federal grant funds, \$18,944,000 from other funds, and \$9,000 from private funds), in addition, \$1,300,000 from funds previously appropriated in this Act under the heading “Federal Payment to the Criminal Justice Coordinating Council” and \$500,000 from funds previously appropriated in this Act under the heading “Federal Payment for Emergency Personnel Cross Training”: *Provided*, That not to exceed \$500,000 shall be available from this appropriation for the Chief of Police for the prevention and detection of crime: *Provided further*, That the Mayor shall reimburse the District of Columbia National Guard for expenses incurred in connection with services that are performed in emergencies by the National Guard in a militia status and are requested by the Mayor, in amounts that shall be jointly determined and certified as due and payable for these services by the Mayor and the Commanding General of the District of Columbia National Guard: *Provided further*, That such sums as may be necessary for reimbursement to the District of Columbia National Guard under the preceding proviso shall be available from this appropriation, and the availability of the sums shall be deemed as constituting payment in advance for emergency services involved.

PUBLIC EDUCATION SYSTEM

(INCLUDING TRANSFERS OF FUNDS)

Public education system, including the development of national defense education programs, \$1,157,841,000 (including \$962,941,000 from local funds, \$156,708,000 from Federal grant funds, \$27,074,000 from other funds, \$4,302,000 from private funds, and not to exceed \$6,816,000, to remain available until expended, from the Medicaid and Special Education Reform Fund established pursuant to the Medicaid and Special Education Reform Fund Establishment Act of 2002 (D.C. Law 14-190; D.C. Official Code 4-204.51 et seq.)), in addition, \$17,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for Resident Tuition Support”, \$4,500,000 from funds previously appropriated in this Act under the heading “Federal Payment for Public School Facilities”, and \$26,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for School Improvement in the District of Columbia” to be allocated as follows:

(1) DISTRICT OF COLUMBIA PUBLIC SCHOOLS.—\$870,135,000 (including \$738,444,000 from local funds, \$114,749,000 from Federal grant funds, \$6,527,000 from other funds, \$3,599,000 from private funds, and not to exceed \$6,816,000, to remain available until expended, from the Medicaid and Special Education Reform Fund established pursuant to the Medicaid and Special Education Reform Fund Establishment Act of 2002

(D.C. Law 14-190; D.C. Official Code 4-204.51 et seq.)), in addition, \$4,500,000 from funds previously appropriated in this Act under the heading “Federal Payment for Public School Facilities” and \$13,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for School Improvement in the District of Columbia” shall be available for District of Columbia Public Schools: *Provided*, That notwithstanding any other provision of law, rule, or regulation, the evaluation process and instruments for evaluating District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes: *Provided further*, That this appropriation shall not be available to subsidize the education of any nonresident of the District of Columbia at any District of Columbia public elementary or secondary school during fiscal year 2004 unless the nonresident pays tuition to the District of Columbia at a rate that covers 100 percent of the costs incurred by the District of Columbia that are attributable to the education of the nonresident (as established by the Superintendent of the District of Columbia Public Schools): *Provided further*, That notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the District of Columbia Public Schools on July 1, 2004, an amount equal to 10 percent of the total amount provided for the District of Columbia Public Schools in the proposed budget of the District of Columbia for fiscal year 2005 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the District of Columbia Public Schools under the District of Columbia Appropriations Act, 2005: *Provided further*, That not to exceed \$2,500 for the Superintendent of Schools shall be available from this appropriation for official reception and representation expenses: *Provided further*, That the District of Columbia Public Schools shall submit to the Board of Education by January 1 and July 1 of each year a Schedule A showing all the current funded positions of the District of Columbia Public Schools, their compensation levels, and indicating whether the positions are encumbered: *Provided further*, That the Board of Education shall approve or disapprove each Schedule A within 30 days of its submission and provide the Council of the District of Columbia a copy of the Schedule A upon its approval.

(2) STATE EDUCATION OFFICE.—\$38,752,000 (including \$9,959,000 from local funds, \$28,617,000 from Federal grant funds, and \$176,000 from other funds), in addition, \$17,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for Resident Tuition Support” and \$13,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for School Improvement in the District of Columbia” shall be available for the State Education Office: *Provided*, That of the amounts provided to the State Education Office, \$500,000 from local funds shall remain available until June 30, 2005 for an audit of the student enrollment of each District of Columbia Public School and of each District of Columbia public charter school.

(3) DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOLS.—\$137,531,000 from local funds shall be available for District of Columbia public charter schools: *Provided*, That there shall

be quarterly disbursement of funds to the District of Columbia public charter schools, with the first payment to occur within 15 days of the beginning of the fiscal year: *Provided further*, That if the entirety of this allocation has not been provided as payments to any public charter schools currently in operation through the per pupil funding formula, the funds shall be available as follows: (A) the first \$3,000,000 shall be deposited in the Credit Enhancement Revolving Fund established pursuant to section 603(e) of the Student Loan Marketing Association Reorganization Act of 1996 (Public Law 104-208; 110 Stat. 3009; 20 U.S.C. 1155(e)); and (B) the balance shall be for public education in accordance with section 2403(b)(2) of the District of Columbia School Reform Act of 1995 (D.C. Official Code, sec. 38-1804.03(b)(2)): *Provided further*, That of the amounts made available to District of Columbia public charter schools, \$25,000 shall be made available to the Office of the Chief Financial Officer as authorized by section 2403(b)(6) of the District of Columbia School Reform Act of 1995 (D.C. Official Code, sec. 38-1804.03(b)(6)): *Provided further*, That \$660,000 of this amount shall be available to the District of Columbia Public Charter School Board for administrative costs: *Provided further*, That notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the District of Columbia public charter schools on July 1, 2004, an amount equal to 25 percent of the total amount provided for payments to public charter schools in the proposed budget of the District of Columbia for fiscal year 2005 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for such payments under the District of Columbia Appropriations Act, 2005.

(4) UNIVERSITY OF THE DISTRICT OF COLUMBIA.—\$80,660,000 (including \$48,656,000 from local funds, \$11,867,000 from Federal grant funds, \$19,434,000 from other funds, and \$703,000 from private funds) shall be available for the University of the District of Columbia: *Provided*, That this appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 2004, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area: *Provided further*, That notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the University of the District of Columbia on July 1, 2004, an amount equal to 10 percent of the total amount provided for the University of the District of Columbia in the proposed budget of the District of Columbia for fiscal year 2005 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the University of the District of Columbia under the District of Columbia Appropriations Act, 2005: *Provided further*, That not to exceed \$2,500 for the President of the University of the District of Columbia

shall be available from this appropriation for official reception and representation expenses.

(5) DISTRICT OF COLUMBIA PUBLIC LIBRARIES.—\$28,287,000 (including \$26,750,000 from local funds, \$1,000,000 from Federal grant funds, and \$537,000 from other funds) shall be available for the District of Columbia Public Libraries: *Provided*, That not to exceed \$2,000 for the Public Librarian shall be available from this appropriation for official reception and representation expenses.

(6) COMMISSION ON THE ARTS AND HUMANITIES.—\$2,476,000 (including \$1,601,000 from local funds, \$475,000 from Federal grant funds, and \$400,000 from other funds) shall be available for the Commission on the Arts and Humanities.

HUMAN SUPPORT SERVICES

(INCLUDING TRANSFER OF FUNDS)

Human support services, \$2,360,067,000 (including \$1,030,223,000 from local funds, \$1,247,945,000 from Federal grant funds, \$24,330,000 from other funds, \$9,330,000 from private funds, and \$48,239,000, to remain available until expended, from the Medicaid and Special Education Reform Fund established pursuant to the Medicaid and Special Education Reform Fund Establishment Act of 2002 (D.C. Law 14-190; D.C. Official Code 4-204.51 et seq.)), in addition, \$7,500,000 from funds previously appropriated in this Act under the heading “Federal Payment for Hospital Bioterrorism Preparedness in the District of Columbia” and \$12,900,000 from funds previously appropriated in this Act under the heading “Federal Payment to Foster Care Improvements in the District of Columbia”: *Provided*, That the funds available from the Medicaid and Special Education Reform Fund are allocated as follows: not more than \$18,744,000 for Child and Family Services, not more than \$7,795,000 for the Department of Human Services, and not more than \$21,700,000 for the Department of Mental Health: *Provided further*, That \$27,959,000 of this appropriation, to remain available until expended, shall be available solely for District of Columbia employees’ disability compensation: *Provided further*, That \$7,500,000 of this appropriation, to remain available until expended, shall be deposited in the Addiction Recovery Fund, established pursuant to section 5 of the Choice in Drug Treatment Act of 2000 (D.C. Law 13-146; D.C. Official Code, sec. 7-3004) and used exclusively for the purpose of the Drug Treatment Choice Program established pursuant to section 4 of the Choice in Drug Treatment Act of 2000 (D.C. Law 13-146; D.C. Official Code, sec. 7-3003): *Provided further*, That no less than \$2,000,000 of this appropriation shall be available exclusively for the purpose of funding the pilot substance abuse program for youth ages 14 through 21 years established pursuant to section 4212 of the Pilot Substance Abuse Program for Youth Act of 2001 (D.C. Law 14-28; D.C. Official Code, sec. 7-3101): *Provided further*, That \$4,500,000 of this appropriation, to remain available until expended, shall be deposited in the Interim Disability Assistance Fund established pursuant to section 201 of the District of Columbia Public Assistance Act of 1982 (D.C. Law 4-101; D.C. Official Code, sec. 4-202.01), to be used exclusively for the Interim Disability Assistance program and the purposes for that program set forth in section 407 of the District of Columbia Public Assistance Act of 1982

(D.C. Law 13–252; D.C. Official Code, sec. 4–204.07): *Provided further*, That not less than \$640,531 of this appropriation shall be available exclusively for the purpose of funding the Burial Assistance Program established by section 1802 of the Burial Assistance Program Reestablishment Act of 1999 (D.C. Law 13–38; D.C. Official Code, sec. 4–1001).

PUBLIC WORKS

Public works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and leasing of passenger-carrying vehicles, \$327,046,000 (including \$308,028,000 from local funds, \$5,274,000 from Federal grant funds, and \$13,744,000 from other funds), in addition, \$3,500,000 from funds previously appropriated in this Act under the heading “Federal Payment for Transportation Assistance”: *Provided*, That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business.

CASH RESERVE

For the cumulative cash reserve established pursuant to section 202(j)(2) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (D.C. Official Code, sec. 47–392.02(j)(2)), \$50,000,000 from local funds.

EMERGENCY AND CONTINGENCY RESERVE FUNDS

For the emergency reserve fund and the contingency reserve fund under section 450A of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1–204.50a), such amounts from local funds as are necessary to meet the balance requirements for such funds under such section.

REPAYMENT OF LOANS AND INTEREST

For payment of principal, interest, and certain fees directly resulting from borrowing by the District of Columbia to fund District of Columbia capital projects as authorized by sections 462, 475, and 490 of the District of Columbia Home Rule Act (D.C. Official Code, secs. 1–204.62, 1–204.75, and 1–204.90), \$311,504,000 from local funds: *Provided*, That for equipment leases, the Mayor may finance \$14,300,000 of equipment cost, plus cost of issuance not to exceed 2 percent of the par amount being financed on a lease purchase basis with a maturity not to exceed 5 years.

PAYMENT OF INTEREST ON SHORT-TERM BORROWING

For payment of interest on short-term borrowing, \$3,000,000 from local funds.

CERTIFICATES OF PARTICIPATION

For principal and interest payments on the District’s Certificates of Participation, issued to finance the ground lease underlying the building located at One Judiciary Square, \$4,911,000 from local funds.

SETTLEMENTS AND JUDGMENTS

For making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government, \$22,522,000 from local funds: *Provided*, That this appropriation shall not be construed as modifying or affecting the provisions of section 103 of this Act.

WILSON BUILDING

For expenses associated with the John A. Wilson building, \$3,704,000 from local funds.

WORKFORCE INVESTMENTS

For workforce investments, \$22,308,000 from local funds, to be transferred by the Mayor of the District of Columbia within the various appropriation headings in this Act for which employees are properly payable.

NON-DEPARTMENTAL AGENCY

To account for anticipated costs that cannot be allocated to specific agencies during the development of the proposed budget, \$19,639,000 (including \$11,455,000 from local funds and \$8,184,000 from other funds) to be transferred by the Mayor of the District of Columbia within the various appropriations headings in this Act: *Provided*, That \$11,455,000 from local funds shall be for anticipated costs associated with the No Child Left Behind Act.

PAY-AS-YOU-GO CAPITAL

For Pay-As-You-Go Capital funds in lieu of capital financing, \$11,267,000 from local funds, to be transferred to the Capital Fund, subject to the Criteria for Spending Pay-as-You-Go Funding Amendment Act of 2003 (D.C. Act 15–106): *Provided*, That pursuant to this Act, there are authorized to be transferred from Pay-As-You-Go Capital funds to other headings of this Act, such sums as may be necessary to carry out the purposes of this Act.

TAX INCREMENT FINANCING PROGRAM

For a Tax Increment Financing Program, \$1,940,000 from local funds.

MEDICAID DISALLOWANCE

For making refunds associated with disallowed Medicaid funding, an amount not to exceed \$57,000,000 in local funds, to remain available until expended: *Provided*, That funds are derived from a transfer from the funds identified in the fiscal year 2002 comprehensive annual financial report as the District of Columbia's Grants Disallowance balance.

ENTERPRISE AND OTHER FUNDS

WATER AND SEWER AUTHORITY

For operation of the Water and Sewer Authority, \$259,095,000 from other funds, of which \$18,692,000 shall be apportioned for repayment of loans and interest incurred for capital improvement projects and payable to the District's debt service fund.

For construction projects, \$229,807,000, to be distributed as follows: \$99,449,000 for the Blue Plains Wastewater Treatment Plant, \$16,739,000 for the sewer program, \$72,047,000 for the combined sewer program, \$5,993,000 for the stormwater program, \$24,431,000 for the water program, and \$11,148,000 for the capital equipment program; in addition, \$30,000,000 from funds previously appropriated in this Act under the heading "Federal Payment to the District of Columbia Water and Sewer Authority": *Provided*, That the requirements and restrictions that are applicable to general fund capital improvement projects and set forth in this Act under the Capital Outlay appropriation account shall apply to projects approved under this appropriation account.

WASHINGTON AQUEDUCT

For operation of the Washington Aqueduct, \$55,553,000 from other funds.

STORMWATER PERMIT COMPLIANCE ENTERPRISE FUND

For operation of the Stormwater Permit Compliance Enterprise Fund, \$3,501,000 from other funds.

LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND

For the Lottery and Charitable Games Enterprise Fund, established by the District of Columbia Appropriation Act, 1982, for the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia (D.C. Law 3–172; D.C. Official Code, sec. 3–1301 et seq. and sec. 22–1716 et seq.), \$242,755,000 from other funds: *Provided*, That the District of Columbia shall identify the source of funding for this appropriation title from the District's own locally generated revenues: *Provided further*, That no revenues from Federal sources shall be used to support the operations or activities of the Lottery and Charitable Games Control Board.

SPORTS AND ENTERTAINMENT COMMISSION

For the Sports and Entertainment Commission, \$13,979,000 from local funds.

DISTRICT OF COLUMBIA RETIREMENT BOARD

For the District of Columbia Retirement Board, established pursuant to section 121 of the District of Columbia Retirement Reform Act of 1979 (D.C. Official Code, sec. 1–711), \$13,895,000 from the earnings of the applicable retirement funds to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board: *Provided*, That the District of Columbia Retirement Board shall provide to

the Congress and to the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: *Provided further*, That the District of Columbia Retirement Board shall provide the Mayor, for transmittal to the Council of the District of Columbia, an itemized accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report.

WASHINGTON CONVENTION CENTER ENTERPRISE FUND

For the Washington Convention Center Enterprise Fund, \$69,742,000 from other funds.

NATIONAL CAPITAL REVITALIZATION CORPORATION

For the National Capital Revitalization Corporation, \$7,849,000 from other funds.

CAPITAL OUTLAY

(INCLUDING RESCISSIONS)

For construction projects, an increase of \$1,004,796,000, of which \$601,708,000 shall be from local funds, \$46,014,000 from Highway Trust funds, \$38,311,000 from the Rights-of-way funds, \$218,880,000 from Federal grant funds, and a rescission of \$99,884,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of \$904,913,000, to remain available until expended; in addition, \$8,150,000 from funds previously appropriated in this Act under the heading “Federal Payment for Capital Development in the District of Columbia” and \$5,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for the Anacostia Waterfront Initiative”: *Provided*, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: *Provided further*, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended.

DC School Choice
Incentive Act of
2003.

TITLE III—DC SCHOOL CHOICE INCENTIVE ACT OF 2003

SEC. 301. SHORT TITLE.

This title may be cited as the “DC School Choice Incentive Act of 2003”.

SEC. 302. FINDINGS.

The Congress finds the following:

(1) Parents are best equipped to make decisions for their children, including the educational setting that will best serve the interests and educational needs of their child.

(2) For many parents in the District of Columbia, public school choice provided for under the No Child Left Behind Act of 2001 as well as under other public school choice programs, is inadequate due to capacity constraints. Available

educational alternatives to the public schools are insufficient and more educational options are needed. In particular, funds are needed to assist low-income parents to exercise choice among enhanced public opportunities and private educational environments, whether religious or nonreligious. Therefore, in keeping with the spirit of the No Child Left Behind Act of 2001, school choice options, in addition to those already available to parents in the District of Columbia (such as magnet and charter schools and open enrollment schools) should be made available to those parents.

(3) In the most recent mathematics assessment on the National Assessment of Educational Progress (NAEP), administered in 2000, a lower percentage of 4th-grade students in the District of Columbia demonstrated proficiency than was the case for any State. Seventy-six percent of the District of Columbia fourth-graders scored at the “below basic” level and of the 8th-grade students in the District of Columbia, only 6 percent of the students tested at the proficient or advanced levels, and 77 percent were below basic. In the most recent NAEP reading assessment, in 1998, only 10 percent of the District of Columbia fourth-graders could read proficiently, while 72 percent were below basic. At the 8th-grade level, 12 percent were proficient or advanced and 56 percent were below basic.

(4) A program enacted for the valid secular purpose of providing educational assistance to low-income children in a demonstrably failing public school system is constitutional under *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), if it is neutral with respect to religion and provides assistance to a broad class of citizens who direct government aid to religious and secular schools solely as a result of their genuine and independent private choices.

(5) The Mayor of the District of Columbia, the Chairman of the Education Committee of the City Council of the District of Columbia, and the President of the District of Columbia Board of Education support this title.

(6) This title provides additional money for the District of Columbia public schools and therefore money for scholarships is not being taken out of money that would otherwise go to the District of Columbia public schools.

(7) This title creates a 5-year program tailored to the current needs and particular circumstances of low-income children in District of Columbia schools. This title does not establish parameters or requirements for other school choice programs.

SEC. 303. PURPOSE.

The purpose of this title is to provide low-income parents residing in the District of Columbia, particularly parents of students who attend elementary schools or secondary schools identified for improvement, corrective action, or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316), with expanded opportunities for enrolling their children in higher-performing schools in the District of Columbia.

SEC. 304. GENERAL AUTHORITY.

(a) **AUTHORITY.**—From funds appropriated to carry out this title, the Secretary shall award grants on a competitive basis to

eligible entities with approved applications under section 305 to carry out activities to provide eligible students with expanded school choice opportunities. The Secretary may award a single grant or multiple grants, depending on the quality of applications submitted and the priorities of this title.

(b) DURATION OF GRANTS.—The Secretary may make grants under this section for a period of not more than 5 years.

(c) MEMORANDUM OF UNDERSTANDING.—The Secretary and the Mayor of the District of Columbia shall enter into a memorandum of understanding, as described in the statement of the managers, regarding the design of, selection of eligible entities to receive grants under, and implementation of, a program assisted under this title.

SEC. 305. APPLICATIONS.

(a) IN GENERAL.—In order to receive a grant under this title, an eligible entity shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(b) CONTENTS.—The Secretary may not approve the request of an eligible entity for a grant under this title unless the entity's application includes—

(1) a detailed description of—

(A) how the entity will address the priorities described in section 306;

(B) how the entity will ensure that if more eligible students seek admission in the program than the program can accommodate, eligible students are selected for admission through a random selection process which gives weight to the priorities described in section 306;

(C) how the entity will ensure that if more participating eligible students seek admission to a participating school than the school can accommodate, participating eligible students are selected for admission through a random selection process;

(D) how the entity will notify parents of eligible students of the expanded choice opportunities and how the entity will ensure that parents receive sufficient information about their options to allow the parents to make informed decisions;

(E) the activities that the entity will carry out to provide parents of eligible students with expanded choice opportunities through the awarding of scholarships under section 307(a);

(F) how the entity will determine the amount that will be provided to parents for the tuition, fees, and transportation expenses, if any;

(G) how the entity will seek out private elementary schools and secondary schools in the District of Columbia to participate in the program, and will ensure that participating schools will meet the applicable requirements of this title and provide the information needed for the entity to meet the reporting requirements of this title;

(H) how the entity will ensure that participating schools are financially responsible and will use the funds received under this title effectively;

(I) how the entity will address the renewal of scholarships to participating eligible students, including continued eligibility; and

(J) how the entity will ensure that a majority of its voting board members or governing organization are residents of the District of Columbia; and

(2) an assurance that the entity will comply with all requests regarding any evaluation carried out under section 309.

SEC. 306. PRIORITIES.

In awarding grants under this title, the Secretary shall give priority to applications from eligible entities who will most effectively—

(1) give priority to eligible students who, in the school year preceding the school year for which the eligible student is seeking a scholarship, attended an elementary school or secondary school identified for improvement, corrective action, or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316);

(2) target resources to students and families that lack the financial resources to take advantage of available educational options; and

(3) provide students and families with the widest range of educational options.

SEC. 307. USE OF FUNDS.

(a) SCHOLARSHIPS.—

(1) **IN GENERAL.**—Subject to paragraphs (2) and (3), a grantee shall use the grant funds to provide eligible students with scholarships to pay the tuition, fees, and transportation expenses, if any, to enable them to attend the District of Columbia private elementary school or secondary school of their choice. Each grantee shall ensure that the amount of any tuition or fees charged by a school participating in the grantee's program under this title to an eligible student participating in the program does not exceed the amount of tuition or fees that the school customarily charges to students who do not participate in the program.

(2) **PAYMENTS TO PARENTS.**—A grantee shall make scholarship payments under the program under this title to the parent of the eligible student participating in the program, in a manner which ensures that such payments will be used for the payment of tuition, fees, and transportation expenses (if any), in accordance with this title.

(3) AMOUNT OF ASSISTANCE.—

(A) **VARYING AMOUNTS PERMITTED.**—Subject to the other requirements of this section, a grantee may award scholarships in larger amounts to those eligible students with the greatest need.

(B) **ANNUAL LIMIT ON AMOUNT.**—The amount of assistance provided to any eligible student by a grantee under a program under this title may not exceed \$7,500 for any academic year.

(4) **CONTINUATION OF SCHOLARSHIPS.**—Notwithstanding section 312(3)(B), an eligible entity receiving a grant under this title may award a scholarship, for the second or any

succeeding year of an eligible student's participation in a program under this title, to a student who comes from a household whose income does not exceed 200 percent of the poverty line.

(b) ADMINISTRATIVE EXPENSES.—A grantee may use not more than 3 percent of the amount provided under the grant each year for the administrative expenses of carrying out its program under this title during the year, including—

- (1) determining the eligibility of students to participate;
- (2) providing information about the program and the schools involved to parents of eligible students;
- (3) selecting students to receive scholarships;
- (4) determining the amount of scholarships and issuing the scholarships to eligible students;
- (5) compiling and maintaining financial and programmatic records; and
- (6) providing funds to assist parents in meeting expenses that might otherwise preclude the participation of their child in the program.

SEC. 308. NONDISCRIMINATION.

(a) IN GENERAL.—An eligible entity or a school participating in any program under this title shall not discriminate against program participants or applicants on the basis of race, color, national origin, religion, or sex.

(b) APPLICABILITY AND SINGLE SEX SCHOOLS, CLASSES, OR ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the prohibition of sex discrimination in subsection (a) shall not apply to a participating school that is operated by, supervised by, controlled by, or connected to a religious organization to the extent that the application of subsection (a) is inconsistent with the religious tenets or beliefs of the school.

(2) SINGLE SEX SCHOOLS, CLASSES, OR ACTIVITIES.—Notwithstanding subsection (a) or any other provision of law, a parent may choose and a school may offer a single sex school, class, or activity.

(3) APPLICABILITY.—For purposes of this title, the provisions of section 909 of the Education Amendments of 1972 (20 U.S.C. 1688) shall apply to this title as if section 909 of the Education Amendments of 1972 (20 U.S.C. 1688) were part of this title.

(c) CHILDREN WITH DISABILITIES.—Nothing in this title may be construed to alter or modify the provisions of the Individuals with Disabilities Education Act.

(d) RELIGIOUSLY AFFILIATED SCHOOLS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a school participating in any program under this title that is operated by, supervised by, controlled by, or connected to, a religious organization may exercise its right in matters of employment consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1 et seq.), including the exemptions in such title.

(2) MAINTENANCE OF PURPOSE.—Notwithstanding any other provision of law, funds made available under this title to eligible students that are received by a participating school, as a result of their parents' choice, shall not, consistent with the first

amendment of the United States Constitution, necessitate any change in the participating school's teaching mission, require any participating school to remove religious art, icons, scriptures, or other symbols, or preclude any participating school from retaining religious terms in its name, selecting its board members on a religious basis, or including religious references in its mission statements and other chartering or governing documents.

(e) **RULE OF CONSTRUCTION.**—A scholarship (or any other form of support provided to parents of eligible students) under this title shall be considered assistance to the student and shall not be considered assistance to the school that enrolls the eligible student. The amount of any scholarship (or other form of support provided to parents of an eligible student) under this title shall not be treated as income of the parents for purposes of Federal tax laws or for determining eligibility for any other Federal program.

SEC. 309. EVALUATIONS.

(a) IN GENERAL.—

(1) **DUTIES OF THE SECRETARY AND THE MAYOR.**—The Secretary and the Mayor of the District of Columbia shall jointly select an independent entity to evaluate annually the performance of students who received scholarships under the 5-year program under this title, and shall make the evaluations public in accordance with subsection (c).

(2) **DUTIES OF THE SECRETARY.**—The Secretary, through a grant, contract, or cooperative agreement, shall—

(A) ensure that the evaluation is conducted using the strongest possible research design for determining the effectiveness of the programs funded under this title that addresses the issues described in paragraph (4); and

(B) disseminate information on the impact of the programs in increasing the student academic achievement of participating students, and on the impact of the programs on students and schools in the District of Columbia.

(3) **DUTIES OF THE INDEPENDENT ENTITY.**—The independent entity shall—

(A) measure the academic achievement of all participating eligible students;

(B) use the same grade appropriate measurement every school year to assess participating eligible students as the measurement used by the District of Columbia Public Schools to assess District of Columbia Public School students in the first year of the program; and

(C) work with the eligible entities to ensure that the parents of each student who applies for a scholarship under this title (regardless of whether the student receives the scholarship) and the parents of each student participating in the scholarship program under this title, agree that the student will participate in the measurements given annually by the independent entity for the period for which the student applied for or received the scholarship, respectively.

(4) **ISSUES TO BE EVALUATED.**—The issues to be evaluated include the following:

(A) A comparison of the academic achievement of participating eligible students in the measurements described in this section to the achievement of—

(i) students in the same grades in the District of Columbia public schools; and

(ii) the eligible students in the same grades in the District of Columbia public schools who sought to participate in the scholarship program but were not selected.

(B) The success of the programs in expanding choice options for parents.

(C) The reasons parents choose for their children to participate in the programs.

(D) A comparison of the retention rates, dropout rates, and (if appropriate) graduation and college admission rates, of students who participate in the programs funded under this title with the retention rates, dropout rates, and (if appropriate) graduation and college admission rates of students of similar backgrounds who do not participate in such programs.

(E) The impact of the program on students, and public elementary schools and secondary schools, in the District of Columbia.

(F) A comparison of the safety of the schools attended by students who participate in the programs and the schools attended by students who do not participate in the programs.

(G) Such other issues as the Secretary considers appropriate for inclusion in the evaluation.

(5) PROHIBITION.—Personally identifiable information regarding the results of the measurements used for the evaluations may not be disclosed, except to the parents of the student to whom the information relates.

Deadlines.

(b) REPORTS.—The Secretary shall submit to the Committees on Appropriations, Education and the Workforce, and Government Reform of the House of Representatives and the Committees on Appropriations, Health, Education, Labor, and Pensions, and Governmental Affairs of the Senate—

(1) annual interim reports, not later than December 1 of each year for which a grant is made under this title, on the progress and preliminary results of the evaluation of the programs funded under this title; and

(2) a final report, not later than 1 year after the final year for which a grant is made under this title, on the results of the evaluation of the programs funded under this title.

(c) PUBLIC AVAILABILITY.—All reports and underlying data gathered pursuant to this section shall be made available to the public upon request, in a timely manner following submission of the applicable report under subsection (b), except that personally identifiable information shall not be disclosed or made available to the public.

(d) LIMIT ON AMOUNT EXPENDED.—The amount expended by the Secretary to carry out this section for any fiscal year may not exceed 3 percent of the total amount appropriated to carry out this title for the fiscal year.

SEC. 310. REPORTING REQUIREMENTS.

(a) **ACTIVITIES REPORTS.**—Each grantee receiving funds under this title during a year shall submit a report to the Secretary not later than July 30 of the following year regarding the activities carried out with the funds during the preceding year.

(b) **ACHIEVEMENT REPORTS.**—

(1) **IN GENERAL.**—In addition to the reports required under subsection (a), each grantee shall, not later than September 1 of the year during which the second academic year of the grantee's program is completed and each of the next 2 years thereafter, submit a report to the Secretary regarding the data collected in the previous 2 academic years concerning—

(A) the academic achievement of students participating in the program;

(B) the graduation and college admission rates of students who participate in the program, where appropriate; and

(C) parental satisfaction with the program.

(2) **PROHIBITING DISCLOSURE OF PERSONAL INFORMATION.**—No report under this subsection may contain any personally identifiable information.

(c) **REPORTS TO PARENT.**—

(1) **IN GENERAL.**—Each grantee shall ensure that each school participating in the grantee's program under this title during a year reports at least once during the year to the parents of each of the school's students who are participating in the program on—

(A) the student's academic achievement, as measured by a comparison with the aggregate academic achievement of other participating students at the student's school in the same grade or level, as appropriate, and the aggregate academic achievement of the student's peers at the student's school in the same grade or level, as appropriate; and

(B) the safety of the school, including the incidence of school violence, student suspensions, and student expulsions.

(2) **PROHIBITING DISCLOSURE OF PERSONAL INFORMATION.**—No report under this subsection may contain any personally identifiable information, except as to the student who is the subject of the report to that student's parent.

(d) **REPORT TO CONGRESS.**—The Secretary shall submit to the Committees on Appropriations, Education and the Workforce, and Government Reform of the House of Representatives and the Committees on Appropriations, Health, Education, Labor, and Pensions, and Governmental Affairs of the Senate an annual report on the findings of the reports submitted under subsections (a) and (b).

SEC. 311. OTHER REQUIREMENTS FOR PARTICIPATING SCHOOLS.

(a) **REQUESTS FOR DATA AND INFORMATION.**—Each school participating in a program funded under this title shall comply with all requests for data and information regarding evaluations conducted under section 309(a).

(b) **RULES OF CONDUCT AND OTHER SCHOOL POLICIES.**—A participating school, including those described in section 308(d), may require eligible students to abide by any rules of conduct

and other requirements applicable to all other students at the school.

SEC. 312. DEFINITIONS.

As used in this title:

(1) **ELEMENTARY SCHOOL.**—The term “elementary school” means an institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under District of Columbia law.

(2) **ELIGIBLE ENTITY.**—The term “eligible entity” means any of the following:

(A) An educational entity of the District of Columbia Government.

(B) A nonprofit organization.

(C) A consortium of nonprofit organizations.

(3) **ELIGIBLE STUDENT.**—The term “eligible student” means a student who—

(A) is a resident of the District of Columbia; and

(B) comes from a household whose income does not exceed 185 percent of the poverty line.

(4) **PARENT.**—The term “parent” has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(5) **POVERTY LINE.**—The term “poverty line” has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(6) **SECONDARY SCHOOL.**—The term “secondary school” means an institutional day or residential school, including a public secondary charter school, as determined under District of Columbia law, except that the term does not include any education beyond grade 12.

(7) **SECRETARY.**—The term “Secretary” means the Secretary of Education.

SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title \$14,000,000 for fiscal year 2004 and such sums as may be necessary for each of the 4 succeeding fiscal years.

TITLE IV—GENERAL PROVISIONS

SEC. 401. Whenever in this Act, an amount is specified within an appropriation for particular purposes or objects of expenditure, such amount, unless otherwise specified, shall be considered as the maximum amount that may be expended for said purpose or object rather than an amount set apart exclusively therefor.

SEC. 402. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor: *Provided*, That in the case of the Council of the District of Columbia, funds may be expended with the authorization of the Chairman of the Council.

SEC. 403. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government: *Provided*, That nothing contained in this section shall be construed as modifying or affecting the provisions of section

11(c)(3) of title XII of the District of Columbia Income and Franchise Tax Act of 1947 (D.C. Official Code, sec. 47–1812.11(c)(3)).

SEC. 404. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly provided herein.

SEC. 405. No funds appropriated in this Act for the District of Columbia government for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community or partisan political group during non-school hours.

SEC. 406. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, and salary are not available for inspection by the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Council of the District of Columbia, or their duly authorized representative.

SEC. 407. (a) Except as provided in subsection (b), no part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

(b) The District of Columbia may use local funds provided in this Act to carry out lobbying activities on any matter other than—

(1) the promotion or support of any boycott; or

(2) statehood for the District of Columbia or voting representation in Congress for the District of Columbia.

(c) Nothing in this section may be construed to prohibit any elected official from advocating with respect to any of the issues referred to in subsection (b).

SEC. 408. (a) None of the funds provided under this Act to the agencies funded by this Act, both Federal and District government agencies, that remain available for obligation or expenditure in fiscal year 2004, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditures for an agency through a reprogramming of funds which—

(1) creates new programs;

(2) eliminates a program, project, or responsibility center;

(3) establishes or changes allocations specifically denied, limited or increased under this Act;

(4) increases funds or personnel by any means for any program, project, or responsibility center for which funds have been denied or restricted;

(5) reestablishes any program or project previously deferred through reprogramming;

(6) augments any existing program, project, or responsibility center through a reprogramming of funds in excess of \$1,000,000 or 10 percent, whichever is less; or

(7) increases by 20 percent or more personnel assigned to a specific program, project or responsibility center,

unless the Committee on Appropriations of the House of Representatives and Senate are notified in writing 30 days in advance of the reprogramming.

(b) None the local funds contained in this Act may be available for obligation or expenditure for an agency through a transfer of any local funds from one appropriation heading to another unless the Committees on Appropriations of the House of Representatives and Senate are notified in writing 30 days in advance of the transfer, except that in no event may the amount of any funds transferred exceed 4 percent of the local funds in the appropriations.

SEC. 409. Consistent with the provisions of section 1301(a) of title 31, United States Code, appropriations under this Act shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

SEC. 410. Notwithstanding any other provisions of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2–139; D.C. Official Code, sec. 1–601.01 et seq.), enacted pursuant to section 422(3) of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1–2041.22(3)), shall apply with respect to the compensation of District of Columbia employees: *Provided*, That for pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5, United States Code.

Deadline.

SEC. 411. No later than 30 days after the end of the first quarter of fiscal year 2004, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia and the Committees on Appropriations of the House of Representatives and Senate the new fiscal year 2004 revenue estimates as of the end of such quarter. These estimates shall be used in the budget request for fiscal year 2005. The officially revised estimates at midyear shall be used for the midyear report.

SEC. 412. No sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in section 303 of the District of Columbia Procurement Practices Act of 1985 (D.C. Law 6–85; D.C. Official Code, sec. 2–303.03), except that the District of Columbia government or any agency thereof may renew or extend sole source contracts for which competition is not feasible or practical, but only if the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated rules and procedures and has been reviewed and certified by the Chief Financial Officer of the District of Columbia.

SEC. 413. (a) In the event a sequestration order is issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 after the amounts appropriated to the District of Columbia for the fiscal year involved have been paid to the District of Columbia, the Mayor of the District of Columbia shall pay to the Secretary of the Treasury, within 15 days after receipt of a request therefor from the Secretary of the Treasury, such amounts as are sequestered by the order: *Provided*, That the sequestration percentage specified in the order shall be applied proportionately to each of the Federal appropriation accounts in this Act that are not specifically exempted from sequestration by such Act.

(b) For purposes of the Balanced Budget and Emergency Deficit Control Act of 1985, the term “program, project, and activity” shall

be synonymous with and refer specifically to each account appropriating Federal funds in this Act, and any sequestration order shall be applied to each of the accounts rather than to the aggregate total of those accounts: *Provided*, That sequestration orders shall not be applied to any account that is specifically exempted from sequestration by the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 414. None of the Federal funds provided in this Act may be used by the District of Columbia to provide for salaries, expenses, or other costs associated with the offices of United States Senator or United States Representative under section 4(d) of the District of Columbia Statehood Constitutional Convention Initiatives of 1979 (D.C. Law 3-171; D.C. Official Code, sec. 1-123).

SEC. 415. None of the funds appropriated under this Act shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.

Abortions.

SEC. 416. None of the Federal funds made available in this Act may be used to implement or enforce the Health Care Benefits Expansion Act of 1992 (D.C. Law 9-114; D.C. Official Code, sec. 32-701 et seq.) or to otherwise implement or enforce any system of registration of unmarried, cohabiting couples, including but not limited to registration for the purpose of extending employment, health, or governmental benefits to such couples on the same basis that such benefits are extended to legally married couples.

SEC. 417. (a) Notwithstanding any other provision of this Act, the Mayor, in consultation with the Chief Financial Officer of the District of Columbia may accept, obligate, and expend Federal, private, and other grants received by the District government that are not reflected in the amounts appropriated in this Act.

(b)(1) No such Federal, private, or other grant may be accepted, obligated, or expended pursuant to subsection (a) until—

(A) the Chief Financial Officer of the District of Columbia submits to the Council a report setting forth detailed information regarding such grant; and

(B) the Council has reviewed and approved the acceptance, obligation, and expenditure of such grant.

(2) For purposes of paragraph (1)(B), the Council shall be deemed to have reviewed and approved the acceptance, obligation, and expenditure of a grant if—

(A) no written notice of disapproval is filed with the Secretary of the Council within 14 calendar days of the receipt of the report from the Chief Financial Officer under paragraph (1)(A); or

(B) if such a notice of disapproval is filed within such deadline, the Council does not by resolution disapprove the acceptance, obligation, or expenditure of the grant within 30 calendar days of the initial receipt of the report from the Chief Financial Officer under paragraph (1)(A).

(c) No amount may be obligated or expended from the general fund or other funds of the District of Columbia government in anticipation of the approval or receipt of a grant under subsection (b)(2) or in anticipation of the approval or receipt of a Federal, private, or other grant not subject to such subsection.

(d) The Chief Financial Officer of the District of Columbia shall prepare a quarterly report setting forth detailed information regarding all Federal, private, and other grants subject to this

section. Each such report shall be submitted to the Council of the District of Columbia and to the Committees on Appropriations of the House of Representatives and Senate not later than 15 days after the end of the quarter covered by the report.

SEC. 418. (a) Except as otherwise provided in this section, none of the funds made available by this Act or by any other Act may be used to provide any officer or employee of the District of Columbia with an official vehicle unless the officer or employee uses the vehicle only in the performance of the officer's or employee's official duties. For purposes of this paragraph, the term "official duties" does not include travel between the officer's or employee's residence and workplace, except in the case of—

(1) an officer or employee of the Metropolitan Police Department who resides in the District of Columbia or is otherwise designated by the Chief of the Department;

(2) at the discretion of the Fire Chief, an officer or employee of the District of Columbia Fire and Emergency Medical Services Department who resides in the District of Columbia and is on call 24 hours a day;

(3) the Mayor of the District of Columbia; and

(4) the Chairman of the Council of the District of Columbia.

(b) The Chief Financial Officer of the District of Columbia shall submit by March 1, 2004, an inventory, as of September 30, 2003, of all vehicles owned, leased or operated by the District of Columbia government. The inventory shall include, but not be limited to, the department to which the vehicle is assigned; the year and make of the vehicle; the acquisition date and cost; the general condition of the vehicle; annual operating and maintenance costs; current mileage; and whether the vehicle is allowed to be taken home by a District officer or employee and if so, the officer or employee's title and resident location.

SEC. 419. None of the funds contained in this Act may be used for purposes of the annual independent audit of the District of Columbia government for fiscal year 2004 unless—

(1) the audit is conducted by the Inspector General of the District of Columbia, in coordination with the Chief Financial Officer of the District of Columbia, pursuant to section 208(a)(4) of the District of Columbia Procurement Practices Act of 1985 (D.C. Official Code, sec. 2-302.8); and

(2) the audit includes as a basic financial statement a comparison of audited actual year-end results with the revenues submitted in the budget document for such year and the appropriations enacted into law for such year using the format, terminology, and classifications contained in the law making the appropriations for the year and its legislative history.

SEC. 420. (a) None of the funds contained in this Act may be used by the District of Columbia Corporation Counsel or any other officer or entity of the District government to provide assistance for any petition drive or civil action which seeks to require Congress to provide for voting representation in Congress for the District of Columbia.

(b) Nothing in this section bars the District of Columbia Corporation Counsel from reviewing or commenting on briefs in private lawsuits, or from consulting with officials of the District government regarding such lawsuits.

SEC. 421. (a) None of the funds contained in this Act may be used for any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

(b) Any individual or entity who receives any funds contained in this Act and who carries out any program described in subsection (a) shall account for all funds used for such program separately from any funds contained in this Act.

SEC. 422. None of the funds contained in this Act may be used after the expiration of the 60-day period that begins on the date of the enactment of this Act to pay the salary of any chief financial officer of any office of the District of Columbia government (including any independent agency of the District of Columbia) who has not filed a certification with the Mayor and the Chief Financial Officer of the District of Columbia that the officer understands the duties and restrictions applicable to the officer and the officer's agency as a result of this Act (and the amendments made by this Act), including any duty to prepare a report requested either in the Act or in any of the reports accompanying the Act and the deadline by which each report must be submitted. The Chief Financial Officer of the District of Columbia shall provide to the Committees on Appropriations of the House of Representatives and Senate by the 10th day after the end of each quarter a summary list showing each report, the due date, and the date submitted to the committees.

SEC. 423. (a) None of the funds contained in this Act may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 802) or any tetrahydrocannabinols derivative.

(b) The Legalization of Marijuana for Medical Treatment Initiative of 1998, also known as Initiative 59, approved by the electors of the District of Columbia on November 3, 1998, shall not take effect.

SEC. 424. Nothing in this Act may be construed to prevent the Council or Mayor of the District of Columbia from addressing the issue of the provision of contraceptive coverage by health insurance plans, but it is the intent of Congress that any legislation enacted on such issue should include a "conscience clause" which provides exceptions for religious beliefs and moral convictions.

SEC. 425. The Mayor of the District of Columbia shall submit to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate quarterly reports addressing—

Reports.

(1) crime, including the homicide rate, implementation of community policing, the number of police officers on local beats, and the closing down of open-air drug markets;

(2) access to substance and alcohol abuse treatment, including the number of treatment slots, the number of people served, the number of people on waiting lists, and the effectiveness of treatment programs;

(3) management of parolees and pre-trial violent offenders, including the number of halfway houses escapes and steps taken to improve monitoring and supervision of halfway house residents to reduce the number of escapes to be provided in

consultation with the Court Services and Offender Supervision Agency for the District of Columbia;

(4) education, including access to special education services and student achievement to be provided in consultation with the District of Columbia Public Schools and the District of Columbia public charter schools;

(5) improvement in basic District services, including rat control and abatement;

(6) application for and management of Federal grants, including the number and type of grants for which the District was eligible but failed to apply and the number and type of grants awarded to the District but for which the District failed to spend the amounts received; and

(7) indicators of child well-being.

Deadline.

SEC. 426. No later than 30 calendar days after the date of the enactment of this Act, the Chief Financial Officer of the District of Columbia shall submit to the appropriate committees of Congress, the Mayor, and the Council of the District of Columbia a revised appropriated funds operating budget in the format of the budget that the District of Columbia government submitted pursuant to section 442 of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1–204.42), for all agencies of the District of Columbia government for fiscal year 2003 that is in the total amount of the approved appropriation and that realigns all budgeted data for personal services and other-than-personal-services, respectively, with anticipated actual expenditures.

SEC. 427. None of the funds contained in this Act may be used to issue, administer, or enforce any order by the District of Columbia Commission on Human Rights relating to docket numbers 93–030–(PA) and 93–031–(PA).

SEC. 428. None of the Federal funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 429. During fiscal year 2004 and any subsequent fiscal year, in addition to any other authority to pay claims and judgments, any department, agency, or instrumentality of the District government may use local funds to pay the settlement or judgment of a claim or lawsuit in an amount less than \$10,000, in accordance with the Risk Management for Settlements and Judgments Amendment Act of 2000 (D.C. Law 13–172; D.C. Official Code, sec. 2–402).

SEC. 430. Notwithstanding any other law, the District of Columbia Courts shall transfer to the general treasury of the District of Columbia all fines levied and collected by the Courts under section 10(b)(1) and (2) of the District of Columbia Traffic Act (D.C. Official Code, sec. 50–2201.05(b)(1) and (2)). The transferred funds shall remain available until expended and shall be used by the Office of the Corporation Counsel for enforcement and prosecution of District traffic alcohol laws in accordance with section 10(b)(3) of the District of Columbia Traffic Act (D.C. Official Code, sec. 50–2201.05(b)(3)).

SEC. 431. During fiscal year 2004 and any subsequent fiscal year, any agency of the District government may transfer to the Office of Labor Relations and Collective Bargaining (OLRCB) such local funds as may be necessary to pay for representation by OLRCB

in third-party cases, grievances, and dispute resolution, pursuant to an intra-District agreement with OLR CB. These amounts shall be available for use by OLR CB to reimburse the cost of providing the representation.

SEC. 432. None of the funds contained in this Act may be made available to pay—

(1) the fees of an attorney who represents a party in an action or an attorney who defends an action, including an administrative proceeding, brought against the District of Columbia Public Schools under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) in excess of \$4,000 for that action; or

(2) the fees of an attorney or firm whom the Chief Financial Officer of the District of Columbia determines to have a pecuniary interest, either through an attorney, officer or employee of the firm, in any special education diagnostic services, schools, or other special education service providers.

SEC. 433. The Chief Financial Officer of the District of Columbia shall require attorneys in special education cases brought under the Individuals with Disabilities Act (IDEA) in the District of Columbia to certify in writing that the attorney or representative rendered any and all services for which they receive awards, including those received under a settlement agreement or as part of an administrative proceeding, under the IDEA from the District of Columbia: *Provided*, That as part of the certification, the Chief Financial Officer of the District of Columbia shall require all attorneys in IDEA cases to disclose any financial, corporate, legal, memberships on boards of directors, or other relationships with any special education diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients as part of this certification: *Provided further*, That the Chief Financial Officer shall prepare and submit quarterly reports to the Committees on Appropriations of the House of Representatives and Senate on the certification of and the amount paid by the government of the District of Columbia, including the District of Columbia Public Schools, to attorneys in cases brought under IDEA: *Provided further*, That the Inspector General of the District of Columbia may conduct investigations to determine the accuracy of the certifications.

SEC. 434. Section 603(e)(3)(C)(iv) of the Student Loan Marketing Association Reorganization Act of 1996 (20 U.S.C. 1155(e)(3)(C)(iv)) is amended as follows—

(1) by inserting “for a fiscal year” after “this subparagraph”; and

(2) by inserting “for the fiscal year” before the period.

SEC. 435. Chapter 3 of title 16, District of Columbia Code, is amended by inserting at the end the following new section:

**“SEC. 16–316. APPOINTMENT AND COMPENSATION OF COUNSEL;
GUARDIAN AD LITEM.**

“(a) When a petition for adoption has been filed and there has been no termination or relinquishment of parental rights with respect to the proposed adoptee or consent to the proposed adoption by a parent or guardian whose consent is required under D.C. Code section 16–304, the Court may appoint an attorney to represent such parent or guardian in the adoption proceeding if the individual is financially unable to obtain adequate representation.

“(b) The Court may appoint a guardian ad litem who is an attorney to represent the child in an adoption proceeding. The guardian ad litem shall in general be charged with the representation of the child’s best interest.

“(c) An attorney appointed pursuant to subsection (a) or (b) of this section shall be compensated in accordance with D.C. Code section 16–2326.01, except that compensation in the adoption case shall be subject to the limitation set forth in D.C. Code section 16–2326.01(b)(2).”.

The table of sections for chapter 3 of title 16, District of Columbia Code, is amended by inserting at the end the following new item:

“Sec. 16–316. Appointment and compensation of counsel; guardian ad litem.”.

SEC. 436. The amount appropriated by this Act may be increased by no more than \$15,000,000 from funds identified in the comprehensive annual financial report as the District’s fiscal year 2003 unexpended general fund surplus. The District may obligate and expend these amounts only in accordance with the following conditions:

(1) The Chief Financial Officer of the District of Columbia shall certify that the use of any such amounts is not anticipated to have a negative impact on the District’s long-term financial, fiscal, and economic vitality.

(2) The District of Columbia may only use these funds for the following expenditures—

- (A) unanticipated one-time expenditures;
- (B) to avoid deficit spending;
- (C) debt reduction;
- (D) unanticipated program needs; or
- (E) to avoid revenue shortfalls.

(3) The amounts shall be obligated and expended in accordance with laws enacted by the Council in support of each such obligation or expenditure.

(4) The amounts may not be used to fund the agencies of the District of Columbia government under court ordered receivership.

(5) The amounts may be obligated and expended only if approved by the Committees on Appropriations of the House of Representatives and Senate in advance of any obligation or expenditure.

This division may be cited as the “District of Columbia Appropriations Act, 2004”.

DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2004Foreign
Operations,
Export
Financing, and
Related
Programs
Appropriations
Act, 2004.**An Act**

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2004, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I—EXPORT AND INVESTMENT ASSISTANCE**EXPORT-IMPORT BANK OF THE UNITED STATES**

The Export-Import Bank of the United States is authorized to make such expenditures within the limits of funds and borrowing authority available to such corporation, and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations, as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out the program for the current fiscal year for such corporation: *Provided*, That none of the funds available during the current fiscal year may be used to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel, or technology to any country, other than a nuclear-weapon state as defined in Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons eligible to receive economic or military assistance under this Act, that has detonated a nuclear explosive after the date of the enactment of this Act: *Provided further*, That notwithstanding section 1(c) of Public Law 103–428, as amended, sections 1(a) and (b) of Public Law 103–428 shall remain in effect through October 1, 2004.

12 USC 635 note.

ADMINISTRATIVE EXPENSES

For administrative expenses to carry out the direct and guaranteed loan and insurance programs, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, and not to exceed \$30,000 for official reception and representation expenses for members of the Board of Directors, \$72,895,000: *Provided*, That the Export-Import Bank may accept, and use, payment or services provided by transaction participants for legal, financial, or technical services in connection with any transaction for which an application for a loan, guarantee or insurance commitment has been made: *Provided further*, That, notwithstanding subsection (b) of section 117 of the Export Enhancement Act of 1992, subsection (a) thereof shall remain in effect until October 1, 2004.

12 USC 635a
note.

OVERSEAS PRIVATE INVESTMENT CORPORATION

NONCREDIT ACCOUNT

The Overseas Private Investment Corporation is authorized to make, without regard to fiscal year limitations, as provided by 31 U.S.C. 9104, such expenditures and commitments within the limits of funds available to it and in accordance with law as may be necessary: *Provided*, That the amount available for administrative expenses to carry out the credit and insurance programs (including an amount for official reception and representation expenses which shall not exceed \$35,000) shall not exceed \$41,385,000: *Provided further*, That project-specific transaction costs, including direct and indirect costs incurred in claims settlements, and other direct costs associated with services provided to specific investors or potential investors pursuant to section 234 of the Foreign Assistance Act of 1961, shall not be considered administrative expenses for the purposes of this heading.

PROGRAM ACCOUNT

For the cost of direct and guaranteed loans, \$24,000,000, as authorized by section 234 of the Foreign Assistance Act of 1961, to be derived by transfer from the Overseas Private Investment Corporation Non-Credit Account: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That such sums shall be available for direct loan obligations and loan guaranty commitments incurred or made during fiscal years 2004 and 2005: *Provided further*, That such sums shall remain available through fiscal year 2012 for the disbursement of direct and guaranteed loans obligated in fiscal year 2004, and through fiscal year 2013 for the disbursement of direct and guaranteed loans obligated in fiscal year 2005.

In addition, such sums as may be necessary for administrative expenses to carry out the credit program may be derived from amounts available for administrative expenses to carry out the credit and insurance programs in the Overseas Private Investment Corporation Noncredit Account and merged with said account.

FUNDS APPROPRIATED TO THE PRESIDENT

TRADE AND DEVELOPMENT AGENCY

For necessary expenses to carry out the provisions of section 661 of the Foreign Assistance Act of 1961, \$50,000,000, to remain available until September 30, 2005.

TITLE II—BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

For expenses necessary to enable the President to carry out the provisions of the Foreign Assistance Act of 1961, and for other purposes, to remain available until September 30, 2004, unless otherwise specified herein, as follows:

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

CHILD SURVIVAL AND HEALTH PROGRAMS FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of chapters 1 and 10 of part I of the Foreign Assistance Act of 1961, for child survival, health, and family planning/reproductive health activities, in addition to funds otherwise available for such purposes, \$1,835,000,000, to remain available until September 30, 2005: *Provided*, That this amount shall be made available for such activities as: (1) immunization programs; (2) oral rehydration programs; (3) health, nutrition, water and sanitation programs which directly address the needs of mothers and children, and related education programs; (4) assistance for children displaced or orphaned by causes other than AIDS; (5) programs for the prevention, treatment, control of, and research on HIV/AIDS, tuberculosis, polio, malaria, and other infectious diseases, and for assistance to communities severely affected by HIV/AIDS, including children displaced or orphaned by AIDS; and (6) family planning/reproductive health: *Provided further*, That none of the funds appropriated under this heading may be made available for nonproject assistance, except that funds may be made available for such assistance for ongoing health activities: *Provided further*, That of the funds appropriated under this heading, not to exceed \$250,000, in addition to funds otherwise available for such purposes, may be used to monitor and provide oversight of child survival, maternal and family planning/reproductive health, and infectious disease programs: *Provided further*, That the following amounts should be allocated as follows: \$330,000,000 for child survival and maternal health; \$28,000,000 for vulnerable children; \$516,500,000 for HIV/AIDS including not less than \$22,000,000 which should be made available to support the development of microbicides as a means for combating HIV/AIDS; \$185,000,000 for other infectious diseases; and \$375,500,000 for family planning/reproductive health, including in areas where population growth threatens biodiversity or endangered species: *Provided further*, That of the funds appropriated under this heading, and in addition to funds allocated under the previous proviso, not less than \$400,000,000 shall be made available, notwithstanding any other provision of law, except for the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (117 Stat. 711; 22 U.S.C. 1701 et seq.) as amended by section 595 of this Act, for a United States contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”), and shall be expended at the minimum rate necessary to make timely payment for projects and activities: *Provided further*, That of the funds appropriated under this heading that are available for HIV/AIDS programs and activities, not less than \$26,000,000 should be made available for the International AIDS Vaccine Initiative and not less than \$26,000,000 should be made available for a United States contribution to UNAIDS: *Provided further*, That of the funds appropriated under this heading, \$60,000,000 should be made available for a United States contribution to The Vaccine Fund, and up to \$6,000,000 may be transferred to and merged with funds appropriated by this Act under the heading “Operating Expenses of the United States Agency for International Development” for costs directly related to international health, but funds

made available for such costs may not be derived from amounts made available for contribution under this and preceding provisos: *Provided further*, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: *Provided further*, That none of the funds made available under this Act may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions: *Provided further*, That none of the funds made available under this Act may be used to lobby for or against abortion: *Provided further*, That in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services, and that any such voluntary family planning project shall meet the following requirements: (1) service providers or referral agents in the project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (this provision shall not be construed to include the use of quantitative estimates or indicators for budgeting and planning purposes); (2) the project shall not include payment of incentives, bribes, gratuities, or financial reward to: (A) an individual in exchange for becoming a family planning acceptor; or (B) program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning; (3) the project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual's decision not to accept family planning services; (4) the project shall provide family planning acceptors comprehensible information on the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method; and (5) the project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits; and, not less than 60 days after the date on which the Administrator of the United States Agency for International Development determines that there has been a violation of the requirements contained in paragraph (1), (2), (3), or (5) of this proviso, or a pattern or practice of violations of the requirements contained in paragraph (4) of this proviso, the Administrator shall submit to the Committees on Appropriations a report containing a description of such violation and the corrective action taken by the Agency: *Provided further*, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso: *Provided further*, That for purposes of this or any other Act authorizing or appropriating funds for foreign operations, export

financing, and related programs, the term “motivate”, as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options: *Provided further*, That nothing in this paragraph shall be construed to alter any existing statutory prohibitions against abortion under section 104 of the Foreign Assistance Act of 1961: *Provided further*, That to the maximum extent feasible, taking into consideration cost, timely availability, and best health practices, funds appropriated in this Act or prior appropriations Acts that are made available for condom procurement shall be made available only for the procurement of condoms manufactured in the United States: *Provided further*, That information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated by this Act shall be medically accurate and shall include the public health benefits and failure rates of such use.

DEVELOPMENT ASSISTANCE

For necessary expenses of the United States Agency for International Development to carry out the provisions of sections 103, 105, 106, and 131, and chapter 10 of part I of the Foreign Assistance Act of 1961, \$1,385,000,000, of which up to \$150,000,000 may remain available until September 30, 2005: *Provided*, That none of the funds appropriated under title II of this Act that are managed by or allocated to the United States Agency for International Development's Global Development Secretariat, may be made available except through the regular notification procedures of the Committees on Appropriations: *Provided further*, That \$190,000,000 should be allocated for trade capacity building: *Provided further*, That \$235,000,000 should be allocated for basic education: *Provided further*, That of the funds appropriated under this heading and managed by the United States Agency for International Development Bureau of Democracy, Conflict, and Humanitarian Assistance, not less than \$11,000,000 shall be made available only for programs to improve women's leadership capacity in recipient countries: *Provided further*, That such funds may not be made available for construction: *Provided further*, That of the funds appropriated under this heading that are made available for assistance programs for displaced and orphaned children and victims of war, not to exceed \$32,500, in addition to funds otherwise available for such purposes, may be used to monitor and provide oversight of such programs: *Provided further*, That of the aggregate amount of the funds appropriated by this Act that are made available for agriculture and rural development programs, \$25,000,000 should be made available for plant biotechnology research and development: *Provided further*, That not less than \$2,300,000 should be made available for core support for the International Fertilizer Development Center: *Provided further*, That of the funds appropriated under this heading, not less than \$19,000,000 should be made available for the American Schools and Hospitals Abroad program: *Provided further*, That of the funds appropriated under this heading, not less than \$10,000,000, in addition to other funds available under this heading for assistance for Mexico, should be made available for programs and activities in rural Mexico to promote microfinance, small business development, energy and environmental conservation, and private property ownership in rural communities, and to support small farmers who have been affected by adverse economic conditions:

Provided further, That funds made available pursuant to the previous proviso shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That of the funds appropriated by this Act, \$100,000,000 shall be made available for drinking water supply projects and related activities.

INTERNATIONAL DISASTER AND FAMINE ASSISTANCE

For necessary expenses of the United States Agency for International Development to carry out the provisions of section 491 of the Foreign Assistance Act of 1961, as amended for international disaster relief, rehabilitation, and reconstruction assistance, \$235,500,000, to remain available until expended.

In addition, for necessary expenses for assistance for famine prevention and relief, including for mitigation of the effects of famine, \$20,000,000, to remain available until expended: *Provided*, That such funds shall be made available utilizing the general authorities of section 491 of the Foreign Assistance Act of 1961, and shall be in addition to amounts otherwise available for such purposes: *Provided further*, That funds appropriated by this paragraph shall be available for obligation subject to prior consultation with the Committees on Appropriations.

TRANSITION INITIATIVES

For necessary expenses for international disaster rehabilitation and reconstruction assistance pursuant to section 491 of the Foreign Assistance Act of 1961, \$55,000,000, to remain available until expended, to support transition to democracy and to long-term development of countries in crisis: *Provided*, That such support may include assistance to develop, strengthen, or preserve democratic institutions and processes, revitalize basic infrastructure, and foster the peaceful resolution of conflict: *Provided further*, That the United States Agency for International Development shall submit a report to the Committees on Appropriations at least 5 days prior to beginning a new program of assistance: *Provided further*, That if the President determines that is important to the national interests of the United States to provide transition assistance in excess of the amount appropriated under this heading, up to \$15,000,000 of the funds appropriated by this Act to carry out the provisions of part I of the Foreign Assistance Act of 1961 may be used for purposes of this heading and under the authorities applicable to funds appropriated under this heading: *Provided further*, That funds made available pursuant to the previous proviso shall be made available subject to prior consultation with the Committees on Appropriations.

DEVELOPMENT CREDIT AUTHORITY

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans and loan guarantees provided by the United States Agency for International Development, as authorized by sections 108 and 635 of the Foreign Assistance Act of 1961, funds may be derived by transfer from funds appropriated by this Act to carry out part I of such Act and under the heading “Assistance for Eastern Europe and the Baltic States”: *Provided*, That such funds shall not exceed \$21,000,000, which shall be made

available only for micro and small enterprise programs, urban programs, and other programs which further the purposes of part I of the Act: *Provided further*, That such costs, including the cost of modifying such direct and guaranteed loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That funds made available by this paragraph may be used for the cost of modifying any such guaranteed loans under this Act or prior Acts, and funds used for such costs shall be subject to the regular notification procedures of the Committees on Appropriations.

In addition, for administrative expenses to carry out credit programs administered by the United States Agency for International Development, \$8,000,000, which may be transferred to and merged with the appropriation for Operating Expenses of the United States Agency for International Development: *Provided*, That funds made available under this heading shall remain available until September 30, 2007.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY
FUND

For payment to the “Foreign Service Retirement and Disability Fund”, as authorized by the Foreign Service Act of 1980, \$43,859,000.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of section 667 of the Foreign Assistance Act of 1961, \$604,100,000, of which up to \$25,000,000 may remain available until September 30, 2005: *Provided*, That none of the funds appropriated under this heading and under the heading “Capital Investment Fund” may be made available to finance the construction (including architect and engineering services), purchase, or long term lease of offices for use by the United States Agency for International Development, unless the Administrator has identified such proposed construction (including architect and engineering services), purchase, or long term lease of offices in a report submitted to the Committees on Appropriations at least 15 days prior to the obligation of these funds for such purposes: *Provided further*, That the previous proviso shall not apply where the total cost of construction (including architect and engineering services), purchase, or long term lease of offices does not exceed \$1,000,000: *Provided further*, That contracts or agreements entered into with funds appropriated under this heading may entail commitments for the expenditure of such funds through fiscal year 2005: *Provided further*, That in addition not to exceed \$15,000,000 shall be derived by transfer from the “Iraq Relief and Reconstruction Fund” (Public Law 108–11) to support the United States Agency for International Development mission in Iraq: *Provided further*, That none of the funds in this Act may be used to open a new overseas mission of the United States Agency for International Development without the prior written notification of the Committees on Appropriations: *Provided further*, That the authority of sections 610 and 109 of the Foreign Assistance Act of 1961 may be exercised by the Secretary of State

to transfer funds appropriated to carry out chapter 1 of part I of such Act to “Operating Expenses of the United States Agency for International Development” in accordance with the provisions of those sections: *Provided further*, That during fiscal year 2004, the number of full-time equivalent positions for United States foreign service employees of the United States Agency for International Development for countries in the Latin America and Caribbean region shall not be reduced below the number for such employees for countries in that region as of September 30, 2003, except as provided through the regular notification procedures of the Committees on Appropriations.

CAPITAL INVESTMENT FUND

For necessary expenses for overseas construction and related costs, and for the procurement and enhancement of information technology and related capital investments, pursuant to section 667 of the Foreign Assistance Act of 1961, \$82,200,000, to remain available until expended: *Provided*, That this amount is in addition to funds otherwise available for such purposes: *Provided further*, That the Administrator of the United States Agency for International Development shall assess fair and reasonable rental payments for the use of space by employees of other United States Government agencies in buildings constructed using funds appropriated under this heading, and such rental payments shall be deposited into this account as an offsetting collection: *Provided further*, That the rental payments collected pursuant to the previous proviso and deposited as an offsetting collection shall be available for obligation only pursuant to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the assignment of United States Government employees or contractors to space in buildings constructed using funds appropriated under this heading shall be subject to the concurrence of the Administrator of the United States Agency for International Development: *Provided further*, That funds appropriated under this heading shall be available for obligation only pursuant to the regular notification procedures of the Committees on Appropriations.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF INSPECTOR GENERAL

For necessary expenses to carry out the provisions of section 667 of the Foreign Assistance Act of 1961, \$35,000,000, to remain available until September 30, 2005, which sum shall be available for the Office of the Inspector General of the United States Agency for International Development.

OTHER BILATERAL ECONOMIC ASSISTANCE

ECONOMIC SUPPORT FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of chapter 4 of part II, \$2,132,500,000, to remain available until September 30, 2005: *Provided*, That of the funds appropriated under this heading, not less than \$480,000,000 shall be available only for Israel, which sum shall be available on a grant basis as a cash transfer and shall be disbursed within 30 days of the enactment

of this Act: *Provided further*, That not less than \$575,000,000 shall be available only for Egypt, which sum shall be provided on a grant basis, and of which sum cash transfer assistance shall be provided with the understanding that Egypt will undertake significant economic reforms which are additional to those which were undertaken in previous fiscal years, and of which not less than \$200,000,000 shall be provided as Commodity Import Program assistance: *Provided further*, That in exercising the authority to provide cash transfer assistance for Israel, the President shall ensure that the level of such assistance does not cause an adverse impact on the total level of nonmilitary exports from the United States to such country and that Israel enters into a side letter agreement in an amount proportional to the fiscal year 1999 agreement: *Provided further*, That of the funds appropriated under this heading, not less than \$250,000,000 should be made available only for assistance for Jordan: *Provided further*, That of the funds appropriated under this heading, up to \$1,000,000 should be used to further legal reforms in the West Bank and Gaza, including judicial training on commercial disputes and ethics: *Provided further*, That funds appropriated under this heading shall be made available for administrative costs of the United States Agency for International Development to implement regional programs in Asia and the Near East, including the Middle East Partnership Initiative, in addition to amounts otherwise available for such purposes: *Provided further*, That \$13,500,000 of the funds appropriated under this heading shall be made available for Cyprus to be used only for scholarships, administrative support of the scholarship program, bicomunal projects, and measures aimed at reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities on Cyprus: *Provided further*, That \$35,000,000 of the funds appropriated under this heading shall be made available for assistance for Lebanon, of which not less than \$4,000,000 should be made available for American educational institutions for scholarships and other programs: *Provided further*, That notwithstanding section 534(a) of this Act, funds appropriated under this heading that are made available for assistance for the Central Government of Lebanon shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That of the funds appropriated under this heading, not less than \$22,500,000 shall be made available for assistance for the Democratic Republic of Timor-Leste, of which up to \$1,000,000 may be available for administrative expenses of the United States Agency for International Development: *Provided further*, That of the funds appropriated under this heading, not less than \$1,500,000 should be made available for technical assistance for countries to implement and enforce the Kimberley Process Certification Scheme: *Provided further*, That funds appropriated under this heading should be made available to support the development of justice and reconciliation mechanisms in the Democratic Republic of the Congo, Rwanda, Burundi, and Uganda, including programs to improve local capacity to prevent and respond to gender-based violence: *Provided further*, That funds appropriated under this heading may be used, notwithstanding any other provision of law, to provide assistance to the National Democratic Alliance of Sudan to strengthen its ability to protect civilians from attacks, slave raids, and aerial bombardment by the Sudanese Government forces and its militia allies, and the provision of such

funds shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That in the previous proviso, the term “assistance” includes non-lethal, non-food aid such as blankets, medicine, fuel, mobile clinics, water drilling equipment, communications equipment to notify civilians of aerial bombardment, non-military vehicles, tents, and shoes: *Provided further*, That of the funds appropriated under this heading, not less than \$1,750,000 should be made available for East Asia and Pacific Environment Initiatives: *Provided further*, That of the funds appropriated under this heading, \$5,000,000 shall be made available to continue to support the provision of wheelchairs for needy persons in developing countries: *Provided further*, That funds appropriated under this heading that are made available for a Middle East Financing Facility, Middle East Enterprise Fund, or any other similar entity in the Middle East shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That with respect to funds appropriated under this heading in this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, the responsibility for policy decisions and justifications for the use of such funds, including whether there will be a program for a country that uses those funds and the amount of each such program, shall be the responsibility of the Secretary of State and the Deputy Secretary of State and this responsibility shall not be delegated: *Provided further*, That of the funds appropriated in Public Law 108–106 under the heading “Iraq Relief and Reconstruction Fund”, up to \$100,000,000 may be transferred to and consolidated with funds appropriated by this Act under this heading and made available for Turkey, and up to \$30,000,000 may be transferred to and consolidated with funds appropriated by this Act under this heading and made available for the Middle East Partnership Initiative: *Provided further*, That funds appropriated under this heading shall be made available for programs and countries in the amounts contained in the table accompanying the joint explanatory statement of the managers accompanying this Act: *Provided further*, That any proposed increases or decreases to the amounts contained in such table shall be subject to the regular notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961 and notifications shall be transmitted at least 15 days in advance of the obligation of funds.

INTERNATIONAL FUND FOR IRELAND

For necessary expenses to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, \$18,500,000, which shall be available for the United States contribution to the International Fund for Ireland and shall be made available in accordance with the provisions of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99–415): *Provided*, That such amount shall be expended at the minimum rate necessary to make timely payment for projects and activities: *Provided further*, That funds made available under this heading shall remain available until September 30, 2005.

GLOBAL HIV/AIDS INITIATIVE

For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 for the prevention, treatment, and

control of, and research on, HIV/AIDS, \$491,000,000, to remain available until expended: *Provided*, That of the funds appropriated under this heading, \$15,000,000 may be apportioned directly to the Peace Corps to remain available until expended for necessary expenses to carry out activities to combat HIV/AIDS, tuberculosis and malaria: *Provided further*, That of the funds appropriated under this heading, not more than \$8,000,000 may be made available for administrative expenses of the office of the “Coordinator of United States Government Activities to Combat HIV/AIDS Globally” of the Department of State: *Provided further*, That in carrying out the duties specified in section 1(f)(2)(B)(ii)(VII) of the State Department Basic Authorities Act of 1956, the Coordinator shall ensure that assistance is provided for activities in not fewer than 15 countries, at least one of which shall not be in Africa or the Caribbean region: *Provided further*, That of the funds appropriated under this heading, up to \$75,000,000 should be made available for the safe and appropriate use of injections and other forms of infection control and prevention, and for blood safety programs.

ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES

(a) For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 and the Support for East European Democracy (SEED) Act of 1989, \$445,000,000, to remain available until September 30, 2005, which shall be available, notwithstanding any other provision of law, for assistance and for related programs for Eastern Europe and the Baltic States: *Provided*, That of the funds appropriated under this heading that are made available for assistance for Bulgaria, \$2,000,000 should be made available to enhance safety at nuclear power plants: *Provided further*, That of the funds appropriated under this heading, and under the headings “Assistance for the Independent States of the Former Soviet Union”, “Foreign Military Financing Program”, and “Economic Support Fund”, not less than \$53,500,000 shall be made available for programs for the prevention, treatment, and control of, and research on, HIV/AIDS, tuberculosis, and malaria: *Provided further*, That of the funds appropriated under this heading that are made available for Montenegro, not less than \$12,000,000 shall be made available for economic development and environmental programs in the coastal region: *Provided further*, That of the funds appropriated under this heading, up to \$1,000,000 should be made available for a program to promote greater understanding and interaction among youth in Albania, Kosovo, Montenegro and Macedonia: *Provided further*, That funds appropriated under this heading shall be made available for programs and countries in the amounts contained in the table accompanying the joint explanatory statement of the managers accompanying this Act: *Provided further*, That any proposed increases or decreases to the amounts contained in such table shall be subject to the regular notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961 and notifications shall be transmitted at least 15 days in advance of the obligation of funds.

(b) Funds appropriated under this heading shall be considered to be economic assistance under the Foreign Assistance Act of 1961 for purposes of making available the administrative authorities contained in that Act for the use of economic assistance.

(c) With regard to funds appropriated under this heading for the economic revitalization program in Bosnia and Herzegovina,

and local currencies generated by such funds (including the conversion of funds appropriated under this heading into currency used by Bosnia and Herzegovina as local currency and local currency returned or repaid under such program) the Administrator of the United States Agency for International Development shall provide written approval for grants and loans prior to the obligation and expenditure of funds for such purposes, and prior to the use of funds that have been returned or repaid to any lending facility or grantee.

(d) The provisions of section 529 of this Act shall apply to funds made available under subsection (c) and to funds appropriated under this heading: *Provided*, That notwithstanding any provision of this or any other Act, including provisions in this subsection regarding the application of section 529 of this Act, local currencies generated by, or converted from, funds appropriated by this Act and by previous appropriations Acts and made available for the economic revitalization program in Bosnia may be used in Eastern Europe and the Baltic States to carry out the provisions of the Foreign Assistance Act of 1961 and the Support for East European Democracy (SEED) Act of 1989.

(e) The President is authorized to withhold funds appropriated under this heading made available for economic revitalization programs in Bosnia and Herzegovina, if he determines and certifies to the Committees on Appropriations that the Federation of Bosnia and Herzegovina has not complied with article III of annex 1–A of the General Framework Agreement for Peace in Bosnia and Herzegovina concerning the withdrawal of foreign forces, and that intelligence cooperation on training, investigations, and related activities between state sponsors of terrorism and terrorist organizations and Bosnian officials has not been terminated.

ASSISTANCE FOR THE INDEPENDENT STATES OF THE FORMER SOVIET UNION

(a) For necessary expenses to carry out the provisions of chapters 11 and 12 of part I of the Foreign Assistance Act of 1961 and the FREEDOM Support Act, for assistance for the Independent States of the former Soviet Union and for related programs, \$587,000,000, to remain available until September 30, 2005: *Provided*, That the provisions of such chapters shall apply to funds appropriated by this paragraph: *Provided further*, That of the funds made available for the Southern Caucasus region, notwithstanding any other provision of law, funds may be used for confidence-building measures and other activities in furtherance of the peaceful resolution of the regional conflicts, especially those in the vicinity of Abkhazia and Nagorno-Karabagh: *Provided further*, That of the funds appropriated under this heading, \$1,500,000 should be available only to meet the health and other assistance needs of victims of trafficking in persons: *Provided further*, That of the funds appropriated under this heading, \$17,500,000 shall be made available solely for assistance for the Russian Far East, of which not less than \$3,000,000 shall be made available for programs and activities authorized under section 307 of the FREEDOM Support Act (Public Law 102–511): *Provided further*, That \$4,000,000 shall be made available to promote freedom of the media and an independent media in Russia: *Provided further*, That of the funds appropriated under this heading, up to \$500,000 should be made available to support democracy building programs in Russia through the

Sakharov Archives: *Provided further*, That, notwithstanding any other provision of law, funds appropriated under this heading in this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, that are made available pursuant to the provisions of section 807 of Public Law 102–511 shall be subject to a 6 percent ceiling on administrative expenses.

(b) Of the funds appropriated under this heading that are made available for assistance for Ukraine, not less than \$19,000,000 should be made available for nuclear reactor safety initiatives, and not less than \$1,500,000 shall be made available for coal mine safety programs.

(c) Of the funds appropriated under this heading, not less than \$94,000,000 shall be made available for assistance for Russia.

(d) Of the funds appropriated under this heading, not less than \$75,000,000 shall be made available for assistance for Armenia.

(e) Of the funds appropriated under this heading, not less than \$57,000,000 should be made available, in addition to funds otherwise available for such purposes, for assistance for child survival, environmental and reproductive health, and to combat HIV/AIDS, tuberculosis and other infectious diseases, and for related activities.

(f)(1) Of the funds appropriated under this heading that are allocated for assistance for the Government of the Russian Federation, 60 percent shall be withheld from obligation until the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation—

(A) has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability; and

(B) is providing full access to international non-government organizations providing humanitarian relief to refugees and internally displaced persons in Chechnya.

(2) Paragraph (1) shall not apply to—

(A) assistance to combat infectious diseases, child survival activities, or assistance for victims of trafficking in persons; and

(B) activities authorized under title V (Nonproliferation and Disarmament Programs and Activities) of the FREEDOM Support Act.

(g) Section 907 of the FREEDOM Support Act shall not apply to—

(1) activities to support democracy or assistance under title V of the FREEDOM Support Act and section 1424 of Public Law 104–201 or non-proliferation assistance;

(2) any assistance provided by the Trade and Development Agency under section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421);

(3) any activity carried out by a member of the United States and Foreign Commercial Service while acting within his or her official capacity;

(4) any insurance, reinsurance, guarantee or other assistance provided by the Overseas Private Investment Corporation under title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2191 et seq.);

- (5) any financing provided under the Export-Import Bank Act of 1945; or
- (6) humanitarian assistance.

INDEPENDENT AGENCIES

INTER-AMERICAN FOUNDATION

For necessary expenses to carry out the functions of the Inter-American Foundation in accordance with the provisions of section 401 of the Foreign Assistance Act of 1969, \$16,334,000, to remain available until September 30, 2005.

AFRICAN DEVELOPMENT FOUNDATION

For necessary expenses to carry out title V of the International Security and Development Cooperation Act of 1980, Public Law 96–533, \$18,689,000, to remain available until September 30, 2005: *Provided*, That funds made available to grantees may be invested pending expenditure for project purposes when authorized by the board of directors of the Foundation: *Provided further*, That interest earned shall be used only for the purposes for which the grant was made: *Provided further*, That notwithstanding section 505(a)(2) of the African Development Foundation Act, in exceptional circumstances the board of directors of the Foundation may waive the \$250,000 limitation contained in that section with respect to a project: *Provided further*, That the Foundation shall provide a report to the Committees on Appropriations after each time such waiver authority is exercised.

PEACE CORPS

For necessary expenses to carry out the provisions of the Peace Corps Act (75 Stat. 612), \$310,000,000, including the purchase of not to exceed five passenger motor vehicles for administrative purposes for use outside of the United States: *Provided*, That none of the funds appropriated under this heading shall be used to pay for abortions: *Provided further*, That funds appropriated under this heading shall remain available until September 30, 2005: *Provided further*, That during fiscal year 2004 and any subsequent fiscal year, the Director of the Peace Corps may make appointments or assignments, or extend current appointments or assignments, to permit United States citizens to serve for periods in excess of 5 years in the case of individuals whose appointment or assignment, such as regional safety security officers and employees within the Office of the Inspector General, involves the safety of Peace Corps volunteers: *Provided further*, That the Director of the Peace Corps may make such appointments or assignments notwithstanding the provisions of section 7 of the Peace Corps Act limiting the length of an appointment or assignment, the circumstances under which such an appointment or assignment may exceed 5 years, and the percentage of appointments or assignments that can be made in excess of 5 years.

22 USC 2506
note.

MILLENNIUM CHALLENGE CORPORATION

For necessary expenses for the “Millennium Challenge Account”, \$650,000,000, to remain available until expended: *Provided*, That of the funds appropriated under this heading, not

more than \$50,000,000 may be available for administrative expenses.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT

For necessary expenses to carry out section 481 of the Foreign Assistance Act of 1961, \$241,700,000, to remain available until September 30, 2006: *Provided*, That during fiscal year 2004, the Department of State may also use the authority of section 608 of the Foreign Assistance Act of 1961, without regard to its restrictions, to receive excess property from an agency of the United States Government for the purpose of providing it to a foreign country under chapter 8 of part I of that Act subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That of the funds appropriated under this heading, \$12,000,000 should be made available for anti-trafficking in persons programs, including trafficking prevention, protection and assistance for victims, and prosecution of traffickers: *Provided further*, That the Secretary of State shall provide to the Committees on Appropriations not later than 45 days after the date of the enactment of this Act and prior to the initial obligation of funds appropriated under this heading, a report on the proposed uses of all funds under this heading on a country-by-country basis for each proposed program, project, or activity: *Provided further*, That of the funds appropriated under this heading, \$7,105,000 should be made available for the International Law Enforcement Academy in Roswell, New Mexico, of which \$2,105,000 should be made available for construction and completion of a new facility: *Provided further*, That of the funds appropriated under this heading, not more than \$26,117,000 may be available for administrative expenses.

Deadline.

ANDEAN COUNTERDRUG INITIATIVE

For necessary expenses to carry out section 481 of the Foreign Assistance Act of 1961 to support counterdrug activities in the Andean region of South America, \$731,000,000, to remain available until September 30, 2006: *Provided*, That in fiscal year 2004, funds available to the Department of State for assistance to the Government of Colombia shall be available to support a unified campaign against narcotics trafficking, against activities by organizations designated as terrorist organizations such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC), and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations: *Provided further*, That this authority shall cease to be effective if the Secretary of State has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations: *Provided further*, That the President shall ensure that if any helicopter procured with funds under this heading is used to aid or abet the operations of any illegal self-defense group or illegal security cooperative, such helicopter shall be immediately returned to the United States: *Provided further*, That none of the funds appropriated by this

Act may be made available to support a Peruvian air interdiction program until the Secretary of State and Director of Central Intelligence certify to the Congress, 30 days before any resumption of United States involvement in a Peruvian air interdiction program, that an air interdiction program that permits the ability of the Peruvian Air Force to shoot down aircraft will include enhanced safeguards and procedures to prevent the occurrence of any incident similar to the April 20, 2001 incident: *Provided further*, That the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall provide to the Committees on Appropriations not later than 45 days after the date of the enactment of this Act and prior to the initial obligation of funds appropriated under this heading, a report on the proposed uses of all funds under this heading on a country-by-country basis for each proposed program, project, or activity: *Provided further*, That of the funds appropriated under this heading, not less than \$257,000,000 shall be made available for alternative development/institution building, of which \$229,200,000 shall be apportioned directly to the United States Agency for International Development: *Provided further*, That of the funds appropriated under this heading, not less than \$25,000,000 should be made available for justice and rule of law programs in Colombia: *Provided further*, That of the funds appropriated under this heading, in addition to funds made available pursuant to the previous proviso, not less than \$13,000,000 should be made available for organizations and programs to protect human rights: *Provided further*, That not more than 20 percent of the funds appropriated by this Act that are used for the procurement of chemicals for aerial coca and poppy fumigation programs may be made available for such programs unless the Secretary of State, after consultation with the Administrator of the Environmental Protection Agency (EPA), certifies to the Committees on Appropriations that: (1) the herbicide mixture is being used in accordance with EPA label requirements for comparable use in the United States and any additional controls recommended by the EPA for this program, and with the Colombian Environmental Management Plan for aerial fumigation; and (2) the herbicide mixture, in the manner it is being used, does not pose unreasonable risks or adverse effects to humans or the environment: *Provided further*, That such funds may not be made available unless the Secretary of State certifies to the Committees on Appropriations that complaints of harm to health or licit crops caused by such fumigation are evaluated and fair compensation is being paid for meritorious claims: *Provided further*, That such funds may not be made available for such purposes unless programs are being implemented by the United States Agency for International Development, the Government of Colombia, or other organizations, in consultation with local communities, to provide alternative sources of income in areas where security permits for small-acreage growers whose illicit crops are targeted for fumigation: *Provided further*, That of the funds appropriated under this heading, not less than \$2,500,000 should be made available for continued training, equipment, and other assistance for the Colombian National Park Service: *Provided further*, That funds appropriated by this Act may be used for aerial fumigation in Colombia's national parks or reserves if the Secretary of State determines that it is in accordance with Colombian laws and that there are no effective alternatives to reduce drug cultivation in these areas: *Provided*

further, That section 482(b) of the Foreign Assistance Act of 1961 shall not apply to funds appropriated under this heading: *Provided further*, That assistance provided with funds appropriated under this heading that is made available notwithstanding section 482(b) of the Foreign Assistance Act of 1961, as amended, shall be made available subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the provisions of section 3204(b) through (d) of Public Law 106–246, as amended by Public Law 107–115, shall be applicable to funds appropriated for fiscal year 2004: *Provided further*, That no United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available by this Act for Colombia: *Provided further*, That funds appropriated under this heading that are available for assistance for the Bolivian military and police should be made available for such purposes subject to a determination by the Secretary of State, and a report to the Committees on Appropriations, that the Bolivian military and police are respecting human rights and cooperating with investigations and prosecutions of alleged violations of human rights: *Provided further*, That of the funds appropriated under this heading, not more than \$16,285,000 may be available for administrative expenses of the Department of State, and not more than \$4,500,000 may be available, in addition to amounts otherwise available for such purposes, for administrative expenses of the United States Agency for International Development.

MIGRATION AND REFUGEE ASSISTANCE

For expenses, not otherwise provided for, necessary to enable the Secretary of State to provide, as authorized by law, a contribution to the International Committee of the Red Cross, assistance to refugees, including contributions to the International Organization for Migration and the United Nations High Commissioner for Refugees, and other activities to meet refugee and migration needs; salaries and expenses of personnel and dependents as authorized by the Foreign Service Act of 1980; allowances as authorized by sections 5921 through 5925 of title 5, United States Code; purchase and hire of passenger motor vehicles; and services as authorized by section 3109 of title 5, United States Code, \$760,197,000, which shall remain available until expended: *Provided*, That not more than \$21,000,000 may be available for administrative expenses: *Provided further*, That not less than \$50,000,000 of the funds made available under this heading shall be made available for refugees from the former Soviet Union and Eastern Europe and other refugees resettling in Israel: *Provided further*, That funds appropriated under this heading may be made available for a headquarters contribution to the International Committee of the Red Cross only if the Secretary of State determines (and so reports to the appropriate committees of Congress) that the Magen David Adom Society of Israel is not being denied participation in the activities of the International Red Cross and Red Crescent Movement.

UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSISTANCE
FUND

For necessary expenses to carry out the provisions of section 2(c) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)), \$30,000,000, to remain available until expended: *Provided*, That funds made available under this heading are appropriated notwithstanding the provisions contained in section 2(c)(2) of such Act which would limit the amount of funds which could be appropriated for this purpose.

NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED
PROGRAMS

For necessary expenses for nonproliferation, anti-terrorism, demining and related programs and activities, \$353,500,000, to carry out the provisions of chapter 8 of part II of the Foreign Assistance Act of 1961 for anti-terrorism assistance, chapter 9 of part II of the Foreign Assistance Act of 1961, section 504 of the FREEDOM Support Act, section 23 of the Arms Export Control Act or the Foreign Assistance Act of 1961 for demining activities, the clearance of unexploded ordnance, the destruction of small arms, and related activities, notwithstanding any other provision of law, including activities implemented through nongovernmental and international organizations, and section 301 of the Foreign Assistance Act of 1961 for a voluntary contribution to the International Atomic Energy Agency (IAEA), and for a United States contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission: *Provided*, That of this amount not to exceed \$30,000,000, to remain available until expended, may be made available for the Nonproliferation and Disarmament Fund, notwithstanding any other provision of law, to promote bilateral and multilateral activities relating to nonproliferation and disarmament: *Provided further*, That such funds may also be used for such countries other than the Independent States of the former Soviet Union and international organizations when it is in the national security interest of the United States to do so: *Provided further*, That funds appropriated under this heading may be made available for the International Atomic Energy Agency only if the Secretary of State determines (and so reports to the Congress) that Israel is not being denied its right to participate in the activities of that Agency: *Provided further*, That funds available during fiscal year 2004 for a contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission and that are not necessary to make the United States contribution to the Commission in the amount assessed for fiscal year 2004 shall be made available for a voluntary contribution to the International Atomic Energy Agency and shall remain available until September 30, 2005: *Provided further*, That of the funds made available for demining and related activities, not to exceed \$690,000, in addition to funds otherwise available for such purposes, may be used for administrative expenses related to the operation and management of the demining program: *Provided further*, That the Secretary of State is authorized to provide, from funds appropriated under this heading in this and subsequent Acts making appropriations for foreign operations, export financing and related programs, not to exceed \$250,000 for public-private partnerships for mine action by grant, cooperative agreement, or contract: *Provided further*, That funds appropriated under this heading shall

be made available for programs and countries in the amounts contained in the table accompanying the joint explanatory statement of the managers accompanying this Act: *Provided further*, That any proposed increases or decreases to the amounts contained in such table shall be subject to the regular notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961 and notifications shall be transmitted at least 15 days in advance of the obligation of funds.

DEPARTMENT OF THE TREASURY

INTERNATIONAL AFFAIRS TECHNICAL ASSISTANCE

For necessary expenses to carry out the provisions of section 129 of the Foreign Assistance Act of 1961, \$19,000,000, to remain available until September 30, 2006, which shall be available notwithstanding any other provision of law.

DEBT RESTRUCTURING

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of modifying loans and loan guarantees, as the President may determine, for which funds have been appropriated or otherwise made available for programs within the International Affairs Budget Function 150, including the cost of selling, reducing, or canceling amounts owed to the United States as a result of concessional loans made to eligible countries, pursuant to parts IV and V of the Foreign Assistance Act of 1961, and of modifying concessional credit agreements with least developed countries, as authorized under section 411 of the Agricultural Trade Development and Assistance Act of 1954, as amended, and concessional loans, guarantees and credit agreements, as authorized under section 572 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461), and of canceling amounts owed, as a result of loans or guarantees made pursuant to the Export-Import Bank Act of 1945, by countries that are eligible for debt reduction pursuant to title V of H.R. 3425 as enacted into law by section 1000(a)(5) of Public Law 106–113, \$95,000,000, to remain available until September 30, 2006: *Provided*, That not less than \$20,000,000 of the funds appropriated under this heading shall be made available to carry out the provisions of part V of the Foreign Assistance Act of 1961: *Provided further*, That \$75,000,000 of the funds appropriated under this heading may be used by the Secretary of the Treasury to pay to the Heavily Indebted Poor Countries (HIPC) Trust Fund administered by the International Bank for Reconstruction and Development amounts for the benefit of countries that are eligible for debt reduction pursuant to title V of H.R. 3425 as enacted into law by section 1000(a)(5) of Public Law 106–113: *Provided further*, That amounts paid to the HIPC Trust Fund may be used only to fund debt reduction under the enhanced HIPC initiative by—

- (1) the Inter-American Development Bank;
- (2) the African Development Fund;
- (3) the African Development Bank; and
- (4) the Central American Bank for Economic Integration:

Provided further, That funds may not be paid to the HIPC Trust Fund for the benefit of any country if the Secretary of State has

Deadline.

credible evidence that the government of such country is engaged in a consistent pattern of gross violations of internationally recognized human rights or in military or civil conflict that undermines its ability to develop and implement measures to alleviate poverty and to devote adequate human and financial resources to that end: *Provided further*, That on the basis of final appropriations, the Secretary of the Treasury shall consult with the Committees on Appropriations concerning which countries and international financial institutions are expected to benefit from a United States contribution to the HIPC Trust Fund during the fiscal year: *Provided further*, That the Secretary of the Treasury shall inform the Committees on Appropriations not less than 15 days in advance of the signature of an agreement by the United States to make payments to the HIPC Trust Fund of amounts for such countries and institutions: *Provided further*, That the Secretary of the Treasury may disburse funds designated for debt reduction through the HIPC Trust Fund only for the benefit of countries that—

(1) have committed, for a period of 24 months, not to accept new market-rate loans from the international financial institution receiving debt repayment as a result of such disbursement, other than loans made by such institutions to export-oriented commercial projects that generate foreign exchange which are generally referred to as “enclave” loans; and

(2) have documented and demonstrated their commitment to redirect their budgetary resources from international debt repayments to programs to alleviate poverty and promote economic growth that are additional to or expand upon those previously available for such purposes:

Provided further, That any limitation of subsection (e) of section 411 of the Agricultural Trade Development and Assistance Act of 1954 shall not apply to funds appropriated under this heading: *Provided further*, That none of the funds made available under this heading in this or any other appropriations Act shall be made available for Sudan or Burma unless the Secretary of the Treasury determines and notifies the Committees on Appropriations that a democratically elected government has taken office.

TITLE III—MILITARY ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL MILITARY EDUCATION AND TRAINING

For necessary expenses to carry out the provisions of section 541 of the Foreign Assistance Act of 1961, \$91,700,000, of which up to \$3,000,000 may remain available until expended: *Provided*, That the civilian personnel for whom military education and training may be provided under this heading may include civilians who are not members of a government whose participation would contribute to improved civil-military relations, civilian control of the military, or respect for human rights: *Provided further*, That funds appropriated under this heading for military education and training for Guatemala may only be available for expanded international military education and training, and funds made available for Algeria, Cambodia, Nigeria and Guatemala may only be provided through the regular notification procedures of the Committees on Appropriations.

FOREIGN MILITARY FINANCING PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for grants to enable the President to carry out the provisions of section 23 of the Arms Export Control Act, \$4,294,000,000: *Provided*, That of the funds appropriated under this heading, not less than \$2,160,000,000 shall be available for grants only for Israel, and not less than \$1,300,000,000 shall be made available for grants only for Egypt: *Provided further*, That the funds appropriated by this paragraph for Israel shall be disbursed within 30 days of the enactment of this Act: *Provided further*, That to the extent that the Government of Israel requests that funds be used for such purposes, grants made available for Israel by this paragraph shall, as agreed by Israel and the United States, be available for advanced weapons systems, of which not less than \$568,000,000 shall be available for the procurement in Israel of defense articles and defense services, including research and development: *Provided further*, That of the funds appropriated by this paragraph, \$206,000,000 should be made available for assistance for Jordan: *Provided further*, That of the funds appropriated by this paragraph, \$17,000,000 may be transferred to and merged with funds appropriated under the heading “Andean Counterdrug Initiative” and made available for aircraft and related assistance for the Colombian National Police: *Provided further*, That funds appropriated by this paragraph shall be nonrepayable notwithstanding any requirement in section 23 of the Arms Export Control Act: *Provided further*, That funds made available under this paragraph shall be obligated upon apportionment in accordance with paragraph (5)(C) of section 1501(a) of title 31, United States Code.

None of the funds made available under this heading shall be available to finance the procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act unless the foreign country proposing to make such procurements has first signed an agreement with the United States Government specifying the conditions under which such procurements may be financed with such funds: *Provided*, That all country and funding level increases in allocations shall be submitted through the regular notification procedures of section 515 of this Act: *Provided further*, That none of the funds appropriated under this heading shall be available for assistance for Sudan, Guatemala and Liberia: *Provided further*, That funds made available under this heading may be used, notwithstanding any other provision of law, for demining, the clearance of unexploded ordnance, and related activities, and may include activities implemented through nongovernmental and international organizations: *Provided further*, That the authority contained in the previous proviso or any other provision of law relating to the use of funds for programs under this heading, including provisions contained in previously enacted appropriations Acts, shall not apply to activities relating to the clearance of unexploded ordnance resulting from United States Armed Forces testing or training exercises: *Provided further*, That the previous proviso shall not apply to San Jose Island, Republic of Panama: *Provided further*, That only those countries for which assistance was justified for the “Foreign Military Sales Financing Program” in the fiscal year 1989 congressional presentation for security assistance programs may utilize funds made available under this heading

for procurement of defense articles, defense services or design and construction services that are not sold by the United States Government under the Arms Export Control Act: *Provided further*, That funds appropriated under this heading shall be expended at the minimum rate necessary to make timely payment for defense articles and services: *Provided further*, That not more than \$40,500,000 of the funds appropriated under this heading may be obligated for necessary expenses, including the purchase of passenger motor vehicles for replacement only for use outside of the United States, for the general costs of administering military assistance and sales: *Provided further*, That not more than \$361,000,000 of funds realized pursuant to section 21(e)(1)(A) of the Arms Export Control Act may be obligated for expenses incurred by the Department of Defense during fiscal year 2004 pursuant to section 43(b) of the Arms Export Control Act, except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations: *Provided further*, That foreign military financing program funds estimated to be outlayed for Egypt during fiscal year 2004 shall be transferred to an interest bearing account for Egypt in the Federal Reserve Bank of New York within 30 days of enactment of this Act.

PEACEKEEPING OPERATIONS

For necessary expenses to carry out the provisions of section 551 of the Foreign Assistance Act of 1961, \$74,900,000: *Provided*, That none of the funds appropriated under this heading shall be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

TITLE IV—MULTILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

GLOBAL ENVIRONMENT FACILITY

For the United States contribution for the Global Environment Facility, \$139,240,000 to the International Bank for Reconstruction and Development as trustee for the Global Environment Facility, by the Secretary of the Treasury, to remain available until expended.

CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

For payment to the International Development Association by the Secretary of the Treasury, \$913,200,000, to remain available until expended: *Provided*, That the Secretary of the Treasury shall work to ensure that the World Bank provides for an independent entity, such as a private auditing firm, to conduct and make publicly available an external performance audit which verifies whether the IDA–13 Spring 2004 performance targets have been met: *Provided further*, That any further incentive contribution for additional contributions for IDA–13 regarding such targets shall be made only after the Secretary of the Treasury has reviewed and considered carefully the findings of any such independent external audit.

CONTRIBUTION TO THE MULTILATERAL INVESTMENT GUARANTEE
AGENCY

For payment to the Multilateral Investment Guarantee Agency by the Secretary of the Treasury, \$1,124,000, for the United States paid-in share of the increase in capital stock, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the Multilateral Investment Guarantee Agency may subscribe without fiscal year limitation for the callable capital portion of the United States share of such capital stock in an amount not to exceed \$4,475,203.

CONTRIBUTION TO THE ENTERPRISE FOR THE AMERICAS
MULTILATERAL INVESTMENT FUND

For payment to the Enterprise for the Americas Multilateral Investment Fund by the Secretary of the Treasury, for the United States contribution to the fund, \$25,000,000, to remain available until expended.

CONTRIBUTION TO THE ASIAN DEVELOPMENT FUND

For the United States contribution by the Secretary of the Treasury to the increase in resources of the Asian Development Fund, as authorized by the Asian Development Bank Act, as amended, \$144,421,000, to remain available until expended.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT BANK

For payment to the African Development Bank by the Secretary of the Treasury, \$5,104,930, for the United States paid-in share of the increase in capital stock, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the African Development Bank may subscribe without fiscal year limitation for the callable capital portion of the United States share of such capital stock in an amount not to exceed \$79,609,817.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT FUND

For the United States contribution by the Secretary of the Treasury to the increase in resources of the African Development Fund, \$112,725,000, to remain available until expended.

CONTRIBUTION TO THE EUROPEAN BANK FOR RECONSTRUCTION AND
DEVELOPMENT

For payment to the European Bank for Reconstruction and Development by the Secretary of the Treasury, \$35,431,111 for the United States share of the paid-in portion of the increase in capital stock, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the European Bank for Reconstruction and Development may subscribe without fiscal year

limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed \$122,085,497.

CONTRIBUTION TO THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

For the United States contribution by the Secretary of the Treasury to increase the resources of the International Fund for Agricultural Development, \$15,004,042, to remain available until expended.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

Notification.

For necessary expenses to carry out the provisions of section 301 of the Foreign Assistance Act of 1961, and of section 2 of the United Nations Environment Program Participation Act of 1973, \$321,650,000: *Provided*, That none of the funds appropriated under this heading may be made available to the International Atomic Energy Agency (IAEA): *Provided further*, That funds appropriated under this heading shall be made available for programs and countries in the amounts contained in the table accompanying the joint explanatory statement of the managers accompanying this Act: *Provided further*, That any proposed increases or decreases to the amounts contained in such table shall be subject to the regular notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961 and notifications shall be transmitted at least 15 days in advance of the obligation of funds.

TITLE V—GENERAL PROVISIONS

COMPENSATION FOR UNITED STATES EXECUTIVE DIRECTORS TO INTERNATIONAL FINANCIAL INSTITUTIONS

SEC. 501. (a) No funds appropriated by this Act may be made as payment to any international financial institution while the United States Executive Director to such institution is compensated by the institution at a rate which, together with whatever compensation such Director receives from the United States, is in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while any alternate United States Director to such institution is compensated by the institution at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) For purposes of this section, “international financial institutions” are: the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the Asian Development Fund, the African Development Bank, the African Development Fund, the International Monetary Fund, the North American Development Bank, and the European Bank for Reconstruction and Development.

PRIVATE AND VOLUNTARY ORGANIZATIONS

22 USC 2151u
note.

SEC. 502. None of the funds appropriated or otherwise made available by this Act for development assistance may be made available to any United States private and voluntary organization,

except any cooperative development organization, which obtains less than 20 percent of its total annual funding for international activities from sources other than the United States Government: *Provided*, That the Administrator of the United States Agency for International Development, after informing the Committees on Appropriations, may, on a case-by-case basis, waive the restriction contained in this subsection, after taking into account the effectiveness of the overseas development activities of the organization, its level of volunteer support, its financial viability and stability, and the degree of its dependence for its financial support on the agency.

LIMITATION ON RESIDENCE EXPENSES

SEC. 503. Of the funds appropriated or made available pursuant to this Act, not to exceed \$100,500 shall be for official residence expenses of the United States Agency for International Development during the current fiscal year: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

LIMITATION ON EXPENSES

SEC. 504. Of the funds appropriated or made available pursuant to this Act, not to exceed \$5,000 shall be for entertainment expenses of the United States Agency for International Development during the current fiscal year.

LIMITATION ON REPRESENTATIONAL ALLOWANCES

SEC. 505. Of the funds appropriated or made available pursuant to this Act, not to exceed \$125,000 shall be available for representation allowances for the United States Agency for International Development during the current fiscal year: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars: *Provided further*, That of the funds made available by this Act for general costs of administering military assistance and sales under the heading “Foreign Military Financing Program”, not to exceed \$2,000 shall be available for entertainment expenses and not to exceed \$125,000 shall be available for representation allowances: *Provided further*, That of the funds made available by this Act under the heading “International Military Education and Training”, not to exceed \$50,000 shall be available for entertainment allowances: *Provided further*, That of the funds made available by this Act for the Inter-American Foundation, not to exceed \$2,000 shall be available for entertainment and representation allowances: *Provided further*, That of the funds made available by this Act for the Peace Corps, not to exceed a total of \$4,000 shall be available for entertainment expenses: *Provided further*, That of the funds made available by this Act under the heading “Trade and Development Agency”, not to exceed \$2,000 shall be available for representation and entertainment allowances: *Provided further*, That of the funds made available by this Act under the heading “Millennium Challenge Corporation”, not to exceed \$130,000 shall be available for representation and entertainment allowances.

PROHIBITION ON TAXATION OF UNITED STATES ASSISTANCE

SEC. 506. (a) PROHIBITION ON TAXATION.—None of the funds appropriated by this Act may be made available to provide assistance for a foreign country under a new bilateral agreement governing the terms and conditions under which such assistance is to be provided unless such agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government, and the Secretary of State shall expeditiously seek to negotiate amendments to existing bilateral agreements, as necessary, to conform with this requirement.

(b) REIMBURSEMENT OF FOREIGN TAXES.—An amount equivalent to 200 percent of the total taxes assessed during fiscal year 2004 on funds appropriated by this Act by a foreign government or entity against commodities financed under United States assistance programs for which funds are appropriated by this Act, either directly or through grantees, contractors and subcontractors shall be withheld from obligation from funds appropriated for assistance for fiscal year 2005 and allocated for the central government of such country and for the West Bank and Gaza Program to the extent that the Secretary of State certifies and reports in writing to the Committees on Appropriations that such taxes have not been reimbursed to the Government of the United States.

(c) DE MINIMIS EXCEPTION.—Foreign taxes of a de minimis nature shall not be subject to the provisions of subsection (b).

(d) REPROGRAMMING OF FUNDS.—Funds withheld from obligation for each country or entity pursuant to subsection (b) shall be reprogrammed for assistance to countries which do not assess taxes on United States assistance or which have an effective arrangement that is providing substantial reimbursement of such taxes.

(e) DETERMINATIONS.—

(1) The provisions of this section shall not apply to any country or entity the Secretary of State determines—

(A) does not assess taxes on United States assistance or which has an effective arrangement that is providing substantial reimbursement of such taxes; or

(B) the foreign policy interests of the United States outweigh the policy of this section to ensure that United States assistance is not subject to taxation.

(2) The Secretary of State shall consult with the Committees on Appropriations at least 15 days prior to exercising the authority of this subsection with regard to any country or entity.

Regulations.

(f) IMPLEMENTATION.—The Secretary of State shall issue rules, regulations, or policy guidance, as appropriate, to implement the prohibition against the taxation of assistance contained in this section.

(g) DEFINITIONS.—As used in this section—

(1) the terms “taxes” and “taxation” refer to value added taxes and customs duties imposed on commodities financed with United States assistance for programs for which funds are appropriated by this Act; and

(2) the term “bilateral agreement” refers to a framework bilateral agreement between the Government of the United States and the government of the country receiving assistance

that describes the privileges and immunities applicable to United States foreign assistance for such country generally, or an individual agreement between the Government of the United States and such government that describes, among other things, the treatment for tax purposes that will be accorded the United States assistance provided under that agreement.

(h) RELATIONSHIP TO PRIOR LAW.—Section 579 of division E of Public Law 108–7 shall be deemed to have been amended by subsection (f) of this section and the modifications made by this section to comparable provisions contained in section 579.

PROHIBITION AGAINST DIRECT FUNDING FOR CERTAIN COUNTRIES

SEC. 507. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, Libya, North Korea, Iran, or Syria: *Provided*, That for purposes of this section, the prohibition on obligations or expenditures shall include direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents.

MILITARY COUPS

SEC. 508. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by decree or military coup: *Provided*, That assistance may be resumed to such government if the President determines and certifies to the Committees on Appropriations that subsequent to the termination of assistance a democratically elected government has taken office: *Provided further*, That the provisions of this section shall not apply to assistance to promote democratic elections or public participation in democratic processes: *Provided further*, That funds made available pursuant to the previous provisos shall be subject to the regular notification procedures of the Committees on Appropriations.

TRANSFERS

SEC. 509. (a)(1) LIMITATION ON TRANSFERS BETWEEN AGENCIES.—None of the funds made available by this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

(2) Notwithstanding paragraph (1), in addition to transfers made by, or authorized elsewhere in, this Act, funds appropriated by this Act to carry out the purposes of the Foreign Assistance Act of 1961 may be allocated or transferred to agencies of the United States Government pursuant to the provisions of sections 109, 610, and 632 of the Foreign Assistance Act of 1961.

(b) TRANSFERS BETWEEN ACCOUNTS.—None of the funds made available by this Act may be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided for in this Act, unless the President, not less than five days prior to the exercise of any authority contained in the Foreign Assistance Act of 1961 to transfer funds, consults

with and provides a written policy justification to the Committees on Appropriations of the House of Representatives and the Senate.

(c) AUDIT OF INTER-AGENCY TRANSFERS.—Any agreement for the transfer or allocation of funds appropriated by this Act, or prior Acts, entered into between the United States Agency for International Development and another agency of the United States Government under the authority of section 632(a) of the Foreign Assistance Act of 1961 or any comparable provision of law, shall expressly provide that the Office of the Inspector General for the agency receiving the transfer or allocation of such funds shall perform periodic program and financial audits of the use of such funds: *Provided*, That funds transferred under such authority may be made available for the cost of such audits.

COMMERCIAL LEASING OF DEFENSE ARTICLES

SEC. 510. Notwithstanding any other provision of law, and subject to the regular notification procedures of the Committees on Appropriations, the authority of section 23(a) of the Arms Export Control Act may be used to provide financing to Israel, Egypt and NATO and major non-NATO allies for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under such Act.

AVAILABILITY OF FUNDS

SEC. 511. No part of any appropriation contained in this Act shall remain available for obligation after the expiration of the current fiscal year unless expressly so provided in this Act: *Provided*, That funds appropriated for the purposes of chapters 1, 8, 11, and 12 of part I, section 667, chapter 4 of part II of the Foreign Assistance Act of 1961, as amended, section 23 of the Arms Export Control Act, and funds provided under the heading “Assistance for Eastern Europe and the Baltic States”, shall remain available for an additional 4 years from the date on which the availability of such funds would otherwise have expired, if such funds are initially obligated before the expiration of their respective periods of availability contained in this Act: *Provided further*, That, notwithstanding any other provision of this Act, any funds made available for the purposes of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961 which are allocated or obligated for cash disbursements in order to address balance of payments or economic policy reform objectives, shall remain available until expended.

LIMITATION ON ASSISTANCE TO COUNTRIES IN DEFAULT

SEC. 512. No part of any appropriation contained in this Act shall be used to furnish assistance to the government of any country which is in default during a period in excess of one calendar year in payment to the United States of principal or interest on any loan made to the government of such country by the United

States pursuant to a program for which funds are appropriated under this Act unless the President determines, following consultations with the Committees on Appropriations, that assistance to such country is in the national interest of the United States.

COMMERCE AND TRADE

SEC. 513. (a) None of the funds appropriated or made available pursuant to this Act for direct assistance and none of the funds otherwise made available pursuant to this Act to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity: *Provided*, That such prohibition shall not apply to the Export-Import Bank if in the judgment of its Board of Directors the benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity, and the Chairman of the Board so notifies the Committees on Appropriations.

(b) None of the funds appropriated by this or any other Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States: *Provided*, That this subsection shall not prohibit—

(1) activities designed to increase food security in developing countries where such activities will not have a significant impact on the export of agricultural commodities of the United States; or

(2) research activities intended primarily to benefit American producers.

SURPLUS COMMODITIES

SEC. 514. The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the North American Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or made available pursuant to this Act, for the production or extraction of any commodity or mineral for export, if it is in surplus on world markets and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

22 USC 262h
note.

NOTIFICATION REQUIREMENTS

SEC. 515. For the purposes of providing the executive branch with the necessary administrative flexibility, none of the funds made available under this Act for “Child Survival and Health Programs Fund”, “Development Assistance”, “International Organizations and Programs”, “Trade and Development Agency”, “International Narcotics Control and Law Enforcement”, “Andean Counterdrug Initiative”, “Assistance for Eastern Europe and the Baltic States”, “Assistance for the Independent States of the Former Soviet Union”, “Economic Support Fund”, “Global HIV/AIDS Initiative”, “Peacekeeping Operations”, “Capital Investment Fund”, “Operating Expenses of the United States Agency for International Development”, “Operating Expenses of the United States Agency for International Development Office of Inspector General”, “Non-proliferation, Anti-terrorism, Demining and Related Programs”, “Millennium Challenge Corporation” (by country only), “Foreign Military Financing Program”, “International Military Education and Training”, “Peace Corps”, and “Migration and Refugee Assistance”, shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Committees on Appropriations for obligation under any of these specific headings unless the Committees on Appropriations of both Houses of Congress are previously notified 15 days in advance: *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 percent in excess of the quantities justified to Congress unless the Committees on Appropriations are notified 15 days in advance of such commitment: *Provided further*, That this section shall not apply to any reprogramming for an activity, program, or project for which funds are appropriated under title II of this Act of less than 10 percent of the amount previously justified to the Congress for obligation for such activity, program, or project for the current fiscal year: *Provided further*, That the requirements of this section or any similar provision of this Act or any other Act, including any prior Act requiring notification in accordance with the regular notification procedures of the Committees on Appropriations, may be waived if failure to do so would pose a substantial risk to human health or welfare: *Provided further*, That in case of any such waiver, notification to the Congress, or the appropriate congressional committees, shall be provided as early as practicable, but in no event later than 3 days after taking the action to which such notification requirement was applicable, in the context of the circumstances necessitating such waiver: *Provided further*, That any notification provided pursuant to such a waiver shall contain an explanation of the emergency circumstances.

LIMITATION ON AVAILABILITY OF FUNDS FOR INTERNATIONAL ORGANIZATIONS AND PROGRAMS

SEC. 516. Subject to the regular notification procedures of the Committees on Appropriations, funds appropriated under this Act or any previously enacted Act making appropriations for foreign

operations, export financing, and related programs, which are returned or not made available for organizations and programs because of the implementation of section 307(a) of the Foreign Assistance Act of 1961, shall remain available for obligation until September 30, 2005.

INDEPENDENT STATES OF THE FORMER SOVIET UNION

SEC. 517. (a) None of the funds appropriated under the heading “Assistance for the Independent States of the Former Soviet Union” shall be made available for assistance for a government of an Independent State of the former Soviet Union—

(1) unless that government is making progress in implementing comprehensive economic reforms based on market principles, private ownership, respect for commercial contracts, and equitable treatment of foreign private investment; and

(2) if that government applies or transfers United States assistance to any entity for the purpose of expropriating or seizing ownership or control of assets, investments, or ventures. Assistance may be furnished without regard to this subsection if the President determines that to do so is in the national interest.

(b) None of the funds appropriated under the heading “Assistance for the Independent States of the Former Soviet Union” shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union, such as those violations included in the Helsinki Final Act: *Provided*, That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national security interest of the United States.

22 USC 5814
note.

(c) None of the funds appropriated under the heading “Assistance for the Independent States of the Former Soviet Union” shall be made available for any state to enhance its military capability: *Provided*, That this restriction does not apply to demilitarization, demining or nonproliferation programs.

(d) Funds appropriated under the heading “Assistance for the Independent States of the Former Soviet Union” for the Russian Federation, Armenia, Georgia, and Ukraine shall be subject to the regular notification procedures of the Committees on Appropriations.

(e) Funds made available in this Act for assistance for the Independent States of the former Soviet Union shall be subject to the provisions of section 117 (relating to environment and natural resources) of the Foreign Assistance Act of 1961.

(f) Funds made available for Enterprise Funds shall be expended at the minimum rate necessary to make timely payment for projects and activities.

(g) In issuing new task orders, entering into contracts, or making grants, with funds appropriated in this Act or prior appropriations Acts under the heading “Assistance for the Independent States of the Former Soviet Union” and under comparable headings in prior appropriations Acts, for projects or activities that have as one of their primary purposes the fostering of private sector development, the Coordinator for United States Assistance to the New Independent States and the implementing agency shall encourage the participation of and give significant weight to contractors and grantees who propose investing a significant amount of their

own resources (including volunteer services and in-kind contributions) in such projects and activities.

PROHIBITION ON FUNDING FOR ABORTIONS AND INVOLUNTARY
STERILIZATION

SEC. 518. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for any biomedical research which relates in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be obligated or expended for any country or organization if the President certifies that the use of these funds by any such country or organization would violate any of the above provisions related to abortions and involuntary sterilizations.

EXPORT FINANCING TRANSFER AUTHORITIES

SEC. 519. Not to exceed 5 percent of any appropriation other than for administrative expenses made available for fiscal year 2004, for programs under title I of this Act may be transferred between such appropriations for use for any of the purposes, programs, and activities for which the funds in such receiving account may be used, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 25 percent by any such transfer: *Provided*, That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.

SPECIAL NOTIFICATION REQUIREMENTS

SEC. 520. None of the funds appropriated by this Act shall be obligated or expended for Liberia, Serbia, Sudan, Zimbabwe, Pakistan, Cambodia, or the Democratic Republic of the Congo except as provided through the regular notification procedures of the Committees on Appropriations.

DEFINITION OF PROGRAM, PROJECT, AND ACTIVITY

SEC. 521. For the purpose of this Act, “program, project, and activity” shall be defined at the appropriations Act account level and shall include all appropriations and authorizations Acts earmarks, ceilings, and limitations with the exception that for the following accounts: Economic Support Fund and Foreign Military Financing Program, “program, project, and activity” shall also be considered to include country, regional, and central program level funding within each such account; for the development assistance accounts of the United States Agency for International Development “program, project, and activity” shall also be considered to include

central, country, regional, and program level funding, either as: (1) justified to the Congress; or (2) allocated by the executive branch in accordance with a report, to be provided to the Committees on Appropriations within 30 days of the enactment of this Act, as required by section 653(a) of the Foreign Assistance Act of 1961.

CHILD SURVIVAL AND HEALTH ACTIVITIES

SEC. 522. Up to \$13,500,000 of the funds made available by this Act for assistance under the heading “Child Survival and Health Programs Fund”, may be used to reimburse United States Government agencies, agencies of State governments, institutions of higher learning, and private and voluntary organizations for the full cost of individuals (including for the personal services of such individuals) detailed or assigned to, or contracted by, as the case may be, the United States Agency for International Development for the purpose of carrying out activities under that heading: *Provided*, That up to \$3,500,000 of the funds made available by this Act for assistance under the heading “Development Assistance” may be used to reimburse such agencies, institutions, and organizations for such costs of such individuals carrying out other development assistance activities: *Provided further*, That funds appropriated by titles II and III of this Act that are made available for bilateral assistance for child survival activities or disease programs including activities relating to research on, and the prevention, treatment and control of, HIV/AIDS may be made available notwithstanding any other provision of law except for the provisions under the heading “Child Survival and Health Programs Fund” and the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (117 Stat. 711; 22 U.S.C. 7601 et seq.) as amended by section 595 of this Act: *Provided further*, That of the funds appropriated under title II of this Act, not less than \$432,000,000 shall be made available for family planning/reproductive health.

AFGHANISTAN

SEC. 523. Of the funds appropriated by this Act, \$405,000,000 shall be made available for humanitarian and reconstruction assistance for Afghanistan: *Provided*, That of the funds made available pursuant to this section, not less than \$75,000,000 should be from funds appropriated under the heading “Economic Support Fund”: *Provided further*, That of the funds made available pursuant to this section, not less than \$2,000,000 should be made available for reforestation activities: *Provided further*, That funds made available pursuant to the previous proviso should be matched, to the maximum extent possible, with contributions from American and Afghan businesses: *Provided further*, That of the funds made available pursuant to this section, not less than \$2,000,000 should be made available for the Afghan Judicial Reform Commission: *Provided further*, That of the funds made available pursuant to this section, not less than \$5,000,000 should be made available to support programs to address the needs of Afghan women through training and equipment to improve the capacity of women-led Afghan nongovernmental organizations and to support the activities of such organizations: *Provided further*, That not less than \$2,000,000 should be made available for assistance for Afghan

communities and families that suffer losses as a result of the military operations.

NOTIFICATION ON EXCESS DEFENSE EQUIPMENT

SEC. 524. Prior to providing excess Department of Defense articles in accordance with section 516(a) of the Foreign Assistance Act of 1961, the Department of Defense shall notify the Committees on Appropriations to the same extent and under the same conditions as are other committees pursuant to subsection (f) of that section: *Provided*, That before issuing a letter of offer to sell excess defense articles under the Arms Export Control Act, the Department of Defense shall notify the Committees on Appropriations in accordance with the regular notification procedures of such Committees if such defense articles are significant military equipment (as defined in section 47(9) of the Arms Export Control Act) or are valued (in terms of original acquisition cost) at \$7,000,000 or more, or if notification is required elsewhere in this Act for the use of appropriated funds for specific countries that would receive such excess defense articles: *Provided further*, That such Committees shall also be informed of the original acquisition cost of such defense articles.

USAID OVERSEAS PROGRAM

22 USC 3948
note.

SEC. 525. Funds appropriated by this and subsequent appropriations Acts to carry out the provisions of part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading “Assistance for Eastern Europe and the Baltic States”, may be made available to employ individuals overseas on a limited appointment basis pursuant to the authority of sections 308 and 309 of the Foreign Service Act of 1980: *Provided*, That in fiscal years 2004, 2005, and 2006 the authority of this section may be used to hire not more than 85 individuals in each such year.

DEMOCRACY PROGRAMS

SEC. 526. (a) Notwithstanding any other provision of law, of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, not less than \$13,500,000 shall be made available for assistance for activities to support democracy, human rights, and the rule of law in the People’s Republic of China and Hong Kong: *Provided*, That funds appropriated under the heading “Economic Support Fund” should be made available for assistance for Taiwan for the purposes of furthering political and legal reforms: *Provided further*, That such funds shall only be made available to the extent that they are matched from sources other than the United States Government: *Provided further*, That funds made available pursuant to the authority of this subsection shall be subject to the regular notification procedures of the Committees on Appropriations.

(b)(1) In addition to the funds made available in subsection (a), of the funds appropriated by this Act under the heading “Economic Support Fund” not less than \$11,500,000 shall be made available for programs and activities to foster democracy, human rights, civic education, women’s development, press freedom, and the rule of law in countries with a significant Muslim population, and where such programs and activities would be important to

United States efforts to respond to, deter, or prevent acts of international terrorism: *Provided*, That funds made available pursuant to the authority of this subsection should support new initiatives or bolster ongoing programs and activities in those countries: *Provided further*, That not less than \$3,000,000 of such funds shall be made available for programs and activities that provide professional training for journalists: *Provided further*, That of the funds appropriated under this heading, in addition to other amounts made available for Egypt in this Act, funds shall be made available to support civil society organizations working for democracy in Egypt: *Provided further*, That notwithstanding any other provision of law, not to exceed \$1,500,000 of such funds may be used for making grants to educational, humanitarian and nongovernmental organizations and individuals inside Iran to support the advancement of democracy and human rights in Iran: *Provided further*, That funds made available pursuant to this subsection shall be subject to the regular notification procedures of the Committees on Appropriations.

(2) In addition to funds made available under subsections (a) and (b)(1), of the funds appropriated by this Act under the heading “Economic Support Fund” not less than \$3,000,000 shall be made available for programs and activities of the National Endowment for Democracy to foster democracy, human rights, civic education, women’s development, press freedom, and the rule of law in countries in sub-Saharan Africa.

(c) Of the funds made available under subsection (a), not less than \$10,500,000 shall be made available for the Human Rights and Democracy Fund of the Bureau of Democracy, Human Rights and Labor, Department of State, to support the activities described in subsection (a), and of the funds made available under subsection (b), not less than \$7,000,000 shall be made available for such Fund to support the activities described in subsection (b): *Provided*, That the total amount of funds made available by this Act under “Economic Support Fund” for activities of the Bureau of Democracy, Human Rights and Labor, Department of State, including funds available in this section, shall be not less than \$34,500,000.

(d) Of the funds made available under subsection (a), not less than \$3,000,000 shall be made available for the National Endowment for Democracy to support the activities described in subsection (a), and of the funds made available under subsection (b), not less than \$3,500,000 shall be made available for the National Endowment for Democracy to support the activities described in subsection (b): *Provided*, That the Secretary of State shall provide a report to the Committees on Appropriations within 120 days of the date of enactment of this Act on the status of the allocation, obligation, and expenditure of such funds.

Reports.
Deadline.

PROHIBITION ON BILATERAL ASSISTANCE TO TERRORIST COUNTRIES

SEC. 527. (a) Funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to the enactment of this Act, shall not be made available to any country which the President determines—

(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism; or

(2) otherwise supports international terrorism.

Federal Register,
publication.

(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

DEBT-FOR-DEVELOPMENT

SEC. 528. In order to enhance the continued participation of nongovernmental organizations in debt-for-development and debt-for-nature exchanges, a nongovernmental organization which is a grantee or contractor of the United States Agency for International Development may place in interest bearing accounts local currencies which accrue to that organization as a result of economic assistance provided under title II of this Act and any interest earned on such investment shall be used for the purpose for which the assistance was provided to that organization.

SEPARATE ACCOUNTS

22 USC 2362
note.

SEC. 529. (a) SEPARATE ACCOUNTS FOR LOCAL CURRENCIES.—(1) If assistance is furnished to the government of a foreign country under chapters 1 and 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961 under agreements which result in the generation of local currencies of that country, the Administrator of the United States Agency for International Development shall—

(A) require that local currencies be deposited in a separate account established by that government;

(B) enter into an agreement with that government which sets forth—

(i) the amount of the local currencies to be generated;

and

(ii) the terms and conditions under which the currencies so deposited may be utilized, consistent with this section; and

(C) establish by agreement with that government the responsibilities of the United States Agency for International Development and that government to monitor and account for deposits into and disbursements from the separate account.

(2) USES OF LOCAL CURRENCIES.—As may be agreed upon with the foreign government, local currencies deposited in a separate account pursuant to subsection (a), or an equivalent amount of local currencies, shall be used only—

(A) to carry out chapter 1 or 10 of part I or chapter 4 of part II (as the case may be), for such purposes as—

(i) project and sector assistance activities; or

(ii) debt and deficit financing; or

(B) for the administrative requirements of the United States Government.

(3) PROGRAMMING ACCOUNTABILITY.—The United States Agency for International Development shall take all necessary steps to ensure that the equivalent of the local currencies disbursed pursuant to subsection (a)(2)(A) from the separate account established

pursuant to subsection (a)(1) are used for the purposes agreed upon pursuant to subsection (a)(2).

(4) **TERMINATION OF ASSISTANCE PROGRAMS.**—Upon termination of assistance to a country under chapter 1 or 10 of part I or chapter 4 of part II (as the case may be), any unencumbered balances of funds which remain in a separate account established pursuant to subsection (a) shall be disposed of for such purposes as may be agreed to by the government of that country and the United States Government.

(5) **REPORTING REQUIREMENT.**—The Administrator of the United States Agency for International Development shall report on an annual basis as part of the justification documents submitted to the Committees on Appropriations on the use of local currencies for the administrative requirements of the United States Government as authorized in subsection (a)(2)(B), and such report shall include the amount of local currency (and United States dollar equivalent) used and/or to be used for such purpose in each applicable country.

(b) **SEPARATE ACCOUNTS FOR CASH TRANSFERS.**—(1) If assistance is made available to the government of a foreign country, under chapter 1 or 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961, as cash transfer assistance or as nonproject sector assistance, that country shall be required to maintain such funds in a separate account and not commingle them with any other funds.

(2) **APPLICABILITY OF OTHER PROVISIONS OF LAW.**—Such funds may be obligated and expended notwithstanding provisions of law which are inconsistent with the nature of this assistance including provisions which are referenced in the Joint Explanatory Statement of the Committee of Conference accompanying House Joint Resolution 648 (House Report No. 98–1159).

(3) **NOTIFICATION.**—At least 15 days prior to obligating any such cash transfer or nonproject sector assistance, the President shall submit a notification through the regular notification procedures of the Committees on Appropriations, which shall include a detailed description of how the funds proposed to be made available will be used, with a discussion of the United States interests that will be served by the assistance (including, as appropriate, a description of the economic policy reforms that will be promoted by such assistance).

(4) **EXEMPTION.**—Nonproject sector assistance funds may be exempt from the requirements of subsection (b)(1) only through the notification procedures of the Committees on Appropriations.

ENTERPRISE FUND RESTRICTIONS

SEC. 530. Prior to the distribution of any assets resulting from any liquidation, dissolution, or winding up of an Enterprise Fund, in whole or in part, the President shall submit to the Committees on Appropriations, in accordance with the regular notification procedures of the Committees on Appropriations, a plan for the distribution of the assets of the Enterprise Fund.

President.

BURMA

50 USC 1701
note.

SEC. 531. (a) The Secretary of the Treasury shall instruct the United States executive director to each appropriate international financial institution in which the United States participates, to oppose and vote against the extension by such institution of any loan or financial or technical assistance or any other utilization of funds of the respective bank to and for Burma.

(b) Of the funds appropriated under the heading “Economic Support Fund”, not less than \$13,000,000 shall be made available to support democracy activities in Burma, along the Burma-Thailand border, for activities of Burmese student groups and other organizations located outside Burma, and for the purpose of supporting the provision of humanitarian assistance to displaced Burmese along Burma’s borders: *Provided*, That of this amount \$500,000 should be made available to support newspapers, publications, and other media activities promoting democracy inside Burma: *Provided further*, That funds made available under this heading may be made available notwithstanding any other provision of law: *Provided further*, That \$5,000,000 shall be allocated to the United States Agency for International Development for humanitarian assistance for displaced Burmese and host communities in Thailand: *Provided further*, That not more than 60 days after enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit a report to the Committees on Appropriations describing the amount and rate of disbursement of fiscal years 2002 and 2003 funding for HIV/AIDS programs and activities in Burma, the estimated amount of funds expended by the State Peace and Development Council (SPDC) on HIV/AIDS programs and activities in calendar years 2001, 2002, and 2003, and the extent to which international nongovernmental organizations are able to conduct HIV/AIDS programs throughout Burma, including the ability of expatriate staff to freely travel through the country and to conduct programmatic oversight independent of SPDC handling and monitoring: *Provided further*, That funds made available by this section shall be subject to the regular notification procedures of the Committees on Appropriations.

(c) It is the sense of the Congress that the United Nations Security Council should debate and consider sanctions against Burma as a result of the threat to regional stability and peace posed by the repressive and illegitimate rule of the State Peace and Development Council.

AUTHORITIES FOR THE PEACE CORPS, INTER-AMERICAN FOUNDATION
AND AFRICAN DEVELOPMENT FOUNDATION

SEC. 532. Unless expressly provided to the contrary, provisions of this or any other Act, including provisions contained in prior Acts authorizing or making appropriations for foreign operations, export financing, and related programs, shall not be construed to prohibit activities authorized by or conducted under the Peace Corps Act, the Inter-American Foundation Act or the African Development Foundation Act. The agency shall promptly report to the Committees on Appropriations whenever it is conducting activities or is proposing to conduct activities in a country for which assistance is prohibited.

IMPACT ON JOBS IN THE UNITED STATES

SEC. 533. None of the funds appropriated by this Act may be obligated or expended to provide—

(1) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States; or

(2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: *Provided*, That the application of section 507(4)(D) and (E) of such Act should be commensurate with the level of development of the recipient country and sector, and shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

SPECIAL AUTHORITIES

SEC. 534. (a) AFGHANISTAN, PAKISTAN, LEBANON, MONTENEGRO, VICTIMS OF WAR, DISPLACED CHILDREN, AND DISPLACED BURMESE.—Funds appropriated by this Act that are made available for assistance for Afghanistan may be made available notwithstanding section 512 of this Act or any similar provision of law and section 660 of the Foreign Assistance Act of 1961, and funds appropriated in titles I and II of this Act that are made available for Lebanon, Montenegro, Pakistan, and for victims of war, displaced children, and displaced Burmese, and to assist victims of trafficking in persons and, subject to the regular notification procedures of the Committees on Appropriations, to combat such trafficking, may be made available notwithstanding any other provision of law.

(b) TROPICAL FORESTRY AND BIODIVERSITY CONSERVATION ACTIVITIES.—Funds appropriated by this Act to carry out the provisions of sections 103 through 106, and chapter 4 of part II, of the Foreign Assistance Act of 1961 may be used, notwithstanding any other provision of law, for the purpose of supporting tropical forestry and biodiversity conservation activities and energy programs aimed at reducing greenhouse gas emissions: *Provided*, That such assistance shall be subject to sections 116, 502B, and 620A of the Foreign Assistance Act of 1961.

(c) PERSONAL SERVICES CONTRACTORS.—Funds appropriated by this Act to carry out chapter 1 of part I, chapter 4 of part II, and section 667 of the Foreign Assistance Act of 1961, and title II of the Agricultural Trade Development and Assistance Act of 1954, may be used by the United States Agency for International Development to employ up to 25 personal services contractors in the United States, notwithstanding any other provision of law, for the purpose of providing direct, interim support for new or expanded overseas programs and activities managed by the agency until permanent direct hire personnel are hired and trained: *Provided*, That not more than 10 of such contractors shall be assigned to any bureau or office: *Provided further*, That such funds appropriated to carry out title II of the Agricultural Trade Development

and Assistance Act of 1954, may be made available only for personal services contractors assigned to the Office of Food for Peace.

(d)(1) **WAIVER.**—The President may waive the provisions of section 1003 of Public Law 100–204 if the President determines and certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that it is important to the national security interests of the United States.

(2) **PERIOD OF APPLICATION OF WAIVER.**—Any waiver pursuant to paragraph (1) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(e) **SMALL BUSINESS.**—In entering into multiple award indefinite-quantity contracts with funds appropriated by this Act, the United States Agency for International Development may provide an exception to the fair opportunity process for placing task orders under such contracts when the order is placed with any category of small or small disadvantaged business.

22 USC 2151u
note.

(f) **SHIPMENT OF HUMANITARIAN ASSISTANCE.**—During fiscal year 2004 and each fiscal year thereafter, of the amounts made available by the United States Agency for International Development to carry out the provisions of section 123(b) of the Foreign Assistance Act of 1961, funds may be made available to nongovernmental organizations for administrative costs necessary to implement a program to obtain available donated space on commercial ships for the shipment of humanitarian assistance overseas.

(g) **RECONSTITUTING CIVILIAN POLICE AUTHORITY.**—In providing assistance with funds appropriated by this Act under section 660(b)(6) of the Foreign Assistance Act of 1961, support for a nation emerging from instability may be deemed to mean support for regional, district, municipal, or other sub-national entity emerging from instability, as well as a nation emerging from instability.

(h) **NATIONAL ENDOWMENT FOR DEMOCRACY.**—Funds appropriated by this Act that are provided to the National Endowment for Democracy may be provided notwithstanding any other provision of law or regulation.

(i) **WORLD FOOD PROGRAM.**—Of the funds managed by the Bureau for Democracy, Conflict, and Humanitarian Assistance of the United States Agency for International Development, from this or any other Act, not less than \$6,000,000 shall be made available as a general contribution to the World Food Program, notwithstanding any other provision of law.

50 USC 1701
note.

(j) **SUDAN.**—For the purposes of section 501 of Public Law 106–570, the terms “areas outside of control of the Government of Sudan” and “area in Sudan outside of control of the Government of Sudan” shall, upon conclusion of a peace agreement between the Government of Sudan and the Sudan People’s Liberation Movement, have the same meaning and application as was the case immediately prior to the conclusion of such agreement.

(k) **PROGRAMS.**—Of the funds appropriated under “Economic Support Fund” for Middle East regional programs, up to \$5,000,000 may be made available for programs and activities of the Yitzhak Rabin Center for Israel Studies in Tel Aviv, Israel, and up to \$5,000,000 may be made available for programs and activities of the Center for Human Dignity Museum of Tolerance in Jerusalem.

ARAB LEAGUE BOYCOTT OF ISRAEL

SEC. 535. It is the sense of the Congress that—

(1) the Arab League boycott of Israel, and the secondary boycott of American firms that have commercial ties with Israel, is an impediment to peace in the region and to United States investment and trade in the Middle East and North Africa;

(2) the Arab League boycott, which was regrettably reinstated in 1997, should be immediately and publicly terminated, and the Central Office for the Boycott of Israel immediately disbanded;

(3) the three Arab League countries with diplomatic and trade relations with Israel should return their ambassadors to Israel, should refrain from downgrading their relations with Israel, and should play a constructive role in securing a peaceful resolution of the Israeli-Arab conflict;

(4) the remaining Arab League states should normalize relations with their neighbor Israel;

(5) the President and the Secretary of State should continue to vigorously oppose the Arab League boycott of Israel and find concrete steps to demonstrate that opposition by, for example, taking into consideration the participation of any recipient country in the boycott when determining to sell weapons to said country; and

(6) the President should report to Congress annually on specific steps being taken by the United States to encourage Arab League states to normalize their relations with Israel to bring about the termination of the Arab League boycott of Israel, including those to encourage allies and trading partners of the United States to enact laws prohibiting businesses from complying with the boycott and penalizing businesses that do comply.

ADMINISTRATION OF JUSTICE ACTIVITIES

SEC. 536. Of the funds appropriated or otherwise made available by this Act or any subsequent Act for “Economic Support Fund”, assistance may be provided to strengthen the administration of justice in countries in Latin America and the Caribbean and in other regions consistent with the provisions of section 534(b) of the Foreign Assistance Act of 1961, except that programs to enhance protection of participants in judicial cases may be conducted notwithstanding section 660 of that Act. Funds made available pursuant to this section may be made available notwithstanding section 534(c) and the second and third sentences of section 534(e) of the Foreign Assistance Act of 1961.

22 USC 2364c
note.

ELIGIBILITY FOR ASSISTANCE

SEC. 537. (a) ASSISTANCE THROUGH NONGOVERNMENTAL ORGANIZATIONS.—Restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance in support of programs of nongovernmental organizations from funds appropriated by this Act to carry out the provisions of chapters 1, 10, 11, and 12 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, and from funds appropriated under the heading “Assistance for Eastern Europe and the Baltic States”: *Provided*, That before using the authority

of this subsection to furnish assistance in support of programs of nongovernmental organizations, the President shall notify the Committees on Appropriations under the regular notification procedures of those committees, including a description of the program to be assisted, the assistance to be provided, and the reasons for furnishing such assistance: *Provided further*, That nothing in this subsection shall be construed to alter any existing statutory prohibitions against abortion or involuntary sterilizations contained in this or any other Act.

(b) PUBLIC LAW 480.—During fiscal year 2004, restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance under the Agricultural Trade Development and Assistance Act of 1954: *Provided*, That none of the funds appropriated to carry out title I of such Act and made available pursuant to this subsection may be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

(c) EXCEPTION.—This section shall not apply—

(1) with respect to section 620A of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting assistance to countries that support international terrorism; or

(2) with respect to section 116 of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting assistance to the government of a country that violates internationally recognized human rights.

RESERVATIONS OF FUNDS

SEC. 538. (a) Funds appropriated by this Act which are earmarked may be reprogrammed for other programs within the same account notwithstanding the earmark if compliance with the earmark is made impossible by operation of any provision of this or any other Act: *Provided*, That any such reprogramming shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That assistance that is reprogrammed pursuant to this subsection shall be made available under the same terms and conditions as originally provided.

(b) In addition to the authority contained in subsection (a), the original period of availability of funds appropriated by this Act and administered by the United States Agency for International Development that are earmarked for particular programs or activities by this or any other Act shall be extended for an additional fiscal year if the Administrator of such agency determines and reports promptly to the Committees on Appropriations that the termination of assistance to a country or a significant change in circumstances makes it unlikely that such earmarked funds can be obligated during the original period of availability: *Provided*, That such earmarked funds that are continued available for an additional fiscal year shall be obligated only for the purpose of such earmark.

CEILINGS AND EARMARKS

SEC. 539. Ceilings and earmarks contained in this Act shall not be applicable to funds or authorities appropriated or otherwise made available by any subsequent Act unless such Act specifically so directs. Earmarks or minimum funding requirements contained

in any other Act shall not be applicable to funds appropriated by this Act.

PROHIBITION ON PUBLICITY OR PROPAGANDA

SEC. 540. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes within the United States not authorized before the date of the enactment of this Act by the Congress: *Provided*, That not to exceed \$750,000 may be made available to carry out the provisions of section 316 of Public Law 96–533.

PROHIBITION OF PAYMENTS TO UNITED NATIONS MEMBERS

SEC. 541. None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, may be used to pay in whole or in part any assessments, arrearages, or dues of any member of the United Nations or, from funds appropriated by this Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, the costs for participation of another country's delegation at international conferences held under the auspices of multilateral or international organizations.

NONGOVERNMENTAL ORGANIZATIONS—DOCUMENTATION

SEC. 542. None of the funds appropriated or made available pursuant to this Act shall be available to a nongovernmental organization which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

SEC. 543. (a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 6(j) of the Export Administration Act. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

Termination.

Applicability.

(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States.

(c) Whenever the waiver authority of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.

WITHHOLDING OF ASSISTANCE FOR PARKING FINES OWED BY FOREIGN COUNTRIES

SEC. 544. (a) Subject to subsection (c), of the funds appropriated by this Act that are made available for assistance for a foreign country, an amount equal to 110 percent of the total amount of the unpaid fully adjudicated parking fines and penalties owed by such country shall be withheld from obligation for such country until the Secretary of State submits a certification to the appropriate congressional committees stating that such parking fines and penalties are fully paid.

(b) Funds withheld from obligation pursuant to subsection (a) may be made available for other programs or activities funded by this Act, after consultation with and subject to the regulation notification procedures of the appropriate congressional committees, provided that no such funds shall be made available for assistance to the central government of a foreign country that has not paid the total amount of the fully adjudicated parking fines and penalties owed by such country.

(c) Subsection (a) shall not include amounts that have been withheld under any other provision of law.

(d) The Secretary of State may waive the requirements set forth in subsection (a) no sooner than 60 days from the date of enactment of this Act, or at any time with respect to a particular country, if the Secretary determines that it is in the national interests of the United States to do so.

Deadline.
Reports.

(e) Not later than 6 months after the initial exercise of the waiver authority in subsection (d), the Secretary of State, after consultations with the City of New York, shall submit a report to the Committees on Appropriations describing a strategy, including a timetable and steps currently being taken, to collect the parking fines and penalties owed by nations receiving foreign assistance under this Act.

(f) In this section:

(1) The term “appropriate congressional committees” means the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

(2) The term “fully adjudicated” includes circumstances in which the person to whom the vehicle is registered—

(A)(i) has not responded to the parking violation summons; or

(ii) has not followed the appropriate adjudication procedure to challenge the summons; and

(B) the period of time for payment of or challenge to the summons has lapsed.

(3) The term “parking fines and penalties” means parking fines and penalties—

(A) owed to—

(i) the District of Columbia; or

(ii) New York, New York; and

(B) incurred during the period April 1, 1997 through September 30, 2003.

LIMITATION ON ASSISTANCE FOR THE PLO FOR THE WEST BANK AND GAZA

SEC. 545. None of the funds appropriated by this Act may be obligated for assistance for the Palestine Liberation Organization

for the West Bank and Gaza unless the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104–107) or any other legislation to suspend or make inapplicable section 307 of the Foreign Assistance Act of 1961 and that suspension is still in effect: *Provided*, That if the President fails to make the certification under section 604(b)(2) of the Middle East Peace Facilitation Act of 1995 or to suspend the prohibition under other legislation, funds appropriated by this Act may not be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza.

WAR CRIMES TRIBUNALS DRAWDOWN

SEC. 546. If the President determines that doing so will contribute to a just resolution of charges regarding genocide or other violations of international humanitarian law, the President may direct a drawdown pursuant to section 552(c) of the Foreign Assistance Act of 1961, as amended, of up to \$30,000,000 of commodities and services for the United Nations War Crimes Tribunal established with regard to the former Yugoslavia by the United Nations Security Council or such other tribunals or commissions as the Council may establish or authorize to deal with such violations, without regard to the ceiling limitation contained in paragraph (2) thereof: *Provided*, That the determination required under this section shall be in lieu of any determinations otherwise required under section 552(c): *Provided further*, That the drawdown made under this section for any tribunal shall not be construed as an endorsement or precedent for the establishment of any standing or permanent international criminal tribunal or court: *Provided further*, That funds made available for tribunals other than Yugoslavia, Rwanda, or the Special Court for Sierra Leone shall be made available subject to the regular notification procedures of the Committees on Appropriations.

LANDMINES

SEC. 547. Notwithstanding any other provision of law, demining equipment available to the United States Agency for International Development and the Department of State and used in support of the clearance of landmines and unexploded ordnance for humanitarian purposes may be disposed of on a grant basis in foreign countries, subject to such terms and conditions as the President may prescribe.

RESTRICTIONS CONCERNING THE PALESTINIAN AUTHORITY

SEC. 548. None of the funds appropriated by this Act may be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: *Provided*, That this restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem: *Provided further*, That meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles,

for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem. As has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

PROHIBITION OF PAYMENT OF CERTAIN EXPENSES

SEC. 549. None of the funds appropriated or otherwise made available by this Act under the heading “International Military Education and Training” or “Foreign Military Financing Program” for Informational Program activities or under the headings “Child Survival and Health Programs Fund”, “Development Assistance”, and “Economic Support Fund” may be obligated or expended to pay for—

- (1) alcoholic beverages; or
- (2) entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.

RESTRICTIONS ON VOLUNTARY CONTRIBUTIONS TO UNITED NATIONS AGENCIES

SEC. 550. None of the funds appropriated by this Act may be made available to pay any voluntary contribution of the United States to the United Nations (including the United Nations Development Program) if the United Nations implements or imposes any taxation on any United States persons.

HAITI

SEC. 551. The Government of Haiti shall be eligible to purchase defense articles and services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), for the Coast Guard.

LIMITATION ON ASSISTANCE TO THE PALESTINIAN AUTHORITY

SEC. 552. (a) PROHIBITION OF FUNDS.—None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority.

(b) WAIVER.—The prohibition included in subsection (a) shall not apply if the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that waiving such prohibition is important to the national security interests of the United States.

(c) PERIOD OF APPLICATION OF WAIVER.—Any waiver pursuant to subsection (b) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(d) REPORT.—Whenever the waiver authority pursuant to subsection (b) is exercised, the President shall submit a report to the Committees on Appropriations detailing the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure. The report shall also

include a description of how funds will be spent and the accounting procedures in place to ensure that they are properly disbursed.

LIMITATION ON ASSISTANCE TO SECURITY FORCES

SEC. 553. None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice: *Provided*, That nothing in this section shall be construed to withhold funds made available by this Act from any unit of the security forces of a foreign country not credibly alleged to be involved in gross violations of human rights: *Provided further*, That in the event that funds are withheld from any unit pursuant to this section, the Secretary of State shall promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice.

FOREIGN MILITARY TRAINING REPORT

SEC. 554. The annual foreign military training report required by section 656 of the Foreign Assistance Act of 1961 shall be submitted by the Secretary of Defense and the Secretary of State to the Committees on Appropriations of the House of Representatives and the Senate by the date specified in that section.

ENVIRONMENT PROGRAMS

SEC. 555. (a) FUNDING.—Of the funds appropriated under the heading “Development Assistance”, not less than \$155,000,000 shall be made available for programs and activities which directly protect biodiversity, including forests, in developing countries, of which \$1,500,000 should be made available to improve the capacity of indigenous groups and local environmental organizations and law enforcement agencies to protect the biodiversity of indigenous reserves in the Amazon Basin region of Brazil, which amount shall be in addition to the amount requested in this Act for assistance for Brazil for fiscal year 2004: *Provided*, That not later than 1 year after enactment of this Act, the Secretary of State, in coordination with the Administrator of the United States Agency for International Development and other appropriate departments and agencies, and after consultation with appropriate governments and nongovernmental organizations, shall submit to the Committees on Appropriations a strategy for biodiversity conservation in the Amazon Basin region of South America: *Provided further*, That of the funds appropriated under the headings “Development Assistance” and “Andean Counterdrug Initiative”, funds shall be made available in fiscal year 2004 to develop the strategy described in the previous proviso: *Provided further*, That of the funds appropriated by this Act, not less than \$180,000,000 shall be made available to support policies and programs in developing countries that directly: (1) promote a wide range of energy conservation, energy efficiency and clean energy programs and activities,

including the transfer of clean and environmentally sustainable energy technologies; (2) measure, monitor, and reduce greenhouse gas emissions; (3) increase carbon sequestration activities; and (4) enhance climate change mitigation and adaptation programs.

Deadline.

(b) CLIMATE CHANGE REPORT.—Not later than 45 days after the date on which the President’s fiscal year 2005 budget request is submitted to Congress, the President shall submit a report to the Committees on Appropriations describing in detail the following—

(1) all Federal agency obligations and expenditures, domestic and international, for climate change programs and activities in fiscal year 2004, including an accounting of expenditures by agency with each agency identifying climate change activities and associated costs by line item as presented in the President’s Budget Appendix; and

(2) all fiscal year 2003 obligations and estimated expenditures, fiscal year 2004 estimated expenditures and estimated obligations, and fiscal year 2005 requested funds by the United States Agency for International Development, by country and central program, for each of the following: (i) to promote the transfer and deployment of a wide range of United States clean energy and energy efficiency technologies; (ii) to assist in the measurement, monitoring, reporting, verification, and reduction of greenhouse gas emissions; (iii) to promote carbon capture and sequestration measures; (iv) to help meet such countries’ responsibilities under the Framework Convention on Climate Change; and (v) to develop assessments of the vulnerability to impacts of climate change and mitigation and adaptation response strategies.

REGIONAL PROGRAMS FOR EAST ASIA AND THE PACIFIC

SEC. 556. Funds appropriated by this Act under the heading “Economic Support Fund” that are requested for “Regional Democracy” assistance for East Asia and the Pacific shall be made available for the Human Rights and Democracy Fund of the Bureau for Democracy, Human Rights and Labor, Department of State.

ZIMBABWE

22 USC 2151
note.

SEC. 557. The Secretary of the Treasury shall instruct the United States executive director to each international financial institution to vote against any extension by the respective institution of any loans, to the Government of Zimbabwe, except to meet basic human needs or to promote democracy, unless the Secretary of State determines and certifies to the Committees on Appropriations that the rule of law has been restored in Zimbabwe, including respect for ownership and title to property, freedom of speech and association.

TIBET

SEC. 558. (a) The Secretary of the Treasury should instruct the United States executive director to each international financial institution to use the voice and vote of the United States to support projects in Tibet if such projects do not provide incentives for the migration and settlement of non-Tibetans into Tibet or facilitate the transfer of ownership of Tibetan land and natural resources

to non-Tibetans; are based on a thorough needs-assessment; foster self-sufficiency of the Tibetan people and respect Tibetan culture and traditions; and are subject to effective monitoring.

(b) Notwithstanding any other provision of law, not less than \$4,000,000 of the funds appropriated by this Act under the heading “Economic Support Fund” shall be made available to nongovernmental organizations to support activities which preserve cultural traditions and promote sustainable development and environmental conservation in Tibetan communities in the Tibetan Autonomous Region and in other Tibetan communities in China.

AUTHORIZATION REQUIREMENT

SEC. 559. Funds appropriated by this Act may be obligated and expended notwithstanding section 10 of Public Law 91–672 and section 15 of the State Department Basic Authorities Act of 1956.

NIGERIA

SEC. 560. None of the funds appropriated under the headings “International Military Education and Training” and “Foreign Military Financing Program” may be made available for assistance for Nigeria until the President certifies to the Committees on Appropriations that the Nigerian Minister of Defense, the Chief of the Army Staff, and the Minister of State for Defense/Army are suspending from the Armed Forces those members, of whatever rank, against whom there is credible evidence of gross violations of human rights in Benue State in October 2001, and the Government of Nigeria and the Nigerian Armed Forces are taking effective measures to bring such individuals to justice: *Provided*, That the President may waive such prohibition if he determines that doing so is in the national security interest of the United States: *Provided further*, That prior to exercising such waiver authority, the President shall submit a report to the Committees on Appropriations describing the involvement of the Nigerian Armed Forces in the incident in Benue State, the measures that are being taken to bring such individuals to justice, and whether any Nigerian Armed Forces units involved with the incident in Benue State are receiving United States assistance.

CAMBODIA

SEC. 561. (a) The Secretary of the Treasury should instruct the United States executive directors of the international financial institutions to use the voice and vote of the United States to oppose loans to the Central Government of Cambodia, except loans to meet basic human needs.

(b)(1) None of the funds appropriated by this Act may be made available for assistance for the Central Government of Cambodia.

(2) Paragraph (1) shall not apply to assistance for basic education, reproductive and maternal and child health, cultural and historic preservation, programs for the prevention, treatment, and control of, and research on, HIV/AIDS, tuberculosis, malaria, polio and other infectious diseases, programs to combat human trafficking that are provided through nongovernmental organizations, and for

the Ministry of Women and Veterans Affairs to combat human trafficking.

(c) Of the funds appropriated by this Act under the heading “Economic Support Fund”, up to \$4,000,000 may be made available for activities to support democracy, including assistance for democratic political parties.

(d) Funds appropriated by this Act to carry out provisions of section 541 of the Foreign Assistance Act of 1961 may be made available notwithstanding subsection (b) only if at least 15 days prior to the obligation of such funds, the Secretary of State provides to the Committees on Appropriations a list of those individuals who have been credibly alleged to have ordered or carried out extrajudicial and political killings that occurred during the March 1997 grenade attack against the Khmer Nation Party, the July 1997 coup d’etat, and election related violence that occurred during the 1998, 2002, and 2003 elections in Cambodia.

(e) None of the funds appropriated or otherwise made available by this Act may be used to provide assistance to any tribunal established by the Government of Cambodia.

PALESTINIAN STATEHOOD

SEC. 562. (a) LIMITATION ON ASSISTANCE.—None of the funds appropriated by this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that—

(1) a new leadership of a Palestinian governing entity has been democratically elected through credible and competitive elections;

(2) the elected governing entity of a new Palestinian state—
(A) has demonstrated a firm commitment to peaceful co-existence with the State of Israel;

(B) is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures; and

(C) is establishing a new Palestinian security entity that is cooperative with appropriate Israeli and other appropriate security organizations; and

(3) the Palestinian Authority (or the governing body of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships, which should include—

(A) termination of all claims or states of belligerency;

(B) respect for and acknowledgement of the sovereignty, territorial integrity, and political independence of every state in the area through measures including the establishment of demilitarized zones;

(C) their right to live in peace within secure and recognized boundaries free from threats or acts of force;

(D) freedom of navigation through international waterways in the area; and

(E) a framework for achieving a just settlement of the refugee problem.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the newly elected governing entity should enact a constitution

assuring the rule of law, an independent judiciary, and respect for human rights for its citizens, and should enact other laws and regulations assuring transparent and accountable governance.

(c) **WAIVER.**—The President may waive subsection (a) if he determines that it is vital to the national security interests of the United States to do so.

(d) **EXEMPTION.**—The restriction in subsection (a) shall not apply to assistance intended to help reform the Palestinian Authority and affiliated institutions, or a newly elected governing entity, in order to help meet the requirements of subsection (a), consistent with the provisions of section 552 of this Act (“Limitation on Assistance to the Palestinian Authority”).

COLOMBIA

SEC. 563. (a) DETERMINATION AND CERTIFICATION REQUIRED.—Notwithstanding any other provision of law, funds appropriated by this Act that are available for assistance for the Colombian Armed Forces, may be made available as follows:

(1) Up to 75 percent of such funds may be obligated prior to a determination and certification by the Secretary of State pursuant to paragraph (2).

(2) Up to 12.5 percent of such funds may be obligated only after the Secretary of State certifies and reports to the appropriate congressional committees that:

(A) The Commander General of the Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank who, according to the Minister of Defense or the Procuraduria General de la Nacion, have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations.

(B) The Colombian Government is vigorously investigating and prosecuting those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations, and is promptly punishing those members of the Colombian Armed Forces found to have committed such violations of human rights or to have aided or abetted paramilitary organizations.

(C) The Colombian Armed Forces have made substantial progress in cooperating with civilian prosecutors and judicial authorities in such cases (including providing requested information, such as the identity of persons suspended from the Armed Forces and the nature and cause of the suspension, and access to witnesses, relevant military documents, and other requested information).

(D) The Colombian Armed Forces have made substantial progress in severing links (including denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation) at the command, battalion, and brigade levels, with paramilitary organizations, especially in regions where these organizations have a significant presence.

(E) The Colombian Armed Forces are dismantling paramilitary leadership and financial networks by arresting

commanders and financial backers, especially in regions where these networks have a significant presence.

(3) The balance of such funds may be obligated after July 31, 2004, if the Secretary of State certifies and reports to the appropriate congressional committees, after such date, that the Colombian Armed Forces are continuing to meet the conditions contained in paragraph (2) and are conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(b) CONGRESSIONAL NOTIFICATION.—Funds made available by this Act for the Colombian Armed Forces shall be subject to the regular notification procedures of the Committees on Appropriations.

Deadlines.

(c) CONSULTATIVE PROCESS.—Not later than 60 days after the date of enactment of this Act, and every 90 days thereafter until September 30, 2005, the Secretary of State shall consult with internationally recognized human rights organizations regarding progress in meeting the conditions contained in that subsection.

(d) DEFINITIONS.—In this section:

(1) AIDED OR ABETTED.—The term “aided or abetted” means to provide any support to paramilitary groups, including taking actions which allow, facilitate, or otherwise foster the activities of such groups.

(2) PARAMILITARY GROUPS.—The term “paramilitary groups” means illegal self-defense groups and illegal security cooperatives.

ILLEGAL ARMED GROUPS

SEC. 564. (a) DENIAL OF VISAS TO SUPPORTERS OF COLOMBIAN ILLEGAL ARMED GROUPS.—Subject to subsection (b), the Secretary of State shall not issue a visa to any alien who the Secretary determines, based on credible evidence—

(1) has willfully provided any support to the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), or the United Self-Defense Forces of Colombia (AUC), including taking actions or failing to take actions which allow, facilitate, or otherwise foster the activities of such groups; or

(2) has committed, ordered, incited, assisted, or otherwise participated in the commission of gross violations of human rights, including extra-judicial killings, in Colombia.

(b) WAIVER.—Subsection (a) shall not apply if the Secretary of State determines and certifies to the appropriate congressional committees, on a case-by-case basis, that the issuance of a visa to the alien is necessary to support the peace process in Colombia or for urgent humanitarian reasons.

PROHIBITION ON ASSISTANCE TO THE PALESTINIAN BROADCASTING CORPORATION

SEC. 565. None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

WEST BANK AND GAZA PROGRAM

SEC. 566. (a) OVERSIGHT.—For fiscal year 2004, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the appropriate committees of Congress that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading “Economic Support Fund” for the West Bank and Gaza.

(b) VETTING.—Prior to the obligation of funds appropriated by this Act under the heading “Economic Support Fund” for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual or entity that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity. The Secretary of State shall, as appropriate, establish procedures specifying the steps to be taken in carrying out this subsection.

(c) AUDITS.—(1) The Administrator of the United States Agency for International Development shall ensure that Federal or non-Federal audits of all contractors and grantees, and significant sub-contractors and subgrantees, under the West Bank and Gaza Program, are conducted at least on an annual basis to ensure, among other things, compliance with this section.

(2) Of the funds appropriated by this Act under the heading “Economic Support Fund” that are made available for assistance for the West Bank and Gaza, up to \$1,000,000 may be used by the Office of the Inspector General of the United States Agency for International Development for audits, inspections, and other activities in furtherance of the requirements of this subsection. Such funds are in addition to funds otherwise available for such purposes.

CONTRIBUTIONS TO UNITED NATIONS POPULATION FUND

SEC. 567. (a) LIMITATIONS ON AMOUNT OF CONTRIBUTION.—Of the amounts made available under “International Organizations and Programs” and “Child Survival and Health Programs Fund” for fiscal year 2004, the amount cited in section 576 of Public Law 107–115 shall be made available for the United Nations Population Fund (hereafter in this section referred to as the “UNFPA”).

(b) FAMILY PLANNING, MATERNAL AND REPRODUCTIVE HEALTH ACTIVITIES.—Of the funds appropriated in Public Law 107–115 that were available for the UNFPA, including all funds that were transferred to “Child Survival and Health Programs Fund”, \$34,000,000 shall be made available for family planning, maternal and reproductive health activities in the Democratic Republic of the Congo, Ethiopia, Nigeria, Tanzania, Uganda, Haiti, Georgia, Azerbaijan, Russia, Albania, Romania, and Kazakhstan: *Provided*, That such programs and activities shall be deemed to have been justified to Congress.

(c) TRAFFICKING INITIATIVE.—Of the funds appropriated in Public Law 108–7 that were available for the UNFPA and that were transferred to “Child Survival and Health Programs Fund”, \$25,000,000 shall be allocated for assistance for “vulnerable children” and made available for a new initiative for assistance for

young women, mothers and children who are victims of trafficking in persons: *Provided*, That such programs and activities shall be deemed to have been justified to Congress.

(d) PROHIBITION ON USE OF FUNDS IN CHINA.—None of the funds made available under “International Organizations and Programs” may be made available for the UNFPA for a country program in the People’s Republic of China.

(e) CONDITIONS ON AVAILABILITY OF FUNDS.—Amounts made available under “International Organizations and Programs” and “Child Survival and Health Programs Fund” for fiscal year 2004 for the UNFPA may not be made available to UNFPA unless—

(1) the UNFPA maintains amounts made available to the UNFPA under this section in an account separate from other accounts of the UNFPA;

(2) the UNFPA does not commingle amounts made available to the UNFPA under this section with other sums; and

(3) the UNFPA does not fund abortions.

CENTRAL ASIA

SEC. 568. (a) Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress in meeting its commitments under the “Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America”, including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media.

(b) Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights during the preceding 6-month period.

(c) The Secretary of State may waive the requirements under subsection (b) if he determines and reports to the Committees on Appropriations that such a waiver is in the national security interests of the United States.

(d) Not later than October 1, 2004, the Secretary of State shall submit a report to the Committees on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives describing the following:

(1) The defense articles, defense services, and financial assistance provided by the United States to the countries of Central Asia during the 6-month period ending 30 days prior to submission of such report.

(2) The use during such period of defense articles, defense services, and financial assistance provided by the United States by units of the armed forces, border guards, or other security forces of such countries.

(e) For purposes of this section, the term “countries of Central Asia” means Uzbekistan, Kazakhstan, Kyrgyz Republic, Tajikistan, and Turkmenistan.

Deadline.
Reports.

DISCRIMINATION AGAINST MINORITY RELIGIOUS FAITHS IN THE
RUSSIAN FEDERATION

SEC. 569. None of the funds appropriated under this Act may be made available for the Government of the Russian Federation, after 180 days from the date of the enactment of this Act, unless the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation has implemented no statute, Executive order, regulation or similar government action that would discriminate, or who have as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.

WAR CRIMINALS

SEC. 570. (a)(1) None of the funds appropriated or otherwise made available pursuant to this Act may be made available for assistance, and the Secretary of the Treasury shall instruct the United States executive directors to the international financial institutions to vote against any new project involving the extension by such institutions of any financial or technical assistance, to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations to apprehend and transfer to the International Criminal Tribunal for the former Yugoslavia (the “Tribunal”) all persons in their territory who have been indicted by the Tribunal and to otherwise cooperate with the Tribunal.

(2) The provisions of this subsection shall not apply to humanitarian assistance or assistance for democratization.

(b) The provisions of subsection (a) shall apply unless the Secretary of State determines and reports to the appropriate congressional committees that the competent authorities of such country, entity, or municipality are—

(1) cooperating with the Tribunal, including access for investigators to archives and witnesses, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension; and

(2) are acting consistently with the Dayton Accords.

(c) Not less than 10 days before any vote in an international financial institution regarding the extension of any new project involving financial or technical assistance or grants to any country or entity described in subsection (a), the Secretary of the Treasury, in consultation with the Secretary of State, shall provide to the Committees on Appropriations a written justification for the proposed assistance, including an explanation of the United States position regarding any such vote, as well as a description of the location of the proposed assistance by municipality, its purpose, and its intended beneficiaries.

(d) In carrying out this section, the Secretary of State, the Administrator of the United States Agency for International Development, and the Secretary of the Treasury shall consult with representatives of human rights organizations and all government agencies with relevant information to help prevent indicted war criminals from benefiting from any financial or technical assistance

or grants provided to any country or entity described in subsection (a).

(e) The Secretary of State may waive the application of subsection (a) with respect to projects within a country, entity, or municipality upon a written determination to the Committees on Appropriations that such assistance directly supports the implementation of the Dayton Accords.

(f) DEFINITIONS.—As used in this section—

(1) COUNTRY.—The term “country” means Bosnia and Herzegovina, Croatia and Serbia.

(2) ENTITY.—The term “entity” refers to the Federation of Bosnia and Herzegovina, Kosovo, Montenegro and the Republika Srpska.

(3) MUNICIPALITY.—The term “municipality” means a city, town or other subdivision within a country or entity as defined herein.

(4) DAYTON ACCORDS.—The term “Dayton Accords” means the General Framework Agreement for Peace in Bosnia and Herzegovina, together with annexes relating thereto, done at Dayton, November 10 through 16, 1995.

USER FEES

SEC. 571. The Secretary of the Treasury shall instruct the United States Executive Director at each international financial institution (as defined in section 1701(c)(2) of the International Financial Institutions Act) and the International Monetary Fund to oppose any loan, grant, strategy or policy of these institutions that would require user fees or service charges on poor people for primary education or primary healthcare, including prevention and treatment efforts for HIV/AIDS, malaria, tuberculosis, and infant, child, and maternal well-being, in connection with the institutions’ financing programs.

FUNDING FOR SERBIA

SEC. 572. (a) Funds appropriated by this Act may be made available for assistance for Serbia after March 31, 2004, if the President has made the determination and certification contained in subsection (c).

(b) After March 31, 2004, the Secretary of the Treasury should instruct the United States executive directors to the international financial institutions to support loans and assistance to the Government of the Federal Republic of Yugoslavia (or a government of a successor state) subject to the conditions in subsection (c): *Provided*, That section 576 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, as amended, shall not apply to the provision of loans and assistance to the Federal Republic of Yugoslavia (or a successor state) through international financial institutions.

(c) The determination and certification referred to in subsection (a) is a determination by the President and a certification to the Committees on Appropriations that the Government of the Federal Republic of Yugoslavia (or a government of a successor state) is—

(1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension, including

making all practicable efforts to apprehend and transfer Ratko Mladic;

(2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and

(3) taking steps to implement policies which reflect a respect for minority rights and the rule of law, including the release of political prisoners from Serbian jails and prisons.

(d) This section shall not apply to Montenegro, Kosovo, humanitarian assistance or assistance to promote democracy in municipalities.

COMMUNITY-BASED POLICE ASSISTANCE

SEC. 573. (a) **AUTHORITY.**—Funds made available by this Act to carry out the provisions of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, may be used, notwithstanding section 660 of that Act, to enhance the effectiveness and accountability of civilian police authority in Jamaica and El Salvador through training and technical assistance in human rights, the rule of law, strategic planning, and through assistance to foster civilian police roles that support democratic governance including assistance for programs to prevent conflict and foster improved police relations with the communities they serve.

22 USC 2151
note.

(b) **NOTIFICATION.**—Assistance provided under subsection (a) shall be subject to the regular notification procedures of the Committees on Appropriations.

SPECIAL DEBT RELIEF FOR THE POOREST

SEC. 574. (a) **AUTHORITY TO REDUCE DEBT.**—The President may reduce amounts owed to the United States (or any agency of the United States) by an eligible country as a result of—

(1) guarantees issued under sections 221 and 222 of the Foreign Assistance Act of 1961;

(2) credits extended or guarantees issued under the Arms Export Control Act; or

(3) any obligation or portion of such obligation, to pay for purchases of United States agricultural commodities guaranteed by the Commodity Credit Corporation under export credit guarantee programs authorized pursuant to section 5(f) of the Commodity Credit Corporation Charter Act of June 29, 1948, as amended, section 4(b) of the Food for Peace Act of 1966, as amended (Public Law 89–808), or section 202 of the Agricultural Trade Act of 1978, as amended (Public Law 95–501).

(b) **LIMITATIONS.**—

(1) The authority provided by subsection (a) may be exercised only to implement multilateral official debt relief and referendum agreements, commonly referred to as “Paris Club Agreed Minutes”.

(2) The authority provided by subsection (a) may be exercised only in such amounts or to such extent as is provided in advance by appropriations Acts.

(3) The authority provided by subsection (a) may be exercised only with respect to countries with heavy debt burdens that are eligible to borrow from the International Development Association, but not from the International Bank for

Reconstruction and Development, commonly referred to as “IDA-only” countries.

(c) CONDITIONS.—The authority provided by subsection (a) may be exercised only with respect to a country whose government—

(1) does not have an excessive level of military expenditures;

(2) has not repeatedly provided support for acts of international terrorism;

(3) is not failing to cooperate on international narcotics control matters;

(4) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights; and

(5) is not ineligible for assistance because of the application of section 527 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

(d) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to the funds appropriated by this Act under the heading “Debt Restructuring”.

(e) CERTAIN PROHIBITIONS INAPPLICABLE.—A reduction of debt pursuant to subsection (a) shall not be considered assistance for the purposes of any provision of law limiting assistance to a country. The authority provided by subsection (a) may be exercised notwithstanding section 620(r) of the Foreign Assistance Act of 1961 or section 321 of the International Development and Food Assistance Act of 1975.

AUTHORITY TO ENGAGE IN DEBT BUYBACKS OR SALES

SEC. 575. (a) LOANS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION.—

(1) AUTHORITY TO SELL, REDUCE, OR CANCEL CERTAIN LOANS.—Notwithstanding any other provision of law, the President may, in accordance with this section, sell to any eligible purchaser any concessional loan or portion thereof made before January 1, 1995, pursuant to the Foreign Assistance Act of 1961, to the government of any eligible country as defined in section 702(6) of that Act or on receipt of payment from an eligible purchaser, reduce or cancel such loan or portion thereof, only for the purpose of facilitating—

(A) debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps; or

(B) a debt buyback by an eligible country of its own qualified debt, only if the eligible country uses an additional amount of the local currency of the eligible country, equal to not less than 40 percent of the price paid for such debt by such eligible country, or the difference between the price paid for such debt and the face value of such debt, to support activities that link conservation and sustainable use of natural resources with local community development, and child survival and other child development, in a manner consistent with sections 707 through 710 of the Foreign Assistance Act of 1961, if the sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan.

(2) TERMS AND CONDITIONS.—Notwithstanding any other provision of law, the President shall, in accordance with this

section, establish the terms and conditions under which loans may be sold, reduced, or canceled pursuant to this section.

(3) ADMINISTRATION.—The Facility, as defined in section 702(8) of the Foreign Assistance Act of 1961, shall notify the administrator of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 of purchasers that the President has determined to be eligible, and shall direct such agency to carry out the sale, reduction, or cancellation of a loan pursuant to this section. Such agency shall make adjustment in its accounts to reflect the sale, reduction, or cancellation.

(4) LIMITATION.—The authorities of this subsection shall be available only to the extent that appropriations for the cost of the modification, as defined in section 502 of the Congressional Budget Act of 1974, are made in advance.

(b) DEPOSIT OF PROCEEDS.—The proceeds from the sale, reduction, or cancellation of any loan sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such loan.

(c) ELIGIBLE PURCHASERS.—A loan may be sold pursuant to subsection (a)(1)(A) only to a purchaser who presents plans satisfactory to the President for using the loan for the purpose of engaging in debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(d) DEBTOR CONSULTATIONS.—Before the sale to any eligible purchaser, or any reduction or cancellation pursuant to this section, of any loan made to an eligible country, the President should consult with the country concerning the amount of loans to be sold, reduced, or canceled and their uses for debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(e) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to funds appropriated by this Act under the heading “Debt Restructuring”.

DISASTER SURGE CAPACITY

SEC. 576. Funds appropriated by this Act to carry out part I of the Foreign Assistance Act of 1961 may be used, in addition to funds otherwise available for such purposes, for the cost (including the support costs) of individuals detailed to or employed by the United States Agency for International Development whose primary responsibility is to carry out programs to address natural or manmade disasters or programs under the heading “Transition Initiatives”.

IFAD AUTHORIZATION

SEC. 577. The Secretary of the Treasury may, to fulfill commitments of the United States, contribute on behalf of the United States to the sixth replenishment of the resources of the International Fund for Agricultural Development. The following amount is authorized to be appropriated without fiscal year limitation for payment by the Secretary of the Treasury: \$45,000,000 for the International Fund for Agricultural Development.

22 USC 2151a
note.

PHILIPPINE EDUCATION AND HEALTH INFRASTRUCTURE

SEC. 578. Of the funds appropriated under “Economic Support Fund” for the Philippines in Public Law 108–11, the Emergency Wartime Supplemental Appropriations Act, 2003, \$600,000 shall be available only for upgrading education and health infrastructure in the Sulu Archipelago.

BASIC EDUCATION

SEC. 579. Of the funds appropriated by title II of this Act, not less than \$326,500,000 shall be made available for basic education: *Provided*, That the Secretary of State, in consultation with the Administrator of the United States Agency for International Development (USAID), shall submit a report not later than 120 days after enactment of this Act articulating a strategy for the use of basic education funds in Africa, East Asia and the Pacific, the Near East, South Asia, and the Western Hemisphere (excluding the United States) to include—

(1) country strategies and brief project descriptions of the uses and proposed uses of all United States Government resources for basic education overseas;

(2) a detailed description of the administrative structure currently in place to manage strategic coordination undertaken among the State Department, USAID and other agencies involved in international basic education activities; and

(3) a description of actions being taken to expand the administrative capacity of both USAID and the State Department to deliver effective expanded basic education programs.

PARTICIPATION IN THE THIRTEENTH REPLENISHMENT OF THE RESOURCES OF THE INTERNATIONAL DEVELOPMENT ASSOCIATION

SEC. 580. The International Development Association Act (22 U.S.C. 284–284s) is amended by adding at the end the following:

22 USC 284t.

“SEC. 22. THIRTEENTH REPLENISHMENT.

“(a) CONTRIBUTION AUTHORITY.—

“(1) IN GENERAL.—The United States Governor of the Association may contribute on behalf of the United States an amount equal to the amount appropriated under subsection (b), pursuant to the resolution of the Association entitled ‘Additions to IDA Resources: Thirteenth Replenishment’.

“(2) SUBJECT TO APPROPRIATIONS.—Any commitment to make the contribution authorized by paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

“(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For the contribution authorized by subsection (a), there are authorized to be appropriated such sums as may be necessary for payment by the Secretary of the Treasury, without fiscal year limitation.”.

ADMINISTRATIVE PROVISIONS RELATED TO MULTILATERAL DEVELOPMENT INSTITUTIONS

SEC. 581. Title XV of the International Financial Institutions Act (22 U.S.C. 2620–2620–2) is amended by adding at the end the following:

“SEC. 1504. ADMINISTRATIVE PROVISIONS.

22 USC 262o–3.

“(a) **ACHIEVEMENT OF CERTAIN POLICY GOALS.**—The Secretary of the Treasury should instruct the United States Executive Director at each multilateral development institution to inform the institution of the following United States policy goals, and use the voice and vote of the United States to achieve the goals at the institution before June 30, 2005:

“(1) No later than 60 calendar days after the Board of Directors of the institution approves the minutes of a Board meeting, the institution shall post on its website an electronic version of the minutes, with material deemed too sensitive for public distribution redacted. Deadline.

“(2) The institution shall keep a written transcript or electronic recording of each meeting of its Board of Directors and preserve the transcript or recording for at least 10 years after the meeting. Records.

“(3) All public sector loan, credit and grant documents, country assistance strategies, sector strategies, and sector policies prepared by the institution and presented for endorsement or approval by its Board of Directors, with materials deemed too sensitive for public distribution redacted or withheld, shall be made available to the public 15 calendar days before consideration by the Board or, if not then available, when the documents are distributed to the Board. Such documents shall include the resources and conditionality necessary to ensure that the borrower complies with applicable laws in carrying out the terms and conditions of such documents, strategies, or policies, including laws pertaining to the integrity and transparency of the process such as public consultation, and to public health and safety and environmental protection.

“(4) The institution shall post on its website an annual report containing statistical summaries and case studies of the fraud and corruption cases pursued by its investigations unit.

“(5) The institution shall require that any health, education, or poverty-focused loan, credit, grant, document, policy, or strategy prepared by the institution includes specific outcome and output indicators to measure results, and that the indicators and results be published periodically during the execution, and at the completion, of the project or program.

“(6) The institution shall establish a plan and schedule for conducting regular, independent audits of internal management controls and procedures for meeting operational objectives, complying with Bank policies, and preventing fraud, and making reports describing the scope and findings of such audits available to the public.

“(7) The institution shall establish effective procedures for the receipt, retention, and treatment of: (A) complaints received by the Bank regarding fraud, accounting, mismanagement, internal accounting controls, or auditing matters; and (B) the confidential, anonymous submission by employees of the Bank of concerns regarding fraud, accounting, mismanagement, internal accounting controls, or auditing matters. Procedures.

“(b) Not later than September 1, 2004, and 6 months thereafter, the Secretary of the Treasury shall submit a report to the appropriate congressional committees describing the actions taken by each multilateral development institution to implement the policy Deadline.
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Deadline. goals described in subsection (a), and any further actions that need to be taken to fully implement such goals.

“(c) PUBLICATION OF WRITTEN STATEMENTS REGARDING INSPECTION MECHANISM CASES.—No later than 60 calendar days after a meeting of the Board of Directors of a multilateral development institution, the Secretary of the Treasury should provide for publication on the website of the Department of the Treasury of any written statement presented at the meeting by the United States Executive Director at the institution concerning—

“(1) a project on which a claim has been made to the inspection mechanism of the institution; or

“(2) a pending inspection mechanism case.

“(d) CONGRESSIONAL BRIEFINGS.—The Secretary of the Treasury or the designee of the Secretary should brief the appropriate congressional committees, when requested, on the steps that have been taken by the United States Executive Director at any multilateral development institution, and by any such institution, to implement the measures described in this section.

“(e) PUBLICATION OF ‘NO’ VOTES AND ABSTENTIONS BY THE UNITED STATES.—Each month, the Secretary of the Treasury should provide for posting on the website of the Department of the Treasury of a record of all ‘no’ votes and abstentions made by the United States Executive Director at any multilateral development institution on any matter before the Board of Directors of the institution.

“(f) MULTILATERAL DEVELOPMENT INSTITUTION DEFINED.—In this section, the term ‘multilateral development institution’ shall have the meaning given in section 1701(c)(3).”.

PARTICIPATION IN THE SEVENTH REPLENISHMENT OF THE RESOURCES OF THE ASIAN DEVELOPMENT FUND

SEC. 582. The Asian Development Bank Act (22 U.S.C. 285–285aa) is amended by adding at the end the following:

22 USC 285bb.

“SEC. 31. ADDITIONAL CONTRIBUTION TO SPECIAL FUNDS.

“(a) CONTRIBUTION AUTHORITY.—

“(1) IN GENERAL.—The United States Governor of the Bank may contribute on behalf of the United States an amount equal to the amount appropriated under subsection (b), pursuant to the resolution of the Bank entitled ‘Seventh Replenishment of the Asian Development Fund’.

“(2) SUBJECT TO APPROPRIATIONS.—Any commitment to make the contribution authorized by paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

“(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For the contribution authorized by subsection (a), there are authorized to be appropriated such sums as may be necessary for payment by the Secretary of the Treasury, without fiscal year limitation.”.

PARTICIPATION IN THE NINTH REPLENISHMENT OF THE RESOURCES OF THE AFRICAN DEVELOPMENT FUND

SEC. 583. The African Development Fund Act (22 U.S.C. 290g–290g–15) is amended by adding at the end the following:

22 USC 290g–16.

“SEC. 217. NINTH REPLENISHMENT.

“(a) CONTRIBUTION AUTHORITY.—

“(1) IN GENERAL.—The United States Governor of the Fund may contribute on behalf of the United States an amount equal to the amount appropriated under subsection (b), pursuant to the resolution of the Fund entitled ‘The Ninth General Replenishment of Resources of the African Development Fund’.

“(2) SUBJECT TO APPROPRIATIONS.—Any commitment to make the contribution authorized by paragraph (1) shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

“(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For the contribution authorized by subsection (a), there are authorized to be appropriated such sums as may be necessary for payment by the Secretary of the Treasury, without fiscal year limitation.”.

OVERSEAS PRIVATE INVESTMENT CORPORATION AND EXPORT-IMPORT BANK RESTRICTIONS

SEC. 584. (a) LIMITATION ON USE OF FUNDS BY OPIC.—None of the funds made available in this Act may be used by the Overseas Private Investment Corporation to insure, reinsure, guarantee, or finance any investment in connection with a project involving the mining, polishing or other processing, or sale of diamonds in a country that fails to meet the requirements of subsection (c).

(b) LIMITATION ON USE OF FUNDS BY THE EXPORT-IMPORT BANK.—None of the funds made available in this Act may be used by the Export-Import Bank of the United States to guarantee, insure, extend credit, or participate in an extension of credit in connection with the export of any goods to a country for use in an enterprise involving the mining, polishing or other processing, or sale of diamonds in a country that fails to meet the requirements of subsection (c).

(c) REQUIREMENTS.—The requirements referred to in subsections (a) and (b) are that the country concerned is implementing the recommendations, obligations and requirements developed by the Kimberley Process on conflict diamonds.

RECONCILIATION PROGRAMS

SEC. 585. Of the funds appropriated under the headings “Economic Support Fund”, not less than \$8,000,000 shall be made available to support reconciliation programs and activities which bring together individuals of different ethnic, religious, and political backgrounds from areas of civil conflict and war.

NICARAGUA

SEC. 586. Of the funds appropriated under the headings “Development Assistance” and “Child Survival and Health Programs Fund”, not less than \$35,000,000 shall be made available for assistance for Nicaragua.

DISABILITY ACCESS

SEC. 587. The Administrator of the United States Agency for International Development (“USAID”) shall seek to ensure that programs, projects, and activities administered by USAID in Afghanistan comply fully with USAID’s “Policy Paper: Disability” issued on September 12, 1997: *Provided*, That the Administrator shall submit a report to the Committees on Appropriations not

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later than December 31, 2004, describing the manner in which the needs of people with disabilities were met in the development and implementation of USAID programs, projects, and activities in Afghanistan in fiscal year 2004: *Provided further*, That the Administrator, not later than 180 days after enactment of this Act and in consultation, as appropriate, with other appropriate departments and agencies, the Architectural and Transportation Barriers Compliance Board, and nongovernmental organizations with expertise in the needs of people with disabilities, shall develop and implement appropriate standards for access for people with disabilities for construction projects funded by USAID.

TRADE CAPACITY BUILDING

SEC. 588. Of the funds appropriated by this Act, under the headings “Trade and Development Agency”, “Development Assistance”, “Transition Initiatives”, “Economic Support Fund”, “International Affairs Technical Assistance”, and “International Organizations and Programs”, not less than \$503,000,000 should be made available for trade capacity building assistance.

WAR CRIMES IN AFRICA

SEC. 589. (a) The Congress recognizes the important contribution that the democratically elected Government of Nigeria has played in fostering stability in West Africa, including reaching an agreement with the Government of Liberia to provide relief and promote reconciliation in that nation. The Congress also recognizes the important contributions of other African nations and supports continued assistance aimed at resolving the conflicts that have destabilized West Africa and the Great Lakes region.

(b) The Congress reaffirms its support for the efforts of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) to bring to justice individuals responsible for war crimes and crimes against humanity in a timely manner.

(c) Funds appropriated by this Act, including funds for debt restructuring, may be made available for assistance to the central government of a country in which individuals indicted by ICTR and SCSL are credibly alleged to be living, if the Secretary of State determines and reports to the Committees on Appropriations that such government is cooperating with ICTR and SCSL, including the surrender and transfer of indictees in a timely manner: *Provided*, That this subsection shall not apply to assistance provided under section 551 of the Foreign Assistance Act of 1961 or to project assistance under title II of this Act: *Provided further*, That the United States shall use its voice and vote in the United Nations Security Council to fully support efforts by ICTR and SCSL to bring to justice individuals indicted by such tribunals in a timely manner.

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(d) The prohibition in subsection (c) may be waived on a country by country basis if the President determines that doing so is in the national security interest of the United States: *Provided*, That prior to exercising such waiver authority, the President shall report to the Committees on Appropriations, in classified form if necessary, on: (1) the steps being taken to obtain the cooperation of the government in surrendering the indictee in question to SCSL or

ICTR; (2) a strategy for bringing the indictee before ICTR or SCSL; and (3) the justification for exercising the waiver authority.

(e) Of the funds made available under the heading “Economic Support Fund” in Public Law 108–7, not less than \$5,000,000 shall be made available during fiscal year 2004 for a contribution to the Special Court of Sierra Leone: *Provided*, That funds made available under the previous proviso shall be disbursed no later than 30 days after enactment of this Act.

Deadline.

REPORT ON ADMISSION OF REFUGEES

SEC. 590. (a) The Secretary of State shall utilize private voluntary organizations with expertise in the protection needs of refugees in the processing of refugees overseas for admission and resettlement to the United States, and shall utilize such agencies in addition to the United Nations High Commissioner for Refugees in the identification and referral of refugees.

(b) The Secretary of State should establish a system for accepting referrals of appropriate candidates for resettlement from local private, voluntary organizations and work to ensure that particularly vulnerable refugee groups receive special consideration for admission into the United States, including—

- (1) long-stayers in countries of first asylum;
- (2) unaccompanied refugee minors;
- (3) refugees outside traditional camp settings; and
- (4) refugees in woman-headed households.

(c) The Secretary of State shall give special consideration to—

- (1) refugees of all nationalities who have close family ties to citizens and residents of the United States; and
- (2) other groups of refugees who are of special concern to the United States.

(d) Not later than 120 days after the date of enactment of this Act, the Secretary of State shall submit a report to the Committees on Appropriations describing the steps that have been taken to implement this section.

Deadline.

POST DIFFERENTIALS AND DANGER PAY ALLOWANCES

SEC. 591. (a) Section 5925(a) of title 5, United States Code, is amended in the third sentence by inserting after “25 percent of the rate of basic pay” the following: “or, in the case of an employee of the United States Agency for International Development, 35 percent of the rate of basic pay”.

(b) Section 5928 of title 5, United States Code, is amended by inserting after “25 percent of the basic pay of the employee” both places it appears the following: “or 35 percent of the basic pay of the employee in the case of an employee of the United States Agency for International Development”.

(c) Except for employees of the United States Agency for International Development stationed in Iraq and Afghanistan, the amendments made by subsections (a) and (b) shall not take effect until the same authority is enacted for employees of the Department of State.

5 USC 5925 note.

REPORT ON AZERBAIJAN

SEC. 592. Not later than 90 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Attorney

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General, shall submit a report to the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives on the investigation of the murder of United States democracy worker John Alvis. Such report shall include—

(1) a description of the steps taken by the Government of Azerbaijan to further such investigation and bring to justice those responsible for the murder of John Alvis;

(2) a description of the actions of the Government of Azerbaijan to cooperate with United States agencies involved in such investigation; and

(3) any recommendations of the Secretary for furthering progress of such investigation.

DESIGNATION OF THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA UNDER THE INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT

SEC. 593. The International Organizations Immunities Act (22 U.S.C. 288 et seq.) is amended by adding at the end the following new section:

22 USC 288f-6.

“SEC. 16. The provisions of this title may be extended to the Global Fund to Fight AIDS, Tuberculosis and Malaria in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.”.

CODE OF CONDUCT

SEC. 594. (a) None of the funds made available by title II under the heading “MIGRATION AND REFUGEE ASSISTANCE” or “TRANSITION INITIATIVES” to provide assistance to refugees or internally displaced persons may be provided to an organization that has failed to adopt a code of conduct consistent with the Inter-Agency Standing Committee Task Force on Protection From Sexual Exploitation and Abuse in Humanitarian Crises six core principles for the protection of beneficiaries of humanitarian assistance.

(b) In administering the amounts made available for the accounts described in subsection (a), the Secretary of State and Administrator of the United States Agency for International Development shall incorporate specific policies and programs for the purpose of identifying specific needs of, and particular threats to, women and children at the various stages of humanitarian emergencies, especially at the onset of such emergency.

(c) Not later than 90 days after the date of enactment of this Act, the Secretary of State shall submit to the Committee on Foreign Relations of the Senate, the Committee on International Relations of the House of Representatives and the Committees on Appropriations a report on activities of the Government of the United States to protect women and children affected by humanitarian emergencies. The report shall include—

(1) an assessment of the specific protection needs of women and children at the various stages of humanitarian emergencies;

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(2) a description of which agencies and offices of the United States Government are responsible for addressing each aspect of such needs and threats; and

(3) guidelines and recommendations for improving United States and international systems for the protection of women and children during humanitarian emergencies.

ASSISTANCE FOR HIV/AIDS

SEC. 595. The United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (117 Stat. 711; 22 U.S.C. 7601 et seq.) is amended—

(1) in section 202(d)(4)(A), by adding at the end the following new clause: 22 USC 7622.

“(vi) for the purposes of clause (i), ‘funds contributed to the Global Fund from all sources’ means funds contributed to the Global Fund at any time during fiscal years 2004 through 2008 that are not contributed to fulfill a commitment made for a fiscal year prior to fiscal year 2004.”;

(2) in section 202(d)(4)(B), by adding at the end the following new clause:

“(iv) Notwithstanding clause (i), after July 31 of each of the fiscal years 2004 through 2008, any amount made available under this subsection that is withheld by reason of subparagraph (A)(i) is authorized to be made available to carry out sections 104A, 104B, and 104C of the Foreign Assistance Act of 1961 (as added by title III of this Act).”; and

(3) in section 301(f), by inserting “, except that this subsection shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency” after “trafficking”. 22 USC 7631.

TECHNICAL CORRECTION RELATING TO THE ENHANCED HIPC INITIATIVE

SEC. 596. Section 1625(a)(1)(B)(ii) of the International Financial Institutions Act (as added by section 501 of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108–25)) is amended by striking “subparagraph (A)” and inserting “clause (i)”. 22 USC 262p–8.

INDONESIA

SEC. 597. (a) Funds appropriated by this Act under the heading “Foreign Military Financing Program” may be made available for assistance for Indonesia, and licenses may be issued for the export of lethal defense articles for the Indonesian Armed Forces, only if the President certifies to the appropriate congressional committees that— President. Certification.

(1) the Indonesia Minister of Defense is suspending from the Armed Forces those members, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, or to have aided or abetted militia groups;

(2) the Indonesian Government is prosecuting those members of the Indonesian Armed Forces, of whatever rank, who

have been credibly alleged to have committed gross violations of human rights, or to have aided or abetted militia groups, and is punishing those members of the Indonesian Armed Forces found to have committed such violations of human rights or to have aided or abetted militia groups;

(3) the Indonesian Armed Forces are cooperating with civilian prosecutors and judicial authorities in Indonesia and with the joint United Nations-East Timor Serious Crimes Unit (SCU) in such cases (including extraditing those indicted by the SCU to East Timor and providing access to witnesses, relevant military documents, and other requested information); and

(4) the Minister of Defense is making publicly available audits of receipts and expenditures of the Indonesian Armed Forces.

(b) Congress notes that the Indonesian Government and Armed Forces have pledged to cooperate with the Federal Bureau of Investigation with respect to its investigation into the August 31, 2002, murders of two American citizens and one Indonesian citizen in Timika, Indonesia. Therefore, funds appropriated under the heading “INTERNATIONAL MILITARY EDUCATION AND TRAINING” may be made available for Indonesia if the Secretary of State determines and reports to the appropriate congressional committees that the Indonesian Government and Armed Forces are cooperating with the Federal Bureau of Investigation’s investigation: *Provided*, That this restriction shall not apply to expanded international military education and training, which may include English language training.

RELIGIOUS FREEDOM REPORT

SEC. 598. The assessment and description of violations of religious freedom contained in the report required by section 102(b)(1)(B) of the International Religious Freedom Act of 1998 (22 U.S.C. 6412(b)(1)(B)) shall include a description of persecution targeted at specific religions, including acts of anti-Semitism, by individuals or organizations designated as terrorist organizations by the Secretary of State under section 219 of the Immigration and Nationality Act, as amended.

DELIVERY OF ASSISTANCE BY AIR

SEC. 599A. The Secretary of State and the Administrator of the United States Agency for International Development shall seek to ensure that, where appropriate, dedicated air service is provided for transportation to areas where scheduled air service is not adequate to meet assistance requirements on a timely basis: *Provided*, That to the maximum extent practicable and in a manner consistent with the use of full and open competition (as that term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)), contracts for such dedicated air service shall be entered into with United States air carriers.

MODIFICATION ON REPORTING REQUIREMENTS

SEC. 599B. (a) Section 3204(f) of the Emergency Supplemental Act, 2000 (Public Law 106–246) is amended—

(1) in the heading, by striking “BIMONTHLY” and inserting “QUARTERLY”;

(2) by striking “60” and inserting “90”; and

(3) by striking “Congress” and inserting “the appropriate congressional committees”.

(b) The report required by section 3204(e) of the Emergency Supplemental Act, 2000 (Public Law 106–246) is amended by striking “Congress” and inserting “the appropriate congressional committees”.

114 Stat. 576.

(c) Subsection (a) of section 803 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001, Appendix A of Public Law 106–429 (as enacted by section 101(a) of such Public Law) is hereby repealed.

22 USC 262r–6.

CPA DETAILEES

SEC. 599C. The Office of Personnel Management shall provide the House and Senate Committees on Appropriations a report of the number of Federal employees detailed from each executive agency to the Coalition Provisional Authority in Iraq on the date of enactment of this Act: *Provided*, That the report shall identify by agency the number of non-reimbursable and reimbursable detailees and shall be submitted to the House and Senate Committees on Appropriations by February 1, 2004: *Provided further*, That the report shall be updated and submitted on a quarterly basis until May, 2005.

Reports.

Deadline.

TITLE VI—MILLENNIUM CHALLENGE ACT OF 2003

Millennium
Challenge Act of
2003.

SEC. 601. SHORT TITLE.

This title may be cited as the “Millennium Challenge Act of 2003”.

22 USC 7701
note.

SEC. 602. PURPOSES.

The purposes of this title are—

(1) to provide United States assistance for global development through the Millennium Challenge Corporation, as described in section 604; and

(2) to provide such assistance in a manner that promotes economic growth and the elimination of extreme poverty and strengthens good governance, economic freedom, and investments in people.

22 USC 7701.

SEC. 603. DEFINITIONS.

22 USC 7702.

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on International Relations and the Committee on Appropriations of the House of Representatives; and

(B) the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(2) BOARD.—The term “Board” means the Board of Directors of the Corporation established pursuant to section 604(c).

(3) CANDIDATE COUNTRY.—The term “candidate country” means a country that meets the requirements of section 606.

(4) CHIEF EXECUTIVE OFFICER.—The term “Chief Executive Officer” means the chief executive officer of the Corporation appointed pursuant to section 604(b).

(5) COMPACT.—The term “Compact” means a Millennium Challenge Compact described in section 609.

(6) CORPORATION.—The term “Corporation” means the Millennium Challenge Corporation established by section 604(a).

(7) ELIGIBLE COUNTRY.—The term “eligible country” means a candidate country that is determined, under section 607, to be an eligible country to receive assistance under section 605.

22 USC 7703.

SEC. 604. ESTABLISHMENT AND MANAGEMENT OF THE MILLENNIUM CHALLENGE CORPORATION.

(a) ESTABLISHMENT.—There is established in the executive branch a corporation to be known as the “Millennium Challenge Corporation” that shall be responsible for carrying out this title. The Corporation shall be a government corporation, as defined in section 103 of title 5, United States Code.

(b) CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—There shall be in the Corporation a Chief Executive Officer who shall be responsible for the management of the Corporation.

(2) APPOINTMENT.—

President.

(A) IN GENERAL.—Except as provided in subparagraph (B), the Chief Executive Officer shall be appointed by the President, by and with the advice and consent of the Senate.

(B) INTERIM CEO.—The members of the Board of Directors described in subsection (c)(3)(A) may designate by unanimous consent in writing an individual who is an officer within any Federal department or agency (and who has been appointed to such position by the President, by and with the advice and consent of the Senate) to carry out the duties described in this subsection until the Chief Executive Officer is appointed pursuant to subparagraph (A).

(3) RELATIONSHIP TO BOARD.—The Chief Executive Officer shall report to and be under the direct authority of the Board.

(4) COMPENSATION AND RANK.—

(A) IN GENERAL.—The Chief Executive Officer shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code, and shall have the equivalent rank of Deputy Secretary.

(B) AMENDMENT.—Section 5313 of title 5, United States Code, is amended by adding at the end the following: “Chief Executive Officer, Millennium Challenge Corporation.”

(5) AUTHORITIES AND DUTIES.—The Chief Executive Officer shall be responsible for the management of the Corporation and shall exercise the powers and discharge the duties of the Corporation.

(6) AUTHORITY TO APPOINT OFFICERS.—In consultation and with approval of the Board, the Chief Executive Officer shall appoint all officers of the Corporation.

(c) BOARD OF DIRECTORS.—

(1) ESTABLISHMENT.—There shall be in the Corporation a Board of Directors.

(2) DUTIES.—The Board shall perform the functions specified to be carried out by the Board in this title and may prescribe, amend, and repeal bylaws, rules, regulations, and procedures governing the manner in which the business of the Corporation may be conducted and in which the powers granted to it by law may be exercised.

(3) MEMBERSHIP.—The Board shall consist of—

(A) the Secretary of State, the Secretary of the Treasury, the Administrator of the United States Agency for International Development, the Chief Executive Officer of the Corporation, and the United States Trade Representative; and

(B) four other individuals with relevant international experience who shall be appointed by the President, by and with the advice and consent of the Senate, of which—

(i) one individual should be appointed from among a list of individuals submitted by the majority leader of the House of Representatives;

(ii) one individual should be appointed from among a list of individuals submitted by the minority leader of the House of Representatives;

(iii) one individual should be appointed from among a list of individuals submitted by the majority leader of the Senate; and

(iv) one individual should be appointed from among a list of individuals submitted by the minority leader of the Senate.

(4) TERMS.—

(A) OFFICERS OF THE FEDERAL GOVERNMENT.—Each member of the Board described in paragraph (3)(A) shall serve for a term that is concurrent with the term of service of the individual's position as an officer within the other Federal department or agency.

(B) OTHER MEMBERS.—Each member of the Board described in paragraph (3)(B) shall be appointed for a term of 3 years and may be reappointed for a term of an additional 2 years.

(C) VACANCIES.—A vacancy in the Board shall be filled in the manner in which the original appointment was made.

(5) CHAIRPERSON.—There shall be a Chairperson of the Board. The Secretary of State shall serve as the Chairperson.

(6) QUORUM.—A majority of the members of the Board shall constitute a quorum, which, except with respect to a meeting of the Board during the 135-day period beginning on the date of the enactment of this Act, shall include at least one member of the Board described in paragraph (3)(B).

(7) MEETINGS.—The Board shall meet at the call of the Chairperson.

(8) COMPENSATION.—

(A) OFFICERS OF THE FEDERAL GOVERNMENT.—

(i) IN GENERAL.—A member of the Board described in paragraph (3)(A) may not receive additional pay, allowances, or benefits by reason of the member's service on the Board.

(ii) **TRAVEL EXPENSES.**—Each such member of the Board shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(B) **OTHER MEMBERS.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), a member of the Board described in paragraph (3)(B)—

(I) shall be paid compensation out of funds made available for the purposes of this title at the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties as a member of the Board; and

(II) while away from the member's home or regular place of business on necessary travel in the actual performance of duties as a member of the Board, shall be paid per diem, travel, and transportation expenses in the same manner as is provided under subchapter I of chapter 57 of title 5, United States Code.

(ii) **LIMITATION.**—A member of the Board may not be paid compensation under clause (i)(II) for more than 90 days in any calendar year.

22 USC 7704.

SEC. 605. AUTHORIZATION OF ASSISTANCE.

(a) **ASSISTANCE.**—Notwithstanding any other provision of law (other than a provision of this title), the Board, acting through the Chief Executive Officer, is authorized to provide assistance under this section for each country that enters into a Millennium Challenge Compact with the United States pursuant to section 609 to support policies and programs that advance the progress of the country in achieving lasting economic growth and poverty reduction and are in furtherance of the purposes of this title.

(b) **FORM OF ASSISTANCE.**—Assistance under this section may be provided in the form of grants, cooperative agreements, or contracts to or with eligible entities described in subsection (c). Assistance under this section may not be provided in the form of loans.

(c) **ELIGIBLE ENTITIES.**—An eligible entity referred to in subsection (b) is—

(1) the national government of the eligible country;

(2) regional or local governmental units of the country;

or

(3) a nongovernmental organization or a private entity.

(d) **APPLICATION.**—The Chief Executive Officer, in consultation with the Board and working with eligible countries selected by the Board for negotiation of Compacts, should develop and recommend procedures for considering solicited and unsolicited proposals in Compacts prior to an approval of the Compacts by the Board.

(e) **LIMITATIONS.**—

(1) **PROHIBITION ON MILITARY ASSISTANCE AND TRAINING.**—Assistance under this section may not include military assistance or military training for a country.

(2) **PROHIBITION ON ASSISTANCE RELATING TO UNITED STATES JOB LOSS OR PRODUCTION DISPLACEMENT.**—Assistance under

this section may not be provided for any project that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production.

(3) PROHIBITION ON ASSISTANCE RELATING TO ENVIRONMENTAL, HEALTH, OR SAFETY HAZARDS.—Assistance under this section may not be provided for any project that is likely to cause a significant environmental, health, or safety hazard.

(4) PROHIBITION ON USE OF FUNDS FOR ABORTIONS AND INVOLUNTARY STERILIZATIONS.—The prohibitions on use of funds contained in paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)–(3)) shall apply to funds made available to carry out this section to the same extent and in the same manner as such prohibitions apply to funds made available to carry out part I of such Act. The prohibition on use of funds contained in any provision of law comparable to the eleventh and fourteenth provisos under the heading “Child Survival and Health Programs Fund” of division E of Public Law 108–7 (117 Stat. 162) shall apply to funds made available to carry out this section for fiscal year 2004.

Applicability.

(f) COORDINATION.—The provision of assistance under this section shall be coordinated with other United States foreign assistance programs.

SEC. 606. CANDIDATE COUNTRIES.

22 USC 7705.

(a) LOW INCOME COUNTRIES.—

(1) FISCAL YEAR 2004.—A country shall be a candidate country for purposes of eligibility for assistance for fiscal year 2004 if—

(A) the country is eligible for assistance from the International Development Association, and the per capita income of the country is equal to or less than the historical ceiling of the International Development Association for that year, as defined by the International Bank for Reconstruction and Development; and

(B) subject to paragraph (3), the country is not ineligible to receive United States economic assistance under part I of the Foreign Assistance Act of 1961 by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law.

(2) FISCAL YEAR 2005 AND SUBSEQUENT FISCAL YEARS.—A country shall be a candidate country for purposes of eligibility for assistance for fiscal year 2005 or a subsequent fiscal year if—

(A) the per capita income of the country is equal to or less than the historical ceiling of the International Development Association for the fiscal year involved, as defined by the International Bank for Reconstruction and Development; and

(B) the country meets the requirements of paragraph (1)(B).

(3) RULE OF CONSTRUCTION.—For the purposes of determining whether a country is eligible for receiving assistance under section 605 pursuant to paragraph (1)(B), the exercise by the President, the Secretary of State, or any other officer or employee of the United States of any waiver or suspension of any provision of law referred to in such paragraph, and

notification to the appropriate congressional committees in accordance with such provision of law, shall be construed as satisfying the requirement of such paragraph.

(b) LOWER MIDDLE INCOME COUNTRIES.—

(1) IN GENERAL.—In addition to countries described in subsection (a), a country shall be a candidate country for purposes of eligibility for assistance for fiscal year 2006 or a subsequent fiscal year if the country—

(A) is classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and has an income greater than the historical ceiling for International Development Association eligibility for the fiscal year involved; and

(B) meets the requirements of subsection (a)(1)(B).

(2) LIMITATION.—The total amount of assistance provided to countries described in paragraph (1) for fiscal year 2006 or any subsequent fiscal year may not exceed 25 percent of the total amount of assistance provided to all countries under section 605 for fiscal year 2006 or the subsequent fiscal year, as the case may be.

(c) IDENTIFICATION BY THE BOARD.—The Board shall identify whether a country is a candidate country for purposes of this section.

22 USC 7706.

SEC. 607. ELIGIBLE COUNTRIES.

(a) DETERMINATION BY THE BOARD.—The Board shall determine whether a candidate country is an eligible country for purposes of this section. Such determination shall be based, to the maximum extent possible, upon objective and quantifiable indicators of a country's demonstrated commitment to the criteria in subsection (b), and shall, where appropriate, take into account and assess the role of women and girls.

(b) CRITERIA.—A candidate country should be considered to be an eligible country for purposes of this section if the Board determines that the country has demonstrated a commitment to—

(1) just and democratic governance, including a demonstrated commitment to—

(A) promote political pluralism, equality, and the rule of law;

(B) respect human and civil rights, including the rights of people with disabilities;

(C) protect private property rights;

(D) encourage transparency and accountability of government; and

(E) combat corruption;

(2) economic freedom, including a demonstrated commitment to economic policies that—

(A) encourage citizens and firms to participate in global trade and international capital markets;

(B) promote private sector growth and the sustainable management of natural resources;

(C) strengthen market forces in the economy; and

(D) respect worker rights, including the right to form labor unions; and

(3) investments in the people of such country, particularly women and children, including programs that—

(A) promote broad-based primary education; and

(B) strengthen and build capacity to provide quality public health and reduce child mortality.

(c) SELECTION BY THE BOARD.—

(1) IN GENERAL.—At the time the Board determines eligible countries under this section for a fiscal year, the Board shall select those eligible countries with respect to which the United States will initially seek to enter into a Millennium Challenge Compact pursuant to section 609.

(2) FACTORS.—In selecting eligible countries under paragraph (1), the Board shall consider the following factors:

(A) The extent to which the country clearly meets or exceeds the eligibility criteria.

(B) The opportunity to reduce poverty and generate economic growth in the country.

(C) The availability of amounts to carry out this title.

(d) ESTABLISHMENT OF CRITERIA AND METHODOLOGY.—The criteria and methodology submitted by the Board to Congress and published in the Federal Register under section 608(b)(2) with respect to a fiscal year shall remain fixed for purposes of eligibility determinations for such year.

(e) ANNUAL MODIFICATION OF CRITERIA AND METHODOLOGY.—As appropriate, the Board, acting through the Chief Executive Officer, shall review the eligibility criteria and methodology and modify such criteria and methodology in subsequent years consistent with section 608(b).

SEC. 608. CONGRESSIONAL AND PUBLIC NOTIFICATION OF CANDIDATE COUNTRIES, ELIGIBILITY CRITERIA, AND ELIGIBLE COUNTRIES. 22 USC 7707.

(a) IDENTIFICATION OF CANDIDATE COUNTRIES.—Not later than 90 days prior to the date on which the Board determines eligible countries under section 607 for a fiscal year, the Chief Executive Officer— Deadline.

(1) shall prepare and submit to the appropriate congressional committees a report that contains a list of all candidate countries identified under section 606, and all countries that would be candidate countries if the countries met the requirement contained in section 606(a)(1)(B), for the fiscal year; and Reports.

(2) shall publish in the Federal Register the information contained in the report described in paragraph (1). Federal Register, publication.

(b) IDENTIFICATION OF ELIGIBILITY CRITERIA AND METHODOLOGY.—Not later than 60 days prior to the date on which the Board determines eligible countries under section 607 for a fiscal year, the Chief Executive Officer— Deadline.

(1) shall prepare and submit to the appropriate congressional committees a report that contains a list of the criteria and methodology described in subsections (a) and (b) of section 607 that will be used to determine eligibility for each candidate country identified under subsection (a); Reports.

(2) shall publish in the Federal Register the information contained in the report described in paragraph (1); and Federal Register, publication.

(3) may conduct one or more public hearings on the eligibility criteria and methodology.

(c) PUBLIC COMMENT AND CONGRESSIONAL CONSULTATION.—

(1) **PUBLIC COMMENT.**—The Chief Executive Officer shall, for the 30-day period beginning on the date of publication in the Federal Register of the information contained in the report described in subsection (b)(1), accept public comment and consider such comment for purposes of determining eligible countries under section 607.

(2) **CONGRESSIONAL CONSULTATION.**—The Chief Executive Officer shall consult with the appropriate congressional committees on the extent to which the candidate countries meet the criteria described in section 607(b).

Deadline. (d) **IDENTIFICATION OF ELIGIBLE COUNTRIES.**—Not later than 5 days after the date on which the Board determines eligible countries under section 607 for a fiscal year, the Chief Executive Officer—

Reports. (1) shall prepare and submit to the appropriate congressional committees a report that contains a list of all such eligible countries, an identification of those countries on such list with respect to which the Board will seek to enter into a Compact under section 609, and a justification for such eligibility determination and selection for Compact negotiation; and

Federal Register, publication. (2) shall publish in the Federal Register the information contained in the report described in paragraph (1).

22 USC 7708.

SEC. 609. MILLENNIUM CHALLENGE COMPACT.

(a) **COMPACT.**—The Board, acting through the Chief Executive Officer of the Corporation, may provide assistance for an eligible country only if the country enters into an agreement with the United States, to be known as a “Millennium Challenge Compact”, that establishes a multi-year plan for achieving shared development objectives in furtherance of the purposes of this title.

(b) **ELEMENTS.**—

(1) **IN GENERAL.**—The Compact should take into account the national development strategy of the eligible country and shall contain—

(A) the specific objectives that the country and the United States expect to achieve during the term of the Compact;

(B) the responsibilities of the country and the United States in the achievement of such objectives;

(C) regular benchmarks to measure, where appropriate, progress toward achieving such objectives;

(D) an identification of the intended beneficiaries, disaggregated by income level, gender, and age, to the maximum extent practicable;

(E) a multi-year financial plan, including the estimated amount of contributions by the Corporation and the country and proposed mechanisms to implement the plan and provide oversight, that describes how the requirements of subparagraphs (A) through (D) will be met, including identifying the role of civil society in the achievement of such requirements;

(F) where appropriate, a description of the current and potential participation of other donors in the achievement of such objectives;

(G) a plan to ensure appropriate fiscal accountability for the use of assistance provided under section 605;

(H) where appropriate, a process or processes for consideration of solicited proposals under the Compact as well as a process for consideration of unsolicited proposals by the Corporation and national, regional, or local units of government;

(I) a requirement that open, fair, and competitive procedures are used in a transparent manner in the administration of grants or cooperative agreements or the procurement of goods and services for the accomplishment of objectives under the Compact;

(J) the strategy of the eligible country to sustain progress made toward achieving such objectives after expiration of the Compact; and

(K) a description of the role of the United States Agency for International Development in any design, implementation, and monitoring of programs and activities funded under the Compact.

(2) LOWER MIDDLE INCOME COUNTRIES.—In addition to the elements described in subparagraphs (A) through (K) of paragraph (1), with respect to a lower middle income country described in section 606(b), the Compact shall identify a contribution, as appropriate, from the country relative to its national budget, taking into account the prevailing economic conditions, toward meeting the objectives of the Compact. Any such contribution should be in addition to government spending allocated for such purposes in the country's budget for the year immediately preceding the establishment of the Compact and should continue for the duration of the Compact.

(3) DEFINITION.—In this subsection, the term “national development strategy” means any strategy to achieve market-driven economic growth and eliminate extreme poverty that has been developed by the government of the country in consultation with a wide variety of civic participation, including nongovernmental organizations, private and voluntary organizations, academia, women's and student organizations, local trade and labor unions, and the business community.

(c) ADDITIONAL PROVISION RELATING TO PROHIBITION ON TAXATION.—In addition to the elements described in subsection (c), each Compact shall contain a provision that states that assistance provided by the United States under the Compact shall be exempt from taxation by the government of the eligible country.

(d) LOCAL INPUT.—In entering into a Compact, the United States shall seek to ensure that the government of an eligible country—

(1) takes into account the local-level perspectives of the rural and urban poor, including women, in the eligible country; and

(2) consults with private and voluntary organizations, the business community, and other donors in the eligible country.

(e) CONSULTATION.—During any discussions with a country for the purpose of entering into a Compact with the country, officials of the Corporation participating in such discussions shall, at a minimum, consult with appropriate officials of the United States Agency for International Development, particularly with those officials responsible for the appropriate region or country on development issues related to the Compact.

(f) **COORDINATION WITH OTHER DONORS.**—To the maximum extent feasible, activities undertaken to achieve the objectives of the Compact shall be undertaken in coordination with the assistance activities of other donors.

(g) **ASSISTANCE FOR DEVELOPMENT OF COMPACT.**—Notwithstanding subsection (a), the Chief Executive Officer may enter into contracts or make grants for any eligible country for the purpose of facilitating the development and implementation of the Compact between the United States and the country.

(h) **REQUIREMENT FOR APPROVAL BY THE BOARD.**—Each Compact shall be approved by the Board before the United States enters into the Compact.

Deadline. (i) **INCREASE OR EXTENSION OF ASSISTANCE UNDER A COMPACT.**—Not later than 15 days after making a determination to increase or extend assistance under a Compact with an eligible country, the Board, acting through the Chief Executive Officer—

Reports. (1) shall prepare and transmit to the appropriate congressional committees a written report and justification that contains a detailed summary of the proposed increase in or extension of assistance under the Compact and a copy of the full text of the amendment to the Compact; and

Federal Register, publication. (2) shall publish a detailed summary, full text, and justification of the proposed increase in or extension of assistance under the Compact in the Federal Register and on the Internet website of the Corporation.

(j) **DURATION OF COMPACT.**—The duration of a Compact shall not exceed 5 years.

(k) **SUBSEQUENT COMPACTS.**—An eligible country and the United States may enter into and have in effect only one Compact at any given time under this section. An eligible country and the United States may enter into one or more subsequent Compacts in accordance with the requirements of this title after the expiration of the existing Compact.

Deadlines. 22 USC 7709. **SEC. 610. CONGRESSIONAL AND PUBLIC NOTIFICATION OF COMPACT.**

(a) **CONGRESSIONAL CONSULTATION PRIOR TO COMPACT NEGOTIATIONS.**—Not later than 15 days prior to the start of negotiations of a Compact with an eligible country, the Board, acting through the Chief Executive Officer—

(1) shall consult with the appropriate congressional committees with respect to the proposed Compact negotiation; and

(2) shall identify the objectives and mechanisms to be used for the negotiation of the Compact.

(b) **CONGRESSIONAL AND PUBLIC NOTIFICATION AFTER ENTERING INTO A COMPACT.**—Not later than 10 days after entering into a Compact with an eligible country, the Board, acting through the Chief Executive Officer—

Notification. (1) shall provide notification of the Compact to the appropriate congressional committees, including a detailed summary of the Compact and a copy of the text of the Compact; and

Federal Register, publication. (2) shall publish such detailed summary and the text of the Compact in the Federal Register and on the Internet website of the Corporation.

22 USC 7710. **SEC. 611. SUSPENSION AND TERMINATION OF ASSISTANCE.**

(a) **SUSPENSION AND TERMINATION OF ASSISTANCE.**—After consultation with the Board, the Chief Executive Officer may suspend

or terminate assistance in whole or in part for a country or entity under section 605 if the Chief Executive Officer determines that—

(1) the country or entity is engaged in activities which are contrary to the national security interests of the United States;

(2) the country or entity has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of the country or entity, as the case may be; or

(3) the country or entity has failed to adhere to its responsibilities under the Compact.

(b) REINSTATEMENT.—The Chief Executive Officer may reinstate assistance for a country or entity under section 605 only if the Chief Executive Officer determines that the country or entity has demonstrated a commitment to correcting each condition for which assistance was suspended or terminated under subsection (a).

(c) CONGRESSIONAL NOTIFICATION.—Not later than 3 days after the date on which the Chief Executive Officer suspends or terminates assistance under subsection (a) for a country or entity, or reinstates assistance under subsection (b) for a country or entity, the Chief Executive Officer shall submit to the appropriate congressional committees a report that contains the determination of the Chief Executive Officer under subsection (a) or subsection (b), as the case may be.

Deadline.
Reports.

(d) RULE OF CONSTRUCTION.—The authority to suspend or terminate assistance under this section includes the authority to suspend or terminate obligations and sub-obligations.

SEC. 612. DISCLOSURE.

22 USC 7711.

(a) REQUIREMENT FOR DISCLOSURE.—The Corporation shall make available to the public on at least a quarterly basis, the following information:

Public
information.

(1) For assistance provided under section 605—

(A) the name of each entity to which assistance is provided;

(B) the amount of assistance provided to the entity; and

(C) a description of the program or project, including—
(i) a description of whether the program or project was solicited or unsolicited; and
(ii) a detailed description of the objectives and measures for results of the program or project.

(2) For funds allocated or transferred under section 619(b)—

(A) the name of each United States Government agency to which such funds are transferred or allocated;

(B) the amount of funds transferred or allocated to such agency; and

(C) a description of the program or project to be carried out by such agency with such funds.

(b) DISSEMINATION.—The information required to be disclosed under subsection (a) shall be made available to the public by means of publication in the Federal Register and on the Internet website of the Corporation, as well as by any other methods that the Board determines appropriate.

Federal Register,
publication.

SEC. 613. ANNUAL REPORT.

22 USC 7712.

(a) REPORT.—Not later than March 31, 2005, and each March 31 thereafter, the President shall submit to Congress a report

Deadline.

on the assistance provided under section 605 during the prior fiscal year.

(b) CONTENTS.—The report shall include the following:

(1) The amount of obligations and expenditures for assistance provided to each eligible country during the prior fiscal year.

(2) For each eligible country, an assessment of—

(A) the progress made during each year by the country toward achieving the objectives set out in the Compact entered into by the country; and

(B) the extent to which assistance provided under section 605 has been effective in helping the country to achieve such objectives.

(3) A description of the coordination of assistance provided under section 605 with other United States foreign assistance and related trade policies.

(4) A description of the coordination of assistance provided under section 605 with assistance provided by other donor countries.

(5) Any other information the President considers relevant with respect to assistance provided under section 605.

22 USC 7713.

SEC. 614. POWERS OF THE CORPORATION; RELATED PROVISIONS.

(a) POWERS.—The Corporation—

(1) shall have perpetual succession unless dissolved by a law enacted after the date of the enactment of this Act;

(2) may adopt, alter, and use a seal, which shall be judicially noticed;

(3) may make and perform such contracts, grants, and other agreements with any person or government however designated and wherever situated, as may be necessary for carrying out the functions of the Corporation;

(4) may determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid, including expenses for representation;

(5) may lease, purchase, or otherwise acquire, improve, and use such real property wherever situated, as may be necessary for carrying out the functions of the Corporation;

(6) may accept cash gifts or donations of services or of property (real, personal, or mixed), tangible or intangible, for the purpose of carrying out the provisions of this title;

(7) may use the United States mails in the same manner and on the same conditions as the executive departments;

(8) may contract with individuals for personal services, who shall not be considered Federal employees for any provision of law administered by the Office of Personnel Management;

(9) may hire or obtain passenger motor vehicles; and

(10) shall have such other powers as may be necessary and incident to carrying out this title.

(b) PRINCIPAL OFFICE.—The Corporation shall maintain its principal office in the metropolitan area of Washington, District of Columbia.

(c) POSITIONS WITH FOREIGN GOVERNMENTS.—When approved by the Chief Executive Officer, for purposes of implementing a Compact, employees of the Corporation (including individuals detailed to the Corporation) may accept and hold offices or positions

to which no compensation is attached with governments or governmental agencies of foreign countries or with international organizations.

(d) OTHER AUTHORITIES.—Except to the extent inconsistent with the provisions of this title, the administrative authorities contained in the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a et seq.) and the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) shall apply to the implementation of this title to the same extent and in the same manner as such authorities apply to the implementation of those Acts.

Applicability.

(e) APPLICABILITY OF GOVERNMENT CORPORATION CONTROL ACT.—

(1) IN GENERAL.—The Corporation shall be subject to chapter 91 of subtitle VI of title 31, United States Code, except that the Corporation shall not be authorized to issue obligations or offer obligations to the public.

(2) CONFORMING AMENDMENT.—Section 9101(3) of title 31, United States Code, is amended by adding at the end the following:

“(Q) the Millennium Challenge Corporation.”.

(f) INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the United States Agency for International Development shall serve as Inspector General of the Corporation, and, in acting in such capacity, may conduct reviews, investigations, and inspections of all aspects of the operations and activities of the Corporation.

(2) AUTHORITY OF THE BOARD.—In carrying out the responsibilities under this subsection, the Inspector General shall report to and be under the general supervision of the Board.

(3) REIMBURSEMENT AND AUTHORIZATION OF SERVICES.—

(A) REIMBURSEMENT.—The Corporation shall reimburse the United States Agency for International Development for all expenses incurred by the Inspector General in connection with the Inspector General’s responsibilities under this subsection.

(B) AUTHORIZATION FOR SERVICES.—Of the amount authorized to be appropriated under section 619(a) for a fiscal year, up to \$5,000,000 is authorized to be made available to the Inspector General of the United States Agency for International Development to conduct reviews, investigations, and inspections of operations and activities of the Corporation.

(g) SPECIAL ASSISTANCE.—

(1) IN GENERAL.—The Chief Executive Officer is authorized to contract with any nongovernmental organization (including a university, independent foundation, or other organization) in the United States or in a candidate country, and, where appropriate, directly with a governmental agency of any such country, that is undertaking research aimed at improving data related to eligibility criteria under this title with respect to the country.

(2) FUNDING.—Of the amount authorized to be appropriated under section 619(a) for a fiscal year, up to \$5,000,000 is authorized to be made available to carry out paragraph (1).

22 USC 7714.

SEC. 615. COORDINATION WITH UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

(a) **REQUIREMENT FOR COORDINATION.**—The Chief Executive Officer shall consult with the Administrator of the United States Agency for International Development in order to coordinate the activities of the Corporation with the activities of the Agency.

(b) **USAID PROGRAMS.**—The Administrator of the United States Agency for International Development shall seek to ensure that appropriate programs of the Agency play a primary role in preparing candidate countries to become eligible countries.

22 USC 7715.

SEC. 616. ASSISTANCE TO CERTAIN CANDIDATE COUNTRIES.

(a) **AUTHORIZATION.**—The Board, acting through the Chief Executive Officer, is authorized to provide assistance to a candidate country described in subsection (b) for the purpose of assisting such country to become an eligible country.

(b) **CANDIDATE COUNTRY DESCRIBED.**—A candidate country referred to in subsection (a) is a candidate country that—

(1) satisfies the requirements contained in subparagraphs (A) and (B) of section 606(a)(1); and

(2) demonstrates a significant commitment to meet the requirements of section 607(b) but fails to meet such requirements (including by reason of the absence or unreliability of data).

(c) **ADMINISTRATION.**—Assistance under this section may be provided through the United States Agency for International Development.

(d) **FUNDING.**—Not more than 10 percent of the amount appropriated pursuant to the authorization of appropriations under section 619(a) for fiscal year 2004 is authorized to be made available to carry out this section.

22 USC 7716.

SEC. 617. GENERAL PERSONNEL AUTHORITIES.

(a) **DETAIL OF PERSONNEL.**—Upon request of the Chief Executive Officer, the head of an agency may detail any employee of such agency to the Corporation on a reimbursable basis. Any employee so detailed remains, for the purpose of preserving such employee's allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed.

(b) **REEMPLOYMENT RIGHTS.**—

(1) **IN GENERAL.**—An employee of an agency who is serving under a career or career conditional appointment (or the equivalent), and who, with the consent of the head of such agency, transfers to the Corporation, is entitled to be reemployed in such employee's former position or a position of like seniority, status, and pay in such agency, if such employee—

(A) is separated from the Corporation for any reason, other than misconduct, neglect of duty, or malfeasance; and

Deadline.

(B) applies for reemployment not later than 90 days after the date of separation from the Corporation.

(2) **SPECIFIC RIGHTS.**—An employee who satisfies paragraph (1) is entitled to be reemployed (in accordance with such paragraph) within 30 days after applying for reemployment and, on reemployment, is entitled to at least the rate of basic pay to which such employee would have been entitled had such employee never transferred.

(c) **HIRING AUTHORITY.**—Of persons employed by the Corporation, not to exceed 30 persons may be appointed, compensated, or removed without regard to the civil service laws and regulations.

(d) **BASIC PAY.**—The Chief Executive Officer may fix the rate of basic pay of employees of the Corporation without regard to the provisions of chapter 51 of title 5, United States Code (relating to the classification of positions), subchapter III of chapter 53 of such title (relating to General Schedule pay rates), except that no employee of the Corporation may receive a rate of basic pay that exceeds the rate for level II of the Executive Schedule under section 5313 of such title.

(e) **DEFINITIONS.**—In this section—

(1) the term “agency” means an executive agency, as defined by section 105 of title 5, United States Code; and

(2) the term “detail” means the assignment or loan of an employee, without a change of position, from the agency by which such employee is employed to the Corporation.

SEC. 618. PERSONNEL OUTSIDE THE UNITED STATES.

22 USC 7717.

(a) **ASSIGNMENT TO UNITED STATES EMBASSIES.**—An employee of the Corporation, including an individual detailed to or contracted by the Corporation, may be assigned to a United States diplomatic mission or consular post or a United States Agency for International Development field mission.

(b) **PRIVILEGES AND IMMUNITIES.**—The Secretary of State shall seek to ensure that an employee of the Corporation, including an individual detailed to or contracted by the Corporation, and the members of the family of such employee, while the employee is performing duties in any country or place outside the United States, enjoy the privileges and immunities that are enjoyed by a member of the Foreign Service, or the family of a member of the Foreign Service, as appropriate, of comparable rank and salary of such employee, if such employee or a member of the family of such employee is not a national of or permanently resident in such country or place.

(c) **RESPONSIBILITY OF CHIEF OF MISSION.**—An employee of the Corporation, including an individual detailed to or contracted by the Corporation, and a member of the family of such employee, shall be subject to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) in the same manner as United States Government employees while the employee is performing duties in any country or place outside the United States if such employee or member of the family of such employee is not a national of or permanently resident in such country or place.

SEC. 619. AUTHORIZATION OF APPROPRIATIONS.

22 USC 7718.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this title such sums as may be necessary for each of the fiscal years 2004 and 2005.

(b) **ALLOCATION OF FUNDS.**—

(1) **IN GENERAL.**—The Corporation may allocate or transfer to any agency of the United States Government any of the funds available for carrying out this title. Such funds shall be available for obligation and expenditure for the purposes for which the funds were authorized, in accordance with authority granted in this title or under authority governing the activities of the United States Government agency to which such funds are allocated or transferred.

Deadline.

(2) NOTIFICATION.—The Corporation shall notify the appropriate congressional committees not less than 15 days prior to an allocation or transfer of funds pursuant to paragraph (1).

This division may be cited as the “Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004”.

Departments of
Labor, Health
and Human
Services, and
Education, and
Related Agencies
Appropriations
Act, 2004.

DIVISION E—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS, 2004

An Act

Making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2004, and for other purposes, namely:

Department of
Labor
Appropriations
Act, 2004.

TITLE I—DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

For necessary expenses of the Workforce Investment Act of 1998, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the Workforce Investment Act of 1998; \$2,697,654,000 plus reimbursements, of which \$1,666,473,000 is available for obligation for the period July 1, 2004 through June 30, 2005; except that amounts determined by the Secretary of Labor to be necessary pursuant to sections 173(a)(4)(A) and 174(c) of such Act shall be available from October 1, 2003 until expended; of which \$1,000,965,000 is available for obligation for the period April 1, 2004 through June 30, 2005, to carry out chapter 4 of the Workforce Investment Act of 1998; and of which \$30,216,000 is available for the period July 1, 2004 through June 30, 2007 for necessary expenses of construction, rehabilitation, and acquisition of Job Corps centers: *Provided*, That notwithstanding any other provision of law, of the funds provided herein under section 137(c) of the Workforce Investment Act of 1998, \$276,608,000 shall be for activities described in section 132(a)(2)(A) of such Act and \$1,180,152,000 shall be for activities described in section 132(a)(2)(B) of such Act: *Provided further*, That funds provided to carry out section 132(a)(2)(A) of the Workforce Investment Act may be used to provide assistance to a State for state-wide or local use in order to address cases where there have been worker dislocations across multiple sectors or across multiple local areas and such workers remain dislocated; coordinate the State workforce development plan with

emerging economic development needs; and train such eligible dislocated workers: *Provided further*, That \$9,039,000 shall be for carrying out section 172 of the Workforce Investment Act of 1998: *Provided further*, That, notwithstanding any other provision of law or related regulation, \$77,330,000 shall be for carrying out section 167 of the Workforce Investment Act of 1998, including \$72,213,000 for formula grants, \$4,610,000 for migrant and seasonal housing (of which not less than 70 percent shall be for permanent housing), and \$507,000 for other discretionary purposes: *Provided further*, That notwithstanding the transfer limitation under section 133(b)(4) of such Act, up to 30 percent of such funds may be transferred by a local board if approved by the Governor: *Provided further*, That funds provided to carry out section 171(d) of the Workforce Investment Act of 1998 may be used for demonstration projects that provide assistance to new entrants in the workforce and incumbent workers: *Provided further*, That funding provided to carry out projects under section 171 of the Workforce Investment Act of 1998 that are identified in the Conference Agreement, shall not be subject to the requirements of section 171(b)(2)(B) of such Act, the requirements of section 171(c)(4)(D) of such Act, the joint funding requirements of sections 171(b)(2)(A) and 171(c)(4)(A) of such Act, or any time limit requirements of sections 171(b)(2)(C) and 171(c)(4)(B) of such Act: *Provided further*, That no funds from any other appropriation shall be used to provide meal services at or for Job Corps centers.

For necessary expenses of the Workforce Investment Act of 1998, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the Workforce Investment Act of 1998; \$2,463,000,000 plus reimbursements, of which \$2,363,000,000 is available for obligation for the period October 1, 2004 through June 30, 2005, and of which \$100,000,000 is available for the period October 1, 2004 through June 30, 2007, for necessary expenses of construction, rehabilitation, and acquisition of Job Corps centers.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

To carry out title V of the Older Americans Act of 1965, as amended, \$441,253,000.

FEDERAL UNEMPLOYMENT BENEFITS AND ALLOWANCES

For payments during the current fiscal year of trade adjustment benefit payments and allowances under part I and section 246; and for training, allowances for job search and relocation, and related State administrative expenses under part II of chapter 2, title II of the Trade Act of 1974 (including the benefits and services described under sections 123(c)(2) and 151(b) and (c) of the Trade Adjustment Assistance Reform Act of 2002, Public Law 107–210), \$1,338,200,000, together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15 of the current year.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE
OPERATIONS

For authorized administrative expenses, \$142,520,000, together with not to exceed \$3,466,861,000 (including not to exceed \$1,228,000 which may be used for amortization payments to States which had independent retirement plans in their State employment service agencies prior to 1980), which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund including the cost of administering section 51 of the Internal Revenue Code of 1986, as amended, section 7(d) of the Wagner-Peyser Act, as amended, the Trade Act of 1974, as amended, the Immigration Act of 1990, and the Immigration and Nationality Act, as amended, and of which the sums available in the allocation for activities authorized by title III of the Social Security Act, as amended (42 U.S.C. 502–504), and the sums available in the allocation for necessary administrative expenses for carrying out 5 U.S.C. 8501–8523, shall be available for obligation by the States through December 31, 2004, except that funds used for automation acquisitions shall be available for obligation by the States through September 30, 2006; of which \$142,520,000, together with not to exceed \$768,257,000 of the amount which may be expended from said trust fund, shall be available for obligation for the period July 1, 2004 through June 30, 2005, to fund activities under the Act of June 6, 1933, as amended, including the cost of penalty mail authorized under 39 U.S.C. 3202(a)(1)(E) made available to States in lieu of allotments for such purpose: *Provided*, That to the extent that the Average Weekly Insured Unemployment (AWIU) for fiscal year 2004 is projected by the Department of Labor to exceed 3,227,000, an additional \$28,600,000 shall be available for obligation for every 100,000 increase in the AWIU level (including a pro rata amount for any increment less than 100,000) from the Employment Security Administration Account of the Unemployment Trust Fund: *Provided further*, That funds appropriated in this Act which are used to establish a national one-stop career center system, or which are used to support the national activities of the Federal-State unemployment insurance or immigration programs, may be obligated in contracts, grants or agreements with non-State entities: *Provided further*, That funds appropriated under this Act for activities authorized under the Wagner-Peyser Act, as amended, and title III of the Social Security Act, may be used by the States to fund integrated Employment Service and Unemployment Insurance automation efforts, notwithstanding cost allocation principles prescribed under Office of Management and Budget Circular A–87.

ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

For repayable advances to the Unemployment Trust Fund as authorized by sections 905(d) and 1203 of the Social Security Act, as amended, and to the Black Lung Disability Trust Fund as authorized by section 9501(c)(1) of the Internal Revenue Code of 1954, as amended; and for nonrepayable advances to the Unemployment Trust Fund as authorized by section 8509 of title 5, United States Code, and to the “Federal unemployment benefits and allowances” account, to remain available until September 30, 2005, \$467,000,000.

In addition, for making repayable advances to the Black Lung Disability Trust Fund in the current fiscal year after September 15, 2004, for costs incurred by the Black Lung Disability Trust Fund in the current fiscal year, such sums as may be necessary.

PROGRAM ADMINISTRATION

For expenses of administering employment and training programs, \$115,824,000, including \$2,393,000 to administer welfare-to-work grants, together with not to exceed \$57,820,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

EMPLOYEE BENEFITS SECURITY ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employee Benefits Security Administration, \$124,962,000.

PENSION BENEFIT GUARANTY CORPORATION

PENSION BENEFIT GUARANTY CORPORATION FUND

The Pension Benefit Guaranty Corporation is authorized to make such expenditures, including financial assistance authorized by section 104 of Public Law 96–364, within limits of funds and borrowing authority available to such Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended (31 U.S.C. 9104), as may be necessary in carrying out the program, including associated administrative expenses, through September 30, 2004 for such Corporation: *Provided*, That none of the funds available to the Corporation for fiscal year 2004 shall be available for obligations for administrative expenses in excess of \$228,772,000: *Provided further*, That obligations in excess of such amount may be incurred after approval by the Office of Management and Budget and the Committees on Appropriations of the House and Senate.

EMPLOYMENT STANDARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employment Standards Administration, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, \$392,872,000, together with \$2,036,000 which may be expended from the Special Fund in accordance with sections 39(c), 44(d) and 44(j) of the Longshore and Harbor Workers' Compensation Act: *Provided*, That \$1,250,000 shall be for the development of an alternative system for the electronic submission of reports required to be filed under the Labor-Management Reporting and Disclosure Act of 1959, as amended, and for a computer database of the information for each submission by whatever means, that is indexed and easily searchable by the public via the Internet: *Provided further*, That the Secretary of Labor is authorized to accept, retain, and spend, until expended, in the name of the Department of Labor, all sums of money ordered to be paid to

the Secretary of Labor, in accordance with the terms of the Consent Judgment in Civil Action No. 91–0027 of the United States District Court for the District of the Northern Mariana Islands (May 21, 1992): *Provided further*, That the Secretary of Labor is authorized to establish and, in accordance with 31 U.S.C. 3302, collect and deposit in the Treasury fees for processing applications and issuing certificates under sections 11(d) and 14 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 211(d) and 214) and for processing applications and issuing registrations under title I of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

SPECIAL BENEFITS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation, benefits, and expenses (except administrative expenses) accruing during the current or any prior fiscal year authorized by title 5, chapter 81 of the United States Code; continuation of benefits as provided for under the heading “Civilian War Benefits” in the Federal Security Agency Appropriation Act, 1947; the Employees’ Compensation Commission Appropriation Act, 1944; sections 4(c) and 5(f) of the War Claims Act of 1948 (50 U.S.C. App. 2012); and 50 percent of the additional compensation and benefits required by section 10(h) of the Longshore and Harbor Workers’ Compensation Act, as amended, \$163,000,000, together with such amounts as may be necessary to be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to August 15 of the current year: *Provided*, That amounts appropriated may be used under section 8104 of title 5, United States Code, by the Secretary of Labor to reimburse an employer, who is not the employer at the time of injury, for portions of the salary of a reemployed, disabled beneficiary: *Provided further*, That balances of reimbursements unobligated on September 30, 2003, shall remain available until expended for the payment of compensation, benefits, and expenses: *Provided further*, That in addition there shall be transferred to this appropriation from the Postal Service and from any other corporation or instrumentality required under section 8147(c) of title 5, United States Code, to pay an amount for its fair share of the cost of administration, such sums as the Secretary determines to be the cost of administration for employees of such fair share entities through September 30, 2004: *Provided further*, That of those funds transferred to this account from the fair share entities to pay the cost of administration of the Federal Employees’ Compensation Act, \$39,315,000 shall be made available to the Secretary as follows: (1) for enhancement and maintenance of automated data processing systems and telecommunications systems, \$11,618,000; (2) for automated workload processing operations, including document imaging, centralized mail intake and medical bill processing, \$14,496,000; (3) for periodic roll management and medical review, \$13,201,000; and (4) the remaining funds shall be paid into the Treasury as miscellaneous receipts: *Provided further*, That the Secretary may require that any person filing a notice of injury or a claim for benefits under chapter 81 of title 5, United States Code, or 33 U.S.C. 901 et seq., provide as part of such notice and claim, such identifying information (including Social Security account number) as such regulations may prescribe.

SPECIAL BENEFITS FOR DISABLED COAL MINERS

For carrying out title IV of the Federal Mine Safety and Health Act of 1977, as amended by Public Law 107–275, (the “Act”), \$300,000,000, to remain available until expended.

For making after July 31 of the current fiscal year, benefit payments to individuals under title IV of the Act, for costs incurred in the current fiscal year, such amounts as may be necessary.

For making benefit payments under title IV for the first quarter of fiscal year 2005, \$88,000,000, to remain available until expended.

ADMINISTRATIVE EXPENSES, ENERGY EMPLOYEES OCCUPATIONAL
ILLNESS COMPENSATION FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to administer the Energy Employees Occupational Illness Compensation Act, \$55,074,000, to remain available until expended: *Provided*, That the Secretary of Labor is authorized to transfer to any executive agency with authority under the Energy Employees Occupational Illness Compensation Act, including within the Department of Labor, such sums as may be necessary in fiscal year 2004 to carry out those authorities: *Provided further*, That the Secretary may require that any person filing a claim for benefits under the Act provide as part of such claim, such identifying information (including Social Security account number) as may be prescribed.

BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

Beginning in fiscal year 2004 and thereafter, such sums as may be necessary from the Black Lung Disability Trust Fund, to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (4), and (7) of the Internal Revenue Code of 1954, as amended; and interest on advances, as authorized by section 9501(c)(2) of that Act. In addition, the following amounts shall be available from the Fund for fiscal year 2004 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): \$32,004,000 for transfer to the Employment Standards Administration, “Salaries and Expenses”; \$23,401,000 for transfer to Departmental Management, “Salaries and Expenses”; \$338,000 for transfer to Departmental Management, “Office of Inspector General”; and \$356,000 for payments into miscellaneous receipts for the expenses of the Department of the Treasury.

26 USC 9501
note.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, \$460,786,000, including not to exceed \$92,505,000 which shall be the maximum amount available for grants to States under section 23(g) of the Occupational Safety and Health Act (the “Act”), which grants shall be no less than 50 percent of the costs of State occupational safety and health programs required to be incurred under plans approved by the Secretary under section

29 USC 670 note.

18 of the Act; and, in addition, notwithstanding 31 U.S.C. 3302, the Occupational Safety and Health Administration may retain up to \$750,000 per fiscal year of training institute course tuition fees, otherwise authorized by law to be collected, and may utilize such sums for occupational safety and health training and education grants: *Provided*, That, notwithstanding 31 U.S.C. 3302, the Secretary of Labor is authorized, during the fiscal year ending September 30, 2004, to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further*, That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Act with respect to any employer of 10 or fewer employees who is included within a category having an occupational injury lost work-day case rate, at the most precise Standard Industrial Classification Code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of that Act (29 U.S.C. 673), except—

(1) to provide, as authorized by such Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies;

(2) to conduct an inspection or investigation in response to an employee complaint, to issue a citation for violations found during such inspection, and to assess a penalty for violations which are not corrected within a reasonable abatement period and for any willful violations found;

(3) to take any action authorized by such Act with respect to imminent dangers;

(4) to take any action authorized by such Act with respect to health hazards;

(5) to take any action authorized by such Act with respect to a report of an employment accident which is fatal to one or more employees or which results in hospitalization of two or more employees, and to take any action pursuant to such investigation authorized by such Act; and

(6) to take any action authorized by such Act with respect to complaints of discrimination against employees for exercising rights under such Act:

Provided further, That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further*, That not less than \$3,200,000 shall be used to extend funding for the Institutional Competency Building training grants which commenced in September 2000, for program activities for the period of September 30, 2003 to September 30, 2004, provided that a grantee has demonstrated satisfactory performance.

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Mine Safety and Health Administration, \$270,826,000, including purchase and bestowal of certificates and trophies in connection with mine rescue and first-aid work, and the hire of passenger motor vehicles, including \$100,000 for an award to the Stolar Research Corporation to further develop and demonstrate electromagnetic wave detection technology, and other purposes, in Allegheny County, Pennsylvania; including \$1,000,000 for an award to the National Technology Transfer Center for a coal slurry impoundment pilot project in southern West Virginia; including up to \$2,000,000 for mine rescue and recovery activities; in addition, not to exceed \$750,000 may be collected by the National Mine Health and Safety Academy for room, board, tuition, and the sale of training materials, otherwise authorized by law to be collected, to be available for mine safety and health education and training activities, notwithstanding 31 U.S.C. 3302; and, in addition, the Mine Safety and Health Administration may retain up to \$1,000,000 from fees collected for the approval and certification of equipment, materials, and explosives for use in mines, and may utilize such sums for such activities; the Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; and any funds available to the department may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of a major disaster.

30 USC 962.

BUREAU OF LABOR STATISTICS

SALARIES AND EXPENSES

For necessary expenses for the Bureau of Labor Statistics, including advances or reimbursements to State, Federal, and local agencies and their employees for services rendered, \$447,088,000, together with not to exceed \$75,110,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund, of which \$5,000,000 may be used to fund the mass layoff statistics program under section 15 of the Wagner-Peyser Act (29 U.S.C. 491–2).

OFFICE OF DISABILITY EMPLOYMENT POLICY

SALARIES AND EXPENSES

For necessary expenses for the Office of Disability Employment Policy to provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities, \$47,333,000.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For necessary expenses for Departmental Management, including the hire of three sedans, and including the management or operation, through contracts, grants or other arrangements of Departmental activities conducted by or through the Bureau of International Labor Affairs, including bilateral and multilateral technical assistance and other international labor activities, \$48,565,000, for the acquisition of Departmental information technology, architecture, infrastructure, equipment, software and related needs which will be allocated by the Department's Chief Information Officer in accordance with the Department's capital investment management process to assure a sound investment strategy; \$352,514,000; together with not to exceed \$316,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund: *Provided*, That no funds made available by this Act may be used by the Solicitor of Labor to participate in a review in any United States court of appeals of any decision made by the Benefits Review Board under section 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921) where such participation is precluded by the decision of the United States Supreme Court in *Director, Office of Workers' Compensation Programs v. Newport News Shipbuilding*, 115 S. Ct. 1278 (1995), notwithstanding any provisions to the contrary contained in Rule 15 of the Federal Rules of Appellate Procedure: *Provided further*, That no funds made available by this Act may be used by the Secretary of Labor to review a decision under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) that has been appealed and that has been pending before the Benefits Review Board for more than 12 months: *Provided further*, That any such decision pending a review by the Benefits Review Board for more than 1 year shall be considered affirmed by the Benefits Review Board on the 1-year anniversary of the filing of the appeal, and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals: *Provided further*, That these provisions shall not be applicable to the review or appeal of any decision issued under the Black Lung Benefits Act (30 U.S.C. 901 et seq.): *Provided further*, That of the funds provided under this heading, \$150,000 shall be for a grant to the International Center on Child Labor and Education.

33 USC 921 note.

VETERANS EMPLOYMENT AND TRAINING

Not to exceed \$193,443,000 may be derived from the Employment Security Administration Account in the Unemployment Trust Fund to carry out the provisions of 38 U.S.C. 4100–4110A, 4212, 4214, and 4321–4327, and Public Law 103–353, and which shall be available for obligation by the States through December 31, 2004, of which \$2,000,000 is for the National Veterans' Employment and Training Services Institute. To carry out the Homeless Veterans Reintegration Programs (38 U.S.C. 2021) and the Veterans Workforce Investment Programs (29 U.S.C. 2913), \$26,550,000 of which \$7,550,000 shall be available for obligation for the period July 1, 2004 through June 30, 2005.

OFFICE OF INSPECTOR GENERAL

For salaries and expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$60,094,000, together with not to exceed \$5,730,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

WORKING CAPITAL FUND

For the acquisition of a new core accounting system for the Department of Labor, including hardware and software infrastructure and the costs associated with implementation thereof, \$13,850,000.

GENERAL PROVISIONS

SEC. 101. None of the funds appropriated in this title for the Job Corps shall be used to pay the compensation of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level II.

(TRANSFER OF FUNDS)

SEC. 102. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the current fiscal year for the Department of Labor in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: *Provided*, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

Notification.

SEC. 103. In accordance with Executive Order No. 13126, none of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended for the procurement of goods mined, produced, manufactured, or harvested or services rendered, whole or in part, by forced or indentured child labor in industries and host countries already identified by the United States Department of Labor prior to enactment of this Act.

SEC. 104. There is authorized to be appropriated such sums as may be necessary to the Denali Commission through the Department of Labor to conduct job training of the local workforce where Denali Commission projects will be constructed.

SEC. 105. Of the funds appropriated for fiscal year 1999 under section 403(a)(5)(H)(i)(II) of the Social Security Act (42 U.S.C. 603(a)(5)(H)(i)(II)) that were allotted as welfare to work formula grants to the States under section 403(a)(5)(A) of such Act (42 U.S.C. 603(a)(5)(A)), there is hereby rescinded any funds that are unexpended by the States as of the date of enactment of this section, except for such funds as the Secretary of Labor determines are necessary for States to carry out administrative activities relating to the close out of such grants. Notwithstanding section 403(a)(5) of the Social Security Act (42 U.S.C. 603(a)(5)), the Secretary of Labor may take such actions as the Secretary determines are appropriate to facilitate the orderly and equitable close out of such grants, consistent with the requirements of this section.

SEC. 106. (a) FINDINGS.—Congress finds that—

(1) it is projected that the Department of Labor, in conjunction with labor, industry, and the National Institute for Occupational Safety and Health, will be undertaking several months of testing on Personal Dust Monitor production prototypes; and

(2) the testing of Personal Dust Monitor prototypes is set to begin (by late May or early June of 2004) following the scheduled delivery of the Personal Dust Monitors in May 2004.

(b) RE-PROPOSAL OF RULE.—Following the successful demonstration of Personal Dust Monitor technology, and if the Secretary of Labor makes a determination that Personal Dust Monitors can be effectively applied in a regulatory scheme, the Secretary of Labor shall re-propose a rule on respirable coal dust which incorporates the use of Personal Dust Monitors, and, if such rule is re-proposed, the Secretary shall comply with the regular procedures applicable to Federal rulemaking.

Ohio.
Real property.

SEC. 107. The Secretary of Labor shall transfer, without charge or consideration, to Hamilton County, Ohio all rights, title, and interest (including all Federal equity) the United States holds in the real property located at 1916 Central Parkway, Cincinnati, Ohio to the extent such rights, title, or interest were acquired through grants to the State of Ohio under title III of the Social Security Act or the Wagner-Peyser Act or acquired through funds distributed to the State of Ohio under section 903 of the Social Security Act.

SEC. 108. FAIR LABOR STANDARDS ACT WOODWORKING EXEMPTION. Section 13(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(c)) is amended by adding at the end the following:

“(7)(A)(i) Subject to subparagraph (B), in the administration and enforcement of the child labor provisions of this Act, it shall not be considered oppressive child labor for a new entrant into the workforce to be employed inside or outside places of business where machinery is used to process wood products.

“(ii) In this paragraph, the term ‘new entrant into the workforce’ means an individual who—

“(I) is under the age of 18 and at least the age of 14, and

“(II) by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade.

“(B) The employment of a new entrant into the workforce under subparagraph (A) shall be permitted—

“(i) if the entrant is supervised by an adult relative of the entrant or is supervised by an adult member of the same religious sect or division as the entrant;

“(ii) if the entrant does not operate or assist in the operation of power-driven woodworking machines;

“(iii) if the entrant is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

“(iv) if the entrant is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.”.

This title may be cited as the “Department of Labor Appropriations Act, 2004”.

TITLE II—DEPARTMENT OF HEALTH AND HUMAN
SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

Department of
Health and
Human Services
Appropriations
Act, 2004.

For carrying out titles II, III, IV, VII, VIII, X, XII, XIX, and XXVI of the Public Health Service Act, section 427(a) of the Federal Coal Mine Health and Safety Act, title V (including section 510), and sections 1128E, 711 and 1820 of the Social Security Act, the Health Care Quality Improvement Act of 1986, as amended, the Native Hawaiian Health Care Act of 1988, as amended, the Cardiac Arrest Survival Act of 2000, and the Poison Control Center Enhancement and Awareness Act, \$6,698,437,000, of which \$367,563,000 shall be available for construction and renovation (including equipment) of health care and other facilities, abstinence education and related services, and other health-related activities as specified in the statement of the managers on the conference report accompanying this Act, and of which \$39,740,000 from general revenues, notwithstanding section 1820(j) of the Social Security Act, shall be available for carrying out the Medicare rural hospital flexibility grants program under section 1820 of such Act: *Provided*, That of the funds made available under this heading, \$250,000 shall be available until expended for facilities renovations at the Gillis W. Long Hansen's Disease Center: *Provided further*, That in addition to fees authorized by section 427(b) of the Health Care Quality Improvement Act of 1986, fees shall be collected for the full disclosure of information under the Act sufficient to recover the full costs of operating the National Practitioner Data Bank, and shall remain available until expended to carry out that Act: *Provided further*, That fees collected for the full disclosure of information under the "Health Care Fraud and Abuse Data Collection Program", authorized by section 1128E(d)(2) of the Social Security Act, shall be sufficient to recover the full costs of operating the program, and shall remain available until expended to carry out that Act: *Provided further*, That \$25,000,000 of the funding provided for community health centers shall be used for base grant adjustments for existing centers: *Provided further*, That no more than \$4,850,000 is available for carrying out the provisions of section 233(o) of title 42, United States Code, including associated administrative expenses: *Provided further*, That no more than \$45,000,000 is available for carrying out the provisions of Public Law 104–73: *Provided further*, That \$10,000,000 is available until expended to establish a National Cord Blood Stem Cell Bank Program as described in the statement of the managers on the conference report accompanying this Act: *Provided further*, That of the funds made available under this heading, \$280,000,000 shall be for the program under title X of the Public Health Service Act to provide for voluntary family planning projects: *Provided further*, That amounts provided to said projects under such title shall not be expended for abortions, that all pregnancy counseling shall be nondirective, and that such amounts shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office: *Provided further*, That \$753,317,000 shall be for State AIDS Drug Assistance Programs authorized by section 2616 of the Public

Family planning.

Abortion.

Grants.
Abstinence.

Health Service Act: *Provided further*, That in addition to amounts provided herein, \$25,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out parts A, B, C, and D of title XXVI of the Public Health Service Act to fund section 2691 Special Projects of National Significance: *Provided further*, That notwithstanding section 502(a)(1) of the Social Security Act, not to exceed \$121,130,000 is available for carrying out special projects of regional and national significance pursuant to section 501(a)(2) of such Act: *Provided further*, That \$70,488,000 is available for special projects of regional and national significance under section 501(a)(2) of the Social Security Act, which shall not be counted toward compliance with the allocation required in section 502(a)(1) of such Act, and which shall be used only for making competitive grants to provide abstinence education (as defined in section 510(b)(2) of such Act) to adolescents and for Federal costs of administering the grants: *Provided further*, That grants under the immediately preceding proviso shall be made only to public and private entities which agree that, with respect to an adolescent to whom the entities provide abstinence education under such grant, the entities will not provide to that adolescent any other education regarding sexual conduct, except that, in the case of an entity expressly required by law to provide health information or services the adolescent shall not be precluded from seeking health information or services from the entity in a different setting than the setting in which the abstinence education was provided: *Provided further*, That in addition to amounts provided herein for abstinence education to adolescents, \$4,500,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out evaluations (including longitudinal evaluations) of adolescent pregnancy prevention approaches.

HEALTH EDUCATION ASSISTANCE LOANS PROGRAM ACCOUNT

Such sums as may be necessary to carry out the purpose of the program, as authorized by title VII of the Public Health Service Act, as amended. For administrative expenses to carry out the guaranteed loan program, including section 709 of the Public Health Service Act, \$3,389,000.

VACCINE INJURY COMPENSATION PROGRAM TRUST FUND

For payments from the Vaccine Injury Compensation Program Trust Fund, such sums as may be necessary for claims associated with vaccine-related injury or death with respect to vaccines administered after September 30, 1988, pursuant to subtitle 2 of title XXI of the Public Health Service Act, to remain available until expended: *Provided*, That for necessary administrative expenses, not to exceed \$3,222,000 shall be available from the Trust Fund to the Secretary of Health and Human Services.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

To carry out titles II, III, VII, XI, XV, XVII, XIX, XXI, and XXVI of the Public Health Service Act, sections 101, 102, 103, 201, 202, 203, 301, and 501 of the Federal Mine Safety and Health Act of 1977, sections 20, 21, and 22 of the Occupational Safety

and Health Act of 1970, title IV of the Immigration and Nationality Act, and section 501 of the Refugee Education Assistance Act of 1980; including purchase and insurance of official motor vehicles in foreign countries; and purchase, hire, maintenance, and operation of aircraft, \$4,545,472,000, of which \$262,000,000 shall remain available until expended for equipment, and construction and renovation of facilities, and of which \$293,569,000 for international HIV/AIDS shall remain available until September 30, 2005, including \$150,000,000, to remain available until expended for the “International Mother and Child HIV Prevention Initiative”. In addition, such sums as may be derived from authorized user fees, which shall be credited to this account: *Provided*, That in addition to amounts provided herein, \$14,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out the National Immunization Surveys: *Provided further*, That in addition to amounts provided herein, \$127,634,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out the National Center for Health Statistics surveys: *Provided further*, That in addition to amounts provided herein, \$28,600,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out information systems standards development and architecture and applications-based research used at local public health levels: *Provided further*, That in addition to amounts provided herein, \$41,900,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out Research Tools and Approaches activities within the National Occupational Research Agenda: *Provided further*, That none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used, in whole or in part, to advocate or promote gun control: *Provided further*, That the Director may redirect the total amount made available under authority of Public Law 101–502, section 3, dated November 3, 1990, to activities the Director may so designate: *Provided further*, That the Congress is to be notified promptly of any such transfer: *Provided further*, That not to exceed \$12,500,000 may be available for making grants under section 1509 of the Public Health Service Act to not more than 15 States: *Provided further*, That without regard to existing statute, funds appropriated may be used to proceed, at the discretion of the Centers for Disease Control and Prevention, with property acquisition, including a long-term ground lease for construction on non-Federal land, to support the construction of a replacement laboratory in the Fort Collins, Colorado area: *Provided further*, That notwithstanding any other provision of law, a single contract or related contracts for development and construction of facilities may be employed which collectively include the full scope of the project: *Provided further*, That the solicitation and contract shall contain the clause “availability of funds” found at 48 CFR 52.232–18.

Notification.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CANCER INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cancer, \$4,770,519,000.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cardiovascular, lung, and blood diseases, and blood and blood products, \$2,897,145,000.

NATIONAL INSTITUTE OF DENTAL AND CRANIOFACIAL RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to dental disease, \$385,796,000.

NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to diabetes and digestive and kidney disease, \$1,682,457,000.

NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

For carrying out section 301 and title IV of the Public Health Service Act with respect to neurological disorders and stroke, \$1,510,776,000.

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

(INCLUDING TRANSFER OF FUNDS)

For carrying out section 301 and title IV of the Public Health Service Act with respect to allergy and infectious diseases, \$4,335,155,000: *Provided*, That \$150,000,000 may be made available to International Assistance Programs, “Global Fund to Fight HIV/AIDS, Malaria, and Tuberculosis”, to remain available until expended.

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to general medical sciences, \$1,916,333,000.

NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

For carrying out section 301 and title IV of the Public Health Service Act with respect to child health and human development, \$1,250,585,000.

NATIONAL EYE INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to eye diseases and visual disorders, \$657,199,000.

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For carrying out sections 301 and 311 and title IV of the Public Health Service Act with respect to environmental health sciences, \$636,974,000.

NATIONAL INSTITUTE ON AGING

For carrying out section 301 and title IV of the Public Health Service Act with respect to aging, \$1,031,311,000.

NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN
DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to arthritis and musculoskeletal and skin diseases, \$504,300,000.

NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION
DISORDERS

For carrying out section 301 and title IV of the Public Health Service Act with respect to deafness and other communication disorders, \$384,477,000.

NATIONAL INSTITUTE OF NURSING RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to nursing research, \$135,555,000.

NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM

For carrying out section 301 and title IV of the Public Health Service Act with respect to alcohol abuse and alcoholism, \$431,471,000.

NATIONAL INSTITUTE ON DRUG ABUSE

For carrying out section 301 and title IV of the Public Health Service Act with respect to drug abuse, \$997,414,000.

NATIONAL INSTITUTE OF MENTAL HEALTH

For carrying out section 301 and title IV of the Public Health Service Act with respect to mental health, \$1,390,714,000.

NATIONAL HUMAN GENOME RESEARCH INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to human genome research, \$482,222,000.

NATIONAL INSTITUTE OF BIOMEDICAL IMAGING AND BIOENGINEERING

For carrying out section 301 and title IV of the Public Health Service Act with respect to biomedical imaging and bioengineering research, \$288,900,000.

NATIONAL CENTER FOR RESEARCH RESOURCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to research resources and general research support grants, \$1,186,183,000: *Provided*, That none of these funds shall be used to pay recipients of the general research support grants program any amount for indirect expenses in connection with such grants: *Provided further*, That \$119,220,000 shall be for extramural facilities construction grants.

NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE
MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to complementary and alternative medicine, \$117,752,000.

NATIONAL CENTER ON MINORITY HEALTH AND HEALTH DISPARITIES

For carrying out section 301 and title IV of the Public Health Service Act with respect to minority health and health disparities research, \$192,724,000.

JOHN E. FOGARTY INTERNATIONAL CENTER

For carrying out the activities at the John E. Fogarty International Center, \$65,800,000.

NATIONAL LIBRARY OF MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to health information communications, \$311,635,000, of which \$4,000,000 shall be available until expended for improvement of information systems: *Provided*, That in fiscal year 2004, the Library may enter into personal services contracts for the provision of services in facilities owned, operated, or constructed under the jurisdiction of the National Institutes of Health: *Provided further*, That in addition to amounts provided herein, \$8,200,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out National Information Center on Health Services Research and Health Care Technology and related health services.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For carrying out the responsibilities of the Office of the Director, National Institutes of Health, \$329,707,000, of which up to \$7,500,000 shall be used to carry out section 221 of this Act: *Provided*, That funding shall be available for the purchase of not to exceed 29 passenger motor vehicles for replacement only: *Provided further*, That the Director may direct up to 1 percent of the total amount made available in this or any other Act to all National Institutes of Health appropriations to activities the Director may so designate: *Provided further*, That no such appropriation shall be decreased by more than 1 percent by any such transfers and that the Congress is promptly notified of the transfer: *Provided further*, That the National Institutes of Health is authorized to collect third party payments for the cost of clinical services that are incurred in National Institutes of Health research facilities and that such payments shall be credited to the National Institutes of Health Management Fund: *Provided further*, That all funds credited to the National Institutes of Health Management Fund shall remain available for 1 fiscal year after the fiscal year in which they are deposited: *Provided further*, That up to \$500,000 shall be available to carry out section 499 of the Public Health Service Act.

BUILDINGS AND FACILITIES

(INCLUDING TRANSFER OF FUNDS)

For the study of, construction of, renovation of, and acquisition of equipment for, facilities of or used by the National Institutes of Health, including the acquisition of real property, \$89,500,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, single contracts or related contracts, which collectively include the full scope of the project, may be employed for the development and construction of the first and second phases of the John Edward Porter Neuroscience Research Center: *Provided further*, That the solicitations and contracts shall contain the clause “availability of funds” found at 48 CFR 52.232–18.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

For carrying out titles V and XIX of the Public Health Service Act with respect to substance abuse and mental health services, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and section 301 of the Public Health Service Act with respect to program management, \$3,253,763,000: *Provided*, That in addition to amounts provided herein, \$79,200,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out subpart II of title XIX of the Public Health Service Act to fund section 1935(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1935(b) activities shall not exceed 5 percent of the amounts appropriated for subpart II of title XIX: *Provided further*, That in addition to the amounts provided herein, \$21,850,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out subpart I of part B of title XIX of the Public Health Service Act to fund section 1920(b) technical assistance, data collection and program evaluation activities, and further that the total available under this Act for section 1920(b) activities shall not exceed 5 percent of the amounts appropriated for subpart I of part B of title XIX: *Provided further*, That in addition to amounts provided herein, \$16,000,000 shall be made available from amounts available under section 241 of the Public Health Service Act to carry out national surveys on drug abuse.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

For carrying out titles III and IX of the Public Health Service Act, and part A of title XI of the Social Security Act, amounts received from Freedom of Information Act fees, reimbursable and interagency agreements, and the sale of data shall be credited to this appropriation and shall remain available until expended: *Provided*, That the amount made available pursuant to section 927(c) of the Public Health Service Act shall not exceed \$303,695,000: *Provided further*, That, of the funds made available under this heading, \$12,000,000 shall be for the conduct of research

on the comparative clinical effectiveness, cost-effectiveness, and safety of drugs, biological products, and devices.

CENTERS FOR MEDICARE AND MEDICAID SERVICES

GRANTS TO STATES FOR MEDICAID

For carrying out, except as otherwise provided, titles XI and XIX of the Social Security Act, \$130,892,197,000, to remain available until expended.

For making, after May 31, 2004, payments to States under title XIX of the Social Security Act for the last quarter of fiscal year 2004 for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

For making payments to States or in the case of section 1928 on behalf of States under title XIX of the Social Security Act for the first quarter of fiscal year 2005, \$58,416,275,000, to remain available until expended.

Payment under title XIX may be made for any quarter with respect to a State plan or plan amendment in effect during such quarter, if submitted in or prior to such quarter and approved in that or any subsequent quarter.

PAYMENTS TO HEALTH CARE TRUST FUNDS

For payment to the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as provided under section 1844 of the Social Security Act, sections 103(c) and 111(d) of the Social Security Amendments of 1965, section 278(d) of Public Law 97–248, and for administrative expenses incurred pursuant to section 201(g) of the Social Security Act, \$95,084,100,000.

PROGRAM MANAGEMENT

For carrying out, except as otherwise provided, titles XI, XVIII, XIX, and XXI of the Social Security Act, titles XIII and XXVII of the Public Health Service Act, and the Clinical Laboratory Improvement Amendments of 1988, not to exceed \$2,664,994,000, to be transferred from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as authorized by section 201(g) of the Social Security Act; together with all funds collected in accordance with section 353 of the Public Health Service Act and section 1857(e)(2) of the Social Security Act, and such sums as may be collected from authorized user fees and the sale of data, which shall remain available until expended, and together with administrative fees collected relative to Medicare overpayment recovery activities, which shall remain available until expended: *Provided*, That all funds derived in accordance with 31 U.S.C. 9701 from organizations established under title XIII of the Public Health Service Act shall be credited to and available for carrying out the purposes of this appropriation: *Provided further*, That \$30,000,000, to remain available until September 30, 2005, is for contract costs for CMS's Systems Revitalization Plan: *Provided further*, That \$56,991,000, to remain available until September 30, 2005, is for contract costs for the Healthcare Integrated General Ledger Accounting System: *Provided further*, That of the amounts made available for research, demonstration and evaluation, \$100,000 is available for Advocate Health Care

in Oak Brook, Illinois, for health education programs and services to the deaf and hard-of-hearing, \$1,750,000 is available for AIDS Healthcare Foundation in Los Angeles for a demonstration of residential and outpatient treatment facilities, \$250,000 is available for Berwick Hospital Center, Berwick, Pennsylvania, for stabilizing the workforce for patient care, \$163,000 is available for Bloomsburg Hospital, Bloomsburg, Pennsylvania for stabilizing the workforce for patient care, \$275,000 is available for Cheyenne River Sioux Tribe in Eagle Butte, South Dakota, to establish a nursing home, \$778,000 is available for Community Medical Center, Scranton, Pennsylvania, for stabilizing the workforce for patient care, \$150,000 is available for Cook County (Illinois) Bureau of Health Services to improve the management of vulnerable patients with poorly controlled diabetes, \$178,000 is available for Divine Providence Hospital, Williamsport, Pennsylvania, for stabilizing the workforce for patient care, \$267,000 is available for Geisinger Wyoming Valley Medical Center, Wilkes-Barre, Pennsylvania, for stabilizing the workforce for patient care, \$237,000 is available for Hazleton General Hospital, Hazleton, Pennsylvania, for stabilizing the workforce for patient care, \$25,000 is available for Hope Worldwide, Philadelphia, Pennsylvania, to maintain clinical care for recovering drug and alcohol addicts, \$825,000 is available for Illinois Primary Health Care Association for the Shared Integrated Management Information System, Springfield, Illinois, \$250,000 is available for James S. Taylor Memorial Home, Louisville, Kentucky, \$100,000 is available for Jefferson Area Board for Aging, Charlottesville, Virginia, for the Nursing Assistant Institute, \$85,000 is available for Jersey Shore Hospital, Jersey Shore, Pennsylvania for stabilizing the workforce for patient care, \$179,000 is available for Marian Community Hospital, Carbondale, Pennsylvania, for stabilizing the workforce for patient care, \$200,000 is available for Medical Care for Children Partnership, Fairfax, Virginia, to provide outreach to increase access to medical and dental care for children, \$393,000 is available for Mercy Health Partners, Scranton, Pennsylvania, for stabilizing the workforce for patient care, \$571,000 is available for Mercy Hospital, Wilkes-Barre, Pennsylvania, for stabilizing the workforce for patient care, \$63,000 is available for Mid-Valley Hospital, Peckville, Pennsylvania, for stabilizing the workforce for patient care, \$510,000 is available for Moses Taylor Hospital, Scranton, Pennsylvania, for stabilizing the workforce for patient care, \$109,000 is available for Muncy Valley Hospital, Muncy, Pennsylvania, for stabilizing the workforce for patient care, \$225,000 is available for Muskegon Community Health Project, Muskegon, Michigan, for the Access Health program, \$75,000 is available for North Penn Visiting Nurse Association, Lansdale, Pennsylvania, to provide low-cost or free health care to children who do not have health insurance, \$122,000 is available for Patient Advocate Foundation, Newport News, Virginia, to provide direct intervention assistance to patients throughout the United States who are experiencing difficulty in accessing quality health care services, \$100,000 is available for Rhode Island Hospital-Medical Simulation Center of Providence, Rhode Island, for the creation of a transportable simulation-based training curriculum and validated human performance measurement system, \$256,000 is available for Saint Joseph Medical Center, Hazleton, Pennsylvania, for stabilizing the workforce for patient care, \$100,000 is available

for Santa Clara County, California, for its Children’s Health Initiative program to provide outreach and enrollment assistance for families under 300 percent of Federal poverty level, \$664,000 is available for Sharon Regional Health System, Sharon, Pennsylvania, for stabilizing the workforce for patient care, \$25,000 is available for Sickie Cell Medical Treatment & Education Center, St. Louis Children’s Hospital, St. Louis, Missouri, to improve the academic achievement of children with Sickie Cell Disease with specific cognitive rehabilitation, \$111,000 is available for Tyler Memorial Hospital, Tunkhannock, Pennsylvania, for stabilizing the workforce for patient care, \$174,000 is available for United Community Hospital, Grove City, Pennsylvania, for stabilizing the workforce for patient care, \$503,000 is available for UPMC Horizon, Farrell, Pennsylvania, for stabilizing the workforce for patient care, \$613,000 is available for Williamsport Hospital & Medical Center, Williamsport, Pennsylvania, for stabilizing the workforce for patient care, and \$965,000 is available for Wyoming Valley Health Care System, Wilkes-Barre, Pennsylvania, for stabilizing the workforce for patient care: *Provided further*, That the Secretary of Health and Human Services is directed to collect fees in fiscal year 2004 from Medicare + Choice organizations pursuant to section 1857(e)(2) of the Social Security Act and from eligible organizations with risk-sharing contracts under section 1876 of that Act pursuant to section 1876(k)(4)(D) of that Act: *Provided further*, that to the extent Medicare claims processing unit costs are projected by the Centers for Medicare & Medicaid Services to exceed \$0.87 for part A claims and/or \$0.65 for part B claims, up to an additional \$18,000,000 may be available for obligation for every \$0.04 increase in Medicare claims processing unit costs from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds. The calculation of projected unit costs shall be derived in the same manner in which the estimated unit costs were calculated for the Federal budget estimate for the fiscal year.

HEALTH MAINTENANCE ORGANIZATION LOAN AND LOAN GUARANTEE FUND

For carrying out subsections (d) and (e) of section 1308 of the Public Health Service Act, any amounts received by the Secretary in connection with loans and loan guarantees under title XIII of the Public Health Service Act, to be available without fiscal year limitation for the payment of outstanding obligations. During fiscal year 2004, no commitments for direct loans or loan guarantees shall be made.

ADMINISTRATION FOR CHILDREN AND FAMILIES

PAYMENTS TO STATES FOR CHILD SUPPORT ENFORCEMENT AND FAMILY SUPPORT PROGRAMS

For making payments to States or other non-Federal entities under titles I, IV–D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9), \$3,292,970,000, to remain available until expended; and for such purposes for the first quarter of fiscal year 2005, \$1,200,000,000, to remain available until expended.

For making payments to each State for carrying out the program of Aid to Families with Dependent Children under title IV–

A of the Social Security Act before the effective date of the program of Temporary Assistance for Needy Families (TANF) with respect to such State, such sums as may be necessary: *Provided*, That the sum of the amounts available to a State with respect to expenditures under such title IV–A in fiscal year 1997 under this appropriation and under such title IV–A as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall not exceed the limitations under section 116(b) of such Act.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under titles I, IV–D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9), for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

LOW-INCOME HOME ENERGY ASSISTANCE

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, \$1,800,000,000.

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, \$100,000,000, to remain available until expended: *Provided*, That these funds are for the unanticipated home energy assistance needs of one or more States, as authorized by section 2604(e) of the Act, and notwithstanding the designation requirement of section 2602(e).

REFUGEE AND ENTRANT ASSISTANCE

For necessary expenses for refugee and entrant assistance activities authorized by title IV of the Immigration and Nationality Act and section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–422), for carrying out section 462 of the Homeland Security Act of 2002 (Public Law 107–296), and for carrying out section 5 of the Torture Victims Relief Act of 1998 (Public Law 105–320), \$450,276,000, of which up to \$9,968,000 shall be available to carry out the Trafficking Victims Protection Act of 2000 (Public Law 106–386; division A): *Provided*, That funds appropriated under this heading pursuant to section 414(a) of the Immigration and Nationality Act for fiscal year 2004 shall be available for the costs of assistance provided and other activities, to remain available through September 30, 2006.

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

For carrying out sections 658A through 658R of the Omnibus Budget Reconciliation Act of 1981 (Child Care and Development Block Grant Act of 1990), \$2,099,729,000 shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: *Provided*, That \$19,120,000 shall be available for child care resource and referral and school-aged child care activities, of which \$1,000,000 shall be for the Child Care Aware toll free hotline: *Provided further*, That, in addition to the amounts required to be reserved by the States under section 658G, \$272,672,000 shall be reserved by the States for activities authorized under section 658G, of which \$100,000,000 shall be for activities that improve the quality of infant and toddler care:

Provided further, That \$9,864,000 shall be for use by the Secretary for child care research, demonstration, and evaluation activities.

SOCIAL SERVICES BLOCK GRANT

For making grants to States pursuant to section 2002 of the Social Security Act, \$1,700,000,000: *Provided*, That notwithstanding subparagraph (B) of section 404(d)(2) of such Act, the applicable percent specified under such subparagraph for a State to carry out State programs pursuant to title XX of such Act shall be 10 percent.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For carrying out, except as otherwise provided, the Runaway and Homeless Youth Act, the Developmental Disabilities Assistance and Bill of Rights Act, the Head Start Act, the Child Abuse Prevention and Treatment Act, sections 310 and 316 of the Family Violence Prevention and Services Act, as amended, the Native American Programs Act of 1974, title II of Public Law 95–266 (adoption opportunities), the Adoption and Safe Families Act of 1997 (Public Law 105–89), sections 1201 and 1211 of the Children’s Health Act of 2000, the Abandoned Infants Assistance Act of 1988, sections 261 and 291 of the Help America Vote Act of 2002, the Early Learning Opportunities Act, part B(1) of title IV and sections 413, 429A, 1110, and 1115 of the Social Security Act, and sections 40155, 40211, and 40241 of Public Law 103–322; for making payments under the Community Services Block Grant Act, sections 439(h), 473A, and 477(i) of the Social Security Act, and title IV of Public Law 105–285, and for necessary administrative expenses to carry out said Acts and titles I, IV, X, XI, XIV, XVI, and XX of the Social Security Act, the Act of July 5, 1960 (24 U.S.C. ch. 9), the Omnibus Budget Reconciliation Act of 1981, title IV of the Immigration and Nationality Act, section 501 of the Refugee Education Assistance Act of 1980, section 5 of the Torture Victims Relief Act of 1998 (Public Law 105–320), sections 40155, 40211, and 40241 of Public Law 103–322, and section 126 and titles IV and V of Public Law 100–485, \$8,816,097,000, of which \$7,500,000, to remain available until September 30, 2005, shall be for grants to States for adoption incentive payments, as authorized by section 473A of title IV of the Social Security Act (42 U.S.C. 670–679) and may be made for adoptions completed before September 30, 2004: *Provided*, That funds appropriated in Public Law 108–7 for grants to States as authorized by section 473A of title IV of the Social Security Act shall also be available for adoption incentive payments for adoptions completed before September 30, 2004: *Provided further*, That \$6,815,570,000 shall be for making payments under the Head Start Act, of which \$1,400,000,000 shall become available October 1, 2004 and remain available through September 30, 2005: *Provided further*, That \$735,686,000 shall be for making payments under the Community Services Block Grant Act: *Provided further*, That not less than \$7,227,000 shall be for section 680(3)(B) of the Community Services Block Grant Act, as amended: *Provided further*, That in addition to amounts provided herein, \$6,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out the provisions of section 1110 of the Social Security Act: *Provided further*, That to the extent Community Services Block Grant funds are distributed as

grant funds by a State to an eligible entity as provided under the Act, and have not been expended by such entity, they shall remain with such entity for carryover into the next fiscal year for expenditure by such entity consistent with program purposes: *Provided further*, That the Secretary shall establish procedures regarding the disposition of intangible property which permits grant funds, or intangible assets acquired with funds authorized under section 680 of the Community Services Block Grant Act, as amended, to become the sole property of such grantees after a period of not more than 12 years after the end of the grant for purposes and uses consistent with the original grant: *Provided further*, That funds appropriated for section 680(a)(2) of the Community Services Block Grant Act, as amended, shall be available for financing construction and rehabilitation and loans or investments in private business enterprises owned by community development corporations: *Provided further*, That \$89,978,000 shall be for activities authorized by the Runaway and Homeless Youth Act, notwithstanding the allocation requirements of section 388(a) of such Act, of which \$40,505,000 is for the transitional living program: *Provided further*, That \$48,000,000 is for a compassion capital fund to provide grants to charitable organizations to emulate model social service programs and to encourage research on the best practices of social service organizations: *Provided further*, That \$15,000,000 shall be for activities authorized by the Help America Vote Act of 2002, of which \$10,000,000 shall be for payments to States to promote disabled voter access, and of which \$5,000,000 shall be for payments to States for disabled voters protection and advocacy systems.

Procedures.
42 USC 9921
note.

PROMOTING SAFE AND STABLE FAMILIES

For carrying out section 436 of the Social Security Act, \$305,000,000 and for section 437, \$100,000,000.

PAYMENTS TO STATES FOR FOSTER CARE AND ADOPTION ASSISTANCE

For making payments to States or other non-Federal entities under title IV–E of the Social Security Act, \$5,068,300,000.

For making payments to States or other non-Federal entities under title IV–E of the Act, for the first quarter of fiscal year 2005, \$1,767,700,000.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under section 474 of title IV–E, for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For carrying out, to the extent not otherwise provided, the Older Americans Act of 1965, as amended, and section 398 of the Public Health Service Act, \$1,381,689,000, of which \$5,500,000 shall be available for activities regarding medication management, screening, and education to prevent incorrect medication and

adverse drug reactions; and of which \$2,842,000 shall remain available until September 30, 2006, for the White House Conference on Aging.

OFFICE OF THE SECRETARY

GENERAL DEPARTMENTAL MANAGEMENT

For necessary expenses, not otherwise provided, for general departmental management, including hire of six sedans, and for carrying out titles III, XVII, XX, and XXI of the Public Health Service Act, and the United States-Mexico Border Health Commission Act, \$357,358,000, together with \$5,851,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund: *Provided*, That of the funds made available under this heading for carrying out title XX of the Public Health Service Act, \$11,885,000 shall be for activities specified under section 2003(b)(2), of which \$10,157,000 shall be for prevention service demonstration grants under section 510(b)(2) of title V of the Social Security Act, as amended, without application of the limitation of section 2010(c) of said title XX: *Provided further*, That of this amount, \$49,838,000 is for minority AIDS prevention and treatment activities; and \$15,000,000 shall be for an Information Technology Security and Innovation Fund for Department-wide activities involving cybersecurity, information technology security, and related innovation projects, and \$5,000,000 is to assist Afghanistan in the development of maternal and child health clinics, consistent with section 103(a)(4)(H) of the Afghanistan Freedom Support Act of 2002.

OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$39,497,000: *Provided*, That, of such amount, necessary sums are available for providing protective services to the Secretary and investigating non-payment of child support cases for which non-payment is a Federal offense under 18 U.S.C. 228.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, \$30,936,000, together with not to exceed \$3,314,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund.

POLICY RESEARCH

For carrying out, to the extent not otherwise provided, research studies under section 1110 of the Social Security Act and title III of the Public Health Service Act, \$20,750,000, which shall be available from amounts available under section 241 of the Public Health Service Act to carry out national health or human services research and evaluation activities: *Provided*, That the expenditure of any funds available under section 241 of the Public Health Service Act are subject to the requirements of section 205 of this Act.

RETIREMENT PAY AND MEDICAL BENEFITS FOR COMMISSIONED
OFFICERS

For retirement pay and medical benefits of Public Health Service Commissioned Officers as authorized by law, for payments under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan, for medical care of dependents and retired personnel under the Dependents' Medical Care Act (10 U.S.C. ch. 55 and 56), and for payments pursuant to section 229(b) of the Social Security Act (42 U.S.C. 429(b)), such amounts as may be required during the current fiscal year. The following are definitions for the medical benefits of the Public Health Service Commissioned Officers that apply to 10 U.S.C. chapter 56, section 1116(c). The source of funds for the monthly accrual payments into the Department of Defense Medicare-Eligible Retiree Health Care Fund shall be the Retirement Pay and Medical Benefits for Commissioned Officers account. For purposes of this Act, the term "pay of members" shall be construed to be synonymous with retirement payments to United States Public Health Service officers who are retired for age, disability, or length of service; payments to survivors of deceased officers; medical care to active duty and retired members and dependents and beneficiaries; and for payments to the Social Security Administration for military service credits; all of which payments are provided for by the Retirement Pay and Medical Benefits for Commissioned Officers account.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For expenses necessary to support activities related to countering potential biological, disease and chemical threats to civilian populations, \$1,726,846,000: *Provided*, That this amount is distributed as follows: Centers for Disease Control and Prevention, \$1,116,156,000; Office of the Secretary, \$64,820,000; and Health Resources and Services Administration, \$545,870,000: *Provided further*, That at the discretion of the Secretary of Health and Human Services, these amounts may be transferred between categories subject to normal reprogramming procedures: *Provided further*, That employees of the Centers for Disease Control and Prevention or the Public Health Service, both civilian and Commissioned Officers, detailed to States, municipalities, or other organizations under authority of section 214 of the Public Health Service Act for purposes related to homeland security, shall be treated as non-Federal employees for reporting purposes only and shall not be included within any personnel ceiling applicable to the Agency, Service, or the Department of Health and Human Services during the period of detail or assignment.

In addition, for activities to ensure a year-round influenza vaccine production capacity and the development and implementation of rapidly expandable influenza vaccine production technologies, \$50,000,000, to remain available until expended.

GENERAL PROVISIONS

SEC. 201. Funds appropriated in this title shall be available for not to exceed \$50,000 for official reception and representation expenses when specifically approved by the Secretary.

SEC. 202. The Secretary shall make available through assignment not more than 60 employees of the Public Health Service

to assist in child survival activities and to work in AIDS programs through and with funds provided by the Agency for International Development, the United Nations International Children's Emergency Fund or the World Health Organization.

SEC. 203. None of the funds appropriated under this Act may be used to implement section 399F(b) of the Public Health Service Act or section 1503 of the National Institutes of Health Revitalization Act of 1993, Public Law 103–43.

SEC. 204. None of the funds appropriated in this Act for the National Institutes of Health, the Agency for Healthcare Research and Quality, and the Substance Abuse and Mental Health Services Administration shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level I.

Reports.

SEC. 205. None of the funds appropriated in this Act may be expended pursuant to section 241 of the Public Health Service Act, except for funds specifically provided for in this Act, or for other taps and assessments made by any office located in the Department of Health and Human Services, prior to the Secretary's preparation and submission of a report to the Committee on Appropriations of the Senate and of the House detailing the planned uses of such funds.

SEC. 206. Notwithstanding section 241(a) of the Public Health Service Act, such portion as the Secretary shall determine, but not more than 2.2 percent, of any amounts appropriated for programs authorized under said Act shall be made available for the evaluation (directly, or by grants or contracts) of the implementation and effectiveness of such programs.

(TRANSFER OF FUNDS)

SEC. 207. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the current fiscal year for the Department of Health and Human Services in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: *Provided*, That an appropriation may be increased by up to an additional 2 percent subject to approval by the House and Senate Committees on Appropriations: *Provided further*, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

Notification.

SEC. 208. The Director of the National Institutes of Health, jointly with the Director of the Office of AIDS Research, may transfer up to 3 percent among institutes, centers, and divisions from the total amounts identified by these two Directors as funding for research pertaining to the human immunodeficiency virus: *Provided*, That the Congress is promptly notified of the transfer.

Notification.

SEC. 209. Of the amounts made available in this Act for the National Institutes of Health, the amount for research related to the human immunodeficiency virus, as jointly determined by the Director of the National Institutes of Health and the Director of the Office of AIDS Research, shall be made available to the "Office of AIDS Research" account. The Director of the Office of AIDS Research shall transfer from such account amounts necessary to carry out section 2353(d)(3) of the Public Health Service Act.

SEC. 210. None of the funds appropriated in this Act may be made available to any entity under title X of the Public Health

Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities.

SEC. 211. None of the funds appropriated by this Act (including funds appropriated to any trust fund) may be used to carry out the Medicare+Choice program if the Secretary denies participation in such program to an otherwise eligible entity (including a Provider Sponsored Organization) because the entity informs the Secretary that it will not provide, pay for, provide coverage of, or provide referrals for abortions: *Provided*, That the Secretary shall make appropriate prospective adjustments to the capitation payment to such an entity (based on an actuarially sound estimate of the expected costs of providing the service to such entity's enrollees): *Provided further*, That nothing in this section shall be construed to change the Medicare program's coverage for such services and a Medicare+Choice organization described in this section shall be responsible for informing enrollees where to obtain information about all Medicare covered services.

SEC. 212. Notwithstanding any other provision of law, no provider of services under title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.

SEC. 213. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167) is amended—

(1) in section 599D (8 U.S.C. 1157 note)—

(A) in subsection (b)(3), by striking “1997, 1998, 1999, 2000, 2001, 2002, and 2003” and inserting “1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004”; and

(B) in subsection (e), by striking “October 1, 2003” each place it appears and inserting “October 1, 2004”;

(C) in subsection (b)(1)—

(i) in subparagraph (A), by striking “and” at the end;

(ii) in subparagraph (B), by striking the period and inserting “; and”; and

(iii) by adding at the end the following:

“(C) one or more categories of aliens who are or were nationals and residents of the Islamic Republic of Iran who, as members of a religious minority in Iran, share common characteristics that identify them as targets of persecution in that state on account of race, religion, nationality, membership in a particular social group, or political opinion.”; and

(2) in section 599E (8 U.S.C. 1255 note) in subsection (b)(2), by striking “September 30, 2003” and inserting “September 30, 2004”.

SEC. 214. (a) Except as provided by subsection (e) none of the funds appropriated by this Act may be used to withhold substance abuse funding from a State pursuant to section 1926 of the Public Health Service Act (42 U.S.C. 300x–26) if such State certifies to the Secretary of Health and Human Services by May 1, 2004, that the State will commit additional State funds, in accordance with subsection (b), to ensure compliance with State

laws prohibiting the sale of tobacco products to individuals under 18 years of age.

(b) The amount of funds to be committed by a State under subsection (a) shall be equal to 1 percent of such State's substance abuse block grant allocation for each percentage point by which the State misses the retailer compliance rate goal established by the Secretary of Health and Human Services under section 1926 of such Act.

(c) The State is to maintain State expenditures in fiscal year 2004 for tobacco prevention programs and for compliance activities at a level that is not less than the level of such expenditures maintained by the State for fiscal year 2003, and adding to that level the additional funds for tobacco compliance activities required under subsection (a). The State is to submit a report to the Secretary on all fiscal year 2003 State expenditures and all fiscal year 2004 obligations for tobacco prevention and compliance activities by program activity by July 31, 2004.

(d) The Secretary shall exercise discretion in enforcing the timing of the State obligation of the additional funds required by the certification described in subsection (a) as late as July 31, 2004.

(e) None of the funds appropriated by this Act may be used to withhold substance abuse funding pursuant to section 1926 from a territory that receives less than \$1,000,000.

SEC. 215. In order for the Centers for Disease Control and Prevention to carry out international health activities, including HIV/AIDS and other infectious disease, chronic and environmental disease, and other health activities abroad during fiscal year 2004, the Secretary of Health and Human Services—

(1) may exercise authority equivalent to that available to the Secretary of State in section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)). The Secretary of Health and Human Services shall consult with the Secretary of State and relevant Chief of Mission to ensure that the authority provided in this section is exercised in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) and other applicable statutes administered by the Department of State; and

(2) is authorized to provide such funds by advance or reimbursement to the Secretary of State as may be necessary to pay the costs of acquisition, lease, alteration, renovation, and management of facilities outside of the United States for the use of the Department of Health and Human Services. The Department of State shall cooperate fully with the Secretary of Health and Human Services to ensure that the Department of Health and Human Services has secure, safe, functional facilities that comply with applicable regulation governing location, setback, and other facilities requirements and serve the purposes established by this Act. The Secretary of Health and Human Services is authorized, in consultation with the Secretary of State, through grant or cooperative agreement, to make available to public or nonprofit private institutions or agencies in participating foreign countries, funds to acquire, lease, alter, or renovate facilities in those countries as necessary to conduct programs of assistance for international health activities, including activities relating to HIV/AIDS and other

Reports.
Deadline.

infectious diseases, chronic and environmental diseases, and other health activities abroad.

SEC. 216. The Division of Federal Occupational Health may utilize personal services contracting to employ professional management/administrative and occupational health professionals.

SEC. 217. Notwithstanding section 409B(c) of the Public Health Service Act regarding a limitation on the number of such grants, funds appropriated in this Act and Acts in fiscal years thereafter may be expended by the Director of the National Institutes of Health to award Core Center Grants to encourage the development of innovative multidisciplinary research and provide training concerning Parkinson's disease. Each center funded under such grants shall be designated as a Morris K. Udall Center for Research on Parkinson's Disease. 42 USC 284f note.

SEC. 218. Not later than 90 days after the date of enactment of this Act, the Director of the National Institutes of Health shall submit to the appropriate committees of Congress a report that shall— Deadline. Reports.

(1) contain the recommendations of the Director concerning the role of the National Institutes of Health in promoting the affordability of inventions and products developed with Federal funds; and

(2) specify whether any circumstances exist to prevent the Director from promoting the affordability of inventions and products developed with Federal funds.

SEC. 219. Notwithstanding any other provisions of law, funds made available under this heading may be used to continue operating the Council on Graduate Medical Education established by section 301 of Public Law 102–408. 42 USC 294o note.

SEC. 220. DESIGNATION OF SENATOR PAUL D. WELLSTONE NIH MDCRC PROGRAM. (a) FINDINGS.—Congress finds the following:

(1) On December 18, 2001, Public Law 107–84, otherwise known as the Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001, or the MD CARE Act, was signed into law to provide for research and education with respect to various forms of muscular dystrophy, including Duchenne, Becker, limb girdle, congenital, facioscapulohumeral, myotonic, oculopharyngeal, distal, and EmeryDreifuss muscular dystrophies.

(2) In response to the MD CARE Act of 2001, in September 2002, the National Institutes of Health (NIH) announced its intention to establish the Muscular Dystrophy Cooperative Research Centers (MDCRC) program.

(3) Senator Paul D. Wellstone was a driving force behind enactment of the MD CARE Act, which led to the establishment of the MDCRC program.

(b) DESIGNATION.—The NIH Muscular Dystrophy Cooperative Research Centers (MDCRC) program shall be known and designated as the “Senator Paul D. Wellstone Muscular Dystrophy Cooperative Research Centers”, in honor of Senator Paul D. Wellstone who was deceased on October 25, 2002.

(c) REFERENCES.—Any reference in a law, regulation, document, paper, or other record of the United States to the NIH program of Muscular Dystrophy Cooperative Research Centers shall be deemed to be a reference to the “Senator Paul D. Wellstone Muscular Dystrophy Cooperative Research Centers”.

SEC. 221. (a) **AUTHORITY.**—Notwithstanding any other provision of law, the Director of the National Institutes of Health may use funds available under section 402(i) of the Public Health Service Act (42 U.S.C. 282(i)) to enter into transactions (other than contracts, cooperative agreements, or grants) to carry out research in support of the NIH Roadmap Initiative of the Director.

(b) **PEER REVIEW.**—In entering into transactions under subsection (a), the Director of the National Institutes of Health may utilize such peer review procedures (including consultation with appropriate scientific experts) as the Director determines to be appropriate to obtain assessments of scientific and technical merit. Such procedures shall apply to such transactions in lieu of the peer review and advisory council review procedures that would otherwise be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494 of the Public Health Service Act (42 U.S.C. 241, 284(b)(1)(B), 284(b)(2), 284a(a)(3)(A), 289a, and 289c).

Applicability.

SEC. 222. Section 307(c) of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended by striking “is authorized to make grants” and inserting “is authorized to make interagency transfers”.

This title may be cited as the “Department of Health and Human Services Appropriations Act, 2004”.

Department of
Education
Appropriations
Act, 2004.

TITLE III—DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

For carrying out title I of the Elementary and Secondary Education Act of 1965 (“ESEA”) and section 418A of the Higher Education Act of 1965, \$14,528,522,000, of which \$6,983,169,000 shall become available on July 1, 2004, and shall remain available through September 30, 2005, and of which \$7,383,301,000 shall become available on October 1, 2004, and shall remain available through September 30, 2005, for academic year 2004–2005: *Provided*, That \$7,107,283,000 shall be available for basic grants under section 1124: *Provided further*, That up to \$3,500,000 of these funds shall be available to the Secretary of Education on October 1, 2003, to obtain annually updated educational-agency-level census poverty data from the Bureau of the Census: *Provided further*, That \$1,365,031,000 shall be available for concentration grants under section 1124A: *Provided further*, That \$1,969,843,000 shall be available for targeted grants under section 1125: *Provided further*, That \$1,969,843,000 shall be available for education finance incentive grants under section 1125A: *Provided further*, That \$235,000,000 shall be available for comprehensive school reform grants under part F of the ESEA: *Provided further*, That from the \$8,842,000 available to carry out part E of title I, up to \$1,000,000 shall be available to the Secretary of Education to provide technical assistance to State and local educational agencies concerning part A of title I.

IMPACT AID

For carrying out programs of financial assistance to federally affected schools authorized by title VIII of the Elementary and Secondary Education Act of 1965, \$1,236,824,000, of which \$1,070,000,000 shall be for basic support payments under section

8003(b), \$50,668,000 shall be for payments for children with disabilities under section 8003(d), \$46,208,000 shall be for construction under section 8007 and shall remain available through September 30, 2005, \$62,000,000 shall be for Federal property payments under section 8002, and \$7,948,000, to remain available until expended, shall be for facilities maintenance under section 8008: *Provided*, That \$1,500,000 of the funds for section 8007 shall be available for the local educational agencies and in the amounts specified in the statement of the managers on the conference report accompanying this Act: *Provided further*, That, notwithstanding any other provision of law, these funds shall remain available until expended.

SCHOOL IMPROVEMENT PROGRAMS

For carrying out school improvement activities authorized by titles II, part B of title IV, part A and subparts 6 and 9 of part D of title V, parts A and B of title VI, and parts B and C of title VII of the Elementary and Secondary Education Act of 1965 (“ESEA”); the McKinney-Vento Homeless Assistance Act; and the Civil Rights Act of 1964, \$5,834,208,000, of which \$4,282,199,000 shall become available on July 1, 2004, and remain available through September 30, 2005, and of which \$1,435,000,000 shall become available on October 1, 2004, and shall remain available through September 30, 2005, for academic year 2004–2005: *Provided*, That funds made available to carry out part B of title VII of the ESEA may be used for construction, renovation and modernization of any elementary school, secondary school, or structure related to an elementary school or secondary school, run by the Department of Education of the State of Hawaii, that serves a predominantly Native Hawaiian student body: *Provided further*, That from the funds referred to in the preceding proviso, not less than \$1,000,000 shall be for a grant to the Department of Education of the State of Hawaii for the activities described in such proviso: *Provided further*, That funds made available to carry out part C of title VII of the ESEA may be used for construction: *Provided further*, That \$391,600,000 shall be for subpart 1 of part A of title VI of the ESEA: *Provided further*, That \$27,821,000 shall be available to carry out part D of title V of the ESEA: *Provided further*, That no funds appropriated under this heading may be used to carry out section 5494 under the ESEA.

INDIAN EDUCATION

For expenses necessary to carry out, to the extent not otherwise provided, title VII, part A of the Elementary and Secondary Education Act of 1965, \$121,573,000.

INNOVATION AND IMPROVEMENT

For carrying out activities authorized by parts G and H of title I, subpart 5 of part A and parts C and D of title II, parts B, C, and D of title V, and section 1504 of the Elementary and Secondary Education Act of 1965 (“ESEA”), \$1,106,811,000: *Provided*, That \$74,513,000 for continuing and new grants to demonstrate effective approaches to comprehensive school reform shall become available on July 1, 2004, and remain available through September 30, 2005, and shall be allocated and expended in the same manner as the funds provided under the Fund for the

Improvement of Education for this purpose were allocated and expended in fiscal year 2003: *Provided further*, That \$18,500,000 shall be available to carry out section 2151(c) of the ESEA, of which not less than \$10,000,000 shall be provided to the National Board for Professional Teaching Standards, not less than \$7,000,000 shall be provided to the National Council on Teacher Quality, and up to \$1,500,000 may be reserved by the Secretary to conduct an evaluation of activities authorized by such section: *Provided further*, That \$430,463,000 shall be available to carry out part D of title V of the ESEA: *Provided further*, That \$177,271,000 of the funds for subpart 1, part D of title V of the ESEA shall be available for the projects and in the amounts specified in the statement of the managers on the conference report accompanying this Act.

SAFE SCHOOLS AND CITIZENSHIP EDUCATION

For carrying out activities authorized by subpart 3 of part C of title II, part A of title IV, and subparts 2, 3 and 10 of part D of title V of the Elementary and Secondary Education Act of 1965 (“ESEA”), title VIII–D of the Higher Education Amendments of 1998, and Public Law 102–73, \$862,813,000, of which \$470,483,000 shall become available on July 1, 2004, and remain available through September 30, 2005: *Provided*, That of the amount available for subpart 2 of part A of title IV of the ESEA, \$850,000 shall be used to continue the National Recognition Awards program under the same guidelines outlined by section 120(f) of Public Law 105–244: *Provided further*, That \$445,483,000 shall be available for subpart 1 of part A of title IV and \$234,680,000 shall be available for subpart 2 of part A of title IV: *Provided further*, That \$128,838,000 shall be available to carry out part D of title V of the ESEA: *Provided further*, That of the funds available to carry out subpart 3 of part C of title II, up to \$11,922,000 may be used to carry out section 2345 and \$2,980,000 shall be used by the Center for Civic Education to implement a comprehensive program to improve public knowledge, understanding, and support of the Congress and the State legislatures: *Provided further*, That \$25,000,000 shall be for Youth Offender Grants, of which \$5,000,000 shall be used in accordance with section 601 of Public Law 102–73 as that section was in effect prior to enactment of Public Law 105–220.

ENGLISH LANGUAGE ACQUISITION

For carrying out part A of title III of the ESEA, \$685,258,000, of which \$560,301,000 shall become available on July 1, 2004, and shall remain available through September 30, 2005: *Provided*, That notwithstanding section 3111(c)(4)(B)(ii), the Secretary may, in determining the allotments under section 3111(c)(3), use the same Census data for the number of limited English proficient children and youth used for the previous year’s allotments under section 3111(c)(3) and the most recent data collected from States for the number of immigrant children and youth that is acceptable to the Secretary: *Provided further*, That funds reserved under section 3111(c)(1)(D) of the ESEA that are not used in accordance with section 3111(c)(2) may be added to the funds that are available July 1, 2004 through September 30, 2005, for State allotments under section 3111(c)(3).

SPECIAL EDUCATION

For carrying out the Individuals with Disabilities Education Act, \$11,307,072,000, of which \$5,604,762,000 shall become available for obligation on July 1, 2004, and shall remain available through September 30, 2005, and of which \$5,413,000,000 shall become available on October 1, 2004, and shall remain available through September 30, 2005, for academic year 2004–2005: *Provided*, That \$11,400,000 shall be for Recording for the Blind and Dyslexic to support the development, production, and circulation of recorded educational materials: *Provided further*, That \$1,500,000 shall be for the recipient of funds provided by Public Law 105–78 under section 687(b)(2)(G) of the Act to provide information on diagnosis, intervention, and teaching strategies for children with disabilities: *Provided further*, That the amount for section 611(c) of the Act shall be equal to the amount available for that section during fiscal year 2003, increased by the amount of inflation as specified in section 611(f)(1)(B)(ii) of the Act: *Provided further*, That \$6,879,000 of the funds for section 672 of the Act shall be available for the projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

REHABILITATION SERVICES AND DISABILITY RESEARCH

For carrying out, to the extent not otherwise provided, the Rehabilitation Act of 1973, the Assistive Technology Act of 1998, and the Helen Keller National Center Act, \$3,013,305,000, of which \$1,000,000 shall be awarded to the American Academy of Orthotists and Prosthetists for activities that further the purposes of the grant received by the Academy for the period beginning October 1, 2003, including activities to meet the demand for orthotic and prosthetic provider services and improve patient care: *Provided*, That the funds provided for title I of the Assistive Technology Act of 1998 (“the AT Act”) shall be allocated notwithstanding section 105(b)(1) of the AT Act: *Provided further*, That section 101(f) of the AT Act shall not limit the award of an extension grant to 3 years: *Provided further*, That no State or outlying area awarded funds under section 101 shall receive less than the amount received in fiscal year 2003: *Provided further*, That \$5,035,000 of the funds for section 303 of the Rehabilitation Act of 1973 shall be available for the projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES

AMERICAN PRINTING HOUSE FOR THE BLIND

For carrying out the Act of March 3, 1879, as amended (20 U.S.C. 101 et seq.), \$16,500,000.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

For the National Technical Institute for the Deaf under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), \$53,800,000, of which \$367,000 shall be for construction and shall remain available until expended: *Provided*, That from the total amount available, the Institute may at its discretion

use funds for the endowment program as authorized under section 207.

GALLAUDET UNIVERSITY

For the Kendall Demonstration Elementary School, the Model Secondary School for the Deaf, and the partial support of Gallaudet University under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), \$100,800,000: *Provided*, That from the total amount available, the University may at its discretion use funds for the endowment program as authorized under section 207.

VOCATIONAL AND ADULT EDUCATION

For carrying out, to the extent not otherwise provided, the Carl D. Perkins Vocational and Technical Education Act of 1998, the Adult Education and Family Literacy Act, and subparts 4 and 11 of part D of title V of the Elementary and Secondary Education Act of 1965 (“ESEA”), \$2,121,690,000, of which \$1,304,712,000 shall become available on July 1, 2004, and shall remain available through September 30, 2005, and of which \$791,000,000 shall become available on October 1, 2004, and shall remain available through September 30, 2005: *Provided*, That notwithstanding any other provision of law or any regulation, the Secretary of Education shall not require the use of a restricted indirect cost rate for grants issued pursuant to section 117 of the Carl D. Perkins Vocational and Technical Education Act of 1998: *Provided further*, That of the amount provided for Adult Education State Grants, \$69,545,000 shall be made available for integrated English literacy and civics education services to immigrants and other limited English proficient populations: *Provided further*, That of the amount reserved for integrated English literacy and civics education, notwithstanding section 211 of the Adult Education and Family Literacy Act, 65 percent shall be allocated to States based on a State’s absolute need as determined by calculating each State’s share of a 10-year average of the Immigration and Naturalization Service data for immigrants admitted for legal permanent residence for the 10 most recent years, and 35 percent allocated to States that experienced growth as measured by the average of the 3 most recent years for which Immigration and Naturalization Service data for immigrants admitted for legal permanent residence are available, except that no State shall be allocated an amount less than \$60,000: *Provided further*, That of the amounts made available for the Adult Education and Family Literacy Act, \$9,223,000 shall be for national leadership activities under section 243 and \$6,732,000 shall be for the National Institute for Literacy under section 242: *Provided further*, That \$185,000,000 shall be available to carry out part D of title V of the ESEA: *Provided further*, That \$175,000,000 shall be available to support the activities authorized under subpart 4 of part D of title V of the Elementary and Secondary Education Act of 1965, of which up to 5 percent shall become available October 1, 2003, and shall remain available through September 30, 2005, for evaluation, technical assistance, school networking, peer review of applications, and program outreach activities, and of which not less than 95 percent shall become available on July 1, 2004, and remain

available through September 30, 2005, for grants to local educational agencies: *Provided further*, That funds made available to local education agencies under this subpart shall be used only for activities related to establishing smaller learning communities in high schools.

STUDENT FINANCIAL ASSISTANCE

For carrying out subparts 1, 3, and 4 of part A, part C and part E of title IV of the Higher Education Act of 1965, as amended, \$14,090,430,000, which shall remain available through September 30, 2005.

The maximum Pell Grant for which a student shall be eligible during award year 2004–2005 shall be \$4,050.

20 USC 1070a
note.

STUDENT AID ADMINISTRATION

For Federal administrative expenses (in addition to funds made available under section 458), to carry out part D of title I, and subparts 1, 3, and 4 of part A, and parts B, C, D and E of title IV of the Higher Education Act of 1965, as amended, \$118,010,000.

HIGHER EDUCATION

For carrying out, to the extent not otherwise provided, section 121 and titles II, III, IV, V, VI, and VII of the Higher Education Act of 1965 (“HEA”), as amended, section 1543 of the Higher Education Amendments of 1992, title VIII of the Higher Education Amendments of 1998, and the Mutual Educational and Cultural Exchange Act of 1961, \$2,094,511,000, of which \$2,000,000 for interest subsidies authorized by section 121 of the HEA shall remain available until expended: *Provided*, That \$9,935,000, to remain available through September 30, 2005, shall be available to fund fellowships for academic year 2005–2006 under part A, subpart 1 of title VII of said Act, under the terms and conditions of part A, subpart 1: *Provided further*, That \$994,000 is for data collection and evaluation activities for programs under the HEA, including such activities needed to comply with the Government Performance and Results Act of 1993: *Provided further*, That notwithstanding any other provision of law, funds made available in this Act to carry out title VI of the HEA and section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 may be used to support visits and study in foreign countries by individuals who are participating in advanced foreign language training and international studies in areas that are vital to United States national security and who plan to apply their language skills and knowledge of these countries in the fields of government, the professions, or international development: *Provided further*, That up to 1 percent of the funds referred to in the preceding proviso may be used for program evaluation, national outreach, and information dissemination activities: *Provided further*, That \$123,110,000 of the funds for part B of title VII of the Higher Education Act of 1965 shall be available for the projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

HOWARD UNIVERSITY

For partial support of Howard University (20 U.S.C. 121 et seq.), \$240,180,000, of which not less than \$3,573,000 shall be for a matching endowment grant pursuant to the Howard University Endowment Act (Public Law 98–480) and shall remain available until expended.

COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS PROGRAM

For Federal administrative expenses authorized under section 121 of the Higher Education Act of 1965, \$774,000 to carry out activities related to existing facility loans entered into under the Higher Education Act of 1965.

HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAPITAL
FINANCING PROGRAM ACCOUNT

The aggregate principal amount of outstanding bonds insured pursuant to section 344 of title III, part D of the Higher Education Act of 1965, shall not exceed \$357,000,000, and the cost, as defined in section 502 of the Congressional Budget Act of 1974, of such bonds shall not exceed zero.

For administrative expenses to carry out the Historically Black College and University Capital Financing Program entered into pursuant to title III, part D of the Higher Education Act of 1965, as amended, \$210,000.

INSTITUTE OF EDUCATION SCIENCES

For carrying out activities authorized by Public Law 107–279, \$478,717,000: *Provided*, That, of the amount appropriated, \$166,500,000 shall be available for obligation through September 30, 2005: *Provided further*, That of the amount provided to carry out title I, parts B and D of Public Law 107–279, not less than \$24,362,000 shall be for the national research and development centers authorized under section 133(c): *Provided further*, That \$4,968,000 shall be available to extend for one additional year the contract for the Eisenhower National Clearinghouse for Mathematics and Science Education authorized under section 2102(a)(2) of the Elementary and Secondary Education Act of 1965, prior to its amendment by the No Child Left Behind Act of 2001, Public Law 107–110.

DEPARTMENTAL MANAGEMENT

PROGRAM ADMINISTRATION

For carrying out, to the extent not otherwise provided, the Department of Education Organization Act, including rental of conference rooms in the District of Columbia and hire of three passenger motor vehicles, \$425,000,000, of which \$13,644,000, to remain available until expended, shall be for building alterations and related expenses for the relocation of department staff to Potomac Center Plaza in Washington, D.C.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, as authorized by section 203 of the Department of Education Organization Act, \$89,275,000.

OFFICE OF THE INSPECTOR GENERAL

For expenses necessary for the Office of the Inspector General, as authorized by section 212 of the Department of Education Organization Act, \$47,137,000.

GENERAL PROVISIONS

SEC. 301. No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

SEC. 302. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing or clustering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 303. No funds appropriated under this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

(TRANSFER OF FUNDS)

SEC. 304. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the Department of Education in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: *Provided*, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

Notification.

SEC. 305. SPECIAL STUDY OF SIMPLIFICATION OF NEED ANALYSIS AND APPLICATION FOR TITLE IV AID. (a) STUDY REQUIRED.—The Advisory Committee on Student Financial Assistance established by section 491 of the Higher Education Act of 1965 (20 U.S.C. 1098), hereafter in this section referred to as “the Advisory Committee”, shall conduct a thorough study of the feasibility of simplifying the need analysis methodology for all Federal student financial assistance programs and the process of applying for such assistance.

20 USC 1087kk
note.

(b) REQUIRED SUBJECTS OF STUDY.—In performing the study, the Advisory Committee shall, at a minimum, examine the following:

(1) whether the methodology used to calculate the expected family contribution can be simplified without significant adverse effects on program intent, costs, integrity, delivery, and distribution of awards;

(2) whether the number of data elements, and, accordingly, the number and complexity of questions asked of students and families, used to calculate the expected family contribution can be reduced without such adverse effects;

(3) whether the procedures for determining such data elements, including determining and updating offsets and allowances, is the most efficient, effective, and fair means to determine a family's available income and assets;

(4) whether the methodology used to calculate the expected family contribution, specifically the consideration of income earned by a dependent student and its effect on Pell grant eligibility, is an effective and fair means to determine a family's available income and a student's need;

(5) whether the nature and timing of the application required in section 483 (a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1090(a)(1)), eligibility and award determination, financial aid processing, and funds delivery can be streamlined further for students and families, institutions, and States;

(6) whether it is feasible to allow students to complete only those limited sections of the financial aid application that apply to their specific circumstances and the State in which they reside;

(7) whether a widely disseminated printed form, or the use of an Internet or other electronic means, can be developed to notify individuals of an estimation of their approximate eligibility for grant, work-study, and loan assistance upon completion and verification of the simplified application form;

(8) whether information provided on other Federal forms (such as the form applying for supplemental security income under title XVI of the Social Security Act, the form for applying for food stamps under the Food Stamp Act of 1977, and the schedule for applying for the earned income tax credit under section 32 of the Internal Revenue Code of 1986) that are designed to determine eligibility for various Federal need-based assistance programs could be used to qualify potential students for the simplified needs test; and

(9) whether any proposed changes to data elements collected, in addition to those used to calculate expected family contribution, or any proposed changes to the form's design or the process of applying for aid, may have adverse effects on program costs, integrity, delivery, or distribution of awards, as well as, application development or application processing.

(c) **ADDITIONAL CONSIDERATIONS.**—In conducting the feasibility study, the Advisory Committee's primary objective under this subsection shall be simplifying the financial aid application forms and process and obtaining a substantial reduction in the number of required data items. In carrying out that objective, the Advisory Committee shall pay special attention to the needs of low-income and moderate-income students and families.

(d) **CONSULTATION.**—

(1) **IN GENERAL.**—The Advisory Committee shall consult with a broad range of interested parties in higher education,

including parents and students, high school guidance counselors, financial aid and other campus administrators, appropriate State administrators, administrators of intervention and outreach programs, and appropriate officials from the Department of Education.

(2) FORMS DESIGN EXPERT.—With the goal of making significant changes to the form to make the questions more easily understandable, the Advisory Committee shall consult a forms design expert to ensure that its recommendations for revision of the application form would assist in making the form easily readable and understood by parents, students, and other members of the public.

(3) CONGRESSIONAL CONSULTATION.—The Advisory Committee shall consult on a regular basis with the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate in carrying out the feasibility study required by this subsection.

(4) DEPARTMENTAL CONSULTATION.—The Secretary of Education shall provide such assistance to the Advisory Committee as is requested and practicable in conducting the study required by this subsection.

(e) REPORTS.—

Deadlines.

(1) INTERIM REPORT.—The Advisory Committee shall, not later than 6 months after the date of enactment of this Act, prepare and submit an interim report containing any such legislative changes as the Advisory Committee recommends to reform and simplify the needs analysis under part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk et seq.) and forms and other requirements under such title to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Secretary of Education.

(2) FINAL REPORT.—The Advisory Committee shall, not later than 1 year after the date of enactment of this Act, prepare and submit a full final report on the study, including recommendations for regulatory and administrative changes required by this section, to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Secretary of Education.

(f) IMPLEMENTATION.—The Secretary of Education shall consult with the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate and shall subsequently initiate a redesign of the form required by section 483 of the Higher Education Act of 1965 (20 U.S.C. 1090). Such redesign shall include the testing of alternative simplified versions of the free Federal form. The Secretary shall keep the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate fully and currently informed on the progress of these efforts.

(g) POSTPONEMENT OF TAX TABLE UPDATE PENDING REPORT AND IMPLEMENTATION.—The Secretary of Education shall not implement or enforce for the award year 2004–2005 the annual update to the allowances for State and other taxes in the tables used

Deadline.

in the Federal needs analysis methodology, as prescribed by the Secretary on May 30, 2003 (68 Fed. Reg. 32473).

SEC. 306. The Secretary of Education shall treat as timely filed an application under section 8003 of the Elementary and Secondary Education Act of 1965 from the local educational agency for Hydaburg, Alaska, for a payment for fiscal year 2004, and shall process such application for payment, if the Secretary has received the fiscal year 2004 application not later than 30 days after the date of enactment of this Act.

This title may be cited as the “Department of Education Appropriations Act, 2004”.

TITLE IV—RELATED AGENCIES

ARMED FORCES RETIREMENT HOME

For expenses necessary for the Armed Forces Retirement Home to operate and maintain the Armed Forces Retirement Home—Washington and the Armed Forces Retirement Home—Gulfport, to be paid from funds available in the Armed Forces Retirement Home Trust Fund, \$65,279,000, of which \$1,983,000 shall remain available until expended for construction and renovation of the physical plants at the Armed Forces Retirement Home—Washington and the Armed Forces Retirement Home—Gulfport.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

DOMESTIC VOLUNTEER SERVICE PROGRAMS, OPERATING EXPENSES

For expenses necessary for the Corporation for National and Community Service to carry out the provisions of the Domestic Volunteer Service Act of 1973, as amended, \$356,443,000: *Provided*, That none of the funds made available to the Corporation for National and Community Service in this Act for activities authorized by section 122 of part C of title I and part E of title II of the Domestic Volunteer Service Act of 1973 shall be used to provide stipends or other monetary incentives to volunteers or volunteer leaders whose incomes exceed 125 percent of the national poverty level.

CORPORATION FOR PUBLIC BROADCASTING

For payment to the Corporation for Public Broadcasting, as authorized by the Communications Act of 1934, an amount which shall be available within limitations specified by that Act, for the fiscal year 2006, \$400,000,000: *Provided*, That no funds made available to the Corporation for Public Broadcasting by this Act shall be used to pay for receptions, parties, or similar forms of entertainment for Government officials or employees: *Provided further*, That none of the funds contained in this paragraph shall be available or used to aid or support any program or activity from which any person is excluded, or is denied benefits, or is discriminated against, on the basis of race, color, national origin, religion, or sex: *Provided further*, That for fiscal year 2004, in addition to the amounts provided above, \$50,000,000 shall be for costs related

to digital program production, development, and distribution, associated with the transition of public broadcasting to digital broadcasting, to be awarded as determined by the Corporation in consultation with public radio and television licensees or permittees, or their designated representatives: *Provided further*, That for fiscal year 2004, in addition to the amounts provided above, \$10,000,000 shall be for the costs associated with implementing the first phase of the next generation interconnection system.

FEDERAL MEDIATION AND CONCILIATION SERVICE

SALARIES AND EXPENSES

For expenses necessary for the Federal Mediation and Conciliation Service to carry out the functions vested in it by the Labor Management Relations Act, 1947 (29 U.S.C. 171–180, 182–183), including hire of passenger motor vehicles; for expenses necessary for the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a); and for expenses necessary for the Service to carry out the functions vested in it by the Civil Service Reform Act, Public Law 95–454 (5 U.S.C. ch. 71), \$43,385,000, including \$1,500,000, to remain available through September 30, 2005, for activities authorized by the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a): *Provided*, That notwithstanding 31 U.S.C. 3302, fees charged, up to full-cost recovery, for special training activities and other conflict resolution services and technical assistance, including those provided to foreign governments and international organizations, and for arbitration services shall be credited to and merged with this account, and shall remain available until expended: *Provided further*, That fees for arbitration services shall be available only for education, training, and professional development of the agency workforce: *Provided further*, That the Director of the Service is authorized to accept and use on behalf of the United States gifts of services and real, personal, or other property in the aid of any projects or functions within the Director's jurisdiction.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Federal Mine Safety and Health Review Commission (30 U.S.C. 801 et seq.), \$7,774,000.

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

For carrying out the Museum and Library Services Act of 1996, \$262,596,000, to remain available until expended: *Provided*, That of the amount provided, \$125,000 shall be awarded to the Alabama School of Math and Science at the University of Alabama for technology upgrades and library resources, \$50,000 shall be awarded to the Alaska Moving Image Preservation Association, Anchorage, Alaska, to digitize files/photos/videos of Alaskan history, \$25,000 shall be awarded to the Alex Haley House Museum, Henning, Tennessee, for care and preservation of collection, \$500,000 shall be awarded to the Allen County Historical Society, Lima, Ohio, for the “Move Our Past Forward” project to expand and develop exhibits for their Children's Discovery Museum Center, \$75,000 shall be awarded to the Allentown Art Museum, Allentown,

Pennsylvania, for educational programming for school districts, \$100,000 shall be awarded to the Alutiiq Museum, Kodiak, Alaska, to support programs to teach students and adults how to develop traditional Native arts, \$200,000 shall be awarded to the American Village Citizenship Trust, Montevallo, Alabama, for a national initiative for teaching American history and civics, \$100,000 shall be awarded to the Arab Community Center for Economic and Social Services (ACCESS), Dearborn, Michigan, for exhibits and museum programs, \$100,000 shall be awarded to the Ashland Community Arts Center, Ashland, Ohio, for Arts in Downtown project, \$75,000 shall be awarded to the Athenaeum of Philadelphia, Philadelphia, Pennsylvania, to preserve library materials and access to information in the form of digital images on the Internet, \$500,000 shall be awarded to the Beth Medrash Govoha, Lakewood, New Jersey, for equipment and exhibits for the Holocaust Library, \$400,000 shall be awarded to the Bishop Museum in Hawaii, for activities to preserve the culture of Native Hawaiians, \$400,000 shall be awarded to the Bishop Museum in Hawaii to develop Native Hawaiian cultural projects in collaboration with the Peabody Museum of Massachusetts and an Alaskan museum, \$900,000 shall be awarded to the Burpee Museum of Natural History, Rockford, Illinois, for community outreach and educational activities, \$100,000 shall be awarded to the Campbell Center for Historic Preservation Studies, Mount Carroll, Illinois, for community outreach and program planning, \$200,000 shall be awarded to the Chaldean Community Culture Center, West Bloomfield, Michigan, for programs that promote Chaldean language, history, culture and teacher training, \$250,000 shall be awarded to the Chapman University, Orange, California, for technological infrastructure, \$250,000 shall be awarded to the Chartiers Valley Partnership, Inc., Carnegie, Pennsylvania, for technological upgrades and educational programs at the Andrew Carnegie Free Library, \$113,000 shall be awarded to the Children's Museum at La Habra, California, for a Hands On English Program, \$144,000 shall be awarded to the Children's Museum of History, Natural History, Science and Technology, Utica, New York, for technology improvements, staffing and training, \$400,000 shall be awarded to the Cincinnati Museum Center at Union Terminal, Cincinnati, Ohio, to develop and implement an integrated curriculum that will utilize its resources in art, science, and history when visiting the museum, \$150,000 shall be awarded to the City of Hemet, California, for Hemet Public Library, for library materials and technological equipment, \$387,000 shall be awarded to the City of Whittier, California, for the Whittier Public Library Children's Area and History Room, \$250,000 shall be awarded to the Cleveland Health Museum, Cleveland Ohio, for exhibits, \$100,000 shall be awarded to the College of Physicians of Philadelphia, Philadelphia, Pennsylvania, to preserve medical library and art collection, \$400,000 shall be awarded to the Davenport Music History Museum in Davenport, Iowa, \$75,000 shall be awarded to the Delaware County Historical Society, Media, Pennsylvania, for educational programs highlighting historical themes and sites relating to Delaware County, \$75,000 shall be awarded to the East Stroudsburg University, East Stroudsburg, Pennsylvania, to preserve and develop exhibits for their Vintage Radio Programs and Jazz Museum, \$100,000 shall be awarded to the Elmwood Zoo, Norristown, Pennsylvania, for student education programs, \$75,000 shall be awarded to the Erie County,

Erie, Pennsylvania, for technology upgrades for the Erie County Library, \$100,000 shall be awarded to the Fender Museum of the Arts Foundation, Corona, California, for the Kids Rock Free educational program, \$200,000 shall be awarded to the Fine Arts Museums of San Francisco for the De Young Museum's Art Education Program, \$1,500,000 shall be awarded to the Florida Holocaust Museum, St. Petersburg, Florida, for school outreach program, \$750,000 shall be awarded to the Florida International Museum, St. Petersburg, Florida, for professional activities, \$1,600,000 shall be awarded to the Folger Library, Washington, D.C., for exhibits, operations, and public programs including education and outreach, \$50,000 shall be awarded to the Forsyth County Public Library, Winston-Salem, North Carolina, for salaries, supplies, personnel and materials, \$50,000 shall be awarded to the Gault Family Learning Center, Wooster, Ohio, for PALS/Parenting Resource Center/Growing Together, \$250,000 shall be awarded to the General George S. Patton Jr. National Museum of Cavalry and Armor, Fort Knox, Kentucky, \$500,000 shall be awarded to the George C. Marshall Foundation in Lexington, Virginia, for exhibit design and development and collection preservation, \$500,000 shall be awarded to the Grout Museum, Waterloo, Iowa, for exhibits and design of the Sullivan Brothers Veterans Museum and Research Center, \$200,000 shall be awarded to the Heritage Harbor Museum of Providence, Rhode Island, for exhibit design and development relating Rhode Island and American history, \$150,000 shall be awarded to the Hernando County Library System, Florida, for technology improvements at West Hernando Branch Library, Brooksville Main Library, Spring Hill Library, and East Hernando Branch Library, \$250,000 shall be awarded to the Hesperia Community Library, Hesperia, California, \$200,000 shall be awarded to the Historical Society of Western Pennsylvania, Pittsburgh, Pennsylvania, for exhibit and curriculum development for the Western Pennsylvania Sports Museum at the Senator John Heinz Pittsburgh Regional History Center, \$150,000 shall be awarded to the Historical Society of Western Pennsylvania, Pittsburgh, Pennsylvania, for exhibit design and development for the Meadowcraft Museum of Rural Life, \$250,000 shall be awarded to the Idaho State University, Pocatello, Idaho, for a Virtual Idaho Museum of Natural History project, \$50,000 shall be awarded to the Imaginarium Science Center, Anchorage, Alaska, to develop science exhibits and distance delivery modules, \$100,000 shall be awarded to the International Museum of Women to develop exhibits on the history of women's lives worldwide, \$100,000 shall be awarded to the International Storytelling Center, Jonesborough, Tennessee, \$100,000 shall be awarded to the James Ford Bell Museum of Natural History, Minneapolis, Minnesota, to produce detailed exhibit design and development, \$100,000 shall be awarded to the Kishacoquillas Valley Historical Society, Allensville, Pennsylvania, for care and preservation of collection, \$100,000 shall be awarded to the Lafayette College, Easton, Pennsylvania, for technology updates to the Skillman Library, \$166,000 shall be awarded to the Madera County Resource Management Agency, Madera, California, \$21,000 shall be awarded to the Magic House, Kirkwood, Missouri for the development and design of interactive exhibits and software to be used within The Magic Library to support family literacy, \$100,000 shall be awarded to the Mary Meuser Memorial Library, Easton, Pennsylvania, for library upgrades,

\$250,000 shall be awarded to the Metropolitan Museum of Art, New York, in conjunction with the Fairbanks Museum of Art and the Anchorage Museum of History and Art, for costs of mounting the exhibit and for costs associated with bringing the exhibit to Alaska, \$350,000 shall be awarded to the Michigan Space and Science Center, Jackson, Michigan, for development of the strategic plan, operational costs and personnel, \$450,000 shall be awarded to the Mississippi Department of Archives and History, Jackson, Mississippi, to complete the preservation and restoration of the Eudora Welty House, \$75,000 shall be awarded to the Mobile Museum of Art, Mobile, Alabama, for equipment and supplies, and for exhibit design and development, \$100,000 shall be awarded to the Morehouse College Library, Atlanta, Georgia, for historical preservation of documents and records, \$100,000 shall be awarded to the Mother Bethel Foundation, Philadelphia, Pennsylvania, for care and preservation of collection at the Richard Allen Museum, \$225,000 shall be awarded to the Museum of Aviation Foundation Inc., Warner Robins, Georgia, \$250,000 shall be awarded to the Museum of Broadcast Communications, Chicago, Illinois, for educational programming, \$1,000,000 shall be awarded to the Museum of Science in Boston, Massachusetts, for technology upgrades and equipment for the National Center for Technology Literacy, \$100,000 shall be awarded to the Mystic Seaport, the Museum of America and the Sea, Mystic, Connecticut, to support collections, \$50,000 shall be awarded to the National Canal Museum, Easton, Pennsylvania, for educational programming and exhibits on the use of transportation and industrial technology along the Lehigh Canal, \$400,000 shall be awarded to the National Center for American Revolution, Wayne, Pennsylvania, for exhibit design and curriculum development for the Museum of the American Revolution at Valley Forge National Historic Park, \$50,000 shall be awarded to the National Center for the Study of Civil Rights and African-American Culture, Alabama State University, Montgomery, Alabama, for support of events leading into the 50th anniversary of the Montgomery Bus Boycott, \$500,000 shall be awarded to the National Civil Rights Museum in Memphis for exhibit design and development, and for educational programs, \$16,000 shall be awarded to the National Distance Running Hall of Fame, Utica, New York, for display cases and to establish new interactive displays, \$500,000 shall be awarded to the National Liberty Museum, Philadelphia, Pennsylvania, for a teacher training program to assist educators in addressing violence in schools, \$650,000 shall be awarded to the National Mississippi River Museum and Aquarium in Dubuque, Iowa for exhibits, \$200,000 shall be awarded to the National Museum of American Jewish History, Philadelphia, Pennsylvania, for online educational programming and technology modernization, \$1,000,000 shall be awarded to the National Museum of Women in the Arts, Washington, D.C., \$1,000,000 shall be awarded to the Native American Cultural and Educational Authority, Oklahoma City, Oklahoma, for the Oklahoma Native American Culture Center and Museum, to be expended only upon meeting the matching requirements in title III, section 301(b)(2)(B) of Public Law 107-331, \$300,000 shall be awarded to the Negro Leagues Baseball Museum, Kansas City, Missouri, for exhibits for the Double Play Action Center, \$400,000 shall be awarded to the New York Botanical Garden's Virtual Herbarium imaging project in Bronx, New York, \$900,000 shall be awarded to the New York

Hall of Science to develop, expand, and display science-related educational materials, \$420,000 shall be awarded to the Niagara County Historical Society, Lockport, New York, to create a state-of-the-art interpretive museum, \$50,000 shall be awarded to the Northwest Museum of Arts and Culture, Spokane, Washington, for the Star Nations Program, \$210,000 shall be awarded to the O. Winston Link Museum, Roanoke, Virginia, for displays and digitization, \$150,000 shall be awarded to the Piper's Opera House Programs, Inc., Virginia City, Nevada, for exhibit design and development, educational programming, and technology modernization, \$100,000 shall be awarded to the Pittsburgh Children's Museum, Pittsburgh, Pennsylvania, to expand arts and after-school programs for at-risk children, \$50,000 shall be awarded to the Placer County Library, Auburn, California, to enhance library collection through the purchase of library materials, \$977,000 shall be awarded to the Plano Community Library District, Plano, Illinois, for expenses related to the library, \$725,000 shall be awarded to the Please Touch Museum, Philadelphia, Pennsylvania, to develop educational programs focusing on hands-on learning experiences, \$100,000 shall be awarded to the Plumas County Library, Quincy, California, for library materials, \$25,000 shall be awarded to the Putnam County Commissioners, Winfield, West Virginia, for technology for the public library system in Putnam County, \$200,000 shall be awarded to the Rock and Roll Hall of Fame and Museum, Cleveland, Ohio, for the Rockin' the Schools education program, \$50,000 shall be awarded to the Saint Tikhon's Theological Seminary, South Canaan, Pennsylvania, for care and preservation of Russian artifacts, \$250,000 shall be awarded to the San Bernardino County, San Bernardino, California, for the San Bernardino County Museum, \$100,000 shall be awarded to the Serra Cooperative Library System, San Diego, California, to provide Live Homework Help Project to help students with expert tutors for real-time online instructions, \$100,000 shall be awarded to the Simon Wiesenthal Center's Los Angeles Museum for Tolerance, Los Angeles, California, for the Tools for Tolerance for Educators program to provide teacher training in diversity, tolerance and cooperation, \$25,000 shall be awarded to the Southern New Hampshire Services, Inc., Manchester, New Hampshire, for exhibit acquisition for SEE Science Center, \$400,000 shall be awarded to the Speed Art Museum, Louisville, Kentucky, \$100,000 shall be awarded to the Standing Bear Museum and Learning Center, Ponca City, Oklahoma, \$1,000,000 shall be awarded to the State Historical Society of Iowa in Des Moines, Iowa, for the development of exhibits for the World Food Prize, \$200,000 shall be awarded to the Taft Museum of Art, Cincinnati, Ohio, for educational programming and exhibits, \$1,000,000 shall be awarded to the Tennessee State University African American History Museum, Nashville, Tennessee, to enhance the library facilities which will include new exhibits, expanded archives, and research programs, \$24,000 shall be awarded to The Arts Guild of Old Forge, Old Forge, New York, for the new exhibits spaces and educational programs, \$50,000 shall be awarded to the Tifton-Tift County Public Library, Tifton, Georgia, \$60,000 shall be awarded to the Tillamook County Library, Tillamook, Oregon, for design and development of exhibits and educational programs, \$100,000 shall be awarded to the Town of Greece, Rochester, New York, for the Greece Public Library Security program, \$50,000 shall be awarded to the Tuskegee

Multicultural Center, Tuskegee, Alabama, to provide for technology enhancements and installation of exhibits, \$400,000 shall be awarded to the University of Idaho for digital archiving and preservation of historically significant American music and facilitating its access to students and scholars nationwide, \$500,000 shall be awarded to the Vietnam Archives Center at Texas Tech University, Lubbock, Texas, for technology infrastructure, \$250,000 shall be awarded to the Virginia Historical Society, Richmond, Virginia, to assist with educational programmatic development and for cataloging and archiving of business history records, \$100,000 shall be awarded to the Virginia Living Museum for the expansion of its educational programs in its capital campaign project, \$100,000 shall be awarded to the Westminster College Library, New Willmington, Pennsylvania, for technology upgrades and computers and community programming, \$600,000 shall be awarded to the WWII Victory Memorial Museum, Auburn, Indiana, for interpretive dioramas, education, research library and visual documentary, and \$100,000 shall be awarded to the Zimmer Children's Museum, Los Angeles, California, to expand the youTHink education program.

MEDICARE PAYMENT ADVISORY COMMISSION

SALARIES AND EXPENSES

For expenses necessary to carry out section 1805 of the Social Security Act, \$9,300,000, to be transferred to this appropriation from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

SALARIES AND EXPENSES

For necessary expenses for the National Commission on Libraries and Information Science, established by the Act of July 20, 1970 (Public Law 91-345, as amended), \$1,000,000.

NATIONAL COUNCIL ON DISABILITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Disability as authorized by title IV of the Rehabilitation Act of 1973, as amended, \$3,039,000.

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, as amended (29 U.S.C. 141-167), and other laws, \$244,073,000: *Provided*, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935

(29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 percent of the water stored or supplied thereby is used for farming purposes.

NATIONAL MEDIATION BOARD

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions of the Railway Labor Act, as amended (45 U.S.C. 151–188), including emergency boards appointed by the President, \$11,421,000.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Occupational Safety and Health Review Commission (29 U.S.C. 661), \$9,863,000.

RAILROAD RETIREMENT BOARD

DUAL BENEFITS PAYMENTS ACCOUNT

For payment to the Dual Benefits Payments Account, authorized under section 15(d) of the Railroad Retirement Act of 1974, \$119,000,000, which shall include amounts becoming available in fiscal year 2004 pursuant to section 224(c)(1)(B) of Public Law 98–76; and in addition, an amount, not to exceed 2 percent of the amount provided herein, shall be available proportional to the amount by which the product of recipients and the average benefit received exceeds \$119,000,000: *Provided*, That the total amount provided herein shall be credited in 12 approximately equal amounts on the first day of each month in the fiscal year.

FEDERAL PAYMENTS TO THE RAILROAD RETIREMENT ACCOUNTS

For payment to the accounts established in the Treasury for the payment of benefits under the Railroad Retirement Act for interest earned on unnegotiated checks, \$150,000, to remain available through September 30, 2005, which shall be the maximum amount available for payment pursuant to section 417 of Public Law 98–76.

LIMITATION ON ADMINISTRATION

For necessary expenses for the Railroad Retirement Board for administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, \$101,300,000, to be derived in such amounts as determined by the Board from the railroad retirement accounts and from moneys credited to the railroad unemployment insurance administration fund.

LIMITATION ON THE OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General for audit, investigatory and review activities, as authorized by the

Inspector General Act of 1978, as amended, not more than \$6,600,000, to be derived from the railroad retirement accounts and railroad unemployment insurance account: *Provided*, That none of the funds made available in any other paragraph of this Act may be transferred to the Office; used to carry out any such transfer; used to provide any office space, equipment, office supplies, communications facilities or services, maintenance services, or administrative services for the Office; used to pay any salary, benefit, or award for any personnel of the Office; used to pay any other operating expense of the Office; or used to reimburse the Office for any service provided, or expense incurred, by the Office.

SOCIAL SECURITY ADMINISTRATION

PAYMENTS TO SOCIAL SECURITY TRUST FUNDS

For payment to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance trust funds, as provided under sections 201(m), 228(g), and 1131(b)(2) of the Social Security Act, \$21,658,000.

SUPPLEMENTAL SECURITY INCOME PROGRAM

For carrying out titles XI and XVI of the Social Security Act, section 401 of Public Law 92–603, section 212 of Public Law 93–66, as amended, and section 405 of Public Law 95–216, including payment to the Social Security trust funds for administrative expenses incurred pursuant to section 201(g)(1) of the Social Security Act, \$26,229,300,000, to remain available until expended: *Provided*, That any portion of the funds provided to a State in the current fiscal year and not obligated by the State during that year shall be returned to the Treasury.

For making, after June 15 of the current fiscal year, benefit payments to individuals under title XVI of the Social Security Act, for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

For making benefit payments under title XVI of the Social Security Act for the first quarter of fiscal year 2005, \$12,590,000,000, to remain available until expended.

LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, including the hire of two passenger motor vehicles, and not to exceed \$15,000 for official reception and representation expenses, not more than \$8,241,800,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: *Provided*, That not less than \$1,800,000 shall be for the Social Security Advisory Board: *Provided further*, That unobligated balances of funds provided under this paragraph at the end of fiscal year 2004 not needed for fiscal year 2004 shall remain available until expended to invest in the Social Security Administration information technology and telecommunications hardware and software infrastructure, including related equipment and non-payroll administrative expenses associated solely with this information technology and telecommunications infrastructure: *Provided further*, That reimbursement to the trust funds under this heading for expenditures for official time for employees of the Social Security

Administration pursuant to section 7131 of title 5, United States Code, and for facilities or support services for labor organizations pursuant to policies, regulations, or procedures referred to in section 7135(b) of such title shall be made by the Secretary of the Treasury, with interest, from amounts in the general fund not otherwise appropriated, as soon as possible after such expenditures are made.

In addition, \$120,000,000 to be derived from administration fees in excess of \$5.00 per supplementary payment collected pursuant to section 1616(d) of the Social Security Act or section 212(b)(3) of Public Law 93–66, which shall remain available until expended. To the extent that the amounts collected pursuant to such section 1616(d) or 212(b)(3) in fiscal year 2004 exceed \$120,000,000, the amounts shall be available in fiscal year 2005 only to the extent provided in advance in appropriations Acts.

From funds previously appropriated for this purpose, any unobligated balances at the end of fiscal year 2003 shall be available to continue Federal-State partnerships which will evaluate means to promote Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$24,500,000, together with not to exceed \$63,700,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

In addition, an amount not to exceed 3 percent of the total provided in this appropriation may be transferred from the “Limitation on Administrative Expenses”, Social Security Administration, to be merged with this account, to be available for the time and purposes for which this account is available: *Provided*, That notice of such transfers shall be transmitted promptly to the Committees on Appropriations of the House and Senate.

UNITED STATES INSTITUTE OF PEACE

OPERATING EXPENSES

For necessary expenses of the United States Institute of Peace as authorized in the United States Institute of Peace Act, \$17,200,000.

TITLE V—GENERAL PROVISIONS

SEC. 501. The Secretaries of Labor, Health and Human Services, and Education are authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act: *Provided*, That such transferred balances are used for the same purpose, and for the same periods of time, for which they were originally appropriated.

SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 503. (a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

SEC. 504. The Secretaries of Labor and Education are authorized to make available not to exceed \$28,000 and \$20,000, respectively, from funds available for salaries and expenses under titles I and III, respectively, for official reception and representation expenses; the Director of the Federal Mediation and Conciliation Service is authorized to make available for official reception and representation expenses not to exceed \$5,000 from the funds available for "Salaries and expenses, Federal Mediation and Conciliation Service"; and the Chairman of the National Mediation Board is authorized to make available for official reception and representation expenses not to exceed \$5,000 from funds available for "Salaries and expenses, National Mediation Board".

SEC. 505. Notwithstanding any other provision of this Act, no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

SEC. 506. (a) It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

(c) If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

SEC. 507. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds included in this Act, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state: (1) the percentage of the total costs of the program or project which will be financed with Federal money; (2) the dollar amount of Federal funds for the project or program; and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

SEC. 508. (a) None of the funds appropriated under this Act, and none of the funds in any trust fund to which funds are appropriated under this Act, shall be expended for any abortion. Abortions.

(b) None of the funds appropriated under this Act, and none of the funds in any trust fund to which funds are appropriated under this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) The term “health benefits coverage” means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

SEC. 509. (a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State’s or locality’s contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State’s or locality’s contribution of Medicaid matching funds).

SEC. 510. (a) None of the funds made available in this Act may be used for—

(1) the creation of a human embryo or embryos for research purposes; or Embryos.

(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(b) For purposes of this section, the term “human embryo or embryos” includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

SEC. 511. (a) None of the funds made available in this Act may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established by section 202 of the Controlled Substances Act (21 U.S.C. 812). Drugs and drug abuse.

(b) The limitation in subsection (a) shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

SEC. 512. None of the funds made available in this Act may be obligated or expended to enter into or renew a contract with an entity if—

(1) such entity is otherwise a contractor with the United States and is subject to the requirement in section 4212(d) of title 38, United States Code, regarding submission of an annual report to the Secretary of Labor concerning employment of certain veterans; and

(2) such entity has not submitted a report as required by that section for the most recent year for which such requirement was applicable to such entity.

SEC. 513. None of the funds made available in this Act may be used to promulgate or adopt any final standard under section 1173(b) of the Social Security Act (42 U.S.C. 1320d–2(b)) providing for, or providing for the assignment of, a unique health identifier for an individual (except in an individual's capacity as an employer or a health care provider), until legislation is enacted specifically approving the standard.

SEC. 514. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 515. (a) IN GENERAL.—Amounts made available under this Act for the administrative and related expenses for departmental management for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced on a pro rata basis by \$50,000,000: *Provided*, That not later than 15 days after the enactment of this Act, the Director of the Office of Management and Budget shall report to the House and Senate Committees on Appropriations the accounts subject to the pro rata reductions and the amount to be reduced in each account.

(b) LIMITATION.—The reduction required by subsection (a) shall not apply to the Food and Drug Administration and the Indian Health Service.

SEC. 516. None of the funds made available by this Act to carry out the Library Services and Technology Act may be made available to any library covered by paragraph (1) of section 224(f) of such Act (20 U.S.C. 9134(f)), as amended by the Children's Internet Protections Act, unless such library has made the certifications required by paragraph (4) of such section.

SEC. 517. None of the funds made available by this Act to carry out part D of title II of the Elementary and Secondary Education Act of 1965 may be made available to any elementary or secondary school covered by paragraph (1) of section 2441(a) of such Act (20 U.S.C. 6777(a)), as amended by the Children's Internet Protections Act and the No Child Left Behind Act, unless the local educational agency with responsibility for such covered school has made the certifications required by paragraph (2) of such section.

This division may be cited as the “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004”.

Deadline.
Reports.

**DIVISION F—DEPARTMENTS OF TRANSPORTATION AND
TREASURY, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2004**

Transportation,
Treasury, and
Independent
Agencies
Appropriations
Act, 2004.

An Act

Making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2004, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Transportation and Treasury and independent agencies for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I**DEPARTMENT OF TRANSPORTATION****OFFICE OF THE SECRETARY****SALARIES AND EXPENSES**

For necessary expenses of the Office of the Secretary, \$80,903,000, of which not to exceed \$2,210,000 shall be available for the immediate Office of the Secretary; not to exceed \$700,000 shall be available for the immediate Office of the Deputy Secretary; not to exceed \$15,403,000 shall be available for the Office of the General Counsel; not to exceed \$12,312,000 shall be available for the Office of the Under Secretary of Transportation for Policy; not to exceed \$8,536,000 shall be available for the Office of the Assistant Secretary for Budget and Programs; not to exceed \$2,300,000 shall be available for the Office of the Assistant Secretary for Governmental Affairs; not to exceed \$24,612,000 shall be available for the Office of the Assistant Secretary for Administration; not to exceed \$1,915,000 shall be available for the Office of Public Affairs; not to exceed \$1,447,000 shall be available for the Office of the Executive Secretariat; not to exceed \$700,000 shall be available for the Board of Contract Appeals; not to exceed \$1,268,000 shall be available for the Office of Small and Disadvantaged Business Utilization; not to exceed \$2,000,000 for the Office of Intelligence and Security; and not to exceed \$7,500,000 shall be available for the Office of the Chief Information Officer: *Provided*, That the Secretary of Transportation is authorized to transfer funds appropriated for any office of the Office of the Secretary to any other office of the Office of the Secretary: *Provided further*, That no appropriation for any office shall be increased or decreased by more than 5 percent by all such transfers: *Provided further*, That any change in funding greater than 5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further*, That not to exceed \$60,000 shall be for allocation within the Department for official reception and representation expenses as the Secretary may determine: *Provided further*, That notwithstanding any other provision of law, excluding

fees authorized in Public Law 107-71, there may be credited to this appropriation up to \$2,500,000 in funds received in user fees: *Provided further*, That none of the funds provided in this Act shall be available for the position of Assistant Secretary for Public Affairs.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, \$8,569,000.

TRANSPORTATION PLANNING, RESEARCH, AND DEVELOPMENT

For necessary expenses for conducting transportation planning, research, systems development, development activities, and making grants, to remain available until expended, \$20,864,000.

WORKING CAPITAL FUND

Necessary expenses for operating costs and capital outlays of the Working Capital Fund, not to exceed \$116,715,000, shall be paid from appropriations made available to the Department of Transportation: *Provided*, That such services shall be provided on a competitive basis to entities within the Department of Transportation: *Provided further*, That the above limitation on operating expenses shall not apply to non-DOT entities: *Provided further*, That no funds appropriated in this Act to an agency of the Department shall be transferred to the Working Capital Fund without the approval of the agency modal administrator: *Provided further*, That no assessments may be levied against any program, budget activity, subactivity or project funded by this Act unless notice of such assessments and the basis therefor are presented to the House and Senate Committees on Appropriations and are approved by such Committees.

MINORITY BUSINESS RESOURCE CENTER PROGRAM

For the cost of guaranteed loans, \$500,000, as authorized by 49 U.S.C. 332: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$18,367,000. In addition, for administrative expenses to carry out the guaranteed loan program, \$400,000.

MINORITY BUSINESS OUTREACH

For necessary expenses of Minority Business Resource Center outreach activities, \$3,000,000, to remain available until September 30, 2005: *Provided*, That notwithstanding 49 U.S.C. 332, these funds may be used for business opportunities related to any mode of transportation.

PAYMENTS TO AIR CARRIERS

(AIRPORT AND AIRWAY TRUST FUND)

In addition to funds made available from any other source to carry out the essential air service program under 49 U.S.C.

41731 through 41742, \$52,000,000, to be derived from the Airport and Airway Trust Fund, to remain available until expended.

FEDERAL AVIATION ADMINISTRATION

OPERATIONS

For necessary expenses of the Federal Aviation Administration, not otherwise provided for, including operations and research activities related to commercial space transportation, administrative expenses for research and development, establishment of air navigation facilities, the operation (including leasing) and maintenance of aircraft, subsidizing the cost of aeronautical charts and maps sold to the public, lease or purchase of passenger motor vehicles for replacement only, in addition to amounts made available by Public Law 104–264, \$7,530,925,000, of which \$4,500,000,000 shall be derived from the Airport and Airway Trust Fund, of which not to exceed \$6,053,724,000 shall be available for air traffic services program activities; not to exceed \$880,684,000 shall be available for aviation regulation and certification program activities; not to exceed \$218,481,000 shall be available for research and acquisition program activities; not to exceed \$11,776,000 shall be available for commercial space transportation program activities; not to exceed \$49,783,000 shall be available for financial services program activities; not to exceed \$76,529,000 shall be available for human resources program activities; not to exceed \$86,749,000 shall be available for regional coordination program activities; not to exceed \$143,150,000 shall be available for staff offices; and not to exceed \$29,681,000 shall be available for information services: *Provided*, That none of the funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act: *Provided further*, That there may be credited to this appropriation funds received from States, counties, municipalities, foreign authorities, other public authorities, and private sources, for expenses incurred in the provision of agency services, including receipts for the maintenance and operation of air navigation facilities, and for issuance, renewal or modification of certificates, including airman, aircraft, and repair station certificates, or for tests related thereto, or for processing major repair or alteration forms: *Provided further*, That of the funds appropriated under this heading, not less than \$6,500,000 shall be for the contract tower cost-sharing program: *Provided further*, That funds may be used to enter into a grant agreement with a nonprofit standard-setting organization to assist in the development of aviation safety standards: *Provided further*, That none of the funds in this Act shall be available for new applicants for the second career training program: *Provided further*, That none of the funds in this Act shall be available for paying premium pay under 5 U.S.C. 5546(a) to any Federal Aviation Administration employee unless such employee actually performed work during the time corresponding to such premium pay: *Provided further*, That none of the funds in this Act may be obligated or expended to operate a manned auxiliary flight service station in the contiguous United States: *Provided further*, That none of the funds in this Act for aeronautical charting and cartography are available for activities conducted by, or coordinated through, the Working Capital Fund: *Provided further*, That of the

Deadline.
Regulations.
5 USC 8335 note.

amount appropriated under this heading, not to exceed \$50,000 may be transferred to the Aircraft Loan Purchase Guarantee Program: *Provided further*, That not later than March 1, 2004, the Secretary of Transportation, in consultation with the Administrator of the Federal Aviation Administration, shall issue final regulations, pursuant to 5 U.S.C. 8335, establishing an exemption process allowing individual air traffic controllers to delay mandatory retirement until the employee reaches no later than 61 years of age: *Provided further*, That of the funds provided under this heading, \$4,000,000 is available only for recruitment, personnel compensation and benefits, and related costs to raise the level of operational air traffic control supervisors to the level of 1,726: *Provided further*, That none of the funds in this Act may be obligated or expended to execute or continue to implement a memorandum of understanding or memorandum of agreement (or any revisions thereto) with representatives of any FAA bargaining unit after January 1, 2004, unless such document is filed in a central registry and catalogued in an automated, searchable database under the executive direction of appropriate management representatives at FAA headquarters: *Provided further*, That none of the funds in this Act may be obligated or expended for an employee of the Federal Aviation Administration to purchase a store gift card or gift certificate through use of a Government-issued credit card.

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for acquisition, establishment, technical support services, improvement by contract or purchase, and hire of air navigation and experimental facilities and equipment, as authorized under part A of subtitle VII of title 49, United States Code, including initial acquisition of necessary sites by lease or grant; engineering and service testing, including construction of test facilities and acquisition of necessary sites by lease or grant; construction and furnishing of quarters and related accommodations for officers and employees of the Federal Aviation Administration stationed at remote localities where such accommodations are not available; and the purchase, lease, or transfer of aircraft from funds available under this heading; to be derived from the Airport and Airway Trust Fund, \$2,910,000,000, of which \$2,489,158,800 shall remain available until September 30, 2006, and of which \$420,841,200 shall remain available until September 30, 2004: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the establishment and modernization of air navigation facilities: *Provided further*, That upon initial submission to the Congress of the fiscal year 2005 President's budget, the Secretary of Transportation shall transmit to the Congress a comprehensive capital investment plan for the Federal Aviation Administration which includes funding for each budget line item for fiscal years 2005 through 2009, with total funding for each year of the plan constrained to the funding targets for those years as estimated and approved by the Office of Management and Budget: *Provided further*, That of the funds provided under this heading, not less than \$3,000,000 is for contract audit services provided by the Defense Contract Audit Agency: *Provided further*, That of the funds

provided under this heading, \$25,000,000 is available only for the Houston Area Air Traffic System.

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

(RESCISSION)

Of the available balances under this heading, \$30,000,000 are rescinded.

RESEARCH, ENGINEERING, AND DEVELOPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research, engineering, and development, as authorized under part A of subtitle VII of title 49, United States Code, including construction of experimental facilities and acquisition of necessary sites by lease or grant, \$119,439,000, to be derived from the Airport and Airway Trust Fund and to remain available until September 30, 2006: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred for research, engineering, and development.

GRANTS-IN-AID FOR AIRPORTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(AIRPORT AND AIRWAY TRUST FUND)

For liquidation of obligations incurred for grants-in-aid for airport planning and development, and noise compatibility planning and programs as authorized under subchapter I of chapter 471 and subchapter I of chapter 475 of title 49, United States Code, and under other law authorizing such obligations; for procurement, installation, and commissioning of runway incursion prevention devices and systems at airports of such title; for grants authorized under section 41743 of title 49, United States Code; and for inspection activities and administration of airport safety programs, including those related to airport operating certificates under section 44706 of title 49, United States Code, \$3,400,000,000, to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided*, That none of the funds under this heading shall be available for the planning or execution of programs the obligations for which are in excess of \$3,400,000,000 in fiscal year 2004, notwithstanding section 47117(g) of title 49, United States Code: *Provided further*, That none of the funds under this heading shall be available for the replacement of baggage conveyor systems, reconfiguration of terminal baggage areas, or other airport improvements that are necessary to install bulk explosive detection systems: *Provided further*, That notwithstanding any other provision of law, not more than \$66,254,000 of funds limited under this heading shall be obligated for administration and not less than \$20,000,000 shall be for the Small Community Air Service Development Pilot Program.

GENERAL PROVISIONS—FEDERAL AVIATION ADMINISTRATION

49 USC 44502
note.

SEC. 101. Notwithstanding any other provision of law, airports may transfer, without consideration, to the Federal Aviation Administration (FAA) instrument landing systems (along with associated approach lighting equipment and runway visual range equipment) which conform to FAA design and performance specifications, the purchase of which was assisted by a Federal airport-aid program, airport development aid program or airport improvement program grant: *Provided*, That, the Federal Aviation Administration shall accept such equipment, which shall thereafter be operated and maintained by FAA in accordance with agency criteria.

SEC. 102. None of the funds in this Act may be used to compensate in excess of 350 technical staff-years under the federally funded research and development center contract between the Federal Aviation Administration and the Center for Advanced Aviation Systems Development during fiscal year 2004.

SEC. 103. None of the funds made available in this Act may be used for engineering work related to an additional runway at Louis Armstrong New Orleans International Airport.

SEC. 104. None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation, or weather reporting: *Provided*, That the prohibition of funds in this section does not apply to negotiations between the agency and airport sponsors to achieve agreement on “below-market” rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for air traffic control facilities.

SEC. 105. For an airport project that the Administrator of the Federal Aviation Administration (FAA) determines will add critical airport capacity to the national air transportation system, the Administrator is authorized to accept funds from an airport sponsor, including entitlement funds provided under the “Grants-in-Aid for Airports” program, for the FAA to hire additional staff or obtain the services of consultants: *Provided*, That the Administrator is authorized to accept and utilize such funds only for the purpose of facilitating the timely processing, review, and completion of environmental activities associated with such project.

SEC. 106. None of the funds appropriated or limited by this Act may be used to change weight restrictions or prior permission rules at Teterboro Airport in Teterboro, New Jersey.

SEC. 107. None of the funds appropriated or otherwise made available by this Act may be obligated or expended to establish or implement a pilot program under which not more than 10 designated essential air service communities located in proximity to hub airports are required to assume 10 percent of their essential air subsidy costs for a 4-year period, commonly referred to as the EAS local participation program.

SEC. 108. Notwithstanding any other provision of law, the costs of construction of terminal and hangar buildings are allowable for an airport development project at Somerset-Pulaski County Airport-J.T. Wilson Field, Kentucky, and at Pryor Field Regional Airport, Decatur, Alabama, under chapter 471 of title 49, United States Code.

FEDERAL HIGHWAY ADMINISTRATION
LIMITATION ON ADMINISTRATIVE EXPENSES

Necessary expenses for administration and operation of the Federal Highway Administration, not to exceed \$337,604,000, shall be paid in accordance with law from appropriations made available by this Act to the Federal Highway Administration together with advances and reimbursements received by the Federal Highway Administration: *Provided*, That of the funds available under section 104(a)(1)(A) of title 23, United States Code, \$7,000,000 shall be available for environmental streamlining activities, which may include making grants to, or entering into contracts, cooperative agreements, and other transactions, with a Federal agency, State agency, local agency, authority, association, non-profit or for-profit corporation, or institution of higher education.

FEDERAL-AID HIGHWAYS
(LIMITATION ON OBLIGATIONS)
(HIGHWAY TRUST FUND)

None of the funds in this Act shall be available for the implementation or execution of programs, the obligations for which are in excess of \$33,843,000,000 for Federal-aid highways and highway safety construction programs for fiscal year 2004: *Provided*, That within the \$33,843,000,000 obligation limitation on Federal-aid highways and highway safety construction programs, not more than \$462,500,000 shall be available for the implementation or execution of programs for transportation research (sections 502, 503, 504, 506, 507, and 508 of title 23, United States Code, as amended; section 5505 of title 49, United States Code, as amended; and sections 5112 and 5204–5209 of Public Law 105–178) for fiscal year 2004: *Provided further*, That this limitation on transportation research programs shall not apply to any authority previously made available for obligation: *Provided further*, That within the \$232,000,000 obligation limitation on Intelligent Transportation Systems, the following sums shall be made available for Intelligent Transportation System projects that are designed to achieve the goals and purposes set forth in section 5203 of the Intelligent Transportation Systems Act of 1998 (subtitle C of title V of Public Law 105–178; 112 Stat. 453; 23 U.S.C. 502 note) in the following specified areas:

23 USC 104 note.

- City of Huntsville, Alabama, ITS, \$4,500,000;
- 511 Traveler Information Program in North Carolina, \$400,000;
- Advanced Ticket Collection and Passenger Information Systems, New Jersey, \$750,000;
- Advanced Traffic Analysis Center, North Dakota, \$200,000;
- Advanced Transportation Management Systems (ATMS), Montgomery County, Maryland, \$500,000;
- Alameda Corridor-East Gateway to America Project Phase II, Los Angeles, California, \$1,200,000;
- Alexandria ITS Real-Time Transit Enhancement Pilot Project, \$410,000;
- Altarum Restricted Use Technology Study, \$1,750,000;
- Altoona, Pennsylvania, ITS, \$800,000;
- Amber Alert Multi-Regional Strategic Plan, \$400,000;

ATR Transportation Technology/CVISN, New Mexico, \$175,000;
Auburn, Auburn Way South ITS, Washington, \$1,600,000;
Bay County Area Wide Traffic Signal System, \$750,000;
Cargo Watch Logistics Information System, New York, \$2,500,000;
Carson Passenger Information System, \$300,000;
CCTA Intelligent Transportation Systems, Vermont, \$300,000;
City of Baltimore, Maryland Traffic Congestion Management, \$200,000;
City of Boston Intelligent Transportation Systems, Massachusetts, \$1,000,000;
City of New Rochelle, NY Traffic Signal Replacement Program, \$500,000;
City of Santa Rosa, Intelligent Transportation System, \$300,000;
Clark County Transit, VAST ITS, Washington, \$1,600,000;
Computerization of traffic signals in Ashtabula, Ohio, \$14,000;
Corona City-wide automated traffic management system, \$1,000,000;
DelTrac Statewide Integration, Delaware, \$1,000,000;
Demonstration project to deploy Geospatial Emergency & Response System (GEARS) for transportation, \$150,000;
Detroit Metro Airport ITS, \$350,000;
DuPage County Signal Interconnection Project, \$300,000;
Elk Grove Traffic Operations Center, \$960,000;
Fairfax County Route 1 Traffic Synchronization ITS Pilot Project, \$500,000;
FAST Las Vegas (ITS—Phase 2)—Construction, \$300,000;
Fiber Optic Signal Interconnect System, Tuscon, Arizona, \$3,500,000;
George Washington University, Virginia Campus, \$500,000;
Germantown Parkway ITS Project, Tennessee, \$3,000,000;
GMU ITS Research, Virginia, \$500,000;
Great Lakes ITS, Michigan, \$3,000,000;
Greater Philadelphia Chamber of Commerce ITS System, Pennsylvania, \$1,500,000;
Harbor Boulevard Intelligent Transportation, \$800,000;
Hawthorne Street Public Access Improvements, New Bedford, Massachusetts, \$150,000;
Hillsborough Area Regional Transit: Bus Tracking, Communication and Security, Florida, \$750,000;
Houma, Louisiana, \$1,250,000;
Houston ITS, \$1,500,000;
I-70 Incident Management Plan Implementation, Colorado, \$2,500,000;
I-87 Highway Speed E-Z Pass at the Woodbury Toll Barrier, \$1,750,000;
I-87 Smart Corridor, \$1,000,000;
I-90 Phase 2 Connector ITS Testbed—Town of North Greenbush—Rensselaer County, New York, \$200,000;
Illinois Statewide ITS, \$3,000,000;
Implementation of Wisconsin DOT's Fiber Optics Network, \$1,000,000;

Integration and Implementation of DYNASMART-X, RHODES and CLAIRE in Houston, Texas, \$500,000;
Intelligent Transportation System (Kansas City metro area), \$200,000;
Intelligent Transportation Systems—Phases II and III, Ohio, \$700,000;
Intelligent Transportation Systems Deployment Project, Inglewood, California, \$500,000;
Intelligent Transportation Systems, City of Wichita Transit Authority, \$750,000;
Intelligent Transportation Systems, Statewide and Commercial Vehicle Information Systems Network, Maryland, \$750,000;
Intelligent Transportation Systems, Washington, D.C. Region, \$500,000;
Intersection Signalization Project for the City of Virginia Beach, Virginia, \$500,000;
Iowa Transportation Systems, \$750,000;
ITS Baton Rouge, Louisiana, \$1,250,000;
ITS Expansion in Davis and Utah Counties, Utah, \$1,250,000;
ITS Logistics and Systems Management for the Gateway Cities, \$250,000;
ITS Technologies, San Antonio, Texas, \$200,000;
ITS, Cache Valley, Utah, \$1,000,000;
Jacksonville Transportation Authority, Intelligent Transportation Initiative—Regional Planning, Florida, \$750,000;
King County, County-wide Signal Program, Washington, \$1,500,000;
Lincoln, Nebraska StarTran Automatic Vehicle Locator System, \$1,000,000;
Los Angeles MTA Regional Universal Fare System, \$500,000;
Macomb County ITS Integration, Michigan, \$600,000;
Maine Statewide ITS, \$1,000,000;
Market Street Signalization Improvements, \$100,000;
MARTA Automated Fare Collection/Smart Card System, Georgia, \$700,000;
Metrolina Transportation Management Center, \$1,750,000;
Mid-America Surface Transportation Water Research Institute, North Dakota, \$500,000;
Minnesota Guidestar, \$1,250,000;
Missouri Statewide Rural ITS, \$4,000,000;
Mobile Data Computer Network Phase II (MDCN), Wisconsin, \$2,200,000;
Monroe County ATMS ITS Deployment Project, \$800,000;
Montachusett Area Regional Transit (MART) AVLS, Massachusetts, \$240,000;
Multi Region Advanced Traveler Information System (ATIS) for the IH-20 Corridor—Phase 1 in Texas, \$550,000;
Nebraska Statewide Intelligent Transportation System Deployment, \$1,000,000;
New York State Thruway Authority Traffic Operation Package for I-95 and I-87, \$1,676,000;
North Bergen, New Jersey Traffic Signalization Replacement, \$1,000,000;

Oklahoma Statewide ITS, \$4,000,000;
Palm Tran, Palm Beach County, Florida—Automated Vehicle Location and Mobile Data Terminals, \$1,000,000;
Portland State University Intelligent Transportation Research Initiative, \$400,000;
Program of Projects, Washington, \$2,000,000;
Project Hoosier SAFE-T, \$2,000,000;
Real Time Transit Passenger Information System for the Prince George's County Dept. of Public Works, Maryland, \$1,000,000;
Regional Intelligent Transportation System, Springfield, Missouri, \$2,000,000;
Regional ITS Architecture and Deployment Plan for the Eagle Pass Region and Integrate with Laredo, \$300,000;
Roosevelt Boulevard ITS Enhancement Pilot Program, \$750,000;
Rural Freeway Management System Implementation for the IH–20 Corridor in the Tyler Region—Phase 1, \$200,000;
Sacramento Area Council of Governments—ITS Projects, California, \$1,175,000;
San Diego Joint Transportation Operations Center, \$400,000;
Seacoast Intelligent Transportation System Congestion Relief Project, \$1,000,000;
Seattle City Center ITS, Washington, \$2,500,000;
Shreveport Intelligent Transportation System, Louisiana, \$1,000,000;
South Carolina DOT Inroads Intelligent Transportation System, \$3,500,000;
Spotswood Township, NJ; Expand and improve traffic flow with road improvements, \$250,000;
SR 924 ITS Integration Project, \$1,000,000;
SR 112 ITS Integration Project, \$300,000;
Statewide AVL Initiative, Nebraska, \$300,000;
Swatara Township, Pennsylvania—Traffic Signalization Improvements, \$100,000;
TalTran ITS Smartbus Program, Florida, \$1,750,000;
Texas Medical Center EMS Early Warning Transportation System, \$1,000,000;
Texas Statewide ITS Deployment and Integration, City of Lubbock, \$400,000;
Texas Statewide ITS Deployment and Integration, Port of Galveston, \$400,000;
Town of Cary Computerized Traffic Signal Project, North Carolina, \$800,000;
Traffic Signal Controllers & Cabinets, District of Columbia, \$400,000;
TRANSCOM Regional Architecture & TRANSMIT project, NJ, NY, & CT, \$500,000;
Transportation Research Center (TRC) for Freight, Trade, Security, and Economic Strength, Georgia, \$500,000;
Tukwila, Signalization Interconnect and Intelligent Transportation, Washington, \$1,400,000;
Twin Cities, Minnesota Redundant Communications Pilot, \$1,000,000;
Tysons Transportation Association—ITS, \$250,000;
University of Kentucky Transportation Center, \$1,000,000;

Ventura County Intelligent Transportation System, \$1,000,000;
West Baton Rouge Parish Joint Operations Emergency Communications Center, \$800,000;
Wisconsin CVISN Level One Deployment, \$800,000; and
Wyoming Statewide ITS Initiative, \$4,000,000.

FEDERAL-AID HIGHWAYS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for carrying out the provisions of title 23, United States Code, that are attributable to Federal-aid highways, including the National Scenic and Recreational Highway as authorized by 23 U.S.C. 148, not otherwise provided, including reimbursement for sums expended pursuant to the provisions of 23 U.S.C. 308, \$34,000,000,000 or so much thereof as may be available in and derived from the Highway Trust Fund, to remain available until expended.

FEDERAL-AID HIGHWAYS

MISCELLANEOUS HIGHWAY AND HIGHWAY SAFETY PROGRAMS

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, from the available unobligated balances under the programs for which funds are authorized under sections 1101(a)(1), 1101(a)(2), 1101(a)(3), 1101(a)(4), and 1101(a)(5) of Public Law 105–178, as amended, \$15,000,000 shall be made available for planning and design activities, and initiation of construction of the project at Pennsylvania Avenue in front of the White House; \$20,000,000 shall be made available to provide grants to States for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children under section 303 of Public Law 108–21; \$8,000,000 shall be made available to the Federal Motor Carrier Safety Administration to make grants to States for implementation of section 210 of Public Law 106–159; \$3,500,000 shall be made available to the Federal Motor Carrier Safety Administration for necessary operating expenses and personnel for implementation of section 210 of Public Law 106–159; \$23,000,000 shall be made available to the Federal Motor Carrier Safety Administration to make grants to States for southern border State operations for the purposes described in 49 U.S.C. 31104(f)(2)(B); \$9,000,000 shall be made available to the Federal Motor Carrier Safety Administration to make grants to States for northern border truck inspections; \$21,000,000 shall be made available to the Federal Motor Carrier Safety Administration to make grants to States, local governments, or other entities for commercial driver's license program improvements; \$47,000,000 shall be made available to make grants to States for construction of State border safety inspection facilities at the United States border with Mexico; and \$150,545,000 shall be made available to the National Highway Traffic Safety Administration for expenses necessary to discharge the functions of the Secretary, with respect to traffic and highway safety under chapter

301 of title 49, United States Code, and part C of subtitle VI of title 49, United States Code: *Provided*, That funds shall be made available from a State's available unobligated balances in the programs funded under sections 1101(a)(1) through (5) of Public Law 105–178, as amended, in the ratio that the State's total amount of funds apportioned under such programs for fiscal year 2003 bears to the total amount of funds apportioned to all States under such programs: *Provided further*, That the funds made available under this heading may be transferred by the Secretary to another Federal agency, such funds to be then administered by the procedures of the Federal agency to which such funds are transferred: *Provided further*, That none of the funds provided to the National Highway Traffic Safety Administration may be obligated or expended to plan, finalize, or implement any rulemaking to add to section 575.104 of title 49, Code of Federal Regulations any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect: *Provided further*, That all funds made available for obligation under this heading shall be available in the same manner as though such funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share payable on account of any program, project, or activity carried out with funds made available under this heading shall be 100 percent and such funds shall remain available for obligation until expended: *Provided further*, That all funds made available under this heading shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs set forth in this Act or any other Act.

FEDERAL-AID HIGHWAYS

(HIGHWAY TRUST FUND)

(RESCISSION)

Of the unobligated balances of funds apportioned to each State under the program authorized under sections 1101(a)(1), 1101(a)(2), 1101(a)(3), 1101(a)(4), and 1101(a)(5) of Public Law 105–178, as amended, \$207,000,000 are rescinded.

APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM

For necessary expenses for the Appalachian Development Highway System as authorized under section 1069(y) of Public Law 102–240, as amended, \$125,000,000, to remain available until expended.

GENERAL PROVISIONS—FEDERAL HIGHWAY ADMINISTRATION

23 USC 104 note.

SEC. 110. (a) For fiscal year 2004, the Secretary of Transportation shall—

(1) not distribute from the obligation limitation for Federal-aid Highways amounts authorized for administrative expenses and programs funded from the administrative takedown authorized by section 104(a)(1)(A) of title 23, United States Code, for the highway use tax evasion program, for the Bureau of Transportation Statistics and for the programs, projects, and activities for which funds are made available under the heading

“Federal-Aid Highways, Miscellaneous Highway and Highway Safety Programs” in this Act;

(2) not distribute an amount from the obligation limitation for Federal-aid Highways that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highways and highway safety programs for the prior fiscal years the funds for which are allocated by the Secretary;

(3) determine the ratio that—

(A) the obligation limitation for Federal-aid Highways less the aggregate of amounts not distributed under paragraphs (1) and (2), bears to

(B) the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction programs (other than sums authorized to be appropriated for sections set forth in paragraphs (1) through (7) of subsection (b) and sums authorized to be appropriated for section 105 of title 23, United States Code, equal to the amount referred to in subsection (b)(8)) for such fiscal year less the aggregate of the amounts not distributed under paragraph (1) of this subsection;

(4) distribute the obligation limitation for Federal-aid Highways less the aggregate amounts not distributed under paragraphs (1) and (2) for section 201 of the Appalachian Regional Development Act of 1965 and \$2,000,000,000 for such fiscal year under section 105 of title 23, United States Code (relating to minimum guarantee) so that the amount of obligation authority available for each of such sections is equal to the amount determined by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such section (except in the case of section 105, \$2,000,000,000) for such fiscal year;

(5) distribute the obligation limitation provided for Federal-aid Highways less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraph (4) for each of the programs that are allocated by the Secretary under title 23, United States Code (other than activities to which paragraph (1) applies and programs to which paragraph (4) applies) by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such program for such fiscal year; and

(6) distribute the obligation limitation provided for Federal-aid Highways less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraphs (4) and (5) for Federal-aid highways and highway safety construction programs (other than the minimum guarantee program, but only to the extent that amounts apportioned for the minimum guarantee program for such fiscal year exceed \$2,639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under title 23, United States Code, in the ratio that—

(A) sums authorized to be appropriated for such programs that are apportioned to each State for such fiscal year, bear to

(B) the total of the sums authorized to be appropriated for such programs that are apportioned to all States for such fiscal year.

(b) EXCEPTIONS FROM OBLIGATION LIMITATION.—The obligation limitation for Federal-aid Highways shall not apply to obligations: (1) under section 125 of title 23, United States Code; (2) under section 147 of the Surface Transportation Assistance Act of 1978; (3) under section 9 of the Federal-Aid Highway Act of 1981; (4) under sections 131(b) and 131(j) of the Surface Transportation Assistance Act of 1982; (5) under sections 149(b) and 149(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987; (6) under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991; (7) under section 157 of title 23, United States Code, as in effect on the day before the date of the enactment of the Transportation Equity Act for the 21st Century; (8) under section 105 of title 23, United States Code (but, only in an amount equal to \$639,000,000 for such fiscal year); and for Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century or subsequent public laws for multiple years or to remain available until used, but only to the extent that such obligation authority has not lapsed or been used.

(c) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (a), the Secretary shall after August 1 for such fiscal year revise a distribution of the obligation limitation made available under subsection (a) if a State will not obligate the amount distributed during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under sections 104 and 144 of title 23, United States Code, section 160 (as in effect on the day before the enactment of the Transportation Equity Act for the 21st Century) of title 23, United States Code, and under section 1015 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1943–1945).

(d) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—The obligation limitation shall apply to transportation research programs carried out under chapter 5 of title 23, United States Code, except that obligation authority made available for such programs under such limitation shall remain available for a period of 3 fiscal years.

Deadline.

(e) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—Not later than 30 days after the date of the distribution of obligation limitation under subsection (a), the Secretary shall distribute to the States any funds: (1) that are authorized to be appropriated for such fiscal year for Federal-aid highways programs (other than the program under section 160 of title 23, United States Code) and for carrying out subchapter I of chapter 311 of title 49, United States Code, and highway-related programs under chapter 4 of title 23, United States Code; and (2) that the Secretary determines will not be allocated to the States, and will not be available for obligation, in such fiscal year due to the imposition of any obligation limitation for such fiscal year. Such distribution to the States shall be made in the same ratio as the distribution of obligation authority under subsection (a)(6). The funds so distributed shall be available for any purposes described in section 133(b) of title 23, United States Code.

(f) SPECIAL RULE.—Obligation limitation distributed for a fiscal year under subsection (a)(4) of this section for a section set forth

in subsection (a)(4) shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(g) Of the obligation authority distributed to a State under subsection (a)(6), an amount of obligation authority equal to the amount for each surface transportation project in such State identified in section 115 of the statement of managers accompanying this Act shall be available for carrying out each project.

(h) The obligation limitation made available for the programs, projects, and activities for which funds are made available under the heading “Federal-Aid Highways, Miscellaneous Highway and Highway Safety Program” of this Act shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

SEC. 111. Notwithstanding any other provision of law:

(1) Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032; 112 Stat. 191; 115 Stat. 871) is amended—

(A) in paragraph (42), by striking “Fulton, Mississippi,” the first time that it appears and all that follows to the end of the paragraph and inserting “Fulton, Mississippi.”; and

(B) by adding at the end the following:

“(45) The United States Route 78 Corridor from Memphis, Tennessee, to Corridor X of the Appalachian development highway system near Fulton, Mississippi, and Corridor X of the Appalachian development highway system extending from near Fulton, Mississippi, to near Birmingham, Alabama.”.

(2) Section 1105(e)(5) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032; 115 Stat. 872) is amended—

(A) in subparagraph (A) by striking “(A) IN GENERAL.—The portions” and all that follows through the end of the first sentence and inserting:

“(A) IN GENERAL.—The portions of the routes referred to in subsection (c)(1), subsection (c)(3) (relating solely to the Kentucky Corridor), clauses (i), (ii), and (except with respect to Georgetown County) (iii) of subsection (c)(5)(B), subsection (c)(9), subsections (c)(18) and (c)(20), subsection (c)(36), subsection (c)(37), subsection (c)(40), subsection (c)(42), and subsection (c)(45) that are not a part of the Interstate System are designated as future parts of the Interstate System.”; and

(B) by adding the following at the end of subparagraph (B)(i): “The route referred to in subsection (c)(45) is designated as Interstate Route I–22.”.

SEC. 112. Notwithstanding any other provision of law, in section 1602 of the Transportation Equity Act for the 21st Century:

(1) Item number 230 is amended by striking “Monroe County transportation improvements on Long Pond Road, Pattonwood Road, and Lyell road” and inserting “Route 531/Brockport-Rochester Corridor in Monroe County, New York”.

(2) Item number 1149 is amended by striking “Traffic Mitigation Project on William Street and Losson Road in Cheektowaga” and inserting “Study and implement mitigation

and diversion options for William Street and Broadway Street in Cheektowaga, I-90 Corridor Study; Interchange 53 to Interchange 49, PIN 552830 and Cheektowaga Rails to Trails, PIN 575508”.

(3) Item number 476 is amended by striking “Expand Perkins Road in Baton Rouge” and inserting “Feasibility study, design, and construction of a connector between Louisiana Highway 1026 and I-12 in Livingston Parish”.

(4) Item 4 of the table contained in section 1602 of the Transportation Equity Act for the 21st Century, relating to construction of a bike path in Michigan, is amended by striking “between Mount Clemens and New Baltimore” and inserting “for the Macomb Orchard Trail in Macomb County”.

(5) Item number 1077 is amended by striking “Construct I-95-I-26 interchange, Orangeburg Co” and inserting “Expand Transportation Research Center, South Carolina State University, Orangeburg, SC”.

(6) Item number 897 is amended by striking “Upgrade Bishop Ford Expressway/142nd St. interchange” and inserting “Road upgrade and access road near the intersection of I-80 and I-57 in Country Club Hills, Illinois”.

(7) Item number 436 is amended by inserting after “Ohio River Major Investment Study Project, Kentucky and Indiana” the following: “, and preliminary engineering and right of way acquisition associated with the project”.

SEC. 113. Notwithstanding 31 U.S.C. 3302, funds received by the Bureau of Transportation Statistics from the sale of data products, for necessary expenses incurred pursuant to 49 U.S.C. 111 may be credited to the Federal-aid highways account for the purpose of reimbursing the Bureau for such expenses: *Provided*, That such funds shall be subject to the obligation limitation for Federal-aid highways and highway safety construction.

SEC. 114. Intelligent Transportation Systems appropriations made to the State of Wisconsin in Public Law 105-277, Public Law 106-69, and Public Law 107-87 shall not be subject to the limitations of Public Law 105-178, section 5208(d), 23 U.S.C. 502 note.

SEC. 115. Notwithstanding any other provision of law, from the available unobligated balances under the programs for which funds are authorized under sections 1101(a)(1), 1101(a)(2), 1101(a)(3), 1101(a)(4), and 1101(a)(5) of Public Law 105-178, as amended, of each State for which a project or projects in such State identified under this section in the statement of managers accompanying this Act shall be made available for necessary expenses to carry out such project: *Provided*, That the amount identified for each such project shall be made available from the State’s unobligated balance in any of the five specified programs for which the project would be eligible, such selection to be at the option of the State: *Provided further*, That if a project is not otherwise eligible for funding under one of the five programs, then such project shall be deemed eligible and shall be funded from the unobligated balance of funds made available for the program for which funds are authorized under section 1101(a)(4) of Public Law 105-178, as amended, but not including funds set aside pursuant to section 133(d) of title 23, United States Code: *Provided further*, That funds made available under this section may, at the request of a State, be transferred by the Secretary to another

Federal agency to carry out a project funded under this section, such funds to be then administered by the procedures of the Federal agency to which such funds may be transferred: *Provided further*, That all funds made available for obligation under this section shall be available in the same manner as though such funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share payable on account of any program, project, or activity carried out with funds made available under this heading shall be 100 percent and such funds shall remain available for obligation until expended: *Provided further*, That all funds made available in this section shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs set forth in this Act or any other Act.

SEC. 116. Notwithstanding Public Law 105–178, section 5208(d), Intelligent Transportation Systems appropriations for—

Wisconsin.

(1) Wausau-Stevens Point-Wisconsin Rapids, Wisconsin, in Public Law 105–277 and Public Law 106–69 shall be available for use in the counties of Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Iron, Lincoln, Marathon, Polk, Portage, Price, Rusk, Sawyer, Taylor, Washburn, Wood, Clark, Langlade, and Oneida; and

(2) the City of Superior and Douglas County, Wisconsin, in Public Law 106–69 shall be available for use in the City of Superior and northern Wisconsin.

SEC. 117. (a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of Transportation shall enter into an agreement with the State of Nevada, the State of Arizona, or both, to provide a method of funding for construction of a Hoover Dam Bypass Bridge from funds allocated for the Federal Lands Highway Program under section 202(b) of title 23, United States Code.

Contracts.
Nevada.
Arizona.

(b) METHODS OF FUNDING.—

(1) The agreement entered into under subsection (a) shall provide for funding in a manner consistent with the advance construction and debt instrument financing procedures for Federal-aid highways set forth in section 115 and 122 of title 23, except that the funding source may include funds made available under the Federal Lands Highway Program.

(2) Eligibility for funding under this subsection shall not be construed as a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest of an eligible debt financing instrument as so defined in section 122, nor create a right of a third party against the United States for payment under an eligible debt financing instrument. The agreement entered into pursuant to subsection (a) shall make specific reference to this provision of law.

(3) The provisions of this section do not limit the use of other available funds for which the project referenced in subsection (a) is eligible.

SEC. 118. Section 1108 of the Intermodal Surface Transportation Efficiency Act of 1991, item number 8, is amended by striking “To relocate” and all that follows through “Street” and inserting the following, “For road improvements and non-motorized enhancements in the Detroit East Riverfront, Detroit, Michigan”.

105 Stat. 2060.

Michigan.

SEC. 119. The funds provided under the heading “Transportation and Community and System Preservation Program” in Conference Report No. 106-940 for the Lodge Freeway pedestrian overpass, Detroit, Michigan, shall be transferred to, and made available for, enhancements in the East Riverfront, Detroit, Michigan.

Michigan.

SEC. 120. The funds provided under the heading “Transportation and Community and System Preservation Program” in Conference Report No. 107-308 for the Eastern Market pedestrian overpass park, shall be transferred to, and made available for, enhancements in the East Riverfront, Detroit, Michigan.

SEC. 121. KANSAS RECREATION AREAS. Any unexpended balances of the amounts made available by the Consolidated Appropriations Resolution, 2003 (Public Law 108-7) from the Federal-aid highway account for improvements to Council Grove Lake, Kansas, shall be available to make improvements to Richey Cove, Santa Fe Recreation Area, Canning Creek Recreation Area, and other areas in the State of Kansas.

117 Stat. 413.

SEC. 122. Section 330 of Public Law 108-7 is amended to read as follows: In addition to amounts otherwise made available in this Act, to enable the Secretary of Transportation to make grants for surface transportation projects, \$90,600,000 to remain available until expended: *Provided*, That notwithstanding any other provision of law, the surface transportation projects identified in the Joint Explanatory Statement of the Committee of Conference accompanying this Act are also eligible for funding made available by the immediately preceding clause of this provision: *Provided further*, That notwithstanding any other provision of law and the immediately preceding clause of this provision, the Secretary of Transportation may use amounts made available by this section to make grants for any surface transportation project otherwise eligible for funding under title 23 or title 49, United States Code.

SEC. 123. (a) Section 14501 of title 40, United States Code, is amended in the third sentence by striking “three thousand and twenty-five” and inserting “three thousand and ninety”.

(b) There is hereby designated as Corridor X-1 in Alabama an addition to the Appalachian development highway system. Corridor X-1 shall extend approximately 65 miles along the alignment of the Birmingham Northern Beltline from Interstate 20/59, in the vicinity of Interstate 459 southwest of Birmingham, and extending northward crossing State Route 269 and Corridor X and continuing eastward crossing Interstate 65, United States Route 31, State Route 79, State Route 75, Interstate 59, United States Route 11, United States Route 411, and connecting to Interstate 20 to the east of Birmingham. Corridor X-1 shall be developed as a multi-lane freeway, with interchanges at appropriate crossroad locations.

Deadline.

SEC. 124. MOTORIST INFORMATION CONCERNING PHARMACY SERVICES. (a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall amend the Manual on Uniform Traffic Control Devices to include a provision permitting information to be provided to motorists to assist motorists in locating licensed 24-hour pharmacy services open to the public.

(b) LOGO PANEL.—The provision under subsection (a) may allow placement of a logo panel that displays information disclosing the names or logos of pharmacies described in subsection (a) that are

located within 3 miles of an interchange on the Federal-aid system (as defined in section 101 of title 23, United States Code).

SEC. 125. Notwithstanding any other provision of law, funds obligated for pre-implementation costs, project design, and implementation costs of the I–15 Congestion Pricing Project, also known as the I–15 FasTrack project located in the city of San Diego shall be eligible for funding the costs incurred under such project. The Federal share payable for the total cost of the project shall not exceed 80 percent.

SEC. 126. The project name in House Report No. 108–10, delineating projects referenced in division I, section 330, of the Fiscal Year 2003 Omnibus Appropriations Act, Public Law 108–7, is amended by striking “Freight Enhancement KY Highlands, Kentucky,” and inserting “Kentucky Highlands, Freight Enhancement Revolving Loan Fund, Kentucky”. Notwithstanding any other provision of law, such revolving loan fund shall be eligible for the funding made available under this section and administered consistent with section 1511 of Public Law 105–178, except that such assistance shall be to assist in financing freight enhancement projects and that capitalization of such fund shall be limited to the amount made available by division I, section 330 of Public Law 108–7.

SEC. 127. The amount made available for obligation in fiscal year 2003 for the project Kannapolis Parkway & Interstate 85 Interchange-Kannapolis, North Carolina as specified in section 329 of Public Law 108–7 and on page 1317 of the Joint Committee of the Conference pursuant to the Joint Resolution Making Consolidated Appropriations for fiscal year 2003 shall be reprogrammed and transferred to and made available for obligation for “Kannapolis Industrial Park Access Road-Kannapolis, North Carolina”.

SEC. 128. Section 378 of the Department of Transportation and Related Agencies Appropriations Act, 2001 (as enacted into law by Public Law 106–346; 114 Stat. 1356A–40) is amended by striking “\$5,000,000 for improvements to US 73 from State Avenue North to Marxen Road in Wyandotte County, Kansas” and inserting “\$5,000,000 for improvements to US 73 from State Avenue north to Marxen Road, and along US 73 on State Avenue eastward to its terminus at I–435, in Wyandotte County, Kansas”.

SEC. 129. Section 375 of division I of the Consolidated Appropriations Resolution, 2003 (117 Stat. 428) is amended by inserting before the period at the end the following: “, including construction of a connector road between the newly relocated State Route 1045 and Saint Vincent College, Latrobe, PA”.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

MOTOR CARRIER SAFETY

LIMITATION ON ADMINISTRATIVE EXPENSES

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, none of the funds in this Act shall be available for expenses for administration of motor carrier safety programs and motor carrier safety research, the obligations for which are in excess of \$176,070,000 for fiscal

year 2004: *Provided*, That notwithstanding any other provision of law, for payment of obligations incurred to pay administrative expenses of the Federal Motor Carrier Safety Administration, \$176,070,000, to be derived from the Highway Trust Fund and to remain available until expended.

NATIONAL MOTOR CARRIER SAFETY PROGRAM

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out 49 U.S.C. 31102, 31106, and 31309, \$190,000,000, to be derived from the Highway Trust Fund and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of \$190,000,000 for “Motor Carrier Safety Grants” and “Information Systems”.

GENERAL PROVISIONS—FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION

Reports.

SEC. 130. Funds appropriated or limited in this Act shall be subject to the terms and conditions stipulated in section 350 of Public Law 107–87, including that the Secretary submit a report to the House and Senate Appropriations Committees annually on the safety and security of transportation into the United States by Mexico-domiciled motor carriers.

SEC. 131. No funds appropriated or otherwise made available by this Act may be used to implement or enforce any provisions of the Final Rule, issued on April 16, 2003 (Docket No. FMCSA–97–2350), with respect to either of the following:

(1) The operators of utility service vehicles, as that term is defined in section 395.2 of title 49, Code of Federal Regulations.

(2) Maximum daily hours of service for drivers engaged in the transportation of property or passengers to or from a motion picture or television production site located within a 100-air mile radius of the work reporting location of such drivers.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OPERATIONS AND RESEARCH

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out the provisions of 23 U.S.C. 403, to remain available until expended, \$72,000,000, to be derived from the Highway Trust Fund: *Provided*, That none of the funds in this Act shall be available for the planning or execution of

programs the total obligations for which, in fiscal year 2004, are in excess of \$72,000,000 for programs authorized under 23 U.S.C. 403.

NATIONAL DRIVER REGISTER

(HIGHWAY TRUST FUND)

For expenses necessary to discharge the functions of the Secretary with respect to the National Driver Register under chapter 303 of title 49, United States Code, \$3,600,000, to be derived from the Highway Trust Fund, and to remain available until expended.

HIGHWAY TRAFFIC SAFETY GRANTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out the provisions of 23 U.S.C. 402, 405, and 410, to remain available until expended, \$225,000,000, to be derived from the Highway Trust Fund: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which, in fiscal year 2004, are in excess of \$225,000,000 for programs authorized under 23 U.S.C. 402, 405, and 410, of which \$165,000,000 shall be for “Highway Safety Programs” under 23 U.S.C. 402, \$20,000,000 shall be for “Occupant Protection Incentive Grants” under 23 U.S.C. 405, and \$40,000,000 shall be for “Alcohol-Impaired Driving Countermeasures Grants” under 23 U.S.C. 410: *Provided further*, That none of these funds shall be used for construction, rehabilitation, or remodeling costs, or for office furnishings and fixtures for State, local, or private buildings or structures: *Provided further*, That not to exceed \$8,150,000 of the funds made available for section 402, not to exceed \$1,000,000 of the funds made available for section 405, and not to exceed \$2,000,000 of the funds made available for section 410 shall be available to NHTSA for administering highway safety grants under chapter 4 of title 23, United States Code: *Provided further*, That not to exceed \$500,000 of the funds made available for section 410 “Alcohol-Impaired Driving Countermeasures Grants” shall be available for technical assistance to the States.

GENERAL PROVISIONS—NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION

SEC. 140. Notwithstanding any other provision of law, States may use funds provided in this Act under section 402 of title 23, United States Code, to produce and place highway safety public service messages in television, radio, cinema, and print media, and on the Internet in accordance with guidance issued by the Secretary of Transportation: *Provided*, That any State that uses funds for such public service messages shall submit to the Secretary a report describing and assessing the effectiveness of the messages: *Provided further*, That \$10,000,000 of the funds allocated under section 157 of title 23, United States Code, shall be used as directed

Reports.

by the National Highway Traffic Safety Administrator to purchase national paid advertising (including production and placement) to support national safety belt mobilizations: *Provided further*, That, of the funds allocated under section 163 of title 23, United States Code, \$2,750,000 shall be used as directed by the Administrator to support national impaired driving mobilizations and enforcement efforts, \$14,000,000 shall be used as directed by the Administrator to purchase national paid advertising (including production and placement) to support such national impaired driving mobilizations and enforcement efforts, \$500,000 shall be used as directed by the Administrator to conduct an evaluation of alcohol-impaired driving messages, and \$3,000,000 shall be used as directed by the Administrator to conduct an impaired driving demonstration program.

SEC. 141. Notwithstanding any other provision of law, funds appropriated or limited in the Act to educate the motoring public on how to share the road safely with commercial motor vehicles shall be administered by the National Highway Traffic Safety Administration.

SEC. 142. Notwithstanding any other provision of law, for fiscal year 2004 the Secretary of Transportation is authorized to use amounts made available to carry out section 157 of title 23, United States Code, to make innovative project allocations, not to exceed the prior year's amounts for such allocations, before making incentive grants for use of seat belts.

SEC. 143. Notwithstanding any other provision of law, for fiscal year 2004 the Secretary of Transportation is authorized to use the amounts made available to carry out section 163 of title 23, United States Code, to support national mobilizations that target impaired drivers, in cooperation with the States and nonprofit safety organizations that have been active participants in such mobilizations. Such support shall include impaired driving enforcement grants, broadcast advertising to be used as directed by the Secretary, evaluation of these activities, and a demonstration project to test new and improved strategies in States where the largest gains in reducing alcohol-related fatalities can be made, as determined by the Secretary.

FEDERAL RAILROAD ADMINISTRATION

SAFETY AND OPERATIONS

For necessary expenses of the Federal Railroad Administration, not otherwise provided for, \$130,825,000, of which \$11,712,000 shall remain available until expended.

RAILROAD RESEARCH AND DEVELOPMENT

For necessary expenses for railroad research and development, \$34,025,000, to remain available until expended.

RAILROAD REHABILITATION AND IMPROVEMENT PROGRAM

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210), as amended, in such amounts and at such times as may be necessary to pay any amounts required

pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided*, That pursuant to section 502 of such Act, as amended, no new direct loans or loan guarantee commitments shall be made using Federal funds for the credit risk premium during fiscal year 2004: *Provided further*, That no payments of principal or interest shall be collected during fiscal year 2004 for the direct loan made to the National Railroad Passenger Corporation under section 502 of such Act.

NEXT GENERATION HIGH-SPEED RAIL

For necessary expenses for the Next Generation High-Speed Rail program as authorized under 49 U.S.C. 26101 and 26102, \$37,400,000, to remain available until expended.

ALASKA RAILROAD REHABILITATION

To enable the Secretary of Transportation to make grants to the Alaska Railroad, \$25,000,000 shall be for capital rehabilitation and improvements benefiting its passenger operations, to remain available until expended.

GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of Transportation to make quarterly grants to the National Railroad Passenger Corporation, \$1,225,000,000, to remain available until September 30, 2004: *Provided*, That the Secretary of Transportation shall approve funding to cover operating losses and capital expenditures, including advance purchase orders, for the National Railroad Passenger Corporation only after receiving and reviewing a grant request for each specific train route: *Provided further*, That each such grant request shall be accompanied by a detailed financial analysis, revenue projection, and capital expenditure projection justifying the Federal support to the Secretary's satisfaction: *Provided further*, That the Secretary of Transportation shall reserve \$60,000,000 of the funds provided under this heading and is authorized to transfer such sums to the Surface Transportation Board, upon request from said Board, to carry out directed service orders issued pursuant to section 11123 of title 49, United States Code, to respond to the cessation of commuter rail operations by the National Railroad Passenger Corporation: *Provided further*, That the Secretary of Transportation shall make the reserved funds available to the National Railroad Passenger Corporation through an appropriate grant instrument during the fourth quarter of fiscal year 2004 to the extent that no directed service orders have been issued by the Surface Transportation Board as of the date of transfer or there is a balance of reserved funds not needed by the Board to pay for any directed service order issued through September 30, 2004: *Provided further*, That not later than 60 days after enactment of this Act, Amtrak shall transmit, in electronic format, to the Secretary of Transportation, the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation a comprehensive business plan approved by the Board of Directors for fiscal year 2005 under section 24104(a)

Deadline.

Deadlines.
Reports.

Public
information.

of title 49, United States Code: *Provided further*, That the business plan shall include, as applicable, targets for ridership, revenues, and capital and operating expenses: *Provided further*, That the plan shall also include a separate accounting of such targets for the Northeast Corridor; commuter service; long-distance Amtrak service; state-supported service; each intercity train route; including Autotrain; and commercial activities including contract operations and mail and express: *Provided further*, That the business plan shall include a description of the work to be funded, along with cost estimates and an estimated timetable for completion of the projects covered by this business plan: *Provided further*, That not later than December 1, 2003 and no later than 30 days following the last business day of the previous month thereafter, Amtrak shall submit to the Secretary of Transportation and the House and Senate Committees on Appropriations a supplemental report, in electronic format, regarding the pending business plan, which shall describe the work completed to date, any changes to the business plan, and the reasons for such changes: *Provided further*, That none of the funds in this Act may be used for operating expenses, including advance purchase orders, and capital projects not approved by the Secretary of Transportation nor on the National Railroad Passenger Corporation's fiscal year 2004 business plan: *Provided further*, That Amtrak shall display the business plan and all subsequent supplemental plans on the Corporation's website within a reasonable timeframe following their submission to the appropriate entities: *Provided further*, That none of the funds under this heading may be obligated or expended until the National Railroad Passenger Corporation agrees to continue abiding by the provisions of paragraphs 1, 2, 3, 5, 9, and 11 of the summary of conditions for the direct loan agreement of June 28, 2002, in the same manner as in effect on the date of enactment of this Act.

GENERAL PROVISIONS—FEDERAL RAILROAD ADMINISTRATION

SEC. 150. To authorize the Surface Transportation Board to direct the continued operation of certain commuter rail passenger transportation operations in emergency situations, and for other purposes:

(1) Section 11123 of title 49, United States Code, is amended—

(A) in subsection (a)—

(i) by inserting “failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation,” after “cessation of operations,”;

(ii) by striking “or” at the end of paragraph (3);

(iii) by striking the period at the end of paragraph

(4)(C) and inserting “; or”; and

(iv) by adding at the end the following new paragraph:

“(5) in the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, direct the continuation of the operations and dispatching, maintenance, and other necessary infrastructure functions related to the operations.”;

(B) in subsection (b)(3)—

(i) by striking “When” and inserting “(A) Except as provided in subparagraph (B), when”; and

(ii) by adding at the end the following new subparagraph:

“(B) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, the Board shall provide funding to fully reimburse the directed service provider for its costs associated with the activities directed under subsection (a), including the payment of increased insurance premiums. The Board shall order complete indemnification against any and all claims associated with the provision of service to which the directed rail carrier may be exposed.”;

(C) by adding the following new paragraph at the end of subsection (c):

“(4) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by cessation of service by the National Railroad Passenger Corporation, the Board may not direct a rail carrier to undertake activities under subsection (a) to continue such operations unless—

“(A) the Board first affirmatively finds that the rail carrier is operationally capable of conducting the directed service in a safe and efficient manner; and

“(B) the funding for such directed service required by subparagraph (B) of subsection (b)(3) is provided in advance in appropriations Acts.”; and

(D) by adding at the end the following new subsections:

“(e) For purposes of this section, the National Railroad Passenger Corporation and any entity providing commuter rail passenger transportation shall be considered rail carriers subject to the Board’s jurisdiction.

“(f) For purposes of this section, the term ‘commuter rail passenger transportation’ has the meaning given that term in section 24102(4).”.

(2) Section 24301(c) of title 49, United States Code, is amended by inserting “11123,” after “except for sections”.

SEC. 151. For the purpose of assisting State-supported intercity rail service, in order to demonstrate whether competition will provide higher quality rail passenger service at reasonable prices, the Secretary of Transportation, working with affected States, shall develop and implement a procedure for fair competitive bidding by Amtrak and non-Amtrak operators for State-supported routes: *Provided*, That in the event a State desires to select or selects a non-Amtrak operator for the route, the State may make an agreement with Amtrak to use facilities and equipment of, or have services provided by, Amtrak under terms agreed to by the State and Amtrak to enable the non-Amtrak operator to provide the State-supported service: *Provided further*, That if the parties cannot agree on terms, the Secretary shall, as a condition of receipt of Federal grant funds, order that the facilities and equipment be made available and the services be provided by Amtrak under reasonable terms and compensation: *Provided further*, That when prescribing reasonable compensation to Amtrak, the Secretary shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services: *Provided further*, That the Secretary

Procedures.
49 USC 24101
note.

may reprogram up to \$2,500,000 from the Amtrak operating grant funds for costs associated with the implementation of the fair bid procedure and demonstration of competition under this section.

FEDERAL TRANSIT ADMINISTRATION

ADMINISTRATIVE EXPENSES

For necessary administrative expenses of the Federal Transit Administration's programs authorized by chapter 53 of title 49, United States Code, \$15,100,000: *Provided*, That no more than \$75,500,000 of budget authority shall be available for these purposes: *Provided further*, That of the funds available not to exceed \$970,938 shall be available for the Office of the Administrator; not to exceed \$6,755,434 shall be available for the Office of Administration; not to exceed \$3,892,622 shall be available for the Office of the Chief Counsel; not to exceed \$1,168,780 shall be available for the Office of Communication and Congressional Affairs; not to exceed \$7,157,766 shall be available for the Office of Program Management; not to exceed \$6,231,332 shall be available for the Office of Budget and Policy; not to exceed \$4,854,892 shall be available for the Office of Demonstration and Innovation; not to exceed \$2,717,034 shall be available for the Office of Civil Rights; not to exceed \$3,667,320 shall be available for the Office of Planning; not to exceed \$19,050,044 shall be available for regional offices; and not to exceed \$16,838,838 shall be available for the central account: *Provided further*, That the Administrator is authorized to transfer funds appropriated for an office of the Federal Transit Administration: *Provided further*, That no appropriation for an office shall be increased or decreased by more than 3 percent by all such transfers: *Provided further*, That any change in funding greater than 3 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further*, That of the funds in this Act available for the execution of contracts under section 5327(c) of title 49, United States Code, \$2,000,000 shall be reimbursed to the Department of Transportation's Office of Inspector General for costs associated with audits and investigations of transit-related issues, including reviews of new fixed guideway systems: *Provided further*, That not less than \$2,200,000 for the National transit database shall remain available until expended: *Provided further*, That upon submission to the Congress of the fiscal year 2005 President's budget, the Secretary of Transportation shall transmit to Congress the annual report on new starts, proposed allocations of funds for fiscal year 2005: *Provided further*, That the amount herein appropriated shall be reduced by \$100,000 per day for each day after initial submission of the President's budget that the report has not been submitted to the Congress.

Reports.

FORMULA GRANTS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out 49 U.S.C. 5307, 5308, 5310, 5311, 5327, and section 3038 of Public Law 105-178, \$767,800,000, to remain available until expended: *Provided*, That no more than \$3,839,000,000 of budget authority shall be available for these purposes: *Provided further*, That notwithstanding section 3008 of Public Law 105-178, \$50,000,000 of the funds to carry

out 49 U.S.C. 5308 shall be transferred to and merged with funding provided for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under “Federal Transit Administration, Capital investment grants”.

UNIVERSITY TRANSPORTATION RESEARCH

For necessary expenses to carry out 49 U.S.C. 5505, \$1,200,000, to remain available until expended: *Provided*, That no more than \$6,000,000 of budget authority shall be available for these purposes.

TRANSIT PLANNING AND RESEARCH

For necessary expenses to carry out 49 U.S.C. 5303, 5304, 5305, 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322, \$25,200,000, to remain available until expended: *Provided*, That no more than \$126,000,000 of budget authority shall be available for these purposes: *Provided further*, That \$5,250,000 is available to provide rural transportation assistance (49 U.S.C. 5311(b)(2)), \$4,000,000 is available to carry out programs under the National Transit Institute (49 U.S.C. 5315), \$8,250,000 is available to carry out transit cooperative research programs (49 U.S.C. 5313(a)), \$60,385,600 is available for metropolitan planning (49 U.S.C. 5303, 5304, and 5305), \$12,614,400 is available for State planning (49 U.S.C. 5313(b)); and \$35,500,000 is available for the national planning and research program (49 U.S.C. 5314).

TRUST FUND SHARE OF EXPENSES

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out 49 U.S.C. 5303–5308, 5310–5315, 5317(b), 5322, 5327, 5334, 5505, and sections 3037 and 3038 of Public Law 105–178, \$5,847,200,000, to remain available until expended, and to be derived from the Mass Transit Account of the Highway Trust Fund: *Provided*, That \$3,071,200,000 shall be paid to the Federal Transit Administration’s formula grants account: *Provided further*, That \$100,800,000 shall be paid to the Federal Transit Administration’s transit planning and research account: *Provided further*, That \$60,400,000 shall be paid to the Federal Transit Administration’s administrative expenses account: *Provided further*, That \$4,800,000 shall be paid to the Federal Transit Administration’s university transportation research account: *Provided further*, That \$100,000,000 shall be paid to the Federal Transit Administration’s job access and reverse commute grants program: *Provided further*, That \$2,510,000,000 shall be paid to the Federal Transit Administration’s capital investment grants account.

CAPITAL INVESTMENT GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out 49 U.S.C. 5308, 5309, 5318, and 5327, \$627,500,000, to remain available until expended: *Provided*, That no more than \$3,137,500,000 of budget authority shall be available for these purposes: *Provided further*, That there

shall be available for fixed guideway modernization, \$1,206,506,000; there shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities, \$607,200,000, which shall include \$50,000,000 made available under 5309(m)(3)(C) of this title, plus \$50,000,000 transferred from “Federal Transit Administration, Formula Grants” and \$20,000,000 transferred from “Federal Transit Administration, Job Access and Reverse Commute Grants”; and there shall be available for new fixed guideway systems \$1,323,794,000, together with \$2,331,545 in unobligated balances made available in Public Law 106–69 and \$2,182,937 in unobligated balances made available in Public Law 106–346 to carry out section 3037 of Public Law 105–178, as amended, to be available as follows:

Atlanta, Georgia, Northwest Corridor BRT, \$2,149,413;
Baltimore, Maryland, Central Light Rail Double Track Project, \$40,000,000;
BART San Francisco Airport (SFO), California, Extension Project, \$100,000,000;
Birmingham—Transit Corridor, Alabama, \$3,500,000;
Boston, Massachusetts, Silver Line Phase III, \$2,000,000;
Charlotte, North Carolina, South Corridor Light Rail Project, \$12,000,000;
Chicago, Illinois, Metra Commuter Rail Expansions and Extensions, \$52,000,000;
Chicago, Illinois, Ravenswood Reconstruction, \$10,000,000;
Chicago, Illinois, Transit Authority, Douglas Branch Reconstruction, \$85,000,000;
Dallas, Texas, North Central Light Rail Extension, \$30,161,283;
Denver, Colorado, Southeast Corridor LRT (T-REX), \$80,000,000;
East Side Access Project, New York, Phase I, \$75,000,000;
Euclid Corridor Transportation Project, Ohio, \$11,000,000;
Fort Lauderdale, Florida, Tri-Rail Commuter Project, \$18,410,000;
Hawaii and Alaska Ferry Boats, \$10,296,000;
Houston Advanced Metro Transit Plan, Texas, \$8,000,000;
Integrated Intermodal project, Rhode Island, \$3,000,000;
Kenosha-Racine-Milwaukee Commuter Rail Extension, Wisconsin, \$3,250,000;
Las Vegas, Nevada, Resort Corridor Fixed Guideway, MOS, \$20,000,000;
Little Rock, Arkansas, River Rail Streetcar Project, \$3,000,000;
Maine Marine Highway, \$1,550,000;
Memphis, Tennessee, Medical Center Rail Extension, \$9,247,588;
Minneapolis, Minnesota, Hiawatha Corridor Light Rail Transit (LRT), \$74,980,000;
Minneapolis, Minnesota, Northstar Corridor Rail Project, \$5,750,000;
New Orleans, Louisiana, Canal Street Streetcar Project, \$23,291,373;
New York, Second Avenue Subway, \$2,000,000;
Newark, New Jersey, Rail Link (NERL) MOS1, \$22,566,022;

Northern Oklahoma Regional Multimodal Transportation System, \$3,000,000;
Northern, New Jersey, Hudson-Bergen Light Rail (MOS2), \$100,000,000;
Phase II, LA to Pasadena Metro Gold Line Light Rail Project, \$4,000,000;
Philadelphia, Pennsylvania, Schuylkill Valley Metro, \$14,000,000;
Phoenix, Arizona, Central Phoenix/East Valley Light Rail Transit Project, \$13,000,000;
Pittsburgh, Pennsylvania, North Shore Connector, \$10,000,000;
Pittsburgh, Pennsylvania, Stage II Light Rail Transit Reconstruction, \$32,243,442;
Portland, Oregon, Interstate MAX Light Rail Extension, \$77,500,000;
Raleigh, North Carolina, Triangle Transit Authority Regional Rail Project, \$5,500,000;
Regional Commuter Rail (Weber County to Salt Lake City), Utah, \$9,000,000;
Salt Lake City, Utah, Medical Center LRT Extension, \$30,663,361;
San Diego, California, Mission Valley East Light Rail Transit Extension, \$65,000,000;
San Diego, California, Oceanside-Escondido Rail Project, \$48,000,000;
San Francisco, California Muni Third Street Light Rail Project, \$9,000,000;
San Jose, California, Silicon Valley Rapid Transit Corridor, \$2,000,000;
Scranton, Pennsylvania, NY City Rail Service, \$2,500,000;
Seattle, Washington, Sound Transit Central Link Initial Segment, \$75,000,000;
South Shore Commuter Rail Service capacity enhancement, \$1,000,000;
Stamford, Connecticut, Urban Transitway & Intermodal Transportation Center Improvements, \$4,000,000;
Tren Urbano Rapid Transit System, San Juan, PR, \$20,000,000;
VRE Parking Improvements, Virginia, \$3,000,000;
Washington, DC/VA Dulles Corridor Rapid Transit Project, \$20,000,000;
Washington, DC/MD, Largo Extension, \$65,000,000;
Western North Carolina Rail Passenger Service, \$1,000,000;
Wilmington, Delaware, Train Station Improvements, \$1,500,000;
Wilsonville to Beaverton, Oregon, Commuter Rail, \$3,250,000; and
Yarmouth to Auburn Line, Maine, \$1,000,000.

JOB ACCESS AND REVERSE COMMUTE GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out section 3037 of the Federal Transit Act of 1998, \$25,000,000, to remain available until expended: *Provided*, That no more than \$125,000,000 of budget

authority shall be available for these purposes: *Provided further*, That up to \$300,000 of the funds provided under this heading may be used by the Federal Transit Administration for technical assistance and support and performance reviews of the Job Access and Reverse Commute Grants program: *Provided further*, That \$20,000,000 of the funds provided under this heading shall be transferred to and merged with funds for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under “Federal Transit Administration, Capital Investment Grants”: *Provided further*, That \$2,331,545 in unobligated balances made available in Public Law 106-69 and \$2,182,937 in unobligated balances made available in Public Law 106-346 to carry out section 3037 of Public Law 105-178, as amended, shall be transferred to and merged with funds for new fixed guideway systems under “Federal Transit Administration, Capital Investment Grants”.

GENERAL PROVISIONS—FEDERAL TRANSIT ADMINISTRATION

49 USC 5338
note.

SEC. 160. The limitations on obligations for the programs of the Federal Transit Administration shall not apply to any authority under 49 U.S.C. 5338, previously made available for obligation, or to any other authority previously made available for obligation.

SEC. 161. Notwithstanding any other provision of law, and except for fixed guideway modernization projects, funds made available by this Act under “Federal Transit Administration, Capital investment grants” for projects specified in this Act or identified in reports accompanying this Act not obligated by September 30, 2006, and other recoveries, shall be made available for other projects under 49 U.S.C. 5309.

SEC. 162. Notwithstanding any other provision of law, any funds appropriated before October 1, 2003, under any section of chapter 53 of title 49, United States Code, that remain available for expenditure may be transferred to and administered under the most recent appropriation heading for any such section.

SEC. 163. Funds made available for Alaska or Hawaii ferry boats or ferry terminal facilities pursuant to 49 U.S.C. 5309(m)(2)(B) may be used to construct new vessels and facilities, or to improve existing vessels and facilities, including both the passenger and vehicle-related elements of such vessels and facilities, and for repair facilities: *Provided*, That not more than \$3,000,000 of the funds made available pursuant to 49 U.S.C. 5309(m)(2)(B) may be used by the State of Hawaii to initiate and operate a passenger ferryboat services demonstration project to test the viability of different intra-island and inter-island ferry boat routes and technology: *Provided further*, That notwithstanding 49 U.S.C. 5302(a)(7), funds made available for Alaska or Hawaii ferry boats may be used to acquire passenger ferry boats and to provide passenger ferry transportation services within areas of the State of Hawaii under the control or use of the National Park Service.

SEC. 164. Notwithstanding any other provision of law, funds made available to the Colorado Roaring Fork Transportation Authority under “Federal Transit Administration, Capital investment grants” in Public Laws 106-69 and 106-346 shall be available for expenditure on park and ride lots in Carbondale and Glenwood Springs, Colorado as part of the Roaring Fork Valley Bus Rapid Transit project.

SEC. 165. Notwithstanding any other provision of law, unobligated funds made available for a new fixed guideway systems projects under the heading “Federal Transit Administration, Capital Investment Grants” in any appropriations Act prior to this Act may be used during this fiscal year to satisfy expenses incurred for such projects.

SEC. 166. (a) IN GENERAL.—The Secretary shall establish a pilot program to determine the benefits of encouraging cooperative procurement of major capital equipment under sections 5307, 5309, and 5311. The program shall consist of three pilot projects. Cooperative procurements in these projects may be carried out by grantees, consortiums of grantees, or members of the private sector acting as agents of grantees.

49 USC 5307
note.

(b) FEDERAL SHARE.—Notwithstanding any other provision of law, the Federal share for a grant under this pilot program shall be 90 percent of the net project cost.

(c) PERMISSIBLE ACTIVITIES.—

(1) DEVELOPING SPECIFICATIONS.—Cooperative specifications may be developed either by the grantees or their agents.

(2) REQUESTS FOR PROPOSALS.—To the extent permissible under State and local law, cooperative procurements under this section may be carried out, either by the grantees or their agents, by issuing one request for proposal for each cooperative procurement, covering all agencies that are participating in the procurement.

(3) BEST AND FINAL OFFERS.—The cost of evaluating best and final offers either by the grantees or their agents, is an eligible expense under this program.

(d) TECHNOLOGY.—To the extent feasible, cooperative procurements under this section shall maximize use of Internet-based software technology designed specifically for transit buses and other major capital equipment to develop specifications; aggregate equipment requirements with other transit agencies; generate cooperative request for proposal packages; create cooperative specifications; and automate the request for approved equals process.

(e) ELIGIBLE EXPENSES.—The cost of the permissible activities under (c) and procurement under (d) are eligible expenses under the pilot program.

(f) PROPORTIONATE CONTRIBUTIONS.—Cooperating agencies may contribute proportionately to the non-Federal share of any of the eligible expenses under (e).

(g) OUTREACH.—The Secretary shall conduct outreach on cooperative procurement. Under this program the Secretary shall: (1) offer technical assistance to transit agencies to facilitate the use of cooperative procurement of major capital equipment; and (2) conduct seminars and conferences for grantees, nationwide, on the concept of cooperative procurement of major capital equipment.

(h) REPORT.—Not later than 30 days after delivery of the base order under each of the pilot projects, the Secretary shall submit to the House and Senate Committees on Appropriations a report on the results of that pilot project. Each report shall evaluate any savings realized through the cooperative procurement and the benefits of incorporating cooperative procurement, as shown by that project, into the mass transit program as a whole.

Deadline.

SEC. 167. Notwithstanding any other provision of law, new fixed guideway system funds available for the Yosemite, California, area regional transportation system project, in the Department

of Transportation and Related Agencies Appropriations Act, 2002, Public Law 107-87, under “Capital Investment Grants”, in the amount of \$400,000 shall be available for obligation for the replacement, rehabilitation, or purchase of buses or related equipment, or the construction of bus related facilities: *Provided*, That this amount shall be in addition to the amount available in fiscal year 2002 for these purposes.

SEC. 168. Notwithstanding any other provision of law, for the purpose of calculating the non-New Starts share of the total project cost of both phases of San Francisco Muni’s Third Street Light Rail Transit project for fiscal year 2004, the Secretary of Transportation shall include all non-New Starts contributions made towards Phase 1 of the two-phase project for engineering, final design and construction, and also shall allow non-New Starts funds expended on one element or phase of the project to be used to meet the non-New Starts share requirement of any element or phase of the project: *Provided further*, That none of the funds provided in this Act for the San Francisco Muni Third Street Light Rail Transit Project shall be obligated if the Federal Transit Administration determines that the project is found to be “not recommended” after evaluation and computation of revised transportation system user benefit data.

SEC. 169. Notwithstanding any other provision of law, funds made available under “Federal Transit Administration, Capital Investment Grants” in Public Law 105-277 for the Cleveland Berea Red Line Extension to the Hopkins International Airport project may be used for the Euclid Corridor Transportation Project.

SEC. 170. Notwithstanding any other provision of law, funds designated to the Community Transportation Association of America (CTAA) on pages 1305 through 1307 of the Joint Explanatory Statement of the Committee of Conference for Public Law 108-7 may be available to CTAA for any project or activity authorized under section 3037 of Public Law 105-178 upon receipt of an application.

SEC. 171. After the last section of the Federal Transit Act, 49 U.S.C. chapter 53, add the following section:

“SEC. 3042. UTAH TRANSPORTATION PROJECTS.

“(a) COORDINATION.—FTA and FHWA are directed to work with the Utah Transit Authority and the Utah Department of Transportation to coordinate the development regional commuter rail and the northern segment of I-15 reconstruction located in the Wasatch Front corridor extending from Brigham City to Payson, Utah. Coordination includes integration of preliminary engineering and design, a simplified method for allocating project costs among eligible FTA and FHWA funding sources, and a unified accounting and audit process.

“(b) GOVERNMENTAL FUNDING.—For purposes of determining and allocating the nongovernmental and governmental share of costs, the following projects comprise a related program of projects: regional commuter rail, the TRAX light rail system, TRAX extensions to the Medical Center and to the Gateway Intermodal Center, and the northern segment of I-15 reconstruction. The governmental share of project costs appropriated from the section 5309 New Start program shall conform to the share specified in the extension or reauthorization of TEA21.”.

SEC. 172. Funds apportioned to the Charleston Area Regional Transportation Authority to carry out section 5307 of title 49,

United States Code, may be used to lease land, equipment, or facilities used in public transportation from another governmental authority in the same geographic area: *Provided*, That the non-Federal share under section 5307 may include revenues from the sale of advertising and concessions: *Provided further*, That this provision shall remain in effect until September 30, 2004, or until the Federal interest in the land, equipment or facilities leased reaches 80 percent of its fair market value at disposition, whichever occurs first.

Termination
date.

SEC. 173. Notwithstanding any other provision of law, funds designated to the Pennsylvania Cumberland/Dauphin County Corridor I project in committee reports accompanying this Act may be available to the recipient for any project activities authorized under sections 5307 and 5309 of title 49, United States Code.

SEC. 174. To the extent that funds provided by the Congress for the Memphis Medical Center light rail extension project through the section 5309 “new fixed guideway systems” program remain available upon the closeout of the project, Federal Transit Administration is directed to permit the Memphis Area Transit Authority to use all of those funds for planning, engineering, design, construction or acquisition projects pertaining to the Memphis Regional Rail Plan. Such funds shall remain available until expended.

SEC. 175. Section 30303(d)(3) of the Transportation Equity Act for the 21st Century (Public Law 105–178) is amended by inserting at the end:

112 Stat. 379.

“(D) Memphis-Shelby International Airport intermodal facility.”.

SEC. 176. For fiscal year 2004, section 3027 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5307 note; 112 Stat. 366), as amended, is amended by adding at the end the following:

“(3) SERVICES FOR ELDERLY AND PERSONS WITH DISABILITIES.—In addition to assistance made available under paragraph (1), the Secretary may provide assistance under section 5307 of title 49, United States Code, to a transit provider that operates 25 or fewer vehicles in an urbanized area with a population of at least 200,000 to finance the operating costs of equipment and facilities used by the transit provider in providing mass transportation services to elderly and persons with disabilities, provided that such assistance to all entities shall not exceed \$10,000,000 annually.”.

SEC. 177. None of the funds in this Act shall be available to any Federal transit grantee after February 1, 2004, involved directly or indirectly, in any activity that promotes the legalization or medical use of any substance listed in schedule I of section 202 of the Controlled Substances Act (21 U.S.C. 812 et seq.).

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation’s budget for the current fiscal year.

OPERATIONS AND MAINTENANCE

(HARBOR MAINTENANCE TRUST FUND)

For necessary expenses for operations and maintenance of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation, \$14,400,000, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662.

MARITIME ADMINISTRATION

MARITIME SECURITY PROGRAM

For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, \$98,700,000, to remain available until expended.

OPERATIONS AND TRAINING

For necessary expenses of operations and training activities authorized by law, \$106,997,000, of which \$23,600,000 shall remain available until September 30, 2004, for salaries and benefits of employees of the United States Merchant Marine Academy; of which \$13,500,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; of which \$8,063,000 shall remain available until expended for the State Maritime Schools Schoolship Maintenance and Repair; of which \$500,000 shall remain available until expended for the evaluation and provision of the fourteen commercially strategic ports; and of which \$1,000,000 shall remain available until September 30, 2005, for Maritime Security Professional Training in support of section 109 of the Maritime Transportation Security Act of 2002.

SHIP DISPOSAL

For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, \$16,211,000, to remain available until expended.

MARITIME GUARANTEED LOAN (TITLE XI) PROGRAM ACCOUNT

For administrative expenses to carry out the guaranteed loan program, not to exceed \$4,498,000, which shall be transferred to and merged with the appropriation for Operations and Training.

SHIP CONSTRUCTION

(RESCISSION)

Of the unobligated balances available under this heading, \$4,107,056 are rescinded.

GENERAL PROVISIONS—MARITIME ADMINISTRATION

SEC. 180. Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control

of the Maritime Administration, and payments received therefore shall be credited to the appropriation charged with the cost thereof: *Provided*, That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts.

SEC. 181. No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936, or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior appropriation Act.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RESEARCH AND SPECIAL PROGRAMS

For expenses necessary to discharge the functions of the Research and Special Programs Administration, \$46,441,000, of which \$645,000 shall be derived from the Pipeline Safety Fund, and of which \$2,510,000 shall remain available until September 30, 2006: *Provided*, That up to \$1,200,000 in fees collected under 49 U.S.C. 5108(g) shall be deposited in the general fund of the Treasury as offsetting receipts: *Provided further*, That there may be credited to this appropriation, to be available until expended, funds received from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training, for reports publication and dissemination, and for travel expenses incurred in performance of hazardous materials exemptions and approvals functions.

PIPELINE SAFETY

(PIPELINE SAFETY FUND)

(OIL SPILL LIABILITY TRUST FUND)

For expenses necessary to conduct the functions of the pipeline safety program, for grants-in-aid to carry out a pipeline safety program, as authorized by 49 U.S.C. 60107, and to discharge the pipeline program responsibilities of the Oil Pollution Act of 1990, \$66,305,000, of which \$13,000,000 shall be derived from the Oil Spill Liability Trust Fund and shall remain available until September 30, 2006; of which \$53,305,000 shall be derived from the Pipeline Safety Fund, of which \$21,828,000 shall remain available until September 30, 2006.

EMERGENCY PREPAREDNESS GRANTS

(EMERGENCY PREPAREDNESS FUND)

For necessary expenses to carry out 49 U.S.C. 5127(c), \$200,000, to be derived from the Emergency Preparedness Fund, to remain available until September 30, 2006: *Provided*, That not more than \$14,300,000 shall be made available for obligation in fiscal year 2004 from amounts made available by 49 U.S.C. 5116(i) and 5127(d): *Provided further*, That none of the funds made available by 49 U.S.C. 5116(i) and 5127(d) shall be made available for obligation by individuals other than the Secretary of Transportation, or his designee.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

Air carriers.

For necessary expenses of the Office of Inspector General to carry out the provisions of the Inspector General Act of 1978, as amended, \$56,000,000: *Provided*, That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3) to investigate allegations of fraud, including false statements to the government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the Department: *Provided further*, That the funds made available under this heading shall be used to investigate, pursuant to section 41712 of title 49, United States Code: (1) unfair or deceptive practices and unfair methods of competition by domestic and foreign air carriers and ticket agents; and (2) the compliance of domestic and foreign air carriers with respect to item (1) of this proviso.

SURFACE TRANSPORTATION BOARD

SALARIES AND EXPENSES

For necessary expenses of the Surface Transportation Board, including services authorized by 5 U.S.C. 3109, \$19,521,000: *Provided*, That notwithstanding any other provision of law, not to exceed \$1,050,000 from fees established by the Chairman of the Surface Transportation Board shall be credited to this appropriation as offsetting collections and used for necessary and authorized expenses under this heading: *Provided further*, That the sum herein appropriated from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2004, to result in a final appropriation from the general fund estimated at no more than \$18,471,000.

TITLE II—DEPARTMENT OF THE TREASURY

DEPARTMENTAL OFFICES

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Departmental Offices including operation and maintenance of the Treasury Building and Annex; hire of passenger motor vehicles; maintenance, repairs, and improvements of, and purchase of commercial insurance policies for, real properties leased or owned overseas, when necessary for the performance of official business; not to exceed \$3,000,000, to remain available until September 30, 2005, for information technology modernization requirements; not to exceed \$150,000 for official reception and representation expenses; not to exceed \$258,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Secretary of the Treasury and to be accounted for solely on his certificate, \$176,109,000: *Provided*, That the Office of Foreign Assets Control shall be funded at no less than \$21,855,000 and 120 full time equivalent positions: *Provided further*, That of these amounts, \$2,900,000 is available for grants to State and local law enforcement groups to help fight

money laundering: *Provided further*, That of these amounts, \$3,393,000, to remain available until September 30, 2005, shall be for the Treasury-wide Financial Statement Audit Program, of which such amounts as may be necessary may be transferred to accounts of the Department's offices and bureaus to conduct audits: *Provided further*, That this transfer authority shall be in addition to any other provided in this Act.

DEPARTMENT-WIDE SYSTEMS AND CAPITAL INVESTMENTS PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For development and acquisition of automatic data processing equipment, software, and services for the Department of the Treasury, \$36,400,000, to remain available until September 30, 2006: *Provided*, That these funds shall be transferred to accounts and in amounts as necessary to satisfy the requirements of the Department's offices, bureaus, and other organizations: *Provided further*, That this transfer authority shall be in addition to any other transfer authority provided in this Act: *Provided further*, That none of the funds appropriated shall be used to support or supplement the Internal Revenue Service appropriations for Information Systems or Business Systems Modernization.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, not to exceed \$2,000,000 for official travel expenses, including hire of passenger motor vehicles; and not to exceed \$100,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General of the Treasury, \$13,000,000, of which not to exceed \$2,500 shall be available for official reception and representation expenses.

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Treasury Inspector General for Tax Administration in carrying out the Inspector General Act of 1978, as amended, including purchase (not to exceed 150 for replacement only for police-type use) and hire of passenger motor vehicles (31 U.S.C. 1343(b)); services authorized by 5 U.S.C. 3109, at such rates as may be determined by the Inspector General for Tax Administration; not to exceed \$6,000,000 for official travel expenses; and not to exceed \$500,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General for Tax Administration, \$128,034,000.

AIR TRANSPORTATION STABILIZATION PROGRAM

For necessary expenses to administer the Air Transportation Stabilization Board established by section 102 of the Air Transportation Safety and System Stabilization Act (Public Law 107–42), \$2,538,000, to remain available until expended.

TREASURY BUILDING AND ANNEX REPAIR AND RESTORATION

For the repair, alteration, and improvement of the Treasury Building and Annex, \$25,000,000, to remain available until September 30, 2006, of which not less than \$7,000,000 shall not be available for obligation until completion of the audit by the Treasury Inspector General or upon the advance approval of the House and Senate Committees on Appropriations.

FINANCIAL CRIMES ENFORCEMENT NETWORK

SALARIES AND EXPENSES

For necessary expenses of the Financial Crimes Enforcement Network, including hire of passenger motor vehicles; travel expenses of non-Federal law enforcement personnel to attend meetings concerned with financial intelligence activities, law enforcement, and financial regulation; not to exceed \$14,000 for official reception and representation expenses; and for assistance to Federal law enforcement agencies, with or without reimbursement, \$57,571,000, of which not to exceed \$4,500,000 shall remain available until September 30, 2006; and of which \$8,152,000 shall remain available until September 30, 2005: *Provided*, That funds appropriated in this account may be used to procure personal services contracts.

FINANCIAL MANAGEMENT SERVICE

SALARIES AND EXPENSES

For necessary expenses of the Financial Management Service, \$228,558,000, of which not to exceed \$9,220,000 shall remain available until September 30, 2006, for information systems modernization initiatives; and of which not to exceed \$2,500 shall be available for official reception and representation expenses.

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

SALARIES AND EXPENSES

For necessary expenses of carrying out section 1111 of the Homeland Security Act of 2002, including hire of passenger motor vehicles, \$80,000,000; of which not to exceed \$6,000 for official reception and representation expenses; not to exceed \$50,000 for cooperative research and development programs for Laboratory Services; and provision of laboratory assistance to State and local agencies with or without reimbursement.

UNITED STATES MINT

UNITED STATES MINT PUBLIC ENTERPRISE FUND

Pursuant to section 5136 of title 31, United States Code, the United States Mint is provided funding through the United States Mint Public Enterprise Fund for costs associated with the production of circulating coins, numismatic coins, and protective services, including both operating expenses and capital investments. The aggregate amount of new liabilities and obligations incurred during fiscal year 2004 under such section 5136 for circulating coinage

and protective service capital investments of the United States Mint shall not exceed \$40,652,000.

BUREAU OF THE PUBLIC DEBT

ADMINISTERING THE PUBLIC DEBT

For necessary expenses connected with any public-debt issues of the United States, \$178,052,000, of which not to exceed \$2,500 shall be available for official reception and representation expenses, and of which not to exceed \$2,000,000 shall remain available until expended for systems modernization: *Provided*, That the sum appropriated herein from the General Fund for fiscal year 2004 shall be reduced by not more than \$4,400,000 as definitive security issue fees and Treasury Direct Investor Account Maintenance fees are collected, so as to result in a final fiscal year 2004 appropriation from the general fund estimated at \$173,652,000. In addition, \$40,000 to be derived from the Oil Spill Liability Trust Fund to reimburse the Bureau for administrative and personnel expenses for financial management of the Fund, as authorized by section 1012 of Public Law 101–380.

INTERNAL REVENUE SERVICE

PROCESSING, ASSISTANCE, AND MANAGEMENT

For necessary expenses of the Internal Revenue Service for pre-filing taxpayer assistance and education, filing and account services, shared services support, general management and administration; and services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, \$4,033,000,000, of which up to \$4,100,000 shall be for the Tax Counseling for the Elderly Program, of which \$7,500,000 shall be available for low-income taxpayer clinic grants, and of which not to exceed \$25,000 shall be for official reception and representation expenses.

TAX LAW ENFORCEMENT

For necessary expenses of the Internal Revenue Service for determining and establishing tax liabilities; providing litigation support; conducting criminal investigation and enforcement activities; securing unfiled tax returns; collecting unpaid accounts; conducting a document matching program; resolving taxpayer problems through prompt identification, referral and settlement; resolving essential earned income tax credit compliance and error problems; compiling statistics of income and conducting compliance research; purchase (for police-type use, not to exceed 850) and hire of passenger motor vehicles (31 U.S.C. 1343(b)); and services as authorized by U.S.C. 3109, at such rates as may be determined by the Commissioner, \$4,196,000,000, of which not to exceed \$1,000,000 shall remain available until September 30, 2006, for research: *Provided*, That such sums may be transferred as necessary from this account to the IRS Processing, Assistance, and Management appropriation or the IRS Information Systems appropriation solely for the purposes of management of the Earned Income Tax Compliance program and to reimburse the Social Security Administration for the cost of implementing section 1090 of the Taxpayer Relief Act of 1997 (Public Law 105–33): *Provided further*, That this transfer

authority shall be in addition to any other transfer authority provided in this Act.

INFORMATION SYSTEMS

For necessary expenses of the Internal Revenue Service for information systems and telecommunications support, including developmental information systems and operational information systems; the hire of passenger motor vehicles (31 U.S.C. 1343(b)); and services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, \$1,590,962,000, of which \$200,000,000 shall remain available until September 30, 2005.

BUSINESS SYSTEMS MODERNIZATION

For necessary expenses of the Internal Revenue Service, \$390,000,000, to remain available until September 30, 2006, for the capital asset acquisition of information technology systems, including management and related contractual costs of said acquisitions, including contractual costs associated with operations authorized by 5 U.S.C. 3109: *Provided*, That none of these funds may be obligated until the Internal Revenue Service submits to the Committees on Appropriations, and such Committees approve, a plan for expenditure that: (1) meets the capital planning and investment control review requirements established by the Office of Management and Budget, including Circular A–11 part 3; (2) complies with the Internal Revenue Service’s enterprise architecture, including the modernization blueprint; (3) conforms with the Internal Revenue Service’s enterprise life cycle methodology; (4) is approved by the Internal Revenue Service, the Department of the Treasury, and the Office of Management and Budget; (5) has been reviewed by the General Accounting Office; and (6) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government.

HEALTH INSURANCE TAX CREDIT ADMINISTRATION

For expenses necessary to implement the health insurance tax credit included in the Trade Act of 2002 (Public Law 107–210), \$35,000,000, to remain available until September 30, 2005.

GENERAL PROVISIONS—INTERNAL REVENUE SERVICE

SEC. 201. Not to exceed 5 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to any other Internal Revenue Service appropriation upon the advance approval of the Committees on Appropriations.

SEC. 202. The Internal Revenue Service shall maintain a training program to ensure that Internal Revenue Service employees are trained in taxpayers’ rights, in dealing courteously with the taxpayers, and in cross-cultural relations.

SEC. 203. The Internal Revenue Service shall institute and enforce policies and procedures that will safeguard the confidentiality of taxpayer information.

SEC. 204. Funds made available by this or any other Act to the Internal Revenue Service shall be available for improved facilities and increased manpower to provide sufficient and effective 1–800 help line service for taxpayers. The Commissioner shall continue to make the improvement of the Internal Revenue Service

26 USC 7804
note.

Procedures.
26 USC 6103
note.

1–800 help line service a priority and allocate resources necessary to increase phone lines and staff to improve the Internal Revenue Service 1–800 help line service.

SEC. 205. Within one hundred and eighty days of enactment, the Secretary of the Treasury shall present to the Congress a proposal for legislation which would provide transition relief for older and longer-service participants affected by conversions of their employers' traditional pension plans to cash balance pension plans: *Provided*, That none of the funds made available in this Act may be used by the Secretary of the Treasury, or his designee, to issue any rule or regulation which implements the proposed amendments to Internal Revenue Service regulations set forth in REG–209500–86 and REG–164464–02, or any amendments reaching results similar to such proposed amendments.

Deadline.
Proposal.
Pensions.

SEC. 206. STUDY ON EARNED INCOME TAX CREDIT CERTIFICATION PROGRAM. (A) STUDY.—The Internal Revenue Service shall conduct a study, as a part of any program that requires certification (including pre-certification) in order to claim the earned income tax credit under section 32 of the Internal Revenue Code of 1986, on the following matters:

26 USC 32 note.

(1) The costs (in time and money) incurred by the participants in the program.

(2) The administrative costs incurred by the Internal Revenue Service in operating the program.

(3) The percentage of individuals included in the program who were not certified for the credit, including the percentage of individuals who were not certified due to—

(A) ineligibility for the credit; and

(B) failure to complete the requirements for certification.

(4) The percentage of individuals to whom paragraph (3)(B) applies who were—

(A) otherwise eligible for the credit; and

(B) otherwise ineligible for the credit.

(5) The percentage of individuals to whom paragraph (3)(B) applies who—

(A) did not respond to the request for certification; and

(B) responded to such request but otherwise failed to complete the requirements for certification.

(6) The reasons—

(A) for which individuals described in paragraph (5)(A) did not respond to requests for certification; and

(B) for which individuals described in paragraph (5)(B) had difficulty in completing the requirements for certification.

(7) The characteristics of those individuals who were denied the credit due to—

(A) failure to complete the requirements for certification; and

(B) ineligibility for the credit.

(8) The impact of the program on non-English speaking participants.

(9) The impact of the program on homeless and other highly transient individuals.

(b) REPORT.—

Deadlines.

(1) PRELIMINARY REPORT.—Not later than July 30, 2004, the Commissioner of the Internal Revenue Service shall submit to Congress a preliminary report on the study conducted under subsection (a).

(2) FINAL REPORT.—Not later than June 30, 2005, the Commissioner of the Internal Revenue Service shall submit to Congress a final report detailing the findings of the study conducted under subsection (a).

GENERAL PROVISIONS—DEPARTMENT OF THE TREASURY

SEC. 210. Appropriations to the Department of the Treasury in this Act shall be available for uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901), including maintenance, repairs, and cleaning; purchase of insurance for official motor vehicles operated in foreign countries; purchase of motor vehicles without regard to the general purchase price limitations for vehicles purchased and used overseas for the current fiscal year; entering into contracts with the Department of State for the furnishing of health and medical services to employees and their dependents serving in foreign countries; and services authorized by 5 U.S.C. 3109.

SEC. 211. Not to exceed 2 percent of any appropriations in this Act made available to the Departmental Offices—Salaries and Expenses, Office of Inspector General, Financial Management Service, Alcohol and Tobacco Tax and Trade Bureau, Financial Crime Enforcement Network, and Bureau of the Public Debt, may be transferred between such appropriations upon the advance approval of the Committees on Appropriations. No transfer may increase or decrease any such appropriation by more than 2 percent.

SEC. 212. Not to exceed 2 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to the Treasury Inspector General for Tax Administration's appropriation upon the advance approval of the Committees on Appropriations. No transfer may increase or decrease any such appropriation by more than 2 percent.

Certification.

SEC. 213. Of the funds available for the purchase of law enforcement vehicles, no funds may be obligated until the Secretary of the Treasury certifies that the purchase by the respective Treasury bureau is consistent with Departmental vehicle management principles: *Provided*, That the Secretary may delegate this authority to the Assistant Secretary for Management.

SEC. 214. None of the funds appropriated in this Act or otherwise available to the Department of the Treasury or the Bureau of Engraving and Printing may be used to redesign the \$1 Federal Reserve note.

SEC. 215. The Secretary of the Treasury may transfer funds from "Salaries and Expenses", Financial Management Service, to the Debt Services Account as necessary to cover the costs of debt collection: *Provided*, That such amounts shall be reimbursed to such Salaries and Expenses account from debt collections received in the Debt Services Account.

SEC. 216. Section 122(g)(1) of Public Law 105–119 (5 U.S.C. 3104 note), is further amended by striking "5 years" and inserting "6 years".

SEC. 217. None of the funds appropriated or otherwise made available by this or any other Act may be used by the United

States Mint to construct or operate any museum without the explicit approval of the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs.

SEC. 218. For fiscal year 2004 and each fiscal year thereafter, there are appropriated to the Secretary of the Treasury such sums as may be necessary to reimburse financial institutions in their capacity as depositaries and financial agents of the United States for all services required or directed by the Secretary of the Treasury, or the Secretary's designee, to be performed by such financial institutions on behalf of the Department of the Treasury or other Federal agencies, including services rendered prior to fiscal year 2004.

12 USC 5018
note.

TITLE III—EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

COMPENSATION OF THE PRESIDENT

For compensation of the President, including an expense allowance at the rate of \$50,000 per annum as authorized by 3 U.S.C. 102, \$450,000: *Provided*, That none of the funds made available for official expenses shall be expended for any other purpose and any unused amount shall revert to the Treasury pursuant to section 1552 of title 31, United States Code.

3 USC 102 note.

WHITE HOUSE OFFICE

SALARIES AND EXPENSES

For necessary expenses for the White House as authorized by law, including not to exceed \$3,850,000 for services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 105; subsistence expenses as authorized by 3 U.S.C. 105, which shall be expended and accounted for as provided in that section; hire of passenger motor vehicles, newspapers, periodicals, teletype news service, and travel (not to exceed \$100,000 to be expended and accounted for as provided by 3 U.S.C. 103); and not to exceed \$19,000 for official entertainment expenses, to be available for allocation within the Executive Office of the President, \$69,168,000: *Provided*, That \$8,650,000 of the funds appropriated shall be available for reimbursements to the White House Communications Agency: *Provided further*, That \$7,231,000 of the funds appropriated under this heading shall be available for the Homeland Security Council.

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

OPERATING EXPENSES

For the care, maintenance, repair and alteration, refurnishing, improvement, heating, and lighting, including electric power and fixtures, of the Executive Residence at the White House and official entertainment expenses of the President, \$12,501,000, to be expended and accounted for as provided by 3 U.S.C. 105, 109, 110, and 112–114.

REIMBURSABLE EXPENSES

For the reimbursable expenses of the Executive Residence at the White House, such sums as may be necessary: *Provided*, That

all reimbursable operating expenses of the Executive Residence shall be made in accordance with the provisions of this paragraph: *Provided further*, That, notwithstanding any other provision of law, such amount for reimbursable operating expenses shall be the exclusive authority of the Executive Residence to incur obligations and to receive offsetting collections, for such expenses: *Provided further*, That the Executive Residence shall require each person sponsoring a reimbursable political event to pay in advance an amount equal to the estimated cost of the event, and all such advance payments shall be credited to this account and remain available until expended: *Provided further*, That the Executive Residence shall require the national committee of the political party of the President to maintain on deposit \$25,000, to be separately accounted for and available for expenses relating to reimbursable political events sponsored by such committee during such fiscal year: *Provided further*, That the Executive Residence shall ensure that a written notice of any amount owed for a reimbursable operating expense under this paragraph is submitted to the person owing such amount within 60 days after such expense is incurred, and that such amount is collected within 30 days after the submission of such notice: *Provided further*, That the Executive Residence shall charge interest and assess penalties and other charges on any such amount that is not reimbursed within such 30 days, in accordance with the interest and penalty provisions applicable to an outstanding debt on a United States Government claim under section 3717 of title 31, United States Code: *Provided further*, That each such amount that is reimbursed, and any accompanying interest and charges, shall be deposited in the Treasury as miscellaneous receipts: *Provided further*, That the Executive Residence shall prepare and submit to the Committees on Appropriations, by not later than 90 days after the end of the fiscal year covered by this Act, a report setting forth the reimbursable operating expenses of the Executive Residence during the preceding fiscal year, including the total amount of such expenses, the amount of such total that consists of reimbursable official and ceremonial events, the amount of such total that consists of reimbursable political events, and the portion of each such amount that has been reimbursed as of the date of the report: *Provided further*, That the Executive Residence shall maintain a system for the tracking of expenses related to reimbursable events within the Executive Residence that includes a standard for the classification of any such expense as political or nonpolitical: *Provided further*, That no provision of this paragraph may be construed to exempt the Executive Residence from any other applicable requirement of subchapter I or II of chapter 37 of title 31, United States Code.

Notices.
Deadlines.

Deadline.
Reports.

Records.

WHITE HOUSE REPAIR AND RESTORATION

For the repair, alteration, and improvement of the Executive Residence at the White House, \$4,225,000, to remain available until expended, for required maintenance, safety and health issues, and continued preventative maintenance.

COUNCIL OF ECONOMIC ADVISERS

SALARIES AND EXPENSES

For necessary expenses of the Council of Economic Advisors in carrying out its functions under the Employment Act of 1946 (15 U.S.C. 1021), \$4,502,000.

OFFICE OF POLICY DEVELOPMENT

SALARIES AND EXPENSES

For necessary expenses of the Office of Policy Development, including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, \$4,109,000.

NATIONAL SECURITY COUNCIL

SALARIES AND EXPENSES

For necessary expenses of the National Security Council, including services as authorized by 5 U.S.C. 3109, \$10,551,000.

OFFICE OF ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Office of Administration, including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, and hire of passenger motor vehicles, \$82,826,000, of which \$20,578,000 shall remain available until expended for the Capital Investment Plan for continued modernization of the information technology infrastructure within the Executive Office of the President.

OFFICE OF MANAGEMENT AND BUDGET

SALARIES AND EXPENSES

For necessary expenses of the Office of Management and Budget, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109 and to carry out the provisions of chapter 35 of title 44, United States Code, \$67,159,000, of which not to exceed \$3,000 shall be available for official representation expenses: *Provided*, That, as provided in 31 U.S.C. 1301(a), appropriations shall be applied only to the objects for which appropriations were made except as otherwise provided by law: *Provided further*, That none of the funds appropriated in this Act for the Office of Management and Budget may be used for the purpose of reviewing any agricultural marketing orders or any activities or regulations under the provisions of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 et seq.): *Provided further*, That none of the funds made available for the Office of Management and Budget by this Act may be expended for the altering of the transcript of actual testimony of witnesses, except for testimony of officials of the Office of Management and Budget, before the Committees on Appropriations or the Committees on Veterans' Affairs or their subcommittees: *Provided further*, That the preceding shall not apply to printed hearings released by the Committees

Applicability.

on Appropriations or the Committees on Veterans' Affairs: *Provided further*, That none of the funds appropriated in this Act may be available to pay the salary or expenses of any employee of the Office of Management and Budget who calculates, prepares, or approves any tabular or other material that proposes the sub-allocation of budget authority or outlays by the Committees on Appropriations among their subcommittees.

OFFICE OF NATIONAL DRUG CONTROL POLICY

SALARIES AND EXPENSES

21 USC 1702
note.

For necessary expenses of the Office of National Drug Control Policy; for research activities pursuant to the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.); not to exceed \$10,000 for official reception and representation expenses; and for participation in joint projects or in the provision of services on matters of mutual interest with nonprofit, research, or public organizations or agencies, with or without reimbursement, \$27,996,500; of which \$1,350,000 shall remain available until expended for policy research and evaluation; and \$1,500,000 for the National Alliance for Model State Drug Laws: *Provided*, That the Office is authorized to accept, hold, administer, and utilize gifts, both real and personal, public and private, without fiscal year limitation, for the purpose of aiding or facilitating the work of the Office.

COUNTERDRUG TECHNOLOGY ASSESSMENT CENTER

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Counterdrug Technology Assessment Center for research activities pursuant to the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.), \$42,000,000, which shall remain available until expended, consisting of \$18,000,000 for counternarcotics research and development projects, and \$24,000,000 for the continued operation of the technology transfer program: *Provided*, That the \$18,000,000 for counternarcotics research and development projects shall be available for transfer to other Federal departments or agencies.

FEDERAL DRUG CONTROL PROGRAMS

HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of National Drug Control Policy's High Intensity Drug Trafficking Areas Program, \$226,350,000, for drug control activities consistent with the approved strategy for each of the designated High Intensity Drug Trafficking Areas, of which no less than 51 percent shall be transferred to State and local entities for drug control activities, which shall be obligated within 120 days of the date of the enactment of this Act: *Provided*, That up to 49 percent, to remain available until September 30, 2005, may be transferred to Federal agencies and departments at a rate to be determined by the Director, of which not less than \$2,100,000 shall be used for auditing services

and associated activities, and at least \$500,000 of the \$2,100,000 shall be used to develop and implement a data collection system to measure the performance of the High Intensity Drug Trafficking Areas Program: *Provided further*, That High Intensity Drug Trafficking Areas Programs designated as of September 30, 2003, shall be funded at no less than the fiscal year 2003 initial allocation levels unless the Director submits to the Committees on Appropriations, and the Committees approve, justification for changes in those levels based on clearly articulated priorities for the High Intensity Drug Trafficking Areas Programs, as well as published Office of National Drug Control Policy performance measures of effectiveness: *Provided further*, That a request shall be submitted to the Committees on Appropriations for approval prior to the obligation of funds of an amount in excess of the fiscal year 2004 budget request: *Provided further*, That such request shall be made in compliance with the reprogramming guidelines.

OTHER FEDERAL DRUG CONTROL PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For activities to support a national anti-drug campaign for youth, and for other purposes, authorized by the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.), \$229,000,000, to remain available until expended, of which the following amounts are available as follows: \$145,000,000 to support a national media campaign, as authorized by the Drug-Free Media Campaign Act of 1998; \$70,000,000 to continue a program of matching grants to drug-free communities, of which \$1,000,000 shall be a directed grant to the Community Anti-Drug Coalitions of America for the National Community Anti-Drug Coalition Institute, as authorized in chapter 2 of the National Narcotics Leadership Act of 1988, as amended; \$3,000,000 for the Counterdrug Intelligence Executive Secretariat; \$2,000,000 for evaluations and research related to National Drug Control Program performance measures; \$1,000,000 for the National Drug Court Institute; \$7,200,000 for the United States Anti-Doping Agency for anti-doping activities; and \$800,000 for the United States membership dues to the World Anti-Doping Agency: *Provided*, That such funds may be transferred to other Federal departments and agencies to carry out such activities: *Provided further*, That of the amounts appropriated for a national media campaign, no less than 78 percent shall be used for the purchase of advertising time and space for the national media campaign.

UNANTICIPATED NEEDS

For expenses necessary to enable the President to meet unanticipated needs, in furtherance of the national interest, security, or defense which may arise at home or abroad during the current fiscal year, as authorized by 3 U.S.C. 108, \$1,000,000.

SPECIAL ASSISTANCE TO THE PRESIDENT AND THE OFFICIAL RESIDENCE OF THE VICE PRESIDENT

SALARIES AND EXPENSES

For necessary expenses to enable the Vice President to provide assistance to the President in connection with specially assigned

functions; services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 106, including subsistence expenses as authorized by 3 U.S.C. 106, which shall be expended and accounted for as provided in that section; and hire of passenger motor vehicles, \$4,461,000.

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For the care, operation, refurbishing, improvement, and to the extent not otherwise provided for, heating and lighting, including electric power and fixtures, of the official residence of the Vice President; the hire of passenger motor vehicles; and not to exceed \$90,000 for official entertainment expenses of the Vice President, to be accounted for solely on his certificate, \$331,000: *Provided*, That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.

GENERAL PROVISION—EXECUTIVE OFFICE OF THE PRESIDENT

SEC. 301. Section 102 of title 3, United States Code, is amended by striking “, for which expense allowance” and all that follows through the first period and inserting “. Any unused amount of such expense allowance shall revert to the Treasury pursuant to section 1552 of title 31, United States Code. No amount of such expense allowance shall be included in the gross income of the President.”.

TITLE IV—INDEPENDENT AGENCIES

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SALARIES AND EXPENSES

For expenses necessary for the Architectural and Transportation Barriers Compliance Board, as authorized by section 502 of the Rehabilitation Act of 1973, as amended \$5,401,000: *Provided*, That, notwithstanding any other provision of law, there may be credited to this appropriation funds received for publications and training expenses.

NATIONAL TRANSPORTATION SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the National Transportation Safety Board, including hire of passenger motor vehicles and aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for a GS–15; uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901–5902) \$73,499,000, of which not to exceed \$2,000 may be used for official reception and representation expenses.

EMERGENCY FUND

For necessary expenses of the National Transportation Safety Board for accident investigations, \$600,000, to remain available until expended: *Provided*, That these funds shall be available only

to the extent necessary to restore the balance of the emergency fund to \$2,000,000 (29 U.S.C. 1118(b)).

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR
SEVERELY DISABLED

SALARIES AND EXPENSES

For necessary expenses of the Committee for Purchase From People Who Are Blind or Severely Disabled established by Public Law 92–28, \$4,725,000.

FEDERAL ELECTION COMMISSION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the Federal Election Campaign Act of 1971, as amended, \$51,240,000, of which no less than \$6,389,900 shall be available for internal automated data processing systems, of which not to exceed \$5,000 shall be available for reception and representation expenses, and of which \$800,000 shall be available for necessary expenses to carry out the functions of the Office of Election Administration: *Provided*, That upon the transfer of functions of the Office of Election Administration to the Election Assistance Commission under the provisions of title VIII of the Help America Vote Act of 2002, any portion of such funds remaining available as of the date of the transfer shall be transferred to the Election Assistance Commission for purposes of carrying out such functions.

ELECTION ASSISTANCE COMMISSION

SALARIES AND EXPENSES

For necessary expenses to carry out the Help America Vote Act of 2002, \$1,200,000.

ELECTION REFORM PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out a program of requirements payments to States as authorized by section 257 of the Help America Vote Act of 2002, \$500,000,000: *Provided*, That no more than one-tenth of 1 percent of funds available for requirements payments under section 257 of the Help America Vote Act of 2002 shall be allocated to any territory: *Provided further*, That of the funds made available for providing grants to assist State and local efforts to improve election technology and the administration of Federal elections, as authorized by such Act, not to exceed \$100,000 shall be transferred to the General Services Administration for necessary administrative expenses to carry out programs of payments to States as authorized by section 257 of such Act.

FEDERAL LABOR RELATIONS AUTHORITY

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan Numbered 2 of 1978, and the Civil Service Reform Act of 1978, including services authorized by 5 U.S.C. 3109, and including hire of experts and consultants, hire of passenger motor vehicles, and rental of conference rooms in the District of Columbia and elsewhere, \$29,611,000: *Provided*, That public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation as authorized by 5 U.S.C. 3109: *Provided further*, That notwithstanding 31 U.S.C. 3302, funds received from fees charged to non-Federal participants at labor-management relations conferences shall be credited to and merged with this account, to be available without further appropriation for the costs of carrying out these conferences.

FEDERAL MARITIME COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. App. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901-5902, \$18,471,000: *Provided*, That not to exceed \$2,000 shall be available for official reception and representation expenses.

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount to be deposited in, and to be used for the purposes of, the Fund established pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 592), \$446,000,000. The revenues and collections deposited into the Fund shall be available for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings; rental of buildings in the District of Columbia; restoration of leased premises; moving governmental agencies (including space adjustments and telecommunications relocation expenses) in connection with the assignment, allocation and transfer of space; contractual services incident to cleaning or servicing buildings, and moving; repair and alteration of federally owned buildings including grounds, approaches and appurtenances; care and safeguarding of sites;

maintenance, preservation, demolition, and equipment; acquisition of buildings and sites by purchase, condemnation, or as otherwise authorized by law; acquisition of options to purchase buildings and sites; conversion and extension of federally owned buildings; preliminary planning and design of projects by contract or otherwise; construction of new buildings (including equipment for such buildings); and payment of principal, interest, and any other obligations for public buildings acquired by installment purchase and purchase contract; in the aggregate amount of \$6,758,208,000, of which: (1) \$708,268,000 shall remain available until expended for construction (including funds for sites and expenses and associated design and construction services) of additional projects at the following locations:

New Construction:

Alabama:

Anniston, United States Courthouse, \$4,400,000.
Tuscaloosa, Federal Building, \$7,500,000.

California:

Los Angeles, United States Courthouse,
\$50,000,000.
San Diego, Border Station, \$34,211,000.

Colorado:

Denver Federal Center, site remediation,
\$6,000,000.

District of Columbia:

Department of Transportation Headquarters,
\$42,000,000.

Florida:

Orlando, United States Courthouse, \$7,200,000.

Georgia:

Atlanta, Tuttle Building Annex, \$10,600,000.

Maine:

Jackman, Border Station, \$7,712,000.

Maryland:

Montgomery County, Food and Drug Administra-
tion Consolidation, \$42,000,000.
Suitland, United States Census Bureau,
\$146,451,000.

Michigan:

Detroit, Ambassador Bridge Border Station,
\$25,387,000.

New York:

Champlain, Border Station, \$31,031,000.

North Carolina:

Charlotte, United States Courthouse, \$8,500,000.

Ohio:

Toledo, United States Courthouse, \$6,500,000.

Pennsylvania:

Harrisburg, United States Courthouse,
\$26,000,000.

South Carolina:

Greenville, United States Courthouse, \$11,000,000.

Texas:

Del Rio, Border Station, \$23,966,000.
Eagle Pass, Border Station, \$31,980,000.
Houston, Federal Bureau of Investigation,
\$58,080,000.

McAllen, Border Station, \$17,938,000.
 San Antonio, United States Courthouse,
 \$8,000,000.

Virginia:

Richmond, United States Courthouse, \$83,000,000.

Washington:

Blaine, Border Station, \$9,812,000.

Nonprospectus Construction, \$9,000,000:

Provided, That each of the foregoing limits of costs on new construction projects may be exceeded to the extent that savings are effected in other such projects, but not to exceed 10 percent of the amounts included in an approved prospectus, if required, unless advance approval is obtained from the Committees on Appropriations of a greater amount: *Provided further*, That all funds for direct construction projects shall expire on September 30, 2005, and remain in the Federal Buildings Fund except for funds for projects as to which funds for design or other funds have been obligated in whole or in part prior to such date; (2) \$991,300,000 shall remain available until expended for repairs and alterations, which includes associated design and construction services:

Repairs and Alterations:

Colorado:

Denver, Byron G. Rogers Federal Building—Court-
 house, \$39,436,000.

District of Columbia:

320 First Street, \$7,485,000.

Eisenhower Executive Office Building,
 \$65,757,000.

Federal Office Building 8, \$134,872,000.

Main Interior Building, \$15,603,000.

Fire & Life Safety, \$68,188,000.

Georgia:

Atlanta, Richard B. Russell Federal Building,
 \$32,173,000.

Illinois:

Chicago, Dirksen Courthouse & Kluczynski Fed-
 eral Building, \$24,056,000.

Springfield, Paul H. Findley Federal Building—
 Courthouse, \$6,183,000.

Indiana:

Terre Haute Federal Building—Post Office,
 \$4,600,000.

Massachusetts:

Boston, John W. McCormack Post Office and
 Courthouse, \$73,037,000.

New York:

Brooklyn, Emanuel Celler Courthouse,
 \$65,511,000.

North Dakota:

Fargo, Federal Building—Post Office, \$5,801,000.

Ohio:

Columbus, John W. Bricker Federal Building,
 \$10,707,000.

Washington:

Auburn, Building 7, Auburn Federal Building,
 \$18,315,000.

Bellingham, Federal Building, \$2,610,000.

Expiration date.

Seattle, Henry M. Jackson Federal Building,
\$6,868,000.

Special Emphasis Programs:

Chlorofluorocarbons Program, \$5,000,000.

Energy Program, \$5,000,000.

Glass Fragmentation Program, \$20,000,000.

Design Program, \$41,462,000:

Provided further, That funds made available in any previous Act in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount identified for each project, except each project in any previous Act may be increased by an amount not to exceed 10 percent unless advance approval is obtained from the Committees on Appropriations of a greater amount: *Provided further*, That additional projects for which prospectuses have been fully approved may be funded under this category only if advance approval is obtained from the Committees on Appropriations: *Provided further*, That the amounts provided in this or any prior Act for “Repairs and Alterations” may be used to fund costs associated with implementing security improvements to buildings necessary to meet the minimum standards for security in accordance with current law and in compliance with the reprogramming guidelines of the appropriate Committees of the House and Senate: *Provided further*, That the difference between the funds appropriated and expended on any projects in this or any prior Act, under the heading “Repairs and Alterations”, may be transferred to Basic Repairs and Alterations or used to fund authorized increases in prospectus projects: *Provided further*, That all funds for repairs and alterations prospectus projects shall expire on September 30, 2005, and remain in the Federal Buildings Fund except funds for projects as to which funds for design or other funds have been obligated in whole or in part prior to such date: *Provided further*, That the amount provided in this or any prior Act for Basic Repairs and Alterations may be used to pay claims against the Government arising from any projects under the heading “Repairs and Alterations” or used to fund authorized increases in prospectus projects: *Provided further*, That the funds available herein for repairs to the Bellingham, Washington, Federal Building, shall be available for transfer to the city of Bellingham, Washington, subject to disposal of the building to the city; (3) \$169,745,000 for installment acquisition payments including payments on purchase contracts which shall remain available until expended; (4) \$3,280,187,000 for rental of space which shall remain available until expended; and (5) \$1,608,708,000 for building operations which shall remain available until expended: *Provided further*, That funds available to the General Services Administration shall not be available for expenses of any construction, repair, alteration and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses for the development of a proposed prospectus: *Provided further*, That funds available in the Federal Buildings Fund may be expended for emergency repairs when advance approval is obtained from the Committees on Appropriations: *Provided further*, That amounts necessary to provide reimbursable special services to other agencies under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 592(b)(2)) and amounts to provide

Expiration date.

such reimbursable fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control as may be appropriate to enable the United States Secret Service to perform its protective functions pursuant to 18 U.S.C. 3056, shall be available from such revenues and collections: *Provided further*, That revenues and collections and any other sums accruing to this Fund during fiscal year 2004, excluding reimbursements under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 592(b)(2)) in excess of \$6,717,208,000 shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

GENERAL ACTIVITIES

GOVERNMENT-WIDE POLICY

For expenses authorized by law, not otherwise provided for, for Government-wide policy and evaluation activities associated with the management of real and personal property assets and certain administrative services; Government-wide policy support responsibilities relating to acquisition, telecommunications, information technology management, and related technology activities; and services as authorized by 5 U.S.C. 3109, \$56,383,000.

OPERATING EXPENSES

For expenses authorized by law, not otherwise provided for, for Government-wide activities associated with utilization and donation of surplus personal property; disposal of real property; telecommunications, information technology management, and related technology activities; providing Internet access to Federal information and services; agency-wide policy direction and management, and Board of Contract Appeals; accounting, records management, and other support services incident to adjudication of Indian Tribal Claims by the United States Court of Federal Claims; services as authorized by 5 U.S.C. 3109; and not to exceed \$7,500 for official reception and representation expenses, \$88,110,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General and services authorized by 5 U.S.C. 3109, \$39,169,000: *Provided*, That not to exceed \$15,000 shall be available for payment for information and detection of fraud against the Government, including payment for recovery of stolen Government property: *Provided further*, That not to exceed \$2,500 shall be available for awards to employees of other Federal agencies and private citizens in recognition of efforts and initiatives resulting in enhanced Office of Inspector General effectiveness.

ELECTRONIC GOVERNMENT (E-GOV) FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in support of interagency projects that enable the Federal Government to expand its ability to conduct activities electronically, through the development and implementation of innovative uses of the Internet and other electronic methods, \$3,000,000, to remain available until expended: *Provided*, That

these funds may be transferred to Federal agencies to carry out the purposes of the Fund: *Provided further*, That this transfer authority shall be in addition to any other transfer authority provided in this Act: *Provided further*, That such transfers may not be made until 10 days after a proposed spending plan and justification for each project to be undertaken has been submitted to the Committees on Appropriations.

ALLOWANCES AND OFFICE STAFF FOR FORMER PRESIDENTS

(INCLUDING TRANSFER OF FUNDS)

For carrying out the provisions of the Act of August 25, 1958, as amended (3 U.S.C. 102 note), and Public Law 95–138, \$3,393,000: *Provided*, That the Administrator of General Services shall transfer to the Secretary of the Treasury such sums as may be necessary to carry out the provisions of such Acts.

GENERAL PROVISIONS—GENERAL SERVICES ADMINISTRATION

SEC. 401. The appropriate appropriation or fund available to the General Services Administration shall be credited with the cost of operation, protection, maintenance, upkeep, repair, and improvement, included as part of rentals received from Government corporations pursuant to law (40 U.S.C. 129).

SEC. 402. Funds available to the General Services Administration shall be available for the hire of passenger motor vehicles.

SEC. 403. Funds in the Federal Buildings Fund made available for fiscal year 2004 for Federal Buildings Fund activities may be transferred between such activities only to the extent necessary to meet program requirements: *Provided*, That any proposed transfers shall be approved in advance by the Committees on Appropriations.

SEC. 404. No funds made available by this Act shall be used to transmit a fiscal year 2005 request for United States Courthouse construction that: (1) does not meet the design guide standards for construction as established and approved by the General Services Administration, the Judicial Conference of the United States, and the Office of Management and Budget; and (2) does not reflect the priorities of the Judicial Conference of the United States as set out in its approved 5-year construction plan: *Provided*, That the fiscal year 2005 request must be accompanied by a standardized courtroom utilization study of each facility to be constructed, replaced, or expanded.

SEC. 405. None of the funds provided in this Act may be used to increase the amount of occupiable square feet, provide cleaning services, security enhancements, or any other service usually provided through the Federal Buildings Fund, to any agency that does not pay the rate per square foot assessment for space and services as determined by the General Services Administration in compliance with the Public Buildings Amendments Act of 1972 (Public Law 92–313).

SEC. 406. Funds provided to other Government agencies by the Information Technology Fund, General Services Administration, under section 110 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757) and sections 5124(b) and 5128 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1424(b) and 1428), for performance of pilot information technology projects which have

potential for Government-wide benefits and savings, may be repaid to this Fund from any savings actually incurred by these projects or other funding, to the extent feasible.

SEC. 407. From funds made available under the heading “Federal Buildings Fund, Limitations on Availability of Revenue”, claims against the Government of less than \$250,000 arising from direct construction projects and acquisition of buildings may be liquidated from savings effected in other construction projects with prior notification to the Committees on Appropriations.

New Hampshire.

SEC. 408. (a) Notwithstanding any other provision of law, the Administrator of General Services is authorized to acquire, under such terms and conditions as he deems to be in the interests of the United States, approximately 27 acres of land, identified as Site 7 and located at 234 Corporate Drive, Pease International Tradeport, Portsmouth, NH 03801, as a site for the public building needs of the Federal Government, and to design and construct upon the site a new Federal Office Building of approximately 98,000 gross square feet: *Provided*, That the Administrator shall not acquire any property under this subsection until the Administrator determines that the property is in compliance with applicable environmental laws, and that the property is suitable and available for use as a site to house the Federal agencies presently located in the Thomas J. McIntyre Federal Building.

(b) For the site acquisition, design, construction, and relocation, \$11,149,000 shall be available from funds previously provided under the heading “General Services Administration, Real Property Activities, Federal Buildings Fund” in Public Law 108–7 for repairs and alterations to the Thomas J. McIntyre Federal Building in Portsmouth, New Hampshire, which was included in the plan for expenditure of repairs and alterations funds as required by accompanying House Report No. 108–10.

(c) For any additional costs of construction, management and inspection of the new facility to house the Federal agencies relocated from the McIntyre Federal Office Building, and for the costs of relocating the Federal agencies occupying the McIntyre Federal Office Building, \$13,669,000 shall be deposited into the Federal Buildings Fund (40 U.S.C. 592) from the general fund; which amount, together with the amount set forth in subsection (b) of this section shall remain available until expended and shall be subject to such escalation and reprogramming authorities available to the Administrator for any other new construction projects under the heading “Federal Building Fund Limitations on Availability of Revenue”.

(d) The Administrator is authorized and directed to convey, without consideration, the Thomas J. McIntyre Federal Office Building to the City of Portsmouth, New Hampshire for economic development purposes subject to the following conditions: (i) that all Federal agencies currently occupying the McIntyre Building except the United States Postal Service are completely relocated to the new Federal Building for so long as those agencies have continuing mission needs for that new location; (ii) that the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.) shall not apply to this conveyance; and (iii) that the Administrator may include in the conveyance documents such terms and conditions as the Administrator determines in the best interest of the United States.

SEC. 409. (a) The Administrator of General Services shall carry out the authority of the Election Assistance Commission to make election assistance payments under subtitle D of title II of the Help America Vote Act of 2002, including the authority under such subtitle to receive statements and applications from entities seeking such payments and reports from entities receiving such payments.

(b) The authority of the Administrator of General Services under subsection (a) shall apply with respect to amounts appropriated for fiscal year 2004 and amounts appropriated for fiscal year 2003 which remain unobligated and unexpended at the end of fiscal year 2003, except that this authority shall expire upon the earlier of—

Applicability.
Expiration date.

(1) the expiration of the 3-month period which begins on the date on which all members of the Election Assistance Commission are appointed; or

(2) June 30, 2004.

(c) Upon the appointment of all members of the Election Assistance Commission, the Administrator of General Services shall transmit to the Commission all statements, applications, and reports received by the Administrator in carrying out this section.

Reports.

SEC. 410. None of the funds made available in this Act may be used by the General Services Administration to establish a quick response team processing center on East Brainerd Road in Chattanooga, Tennessee.

SEC. 411. COMPLETION OF LAND CONVEYANCE, SAN JOAQUIN COUNTY, CALIFORNIA. Section 140 of division C of Public Law 105-277 (112 Stat. 2681-599), as amended by section 3034 of the 1999 Emergency Supplemental Appropriations Act (Public Law 106-31; 113 Stat. 104), is amended—

(1) in subsection (a)—

(A) in the first sentence, by striking “Attorney General” and inserting “Administrator of General Services, on behalf of the Attorney General,”;

(B) in the second sentence, by striking “Attorney General” and inserting “Administrator”; and

(C) in the second sentence, by striking “not later than August 21, 1999” and inserting “as soon as practicable”;

(2) in subsection (b), by striking “Attorney General” and inserting “Administrator”;

(3) in subsection (c)(1)—

(A) in the first sentence, by striking “as the location” and all that follows through “other educational purposes” and inserting “for educational or recreational purposes”; and

(B) by striking the second sentence;

(4) in subsection (c)(2), by striking “Attorney General” and inserting “Administrator”;

(5) in subsection (d), by striking paragraph (2) and inserting the following new paragraph:

“(2) The use of the real property conveyed under subsection (a) for recreational purposes, as provided in subsection (c), shall be subject to the approval of the Secretary of the Interior.”;

(6) in subsection (e)—

(A) in paragraph (1), by striking “If the Secretary” and all that follows through “not being used” and inserting “If a portion of the real property conveyed under subsection

(a) is used for educational purposes, as provided in subsection (c), and the Secretary of Education determines that such portion is no longer being used”; and

(B) in paragraph (2), by striking “as a public park or for other recreational purposes” and inserting “for recreational purposes”; and

(7) in subsection (f), by striking “Attorney General” and inserting “Administrator”.

MERIT SYSTEMS PROTECTION BOARD

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan Numbered 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and direct procurement of survey printing, \$32,877,000 together with not to exceed \$2,626,000 for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY TRUST FUND

For payment to the Morris K. Udall Scholarship and Excellence in National Environmental Policy Trust Fund, pursuant to the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5601 et seq.), \$1,996,000, to remain available until expended of which up to \$50,000 shall be used to conduct financial audits pursuant to the Accountability of Tax Dollars Act of 2002 (Public Law 107-289) notwithstanding sections 8 and 9 of Public Law 102-259: *Provided*, That up to 60 percent of such funds may be transferred by the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for the necessary expenses of the Native Nations Institute.

ENVIRONMENTAL DISPUTE RESOLUTION FUND

For payment to the Environmental Dispute Resolution Fund to carry out activities authorized in the Environmental Policy and Conflict Resolution Act of 1998, \$1,309,000, to remain available until expended.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

OPERATING EXPENSES

For necessary expenses in connection with the administration of the National Archives and Records Administration (including the Information Security Oversight Office) and archived Federal

records and related activities, as provided by law, and for expenses necessary for the review and declassification of documents, and for the hire of passenger motor vehicles, \$256,700,000: *Provided*, That the Archivist of the United States is authorized to use any excess funds available from the amount borrowed for construction of the National Archives facility, for expenses necessary to provide adequate storage for holdings: *Provided further*, That, of the funds provided in this paragraph, \$600,000 shall be for the preservation of the records of the Freedmen's Bureau.

ELECTRONIC RECORDS ARCHIVE

For necessary expenses in connection with the development of an electronic records archive, to include all direct project costs associated with research, analysis, design, development, and program management, \$35,914,000, of which \$22,000,000 shall remain available until September 30, 2006.

REPAIRS AND RESTORATION

For the repair, alteration, and improvement of archives facilities, and to provide adequate storage for holdings, \$13,708,000, to remain available until expended, of which \$500,000 is for the Military Personnel Records Center requirements study, of which \$2,250,000 is for land acquisition for a site in Anchorage, Alaska, to construct a new regional archives and records facility and of which \$5,000,000 is for the repair and restoration of the plaza that surrounds the Lyndon Baines Johnson Presidential Library and that is under the joint control and custody of the University of Texas: *Provided*, That such funds may be transferred directly to the University and used, together with University funds, for repair and restoration of the plaza and remain available until expended for this purpose: *Provided further*, That the same transfer authority shall extend to funds previously appropriated in Public Law 108–7 for this purpose.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

GRANTS PROGRAM

For necessary expenses for allocations and grants for historical publications and records as authorized by 44 U.S.C. 2504, as amended, \$10,000,000, to remain available until expended.

OFFICE OF GOVERNMENT ETHICS

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Government Ethics pursuant to the Ethics in Government Act of 1978, as amended and the Ethics Reform Act of 1989, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and not to exceed \$1,500 for official reception and representation expenses, \$10,738,000.

OFFICE OF PERSONNEL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF TRUST FUNDS)

For necessary expenses to carry out functions of the Office of Personnel Management pursuant to Reorganization Plan Numbered 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109; medical examinations performed for veterans by private physicians on a fee basis; rental of conference rooms in the District of Columbia and elsewhere; hire of passenger motor vehicles; not to exceed \$2,500 for official reception and representation expenses; advances for reimbursements to applicable funds of the Office of Personnel Management and the Federal Bureau of Investigation for expenses incurred under Executive Order No. 10422 of January 9, 1953, as amended; and payment of per diem and/or subsistence allowances to employees where Voting Rights Act activities require an employee to remain overnight at his or her post of duty, \$119,498,000, of which \$2,000,000 shall remain available until expended for the cost of the enterprise human resources integration project, and \$2,500,000 shall remain available until expended for the cost of leading the Government-wide initiative to modernize the Federal payroll systems and service delivery and \$2,500,000 shall remain available through September 30, 2005, to coordinate and conduct program evaluation and performance measurement; and in addition \$135,914,000 for administrative expenses, to be transferred from the appropriate trust funds of the Office of Personnel Management without regard to other statutes, including direct procurement of printed materials, for the retirement and insurance programs, of which \$36,700,000 shall remain available until expended for the cost of automating the retirement recordkeeping systems: *Provided*, That the provisions of this appropriation shall not affect the authority to use applicable trust funds as provided by sections 8348(a)(1)(B), 8909(g), and 9004(f)(1)(A) and (2)(A) of title 5, United States Code: *Provided further*, That no part of this appropriation shall be available for salaries and expenses of the Legal Examining Unit of the Office of Personnel Management established pursuant to Executive Order No. 9358 of July 1, 1943, or any successor unit of like purpose: *Provided further*, That the President's Commission on White House Fellows, established by Executive Order No. 11183 of October 3, 1964, may, during fiscal year 2004, accept donations of money, property, and personal services in connection with the development of a publicity brochure to provide information about the White House Fellows, except that no such donations shall be accepted for travel or reimbursement of travel expenses, or for the salaries of employees of such Commission.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF TRUST FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act, as amended, including services as authorized by 5 U.S.C. 3109, hire of passenger motor vehicles, \$1,498,000, and in addition, not to

exceed \$14,427,000 for administrative expenses to audit, investigate, and provide other oversight of the Office of Personnel Management's retirement and insurance programs, to be transferred from the appropriate trust funds of the Office of Personnel Management, as determined by the Inspector General: *Provided*, That the Inspector General is authorized to rent conference rooms in the District of Columbia and elsewhere.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH
BENEFITS

For payment of Government contributions with respect to retired employees, as authorized by chapter 89 of title 5, United States Code, and the Retired Federal Employees Health Benefits Act (74 Stat. 849), as amended, such sums as may be necessary.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE LIFE
INSURANCE

For payment of Government contributions with respect to employees retiring after December 31, 1989, as required by chapter 87 of title 5, United States Code, such sums as may be necessary.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

For financing the unfunded liability of new and increased annuity benefits becoming effective on or after October 20, 1969, as authorized by 5 U.S.C. 8348, and annuities under special Acts to be credited to the Civil Service Retirement and Disability Fund, such sums as may be necessary: *Provided*, That annuities authorized by the Act of May 29, 1944, as amended, and the Act of August 19, 1950, as amended (33 U.S.C. 771–775), may hereafter be paid out of the Civil Service Retirement and Disability Fund.

33 USC 776.

HUMAN CAPITAL PERFORMANCE FUND

(INCLUDING TRANSFER OF FUNDS)

For a human capital performance fund, \$1,000,000: *Provided*, That such amount shall not be available for obligation or transfer until enactment of legislation that establishes a human capital performance fund within the Office of Personnel Management: *Provided further*, That such amounts as determined by the Director of the Office of Personnel Management may be transferred to Federal agencies to carry out the purposes of this fund as authorized: *Provided further*, That no funds shall be available for obligation or transfer to any Federal agency until the Director has notified the relevant subcommittees of jurisdiction of the Committees on Appropriations of the approval of a performance pay plan for that agency, and the prior approval of such subcommittees has been attained.

OFFICE OF SPECIAL COUNSEL

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Special Counsel pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978 (Public Law 95–454), as amended, the Whistleblower Protection Act of 1989 (Public

Law 101–12), as amended, Public Law 103–424, and the Uniformed Services Employment and Reemployment Act of 1994 (Public Law 103–353), including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms in the District of Columbia and elsewhere, and hire of passenger motor vehicles; \$13,504,000.

UNITED STATES POSTAL SERVICE

PAYMENT TO THE POSTAL SERVICE FUND

39 USC 403 note.

For payment to the Postal Service Fund for revenue forgone on free and reduced rate mail, pursuant to subsections (c) and (d) of section 2401 of title 39, United States Code, \$65,521,000, of which \$36,521,000 shall not be available for obligation until October 1, 2004: *Provided*, That mail for overseas voting and mail for the blind shall continue to be free: *Provided further*, That 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level: *Provided further*, That none of the funds made available to the Postal Service by this Act shall be used to implement any rule, regulation, or policy of charging any officer or employee of any State or local child support enforcement agency, or any individual participating in a State or local program of child support enforcement, a fee for information requested or provided concerning an address of a postal customer: *Provided further*, That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in fiscal year 2004.

UNITED STATES TAX COURT

SALARIES AND EXPENSES

26 USC 7443
note.

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. 3109, \$40,187,000: *Provided*, That travel expenses of the judges shall be paid upon the written certificate of the judge.

WHITE HOUSE COMMISSION ON THE NATIONAL MOMENT OF REMEMBRANCE

For necessary expenses of the White House Commission on the National Moment of Remembrance, \$250,000.

TITLE V—GENERAL PROVISIONS

THIS ACT

(INCLUDING TRANSFERS OF FUNDS)

SEC. 501. During the current fiscal year applicable appropriations to the Department of Transportation shall be available for maintenance and operation of aircraft; hire of passenger motor vehicles and aircraft; purchase of liability insurance for motor vehicles operating in foreign countries on official department business; and uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901–5902).

SEC. 502. Such sums as may be necessary for fiscal year 2004 pay raises for programs funded in this Act shall be absorbed within the levels appropriated in this Act or previous appropriations Acts.

SEC. 503. Appropriations contained in this Act for the Department of Transportation shall be available for services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for an Executive Level IV.

SEC. 504. None of the funds in this Act shall be available for salaries and expenses of more than 106 political and Presidential appointees in the Department of Transportation: *Provided*, That none of the personnel covered by this provision may be assigned on temporary detail outside the Department of Transportation.

SEC. 505. None of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings funded in this Act.

SEC. 506. None of the funds appropriated in this Act shall remain available for obligation beyond the current fiscal year, nor may any be transferred to other appropriations, unless expressly so provided herein.

SEC. 507. The expenditure of any appropriation under this Act for any consulting service through procurement contract pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Contracts.
Public
information.

SEC. 508. None of the funds in this Act shall be used to implement section 404 of title 23, United States Code.

SEC. 509. (a) No recipient of funds made available in this Act shall disseminate personal information (as defined in 18 U.S.C. 2725(3)) obtained by a State department of motor vehicles in connection with a motor vehicle record as defined in 18 U.S.C. 2725(1), except as provided in 18 U.S.C. 2721 for a use permitted under 18 U.S.C. 2721.

(b) Notwithstanding subsection (a), the Secretary shall not withhold funds provided in this Act for any grantee if a State is in noncompliance with this provision.

SEC. 510. Funds received by the Federal Highway Administration, Federal Transit Administration, and Federal Railroad Administration from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training may be credited respectively to the Federal Highway Administration's "Federal-Aid Highways" account, the Federal Transit Administration's "Transit Planning and Research" account, and to the Federal Railroad Administration's "Safety and Operations" account, except for State rail safety inspectors participating in training pursuant to 49 U.S.C. 20105.

SEC. 511. Notwithstanding any other provision of law, rule or regulation, the Secretary of Transportation is authorized to allow the issuer of any preferred stock heretofore sold to the Department to redeem or repurchase such stock upon the payment to the Department of an amount determined by the Secretary.

SEC. 512. None of the funds in title I of this Act may be used to make a grant unless the Secretary of Transportation notifies the House and Senate Committees on Appropriations not less than 3 full business days before any discretionary grant award, letter

of intent, or full funding grant agreement totaling \$1,000,000 or more is announced by the department or its modal administrations from: (1) any discretionary grant program of the Federal Highway Administration other than the emergency relief program; (2) the airport improvement program of the Federal Aviation Administration; or (3) any program of the Federal Transit Administration other than the formula grants and fixed guideway modernization programs: *Provided*, That no notification shall involve funds that are not available for obligation.

Oklahoma.

SEC. 513. For the purpose of any applicable law, for fiscal year 2004, the City of Norman, Oklahoma, shall be considered to be part of the Oklahoma City Transportation Management Area.

SEC. 514. None of the funds in title I of this Act may be obligated for the Office of the Secretary of Transportation to approve assessments or reimbursable agreements pertaining to funds appropriated to the modal administrations in this Act, except for activities underway on the date of enactment of this Act, unless such assessments or agreements have completed the normal reprogramming process for Congressional notification.

SEC. 515. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 516. Rebates, refunds, incentive payments, minor fees and other funds received by the Department of Transportation from travel management centers, charge card programs, the subleasing of building space, and miscellaneous sources are to be credited to appropriations of the Department of Transportation and allocated to elements of the Department of Transportation using fair and equitable criteria and such funds shall be available until expended.

SEC. 517. Funds provided in this Act for the Working Capital Fund shall be reduced by \$17,816,000, which limits fiscal year 2004 Working Capital Fund obligational authority for elements of the Department of Transportation funded in this Act to no more than \$98,899,000: *Provided*, That such reductions from the budget request shall be allocated by the Department of Transportation to each appropriations account in proportion to the amount included in each account for the Working Capital Fund.

SEC. 518. Amounts made available in this or any other Act that the Secretary determines represent improper payments by the Department of Transportation to a third party contractor under a financial assistance award, which are recovered pursuant to law, shall be available—

(1) to reimburse the actual expenses incurred by the Department of Transportation in recovering improper payments; and

(2) to pay contractors for services provided in recovering improper payments: *Provided*, That amounts in excess of that required for paragraphs (1) and (2)—

(A) shall be credited to and merged with the appropriation from which the improper payments were made, and shall be available for the purposes and period for which such appropriations are available; or

(B) if no such appropriation remains available, shall be deposited in the Treasury as miscellaneous receipts:

Provided, That prior to the transfer of any such recovery to an appropriations account, the Secretary shall notify the House and Senate Committees on Appropriations of the amount and reasons for such transfer: *Provided further*, That for purposes of this section, the term “improper payments”, has the same meaning as that provided in section 2(d)(2) of Public Law 107–300.

Notification.

SEC. 519. The Secretary of Transportation is authorized to transfer the unexpended balances available for the bonding assistance program from “Office of the Secretary, Salaries and expenses” to “Minority Business Outreach”.

SEC. 520. None of the funds made available by this Act shall be available for any activity or for paying the salary of any Government employee where funding an activity or paying a salary to a Government employee would result in a decision, determination, rule, regulation, or policy that would prohibit the enforcement of section 307 of the Tariff Act of 1930.

SEC. 521. (a) IN GENERAL.—The Secretary of Transportation—

(1) shall, without regard to any fiscal year limitation, maintain in full force and effect the restrictions imposed under Federal Aviation Administration Notices to Airmen FDC 3/2122, FDC 3/2123, and FDC 2/0199; and

(2) may not grant any waivers or exemptions from such restrictions, except—

(A) as authorized by air traffic control for operational or safety purposes;

(B) with respect to an event, stadium, or other venue—

(i) for operational purposes;

(ii) for the transport of team members, officials of the governing body, and immediate family members and guests of such team members and officials to and from such event, stadium, or venue;

(iii) in the case of a sporting event, for the transport of equipment or parts to and from such sporting event;

(iv) to permit a broadcast rights holder to provide broadcast coverage of such event, stadium, or venue; and

(v) for safety and security purposes related to such event, stadium, or venue; and

(C) to allow the operation of an aircraft in restricted airspace to the extent necessary to arrive at or depart from an airport using standard air traffic control procedures.

(b) LIMITATIONS ON USE OF FUNDS.—None of the funds appropriated or otherwise made available by title I of this Act may be obligated or expended to terminate or limit the restrictions imposed under the Federal Aviation Administration Notices to Airmen referred to in subsection (a), or to grant waivers of, or exemptions from, such restrictions except as provided under subsection (a)(2).

(c) BROADCAST CONTRACTS NOT AFFECTED.—Nothing in this section shall be construed to affect contractual rights pertaining to any broadcasting agreement.

SEC. 522. No part of any appropriation contained in this Act shall be available to pay the salary for any person filling a position, other than a temporary position, formerly held by an employee

who has left to enter the Armed Forces of the United States and has satisfactorily completed his period of active military or naval service, and has within 90 days after his release from such service or from hospitalization continuing after discharge for a period of not more than 1 year, made application for restoration to his former position and has been certified by the Office of Personnel Management as still qualified to perform the duties of his former position and has not been restored thereto.

SEC. 523. No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the “Buy America Act”).

SEC. 524. (a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—Hereafter, in the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the Secretary of the Treasury shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.

SEC. 525. Hereafter, if it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

SEC. 526. Except as otherwise specifically provided by law, not to exceed 50 percent of unobligated balances remaining available at the end of fiscal year 2004 from appropriations made available for salaries and expenses for fiscal year 2004 in this Act, shall remain available through September 30, 2005, for each such account for the purposes authorized: *Provided*, That a request shall be submitted to the Committees on Appropriations for approval prior to the expenditure of such funds: *Provided further*, That these requests shall be made in compliance with reprogramming guidelines.

SEC. 527. None of the funds made available in this Act may be used by the Executive Office of the President to request from the Federal Bureau of Investigation any official background investigation report on any individual, except when—

(1) such individual has given his or her express written consent for such request not more than 6 months prior to the date of such request and during the same presidential administration; or

(2) such request is required due to extraordinary circumstances involving national security.

SEC. 528. The cost accounting standards promulgated under section 26 of the Office of Federal Procurement Policy Act (Public Law 93-400; 41 U.S.C. 422) shall not apply with respect to a contract under the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

SEC. 529. For the purpose of resolving litigation and implementing any settlement agreements regarding the nonforeign area cost-of-living allowance program, the Office of Personnel Management may accept and utilize (without regard to any restriction on unanticipated travel expenses imposed in an Appropriations Act) funds made available to the Office pursuant to court approval.

SEC. 530. No funds appropriated or otherwise made available under this Act shall be made available to any person or entity that has been convicted of violating the Buy American Act (41 U.S.C. 10a–10c).

SEC. 531. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions.

Abortion.

SEC. 532. The provision of section 531 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.

SEC. 533. None of the funds provided in this Act, provided by previous appropriations Acts to the agencies or entities funded in this Act that remain available for obligation or expenditure in fiscal year 2004, or provided from any accounts in the Treasury derived by the collection of fees and available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that—

- (1) creates a new program;
- (2) eliminates a program, project, or activity;
- (3) increases funds for any program, project, or activity for which funds have been denied or restricted by the Congress;
- (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose;
- (5) augments existing programs, projects, or activities in excess of \$5,000,000 or 10 percent, whichever is greater; or
- (6) reduces existing programs, projects, or activities by \$5,000,000 or 10 percent, whichever is greater,

unless prior approval is received from the House and Senate Committees on Appropriations.

SEC. 534. None of the funds made available in this Act may be used to require a State or local government to post a traffic control device or variable message sign, or any other type of traffic warning sign, in a language other than English, except with respect to the names of cities, streets, places, events, or signs related to an international border.

SEC. 535. EXEMPTION FROM LIMITATIONS ON PROCUREMENT OF FOREIGN INFORMATION TECHNOLOGY THAT IS A COMMERCIAL ITEM. (a) EXEMPTION.—In order to promote Government access to commercial information technology, the restriction on purchasing non-domestic articles, materials, and supplies set forth in the Buy American Act (41 U.S.C. 10a et seq.), shall not apply to the acquisition by the Federal Government of information technology (as defined in section 11101 of title 40, United States Code, that is a commercial item (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(b) DEFINITION.—Section 11101(6) of title 40, United States Code, is amended—

- (1) in subparagraph (A), by inserting after “storage,” the following: “analysis, evaluation,”; and

(2) in subparagraph (B), by striking “ancillary equipment,” and inserting “ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer,”.

SEC. 536. It is the sense of the House of Representatives that empowerment zones within cities should have the necessary flexibility to expand to include relevant communities so that empowerment zone benefits are equitably distributed.

SEC. 537. It is the sense of the House of Representatives that all census tracts contained in an empowerment zone, either fully or partially, should be equitably accorded the same benefits.

SEC. 538. None of the funds made available in this Act may be used to finalize, implement, administer, or enforce—

(1) the proposed rule relating to the determination that real estate brokerage is an activity that is financial in nature or incidental to a financial activity published in the Federal Register on January 3, 2001 (66 Fed. Reg. 307 et seq.); or

(2) the revision proposed in such rule to section 1501.2 of title 12, Code of Federal Regulations.

SEC. 539. It is the sense of Congress that, after proper documentation, justification, and review, the Department of Transportation should consider programs to reimburse general aviation ground support services at Ronald Reagan Washington National Airport, and airports located within fifteen miles of Ronald Reagan Washington National Airport, for their financial losses due to Government actions after the terrorist attacks of September 11, 2001.

SEC. 540. It is the sense of the House of Representatives that public private partnerships (PPPs) could help eliminate some of the cost drivers behind complex, capital-intensive highway and transit projects. The House of Representatives encourages the Secretary of Transportation to apply available funds to select projects that are in the development phase, eligible under title 23 and title 49, United States Code, except 23 U.S.C. 133(b)(8), and that employ a PPP strategy.

SEC. 541. Section 414(h) of title 39, United States Code, is amended by striking “2003” and inserting “2005”.

Fees.

SEC. 542. None of the funds in title I of this Act may be used to adopt rules or regulations concerning travel agent service fees unless the Department of Transportation publishes in the Federal Register revisions to the proposed rule and provides a period for additional public comment on such proposed rule for a period not less than 60 days.

SEC. 543. (a) Section 103 of the Presidential Recordings and Materials Preservation Act (Public Law 93–526; 44 U.S.C. 2111 note) is amended by striking the second sentence and inserting the following: “The Archivist may transfer such recordings and materials to a Presidential archival depository in accordance with section 2112 of title 44, United States Code.”.

(b) Nothing in section 103 of the Presidential Recordings and Materials Preservation Act (Public Law 93–526; 44 U.S.C. 2111 note), as amended by subsection (a), may be construed as affecting public access to the recordings and materials referred to in that section as provided in regulations promulgated pursuant to section 104 of such Act.

SEC. 544. AMENDMENTS TO OKLAHOMA CITY NATIONAL MEMORIAL ACT OF 1997. (a) SHORT TITLE.—This section may be cited as the “Oklahoma City National Memorial Act Amendments of 2003”.

Oklahoma City
National
Memorial Act
Amendments of
2003.
16 USC 450ss
note.

(b) FOUNDATION DEFINED; CONFORMING AMENDMENT.—Section 3 of the Oklahoma City National Memorial Act of 1997 (16 U.S.C. 450ss–1) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively;

(2) by inserting immediately preceding paragraph (2) (as so redesignated by paragraph (1) of this subsection) the following new paragraph:

“(1) FOUNDATION.—The term ‘Foundation’ means the Oklahoma City National Memorial Foundation, a not-for-profit corporation that is—

“(A) described in section 501(c)(3) of the Internal Revenue Code of 1986;

“(B) exempt from taxation under section 501(a) of such Code; and

“(C) dedicated to the support of the Memorial.”; and

(3) in paragraph (3), by striking “designated under section 5(a)”.

(c) ADMINISTRATION OF MEMORIAL BY FOUNDATION.—Section 4 of the Oklahoma City National Memorial Act of 1997 (16 U.S.C. 450ss–2) is amended—

(1) in subsection (a)—

(A) by striking “a unit” and inserting “an affiliate”; and

(B) by striking the second sentence;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection:

“(b) ADMINISTRATION OF MEMORIAL.—The Foundation shall administer the Memorial in accordance with this Act and the general objectives of the ‘Memorial Mission Statement’, adopted March 26, 1996, by the Foundation.”; and

(4) in subsection (c) (as so redesignated by paragraph (2) of this subsection) by striking “1997 (hereafter)” and all that follows through the final period and inserting “1997. The map shall be on file and available for public inspection in the appropriate office of the Foundation.”.

(d) TRANSFER OF MEMORIAL PROPERTY, RIGHTS, AUTHORITIES, AND DUTIES.—Section 5 of the Oklahoma City National Memorial Act of 1997 (16 U.S.C. 450ss–3) is amended to read as follows:

“SEC. 5. TRANSFER OF MEMORIAL PROPERTY, RIGHTS, AUTHORITIES, AND DUTIES.

“(a) TRANSFER OF MEMORIAL PROPERTY.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of the Oklahoma City National Memorial Act Amendments of 2003, the Trust shall transfer to the Foundation—

Deadline.

“(A) all assets of the Trust, including all real and personal property of the Memorial, any appurtenances, buildings, facilities, monuments, contents, artifacts, contracts and contract rights, accounts, deposits, intangibles, trademarks, trade names, copyrights, all other intellectual

property, all other real and personal property of every kind and character comprising the Memorial, and any amounts appropriated for the Trust;

“(B) any property owned by the Trust that is adjacent or related to the Memorial; and

“(C) all property maintained for the Memorial, together with all rights, authorities, and duties relating to the ownership, administration, operation, and management of the Memorial.

“(2) SUBSEQUENT GIFTS.—Any artifact, memorial, or other personal property that is received by, or is intended by any person to be given to, the Trust after the date of transfer of property under paragraph (1) shall be the property of the Foundation.

“(b) ASSUMPTION OF TRUST OBLIGATIONS.—Any obligations of the Trust relating to the Memorial that have been approved by the Trust before the date on which the property is transferred under subsection (a) shall become the responsibility of the Foundation on the date of the transfer.

Deadline.
Notification.

“(c) DISSOLUTION OF TRUST.—Not later than 30 days after the transfer under subsection (a) is completed—

“(1) the Trust shall be dissolved; and

“(2) the Trust shall notify the Secretary of the date of dissolution.

“(d) AUTHORITY TO ENTER INTO AGREEMENTS.—The Secretary, acting through the National Park Service, is authorized to enter into 1 or more cooperative agreements with the Foundation for the National Park Service to provide interpretive services related to the Memorial and such other assistance as may be agreed upon between the Secretary and the Foundation. The costs of the services and other agreed assistance shall be paid by the Secretary.

“(e) GENERAL SERVICES ADMINISTRATION AUTHORITY.—The Administrator of General Services shall provide, on a non-reimbursable basis, services necessary for the facilitation of the transfer of the Memorial to the Foundation.

“(f) LIMITATION.—Nothing in this Act shall prohibit the use of State and local law enforcement for the purposes of security related to the Memorial.”

(e) REPEAL OF DUTIES AND AUTHORITIES OF TRUST.—

(1) IN GENERAL.—Section 6 of the Oklahoma City National Memorial Act of 1997 (16 U.S.C. 450ss–4) is repealed.

16 USC 450ss–4
note.

(2) EFFECTIVE DATE.—The repeal under this subsection shall take effect upon the transfer of the Memorial property, rights, authorities, and duties pursuant to the amendments made by subsection (d).

(f) AUTHORIZATION OF APPROPRIATIONS.—Section 7 of the Oklahoma City National Memorial Act of 1997 (16 U.S.C. 450ss–5) is amended—

(1) in paragraph (1), by inserting “for an endowment fund subject to paragraph (2)” after “the sum of \$5,000,000”; and

(2) in paragraph (2)—

(A) by striking “Trust or to the Oklahoma City Memorial”; and

(B) by striking “or operation” and inserting “operation, or endowment”.

16 USC 450ss–3
note.

(g) AUTHORIZATION OF SECRETARY TO REIMBURSE PREVIOUS COSTS PAID BY FOUNDATION OR TRUST.—To the extent that funds

are made available for the Trust, the Secretary of the Interior shall reimburse the Oklahoma City National Memorial Foundation for funds obligated or expended by the Oklahoma City National Memorial Foundation or the Oklahoma City National Memorial Trust to the Secretary of the Interior for interpretive services, security, and other costs and services related to the Oklahoma City National Memorial before the date of the enactment of this Act. The Oklahoma City National Memorial Foundation may use such reimbursed funds for the operation, maintenance, and permanent endowment of the Oklahoma City National Memorial.

(h) REPEAL OF DISPOSITION OF SITE OF ALFRED P. MURRAH FEDERAL BUILDING.—Section 8 of the Oklahoma City National Memorial Act of 1997 (16 U.S.C. 450ss–6) is repealed.

(i) REPEAL OF STUDY REQUIREMENT.—Section 9 of the Oklahoma City National Memorial Act of 1997 (16 U.S.C. 450ss–7) is repealed.

SEC. 545. Notwithstanding any other provision of law, the unobligated balance of funds made available to the District of Columbia under item 70 in the table contained in section 1106(b)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2047) and the unobligated balance of funds made available to the District of Columbia under item 554 of the table contained in section 1602 of the Transportation Equity Act for the 21st Century (Public Law 105–178, as amended; 112 Stat. 277) shall be made available to carry out a project for the replacement of the existing bridge on Kenilworth Avenue over Nannie Helen Burroughs Avenue and for a ferry and ferry facility project on the Anacostia River.

SEC. 546. Section 345(6), division I, of Public Law 108–7 is amended by adding at the end of the section the following “In implementing section 345(6) the Secretary may also modify the permitted uses of draws on the lines of credit to include any repair and replacement costs.” 117 Stat. 418.

SEC. 547. Notwithstanding any other provision of law, projects and activities described in the statement of managers accompanying this Act under the headings “Federal-Aid Highways” and “Federal Transit Administration” shall be eligible for fiscal year 2004 funds made available for the program for which each project or activity is so designated and projects and activities under the heading “Job Access and Reverse Commute Grants” shall be awarded those grants upon receipt of an application.

TITLE VI—GENERAL PROVISIONS

DEPARTMENTS, AGENCIES, AND CORPORATIONS

SEC. 601. Funds appropriated in this or any other Act may be used to pay travel to the United States for the immediate family of employees serving abroad in cases of death or life threatening illness of said employee.

SEC. 602. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for fiscal year 2004 shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as

defined in the Controlled Substances Act) by the officers and employees of such department, agency, or instrumentality.

31 USC 1343
note.

SEC. 603. Unless otherwise specifically provided, the maximum amount allowable during the current fiscal year in accordance with section 16 of the Act of August 2, 1946 (60 Stat. 810), for the purchase of any passenger motor vehicle (exclusive of buses, ambulances, law enforcement, and undercover surveillance vehicles), is hereby fixed at \$8,100 except station wagons for which the maximum shall be \$9,100: *Provided*, That these limits may be exceeded by not to exceed \$3,700 for police-type vehicles, and by not to exceed \$4,000 for special heavy-duty vehicles: *Provided further*, That the limits set forth in this section may not be exceeded by more than 5 percent for electric or hybrid vehicles purchased for demonstration under the provisions of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976: *Provided further*, That the limits set forth in this section may be exceeded by the incremental cost of clean alternative fuels vehicles acquired pursuant to Public Law 101-549 over the cost of comparable conventionally fueled vehicles.

SEC. 604. Appropriations of the executive departments and independent establishments for the current fiscal year available for expenses of travel, or for the expenses of the activity concerned, are hereby made available for quarters allowances and cost-of-living allowances, in accordance with 5 U.S.C. 5922-5924.

5 USC 3101 note.

SEC. 605. Unless otherwise specified during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless such person: (1) is a citizen of the United States; (2) is a person in the service of the United States on the date of the enactment of this Act who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date and is actually residing in the United States; (3) is a person who owes allegiance to the United States; (4) is an alien from Cuba, Poland, South Vietnam, the countries of the former Soviet Union, or the Baltic countries lawfully admitted to the United States for permanent residence; (5) is a South Vietnamese, Cambodian, or Laotian refugee paroled in the United States after January 1, 1975; or (6) is a national of the People's Republic of China who qualifies for adjustment of status pursuant to the Chinese Student Protection Act of 1992: *Provided*, That for the purpose of this section, an affidavit signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status have been complied with: *Provided further*, That any person making a false affidavit shall be guilty of a felony, and, upon conviction, shall be fined no more than \$4,000 or imprisoned for not more than 1 year, or both: *Provided further*, That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law: *Provided further*, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government. This section shall not apply to citizens of Ireland, Israel, or the Republic of the Philippines, or to nationals of those countries allied

with the United States in a current defense effort, or to international broadcasters employed by the United States Information Agency, or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies.

SEC. 606. Appropriations available to any department or agency during the current fiscal year for necessary expenses, including maintenance or operating expenses, shall also be available for payment to the General Services Administration for charges for space and services and those expenses of renovation and alteration of buildings and facilities which constitute public improvements performed in accordance with the Public Buildings Act of 1959 (73 Stat. 749), the Public Buildings Amendments of 1972 (87 Stat. 216), or other applicable law.

SEC. 607. In addition to funds provided in this or any other Act, all Federal agencies are authorized to receive and use funds resulting from the sale of materials, including Federal records disposed of pursuant to a records schedule recovered through recycling or waste prevention programs. Such funds shall be available until expended for the following purposes:

(1) Acquisition, waste reduction and prevention, and recycling programs as described in Executive Order No. 13101 (September 14, 1998), including any such programs adopted prior to the effective date of the Executive order.

(2) Other Federal agency environmental management programs, including, but not limited to, the development and implementation of hazardous waste management and pollution prevention programs.

(3) Other employee programs as authorized by law or as deemed appropriate by the head of the Federal agency.

SEC. 608. Funds made available by this or any other Act for administrative expenses in the current fiscal year of the corporations and agencies subject to chapter 91 of title 31, United States Code, shall be available, in addition to objects for which such funds are otherwise available, for rent in the District of Columbia; services in accordance with 5 U.S.C. 3109; and the objects specified under this head, all the provisions of which shall be applicable to the expenditure of such funds unless otherwise specified in the Act by which they are made available: *Provided*, That in the event any functions budgeted as administrative expenses are subsequently transferred to or paid from other funds, the limitations on administrative expenses shall be correspondingly reduced.

SEC. 609. No part of any appropriation for the current fiscal year contained in this or any other Act shall be paid to any person for the filling of any position for which he or she has been nominated after the Senate has voted not to approve the nomination of said person.

SEC. 610. No part of any appropriation contained in this or any other Act shall be available for interagency financing of boards (except Federal Executive Boards), commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality.

SEC. 611. Funds made available by this or any other Act to the Postal Service Fund (39 U.S.C. 2003) shall be available for employment of guards for all buildings and areas owned or occupied by the Postal Service and under the charge and control of the

Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by the first section of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318), and, as to property owned or occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of sections 2 and 3 of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318a and 318b), attaching thereto penal consequences under the authority and within the limits provided in section 4 of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318c).

SEC. 612. None of the funds made available pursuant to the provisions of this Act shall be used to implement, administer, or enforce any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

5 USC 5343 note.

SEC. 613. (a) Notwithstanding any other provision of law, and except as otherwise provided in this section, no part of any of the funds appropriated for fiscal year 2004, by this or any other Act, may be used to pay any prevailing rate employee described in section 5342(a)(2)(A) of title 5, United States Code—

(1) during the period from the date of expiration of the limitation imposed by the comparable section for previous fiscal years until the normal effective date of the applicable wage survey adjustment that is to take effect in fiscal year 2004, in an amount that exceeds the rate payable for the applicable grade and step of the applicable wage schedule in accordance with such section; and

(2) during the period consisting of the remainder of fiscal year 2004, in an amount that exceeds, as a result of a wage survey adjustment, the rate payable under paragraph (1) by more than the sum of—

(A) the percentage adjustment taking effect in fiscal year 2004 under section 5303 of title 5, United States Code, in the rates of pay under the General Schedule; and

(B) the difference between the overall average percentage of the locality-based comparability payments taking effect in fiscal year 2004 under section 5304 of such title (whether by adjustment or otherwise), and the overall average percentage of such payments which was effective in the previous fiscal year under such section.

(b) Notwithstanding any other provision of law, no prevailing rate employee described in subparagraph (B) or (C) of section 5342(a)(2) of title 5, United States Code, and no employee covered by section 5348 of such title, may be paid during the periods for which subsection (a) is in effect at a rate that exceeds the rates that would be payable under subsection (a) were subsection (a) applicable to such employee.

Regulations.

(c) For the purposes of this section, the rates payable to an employee who is covered by this section and who is paid from a schedule not in existence on September 30, 2003, shall be determined under regulations prescribed by the Office of Personnel Management.

(d) Notwithstanding any other provision of law, rates of premium pay for employees subject to this section may not be changed from the rates in effect on September 30, 2003, except to the

extent determined by the Office of Personnel Management to be consistent with the purpose of this section.

(e) This section shall apply with respect to pay for service performed after September 30, 2003. Applicability.

(f) For the purpose of administering any provision of law (including any rule or regulation that provides premium pay, retirement, life insurance, or any other employee benefit) that requires any deduction or contribution, or that imposes any requirement or limitation on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

(g) Nothing in this section shall be considered to permit or require the payment to any employee covered by this section at a rate in excess of the rate that would be payable were this section not in effect.

(h) The Office of Personnel Management may provide for exceptions to the limitations imposed by this section if the Office determines that such exceptions are necessary to ensure the recruitment or retention of qualified employees.

SEC. 614. During the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations. For the purposes of this section, the term “office” shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.

SEC. 615. Notwithstanding section 1346 of title 31, United States Code, or section 610 of this Act, funds made available for the current fiscal year by this or any other Act shall be available for the interagency funding of national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities, as provided by Executive Order No. 12472 (April 3, 1984).

SEC. 616. (a) None of the funds appropriated by this or any other Act may be obligated or expended by any Federal department, agency, or other instrumentality for the salaries or expenses of any employee appointed to a position of a confidential or policy-determining character excepted from the competitive service pursuant to section 3302 of title 5, United States Code, without a certification to the Office of Personnel Management from the head of the Federal department, agency, or other instrumentality employing the Schedule C appointee that the Schedule C position was not created solely or primarily in order to detail the employee to the White House.

(b) The provisions of this section shall not apply to Federal employees or members of the armed services detailed to or from—

(1) the Central Intelligence Agency;

(2) the National Security Agency;

(3) the Defense Intelligence Agency;

(4) the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(5) the Bureau of Intelligence and Research of the Department of State;

(6) any agency, office, or unit of the Army, Navy, Air Force, and Marine Corps, the Department of Homeland Security, the Federal Bureau of Investigation and the Drug Enforcement Administration of the Department of Justice, the Department of Transportation, the Department of the Treasury, and the Department of Energy performing intelligence functions; and

(7) the Director of Central Intelligence.

SEC. 617. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for the current fiscal year shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from discrimination and sexual harassment and that all of its workplaces are not in violation of title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973.

SEC. 618. No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who—

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

SEC. 619. (a) None of the funds made available in this or any other Act may be obligated or expended for any employee training that—

(1) does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties;

(2) contains elements likely to induce high levels of emotional response or psychological stress in some participants;

(3) does not require prior employee notification of the content and methods to be used in the training and written end of course evaluation;

(4) contains any methods or content associated with religious or quasi-religious belief systems or “new age” belief systems as defined in Equal Employment Opportunity Commission Notice N-915.022, dated September 2, 1988; or

(5) is offensive to, or designed to change, participants’ personal values or lifestyle outside the workplace.

(b) Nothing in this section shall prohibit, restrict, or otherwise preclude an agency from conducting training bearing directly upon the performance of official duties.

SEC. 620. No funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: “These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.”: *Provided*, That notwithstanding the preceding paragraph, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that they do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

SEC. 621. No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself. Lobbying.

SEC. 622. None of the funds appropriated by this or any other Act may be used by an agency to provide a Federal employee’s home address to any labor organization except when the employee

has authorized such disclosure or when such disclosure has been ordered by a court of competent jurisdiction.

SEC. 623. None of the funds made available in this Act or any other Act may be used to provide any non-public information such as mailing or telephone lists to any person or any organization outside of the Federal Government without the approval of the Committees on Appropriations.

SEC. 624. No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.

SEC. 625. (a) In this section the term “agency”—

(1) means an executive agency as defined under section 105 of title 5, United States Code;

(2) includes a military department as defined under section 102 of such title, the Postal Service, and the Postal Rate Commission; and

(3) shall not include the General Accounting Office.

(b) Unless authorized in accordance with law or regulations to use such time for other purposes, an employee of an agency shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under section 6301(2) of title 5, United States Code, has an obligation to expend an honest effort and a reasonable proportion of such employee’s time in the performance of official duties.

SEC. 626. Notwithstanding 31 U.S.C. 1346 and section 610 of this Act, funds made available for the current fiscal year by this or any other Act to any department or agency, which is a member of the Joint Financial Management Improvement Program (JFMIP), shall be available to finance an appropriate share of JFMIP administrative costs, as determined by the JFMIP, but not to exceed a total of \$800,000 including the salary of the Executive Director and staff support.

SEC. 627. Notwithstanding 31 U.S.C. 1346 and section 610 of this Act, the head of each executive department and agency is hereby authorized to transfer to or reimburse the “Policy and Citizen Services” account, General Services Administration, with the approval of the Director of the Office of Management and Budget, funds made available for the current fiscal year by this or any other Act, including rebates from charge card and other contracts. These funds shall be administered by the Administrator of General Services to support Government-wide financial, information technology, procurement, and other management innovations, initiatives, and activities, as approved by the Director of the Office of Management and Budget, in consultation with the appropriate interagency groups designated by the Director (including the Chief Financial Officers Council and the Joint Financial Management Improvement Program for financial management initiatives, the Chief Information Officers Council for information technology initiatives, and the Procurement Executives Council for procurement initiatives). The total funds transferred or reimbursed shall not exceed \$17,000,000. Such transfers or reimbursements may only be made 15 days following notification of the Committees on Appropriations by the Director of the Office of Management and Budget.

SEC. 628. None of the funds made available in this or any other Act may be used by the Office of Personnel Management or any other department or agency of the Federal Government

to prohibit any agency from using appropriated funds as they see fit to independently contract with private companies to provide online employment applications and processing services.

SEC. 629. Notwithstanding any other provision of law, a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

Breastfeeding.

SEC. 630. Notwithstanding section 1346 of title 31, United States Code, or section 610 of this Act, funds made available for the current fiscal year by this or any other Act shall be available for the interagency funding of specific projects, workshops, studies, and similar efforts to carry out the purposes of the National Science and Technology Council (authorized by Executive Order No. 12881), which benefit multiple Federal departments, agencies, or entities: *Provided*, That the Office of Management and Budget shall provide a report describing the budget of and resources connected with the National Science and Technology Council to the Committees on Appropriations, the House Committee on Science; and the Senate Committee on Commerce, Science, and Transportation 90 days after enactment of this Act.

Reports.
Deadline.

SEC. 631. Any request for proposals, solicitation, grant application, form, notification, press release, or other publications involving the distribution of Federal funds shall indicate the agency providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided. This provision shall apply to direct payments, formula funds, and grants received by a State receiving Federal funds.

SEC. 632. Subsection (f) of section 403 of Public Law 103–356 (31 U.S.C. 501 note) is amended by striking “October 1, 2003” and inserting “October 1, 2004”.

SEC. 633. (a) PROHIBITION OF FEDERAL AGENCY MONITORING OF PERSONAL INFORMATION ON USE OF INTERNET.—None of the funds made available in this or any other Act may be used by any Federal agency—

(1) to collect, review, or create any aggregate list, derived from any means, that includes the collection of any personally identifiable information relating to an individual’s access to or use of any Federal Government Internet site of the agency; or

(2) to enter into any agreement with a third party (including another Government agency) to collect, review, or obtain any aggregate list, derived from any means, that includes the collection of any personally identifiable information relating to an individual’s access to or use of any nongovernmental Internet site.

(b) EXCEPTIONS.—The limitations established in subsection (a) shall not apply to—

(1) any record of aggregate data that does not identify particular persons;

(2) any voluntary submission of personally identifiable information;

(3) any action taken for law enforcement, regulatory, or supervisory purposes, in accordance with applicable law; or

(4) any action described in subsection (a)(1) that is a system security action taken by the operator of an Internet site and is necessarily incident to the rendition of the Internet site

services or to the protection of the rights or property of the provider of the Internet site.

(c) DEFINITIONS.—For the purposes of this section:

(1) The term “regulatory” means agency actions to implement, interpret or enforce authorities provided in law.

(2) The term “supervisory” means examinations of the agency’s supervised institutions, including assessing safety and soundness, overall financial condition, management practices and policies and compliance with applicable standards as provided in law.

SEC. 634. (a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with—

(1) any of the following religious plans:

(A) Personal Care’s HMO; and

(B) OSF Health Plans, Inc.; and

(2) any existing or future plan, if the carrier for the plan objects to such coverage on the basis of religious beliefs.

(c) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individual’s religious beliefs or moral convictions.

Abortion.

(d) Nothing in this section shall be construed to require coverage of abortion or abortion-related services.

SEC. 635. The Congress of the United States recognizes the United States Anti-Doping Agency (USADA) as the official anti-doping agency for Olympic, Pan American, and Paralympic sport in the United States.

Deadline.
Reports.

SEC. 636. Not later than 6 months after the date of enactment of this Act, the Inspector General of each applicable department or agency shall submit to the Committee on Appropriations a report detailing what policies and procedures are in place for each department or agency to give first priority to the location of new offices and other facilities in rural areas, as directed by the Rural Development Act of 1972.

SEC. 637. None of the funds made available under this or any other Act for fiscal year 2004 shall be expended for the purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making such purchase determines that such offered product or service provides the best value to the buying agency pursuant to Government-wide procurement regulations, issued pursuant to section 25(c)(1) of the Office of Federal Procurement Act (41 U.S.C. 421(c)(1)) that impose procedures, standards, and limitations of section 2410n of title 10, United States Code.

Credit.
5 USC 5701 note.

SEC. 638. Each executive department and agency shall evaluate the creditworthiness of an individual before issuing the individual a Government purchase charge card or Government travel charge card. The department or agency may not issue a Government purchase charge card or Government travel charge card to an individual that either lacks a credit history or is found to have an unsatisfactory credit history as a result of this evaluation: *Provided*, That this restriction shall not preclude issuance of a restricted-use charge, debit, or stored value card made in accordance with agency

procedures to (a) an individual with an unsatisfactory credit history where such card is used to pay travel expenses and the agency determines there is no suitable alternative payment mechanism available before issuing the card, or (b) an individual who lacks a credit history. Each executive department and agency shall establish guidelines and procedures for disciplinary actions to be taken against agency personnel for improper, fraudulent, or abusive use of Government charge cards, which shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or agency or with applicable standards of conduct.

SEC. 639. Section 640(c) of the Treasury and General Government Appropriations Act, 2000 (Public Law 106–58; 2 U.S.C. 437g note 1), as amended by section 642 of the Treasury and General Government Appropriations Act, 2002 (Public Law 107–67), is amended by striking “December 31, 2003” and inserting “December 31, 2005”.

SEC. 640. (a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2004 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.1 percent, and this adjustment shall apply to civilian employees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2004.

Effective date.
5 USC 5303 note.

(b) Notwithstanding section 613 of this Act, the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2004 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as “Rest of US” pursuant to section 5304 of title 5 for purposes of this paragraph.

(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2004.

SEC. 641. Section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended as follows—

(1) in clauses (a)(2)(A)(i) and (a)(4)(A)(ii) by striking “(or posted by registered or certified mail no later than the 15th day before)” and inserting “(or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before)”; and

(2) by striking paragraph (a)(5) and inserting the following:
“(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) or subsection (g)(1)) is sent by registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, the United States postmark

shall be considered the date of filing the designation, report or statement. If a designation, report or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection (g)(1)) is sent by an overnight delivery service with an on-line tracking system, the date on the proof of delivery to the delivery service shall be considered the date of filing of the designation, report, or statement.”.

SEC. 642. Notwithstanding any other provision of law, funds appropriated for official travel by Federal departments and agencies may be used by such departments and agencies, if consistent with Office of Management and Budget Circular A-126 regarding official travel for Government personnel, to participate in the fractional aircraft ownership pilot program.

SEC. 643. Notwithstanding any other provision of law, no executive branch agency shall purchase, construct, and/or lease any additional facilities, except within or contiguous to existing locations, to be used for the purpose of conducting Federal law enforcement training without the advance approval of the Committees on Appropriations, except that the Federal Law Enforcement Training Center is authorized to obtain the temporary use of additional facilities by lease, contract, or other agreement for training which cannot be accommodated in existing Center facilities.

SEC. 644. None of the funds provided in this Act shall be used to implement or enforce regulations for locality pay areas in fiscal year 2004 that are inconsistent with the recommendations of the Federal Salary Council adopted on October 7, 2003.

Deadline.
Reports.

SEC. 645. (a) Not later than 180 days after the enactment of this Act, the head of each Federal agency shall submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in that fiscal year.

(b) The report required by subsection (a) shall separately indicate—

(1) the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States;

(2) an itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act (41 U.S.C. 10a et seq.); and

(3) a summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States.

Public
information.

(c) The head of each Federal agency submitting a report under subsection (a) shall make the report publicly available to the maximum extent practicable.

SEC. 646. Notwithstanding any other provision of law, none of the funds appropriated or made available under this Act or any other appropriations Act may be used to implement or enforce restrictions or limitations on the Coast Guard Congressional Fellowship Program, or to implement the proposed regulations of the Office of Personnel Management to add sections 300.311 through 300.316 to part 300 of title 5 of the Code of Federal Regulations, published in the Federal Register, volume 68, number 174, on September 9, 2003 (relating to the detail of executive branch employees to the legislative branch): *Provided*, That if such proposed regulations are final regulations on the date of enactment of this Act, none of the funds appropriated or made available under this

Act may be used to implement, administer, or enforce such final regulations.

SEC. 647. (a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE.—None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of an executive agency, that on or after the date of enactment of this Act, is performed by more than 10 Federal employees unless—

(1) the conversion is based on the result of a public-private competition plan that includes a most efficient and cost effective organization plan developed by such activity or function; and

(2) the Competitive Sourcing Official considers, as part of the cost or price evaluation, whether over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the executive agency by an amount that equals or exceeds the lesser of—

(A) 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by Federal employees; or

(B) \$10,000,000.

(b) Not later than 120 days following the enactment of this Act and not later than December 31 of each year thereafter, the head of each executive agency shall submit to Congress a report on the competitive sourcing activities on the list required under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 31 U.S.C. 501 note) that were performed for such executive agency during the previous fiscal year by Federal Government sources. The report shall include—

(1) the total number of competitions completed;

(2) the total number of competitions announced, together with a list of the activities covered by such competitions;

(3) the total number (expressed as a full-time employee equivalent number) of the Federal employees studied under completed competitions;

(4) the total number (expressed as a full-time employee equivalent number) of the Federal employees that are being studied under competitions announced but not completed;

(5) the incremental cost directly attributable to conducting the competitions identified under paragraphs (1) and (2), including costs attributable to paying outside consultants and contractors;

(6) an estimate of the total anticipated savings, or a quantifiable description of improvements in service or performance, derived from completed competitions;

(7) actual savings, or a quantifiable description of improvements in service or performance, derived from the implementation of competitions completed after May 29, 2003;

(8) the total projected number (expressed as a full-time employee equivalent number) of the Federal employees that are to be covered by competitions scheduled to be announced in the fiscal year covered by the next report required under this section; and

(9) a general description of how the competitive sourcing decisionmaking processes of the executive agency are aligned with the strategic workforce plan of that executive agency.

Deadline.
Reports.
31 USC 501 note.

(c) The head of an executive agency may not be required, under Office of Management and Budget Circular A–76 or any other policy, directive, or regulation, to automatically limit to 5 years or less the performance period in a letter of obligation, or other agreement, issued to executive agency employees, if such a letter or other agreement was issued as the result of a public-private competition conducted in accordance with the circular.

31 USC 501 note.

(d) Hereafter, the head of an executive agency may expend funds appropriated or otherwise made available for any purpose to the executive agency under this or any other Act to monitor (in the administration of responsibilities under Office of Management and Budget Circular A–76 or any related policy, directive, or regulation) the performance of an activity or function of the executive agency that has previously been subjected to a public-private competition under such circular.

(e) An activity or function of an executive agency that is converted to contractor performance under Office of Management and Budget Circular A–76 may not be performed by the contractor at a location outside the United States except to the extent that such activity or function was previously performed by Federal Government employees outside the United States.

31 USC 501 note.

(f) In this section, the term “executive agency” has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

SEC. 648. Notwithstanding section 1346 of title 31, United States Code, and section 610 of this Act, the head of each executive department and agency shall transfer to or reimburse the Federal Aviation Administration, with the approval of the Director of the Office of Management and Budget, funds made available by this or any other Act for the purposes described below, and shall submit budget requests for such purposes. These funds shall be administered by the Federal Aviation Administration as approved by the Director of the Office of Management and Budget, in consultation with the appropriate interagency groups designated by the Director to ensure the operation of the Midway Atoll Airfield by the Federal Aviation Administration pursuant to an operational agreement with the Department of the Interior. The total funds transferred or reimbursed shall not exceed \$6,000,000 and shall not be available for activities other than the operation of the airfield. The Director of the Office of Management and Budget shall notify the Committees on Appropriations of such transfers or reimbursements within 15 days of this Act. Such transfers or reimbursements shall begin within 30 days of enactment of this Act.

Notification.
Deadline.

Deadline.

This division may be cited as the “Transportation, Treasury, and Independent Agencies Appropriations Act, 2004”.

**DIVISION G—DEPARTMENTS OF VETERANS AFFAIRS
AND HOUSING AND URBAN DEVELOPMENT, AND INDE-
PENDENT AGENCIES APPROPRIATIONS ACT, 2004**

Departments of
Veterans Affairs
and Housing and
Urban
Development,
and Independent
Agencies
Appropriations
Act, 2004.

An Act

Making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I—DEPARTMENT OF VETERANS AFFAIRS**VETERANS BENEFITS ADMINISTRATION****COMPENSATION AND PENSIONS****(INCLUDING TRANSFER OF FUNDS)**

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by law (38 U.S.C. 107, chapters 11, 13, 18, 51, 53, 55, and 61); pension benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 15, 51, 53, 55, and 61; 92 Stat. 2508); and burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 540 et seq.) and for other benefits as authorized by law (38 U.S.C. 107, 1312, 1977, and 2106, chapters 23, 51, 53, 55, and 61; 50 U.S.C. App. 540–548; 43 Stat. 122, 123; 45 Stat. 735; 76 Stat. 1198), \$29,845,127,000, to remain available until expended: *Provided*, That not to exceed \$17,056,000 of the amount appropriated under this heading shall be reimbursed to "General operating expenses" and "Medical services" for necessary expenses in implementing those provisions authorized in the Omnibus Budget Reconciliation Act of 1990, and in the Veterans' Benefits Act of 1992 (38 U.S.C. chapters 51, 53, and 55), the funding source for which is specifically provided as the "Compensation and pensions" appropriation: *Provided further*, That such sums as may be earned on an actual qualifying patient basis, shall be reimbursed to "Medical facilities revolving fund" to augment the funding of individual medical facilities for nursing home care provided to pensioners as authorized.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters

21, 30, 31, 34, 35, 36, 39, 51, 53, 55, and 61), \$2,529,734,000, to remain available until expended: *Provided*, That expenses for rehabilitation program services and assistance which the Secretary is authorized to provide under section 3104(a) of title 38, United States Code, other than under subsection (a)(1), (2), (5), and (11) of that section, shall be charged to this account.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by 38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487, \$29,017,000, to remain available until expended.

VETERANS HOUSING BENEFIT PROGRAM FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the program, as authorized by 38 U.S.C. chapter 37, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That during fiscal year 2004, within the resources available, not to exceed \$300,000 in gross obligations for direct loans are authorized for specially adapted housing loans.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, \$154,850,000, which may be transferred to and merged with the appropriation for "General operating expenses".

EDUCATION LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, \$1,000, as authorized by 38 U.S.C. 3698, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed \$3,400.

In addition, for administrative expenses necessary to carry out the direct loan program, \$70,000, which may be transferred to and merged with the appropriation for "General operating expenses".

VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, \$52,000, as authorized by 38 U.S.C. chapter 31, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That funds made available under this heading are available to subsidize gross obligations for the principal amount of direct loans not to exceed \$3,938,000.

In addition, for administrative expenses necessary to carry out the direct loan program, \$300,000, which may be transferred

to and merged with the appropriation for “General operating expenses”.

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For administrative expenses to carry out the direct loan program authorized by 38 U.S.C. chapter 37, subchapter V, as amended, \$571,000, which may be transferred to and merged with the appropriation for “General operating expenses”: *Provided*, That no new loans in excess of \$50,000,000 may be made in fiscal year 2004.

GUARANTEED TRANSITIONAL HOUSING LOANS FOR HOMELESS
VETERANS PROGRAM ACCOUNT

For the administrative expenses to carry out the guaranteed transitional housing loan program authorized by 38 U.S.C. chapter 37, subchapter VI, not to exceed \$600,000 of the amounts appropriated by this Act for “General operating expenses” and “Medical services” may be expended.

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

For necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in paragraphs (1) through (8) of section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the department and including medical supplies and equipment and salaries and expenses of health-care employees hired under title 38, United States Code, and aid to State homes as authorized by section 1741 of title 38, United States Code; \$17,867,220,000, plus reimbursements: *Provided*, That of the funds made available under this heading, not to exceed \$1,100,000,000 shall be available until September 30, 2005: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for treatment for veterans who are service-connected disabled, lower income, or have special needs: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: *Provided further*, That of the funds made available under this heading, the Secretary may transfer up to \$400,000,000 to “Construction, major projects” for purposes of implementing CARES subject to a determination by the Secretary that such funds will improve access and quality of veteran’s health care needs: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may authorize the dispensing of prescription drugs from Veterans Health Administration facilities to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: *Provided further*, That the implementation of the program described in the previous proviso shall incur no additional cost to the Department of Veterans Affairs.

MEDICAL ADMINISTRATION

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities; information technology hardware and software; uniforms or allowances therefor, as authorized by sections 5901–5902 of title 5, United States Code; and administrative and legal expenses of the department for collecting and recovering amounts owed the department as authorized under chapter 17 of title 38, United States Code, and the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.); \$5,000,000,000, of which \$150,000,000 shall be available until September 30, 2005, plus reimbursements.

MEDICAL FACILITIES

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities and other necessary facilities for the Veterans Health Administration; for administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction and renovation of any facility under the jurisdiction or for the use of the department; for oversight, engineering and architectural activities not charged to project costs; for repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; for leases of facilities; and for laundry and food services, \$4,000,000,000, of which \$150,000,000 shall be available until September 30, 2005.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by chapter 73 of title 38, United States Code, to remain available until September 30, 2005, \$408,000,000, plus reimbursements.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including administrative expenses in support of department-wide capital planning, management and policy activities, uniforms or allowances therefor; not to exceed \$25,000 for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail, \$1,283,272,000: *Provided*, That expenses for services and assistance authorized under 38 U.S.C. 3104(a)(1), (2), (5), and (11) that the Secretary determines are necessary to enable entitled veterans: (1) to the maximum extent feasible, to become employable and to obtain and maintain suitable employment; or (2) to achieve maximum independence in daily living, shall be charged to this account: *Provided further*, That the Veterans Benefits Administration shall be funded at not less than \$1,005,000,000: *Provided*

further, That of the funds made available under this heading, not to exceed \$66,000,000 shall be available for obligation until September 30, 2005: *Provided further*, That from the funds made available under this heading, the Veterans Benefits Administration may purchase up to two passenger motor vehicles for use in operations of that Administration in Manila, Philippines.

NATIONAL CEMETERY ADMINISTRATION

For necessary expenses of the National Cemetery Administration for operations and maintenance, not otherwise provided for, including uniforms or allowances therefor; cemeterial expenses as authorized by law; purchase of one passenger motor vehicle for use in cemeterial operations; and hire of passenger motor vehicles, \$144,203,000: *Provided*, That of the funds made available under this heading, not to exceed \$7,200,000 shall be available until September 30, 2005.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$62,000,000, to remain available until September 30, 2005.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities including parking projects under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including planning, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, where the estimated cost of a project is more than the amount set forth in 38 U.S.C. 8104(a)(3)(A) or where funds for a project were made available in a previous major project appropriation, \$272,690,000, to remain available until expended, of which \$181,000,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities; and of which \$10,000,000 shall be to make reimbursements as provided in 41 U.S.C. 612 for claims paid for contract disputes: *Provided*, That except for advance planning activities, including needs assessments which may or may not lead to capital investments, and other capital asset management related activities, such as portfolio development and management activities, and investment strategy studies funded through the advance planning fund and the planning and design activities funded through the design fund and CARES funds, including needs assessments which may or may not lead to capital investments, none of the funds appropriated under this heading shall be used for any project which has not been approved by the Congress in the budgetary process: *Provided further*, That funds provided in this appropriation for fiscal year 2004, for each approved project (except those for CARES activities referenced above) shall be obligated: (1) by the awarding of a construction documents contract by September 30, 2004; and (2) by the awarding of a construction

Reports.

contract by September 30, 2005: *Provided further*, That the Secretary of Veterans Affairs shall promptly report in writing to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities including parking projects under the jurisdiction or for the use of the Department of Veterans Affairs, including planning and assessments of needs which may lead to capital investments, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, 8122, and 8162 of title 38, United States Code, where the estimated cost of a project is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), \$252,144,000, to remain available until expended, along with unobligated balances of previous “Construction, minor projects” appropriations which are hereby made available for any project where the estimated cost is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), of which \$40,000,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities: *Provided*, That from amounts appropriated under this heading, additional amounts may be used for CARES activities upon notification of and approval by the Committees on Appropriations: *Provided further*, That funds in this account shall be available for: (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the department which are necessary because of loss or damage caused by any natural disaster or catastrophe; and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans as authorized by 38 U.S.C. 8131–8137, \$102,100,000, to remain available until expended.

GRANTS FOR THE CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to aid States in establishing, expanding, or improving State veterans cemeteries as authorized by 38 U.S.C. 2408, \$32,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

(INCLUDING RESCISSION OF FUNDS)

SEC. 101. Any appropriation for fiscal year 2004 for “Compensation and pensions”, “Readjustment benefits”, and “Veterans insurance and indemnities” may be transferred to any other of the mentioned appropriations.

SEC. 102. Appropriations available to the Department of Veterans Affairs for fiscal year 2004 for salaries and expenses shall be available for services authorized by 5 U.S.C. 3109 hire of passenger motor vehicles; lease of a facility or land or both; and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902.

SEC. 103. No appropriations in this Act for the Department of Veterans Affairs (except the appropriations for “Construction, major projects”, “Construction, minor projects”, and the “Parking revolving fund”) shall be available for the purchase of any site for or toward the construction of any new hospital or home.

SEC. 104. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or examination of any persons (except beneficiaries entitled under the laws bestowing such benefits to veterans, and persons receiving such treatment under 5 U.S.C. 7901–7904 or 42 U.S.C. 5141–5204), unless reimbursement of cost is made to the “Medical services” account at such rates as may be fixed by the Secretary of Veterans Affairs.

SEC. 105. Appropriations available to the Department of Veterans Affairs for fiscal year 2004 for “Compensation and pensions”, “Readjustment benefits”, and “Veterans insurance and indemnities” shall be available for payment of prior year accrued obligations required to be recorded by law against the corresponding prior year accounts within the last quarter of fiscal year 2003.

SEC. 106. Appropriations accounts available to the Department of Veterans Affairs for fiscal year 2004 shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from title X of the Competitive Equality Banking Act, Public Law 100–86, except that if such obligations are from trust fund accounts they shall be payable from “Compensation and pensions”.

SEC. 107. Notwithstanding any other provision of law, during fiscal year 2004, the Secretary of Veterans Affairs shall, from the National Service Life Insurance Fund (38 U.S.C. 1920), the Veterans’ Special Life Insurance Fund (38 U.S.C. 1923), and the United States Government Life Insurance Fund (38 U.S.C. 1955), reimburse the “General operating expenses” account for the cost of administration of the insurance programs financed through those accounts: *Provided*, That reimbursement shall be made only from the surplus earnings accumulated in an insurance program in fiscal year 2004 that are available for dividends in that program after claims have been paid and actuarially determined reserves have been set aside: *Provided further*, That if the cost of administration of an insurance program exceeds the amount of surplus earnings accumulated in that program, reimbursement shall be made only to the extent of such surplus earnings: *Provided further*, That the Secretary shall determine the cost of administration for fiscal year 2004 which is properly allocable to the provision of each insurance program and to the provision of any total disability income insurance included in such insurance program.

SEC. 108. Notwithstanding any other provision of law, the Department of Veterans Affairs shall continue the Franchise Fund pilot program authorized to be established by section 403 of Public Law 103–356 until October 1, 2004: *Provided*, That the Franchise Fund, established by title I of Public Law 104–204 to finance

Termination
date.
31 USC 501 note.

the operations of the Franchise Fund pilot program, shall continue until October 1, 2004.

SEC. 109. Amounts deducted from enhanced-use lease proceeds to reimburse an account for expenses incurred by that account during a prior fiscal year for providing enhanced-use lease services, may be obligated during the fiscal year in which the proceeds are received.

SEC. 110. Funds available in any Department of Veterans Affairs appropriation for fiscal year 2004 or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management and the Office of Employment Discrimination Complaint Adjudication for all services provided at rates which will recover actual costs but not exceed \$29,318,000 for the Office of Resolution Management and \$3,059,000 for the Office of Employment and Discrimination Complaint Adjudication: *Provided*, That payments may be made in advance for services to be furnished based on estimated costs: *Provided further*, That amounts received shall be credited to “General operating expenses” for use by the office that provided the service.

Contracts.
Reports.
Deadline.

SEC. 111. No appropriations in this Act for the Department of Veterans Affairs shall be available to enter into any new lease of real property if the estimated annual rental is more than \$300,000 unless the Secretary submits a report which the Committees on Appropriations of the Congress approve within 30 days following the date on which the report is received.

SEC. 112. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or treatment of any person by reason of eligibility under section 1710(a)(3) of title 38, United States Code, unless that person has disclosed to the Secretary of Veterans Affairs, in such form as the Secretary may require—

(1) current, accurate third-party reimbursement information for purposes of section 1729 of such title; and

(2) annual income information for purposes of section 1722 of such title.

SEC. 113. Of the amounts provided in this Act, \$25,000,000 shall be for information technology initiatives to support the enterprise architecture of the Department of Veterans Affairs.

SEC. 114. None of the funds in this Act may be used to implement sections 2 and 5 of Public Law 107–287.

SEC. 115. Receipts that would otherwise be credited to the Veterans Extended Care Revolving Fund, the Medical Facilities Revolving Fund, the Special Therapeutic and Rehabilitation Fund, the Nursing Home Revolving Fund, the Veterans Health Services Improvement Fund, and the Parking Revolving Fund shall be deposited into the Medical Care Collections Fund, and shall be transferred to “Medical services”, to remain available until expended, to carry out the purposes of “Medical services”.

Contracts.

SEC. 116. (a) The Secretary of Veterans Affairs shall conduct by contract a program of recovery audits for the fee basis and other medical services contracts with respect to payments for hospital care. Notwithstanding section 3302(b) of title 31, United States Code, amounts collected, by setoff or otherwise, as the result of such audits shall be available, without fiscal year limitation, for the purposes for which funds are appropriated under “Medical services” and the purposes of paying a contractor a percent of

the amount collected as a result of an audit carried out by the contractor.

(b) All amounts so collected under subsection (a) with respect to a designated health care region (as that term is defined in section 1729A(d)(2) of title 38, United States Code) shall be allocated, net of payments to the contractor, to that region.

SEC. 117. Notwithstanding any other provision of law, at the discretion of the Secretary of Veterans Affairs, proceeds or revenues derived from enhanced-use leasing activities (including disposal) that are deposited into the Medical Care Collections Fund may be transferred and merged with “Construction, major projects” and “Construction, minor projects” accounts and be used for construction (including site acquisition and disposition), alterations and improvements of any medical facility under the jurisdiction or for the use of the Department of Veterans Affairs. Such sums as realized are in addition to the amount provided for in “Construction, major projects” and “Construction, minor projects”.

SEC. 118. Amounts made available under “Medical services” are available—

(1) for furnishing recreational facilities, supplies, and equipment; and

(2) for funeral expenses, burial expenses, and other expenses incidental to funerals and burials for beneficiaries receiving care in the department.

SEC. 119. That such sums as may be deposited to the Medical Care Collections Fund pursuant to 38 U.S.C. 1729A may be transferred to “Medical services”, to remain available until expended for the purposes of this account.

SEC. 120. Amounts made available for fiscal year 2004 under the “Medical services”, “Medical administration”, and “Medical facilities” accounts may be transferred between the accounts to the extent necessary to implement the restructuring of the Veterans Health Administration accounts after notice of the amount and purpose of the transfer is provided to the Committees on Appropriations of the Senate and House of Representatives and a period of 30 days has elapsed: *Provided*, That the limitation on transfers is 20 percent in fiscal year 2004.

SEC. 121. The Department of Veterans Affairs shall implement the Veterans Health Administration account structure described under this Act by no later than 90 days after the date of enactment of this Act and shall submit its fiscal year 2005 budget justifications using the identical structure provided under this Act. Deadline.

SEC. 122. That of the unobligated balances remaining from prior year recoveries under the heading “Medical care”, \$270,000,000 are rescinded.

TITLE II—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

HOUSING CERTIFICATE FUND

(INCLUDING TRANSFER AND RESCISSION OF FUNDS)

For activities and assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) (“the Act” herein), not otherwise provided for, \$19,371,481,762, and amounts that are

recaptured in this account, to remain available until expended: *Provided*, That of the amounts made available under this heading, \$15,171,481,762 and the aforementioned recaptures shall be available on October 1, 2003 and \$4,200,000,000 shall be available on October 1, 2004: *Provided further*, That amounts made available under this heading are provided as follows:

Contracts.

(1) \$17,635,130,745 for expiring or terminating section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for amendments to section 8 project-based subsidy contracts, for contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act, for the renewal of section 8 contracts for units in projects that are subject to approved plans of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and for renewals of expiring section 8 tenant-based annual contributions contracts (including amendments and renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act (42 U.S.C. 1437f(t))): *Provided*, That notwithstanding any other provision of law, the Secretary shall renew expiring section 8 tenant-based annual contributions contracts for each public housing agency, (including for agencies participating in the Moving to Work demonstration, unit months representing section 8 tenant-based assistance funds committed by the public housing agency for specific purposes, other than reserves, that are authorized pursuant to any agreement and conditions entered into under such demonstration, and utilized in compliance with any applicable program obligation deadlines) based on the total number of unit months which were under lease as reported on the most recent end-of-year financial statement submitted by the public housing agency to the Department, or as adjusted by such additional information submitted by the public housing agency to the Secretary as of August 1, 2003 (subject to verification), and by applying an inflation factor based on local or regional factors to the actual per unit cost: *Provided further*, That none of the funds made available in this paragraph may be used to support a total number of unit months under lease which exceeds a public housing agency's authorized level of units under contract;

Deadline.

(2) \$136,846,017 for a central fund to be allocated by the Secretary for amendments to section 8 tenant-based annual contributions contracts for such purposes set forth in this paragraph: *Provided*, That subject to the following proviso, the Secretary may use amounts made available in such fund, as necessary, for an increase in the total number of unit months under lease as compared to the number of unit months under lease as of August 1, 2003, provided for by the annual contributions contract: *Provided further*, That if a public housing agency, at any point in time during their fiscal year, has obligated the amounts made available to such agency pursuant to paragraph (1) under this heading for the renewal of expiring section 8 tenant-based annual contributions contracts, and if such agency has expended 50 percent of the amounts available to such agency in its annual contributions contract reserve account, the Secretary may only make available amounts as are necessary from amounts available from such central fund

to fund additional leased units under the preceding proviso within thirty days of a request from such agency: *Provided further*, That none of the funds made available in this paragraph may be used to support a total number of unit months under lease which exceeds a public housing agency's authorized level of units under contract: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations of the House and the Senate on the obligation of funds provided in this paragraph in accordance with the directions specified in the report accompanying this Act;

Reports.

(3) \$206,495,000 for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134), conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act (42 U.S.C.1437f(t)), and tenant protection assistance, including replacement and relocation assistance;

(4) \$48,000,000 for family self-sufficiency coordinators under section 23 of the Act;

(5) not to exceed \$1,242,000,000 for administrative and other expenses of public housing agencies in administering the section 8 tenant-based rental assistance program, of which up to \$50,000,000 shall be available to the Secretary to allocate to public housing agencies that need additional funds to administer their section 8 programs: *Provided*, That not to exceed \$1,192,000,000 of the amount provided in this paragraph shall be allocated on a pro rata basis to public housing agencies based on the amount public housing agencies were eligible to receive in fiscal year 2003 without regard to the reduction required for excess administrative fee balances: *Provided further*, That, amounts under this paragraph shall be distributed according to the requirements of this paragraph and notwithstanding any other provision of law: *Provided further*, That none of the funds provided in this Act or any other Act may be used to supplement the amounts provided in this paragraph: *Provided further*, That all such administrative fee amounts provided under this paragraph shall be only for activities related to the provision of rental assistance under section 8, including related development activities;

(6) \$100,000,000 for contract administrators for section 8 project-based assistance; and

(7) not less than \$3,010,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under "Public and Indian Housing": *Provided*, That the Secretary may transfer up to 15 percent of funds provided under paragraphs (1), (2), or (5), herein to paragraphs (1) or (2), if the Secretary determines that such action is necessary

because the funding provided under one such paragraph otherwise would be depleted and as a result, the maximum utilization of section 8 tenant-based assistance with the funds appropriated for this purpose by this Act would not be feasible: *Provided further*, That prior to undertaking the transfer of funds in excess of 10 percent from any paragraph pursuant to the previous proviso, the Secretary shall notify the Chairman and Ranking Member of the Subcommittees on Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate and shall not transfer any such funds until 30 days after such notification: *Provided further*, That incremental vouchers previously made available under this heading for non-elderly disabled families shall, to the extent practicable, continue to be provided to non-elderly disabled families upon turnover: *Provided further*, That, hereafter, the Secretary shall require public housing agencies to submit accounting data for funds disbursed under this heading in this Act and prior Acts by source and purpose of such funds: *Provided further*, That \$2,844,000,000 is rescinded from unobligated balances remaining from funds appropriated to the Department of Housing and Urban Development under this heading or the heading “Annual contributions for assisted housing” or any other heading for fiscal year 2003 and prior years, to be effected by the Secretary no later than September 30, 2004: *Provided further*, That any such balances governed by reallocation provisions under the statute authorizing the program for which the funds were originally appropriated shall be available for the rescission: *Provided further*, That any obligated balances of contract authority from fiscal year 1974 and prior that have been terminated shall be cancelled.

Notification.
Deadline.

Records.

Deadline.

PUBLIC HOUSING CAPITAL FUND

(INCLUDING TRANSFER OF FUNDS)

For the Public Housing Capital Fund Program to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g) (the “Act”) \$2,712,255,000, to remain available until September 30, 2007: *Provided*, That notwithstanding any other provision of law or regulation, during fiscal year 2004, the Secretary may not delegate to any Department official other than the Deputy Secretary and the Assistant Secretary for Public and Indian Housing any authority under paragraph (2) of section 9(j) regarding the extension of the time periods under such section: *Provided further*, That for purposes of such section 9(j), the term “obligate” means, with respect to amounts, that the amounts are subject to a binding agreement that will result in outlays, immediately or in the future: *Provided further*, That of the total amount provided under this heading, up to \$50,000,000 shall be for carrying out activities under section 9(h) of such Act, of which \$13,000,000 shall be for the provision of remediation services to public housing agencies identified as “troubled” under the section 8 Management Assessment Program and for surveys used to calculate local Fair Market Rents and assess housing conditions in connection with rental assistance under section 8 of the Act: *Provided further*, That of the total amount provided under

this heading, up to \$500,000 shall be for lease adjustments to section 23 projects, and no less than \$10,610,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under “Public and Indian housing”: *Provided further*, That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended: *Provided further*, That of the total amount provided under this heading, up to \$40,000,000 shall be available for the Secretary of Housing and Urban Development to make grants to public housing agencies for emergency capital needs resulting from emergencies and natural disasters in fiscal year 2004: *Provided further*, That of the total amount provided under this heading, \$55,000,000 shall be for supportive services, service coordinators and congregate services as authorized by section 34 of the Act and the Native American Housing Assistance and Self-Determination Act of 1996: *Provided further*, That of the total amount provided under this heading, \$15,000,000 shall be for Neighborhood Networks grants for activities authorized in section 9(d)(1)(E) of the United States Housing Act of 1937, as amended: *Provided further*, That notwithstanding any other provision of law, amounts made available in the previous proviso shall be awarded to public housing agencies on a competitive basis.

The first proviso under this heading in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003, is amended by striking “1998, 1999”.

117 Stat. 486.

PUBLIC HOUSING OPERATING FUND

For 2004 payments to public housing agencies for the operation and management of public housing, as authorized by section 9(e) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g(e)), \$3,600,000,000: *Provided*, That of the total amount provided under this heading, \$10,000,000 shall be for programs, as determined appropriate by the Attorney General, which assist in the investigation, prosecution, and prevention of violent crimes and drug offenses in public and federally-assisted low-income housing, including Indian housing, which shall be administered by the Department of Justice through a reimbursable agreement with the Department of Housing and Urban Development: *Provided further*, That, in fiscal year 2004 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act: *Provided further*, That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended.

42 USC 1437g
note.

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)

For grants to public housing agencies for demolition, site revitalization, replacement housing, and tenant-based assistance grants to projects as authorized by section 24 of the United States Housing Act of 1937, as amended, \$150,000,000, to remain available until September 30, 2005, of which the Secretary may use up to \$4,000,000 for technical assistance and contract expertise, to be provided directly or indirectly by grants, contracts or cooperative

agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the department and of public housing agencies and to residents: *Provided*, That none of such funds shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments, unless expressly permitted herein.

NATIVE AMERICAN HOUSING BLOCK GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For the Native American Housing Block Grants program, as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.), \$654,100,000, to remain available until expended, of which \$2,200,000 shall be contracted through the Secretary as technical assistance and capacity building to be used by the National American Indian Housing Council in support of the implementation of NAHASDA; of which \$4,500,000 shall be to support the inspection of Indian housing units, contract expertise, training, and technical assistance in the training, oversight, and management of Indian housing and tenant-based assistance, including up to \$300,000 for related travel; and of which no less than \$2,720,000 shall be transferred to the Working Capital Fund for development of and modifications to information technology systems which serve programs or activities under “Public and Indian housing”: *Provided*, That of the amount provided under this heading, \$2,000,000 shall be made available for the cost of guaranteed notes and other obligations, as authorized by title VI of NAHASDA: *Provided further*, That such costs, including the costs of modifying such notes and other obligations, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize the total principal amount of any notes and other obligations, any part of which is to be guaranteed, not to exceed \$16,658,000: *Provided further*, That for administrative expenses to carry out the guaranteed loan program, up to \$150,000 from amounts in the first proviso, which shall be transferred to and merged with the appropriation for “Salaries and expenses”, to be used only for the administrative costs of these guarantees.

INDIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a), \$5,300,000, to remain available until expended: *Provided*, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$197,243,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to \$250,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for “Salaries and expenses”, to be used only for the administrative costs of these guarantees.

NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND PROGRAM
ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b), \$1,035,000, to remain available until expended: *Provided*, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$39,712,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to \$35,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for “Salaries and expenses”, to be used only for the administrative costs of these guarantees.

COMMUNITY PLANNING AND DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

For carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.), \$296,500,000, to remain available until September 30, 2005: *Provided*, That the Secretary shall renew all expiring contracts for permanent supportive housing that were funded under section 854(c)(3) of such Act that meet all program requirements before awarding funds for new contracts and activities authorized under this section: *Provided further*, That the Secretary may use up to \$2,500,000 of the funds under this heading for training, oversight, and technical assistance activities.

RURAL HOUSING AND ECONOMIC DEVELOPMENT

For the Office of Rural Housing and Economic Development in the Department of Housing and Urban Development, \$25,000,000 to remain available until expended, which amount shall be competitively awarded by June 1, 2004, to Indian tribes, State housing finance agencies, State community and/or economic development agencies, local rural nonprofits and community development corporations to support innovative housing and economic development activities in rural areas.

EMPOWERMENT ZONES/ENTERPRISE COMMUNITIES

For grants in connection with a second round of empowerment zones and enterprise communities, \$15,000,000, to remain available until September 30, 2005, for “Urban Empowerment Zones”, as authorized in section 1391(g) of the Internal Revenue Code of 1986 (26 U.S.C. 1391(g)), including \$1,000,000 for each empowerment zone for use in conjunction with economic development activities consistent with the strategic plan of each empowerment zone.

COMMUNITY DEVELOPMENT FUND
(INCLUDING TRANSFERS OF FUNDS)

For assistance to units of State and local government, and to other entities, for economic and community development activities, and for other purposes, \$4,950,000,000, to remain available until September 30, 2006: *Provided*, That of the amount provided, \$4,356,550,000 is for carrying out the community development block grant program under title I of the Housing and Community Development Act of 1974, as amended (the “Act” herein) (42 U.S.C. 5301 et seq.): *Provided further*, That unless explicitly provided for under this heading (except for planning grants provided in the third paragraph and amounts made available in the second paragraph), not to exceed 20 percent of any grant made with funds appropriated under this heading (other than a grant made available in this paragraph to the Housing Assistance Council or the National American Indian Housing Council, or a grant using funds under section 107(b)(3) of the Act) shall be expended for planning and management development and administration: *Provided further*, That \$72,000,000 shall be for grants to Indian tribes notwithstanding section 106(a)(1) of such Act; \$3,300,000 shall be for a grant to the Housing Assistance Council; \$2,500,000 shall be for a grant to the National American Indian Housing Council; \$5,000,000 shall be available as a grant to the National Housing Development Corporation, for operating expenses not to exceed \$2,000,000 and for a program of affordable housing acquisition and rehabilitation; \$5,000,000 shall be available as a grant to the National Council of La Raza for the HOPE Fund, of which \$500,000 is for technical assistance and fund management, and \$4,500,000 is for investments in the HOPE Fund and financing to affiliated organizations; \$52,000,000 shall be for grants pursuant to section 107 of the Act, of which \$9,500,000 shall be for the Native Hawaiian block grant authorized under title VIII of the Native American Housing Assistance and Self-Determination Act of 1996; no less than \$4,900,000 shall be transferred to the Working Capital Fund for the development of and modification to information technology systems which serve programs or activities under “Community planning and development”; \$27,000,000 shall be for grants pursuant to the Self Help Homeownership Opportunity Program; \$34,750,000 shall be for capacity building, of which \$30,000,000 shall be for Capacity Building for Community Development and Affordable Housing for LISC and the Enterprise Foundation for activities as authorized by section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, with not less than \$5,000,000 of the funding to be used in rural areas, including tribal areas, and of which \$4,750,000 shall be for capacity building activities administered by Habitat for Humanity International; \$65,000,000 shall be available for YouthBuild program activities authorized by subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended, and such activities shall be an eligible activity with respect to any funds made available under this heading: *Provided*, That local YouthBuild programs that demonstrate an ability to leverage private and nonprofit funding shall be given a priority for YouthBuild funding: *Provided further*, That no more than 10 percent of any grant award under the YouthBuild program may be used for administrative costs: *Provided further*, That of the

amount made available for YouthBuild not less than \$10,000,000 is for grants to establish YouthBuild programs in underserved and rural areas and \$2,000,000 is to be made available for a grant to YouthBuild USA for capacity building for community development and affordable housing activities as specified in section 4 of the HUD Demonstration Act of 1993, as amended.

Of the amount made available under this heading, \$44,000,000 shall be available for neighborhood initiatives that are utilized to improve the conditions of distressed and blighted areas and neighborhoods, to stimulate investment, economic diversification, and community revitalization in areas with population outmigration or a stagnating or declining economic base, or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives: *Provided*, That amounts made available under this paragraph shall be provided in accordance with the terms and conditions specified in the joint explanatory statement of the managers accompanying this Act.

Of the amount made available under this heading, \$278,000,000 shall be available for grants for the Economic Development Initiative (EDI) to finance a variety of targeted economic investments in accordance with the terms and conditions specified in the joint explanatory statement of the managers accompanying this Act: *Provided*, That none of the funds provided under this paragraph may be used for program operations.

The referenced statement of the managers under this heading in Public Law 107-73 is deemed to be amended with respect to the amount made available to the North Carolina Community Land Trust Initiative by striking “North Carolina Community Land Trust Initiative” and inserting “Orange Community Housing and Land Trust”.

The referenced statement of the managers under this heading in Public Law 107-73 is deemed to be amended with respect to the amount made available to the Willacy County Boys and Girls Club in Willacy County, Texas by striking “Willacy County Boys and Girls Club in Willacy County, Texas” and inserting “Willacy County, Texas”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 17 by striking “for sidewalks, curbs, street lighting, outdoor furniture and façade improvements in the Mill Village neighborhood” and inserting “for the restoration and renovation of houses within the Lincoln or Dallas mill villages”.

The referenced statement of the managers under this heading in Public Law 107-73 is deemed to be amended with respect to the amount made available to the Metropolitan Development Association in Syracuse, New York by inserting “and other economic development planning and revitalization activities” after the word “study”.

The referenced statement of the managers under this heading in Public Law 107-73 is deemed to be amended with respect to the amount made available to the Staten Island Freedom Memorial Fund by striking “Staten Island Freedom Memorial Fund for the construction of a memorial in the Staten Island community of St. George, New York” and inserting “Staten Island Botanical Garden for construction and related activities for a healing garden”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 526 by striking “for an economic development study for the revitalization of Westchester” and inserting “for the reconstruction of renaissance plaza at Main and Mamaroneck in downtown White Plains”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 877 by striking “West Virginia High Technology Consortium Foundation, Inc. in Marion County, West Virginia for facilities construction for a high-tech park” and inserting “Glenville State College in Glenville, West Virginia for construction of a new campus community education center”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 126 by striking “for construction of” and inserting “for facilities improvements and build out for”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 721 by striking “training” and inserting “creation, small business development and quality of life improvements within the State of South Carolina”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 317 by striking “135,000” and inserting “151,000”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 324 by striking “225,000” and inserting “209,000”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 74 by striking “renovation” and inserting “design and construction”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 718 by striking “construction” and inserting “renovation”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 785 by striking “to the Town of Altavista, Virginia to assist with renovations of the shell building industrial site” and inserting “to the County of Campbell, Virginia for development of the Winston Tract Commercial Center industrial site”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 253 by striking “to the Salvation Army/Boys and Girls Club-Northfolk community center” and inserting “to the Salvation Army Boys and Girls Club in Louisville, Kentucky for the renovation of the Newburg community center”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 288 by striking “for building renovations” and inserting “for signage, street furniture, sidewalks and streetscape improvements”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 217 by striking “\$135,000 to the Village of Olympia Fields, Illinois for construction of a hall, public library and upgraded commuter station” and inserting “\$135,000 to the Village of Olympia Fields, Illinois, for sidewalks, street lighting, neighborhood redevelopment improvements, and building renovations”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 809 by striking “\$90,000 to the Department of Vermont Veterans of Foreign Wars for the construction of the Green Block Veterans Memorial in Brandon, Vermont and the Windsor, Vermont War Memorial” and inserting “\$90,000 to the Department of Buildings and General Services of the State of Vermont for the construction of the Brandon, Vermont Veterans Memorial and the Windsor, Vermont War Memorial”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 244 by striking “\$900,000 to Purdue University in West Lafayette, Indiana for facilities construction for the Northwest Indiana Purdue Technology Center” and inserting “\$900,000 to Purdue Research Foundation in West Lafayette, Indiana for facilities buildout for the Northwest Indiana Purdue Technology Center”.

The referenced statement of the managers under this heading in Public Law 107-73 is deemed to be amended with respect to the amount made available to Connecticut Hospice, Inc., of Branford, Connecticut by striking “for construction of a new facility” and inserting “for facilities renovation and equipment upgrades”.

The referenced statement of the managers under this heading in Public Law 107-73 is deemed to be amended with respect to a grant made available to the United Way community services facility in Anchorage, Alaska by striking “the United Way community services facility in Anchorage, Alaska, to complete construction of asocial service facility to serve low-income people;” and inserting “the Cook Inlet Tribal Council, Inc., in Anchorage, Alaska as a Federal contribution for construction of asocial service facility to serve low income people;”.

The referenced statement of the managers under this heading in title II of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108-7; House Report No. 108-10) is deemed to be amended with respect to item number 137 by striking “Wilmington Housing Authority” and inserting “City of Wilmington”.

URBAN DEVELOPMENT ACTION GRANTS

From balances of the Urban Development Action Grant Program, as authorized by title I of the Housing and Community Development Act of 1974, as amended, \$30,000,000 are cancelled.

COMMUNITY DEVELOPMENT LOAN GUARANTEES PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, \$6,325,000, to remain available until September 30, 2005, as authorized by section 108 of the Housing and Community Development Act of 1974, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$275,000,000, notwithstanding any aggregate limitation on outstanding obligations guaranteed in section 108(k) of the Housing and Community Development Act of 1974, as amended.

In addition, for administrative expenses to carry out the guaranteed loan program, \$1,000,000 which shall be transferred to and merged with the appropriation for “Salaries and expenses”.

BROWNFIELDS REDEVELOPMENT

For competitive economic development grants, as authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended, for Brownfields redevelopment projects, \$25,000,000, to remain available until September 30, 2005.

HOME INVESTMENT PARTNERSHIPS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, \$1,930,000,000, to remain available until September 30, 2006: *Provided*, That of the total amount provided in this paragraph, up to \$40,000,000 shall be available for housing counseling under section 106 of the Housing and Urban Development Act of 1968 and no less than \$2,100,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under “Community planning and development”.

In addition to amounts otherwise made available under this heading, \$87,500,000, to remain available until September 30, 2006, for assistance to homebuyers as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended: *Provided*, That the Secretary shall provide such assistance in accordance with a formula to be established by the Secretary that considers, among other things, a participating jurisdiction's need

for, and prior commitment to, assistance to homebuyers: *Provided further*, That should legislation be enacted prior to April 15, 2004, to authorize a new down-payment assistance program under the HOME Investment Partnership Act, the amounts provided under this paragraph shall be distributed for downpayment assistance in accordance with the terms and conditions set forth in such Act.

HOMELESS ASSISTANCE GRANTS
(INCLUDING TRANSFER OF FUNDS)

For the emergency shelter grants program as authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, as amended; the supportive housing program as authorized under subtitle C of title IV of such Act; the section 8 moderate rehabilitation single room occupancy program as authorized under the United States Housing Act of 1937, as amended, to assist homeless individuals pursuant to section 441 of the McKinney-Vento Homeless Assistance Act; and the shelter plus care program as authorized under subtitle F of title IV of such Act, \$1,267,000,000, of which \$1,247,000,000 to remain available until September 30, 2006, and of which \$20,000,000 to remain available until expended: *Provided*, That not less than 30 percent of funds made available, excluding amounts provided for renewals under the shelter plus care program, shall be used for permanent housing: *Provided further*, That all funds awarded for services shall be matched by 25 percent in funding by each grantee: *Provided further*, That the Secretary shall renew on an annual basis expiring contracts or amendments to contracts funded under the shelter plus care program if the program is determined to be needed under the applicable continuum of care and meets appropriate program requirements and financial standards, as determined by the Secretary: *Provided further*, That all awards of assistance under this heading shall be required to coordinate and integrate homeless programs with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health and Substance Abuse Block Grant, Workforce Investment Act, and the Welfare-to-Work grant program: *Provided further*, That \$12,000,000 of the funds appropriated under this heading shall be available for the national homeless data analysis project and technical assistance: *Provided further*, That no less than \$2,580,000 of the funds appropriated under this heading shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under "Community planning and development".

HOUSING PROGRAMS
HOUSING FOR THE ELDERLY
(INCLUDING TRANSFER OF FUNDS)

For capital advances, including amendments to capital advance contracts, for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for project rental

assistance for the elderly under section 202(c)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing, \$778,320,000, plus recaptures and cancelled commitments, to remain available until September 30, 2006, of which amount \$30,000,000 shall be for service coordinators and the continuation of existing congregate service grants for residents of assisted housing projects, and of which amount up to \$25,000,000 shall be for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) for conversion of eligible projects under such section to assisted living or related use and for emergency capital repairs as determined by the Secretary: *Provided*, That of the amount made available under this heading, \$20,000,000 shall be available to the Secretary of Housing and Urban Development only for making competitive grants to private nonprofit organizations and consumer cooperatives for covering costs of architectural and engineering work, site control, and other planning relating to the development of supportive housing for the elderly that is eligible for assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q): *Provided further*, That no less than \$470,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under “Housing programs” or “Federal Housing Administration”: *Provided further*, That the Secretary may waive the provisions of section 202 governing the terms and conditions of project rental assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration: *Provided further*, That all balances outstanding, as of September 30, 2003, for capital advances, including amendments to capital advances, for housing for the elderly, as authorized by section 202, for project rental assistance for housing for the elderly, as authorized under section 202(c)(2) of such Act, including amendments to contracts shall be transferred to and merged with the amounts for those purposes under this heading.

HOUSING FOR PERSONS WITH DISABILITIES

(INCLUDING TRANSFER OF FUNDS)

For capital advance contracts, including amendments to capital advance contracts, for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, for project rental assistance for supportive housing for persons with disabilities under section 811(d)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing for persons with disabilities as authorized by section 811(b)(1) of such Act, and for tenant-based rental assistance contracts entered into pursuant to section 811 of such Act, \$250,570,000, plus recaptures and cancelled commitments to remain available until September 30, 2006: *Provided*, That no less than \$470,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under “Housing programs” or “Federal Housing Administration”: *Provided further*, That of the amount provided under this heading, other than amounts

for renewal of expiring project-based or tenant-based rental assistance contracts, the Secretary may designate up to 25 percent for tenant-based rental assistance, as authorized by section 811 of such Act, (which assistance is 5 years in duration): *Provided further*, That the Secretary may waive the provisions of section 811 governing the terms and conditions of project rental assistance and tenant-based assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration: *Provided further*, That all balances outstanding, as of September 30, 2003, for capital advances, including amendments to capital advances, for supportive housing for persons with disabilities, as authorized by section 811, for project rental assistance for supportive housing for persons with disabilities, as authorized under section 811(d)(2), including amendments to contracts for such assistance and renewal of expiring contracts for such assistance, and for supportive services associated with the housing for persons with disabilities as authorized by section 811(b)(1), shall be transferred to and merged with the amounts for these purposes under this heading.

FLEXIBLE SUBSIDY FUND

(TRANSFER OF FUNDS)

From the Rental Housing Assistance Fund, all uncommitted balances of excess rental charges as of September 30, 2003, and any collections made during fiscal year 2004, shall be transferred to the Flexible Subsidy Fund, as authorized by section 236(g) of the National Housing Act, as amended.

RENTAL HOUSING ASSISTANCE

(RESCISSION)

Up to \$303,000,000 of recaptured section 236 budget authority resulting from prepayment of mortgages subsidized under section 236 of the National Housing Act (12 U.S.C. 1715z–1) shall be rescinded in fiscal year 2004: *Provided*, That the limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 236 is reduced in fiscal year 2004 by not more than \$303,000,000 in uncommitted balances of authorizations of contract authority provided for this purpose in prior appropriations Acts.

MANUFACTURED HOUSING FEES TRUST FUND

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5401 et seq.), up to \$13,000,000 to remain available until expended, to be derived from the Manufactured Housing Fees Trust Fund: *Provided*, That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund pursuant to section 620 of such Act: *Provided further*, That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation from the general fund estimated at not more than \$0 and

fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year 2004 appropriation.

FEDERAL HOUSING ADMINISTRATION

MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

During fiscal year 2004, commitments to guarantee loans to carry out the purposes of section 203(b) of the National Housing Act, as amended, shall not exceed a loan principal of \$185,000,000,000.

During fiscal year 2004, obligations to make direct loans to carry out the purposes of section 204(g) of the National Housing Act, as amended, shall not exceed \$50,000,000: *Provided*, That the foregoing amount shall be for loans to nonprofit and governmental entities in connection with sales of single family real properties owned by the Secretary and formerly insured under the Mutual Mortgage Insurance Fund.

For administrative expenses necessary to carry out the guaranteed and direct loan program, \$359,000,000, of which not to exceed \$355,000,000 shall be transferred to the appropriation for “Salaries and expenses”; and not to exceed \$4,000,000 shall be transferred to the appropriation for “Office of Inspector General”. In addition, for administrative contract expenses, \$85,000,000, of which no less than \$20,744,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under “Housing programs” or “Federal Housing Administration”: *Provided*, That to the extent guaranteed loan commitments exceed \$65,500,000,000 on or before April 1, 2004, an additional \$1,400 for administrative contract expenses shall be available for each \$1,000,000 in additional guaranteed loan commitments (including a pro rata amount for any amount below \$1,000,000), but in no case shall funds made available by this proviso exceed \$30,000,000.

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of guaranteed loans, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z–3 and 1735c), including the cost of loan guarantee modifications, as that term is defined in section 502 of the Congressional Budget Act of 1974, as amended, \$15,000,000, to remain available until expended: *Provided*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, of up to \$25,000,000,000.

Gross obligations for the principal amount of direct loans, as authorized by sections 204(g), 207(l), 238, and 519(a) of the National Housing Act, shall not exceed \$50,000,000, of which not to exceed \$30,000,000 shall be for bridge financing in connection with the sale of multifamily real properties owned by the Secretary and formerly insured under such Act; and of which not to exceed \$20,000,000 shall be for loans to nonprofit and governmental entities in connection with the sale of single-family real properties owned by the Secretary and formerly insured under such Act.

In addition, for administrative expenses necessary to carry out the guaranteed and direct loan programs, \$229,000,000, of which \$209,000,000 shall be transferred to the appropriation for “Salaries and expenses”; and of which \$20,000,000 shall be transferred to the appropriation for “Office of Inspector General”.

In addition, for administrative contract expenses necessary to carry out the guaranteed and direct loan programs, \$93,780,000, of which no less than \$16,946,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under “Housing programs” or “Federal Housing Administration”: *Provided*, That to the extent guaranteed loan commitments exceed \$8,426,000,000 on or before April 1, 2004, an additional \$1,980 for administrative contract expenses shall be available for each \$1,000,000 in additional guaranteed loan commitments over \$8,426,000,000 (including a pro rata amount for any increment below \$1,000,000), but in no case shall funds made available by this proviso exceed \$14,400,000.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

GUARANTEES OF MORTGAGE-BACKED SECURITIES LOAN GUARANTEE PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

New commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721(g)), shall not exceed \$200,000,000,000, to remain available until September 30, 2005.

For administrative expenses necessary to carry out the guaranteed mortgage-backed securities program, \$10,695,000, to be derived from the GNMA guarantees of mortgage-backed securities guaranteed loan receipt account, of which not to exceed \$10,695,000, shall be transferred to the appropriation for “Salaries and expenses”.

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z–1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, \$47,000,000, to remain available until September 30, 2005: *Provided*, That of the total amount provided under this heading, \$7,500,000 shall be for the Partnership for Advancing Technology in Housing (PATH) Initiative.

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ACTIVITIES

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and section 561 of the Housing and Community Development Act

Lobbying.

of 1987, as amended, \$48,000,000, to remain available until September 30, 2005, of which \$20,250,000 shall be to carry out activities pursuant to such section 561: *Provided*, That no funds made available under this heading shall be used to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan.

OFFICE OF LEAD HAZARD CONTROL

LEAD HAZARD REDUCTION

For the Lead Hazard Reduction Program, as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, \$175,000,000, to remain available until September 30, 2005, of which \$10,000,000 shall be for the Healthy Homes Initiative, pursuant to sections 501 and 502 of the Housing and Urban Development Act of 1970 that shall include research, studies, testing, and demonstration efforts, including education and outreach concerning lead-based paint poisoning and other housing-related diseases and hazards: *Provided*, That of the total amount made available under this heading, \$50,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs, as identified by the Secretary as having: (1) the highest number of occupied pre-1940 units of rental housing; and (2) a disproportionately high number of documented cases of lead-poisoned children: *Provided further*, That each grantee receiving funds under the previous proviso shall target those privately owned units and multifamily buildings that are occupied by low-income families as defined under section 3(b)(2) of the United States Housing Act of 1937: *Provided further*, That not less than 90 percent of the funds made available under this paragraph shall be used exclusively for abatement, inspections, risk assessments, temporary relocations and interim control of lead-based hazards as defined by 42 U.S.C. 4851: *Provided further*, That each recipient of funds provided under the first proviso shall make a matching contribution in an amount not less than 25 percent: *Provided further*, That each applicant shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary to carry out the proposed use of funds pursuant to a Notice of Funding Availability.

MANAGEMENT AND ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary administrative and non-administrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed \$25,000 for official reception and representation expenses, \$1,123,130,000, of which \$564,000,000 shall be provided from the various funds of the Federal Housing Administration, \$10,695,000 shall be provided from funds of the Government National Mortgage Association, \$1,000,000 shall be provided from the "Community development loan guarantees program" account, \$150,000 shall be

provided by transfer from the “Native American housing block grants” account, \$250,000 shall be provided by transfer from the “Indian housing loan guarantee fund program” account and \$35,000 shall be transferred from the “Native Hawaiian housing loan guarantee fund” account: *Provided*, That funds made available under this heading shall only be allocated in the manner specified in the report accompanying this Act unless the Committees on Appropriations of both the House of Representatives and the Senate are notified of any changes in an operating plan or reprogramming: *Provided further*, That no official or employee of the Department shall be designated as an allotment holder unless the Office of the Chief Financial Officer (OCFO) has determined that such allotment holder has implemented an adequate system of funds control and has received training in funds control procedures and directives: *Provided further*, That the Chief Financial Officer shall establish positive control of and maintain adequate systems of accounting for appropriations and other available funds as required by 31 U.S.C. 1514: *Provided further*, That for purposes of funds control and determining whether a violation exists under the Anti-Deficiency Act (31 U.S.C. 1341 et seq.), the point of obligation shall be the executed agreement or contract, except with respect to insurance and guarantee programs, certain types of salaries and expenses funding, and incremental funding that is authorized under an executed agreement or contract, and shall be designated in the approved funds control plan: *Provided further*, That the Chief Financial Officer shall: (1) appoint qualified personnel to conduct investigations of potential or actual violations; (2) establish minimum training requirements and other qualifications for personnel that may be appointed to conduct investigations; (3) establish guidelines and timeframes for the conduct and completion of investigations; (4) prescribe the content, format and other requirements for the submission of final reports on violations; and (5) prescribe such additional policies and procedures as may be required for conducting investigations of, and administering, processing, and reporting on, potential and actual violations of the Anti-Deficiency Act and all other statutes and regulations governing the obligation and expenditure of funds made available in this or any other Act: *Provided further*, That the Secretary shall fill 7 out of 10 vacancies at the GS–14 and GS–15 levels until the total number of GS–14 and GS–15 positions in the Department has been reduced from the number of GS–14 and GS–15 positions on the date of enactment of Public Law 106–377 by 2½ percent.

Notification.

Records.
42 USC 3549
note.

Procedures.

The tenth proviso under this heading in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003, is amended by striking “the purpose of” and inserting “purposes of funds control and” and before the colon insert the following “, except with respect to insurance and guarantee programs, certain types of salaries and expenses funding, and incremental funding that is authorized under an executed agreement or contract”.

42 USC 3549
note.

WORKING CAPITAL FUND

For additional capital for the Working Capitol Fund (42 U.S.C. 3535) for the development of, modifications to, and infrastructure for Department-wide information technology systems, and for the continuing operation of both Department-wide and program-specific

information systems, \$235,000,000, to remain available until September 30, 2005: *Provided*, That any amounts transferred to this Fund under this Act shall remain available until expended.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, \$101,000,000, of which \$24,000,000 shall be provided from the various funds of the Federal Housing Administration: *Provided*, That the Inspector General shall have independent authority over all personnel issues within this office: *Provided further*, That no less than \$300,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems for the Office of Inspector General.

CONSOLIDATED FEE FUND

(RESCISSION)

All unobligated balances remaining available from fees and charges under section 7(j) of the Department of Housing and Urban Development Act on October 1, 2003 are rescinded.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, including not to exceed \$500 for official reception and representation expenses, \$39,915,000, to remain available until expended, to be derived from the Federal Housing Enterprises Oversight Fund: *Provided*, That of the amount made available under this heading, \$4,500,000 is for 1-time costs to conduct special investigations of the Federal housing enterprises and \$3,000,000 is for costs associated with strengthening the examination and legal functions: *Provided further*, That the Secretary shall submit a spending plan for the amounts provided under this heading no later than January 15, 2004: *Provided further*, That not less than 60 percent of total amount made available under this heading shall be used only for examination, supervision, and capital oversight of the enterprises (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502)) to ensure that the enterprises are operating in a financially safe and sound manner and complying with the capital requirements under subtitle B of such Act: *Provided further*, That not to exceed the amount provided herein shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the fund: *Provided further*, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than \$0.

Deadline.

ADMINISTRATIVE PROVISIONS

SEC. 201. Fifty percent of the amounts of budget authority, or in lieu thereof 50 percent of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 1437 note) shall be rescinded, or in the case of cash, shall be remitted to the Treasury, and such amounts of budget authority or cash recaptured and not rescinded or remitted to the Treasury shall be used by State housing finance agencies or local governments or local housing agencies with projects approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992, in accordance with such section. Notwithstanding the previous sentence, the Secretary may award up to 15 percent of the budget authority or cash recaptured and not rescinded or remitted to the Treasury to provide project owners with incentives to refinance their project at a lower interest rate.

SEC. 202. None of the amounts made available under this Act may be used during fiscal year 2004 to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a non-frivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a Government official or entity, or a court of competent jurisdiction.

SEC. 203. (a) Notwithstanding section 854(c)(1)(A) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)(1)(A)), from any amounts made available under this title for fiscal year 2004 that are allocated under such section, the Secretary of Housing and Urban Development shall allocate and make a grant, in the amount determined under subsection (b), for any State that—

Grants.
Inter-
governmental
relations.
AIDS.

(1) received an allocation in a prior fiscal year under clause (ii) of such section; and

(2) is not otherwise eligible for an allocation for fiscal year 2004 under such clause (ii) because the areas in the State outside of the metropolitan statistical areas that qualify under clause (i) in fiscal year 2004 do not have the number of cases of acquired immunodeficiency syndrome (AIDS) required under such clause.

(b) The amount of the allocation and grant for any State described in subsection (a) shall be an amount based on the cumulative number of AIDS cases in the areas of that State that are outside of metropolitan statistical areas that qualify under clause (i) of such section 854(c)(1)(A) in fiscal year 2004, in proportion to AIDS cases among cities and States that qualify under clauses (i) and (ii) of such section and States deemed eligible under subsection (a).

SEC. 204. (a) During fiscal year 2004, in the provision of rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) in connection with a program to demonstrate the economy and effectiveness of providing such assistance for use in assisted living facilities that is carried out in the counties of the State of Michigan specified in subsection (b) of this section, notwithstanding paragraphs (3) and (18)(B)(iii) of such section 8(o), a family residing in an assisted living facility in any such county, on behalf of which a public housing agency provides assistance pursuant to section 8(o)(18) of such Act, may be required, at the

Michigan.

time the family initially receives such assistance, to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such a percentage or amount as the Secretary of Housing and Urban Development determines to be appropriate.

(b) The counties specified in this subsection are Oakland County, Macomb County, Wayne County, and Washtenaw County, in the State of Michigan.

SEC. 205. Except as explicitly provided in law, any grant, cooperative agreement or other assistance made pursuant to title II of this Act shall be made on a competitive basis and in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989.

SEC. 206. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal Home Loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811-1831).

SEC. 207. Unless otherwise provided for in this Act or through a reprogramming of funds, no part of any appropriation for the Department of Housing and Urban Development shall be available for any program, project or activity in excess of amounts set forth in the budget estimates submitted to Congress.

SEC. 208. Corporations and agencies of the Department of Housing and Urban Development which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of such Act as may be necessary in carrying out the programs set forth in the budget for 2003 for such corporation or agency except as hereinafter provided: *Provided*, That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

SEC. 209. None of the funds provided in this title for technical assistance, training, or management improvements may be obligated or expended unless HUD provides to the Committees on Appropriations a description of each proposed activity and a detailed budget estimate of the costs associated with each program, project or activity as part of the Budget Justifications. For fiscal year 2004, HUD shall transmit this information to the Committees by January 15, 2004, for 30 days of review.

Deadline.

State listing.

SEC. 210. A public housing agency or such other entity that administers Federal housing assistance in the States of Alaska, Iowa, and Mississippi, shall not be required to include a resident

of public housing or a recipient of assistance provided under section 8 of the United States Housing Act of 1937 on the board of directors or a similar governing board of such agency or entity as required under section (2)(b) of such Act. Each public housing agency or other entity that administers Federal housing assistance under section 8 in the States of Alaska, Iowa, and Mississippi, shall establish an advisory board of not less than 6 residents of public housing or recipients of section 8 assistance to provide advice and comment to the public housing agency or other administering entity on issues related to public housing and section 8. Such advisory board shall meet not less than quarterly.

Establishment.

SEC. 211. The Secretary of Housing and Urban Development shall provide quarterly reports to the House and Senate Committees on Appropriations regarding all uncommitted, unobligated, recaptured and excess funds in each program and activity within the jurisdiction of the Department and shall submit additional, updated budget information to these Committees upon request.

Reports.

SEC. 212. Notwithstanding any other provision of law, in fiscal year 2004, in managing and disposing of any multifamily property that is owned or held by the Secretary and is occupied primarily by elderly or disabled families, the Secretary of Housing and Urban Development shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 that are attached to any dwelling units in the property. To the extent the Secretary determines that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties or provide other rental assistance.

Effective date.

SEC. 213. The Secretary of Housing and Urban Development shall submit an annual report no later than August 30, 2004, and annually thereafter to the House and Senate Committees on Appropriations regarding the number of Federally assisted units under lease and the per unit cost of these units to the Department of Housing and Urban Development.

Reports.
Deadline.
42 USC 1437
note.

SEC. 214. (a) Notwithstanding any other provision of law, the amount allocated for fiscal year 2004 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), to the City of Wilmington, Delaware, on behalf of the Wilmington, Delaware-Maryland-New Jersey Metropolitan Division (hereafter “metropolitan division”) of the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area, shall be adjusted by the Secretary of Housing and Urban Development by allocating to the State of New Jersey the proportion of the metropolitan area’s or division’s amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area or division that is located in New Jersey. The State of New Jersey shall use amounts allocated to the State under this subsection to carry out eligible activities under section 855 of the AIDS Housing Opportunity Act (42 U.S.C. 12904) in the portion of the metropolitan division that is located in New Jersey.

AIDS.
Delaware.
New Jersey.

(b) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall allocate to Wake County, North Carolina, the amounts that otherwise would be allocated for fiscal year 2004 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to the City of Raleigh, North

North Carolina.

Carolina, on behalf of the Raleigh-Cary, North Carolina Metropolitan Statistical Area. Any amounts allocated to Wake County shall be used to carry out eligible activities under section 855 of such Act (42 U.S.C. 12904) within such metropolitan statistical area.

112 USC 1715o.

SEC. 215. Section 224 of the National Housing Act (12 U.S.C. 1735o) is amended by adding the following new sentence at the end of the first paragraph: “Notwithstanding the preceding sentence and the following paragraph, if an insurance claim is paid in cash for any mortgage that is insured under section 203 or 234 of this Act and is endorsed for mortgage insurance after the date of enactment of this sentence, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.”.

SEC. 216. The McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) is amended—

101 Stat. 482.

(1) in section 101(b), by striking “Interagency Council on the Homeless” and inserting “United States Interagency Council on Homelessness”;

42 USC 11301.

(2) in section 102(b)(1), by striking “an Interagency Council on the Homeless” and inserting “the United States Interagency Council on Homelessness”;

(3) in the heading for title II, by striking “INTERAGENCY COUNCIL ON THE HOMELESS” and inserting “UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS”; and

42 USC 11311,
11317, 11411.

(4) in sections 201, 207(1), 501(c)(2)(a), and 501(d)(3), by striking “Interagency Council on the Homeless” and inserting “United States Interagency Council on Homelessness”.

SEC. 217. (a) INFORMATION COMPARISONS FOR PUBLIC AND ASSISTED HOUSING PROGRAMS.—Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) is amended by adding at the end the following new paragraph:

“(7) INFORMATION COMPARISONS FOR HOUSING ASSISTANCE PROGRAMS.—

“(A) FURNISHING OF INFORMATION BY HUD.—Subject to subparagraph (G), the Secretary of Housing and Urban Development shall furnish to the Secretary, on such periodic basis as determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are participating in any program under—

“(i) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

“(ii) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

“(iii) section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z–1);

“(iv) section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

“(v) section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

“(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.—The Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).

“(C) DUTIES OF THE SECRETARY.—

“(i) INFORMATION DISCLOSURE.—The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information provided by the Secretary of Housing and Urban Development with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

“(ii) CONDITION ON DISCLOSURE.—The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

“(D) USE OF INFORMATION BY HUD.—The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only—

“(i) for the purpose of verifying the employment and income of individuals described in subparagraph (A); and

“(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

“(E) DISCLOSURE OF INFORMATION BY HUD.—

“(i) PURPOSE OF DISCLOSURE.—The Secretary of Housing and Urban Development may make a disclosure under this subparagraph only for the purpose of verifying the employment and income of individuals described in subparagraph (A).

“(ii) DISCLOSURES PERMITTED.—Subject to clause (iii), the Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph shall not be made available under section 552 of title 5, United States Code.

“(iii) CONDITIONS ON DISCLOSURE.—Disclosures under this paragraph shall be—

“(I) made in accordance with data security and control policies established by the Secretary of Housing and Urban Development and approved by the Secretary;

“(II) subject to audit in a manner satisfactory to the Secretary; and

“(III) subject to the sanctions under subsection (l)(2).

“(iv) ADDITIONAL DISCLOSURES.—

“(I) DETERMINATION BY SECRETARIES.—The Secretary of Housing and Urban Development and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of Housing and Urban Development (in consultation with and approved by the Secretary), of the costs and benefits of disclosures made under clause (ii) and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

“(II) PERMITTED PERSONS OR ENTITIES.—If the Secretary of Housing and Urban Development and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of Housing and Urban Development to a private owner, a management agent, and a contract administrator in connection with the administration of a program described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

“(v) RESTRICTIONS ON REDISCLOSURE.—A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for verifying the employment and income of individuals described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

“(F) REIMBURSEMENT OF HHS COSTS.—The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

“(G) CONSENT.—The Secretary of Housing and Urban Development shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).”.

(b) CONSENT TO INFORMATION COMPARISON AND USE AS CONDITION OF HUD PROGRAM ELIGIBILITY.—As a condition of participating in any program authorized under—

(1) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(2) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(3) section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z-1);

(4) section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

(5) section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s),

the Secretary of Housing and Urban Development may require consent by an individual (or by a person legally authorized to consent on behalf of such individual) for such Secretary to obtain, use, and disclose information with respect to such individual in accordance with section 453(j)(7) of the Social Security Act (42 U.S.C. 653(j)(7)).

SEC. 218. Notwithstanding any other provision of law, the State of Hawaii may elect by July 31, 2004 to distribute funds under section 106(d)(2) of the Housing and Community Development Act of 1974, to units of general local government located in nonentitlement areas of that State. If the State of Hawaii fails to make such election, the Secretary shall for fiscal years 2005 and thereafter make grants to the units of general local government located in the State of Hawaii's nonentitlement areas (Hawaii, Kauai, and Maui counties). The Secretary of Housing and Urban Development shall allocate funds under section 106(d) of such Act to units of general local government located in nonentitlement areas within the State of Hawaii in accordance with a formula which bears the same ratio to the total amount available for the nonentitlement areas of the State as the weighted average of the ratios between: (1) the population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State; (2) the extent of poverty in that eligible unit of general local government and the extent of poverty in all of the eligible units of general local government in the nonentitlement areas of the State; and (3) the extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all of the eligible units of general local government in the nonentitlement areas of the State. In determining the weighted average of the ratios described in the previous sentence, the ratio described in clause (2) shall be counted twice and the ratios described in clauses (1) and (3) shall be counted once. Notwithstanding any other provision, grants made under this section shall be subject to the program requirements of section 104 of the Housing and Community Development Act of 1974 in the same manner as such requirements are made applicable to grants made under section 106(b) of the Housing and Community Development Act of 1974.

Hawaii.
Deadline.

SEC. 219. The Secretary of Housing and Urban Development shall issue a proposed rulemaking, in accordance with title V, United States Code, not later than 90 days from the date of enactment of this Act that—

Regulations.
Deadline.

(1) addresses and expands, as necessary, the participation and certification requirements for the sale of HUD-owned multifamily housing projects and the foreclosure sale of any multifamily housing securing a mortgage held by the Secretary, including whether a potential purchaser is in substantial compliance with applicable State or local government housing statutes, regulations, ordinances and codes with regard to other properties owned by the purchaser; and

(2) requires any state, city, or municipality that exercises its right of first refusal for the purchase of a multifamily

housing project under section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(i)) to ensure that potential purchasers of the project from the state, city, or municipality are subject to the same standards that they would otherwise be subject to if they had purchased the project directly from the Secretary, including whether a potential purchaser is in substantial compliance with applicable State or local government housing statutes, regulations, ordinances and codes with regard to other properties owned by the purchaser.

115 Stat. 678.

SEC. 220. Section 217 of Public Law 107–73 is amended by striking “the rehabilitation” and inserting “redevelopment, including demolition and new construction”.

SEC. 221. Notwithstanding any other provision of law, funds appropriated for the housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, shall be available for the cost of maintaining and disposing of such properties that are acquired or otherwise become the responsibility of the Department.

Regulations.
42 USC 1437g
note.

Deadline.

SEC. 222. The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 1, 2004.

Budget.

SEC. 223. The Department of Housing and Urban Development shall submit the Department’s fiscal year 2005 congressional budget justifications to the Committees on Appropriations of the House of Representatives and the Senate using the identical structure provided under this Act and only in accordance with the direction included in the joint explanatory statement of the managers accompanying this Act.

TITLE III—INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; and insurance of official motor vehicles in foreign countries, when required by law of such countries, \$41,300,000, to remain available until expended.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

SALARIES AND EXPENSES

For necessary expenses in carrying out activities pursuant to section 112(r)(6) of the Clean Air Act, as amended, including hire

of passenger vehicles, uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902, and for services authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376, \$8,250,000: *Provided*, That the Chemical Safety and Hazard Investigation Board (Board) shall have not more than three career Senior Executive Service positions: *Provided further*, That notwithstanding any other provision of law, the individual appointed to the position of Inspector General of the Environmental Protection Agency (EPA) shall, by virtue of such appointment, also hold the position of Inspector General of the Board: *Provided further*, That notwithstanding any other provision of law, the Inspector General of the Board shall utilize personnel of the Office of Inspector General of EPA in performing the duties of the Inspector General of the Board, and shall not appoint any individuals to positions within the Board.

Government
organization.
5 USC app. 8G
note.

EMERGENCY FUND

For necessary expenses of the Chemical Safety and Hazard Investigation Board for accident investigations not otherwise provided for, \$450,000, to remain available until expended.

DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

To carry out the Community Development Banking and Financial Institutions Act of 1994, including services authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for ES–3, \$61,000,000, to remain available until September 30, 2005, of which \$4,000,000 shall be for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers, and up to \$12,000,000 may be used for administrative expenses, including administration of the New Markets Tax Credit, up to \$6,000,000 may be used for the cost of direct loans, and up to \$250,000 may be used for administrative expenses to carry out the direct loan program: *Provided*, That the cost of direct loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed \$11,000,000.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not

to exceed the per diem rate equivalent to the maximum rate payable under 5 U.S.C. 5376, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed \$500 for official reception and representation expenses, \$60,000,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

NATIONAL AND COMMUNITY SERVICE PROGRAMS OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Corporation for National and Community Service (the "Corporation") in carrying out programs, activities, and initiatives under the National and Community Service Act of 1990 (the "Act") (42 U.S.C. 12501 et seq.), \$553,225,000, to remain available until September 30, 2005: *Provided*, That not more than \$314,000,000 of the amount provided under this heading shall be available for grants under the National Service Trust Program authorized under subtitle C of title I of the Act (42 U.S.C. 12571 et seq.) (relating to activities of the AmeriCorps program), including grants to organizations operating projects under the AmeriCorps Education Awards Program (without regard to the requirements of sections 121(d) and (e), section 131(e), section 132, and sections 140(a), (d), and (e) of the Act): *Provided further*, That not less than \$130,000,000 of the amount provided under this heading, to remain available without fiscal year limitation, shall be transferred to the National Service Trust for educational awards authorized under subtitle D of title I of the Act (42 U.S.C. 12601), of which up to \$5,000,000 shall be available to support national service scholarships for high school students performing community service, and of which \$10,000,000 shall be held in reserve as defined in Public Law 108–45: *Provided further*, That in addition to amounts otherwise provided to the National Service Trust under the second proviso, the Corporation may transfer funds from the amount provided under the first proviso, to the National Service Trust authorized under subtitle D of title I of the Act (42 U.S.C. 12601) upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to Congress: *Provided further*, That of the amount provided under this heading for grants under the National Service Trust program authorized under subtitle C of title I of the Act, not more than \$55,000,000 may be used to administer, reimburse, or support any national service program authorized under section 121(d)(2) of such Act (42 U.S.C. 12581(d)(2)): *Provided further*, That not more than \$11,225,000 shall be available for quality and innovation activities authorized under subtitle H of title I of the Act (42 U.S.C. 12853 et seq.), of which \$3,000,000 shall be available for challenge grants to non-profit organizations: *Provided further*, That notwithstanding subtitle H of title I of the Act (42 U.S.C. 12853), none of the funds provided under the previous proviso shall be used to support salaries and related expenses (including travel) attributable to Corporation employees: *Provided further*, That to the maximum extent feasible, funds appropriated under subtitle C of title I of the Act shall be provided in a manner that is consistent with the recommendations of peer review panels in order to ensure that priority is given to programs that demonstrate quality, innovation,

replicability, and sustainability: *Provided further*, That not less than \$25,000,000 of the funds made available under this heading shall be available for the Civilian Community Corps authorized under subtitle E of title I of the Act (42 U.S.C. 12611 et seq.): *Provided further*, That not more than \$43,000,000 shall be available for school-based and community-based service-learning programs authorized under subtitle B of title I of the Act (42 U.S.C. 12521 et seq.): *Provided further*, That not more than \$3,000,000 shall be available for audits and other evaluations authorized under section 179 of the Act (42 U.S.C. 12639): *Provided further*, That not more than \$10,000,000 of the funds made available under this heading shall be made available for the Points of Light Foundation for activities authorized under title III of the Act (42 U.S.C. 12661 et seq.), of which not more than \$2,500,000 may be used to support an endowment fund, the corpus of which shall remain intact and the interest income from which shall be used to support activities described in title III of the Act, provided that the Foundation may invest the corpus and income in federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, mutual funds, obligations of the United States, and other market instruments and securities but not in real estate investments: *Provided further*, That no funds shall be available for national service programs run by Federal agencies authorized under section 121(b) of such Act (42 U.S.C. 12571(b)): *Provided further*, That not more than \$5,000,000 of the funds made available under this heading shall be made available to America's Promise—The Alliance for Youth, Inc.: *Provided further*, That to the maximum extent practicable, the Corporation shall increase significantly the level of matching funds and in-kind contributions provided by the private sector, and shall reduce the total Federal costs per participant in all programs.

America's
Promise—The
Alliance for
Youth, Inc.

SALARIES AND EXPENSES

For necessary expenses of administration as provided under section 501(a)(4) of the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, the employment of experts and consultants authorized under 5 U.S.C. 3109, and not to exceed \$2,500 for official reception and representation expenses, \$25,000,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, \$6,250,000, to remain available until September 30, 2005.

ADMINISTRATIVE PROVISIONS

Notwithstanding any other provision of law, the term “qualified student loan” with respect to national service education awards shall mean any loan determined by an institution of higher education to be necessary to cover a student's cost of attendance at such institution and made, insured, or guaranteed directly to a student by a State agency, in addition to other meanings under section 148(b)(7) of the National and Community Service Act.

Notwithstanding any other provision of law, funds made available under section 129(d)(5)(B) of the National and Community Service Act to assist entities in placing applicants who are individuals with disabilities may be provided to any entity that receives a grant under section 121 of the Act.

The Inspector General of the Corporation for National and Community Service shall conduct random audits of the grantees that administer activities under the AmeriCorps programs and shall levy sanctions in accordance with standard Inspector General audit resolution procedures which include, but are not limited to, debarment of any grantee (or successor in interest or any entity with substantially the same person or persons in control) that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs, including any grantee that has been determined to have violated the prohibition of using Federal funds to lobby the Congress: *Provided*, That the Inspector General shall obtain reimbursements in the amount of any misused funds from any grantee that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs.

For fiscal year 2004, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking. For fiscal year 2004, during any grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information.

U.S. COURT OF APPEALS FOR VETERANS CLAIMS

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Appeals for Veterans Claims as authorized by 38 U.S.C. 7251–7298, \$15,938,000 of which \$1,175,000 shall be available for the purpose of providing financial assistance as described, and in accordance with the process and reporting procedures set forth, under this heading in Public Law 102–229.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of one passenger motor vehicle for replacement only, and not to exceed \$1,000 for official reception and representation expenses, \$29,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

NATIONAL INSTITUTES OF HEALTH

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For necessary expenses for the National Institute of Environmental Health Sciences in carrying out activities set forth in section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and section 126(g) of the Superfund Amendments and Reauthorization Act of 1986, \$78,774,000.

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

TOXIC SUBSTANCES AND ENVIRONMENTAL PUBLIC HEALTH

For necessary expenses for the Agency for Toxic Substances and Disease Registry (ATSDR) in carrying out activities set forth in sections 104(i), 111(c)(4), and 111(c)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; section 118(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended; and section 3019 of the Solid Waste Disposal Act, as amended, \$73,467,000, which may be derived to the extent funds are available from the Hazardous Substance Superfund Trust Fund pursuant to section 517(a) of SARA (26 U.S.C. 9507): *Provided*, That notwithstanding any other provision of law, in lieu of performing a health assessment under section 104(i)(6) of CERCLA, the Administrator of ATSDR may conduct other appropriate health studies, evaluations, or activities, including, without limitation, biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers: *Provided further*, That in performing any such health assessment or health study, evaluation, or activity, the Administrator of ATSDR shall not be bound by the deadlines in section 104(i)(6)(A) of CERCLA: *Provided further*, That none of the funds appropriated under this heading shall be available for ATSDR to issue in excess of 40 toxicological profiles pursuant to section 104(i) of CERCLA during fiscal year 2004, and existing profiles may be updated as necessary.

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

For science and technology, including research and development activities, which shall include research and development activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; necessary expenses for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; procurement of laboratory equipment and supplies; other operating expenses in support of research and development; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project, \$786,324,000, which shall remain available until September 30, 2005: *Provided*, That of the funds provided

under this heading in Public Law 108–7, in reference to item number 9, the Administrator is authorized to make a grant of \$436,000 to the City of San Bernardino, California.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project; and not to exceed \$9,000 for official reception and representation expenses, \$2,293,578,000, which shall remain available until September 30, 2005, including administrative costs of the brownfields program under the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project, \$37,558,000, to remain available until September 30, 2005.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of, or for use by, the Environmental Protection Agency, \$40,000,000, to remain available until expended.

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including sections 111(c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project; \$1,265,000,000, to remain available until expended, consisting of such sums as are available in the Trust Fund upon the date of enactment of this Act as authorized by section 517(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and up to \$1,265,000,000 as a payment from general revenues to the Hazardous Substance Superfund for purposes as authorized by section 517(b) of SARA, as amended: *Provided*, That funds appropriated under this heading may be allocated to other Federal agencies in accordance with section 111(a) of CERCLA: *Provided further*, That of the funds appropriated under this heading, \$13,214,000 shall be transferred to the “Office of Inspector General”

appropriation to remain available until September 30, 2005, and \$44,697,000 shall be transferred to the “Science and technology” appropriation to remain available until September 30, 2005.

LEAKING UNDERGROUND STORAGE TANK PROGRAM

For necessary expenses to carry out leaking underground storage tank cleanup activities authorized by section 205 of the Superfund Amendments and Reauthorization Act of 1986, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project, \$76,000,000, to remain available until expended.

OIL SPILL RESPONSE

For expenses necessary to carry out the Environmental Protection Agency’s responsibilities under the Oil Pollution Act of 1990, \$16,209,000, to be derived from the Oil Spill Liability trust fund, to remain available until expended.

STATE AND TRIBAL ASSISTANCE GRANTS

For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants, \$3,896,800,000, to remain available until expended, of which \$1,350,000,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended (the “Act”), of which up to \$75,000,000 shall be available for loans, including interest free loans as authorized by 33 U.S.C. 1383(d)(1)(A), to municipal, inter-municipal, interstate, or State agencies or nonprofit entities for projects that provide treatment for or that minimize sewage or stormwater discharges using one or more approaches which include, but are not limited to, decentralized or distributed stormwater controls, decentralized wastewater treatment, low-impact development practices, conservation easements, stream buffers, or wetlands restoration; \$850,000,000 shall be for capitalization grants for the Drinking Water State Revolving Funds under section 1452 of the Safe Drinking Water Act, as amended, except that, notwithstanding section 1452(n) of the Safe Drinking Water Act, as amended, none of the funds made available under this heading in this Act, or in previous appropriations Acts, shall be reserved by the Administrator for health effects studies on drinking water contaminants; \$50,000,000 shall be for architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission; \$43,000,000 shall be for grants to the State of Alaska to address drinking water and waste infrastructure needs of rural and Alaska Native Villages: *Provided*, That, of these funds: (1) the State of Alaska shall provide a match of 25 percent; (2) no more than 5 percent of the funds may be used for administrative and overhead expenses; and (3) not later than October 1, 2004, and thereafter, a statewide priority list shall be established which shall remain in effect for at least 3 years for all water, sewer, waste disposal, and similar projects carried out by the State of Alaska that are funded under section 221 of the Federal Water Pollution Control

Grants.
Alaska.
Deadline.

Act (33 U.S.C. 1301) or the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) which shall allocate not less than 25 percent of the funds provided for projects in regional hub communities; \$3,500,000 shall be for remediation of above ground leaking fuel tanks pursuant to Public Law 106-554; \$325,000,000 shall be for making grants for the construction of drinking water, wastewater and storm water infrastructure and for water quality protection in accordance with the terms and conditions specified for such grants in the joint explanatory statement of the managers accompanying this Act, and, for purposes of these grants, each grantee shall contribute not less than 45 percent of the cost of the project unless the grantee is approved for a waiver by the Agency; \$6,600,000 for grants for construction of alternative decentralized wastewater facilities under the National Decentralized Wastewater Demonstration program, in accordance with the terms and conditions specified in the joint explanatory statement of the managers accompanying this Act; \$93,500,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including grants, interagency agreements, and associated program support costs; and \$1,175,200,000 shall be for grants, including associated program support costs, to States, federally recognized tribes, interstate agencies, tribal consortia, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement and related activities, including activities pursuant to the provisions set forth under this heading in Public Law 104-134, and for making grants under section 103 of the Clean Air Act for particulate matter monitoring and data collection activities of which and subject to terms and conditions specified by the Administrator, of which \$50,000,000 shall be for carrying out section 128 of CERCLA, as amended, and \$20,000,000 shall be for Environmental Information Exchange Network grants, including associated program support costs: *Provided further*, That for fiscal year 2004, State authority under section 302(a) of Public Law 104-182 shall remain in effect: *Provided further*, That notwithstanding section 603(d)(7) of the Act, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in fiscal year 2004 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration: *Provided further*, That for fiscal year 2004, and notwithstanding section 518(f) of the Act, the Administrator is authorized to use the amounts appropriated for any fiscal year under section 319 of that Act to make grants to Indian tribes pursuant to sections 319(h) and 518(e) of that Act: *Provided further*, That for fiscal year 2004, notwithstanding the limitation on amounts in section 518(c) of the Act, up to a total of 1½ percent of the funds appropriated for State Revolving Funds under title VI of that Act may be reserved by the Administrator for grants under section 518(c) of such Act: *Provided further*, That no funds provided by this legislation to address the water, wastewater and other critical infrastructure needs of the colonias in the United States along the United States-Mexico border shall be made available to a county

42 USC 300j-12
note.

33 USC 1377
note.

or municipal government unless that government has established an enforceable local ordinance, or other zoning rule, which prevents in that jurisdiction the development or construction of any additional colonia areas, or the development within an existing colonia the construction of any new home, business, or other structure which lacks water, wastewater, or other necessary infrastructure: *Provided further*, That the referenced statement of the managers under this heading in Public Law 106-377 is deemed to be amended by striking “wastewater” in reference to item number 219 and inserting “water”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended by striking “wastewater” in reference to item number 409 and inserting “water”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7, item number 383, is deemed to be amended by adding after the word “overflow”, “and water infrastructure”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7, item number 255, is deemed to be amended by inserting “water and” after the words “Mississippi for”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7, item number 256, is deemed to be amended by adding after the word “for”, “water and”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 105-276, in reference to item number 19, is deemed to be amended by striking “Wolfe County”, and inserting “the City of Campton”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7, in reference to item number 364, is deemed to be amended by striking everything after “improvements”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7, in reference to item number 191, is deemed to be amended by striking “wastewater”, and inserting “water”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7, in reference to item number 223, is deemed to be amended by adding, “and for other projects within Indian Head after the needs of Woodland Village are met.”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 106-377 is deemed to be amended in reference to item number 234, as amended, by striking everything after “234.” and inserting “\$1,500,000 for the Town of Delbarton Wastewater Collection and Treatment Replacement/Upgrade Project.”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended by striking “wastewater” in reference to item number 469 and inserting “water”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended by striking “Fayette, Mississippi for the Jefferson County” in reference to item number 263 and inserting “Jefferson County, Mississippi”: *Provided further*, That notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency shall certify grant amendments for grant number C34-0714-03.

Certification.

ADMINISTRATIVE PROVISIONS

For fiscal year 2004, notwithstanding 31 U.S.C. 6303(1) and 6305(1), the Administrator of the Environmental Protection Agency, in carrying out the Agency’s function to implement directly Federal

environmental programs required or authorized by law in the absence of an acceptable tribal program, may award cooperative agreements to federally-recognized Indian Tribes or Intertribal consortia, if authorized by their member Tribes, to assist the Administrator in implementing Federal environmental programs for Indian Tribes required or authorized by law, except that no such cooperative agreements may be awarded from funds designated for State financial assistance agreements.

The Administrator of the Environmental Protection Agency is authorized to collect and obligate pesticide registration service fees in accordance with section 33 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by subsection (f)(2) of the Pesticide Registration Improvement Act of 2003).

Notwithstanding CERCLA 104(k)(4)(B)(i)(IV), appropriated funds for fiscal year 2004 may be used to award grants or loans under section 104(k) of CERCLA to eligible entities that satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was prior to the date of enactment of the Small Business Liability Relief and Brownfield Revitalization Act of 2001.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, not to exceed \$2,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, \$7,027,000.

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses to continue functions assigned to the Council on Environmental Quality and Office of Environmental Quality pursuant to the National Environmental Policy Act of 1969, the Environmental Quality Improvement Act of 1970, and Reorganization Plan No. 1 of 1977, and not to exceed \$750 for official reception and representation expenses, \$3,238,000: *Provided*, That notwithstanding section 202 of the National Environmental Policy Act of 1970, the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.

42 USC 4342
note.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$30,125,000, to be derived from the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund.

GENERAL SERVICES ADMINISTRATION

FEDERAL CITIZEN INFORMATION CENTER FUND

For necessary expenses of the Federal Citizen Information Center, including services authorized by 5 U.S.C. 3109, \$14,000,000, to be deposited into the Federal Citizen Information Center Fund: *Provided*, That the appropriations, revenues, and collections deposited into the Fund shall be available for necessary expenses of Federal Citizen Information Center activities in the aggregate amount not to exceed \$21,000,000. Appropriations, revenues, and collections accruing to this Fund during fiscal year 2004 in excess of \$21,000,000 shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

OPERATING EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) of the Interagency Council on the Homeless in carrying out the functions pursuant to title II of the McKinney-Vento Homeless Assistance Act, as amended, \$1,500,000.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SPACE FLIGHT CAPABILITIES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of space flight capabilities research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed \$35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, \$7,512,100,000, to remain available until September 30, 2005, of which \$15,000,000 of amounts for the Space Shuttle Life Extension Program shall be for the development and independent assessment of concepts to increase Space Shuttle crew survivability for crew sizes of 4 to 7 astronauts, and of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science,

engineering, fabricating and testing services; and other administrative services may be transferred to “Science, aeronautics and exploration” in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106-377.

SCIENCE, AERONAUTICS AND EXPLORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics and exploration research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed \$35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, \$7,929,900,000, to remain available until September 30, 2005, of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science, engineering, fabricating and testing services; and other administrative services may be transferred to “Space flight capabilities” in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106-377.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, \$27,300,000.

ADMINISTRATIVE PROVISIONS

Notwithstanding the limitation on the availability of funds appropriated for “Science, aeronautics and exploration”, or “Space flight capabilities” by this appropriations Act, when any activity has been initiated by the incurrence of obligations for construction of facilities or environmental compliance and restoration activities as authorized by law, such amount available for such activity shall remain available until expended. This provision does not apply to the amounts appropriated for institutional minor revitalization and construction of facilities, and institutional facility planning and design.

Notwithstanding the limitation on the availability of funds appropriated for “Science, aeronautics and exploration”, or “Space flight capabilities” by this appropriations Act, the amounts appropriated for construction of facilities shall remain available until September 30, 2006.

From amounts made available in this Act for these activities, the Administration may transfer amounts between aeronautics of the “Science, aeronautics and exploration” account and crosscutting technologies of the “Space flight capabilities” account.

Funds for announced prizes otherwise authorized shall remain available, without fiscal year limitation, until the prize is claimed or the offer is withdrawn.

The unexpired balances of prior appropriations to NASA for activities for which funds are provided under this Act may be transferred to the new account established for the appropriation that provides such activity under this Act. Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions.

NATIONAL CREDIT UNION ADMINISTRATION

CENTRAL LIQUIDITY FACILITY

During fiscal year 2004, gross obligations of the Central Liquidity Facility for the principal amount of new direct loans to member credit unions, as authorized by 12 U.S.C. 1795 et seq., shall not exceed \$1,500,000,000: *Provided*, That administrative expenses of the Central Liquidity Facility in fiscal year 2004 shall not exceed \$310,000.

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND

For the Community Development Revolving Loan Fund program as authorized by 42 U.S.C. 9812, 9822 and 9910, \$1,200,000 shall be available: *Provided*, That of this amount \$200,000, together with amounts of principal and interest on loans repaid, is available until expended for loans to community development credit unions, and \$1,000,000 is available until September 30, 2004 for technical assistance to low-income and community development credit unions.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of aircraft; and authorized travel; \$4,276,600,000, of which not to exceed \$345,000,000 shall remain available until expended for Polar research and operations support, and for reimbursement to other Federal agencies for operational and science support and logistical and other related activities for the United States Antarctic program; the balance to remain available until September 30, 2005: *Provided*, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science Foundation supported research facilities may be credited to this appropriation: *Provided further*, That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in

the authorizing Act for those program activities or their subactivities shall be reduced proportionally: *Provided further*, That \$90,000,000 of the funds available under this heading shall be made available for a comprehensive research initiative on plant genomes for economically significant crops.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets pursuant to the National Science Foundation Act of 1950, as amended, including authorized travel, \$155,900,000, to remain available until expended.

EDUCATION AND HUMAN RESOURCES

For necessary expenses in carrying out science and engineering education and human resources programs and activities pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), including services as authorized by 5 U.S.C. 3109, authorized travel, and rental of conference rooms in the District of Columbia, \$944,550,000, to remain available until September 30, 2005: *Provided*, That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally.

SALARIES AND EXPENSES

For salaries and expenses necessary in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875); services authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed \$9,000 for official reception and representation expenses; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; rental of conference rooms in the District of Columbia; and reimbursement of the General Services Administration for security guard services; \$220,000,000: *Provided*, That contracts may be entered into under “Salaries and expenses” in fiscal year 2004 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year.

OFFICE OF THE NATIONAL SCIENCE BOARD

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) involved in carrying out section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) and Public Law 86–209 (42 U.S.C. 1880 et seq.), \$3,900,000: *Provided*, That not more than \$9,000 shall be available for official reception and representation expenses.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General as authorized by the Inspector General Act of 1978, as amended, \$10,000,000, to remain available until September 30, 2005.

NEIGHBORHOOD REINVESTMENT CORPORATION

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107), \$115,000,000, of which \$5,000,000 shall be for a multi-family rental housing program.

ADMINISTRATIVE PROVISION

Section 605(a) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8104) is amended by—

(1) striking out “compensation” and inserting “salary”; and striking out “highest rate provided for GS–18 of the General Schedule under section 5332 of title 5 United States Code”; and inserting “rate for level IV of the Executive Schedule”; and

(2) inserting after the end the following sentence: “The Corporation shall also apply the provisions of section 5307(a)(1), (b)(1) and (b)(2) of title 5, United States Code, governing limitations on certain pay as if its employees were Federal employees receiving payments under title 5.”.

SELECTIVE SERVICE SYSTEM

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by 5 U.S.C. 4101–4118 for civilian employees; purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed \$750 for official reception and representation expenses; \$26,308,000: *Provided*, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever the President deems such action to be necessary in the interest of national defense: *Provided further*, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States.

TITLE IV—GENERAL PROVISIONS

SEC. 401. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 402. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made; or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Officer or is specifically exempt by law from such audit.

SEC. 403. None of the funds provided in this Act to any department or agency may be obligated or expended for: (1) the transportation of any officer or employee of such department or agency between the domicile and the place of employment of the officer or employee, with the exception of an officer or employee authorized such transportation under 31 U.S.C. 1344 or 5 U.S.C. 7905; or (2) to provide a cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

SEC. 404. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

SEC. 405. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

SEC. 406. None of the funds provided in this Act may be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

SEC. 407. Except as otherwise provided under existing law, or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are: (1) a matter of public record and available for public inspection; and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

SEC. 408. None of the funds appropriated in this Act may be used to implement any cap on reimbursements to grantees for indirect costs, except as published in Office of Management and Budget Circular A-21.

SEC. 409. Such sums as may be necessary for fiscal year 2004 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

Contracts.
Public
information.
Records.

SEC. 410. (a) It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

SEC. 411. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

SEC. 412. Except in the case of entities that are funded solely with Federal funds or any natural persons that are funded under this Act, none of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties to lobby or litigate in respect to adjudicatory proceedings funded in this Act. A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

Lobbying.

Certification.

SEC. 413. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

SEC. 414. All departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of “E-Commerce” technologies and procedures in the conduct of their business practices and public service activities.

SEC. 415. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 416. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

SEC. 417. Section 312 of the National Aeronautics and Space Administration Act of 1958, as amended, is further amended—

42 USC 2459f.

(1) by striking the second Sec. “312” and inserting “313”;

(2) by inserting the title, “Full Cost Appropriations Account Structure”, before Sec. 313;

(3) in subsection (a)—

(A) by striking “Human space flight” and inserting “Space flight capabilities”;

(B) by striking “technology” and inserting “exploration”; and

(C) by striking “2002” and inserting “2004”; and

(4) by striking subsection (c), and inserting the following new subsection:

“(c) The unexpired balances of prior appropriations to the Administration for activities authorized under this Act may be transferred to the new account established for such activity in subsection (a). Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions.”.

SEC. 418. None of the funds made available in this Act may be used to implement any policy prohibiting the Directors of the Veterans Integrated Service Networks from conducting outreach or marketing to enroll new veterans within their respective Networks.

SEC. 419. None of the funds provided in this Act may be expended to apply, in a numerical estimate of the benefits of an agency action prepared pursuant to Executive Order No. 12866 or section 312 of the Clean Air Act (42 U.S.C. 7612), monetary values for adult premature mortality that differ based on the age of the adult.

SEC. 420. It is the sense of Congress that no veteran should wait more than 30 days for an initial doctor's appointment.

SEC. 421. It is the sense of the Congress that human dosing studies of pesticides raises ethical and health questions.

SEC. 422. None of the funds made available to NASA in this Act may be used for voluntary separation incentive payments as provided for in subchapter II of chapter 35 of title 5, United States Code, unless the Administrator of NASA has first certified to Congress that such payments would not result in the loss of skills related to the safety of the Space Shuttle or the International Space Station or to the conduct of independent safety oversight in the National Aeronautics and Space Administration.

SEC. 423. Section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)) is amended—

(1) in paragraph (3)(A), by striking “shall not exceed 2 percent” and inserting “shall not, subject to paragraph (6), exceed 3 percent”;

(2) in paragraph (5), by striking “not to exceed 1 percent” and inserting “subject to paragraph (6), not to exceed 3 percent”;

(3) by redesignating the second paragraph (5) and paragraph (6) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

“(6) Of the amounts received under paragraph (1), the State may deduct not more than an aggregate total of 3 percent of such amounts for—

“(A) administrative expenses under paragraph (3)(A);

and

“(B) technical assistance under paragraph (5).”.

SEC. 424. NATIONAL ACADEMY OF SCIENCES STUDY. The matter under the heading “ADMINISTRATIVE PROVISIONS” under the heading “ENVIRONMENTAL PROTECTION AGENCY” in title III of division K of the Consolidated Appropriations Resolution, 2003 (117 Stat. 513), is amended—

(1) in the first sentence of the fifth undesignated paragraph (beginning “As soon as”), by inserting before the period at the end the following: “, and the impact of the final rule entitled ‘Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Equipment Replacement

Provision of the Routine Maintenance, Repair and Replacement Exclusion’, amending parts 51 and 52 of title 40, Code of Federal Regulations, and published in electronic docket OAR–2002–0068 on August 27, 2003”; and

(2) in the sixth undesignated paragraph (beginning “The National Academy of Sciences”), by striking “March 3, 2004” and inserting “January 1, 2005”.

SEC. 425. DESIGNATIONS OF AREAS FOR PM_{2.5} AND SUBMISSION OF IMPLEMENTATION PLANS FOR REGIONAL HAZE. (a) IN GENERAL.—Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) is amended by adding at the end the following:

“(6) DESIGNATIONS.—

“(A) SUBMISSION.—Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 PM_{2.5} national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

“(B) PROMULGATION.—Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 PM_{2.5} national ambient air quality standards.

“(7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 169B(e)(1) (referred to in this paragraph as ‘regional haze requirements’).

“(B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.”.

(b) RELATIONSHIP TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act, shall remain in effect.

SEC. 426. (a) TREATMENT OF PIONEER HOMES IN ALASKA AS STATE HOME FOR VETERANS.—The Secretary of Veterans Affairs may—

Deadlines.
Inter-
governmental
relations.

42 USC 7407
note.

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary may treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term “Pioneer Homes” means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

- (1) Anchorage, Alaska.
- (2) Fairbanks, Alaska.
- (3) Juneau, Alaska.
- (4) Ketchikan, Alaska.
- (5) Palmer, Alaska.
- (6) Sitka, Alaska.

(d) LIMITATION.—The number of beds occupied by veterans collectively in the six Pioneer Homes listed under subsection (c) for which per diem would be paid under this authority shall not exceed the number of veterans in State beds that otherwise would be permitted in Alaska under the Department of Veterans Affairs State home regulations governing the number of beds per veteran population.

Space Shuttle
Columbia.

SEC. 427. Of the amounts available to the National Aeronautics and Space Administration, such sums as maybe necessary for the benefit of the families of the astronauts who died on board the Space Shuttle Columbia on February 1, 2003, are available under the terms of section 203(c)(13) of the National Aeronautics and Space Act of 1958, as amended, independent of the limitations established therein.

California.

SEC. 428. REGULATION OF SMALL ENGINES. (a) In considering any request from California to authorize the State to adopt or enforce standards of other requirements relating to the control of emissions from new non-road spark-ignition engines smaller than 50 horsepower, the Administrator shall give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

Deadlines.
42 USC 7547
note.

(b) Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations under the Clean Air Act that shall contain standards to reduce emissions from new nonroad spark-ignition engines smaller than 50 horsepower. Not later than December 31, 2005, the Administrator shall publish in the Federal Register final regulations containing such standards.

Federal Register,
publication.

(c) No State or any political subdivision thereof may adopt or attempt to enforce any standard or other requirement applicable to spark ignition engines smaller than 50 horsepower.

(d) EXCEPTION FOR CALIFORNIA.—The prohibition in subsection (c) does not apply to or restrict in any way the authority granted to California under section 209(e) of the Clean Air Act (42 U.S.C. 7543(e)).

(e) EXCEPTION FOR OTHER STATES.—The prohibition in subsection (c) does not apply to or restrict the authority of any State

under section 209(e)(2)(B) of the Clean Air Act (42 U.S.C. 7543(e)(2)(B)) to enforce standards or other requirements that were adopted by that State before September 1, 2003.

TITLE V—PESTICIDE PRODUCTS AND FEES

SEC. 501. PESTICIDE REGISTRATION.

(a) SHORT TITLE.—This section may be cited as the “Pesticide Registration Improvement Act of 2003”.

(b) REGISTRATION REQUIREMENTS FOR ANTIMICROBIAL PESTICIDES.—Section 3(h) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(h)) is amended—

(1) in paragraph (2)(F), by striking “90 to 180 days” and inserting “120 days”; and

(2) in paragraph (3)—

(A) in subparagraph (D)(vi), by striking “240 days” and inserting “120 days”; and

(B) in subparagraph (F), by adding at the end the following:

“(iv) LIMITATION.—Notwithstanding clause (ii), the failure of the Administrator to notify an applicant for an amendment to a registration for an antimicrobial pesticide shall not be judicially reviewable in a Federal or State court if the amendment requires scientific review of data within—

“(I) the time period specified in subparagraph (D)(vi), in the absence of a final regulation under subparagraph (B); or

“(II) the time period specified in paragraph (2)(F), if adopted in a final regulation under subparagraph (B).”.

(c) MAINTENANCE FEES.—

(1) AMOUNTS FOR REGISTRANTS.—Section 4(i)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)) is amended—

(A) in subparagraph (A)—

(i) by striking “(A) Subject” and inserting the following:

“(A) IN GENERAL.—Subject”; and

(ii) by striking “of—” and all that follows through “additional registration” and inserting “for each registration”;

(B) in subparagraph (D)—

(i) by striking “(D) The” and inserting the following:

“(D) MAXIMUM AMOUNT OF FEES FOR REGISTRANTS.—

The”;

(ii) in clause (i), by striking “shall be \$55,000; and” and inserting “shall be—

“(I) for fiscal year 2004, \$84,000;

“(II) for each of fiscal years 2005 and 2006, \$87,000;

“(III) for fiscal year 2007, \$68,000; and

“(IV) for fiscal year 2008, \$55,000; and”; and

(iii) in clause (ii), by striking “shall be \$95,000.” and inserting “shall be—

“(I) for fiscal year 2004, \$145,000;

Pesticide
Registration
Improvement Act
of 2003.
7 USC 136 note.

“(II) for each of fiscal years 2005 and 2006, \$151,000;

“(III) for fiscal year 2007, \$117,000; and

“(IV) for fiscal year 2008, \$95,000.”; and

(C) in subparagraph (E)—

(i) by striking “(E)(i) For” and inserting the following:

“(E) MAXIMUM AMOUNT OF FEES FOR SMALL BUSINESSES.—

“(i) IN GENERAL.—For”;

(ii) by indenting the margins of subclauses (I) and (II) of clause (i) appropriately; and

(iii) in clause (i)—

(I) subclause (I), by striking “shall be \$38,500; and” and inserting “shall be—

“(aa) for fiscal year 2004, \$59,000;

“(bb) for each of fiscal years 2005 and 2006, \$61,000;

“(cc) for fiscal year 2007, \$48,000; and

“(dd) for fiscal year 2008, \$38,500; and”;

and

(II) in subclause (II), by striking “shall be \$66,500.” and inserting “shall be—

“(aa) for fiscal year 2004, \$102,000;

“(bb) for each of fiscal years 2005 and 2006, \$106,000;

“(cc) for fiscal year 2007, \$82,000; and

“(dd) for fiscal year 2008, \$66,500.”.

(2) TOTAL AMOUNT OF FEES.—Section 4(i)(5)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(a)–1(i)(5)(C)) is amended—

(A) by striking “(C)(i) The” and inserting the following: “(C) TOTAL AMOUNT OF FEES.—The”; and

(B) by striking “aggregate amount” and all that follows through clause (ii) and inserting “aggregate amount of—

“(i) for fiscal year 2004, \$26,000,000;

“(ii) for fiscal year 2005, \$27,000,000;

“(iii) for fiscal year 2006, \$27,000,000;

“(iv) for fiscal year 2007, \$21,000,000; and

“(v) for fiscal year 2008, \$15,000,000.”.

(3) DEFINITION OF SMALL BUSINESS.—Section 4(i)(5)(E)(ii) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)(E)(ii)) is amended—

(A) by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively, and indenting the margins appropriately;

(B) by striking “(ii) For purposes of” and inserting the following:

“(ii) DEFINITION OF SMALL BUSINESS.—

“(I) IN GENERAL.—In”;

(C) in item (aa) (as so redesignated), by striking “150” and inserting “500”;

(D) in item (bb) (as so redesignated), by striking “gross revenue from chemicals that did not exceed \$40,000,000.” and inserting “global gross revenue from pesticides that did not exceed \$60,000,000.”; and

(E) by adding at the end the following:

“(II) AFFILIATES.—

“(aa) IN GENERAL.—In the case of a business entity with 1 or more affiliates, the gross revenue limit under subclause (I)(bb) shall apply to the gross revenue for the entity and all of the affiliates of the entity, including parents and subsidiaries, if applicable.

“(bb) AFFILIATED PERSONS.—For the purpose of item (aa), persons are affiliates of each other if, directly or indirectly, either person controls or has the power to control the other person, or a third person controls or has the power to control both persons.

“(cc) INDICIA OF CONTROL.—For the purpose of item (aa), indicia of control include interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.”.

(4) EXTENSION OF AUTHORITY FOR COLLECTING MAINTENANCE FEES.—Section 4(i)(5)(H) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)(H)) is amended by striking “2003” and inserting “2008”.

(5) REREGISTRATION AND OTHER ACTIVITIES.—Section 4(g)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136a–1(g)(2)) is amended—

(A) by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—The Administrator shall make a determination as to eligibility for reregistration—

“(i) for all active ingredients subject to reregistration under this section for which tolerances or exemptions from tolerances are required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), not later than the last date for tolerance reassessment established under section 408(q)(1)(C) of that Act (21 U.S.C. 346a(q)(1)(C)); and

“(ii) for all other active ingredients subject to reregistration under this section, not later than October 3, 2008.”;

(B) in subparagraph (B)—

(i) by striking “(B) Before” and inserting the following:

“(B) PRODUCT-SPECIFIC DATA.—

“(i) IN GENERAL.—Before”;

(ii) by striking “The Administrator” and inserting the following:

“(ii) TIMING.—

“(I) IN GENERAL.—Subject to subclause (II), the Administrator”; and

(iii) by adding at the end the following:

“(II) EXTRAORDINARY CIRCUMSTANCES.—In the case of extraordinary circumstances, the Administrator may provide such a longer period, of not more than 2 additional years, for submission of data to the Administrator under this subparagraph.”; and

(C) in subparagraph (D)—

(i) by striking “(D) If” and inserting the following:

“(D) DETERMINATION TO NOT REREGISTER.—

“(i) IN GENERAL.—If”; and

(ii) by adding at the end the following:

“(ii) TIMING FOR REGULATORY ACTION.—Regulatory action under clause (i) shall be completed as expeditiously as possible.”.

(d) OTHER FEES.—

(1) IN GENERAL.—Section 4(i)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(6)) is amended—

(A) by striking “During” and inserting “Except as provided in section 33, during”; and

(B) by striking “2003” and inserting “2010”.

(2) TOLERANCE FEES.—Notwithstanding section 408(m)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(m)(1)), during the period beginning on October 1, 2003, and ending on September 30, 2008, the Administrator of the Environmental Protection Agency shall not collect any tolerance fees under that section.

(e) EXPEDITED PROCESSING OF SIMILAR APPLICATIONS.—Section 4(k)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(k)(3)) is amended—

(1) in the paragraph heading, by striking “EXPEDITED” and inserting “REVIEW OF INERT INGREDIENTS; EXPEDITED”; and

(2) in subparagraph (A)—

(A) by striking “1997” and all that follows through “of the maintenance fees” and inserting “2004 through 2006, approximately \$3,300,000, and for each of fiscal years 2007 and 2008, between $\frac{1}{8}$ and $\frac{1}{7}$, of the maintenance fees”;

(B) by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II) and (III), respectively, and indenting appropriately; and

(C) by striking “resources to assure the expedited processing and review of any application that” and inserting “resources—

“(i) to review and evaluate new inert ingredients; and

“(ii) to ensure the expedited processing and review of any application that—”.

(f) PESTICIDE REGISTRATION SERVICE FEES.—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a et seq.) is amended—

(1) by redesignating sections 33 and 34 (7 U.S.C. 136x, 136y) as sections 34 and 35, respectively; and

(2) by inserting after section 32 (7 U.S.C. 136w–7) the following:

“SEC. 33. PESTICIDE REGISTRATION SERVICE FEES.

“(a) DEFINITION OF COSTS.—In this section, the term ‘costs’, when used with respect to review and decisionmaking pertaining to an application for which registration service fees are paid under this section, means—

“(1) costs to the extent that—

Effective date.
Termination
date.
21 USC 346a
note.

7 USC 136w–8.

“(A) officers and employees provide direct support for the review and decisionmaking for covered pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses;

“(B) persons and organizations under contract with the Administrator engage in the review of the applications, and corresponding risk and benefits information and assessments; and

“(C) advisory committees and other accredited persons or organizations, on the request of the Administrator, engage in the peer review of risk or benefits information associated with covered pesticide applications;

“(2) costs of management of information, and the acquisition, maintenance, and repair of computer and telecommunication resources (including software), used to support review of pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses; and

“(3) costs of collecting registration service fees under subsections (b) and (c) and reporting, auditing, and accounting under this section.

“(b) FEES.—

“(1) IN GENERAL.—Effective beginning on the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall assess and collect covered pesticide registration service fees in accordance with this section.

Effective date.

“(2) COVERED PESTICIDE REGISTRATION APPLICATIONS.—

“(A) IN GENERAL.—An application for the registration of a pesticide covered by this Act that is received by the Administrator on or after the effective date of the Pesticide Registration Improvement Act of 2003 shall be subject to a registration service fee under this section.

“(B) EXISTING APPLICATIONS.—

“(i) IN GENERAL.—Subject to clause (ii), an application for the registration of a pesticide that was submitted to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003 and is pending on that effective date shall be subject to a service fee under this section if the application is for the registration of a new active ingredient that is not listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

“(ii) TOLERANCE OR EXEMPTION FEES.—The amount of any fee otherwise payable for an application described in clause (i) under this section shall be reduced by the amount of any fees paid to support the related petition for a pesticide tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

“(C) DOCUMENTATION.—An application subject to a registration service fee under this section shall be submitted with documentation certifying—

“(i) payment of the registration service fee; or

“(ii) a request for a waiver from or reduction of the registration service fee.

“(3) SCHEDULE OF COVERED APPLICATIONS AND REGISTRATION SERVICE FEES.—

Deadline.
Federal Register,
publication.

“(A) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of covered pesticide registration applications and corresponding registration service fees.

“(B) REPORT.—Subject to paragraph (6), the schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003.

“(4) PENDING PESTICIDE REGISTRATION APPLICATIONS.—

“(A) IN GENERAL.—An applicant that submitted a registration application to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003, but that is not required to pay a registration service fee under paragraph (2)(B), may, on a voluntary basis, pay a registration service fee in accordance with paragraph (2)(B).

“(B) VOLUNTARY FEE.—The Administrator may not compel payment of a registration service fee for an application described in subparagraph (A).

“(C) DOCUMENTATION.—An application for which a voluntary registration service fee is paid under this paragraph shall be submitted with documentation certifying—

“(i) payment of the registration service fee; or

“(ii) a request for a waiver from or reduction of the registration service fee.

“(5) RESUBMISSION OF PESTICIDE REGISTRATION APPLICATIONS.—If a pesticide registration application is submitted by a person that paid the fee for the application under paragraph (2), is determined by the Administrator to be complete, and is not approved or is withdrawn (without a waiver or refund), the submission of the same pesticide registration application by the same person (or a licensee, assignee, or successor of the person) shall not be subject to a fee under paragraph (2).

“(6) FEE ADJUSTMENT.—Effective for a covered pesticide registration application received on or after October 1, 2005, the Administrator shall—

“(A) increase by 5 percent the service fee payable for the application under paragraph (3); and

“(B) publish in the Federal Register the revised registration service fee schedule.

“(7) WAIVERS AND REDUCTIONS.—

“(A) IN GENERAL.—An applicant for a covered pesticide registration may request the Administrator to waive or reduce the amount of a registration service fee payable under this section under the circumstances described in subparagraphs (D) through (G).

“(B) DOCUMENTATION.—

“(i) IN GENERAL.—A request for a waiver from or reduction of the registration service fee shall be accompanied by appropriate documentation demonstrating the basis for the waiver or reduction.

“(ii) CERTIFICATION.—The applicant shall provide to the Administrator a written certification, signed by a responsible officer, that the documentation submitted to support the waiver or reduction request is accurate.

Federal Register,
publication.

“(iii) INACCURATE DOCUMENTATION.—An application shall be subject to the applicable registration service fee payable under paragraph (3) if, at any time, the Administrator determines that—

“(I) the documentation supporting the waiver or reduction request is not accurate; or

“(II) based on the documentation or any other information, the waiver or reduction should not have been granted or should not be granted.

“(C) DETERMINATION TO GRANT OR DENY REQUEST.—

Deadline.

As soon as practicable, but not later than 60 days, after the date on which the Administrator receives a request for a waiver or reduction of a registration service fee under this paragraph, the Administrator shall—

“(i) determine whether to grant or deny the request; and

“(ii) notify the applicant of the determination.

Notification.

“(D) MINOR USES.—

“(i) IN GENERAL.—The Administrator may waive or reduce a registration service fee for an application for minor uses for a pesticide.

“(ii) SUPPORTING DOCUMENTATION.—An applicant requesting a waiver under this subparagraph shall provide supporting documentation that demonstrates, to the satisfaction of the Administrator, that anticipated revenues from the uses that are the subject of the application would be insufficient to justify imposition of the full application fee.

“(E) IR–4 WAIVER.—The Administrator shall waive the registration service fee for an application if the Administrator determines that—

“(i) the application is solely associated with a tolerance petition submitted in connection with the Inter-Regional Project Number 4 (IR–4) as described in section 2 of Public Law 89–106 (7 U.S.C. 450i(e)); and

“(ii) the waiver is in the public interest.

“(F) SMALL BUSINESSES.—

“(i) IN GENERAL.—The Administrator shall waive 50 percent of the registration service fees payable by an entity for a covered pesticide registration application under this section if the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application.

“(ii) WAIVER OF FEES.—The Administrator shall waive all of the registration service fees payable by an entity under this section if the entity—

“(I) is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

“(II) has average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed \$10,000,000, at the time of application.

“(iii) FORMATION FOR WAIVER.—The Administrator shall not grant a waiver under this subparagraph if the Administrator determines that the entity submitting the application has been formed or manipulated primarily for the purpose of qualifying for the waiver.

“(iv) DOCUMENTATION.—An entity requesting a waiver under this subparagraph shall provide to the Administrator—

“(I) documentation demonstrating that the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

“(II) if the entity is requesting a waiver of all registration service fees payable under this section, documentation demonstrating that the entity has an average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed \$10,000,000, at the time of application.

“(G) FEDERAL AND STATE AGENCY EXEMPTIONS.—An agency of the Federal Government or a State government shall be exempt from covered registration service fees under this section.

“(8) REFUNDS.—

“(A) EARLY WITHDRAWALS.—If, during the first 60 days after the beginning of the applicable decision time review period under subsection (f)(3), a covered pesticide registration application is withdrawn by the applicant, the Administrator shall refund all but 10 percent of the total registration service fee payable under paragraph (3) for the application.

“(B) WITHDRAWALS AFTER THE FIRST 60 DAYS OF DECISION REVIEW TIME PERIOD.—

“(i) IN GENERAL.—If a covered pesticide registration application is withdrawn after the first 60 days of the applicable decision time review period, the Administrator shall determine what portion, if any, of the total registration service fee payable under paragraph (3) for the application may be refunded based on the proportion of the work completed at the time of withdrawal.

“(ii) TIMING.—The Administrator shall—

“(I) make the determination described in clause (i) not later than 90 days after the date the application is withdrawn; and

“(II) provide any refund as soon as practicable after the determination.

“(C) DISCRETIONARY REFUNDS.—

“(i) IN GENERAL.—In the case of a pesticide registration application that has been filed with the Administrator and has not been withdrawn by the applicant, but for which the Administrator has not yet made a final determination, the Administrator may refund a portion of a covered registration service fee if the Administrator determines that the refund is justified.

“(ii) BASIS.—The Administrator may provide a refund for an application under this subparagraph—

“(I) on the basis that, in reviewing the application, the Administrator has considered data submitted in support of another pesticide registration application; or

Deadline.

“(II) on the basis that the Administrator completed portions of the review of the application before the effective date of this section.

“(D) CREDITED FEES.—In determining whether to grant a refund under this paragraph, the Administrator shall take into account any portion of the registration service fees credited under paragraph (2) or (4).

“(c) PESTICIDE REGISTRATION FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury of the United States a Pesticide Registration Fund to be used in carrying out this section (referred to in this section as the ‘Fund’), consisting of—

“(A) such amounts as are deposited in the Fund under paragraph (2);

“(B) any interest earned on investment of amounts in the Fund under paragraph (4); and

“(C) any proceeds from the sale or redemption of investments held in the Fund.

“(2) DEPOSITS IN FUND.—Subject to paragraph (4), the Administrator shall deposit fees collected under this section in the Fund.

“(3) EXPENDITURES FROM FUND.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C) and paragraph (4), the Administrator may make expenditures from the Fund—

“(i) to cover the costs associated with the review and decisionmaking pertaining to all applications for which registration service fees have been paid under this section; and

“(ii) to otherwise carry out this section.

“(B) WORKER PROTECTION.—For each of fiscal years 2004 through 2008, the Administrator shall use approximately $\frac{1}{17}$ of the amount in the Fund (but not more than \$1,000,000, and not less than \$750,000, for any fiscal year) to enhance current scientific and regulatory activities related to worker protection.

“(C) NEW INERT INGREDIENTS.—For each of fiscal years 2004 and 2005, the Administrator shall use approximately $\frac{1}{34}$ of the amount in the Fund (but not to exceed \$500,000 for any fiscal year) for the review and evaluation of new inert ingredients.

“(4) COLLECTIONS AND APPROPRIATIONS ACTS.—The fees authorized by this section and amounts deposited in the Fund—

“(A) shall be collected and made available for obligation only to the extent provided in advance in appropriations Acts; and

“(B) shall be available without fiscal year limitation.

“(5) UNUSED FUNDS.—Amounts in the Fund not currently needed to carry out this section shall be—

“(A) maintained readily available or on deposit;

“(B) invested in obligations of the United States or guaranteed by the United States; or

“(C) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

“(d) ASSESSMENT OF FEES.—

“(1) DEFINITION OF COVERED FUNCTIONS.—In this subsection, the term ‘covered functions’ means functions of the Office of Pesticide Programs of the Environmental Protection Agency, as identified in key programs and projects of the final operating plan for the Environmental Protection Agency submitted as part of the budget process for fiscal year 2002, regardless of any subsequent transfer of 1 or more of the functions to another office or agency or the subsequent transfer of a new function to the Office of Pesticide Programs.

“(2) MINIMUM AMOUNT OF APPROPRIATIONS.—For fiscal years 2004, 2005, and 2006 only, registration service fees may not be assessed for a fiscal year under this section unless the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

“(3) USE OF FEES.—Registration service fees authorized by this section shall be available, in the aggregate, only to defray increases in the costs associated with the review and decisionmaking for the review of pesticide registration applications and associated tolerances (including increases in the number of full-time equivalent positions in the Environmental Protection Agency engaged in those activities) over the costs for fiscal year 2002, excluding costs paid from fees appropriated for the fiscal year.

“(4) COMPLIANCE.—The requirements of paragraph (2) shall have been considered to have been met for any fiscal year if the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) is not more than 3 percent below the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

“(5) SUBSEQUENT AUTHORITY.—If the Administrator does not assess registration service fees under subsection (b) during any portion of a fiscal year as the result of paragraph (2) and is subsequently permitted to assess the fees under subsection (b) during the fiscal year, the Administrator shall assess and collect the fees, without any modification in rate, at any time during the fiscal year, notwithstanding any provisions of subsection (b) relating to the date fees are to be paid.

“(e) REFORMS TO REDUCE DECISION TIME REVIEW PERIODS.—To the maximum extent practicable consistent with the degrees of risk presented by pesticides and the type of review appropriate to evaluate risks, the Administrator shall identify and evaluate reforms to the pesticide registration process under this Act with the goal of reducing decision review periods in effect on the effective date of the Pesticide Registration Improvement Act of 2003 for pesticide registration actions for covered pesticide registration applications (including reduced risk applications).

“(f) DECISION TIME REVIEW PERIODS.—

“(1) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of decision review periods for covered pesticide registration actions and corresponding registration service fees under this Act.

Deadline.
Federal Register,
publication.

“(2) REPORT.—The schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003.

“(3) APPLICATIONS SUBJECT TO DECISION TIME REVIEW PERIODS.—The decision time review periods specified in paragraph (1) shall apply to—

Applicability.

“(A) covered pesticide registration applications subject to registration service fees under subsection (b)(2);

“(B) covered pesticide registration applications for which an applicant has voluntarily paid registration service fees under subsection (b)(4); and

“(C) covered pesticide registration applications listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

“(4) START OF DECISION TIME REVIEW PERIOD.—

“(A) IN GENERAL.—Except as provided in subparagraphs (C), (D), and (E), in the case of a pesticide registration application accompanied by the registration service fee required under this section, the decision time review period begins 21 days after the date on which the Administrator receives the covered pesticide registration application.

“(B) COMPLETENESS OF APPLICATION.—In conducting an initial screening of an application, the Administrator shall determine—

“(i) whether—

“(I) the applicable registration service fee has been paid; or

“(II) the application contains a waiver or refund request; and

“(ii) whether the application—

“(I) contains all necessary forms, data, draft labeling, and, documentation certifying payment of any registration service fee required under this section; or

“(II) establishes a basis for any requested waiver or reduction.

“(C) APPLICATIONS WITH WAIVER OR REDUCTION REQUESTS.—

“(i) IN GENERAL.—In the case of an application submitted with a request for a waiver or reduction of registration service fees under subsection (b)(7), the decision time review period shall be determined in accordance with this subparagraph.

“(ii) REQUEST GRANTED WITH NO ADDITIONAL FEES REQUIRED.—If the Administrator grants the waiver or reduction request and no additional fee is required, the decision time review period begins on the earlier of—

“(I) the date on which the Administrator grants the request; or

“(II) the date that is 60 days after the date of receipt of the application.

“(iii) REQUEST GRANTED WITH ADDITIONAL FEES REQUIRED.—If the Administrator grants the waiver or reduction request, in whole or in part, but an additional registration service fee is required, the decision time review period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

“(iv) REQUEST DENIED.—If the Administrator denies the waiver or reduction request, the decision time review period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

“(D) PENDING APPLICATIONS.—

“(i) IN GENERAL.—The start of the decision time review period for applications described in clause (ii) shall be the date on which the Administrator receives certification of payment of the applicable registration service fee.

“(ii) APPLICATIONS.—Clause (i) applies to—

“(I) covered pesticide registration applications for which voluntary fees have been paid under subsection (b)(4); and

“(II) covered pesticide registration applications received on or after the effective date of the Pesticide Registration Improvement Act of 2003 but submitted without the applicable registration service fee required under this section due to the inability of the Administrator to assess fees under subsection (d)(1).

Effective date.

“(E) 2003 WORK PLAN.—In the case of a covered pesticide registration application listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency, the decision time review period begins on the date that is 30 days after the effective date of the Pesticide Registration Improvement Act of 2003.

“(5) EXTENSION OF DECISION TIME REVIEW PERIOD.—The Administrator and the applicant may mutually agree in writing to extend a decision time review period under this subsection.

“(g) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Any applicant adversely affected by the failure of the Administrator to make a determination on the application of the applicant for registration of a new active ingredient or new use for which a registration service fee is paid under this section may obtain judicial review of the failure solely under this section.

“(2) SCOPE.—

“(A) IN GENERAL.—In an action brought under this subsection, the only issue on review is whether the Administrator failed to make a determination on the application specified in paragraph (1) by the end of the applicable decision time review period required under subsection (f) for the application.

“(B) OTHER ACTIONS.—No other action authorized or required under this section shall be judicially reviewable by a Federal or State court.

“(3) TIMING.—

“(A) IN GENERAL.—A person may not obtain judicial review of the failure of the Administrator to make a determination on the application specified in paragraph (1) before the expiration of the 2-year period that begins on the date on which the decision time review period for the application ends.

“(B) MEETING WITH ADMINISTRATOR.—To be eligible to seek judicial review under this subsection, a person seeking the review shall first request in writing, at least 120 days before filing the complaint for judicial review, a decision review meeting with the Administrator.

“(4) REMEDIES.—The Administrator may not be required or permitted to refund any portion of a registration service fee paid in response to a complaint that the Administrator has failed to make a determination on the covered pesticide registration application specified in paragraph (1) by the end of the applicable decision review period.

“(h) ACCOUNTING.—The Administrator shall—

“(1) provide an annual accounting of the registration service fees paid to the Administrator and disbursed from the Fund, by providing financial statements in accordance with—

“(A) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

“(B) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act;

“(2) provide an accounting describing expenditures from the Fund authorized under subsection (c); and

“(3) provide an annual accounting describing collections and expenditures authorized under subsection (d).

“(i) AUDITING.—

“(1) FINANCIAL STATEMENTS OF AGENCIES.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an executive agency.

“(2) COMPONENTS.—The annual audit required under sections 3515(b) and 3521 of that title of the financial statements of activities under this section shall include an analysis of—

“(A) the fees collected under subsection (b) and disbursed;

“(B) compliance with subsection (f);

“(C) the amount appropriated to meet the requirements of subsection (d)(1); and

“(D) the reasonableness of the allocation of the overhead allocation of costs associated with the review and decisionmaking pertaining to applications under this section.

“(3) INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall—

“(A) conduct the annual audit required under this subsection; and

“(B) report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.

“(j) PERSONNEL LEVELS.—All full-time equivalent positions supported by fees authorized and collected under this section shall not be counted against the agency-wide personnel level goals of the Environmental Protection Agency.

“(k) REPORTS.—

Deadlines.

“(1) IN GENERAL.—Not later than March 1, 2005, and each March 1 thereafter through March 1, 2009, the Administrator shall publish an annual report describing actions taken under this section.

“(2) CONTENTS.—The report shall include—

“(A) a review of the progress made in carrying out each requirement of subsections (e) and (f), including—

“(i) the number of applications reviewed, including the decision times for each application specified in subsection (f);

“(ii) the number of actions pending in each category of actions described in subsection (f)(3), as well as the number of inert ingredients;

“(iii) to the extent determined appropriate by the Administrator and consistent with the authorities of the Administrator and limitations on delegation of functions by the Administrator, recommendations for—

“(I) expanding the use of self-certification in all appropriate areas of the registration process;

“(II) providing for accreditation of outside reviewers and the use of outside reviewers to conduct the review of major portions of applications; and

“(III) reviewing the scope of use of the notification process to cover broader categories of registration actions; and

“(iv) the use of performance-based contracts, other contracts, and procurement to ensure that—

“(I) the goals of this Act for the timely review of applications for registration are met; and

“(II) the registration program is administered in the most productive and cost effective manner practicable;

“(B) a description of the staffing and resources relating to the costs associated with the review and decisionmaking pertaining to applications; and

“(C) a review of the progress in meeting the timeline requirements of section 4(g).

“(3) METHOD.—The Administrator shall publish a report required by this subsection by such method as the Administrator determines to be the most effective for efficiently disseminating the report, including publication of the report on the Internet site of the Environmental Protection Agency.

“(l) SAVINGS CLAUSE.—Nothing in this section affects any other duties, obligations, or authorities established by any other section of this Act, including the right to judicial review of duties, obligations, or authorities established by any other section of this Act.

“(m) TERMINATION OF EFFECTIVENESS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the authority provided by this section terminates on September 30, 2008. Termination date.

“(2) PHASE OUT.—

“(A) FISCAL YEAR 2009.—During fiscal year 2009, the requirement to pay and collect registration service fees applies, except that the level of registration service fees payable under this section shall be reduced 40 percent below the level in effect on September 30, 2008.

“(B) FISCAL YEAR 2010.—During fiscal year 2010, the requirement to pay and collect registration service fees applies, except that the level of registration service fees payable under this section shall be reduced 70 percent below the level in effect on September 30, 2008.

“(C) SEPTEMBER 30, 2010.—Effective September 30, 2010, the requirement to pay and collect registration service fees terminates. Termination date.

“(D) DECISION REVIEW PERIODS.—

“(i) PENDING APPLICATIONS.—In the case of an application received under this section before September 30, 2008, the application shall be reviewed in accordance with subsection (f).

“(ii) NEW APPLICATIONS.—In the case of an application received under this section on or after September 30, 2008, subsection (f) shall not apply to the application.”

(g) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 136) is amended—

(1) by striking the item relating to section 4(k)(3) and inserting the following:

“(3) Review of inert ingredients; expedited processing of similar applications.”; and

(2) by striking the items relating to sections 30 and 31 and inserting the following:

“Sec. 30. Minimum requirements for training of maintenance applicators and service technicians.

“Sec. 31. Environmental Protection Agency minor use program.

“Sec. 32. Department of Agriculture minor use program.

“(a) In general.

“(b)(1) Minor use pesticide data.

“(2) Minor Use Pesticide Data Revolving Fund.

“Sec. 33. Pesticide registration service fees.

“(a) Definition of costs.

“(b) Fees.

“(1) In general.

“(2) Covered pesticide registration applications.

“(3) Schedule of covered applications and registration service fees.

“(4) Pending pesticide registration applications.

“(5) Resubmission of pesticide registration applications.

“(6) Fee adjustment.

“(7) Waivers and reductions.

“(8) Refunds.

“(c) Pesticide Registration Fund.

“(1) Establishment.

“(2) Transfers to Fund.

“(3) Expenditures from Fund.

“(4) Collections and appropriations Acts.

“(5) Unused funds.

“(d) Assessment of fees.

“(1) Definition of covered functions.

- “(2) Minimum amount of appropriations.
- “(3) Use of fees.
- “(4) Compliance.
- “(5) Subsequent authority.
- “(e) Reforms to reduce decision time review periods.
- “(f) Decision time review periods.
 - “(1) In general.
 - “(2) Report.
 - “(3) Applications subject to decision time review periods.
 - “(4) Start of decision time review period.
 - “(5) Extension of decision time review period.
- “(g) Judicial review.
 - “(1) In general.
 - “(2) Scope.
 - “(3) Timing.
 - “(4) Remedies.
- “(h) Accounting.
- “(i) Auditing.
 - “(1) Financial statements of agencies.
 - “(2) Components.
 - “(3) Inspector General.
- “(j) Personnel levels.
- “(k) Reports.
 - “(1) In general.
 - “(2) Contents.
- “(l) Savings clause.
- “(m) Termination of effectiveness.
 - “(1) In general.
 - “(2) Phase out.
- “Sec. 34. Severability.
- “Sec. 35. Authorization for appropriations.”.

7 USC 136a note.

(h) **EFFECTIVE DATE.**—Except as otherwise provided in this section and the amendments made by this section, this section and the amendments made by this section take effect on the date that is 60 days after the date of enactment of this Act.

This division may be cited as the “Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004”.

Miscellaneous
Appropriations
and Offsets Act,
2004.

DIVISION H—MISCELLANEOUS APPROPRIATIONS AND OFFSETS

(INCLUDING RESCISSIONS OF FUNDS)

(INCLUDING TRANSFERS OF FUNDS)

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, and for other purposes, namely:—

SEC. 101. Section 1241(a)(3) of the Food Security Act of 1985 (16 U.S.C. 3841(a)(3)) is amended by striking “, using” and all that follows through “2013”.

SEC. 102. (a) Of the funds appropriated under the heading “Emergency Preparedness and Response, Disaster Relief” in chapter 2 of title I of Public Law 108–106, \$225,000,000 are rescinded.

(b) In addition to amounts appropriated in Public Law 108–108 for “Forest Service, Wildland Fire Management” for hazardous fuels reduction, hazard mitigation, and rehabilitation activities of the Forest Service in southern California, \$25,000,000, to remain available until expended.

(c) In addition to amounts appropriated in Public Law 108–108 for “Forest Service, State and Private Forestry” for hazard mitigation, fuels reduction, and forest health protection and mitigation activities on State and private lands in southern California, \$25,000,000, to remain available until expended.

(d) In addition to amounts made available elsewhere in this Act for the “Department of Agriculture, Emergency Watershed Protection Program” to carry out additional activities in response to the recent wildfires in southern California, including the provision of technical and financial assistance to respond to the tree mortality emergency in Los Angeles, Riverside, San Diego and San Bernardino Counties, California, \$150,000,000, to remain available until expended.

(e) For an additional amount for the tree assistance program in southern California under subtitle C of title X of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8201 et seq.), \$12,500,000.

(f) For an additional amount for the emergency conservation program in southern California under title IV of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 et seq.), \$12,000,000.

(g) For an additional amount for the livestock indemnity program in southern California under the heading “COMMODITY CREDIT CORPORATION FUND” in chapter 1 of title I of the 1999 Emergency Supplemental Appropriations Act (Public Law 106–31; 113 Stat. 59), \$500,000.

(h) The amounts provided or made available by this section are designated by the Congress as an emergency requirement pursuant to section 502 of H. Con. Res. 95 (108th Congress), the concurrent resolution on the budget for fiscal year 2004.

SEC. 103. In addition to amounts otherwise made available in this Act, for “Office of Justice Programs—State and Local Law Enforcement Assistance” for discretionary grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs for reimbursement to State and local law enforcement entities for security and related costs, including overtime, associated with the 2004 Presidential Candidate Nominating Conventions, \$50,000,000, to remain available until September 30, 2005.

SEC. 104. (a) COMMISSION ON THE ABRAHAM LINCOLN STUDY ABROAD FELLOWSHIP PROGRAM.—There are appropriated, out of any money in the Treasury not otherwise appropriated, \$500,000 to establish and fund a bipartisan Commission on the Abraham Lincoln Study Abroad Fellowship Program (in this section referred to as the “Commission”).

Establishment.

(b) RECOMMENDATIONS AND DEVELOPMENT OF PROGRAM.—

(1) RECOMMENDATIONS.—The Commission shall recommend a program to greatly expand the opportunity for students at institutions of higher education in the United States to study abroad, with special emphasis on studying in developing nations.

(2) DEVELOPMENT OF PROGRAM.—The Secretary of State, the Secretary of Education, the Secretary of Commerce, and the Secretary of Defense, in consultation with the Commission, shall develop a program, described in paragraph (1), that assists a diverse group of students and meets the growing need of the United States to become more sensitive to the cultures of other countries.

(c) COMPOSITION.—

(1) IN GENERAL.—The Commission shall consist of 17 members to be appointed as follows:

(A) Three members shall be appointed by the Majority Leader of the Senate.

(B) Three members shall be appointed by the Minority Leader of the Senate.

(C) Three members shall be appointed by the Speaker of the House of Representatives.

(D) Three members shall be appointed by the Minority Leader of the House of Representatives.

(E) One member shall be appointed by the President from a list of candidates submitted by the Secretary of State.

(F) One member shall be appointed by the President from a list of candidates submitted by the Secretary of Defense.

(G) One member shall be appointed by the President from a list of candidates submitted by the Secretary of Education.

(H) One member shall be appointed by the President from a list of candidates submitted by the Secretary of Commerce.

(I) One member shall be appointed jointly by the individuals described in subparagraphs (A) through (D), and such member shall serve as Chair of the Commission.

(2) TYPES OF INDIVIDUALS.—The Commission may consist of members who are leaders in university exchange programs, leaders in foreign policy, and business leaders with experience in international trade.

(d) EXECUTIVE DIRECTOR AND STAFF.—

(1) APPOINTMENT OF EXECUTIVE DIRECTOR.—The Chair of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director of the Commission. The employment of an executive director shall be subject to confirmation by the Commission. The Chair of the Commission may fix the compensation of the executive director without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(2) STAFF.—The executive director may appoint not more than 3 individuals to assist the executive director in carrying out the duties of the executive director. The Chair of the Commission may fix the compensation of the individuals appointed by the executive director without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(e) COMPENSATION.—Members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(f) REPORT.—Not later than December 1, 2004, the Commission shall submit a report to the appropriate committee of Congress

Deadline.

and the President on recommendations for a program to greatly expand the opportunity for students at institutions of higher education in the United States to study abroad.

(g) TERMINATION.—The Commission shall terminate not later than December 31, 2004.

SEC. 105. (a) None of the funds made available under this Act may be obligated or expended to implement any measures to reduce overfishing and promote rebuilding of fish stocks managed under the Management Plan other than such measures set out in the final rule.

(b) In this section:

(1) The term “final rule” means the final rule of the National Oceanic and Atmospheric Administration relating to the Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery that was published on June 27, 2003 (68 Fed. Reg. 38234).

(2) The term “Management Plan” means the Northeast Multispecies Fishery Management Plan prepared pursuant to section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853).

SEC. 106. In addition to amounts otherwise made available in this Act, for “Supreme Court of the United States, Care of the Building and Grounds”, \$16,000,000, to remain available until expended.

SEC. 107. For an additional amount under the heading “State and Local Law Enforcement Assistance, Office of Justice Programs”, \$2,250,000, of which \$750,000 shall only be available for the University of Southern Mississippi Rural Law Enforcement Training Initiative, \$750,000 shall only be available for the Mississippi University for Women Institutional Security Program, and \$750,000 shall only be available for the City of Jackson, Mississippi, Public Safety Automated Technologies Program.

SEC. 108. Upon enactment of this Act, the Secretary of Defense shall make the following transfers of funds: *Provided*, That funds so transferred shall be merged with and shall be available for the same purpose and for the same time period as the appropriation to which transferred: *Provided further*, That the amounts shall be transferred between the following appropriations in the amounts specified:

From:

Under the heading, “Shipbuilding and Conversion, Navy, 1998/2007”:

CVN Refuelings, \$29,000,000;

Under the heading, “Shipbuilding and Conversion, Navy, 2003/2007”:

Outfitting, post delivery, conversions, and first destination transportation, \$8,000,000;

Under the heading, “Shipbuilding and Conversion, Navy, 2004/2008”:

Outfitting, post delivery, conversions, and first destination transportation, \$11,800,000;

CVN Refuelings (AP), \$16,600,000;

Under the heading, “Research, Development, Test and Evaluation, Navy, 2004/2005”, \$9,200,000;

To:

Under the heading, “Shipbuilding and Conversion, Navy, 2004/2008”:

NSSN (AP), \$37,200,000;

NSSN, \$11,800,000;

Under the heading, “Shipbuilding and Conversion, Navy, 2002/2006”:

SSN Submarine Refuelings, \$19,600,000; and

Under the heading, “Defense Health Program”, \$6,000,000.

Effective date.

SEC. 109. Effective immediately after the enactment of the National Defense Authorization Act for Fiscal Year 2004, section 724(d)(2) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 1073 note) is amended—

(1) in subparagraph (A)—

(A) by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively; and

(B) by inserting after “who—” the following new clause

(i):

“(i) do not have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services;”;

(2) by striking subparagraph (B) and inserting the following:

Effective date.

“(B) For each fiscal year beginning after September 30, 2003, the number of covered beneficiaries newly enrolled by designated providers pursuant to clause (ii) of subparagraph (A) during such fiscal year may not exceed 10 percent of the total number of the covered beneficiaries who are newly enrolled under such subparagraph during such fiscal year.”.

10 USC 2302
note.

SEC. 110. Section 853 of the National Defense Authorization Act for Fiscal Year 2004 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) CREDIT TOWARD CERTAIN SMALL BUSINESS CONTRACTING GOALS.—Department of Defense contracts entered into with eligible contractors under the demonstration project under this section, and subcontracts entered into with eligible contractors under such contracts, shall be credited toward the attainment of goals established under section 2323 of title 10, United States Code, and section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) regarding the extent of the participation of disadvantaged small business concerns in contracts of the Department of Defense and subcontracts under such contracts.”.

SEC. 111. Section 8022 of the Department of Defense Appropriations Act, 2004, Public Law 108–87, shall not apply to a cost study of a multi-function activity for which the Department of Defense had solicited proposals as of the date of the enactment of that Act.

SEC. 112. Of the amounts made available to the Department of Defense under the heading “Defense Health Program” for “Procurement”, \$3,100,000 shall be made available to acquire Linear Accelerator Radiation Therapy equipment and associated operating software for Walter Reed Army Medical Center: *Provided*, That of the amounts available to the Department of Defense under the heading “Defense Health Program” for “Operation and Maintenance, In-House Care”, \$2,900,000 shall be made available for the Defense

and Veterans Head Injury Program: *Provided further*, That these funds are in addition to funds provided in previous Acts.

SEC. 113. (a) The Secretary of Defense shall study issues related to the consolidation of the storage of mercury contained in the National Defense Stockpile under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.) and report to Congress on June 1, 2004, on the results of the study.

Reports.
Deadlines.

(b) A decision to consolidate the storage of mercury to a site that currently does not store mercury contained in the National Defense Stockpile under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.) shall occur no earlier than 180 days after the date of the report required in subsection (a).

SEC. 114. Notwithstanding any other provision of law, the Secretary of Defense may transfer up to \$120,000,000 of funds available in the Iraq Freedom Fund to carry out the classified project described in the classified annex accompanying Public Law 107–206, and acquire such interests in real property as he deems necessary to carry out such project: *Provided*, That the Secretary may transfer such funds to other appropriation accounts of the Department, and the amounts so transferred shall be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense.

SEC. 115. Of the amounts provided in Public Laws 107–117, 107–248, and 108–87 under the heading “National Defense Sealift Fund” for construction of additional sealift capacity, \$40,000,000 shall be made available for the construction of a Port of Philadelphia marine cargo terminal for high-speed military sealift and other military purposes.

SEC. 116. The Department of Veterans Affairs medical center in St. Petersburg, Florida, shall, after the end of the service of C. W. Bill Young as a Member of Congress, be known and designated as the “C. W. Bill Young Department of Veterans Affairs Medical Center”. Any reference in any law, regulation, map, document, record, or other paper of the United States to such medical center shall be considered to be a reference to the “C. W. Bill Young Department of Veterans Affairs Medical Center”.

Federal buildings
and facilities.

SEC. 117. Of the funds provided in Public Law 108–7, under the heading of “Department of Defense—Civil”, “Department of the Army”, “Corps of Engineers—Civil”, “Construction, General”, the Secretary of the Army, acting through the Chief of Engineers, is directed to proceed with the construction of the False Pass, Alaska, project, in accordance with the Report of the Chief of Engineers, dated December 29, 2000.

Alaska.

SEC. 118. The Secretary of the Army, acting through the Chief of Engineers, is hereby authorized and directed to design the Central Riverfront Park project on the Ohio Riverfront in Cincinnati, Ohio, as described in the Central Riverfront Park Master Plan performed by the City of Cincinnati, dated December 1999, and the section 905(b) analysis, performed by the Louisville District of the Corps of Engineers, dated August 2002. The cost of project work undertaken by the non-Federal interests, including but not limited to prior and current planning and design, shall be credited toward the non-Federal share of design costs.

SEC. 119. The Secretary of the Army, acting through the Chief of Engineers, is directed to use any remaining available funds

from funds appropriated in Public Law 101-101 for the Hamlet City Lake, North Carolina, project to provide assistance in carrying out any authorized water-related infrastructure projects in Richmond County, North Carolina.

SEC. 120. The Secretary of the Army, acting through the Chief of Engineers, is directed to snag and clear existing debris including trees in Deep River, near Lake Station, Indiana, under section 208 of the Flood Control Act of 1954, as amended.

117 Stat. 1836.

SEC. 121. Section 117, subsection (4), of the Energy and Water Development Appropriations Act, 2004, is amended to read as follows:

“(4) in subsection (h), by striking ‘2001—’ and all that follows and inserting ‘2001—\$100,000,000 for Rural Nevada, and \$25,000,000 for each of Idaho, Montana, New Mexico, and rural Utah, to remain available until expended.’”.

SEC. 122. The Secretary of the Army, acting through the Chief of Engineers, is directed to use any remaining available funds from funds appropriated and made available in Public Law 103-316 for construction of the Savannah Harbor Deepening Project, Savannah, Georgia, for the Savannah Harbor Expansion Project, Savannah, Georgia.

SEC. 123. The Secretary of the Army, acting through the Chief of Engineers, is directed to proceed with the construction of the Columbia River Channel Improvements, Oregon and Washington, project in accordance with the Report of the Chief of Engineers, dated December 23, 1999, and the economic justification and environmental features stated therein, as amended by the Final Supplemental Environmental Impact Statement dated January 28, 2003.

SEC. 124. The Secretary of the Army, acting through the Chief of Engineers, is directed to use previously appropriated funds to proceed with design and initiate construction to complete the Stillwater, Minnesota, Levee and Flood Control project.

SEC. 125. Of the funds made available in the Energy and Water Development Appropriations Act, 2004, to the Western Area Power Administration, up to \$166,100,000 collected by the Western Area Power Administration pursuant to the Flood Control Act of 1944 and the Reclamation Project Act of 1939 to recover purchase power and wheeling expenses shall be credited to the “Construction, Rehabilitation, Operation and Maintenance, Western Area Power Administration” account as offsetting collections.

SEC. 126. Of the funds provided for the development of the new molecular imaging probes in the statement of managers to accompany H.R. 2754, \$5,000,000 shall be provided to the University of California, Los Angeles for the continued efforts for PET imaging, systems biology and nanotechnology.

50 USC 2601
note.

SEC. 127. Funds appropriated in this, or any other Act hereafter, may not be obligated to pay, on behalf of the United States or a contractor or subcontractor of the United States, to post a bond or fulfill any other financial responsibility requirement relating to closure or post-closure care and monitoring of Sandia National Laboratories and properties held or managed by Sandia National Laboratories prior to implementation of closure or post-closure monitoring. The State of New Mexico or any other entity may not enforce against the United States or a contractor or subcontractor of the United States, in this year or any other fiscal year, a requirement to post bond or any other financial responsibility

requirement relating to closure or post-closure care and monitoring of Sandia National Laboratories in New Mexico and properties held or managed by Sandia National Laboratories in New Mexico.

SEC. 128. TREATMENT OF CERTAIN WASTE MATERIALS. (a) IN GENERAL.—Notwithstanding any other provision of law, the Federal commission with the authority to regulate the material designated as “11e.(2) by-product material” by section 312 of the Energy and Water Development Appropriations Act, 2004, or by section 634 of the Energy Policy Act of 2003, shall not allow or otherwise permit any facility to receive or dispose of such material if the facility is located in a State that has an application pending under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) to regulate the 11e.(2) material covered under this section.

(b) SUNSET.—Subsection (a) ceases to be effective January 1, 2005.

SEC. 129. In the conference report accompanying H.R. 6, the Energy Policy Act, in section 1512, subsection (b) strike “University of Mississippi and the University of Oklahoma” and insert “Mississippi State University and Oklahoma State University”.

SEC. 130. DEPARTMENT OF ENERGY, ENERGY PROGRAMS, SCIENCE. For an additional amount for “Science”, \$50,000,000, to remain available until expended, is provided for the Coralville, Iowa, project, which is to utilize alternative renewable energy sources.

SEC. 131. For an additional amount for the “Science” account of the Department of Energy in the Energy and Water Development Appropriations Act, 2004, there is appropriated \$250,000, to remain available until expended, for Biological Sciences at DePaul University; \$500,000, to remain available until expended; for the Cedars-Sinai Gene Therapy Research Program; and \$500,000, to remain available until expended, for the Hartford Hospital Interventional Electrophysiology Project.

SEC. 132. For an additional amount for the “Energy Supply” account of the Department of Energy in the Energy and Water Development Appropriations Act, 2004, there is appropriated \$750,000, to remain available until expended, for the Energy Center of Wisconsin Renewable Fuels Project; \$500,000, to remain available until expended, for the Wind Energy Transmission Study; \$250,000, to remain available until expended, for the White Pine County, Nevada, Public School System biomass conversion heating project; \$250,000, to remain available until expended, for the Lead Animal Shelter Animal Campus renewable energy demonstration project; \$3,000,000, to remain available until expended, for the establishment of a Hawaii Hydrogen Center for Development and Deployment of Distributed Energy Systems; and \$250,000, to remain available until expended, for the Eastern Nevada Landscape Coalition for biomass restoration and science-based restoration.

SEC. 133. For an additional amount for the “Construction, General” account of the Energy and Water Development Appropriations Act, 2004, there is appropriated \$13,750,000, to remain available until expended.

SEC. 134. For an additional amount for “Millennium Challenge Corporation”, \$350,000,000, to remain available until expended.

SEC. 135. Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) is amended by striking “December 31, 2003” and inserting “December 31, 2004”.

SEC. 136. (a) The National Flood Insurance Act of 1968 is amended—

(1) in section 1319 (42 U.S.C. 4026), by striking “December 31, 2003” and inserting “June 30, 2004.”;

(2) in the first sentence of section 1309(a) (42 U.S.C. 4016(a)), by striking “December 31, 2003” and inserting “the date specified in section 1319”;

(3) in section 1336(a) (42 U.S.C. 4056(a)), by striking “December 31, 2003” and inserting “on the date specified in section 1319”; and

(4) in section 1376(c) (42 U.S.C. 4127(c)), by striking “December 31, 2003” and inserting “the date specified in section 1319”.

(b) The amendments made by this section shall be considered to have taken effect on December 31, 2003.

SEC. 137. (a) Section 441(c) of the Maritime Transportation Security Act of 2002 (Public Law 107–295) is amended—

(1) by striking “and that is not the subject of an action prior to June 20, 2002, alleging a breach of subsections (a) and (b) of section 10601 as in effect on such date,”; and

(2) by striking “such subsections” and inserting “subsections (a) and (b) of section 10601 of title 46, United States Code, as in effect prior to November 25, 2002”.

(b) The amendments made by subsection (a) apply to all proceedings pending on or commenced after the date of enactment of this Act.

SEC. 138. Public Law 108–108 is amended under the heading “Bureau of Indian Affairs, Construction” by striking “25 U.S.C. 2005(a)” and inserting “25 U.S.C. 2005(b)” and by striking “25 U.S.C. 2505(f)” and inserting “25 U.S.C. 2504(f)”.

SEC. 139. CONGAREE NATIONAL PARK BOUNDARY REVISION. (a) IN GENERAL.—Subsection (c) of the first section of Public Law 94–545 (90 Stat. 2517; 102 Stat. 2607) is amended by striking paragraph (6) and inserting the following:

“(6) EFFECT.—Nothing in this section—

“(A) affects the use of private land adjacent to the park;

“(B) preempts the authority of the State with respect to the regulation of hunting, fishing, boating, and wildlife management on private land or water outside the boundaries of the park;

“(C) shall negatively affect the economic development of the areas surrounding the park; or

“(D) affects the classification of the park under section 162 of the Clean Air Act (42 U.S.C. 7472).”.

(b) DESIGNATION OF CONGAREE NATIONAL PARK WILDERNESS.—

(1) DESIGNATION.—The wilderness established by section 2(a) of the Congaree Swamp National Monument Expansion and Wilderness Act (102 Stat. 2606) and known as the “Congaree Swamp National Monument Wilderness” shall be known and designated as the “Congaree National Park Wilderness”.

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the wilderness referred to in paragraph (1) shall be deemed to be a reference to the “Congaree National Park Wilderness”.

SEC. 140. Section 123 of the Department of the Interior and Related Agencies Appropriations Act, 2004 (Public Law 108–108),

Effective date.
46 USC 4016
note.
46 USC 10601
note.

Applicability.
42 USC 10601
note.

16 USC 410jjj.

16 USC 1132
note.

117 Stat. 1268.

is amended by striking “any other governmental land management entity” and inserting “any other land management entity”.

SEC. 141. Effective as of November 18, 2003, section 9 of Public Law 100–692 (102 Stat. 4556; 16 U.S.C. 461 note.) is amended to read as follows:

Effective date.

“SEC. 9. TERMINATION OF COMMISSION.

16 USC 461 note.

“The Commission shall terminate on November 18, 2007.”.

SEC. 142. Title IV of Public Law 108–108 is amended in section 403(b)(4) by striking “75–5–703(10)(b)” and inserting “75–5–703(10)(c)”.

117 Stat. 1319.

SEC. 143. Public Law 108–108 is amended under the heading “Indian Health Service, Indian Health Services” by striking “(d) \$2,000,000 for the Alaska Federation of Natives sobriety and wellness program for competitive merit-based grants:” and inserting “(d) \$2,000,000 for RuralCap for alcohol treatment and related transitional housing for homeless chronic inebriates in Anchorage, Alaska:”.

117 Stat. 1294.

SEC. 144. Public Law 108–108 is hereby amended by adding at the end of section 344 the following:

117 Stat. 1318.

“(c) EXEMPTIONS.—The requirements of this section shall not apply to amounts in this Act designated as emergency requirements pursuant to section 502 of H. Con. Res. 95 (108th Congress), the concurrent resolution on the budget for fiscal year 2004.

“(d) INDIAN LAND AND WATER CLAIM SETTLEMENTS.—Under the heading ‘Bureau of Indian Affairs, Indian Land and Water Claim Settlements and Miscellaneous Payments to Indians’, the across-the-board rescission in this section, and any subsequent across-the-board rescission for fiscal year 2004, shall apply only to the first dollar amount in the paragraph and the distribution of the rescission shall be at the discretion of the Secretary of the Interior who shall submit a report on such distribution and the rationale therefor to the House and Senate Committees on Appropriations.”.

Applicability.
Reports.

SEC. 145. THEODORE ROOSEVELT NATIONAL WILDLIFE REFUGE. (a) DEFINITIONS.—In this section:

Mississippi.
16 USC 668dd
note.

(1) COUNTY.—The term “county” means each of the counties of Leflore, Holmes, Humphreys, Sharkey, Warren, and Washington in the State.

(2) REFUGE.—The term “Refuge” means the Theodore Roosevelt National Wildlife Refuge established under subsection (b).

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) STATE.—The term “State” means the State of Mississippi.

(b) ESTABLISHMENT.—The Secretary shall establish the Theodore Roosevelt National Wildlife Refuge, consisting of approximately 6,600 acres of land that—

(1) as of the date of enactment of this Act, is owned by the United States;

(2) was formerly in the inventory of the United States Department of Agriculture; and

(3) is located in the counties.

(c) MAP.—As soon as practicable after the date of enactment of this Act, the Secretary shall prepare a map depicting the boundaries of the Refuge.

(d) BOUNDARY REVISION.—The Secretary may revise the boundaries of the Refuge in the counties to—

- (1) carry out the purposes of the Refuge; or
- (2) facilitate the acquisition or donation of land.

(e) ACQUISITION OF LAND.—Notwithstanding any other provision of law, the Secretary may, for management purposes, exchange Refuge land for land acquired or donated for fee title that is located in the counties.

(f) EDUCATION CENTER.—The Secretary of the Army, acting through the Chief of Engineers, in consultation with the Secretary, shall design and construct a multiagency wildlife and environmental interpretive and education center at a location in the South Delta area of the State to be determined by a site selection and feasibility study conducted by the Secretary of the Army.

(g) DESIGNATION OF REFUGE COMPLEXES.—

(1) HOLT COLLIER NATIONAL WILDLIFE REFUGE.—

(A) DESIGNATION.—The refuge in the State known as the “Bogue Phalia Unit of the Yazoo National Wildlife Refuge” shall be known as the “Holt Collier National Wildlife Refuge”.

(B) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the refuge referred to in subparagraph (A) shall be deemed to be a reference to the “Holt Collier National Wildlife Refuge”.

(2) THEODORE ROOSEVELT NATIONAL WILDLIFE REFUGE COMPLEX.—

(A) DESIGNATION.—The refuge complex in the State known as the “Central Mississippi National Wildlife Refuge Complex” shall be known as the “Theodore Roosevelt National Wildlife Refuge Complex”.

(B) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the refuge complex referred to in subparagraph (A) shall be deemed to be a reference to the “Theodore Roosevelt National Wildlife Refuge Complex”.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(2) EDUCATION CENTER.—There are authorized to be appropriated to carry out subsection (f) \$6,000,000.

SEC. 146. For the purposes described in section 386 of the Energy Policy Act of 2003 there is authorized to be appropriated \$1,000,000, except that upon that Act becoming law, section 386 is amended through this Act:

(1) in subsection (a) by inserting before the term “to issue” the phrase “or with an entity the Secretary determines is qualified to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States.”;

(2) at the end of paragraph 386(b)(1) by striking the period and inserting “, or after the Secretary certifies there exists a qualified entity to construct and operate a liquefied natural gas project to transport liquefied natural gas from Southcentral Alaska to West Coast States. In no case shall loan guarantees be issued for more than one qualified project.”;

(3) at the end of paragraph 386(c)(2) by striking the period and inserting “, except that the total amount of principal that may be guaranteed for a qualified liquefied natural gas project may not exceed a principal amount in which the cost of loan guarantees, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)), exceeds \$2,000,000,000.”; and

(4) at paragraph 386(g)(4):

(A) by inserting before the term “consisting” the new term “or system”; and

(B) by inserting between the term “plants” and the “)” the phrase “liquefaction plants and liquefied natural gas tankers for transportation of liquefied natural gas from Southcentral Alaska to the West Coast”.

SEC. 147. PAYMENT OF EXPENSES AFTER THE DEATH OF CERTAIN FEDERAL EMPLOYEES IN THE STATE OF ALASKA. Section 1308 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3198) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) PAYMENT OF EXPENSES AFTER DEATH OF AN EMPLOYEE.—

“(1) DEFINITION OF IMMEDIATE FAMILY MEMBER.—In this subsection, the term “immediate family member” means a person related to a deceased employee that was a member of the household of the deceased employee at the time of death.

“(2) PAYMENTS.—If an employee appointed under the program established by subsection (a) dies in the performance of any assigned duties on or after October 1, 2002, the Secretary may—

“(A) pay or reimburse reasonable expenses, regardless of when those expenses are incurred, for the preparation and transportation of the remains of the deceased employee to a location in the State of Alaska which is selected by the surviving head of household of the deceased employee;

“(B) pay or reimburse reasonable expenses, regardless of when those expenses are incurred, for transporting immediate family members and the baggage and household goods of the deceased employee and immediate family members to a community in the State of Alaska which is selected by the surviving head of household of the deceased employee.”.

SEC. 148. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS. (a) ESTABLISHMENT.—The sum of \$100,000 is appropriated, to remain available until expended, for the establishment of the Office of Native Hawaiian Relations within the Office of the Secretary of the Interior.

(b) DUTIES.—The Office shall—

(1) effectuate and implement the special legal relationship between the Native Hawaiian people and the United States;

(2) continue the process of reconciliation with the Native Hawaiian people; and

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by assuring timely notification of and prior consultation with the Native Hawaiian people before any Federal agency

takes any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands.

SEC. 149. LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION. The first section of the Act of August 9, 1955 (25 U.S.C. 415), is amended by adding at the end the following:

“(g) LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.—

“(1) IN GENERAL.—Notwithstanding subsection (a) and any regulations under part 162 of title 25, Code of Federal Regulations (or any successor regulation), subject to paragraph (2), the Assiniboiné and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

“(2) CONDITIONS.—A lease entered into under paragraph (1)—

“(A) shall commence during fiscal year 2011 for an initial term of 25 years;

“(B) may be renewed for an additional term of 25 years; and

“(C) shall specify in the terms of the lease an annual rental rate—

“(i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and

“(ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review requirement under part 162 of title 25, Code of Federal Regulations (or any successor regulation).”.

SEC. 150. (a) SHORT TITLE. This Act may be cited as the “Fern Lake Conservation and Recreation Act”.

(b) FINDINGS AND PURPOSES.—

(1) FINDINGS.—The Congress finds the following:

(A) Fern Lake and its surrounding watershed in Bell County, Kentucky, and Claiborne County, Tennessee, is within the potential boundaries of Cumberland Gap National Historical Park as originally authorized by the Act of June 11, 1940 (54 Stat. 262; 16 U.S.C. 261 et seq.).

(B) The acquisition of Fern Lake and its surrounding watershed and its inclusion in Cumberland Gap National Historical Park would protect the vista from Pinnacle Overlook, which is one of the park’s most valuable scenic resources and most popular attractions, and enhance recreational opportunities at the park.

(C) Fern Lake is the water supply source for the city of Middlesboro, Kentucky, and environs.

(D) The 4,500-acre Fern Lake watershed is privately owned, and the 150-acre lake and part of the watershed are currently for sale, but the Secretary of the Interior is precluded by the first section of the Act of June 11, 1940 (16 U.S.C. 261), from using appropriated funds to acquire the lands.

(2) PURPOSES.—The purposes of the Act are—

(A) to authorize the Secretary of the Interior to use appropriated funds if necessary, in addition to other

Fern Lake
Conservation and
Recreation Act.
Kentucky.
Tennessee.
16 USC 268a.

acquisition methods, to acquire from willing sellers Fern Lake and its surrounding watershed, in order to protect scenic and natural resources and enhance recreational opportunities at Cumberland Gap National Historical Park; and

(B) to allow the continued supply of water from Fern Lake to the city of Middlesboro, Kentucky, and environs.

(c) LAND ACQUISITION AND CONVEYANCE AUTHORITY, FERN LAKE, CUMBERLAND GAP NATIONAL HISTORICAL PARK.—

(1) DEFINITIONS.—In this section:

(A) FERN LAKE.—The term “Fern Lake” means Fern Lake located in Bell County, Kentucky, and Claiborne County, Tennessee.

(B) LAND.—The term “land” means land, water, interests in land, and any improvements on the land.

(C) PARK.—The term “park” means Cumberland Gap National Historical Park, as authorized and established by the Act of June 11, 1940 (54 Stat. 262; 16 U.S.C. 261 et seq.).

(D) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Director of the National Park Service.

(2) ACQUISITION AUTHORIZED.—The Secretary may acquire for addition to the park lands consisting of approximately 4,500 acres and containing Fern Lake and its surrounding watershed, as generally depicted on the map entitled “Cumberland Gap National Historical Park, Fern Lake Watershed”, numbered 380/80,004, and dated May 2001. The map shall be on file in the appropriate offices of the National Park Service.

(3) BOUNDARY ADJUSTMENT AND ADMINISTRATION.—Subject to paragraph (4), the Secretary shall revise the boundaries of the park to include the land acquired under paragraph (2). The Secretary shall administer the acquired lands as part of the park in accordance with the laws and regulations applicable to the park.

(4) CONVEYANCE OF FERN LAKE.—

(A) CONVEYANCE REQUIRED.—If the Secretary acquires Fern Lake, the Secretary shall convey, notwithstanding any other law and without consideration, to the city of Middlesboro, Kentucky, all right, title, and interest of the United States in and to Fern Lake, up to the normal operating elevation of 1,200.4 feet above sea level, along with the dam and all appurtenances associated with the withdrawal and delivery of water from Fern Lake.

(B) TERMS OF CONVEYANCE.—In executing the conveyance under subparagraph (4)(A), the Secretary may retain an easement for scenic and recreational purposes.

(C) REVERSIONARY INTEREST.—In the event Fern Lake is no longer used as a source of municipal water supply for the city of Middlesboro, Kentucky, and its environs, ownership of Fern Lake shall revert to the United States and it shall be managed by the Secretary as part of the park.

(5) CONSULTATION REQUIREMENTS.—In order to better manage lands acquired under this section in a manner that will facilitate the provision of water for municipal needs, as well

as the establishment and promotion of new recreational opportunities at the park, the Secretary shall consult with—

(A) appropriate officials in the States of Kentucky, Tennessee, and Virginia, and political subdivisions of these States;

(B) organizations involved in promoting tourism in these States; and

(C) other interested parties.

Congress.
2 USC 121g.

SEC. 151. (a) The Attending Physician to Congress shall have the authority and responsibility for overseeing and coordinating the use of medical assets in response to a bioterrorism event and other medical contingencies or public health emergencies occurring within the Capitol Buildings or the United States Capitol Grounds. This shall include the authority to enact quarantine and to declare death. These actions will be carried out in close cooperation and communication with the Commissioner of Public Health, Chief Medical Examiner, and other Public Health Officials of the District of Columbia government.

(b) In this section—

(1) the term “Capitol Buildings” has the meaning given such term in section 5101 of title 40, United States Code; and

(2) the term “United States Capitol Grounds” has the meaning given such term in section 5102(a) of title 40, United States Code.

Effective date.
Applicability.

(c) Subsection (a) shall take effect on the date of the enactment of this Act and shall apply during any fiscal year occurring on or after such date.

2 USC 1820 note.

SEC. 152. (a) Notwithstanding section 907(a) of Public Law 107–206 (116 Stat. 977) or section 1102 of the Legislative Branch Appropriations Act, 2004 (2 U.S.C. 1822(b)), the Architect of the Capitol, at any time after the date of the enactment of this Act and subject to the availability of appropriations, may enter into an agreement to acquire by lease any portion of the real property located at 499 South Capitol Street Southwest in the District of Columbia for the use of the United States Capitol Police.

(b) Any real property acquired by the Architect of the Capitol pursuant to subsection (a) shall be subject to the provisions of the Act entitled “An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes”, approved July 31, 1946.

22 USC 276n.

SEC. 153. THE UNITED STATES SENATE-CHINA INTERPARLIAMENTARY GROUP. (a) ESTABLISHMENT AND MEETINGS.—Not to exceed 12 Senators shall be appointed to meet annually with representatives of the National People’s Congress of the People’s Republic of China for discussion of common problems in the interest of relations between the United States and China. The Senators so appointed shall be referred to as the “United States group” of the United States Senate-China Interparliamentary Group.

(b) APPOINTMENT OF MEMBERS.—The President pro tempore of the Senate shall appoint Senators under this section upon the recommendations of the majority and minority leaders of the Senate. The President pro tempore of the Senate shall designate 1 Senator as the Chair of the United States group.

(c) FUNDING.—There is authorized to be appropriated \$100,000 for each fiscal year to assist in meeting the expenses of the United States group for each fiscal year for which an appropriation is

made. Appropriations shall be disbursed on vouchers to be approved by the Chair of the United States group.

(d) CERTIFICATION OF EXPENDITURES.—The certificate of the Chair of the United States group shall be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group.

(e) FISCAL YEAR 2004 FUNDING.—There is authorized within the contingent fund of the Senate under the appropriation account “MISCELLANEOUS ITEMS” \$75,000 for fiscal year 2004 to assist in meeting the official expenses of the United States Senate-China Interparliamentary Group including conference room expenses, hospitality expenses, and food and food-related expenses. Expenses shall be paid on vouchers to be approved by the Chair of the United States group. The Secretary of the Senate is authorized to advance such sums as necessary to carry out this subsection.

(f) APPROPRIATIONS.—There are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, \$100,000 for the United States Senate-China Interparliamentary Group.

(g) EFFECTIVE DATE.—

Applicability.

(1) IN GENERAL.—Subsections (a) through (d) shall apply to fiscal year 2004, and each fiscal year thereafter.

(2) FISCAL YEAR 2004.—Subsections (e) and (f) shall apply to fiscal year 2004.

SEC. 154. THE UNITED STATES SENATE-RUSSIA INTERPARLIAMENTARY GROUP. (a) ESTABLISHMENT AND MEETINGS.—Not to exceed 12 Senators shall be appointed to meet annually with representatives of the Federation Council of Russia for discussion of common problems in the interest of relations between the United States and Russia. The Senators so appointed shall be referred to as the “United States group” of the United States Senate-Russia Interparliamentary Group.

22 USC 276o.

(b) APPOINTMENT OF MEMBERS.—The majority and minority leaders of the Senate shall appoint the Senators of the United States group. The majority leader of the Senate shall designate 1 Senator as the Chair of the United States group.

(c) FUNDING.—There is authorized to be appropriated \$100,000 for each fiscal year to assist in meeting the expenses of the United States group for each fiscal year for which an appropriation is made. Appropriations shall be disbursed on vouchers to be approved by the Chair of the United States group.

(d) CERTIFICATION OF EXPENDITURES.—The certificate of the Chair of the United States group shall be final and conclusive upon the accounting officers in the auditing of the accounts of the United States group.

(e) FISCAL YEAR 2004 FUNDING.—There is authorized within the contingent fund of the Senate under the appropriation account “MISCELLANEOUS ITEMS” \$75,000 for fiscal year 2004 to assist in meeting the official expenses of the United States Senate-Russia Interparliamentary Group including conference room expenses, hospitality expenses, and food and food-related expenses. Expenses shall be paid on vouchers to be approved by the Chair of the United States group. The Secretary of the Senate is authorized to advance such sums as necessary to carry out this subsection.

(f) APPROPRIATIONS.—There are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year

ending September 30, 2004, \$100,000 for the United States Senate-Russia Interparliamentary Group.

Applicability.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Subsections (a) through (d) shall apply to fiscal year 2004, and each fiscal year thereafter.

(2) FISCAL YEAR 2004.—Subsections (e) and (f) shall apply to fiscal year 2004.

2 USC 61d–4.

SEC. 155. PAYMENT OF EXPENSES OF THE CHAPLAIN OF THE SENATE FROM THE CONTINGENT FUND OF THE SENATE. (a) IN GENERAL.—For each fiscal year there is authorized to be expended from the contingent fund of the Senate an amount, not in excess of \$50,000 for the Chaplain of the Senate. Payments under this section shall be made only for expenses actually incurred by the Chaplain of the Senate in carrying out his functions, and shall be made upon certification and documentation of the expenses involved, by the Chaplain claiming payment under this section and upon vouchers approved by the Chaplain and by the Committee on Rules and Administration. Funds authorized for expenditure under this section may be used to purchase food or food related items.

(b) REPEAL OF REVOLVING FUND.—

(1) REPEAL.—Section 2 of the Legislative Branch Appropriations Act, 1996 (2 U.S.C. 61d–3) is repealed.

(2) REMAINING FUNDS.—Any funds in the Chaplain Expense Revolving Fund on the date of the repeal under this section shall be remitted to the general fund of the United States Treasury.

Applicability.

(c) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2004, and each fiscal year thereafter.

2 USC 95e.

SEC. 156. (a) There is established in the House of Representatives a fund to be known as the “House of Representatives Revolving Fund”, consisting of the following amounts:

(1) Amounts appropriated to the Fund.

(2) Amounts donated to the Fund.

(3) Interest on the balance of the Fund.

(b) Amounts in the Fund shall be expended at the direction of the Chief Administrative Officer of the House of Representatives, upon notification provided by the Chief Administrative Officer to the Committee on Appropriations of the House of Representatives, and shall remain available until expended.

Applicability.

(c) This section shall apply with respect to fiscal year 2004 and each succeeding fiscal year.

SEC. 157. RECOMPUTATION OF BENEFITS GUARANTEED IN CONNECTION WITH THE TERMINATION OF THE REPUBLIC STEEL RETIREMENT PLAN. (a) IN GENERAL.—The Pension Benefit Guaranty Corporation shall recompute the liability for monthly benefits guaranteed under section 4022 of the Employee Retirement Income Security Act of 1974 which are payable (without regard to this section) with respect to each participant and beneficiary under the Republic Steel Retirement Plan in connection with its termination on September 30, 1986.

(b) ADJUSTMENT OF GUARANTEED BENEFIT AMOUNTS.—In recomputing the liability for monthly guaranteed benefits pursuant to subsection (a) with respect to each participant or beneficiary, the Corporation shall increase the amount of such liability (as determined without regard to this section) by—

(1) the amount of the liability for nonguaranteed benefits under the LTV Steel Supplemental Pension Plan, as in effect with respect to such participant or beneficiary on January 1, 2001, and

(2) the amount of the liability for nonguaranteed benefits payable through the trust established in connection with the Republic Steel Plan under section 4049 of the Employee Retirement Income Security Act of 1974, as in effect with respect to such participant or beneficiary on January 1, 2001.

(c) CERTAIN BENEFITS DISREGARDED.—In making the recalculation under this section, the Corporation shall disregard—

(1) the amount of any benefits which were not paid during the period beginning with January 1, 2001, and ending with December 31, 2003, under the LTV Steel Supplemental Pension Plan or through the section 4049 trust referred to in subsection (b)(2),

(2) any liability for benefits under the LTV Steel Supplemental Pension Plan or through the section 4049 trust referred to in subsection (b)(2) that were included in the LTV Steel Salaried Defined Benefit Retirement Plan, as in effect on January 1, 1999,

(3) any liability for additional benefits that were included in the LTV Steel Supplemental Pension Plan to compensate for any liability of participants and beneficiaries under chapter 21 of the Internal Revenue Code of 1986 in connection with benefits payable under such Plan, and

(4) any liability under the LTV Steel Supplemental Pension Plan for temporary supplements.

(d) TIMING AND APPLICATION OF DETERMINATIONS.—Determinations of the increase in liability pursuant to subsection (b) shall be made as of December 31, 2003, using the mortality and interest assumptions otherwise applicable to plan terminations under title IV of the Employee Retirement Income Security Act of 1974 on such date. The recomputation under this section shall apply only with respect to benefits payable after such date.

Applicability.

SEC. 158. In addition to amounts appropriated or otherwise made available in other Acts, \$9,692,000 is hereby appropriated to the Department of Defense Family Housing Improvement Fund, to remain available until expended, for family housing initiatives undertaken pursuant to the provisions of subchapter IV of chapter 169, title 10, United States Code: *Provided*, That such funds shall be available to cover the costs, as defined in section 502(5) of the Congressional Budget Act of 1974, of direct loans or loan guarantees issued by the Department of Defense pursuant to the provisions of such subchapter: *Provided further*, That of the funds available in the “Foreign Currency Fluctuations, Construction, Defense” account, \$9,692,000 are rescinded.

SEC. 159. For an additional amount to carry out section 257 of the Help America Vote Act of 2002, \$1,000,000,000, to remain available until expended: *Provided*, That no more than $\frac{1}{10}$ of 1 percent of funds available for requirements payments under section 257 of the Help America Vote Act of 2002 shall be allocated to any territory.

SEC. 160. (a) DESIGNATION.—The United States courthouse located at 333 Lomas Blvd. N.W. in Albuquerque, New Mexico, shall be known and designated as the “Pete V. Domenici United States Courthouse”.

Federal buildings and facilities.

(b) REFERENCES.—Any reference in law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in subsection (a) shall be deemed to be a reference to the “Pete V. Domenici United States Courthouse”.

25 USC 450 note.

SEC. 161. The Director of the Office of Management and Budget shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.

SEC. 162. Notwithstanding any other provision of law, in addition to amounts provided in this or any other Act for fiscal year 2004, \$50,000,000, to be derived from the Highway Trust Fund and to remain available until expended, of which \$44,000,000 shall be for reconstruction of the Treasure Island Bridge in Treasure Island, Florida and of which \$6,000,000 shall be for necessary road improvements and design of a plaza at the John F. Kennedy Center for the Performing Arts in Washington, D.C.

5 USC 552 note.

SEC. 163. Section 802(b)(1) of the Japanese Imperial Government Disclosure Act of 2000 (Public Law 106–567; 114 Stat. 2865) is amended by striking “3 years” and inserting “4 years”.

Alaska.
Grants.

SEC. 164. The funds made available for Alaska Natives under the heading “Native American Housing Block Grants” in title II of division G of this Act shall be allocated to the same Native Alaskan Indian housing block grant recipients that received the funds in fiscal year 2003.

SEC. 165. In addition to the amounts otherwise provided in this or any other Act for fiscal year 2004, for “Department of Housing and Urban Development, Community Development Fund”, \$10,000,000 to remain available until expended for a grant to the Anchorage Museum in Anchorage, Alaska for facilities construction.

SEC. 166. The Secretary of a military department may use the authority provided in section 2667(a) of title 10, United States Code, to lease military family housing in the National Capital Region (as defined in section 2674 of such title) to key and essential personnel for continuity of government purposes.

SEC. 167. Notwithstanding any other provision of law, in addition to amounts otherwise provided in this or any other Act for fiscal year 2004, \$55,000,000 is appropriated, to be available until expended, to be distributed as follows: for Department of Energy, Energy Programs, “Energy Supply”, \$12,400,000 for expenses related to the purchase, construction, operation of facilities, and acquisition of plant and capital equipment for facilities that produce fuels from agricultural and animal wastes, to the Society for Energy and Environmental Research, a not-for-profit energy research and development institution, to administer the program; for Department of Transportation, Federal Aviation Administration, “Grants-in-aid for airports”, \$2,000,000 for the extension of a runway at Fort Worth Alliance Airport, Fort Worth, Texas; for Department of Transportation, Federal Highway Administration, \$1,000,000, for Rock County Road, Janesville, Wisconsin; for Department of Transportation, Federal Highway Administration, \$2,500,000, for improvements to I–75 in Lee County, Florida; for Department of Veterans Affairs, Departmental Administration, “Construction; major projects”, \$500,000 for the preliminary planning of a new ambulatory clinic at the Defense Supply Center, Columbus in Columbus, Ohio; for “Small Business Administration, Salaries and Expenses”, \$500,000, to be available for a grant to the University of Wisconsin-Green Bay to establish a paper science technology

transfer center; for “Funds Appropriated to the President, Bilateral Economic Assistance, Independent States of the Former Soviet Union”, \$1,000,000, for the National Program of Action for the Protection of the Arctic Marine Environment; for “Army Corps of Engineers, Construction, General”, \$1,000,000 for the Stockton Metropolitan Flood Control Reimbursement, California, project; for “Army Corps of Engineers, Construction, General”, \$1,000,000 for the San Timoteo Creek element of the Santa Ana River Mainstem, California, project; for “Army Corps of Engineers, Construction, General”, \$2,000,000; for the Florida Keys Water Quality Improvements, Florida, project; for “Army Corps of Engineers, Construction, General”, \$1,500,000, for the Southern West Virginia Environmental Infrastructure, West Virginia, project; for “Department of Energy, Science”, \$2,000,000 for the Western Michigan University Nanotechnology Research and Computation Center; for Department of Energy, Energy Programs, “Energy Supply”, \$2,500,000 for the Enterprise Center in Chattanooga, Tennessee, for the Chattanooga Fuel Cell Demonstration Project; for “Environmental Protection Agency, State and tribal assistance grants”, for grants to address drinking water and waste water infrastructure, \$2,000,000 for the Wyoming Valley Sanitation Authority, Pennsylvania, for combined sewer overflow infrastructure improvements; for “Environmental Protection Agency, State and tribal assistance grants”, for grants to address drinking water and waste water infrastructure, \$1,000,000 to the Saratoga Water Committee in Saratoga County, New York, for construction of a drinking water transport pipeline; for “Centers for Disease Control and Prevention, Disease Control, Research, and Training”, \$1,000,000, for a grant to the Center for Emerging Biological Threats at Emory University, Atlanta, Georgia; for “Department of Education, Higher Education”, \$500,000, for a grant to Santa Clara University in Santa Clara, California, for technology infrastructure upgrades, campus-wide network infrastructure enhancements and equipment; for “Department of Housing and Urban Development, Community Development Fund”, \$600,000, for a grant to Shelter from the Storm, Incorporated in Palm Desert, California, for facilities renovations and improvements; for Department of Labor, Employment and Training Administration, \$500,000, for the Labor Institute for Training, Inc., Indianapolis, Indiana; Department of Labor, Employment and Training Administration, \$250,000, for the Institute for Labor Studies and Research, Cranston, Rhode Island, for Learning on the Roll; for Department of Health and Human Services, Health Resources and Services Administration, \$200,000, for St. Luke’s Episcopal Hospital, Houston, Texas, facilities and equipment; for Department of Health and Human Services, Centers for Disease Control and Prevention, \$200,000, for the University of Texas M.D. Anderson Cancer Center, Houston, Texas, for a comprehensive cancer control program to address the needs of minority and medically underserved populations; for Department of Health and Human Services, Health Resources and Services Administration, \$300,000, for the Long Island Cancer Center, State University of New York at Stony Brook, for facilities and equipment; for Department of Health and Human Services, Health Resources and Services Administration, \$500,000 for the Iowa Health Foundation in Des Moines, Iowa, for a demonstration project to improve dental care in underserved rural areas; for Department of Health and Human Services, Health Resources and Services Administration,

\$500,000, for the Cumberland Medical Center in Crossville, Tennessee, for facilities and equipment; for Department of Health and Human Services, Centers for Disease Control and Prevention, \$250,000 for the New Haven Public Schools in New Haven, Connecticut, for the PE4LIFE program to promote and improve physical education, in cooperation with Yale University; for Department of Health and Human Services, Health Resources and Services Administration, \$250,000, for Quinnipiac University in Hamden, Connecticut, for health-related academic facilities and equipment; for Department of Health and Human Services, Health Resources and Services Administration, \$365,000, for the University of Michigan Health Systems in Ann Arbor, Michigan, for facilities and equipment; for Department of Health and Human Services, Administration on Aging, \$500,000, for the Jewish Family & Children's Center of Greater Boston for Naturally Occurring Retirement Communities project; for Department of Health and Human Services, Centers for Disease Control and Prevention, \$100,000, for the Marion County Health Department in Salem, Oregon, for a project to improve collection, analysis and dissemination of data on infectious diseases; for Department of Health and Human Services, Health Resources and Services Administration, \$400,000, for the Tillamook Lightwave in Tillamook, Oregon, for a fiber optic link between Tillamook County Hospital and the Oregon Health Sciences University; for Department of Health and Human Services, Centers for Disease Control and Prevention, \$300,000, for the Access Community Health Network in Chicago, Illinois, for programs related to prevention and control of chronic diseases; for Department of Health and Human Services, Health Resources and Services Administration, \$200,000, for the Northwestern Memorial Hospital in Chicago, Illinois, for facilities and equipment; for Department of Health and Human Services, Health Resources and Services Administration, \$200,000, for the Illinois Primary Health Care Association, for implementation of the Shared Integrated Management Information System; for Department of Health and Human Services, Health Resources and Services Administration, \$250,000, for Family Resources Community Action in Woonsocket, Rhode Island, for outreach and supportive services for persons with HIV/AIDS; for Department of Health and Human Services, Health Resources and Services Administration, \$250,000, for St. Joseph Hospital/PeaceHealth in Bellingham, Washington, on behalf of the Whatcom Community Health Improvement Consortium, to implement a model for improving care for patients with chronic diseases and increasing access and efficiency of services; for Department of Health and Human Services, Health Resources and Services Administration, \$150,000, for the Children's Rehabilitation Center in White Plains, New York, for facilities and equipment; for Department of Health and Human Services, Health Resources and Services Administration, \$60,000, for the Telfair Regional Hospital in McRae, Georgia, for facilities and equipment; for Department of Health and Human Services, Health Resources and Services Administration, \$65,000, for the Candler County Hospital in Metter, Georgia, for facilities and equipment; for Department of Health and Human Services, Administration for Children and Families, \$500,000 for The Boys & Girls Club of Greater Kansas City, Kansas City, Missouri, for the Heathwood Youth and Families Community Center; for Department of Health and Human Services, Health Resources and Services Administration, \$200,000, for the Boston Medical

Center in Boston, Massachusetts, for facilities and equipment; for Department of Health and Human Services, Health Resources and Services Administration, \$500,000, for the University of North Dakota School of Medicine and Health Sciences, for its rural health program in preventive medicine and behavioral sciences; for Department of Health and Human Services, Health Resources and Services Administration, \$900,000, for the California Hospital Medical Center in Los Angeles, California, for facilities and equipment; for Department of Health and Human Services, Health Resources and Services Administration, \$500,000, for the City of Abilene, Texas, Abilene-Taylor County Public Health District, for facilities and equipment; for Department of Health and Human Services, Health Resources and Services Administration, \$400,000, for the Houston County Hospital, Crockett, Texas, for facilities and equipment; for Department of Education, \$200,000, for the University of Hawaii, West Oahu campus, Hawaii, to produce the “Primal Quest” film documentary; for Department of Education, \$500,000, for the Union Parish School District, Farmerville, Louisiana, to implement an online assessment and interactive instructional program; for Department of Education, \$200,000, for the Middle Country School District, New York, to establish a math, science and technology lab at Oxhead Road Elementary School in Centereach, New York; for Department of Education, \$500,000, for the Florida Campus Compact, Tallahassee, Florida, to enhance service-learning on college campuses throughout Florida; for Department of Education, \$340,000, for Southern Connecticut State University, New Haven, Connecticut, to expand nursing education recruitment, diversity and training programs, in collaboration with Gateway Community College; for Department of Education, \$60,000, for Gateway Community College, New Haven, Connecticut, to enhance educational media and technology; for Department of Education, \$100,000, for Project Georgetown, Georgetown, Texas, for an after-school program; for Department of Education, \$200,000, for Communities in Schools-Bell-Coryell Counties, Inc., Killeen, Texas, for educational services for at-risk youth; for Department of Education, \$200,000, for Communities in Schools-Central Texas, Inc., Austin, Texas, for educational services for at-risk youth; for Department of Education, \$325,000; for Harrisburg Polytechnic Institute, Harrisburg, Pennsylvania, for a K-16 curriculum, equipment, internships and enrichment activities for high school students; for Department of Education, \$175,000, for Lehigh Carbon Community College, Tamaqua, Pennsylvania, for equipment and technology upgrades, and for curricula; for Department of Education, \$200,000, for Chicago State University, Chicago Illinois, to establish a school of pharmacy, including equipment; for Department of Education, \$500,000, for Marywood University, Scranton, Pennsylvania, to establish a Center for Assistive Technology; for Department of Education, \$400,000, for the Boys & Girls Club of Pawtucket, Rhode Island, for academic and literacy, character education, career preparation, and enrichment activities for youth; for Department of Education, \$250,000, for Whatcom Community College, Bellingham, Washington, to establish a center for training in border security; for Department of Education, \$400,000, for Westchester Community College, New York, for personnel, equipment and other programmatic expenses for The New Center; for Department of Education, \$50,000, for the Marymount Institute for the Education of Women and Girls of Marymount College of Fordham

University, Tarrytown, New York, for a mentoring project to enhance the academic and social development of Latina girls at Sleepy Hollow Middle School; for Department of Education, \$500,000, for Northern Kentucky University, Highland Heights, Kentucky, for the Urban Learning Center to expand access to postsecondary education; for Department of Education, \$500,000, for Iron County School District, Cedar City, Utah, for a student achievement management information system; for Department of Education, \$200,000, for Western Maine Technical College, South Paris, Maine, for education programs and marketing activities; for Department of Education, \$275,000, for the YMCA of the Triangle Area, Raleigh, North Carolina, for youth mentoring, character education and leadership activities; for Department of Education, \$325,000, for Communities in Schools of Northeast Texas, Inc., Pflugerville, Texas, for educational services for at-risk students; for the Institute of Museum and Library Services, \$300,000, for The Hudson River Museum, Yonkers, New York, for the “Hudson River Access” science education project; for the Institute of Museum and Library Services, \$375,000, for the Tubman African American Museum, Macon, Georgia, for exhibits, education programs and outreach activities; for the Institute of Museum and Library Services, \$300,000, for the Maine Discovery Museum, Bangor, Maine, for exhibits and education programs; for the Institute of Museum and Library Services, \$225,000, for the North Carolina State Museum of Natural Sciences, Raleigh, North Carolina, to develop exhibits and education programs; for the Department of Housing and Urban Development, “Community Development Fund”, Economic Development Initiative program, for carrying out targeted economic investments, \$3,010,000, to be allocated in the amounts and under the terms and conditions specified on pages 33 through 60 of House Report No. 108–235 for projects numbered 35, 52, 60, 61, 174, 175, 177, 181, 195, 223, 250, 265, 297, 333, 408, 409, 410, 421, 438, 439, 441, 496, 509, 574, and 583; and for the Environmental Protection Agency, “State and Tribal Assistance Grants” to local communities for repair, replacement or upgrading of their drinking water, wastewater or storm water infrastructure or for water quality protection activities, \$600,000, to be allocated under the terms and conditions specified on pages 111 through 127 of House Report No. 108–235 for projects numbered 121 and 226.

SEC. 168. (a) RESCISSIONS.—From unobligated balances of amounts made available in Public Law 107–38, and in Public Law 107–117, and in appropriations Acts for the Department of Defense, \$1,800,000,000 is hereby rescinded: *Provided*, That the Director of the Office of Management and Budget, after consultation with the Committees on Appropriations of the House and Senate and the Secretary of Defense, shall determine the amounts to be rescinded from each account that is to be so reduced: *Provided further*, That the rescissions shall take effect no later than September 30, 2004: *Provided further*, That the Director of the Office of Management and Budget shall notify the Committees on Appropriations of the House and Senate 30 days prior to rescinding such amounts: *Provided further*, That such notification shall include the accounts, programs, projects and activities from which the funds will be rescinded: *Provided further*, That this section shall not apply to any amounts appropriated or otherwise made available

Effective date.

Notification.

by the seventh proviso under the heading “Emergency Response Fund” in Public Law 107–38.

(b) ACROSS-THE-BOARD RESCISSIONS.—There is hereby rescinded an amount equal to 0.59 percent of—

(1) the budget authority provided (or obligation limitation imposed) for fiscal year 2004 for any discretionary account in divisions A through H of this Act and in any other fiscal year 2004 appropriation Act (except any fiscal year 2004 supplemental appropriation Act, the Department of Defense Appropriations Act, 2004, or the Military Construction Appropriations Act, 2004);

(2) the budget authority provided in any advance appropriation for fiscal year 2004 for any discretionary account in any prior fiscal year appropriation Act; and

(3) the contract authority provided in fiscal year 2004 for any program subject to limitation contained in any division or appropriation Act subject to paragraph (1).

(c) PROPORTIONATE APPLICATION.—Any rescission made by subsection (b) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in such subsection; and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President’s budget).

(d) OMB REPORT.—Within 30 days after the date of the enactment of this section the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the account and amount of each rescission made pursuant to subsection (b).

Deadline.

This division may be cited as the “Miscellaneous Appropriations and Offsets Act, 2004”.

Approved January 23, 2004.

LEGISLATIVE HISTORY—H.R. 2673 (S. 1427):

HOUSE REPORTS: Nos. 108–193 (Comm. on Appropriations) and 108–401 (Comm. of Conference).

SENATE REPORTS: No. 108–107 accompanying S. 1427 (Comm. on Appropriations).

CONGRESSIONAL RECORD:

Vol. 149 (2003): July 14, considered and passed House.

Nov. 5, 6, considered and passed Senate, amended.

Dec. 8, House agreed to conference report.

Vol. 150 (2004): Jan. 22, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Jan. 23, Presidential statement.



Public Law 108–200
108th Congress

An Act

Feb. 13, 2004
[H.R. 2264]

To authorize appropriations for fiscal year 2004 to carry out the Congo Basin Forest Partnership program, and for other purposes.

Congo Basin
Forest
Partnership Act
of 2004.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Congo Basin Forest Partnership Act of 2004”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The tropical forests of the Congo Basin, located in the Central African countries of Cameroon, the Central African Republic, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, the Republic of Congo, Rwanda, Burundi, and Sao Tome/Principe, are second in size only to the tropical forests of the Amazon Basin.

(2) These forests are a crucial economic resource for the people of the Central African region.

(3) Congo Basin forests play a critical role in sustaining the environment—absorbing carbon dioxide, cleansing water, and retaining soil.

(4) Congo Basin forests contain the most diverse grouping of plants and animals in Africa, including rare and endangered species, such as the lowland gorilla, mountain gorilla, chimpanzee, and okapi. These plants and animals are invaluable for many reasons, including their genetic and biochemical information, which could spark advances in medical, agricultural, and industrial technology.

(5) Logging operations, driven by a growing global demand for tropical hardwoods, are shrinking these forests. One estimate has logging taking out Congo Basin forest area at a rate of twice the size of the State of Rhode Island every year.

(6) The construction of logging roads and other developments are putting intense hunting pressure on wildlife. At current hunting levels, most species of apes and other primates, large antelope, and elephants will disappear from the Congo Basin, with some becoming extinct.

(7) If current deforestation and wildlife depletion rates are not reversed, the six countries of the Congo Basin most immediately, but also the world, will pay an immense economic, environmental, and cultural price.

(8) The United States has an interest in seeing political stability and economic development advance in the Congo Basin

countries. This interest will be adversely impacted if current deforestation and wildlife depletion rates are not reversed.

(9) Poorly managed and nonmanaged logging and hunting threatens to do to the Congo Basin what it did to West Africa, which lost much of its forest and wildlife through over-exploitation.

(10) Purged of wildlife, some Congo Basin forests already are “empty forests”.

(11) In an attempt to conserve the forests of the Congo Basin, the region’s governments convened the Yaounde (Cameroon) Forest Summit in March 1999.

(12) In September 2002, Secretary of State Colin Powell launched the Congo Basin Forest Partnership (CBFP) in Johannesburg, South Africa. The CBFP promotes the conservation and sustainable use of the region’s forests, for example, by working to combat poaching, illegal logging, and other unsustainable practices, and giving local populations an economic stake in the preservation of the forests, including through the development of ecotourism.

(13)(A) The United States contribution to the CBFP will focus on conserving 11 key landscapes in 6 countries—Cameroon, the Central African Republic, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, and the Republic of Congo—identified at the Yaounde Forest Summit as being of the greatest biological importance to the region.

(B) The United States will fund field-based activities within these 25,000,000 acres that aim to support a network of 27 national parks and protected areas and well-managed forestry concessions.

(C) In this way, the work will build on existing United States efforts, including those of the Central African Regional Program for the Environment (CARPE) of the United States Agency for International Development, which will implement the CBFP.

(14) The CBFP has broad international financial support, including from non-African governments, the European Commission, the International Bank for Reconstruction and Development, and numerous nongovernment organizations.

(15) A dramatic step toward conserving Congo Basin forests has recently been taken by Gabon. In September 2002, President Omar Bongo announced the creation of 13 national parks, representing over 10 percent of Gabon’s surface area. Previously, Gabon had no national park system.

(16) With the CBFP and other initiatives, there exists unprecedented momentum for the conservation of Congo Basin forests.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the President to carry out the Congo Basin Forest Partnership (CBFP) program \$18,600,000 for fiscal year 2004.

(b) CARPE.—Of the amounts appropriated pursuant to the authorization of appropriations in subsection (a), \$16,000,000 is authorized to be made available to the Central Africa Regional Program for the Environment (CARPE) of the United States Agency for International Development.

(c) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

Approved February 13, 2004.

LEGISLATIVE HISTORY—H.R. 2264:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 7, considered and passed House.

Dec. 9, considered and passed Senate, amended.

Vol. 150 (2004): Feb. 3, House concurred in Senate amendments.



Public Law 108–201
108th Congress

An Act

To amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

Feb. 24, 2004
[S. 610]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “NASA Flexibility Act of 2004”.

NASA Flexibility
Act of 2004.
5 USC 101 note.

SEC. 2. COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.

(a) IN GENERAL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking “the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,” and inserting “the rate of basic pay payable for level III of the Executive Schedule.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first day of the first pay period beginning on or after the date of enactment of this Act.

42 USC 2473
note.

SEC. 3. WORKFORCE AUTHORITIES.

(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by inserting after chapter 97, as added by section 841(a)(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2229), the following:

**“CHAPTER 98—NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION**

“Sec.

“9801. Definitions.

“9802. Planning, notification, and reporting requirements.

“9803. Restrictions.

“9804. Recruitment, redesignation, and relocation bonuses.

“9805. Retention bonuses.

“9806. Term appointments.

“9807. Pay authority for critical positions.

“9808. Assignments of intergovernmental personnel.

“9809. Science and technology scholarship program.

“9810. Distinguished scholar appointment authority.

“9811. Travel and transportation expenses of certain new appointees.

“9812. Annual leave enhancements.

“9813. Limited appointments to Senior Executive Service positions.

“9814. Qualifications pay.

“9815. Reporting requirement.

“§ 9801. Definitions

“For purposes of this chapter—

“(1) the term ‘Administration’ means the National Aeronautics and Space Administration;

“(2) the term ‘Administrator’ means the Administrator of the National Aeronautics and Space Administration;

“(3) the term ‘critical need’ means a specific and important safety, management, engineering, science, research, or operations requirement of the Administration’s mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—

“(A) of the inability to fill positions; or

“(B) employees do not possess the requisite skills;

“(4) the term ‘employee’ means an individual employed in or under the Administration;

“(5) the term ‘workforce plan’ means the plan required under section 9802(a);

“(6) the term ‘appropriate committees of Congress’ means—

“(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

“(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate;

“(7) the term ‘redesignation bonus’ means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof;

“(8) the term ‘supervisor’ has the meaning given such term by section 7103(a)(10); and

“(9) the term ‘management official’ has the meaning given such term by section 7103(a)(11).

Deadlines.

“§ 9802. Planning, notification, and reporting requirements

“(a) Not later than 90 days before exercising any of the workforce authorities made available under this chapter, the Administrator shall submit a written plan to the appropriate committees of Congress. Such plan shall be approved by the Office of Personnel Management.

“(b) A workforce plan shall include a description of—

“(1) each critical need of the Administration and the criteria used in the identification of that need;

“(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

“(i) address critical needs; and

“(ii) would be eligible for each authority proposed to be exercised under this chapter; and

“(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

“(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this chapter; and

“(B) the reasons why those needs would not be so addressed;

“(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

“(5) the safeguards or other measures that will be applied to ensure that this chapter is carried out in a manner consistent with merit system principles;

“(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);

“(7) the methods that will be used to determine if the authorities exercised under this chapter have successfully addressed each critical need identified under paragraph (1);

“(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and

“(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—

“(i) nongovernmental recruitment or placement agencies; and

“(ii) Internet technologies; and

“(9) any workforce-related reforms required to resolve the findings and recommendations of the Columbia Accident Investigation Board, the extent to which those recommendations were accepted, and, if necessary, the reasons why any of those recommendations were not accepted.

“(c) Not later than 60 days before first exercising any of the workforce authorities made available under this chapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

“(d)(1)(A) The Administrator may from time to time modify the workforce plan. Any modification to the workforce plan shall be submitted to the Office of Personnel Management for approval by the Office before the modification may be implemented.

“(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

“(2) Any reference in this chapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

“(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

“(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

“(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

“(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

“(f) None of the workforce authorities made available under this chapter may be exercised in a manner inconsistent with the workforce plan.

“(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

“(h) Not later than 6 years after the date of enactment of this chapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this chapter, including—

“(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this chapter successfully addressed each critical need identified under subsection (b)(1);

“(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

“(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

“(i) The budget request for the Administration for the first fiscal year beginning after the date of enactment of this chapter and for each fiscal year thereafter shall include a statement of the total amount of appropriations requested for such fiscal year to carry out this chapter.

“§ 9803. Restrictions

“(a) None of the workforce authorities made available under this chapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

“(b) Unless specifically stated otherwise, all workforce authorities made available under this chapter shall be subject to section 5307.

“(c)(1) None of the workforce authorities made available under section 9804, 9805, 9806, 9807, 9809, 9812, 9813, 9814, or 9815 may be exercised with respect to a political appointee.

“(2) For purposes of this subsection, the term ‘political appointee’ means an employee who holds—

“(A) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

“(B) a position in the Senior Executive Service as a non-career appointee (as such term is defined in section 3132(a)).

“§ 9804. Recruitment, redesignation, and relocation bonuses

“(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

“(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

“(2) the individual—

“(A) is newly appointed as an employee of the Federal Government;

“(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

“(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

“(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

“(1) 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

“(2) 100 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

“(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee’s annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

“(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

“(B) At a minimum, the service agreement shall include—

“(i) the required service period;

“(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

“(iii) the amount of the bonus and the basis for calculating that amount; and

“(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

“(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

“(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

“(f) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

“§ 9805. Retention bonuses

“(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

“(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee’s services makes it essential to retain the employee; and

“(2) the employee would be likely to leave in the absence of a retention bonus.

“(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

“(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee’s annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a).

“(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

“(B) At a minimum, the service agreement shall include—

“(i) the required service period;

“(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

“(iii) the amount of the bonus and the basis for calculating the amount; and

“(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(2) The employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

“(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

“(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

“(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

“(g) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

“§ 9806. Term appointments

“(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

“(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent

appointment in the competitive service within the Administration without further competition if—

“(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

“(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

“(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

“(4) the employee’s performance under such term appointment was at least fully successful or equivalent; and

“(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

“(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

“(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

“(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

“§ 9807. Pay authority for critical positions

“(a) In this section, the term ‘position’ means—

“(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

“(2) a position under the Executive Schedule under sections 5312 through 5317;

“(3) a position established under section 3104; or

“(4) a senior-level position to which section 5376(a)(1) applies.

“(b) Authority under this section—

“(1) may be exercised only with respect to a position that—

“(A) is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and

“(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

“(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

“(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

“(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in

accordance with this section. The Administrator may not delegate this authority.

“(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

“(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

“(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

“(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

“§ 9808. Assignments of intergovernmental personnel

“For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee’s assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking ‘two’ and inserting ‘four’.

“§ 9809. Science and technology scholarship program

“(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

“(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act.

“(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

“(b) In order to be eligible to participate in the Program, an individual must—

“(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);

“(2) be a United States citizen or permanent resident; and

“(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

“(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

“(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

Public
information.
Records.

“(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

“(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

“(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

“(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

“(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

“(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided. Under no circumstances shall the total period of obligated service be more than 4 years.

“(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

Deadline.

“(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

Regulations.

“(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under

Regulations.

the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

“(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

“(A) the total amount of scholarships received by such individual under this section; plus

“(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

“(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

Regulations.

“(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

“(i) For purposes of this section—

“(1) the term ‘cost of attendance’ has the meaning given that term in section 472 of the Higher Education Act of 1965;

“(2) the term ‘institution of higher education’ has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

“(3) the term ‘Program’ means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

Appropriation
authorization.

“(j)(1) There is authorized to be appropriated to the Administration for the Program \$10,000,000 for each fiscal year.

“(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

“§ 9810. Distinguished scholar appointment authority

“(a) In this section—

“(1) the term ‘professional position’ means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

“(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

“(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

“(2) the term ‘research position’ means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of

a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

“(b) The Administration may appoint, without regard to the provisions of section 3304(b) and sections 3309 through 3318, but subject to subsection (c), candidates directly to General Schedule professional, competitive service positions in the Administration for which public notice has been given (in accordance with regulations of the Office of Personnel Management), if—

“(1) with respect to a position at the GS-7 level, the individual—

“(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

“(2) with respect to a position at the GS-9 level, the individual—

“(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

“(3) with respect to a position at the GS-11 level, the individual—

“(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

“(4) with respect to a research position at the GS-12 level, the individual—

“(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

“(c) In making any selections under this section, preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of nonpreference eligibles.

“(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

“§ 9811. Travel and transportation expenses of certain new appointees

“(a) In this section, the term ‘new appointee’ means—

“(1) a person newly appointed or reinstated to Federal service to the Administration to—

“(A) a career or career-conditional appointment or an excepted service appointment to a continuing position;

“(B) a term appointment;

“(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

“(D) a career or limited term Senior Executive Service appointment;

“(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

“(F) an appointment to a position established under section 3104; or

“(G) an appointment to a position established under section 5108; or

“(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

“(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

“§ 9812. Annual leave enhancements

“(a) In this section—

“(1) the term ‘newly appointed employee’ means an individual who is first appointed—

“(A) as an employee of the Federal Government; or

“(B) as an employee of the Federal Government following a break in service of at least 90 days after that individual’s last period of Federal employment, other than—

“(i) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

“(ii) employment as a law clerk trainee;

“(iii) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

“(iv) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

“(v) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

“(2) the term ‘period of qualified non-Federal service’ means any period of service performed by an individual that—

“(A) was performed in a position the duties of which were directly related to the duties of the position in the Administration which that individual will fill as a newly appointed employee; and

“(B) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and

“(3) the term ‘directly related to the duties of the position’ means duties and responsibilities in the same line of work which require similar qualifications.

“(b)(1) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

“(2) A decision under paragraph (1) to treat a period of qualified non-Federal service as if it were service performed as an employee shall continue to apply so long as that individual serves in or under the Administration.

“(c)(1) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, shall be 1 day for each full biweekly pay period.

“(2) The accrual rate established under this subsection shall continue to apply to the employee so long as such employee serves in or under the Administration.

“§ 9813. Limited appointments to Senior Executive Service positions

“(a) In this section—

“(1) the term ‘career reserved position’ means a position in the Administration designated under section 3132(b) which may be filled only by—

“(A) a career appointee; or

“(B) a limited emergency appointee or a limited term appointee—

“(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

“(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

“(2) the term ‘limited emergency appointee’ has the meaning given under section 3132; and

“(3) the term ‘limited term appointee’ means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

“(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

“(c) Notwithstanding sections 3132 and 3394(b)—

“(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

“(A) 4 years or less to a position the duties of which will expire at the end of such term; or

“(B) 1 year or less to a position the duties of which are continuing; and

“(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

“(A) paragraph (1)(A) for a period not to exceed 2 years; and

“(B) paragraph (1)(B) for a period not to exceed 1 year.

“(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

“(e) Notwithstanding section 3394(b) and section 3395—

“(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

“(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

“(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

“(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

“§ 9814. Qualifications pay

“(a) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, if such employee—

“(1) possesses unusually high or unique qualifications; and

“(2) is assigned—

“(A) new duties, without a change of position; or

“(B) to a new position.

“(b) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's

contribution in the new position will exceed that in the former position, before setting pay under this section.

“(c) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

“(d) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

“(e) Before setting any employee’s pay under this section, the Administrator shall submit a plan to the Office of Personnel Management and the appropriate committees of Congress, that includes—

“(1) criteria for approval of actions to set pay under this section;

“(2) the level of approval required to set pay under this section;

“(3) all types of actions and positions to be covered;

“(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

“(5) a process to evaluate the effectiveness of this section.

“§ 9815. Reporting requirement

“The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 6 years beginning after the date of enactment of this chapter, a report that provides the following: Deadline.

“(1) A summary of all bonuses paid under subsections (b) and (c) of section 9804 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

“(2) A summary of all bonuses paid under subsections (b) and (c) of section 9805 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

“(3) The total number of term appointments converted during the preceding fiscal year under section 9806 and, of that total number, the number of conversions that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(4) The number of positions for which the rate of basic pay was fixed under section 9807 during the preceding fiscal year, the number of positions for which the rate of basic pay under such section was terminated during the preceding fiscal year, and the number of times the rate of basic pay was fixed under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(5) The number of scholarships awarded under section 9809 during the preceding fiscal year and the number of scholarship recipients appointed by the Administration during the preceding fiscal year.

“(6) The total number of distinguished scholar appointments made under section 9810 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(7) The average amount paid per appointee, and the largest amount paid to any appointee, under section 9811 during the preceding fiscal year for travel and transportation expenses.

“(8) The total number of employees who were awarded enhanced annual leave under section 9812 during the preceding fiscal year; of that total number, the number of employees who were serving in a position addressing a critical need described in the workforce plan pursuant to section 9802(b)(2); and, for employees in each of those respective groups, the average amount of additional annual leave such employees earned in the preceding fiscal year (over and above what they would have earned absent section 9812).

“(9) The total number of appointments made under section 9813 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(10) The number of employees for whom the Administrator set the pay under section 9814 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

“(11) A summary of all recruitment, relocation, redesignation, and retention bonuses paid under authorities other than this chapter and excluding the authorities provided in sections 5753 and 5754 of this title, during the preceding fiscal year. Such summary shall include, for each type of bonus, the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.”.

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 97 the following:

“98. National Aeronautics and Space Administration 9801”.

Approved February 24, 2004.

LEGISLATIVE HISTORY—S. 610 (H.R. 1085):

HOUSE REPORTS: No. 108–244, Pt. 1 accompanying H.R. 1085 (Comm. on Science).

SENATE REPORTS: No. 108–113 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 24, considered and passed Senate.

Vol. 150 (2004): Jan. 28, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Feb. 24, Presidential statement.



Public Law 108–202
108th Congress

An Act

Feb. 29, 2004
[H.R. 3850]

To provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

Surface
Transportation
Extension Act of
2004.
23 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Surface Transportation Extension Act of 2004”.

SEC. 2. ADVANCES.

(a) **IN GENERAL.**—Section 2(a) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 104 note; 117 Stat. 1110) is amended by inserting “and the Surface Transportation Extension Act of 2004” after “as amended by this Act”.

(b) **PROGRAMMATIC DISTRIBUTIONS.**—

(1) **ADMINISTRATION OF FUNDS.**—Section 2(b)(3) of such Act (117 Stat. 1110) is amended by striking “the amendment made under subsection (d)” and inserting “section 1101(c) of the Transportation Equity Act for the 21st Century”.

(2) **SPECIAL RULES FOR MINIMUM GUARANTEE.**—Section 2(b)(4) of such Act is amended by striking “\$1,166,666,667” and inserting “\$1,633,333,333”.

(3) **EXTENSION OF OFF-SYSTEM BRIDGE SETASIDE.**—Section 144(g)(3) of title 23, United States Code, is amended by striking “February 29” inserting “April 30”.

(c) **AUTHORIZATION OF CONTRACT AUTHORITY.**—Section 1101(c)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1111) is amended by striking “\$13,483,458,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$18,876,841,666 for the period of October 1, 2003, through April 30, 2004”.

23 USC 104 note.

(d) **LIMITATION ON OBLIGATIONS.**—Section 2(e) of the Surface Transportation Extension Act of 2003 (117 Stat. 1111) is amended to read as follows:

“(e) **LIMITATION ON OBLIGATIONS.**—

“(1) **DISTRIBUTION OF OBLIGATION AUTHORITY.**—Subject to paragraph (2), for the period of October 1, 2003, through April 30, 2004, the Secretary shall distribute the obligation limitation made available for Federal-aid highways and highway safety construction programs under the heading ‘FEDERAL-AID HIGHWAYS’ in the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108–199) in accordance with section 110 of such Act; except that

the amount of obligation limitation to be distributed for such period for each program, project, and activity specified in sections 110(a)(1), 110(a)(2), 110(a)(4), 110(a)(5), and 110(g) of such Act shall equal the greater of—

“(A) the funding authorized for such program, project, or activity in this Act and the Surface Transportation Extension Act of 2004 (including any amendments made by this Act and such Act); or

“(B) $\frac{7}{12}$ of the funding provided for or limitation set on such program, project, or activity in the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (Public Law 108–199).

“(2) LIMITATION ON TOTAL AMOUNT OF AUTHORITY DISTRIBUTED.—The total amount of obligation limitation distributed under paragraph (1) for the period of October 1, 2003, through April 30, 2004, shall not exceed \$19,741,750,000; except that this limitation shall not apply to \$372,750,000 in obligations for minimum guarantee for such period.

“(3) TIME PERIOD FOR OBLIGATIONS OF FUNDS.—After April 30, 2004, no funds shall be obligated for any Federal-aid highway program project until the date of enactment of a law reauthorizing the Federal-aid highway program.

“(4) TREATMENT OF OBLIGATIONS.—Any obligation of obligation authority distributed under this subsection shall be considered to be an obligation for Federal-aid highways and highway safety construction programs for fiscal year 2004 for the purposes of the matter under the heading ‘FEDERAL-AID HIGHWAYS’ in the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004.”.

SEC. 3. TRANSFERS OF UNOBLIGATED APPORTIONMENTS.

Section 3 of the Surface Transportation Extension Act of 2003 (117 Stat. 1112–1113) is amended by adding at the end the following:

“(e) PROHIBITION OF TRANSFERS.—Notwithstanding any other provision of this section, no funds may be transferred after February 29, 2004, by a State under subsection (a)—

“(1) from amounts apportioned to the State for the congestion mitigation and air quality improvement program; and

“(2) from amounts apportioned to the State for the surface transportation program and that are subject to any of paragraphs (1), (2), and (3)(A)(i) of section 133(d) of title 23, United States Code.”.

SEC. 4. ADMINISTRATIVE EXPENSES.

Section 4(a) of the Surface Transportation Extension Act of 2003 (117 Stat. 1113) is amended by striking “\$187,500,000” and inserting “\$262,500,000”.

SEC. 5. OTHER FEDERAL-AID HIGHWAY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE I OF TEA–21.—

(1) FEDERAL LANDS HIGHWAYS.—

(A) INDIAN RESERVATION ROADS.—Section 1101(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112; 117 Stat. 1113) is amended—

(i) in the first sentence by striking “\$114,583,333 for the period of October 1, 2003, through February

29, 2004” and inserting “\$160,416,667 for the period of October 1, 2003, through April 30, 2004”; and

(ii) in the second sentence by striking “\$5,416,667” and inserting “\$7,583,333”.

(B) PUBLIC LANDS HIGHWAYS.—Section 1101(a)(8)(B) of such Act (112 Stat. 112; 117 Stat. 1113) is amended by striking “\$102,500,000 for the period of October 1, 2003, through February 29, 2004” and inserting “\$143,500,000 for the period of October 1, 2003, through April 30, 2004”.

(C) PARK ROADS AND PARKWAYS.—Section 1101(a)(8)(C) of such Act (112 Stat. 112; 117 Stat. 1113) is amended by striking “\$68,750,000 for the period of October 1, 2003, through February 29, 2004” and inserting “\$96,250,000 for the period of October 1, 2003, through April 30, 2004”.

(D) REFUGE ROADS.—Section 1101(a)(8)(D) of such Act (112 Stat. 112; 117 Stat. 1113) is amended by striking “\$8,333,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$11,666,667 for the period of October 1, 2003, through April 30, 2004”.

(2) NATIONAL CORRIDOR PLANNING AND DEVELOPMENT AND COORDINATED BORDER INFRASTRUCTURE PROGRAMS.—Section 1101(a)(9) of such Act (112 Stat. 112; 117 Stat. 1114) is amended by striking “\$58,333,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$81,666,667 for the period of October 1, 2003, through April 30, 2004”.

(3) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—

(A) IN GENERAL.—Section 1101(a)(10) of such Act (112 Stat. 113; 117 Stat. 1114) is amended by striking “\$15,833,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$22,166,667 for the period of October 1, 2003, through April 30, 2004”.

(B) SET ASIDE FOR ALASKA, NEW JERSEY, AND WASHINGTON.—Section 5(a)(3)(B) of the Surface Transportation Extension Act of 2003 (117 Stat. 1114) is amended—

(i) in clause (i) by striking “\$4,166,667” and inserting “\$5,833,333”;

(ii) in clause (ii) by striking “\$2,083,333” and inserting “\$2,916,667”; and

(iii) in clause (iii) by striking “\$2,083,333” and inserting “\$2,916,667”.

(4) NATIONAL SCENIC BYWAYS PROGRAM.—Section 1101(a)(11) of the Transportation Equity Act for the 21st Century (112 Stat. 113; 117 Stat. 1114) is amended by striking “\$11,458,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$16,041,666 for the period of October 1, 2003, through April 30, 2004”.

(5) VALUE PRICING PILOT PROGRAM.—Section 1101(a)(12) of such Act (112 Stat. 113; 117 Stat. 1114) is amended by striking “\$4,583,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$6,416,667 for the period of October 1, 2003, through April 30, 2004”.

(6) HIGHWAY USE TAX EVASION PROJECTS.—Section 1101(a)(14) of such Act (112 Stat. 113; 117 Stat. 1114) is amended by striking “\$2,083,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$2,916,667 for the period of October 1, 2003, through April 30, 2004”.

(7) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—Section 1101(a)(15) of such Act (112 Stat. 113; 117 Stat. 1114) is amended by striking “\$45,833,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$64,166,667 for the period of October 1, 2003, through April 30, 2004”.

(8) SAFETY GRANTS.—Section 1212(i)(1)(D) of such Act (23 U.S.C. 402 note; 112 Stat. 196; 112 Stat. 840; 117 Stat. 1114) is amended by striking “\$208,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$291,667 for the period of October 1, 2003, through April 30, 2004”.

(9) TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM.—Section 1221(e)(1) of such Act (23 U.S.C. 101 note; 112 Stat. 223; 117 Stat. 1114) is amended by striking “\$10,416,667 for the period of October 1, 2003, through February 29, 2004” and inserting “\$14,583,333 for the period of October 1, 2003, through April 30, 2004”.

(10) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION.—Section 188 of title 23, United States Code, is amended—

(A) by striking subsection (a)(1)(F) and inserting the following:

“(F) \$81,666,666 for the period of October 1, 2003, through April 30, 2004.”;

(B) in subsection (a)(2) by striking “\$833,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$1,166,667 for the period of October 1, 2003, through April 30, 2004”; and

(C) in the item relating to fiscal year 2004 in table contained in subsection (c) by striking “\$1,083,333,333” and inserting “\$1,516,666,667”.

(b) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE V OF TEA–21.—

(1) SURFACE TRANSPORTATION RESEARCH.—Section 5001(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 419; 117 Stat. 1115) is amended by striking “\$43,750,000 for the period of October 1, 2003, through February 29, 2004” and inserting “\$61,250,000 for the period of October 1, 2003, through April 30, 2004”.

(2) TECHNOLOGY DEPLOYMENT PROGRAM.—Section 5001(a)(2) of such Act (112 Stat. 419; 117 Stat. 1115) is amended by striking “\$22,916,667 for the period of October 1, 2003, through February 29, 2004” and inserting “\$32,083,334 for the period of October 1, 2003, through April 30, 2004”.

(3) TRAINING AND EDUCATION.—Section 5001(a)(3) of such Act (112 Stat. 420; 117 Stat. 1115) is amended by striking “\$8,750,000 for the period of October 1, 2003, through February 29, 2004” and inserting “\$12,250,000 for the period of October 1, 2003, through April 30, 2004”.

(4) BUREAU OF TRANSPORTATION STATISTICS.—Section 5001(a)(4) of such Act (112 Stat. 420; 117 Stat. 1115) is amended by striking “\$12,916,667 for the period of October 1, 2003, through February 29, 2004” and inserting “\$18,083,333 for the period of October 1, 2003, through April 30, 2004”.

(5) ITS STANDARDS, RESEARCH, OPERATIONAL TESTS, AND DEVELOPMENT.—Section 5001(a)(5) of such Act (112 Stat. 420; 117 Stat. 1115) is amended by striking “\$47,916,667 for the period of October 1, 2003, through February 29, 2004” and

inserting “\$67,083,334 for the period of October 1, 2003, through April 30, 2004”.

(6) ITS DEPLOYMENT.—Section 5001(a)(6) of such Act (112 Stat. 420; 117 Stat. 1116) is amended by striking “\$51,666,667 for the period of October 1, 2003, through February 29, 2004” and inserting “\$72,333,334 for the period of October 1, 2003, through April 30, 2004”.

(7) UNIVERSITY TRANSPORTATION RESEARCH.—Section 5001(a)(7) of such Act (112 Stat. 420; 117 Stat. 1116) is amended by striking “\$11,250,000 for the period of October 1, 2003, through February 29, 2004” and inserting “\$15,750,000 for the period of October 1, 2003, through April 30, 2004”.

(c) METROPOLITAN PLANNING.—Section 5(c)(1) of the Surface Transportation Extension Act of 2003 (117 Stat. 1116) is amended by striking “\$100,000,000 for the period of October 1, 2003, through February 29, 2004” and inserting “\$140,000,000 for the period of October 1, 2003, through April 30, 2004”.

(d) TERRITORIES.—Section 1101(d)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1116) is amended by striking “\$15,166,667 for the period of October 1, 2003, through February 29, 2004” and inserting “\$21,233,333 for the period of October 1, 2003, through April 30, 2004”.

(e) ALASKA HIGHWAY.—Section 1101(e)(1) of such Act (117 Stat. 1116) is amended by striking “\$7,833,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$10,966,666 for the period of October 1, 2003, through April 30, 2004”.

(f) OPERATION LIFESAVER.—Section 1101(f)(1) of such Act (117 Stat. 1117) is amended by striking “\$208,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$291,667 for the period of October 1, 2003, through April 30, 2004”.

(g) BRIDGE DISCRETIONARY.—Section 1101(g)(1) of such Act (117 Stat. 1117) is amended—

(1) by striking “\$41,666,667” and inserting “\$58,333,333”; and

(2) by striking “February 29” and inserting “April 30”.

(h) INTERSTATE MAINTENANCE.—Section 1101(h)(1) of such Act (117 Stat. 1117) is amended—

(1) by striking “\$41,666,667” and inserting “\$58,333,333”; and

(2) by striking “February 29” and inserting “April 30”.

(i) RECREATIONAL TRAILS ADMINISTRATIVE COSTS.—Section 1101(i)(1) of such Act (117 Stat. 1117) is amended by striking “\$312,500 for the period of October 1, 2003, through February 29, 2004” and inserting “\$437,500 for the period of October 1, 2003, through April 30, 2004”.

(j) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—Section 1101(j)(1) of such Act (117 Stat. 1118) is amended—

(1) by striking “\$2,187,500” and inserting “\$3,062,500”;

(2) by striking “\$104,167” and inserting “\$145,833”; and

(3) by striking “February 29” each place it appears and inserting “April 30”.

(k) NONDISCRIMINATION.—Section 1101(k) of such Act (117 Stat. 1118) is amended—

(1) in paragraph (1) by striking “\$4,166,667 for the period of October 1, 2003, through February 29, 2004” and inserting

“\$5,833,333 for the period of October 1, 2003, through April 30, 2004”; and

(2) in paragraph (2) by striking “\$4,166,667 for the period of October 1, 2003, through February 29, 2004” and inserting “\$5,833,333 for the period of October 1, 2003, through April 30, 2004”.

(l) ADMINISTRATION OF FUNDS.—Section 5(l) of the Surface Transportation Extension Act of 2003 (117 Stat. 1118) is amended—

(1) by inserting “and section 5 of the Surface Transportation Extension Act of 2004” after “this section” the first place it appears; and

(2) by inserting “or the amendment made by section 4(a)(1) of such Act” before the period at the end.

(m) REDUCTION OF ALLOCATED PROGRAMS.—Section 5(m) of such Act (117 Stat. 1119) is amended—

(1) by inserting “and section 5 of the Surface Transportation Extension Act of 2004” after “but for this section”;

(2) by striking “both”;

(3) by striking “and by this section” and inserting “, by this section, and by section 5 of such Act”; and

(4) by inserting “and by section 5 of such Act” before the period at the end.

(n) PROGRAM CATEGORY RECONCILIATION.—Section 5(n) of such Act (117 Stat. 1119) is amended by inserting “and section 5 of the Surface Transportation Extension Act of 2004” after “this section”.

SEC. 6. EXTENSION OF HIGHWAY SAFETY PROGRAMS.

(a) SEAT BELT SAFETY INCENTIVE GRANTS.—Section 157(g)(1) of title 23, United States Code, is amended by striking “\$46,666,667 for the period of October 1, 2003, through February 29, 2004” and inserting “\$65,333,333 for the period of October 1, 2003, through April 30, 2004”.

(b) PREVENTION OF INTOXICATED DRIVER INCENTIVE GRANTS.—Section 163(e)(1) of such title is amended by striking “\$50,000,000 for the period of October 1, 2003, through February 29, 2004” and inserting “\$70,000,000 for the period of October 1, 2003, through April 30, 2004”.

SEC. 7. SPORT FISHING AND BOATING SAFETY.

(a) FUNDING FOR NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—Section 4(c)(6) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(c)(6)) is amended to read as follows:

“(6) \$5,833,333 for the period of October 1, 2003, through April 30, 2004.”.

(b) CLEAN VESSEL ACT FUNDING.—Section 4(b)(4) of such Act (16 U.S.C. 777c(b)(4)) is amended to read as follows:

“(4) FIRST 7 MONTHS OF FISCAL YEAR 2004.—For the period of October 1, 2003, through April 30, 2004, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to \$47,833,333, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

“(A) \$5,833,333 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

“(B) \$4,666,667 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)).

“(C) The balance remaining after the application of subparagraphs (A) and (B) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.”.

(c) BOAT SAFETY FUNDS.—Section 13106(c) of title 46, United States Code, is amended—

- (1) by striking “\$2,083,333” and inserting “\$2,916,667”; and
- (2) by striking “\$833,333” and inserting “\$1,166,667”.

SEC. 8. TECHNICAL AMENDMENTS.

(a) HIGHWAY SAFETY GRANTS.—

(1) IN GENERAL.—Title I of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108–199) is amended by inserting before the period at the end of the matter under the heading “NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, HIGHWAY TRAFFIC SAFETY GRANTS” the following: “: *Provided further*, That not to exceed \$2,600,000 of the funds subject to allocation under section 157 of title 23, United States Code, and not to exceed \$2,600,000 of the funds subject to apportionment under section 163 of that title, shall be available to the National Highway Traffic Safety Administration for administering highway safety grants under those sections”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 24, 2004.

(b) FEDERAL HIGHWAY ADMINISTRATION.—Section 110(g) of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108–199) is amended by adding at the end the following: “Obligation authority shall be available until used and in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.”.

SEC. 9. EXTENSION OF FEDERAL TRANSIT PROGRAMS.

(a) ALLOCATING AMOUNTS.—Section 5309(m) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “February 29, 2004” and inserting “April 30, 2004”;

(B) in subparagraph (A), by inserting “, except for the period beginning on October 1, 2003, and ending on April 30, 2004, during which \$699,642,775 will be available” after “modernization”;

(C) in subparagraph (B), by inserting “, except for the period beginning on October 1, 2003, and ending on April 30, 2004, during which \$767,657,109 will be available” before the semicolon; and

(D) in subparagraph (C), by inserting “, except for the period beginning on October 1, 2003 and ending on

Ante, p. 299.

Ante, p. 293.

April 30, 2004, during which \$352,110,220 will be available” after “facilities”;

(2) by amending paragraph (2)(B)(iii) to read as follows:

“(iii) OCTOBER 1, 2003 THROUGH APRIL 30, 2004.—

Of the amounts made available under paragraph (1)(B), \$6,066,667 shall be available for the period beginning on October 1, 2003, and ending on April 30, 2004, for capital projects described in clause (i).”;

(3) in paragraph (3)(B)—

(A) by striking “\$1,250,000” and inserting “\$1,750,000”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(4) in paragraph (3)(C)—

(A) by striking “\$20,833,334 shall be available” and inserting “\$28,994,583 shall be transferred to and administered under section 5309 for buses and bus facilities”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”.

(b) APPORTIONMENT OF APPROPRIATIONS FOR FIXED GUIDEWAY MODERNIZATION.—Section 8(b)(1) of the Surface Transportation Extension Act of 2003 (49 U.S.C. 5337 note) is amended by striking “February 29, 2004” and inserting “April 30, 2004”.

(c) FORMULA GRANTS AUTHORIZATIONS.—Section 5338(a) of title 49, United States Code, is amended—

(1) in the heading to paragraph (2) by striking “FEBRUARY 29, 2004” and inserting “APRIL 30, 2004”;

(2) in paragraph (2)(A)(vi)—

(A) by striking “\$1,292,948,344” and inserting “\$1,780,963,287”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”;

(3) in paragraph (2)(B)(vi)—

(A) by striking “\$323,459,169” and inserting “\$445,240,822”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(4) in paragraph (2)(C) by striking “February 29, 2004” and inserting “April 30, 2004”.

(d) FORMULA GRANT FUNDS.—Section 8(d) of the Surface Transportation Extension Act of 2003 (117 Stat. 1122) is amended to read as follows:

“(d) ALLOCATION OF FORMULA GRANT FUNDS FOR OCTOBER 1, 2003, THROUGH APRIL 30, 2004.—Of the aggregate of amounts made available by or appropriated under section 5338(a)(2) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004—

“(1) \$ 2,812,446 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307 of such title;

“(2) \$28,994,583 shall be available for bus and bus facilities grants under section 5309 of such title;

“(3) \$52,568,804 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310 of such title;

“(4) \$139,526,367 shall be available to provide financial assistance for other than urbanized areas under section 5311 of such title;

“(5) \$4,030,247 shall be available to provide financial assistance in accordance with section 3038(g) of the Transportation Equity Act for the 21st Century; and

“(6) \$1,998,271,661 shall be available to provide financial assistance for urbanized areas under section 5307 of such title.”.

(e) CAPITAL PROGRAM AUTHORIZATIONS.—Section 5338(b)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “FEBRUARY 29, 2004” and inserting “APRIL 30, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$1,022,503,342” and inserting “\$1,819,410,104”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$255,801,669” and inserting “\$363,882,021”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”.

(f) PLANNING AUTHORIZATIONS AND ALLOCATIONS.—Section 5338(c)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “FEBRUARY 29, 2004” and inserting “APRIL 30, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$24,636,667” and inserting “\$33,981,652”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$6,100,000” and inserting “\$8,350,440”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”.

(g) RESEARCH AUTHORIZATIONS.—Section 5338(d)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “FEBRUARY 29, 2004” and inserting “APRIL 30, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$16,536,667” and inserting “\$24,471,428”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$4,095,000” and inserting “\$6,262,830”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(4) in subparagraph (C) by striking “February 29, 2004” and inserting “April 30, 2004”.

(h) RESEARCH FUNDS.—Section 8(h) of the Surface Transportation Extension Act of 2003 is amended to read as follows:

“(h) ALLOCATION OF RESEARCH FUNDS FOR OCTOBER 1, 2003, THROUGH APRIL 30, 2004.—Of the funds made available by or

appropriated under section 5338(d)(2) of title 49, United States Code, for the period of October 1, 2003, through April 30, 2004—

“(1) not less than \$3,044,431 shall be available for providing rural transportation assistance under section 5311(b)(2) of such title;

“(2) not less than \$4,784,106 shall be available for carrying out transit cooperative research programs under section 5313(a) of such title;

“(3) not less than \$4,784,106 shall be available to carry out programs under the National Transit Institute under section 5315 of such title, including not more than \$579,892 to carry out section 5315(a)(16) of such title; and

“(4) any amounts not made available under paragraphs (1) through (3) shall be available for carrying out national planning and research programs under sections 5311(b)(2), 5312, 5313(a), 5314, and 5322 of such title.”.

(i) UNIVERSITY TRANSPORTATION RESEARCH AUTHORIZATIONS.—Section 5338(e)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “FEBRUARY 29, 2004” and inserting “APRIL 30, 2004”;

(2) in subparagraph (A)—

(A) by striking “\$2,020,833” and inserting “\$2,783,480”;

and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”;

(3) in subparagraph (B)—

(A) by striking “\$505,833” and inserting “\$695,870”;

and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(4) in subparagraph (C) by striking “February 29, 2004” each place it appears and inserting “April 30, 2004”.

(j) UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—

(1) IN GENERAL.—Section 8(j) of the Surface Transportation Extension Act of 2003 is amended to read as follows:

“(j) ALLOCATION OF UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—

“(1) IN GENERAL.—Of the amounts made available under section 5338(e)(2)(A) of title 49, United States Code, for the period October 1, 2003, through April 30, 2004—

“(A) \$994,100 shall be available for the center identified in section 5505(j)(4)(A) of such title; and

“(B) \$994,100 shall be available for the center identified in section 5505(j)(4)(F) of such title.

“(2) TRAINING AND CURRICULUM DEVELOPMENT.—Notwithstanding section 5338(e)(2) of title 49, United States Code, any amounts made available under such section for the period October 1, 2003, through April 30, 2004, that remain after distribution under paragraph (1), shall be available for the purposes specified in section 3015(d) of the Transportation Equity Act for the 21st Century (112 Stat. 857).”.

(2) CONFORMING AMENDMENT.—Section 3015(d)(2) of the Transportation Equity Act for the 21st Century (112 Stat. 857) is amended by striking “February 29, 2004” and inserting “April 30, 2004”.

(k) ADMINISTRATION AUTHORIZATIONS.—Section 5338(f)(2) of title 49, United States Code, is amended—

117 Stat 1124.

49 USC 5338
note.

(1) in the heading by striking “FEBRUARY 29, 2004” and inserting “APRIL 30, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$24,585,834” and inserting “\$35,025,457”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$6,150,833” and inserting “\$8,756,364”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”.

(l) JOB ACCESS AND REVERSE COMMUTE PROGRAM.—Section 3037(l) of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in paragraph (1)(A)(vi)—

(A) by striking “\$50,519,167” and inserting “\$57,989,167”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”;

(2) in paragraph (1)(B)(vi)—

(A) by striking “\$12,638,833” and inserting “\$14,497,292”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”;

(3) in paragraph (2) by striking “February 29, 2004, \$4,166,667” and inserting “April 30, 2004, \$5,798,917”; and

(4) by adding at the end the following:

“(4) TRANSFER IN FISCAL YEAR 2004.—Of the funds made available or appropriated under paragraph (1) for fiscal year 2004, prior to the allocation under paragraph (3), \$11,597,833 shall be administered under the provisions of section 5309 of title 49, United States Code.”.

(m) RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note) is amended—

(1) in paragraph (1)(F)—

(A) by striking “\$2,187,500” and inserting “\$3,044,431”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(2) in paragraph (2)—

(A) by striking “\$708,333” and inserting “\$985,816”; and

(B) by striking “February 29, 2004” and inserting “April 30, 2004”.

(n) URBANIZED AREA FORMULA GRANTS.—Section 5307(b)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “FEBRUARY 29, 2004” and inserting “APRIL 30, 2004”; and

(2) in subparagraph (A) by striking “February 29, 2004” and inserting “April 30, 2004”;

(o) OBLIGATION CEILING.—Section 3040(6) of the Federal Transit Act of 1998 (112 Stat. 394) is amended—

(1) by striking “\$3,042,501,691” and inserting “\$4,238,428,192”; and

(2) by striking “February 29, 2004” and inserting “April 30, 2004”.

(p) FUEL CELL BUS AND BUS FACILITIES PROGRAM.—Section 3015(b) of the Federal Transit Act of 1998 (112 Stat. 361) is amended—

(1) by striking “February 29, 2004” and inserting “April 30, 2004”; and

(2) by striking “\$2,020,833” and inserting “\$2,812,475”.

(q) ADVANCED TECHNOLOGY PILOT PROJECT.—Section 3015(c)(2) of the Federal Transit Act of 1998 (49 U.S.C. 322 note) is amended—

23 USC 322 note.

(1) by striking “February 29, 2004,” and inserting “April 30, 2004”; and

(2) by striking “\$2,083,333” and inserting “\$2,812,475”.

(r) PROJECTS FOR NEW FIXED GUIDEWAY SYSTEMS AND EXTENSIONS TO EXISTING SYSTEMS.—Section 3030 of the Transportation Equity Act for the 21st Century (112 Stat. 373) is amended by striking “February 29, 2004” each place it appears and inserting “April 30, 2004”.

(s) NEW JERSEY URBAN CORE PROJECT.—Section 3031(a)(3) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2122; 112 Stat. 379) is amended by striking “February 29, 2004” each place it appears and inserting “April 30, 2004”.

(t) TREATMENT OF FUNDS.—Section 8(t) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 101 note) is amended—

(1) by striking “Amounts” and inserting the following:

“(1) IN GENERAL.—Amounts”;

(2) by inserting “and by section 9 of the Surface Transportation Extension Act of 2004” after “this section”; and

(3) by adding at the end the following:

“(2) TRANSFERS.—Funds authorized by or made available under this section shall be transferred in accordance with the Consolidated Appropriations Act, 2004, except that only $\frac{7}{12}$ of the total amount to be transferred shall be available.”.

(u) LOCAL SHARE.—Section 3011(a) of the Federal Transit Act of 1998 (49 U.S.C. 5307 note) is amended by inserting “and for the period of October 1, 2003 through April 30, 2004,” after “2003,”.

SEC. 10. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION PROGRAMS.

(a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2009(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 337; 117 Stat. 1119) is amended by striking “, and \$68,750,000 for the period of October 1, 2003, through February 29, 2004” and inserting “, and \$96,250,000 for the period of October 1, 2003, through April 30, 2004”.

(b) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2009(a)(2) of such Act (112 Stat. 337; 117 Stat. 1119) is amended by striking “\$30,000,000 for the period of October 1, 2003, through February 29, 2004” and inserting “\$42,000,000 for the period of October 1, 2003, through April 30, 2004”.

(c) OCCUPANT PROTECTION INCENTIVE GRANTS.—Section 2009(a)(3) of such Act (112 Stat. 337; 117 Stat. 1120) is amended by striking “\$8,333,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$11,666,700 for the period of October 1, 2003, through April 30, 2004”.

(d) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANTS.—Section 2009(a)(4) of such Act (112 Stat. 337; 117 Stat.

1120) is amended by striking “\$16,666,667 for the period of October 1, 2003, through February 29, 2004” and inserting “\$23,333,300 for the period of October 1, 2003, through April 30, 2004”.

(e) NATIONAL DRIVER REGISTER.—Section 2009(a)(6) of such Act (112 Stat. 338; 117 Stat. 1120) is amended by striking “\$833,333 for the period of October 1, 2003, through February 29, 2004” and inserting “\$2,100,000 for the period of October 1, 2003, through April 30, 2004”.

SEC. 11. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PROGRAM.

(a) ADMINISTRATIVE EXPENSES.—Section 7(a)(1) of the Surface Transportation Extension Act of 2003 (117 Stat. 1120) is amended by striking “\$71,487,500 for the period of October 1, 2003, through February 29, 2004” and inserting “\$102,467,000 for the period October 1, 2003 through April 30, 2004”.

(b) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—Section 31104(a)(7) of title 49, United States Code, is amended to read as follows:

“(7) Not more than \$98,352,000 for the period of October 1, 2003, through April 30, 2004.”.

(c) INFORMATION SYSTEMS AND COMMERCIAL DRIVER’S LICENSE GRANTS.—

(1) AUTHORIZATION OF APPROPRIATION.—Section 31107(a)(5) of such title is amended to read as follows:

“(5) \$11,639,000 for the period of October 1, 2003, through April 30, 2004.”.

(2) EMERGENCY CDL GRANTS.—Section 7(c) of the Surface Transportation Extension Act of 2003 (117 Stat. 1121) is amended—

(A) by striking “February 29,” and inserting “April 30,”; and

(B) by striking “\$416,667” and inserting “\$582,000”.

(d) CRASH CAUSATION STUDY.—Section 7(d) of such Act is amended—

(1) by striking “\$416,667” and inserting “\$582,000”; and

(2) by striking “February 29” and inserting “April 30”.

(e) TECHNICAL AMENDMENTS.—

(1) IN GENERAL.—Title I of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108–199) is amended—

(A) by striking “Fund and to” in the matter appearing under the heading “FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, MOTOR CARRIER SAFETY, LIMITATION ON ADMINISTRATIVE EXPENSES” and inserting “Fund, together with advances and reimbursements received by the Federal Motor Carrier Safety Administration, the sum of which shall”; and

(B) by inserting before the period at the end of the matter appearing under the heading “FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, NATIONAL MOTOR CARRIER SAFETY PROGRAM” the following: “: *Provided further*, That for grants made to States for implementation of section 210 of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1764–1765), the Federal share payable under such grants shall be 100 percent”.

Ante, p. 298.

Ante, p. 298.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 24, 2004.

SEC. 12. EXTENSION OF AUTHORIZATION FOR USE OF TRUST FUNDS FOR OBLIGATIONS UNDER TEA-21.

(a) HIGHWAY TRUST FUND.—

(1) IN GENERAL.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1986 is amended—

26 USC 9503.

(A) in the matter before subparagraph (A), by striking “March 1, 2004” and inserting “May 1, 2004”,

(B) by striking “or” at the end of subparagraph (E),

(C) by striking the period at the end of subparagraph (F) and inserting “, or”,

(D) by inserting after subparagraph (F), the following new subparagraph:

“(G) authorized to be paid out of the Highway Trust Fund under the Surface Transportation Extension Act of 2004.”, and

(E) in the matter after subparagraph (G), as added by this paragraph, by striking “Surface Transportation Extension Act of 2003” and inserting “Surface Transportation Extension Act of 2004”.

(2) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) of such Code is amended—

(A) in the matter before subparagraph (A), by striking “March 1, 2004” and inserting “May 1, 2004”,

(B) in subparagraph (C), by striking “or” at the end of such subparagraph,

(C) in subparagraph (D), by inserting “or” at the end of such subparagraph,

(D) by inserting after subparagraph (D) the following new subparagraph:

“(E) the Surface Transportation Extension Act of 2004.”, and

(E) in the matter after subparagraph (E), as added by this paragraph, by striking “Surface Transportation Extension Act of 2003” and inserting “Surface Transportation Extension Act of 2004”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 9503(b)(5) of such Code is amended by striking “March 1, 2004” and inserting “May 1, 2004”.

(b) AQUATIC RESOURCES TRUST FUND.—

(1) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) of the Internal Revenue Code of 1986 is amended by striking “Surface Transportation Extension Act of 2003” each place it appears and inserting “Surface Transportation Extension Act of 2004”.

26 USC 9504.

(2) BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 of such Code is amended—

(A) by striking “March 1, 2004” and inserting “May 1, 2004”, and

(B) by striking “Surface Transportation Extension Act of 2003” and inserting “Surface Transportation Extension Act of 2004”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) of such Code is amended by striking “March 1, 2004” and inserting “May 1, 2004”.

26 USC 9503
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

(d) **TEMPORARY RULE REGARDING ADJUSTMENTS.**—During the period beginning on the date of the enactment of the Surface Transportation Extension Act of 2003 and ending on April 30, 2004, for purposes of making any estimate under section 9503(d) of the Internal Revenue Code of 1986 of receipts of the Highway Trust Fund, the Secretary of the Treasury shall treat—

(1) each expiring provision of paragraphs (1) through (4) of section 9503(b) of such Code which is related to appropriations or transfers to such Fund to have been extended through the end of the 24-month period referred to in section 9503(d)(1)(B) of such Code, and

(2) with respect to each tax imposed under the sections referred to in section 9503(b)(1) of such Code, the rate of such tax during the 24-month period referred to in section 9503(d)(1)(B) of such Code to be the same as the rate of such tax as in effect on the date of the enactment of the Surface Transportation Extension Act of 2003.

Approved February 29, 2004.

LEGISLATIVE HISTORY—H.R. 3850:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Feb. 26, considered and passed House.

Feb. 27, considered and passed Senate.



Public Law 108–203
108th Congress

An Act

To amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

Mar. 2, 2004
[H.R. 743]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Social Security Protection Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

- Sec. 101. Authority to reissue benefits misused by organizational representative payees.
- Sec. 102. Oversight of representative payees.
- Sec. 103. Disqualification from service as representative payee of persons convicted of offenses resulting in imprisonment for more than 1 year or fleeing prosecution, custody, or confinement.
- Sec. 104. Fee forfeiture in case of benefit misuse by representative payees.
- Sec. 105. Liability of representative payees for misused benefits.
- Sec. 106. Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting.
- Sec. 107. Survey of use of payments by representative payees.

Subtitle B—Enforcement

- Sec. 111. Civil monetary penalty authority with respect to wrongful conversions by representative payees.

TITLE II—PROGRAM PROTECTIONS

- Sec. 201. Civil monetary penalty authority with respect to withholding of material facts.
- Sec. 202. Issuance by Commissioner of Social Security of receipts to acknowledge submission of reports of changes in work or earnings status of disabled beneficiaries.
- Sec. 203. Denial of title II benefits to persons fleeing prosecution, custody, or confinement, and to persons violating probation or parole.
- Sec. 204. Requirements relating to offers to provide for a fee, a product or service available without charge from the Social Security Administration.
- Sec. 205. Refusal to recognize certain individuals as claimant representatives.
- Sec. 206. Criminal penalty for corrupt or forcible interference with administration of Social Security Act.
- Sec. 207. Use of symbols, emblems, or names in reference to social security or medicare.
- Sec. 208. Disqualification from payment during trial work period upon conviction of fraudulent concealment of work activity.
- Sec. 209. Authority for judicial orders of restitution.

Social Security
Protection Act of
2004.

42 USC 1305
note.

- Sec. 210. Authority for cross-program recovery of benefit overpayments.
- Sec. 211. Prohibition on payment of title II benefits to persons not authorized to work in the United States.

TITLE III—ATTORNEY REPRESENTATIVE FEE PAYMENT SYSTEM IMPROVEMENTS

- Sec. 301. Cap on attorney assessments.
- Sec. 302. Temporary extension of attorney fee payment system to title XVI claims.
- Sec. 303. Nationwide demonstration project providing for extension of fee withholding procedures to non-attorney representatives.
- Sec. 304. GAO study regarding the fee payment process for claimant representatives.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

- Sec. 401. Application of demonstration authority sunset date to new projects.
- Sec. 402. Expansion of waiver authority available in connection with demonstration projects providing for reductions in disability insurance benefits based on earnings.
- Sec. 403. Funding of demonstration projects providing for reductions in disability insurance benefits based on earnings.
- Sec. 404. Availability of Federal and State work incentive services to additional individuals.
- Sec. 405. Technical amendment clarifying treatment for certain purposes of individual work plans under the Ticket to Work and Self-Sufficiency Program.
- Sec. 406. GAO study regarding the Ticket to Work and Self-Sufficiency Program.
- Sec. 407. Reauthorization of appropriations for certain work incentives programs.

Subtitle B—Miscellaneous Amendments

- Sec. 411. Elimination of transcript requirement in remand cases fully favorable to the claimant.
- Sec. 412. Nonpayment of benefits upon removal from the United States.
- Sec. 413. Reinstatement of certain reporting requirements.
- Sec. 414. Clarification of definitions regarding certain survivor benefits.
- Sec. 415. Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agreement partner.
- Sec. 416. Coverage under divided retirement system for public employees in Kentucky and Louisiana.
- Sec. 417. Compensation for the Social Security Advisory Board.
- Sec. 418. Sixty-month period of employment requirement for application of government pension offset exemption.
- Sec. 419. Disclosure to workers of effect of windfall elimination provision and government pension offset provision.
- Sec. 420. Post-1956 Military Wage Credits.
- Sec. 420A. Elimination of disincentive to return-to-work for childhood disability beneficiaries.

Subtitle C—Technical Amendments

- Sec. 421. Technical correction relating to responsible agency head.
- Sec. 422. Technical correction relating to retirement benefits of ministers.
- Sec. 423. Technical corrections relating to domestic employment.
- Sec. 424. Technical corrections of outdated references.
- Sec. 425. Technical correction respecting self-employment income in community property States.
- Sec. 426. Technical amendments to the Railroad Retirement and Survivors' Improvement Act of 2001.

Subtitle D—Amendments Related to Title XVI

- Sec. 430. Exclusion from income for certain infrequent or irregular income and certain interest or dividend income.
- Sec. 431. Uniform 9-month resource exclusion periods.
- Sec. 432. Elimination of certain restrictions on the application of the student earned income exclusion.
- Sec. 433. Exception to retrospective monthly accounting for nonrecurring income.
- Sec. 434. Removal of restriction on payment of benefits to children who are born or who become blind or disabled after their military parents are stationed overseas.

Sec. 435. Treatment of education-related income and resources.

Sec. 436. Monthly treatment of uniformed service compensation.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

SEC. 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 205(j)(5) of the Social Security Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence the following: “In any case in which a representative payee that—

Certification.

“(A) is not an individual (regardless of whether it is a ‘qualified organization’ within the meaning of paragraph (4)(B)); or

“(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary’s alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).”.

(2) MISUSE OF BENEFITS DEFINED.—Section 205(j) of such Act (42 U.S.C. 405(j)) is amended by adding at the end the following:

“(8) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ‘use and benefit’ for purposes of this paragraph.”.

(b) TITLE VIII AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 807(i) of the Social Security Act (42 U.S.C. 1007(i)) is amended further by inserting after the first sentence the following: “In any case in which a representative payee that—

“(A) is not an individual; or

“(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary’s alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (1)(2).”.

(2) MISUSE OF BENEFITS DEFINED.—Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following:

“(j) MISUSE OF BENEFITS.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person under this title and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ‘use and benefit’ for purposes of this subsection.”.

(3) TECHNICAL AMENDMENT.—Section 807(a) of such Act (42 U.S.C. 1007(a)) is amended, in the first sentence, by striking “for his or her benefit” and inserting “for his or her use and benefit”.

(c) TITLE XVI AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the following: “In any case in which a representative payee that—

“(i) is not an individual (regardless of whether it is a ‘qualified organization’ within the meaning of subparagraph (D)(ii)); or

“(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary’s alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).”.

(2) EXCLUSION OF REISSUED BENEFITS FROM RESOURCES.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(A) in paragraph (12), by striking “and” at the end;

(B) in paragraph (13), by striking the period and inserting “; and”; and

(C) by inserting after paragraph (13) the following:

“(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual’s (or spouse’s) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.”.

(3) MISUSE OF BENEFITS DEFINED.—Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following:

“(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation

the meaning of the term ‘use and benefit’ for purposes of this clause.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after January 1, 1995.

Applicability.
42 USC 405 note.

SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

(a) **CERTIFICATION OF BONDING AND LICENSING REQUIREMENTS FOR NONGOVERNMENTAL ORGANIZATIONAL REPRESENTATIVE PAYEES.**—

(1) **TITLE II AMENDMENTS.**—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended—

(A) in paragraph (2)(C)(v), by striking “a community-based nonprofit social service agency licensed or bonded by the State” in subclause (I) and inserting “a certified community-based nonprofit social service agency (as defined in paragraph (9))”;

(B) in paragraph (3)(F), by striking “community-based nonprofit social service agencies” and inserting “certified community-based nonprofit social service agencies (as defined in paragraph (9))”;

(C) in paragraph (4)(B), by striking “any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee” and inserting “any certified community-based nonprofit social service agency (as defined in paragraph (9))”; and

(D) by adding after paragraph (8) (as added by section 101(a)(2) of this Act) the following:

“(9) For purposes of this subsection, the term ‘certified community-based nonprofit social service agency’ means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.”.

Regulations.

Records.

(2) **TITLE XVI AMENDMENTS.**—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended—

(A) in subparagraph (B)(vii), by striking “a community-based nonprofit social service agency licensed or bonded by the State” in subclause (I) and inserting “a certified community-based nonprofit social service agency (as defined in subparagraph (I))”;

(B) in subparagraph (D)(ii)—

(i) by striking “or any community-based” and all that follows through “in accordance” in subclause (II) and inserting “or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance”;

(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margins accordingly); and

(iii) by striking “subclause (II)(bb)” and inserting “subclause (II)”;

(C) by adding at the end the following:

Regulations.

“(I) For purposes of this paragraph, the term ‘certified community-based nonprofit social service agency’ means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.”.

Records.

42 USC 405.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(b) PERIODIC ONSITE REVIEW.—

(1) TITLE II AMENDMENT.—Section 205(j)(6) of such Act (42 U.S.C. 405(j)(6)) is amended to read as follows:

“(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

“(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

“(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

“(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

Deadline.
Reports.

“(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

“(i) the number of such reviews;

“(ii) the results of such reviews;

“(iii) the number of cases in which the representative payee was changed and why;

“(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the

Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

“(v) the number of cases discovered in which there was a misuse of funds;

“(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

“(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

“(viii) such other information as the Commissioner deems appropriate.”.

(2) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 101(b)(2) of this Act) is amended further by adding at the end the following:

“(k) PERIODIC ONSITE REVIEW.—

“(1) IN GENERAL.—In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

“(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

“(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

“(2) REPORT.—Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

“(A) the number of such reviews;

“(B) the results of such reviews;

“(C) the number of cases in which the representative payee was changed and why;

“(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

“(E) the number of cases discovered in which there was a misuse of funds;

“(F) how any such cases of misuse of funds were dealt with by the Commissioner;

“(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

“(H) such other information as the Commissioner deems appropriate.”.

Deadline.

(3) TITLE XVI AMENDMENT.—Section 1631(a)(2)(G) of such Act (42 U.S.C. 1383(a)(2)(G)) is amended to read as follows:

“(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

“(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

“(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(9)); or

“(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

Deadline.
Reports.

“(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

“(I) the number of the reviews;

“(II) the results of such reviews;

“(III) the number of cases in which the representative payee was changed and why;

“(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

“(V) the number of cases discovered in which there was a misuse of funds;

“(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

“(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

“(VIII) such other information as the Commissioner deems appropriate.”.

SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR OR FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT.

(a) TITLE II AMENDMENTS.—Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended—

(1) in subparagraph (B)(i)—

(A) by striking “and” at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI);

and

(C) by inserting after subclause (III) the following:

“(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

“(V) obtain information concerning whether such person is a person described in section 202(x)(1)(A)(iv), and”;

(2) in subparagraph (B), by adding at the end the following:

“(iii) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

Identifying
information.

“(I) such person is described in section 202(x)(1)(A)(iv),

“(II) such person has information that is necessary for the officer to conduct the officer’s official duties, and

“(III) the location or apprehension of such person is within the officer’s official duties.”;

(3) in subparagraph (C)(i)(II)—

(A) by striking “subparagraph (B)(i)(IV),” and inserting “subparagraph (B)(i)(VI)”;

(B) by striking “section 1631(a)(2)(B)(ii)(IV)” and inserting “section 1631(a)(2)(B)(ii)(VI)”;

(4) in subparagraph (C)(i)—

(A) by striking “or” at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a comma; and

(C) by adding at the end the following:

“(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

“(V) such person is a person described in section 202(x)(1)(A)(iv).”.

(b) TITLE VIII AMENDMENTS.—Section 807 of such Act (42 U.S.C. 1007) is amended—

(1) in subsection (b)(2)—

(A) by striking “and” at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) the following:

“(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

“(E) obtain information concerning whether such person is a person described in section 804(a)(2); and”;

(2) in subsection (b), by adding at the end the following:

“(3) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner

Identifying
information.

shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

“(A) such person is described in section 804(a)(2),

“(B) such person has information that is necessary for the officer to conduct the officer’s official duties, and

“(C) the location or apprehension of such person is within the officer’s official duties.”; and

(3) in subsection (d)(1)—

(A) by striking “or” at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

(C) by adding at the end the following:

“(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

“(E) such person is a person described in section 804(a)(2).”.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

(1) in clause (ii)—

(A) by striking “and” at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI);

and

(C) by inserting after subclause (III) the following:

“(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

“(V) obtain information concerning whether such person is a person described in section 1611(e)(4)(A); and”;

(2) in clause (iii)(II)—

(A) by striking “clause (ii)(IV)” and inserting “clause (ii)(VI)”; and

(B) by striking “section 205(j)(2)(B)(i)(IV)” and inserting “section 205(j)(2)(B)(i)(VI)”;

(3) in clause (iii)—

(A) by striking “or” at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a semicolon; and

(C) by adding at the end the following:

“(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

“(V) such person is a person described in section 1611(e)(4)(A).”; and

(4) by adding at the end the following:

“(xiv) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of

1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

“(I) such person is described in section 1611(e)(4)(A),

“(II) such person has information that is necessary for the officer to conduct the officer’s official duties, and

“(III) the location or apprehension of such person is within the officer’s official duties.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act. 42 USC 405 note.

(e) **REPORT TO CONGRESS.**—The Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration, shall prepare a report evaluating whether the existing procedures and reviews for the qualification (including disqualification) of representative payees are sufficient to enable the Commissioner to protect benefits from being misused by representative payees. The Commissioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of the enactment of this Act. The Commissioner shall include in such report any recommendations that the Commissioner considers appropriate. Deadline.

SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES.

(a) **TITLE II AMENDMENTS.**—Section 205(j)(4)(A)(i) of the Social Security Act (42 U.S.C. 405(j)(4)(A)(i)) is amended—

(1) in the first sentence, by striking “A” and inserting “Except as provided in the next sentence, a”; and

(2) in the second sentence, by striking “The Secretary” and inserting the following: “A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual’s benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual’s benefit for purposes of paragraphs (5) and (6). The Commissioner”.

(b) **TITLE XVI AMENDMENTS.**—Section 1631(a)(2)(D)(i) of such Act (42 U.S.C. 1383(a)(2)(D)(i)) is amended—

(1) in the first sentence, by striking “A” and inserting “Except as provided in the next sentence, a”; and

(2) in the second sentence, by striking “The Commissioner” and inserting the following: “A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual’s benefit, and any amount so collected by the qualified organization for such month shall

Applicability.
42 USC 405 note.

be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102) is amended further—

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking "paragraph (9)" and inserting "paragraph (10)";

(3) in paragraph (6)(A)(ii), by striking "paragraph (9)" and inserting "paragraph (10)"; and

(4) by inserting after paragraph (6) the following:

"(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

Certification.

"(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual."

(b) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 102(b)(2)) is amended further by adding at the end the following:

"(I) LIABILITY FOR MISUSED AMOUNTS.—

"(1) IN GENERAL.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified

individual or such qualified individual’s alternative representative payee.

“(2) LIMITATION.—The total of the amount paid to such individual or such individual’s alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.”.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) (as amended by section 102(b)(3)) is amended further—

(1) in subparagraph (G)(i)(II), by striking “section 205(j)(9)” and inserting “section 205(j)(10)”; and

(2) by striking subparagraph (H) and inserting the following:

“(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual’s benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual’s alternative representative payee.

“(ii) The total of the amount paid to such individual or such individual’s alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

Applicability.
42 USC 405 note.

**SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS
WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE
REQUIRED ACCOUNTING.**

(a) TITLE II AMENDMENTS.—Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) (as amended by sections 102(a)(1)(B) and 105(a)(2)) is amended—

(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) by inserting after subparagraph (D) the following:

“(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.”.

(b) TITLE VIII AMENDMENTS.—Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended—

- (1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and
- (2) by inserting after paragraph (2) the following:

“(3) AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.—In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.”.

(c) TITLE XVI AMENDMENT.—Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following:

“(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.”.

42 USC 405 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

SEC. 107. SURVEY OF USE OF PAYMENTS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL.—Section 1110 of the Social Security Act (42 U.S.C. 1310) is amended by adding at the end the following:

“(c)(1) In addition to the amount otherwise appropriated in any other law to carry out subsection (a) for fiscal year 2004, up to \$8,500,000 is authorized and appropriated and shall be used by the Commissioner of Social Security under this subsection for purposes of conducting a statistically valid survey to determine how payments made to individuals, organizations, and State or local government agencies that are representative payees for benefits paid under title II or XVI are being managed and used on behalf of the beneficiaries for whom such benefits are paid.

Deadline.
Reports.

“(2) Not later than 18 months after the date of enactment of this subsection, the Commissioner of Social Security shall submit a report on the survey conducted in accordance with paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.”.

Subtitle B—Enforcement

SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8) is amended by adding at the end the following:

“(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than \$5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to violations committed after the date of the enactment of this Act.

Applicability.
42 USC 1320a–8
note.

TITLE II—PROGRAM PROTECTIONS

SEC. 201. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WITHHOLDING OF MATERIAL FACTS.

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—Section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking “who” in the first sentence and inserting “who—”;

(B) by striking “makes” in the first sentence and all that follows through “shall be subject to,” and inserting the following:

“(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

“(B) makes such a statement or representation for such use with knowing disregard for the truth, or

“(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,”;

(C) by inserting “or each receipt of such benefits or payments while withholding disclosure of such fact” after “each such statement or representation” in the first sentence;

(D) by inserting “or because of such withholding of disclosure of a material fact” after “because of such statement or representation” in the second sentence; and

(E) by inserting “or such a withholding of disclosure” after “such a statement or representation” in the second sentence.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—Section 1129A(a) of such Act (42 U.S.C. 1320a-8a(a)) is amended—

(A) by striking “who” the first place it appears and inserting “who—”; and

(B) by striking “makes” and all that follows through “shall be subject to,” and inserting the following:

“(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI that the person knows or should know is false or misleading,

“(2) makes such a statement or representation for such use with knowing disregard for the truth, or

“(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to.”.

(b) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of such Act (42 U.S.C. 1320a-8(e)(2)(B)) is amended by striking “In the case of amounts recovered arising out of a determination relating to title VIII or XVI,” and inserting “In the case of any other amounts recovered under this section.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of such Act (42 U.S.C. 1320a-8(b)(3)(A)) is amended by striking “charging fraud or false statements”.

(2) Section 1129(c)(1) of such Act (42 U.S.C. 1320a-8(c)(1)) is amended by striking “and representations” and inserting “, representations, or actions”.

(3) Section 1129(e)(1)(A) of such Act (42 U.S.C. 1320a-8(e)(1)(A)) is amended by striking “statement or representation referred to in subsection (a) was made” and inserting “violation occurred”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202.

Applicability.
42 USC 1320a-8
note.

SEC. 202. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES.

Effective date.
Records.
42 USC 902 note.

Effective as soon as possible, but not later than 1 year after the date of the enactment of this Act, until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.

SEC. 203. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE.

(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by striking “Prisoners” and all that follows and inserting the following: “Prisoners, Certain Other Inmates of Publicly Funded Institutions, Fugitives, Probationers, and Parolees”;

(2) in paragraph (1)(A)(ii)(IV), by striking “or” at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

“(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

“(v) is violating a condition of probation or parole imposed under Federal or State law.”;

(5) by adding at the end of paragraph (1)(B) the following:

“(iii) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

“(I) a court of competent jurisdiction has found the individual not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the individual for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

“(II) the individual was erroneously implicated in connection with the criminal offense by reason of identity fraud.

“(iv) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

“(I) the offense described in clause (iv) or underlying the imposition of the probation or parole described in clause (v) was nonviolent and not drug-related, and

“(II) in the case of an individual from whom benefits have been withheld or otherwise would be withheld pursuant to subparagraph (A)(v), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.”; and

(6) in paragraph (3), by adding at the end the following:

“(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

“(i) the beneficiary is described in clause (iv) or (v) of paragraph (1)(A); and

“(ii) the location or apprehension of the beneficiary is within the officer’s official duties.”.

(b) CONFORMING AMENDMENTS TO TITLE XVI.—Section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended—

(1) in paragraph (4)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting “(A)” after “(4)”;

(C) in clause (i) of subparagraph (A) (as redesignated by subparagraph (A)), by striking “or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State” and inserting “or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed”; and

(D) by adding at the end the following:

“(B) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

“(i) a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

“(ii) the person was erroneously implicated in connection with the criminal offense by reason of identity fraud.

“(C) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

“(i) the offense described in subparagraph (A)(i) or underlying the imposition of the probation or parole described in subparagraph (A)(ii) was nonviolent and not drug-related, and

“(ii) in the case of a person who is not considered an eligible individual or eligible spouse pursuant to subparagraph (A)(ii), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.”; and

(2) in paragraph (5), by striking subparagraphs (A) and (B) and inserting the following:

“(A) the recipient is described in clause (i) or (ii) of paragraph (4)(A); and

“(B) the location or apprehension of the recipient is within the officer’s official duties.”.

(c) CONFORMING AMENDMENT.—Section 804(a)(2) of the Social Security Act (42 U.S.C. 1004(a)(2)) is amended by striking “or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State” and inserting “or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act.

42 USC 402 note.

SEC. 204. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE, A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1140 of the Social Security Act (42 U.S.C. 1320b–10) is amended—

(1) in subsection (a), by adding at the end the following:

“(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

“(i) explains that the product or service is available free of charge from the Social Security Administration, and

“(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

“(B) Subparagraph (A) shall not apply to any offer—

“(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

“(ii) to prepare, or assist in the preparation of, an individual’s plan for achieving self-support under title XVI.”; and

(2) in the heading, by striking “PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE” and inserting “PROHIBITIONS RELATING TO REFERENCES”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of the enactment of this Act.

Applicability.
42 USC
1320b–10 note.

Regulations.
Deadline.

SEC. 205. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES.

Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: “Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.”.

SEC. 206. CRIMINAL PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF SOCIAL SECURITY ACT.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1129A the following:

“ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL
SECURITY ACT

42 USC
1320a–8b.

“SEC. 1129B. Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than \$5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than \$3,000, imprisoned not more than 1 year, or both. In this subsection, the term ‘threats of force’ means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.”.

SEC. 207. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE.

(a) IN GENERAL.—Section 1140(a)(1) of the Social Security Act (42 U.S.C. 1320b–10(a)(1)) is amended—

(1) in subparagraph (A), by inserting “‘Centers for Medicare & Medicaid Services’,” after “‘Health Care Financing Administration’,” by striking “or ‘Medicaid’,” and inserting “‘Medicaid’,”

‘Death Benefits Update’, ‘Federal Benefit Information’, ‘Funeral Expenses’, or ‘Final Supplemental Plan’,” and by inserting “‘CMS’,” after “‘HCFA’”;

(2) in subparagraph (B), by inserting “Centers for Medicare & Medicaid Services,” after “Health Care Financing Administration,” each place it appears; and

(3) in the matter following subparagraph (B), by striking “the Health Care Financing Administration,” each place it appears and inserting “the Centers for Medicare & Medicaid Services,”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to items sent after 180 days after the date of the enactment of this Act.

Applicability.
42 USC
1320b–10 note.

SEC. 208. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY.

(a) **IN GENERAL.**—Section 222(c) of the Social Security Act (42 U.S.C. 422(c)) is amended by adding at the end the following:

“(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

“(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

“(B) receiving disability insurance benefits under this title while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

“(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,
no benefit shall be payable to such individual under this title with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this title as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to work activity performed after the date of the enactment of this Act.

Applicability.
42 USC 422 note.

SEC. 209. AUTHORITY FOR JUDICIAL ORDERS OF RESTITUTION.

(a) **AMENDMENTS TO TITLE II.**—Section 208 of the Social Security Act (42 U.S.C. 408) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively;

(2) by inserting after subsection (a) the following:

“(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

Applicability.

“(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution to victims of such offense under this subsection.

“(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

“(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) are the following:

“(A) Any individual who suffers a financial loss as a result of the defendant’s violation of subsection (a).

“(B) The Commissioner of Social Security, to the extent that the defendant’s violation of subsection (a) results in—

“(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

“(ii) an individual suffering a financial loss due to the defendant’s violation of subsection (a) in his or her capacity as the individual’s representative payee appointed pursuant to section 205(j).

“(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

“(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual’s outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this title, title VIII, or title XVI by the individual.”; and

(3) by amending subsection (c) (as redesignated by paragraph (1)), by striking the second sentence.

(b) AMENDMENTS TO TITLE VIII.—Section 811 of the Social Security Act (42 U.S.C. 1011) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) COURT ORDER FOR RESTITUTION.—

“(1) IN GENERAL.—Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

“(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

“(B) an individual suffering a financial loss due to the defendant’s violation of subsection (a) in his or her capacity as the individual’s representative payee appointed pursuant to section 807(i).

Applicability.

“(2) RELATED PROVISIONS.—Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

“(3) STATED REASONS FOR NOT ORDERING RESTITUTION.—If the court does not order restitution, or orders only partial

restitution, under this subsection, the court shall state on the record the reasons therefor.

“(4) RECEIPT OF RESTITUTION PAYMENTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

“(B) PAYMENT TO THE INDIVIDUAL.—In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual’s outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this title, title II, or title XVI by the individual.”.

Certification.

(c) AMENDMENTS TO TITLE XVI.—Section 1632 of the Social Security Act (42 U.S.C. 1383a) is amended—

(1) by redesignating subsection (b) as subsection (c); and
(2) by inserting after subsection (a) the following:

“(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

“(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

“(B) an individual suffering a financial loss due to the defendant’s violation of subsection (a) in his or her capacity as the individual’s representative payee appointed pursuant to section 1631(a)(2).

“(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

Applicability.

“(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

“(4)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

“(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual’s outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this title, title II, or title VIII by the individual.”; and

Certification.

(3) by amending subsection (c) (as redesignated by paragraph (1)) by striking “(1) If a person” and all that follows through “(2)”.

Applicability.
42 USC 408 note.

(d) **EFFECTIVE DATE.**—The amendments made by subsections (a), (b), and (c) shall apply with respect to violations occurring on or after the date of enactment of this Act.

SEC. 210. AUTHORITY FOR CROSS-PROGRAM RECOVERY OF BENEFIT OVERPAYMENTS.

(a) **IN GENERAL.**—Section 1147 of the Social Security Act (42 U.S.C. 1320b–17) is amended to read as follows:

“CROSS-PROGRAM RECOVERY OF OVERPAYMENTS FROM BENEFITS

“(a) **IN GENERAL.**—Subject to subsection (b), whenever the Commissioner of Social Security determines that more than the correct amount of any payment has been made to a person under a program described in subsection (e), the Commissioner of Social Security may recover the amount incorrectly paid by decreasing any amount which is payable to such person under any other program specified in that subsection.

“(b) **LIMITATION APPLICABLE TO CURRENT BENEFITS.**—

“(1) **IN GENERAL.**—In carrying out subsection (a), the Commissioner of Social Security may not decrease the monthly amount payable to an individual under a program described in subsection (e) that is paid when regularly due—

“(A) in the case of benefits under title II or VIII, by more than 10 percent of the amount of the benefit payable to the person for that month under such title; and

“(B) in the case of benefits under title XVI, by an amount greater than the lesser of—

“(i) the amount of the benefit payable to the person for that month; or

“(ii) an amount equal to 10 percent of the person’s income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II payments and excluding income excluded pursuant to section 1612(b)).

“(2) **EXCEPTION.**—Paragraph (1) shall not apply if—

“(A) the person or the spouse of the person was involved in willful misrepresentation or concealment of material information in connection with the amount incorrectly paid; or

“(B) the person so requests.

“(c) **NO EFFECT ON ELIGIBILITY OR BENEFIT AMOUNT UNDER TITLE VIII OR XVI.**—In any case in which the Commissioner of Social Security takes action in accordance with subsection (a) to recover an amount incorrectly paid to any person, neither that person, nor (with respect to the program described in subsection (e)(3)) any individual whose eligibility for benefits under such program or whose amount of such benefits, is determined by considering any part of that person’s income, shall, as a result of such action—

“(1) become eligible for benefits under the program described in paragraph (2) or (3) of subsection (e); or

“(2) if such person or individual is otherwise so eligible, become eligible for increased benefits under such program.

“(d) **INAPPLICABILITY OF PROHIBITION AGAINST ASSESSMENT AND LEGAL PROCESS.**—Section 207 shall not apply to actions taken under

the provisions of this section to decrease amounts payable under titles II and XVI.

“(e) PROGRAMS DESCRIBED.—The programs described in this subsection are the following:

“(1) The old-age, survivors, and disability insurance benefits program under title II.

“(2) The special benefits for certain World War II veterans program under title VIII.

“(3) The supplemental security income benefits program under title XVI (including, for purposes of this section, State supplementary payments paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or section 212(b) of Public Law 93–66).”.

(b) CONFORMING AMENDMENTS.—

(1) Section 204(g) of the Social Security Act (42 U.S.C. 404(g)) is amended to read as follows:

“(g) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.”.

(2) Section 808 of the Social Security Act (42 U.S.C. 1008) is amended—

(A) in subsection (a)(1)—

(i) by striking subparagraph (B);

(ii) in the matter preceding subparagraph (A), by striking “any payment” and all that follows through “under this title” and inserting “any payment under this title”; and

(iii) by striking “; or” and inserting a period;

(B) by striking subsection (b) and redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(C) by adding at the end the following:

“(e) CROSS-PROGRAM RECOVERY OF OVERPAYMENTS.—For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.”.

(3) Section 1147A of the Social Security Act (42 U.S.C. 1320b–18) is repealed.

(4) Section 1631(b) of the Social Security Act (42 U.S.C. 1383(b)) is amended—

(A) in paragraph (1)(B)—

(i) by striking “excluding any other” and inserting “excluding payments under title II when recovery is made from title II payments pursuant to section 1147 and excluding”; and

(ii) by striking “50 percent of”; and

(B) by striking paragraph (6) and inserting the following:

“(6) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.”.

(c) EFFECTIVE DATE.—The amendments and repeal made by this section shall take effect on the date of enactment of this Act, and shall be effective with respect to overpayments under titles II, VIII, and XVI of the Social Security Act that are outstanding on or after such date.

42 USC 404 note.

SEC. 211. PROHIBITION ON PAYMENT OF TITLE II BENEFITS TO PERSONS NOT AUTHORIZED TO WORK IN THE UNITED STATES.

(a) FULLY INSURED AND CURRENTLY INSURED INDIVIDUALS.—Section 214 (42 U.S.C. 414) is amended—

(1) in subsection (a), by inserting before the period at the end the following: “, and who satisfies the criterion specified in subsection (c)”;

(2) in subsection (b), by inserting before the period at the end the following: “, and who satisfies the criterion specified in subsection (c)”;

(3) by adding at the end the following:

“(c) For purposes of subsections (a) and (b), the criterion specified in this subsection is that the individual, if not a United States citizen or national—

“(1) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(i); or

“(2) at the time any such quarters of coverage are earned—

“(A) is described in subparagraph (B) or (D) of section 101(a)(15) of the Immigration and Nationality Act,

“(B) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

“(C) the business engaged in or service as a crewman performed is within the scope of the terms of such individual’s admission to the United States.”.

(b) DISABILITY BENEFITS.—Section 223(a)(1) of the Social Security Act (42 U.S.C. 423(a)(1)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B), the following:

“(C) if not a United States citizen or national—

“(i) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(i); or

“(ii) at the time any quarters of coverage are earned—

“(I) is described in subparagraph (B) or (D) of section 101(a)(15) of the Immigration and Nationality Act,

“(II) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

“(III) the business engaged in or service as a crewman performed is within the scope of the terms of such individual’s admission to the United States.”.

(c) EFFECTIVE DATE.—The amendments made by this section apply to benefit applications based on social security account numbers issued on or after January 1, 2004.

TITLE III—ATTORNEY REPRESENTATIVE FEE PAYMENT SYSTEM IMPROVEMENTS

SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

(a) **IN GENERAL.**—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended—

(1) by inserting “, except that the maximum amount of the assessment may not exceed the greater of \$75 or the adjusted amount as provided pursuant to the following two sentences” after “subparagraph (B)”; and

(2) by adding at the end the following: “In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act.

Applicability.
42 USC 406 note.

SEC. 302. TEMPORARY EXTENSION OF ATTORNEY FEE PAYMENT SYSTEM TO TITLE XVI CLAIMS.

(a) **IN GENERAL.**—Section 1631(d)(2) of the Social Security Act (42 U.S.C. 1383(d)(2)) is amended—

(1) in subparagraph (A), in the matter preceding clause

(i)—

(A) by striking “section 206(a)” and inserting “section 206”;

(B) by striking “(other than paragraph (4) thereof)” and inserting “(other than subsections (a)(4) and (d) thereof)”; and

(C) by striking “paragraph (2) thereof” and inserting “such section”;

(2) in subparagraph (A)(i)—

(A) by striking “in subparagraphs (A)(ii)(I) and (C)(i),” and inserting “in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)”; and

(B) by striking “and” at the end;

(3) by striking subparagraph (A)(ii) and inserting the following:

“(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase ‘paragraph (7)(A) or (8)(A) of section 1631(a) or the requirements of due process of law’ for the phrase ‘subsection (g) or (h) of section 223’;

“(iii) by substituting, in subsection (a)(2)(C)(i), the phrase ‘under title II’ for the phrase ‘under title XVI’;

“(iv) by substituting, in subsection (b)(1)(A), the phrase ‘pay the amount of such fee’ for the phrase ‘certify the amount of such fee for payment’ and by striking, in subsection (b)(1)(A), the phrase ‘or certified for payment’; and

“(v) by substituting, in subsection (b)(1)(B)(ii), the phrase ‘deemed to be such amounts as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a)’ for the phrase ‘determined before any applicable reduction under section 1127(a)’.”; and

(4) by redesignating subparagraph (B) as subparagraph (D) and inserting after subparagraph (A) the following:

“(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

“(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1631(g) and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127(a)), or

“(ii) the amount of past-due benefits available after any applicable reductions under sections 1631(g) and 1127(a).

“(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant’s past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

“(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative’s fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed \$75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of \$75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of \$1 shall be rounded to the next lowest multiple of \$1, but in no case less than \$75.

“(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

“(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant’s past-due benefits.

“(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

“(v) Assessments on attorneys collected under this subparagraph shall be deposited as miscellaneous receipts in the general fund of the Treasury.

“(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this title and related laws.”.

(b) CONFORMING AMENDMENTS.—Section 1631(a) of the Social Security Act (42 U.S.C. 1383(a)) is amended—

(1) in paragraph (2)(F)(i)(II), by inserting “and payment of attorney fees under subsection (d)(2)(B)” after “subsection (g)”; and

(2) in paragraph (10)(A)—

(A) in the matter preceding clause (i), by inserting “and payment of attorney fees under subsection (d)(2)(B)” after “subsection (g)”; and

(B) in the matter following clause (ii), by inserting “and payment of attorney fees under subsection (d)(2)(B)” after “State”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be paid under section 1631(d)(2) of the Social Security Act on or after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act.

(2) SUNSET.—Such amendments shall not apply with respect to fees for representation of claimants in the case of any claim for benefits with respect to which the agreement for representation is entered into after 5 years after the date described in paragraph (1).

42 USC 1383
note.
Applicability.
Notice.

**SEC. 303. NATIONWIDE DEMONSTRATION PROJECT PROVIDING FOR
EXTENSION OF FEE WITHHOLDING PROCEDURES TO
NON-ATTORNEY REPRESENTATIVES.**

42 USC 406 note.

(a) IN GENERAL.—The Commissioner of Social Security (hereafter in this section referred to as the “Commissioner”) shall develop and carry out a nationwide demonstration project under this section with respect to agents and other persons, other than attorneys, who represent claimants under titles II and XVI of the Social Security Act before the Commissioner. The demonstration project shall be designed to determine the potential results of extending to such representatives the fee withholding procedures and assessment procedures that apply under sections 206 and section 1631(d)(2) of such Act to attorneys seeking direct payment out of past due benefits under such titles and shall include an analysis of the effect of such extension on claimants and program administration.

(b) STANDARDS FOR INCLUSION IN DEMONSTRATION PROJECT.—Fee-withholding procedures may be extended under the demonstration project carried out pursuant to subsection (a) to any non-attorney representative only if such representative meets at least the following prerequisites:

(1) The representative has been awarded a bachelor's degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

(2) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of the Social Security Act and the most recent developments in agency and court decisions affecting titles II and XVI of such Act.

(3) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

(4) The representative has undergone a criminal background check to ensure the representative's fitness to practice before the Commissioner.

(5) The representative demonstrates ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of such Act. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

(c) ASSESSMENT OF FEES.—

(1) IN GENERAL.—The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisites described in subsection (b).

(2) DISPOSITION OF FEES.—Fees collected under paragraph (1) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner of Social Security determines appropriate.

(3) AUTHORIZATION OF APPROPRIATIONS.—The fees authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended for administering the prerequisites described in subsection (b).

(d) NOTICE TO CONGRESS AND APPLICABILITY OF FEE WITHHOLDING PROCEDURES.—Not later than 1 year after the date of enactment of this Act, the Commissioner shall complete such actions as are necessary to fully implement the requirements for full operation of the demonstration project and shall submit to each House of Congress a written notice of the completion of such actions. The applicability under this section to non-attorney representatives of the fee withholding procedures and assessment procedures under sections 206 and 1631(d)(2) of the Social Security Act shall be effective with respect to fees for representation of claimants in the case of claims for benefits with respect to which the agreement

Deadline.

for representation is entered into by such non-attorney representatives during the period beginning with the date of the submission of such notice by the Commissioner to Congress and ending with the termination date of the demonstration project.

(e) REPORTS BY THE COMMISSIONER; TERMINATION.—

Deadlines.

(1) INTERIM REPORTS.—On or before the date which is 1 year after the date of enactment of this Act, and annually thereafter, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the demonstration project carried out under this section, together with any related data and materials that the Commissioner may consider appropriate.

(2) TERMINATION DATE AND FINAL REPORT.—The termination date of the demonstration project under this section is the date which is 5 years after the date of the submission of the notice by the Commissioner to each House of Congress pursuant to subsection (d). The authority under the preceding provisions of this section shall not apply in the case of claims for benefits with respect to which the agreement for representation is entered into after the termination date. Not later than 90 days after the termination date, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report with respect to the demonstration project.

SEC. 304. GAO STUDY REGARDING THE FEE PAYMENT PROCESS FOR CLAIMANT REPRESENTATIVES.

42 USC 406 note.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall study and evaluate the appointment and payment of claimant representatives appearing before the Commissioner of Social Security in connection with benefit claims under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) in each of the following groups:

(A) Attorney claimant representatives who elect fee withholding under section 206 or 1631(d)(2) of such Act.

(B) Attorney claimant representatives who do not elect such fee withholding.

(C) Non-attorney claimant representatives who are eligible for, and elect, such fee withholding.

(D) Non-attorney claimant representatives who are eligible for, but do not elect, such fee withholding.

(E) Non-attorney claimant representatives who are not eligible for such fee withholding.

(2) MATTERS TO BE STUDIED.—In conducting the study under this subsection, the Comptroller General shall, for each of group of claimant representatives described in paragraph (1)—

(A) conduct a survey of the relevant characteristics of such claimant representatives including—

(i) qualifications and experience;

(ii) the type of employment of such claimant representatives, such as with an advocacy group, State or local government, or insurance or other company;

(iii) geographical distribution between urban and rural areas;

(iv) the nature of claimants' cases, such as whether the cases are for disability insurance benefits only, supplemental security income benefits only, or concurrent benefits;

(v) the relationship of such claimant representatives to claimants, such as whether the claimant is a friend, family member, or client of the claimant representative; and

(vi) the amount of compensation (if any) paid to the claimant representatives and the method of payment of such compensation;

(B) assess the quality and effectiveness of the services provided by such claimant representatives, including a comparison of claimant satisfaction or complaints and benefit outcomes, adjusted for differences in claimant representatives' caseload, claimants' diagnostic group, level of decision, and other relevant factors;

(C) assess the interactions between fee withholding under sections 206 and 1631(d)(2) of such Act (including under the amendments made by section 302 of this Act and under the demonstration project conducted under section 303 of this Act), the windfall offset under section 1127 of such Act, and interim assistance reimbursements under section 1631(g) of such Act;

(D) assess the potential results of making permanent the fee withholding procedures under sections 206 and 1631(d)(2) of such Act under the amendments made by section 302 of this Act and under the demonstration project conducted under section 303 of this Act with respect to program administration and claimant outcomes, and assess whether the rules and procedures employed by the Commissioner of Social Security to evaluate the qualifications and performance of claimant representatives should be revised prior to making such procedures permanent; and

(E) make such recommendations for administrative and legislative changes as the Comptroller General of the United States considers necessary or appropriate.

(3) CONSULTATION REQUIRED.—The Comptroller General of the United States shall consult with beneficiaries under title II of such Act, beneficiaries under title XVI of such Act, claimant representatives of beneficiaries under such titles, and other interested parties, in conducting the study and evaluation required under paragraph (1).

Deadline.

(b) REPORT.—Not later than 3 years after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act, the Comptroller General of the United States shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the study and evaluation conducted pursuant to subsection (a).

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Im- provement Act of 1999

SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS.

Section 234 of the Social Security Act (42 U.S.C. 434) is amended—

(1) in the first sentence of subsection (c), by striking “conducted under subsection (a)” and inserting “initiated under subsection (a) on or before December 17, 2005”; and

(2) in subsection (d)(2), by striking the first sentence and inserting the following: “The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005.”.

SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNEC- TION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(c) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended by striking “(42 U.S.C. 401 et seq.),” and inserting “(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act.”.

SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended to read as follows:

“(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.”.

SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS.

(a) FEDERAL WORK INCENTIVES OUTREACH PROGRAM.—

(1) IN GENERAL.—Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b–20(c)(2)) is amended to read as follows:

“(2) DISABLED BENEFICIARY.—The term ‘disabled beneficiary’ means an individual—

“(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

“(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

“(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

“(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.”.

Applicability.
42 USC
1320b–20 note.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act.

(b) STATE GRANTS FOR WORK INCENTIVES ASSISTANCE.—

(1) DEFINITION OF DISABLED BENEFICIARY.—Section 1150(g)(2) of such Act (42 U.S.C. 1320b–21(g)(2)) is amended to read as follows:

“(2) DISABLED BENEFICIARY.—The term ‘disabled beneficiary’ means an individual—

“(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

“(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

“(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

“(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.”.

(2) ADVOCACY OR OTHER SERVICES NEEDED TO MAINTAIN GAINFUL EMPLOYMENT.—Section 1150(b)(2) of such Act (42 U.S.C. 1320b–21(b)(2)) is amended by striking “secure or regain” and inserting “secure, maintain, or regain”.

Applicability.
42 USC
1320b–21 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to payments provided after the date of the enactment of this Act.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) IN GENERAL.—Section 1148(g)(1) of the Social Security Act (42 U.S.C. 1320b–19(g)(1)) is amended by adding at the end, after and below subparagraph (E), the following:

“An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921). 42 USC 1320b–19 note.

SEC. 406. GAO STUDY REGARDING THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM. 42 USC 1320b–19 note.

(a) **GAO REPORT.**—Not later than 12 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress regarding the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19) that— Deadline.

(1) examines the annual and interim reports issued by States, the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 1320b–19 note), and the Commissioner of Social Security regarding such program;

(2) assesses the effectiveness of the activities carried out under such program; and

(3) recommends such legislative or administrative changes as the Comptroller General determines are appropriate to improve the effectiveness of such program.

SEC. 407. REAUTHORIZATION OF APPROPRIATIONS FOR CERTAIN WORK INCENTIVES PROGRAMS.

(a) **BENEFITS PLANNING, ASSISTANCE, AND OUTREACH.**—Section 1149(d) of the Social Security Act (42 U.S.C. 1320b–20(d)) is amended by striking “2004” and inserting “2009”.

(b) **PROTECTION AND ADVOCACY.**—Section 1150(h) of the Social Security Act (42 U.S.C. 1320b–21(h)) is amended by striking “2004” and inserting “2009”.

Subtitle B—Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT.

(a) **IN GENERAL.**—Section 205(g) of the Social Security Act (42 U.S.C. 405(g)) is amended in the sixth sentence by striking “and a transcript” and inserting “and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act. Applicability. 42 USC 405 note.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) **IN GENERAL.**—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) is amended—

(1) in paragraph (1), by striking “section 241(a) (other than under paragraph (1)(C) or (1)(E) thereof) of the Immigration and Nationality Act” and inserting “section 237(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) of such section) or under section 212(a)(6)(A) of such Act”;

(2) in paragraph (2), by striking “section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) or (1)(E) thereof)” and inserting “section 237(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) of such section) or under section 212(a)(6)(A) of such Act”;

(3) in paragraph (3), by striking “paragraph (19) of section 241(a) of the Immigration and Nationality Act (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19)” and inserting “paragraph (4)(D) of section 241(a) of the Immigration and Nationality Act (relating to participating in Nazi persecutions or genocide) shall be considered to have been deported under such paragraph (4)(D)”;

(4) in paragraph (3) (as amended by paragraph (3) of this subsection), by striking “241(a)” and inserting “237(a)”.

(b) TECHNICAL CORRECTIONS.—

(1) TERMINOLOGY REGARDING REMOVAL FROM THE UNITED STATES.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by subsection (a)) is amended further—

(A) by striking “deportation” each place it appears and inserting “removal”;

(B) by striking “deported” each place it appears and inserting “removed”; and

(C) in the heading, by striking “Deportation” and inserting “Removal”.

(2) REFERENCES TO THE SECRETARY OF HOMELAND SECURITY.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by subsection (a) and paragraph (1)) is amended further by inserting “or the Secretary of Homeland Security” after “the Attorney General” each place it appears.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by—

(A) subsection (a)(1) shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice after the date of the enactment of this Act;

(B) subsection (a)(2) shall apply with respect to notifications of removals received by the Commissioner of Social Security after the date of enactment of this Act; and

(C) subsection (a)(3) shall be effective as if enacted on March 1, 1991.

(2) SUBSEQUENT CORRECTION OF CROSS-REFERENCE AND TERMINOLOGY.—The amendments made by subsections (a)(4) and (b)(1) shall be effective as if enacted on April 1, 1997.

(3) REFERENCES TO THE SECRETARY OF HOMELAND SECURITY.—The amendment made by subsection (b)(2) shall be effective as if enacted on March 1, 2003.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.31 USC 1113
note.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) shall not apply to any report required to be submitted under any of the following provisions of law:

(1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401(c)(2)).

(B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2)).

(C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t(b)(2)).

(2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).

(B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)).

SEC. 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS.

(a) WIDOWS.—Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting “except as provided in paragraph (2),” before “she was married”;

(4) by inserting “(1)” after “(c)”; and

(5) by adding at the end the following:

“(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

“(A) the individual had been married prior to the individual’s marriage to the surviving wife,

“(B) the prior wife was institutionalized during the individual’s marriage to the prior wife due to mental incompetence or similar incapacity,

“(C) during the period of the prior wife’s institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife’s institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

“(D) the prior wife continued to remain institutionalized up to the time of her death, and

“(E) the individual married the surviving wife within 60 days after the prior wife’s death.”.

(b) WIDOWERS.—Section 216(g) of such Act (42 U.S.C. 416(g)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting “except as provided in paragraph (2),” before “he was married”;

(4) by inserting “(1)” after “(g)”; and

(5) by adding at the end the following:

“(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

“(A) the individual had been married prior to the individual’s marriage to the surviving husband,

“(B) the prior husband was institutionalized during the individual’s marriage to the prior husband due to mental incompetence or similar incapacity,

“(C) during the period of the prior husband’s institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband’s institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

“(D) the prior husband continued to remain institutionalized up to the time of his death, and

“(E) the individual married the surviving husband within 60 days after the prior husband’s death.”.

(c) CONFORMING AMENDMENT.—Section 216(k) of such Act (42 U.S.C. 416(k)) is amended by striking “clause (5) of subsection (c) or clause (5) of subsection (g)” and inserting “clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)”.

42 USC 416 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to applications for benefits under title II of the Social Security Act filed during months ending after the date of the enactment of this Act.

SEC. 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER.

26 USC 1401,
3101, and 3111.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking “to taxes or contributions for similar purposes under” and inserting “exclusively to the laws applicable to”.

SEC. 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY AND LOUISIANA.

(a) IN GENERAL.—Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. 418(d)(6)(C)) is amended by inserting “Kentucky, Louisiana,” after “Illinois,”.

42 USC 418 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on January 1, 2003.

SEC. 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD.

(a) IN GENERAL.—Subsection (f) of section 703 of the Social Security Act (42 U.S.C. 903(f)) is amended to read as follows:

“Compensation, Expenses, and Per Diem

“(f) A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for

level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall be effective as of January 1, 2003. 42 USC 903 note.

SEC. 418. SIXTY-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION.

(a) **IN GENERAL.**—Section 202(k) of the Social Security Act (42 U.S.C. 402(k)) is amended by adding at the end the following:

“(5)(A) The amount of a monthly insurance benefit of any individual for each month under subsection (b), (c), (e), (f), or (g) (as determined after application of the provisions of subsection (q) and the preceding provisions of this subsection) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual’s earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, during any portion of the last 60 months of such service ending with the last day such individual was employed by such entity—

“(i) such service did not constitute ‘employment’ as defined in section 210, or

“(ii) such service was being performed while in the service of the Federal Government, and constituted ‘employment’ as so defined solely by reason of—

“(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

“(II) an election to become subject to the Federal Employees’ Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of \$0.10, shall be rounded to the next higher multiple of \$0.10.

“(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 210(m)).

“(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted ‘employment’ as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which such individual is eligible for benefits under this subsection and has made a valid application for such benefits.

“(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term ‘periodic benefit’ includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.”.

(b) CONFORMING AMENDMENTS.—

(1) WIFE’S INSURANCE BENEFITS.—Section 202(b) of the Social Security Act (42 U.S.C. 402(b)) is amended—

(A) in paragraph (2), by striking “subsection (q) and paragraph (4) of this subsection” and inserting “subsections (k)(5) and (q)”; and

(B) by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(2) HUSBAND’S INSURANCE BENEFITS.—Section 202(c) of the Social Security Act (42 U.S.C. 402(c)) is amended—

(A) by striking paragraph (2) and redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(B) in paragraph (2) as so redesignated, by striking “subsection (q) and paragraph (2) of this subsection” and inserting “subsections (k)(5) and (q)”.

(3) WIDOW’S INSURANCE BENEFITS.—Section 202(e) of the Social Security Act (42 U.S.C. 402(e)) is amended—

(A) in paragraph (2)(A), by striking “subsection (q), paragraph (7) of this subsection,” and inserting “subsection (k)(5), subsection (q),”; and

(B) by striking paragraph (7) and redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

(4) WIDOWER’S INSURANCE BENEFITS.—

(A) IN GENERAL.—Section 202(f) of the Social Security Act (42 U.S.C. 402(f)) is amended—

(i) by striking paragraph (2) and redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively; and

(ii) in paragraph (2) as so redesignated, by striking “subsection (q), paragraph (2) of this subsection,” and inserting “subsection (k)(5), subsection (q),”.

(B) CONFORMING AMENDMENTS.—

(i) Section 202(f)(1)(B) of the Social Security Act (42 U.S.C. 402(f)(1)(B)) is amended by striking “paragraph (5)” and inserting “paragraph (4)”.

(ii) Section 202(f)(1)(F) of the Social Security Act (42 U.S.C. 402(f)(1)(F)) is amended by striking “paragraph (6)” and “paragraph (5)” (in clauses (i) and (ii)) and inserting “paragraph (5)” and “paragraph (4)”, respectively.

(iii) Section 202(f)(5)(A)(ii) of the Social Security Act (as redesignated by subparagraph (A)(i)) is amended by striking “paragraph (5)” and inserting “paragraph (4)”.

(iv) Section 202(k)(2)(B) of the Social Security Act (42 U.S.C. 402(k)(2)(B)) is amended by striking “or (f)(4)” each place it appears and inserting “or (f)(3)”.

(v) Section 202(k)(3)(A) of the Social Security Act (42 U.S.C. 402(k)(3)(A)) is amended by striking “or (f)(3)” and inserting “or (f)(2)”.

(vi) Section 202(k)(3)(B) of the Social Security Act (42 U.S.C. 402(k)(3)(B)) is amended by striking “or (f)(4)” and inserting “or (f)(3)”.

(vii) Section 226(e)(1)(A)(i) of the Social Security Act (42 U.S.C. 426(e)(1)(A)(i)) is amended by striking “and 202(f)(5)” and inserting “and 202(f)(4)”.

(5) MOTHER’S AND FATHER’S INSURANCE BENEFITS.—Section 202(g) of the Social Security Act (42 U.S.C. 402(g)) is amended—

(A) in paragraph (2), by striking “Except as provided in paragraph (4) of this subsection, such” and inserting “Such”; and

(B) by striking paragraph (4).

(c) EFFECTIVE DATE AND TRANSITIONAL RULE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to applications for benefits under title II of the Social Security Act filed on or after the first day of the first month that begins after the date of enactment of this Act, except that such amendments shall not apply in connection with monthly periodic benefits of any individual based on earnings while in service described in section 202(k)(5)(A) of the Social Security Act (in the matter preceding clause (i) thereof) if the last day of such service occurs before July 1, 2004.

(2) TRANSITIONAL RULE.—In the case of any individual whose last day of service described in subparagraph (A) of section 202(k)(5) of the Social Security Act (as added by subsection (a) of this section) occurs within 5 years after the date of enactment of this Act—

(A) the 60-month period described in such subparagraph (A) shall be reduced (but not to less than 1 month) by the number of months of such service (in the aggregate and without regard to whether such months of service were continuous) which—

(i) were performed by the individual under the same retirement system on or before the date of enactment of this Act, and

(ii) constituted “employment” as defined in section 210 of the Social Security Act; and

(B) months of service necessary to fulfill the 60-month period as reduced by subparagraph (A) of this paragraph must be performed after the date of enactment of this Act.

42 USC 402 note.
Applicability.

SEC. 419. DISCLOSURE TO WORKERS OF EFFECT OF WINDFALL ELIMINATION PROVISION AND GOVERNMENT PENSION OFFSET PROVISION.

(a) INCLUSION OF NONCOVERED EMPLOYEES AS ELIGIBLE INDIVIDUALS ENTITLED TO SOCIAL SECURITY ACCOUNT STATEMENTS.—Section 1143(a)(3) of the Social Security Act (42 U.S.C. 1320b–13(a)(3)) is amended—

(1) by striking “who” after “an individual” and inserting “who” before “has” in each of subparagraphs (A) and (B);

(2) by inserting “(i) who” after “(C)”; and

(3) by inserting before the period the following: “, or (ii) with respect to whom the Commissioner has information that the pattern of wages or self-employment income indicate a likelihood of noncovered employment”.

(b) EXPLANATION IN SOCIAL SECURITY ACCOUNT STATEMENTS OF POSSIBLE EFFECTS OF PERIODIC BENEFITS UNDER STATE AND LOCAL RETIREMENT SYSTEMS ON SOCIAL SECURITY BENEFITS.—Section 1143(a)(2) of the Social Security Act (42 U.S.C. 1320b–13(a)(2)) is amended—

(1) in subparagraph (C), by striking “and” at the end;

(2) in subparagraph (D), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(E) in the case of an eligible individual described in paragraph (3)(C)(ii), an explanation, in language calculated to be understood by the average eligible individual, of the operation of the provisions under sections 202(k)(5) and 215(a)(7) and an explanation of the maximum potential effects of such provisions on the eligible individual’s monthly retirement, survivor, and auxiliary benefits.”.

(c) TRUTH IN RETIREMENT DISCLOSURE TO GOVERNMENTAL EMPLOYEES OF EFFECT OF NONCOVERED EMPLOYMENT ON BENEFITS UNDER TITLE II.—Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended further by adding at the end the following:

“Disclosure to Governmental Employees of Effect of Noncovered
Employment

“(d)(1) In the case of any individual commencing employment on or after January 1, 2005, in any agency or instrumentality of any State (or political subdivision thereof, as defined in section 218(b)(2)) in a position in which service performed by the individual does not constitute ‘employment’ as defined in section 210, the head of the agency or instrumentality shall ensure that, prior to the date of the commencement of the individual’s employment in the position, the individual is provided a written notice setting forth an explanation, in language calculated to be understood by the average individual, of the maximum effect on computations of primary insurance amounts (under section 215(a)(7)) and the effect on benefit amounts (under section 202(k)(5)) of monthly periodic payments or benefits payable based on earnings derived in such service. Such notice shall be in a form which shall be prescribed by the Commissioner of Social Security.

“(2) The written notice provided to an individual pursuant to paragraph (1) shall include a form which, upon completion and signature by the individual, would constitute certification by the individual of receipt of the notice. The agency or instrumentality providing the notice to the individual shall require that the form be completed and signed by the individual and submitted to the agency or instrumentality and to the pension, annuity, retirement, or similar fund or system established by the governmental entity involved responsible for paying the monthly periodic payments or benefits, before commencement of service with the agency or instrumentality.”.

(d) EFFECTIVE DATES.—The amendments made by subsections (a) and (b) of this section shall apply with respect to social security account statements issued on or after January 1, 2007.

SEC. 420. POST-1956 MILITARY WAGE CREDITS.

(a) PAYMENT TO THE SOCIAL SECURITY TRUST FUNDS IN SATISFACTION OF OUTSTANDING OBLIGATIONS.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following:

“(n) Not later than July 1, 2004, the Secretary of the Treasury shall transfer, from amounts in the general fund of the Treasury that are not otherwise appropriated—

Deadline.

“(1) \$624,971,854 to the Federal Old-Age and Survivors Insurance Trust Fund;

“(2) \$105,379,671 to the Federal Disability Insurance Trust Fund; and

“(3) \$173,306,134 to the Federal Hospital Insurance Trust Fund.

Amounts transferred in accordance with this subsection shall be in satisfaction of certain outstanding obligations for deemed wage credits for 2000 and 2001.”.

(b) CONFORMING AMENDMENTS.—

(1) REPEAL OF AUTHORITY FOR ANNUAL APPROPRIATIONS AND RELATED ADJUSTMENTS TO COMPENSATE THE SOCIAL SECURITY TRUST FUND FOR MILITARY WAGE CREDITS.—Section 229 of the Social Security Act (42 U.S.C. 429) is amended—

(A) by striking “(a)”; and

(B) by striking subsection (b).

(2) AMENDMENT TO REFLECT THE TERMINATION OF WAGE CREDITS EFFECTIVE AFTER CALENDAR YEAR 2001 BY SECTION 8134 OF PUBLIC LAW 107–117.—Section 229(a)(2) of the Social Security Act (42 U.S.C. 429(a)(2)), as amended by paragraph (1), is amended by inserting “and before 2002” after “1977”.

SEC. 420A. ELIMINATION OF DISINCENTIVE TO RETURN-TO-WORK FOR CHILDHOOD DISABILITY BENEFICIARIES.

(a) IN GENERAL.—Section 202(d)(6)(B) of the Social Security Act (42 U.S.C. 402(d)(6)(B)) is amended—

(1) by inserting “(i)” after “began”; and

(2) by adding after “such disability,” the following: “or (ii) after the close of the 84th month following the month in which his most recent entitlement to child’s insurance benefits terminated because he ceased to be under such disability due to performance of substantial gainful activity,”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective with respect to benefits payable for months beginning with the 7th month that begins after the date of enactment of this Act.

42 USC 402 note.

Subtitle C—Technical Amendments**SEC. 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD.**

Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

(1) by striking “Secretary” the first place it appears and inserting “Commissioner of Social Security”; and

(2) by striking “Secretary” each subsequent place it appears and inserting “Commissioner”.

SEC. 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS.

(a) IN GENERAL.—Section 211(a)(7) of the Social Security Act (42 U.S.C. 411(a)(7)) is amended by inserting “, but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires” before the semicolon.

Applicability.
42 USC 411 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 423. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

26 USC 3121.

(a) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(a)(7)(B) of the Internal Revenue Code of 1986 is amended by striking “described in subsection (g)(5)” and inserting “on a farm operated for profit”.

(b) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209(a)(6)(B) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking “described in section 210(f)(5)” and inserting “on a farm operated for profit”.

(c) CONFORMING AMENDMENT.—Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking “or is domestic service in a private home of the employer”.

SEC. 424. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

(a) CORRECTION OF CITATION RESPECTING THE TAX DEDUCTION RELATING TO HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Section 211(a)(15) of the Social Security Act (42 U.S.C. 411(a)(15)) is amended by striking “section 162(m)” and inserting “section 162(l)”.

26 USC 3102.

(b) ELIMINATION OF REFERENCE TO OBSOLETE 20-DAY AGRICULTURAL WORK TEST.—Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking “and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis”.

SEC. 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking “all of the gross income” and all that follows and inserting “the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;”.

26 USC 1402.

(b) INTERNAL REVENUE CODE OF 1986 AMENDMENT.—Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking “all of the gross income” and all that follows and inserting “the gross income and deductions attributable to such

trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and”.

SEC. 426. TECHNICAL AMENDMENTS TO THE RAILROAD RETIREMENT AND SURVIVORS’ IMPROVEMENT ACT OF 2001.

(a) **QUORUM RULES.**—Section 15(j)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(7)) is amended by striking “entire Board of Trustees” and inserting “Trustees then holding office”.

(b) **POWERS OF THE BOARD OF TRUSTEES.**—Section 15(j)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(4)) is amended to read as follows:

“(4) **POWERS OF THE BOARD OF TRUSTEES.**—The Board of Trustees shall—

“(A) retain independent advisers to assist it in the formulation and adoption of its investment guidelines;

“(B) invest assets of the Trust in a manner consistent with such investment guidelines, either directly or through the retention of independent investment managers;

“(C) adopt bylaws and other rules to govern its operations;

“(D) employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory or management services (compensation for which may be on a fixed contract fee basis or on such other terms as are customary for such services), or other services necessary for the proper administration of the Trust;

“(E) sue and be sued and participate in legal proceedings, have and use a seal, conduct business, carry on operations, and exercise its powers within or without the District of Columbia, form, own, or participate in entities of any kind, enter into contracts and agreements necessary to carry out its business purposes, lend money for such purposes, and deal with property as security for the payment of funds so loaned, and possess and exercise any other powers appropriate to carry out the purposes of the Trust;

“(F) pay administrative expenses of the Trust from the assets of the Trust; and

“(G) transfer money to the disbursing agent or as otherwise provided in section 7(b)(4), to pay benefits payable under this Act from the assets of the Trust.”.

(c) **STATE AND LOCAL TAXES.**—Section 15(j)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(6)) is amended to read as follows:

“(6) **STATE AND LOCAL TAXES.**—The Trust shall be exempt from any income, sales, use, property, or other similar tax or fee imposed or levied by a State, political subdivision, or local taxing authority. The district courts of the United States shall have original jurisdiction over a civil action brought by the Trust to enforce this subsection and may grant equitable or declaratory relief requested by the Trust.”.

(d) **FUNDING.**—Section 15(j)(8) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(8)) is repealed.

(e) TRANSFERS.—Section 15A(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(d)(2)) is amended—

(1) by inserting “or the Railroad Retirement Account” after “National Railroad Retirement Investment Trust” the second place it appears;

(2) by inserting “or the Railroad Retirement Board” after “National Railroad Retirement Investment Trust” the third place it appears;

(3) by inserting “(either directly or through a commingled account consisting only of such obligations)” after “United States” the first place it appears; and

(4) in the third sentence, by inserting before the period at the end the following: “or to purchase such additional obligations”.

(f) CLERICAL AMENDMENTS.—Section 15(j)(5) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(5)) is amended—

(1) in subparagraph (B), by striking “trustee’s” each place it appears and inserting “Trustee’s”;

(2) in subparagraph (C), by striking “trustee” and “trustees” each place it appears and inserting “Trustee” and “Trustees”, respectively; and

(3) in the matter preceding clause (i) of subparagraph (D), by striking “trustee” and inserting “Trustee”.

Subtitle D—Amendments Related to Title XVI

SEC. 430. EXCLUSION FROM INCOME FOR CERTAIN INFREQUENT OR IRREGULAR INCOME AND CERTAIN INTEREST OR DIVI- DEND INCOME.

(a) INFREQUENT OR IRREGULAR INCOME.—Section 1612(b)(3) of the Social Security Act (42 U.S.C. 1382a(b)(3)) is amended to read as follows—

“(3) in any calendar quarter, the first—

“(A) \$60 of unearned income, and

“(B) \$30 of earned income,

of such individual (and such spouse, if any) which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included;”.

(b) INTEREST OR DIVIDEND INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

(1) in paragraph (21), by striking “and” at the end;

(2) in paragraph (22), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(23) interest or dividend income from resources—

“(A) not excluded under section 1613(a), or

“(B) excluded pursuant to Federal law other than section 1613(a).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months in calendar quarters that begin more than 90 days after the date of the enactment of this Act.

SEC. 431. UNIFORM 9-MONTH RESOURCE EXCLUSION PERIODS.

(a) **UNDERPAYMENTS OF BENEFITS.**—Section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7)) is amended—

(1) by striking “6” and inserting “9”; and

(2) by striking “(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)”.

(b) **ADVANCEABLE TAX CREDITS.**—Section 1613(a)(11) of the Social Security Act (42 U.S.C. 1382b(a)(11)) is amended to read as follows:

“(11) for the 9-month period beginning after the month in which received—

“(A) notwithstanding section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, any refund of Federal income taxes made to such individual (or such spouse) under section 24 of the Internal Revenue Code of 1986 (relating to child tax credit) by reason of subsection (d) thereof; and

“(B) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of enactment of this Act, and shall apply to amounts described in paragraph (7) of section 1613(a) of the Social Security Act and refunds of Federal income taxes described in paragraph (11) of such section, that are received by an eligible individual or eligible spouse on or after such date.

Applicability.
42 USC 1382b
note.

SEC. 432. ELIMINATION OF CERTAIN RESTRICTIONS ON THE APPLICATION OF THE STUDENT EARNED INCOME EXCLUSION.

(a) **IN GENERAL.**—Section 1612(b)(1) of the Social Security Act (42 U.S.C. 1382a(b)(1)) is amended by striking “a child who” and inserting “under the age of 22 and”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act.

42 USC 1382a
note.

SEC. 433. EXCEPTION TO RETROSPECTIVE MONTHLY ACCOUNTING FOR NONRECURRING INCOME.

(a) **IN GENERAL.**—Section 1611(c) of the Social Security Act (42 U.S.C. 1382(c)) is amended by adding at the end the following:

“(9)(A) Notwithstanding paragraphs (1) and (2), any non-recurring income which is paid to an individual in the first month of any period of eligibility shall be taken into account in determining the amount of the benefit under this title of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

“(B) For purposes of subparagraph (A), payments to an individual in varying amounts from the same or similar source for the same or similar purpose shall not be considered to be non-recurring income.”.

(b) **DELETION OF OBSOLETE MATERIAL.**—Section 1611(c)(2)(B) of the Social Security Act (42 U.S.C. 1382(c)(2)(B)) is amended to read as follows:

“(B) in the case of the first month following a period of ineligibility in which eligibility is restored after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if eligibility had been restored on the first day of such month as the number of days in such month including and following the date of restoration of eligibility bears to the total number of days in such month.”.

42 USC 1382
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act.

SEC. 434. REMOVAL OF RESTRICTION ON PAYMENT OF BENEFITS TO CHILDREN WHO ARE BORN OR WHO BECOME BLIND OR DISABLED AFTER THEIR MILITARY PARENTS ARE STATIONED OVERSEAS.

(a) **IN GENERAL.**—Section 1614(a)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1382c(a)(1)(B)(ii)) is amended—

(1) by inserting “and” after “citizen of the United States,”; and

(2) by striking “, and who,” and all that follows and inserting a period.

42 USC 1382c
note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall be effective with respect to benefits payable for months beginning after the date of enactment of this Act, but only on the basis of an application filed after such date.

SEC. 435. TREATMENT OF EDUCATION-RELATED INCOME AND RESOURCES.

(a) **EXCLUSION FROM INCOME OF GIFTS PROVIDED FOR TUITION AND OTHER EDUCATION-RELATED FEES.**—Section 1612(b)(7) of the Social Security Act (42 U.S.C. 1382a(b)(7)) is amended by striking “or fellowship received for use in paying” and inserting “fellowship, or gift (or portion of a gift) used to pay”.

(b) **EXCLUSION FROM RESOURCES FOR 9 MONTHS OF GRANTS, SCHOLARSHIPS, FELLOWSHIPS, OR GIFTS PROVIDED FOR TUITION AND OTHER EDUCATION-RELATED FEES.**—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)) (as amended by section 101(c)(2)) is amended—

(1) in paragraph (13), by striking “and” at the end;

(2) in paragraph (14), by striking the period and inserting “; and”; and

(3) by inserting after paragraph (14) the following:

“(15) for the 9-month period beginning after the month in which received, any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution.”.

Applicability.
42 USC 1382a
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act.

SEC. 436. MONTHLY TREATMENT OF UNIFORMED SERVICE COMPENSATION.

(a) **TREATMENT OF PAY AS RECEIVED WHEN EARNED.**—Section 1611(c) of the Social Security Act (42 U.S.C. 1382(c)), as amended by section 435(a), is amended by adding at the end the following:

“(10) For purposes of this subsection, remuneration for service performed as a member of a uniformed service may be treated as received in the month in which it was earned, if the Commissioner of Social Security determines that such treatment would promote the economical and efficient administration of the program authorized by this title.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act.

Applicability.
42 USC 1382
note.

Approved March 2, 2004.

LEGISLATIVE HISTORY—H.R. 743:

HOUSE REPORTS: No. 108–46 (Comm. on Ways and Means).

SENATE REPORTS: No. 108–176 (Comm. on Finance).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Mar. 5, considered and rejected in House.

Apr. 2, considered and passed House.

Dec. 9, considered and passed Senate, amended.

Vol. 150 (2004): Feb. 11, House concurred in Senate amendment.



Public Law 108–204
108th Congress

An Act

Mar. 2, 2004
[S. 523]

To make technical corrections to laws relating to Native Americans, and for other purposes.

Native American
Technical
Corrections Act
of 2004.
25 USC 461 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Native American Technical Corrections Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definition of Secretary.

TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

Subtitle A—Technical Amendments

- Sec. 101. Bosque Redondo Memorial Act.
- Sec. 102. Navajo-Hopi Land Settlement Act.
- Sec. 103. Tribal sovereignty.
- Sec. 104. Cow Creek Band of Umpqua Indians.
- Sec. 105. Pueblo de Cochiti; modification of settlement.
- Sec. 106. Four Corners Interpretive Center.
- Sec. 107. Mississippi Band of Choctaw Indians.
- Sec. 108. Rehabilitation of Celilo Indian Village.

Subtitle B—Other Provisions Relating to Native Americans

- Sec. 121. Barona Band of Mission Indians; facilitation of construction of pipeline to provide water for emergency fire suppression and other purposes.
- Sec. 122. Conveyance of Native Alaskan objects.
- Sec. 123. Pueblo of Acoma; land and mineral consolidation.
- Sec. 124. Quinault Indian Nation; water feasibility study.
- Sec. 125. Santee Sioux Tribe; study and report.
- Sec. 126. Shakopee Mdewakanton Sioux Community.
- Sec. 127. Agua Caliente Band of Cahuilla Indians.
- Sec. 128. Saginaw Chippewa Tribal College.
- Sec. 129. Ute Indian Tribe; oil shale reserve.

TITLE II—PUEBLO OF SANTA CLARA AND PUEBLO OF SAN ILDEFONSO

- Sec. 201. Definitions.
- Sec. 202. Trust for the Pueblo of Santa Clara, New Mexico.
- Sec. 203. Trust for the Pueblo of San Ildefonso, New Mexico.
- Sec. 204. Survey and legal descriptions.
- Sec. 205. Administration of trust land.
- Sec. 206. Effect.
- Sec. 207. Gaming.

TITLE III—DISTRIBUTION OF QUINULT PERMANENT FISHERIES FUNDS

- Sec. 301. Distribution of judgment funds.
- Sec. 302. Conditions for distribution.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, except as otherwise provided in this Act, the term “Secretary” means the Secretary of the Interior.

TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

Subtitle A—Technical Amendments

SEC. 101. BOSQUE REDONDO MEMORIAL ACT.

Section 206 of the Bosque Redondo Memorial Act (16 U.S.C. 431 note; Public Law 106–511) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “2000” and inserting “2004”; and

(B) in paragraph (2), by striking “2001 and 2002” and inserting “2005 and 2006”; and

(2) in subsection (b), by striking “2002” and inserting “2007”.

SEC. 102. NAVAJO-HOPI LAND SETTLEMENT ACT.

Section 25(a)(8) of Public Law 93–531 (commonly known as the “Navajo-Hopi Land Settlement Act of 1974”) (25 U.S.C. 640d–24(a)(8)) is amended by striking “annually for fiscal years 1995, 1996, 1997, 1998, 1999, and 2000” and inserting “for each of fiscal years 2003 through 2008”.

SEC. 103. TRIBAL SOVEREIGNTY.

Section 16 of the Act of June 18, 1934 (25 U.S.C. 476), is amended by adding at the end the following:

“(h) TRIBAL SOVEREIGNTY.—Notwithstanding any other provision of this Act—

“(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

“(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).”.

SEC. 104. COW CREEK BAND OF UMPQUA INDIANS.

Section 7 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712e) is amended in the third sentence by inserting before the period at the end the following: “, and shall be treated as on-reservation land for the purpose of processing acquisitions of real property into trust”.

SEC. 105. PUEBLO DE COCHITI; MODIFICATION OF SETTLEMENT.

Section 1 of Public Law 102–358 (106 Stat. 960) is amended—

(1) by striking “implement the settlement” and inserting the following: “implement—

“(1) the settlement;”;

(2) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(2) the modifications regarding the use of the settlement funds as described in the agreement known as the ‘First Amendment to Operation and Maintenance Agreement for Implementation of Cochiti Wetlands Solution’, executed—

“(A) on October 22, 2001, by the Army Corps of Engineers;

“(B) on October 25, 2001, by the Pueblo de Cochiti of New Mexico; and

“(C) on November 8, 2001, by the Secretary of the Interior.”.

SEC. 106. FOUR CORNERS INTERPRETIVE CENTER.

Section 7 of the Four Corners Interpretive Center Act (113 Stat. 1706) is amended—

(1) in subsection (a)(2), by striking “2005” and inserting “2008”;

(2) in subsection (b), by striking “2002” and inserting “2005”; and

(3) in subsection (c), by striking “2001” and inserting “2004”.

SEC. 107. MISSISSIPPI BAND OF CHOCTAW INDIANS.

Section 1(a)(2) of Public Law 106–228 (114 Stat. 462) is amended by striking “report entitled” and all that follows through “is hereby declared” and inserting the following: “report entitled ‘Report of May 17, 2002, Clarifying and Correcting Legal Descriptions or Recording Information for Certain Lands placed into Trust and Reservation Status for the Mississippi Band of Choctaw Indians by Section 1(a)(2) of Pub. L. 106–228, as amended by Title VIII, Section 811 of Pub. L. 106–568’, on file in the Office of the Superintendent, Choctaw Agency, Bureau of Indian Affairs, Department of the Interior, is declared”.

SEC. 108. REHABILITATION OF CELILO INDIAN VILLAGE.

Section 401(b)(3) of Public Law 100–581 (102 Stat. 2944) is amended by inserting “and Celilo Village” after “existing sites”.

Subtitle B—Other Provisions Relating to Native Americans

California.

SEC. 121. BARONA BAND OF MISSION INDIANS; FACILITATION OF CONSTRUCTION OF PIPELINE TO PROVIDE WATER FOR EMERGENCY FIRE SUPPRESSION AND OTHER PURPOSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to valid existing rights under Federal and State law, and to any easements or similar restrictions which may be granted to the city of San Diego, California, for the construction, operation and maintenance of a pipeline and related appurtenances and facilities for conveying water from the San Vicente Reservoir to the Barona Indian Reservation, or for conservation, wildlife or habitat protection, or related purposes, the land described in subsection (b), fee title to which is held by the Barona Band of Mission Indians of California (referred to in this section as the “Band”)—

(1) is declared to be held in trust by the United States for the benefit of the Band; and

(2) shall be considered to be a portion of the reservation of the Band.

(b) LAND.—The land referred to in subsection (a) is land comprising approximately 85 acres in San Diego County, California, and described more particularly as follows: San Bernardino Base and Meridian; T. 14 S., R. 1 E.; sec. 21: W $\frac{1}{2}$ SE $\frac{1}{4}$, 68 acres; NW $\frac{1}{4}$ NW $\frac{1}{4}$, 17 acres.

(c) GAMING.—The land taken into trust by subsection (a) shall neither be considered to have been taken into trust for gaming, nor be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

SEC. 122. CONVEYANCE OF NATIVE ALASKAN OBJECTS.

Notwithstanding any provision of law affecting the disposal of Federal property, on the request of the Chugach Alaska Corporation or Sealaska Corporation, the Secretary of Agriculture shall convey to whichever of those corporations that has received title to a cemetery site or historical place on National Forest System land conveyed under section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) all artifacts, physical remains, and copies of any available field records that—

(1)(A) are in the possession of the Secretary of Agriculture; and

(B) have been collected from the cemetery site or historical place; but

(2) are not required to be conveyed in accordance with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) or any other applicable law.

SEC. 123. PUEBLO OF ACOMA; LAND AND MINERAL CONSOLIDATION.

(a) DEFINITION OF BIDDING OR ROYALTY CREDIT.—The term “bidding or royalty credit” means a legal instrument or other written documentation, or an entry in an account managed by the Secretary, that may be used in lieu of any other monetary payment for—

(1) a bonus bid for a lease sale on the outer Continental Shelf; or

(2) a royalty due on oil or gas production; for any lease located on the outer Continental Shelf outside the zone defined and governed by section 8(g)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)(2)).

(b) AUTHORITY.—Notwithstanding any other provision of law, the Secretary may acquire any nontribal interest in or to land (including an interest in mineral or other surface or subsurface rights) within the boundaries of the Acoma Indian Reservation for the purpose of carrying out Public Law 107-138 (116 Stat. 6) by issuing bidding or royalty credits under this section in an amount equal to the value of the interest acquired by the Secretary, as determined under section 1(a) of Public Law 107-138 (116 Stat. 6).

(c) USE OF BIDDING AND ROYALTY CREDITS.—On issuance by the Secretary of a bidding or royalty credit under subsection (b), the bidding or royalty credit—

(1) may be freely transferred to any other person (except that, before any such transfer, the transferor shall notify the Secretary of the transfer by such method as the Secretary may specify); and

Notification.

(2) shall remain available for use by any person during the 5-year period beginning on the date of issuance by the Secretary of the bidding or royalty credit.

Washington.

SEC. 124. QUINULT INDIAN NATION; WATER FEASIBILITY STUDY.

(a) **IN GENERAL.**—The Secretary is authorized to carry out, in accordance with Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), a water source, quantity, and quality feasibility study for land of the Quinalt Indian Nation to identify ways to meet the current and future domestic and commercial water supply and distribution needs of the Quinalt Indian Nation on the Olympic Peninsula, Washington.

(b) **PUBLIC AVAILABILITY OF RESULTS.**—As soon as practicable after completion of a feasibility study under subsection (a), the Secretary shall—

Federal Register,
publication.

(1) publish in the Federal Register a notice of the availability of the results of the feasibility study; and

(2) make available to the public, on request, the results of the feasibility study.

Nebraska.

SEC. 125. SANTEE SIOUX TRIBE; STUDY AND REPORT.

(a) **STUDY.**—Pursuant to reclamation laws, the Secretary, acting through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (referred to in this subtitle as the “Tribe”), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) **COOPERATIVE AGREEMENT.**—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

Deadline.

(c) **REPORT.**—Not later than 1 year after funds are made available to carry out this subtitle, the Secretary shall submit to Congress a report containing the results of the study required by subsection (a).

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary to carry out this section \$500,000, to remain available until expended.

Minnesota.

SEC. 126. SHAKOPEE MDEWAKANTON SIOUX COMMUNITY.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, without further authorization by the United States, the Shakopee Mdewakanton Sioux Community in the State of Minnesota (referred to in this section as the “Community”) may lease, sell, convey, warrant, or otherwise transfer all or any part of the interest of the Community in or to any real property that is not held in trust by the United States for the benefit of the Community.

(b) **NO EFFECT ON TRUST LAND.**—Nothing in this section—

(1) authorizes the Community to lease, sell, convey, warrant, or otherwise transfer all or part of an interest in any real property that is held in trust by the United States for the benefit of the Community; or

(2) affects the operation of any law governing leasing, selling, conveying, warranting, or otherwise transferring any interest in that trust land.

SEC. 127. AGUA CALIENTE BAND OF CAHUILLA INDIANS.

(a) **IN GENERAL.**—Notwithstanding any other provision of law (including any restrictive covenant in effect under, or required by operation of, a State law), title to land that the Secretary of the Interior agrees is to be acquired by the United States in accordance with the Act of June 18, 1934 (25 U.S.C. 465), for the Agua Caliente Band of Cahuilla Indians shall be taken in the name of the United States.

(b) **COVENANTS.**—A restrictive covenant referred to in subsection (a) shall be unenforceable against the United States if the land to which the restrictive covenant is attached was held in trust by the United States for, or owned by, the Agua Caliente Band of Cahuilla Indians, or an individual member of the Band, before the date on which the restrictive covenant attached to the land.

SEC. 128. SAGINAW CHIPPEWA TRIBAL COLLEGE.

Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 103–382) is amended—

(1) by redesignating paragraphs (22) through (31) as paragraphs (23) through (32), respectively; and

(2) by inserting after paragraph (21) the following:

“(22) Saginaw Chippewa Tribal College.”.

SEC. 129. UTE INDIAN TRIBE; OIL SHALE RESERVE.

Section 3405(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105–261) is amended by striking paragraph (3) and inserting the following:

“(3) With respect to the land conveyed to the Tribe under subsection (b)—

“(A) the land shall not be subject to any Federal restriction on alienation; and

“(B) notwithstanding any provision to the contrary in the constitution, bylaws, or charter of the Tribe, the Act of May 11, 1938 (commonly known as the ‘Indian Mineral Leasing Act of 1938’) (25 U.S.C. 396a et seq.), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.), section 2103 of the Revised Statutes (25 U.S.C. 81), or section 2116 of the Revised Statutes (25 U.S.C. 177), or any other law, no purchase, grant, lease, or other conveyance of the land (or any interest in the land), and no exploration, development, or other agreement relating to the land that is authorized by resolution by the governing body of the Tribe, shall require approval by the Secretary of the Interior or any other Federal official.”.

**TITLE II—PUEBLO OF SANTA CLARA
AND PUEBLO OF SAN ILDEFONSO**

New Mexico.

SEC. 201. DEFINITIONS.

In this title:

(1) **AGREEMENT.**—The term “Agreement” means the agreement entitled “Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract”, entered into by the Governors on December 20, 2000.

(2) **BOUNDARY LINE.**—The term “boundary line” means the boundary line established under section 204(a).

(3) **GOVERNORS.**—The term “Governors” means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

(4) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) **PUEBLOS.**—The term “Pueblos” means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

(6) **TRUST LAND.**—The term “trust land” means the land held by the United States in trust under section 202(a) or 203(a).

SEC. 202. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

(a) **IN GENERAL.**—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) **DESCRIPTION OF LAND.**—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., sec. 23, New Mexico Principal Meridian;

(3) the southern half of T. 20 N., R. 7 E., sec. 24, New Mexico Principal Meridian;

(4) T. 20 N., R. 7 E., sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

(5) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

(6) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

(7) the portion of T. 20 N., R. 8 E., sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

(8) the portion of T. 20 N., R. 8 E., sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

SEC. 203. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

(a) **IN GENERAL.**—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

(b) **DESCRIPTION OF LAND.**—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

(2) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

(3) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

(4) T. 20 N., R. 7 E., sec. 34, New Mexico Principal Meridian; and

(5) the portion of T. 20 N., R. 7 E., sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

SEC. 204. SURVEY AND LEGAL DESCRIPTIONS.

(a) **SURVEY.**—Not later than 180 days after the date of enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 3102(b) and 3103(b), the boundaries of the trust land. Deadline.

(b) **LEGAL DESCRIPTIONS.**—

(1) **PUBLICATION.**—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register— Federal Register, publication.

(A) a legal description of the boundary line; and

(B) legal descriptions of the trust land.

(2) **TECHNICAL CORRECTIONS.**—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 3102(b) and 3103(b) to ensure that the descriptions are consistent with the terms of the Agreement.

(3) **EFFECT.**—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

SEC. 205. ADMINISTRATION OF TRUST LAND.

(a) **IN GENERAL.**—Effective beginning on the date of enactment of this Act— Effective date.

(1) the land held in trust under section 202(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

(2) the land held in trust under section 203(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

(b) **APPLICABLE LAW.**—

(1) **IN GENERAL.**—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

(2) **PUEBLO LANDS ACT.**—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the “Pueblo Lands Act”) (25 U.S.C. 331 note):

(A) The trust land.

(B) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

(C) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

(c) **USE OF TRUST LAND.**—

(1) **IN GENERAL.**—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

(A) traditional and customary uses; or

(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

(2) **CRITERIA.**—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

(3) **LIMITATION.**—Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

Effective date.

SEC. 206. EFFECT.

Nothing in this title—

(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

(A) in or to the trust land; and

(B) in existence before the date of enactment of this Act;

(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

(A) based on Aboriginal or Indian title; and

(B) in existence before the date of enactment of this Act;

(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.

SEC. 207. GAMING.

Land taken into trust under this title shall neither be considered to have been taken into trust for, nor be used for, gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)).

TITLE III—DISTRIBUTION OF QUINULT PERMANENT FISHERIES FUNDS

SEC. 301. DISTRIBUTION OF JUDGMENT FUNDS.

(a) **FUNDS TO BE DEPOSITED INTO SEPARATE ACCOUNTS.**—

(1) **IN GENERAL.**—Subject to section 302, not later than 30 days after the date of enactment of this Act, the funds appropriated on September 19, 1989, in satisfaction of an award granted to the Quinault Indian Nation under Dockets 772–71, 773–71, 774–71, and 775–71 before the United States

Deadline.

Claims Court, less attorney fees and litigation expenses, and including all interest accrued to the date of disbursement, shall be distributed by the Secretary and deposited into 3 separate accounts to be established and maintained by the Quinault Indian Nation (referred to in this title as the “Tribe”) in accordance with this subsection.

(2) ACCOUNT FOR PRINCIPAL AMOUNT.—

(A) IN GENERAL.—The Tribe shall—

(i) establish an account for the principal amount of the judgment funds; and

(ii) use those funds to establish a Permanent Fisheries Fund.

(B) USE AND INVESTMENT.—The principal amount described in subparagraph (A)(i)—

(i) except as provided in subparagraph (A)(ii), shall not be expended by the Tribe; and

(ii) shall be invested by the Tribe in accordance with the investment policy of the Tribe.

(3) ACCOUNT FOR INVESTMENT INCOME.—

(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on amounts in the Permanent Fisheries Fund established under paragraph (2)(A)(ii) after the date of distribution of the funds to the Tribe under paragraph (1).

(B) USE OF FUNDS.—Funds deposited in the account established under subparagraph (A) shall be available to the Tribe—

(i) subject to subparagraph (C), to carry out fisheries enhancement projects; and

(ii) pay expenses incurred in administering the Permanent Fisheries Fund established under paragraph (2)(A)(ii).

(C) SPECIFICATION OF PROJECTS.—Each fisheries enhancement project carried out under subparagraph (B)(i) shall be specified in the approved annual budget of the Tribe.

(4) ACCOUNT FOR INCOME ON JUDGMENT FUNDS.—

(A) IN GENERAL.—The Tribe shall establish an account for, and deposit in the account, all investment income earned on the judgment funds described in subsection (a) during the period beginning on September 19, 1989, and ending on the date of distribution of the funds to the Tribe under paragraph (1).

(B) USE OF FUNDS.—

(i) IN GENERAL.—Subject to clause (ii), funds deposited in the account established under subparagraph (A) shall be available to the Tribe for use in carrying out tribal government activities.

(ii) SPECIFICATION OF ACTIVITIES.—Each tribal government activity carried out under clause (i) shall be specified in the approved annual budget of the Tribe.

(b) DETERMINATION OF AMOUNT OF FUNDS AVAILABLE.—Subject to compliance by the Tribe with paragraphs (3)(C) and (4)(B)(ii) of subsection (a), the Quinault Business Committee, as the governing body of the Tribe, may determine the amount of funds available for expenditure under paragraphs (3) and (4) of subsection (a).

(c) ANNUAL AUDIT.—The records and investment activities of the 3 accounts established under subsection (a) shall—

(1) be maintained separately by the Tribe; and

(2) be subject to an annual audit.

Deadline.

(d) REPORTING OF INVESTMENT ACTIVITIES AND EXPENDITURES.—Not later than 120 days after the date on which each fiscal year of the Tribe ends, the Tribe shall make available to members of the Tribe a full accounting of the investment activities and expenditures of the Tribe with respect to each fund established under this section (which may be in the form of the annual audit described in subsection (c)) for the fiscal year.

SEC. 302. CONDITIONS FOR DISTRIBUTION.

(a) UNITED STATES LIABILITY.—On disbursement to the Tribe of the funds under section 301(a), the United States shall bear no trust responsibility or liability for the investment, supervision, administration, or expenditure of the funds.

(b) APPLICATION OF OTHER LAW.—All funds distributed under this title shall be subject to section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407).

Approved March 2, 2004.

LEGISLATIVE HISTORY—S. 523:

HOUSE REPORTS: No. 108–374, Pt. 1 (Comm. on Resources).

SENATE REPORTS: No. 108–49 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 149 (2003): July 30, considered and passed Senate.

Vol. 150 (2004): Feb. 11, considered and passed House.



Public Law 108–205
108th Congress

An Act

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through April 2, 2004, and for other purposes.

Mar. 15, 2004
[H.R. 3915]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958.

The authorization for any program, authority, or provision, including any pilot program, that was extended through March 15, 2004, by section 1(a) of Public Law 108–172 is further extended through April 2, 2004, under the same terms and conditions.

117 Stat. 2065.

SEC. 2. EXTENSION OF CERTAIN FEE AUTHORIZATIONS.

Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) is amended by striking “October 1, 2003” and inserting “May 21, 2004”.

Approved March 15, 2004.

LEGISLATIVE HISTORY—H.R. 3915:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Mar. 10, considered and passed House.
Mar. 12, considered and passed Senate.



Public Law 108–206
108th Congress

An Act

Mar. 15, 2004
[S. 714]

To provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. CONVEYANCE OF BUREAU OF LAND MANAGEMENT LAND
IN DOUGLAS COUNTY, OREGON.**

(a) IN GENERAL.—

(1) CONVEYANCE.—The Secretary of the Interior shall convey, without consideration and subject to valid existing rights, to Douglas County, Oregon (referred to in this section as the “County”), all right, title, and interest of the United States in and to the parcel described in paragraph (2) for use by the County for recreational purposes.

(2) PARCEL.—The parcel referred to in paragraph (1) is the parcel of land consisting of approximately 68.8 acres under the administrative jurisdiction of the Bureau of Land Management, as generally depicted on the map entitled “S. 714, Douglas County, Oregon Land Conveyance”, dated May 21, 2003.

(b) PURPOSES OF CONVEYANCE.—The purposes of the conveyance under subsection (a) are to improve management of and recreational access to the Oregon Dunes National Recreation Area by—

(1) improving public safety and reducing traffic congestion along Salmon Harbor Drive (County Road No. 251) in the County;

(2) providing a staging area for off-highway vehicles; and

(3) facilitating policing of unlawful camping and parking along Salmon Harbor Drive and adjacent areas.

(c) SURVEY.—The exact acreage and legal description of the parcel to be conveyed under subsection (a) shall be determined by a survey—

(1) that is satisfactory to the Secretary; and

(2) the cost of which shall be paid by the County.

(d) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

Approved March 15, 2004.

LEGISLATIVE HISTORY—S. 714:

SENATE REPORTS: No. 108–135 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 24, considered and passed Senate.

Vol. 150 (2004): Feb. 24, considered and passed House.



Public Law 108–207
108th Congress

An Act

Mar. 16, 2004
[S. 2136]

To extend the final report date and termination date of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. EXTENSION OF NATIONAL COMMISSION ON TERRORIST
ATTACKS UPON THE UNITED STATES.**

(a) **FINAL REPORT DATE.**—Subsection (b) of section 610 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 6 U.S.C. 101 note; 116 Stat. 2413) is amended by striking “18 months” and inserting “20 months”.

(b) **TERMINATION DATE.**—Subsection (c) of that section is amended—

(1) in paragraph (1), by striking “60 days” and inserting “30 days”; and

(2) in paragraph (2), by striking “60-day period” and inserting “30-day period”.

(c) **ADDITIONAL FUNDING.**—Section 611 of that Act (6 U.S.C. 101 note; 116 Stat. 2413) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) by inserting after subsection (a) the following new subsection (b):

“(b) **ADDITIONAL FUNDING.**—In addition to the amounts made available to the Commission under subsection (a) and under chapter 2 of title II of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 591), of the amounts appropriated for the programs and activities of the Federal Government for fiscal year 2004 that remain available for obligation, not more than \$1,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this title.”; and

(3) in subsection (c), as so redesignated, by striking “subsection (a)” and inserting “this section”.

Approved March 16, 2004.

LEGISLATIVE HISTORY—S. 2136:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Feb. 27, considered and passed Senate.

Mar. 3, considered and passed House.



Public Law 108–208
108th Congress

An Act

Mar. 19, 2004
[H.R. 506]

To provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes.

Galisteo Basin
Archaeological
Sites Protection
Act.
16 USC 470aa
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Galisteo Basin Archaeological Sites Protection Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Galisteo Basin and surrounding area of New Mexico is the location of many well preserved prehistoric and historic archaeological resources of Native American and Spanish colonial cultures;

(2) these resources include the largest ruins of Pueblo Indian settlements in the United States, spectacular examples of Native American rock art, and ruins of Spanish colonial settlements; and

(3) these resources are being threatened by natural causes, urban development, vandalism, and uncontrolled excavations.

(b) PURPOSE.—The purpose of this Act is to provide for the preservation, protection, and interpretation of the nationally significant archaeological resources in the Galisteo Basin in New Mexico.

SEC. 3. GALISTEO BASIN ARCHAEOLOGICAL PROTECTION SITES.

(a) IN GENERAL.—Except as provided in subsection (d), the following archaeological sites located in the Galisteo Basin in the State of New Mexico, totaling approximately 4,591 acres, are hereby designated as Galisteo Basin Archaeological Protection Sites:

Name	Acres
Arroyo Hondo Pueblo	21
Burnt Corn Pueblo	110
Chamisa Locita Pueblo	16
Comanche Gap Petroglyphs	764
Espinoso Ridge Site	160
La Cienega Pueblo & Petroglyphs	126
La Cienega Pithouse Village	179
La Cieneguilla Petroglyphs/Camino Real Site	531
La Cieneguilla Pueblo	11
Lamy Pueblo	30
Lamy Junction Site	80
Las Huertas	44
Pa’ako Pueblo	29
Petroglyph Hill	130
Pueblo Blanco	878
Pueblo Colorado	120
Pueblo Galisteo/Las Madres	133

Name	Acres
Pueblo Largo	60
Pueblo She	120
Rote Chert Quarry	5
San Cristobal Pueblo	520
San Lazaro Pueblo	360
San Marcos Pueblo	152
Upper Arroyo Hondo Pueblo	12
Total Acreage	4,591

(b) **AVAILABILITY OF MAPS.**—The archaeological protection sites listed in subsection (a) are generally depicted on a series of 19 maps entitled “Galisteo Basin Archaeological Protection Sites” and dated July, 2002. The Secretary of the Interior (hereinafter referred to as the “Secretary”) shall keep the maps on file and available for public inspection in appropriate offices in New Mexico of the Bureau of Land Management and the National Park Service.

(c) **BOUNDARY ADJUSTMENTS.**—The Secretary may make minor boundary adjustments to the archaeological protection sites by publishing notice thereof in the Federal Register.

(d) **WITHDRAWAL OF PRIVATE PROPERTY.**—Upon the written request of an owner of private property included within the boundary of an archaeological site protected under this Act, the Secretary shall immediately remove that private property from within that boundary.

SEC. 4. ADDITIONAL SITES.

(a) **IN GENERAL.**—The Secretary shall—

(1) continue to search for additional Native American and Spanish colonial sites in the Galisteo Basin area of New Mexico; and

(2) submit to Congress, within 3 years after the date funds become available and thereafter as needed, recommendations for additions to, deletions from, and modifications of the boundaries of the list of archaeological protection sites in section 3 of this Act.

Deadline.

(b) **ADDITIONS ONLY BY STATUTE.**—Additions to or deletions from the list in section 3 shall be made only by an Act of Congress.

SEC. 5. ADMINISTRATION.

(a) **IN GENERAL.**—

(1) The Secretary shall administer archaeological protection sites located on Federal land in accordance with the provisions of this Act, the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.), and other applicable laws in a manner that will protect, preserve, and maintain the archaeological resources and provide for research thereon.

(2) The Secretary shall have no authority to administer archaeological protection sites which are on non-Federal lands except to the extent provided for in a cooperative agreement entered into between the Secretary and the landowner.

(3) Nothing in this Act shall be construed to extend the authorities of the Archaeological Resources Protection Act of 1979 or the Native American Graves Protection and Repatriation Act to private lands which are designated as an archaeological protection site.

(b) **MANAGEMENT PLAN.**—

Deadline.

(1) **IN GENERAL.**—Within 3 complete fiscal years after the date funds are made available, the Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives, a general management plan for the identification, research, protection, and public interpretation of—

(A) the archaeological protection sites located on Federal land; and

(B) for sites on State or private lands for which the Secretary has entered into cooperative agreements pursuant to section 6 of this Act.

(2) **CONSULTATION.**—The general management plan shall be developed by the Secretary in consultation with the Governor of New Mexico, the New Mexico State Land Commissioner, affected Native American pueblos, and other interested parties.

SEC. 6. COOPERATIVE AGREEMENTS.

The Secretary is authorized to enter into cooperative agreements with owners of non-Federal lands with regard to an archaeological protection site, or portion thereof, located on their property. The purpose of such an agreement shall be to enable the Secretary to assist with the protection, preservation, maintenance, and administration of the archaeological resources and associated lands. Where appropriate, a cooperative agreement may also provide for public interpretation of the site.

SEC. 7. ACQUISITIONS.

(a) **IN GENERAL.**—The Secretary is authorized to acquire lands and interests therein within the boundaries of the archaeological protection sites, including access thereto, by donation, by purchase with donated or appropriated funds, or by exchange.

(b) **CONSENT OF OWNER REQUIRED.**—The Secretary may only acquire lands or interests therein with the consent of the owner thereof.

(c) **STATE LANDS.**—The Secretary may acquire lands or interests therein owned by the State of New Mexico or a political subdivision thereof only by donation or exchange, except that State trust lands may only be acquired by exchange.

SEC. 8. WITHDRAWAL.

Subject to valid existing rights, all Federal lands within the archaeological protection sites are hereby withdrawn—

(1) from all forms of entry, appropriation, or disposal under the public land laws and all amendments thereto;

(2) from location, entry, and patent under the mining law and all amendments thereto; and

(3) from disposition under all laws relating to mineral and geothermal leasing, and all amendments thereto.

SEC. 9. SAVINGS PROVISIONS.

Nothing in this Act shall be construed—

(1) to authorize the regulation of privately owned lands within an area designated as an archaeological protection site;

(2) to modify, enlarge, or diminish any authority of Federal, State, or local governments to regulate any use of privately owned lands;

(3) to modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

(4) to restrict or limit a tribe from protecting cultural or religious sites on tribal lands.

Approved March 19, 2004.

LEGISLATIVE HISTORY—H.R. 506 (S. 210):

HOUSE REPORTS: No. 108–346 (Comm. on Resources).

SENATE REPORTS: No. 108–7 accompanying S. 210 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 4, considered and passed House.

Vol. 150 (2004): Mar. 4, considered and passed Senate.



Public Law 108–209
108th Congress

An Act

Mar. 19, 2004
[H.R. 2059]

To designate Fort Bayard Historic District in the State of New Mexico as a National Historic Landmark, and for other purposes.

Fort Bayard
National Historic
Landmark Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FORT BAYARD NATIONAL HISTORIC LANDMARK ACT.

(a) **SHORT TITLE.**—This Act may be cited as the “Fort Bayard National Historic Landmark Act”.

(b) **DESIGNATION.**—The Fort Bayard Historic District in Grant County, New Mexico, as listed on the National Register of Historic Places, is hereby designated as the Fort Bayard National Historic Landmark.

(c) **ADMINISTRATION.**—Nothing in this section shall affect the administration of the Fort Bayard Historic District by the State of New Mexico.

(d) **COOPERATIVE AGREEMENTS.**—The Secretary, in consultation with the State of New Mexico, Grant County, New Mexico, and affected subdivisions of Grant County, may enter into cooperative agreements with appropriate public or private entities, for the purposes of protecting historic resources at Fort Bayard and providing educational and interpretive facilities and programs for the public. The Secretary shall not enter into any agreement or provide assistance to any activity affecting Fort Bayard State Hospital without the concurrence of the State of New Mexico.

(e) **TECHNICAL AND FINANCIAL ASSISTANCE.**—The Secretary may provide technical and financial assistance with any entity with which the Secretary has entered into a cooperative agreement under subsection (d).

(f) **NO EFFECT ON ACTIONS OF PROPERTY OWNERS.**—Designation of the Fort Bayard Historic District as a National Historic Landmark shall not prohibit any actions which may otherwise be taken by any property owners, including the owners of the Fort Bayard National Historic Landmark, with respect to their property.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Approved March 19, 2004.

LEGISLATIVE HISTORY—H.R. 2059 (S. 214):

HOUSE REPORTS: No. 108–257 (Comm. on Resources).

SENATE REPORTS: No. 108–8 accompanying S. 214 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Sept. 23, considered and passed House.

Vol. 150 (2004): Mar. 4, considered and passed Senate.



Public Law 108–210
108th Congress

An Act

Mar. 31, 2004
[S. 2231]

To reauthorize the Temporary Assistance for Needy Families block grant program through June 30, 2004, and for other purposes.

Welfare Reform
Extension Act
of 2004.
42 USC 1305
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Welfare Reform Extension Act of 2004”.

SEC. 2. EXTENSION OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT PROGRAM THROUGH JUNE 30, 2004.

(a) IN GENERAL.—Activities authorized by part A of title IV of the Social Security Act, and by sections 510, 1108(b), and 1925 of such Act, shall continue through June 30, 2004, in the manner authorized for fiscal year 2002, notwithstanding section 1902(e)(1)(A) of such Act, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the third quarter of fiscal year 2004 at the level provided for such activities through the third quarter of fiscal year 2002.

(b) CONFORMING AMENDMENT.—Section 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C. 603(a)(3)(H)(ii)) is amended by striking “March 31” and inserting “June 30”.

SEC. 3. EXTENSION OF THE NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE AND CHILD WELFARE WAIVER AUTHORITY THROUGH JUNE 30, 2004.

Activities authorized by sections 429A and 1130(a) of the Social Security Act shall continue through June 30, 2004, in the manner authorized for fiscal year 2002, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the third quarter of fiscal year 2004 at the

level provided for such activities through the third quarter of fiscal year 2002.

Approved March 31, 2004.

LEGISLATIVE HISTORY—S. 2231:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 25, considered and passed Senate.

Mar. 30, considered and passed House.



Public Law 108–211
108th Congress

An Act

Mar. 31, 2004
[S. 2241]

To reauthorize certain school lunch and child nutrition programs through June 30, 2004.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSION OF CERTAIN MILITARY HOUSING ALLOWANCES.

Section 9(b)(7) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(7)) is amended by striking “March 31, 2004” and inserting “June 30, 2004”.

SEC. 2. CHILD AND ADULT CARE FOOD PROGRAM.

Section 17(a)(2)(B)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(a)(2)(B)(i)) is amended by striking “March 31, 2004” and inserting “June 30, 2004”.

SEC. 3. REIMBURSEMENT TO STATES UNDER COMMODITY DISTRIBUTION PROGRAMS.

Section 15(e) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note; Public Law 100–237) is amended by striking “April 1, 2004” and inserting “July 1, 2004”.

SEC. 4. FUNDING MAINTENANCE OF COMMODITY DISTRIBUTION PROGRAMS.

Section 14(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking “March 31, 2004” and inserting “June 30, 2004”.

SEC. 5. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) IN GENERAL.—Section 13(q) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(q)) is amended by striking “March 31, 2004” and inserting “June 30, 2004”.

(b) PILOT PROJECTS.—Section 18(f)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)(2)) is amended by striking “March 31, 2004” and inserting “June 30, 2004”.

Approved March 31, 2004.

LEGISLATIVE HISTORY—S. 2241:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 26, considered and passed Senate.

Mar. 30, considered and passed House.



Public Law 108–212
108th Congress

An Act

Apr. 1, 2004
[H.R. 1997]

Unborn Victims
of Violence Act of
2004.
18 USC 1841
note.

To amend title 18, United States Code, and the Uniform Code of Military Justice to protect unborn children from assault and murder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Unborn Victims of Violence Act of 2004” or “Laci and Conner’s Law”.

SEC. 2. PROTECTION OF UNBORN CHILDREN.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 90 the following:

“CHAPTER 90A—PROTECTION OF UNBORN CHILDREN

“Sec.
“1841. Protection of unborn children.

“§ 1841. Protection of unborn children

“(a)(1) Whoever engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

“(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided under Federal law for that conduct had that injury or death occurred to the unborn child’s mother.

“(B) An offense under this section does not require proof that—

“(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

“(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

“(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall instead of being punished under subparagraph (A), be punished as provided under sections 1111, 1112, and 1113 of this title for intentionally killing or attempting to kill a human being.

“(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

“(b) The provisions referred to in subsection (a) are the following:

“(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844(d), (f), (h)(1), and (i), 924(j),

930, 1111, 1112, 1113, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203, 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952 (a)(1)(B), (a)(2)(B), and (a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of this title.

“(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848(e)).

“(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

“(c) Nothing in this section shall be construed to permit the prosecution—

“(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

“(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

“(3) of any woman with respect to her unborn child.

“(d) As used in this section, the term ‘unborn child’ means a child in utero, and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb.”.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following new item:

“90A. Protection of unborn children 1841”.

SEC. 3. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF UNBORN CHILDREN.—Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following new section:

“§ 919a. Art. 119a. Death or injury of an unborn child

“(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child’s mother.

“(2) An offense under this section does not require proof that—

“(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

“(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

“(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

“(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

“(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

“(c) Nothing in this section shall be construed to permit the prosecution—

“(1) of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

“(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

“(3) of any woman with respect to her unborn child.

“(d) In this section, the term ‘unborn child’ means a child in utero, and the term ‘child in utero’ or ‘child, who is in utero’ means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 919 the following new item:

“919a. 119a. Death or injury of an unborn child.”.

Approved April 1, 2004.

LEGISLATIVE HISTORY—H.R. 1997 (S. 1019):

HOUSE REPORTS: No. 108–420, Pt. 1 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Feb. 26, considered and passed House.

Mar. 25, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Apr. 1, Presidential remarks.



Public Law 108–213
108th Congress

An Act

To amend section 220 of the National Housing Act to make a technical correction to restore allowable increases in the maximum mortgage limits for FHA-insured mortgages for multifamily housing projects to cover increased costs of installing a solar energy system or residential energy conservation measures.

Apr. 1, 2004
[H.R. 3724]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Energy Efficient Housing Technical Correction Act”.

Energy Efficient
Housing
Technical
Correction Act.
12 USC 1701
note.

SEC. 2. TECHNICAL CORRECTION.

Section 220(d)(3)(B)(iii)(V) of the National Housing Act (12 U.S.C. 1715k(d)(3)(B)(iii)(V)) is amended by striking “with respect to rehabilitation projects involving not more than five family units,”.

Approved April 1, 2004.

LEGISLATIVE HISTORY—H.R. 3724:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Feb. 3, considered and passed House.

Mar. 12, considered and passed Senate.



Public Law 108–214
108th Congress

An Act

Apr. 1, 2004

[S. 1881]

To amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments made by the Medical Device User Fee and Modernization Act of 2002, and for other purposes.

Medical Devices
Technical
Corrections Act.
21 USC 301 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Medical Devices Technical Corrections Act”.

SEC. 2. TECHNICAL CORRECTIONS REGARDING PUBLIC LAW 107–250.

(a) **TITLE I; FEES RELATING TO MEDICAL DEVICES.**—Part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379i et seq.), as added by section 102 of Public Law 107–250 (116 Stat. 1589), is amended—

21 USC 379i.

(1) in section 737—

(A) in paragraph (4)(B), by striking “and for which clinical data are generally necessary to provide a reasonable assurance of safety and effectiveness” and inserting “and for which substantial clinical data are necessary to provide a reasonable assurance of safety and effectiveness”;

(B) in paragraph (4)(D), by striking “manufacturing”;

(C) in paragraph (5)(J), by striking “a premarket application” and all that follows and inserting “a premarket application or premarket report under section 515 or a premarket application under section 351 of the Public Health Service Act.”; and

(D) in paragraph (8), by striking “The term ‘affiliate’ means a business entity that has a relationship with a second business entity” and inserting “The term ‘affiliate’ means a business entity that has a relationship with a second business entity (whether domestic or international);” and

21 USC 379j.

(2) in section 738—

(A) in subsection (a)(1)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i) by striking “subsection (d),” and inserting “subsections (d) and (e),”;

(II) in clause (iv), by striking “clause (i),” and all that follows and inserting “clause (i).”; and

(III) in clause (vii), by striking “clause (i),” and all that follows and inserting “clause (i), subject to any adjustment under subsection (e)(2)(C)(ii).”; and

(ii) in subparagraph (D), in each of clauses (i) and (ii), by striking “application” and inserting “application, report,”;

(B) in subsection (d)(2)(B), beginning in the second sentence, by striking “firms. which show” and inserting “firms, which show”;

(C) in subsection (e)—

(i) in paragraph (1), by striking “Where” and inserting “For fiscal year 2004 and each subsequent fiscal year, where”; and

(ii) in paragraph (2)—

(I) in subparagraph (B), beginning in the second sentence, by striking “firms. which show” and inserting “firms, which show”; and

(II) in subparagraph (C)(i), by striking “Where” and inserting “For fiscal year 2004 and each subsequent fiscal year, where”;

(D) in subsection (f), by striking “for filing”; and

(E) in subsection (h)(2)(B)—

(i) in clause (ii), by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively;

(ii) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(iii) by striking “The Secretary” and inserting the following:

“(i) IN GENERAL.—The Secretary”; and

(iv) by adding at the end the following:

“(ii) MORE THAN 5 PERCENT.—To the extent such costs are more than 5 percent below the specified level in subparagraph (A)(ii), fees may not be collected under this section for that fiscal year.”.

(b) TITLE II; AMENDMENTS REGARDING REGULATION OF MEDICAL DEVICES.—

(1) INSPECTIONS BY ACCREDITED PERSONS.—Section 704(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(g)), as added by section 201 of Public Law 107–250 (116 Stat. 1602), is amended—

(A) in paragraph (1), in the first sentence, by striking “conducting inspections” and all that follows and inserting “conducting inspections of establishments that manufacture, prepare, propagate, compound, or process class II or class III devices, which inspections are required under section 510(h) or are inspections of such establishments required to register under section 510(i).”;

(B) in paragraph (5)(B), in the first sentence, by striking “or poses” and all that follows through the period and inserting “poses a threat to public health, fails to act in a manner that is consistent with the purposes of this subsection, or where the Secretary determines that there is a financial conflict of interest in the relationship between the accredited person and the owner or operator of a device establishment that the accredited person has inspected under this subsection.”;

(C) in paragraph (6)(A)—

(i) in clause (i), by striking “of the establishment pursuant to subsection (h) or (i) of section 510” and inserting “described in paragraph (1)”;

(ii) in clause (ii)—

(I) in the matter preceding subclause (I)—

(aa) by striking “each inspection” and inserting “inspections”; and

(bb) by inserting “during a 2-year period” after “person”; and

(II) in subclause (I), by striking “such a person” and inserting “an accredited person”;

(iii) in clause (iii)—

(I) in the matter preceding subclause (I), by striking “and the following additional conditions are met:” and inserting “and 1 or both of the following additional conditions are met.”;

(II) in subclause (I), by striking “accredited” and all that follows through the period and inserting “(accredited under paragraph (2) and identified under clause (ii)(II)) as a person authorized to conduct such inspections of device establishments.”; and

(III) in subclause (II), by inserting “or by a person accredited under paragraph (2)” after “by the Secretary”;

(iv) in clause (iv)(I)—

(I) in the first sentence—

(aa) by striking “the two immediately preceding inspections of the establishment” and inserting “inspections of the establishment during the previous 4 years”; and

(bb) by inserting “section” after “pursuant to”;

(II) in the third sentence—

(aa) by striking “the petition states a commercial reason for the waiver.”; and

(bb) by inserting “not” after “the Secretary has not determined that the public health would”; and

(III) in the fourth sentence, by striking “granted until” and inserting “granted or deemed to be granted until”; and

(v) in clause (iv)(II)—

(I) by inserting “of a device establishment required to register” after “to be conducted”; and

(II) by inserting “section” after “pursuant to”;

(D) in paragraph (6)(B)(iii)—

(i) in the first sentence, by striking “, and data otherwise describing whether the establishment has consistently been in compliance with sections 501 and 502 and other” and inserting “and with other”; and

(ii) in the second sentence—

(I) by striking “inspections” and inserting “inspectional findings”; and

(II) by inserting “relevant” after “together with all other”;

(E) in paragraph (6)(B)(iv)—

(i) by inserting “(I)” after “(iv)”; and

(ii) by adding at the end the following:

“(II) If, during the two-year period following clearance under subparagraph (A), the Secretary determines that the device establishment is substantially not in compliance with this Act, the Secretary may, after notice and a written response, notify the establishment that the eligibility of the establishment for the inspections by accredited persons has been suspended.”;

(F) in paragraph (6)(C)(ii), by striking “in accordance with section 510(h), or has not during such period been inspected pursuant to section 510(i), as applicable”;

(G) in paragraph (10)(B)(iii), by striking “a reporting” and inserting “a report”; and

(H) in paragraph (12)—

(i) by striking subparagraph (A) and inserting the following:

“(A) the number of inspections conducted by accredited persons pursuant to this subsection and the number of inspections conducted by Federal employees pursuant to section 510(h) and of device establishments required to register under section 510(i).”; and

(ii) in subparagraph (E), by striking “obtained by the Secretary” and all that follows and inserting “obtained by the Secretary pursuant to inspections conducted by Federal employees.”.

(2) OTHER CORRECTIONS.—

(A) PROHIBITED ACTS.—Section 301(gg) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(gg)), as amended by section 201(d) of Public Law 107–250 (116 Stat. 1609), is amended to read as follows:

“(gg) The knowing failure to comply with paragraph (7)(E) of section 704(g); the knowing inclusion by a person accredited under paragraph (2) of such section of false information in an inspection report under paragraph (7)(A) of such section; or the knowing failure of such a person to include material facts in such a report.”.

(B) ELECTRONIC LABELING.—Section 502(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(f)), as amended by section 206 of Public Law 107–250 (116 Stat. 1613), is amended, in the last sentence—

(i) by inserting “or by a health care professional and required labeling for in vitro diagnostic devices intended for use by health care professionals or in blood establishments” after “in health care facilities”;

(ii) by inserting a comma after “means”;

(iii) by striking “requirements of law and, that” and inserting “requirements of law, and that”;

(iv) by striking “the manufacturer affords health care facilities the opportunity” and inserting “the manufacturer affords such users the opportunity”; and

(v) by striking “the health care facility”.

(c) TITLE III; ADDITIONAL AMENDMENTS.—

(1) EFFECTIVE DATE.—Section 301(b) of Public Law 107–250 (116 Stat. 1616), is amended by striking “18 months” and inserting “36 months”.

21 USC 352 note.

(2) **PREMARKET NOTIFICATION.**—Section 510(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(o)), as added by section 302(b) of Public Law 107–250 (116 Stat. 1616), is amended—

(A) in paragraph (1)(B), by striking “, adulterated” and inserting “or adulterated”; and

(B) in paragraph (2)—

(i) in subparagraph (B), by striking “, adulterated” and inserting “or adulterated”; and

(ii) in subparagraph (E), by striking “semicritical” and inserting “semi-critical”.

(d) **MISCELLANEOUS CORRECTIONS.**—

(1) **CERTAIN AMENDMENTS TO SECTION 515.**—

(A) **IN GENERAL.**—

(i) **TECHNICAL CORRECTION.**—Section 515(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(c)), as amended by sections 209 and 302(c)(2)(A) of Public Law 107–250 (116 Stat. 1613, 1618), is amended by redesignating paragraph (3) (as added by section 209 of such Public Law) as paragraph (4).

(ii) **MODULAR REVIEW.**—Section 515(c)(4)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(c)(4)(B)) is amended by striking “unless an issue of safety” and inserting “unless a significant issue of safety”.

(B) **CONFORMING AMENDMENT.**—Section 210 of Public Law 107–250 (116 Stat. 1614) is amended by striking “, as amended” and all that follows through “by adding” and inserting “is amended in paragraph (3), as redesignated by section 302(c)(2)(A) of this Act, by adding”.

(2) **CERTAIN AMENDMENTS TO SECTION 738.**—

(A) **IN GENERAL.**—Section 738(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j(a)), as amended by subsection (a), is amended—

(i) in the matter preceding paragraph (1)—

(I) by striking “(a) TYPES OF FEES.—Beginning on” and inserting the following:

“(a) **TYPES OF FEES.**—

“(1) **IN GENERAL.**—Beginning on”; and

(II) by striking “this section as follows:” and inserting “this section.”; and

(ii) by striking “(1) **PREMARKET APPLICATION,**” and inserting the following: “(2) **PREMARKET APPLICATION,**”.

(B) **CONFORMING AMENDMENTS.**—Section 738 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379j), as amended by subparagraph (A), is amended—

(i) in subsection (d)(1), in the last sentence, by striking “subsection (a)(1)(A)” and inserting “subsection (a)(2)(A)”;

(ii) in subsection (e)(1), by striking “subsection (a)(1)(A)(vii)” and inserting “subsection (a)(2)(A)(vii)”;

(iii) in subsection (e)(2)(C)—

(I) in each of clauses (i) and (ii), by striking “subsection (a)(1)(A)(vii)” and inserting “subsection (a)(2)(A)(vii)”;

(II) in clause (ii), by striking “subsection (a)(1)(A)(i)” and inserting “subsection (a)(2)(A)(i)”; and

(iv) in subsection (j), by striking “subsection (a)(1)(D),” and inserting “subsection (a)(2)(D),”.

(C) ADDITIONAL CONFORMING AMENDMENT.—Section 102(b)(1) of Public Law 107–250 (116 Stat. 1600) is amended, in the matter preceding subparagraph (A), by striking “section 738(a)(1)(A)(ii)” and inserting “section 738(a)(2)(A)(ii)”. 21 USC 379j note.

(3) PUBLIC LAW 107–250.—Public Law 107–250 is amended—

(A) in section 102(a) (116 Stat. 1589), by striking “(21 U.S.C. 379F et seq.)” and inserting “(21 U.S.C. 379f et seq.)”; 21 USC 379i, 379j.

(B) in section 102(b) (116 Stat. 1600)—

(i) by striking paragraph (2);

(ii) in paragraph (1), by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(iii) by striking:

“(b) FEE EXEMPTION FOR CERTAIN ENTITIES SUBMITTING PRE-MARKET REPORTS.—

“(1) IN GENERAL.—A person submitting a premarket report” and inserting:

“(b) FEE EXEMPTION FOR CERTAIN ENTITIES SUBMITTING PRE-MARKET REPORTS.—A person submitting a premarket report”; and

(C) in section 212(b)(2) (116 Stat. 1614), by striking “, such as phase IV trials,”. 21 USC 360l note.

SEC. 3. REPORT ON BARRIERS TO AVAILABILITY OF DEVICES INTENDED FOR CHILDREN. Deadline.

Not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the barriers to the availability of devices intended for the treatment or diagnosis of diseases and conditions that affect children. The report shall include any recommendations of the Secretary of Health and Human Services for changes to existing statutory authority, regulations, or agency

policy or practice to encourage the invention and development of such devices.

Approved April 1, 2004.

LEGISLATIVE HISTORY—S. 1881 (H.R. 3493):

HOUSE REPORTS: No. 108–433 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 25, considered and passed Senate.

Vol. 150 (2004): Mar. 9, 10, considered and passed House, amended.
Mar. 12, Senate concurred in House amendment.



Public Law 108–215
108th Congress

An Act

To authorize the President of the United States to agree to certain amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, and for other purposes.

Apr. 5, 2004
[H.R. 254]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. AUTHORITY TO AGREE TO CERTAIN AMENDMENTS TO THE BORDER ENVIRONMENT COOPERATION AGREEMENT; GRANT AUTHORITY.

(a) AMENDMENT AUTHORITY.—Part 2 of subtitle D of title V of Public Law 103–182 (22 U.S.C. 290m–290m–3) is amended by adding at the end the following:

“SEC. 545. AUTHORITY TO AGREE TO CERTAIN AMENDMENTS TO THE BORDER ENVIRONMENT COOPERATION AGREEMENT. 22 USC 290m–4.

“The President may agree to amendments to the Cooperation Agreement that—

“(1) enable the Bank to make grants and nonmarket rate loans out of its paid-in capital resources with the approval of its Board; and

“(2) amend the definition of ‘border region’ to include the area in the United States that is within 100 kilometers of the international boundary between the United States and Mexico, and the area in Mexico that is within 300 kilometers of the international boundary between the United States and Mexico.”.

(b) GRANT AUTHORITY.—Part 2 of subtitle D of title V of Public Law 103–182 (22 U.S.C. 290m–290m–3), as amended by subsection (a), is amended by adding at the end the following:

“SEC. 546. GRANTS OUT OF PAID-IN CAPITAL RESOURCES. 22 USC 290m–5.

“(a) IN GENERAL.—The President shall instruct the United States Federal Government representatives on the Board of Directors of the North American Development Bank to oppose any proposal where grants out of the Bank’s paid-in capital resources, except for grants from paid-in capital authorized for the community adjustment and investment program under the Bank’s charter of 1993, would—

“(1) be made to a project that is not being financed, in part, by loans; or

“(2) account for more than 50 percent of the financing of any individual project.

“(b) EXCEPTION.—

“(1) GENERAL RULE.—The requirements of subsection (a) shall not apply in cases where—

“(A) the President determines there are exceptional economic circumstances for making the grant and consults with the Committee on Foreign Relations of the Senate and the Committee on Financial Services of the House of Representatives; or

“(B)(i) the grant is being made for a project that is so small that obtaining a loan is impractical; and

“(ii) the grant does not exceed \$250,000.

“(2) LIMITATION.—Not more than an aggregate of \$5,000,000 in grants may be made under this subsection.”.

19 USC 3301
note.

(c) CLERICAL AMENDMENT.—Section 1(b) of such public law is amended in the table of contents by inserting after the item relating to section 544 the following:

“Sec. 545. Authority to agree to certain amendments to the Border Environment Cooperation Agreement.

“Sec. 546. Grants out of paid-in capital resources.”.

22 USC 290m–6.

SEC. 2. ANNUAL REPORT.

The Secretary of the Treasury shall submit annually to the Committee on Financial Services of the House of Representatives and the Committee on Foreign Relations of the Senate a written report on the North American Development Bank, which addresses the following issues:

(1) The number and description of the projects that the North American Development Bank has approved. The description shall include the level of market-rate loans, non-market-rate loans, and grants used in an approved project, and a description of whether an approved project is located within 100 kilometers of the international boundary between the United States and Mexico or within 300 kilometers of the international boundary between the United States and Mexico.

(2) The number and description of the approved projects in which money has been dispersed.

(3) The number and description of the projects which have been certified by the Border Environment Cooperation Commission, but yet not financed by the North American Development Bank, and the reasons that the projects have not yet been financed.

(4) The total of the paid-in capital, callable capital, and retained earnings of the North American Development Bank, and the uses of such amounts.

(5) A description of any efforts and discussions between the United States and Mexican governments to expand the type of projects which the North American Development Bank finances beyond environmental projects.

(6) A description of any efforts and discussions between the United States and Mexican governments to improve the effectiveness of the North American Development Bank.

(7) The number and description of projects authorized under the Water Conservation Investment Fund of the North American Development Bank.

SEC. 3. SENSE OF THE CONGRESS RELATING TO UNITED STATES SUPPORT FOR NADBANK PROJECTS WHICH FINANCE WATER CONSERVATION FOR TEXAS IRRIGATORS AND AGRICULTURAL PRODUCERS IN THE LOWER RIO GRANDE RIVER VALLEY.

(a) FINDINGS.—The Congress finds that—

(1) Texas irrigators and agricultural producers are suffering enormous hardships in the lower Rio Grande River valley because of Mexico's failure to abide by the 1944 Water Treaty entered into by the United States and Mexico;

(2) over the last 10 years, Mexico has accumulated a 1,500,000-acre fee water debt to the United States which has resulted in a very minimal and inadequate irrigation water supply in Texas;

(3) recent studies by Texas A&M University show that water savings of 30 percent or more can be achieved by improvements in irrigation system infrastructure such as canal lining and metering;

(4) on August 20, 2002, the Board of the North American Development Bank agreed to the creation in the Bank of a Water Conservation Investment Fund, as required by Minute 308 to the 1944 Water Treaty, which was an agreement signed by the United States and Mexico on June 28, 2002; and

(5) the Water Conservation Investment Fund of the North American Development Bank stated that up to \$80,000,000 would be available for grant financing of water conservation projects, which grant funds would be divided equally between the United States and Mexico.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) water conservation projects are eligible for funding from the North American Development Bank under the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank; and

(2) the Board of the North American Development Bank should support qualified water conservation projects which can assist Texas irrigators and agricultural producers in the lower Rio Grande River Valley.

SEC. 4. SENSE OF THE CONGRESS RELATING TO UNITED STATES SUPPORT FOR NADBANK PROJECTS WHICH FINANCE WATER CONSERVATION IN THE SOUTHERN CALIFORNIA AREA.

It is the sense of the Congress that the Board of the North American Development Bank should support—

(1) the development of qualified water conservation projects in southern California and other eligible areas in the 4 United States border States, including the conjunctive use and storage of surface and ground water, delivery system conservation, the re-regulation of reservoirs, improved irrigation practices, wastewater reclamation, regional water management modeling, operational and optimization studies to improve water conservation, and cross-border water exchanges consistent with treaties; and

(2) new water supply research and projects along the Mexico border in southern California and other eligible areas

in the 4 United States border States to desalinate ocean seawater and brackish surface and groundwater, and dispose of or manage the brines resulting from desalination.

SEC. 5. SENSE OF THE CONGRESS RELATING TO UNITED STATES SUPPORT FOR NADBANK PROJECTS FOR WHICH FINANCE WATER CONSERVATION FOR IRRIGATORS AND AGRICULTURAL PRODUCERS IN THE SOUTHWEST UNITED STATES.

(a) FINDINGS.—The Congress finds as follows:

(1) Irrigators and agricultural producers are suffering enormous hardships in the southwest United States. The border States of California, Arizona, New Mexico, and Texas are suffering from one of the worst droughts in history. In Arizona, this is the second driest period in recorded history and the worst since 1904.

(2) In spite of decades of water conservation in the southwest United States, irrigated agriculture uses more than 60 percent of surface and ground water.

(3) The most inadequate water supplies in the United States are in the Southwest, including the lower Colorado River basin and the Great Plains River basins south of the Platte River. In these areas, 70 percent of the water taken from the stream is not returned.

(4) The amount of water being pumped out of groundwater sources in many areas is greater than the amount being replenished, thus depleting the groundwater supply.

(5) On August 20, 2002, the Board of the North American Development Bank agreed to the creation in the bank of a Water Conservation Investment Fund.

(6) The Water Conservation Investment Fund of the North American Development Bank stated that up to \$80,000,000 would be available for grant financing of water conservation projects, which grant funds would be divided equally between the United States and Mexico.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) water conservation projects are eligible for funding from the North American Development Bank under the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank;

(2) the Board of the North American Development Bank should support qualified water conservation projects that can assist irrigators and agricultural producers; and

(3) the Board of the North American Development Bank should take into consideration the needs of all of the border states before approving funding for water projects, and strive to fund water conservation projects in each of the border states.

SEC. 6. SENSE OF THE CONGRESS REGARDING FINANCING OF PROJECTS.

(a) IN GENERAL.—It is the sense of the Congress that the Board of the North American Development Bank should support the financing of projects, on both sides of the international boundary between the United States and Mexico, that address coastal issues

and the problem of pollution in both countries having an environmental impact along the Pacific Ocean and Gulf of Mexico shores of the United States and Mexico.

(b) AIR POLLUTION.—It is the sense of the Congress that the Board of the North American Development Bank should support the financing of projects, on both sides of the international boundary between the United States and Mexico, which address air pollution.

Approved April 5, 2004.

LEGISLATIVE HISTORY—H.R. 254:

HOUSE REPORTS: No. 108–17 (Comm. on Financial Services).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Feb. 26, considered and passed House.

Vol. 150 (2004): Mar. 12, considered and passed Senate, amended.
Mar. 24, 25, House agreed to Senate amendment.



Public Law 108–216
108th Congress

An Act

Apr. 5, 2004
[H.R. 3926]

To amend the Public Health Service Act to promote organ donation, and for other purposes.

Organ Donation
and Recovery
Improvement
Act.
42 USC 201 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Organ Donation and Recovery Improvement Act”.

SEC. 2. SENSE OF CONGRESS.

(a) PUBLIC AWARENESS OF NEED FOR ORGAN DONATION.—It is the sense of Congress that the Federal Government should carry out programs to educate the public with respect to organ donation, including the need to provide for an adequate rate of such donations.

(b) FAMILY DISCUSSIONS OF ORGAN DONATIONS.—Congress recognizes the importance of families pledging to each other to share their lives as organ and tissue donors and acknowledges the importance of discussing organ and tissue donation as a family.

(c) LIVING DONATIONS OF ORGANS.—Congress—

(1) recognizes the generous contribution made by each living individual who has donated an organ to save a life; and

(2) acknowledges the advances in medical technology that have enabled organ transplantation with organs donated by living individuals to become a viable treatment option for an increasing number of patients.

SEC. 3. REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED TOWARD LIVING ORGAN DONATION.

Section 377 of the Public Health Service Act (42 U.S.C. 274f) is amended to read as follows:

“SEC. 377. REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED TOWARD LIVING ORGAN DONATION.

“(a) IN GENERAL.—The Secretary may award grants to States, transplant centers, qualified organ procurement organizations under section 371, or other public or private entities for the purpose of—

“(1) providing for the reimbursement of travel and subsistence expenses incurred by individuals toward making living donations of their organs (in this section referred to as ‘donating individuals’); and

“(2) providing for the reimbursement of such incidental nonmedical expenses that are so incurred as the Secretary determines by regulation to be appropriate.

“(b) PREFERENCE.—The Secretary shall, in carrying out subsection (a), give preference to those individuals that the Secretary determines are more likely to be otherwise unable to meet such expenses.

“(c) CERTAIN CIRCUMSTANCES.—The Secretary may, in carrying out subsection (a), consider—

“(1) the term ‘donating individuals’ as including individuals who in good faith incur qualifying expenses toward the intended donation of an organ but with respect to whom, for such reasons as the Secretary determines to be appropriate, no donation of the organ occurs; and

“(2) the term ‘qualifying expenses’ as including the expenses of having relatives or other individuals, not to exceed 2, accompany or assist the donating individual for purposes of subsection (a) (subject to making payment for only those types of expenses that are paid for a donating individual).

“(d) RELATIONSHIP TO PAYMENTS UNDER OTHER PROGRAMS.—An award may be made under subsection (a) only if the applicant involved agrees that the award will not be expended to pay the qualifying expenses of a donating individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses—

“(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program;

“(2) by an entity that provides health services on a prepaid basis; or

“(3) by the recipient of the organ.

“(e) DEFINITIONS.—For purposes of this section:

“(1) The term ‘donating individuals’ has the meaning indicated for such term in subsection (a)(1), subject to subsection (c)(1).

“(2) The term ‘qualifying expenses’ means the expenses authorized for purposes of subsection (a), subject to subsection (c)(2).

“(f) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated \$5,000,000 for each of the fiscal years 2005 through 2009.”.

SEC. 4. PUBLIC AWARENESS; STUDIES AND DEMONSTRATIONS.

Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 377 the following:

“SEC. 377A. PUBLIC AWARENESS; STUDIES AND DEMONSTRATIONS.

“(a) ORGAN DONATION PUBLIC AWARENESS PROGRAM.—The Secretary shall, directly or through grants or contracts, establish a public education program in cooperation with existing national public awareness campaigns to increase awareness about organ donation and the need to provide for an adequate rate of such donations.

“(b) STUDIES AND DEMONSTRATIONS.—The Secretary may make peer-reviewed grants to, or enter into peer-reviewed contracts with, public and nonprofit private entities for the purpose of carrying out studies and demonstration projects to increase organ donation and recovery rates, including living donation.

“(c) GRANTS TO STATES.—

“(1) IN GENERAL.—The Secretary may make grants to States for the purpose of assisting States in carrying out organ

Grants.
Contracts.
42 USC 274f-1.

donor awareness, public education, and outreach activities and programs designed to increase the number of organ donors within the State, including living donors.

“(2) ELIGIBILITY.—To be eligible to receive a grant under this subsection, a State shall—

“(A) submit an application to the Department in the form prescribed;

“(B) establish yearly benchmarks for improvement in organ donation rates in the State; and

Reports.

“(C) report to the Secretary on an annual basis a description and assessment of the State’s use of funds received under this subsection, accompanied by an assessment of initiatives for potential replication in other States.

“(3) USE OF FUNDS.—Funds received under this subsection may be used by the State, or in partnership with other public agencies or private sector institutions, for education and awareness efforts, information dissemination, activities pertaining to the State donor registry, and other innovative donation specific initiatives, including living donation.

“(d) EDUCATIONAL ACTIVITIES.—The Secretary, in coordination with the Organ Procurement and Transplantation Network and other appropriate organizations, shall support the development and dissemination of educational materials to inform health care professionals and other appropriate professionals in issues surrounding organ, tissue, and eye donation including evidence-based proven methods to approach patients and their families, cultural sensitivities, and other relevant issues.

“(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated \$15,000,000 for fiscal year 2005, and such sums as may be necessary for each of the fiscal years 2006 through 2009. Such authorization of appropriations is in addition to any other authorizations of appropriations that are available for such purpose.

42 USC 274f-2.

“SEC. 377B. GRANTS REGARDING HOSPITAL ORGAN DONATION COORDINATORS.

“(a) AUTHORITY.—

“(1) IN GENERAL.—The Secretary may award grants to qualified organ procurement organizations and hospitals under section 371 to establish programs coordinating organ donation activities of eligible hospitals and qualified organ procurement organizations under section 371. Such activities shall be coordinated to increase the rate of organ donations for such hospitals.

“(2) ELIGIBLE HOSPITAL.—For purposes of this section, the term ‘eligible hospital’ means a hospital that performs significant trauma care, or a hospital or consortium of hospitals that serves a population base of not fewer than 200,000 individuals.

“(b) ADMINISTRATION OF COORDINATION PROGRAM.—A condition for the receipt of a grant under subsection (a) is that the applicant involved agree that the program under such subsection will be carried out jointly—

“(1) by representatives from the eligible hospital and the qualified organ procurement organization with respect to which the grant is made; and

“(2) by such other entities as the representatives referred to in paragraph (1) may designate.

“(c) REQUIREMENTS.—Each entity receiving a grant under subsection (a) shall—

“(1) establish joint organ procurement organization and hospital designated leadership responsibility and accountability for the project;

“(2) develop mutually agreed upon overall project performance goals and outcome measures, including interim outcome targets; and

“(3) collaboratively design and implement an appropriate data collection process to provide ongoing feedback to hospital and organ procurement organization leadership on project progress and results.

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to interfere with regulations in force on the date of enactment of the Organ Donation and Recovery Improvement Act.

“(e) EVALUATIONS.—Within 3 years after the award of grants under this section, the Secretary shall ensure an evaluation of programs carried out pursuant to subsection (a) in order to determine the extent to which the programs have increased the rate of organ donation for the eligible hospitals involved.

Deadline.

“(f) MATCHING REQUIREMENT.—The Secretary may not award a grant to a qualifying organ donation entity under this section unless such entity agrees that, with respect to costs to be incurred by the entity in carrying out activities for which the grant was awarded, the entity shall contribute (directly or through donations from public or private entities) non-Federal contributions in cash or in kind, in an amount equal to not less than 30 percent of the amount of the grant awarded to such entity.

“(g) FUNDING.—For the purpose of carrying out this section, there are authorized to be appropriated \$3,000,000 for fiscal year 2005, and such sums as may be necessary for each of fiscal years 2006 through 2009.”.

SEC. 5. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 377B, as added by section 4, the following:

“SEC. 377C. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

42 USC 274f–3.

“(a) DEVELOPMENT OF SUPPORTIVE INFORMATION.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall develop scientific evidence in support of efforts to increase organ donation and improve the recovery, preservation, and transportation of organs.

“(b) ACTIVITIES.—In carrying out subsection (a), the Secretary shall—

“(1) conduct or support evaluation research to determine whether interventions, technologies, or other activities improve the effectiveness, efficiency, or quality of existing organ donation practice;

“(2) undertake or support periodic reviews of the scientific literature to assist efforts of professional societies to ensure that the clinical practice guidelines that they develop reflect the latest scientific findings;

“(3) ensure that scientific evidence of the research and other activities undertaken under this section is readily accessible by the organ procurement workforce; and

“(4) work in coordination with the appropriate professional societies as well as the Organ Procurement and Transplantation Network and other organ procurement and transplantation organizations to develop evidence and promote the adoption of such proven practices.

“(c) **RESEARCH AND DISSEMINATION.**—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, as appropriate, shall provide support for research and dissemination of findings, to—

“(1) develop a uniform clinical vocabulary for organ recovery;

“(2) apply information technology and telecommunications to support the clinical operations of organ procurement organizations;

“(3) enhance the skill levels of the organ procurement workforce in undertaking quality improvement activities; and

“(4) assess specific organ recovery, preservation, and transportation technologies.

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated \$2,000,000 for fiscal year 2005, and such sums as may be necessary for each of fiscal years 2006 through 2009.”

SEC. 6. REPORT RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 377C, as added by section 5, the following:

42 USC 274f–4.

“SEC. 377D. REPORT RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

Deadline.

“(a) **IN GENERAL.**—Not later than December 31, 2005, and every 2 years thereafter, the Secretary shall report to the appropriate committees of Congress on the activities of the Department carried out pursuant to this part, including an evaluation describing the extent to which the activities have affected the rate of organ donation and recovery.

“(b) **REQUIREMENTS.**—To the extent practicable, each report submitted under subsection (a) shall—

“(1) evaluate the effectiveness of activities, identify effective activities, and disseminate such findings with respect to organ donation and recovery;

“(2) assess organ donation and recovery activities that are recently completed, ongoing, or planned; and

“(3) evaluate progress on the implementation of the plan required under subsection (c)(5).

“(c) **INITIAL REPORT REQUIREMENTS.**—The initial report under subsection (a) shall include the following:

“(1) An evaluation of the organ donation practices of organ procurement organizations, States, other countries, and other appropriate organizations including an examination across all populations, including those with low organ donation rates, of—

“(A) existing barriers to organ donation; and

“(B) the most effective donation and recovery practices.

“(2) An evaluation of living donation practices and procedures. Such evaluation shall include an assessment of issues relating to informed consent and the health risks associated with living donation (including possible reduction of long-term effects).

“(3) An evaluation of—

“(A) federally supported or conducted organ donation efforts and policies, as well as federally supported or conducted basic, clinical, and health services research (including research on preservation techniques and organ rejection and compatibility); and

“(B) the coordination of such efforts across relevant agencies within the Department and throughout the Federal Government.

“(4) An evaluation of the costs and benefits of State donor registries, including the status of existing State donor registries, the effect of State donor registries on organ donation rates, issues relating to consent, and recommendations regarding improving the effectiveness of State donor registries in increasing overall organ donation rates.

“(5) A plan to improve federally supported or conducted organ donation and recovery activities, including, when appropriate, the establishment of baselines and benchmarks to measure overall outcomes of these programs. Such plan shall provide for the ongoing coordination of federally supported or conducted organ donation and research activities.”.

SEC. 7. NATIONAL LIVING DONOR MECHANISMS.

Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 371 the following:

“SEC. 371A. NATIONAL LIVING DONOR MECHANISMS.

42 USC 273a.

“The Secretary may establish and maintain mechanisms to evaluate the long-term effects associated with living organ donations by individuals who have served as living donors.”.

SEC. 8. STUDY.

Deadline.
Reports.

Not later than December 31, 2004, the Secretary of Health and Human Services, in consultation with appropriate entities, including advocacy groups representing those populations that are likely to be disproportionately affected by proposals to increase cadaveric donation, shall submit to the appropriate committees of Congress a report that evaluates the ethical implications of such proposals.

SEC. 9. QUALIFIED ORGAN PROCUREMENT ORGANIZATIONS.

Section 371(a) of the Public Health Service Act (42 U.S.C. 273(a)) is amended by striking paragraph (3).

Approved April 5, 2004.

LEGISLATIVE HISTORY—H.R. 3926:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 23, 24, considered and passed House.

Mar. 25, considered and passed Senate.



Public Law 108–217
108th Congress

An Act

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through June 4, 2004, and for other purposes.

Apr. 5, 2004
[H.R. 4062]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER SMALL BUSINESS ACT AND SMALL BUSINESS INVESTMENT ACT OF 1958.

The authorization for any program, authority, or provision, including any pilot program, that was extended through April 2, 2004, by section 1 of Public Law 108–205 is further extended through June 4, 2004, under the same terms and conditions.

SEC. 2. EXTENSION OF CERTAIN FEE AUTHORIZATIONS.

Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)), as amended by section 2 of Public Law 108–205, is further amended by striking “May 21, 2004” and inserting “October 1, 2004”.

SEC. 3. FISCAL YEAR 2004 PURCHASE AND GUARANTEE AUTHORITY UNDER TITLE III OF SMALL BUSINESS INVESTMENT ACT OF 1958.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end the following new subsection:

“(j) FISCAL YEAR 2004 PURCHASE AND GUARANTEE AUTHORITY UNDER TITLE III OF SMALL BUSINESS INVESTMENT ACT OF 1958.—For fiscal year 2004, for the programs authorized by title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.), the Administration is authorized to make—

“(1) \$4,000,000,000 in purchases of participating securities; and

“(2) \$3,000,000,000 in guarantees of debentures.”.

SEC. 4. COMBINATION FINANCING.

15 USC 636 note.

(a) IN GENERAL.—During the period beginning on the date of the enactment of this section and ending on September 30, 2004, subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(a)) shall be applied as if the paragraph set forth in subsection (b) were added at the end of that subsection (a).

Applicability.

(b) PARAGRAPH SPECIFIED.—The paragraph referred to in subsection (a) is as follows:

“(31) COMBINATION FINANCING.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the term ‘combination financing’ means financing comprised of a loan guaranteed under this subsection and a commercial loan; and

“(ii) the term ‘commercial loan’ means a loan which is part of a combination financing and no portion of which is guaranteed by the Federal Government.

“(B) APPLICABILITY.—This paragraph applies to a loan guarantee obtained by a small business concern under this subsection, if the small business concern also obtains a commercial loan.

“(C) COMMERCIAL LOAN AMOUNT.—In the case of any combination financing, the amount of the commercial loan which is part of such financing shall not exceed the gross amount of the loan guaranteed under this subsection which is part of such financing.

“(D) COMMERCIAL LOAN PROVISIONS.—The commercial loan obtained by the small business concern—

“(i) may be made by the participating lender that is providing financing under this subsection or by a different lender;

“(ii) may be secured by a senior lien; and

“(iii) may be made by a lender in the Preferred Lenders Program, if applicable.

“(E) COMMERCIAL LOAN FEE.—A one-time fee in an amount equal to 0.7 percent of the amount of the commercial loan shall be paid by the lender to the Administration if the commercial loan has a senior credit position to that of the loan guaranteed under this subsection. Paragraph (23)(B) shall apply to the fee established by this paragraph.

“(F) DEFERRED PARTICIPATION LOAN SECURITY.—A loan guaranteed under this subsection may be secured by a subordinated lien.

“(G) COMPLETION OF APPLICATION PROCESSING.—The Administrator shall complete processing of an application for combination financing under this paragraph pursuant to the program authorized by this subsection as it was operating on October 1, 2003.

Applicability.

“(H) BUSINESS LOAN ELIGIBILITY.—Any standards prescribed by the Administrator relating to the eligibility of small business concerns to obtain combination financing under this subsection which are in effect on the date of the enactment of this paragraph shall apply with respect to combination financings made under this paragraph. Any modifications to such standards by the Administrator after such date shall not unreasonably restrict the availability of combination financing under this paragraph relative to the availability of such financing before such modifications.”.

15 USC 636 note. **SEC. 5. LOAN GUARANTEE FEES.**

Applicability.

(a) IN GENERAL.—During the period beginning on the date of the enactment of this section and ending on September 30, 2004, subparagraph (A) of paragraph (23) of subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(a)(23)(A)) shall be applied as if that subparagraph consisted of the language set forth in subsection (b).

(b) LANGUAGE SPECIFIED.—The language referred to in subsection (a) is as follows:

“(A) PERCENTAGE.—

“(i) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administrator shall, in accordance with such terms and procedures as the Administrator shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan.

“(ii) TEMPORARY PERCENTAGE.—With respect to loans approved during the period beginning on the date of enactment of this clause and ending on September 30, 2004, the annual fee assessed and collected under clause (i) shall be equal to 0.36 percent of the outstanding balance of the deferred participation share of the loan.”.

(c) RETENTION OF CERTAIN FEES.—Subparagraph (B) of paragraph (18) of subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(a)(18)(B)) shall not be effective during the period beginning on the date of the enactment of this section and ending on September 30, 2004.

SEC. 6. EXPRESS LOAN PROVISIONS.

15 USC 636 note.

(a) DEFINITIONS.—For the purposes of this section:

(1) The term “express lender” shall mean any lender authorized by the Administrator to participate in the Express Loan Pilot Program.

(2) The term “Express Loan” shall mean any loan made pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636(a)) in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(3) The term “Express Loan Pilot Program” shall mean the program established by the Administrator prior to the date of enactment of this section under the authority granted in section 7(a)(25)(B) of the Small Business Act (15 U.S.C. 636(a)(25)(B)) with a guaranty rate not to exceed 50 percent.

(4) The term “Administrator” means the Administrator of the Small Business Administration.

(5) The term “small business concern” has the same meaning given such term under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(b) RESTRICTION TO EXPRESS LENDER.—The authority to make an Express Loan shall be limited to those lenders deemed qualified to make such loans by the Administrator. Designation as an express lender for purposes of making an Express Loan shall not prohibit such lender from taking any other action authorized by the Administrator for that lender pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(c) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administrator determines that the express lender has violated the law or regulations promulgated by the Administrator or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(d) TEMPORARY EXPANSION OF EXPRESS LOAN PILOT PROGRAM.—

(1) AUTHORIZATION.—As of the date of enactment of this section, the maximum loan amount in the Express Loan Pilot Program shall be increased to a maximum loan amount of \$2,000,000 as set forth in section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)).

(2) **TERMINATION DATE.**—The authority set forth in paragraph (1) shall terminate on September 30, 2004.

(3) **SAVINGS PROVISION.**—Nothing in this section shall be interpreted to modify or alter the authority of the Administrator to continue to operate the Express Loan Pilot Program on or after October 1, 2004.

(e) **OPTION TO PARTICIPATE.**—Except as otherwise provided in this section, the Administrator shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to section 7(a)(24) of the Small Business Act (15 U.S.C. 636(a)(24)), that has the effect of—

(1) requiring a lender to make an Express Loan pursuant to subsection (d);

(2) limiting or modifying any term or condition of deferred participation loans made under such section (other than Express Loans) unless the Administrator imposes the same limit or modification on Express Loans;

(3) transferring or re-allocating staff, staff responsibilities, resources, or funding, if the result of such transfer or re-allocation would be to increase the average loan processing, approval, or disbursement time above the averages for those functions as of October 1, 2003, for loan guarantees approved under such section by employees of the Administration or through the Preferred Lenders Program; or

(4) otherwise providing any incentive or disincentive which encourages lenders or borrowers to make or obtain loans under the Express Loan Pilot Program instead of under the general loan authority of section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(f) **COLLECTION AND REPORTING OF DATA.**—For all loans in excess of \$250,000 made pursuant to the authority set forth in subsection (d)(1), the Administrator shall, to the extent practicable, collect data on the purpose for each such loan. The Administrator shall report monthly to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the number of such loans and their purposes.

(g) **TERMINATION.**—Subsections (b), (c), (e), and (f) shall not apply after September 30, 2004.

15 USC 636 note.

SEC. 7. FISCAL YEAR 2004 DEFERRED PARTICIPATION STANDARDS.

Deferred participation loans made during the period beginning on the date of the enactment of this Act and ending on September 30, 2004, under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) shall have the same terms and conditions (including maximum gross loan amounts and collateral requirements) as were applicable to loans made under such section on October 1, 2003, except as otherwise provided in this Act. This section shall not preclude the Administrator of the Small Business Administration from taking such action as necessary to maintain the loan program carried out under such section, subject to appropriations.

15 USC 636 note.

SEC. 8. TEMPORARY INCREASE IN LOAN LIMIT UNDER BUSINESS LOAN AND INVESTMENT FUND AND IN ASSOCIATED GUARANTEE FEES.

Applicability.

(a) **TEMPORARY INCREASE IN AMOUNT PERMITTED TO BE OUTSTANDING AND COMMITTED.**—During the period beginning on the date of the enactment of this Act and ending on September 30,

2004, section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)) shall be applied as if the first dollar figure were \$1,500,000.

(b) TEMPORARY GUARANTEE FEE ON DEFERRED PARTICIPATION SHARE OVER \$1,000,000.—With respect to loans made during the period referred to in subsection (a) to which section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) applies, the Administrator of the Small Business Administration shall collect an additional guarantee fee equal to 0.25 percent of the amount (if any) by which the deferred participation share of the loan exceeds \$1,000,000.

Approved April 5, 2004.

LEGISLATIVE HISTORY—H.R. 4062:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 31, considered and passed House.

Apr. 1, considered and passed Senate.



Public Law 108–218
108th Congress

An Act

Apr. 10, 2004
[H.R. 3108]

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes.

Pension Funding
Equity Act of
2004.
29 USC 1001
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pension Funding Equity Act of 2004”.

TITLE I—PENSION FUNDING

SEC. 101. TEMPORARY REPLACEMENT OF 30-YEAR TREASURY RATE.

(a) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) DETERMINATION OF PERMISSIBLE RANGE.—

29 USC 1082.

(A) IN GENERAL.—Clause (ii) of section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 is amended by redesignating subclause (II) as subclause (III) and by inserting after subclause (I) the following new subclause:

“(II) SPECIAL RULE FOR YEARS 2004 AND 2005.—In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the term ‘permissible range’ means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. Such rates shall be determined by the Secretary of the Treasury on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the average rate, publicly available.”.

Public
information.

(B) SECRETARIAL AUTHORITY.—Subclause (III) of section 302(b)(5)(B)(ii) of such Act, as redesignated by subparagraph (A), is amended—

(i) by inserting “or (II)” after “subclause (I)” the first place it appears, and

(ii) by striking “subclause (I)” the second place it appears and inserting “such subclause”.

(C) CONFORMING AMENDMENT.—Subclause (I) of section 302(b)(5)(B)(ii) of such Act is amended by inserting “or (III)” after “subclause (II)”. 29 USC 1082.

(2) DETERMINATION OF CURRENT LIABILITY.—Clause (i) of section 302(d)(7)(C) of such Act is amended by adding at the end the following new subclause:

“(IV) SPECIAL RULE FOR 2004 AND 2005.—For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).”.

(3) CONFORMING AMENDMENT.—Paragraph (7) of section 302(e) of such Act is amended to read as follows:

“(7) SPECIAL RULE FOR 2002.—In any case in which the interest rate used to determine current liability is determined under subsection (d)(7)(C)(i)(III), for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (d)(7)(C)(i)(II).”.

(4) PBGC.—Clause (iii) of section 4006(a)(3)(E) of such Act is amended by adding at the end the following new subclause: 29 USC 1306.

“(V) In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the annual yield taken into account under subclause (II) shall be the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the month in which the plan year begins. For purposes of the preceding sentence, the Secretary of the Treasury shall determine such rate of interest on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the rate, publicly available.”.

Public
information.

(b) INTERNAL REVENUE CODE OF 1986.—

(1) DETERMINATION OF PERMISSIBLE RANGE.—

(A) IN GENERAL.—Clause (ii) of section 412(b)(5)(B) of the Internal Revenue Code of 1986 is amended by redesignating subclause (II) as subclause (III) and by inserting after subclause (I) the following new subclause: 26 USC 412.

“(II) SPECIAL RULE FOR YEARS 2004 AND 2005.—In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the term ‘permissible range’ means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. Such rates shall be determined by the Secretary on the basis of 2 or more

- Public information.
- indices that are selected periodically by the Secretary and that are in the top 3 quality levels available. The Secretary shall make the permissible range, and the indices and methodology used to determine the average rate, publicly available.”.
- 26 USC 412. (B) SECRETARIAL AUTHORITY.—Subclause (III) of section 412(b)(5)(B)(ii) of such Code, as redesignated by subparagraph (A), is amended—
- (i) by inserting “or (II)” after “subclause (I)” the first place it appears, and
- (ii) by striking “subclause (I)” the second place it appears and inserting “such subclause”.
- (C) CONFORMING AMENDMENT.—Subclause (I) of section 412(b)(5)(B)(ii) of such Code is amended by inserting “or (III)” after “subclause (II)”.
- (2) DETERMINATION OF CURRENT LIABILITY.—Clause (i) of section 412(l)(7)(C) of such Code is amended by adding at the end the following new subclause:
- “(IV) SPECIAL RULE FOR 2004 AND 2005.—For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).”.
- (3) CONFORMING AMENDMENT.—Paragraph (7) of section 412(m) of such Code is amended to read as follows:
- “(7) SPECIAL RULE FOR 2002.—In any case in which the interest rate used to determine current liability is determined under subsection (l)(7)(C)(i)(III), for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (l)(7)(C)(i)(II).”.
- 26 USC 415. (4) LIMITATION ON CERTAIN ASSUMPTIONS.—Section 415(b)(2)(E)(ii) of such Code is amended by inserting “, except that in the case of plan years beginning in 2004 or 2005, ‘5.5 percent’ shall be substituted for ‘5 percent’ in clause (i)” before the period at the end.
- 26 USC 404. (5) ELECTION TO DISREGARD MODIFICATION FOR DEDUCTION PURPOSES.—Section 404(a)(1) of such Code is amended by adding at the end the following new subparagraph:
- “(F) ELECTION TO DISREGARD MODIFIED INTEREST RATE.—An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (l)(7)(C)(i)(IV) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this paragraph.”.
- 26 USC 411 note. (c) PROVISIONS RELATING TO PLAN AMENDMENTS.—
- (1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—
- (A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and
- (B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section

204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

Effective date.

(i) pursuant to any amendment made by this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2006.

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

(d) EFFECTIVE DATES.—

26 USC 404 note.
Applicability.

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to plan years beginning after December 31, 2003.

(2) LOOKBACK RULES.—For purposes of applying subsections (d)(9)(B)(ii) and (e)(1) of section 302 of the Employee Retirement Income Security Act of 1974 and subsections (l)(9)(B)(ii) and (m)(1) of section 412 of the Internal Revenue Code of 1986 to plan years beginning after December 31, 2003, the amendments made by this section may be applied as if such amendments had been in effect for all prior plan years. The Secretary of the Treasury may prescribe simplified assumptions which may be used in applying the amendments made by this section to such prior plan years.

(3) TRANSITION RULE FOR SECTION 415 LIMITATION.—In the case of any participant or beneficiary receiving a distribution after December 31, 2003 and before January 1, 2005, the amount payable under any form of benefit subject to section 417(e)(3) of the Internal Revenue Code of 1986 and subject to adjustment under section 415(b)(2)(B) of such Code shall not, solely by reason of the amendment made by subsection (b)(4), be less than the amount that would have been so payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 1, 2004.

SEC. 102. ELECTION OF ALTERNATIVE DEFICIT REDUCTION CONTRIBUTION.

(a) AMENDMENT OF ERISA.—Section 302(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(d)) is amended by adding at the end the following new paragraph:

“(12) ELECTION FOR CERTAIN PLANS.—

“(A) IN GENERAL.—In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan

year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of—

“(i) 20 percent of the increased amount under paragraph (1) determined without regard to this paragraph, or

“(ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

“(B) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any applicable plan year, unless—

“(i) the plan’s enrolled actuary certifies (in such form and manner prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

“(ii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

If a plan is amended during any applicable plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any applicable plan year ending on or after the date on which such amendment is adopted.

“(C) APPLICABLE EMPLOYER.—For purposes of this paragraph, the term ‘applicable employer’ means an employer which is—

“(i) a commercial passenger airline,

“(ii) primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets, or

“(iii) an organization described in section 501(c)(5) of the Internal Revenue Code of 1986 and which established the plan to which this paragraph applies on June 30, 1955.

“(D) APPLICABLE PLAN YEAR.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘applicable plan year’ means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.

“(ii) LIMITATION ON NUMBER OF YEARS WHICH MAY BE ELECTED.—An election may not be made under this paragraph with respect to more than 2 plan years.

“(E) NOTICE REQUIREMENTS FOR PLANS ELECTING ALTERNATIVE DEFICIT REDUCTION CONTRIBUTIONS.—

“(i) IN GENERAL.—If an employer elects an alternative deficit reduction contribution under this paragraph and section 412(l)(12) of the Internal Revenue

Deadline.

Code of 1986 for any year, the employer shall provide, within 30 days of filing the election for such year, written notice of the election to participants and beneficiaries and to the Pension Benefit Guaranty Corporation.

“(ii) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—The notice under clause (i) to participants and beneficiaries shall include with respect to any election—

“(I) the due date of the alternative deficit reduction contribution and the amount by which such contribution was reduced from the amount which would have been owed if the election were not made, and

“(II) a description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation and an explanation of the limitations on the guarantee and the circumstances under which such limitations apply, including the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

“(iii) NOTICE TO PBGC.—The notice under clause (i) to the Pension Benefit Guaranty Corporation shall include—

“(I) the information described in clause (ii)(I),

“(II) the number of years it will take to restore the plan to full funding if the employer only makes the required contributions, and

“(III) information as to how the amount by which the plan is underfunded compares with the capitalization of the employer making the election.

“(F) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury may prescribe.”.

(b) AMENDMENT OF 1986 CODE.—Section 412(l) of the Internal Revenue Code of 1986 (relating to applicability of subsection) is amended by adding at the end the following new paragraph: 26 USC 412.

“(12) ELECTION FOR CERTAIN PLANS.—

“(A) IN GENERAL.—In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of—

“(i) 20 percent of the increased amount under paragraph (1) determined without regard to this paragraph, or

“(ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

“(B) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual

of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any applicable plan year, unless—

“(i) the plan’s enrolled actuary certifies (in such form and manner prescribed by the Secretary) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

“(ii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

If a plan is amended during any applicable plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any applicable plan year ending on or after the date on which such amendment is adopted.

“(C) APPLICABLE EMPLOYER.—For purposes of this paragraph, the term ‘applicable employer’ means an employer which is—

“(i) a commercial passenger airline,

“(ii) primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets, or

“(iii) an organization described in section 501(c)(5) and which established the plan to which this paragraph applies on June 30, 1955.

“(D) APPLICABLE PLAN YEAR.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘applicable plan year’ means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.

“(ii) LIMITATION ON NUMBER OF YEARS WHICH MAY BE ELECTED.—An election may not be made under this paragraph with respect to more than 2 plan years.

“(E) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary may prescribe.”.

26 USC 412 note.

(c) EFFECT OF ELECTION.—An election under section 302(d)(12) of the Employee Retirement Income Security Act of 1974 or section 412(l)(12) of the Internal Revenue Code of 1986 (as added by this section) with respect to a plan shall not invalidate any obligation (pursuant to a collective bargaining agreement in effect on the date of the election) to provide benefits, to change the accrual of benefits, or to change the rate at which benefits become nonforfeitable under the plan.

(d) PENALTY FOR FAILING TO PROVIDE NOTICE.—Section 502(c)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(3)) is amended by inserting “or who fails to meet the requirements of section 302(d)(12)(E) with respect to any person” after “101(e)(2) with respect to any person”.

SEC. 103. MULTIEMPLOYER PLAN FUNDING NOTICES.

(a) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by inserting after subsection (e) the following new subsection:

“(f) MULTIEMPLOYER DEFINED BENEFIT PLAN FUNDING NOTICES.—

“(1) IN GENERAL.—The administrator of a defined benefit plan which is a multiemployer plan shall for each plan year provide a plan funding notice to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, to each employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation.

“(2) INFORMATION CONTAINED IN NOTICES.—

“(A) IDENTIFYING INFORMATION.—Each notice required under paragraph (1) shall contain identifying information, including the name of the plan, the address and phone number of the plan administrator and the plan’s principal administrative officer, each plan sponsor’s employer identification number, and the plan number of the plan.

“(B) SPECIFIC INFORMATION.—A plan funding notice under paragraph (1) shall include—

“(i) a statement as to whether the plan’s funded current liability percentage (as defined in section 302(d)(8)(B)) for the plan year to which the notice relates is at least 100 percent (and, if not, the actual percentage);

“(ii) a statement of the value of the plan’s assets, the amount of benefit payments, and the ratio of the assets to the payments for the plan year to which the notice relates;

“(iii) a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and

“(iv) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply.

“(C) OTHER INFORMATION.—Each notice under paragraph (1) shall include any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.

“(3) TIME FOR PROVIDING NOTICE.—Any notice under paragraph (1) shall be provided no later than two months after the deadline (including extensions) for filing the annual report for the plan year to which the notice relates.

Deadline.

“(4) FORM AND MANNER.—Any notice under paragraph (1)—

“(A) shall be provided in a form and manner prescribed in regulations of the Secretary,

Regulations.

“(B) shall be written in a manner so as to be understood by the average plan participant, and

“(C) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.”.

(b) PENALTIES.—Section 502(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(1)) is amended

by striking “or section 101(e)(1)” and inserting “, section 101(e)(1), or section 101(f)”.

Deadline.
29 USC 1021
note.

(c) REGULATIONS AND MODEL NOTICE.—The Secretary of Labor shall, not later than 1 year after the date of the enactment of this Act, issue regulations (including a model notice) necessary to implement the amendments made by this section.

29 USC 1021
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2004.

SEC. 104. ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.

(a) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Section 302(b)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)(7)) is amended by adding at the end the following new subparagraph:

“(F) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—

“(i) IN GENERAL.—With respect to the net experience loss of an eligible multiemployer plan for the first plan year beginning after December 31, 2001, the plan sponsor may elect to defer up to 80 percent of the amount otherwise required to be charged under paragraph (2)(B)(iv) for any plan year beginning after June 30, 2003, and before July 1, 2005, to any plan year selected by the plan from either of the 2 immediately succeeding plan years.

“(ii) INTEREST.—For the plan year to which a charge is deferred pursuant to an election under clause (i), the funding standard account shall be charged with interest on the deferred charge for the period of deferral at the rate determined under section 304(a) for multiemployer plans.

“(iii) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any period for which a charge is deferred pursuant to an election under clause (i), unless—

“(I) the plan’s enrolled actuary certifies (in such form and manner prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

“(II) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

If a plan is amended during any such plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any such plan year ending on or after the date on which such amendment is adopted.

“(iv) ELIGIBLE MULTIEMPLOYER PLAN.—For purposes of this subparagraph, the term ‘eligible multiemployer plan’ means a multiemployer plan—

“(I) which had a net investment loss for the first plan year beginning after December 31, 2001, of at least 10 percent of the average fair market value of the plan assets during the plan year, and

“(II) with respect to which the plan’s enrolled actuary certifies (not taking into account the application of this subparagraph), on the basis of the actuarial assumptions used for the last plan year ending before the date of the enactment of this subparagraph, that the plan is projected to have an accumulated funding deficiency (within the meaning of subsection (a)(2)) for any plan year beginning after June 30, 2003, and before July 1, 2006.

For purposes of subclause (I), a plan’s net investment loss shall be determined on the basis of the actual loss and not under any actuarial method used under subsection (c)(2).

“(v) EXCEPTION TO TREATMENT OF ELIGIBLE MULTIEMPLOYER PLAN.—In no event shall a plan be treated as an eligible multiemployer plan under clause (iv) if—

“(I) for any taxable year beginning during the 10-year period preceding the first plan year for which an election is made under clause (i), any employer required to contribute to the plan failed to timely pay any excise tax imposed under section 4971 of the Internal Revenue Code of 1986 with respect to the plan,

“(II) for any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), the average contribution required to be made by all employers to the plan does not exceed 10 cents per hour or no employer is required to make contributions to the plan, or

“(III) with respect to any of the plan years beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), a waiver was granted under section 303 of this Act or section 412(d) of the Internal Revenue Code of 1986 with respect to the plan or an extension of an amortization period was granted under section 304 of this Act or section 412(e) of such Code with respect to the plan.

“(vi) NOTICE.—If a plan sponsor makes an election under this subparagraph or section 412(b)(7)(F) of the Internal Revenue Code of 1986 for any plan year, the plan administrator shall provide, within 30 days of filing the election for such year, written notice of the election to participants and beneficiaries, to each labor organization representing such participants or beneficiaries, to each employer that has an obligation to

Deadline.

contribute under the plan, and to the Pension Benefit Guaranty Corporation. Such notice shall include with respect to any election the amount of any charge to be deferred and the period of the deferral. Such notice shall also include the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

“(vii) ELECTION.—An election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury may prescribe.”.

(2) PENALTY.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended to read as follows:

“(4) The Secretary may assess a civil penalty of not more than \$1,000 a day for each violation by any person of section 302(b)(7)(F)(vi).”.

(b) INTERNAL REVENUE CODE OF 1986.—Section 412(b)(7) of the Internal Revenue Code of 1986 (relating to special rules for multiemployer plans) is amended by adding at the end the following new subparagraph:

“(F) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—

“(i) IN GENERAL.—With respect to the net experience loss of an eligible multiemployer plan for the first plan year beginning after December 31, 2001, the plan sponsor may elect to defer up to 80 percent of the amount otherwise required to be charged under paragraph (2)(B)(iv) for any plan year beginning after June 30, 2003, and before July 1, 2005, to any plan year selected by the plan from either of the 2 immediately succeeding plan years.

“(ii) INTEREST.—For the plan year to which a charge is deferred pursuant to an election under clause (i), the funding standard account shall be charged with interest on the deferred charge for the period of deferral at the rate determined under subsection (d) for multiemployer plans.

“(iii) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any period for which a charge is deferred pursuant to an election under clause (i), unless—

“(I) the plan’s enrolled actuary certifies (in such form and manner prescribed by the Secretary) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

“(II) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

If a plan is amended during any such plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any such plan year

ending on or after the date on which such amendment is adopted.

“(iv) ELIGIBLE MULTIEMPLOYER PLAN.—For purposes of this subparagraph, the term ‘eligible multiemployer plan’ means a multiemployer plan—

“(I) which had a net investment loss for the first plan year beginning after December 31, 2001, of at least 10 percent of the average fair market value of the plan assets during the plan year, and

“(II) with respect to which the plan’s enrolled actuary certifies (not taking into account the application of this subparagraph), on the basis of the actuarial assumptions used for the last plan year ending before the date of the enactment of this subparagraph, that the plan is projected to have an accumulated funding deficiency (within the meaning of subsection (a)) for any plan year beginning after June 30, 2003, and before July 1, 2006.

For purposes of subclause (I), a plan’s net investment loss shall be determined on the basis of the actual loss and not under any actuarial method used under subsection (c)(2).

“(v) EXCEPTION TO TREATMENT OF ELIGIBLE MULTIEMPLOYER PLAN.—In no event shall a plan be treated as an eligible multiemployer plan under clause (iv) if—

“(I) for any taxable year beginning during the 10-year period preceding the first plan year for which an election is made under clause (i), any employer required to contribute to the plan failed to timely pay any excise tax imposed under section 4971 with respect to the plan,

“(II) for any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), the average contribution required to be made by all employers to the plan does not exceed 10 cents per hour or no employer is required to make contributions to the plan, or

“(III) with respect to any of the plan years beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), a waiver was granted under section 412(d) or section 303 of the Employee Retirement Income Security Act of 1974 with respect to the plan or an extension of an amortization period was granted under subsection (e) or section 304 of such Act with respect to the plan.

“(vi) ELECTION.—An election under this subparagraph shall be made at such time and in such manner as the Secretary may prescribe.”.

TITLE II—OTHER PROVISIONS

SEC. 201. TWO-YEAR EXTENSION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

(a) IN GENERAL.—Section 769(c) of the Retirement Protection Act of 1994, as added by section 1508 of the Taxpayer Relief Act of 1997, is amended—

26 USC 412 note.

(1) by inserting “except as provided in paragraph (3),” before “the transition rules”, and

(2) by adding at the end the following:

Applicability.

“(3) SPECIAL RULES.—In the case of plan years beginning in 2004 and 2005, the following transition rules shall apply in lieu of the transition rules described in paragraph (2):

“(A) For purposes of section 412(I)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

“(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

“(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.”.

Applicability.

26 USC 412 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2003.

SEC. 202. PROCEDURES APPLICABLE TO DISPUTES INVOLVING PENSION PLAN WITHDRAWAL LIABILITY.

(a) IN GENERAL.—Section 4221 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401) is amended by adding at the end the following new subsection:

“(f) PROCEDURES APPLICABLE TO CERTAIN DISPUTES.—

“(1) IN GENERAL.—If—

“(A) a plan sponsor of a plan determines that—

“(i) a complete or partial withdrawal of an employer has occurred, or

“(ii) an employer is liable for withdrawal liability payments with respect to the complete or partial withdrawal of an employer from the plan,

“(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of a transaction that occurred before January 1, 1999, was to evade or avoid withdrawal liability under this subtitle, and

“(C) such transaction occurred at least 5 years before the date of the complete or partial withdrawal, then the special rules under paragraph (2) shall be used in applying subsections (a) and (d) of this section and section 4219(c) to the employer.

“(2) SPECIAL RULES.—

“(A) DETERMINATION.—Notwithstanding subsection (a)(3)—

“(i) a determination by the plan sponsor under paragraph (1)(B) shall not be presumed to be correct, and

“(ii) the plan sponsor shall have the burden to establish, by a preponderance of the evidence, the elements of the claim under section 4212(c) that a principal purpose of the transaction was to evade or avoid withdrawal liability under this subtitle.

Nothing in this subparagraph shall affect the burden of establishing any other element of a claim for withdrawal liability under this subtitle.

“(B) PROCEDURE.—Notwithstanding subsection (d) and section 4219(c), if an employer contests the plan sponsor’s determination under paragraph (1) through an arbitration proceeding pursuant to subsection (a), or through a claim brought in a court of competent jurisdiction, the employer shall not be obligated to make any withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor’s determination.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(b)(1)) after October 31, 2003.

Applicability.
26 USC 1401
note.

SEC. 203. SENSE OF CONGRESS REGARDING DEFINED BENEFIT PENSION SYSTEM REFORM.

It is the sense of the Congress that the Congress must ensure the financial health of the defined benefit pension system by working to promptly implement—

(1) a permanent replacement for the pension discount rate used for defined benefit pension plan calculations, and

(2) comprehensive funding reforms for all defined benefit pension plans aimed at achieving accurate and sound pension funding to enhance retirement security for workers who rely on defined pension plan benefits, to reduce the volatility of contributions, to provide plan sponsors with predictability for plan contributions, and to ensure adequate disclosures for plan participants in the case of underfunded pension plans.

SEC. 204. EXTENSION OF TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—Paragraph (5) of section 420(b) of the Internal Revenue Code of 1986 (relating to expiration) is amended by striking “December 31, 2005” and inserting “December 31, 2013”.

26 USC 420.

(b) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking “Tax Relief Extension Act of 1999” and inserting “Pension Funding Equity Act of 2004”.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking “Tax Relief Extension Act of 1999” and inserting “Pension Funding Equity Act of 2004”.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended—

(A) by striking “January 1, 2006” and inserting “January 1, 2014”, and

(B) by striking “Tax Relief Extension Act of 1999” and inserting “Pension Funding Equity Act of 2004”.

SEC. 205. REPEAL OF REDUCTION OF DEDUCTIONS FOR MUTUAL LIFE INSURANCE COMPANIES.

(a) **IN GENERAL.**—Section 809 of the Internal Revenue Code of 1986 (relating to reductions in certain deduction of mutual life insurance companies) is hereby repealed.

(b) **CONFORMING AMENDMENTS.**—

(1) Subsections (a)(2)(B) and (b)(1)(B) of section 807 of such Code are each amended by striking “the sum of (i)” and by striking “plus (ii) any excess described in section 809(a)(2) for the taxable year,”.

(2)(A) The last sentence of section 807(d)(1) of such Code is amended by striking “section 809(b)(4)(B)” and inserting “paragraph (6)”.

(B) Subsection (d) of section 807 of such Code is amended by adding at the end the following new paragraph:

“(6) **STATUTORY RESERVES.**—The term ‘statutory reserves’ means the aggregate amount set forth in the annual statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).”

(3) Subsection (c) of section 808 of such Code is amended to read as follows:

“(c) **AMOUNT OF DEDUCTION.**—The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.”.

(4) Subparagraph (A) of section 812(b)(3) of such Code is amended by striking “sections 808 and 809” and inserting “section 808”.

(5) Subsection (c) of section 817 of such Code is amended by striking “(other than section 809)”.

(6) Subsection (c) of section 842 of such Code is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(7) The table of sections for subpart C of part I of subchapter L of chapter 1 of such Code is amended by striking the item relating to section 809.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 206. CLARIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) **IN GENERAL.**—Section 501(c)(15)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

“(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

“(i)(I) the gross receipts for the taxable year do not exceed \$600,000, and

“(II) more than 50 percent of such gross receipts consist of premiums, or

“(ii) in the case of a mutual insurance company—

“(I) the gross receipts of which for the taxable year do not exceed \$150,000, and

“(II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee’s family (as defined in section 2032A(e)(2)), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).”.

(b) CONTROLLED GROUP RULE.—Section 501(c)(15)(C) of the Internal Revenue Code of 1986 is amended by inserting “, except that in applying section 831(b)(2)(B)(ii) for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded” before the period at the end. 26 USC 501.

(c) DEFINITION OF INSURANCE COMPANY FOR SECTION 831.—Section 831 of the Internal Revenue Code of 1986 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection: 26 USC 831.

“(c) INSURANCE COMPANY DEFINED.—For purposes of this section, the term ‘insurance company’ has the meaning given to such term by section 816(a).”.

(d) CONFORMING AMENDMENT.—Clause (i) of section 831(b)(2)(A) of the Internal Revenue Code of 1986 is amended by striking “exceed \$350,000 but”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

Applicability.
26 USC 501 note.

(2) TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION.—In the case of a company or association which—

(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends or December 31, 2007.

SEC. 207. CONFIRMATION OF ANTITRUST STATUS OF GRADUATE MEDICAL RESIDENT MATCHING PROGRAMS. 15 USC 37b.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—Congress makes the following findings:

(A) For over 50 years, most United States medical school seniors and the large majority of graduate medical education programs (popularly known as “residency programs”) have chosen to use a matching program to match medical students with residency programs to which they have applied. These matching programs have been an integral part of an educational system that has produced the finest physicians and medical researchers in the world.

(B) Before such matching programs were instituted, medical students often felt pressure, at an unreasonably early stage of their medical education, to seek admission to, and accept offers from, residency programs. As a result, medical students often made binding commitments before they were in a position to make an informed decision

about a medical specialty or a residency program and before residency programs could make an informed assessment of students' qualifications. This situation was inefficient, chaotic, and unfair and it often led to placements that did not serve the interests of either medical students or residency programs.

(C) The original matching program, now operated by the independent non-profit National Resident Matching Program and popularly known as “the Match”, was developed and implemented more than 50 years ago in response to widespread student complaints about the prior process. This Program includes on its board of directors individuals nominated by medical student organizations as well as by major medical education and hospital associations.

(D) The Match uses a computerized mathematical algorithm, as students had recommended, to analyze the preferences of students and residency programs and match students with their highest preferences from among the available positions in residency programs that listed them. Students thus obtain a residency position in the most highly ranked program on their list that has ranked them sufficiently high among its preferences. Each year, about 85 percent of participating United States medical students secure a place in one of their top 3 residency program choices.

(E) Antitrust lawsuits challenging the matching process, regardless of their merit or lack thereof, have the potential to undermine this highly efficient, pro-competitive, and long-standing process. The costs of defending such litigation would divert the scarce resources of our country's teaching hospitals and medical schools from their crucial missions of patient care, physician training, and medical research. In addition, such costs may lead to abandonment of the matching process, which has effectively served the interests of medical students, teaching hospitals, and patients for over half a century.

(2) PURPOSES.—It is the purpose of this section to—

(A) confirm that the antitrust laws do not prohibit sponsoring, conducting, or participating in a graduate medical education residency matching program, or agreeing to do so; and

(B) ensure that those who sponsor, conduct or participate in such matching programs are not subjected to the burden and expense of defending against litigation that challenges such matching programs under the antitrust laws.

(b) APPLICATION OF ANTITRUST LAWS TO GRADUATE MEDICAL EDUCATION RESIDENCY MATCHING PROGRAMS.—

(1) DEFINITIONS.—In this subsection:

(A) ANTITRUST LAWS.—The term “antitrust laws”—

(i) has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(ii) includes any State law similar to the laws referred to in clause (i).

(B) GRADUATE MEDICAL EDUCATION PROGRAM.—The term “graduate medical education program” means—

(i) a residency program for the medical education and training of individuals following graduation from medical school;

(ii) a program, known as a specialty or subspecialty fellowship program, that provides more advanced training; and

(iii) an institution or organization that operates, sponsors or participates in such a program.

(C) GRADUATE MEDICAL EDUCATION RESIDENCY MATCHING PROGRAM.—The term “graduate medical education residency matching program” means a program (such as those conducted by the National Resident Matching Program) that, in connection with the admission of students to graduate medical education programs, uses an algorithm and matching rules to match students in accordance with the preferences of students and the preferences of graduate medical education programs.

(D) STUDENT.—The term “student” means any individual who seeks to be admitted to a graduate medical education program.

(2) CONFIRMATION OF ANTITRUST STATUS.—It shall not be unlawful under the antitrust laws to sponsor, conduct, or participate in a graduate medical education residency matching program, or to agree to sponsor, conduct, or participate in such a program. Evidence of any of the conduct described in the preceding sentence shall not be admissible in Federal court to support any claim or action alleging a violation of the antitrust laws.

(3) APPLICABILITY.—Nothing in this section shall be construed to exempt from the antitrust laws any agreement on the part of 2 or more graduate medical education programs to fix the amount of the stipend or other benefits received by students participating in such programs.

(c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act, shall apply to conduct whether it occurs prior to, on, or after such date of enactment, and shall apply

Applicability.

to all judicial and administrative actions or other proceedings pending on such date of enactment.

Approved April 10, 2004.

LEGISLATIVE HISTORY—H.R. 3108:

HOUSE REPORTS: No. 108–457 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 8, considered and passed House.

Vol. 150 (2004): Jan. 22, 26–28, considered and passed Senate, amended.

Apr. 2, House agreed to conference report.

Apr. 8, Senate agreed to conference report.



Public Law 108–219
108th Congress

An Act

To provide for the conveyance to the Utrok Atoll local government of a decommissioned National Oceanic and Atmospheric Administration ship, and for other purposes.

Apr. 13, 2004
[H.R. 2584]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—UTROK ATOLL RADIOLOGICAL MONITORING SUPPORT

SEC. 101. UTROK ATOLL RADIOLOGICAL MONITORING SUPPORT.

(a) In support of radiological monitoring, rehabilitation, and resettlement of Utrok Atoll, whose residents were affected by United States nuclear testing, the Secretary of Commerce may convey to the Utrok Atoll local government without consideration, all right, title, and interest of the United States in and to a decommissioned National Oceanic and Atmospheric Administration ship in operable condition.

(b) The Government of the United States shall not be responsible or liable for any maintenance or operation of a vessel conveyed under this section after the date of the delivery of the vessel to Utrok.

(c) Within 120 days after the date of enactment of this Act, the Utrok Atoll local government, in consultation with the Government of the Republic of the Marshall Islands, shall submit a plan for the use of the vessel to be conveyed under subsection (a) to the House of Representatives Committee on Resources, the House of Representatives Committee on Science, the Senate Committee on Energy and Natural Resources, and the Senate Committee on Commerce, Science, and Transportation.

Deadline.

TITLE II—RATIFICATION OF CERTAIN NOAA APPOINTMENTS, PROMOTIONS, AND ACTIONS

SEC. 201. RATIFICATION OF CERTAIN NOAA APPOINTMENTS, PROMOTIONS, AND ACTIONS.

Deadline.

All action in the line of duty by, and all Federal agency actions in relation to (including with respect to pay, benefits, and retirement) a de facto officer of the commissioned corps of the National Oceanic and Atmospheric Administration who was appointed or

promoted to that office without Presidential action, and without the advice and consent of the Senate, during such time as the officer was not properly appointed in or promoted to that office, are hereby ratified and approved if otherwise in accord with the law, and the President alone may, without regard to any other law relating to appointments or promotions in such corps, appoint or promote such a de facto officer temporarily, without change in the grade currently occupied in a de facto capacity, as an officer in such corps for a period ending not later than 180 days from the date of enactment of this Act.

International
Fisheries
Reauthorization
Act of 2004.

16 USC 5701
note.

TITLE III—INTERNATIONAL FISHERIES REAUTHORIZATION

SEC. 301. SHORT TITLE.

This title may be cited as the “International Fisheries Reauthorization Act of 2004”.

SEC. 302. EXTENSION OF PERIOD FOR REIMBURSEMENT UNDER FISHERMEN’S PROTECTIVE ACT OF 1967.

Section 7(e) of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1977(e)) is amended by striking “2003” and inserting “2008”.

SEC. 303. REAUTHORIZATION OF YUKON RIVER SALMON ACT OF 2000.

Section 208 of the Yukon River Salmon Act of 2000 (16 U.S.C. 5727) is amended by striking “2000” and all that follows through “2003” and inserting “2004 through 2008”.

SEC. 304. REBUILDING FISH STOCKS.

Ante, p. 437.

Section 105 of division H of the Consolidated Appropriations Act, 2004, is repealed.

TITLE IV—PACIFIC ALBACORE TUNA TREATY

16 USC 1821
note.

SEC. 401. IMPLEMENTATION.

(a) **IN GENERAL.**—Notwithstanding anything to the contrary in section 201, 204, or 307(2) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1821, 1824, and 1857(2)), foreign fishing may be conducted pursuant to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto.

(b) **REGULATIONS.**—The Secretary of Commerce, with the concurrence of the Secretary of State, may—

(1) promulgate regulations necessary to discharge the obligations of the United States under the Treaty and its Annexes; and

(2) provide for the application of any such regulation to any person or vessel subject to the jurisdiction of the United States, wherever that person or vessel may be located.

(c) **ENFORCEMENT.**—

(1) **IN GENERAL.**—The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall

be enforced as if subsection (a) were a provision of that Act. Any reference in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) to “this Act” or to any provision of that Act, shall be considered to be a reference to that Act as it would be in effect if subsection (a) were a provision of that Act.

(2) REGULATIONS.—The regulations promulgated under subsection (b), shall be enforced as if—

(A) subsection (a) were a provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

(B) the regulations were promulgated under that Act.

SEC. 402. SOUTH PACIFIC TUNA TREATY ACT AMENDMENT.

Section 6 of the South Pacific Tuna Act of 1988 (16 U.S.C. 973d(a)) is amended by striking “outside of the 200 nautical mile fisheries zones of the Pacific Island Parties.” and inserting “or to fishing by vessels using the longline method in the high seas areas of the Treaty area.”.

Approved April 13, 2004.

LEGISLATIVE HISTORY—H.R. 2584 (S. 886):

HOUSE REPORTS: No. 108–378 (Comm. on Resources).

SENATE REPORTS: No. 108–58 accompanying S. 886 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 21, considered and passed House.

Vol. 150 (2004): Mar. 24, considered and passed Senate, amended.

Mar. 29, House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Apr. 13, Presidential statement.



Public Law 108–220
108th Congress

An Act

Apr. 22, 2004
[S. 2057]

To require the Secretary of Defense to reimburse members of the United States Armed Forces for certain transportation expenses incurred by the members in connection with leave under the Central Command Rest and Recuperation Leave Program before the program was expanded to include domestic travel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. REIMBURSEMENT OF CERTAIN TRANSPORTATION COSTS
INCURRED BY MEMBERS OF THE UNITED STATES
ARMED FORCES ON REST AND RECUPERATION LEAVE.**

The Secretary of Defense shall reimburse a member of the United States Armed Forces for transportation expenses incurred by such member for one round trip by such member between two locations within the United States in connection with leave taken under the Central Command Rest and Recuperation Leave Program during the period beginning on September 25, 2003, and ending on December 18, 2003.

Approved April 22, 2004.

LEGISLATIVE HISTORY—S. 2057:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Mar. 3, considered and passed Senate.
Mar. 30, considered and passed House.



Public Law 108–221
108th Congress

An Act

To direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that county.

Apr. 30, 2004
[H.R. 1274]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE OF B.F. SISK FEDERAL BUILDING AND UNITED STATES COURTHOUSE, CALIFORNIA.

(a) **CONVEYANCE AUTHORIZED.**—Notwithstanding any other provision of law, the Administrator of General Services may convey to Fresno County, California, for nominal consideration, all right, title, and interest of the United States in and to the building and site located at 1130 O Street in Fresno, California, known as the B.F. Sisk Federal Building and United States Courthouse.

(b) **TIMING OF CONVEYANCE.**—The Administrator may make the conveyance under subsection (a) only after the completion of construction of a new Federal courthouse in Fresno County and the relocation of the tenants in the building referred to in subsection (a) to the new Federal courthouse.

(c) **RESTRICTIONS ON USE.**—

(1) **IN GENERAL.**—The deed for the conveyance under subsection (a) shall include a covenant that provides that the property will be used for public use purposes, and specifically provides for substantial use of the property for the administration of justice.

(2) **REVERSION.**—If the Administrator determines that the property is not being used for the purposes described in paragraph (1), all right, title, and interest in and to the property shall revert to the United States, at the option of the United States.

(3) **EXPIRATION.**—The reversionary interest of the United States in the property under this subsection shall expire 20 years after the date of the conveyance.

(d) **ADDITIONAL TERMS AND CONDITIONS.**—The Administrator may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Administrator considers appropriate to protect the interests of the United States.

SEC. 2. APPLICATION OF OTHER LAWS.

This Act is not subject to the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.).

Approved April 30, 2004.

LEGISLATIVE HISTORY—H.R. 1274:

HOUSE REPORTS: No. 108–341 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 17, 18, considered and passed House.

Vol. 150 (2004): Apr. 20, considered and passed Senate.



Public Law 108–222
108th Congress

An Act

To provide for the distribution of judgment funds to the Cowlitz Indian Tribe.

Apr. 30, 2004
[H.R. 2489]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COWLITZ INDIAN TRIBE DISTRIBUTION OF JUDGMENT FUNDS ACT.

Cowlitz Indian
Tribe
Distribution of
Judgment Funds
Act.

This Act shall be known as the “Cowlitz Indian Tribe Distribution of Judgment Funds Act”.

SEC. 2. DEFINITIONS.

For the purpose of this Act—

(1) The term “current judgment fund” means the funds awarded by the Indian Claims Commission Docket No. 218 and all interest accrued thereon as of the date of the enactment of this Act.

(2) The term “initial interest” means the interest on the funds awarded by the Indian Claims Commission Docket No. 218 during the time period from one year before the date of the enactment of this Act through the date of the enactment of this Act.

(3) The term “principal” means the funds awarded by the Indian Claims Commission Docket No. 218 and all interest accrued thereon as of one year before the date of the enactment of this Act.

(4) The term “Secretary” means the Secretary of the Interior.

(5) The term “tribe” means the Cowlitz Indian Tribe of Washington, which was extended Federal acknowledgment by the United States Department of the Interior on December 31, 2001, pursuant to part 83 of title 25, Code of Federal Regulations.

(6) The term “tribal member” means an individual who is an enrolled member of the Cowlitz Indian Tribe pursuant to tribal enrollment procedures and requirements.

(7) The term “tribe’s governing body” means the Cowlitz Tribal Council, which is the tribe’s governing body under the tribe’s Constitution.

(8) The term “tribal elder” means any tribal member who was 62 years of age or older as of February 14, 2000.

SEC. 3. JUDGMENT DISTRIBUTION PLAN.

Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401, et seq.), or any plan prepared or promulgated by the Secretary pursuant to that Act, the judgment

funds awarded in Indian Claims Commission Docket No. 218 and interest accrued thereon as of the date of the enactment of this Act shall be distributed and used in accordance with this Act.

SEC. 4. DISTRIBUTION AND USE OF FUNDS.

(a) **PRINCIPAL PRESERVED AFTER ELDERLY ASSISTANCE AND TRIBAL ADMINISTRATION PAYMENTS.**—(1) Except as provided in subsection (b), the principal shall not be distributed under this Act. Only the interest earned on the undistributed principal may be used to fund such programs. There will be no distribution of any funds other than as specified in this Act.

(2) The Secretary shall—

Deadline.

(A) maintain undistributed current judgment funds in an interest-bearing account in trust for the tribe; and

(B) disburse principal or interest in accordance with this Act not later than 30 days after receipt by the Northwest Regional Director, Bureau of Indian Affairs, of a request by the tribe's governing body for such disbursement of funds.

Deadline.

(b) **ELDERLY ASSISTANCE PROGRAM.**—(1) From the current judgment fund, the Secretary shall set aside 20 percent for an elderly assistance payment. The Secretary shall provide one elderly assistance payment to each enrolled tribal elder not later than 30 days after all of the following have occurred:

(A) The tribe's governing body has compiled and reviewed for accuracy a list of all enrolled tribal members that are both a minimum of one-sixteenth Cowlitz blood and 62 years of age or older as of February 14, 2000.

(B) The Secretary has verified the blood quantum and age of the tribal members identified on the list prepared pursuant to subparagraph (A).

(C) The tribe's governing body has made a request for disbursement of judgment funds for the elderly assistance payment.

(2) If a tribal elder eligible for an elderly assistance payment dies before receiving payment under this subsection, the money which would have been paid to that individual shall be added to and distributed in accordance with the emergency assistance program under subsection (c).

(3) The Secretary shall pay all costs of distribution under this subsection out of the amount set aside under paragraph (1).

Effective date.

(c) **EMERGENCY ASSISTANCE PROGRAM.**—From the principal, the Secretary shall set aside 10 percent for the Emergency Assistance Program. Beginning the second year after the date of the enactment of this Act, interest earned on such sum shall be distributed annually in a lump sum to the tribe's governing body and will be used to provide emergency assistance for tribal members. 10 percent of the initial interest shall be available upon the date of the enactment of this Act to fund the program for the first year after the date of the enactment of this Act.

Effective date.

(d) **EDUCATION, VOCATIONAL, AND CULTURAL TRAINING PROGRAM.**—From the principal, the Secretary shall set aside 10 percent for an Education, Vocational and Cultural Training Program. Beginning the second year after the date of the enactment of this Act, interest earned on such sum shall be distributed annually in a lump sum to the tribe's governing body and will be used to provide scholarships to tribal members pursuing educational advancement, including cultural and vocational training. 10 percent of the initial

interest shall be available upon the date of the enactment of this Act to fund the program for the first year after the date of the enactment of this Act.

(e) HOUSING ASSISTANCE PROGRAM.—From the principal, the Secretary shall set aside 5 percent for the Housing Assistance Program. Beginning the second year after the date of the enactment of this Act, interest earned on such sum shall be disbursed annually in a lump sum to the tribe's governing body and may be added to any existing tribal housing improvements programs to supplement them or it may be used in a separate Housing Assistance Program to be established by the tribe's governing body. 5 percent of the initial interest shall be available upon the date of the enactment of this Act to fund the program for the first year after the date of the enactment of this Act.

Effective date.

(f) ECONOMIC DEVELOPMENT, TRIBAL, AND CULTURAL CENTERS.—From the principal, the Secretary shall set aside 21.5 percent for economic development and, if other funding is not available or not adequate (as determined by the tribe), for the construction and maintenance of tribal and cultural centers. Beginning the second year after the date of the enactment of this Act, interest earned on such sum shall be disbursed annually in a lump sum to the tribe's governing body and shall be used for the following, with 21.5 percent of the initial interest available upon the date of the enactment of this Act to fund the program for the first year after the date of the enactment of this Act:

Effective date.

(1) Property acquisition for business or other activities which are likely to benefit the tribe economically or provide employment for tribal members.

(2) Business development for the tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures, which are likely to produce profits for the tribe. All business loans shall pay principal and interest back to the Economic Development program for reinvestments and business profits shall go to the tribe's general fund for uses to be determined by the tribe's governing body.

(3) Design, construction, maintenance, and operation of tribal and cultural centers.

(g) NATURAL RESOURCES.—From the principal, the Secretary shall set aside 7.5 percent for natural resources. Beginning the second year after the date of the enactment of this Act, interest earned on such sum shall be disbursed annually in a lump sum to the tribe's governing body and may be added to any existing tribal natural resource program to enhance the tribe's use and enjoyment of existing and renewable natural resources within the tribe's lands. 7.5 percent of the initial interest shall be available upon the date of the enactment of this Act to fund the program for the first year after the date of the enactment of this Act.

Effective date.

(h) CULTURAL RESOURCES.—From the principal, the Secretary shall set aside 4 percent for cultural resources. Beginning the second year after the date of the enactment of this Act, interest earned on such sum shall be distributed annually in a lump sum to the tribe's governing body and shall be used to maintain artifacts, collect documents, archive, and identify cultural sites of tribal significance. 4 percent of the initial interest shall be available

Effective date.

upon the date of the enactment of this Act to fund the program for the first year after the date of the enactment of this Act.

(i) HEALTH.—From the principal, the Secretary shall set aside 21 percent for health. Beginning the second year after the date of the enactment of this Act, interest earned on such sum shall be disbursed annually in a lump sum to the tribe's governing body and shall be used for the health needs of the tribe. 21 percent of the initial interest shall be available upon the date of the enactment of this Act to fund the program for the first year after the date of the enactment of this Act.

(j) TRIBAL ADMINISTRATION PROGRAM.—From the principal, the Secretary shall set aside 21 percent for tribal administration. 21 percent of the initial interest and such of the principal sum set aside for this program as required to fund the first year of this program at \$150,000, the sum of \$150,000 shall be immediately disbursed to the tribe for the purposes of funding tribal administration for the first year after the date of the enactment of this Act. Beginning the second year after the date of the enactment of this Act, interest earned on the remaining principal set aside under this subsection shall be disbursed annually in a lump sum to the tribe's governing body for operating costs of the tribe's governing body, including travel, telephone, cultural, and other expenses incurred in the conduct of the tribe's affairs, and legal fees as approved by the tribe's governing body.

(k) GENERAL CONDITIONS.—The following conditions will apply to the management and use of all funds available under this Act by the tribe's governing body:

(1) No amount greater than 10 percent of the interest earned on the principal designated for any program under this Act may be used for the administrative costs of any of that program, except those programs operated pursuant to subsections (i) and (j).

(2) No service area is implied or imposed under any program under this Act. If the costs of administering any program under this Act for the benefit of tribal members living outside the tribe's Indian Health Service area are greater than 10 percent of the interest earned on the principal designated for that program, the tribe's governing body may authorize the expenditure of such funds for that program.

(3) Before any expenditures, the tribe's governing body must approve all programs and shall publish in a publication of general circulation regulations which provide standards and priorities for programs established in this Act.

(4) Section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407) shall apply to funds available under this Act.

(5) Any tribal member who feels he or she has been unfairly denied the right to take part in any program under this Act may appeal to the tribal secretary. The tribal secretary shall bring the appeal to the tribe's governing body for resolution.

Effective date.

Applicability.

Publication.

Applicability.

The resolution shall be made in a timely manner and the tribal secretary at that time shall respond to the tribal member.

Approved April 30, 2004.

LEGISLATIVE HISTORY—H.R. 2489:

HOUSE REPORTS: No. 108–368 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 23, considered and passed House.

Apr. 20, considered and passed Senate.



Public Law 108–223
108th Congress

An Act

Apr. 30, 2004
[H.R. 3118]

To designate the Orville Wright Federal Building and the Wilbur Wright Federal Building in Washington, District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ORVILLE WRIGHT FEDERAL BUILDING.

(a) DESIGNATION.—The Federal building located at 800 Independence Avenue, Southwest, in Washington, District of Columbia, shall be known and designated as the “Orville Wright Federal Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in subsection (a) shall be deemed to be a reference to the “Orville Wright Federal Building”.

SEC. 2. WILBUR WRIGHT FEDERAL BUILDING.

(a) DESIGNATION.—The Federal building located at 600 Independence Avenue, Southwest, in Washington, District of Columbia, shall be known and designated as the “Wilbur Wright Federal Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in subsection (a) shall be deemed to be a reference to the “Wilbur Wright Federal Building”.

Approved April 30, 2004.

LEGISLATIVE HISTORY—H.R. 3118:

HOUSE REPORTS: No. 108–317 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 4, considered and passed House.

Vol. 150 (2004): Apr. 20, considered and passed Senate.



Public Law 108–224
108th Congress

An Act

To provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

Apr. 30, 2004
[H.R. 4219]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Surface Transportation Extension Act of 2004, Part II”.

Surface
Transportation
Extension Act of
2004, Part II.
23 USC 101 note.

SEC. 2. ADVANCES.

(a) **IN GENERAL.**—Section 2(a) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 104 note; 117 Stat. 1110; 118 Stat. 478) is amended by striking “and the Surface Transportation Extension Act of 2004” and inserting “, the Surface Transportation Extension Act of 2004, and the Surface Transportation Extension Act of 2004, Part II”.

(b) **PROGRAMMATIC DISTRIBUTIONS.**—

(1) **SPECIAL RULES FOR MINIMUM GUARANTEE.**—Section 2(b)(4) of such Act is amended by striking “\$1,633,333,333” and inserting “\$2,100,000,000”.

(2) **EXTENSION OF OFF-SYSTEM BRIDGE SETASIDE.**—Section 144(g)(3) of title 23, United States Code, is amended by striking “April 30” inserting “June 30”.

(c) **AUTHORIZATION OF CONTRACT AUTHORITY.**—Section 1101(c)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1111; 118 Stat. 478) is amended by striking “\$18,876,841,666 for the period of October 1, 2003, through April 30, 2004” and inserting “\$24,270,225,000 for the period of October 1, 2003, through June 30, 2004”.

(d) **LIMITATION ON OBLIGATIONS.**—Section 2(e) of the Surface Transportation Extension Act of 2003 (117 Stat. 1111; 118 Stat. 478) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A) by striking “April 30” and inserting “June 30”;

(B) in subparagraph (A) by inserting after “of 2004” the following: “and the Surface Transportation Extension Act of 2004, Part II”; and

(C) in subparagraph (B) by striking “ $\frac{7}{12}$ ” and inserting “ $\frac{9}{12}$ ”;

(2) in paragraph (2)—

(A) by striking “April 30” and inserting “June 30”;

(B) by striking “\$19,741,750,000” and inserting “\$25,382,250,000”; and
 (C) by striking “\$372,750,000” and inserting “\$479,250,000”; and
 (3) in paragraph (3) by striking “April 30” and inserting “June 30”.

SEC. 3. ADMINISTRATIVE EXPENSES.

Section 4(a) of the Surface Transportation Extension Act of 2003 (117 Stat. 1113; 118 Stat. 479) is amended by striking “\$262,500,000” and inserting “\$337,500,000”.

SEC. 4. OTHER FEDERAL-AID HIGHWAY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE I OF TEA-21.—

(1) FEDERAL LANDS HIGHWAYS.—

(A) INDIAN RESERVATION ROADS.—Section 1101(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112; 117 Stat. 1113; 118 Stat. 479) is amended—

(i) in the first sentence by striking “\$160,416,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$206,250,000 for the period of October 1, 2003, through June 30, 2004”; and

(ii) in the second sentence by striking “\$7,583,333” and inserting “\$9,750,000”.

(B) PUBLIC LANDS HIGHWAYS.—Section 1101(a)(8)(B) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480) is amended by striking “\$143,500,000 for the period of October 1, 2003, through April 30, 2004” and inserting “\$184,500,000 for the period of October 1, 2003, through June 30, 2004”.

(C) PARK ROADS AND PARKWAYS.—Section 1101(a)(8)(C) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480) is amended by striking “\$96,250,000 for the period of October 1, 2003, through April 30, 2004” and inserting “\$123,750,000 for the period of October 1, 2003, through June 30, 2004”.

(D) REFUGE ROADS.—Section 1101(a)(8)(D) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480) is amended by striking “\$11,666,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$15,000,000 for the period of October 1, 2003, through June 30, 2004”.

(2) NATIONAL CORRIDOR PLANNING AND DEVELOPMENT AND COORDINATED BORDER INFRASTRUCTURE PROGRAMS.—Section 1101(a)(9) of such Act (112 Stat. 112; 117 Stat. 1114; 118 Stat. 480) is amended by striking “\$81,666,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$105,000,000 for the period of October 1, 2003, through June 30, 2004”.

(3) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—

(A) IN GENERAL.—Section 1101(a)(10) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480) is amended by striking “\$22,166,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$28,500,000 for the period of October 1, 2003, through June 30, 2004”.

(B) SET ASIDE FOR ALASKA, NEW JERSEY, AND WASHINGTON.—Section 5(a)(3)(B) of the Surface Transportation

Extension Act of 2003 (117 Stat. 1114; 118 Stat. 480) is amended—

- (i) in clause (i) by striking “\$5,833,333” and inserting “\$7,500,000”;
- (ii) in clause (ii) by striking “\$2,916,667” and inserting “\$3,750,000”; and
- (iii) in clause (iii) by striking “\$2,916,667” and inserting “\$3,750,000”.

(4) NATIONAL SCENIC BYWAYS PROGRAM.—Section 1101(a)(11) of the Transportation Equity Act for the 21st Century (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480) is amended by striking “\$16,041,666 for the period of October 1, 2003, through April 30, 2004” and inserting “\$20,625,000 for the period of October 1, 2003, through June 30, 2004”.

(5) VALUE PRICING PILOT PROGRAM.—Section 1101(a)(12) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480) is amended by striking “\$6,416,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$8,250,000 for the period of October 1, 2003, through June 30, 2004”.

(6) HIGHWAY USE TAX EVASION PROJECTS.—Section 1101(a)(14) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480) is amended by striking “\$2,916,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$3,750,000 for the period of October 1, 2003, through June 30, 2004”.

(7) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—Section 1101(a)(15) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 481) is amended by striking “\$64,166,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$82,500,000 for the period of October 1, 2003, through June 30, 2004”.

(8) SAFETY GRANTS.—Section 1212(i)(1)(D) of such Act (23 U.S.C. 402 note; 112 Stat. 196; 112 Stat. 840; 117 Stat. 1114; 118 Stat. 481) is amended by striking “\$291,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$375,000 for the period of October 1, 2003, through June 30, 2004”.

(9) TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM.—Section 1221(e)(1) of such Act (23 U.S.C. 101 note; 112 Stat. 223; 117 Stat. 1114; 118 Stat. 481) is amended by striking “\$14,583,333 for the period of October 1, 2003, through April 30, 2004” and inserting “\$18,750,000 for the period of October 1, 2003, through June 30, 2004”.

(10) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION.—Section 188 of title 23, United States Code, is amended—

(A) by striking subsection (a)(1)(F) and inserting the following:

“(F) \$105,000,000 for the period of October 1, 2003, through June 30, 2004.”;

(B) in subsection (a)(2) by striking “\$1,166,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$1,500,000 for the period of October 1, 2003, through June 30, 2004”; and

(C) in the item relating to fiscal year 2004 in the table contained in subsection (c) by striking “\$1,516,666,667” and inserting “\$1,950,000,000”.

(b) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE V OF TEA-21.—

(1) SURFACE TRANSPORTATION RESEARCH.—Section 5001(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 419; 117 Stat. 1115; 118 Stat. 481) is amended by striking “\$61,250,000 for the period of October 1, 2003, through April 30, 2004” and inserting “\$78,750,000 for the period of October 1, 2003, through June 30, 2004”.

(2) TECHNOLOGY DEPLOYMENT PROGRAM.—Section 5001(a)(2) of such Act (112 Stat. 419; 117 Stat. 1115; 118 Stat. 481) is amended by striking “\$32,083,334 for the period of October 1, 2003, through April 30, 2004” and inserting “\$41,250,000 for the period of October 1, 2003, through June 30, 2004”.

(3) TRAINING AND EDUCATION.—Section 5001(a)(3) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481) is amended by striking “\$12,250,000 for the period of October 1, 2003, through April 30, 2004” and inserting “\$15,750,000 for the period of October 1, 2003, through June 30, 2004”.

(4) BUREAU OF TRANSPORTATION STATISTICS.—Section 5001(a)(4) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481) is amended by striking “\$18,083,333 for the period of October 1, 2003, through April 30, 2004” and inserting “\$23,250,000 for the period of October 1, 2003, through June 30, 2004”.

(5) ITS STANDARDS, RESEARCH, OPERATIONAL TESTS, AND DEVELOPMENT.—Section 5001(a)(5) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481) is amended by striking “\$67,083,334 for the period of October 1, 2003, through April 30, 2004” and inserting “\$86,250,000 for the period of October 1, 2003, through June 30, 2004”.

(6) ITS DEPLOYMENT.—Section 5001(a)(6) of such Act (112 Stat. 420; 117 Stat. 1116; 118 Stat. 482) is amended by striking “\$72,333,334 for the period of October 1, 2003, through April 30, 2004” and inserting “\$93,000,000 for the period of October 1, 2003, through June 30, 2004”.

(7) UNIVERSITY TRANSPORTATION RESEARCH.—Section 5001(a)(7) of such Act (112 Stat. 420; 117 Stat. 1116; 118 Stat. 482) is amended by striking “\$15,750,000 for the period of October 1, 2003, through April 30, 2004” and inserting “\$20,250,000 for the period of October 1, 2003, through June 30, 2004”.

(c) METROPOLITAN PLANNING.—Section 5(c)(1) of the Surface Transportation Extension Act of 2003 (117 Stat. 1116; 118 Stat. 482) is amended by striking “\$140,000,000 for the period of October 1, 2003, through April 30, 2004” and inserting “\$180,000,000 for the period of October 1, 2003, through June 30, 2004”.

(d) TERRITORIES.—Section 1101(d)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1116; 118 Stat. 482) is amended by striking “\$21,233,333 for the period of October 1, 2003, through April 30, 2004” and inserting “\$27,300,000 for the period of October 1, 2003, through June 30, 2004”.

(e) ALASKA HIGHWAY.—Section 1101(e)(1) of such Act (117 Stat. 1116; 118 Stat. 482) is amended by striking “\$10,966,666 for the

period of October 1, 2003, through April 30, 2004” and inserting “\$14,100,000 for the period of October 1, 2003, through June 30, 2004”.

(f) OPERATION LIFESAVER.—Section 1101(f)(1) of such Act (117 Stat. 1117; 118 Stat. 482) is amended by striking “\$291,667 for the period of October 1, 2003, through April 30, 2004” and inserting “\$375,000 for the period of October 1, 2003, through June 30, 2004”.

(g) BRIDGE DISCRETIONARY.—Section 1101(g)(1) of such Act (117 Stat. 1117; 118 Stat. 482) is amended—

(1) by striking “\$58,333,333” and inserting “\$75,000,000”;

and

(2) by striking “April 30” and inserting “June 30”.

(h) INTERSTATE MAINTENANCE.—Section 1101(h)(1) of such Act (117 Stat. 1117; 118 Stat. 482) is amended—

(1) by striking “\$58,333,333” and inserting “\$75,000,000”;

and

(2) by striking “April 30” and inserting “June 30”.

(i) RECREATIONAL TRAILS ADMINISTRATIVE COSTS.—Section 1101(i)(1) of such Act (117 Stat. 1117; 118 Stat. 482) is amended by striking “\$437,500 for the period of October 1, 2003, through April 30, 2004” and inserting “\$562,500 for the period of October 1, 2003, through June 30, 2004”.

(j) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—Section 1101(j)(1) of such Act (117 Stat. 1118; 118 Stat. 482) is amended—

(1) by striking “\$3,062,500” and inserting “\$3,937,500”;

(2) by striking “\$145,833” and inserting “\$187,500”; and

(3) by striking “April 30” each place it appears and inserting “June 30”.

(k) NONDISCRIMINATION.—Section 1101(k) of such Act (117 Stat. 1118; 118 Stat. 482) is amended—

(1) in paragraph (1) by striking “\$5,833,333 for the period of October 1, 2003, through April 30, 2004” and inserting “\$7,500,000 for the period of October 1, 2003, through June 30, 2004”; and

(2) in paragraph (2) by striking “\$5,833,333 for the period of October 1, 2003, through April 30, 2004” and inserting “\$7,500,000 for the period of October 1, 2003, through June 30, 2004”.

(l) ADMINISTRATION OF FUNDS.—Section 5(l) of the Surface Transportation Extension Act of 2003 (117 Stat. 1118; 118 Stat. 483) is amended—

(1) by striking “and section 5 of the Surface Transportation Extension Act of 2004” and inserting “, section 5 of the Surface Transportation Extension Act of 2004, and section 4 of the Surface Transportation Extension Act of 2004, Part II”; and

(2) by striking “or the amendment made by section 4(a)(1) of such Act” and inserting “, the amendment made by section 5(a)(1) of the Surface Transportation Extension Act of 2004, or the amendment made by section 4(a)(1) of the Surface Transportation Extension Act, Part II”.

(m) REDUCTION OF ALLOCATED PROGRAMS.—Section 5(m) of such Act (117 Stat. 1119; 118 Stat. 483) is amended—

(1) by striking “and section 5 of the Surface Transportation Extension Act of 2004” and inserting “, section 5 of the Surface

Transportation Extension Act of 2004, and section 4 of the Surface Transportation Extension Act of 2004, Part II”;

(2) by striking “and by section 5 of such Act” and inserting “, by section 5 of the Surface Transportation Extension Act of 2004, and by section 4 of the Surface Transportation Extension Act of 2004, Part II”; and

(3) by striking “and by section 5 of such Act” and inserting “, by section 5 of the Surface Transportation Extension Act of 2004, and by section 4 of the Surface Transportation Extension Act of 2004, Part II”.

(n) PROGRAM CATEGORY RECONCILIATION.—Section 5(n) of such Act (117 Stat. 1119; 118 Stat. 483) is amended by striking “and section 5 of the Surface Transportation Extension Act of 2004” and inserting “, section 5 of the Surface Transportation Extension Act of 2004, and section 4 of the Surface Transportation Extension Act of 2004, Part II”.

SEC. 5. EXTENSION OF HIGHWAY SAFETY PROGRAMS.

(a) SEAT BELT SAFETY INCENTIVE GRANTS.—Section 157(g)(1) of title 23, United States Code, is amended by striking “\$65,333,333 for the period of October 1, 2003, through April 30, 2004” and inserting “\$84,000,000 for the period of October 1, 2003, through June 30, 2004”.

(b) PREVENTION OF INTOXICATED DRIVER INCENTIVE GRANTS.—Section 163(e)(1) of such title is amended by striking “\$70,000,000 for the period of October 1, 2003, through April 30, 2004” and inserting “\$90,000,000 for the period of October 1, 2003, through June 30, 2004”.

SEC. 6. SPORT FISHING AND BOATING SAFETY.

(a) FUNDING FOR NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—Section 4(c)(6) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(c)(6)) is amended to read as follows:

“(6) \$7,499,999 for the period of October 1, 2003, through June 30, 2004;”.

(b) CLEAN VESSEL ACT FUNDING.—Section 4(b)(4) of such Act (16 U.S.C. 777c(b)(4)) is amended—

(1) in the paragraph heading by striking “7 MONTHS” and inserting “9 MONTHS”;

(2) in the matter preceding subparagraph (A) by striking “\$47,833,333” and inserting “\$61,499,999”;

(3) in subparagraph (A) by striking “\$5,833,333” and inserting “\$7,499,999”; and

(4) in subparagraph (B) by striking “\$4,666,667” and inserting “\$6,000,001”.

(c) BOAT SAFETY FUNDS.—Section 13106(c) of title 46, United States Code, is amended—

(1) by striking “\$2,916,667” and inserting “\$3,750,001”; and

(2) by striking “\$1,166,667” and inserting “\$1,500,001”.

SEC. 7. EXTENSION OF FEDERAL TRANSIT PROGRAMS.

(a) ALLOCATING AMOUNTS.—Section 5309(m) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “April 30, 2004” and inserting “June 30, 2004”;

(B) in subparagraph (A) by striking “, except for the period beginning on October 1, 2003, and ending on April

30, 2004, during which \$699,642,775 will be available” and inserting “, except for the period beginning on October 1, 2003, and ending on June 30, 2004, during which \$899,540,711 will be available”;

(C) in subparagraph (B) by striking “, except for the period beginning on October 1, 2003, and ending on April 30, 2004, during which \$767,657,109 will be available” and inserting “, except for the period beginning on October 1, 2003, and ending on June 30, 2004, during which \$986,987,712 will be available”; and

(D) in subparagraph (C) by striking “, except for the period beginning on October 1, 2003 and ending on April 30, 2004, during which \$352,110,220 will be available” and inserting “, except for the period beginning on October 1, 2003, and ending on June 30, 2004, during which \$452,713,140 will be available;

(2) by amending paragraph (2)(B)(iii) to read as follows:

“(iii) OCTOBER 1, 2003 THROUGH JUNE 30, 2004.—Of the amounts made available under paragraph (1)(B), \$7,753,980 shall be available for the period beginning on October 1, 2003, and ending on June 30, 2004, for capital projects described in clause (i).”;

(3) in paragraph (3)(B)—

(A) by striking “\$1,750,000” and inserting “\$2,236,725”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(4) in paragraph (3)(C)—

(A) by striking “\$28,994,583” and inserting “\$37,278,750”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”.

(b) APPORTIONMENT OF APPROPRIATIONS FOR FIXED GUIDEWAY MODERNIZATION.—Section 8(b)(1) of the Surface Transportation Extension Act of 2003 (49 U.S.C. 5337 note) is amended by striking “April 30, 2004” and inserting “June 30, 2004”.

(c) FORMULA GRANTS AUTHORIZATIONS.—Section 5338(a) of title 49, United States Code, is amended—

(1) in the heading to paragraph (2) by striking “APRIL 30, 2004” and inserting “JUNE 30, 2004”;

(2) in paragraph (2)(A)(vi)—

(A) by striking “\$1,780,963,287” and inserting “\$2,289,809,940”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”;

(3) in paragraph (2)(B)(vi)—

(A) by striking “\$445,240,822” and inserting “\$572,452,485”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(4) in paragraph (2)(C) by striking “April 30, 2004” and inserting “June 30, 2004”.

(d) FORMULA GRANT FUNDS.—Section 8(d) of the Surface Transportation Extension Act of 2003 (117 Stat. 1122) is amended to read as follows:

“(d) ALLOCATION OF FORMULA GRANT FUNDS FOR OCTOBER 1, 2003, THROUGH JUNE 30, 2004.—Of the aggregate of amounts made

available by or appropriated under section 5338(a)(2) of title 49, United States Code, for the period of October 1, 2003, through June 30, 2004—

“(1) \$3,616,001 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307 of such title;

“(2) \$37,278,750 shall be available for bus and bus facilities grants under section 5309 of such title;

“(3) \$67,588,463 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310 of such title;

“(4) \$179,391,044 shall be available to provide financial assistance for other than urbanized areas under section 5311 of such title;

“(5) \$5,181,748 shall be available to provide financial assistance in accordance with section 3038(g) of the Transportation Equity Act for the 21st Century; and

“(6) \$2,569,206,421 shall be available to provide financial assistance for urbanized areas under section 5307 of such title.”.

(e) CAPITAL PROGRAM AUTHORIZATIONS.—Section 5338(b)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “APRIL 30, 2004” and inserting “JUNE 30, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$1,819,410,104” and inserting “\$1,871,393,250”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$363,882,021” and inserting “\$467,848,313”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”.

(f) PLANNING AUTHORIZATIONS AND ALLOCATIONS.—Section 5338(c)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “APRIL 30, 2004” and inserting “JUNE 30, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$33,981,652” and inserting “\$43,690,695”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$8,350,440” and inserting “\$10,736,280”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”.

(g) RESEARCH AUTHORIZATIONS.—Section 5338(d)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “APRIL 30, 2004” and inserting “JUNE 30, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$24,471,428” and inserting “\$31,463,265”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”;

(3) in subparagraph (B)(vi)—

(A) by striking “\$6,262,830” and inserting “\$8,052,210”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(4) in subparagraph (C) by striking “April 30, 2004” and inserting “June 30, 2004”.

(h) RESEARCH FUNDS.—Section 8(h) of the Surface Transportation Extension Act of 2003 (118 Stat. 486) is amended to read as follows:

“(h) ALLOCATION OF RESEARCH FUNDS FOR OCTOBER 1, 2003, THROUGH JUNE 30, 2004.—Of the funds made available by or appropriated under section 5338(d)(2) of title 49, United States Code, for the period of October 1, 2003, through June 30, 2004—

“(1) not less than \$3,914,269 shall be available for providing rural transportation assistance under section 5311(b)(2) of such title;

“(2) not less than \$6,150,994 shall be available for carrying out transit cooperative research programs under section 5313(a) of such title;

“(3) not less than \$2,982,300 shall be available to carry out programs under the National Transit Institute under section 5315 of such title, including not more than \$745,575 to carry out section 5315(a)(16) of such title; and

“(4) any amounts not made available under paragraphs (1) through (3) shall be available for carrying out national planning and research programs under sections 5311(b)(2), 5312, 5313(a), 5314, and 5322 of such title.”.

(i) UNIVERSITY TRANSPORTATION RESEARCH AUTHORIZATIONS.—Section 5338(e)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “APRIL 30, 2004” and inserting “JUNE 30, 2004”;

(2) in subparagraph (A)—

(A) by striking “\$2,783,480” and inserting “\$3,578,760”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”;

(3) in subparagraph (B)—

(A) by striking “\$695,870” and inserting “\$894,690”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(4) in subparagraph (C) by striking “April 30, 2004” each place it appears and inserting “June 30, 2004”.

(j) UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—

(1) IN GENERAL.—Section 8(j) of the Surface Transportation Extension Act of 2003 (118 Stat. 487) is amended to read as follows:

“(j) ALLOCATION OF UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—

“(1) IN GENERAL.—Of the amounts made available under section 5338(e)(2)(A) of title 49, United States Code, for the period October 1, 2003, through June 30, 2004—

“(A) \$1,491,150 shall be available for the center identified in section 5505(j)(4)(A) of such title; and

“(B) \$1,491,150 shall be available for the center identified in section 5505(j)(4)(F) of such title.

“(2) TRAINING AND CURRICULUM DEVELOPMENT.—Notwithstanding section 5338(e)(2) of title 49, United States Code, any amounts made available under such section for the period October 1, 2003, through June 30, 2004, that remain after distribution under paragraph (1), shall be available for the purposes specified in section 3015(d) of the Transportation Equity Act for the 21st Century (112 Stat. 857).”.

(2) CONFORMING AMENDMENT.—Section 3015(d)(2) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5338 note; 112 Stat. 857; 118 Stat. 487) is amended by striking “April 30, 2004” and inserting “June 30, 2004”.

(k) ADMINISTRATION AUTHORIZATIONS.—Section 5338(f)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “APRIL 30, 2004” and inserting “JUNE 30, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$35,025,457” and inserting “\$45,032,730”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$8,756,364” and inserting “\$11,258,183”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”.

(l) JOB ACCESS AND REVERSE COMMUTE PROGRAM.—Section 3037(l) of the Federal Transit Act of 1998 (49 U.S.C. 5309 note) is amended—

(1) in paragraph (1)(A)(vi)—

(A) by striking “\$57,989,167” and inserting “\$74,557,500”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”;

(2) in paragraph (1)(B)(vi)—

(A) by striking “\$14,497,292” and inserting “\$18,639,375”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”;

(3) in paragraph (2) by striking “April 30, 2004, \$5,798,917” and inserting “June 30, 2004, \$7,455,750”; and

(4) in paragraph (4) by striking “\$11,597,833” and inserting “\$14,911,500”.

(m) RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.—Section 3038(g) of the Federal Transit Act of 1998 (49 U.S.C. 5310 note; 118 Stat. 488) is amended—

(1) in paragraph (1)(F)—

(A) by striking “\$3,044,431” and inserting “\$3,914,268”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(2) in paragraph (2)—

(A) by striking “\$985,816” and inserting “\$1,267,478”; and

(B) by striking “April 30, 2004” and inserting “June 30, 2004”.

(n) URBANIZED AREA FORMULA GRANTS.—Section 5307(b)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “APRIL 30, 2004” and inserting “JUNE 30, 2004”; and

(2) in subparagraph (A) by striking “April 30, 2004” and inserting “June 30, 2004”.

(o) OBLIGATION CEILING.—Section 3040(6) of the Federal Transit Act of 1998 (112 Stat. 394; 118 Stat. 488) is amended—

(1) by striking “\$4,238,428,192” and inserting “\$5,449,407,675”; and

(2) by striking “April 30, 2004” and inserting “June 30, 2004”.

(p) FUEL CELL BUS AND BUS FACILITIES PROGRAM.—Section 3015(b) of the Federal Transit Act of 1998 (112 Stat. 361; 118 Stat. 489) is amended—

(1) by striking “April 30, 2004” and inserting “June 30, 2004”; and

(2) by striking “\$2,812,475” and inserting “\$3,616,039”.

(q) ADVANCED TECHNOLOGY PILOT PROJECT.—Section 3015(c)(2) of the Federal Transit Act of 1998 (49 U.S.C. 322 note; 118 Stat. 489) is amended—

(1) by striking “April 30, 2004,” and inserting “June 30, 2004”; and

(2) by striking “\$2,812,475” and inserting “\$3,727,876”.

(r) PROJECTS FOR NEW FIXED GUIDEWAY SYSTEMS AND EXTENSIONS TO EXISTING SYSTEMS.—Section 3030 of the Transportation Equity Act for the 21st Century (112 Stat. 373; 118 Stat. 489) is amended by striking “April 30, 2004” each place it appears and inserting “June 30, 2004”.

(s) NEW JERSEY URBAN CORE PROJECT.—Section 3031(a)(3) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2122; 112 Stat. 379; 118 Stat. 489) is amended by striking “April 30, 2004” each place it appears and inserting “June 30, 2004”.

(t) TREATMENT OF FUNDS.—Section 8(t) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 101 note; 118 Stat. 489) is amended—

(1) in paragraph (1) by striking “and by section 9 of the Surface Transportation Extension Act of 2004” and inserting “, by section 9 of the Surface Transportation Extension Act of 2004, and by section 7 of the Surface Transportation Extension Act of 2004, Part II”; and

(2) in paragraph (2) by striking “⁷/₁₂” and inserting “⁹/₁₂”.

(u) LOCAL SHARE.—Section 3011(a) of the Federal Transit Act of 1998 (49 U.S.C. 5307 note; 118 Stat. 489) is amended by striking “April 30” and inserting “June 30”.

SEC. 8. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION PROGRAMS.

(a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2009(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 337; 117 Stat. 1119; 118 Stat. 489) is amended by striking “, and \$96,250,000 for the period of October 1, 2003, through April 30, 2004” and inserting “, and \$123,019,875 for the period of October 1, 2003, through June 30, 2004”.

(b) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2009(a)(2) of such Act (112 Stat. 337; 117 Stat. 1119; 118 Stat. 489) is amended by striking “\$42,000,000 for the period of October

1, 2003, through April 30, 2004” and inserting “\$53,681,400 for the period of October 1, 2003, through June 30, 2004”.

(c) OCCUPANT PROTECTION INCENTIVE GRANTS.—Section 2009(a)(3) of such Act (112 Stat. 337; 117 Stat. 1120; 118 Stat. 489) is amended by striking “\$11,666,700 for the period of October 1, 2003, through April 30, 2004” and inserting “\$14,911,500 for the period of October 1, 2003, through June 30, 2004”.

(d) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANTS.—Section 2009(a)(4) of such Act (112 Stat. 337; 117 Stat. 1120; 118 Stat. 489) is amended by striking “\$23,333,300 for the period of October 1, 2003, through April 30, 2004” and inserting “\$29,823,000 for the period of October 1, 2003, through June 30, 2004”.

(e) NATIONAL DRIVER REGISTER.—Section 2009(a)(6) of such Act (112 Stat. 338; 117 Stat. 1120; 118 Stat. 490) is amended by striking “\$2,100,000 for the period of October 1, 2003, through April 30, 2004” and inserting “\$2,684,070 for the period of October 1, 2003, through June 30, 2004”.

SEC. 9. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PROGRAM.

(a) ADMINISTRATIVE EXPENSES.—Section 7(a)(1) of the Surface Transportation Extension Act of 2003 (117 Stat. 1120; 118 Stat. 490) is amended by striking “\$102,467,000 for the period October 1, 2003 through April 30, 2004”, and inserting “\$131,811,967 for the period October 1, 2003, through June 30, 2004”.

(b) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—Section 31104(a)(7) of title 49, United States Code, is amended to read as follows:

“(7) Not more than \$126,519,126 for the period of October 1, 2003, through June 30, 2004.”.

(c) INFORMATION SYSTEMS AND COMMERCIAL DRIVER’S LICENSE GRANTS.—

(1) AUTHORIZATION OF APPROPRIATION.—Section 31107(a)(5) of such title is amended to read as follows:

“(5) \$14,972,678 for the period of October 1, 2003, through June 30, 2004.”.

(2) EMERGENCY CDL GRANTS.—Section 7(c)(2) of the Surface Transportation Extension Act of 2003 (117 Stat. 1121) is amended—

(A) by striking “April 30,” and inserting “June 30,”; and

(B) by striking “\$582,000” and inserting “\$748,634”.

(d) CRASH CAUSATION STUDY.—Section 7(d) of such Act is amended—

(1) by striking “\$582,000” and inserting “\$748,634”; and

(2) by striking “April 30” and inserting “June 30”.

SEC. 10. EXTENSION OF AUTHORIZATION FOR USE OF TRUST FUNDS FOR OBLIGATIONS UNDER TEA-21.

(a) HIGHWAY TRUST FUND.—

(1) IN GENERAL.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1986 is amended—

(A) in the matter before subparagraph (A), by striking “May 1, 2004” and inserting “July 1, 2004”,

(B) by striking “or” at the end of subparagraph (F),

(C) by striking the period at the end of subparagraph (G) and inserting “, or”,

(D) by inserting after subparagraph (G), the following new subparagraph:

“(H) authorized to be paid out of the Highway Trust Fund under the Surface Transportation Extension Act of 2004, Part II.”, and

(E) in the matter after subparagraph (H), as added by this paragraph, by striking “Surface Transportation Extension Act of 2004” and inserting “Surface Transportation Extension Act of 2004, Part II”.

(2) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) of such Code is amended—

26 USC 9503.

(A) in the matter before subparagraph (A), by striking “May 1, 2004” and inserting “July 1, 2004”,

(B) in subparagraph (D), by striking “or” at the end of such subparagraph,

(C) in subparagraph (E), by inserting “or” at the end of such subparagraph,

(D) by inserting after subparagraph (E) the following new subparagraph:

“(F) the Surface Transportation Extension Act of 2004, Part II”, and

(E) in the matter after subparagraph (F), as added by this paragraph, by striking “Surface Transportation Extension Act of 2004” and inserting “Surface Transportation Extension Act of 2004, Part II”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 9503(b)(5) of such Code is amended by striking “May 1, 2004” and inserting “July 1, 2004”.

(b) AQUATIC RESOURCES TRUST FUND.—

(1) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) of the Internal Revenue Code of 1986 is amended by striking “Surface Transportation Extension Act of 2004” each place it appears and inserting “Surface Transportation Extension Act of 2004, Part II”.

26 USC 9504.

(2) BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 of such Code is amended—

(A) by striking “May 1, 2004” and inserting “July 1, 2004”, and

(B) by striking “Surface Transportation Extension Act of 2004” and inserting “Surface Transportation Extension Act of 2004, Part II”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) of such Code is amended by striking “May 1, 2004” and inserting “July 1, 2004”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

26 USC 9503
note.

(d) TEMPORARY RULE REGARDING ADJUSTMENTS.—During the period beginning on the date of the enactment of the Surface Transportation Extension Act of 2003 and ending on June 30, 2004, for purposes of making any estimate under section 9503(d) of the Internal Revenue Code of 1986 of receipts of the Highway Trust Fund, the Secretary of the Treasury shall treat—

Effective date.
Termination
date.

(1) each expiring provision of paragraphs (1) through (4) of section 9503(b) of such Code which is related to appropriations or transfers to such Fund to have been extended through the end of the 24-month period referred to in section 9503(d)(1)(B) of such Code, and

(2) with respect to each tax imposed under the sections referred to in section 9503(b)(1) of such Code, the rate of such tax during the 24-month period referred to in section 9503(d)(1)(B) of such Code to be the same as the rate of such tax as in effect on the date of the enactment of the Surface Transportation Extension Act of 2003.

Approved April 30, 2004.

LEGISLATIVE HISTORY—H.R. 4219:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 28, considered and passed House.

Apr. 29, considered and passed Senate.



Public Law 108–225
108th Congress

An Act

To designate the United States courthouse located at 400 North Miami Avenue in Miami, Florida, as the “Wilkie D. Ferguson, Jr. United States Courthouse”.

May 7, 2004
[S. 1904]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States courthouse located at 400 North Miami Avenue in Miami, Florida, shall be known and designated as the “Wilkie D. Ferguson, Jr. United States Courthouse”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the “Wilkie D. Ferguson, Jr. United States Courthouse”.

Approved May 7, 2004.

LEGISLATIVE HISTORY—S. 1904 (H.R. 2538):

HOUSE REPORTS: No. 108–448 accompanying H.R. 2538 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 12, considered and passed Senate.

Apr. 28, considered and passed House.



Public Law 108–226
108th Congress

An Act

May 7, 2004
[S. 2022]

To designate the Federal building located at 250 West Cherry Street in Carbondale, Illinois the “Senator Paul Simon Federal Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF FEDERAL BUILDING.

The Federal building located at 250 West Cherry Street in Carbondale, Illinois shall be known and designated as the “Senator Paul Simon Federal Building”.

SEC. 2. REFERENCE.

Any reference in a law, map, regulation, document, paper or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the Senator Paul Simon Federal Building.

Approved May 7, 2004.

LEGISLATIVE HISTORY—S. 2022 (H.R. 3713):

HOUSE REPORTS: No. 108–450 accompanying H.R. 3713 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 12, considered and passed Senate.

Apr. 21, considered and passed House.



Public Law 108–227
108th Congress

An Act

To designate a Federal building in Harrisburg, Pennsylvania, as the “Ronald Reagan Federal Building”.

May 7, 2004
[S. 2043]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RONALD REAGAN FEDERAL BUILDING.

(a) DESIGNATION.—The Federal building located at 228 Walnut Street, Harrisburg, Pennsylvania, shall be known and designated as the “Ronald Reagan Federal Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the building referred to in subsection (a) shall be deemed to be a reference to the Ronald Reagan Federal Building.

Approved May 7, 2004.

LEGISLATIVE HISTORY—S. 2043:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Mar. 12, considered and passed Senate.
Apr. 28, considered and passed House.



Public Law 108–228
108th Congress

An Act

May 18, 2004
[S. 2315]

To amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF IPO DEADLINE.

Section 621(5)(A)(i) of the Communications Satellite Act of 1962 (47 U.S.C. 763(5)(A)(i)) is amended—

(1) by striking “December 31, 2003,” and inserting “June 30, 2005,”; and

(2) by striking “June 30, 2004,” and inserting “December 31, 2005;”.

Approved May 18, 2004.

LEGISLATIVE HISTORY—S. 2315:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 27, considered and passed Senate.

May 5, considered and passed House.



Public Law 108–229
108th Congress

An Act

To provide for expansion of Sleeping Bear Dunes National Lakeshore.

May 28, 2004

[H.R. 408]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF SLEEPING BEAR DUNES NATIONAL LAKE-SHORE.

Michigan.
16 USC 460x–7
note.

(a) **IN GENERAL.**—When title to the land described in subsection (b) has vested in the United States in fee simple, the boundary of Sleeping Bear Dunes National Lakeshore is revised to include such land in that park.

(b) **LAND DESCRIBED.**—The land referred to in subsection (a) consists of approximately 104.45 acres of unimproved lands generally depicted on National Park Service map number 634/80078, entitled “Bayberry Mills, Inc. Crystal River, MI Proposed Expansion Unit to Sleeping Bear Dunes National Lakeshore”. The Secretary of the Interior shall keep such map on file and available for public inspection in the appropriate offices of the National Park Service.

(c) **PURCHASE OF LANDS AUTHORIZED.**—The Secretary of the Interior may acquire the land described in subsection (b), only by purchase from a willing seller.

SEC. 2. LIMITATION ON ACQUISITION BY EXCHANGE OR CONVEYANCE.

The Secretary of the Interior may not acquire any of the land described in subsection (b) of section 1 through any exchange or conveyance of lands that are within the boundary of the Sleeping Bear Dunes National Lakeshore as of the date of the enactment of this Act.

Approved May 28, 2004.

LEGISLATIVE HISTORY—H.R. 408:

HOUSE REPORTS: No. 108–292 (Comm. on Resources).

SENATE REPORTS: No. 108–240 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 8, considered and passed House.

Vol. 150 (2004): May 19, considered and passed Senate.



Public Law 108–230
108th Congress

An Act

May 28, 2004
[H.R. 708]

To require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LAND CONVEYANCE, FARAWAY RANCH, MENDOCINO NATIONAL FOREST, CALIFORNIA.

(a) CONVEYANCE REQUIRED.—Subject to subsection (b), the Secretary of Agriculture shall convey to the owner of the property known as the Faraway Ranch in Lake County, California (in this section referred to as the “recipient”), by quitclaim deed, all right, title, and interest of the United States in and to the following National Forest System lands in Mendocino National Forest in Lake County, California:

(1) “Faraway Ranch, Tract 39” (approximately 15.8 acres), consisting of a portion of lot 6 of section 4, township 18 north, range 10 west, Mount Diablo base and meridian, as generally depicted on the map entitled “Faraway Ranch, Tracts 39 and 40” and dated June 30, 2002.

(2) “Faraway Ranch, Tract 40” (approximately 105.1 acres) consisting of a portion of the N1/2SW1/4 and lot 7 of section 4, and a portion of lots 15 and 16 of section 5, township 18 north, range 10 west, Mount Diablo base and meridian, as generally depicted on the map referred to in paragraph (1).

Deadline.

(b) TIME FOR CONVEYANCE.—The Secretary shall make the conveyance under subsection (a) not later than 120 days after the date on which the recipient deposits sufficient funds with the Bureau of Land Management, California State Office, Branch of Geographic Services, to cover survey work costs and with the Forest Service, Mendocino National Forest, to cover Forest Service direct transaction costs described in subsection (e).

(c) CORRECTIONS.—With the agreement of the recipient, the Secretary may make minor corrections to the legal descriptions and map of the lands to be conveyed pursuant to this section.

(d) CONSIDERATION.—As consideration for the conveyance under subsection (a), the recipient shall pay to the Secretary an amount equal to the fair market value of the National Forest System lands conveyed under such subsection. The fair market value of such lands shall be determined by an appraisal that is acceptable to the Secretary and conforms with the Federal appraisal standards, as defined in the Uniform Appraisal Standards for Federal Land

Acquisitions developed by the Interagency Land Acquisition Conference.

(e) **PAYMENT OF COSTS.**—All direct transaction costs associated with the conveyance under subsection (a), including the costs of appraisal, title, and survey work, shall be paid by the recipient.

(f) **USE OF PROCEEDS.**—

(1) **DEPOSIT.**—The Secretary shall deposit the amounts received by the Secretary as consideration under subsection (d) in the fund established by Public Law 90–171 (commonly known as the Sisk Act; 16 U.S.C. 484a).

(2) **USE.**—Funds deposited under paragraph (1) shall be available to the Secretary until expended, without further appropriation—

(A) for the acquisition of land and interests in land for National Forest System purposes in the State of California; and

(B) for reimbursement of costs incurred by the Forest Service in making the conveyance under subsection (a).

(3) **STATUS OF ACQUIRED LAND.**—Notwithstanding Public Law 85–862 (16 U.S.C. 521a), any lands acquired under paragraph (2)(A) shall be managed as lands acquired under the Act of March 1, 1911 (commonly known as the Weeks Act; 16 U.S.C. 480, 500, 515 et seq.), regardless of whether any of the lands conveyed under subsection (a) were reserved from the public domain.

SEC. 2. WITHDRAWAL.

Subject to valid existing rights, the lands to be conveyed under subsection (a) of section 1 are hereby withdrawn from all forms of location, entry, and patent under the public land laws and the mining and mineral leasing laws of the United States.

Approved May 28, 2004.

LEGISLATIVE HISTORY—H.R. 708:

HOUSE REPORTS: No. 108–293 (Comm. on Resources).

SENATE REPORTS: No. 108–242 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 8, considered and passed House.

Vol. 150 (2004): May 19, considered and passed Senate.



Public Law 108–231
108th Congress

An Act

May 28, 2004
[H.R. 856]

To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TOM GREEN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1; REPAYMENT PERIOD EXTENDED.

The Secretary of the Interior may revise the repayment contract with the Tom Green County Water Control and Improvement District No. 1 numbered 14–06–500–369, by extending the period authorized for repayment of reimbursable constructions costs of the San Angelo project from 40 years to 50 years.

Approved May 28, 2004.

LEGISLATIVE HISTORY—H.R. 856:

SENATE REPORTS: No. 108–243 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): May 14, considered and passed House.

Vol. 150 (2004): May 19, considered and passed Senate.



Public Law 108–232
108th Congress

An Act

To amend the Small Business Investment Act of 1958 to allow certain premier certified lenders to elect to maintain an alternative loss reserve.

May 28, 2004

[H.R. 923]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Premier Certified
Lenders Program
Improvement Act
of 2004.
15 USC 661 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Premier Certified Lenders Program Improvement Act of 2004”.

SEC. 2. LOSS RESERVES OF PREMIER CERTIFIED LENDERS TEMPORARILY DETERMINED ON THE BASIS OF OUTSTANDING BALANCE OF DEBENTURES.

Paragraph (6) of section 508(c) of the Small Business Investment Act of 1958 (15 U.S.C. 697e(c)) is amended—

(1) by striking “The Administration” and inserting the following:

“(A) IN GENERAL.—The Administration”; and

(2) by adding at the end the following new subparagraph:

“(B) TEMPORARY REDUCTION BASED ON OUTSTANDING BALANCE.—Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after the date of the enactment of this subparagraph, the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.”.

Effective date.

SEC. 3. ALTERNATIVE LOSS RESERVE PILOT PROGRAM FOR CERTAIN PREMIER CERTIFIED LENDERS.

(a) IN GENERAL.—Subsection (c) of section 508 of the Small Business Investment Act of 1958 (15 U.S.C. 697e) is amended by adding at the end the following new paragraphs:

“(7) ALTERNATIVE LOSS RESERVE.—

“(A) ELECTION.—With respect to any eligible calendar quarter, any qualified high loss reserve PCL may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for such quarter.

“(B) CONTRIBUTIONS.—

“(i) ORDINARY RULES INAPPLICABLE.—Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during such quarter.

“(ii) BASED ON LOSS.—A qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to any calendar quarter shall, before the last day of such quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the PCL is—

“(I) not less than \$100,000; and

“(II) sufficient, as determined by a qualified independent auditor, for the PCL to meet its obligations to protect the Federal Government from risk of loss.

“(iii) CERTIFICATION.—Before the end of any calendar quarter for which an election is in effect under subparagraph (A), the head of the PCL shall submit to the Administrator a certification that the loss reserve of the PCL is sufficient to meet such PCL’s obligation to protect the Federal Government from risk of loss. Such certification shall be in such form and submitted in such manner as the Administrator may require and shall be signed by the head of such PCL and the auditor making the determination under clause (ii)(II).

“(C) DISBURSEMENTS.—

“(i) ORDINARY RULE INAPPLICABLE.—Paragraph (6) shall not apply with respect to any qualified high loss reserve PCL for any calendar quarter for which an election is in effect under subparagraph (A).

“(ii) EXCESS FUNDS.—At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administration shall allow the qualified high loss reserve PCL to withdraw from its loss reserve the excess of—

“(I) the amount of the loss reserve, over

“(II) the greater of \$100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the PCL’s obligation to protect the Federal Government from risk of loss.

“(D) RECONTRIBUTION.—If the requirements of this paragraph apply to a qualified high loss reserve PCL for any calendar quarter and cease to apply to such PCL for any subsequent calendar quarter, such PCL shall make a contribution to its loss reserve in such amount as the Administrator may determine provided that such amount does not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in such loss reserve had this paragraph never applied to such PCL. The Administrator may require that such payment be made as a single payment or as a series of payments.

“(E) RISK MANAGEMENT.—If a qualified high loss reserve PCL fails to meet the requirement of subparagraph

Applicability.

(F)(iii) during any period for which an election is in effect under subparagraph (A) and such failure continues for 180 days, the requirements of paragraphs (2), (4), and (6) shall apply to such PCL as of the end of such 180-day period and such PCL shall make the contribution to its loss reserve described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

“(F) QUALIFIED HIGH LOSS RESERVE PCL.—The term ‘qualified high loss reserve PCL’ means, with respect to any calendar year, any premier certified lender designated by the Administrator as a qualified high loss reserve PCL for such year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

“(i) the amount of the loss reserve of the company is not less than \$100,000;

“(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of PCLP loans and for grading each PCLP loan made by the company on the basis of the risk of loss associated with such loan; and

“(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administration has issued a waiver with respect to the requirement of this clause.

“(G) SPECIFIED RISK MANAGEMENT BENCHMARKS.—For purposes of this paragraph, the term ‘specified risk management benchmarks’ means the following rates, as determined by the Administrator:

“(i) Currency rate.

“(ii) Delinquency rate.

“(iii) Default rate.

“(iv) Liquidation rate.

“(v) Loss rate.

“(H) QUALIFIED INDEPENDENT AUDITOR.—For purposes of this paragraph, the term ‘qualified independent auditor’ means any auditor who—

“(i) is compensated by the qualified high loss reserve PCL;

“(ii) is independent of such PCL; and

“(iii) has been approved by the Administrator during the preceding year.

“(I) PCLP LOAN.—For purposes of this paragraph, the term ‘PCLP loan’ means any loan guaranteed under this section.

“(J) ELIGIBLE CALENDAR QUARTER.—For purposes of this paragraph, the term ‘eligible calendar quarter’ means—

“(i) the first calendar quarter that begins after the end of the 90-day period beginning with the date of the enactment of this paragraph; and

“(ii) the 7 succeeding calendar quarters.

“(K) CALENDAR QUARTER.—For purposes of this paragraph, the term ‘calendar quarter’ means—

“(i) the period which begins on January 1 and ends on March 31 of each year;

“(ii) the period which begins on April 1 and ends on June 30 of each year;

“(iii) the period which begins on July 1 and ends on September 30 of each year; and

“(iv) the period which begins on October 1 and ends on December 31 of each year.

Deadline.
Federal Register,
publication.

“(L) REGULATIONS.—Not later than 45 days after the date of the enactment of this paragraph, the Administrator shall publish in the Federal Register and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to—

“(i) the approval of auditors under subparagraph (H); and

“(ii) the designation of qualified high loss reserve PCLs under subparagraph (F), including the determination of whether a process for analyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

“(8) BUREAU OF PCLP OVERSIGHT.—

“(A) ESTABLISHMENT.—There is hereby established in the Small Business Administration a bureau to be known as the Bureau of PCLP Oversight.

“(B) PURPOSE.—The Bureau of PCLP Oversight shall carry out such functions of the Administration under this subsection as the Administrator may designate.

“(C) DEADLINE.—Not later than 90 days after the date of the enactment of this Act—

“(i) the Administrator shall ensure that the Bureau of PCLP Oversight is prepared to carry out any functions designated under subparagraph (B), and

Reports.

“(ii) the Office of the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau of PCLP Oversight to carry out such functions.”.

(b) INCREASED REIMBURSEMENT FOR LOSSES RELATED TO DEBENTURES ISSUED DURING ELECTION PERIOD.—Subparagraph (C) of section 508(b)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697e(b)(2)) is amended by inserting “(15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company)” before “; and”.

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (D) of section 508(b)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697e(b)(2)) is amended by striking “subsection (c)(2)” and inserting “subsection (c)”.

(2) Paragraph (5) of section 508(c) of the Small Business Investment Act of 1958 (15 U.S.C. 697e(c)) is amended by striking “10 percent”.

(d) STUDY AND REPORT.—

Contracts.

(1) IN GENERAL.—The Administrator shall enter into a contract with a Federal agency experienced in community development lending and financial regulation or with a member of the Federal Financial Institutions Examinations Council to study and prepare a report regarding—

(A) the extent to which statutory requirements have caused overcapitalization in the loss reserves maintained by certified development companies participating in the Premier Certified Lenders Program established under section 508 of the Small Business Investment Act of 1958 (15 U.S.C. 697e); and

(B) alternatives for establishing and maintaining loss reserves that are sufficient to protect the Federal Government from the risk of loss associated with loans guaranteed under such Program.

(2) TRANSMISSION OF REPORT.—The report described in paragraph (1) shall be transmitted to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than 90 days after the date of the enactment of this Act. Deadline.

(3) LIMITATION.—The amount of the contract described in paragraph (1) shall not exceed \$75,000.

Approved May 28, 2004.

LEGISLATIVE HISTORY—H.R. 923:

HOUSE REPORTS: No. 108–153 (Comm. on Small Business).

CONGRESSIONAL RECORD:

Vol. 149 (2003): June 24, considered and passed House.

Vol. 150 (2004): May 18, considered and passed Senate.



Public Law 108–233
108th Congress

An Act

May 28, 2004
[H.R. 1598]

Irvine Basin
Surface and
Groundwater
Improvement Act
of 2004.
43 USC 390h
note.

To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in projects within the San Diego Creek Watershed, California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Irvine Basin Surface and Groundwater Improvement Act of 2004”.

SEC. 2. PROJECT AUTHORIZATION.

(a) IN GENERAL.—The Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102–575, title XVI; 43 U.S.C. 390h et seq.) is amended by inserting after section 1635 the following:

43 USC 390h–18.

“SEC. 1636. IRVINE BASIN GROUNDWATER AND SURFACE WATER IMPROVEMENT PROJECTS.

“(a) AUTHORIZATION.—The Secretary, in cooperation with the Irvine Ranch Water District, California, is authorized to participate in the design, planning, and construction of projects to naturally treat impaired surface water, reclaim and reuse impaired groundwater, and provide brine disposal within the San Diego Creek Watershed.

“(b) COST SHARE.—The Federal share of the costs of the projects authorized by this section shall not exceed 25 percent of the total cost.

“(c) LIMITATION.—The Secretary shall not provide funds for the operation or maintenance of a project authorized by this section.”.

(b) CLERICAL AMENDMENT.—The table of sections in section 2 of the Reclamation Projects Authorization and Adjustment Act of 1992 is amended by inserting after the item relating to section 1635 the following:

“1636. Irvine basin groundwater and surface water improvement projects.”.

Approved May 28, 2004.

LEGISLATIVE HISTORY—H.R. 1598:

HOUSE REPORTS: No. 108–306 (Comm. on Resources).

SENATE REPORTS: No. 108–244 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 15, considered and passed House.

Vol. 150 (2004): May 19, considered and passed Senate.



Public Law 108–234
108th Congress

An Act

To provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom.

May 28, 2004
[H.R. 3104]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SEPARATE MILITARY CAMPAIGN MEDALS TO RECOGNIZE SERVICE IN OPERATION ENDURING FREEDOM AND SERVICE IN OPERATION IRAQI FREEDOM.

10 USC 1121
note.

(a) **REQUIREMENT.**—The President shall establish a campaign medal specifically to recognize service by members of the uniformed services in Operation Enduring Freedom and a separate campaign medal specifically to recognize service by members of the uniformed services in Operation Iraqi Freedom.

President.

(b) **ELIGIBILITY.**—Subject to such limitations as may be prescribed by the President, eligibility for a campaign medal established pursuant to subsection (a) shall be set forth in regulations to be prescribed by the Secretary concerned (as defined in section 101 of title 10, United States Code). In the case of regulations prescribed by the Secretaries of the military departments, the regulations shall be subject to approval by the Secretary of Defense and shall be uniform throughout the Department of Defense.

Regulations.

Approved May 28, 2004.

LEGISLATIVE HISTORY—H.R. 3104:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Mar. 30, considered and passed House.
May 18, considered and passed Senate.



Public Law 108–235
108th Congress

An Act

June 14, 2004

[S. 2092]

To address the participation of Taiwan in the World Health Organization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

22 USC 290 note.

**SECTION 1. CONCERNING THE PARTICIPATION OF TAIWAN IN THE
WORLD HEALTH ORGANIZATION.**

(a) FINDINGS.—Congress makes the following findings:

(1) Good health is important to every citizen of the world and access to the highest standards of health information and services is necessary to improve the public health.

(2) Direct and unobstructed participation in international health cooperation forums and programs is beneficial for all parts of the world, especially today with the great potential for the cross-border spread of various infectious diseases such as the human immunodeficiency virus (HIV), tuberculosis, and malaria.

(3) Taiwan's population of 23,500,000 people is greater than that of $\frac{3}{4}$ of the member states already in the World Health Organization (WHO).

(4) Taiwan's achievements in the field of health are substantial, including—

(A) attaining—

(i) 1 of the highest life expectancy levels in Asia;

and

(ii) maternal and infant mortality rates comparable to those of western countries;

(B) eradicating such infectious diseases as cholera, smallpox, the plague, and polio; and

(C) providing children with hepatitis B vaccinations.

(5) The United States Centers for Disease Control and Prevention and its counterpart agencies in Taiwan have enjoyed close collaboration on a wide range of public health issues.

(6) In recent years Taiwan has expressed a willingness to assist financially and technically in international aid and health activities supported by the WHO.

(7) On January 14, 2001, an earthquake, registering between 7.6 and 7.9 on the Richter scale, struck El Salvador. In response, the Taiwanese Government sent 2 rescue teams, consisting of 90 individuals specializing in firefighting, medicine, and civil engineering. The Taiwanese Ministry of Foreign Affairs also donated \$200,000 in relief aid to the Salvadoran Government.

(8) The World Health Assembly has allowed observers to participate in the activities of the organization, including the

Palestine Liberation Organization in 1974, the Order of Malta, and the Holy See in the early 1950's.

(9) The United States, in the 1994 Taiwan Policy Review, declared its intention to support Taiwan's participation in appropriate international organizations.

(10) Public Law 106-137 required the Secretary of State to submit a report to Congress on efforts by the executive branch to support Taiwan's participation in international organizations, in particular the WHO.

(11) In light of all benefits that Taiwan's participation in the WHO can bring to the state of health not only in Taiwan, but also regionally and globally, Taiwan and its 23,500,000 people should have appropriate and meaningful participation in the WHO.

(12) On May 11, 2001, President Bush stated in a letter to Senator Murkowski that the United States "should find opportunities for Taiwan's voice to be heard in international organizations in order to make a contribution, even if membership is not possible", further stating that the administration "has focused on finding concrete ways for Taiwan to benefit and contribute to the WHO".

(13) In his speech made in the World Medical Association on May 14, 2002, Secretary of Health and Human Services Tommy Thompson announced "America's work for a healthy world cuts across political lines. That is why my government supports Taiwan's efforts to gain observership status at the World Health Assembly. We know this is a controversial issue, but we do not shrink from taking a public stance on it. The people of Taiwan deserve the same level of public health as citizens of every nation on earth, and we support them in their efforts to achieve it".

(14) The Government of the Republic of China on Taiwan, in response to an appeal from the United Nations and the United States for resources to control the spread of HIV/AIDS, donated \$1,000,000 to the Global Fund to Fight AIDS, Tuberculosis, and Malaria in December 2002.

(15) In 2003, the outbreak of Severe Acute Respiratory Syndrome (SARS) caused 84 deaths in Taiwan.

(16) Avian influenza, commonly known as bird flu, has reemerged in Asia, with strains of the influenza reported by the People's Republic of China, Cambodia, Indonesia, Japan, Pakistan, South Korea, Taiwan, Thailand, Vietnam, and Laos.

(17) The SARS and avian influenza outbreaks illustrate that disease knows no boundaries and emphasize the importance of allowing all people access to the WHO.

(18) As the pace of globalization quickens and the spread of infectious disease accelerates, it is crucial that all people, including the people of Taiwan, be given the opportunity to participate in international health organizations such as the WHO.

(19) The Secretary of Health and Human Services acknowledged during the 2003 World Health Assembly meeting that "[t]he need for effective public health exists among all peoples".

(b) PLAN.—The Secretary of State is authorized to—

(1) initiate a United States plan to endorse and obtain observer status for Taiwan at the annual week-long summit

of the World Health Assembly each year in Geneva, Switzerland;

(2) instruct the United States delegation to the World Health Assembly in Geneva to implement that plan; and

(3) introduce a resolution in support of observer status for Taiwan at the summit of the World Health Assembly.

Deadline.

(c) REPORT CONCERNING OBSERVER STATUS FOR TAIWAN AT THE SUMMIT OF THE WORLD HEALTH ASSEMBLY.—Not later than 30 days after the date of the enactment of this Act, and not later than April 1 of each year thereafter, the Secretary of State shall submit a report to the Congress, in unclassified form, describing the United States plan to endorse and obtain observer status for Taiwan at the annual week-long summit of the World Health Assembly (WHA) held by the World Health Organization (WHO) in May of each year in Geneva, Switzerland. Each report shall include the following:

(1) An account of the efforts the Secretary of State has made, following the last meeting of the World Health Assembly, to encourage WHO member states to promote Taiwan's bid to obtain observer status.

(2) The steps the Secretary of State will take to endorse and obtain observer status at the next annual meeting of the World Health Assembly in Geneva, Switzerland.

Approved June 14, 2004.

LEGISLATIVE HISTORY—S. 2092 (H.R. 4019):

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 6, considered and passed Senate.

May 20, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

June 14, Presidential statement.

Public Law 108–236
108th Congress

Joint Resolution

Recognizing the 60th anniversary of the Allied landing at Normandy during World War II.

June 15, 2004
[S.J. Res. 28]

Whereas June 6, 2004, marks the 60th anniversary of D-Day, the first day of the Allied landing at Normandy during World War II by American, British, and Canadian troops;

Whereas the D-Day landing, known as Operation Overlord, was the most extensive amphibious operation ever to occur, involving on the first day of the operation 5,000 naval vessels, more than 11,000 sorties by Allied aircraft, and 153,000 members of the Allied Expeditionary Force;

Whereas the bravery and sacrifices of the Allied troops at 5 separate Normandy beaches and numerous paratrooper and glider landing zones began what Allied Supreme Commander Dwight D. Eisenhower called a “Crusade in Europe” to end Nazi tyranny and restore freedom and human dignity to millions of people;

Whereas that great assault by sea and air marked the beginning of the end of Hitler’s ambition for world domination;

Whereas American troops suffered over 6,500 casualties on D-Day; and

Whereas the people of the United States should honor the valor and sacrifices of their fellow countrymen, both living and dead, who fought that day for liberty and the cause of freedom in Europe: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) recognizes the 60th anniversary of the Allied landing at Normandy during World War II; and

(2) requests the President to issue a proclamation calling on the people of the United States to observe the anniversary with appropriate ceremonies and programs to honor the sacrifices of their fellow countrymen to liberate Europe.

Approved June 15, 2004.

LEGISLATIVE HISTORY—S.J. Res. 28:
CONGRESSIONAL RECORD, Vol. 150 (2004):
Apr. 1, considered and passed Senate.
June 2, considered and passed House.

Public Law 108–237
108th Congress

An Act

To encourage the development and promulgation of voluntary consensus standards by providing relief under the antitrust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes.

June 22, 2004
[H.R. 1086]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**TITLE I—STANDARDS DEVELOPMENT
ORGANIZATION ADVANCEMENT ACT
OF 2004**

Standards
Development
Organization
Advancement Act
of 2004.

SEC. 101. SHORT TITLE.

This title may be cited as the “Standards Development Organization Advancement Act of 2004”.

15 USC 4301
note.

SEC. 102. FINDINGS.

The Congress finds the following:

15 USC 4301
note.

(1) In 1993, the Congress amended and renamed the National Cooperative Research Act of 1984 (now known as the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301 et seq.)) by enacting the National Cooperative Production Amendments of 1993 (Public Law 103–42) to encourage the use of collaborative, procompetitive activity in the form of research and production joint ventures that provide adequate disclosure to the antitrust enforcement agencies about the nature and scope of the activity involved.

(2) Subsequently, in 1995, the Congress in enacting the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) recognized the importance of technical standards developed by voluntary consensus standards bodies to our national economy by requiring the use of such standards to the extent practicable by Federal agencies and by encouraging Federal agency representatives to participate in ongoing standards development activities. The Office of Management and Budget on February 18, 1998, revised Circular A–119 to reflect these changes made in law.

(3) Following enactment of the National Technology Transfer and Advancement Act of 1995, technical standards developed or adopted by voluntary consensus standards bodies have replaced thousands of unique Government standards and specifications allowing the national economy to operate in a more unified fashion.

(4) Having the same technical standards used by Federal agencies and by the private sector permits the Government to avoid the cost of developing duplicative Government standards and to more readily use products and components designed for the commercial marketplace, thereby enhancing quality and safety and reducing costs.

(5) Technical standards are written by hundreds of non-profit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A-119, as revised February 18, 1998, of the Office of Management and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

(A) notice to all parties known to be affected by the particular standards development activity,

(B) the opportunity to participate in standards development or modification,

(C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

(D) readily available access to essential information regarding proposed and final standards,

(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objections, and

(F) the right to express a position, to have it considered, and to appeal an adverse decision.

(6) There are tens of thousands of voluntary consensus standards available for government use. Most of these standards are kept current through interim amendments and interpretations, issuance of addenda, and periodic reaffirmation, revision, or reissuance every 3 to 5 years.

(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

(8) Private developers of the technical standards that are used as Government standards are often not similarly protected, leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.

(10) As was the case with respect to research and production joint ventures before the passage of the National Cooperative Research and Production Act of 1993, if relief from the threat of liability under the antitrust laws is not granted to voluntary consensus standards bodies, both regarding the development of new standards and efforts to keep existing standards current, such bodies could be forced to cut back on standards development activities at great financial cost both to the Government and to the national economy.

SEC. 103. DEFINITIONS.

Section 2 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301) is amended—

(1) in subsection (a) by adding at the end the following:

“(7) The term ‘standards development activity’ means any action taken by a standards development organization for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, or using such standard in conformity assessment activities, including actions relating to the intellectual property policies of the standards development organization.

“(8) The term ‘standards development organization’ means a domestic or international organization that plans, develops, establishes, or coordinates voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A–119, as revised February 10, 1998. The term ‘standards development organization’ shall not, for purposes of this Act, include the parties participating in the standards development organization.

“(9) The term ‘technical standard’ has the meaning given such term in section 12(d)(4) of the National Technology Transfer and Advancement Act of 1995.

“(10) The term ‘voluntary consensus standard’ has the meaning given such term in Office of Management and Budget Circular Number A–119, as revised February 10, 1998.”; and

(2) by adding at the end the following:

“(c) The term ‘standards development activity’ excludes the following activities:

“(1) Exchanging information among competitors relating to cost, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required for the purpose of developing or promulgating a voluntary consensus standard, or using such standard in conformity assessment activities.

“(2) Entering into any agreement or engaging in any other conduct that would allocate a market with a competitor.

“(3) Entering into any agreement or conspiracy that would set or restrain prices of any good or service.”.

SEC. 104. RULE OF REASON STANDARD.

Section 3 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4302) is amended by striking “of any person in making or performing a contract to carry out a joint venture shall” and inserting the following: “of—

“(1) any person in making or performing a contract to carry out a joint venture, or

“(2) a standards development organization while engaged in a standards development activity, shall”.

SEC. 105. LIMITATION ON RECOVERY.

Section 4 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4303) is amended—

(1) in subsections (a)(1), (b)(1), and (c)(1) by inserting “, or for a standards development activity engaged in by a standards development organization against which such claim is made” after “joint venture”,

(2) in subsection (e)—

(A) by inserting “, or of a standards development activity engaged in by a standards development organization” before the period at the end, and

(B) by redesignating such subsection as subsection (f), and

(3) by inserting after subsection (d) the following:

“(e) Subsections (a), (b), and (c) shall not be construed to modify the liability under the antitrust laws of any person (other than a standards development organization) who—

“(1) directly (or through an employee or agent) participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

“(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

“(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.”.

SEC. 106. ATTORNEY FEES.

Section 5 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4304) is amended—

(1) in subsection (a) by inserting “, or of a standards development activity engaged in by a standards development organization” after “joint venture”, and

(2) by adding at the end the following:

“(c) Subsections (a) and (b) shall not apply with respect to any person who—

“(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

“(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

“(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.”.

SEC. 107. DISCLOSURE OF STANDARDS DEVELOPMENT ACTIVITY.

Section 6 of the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4305) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively,

(B) by inserting “(1)” after “(a)”, and

(C) by adding at the end the following:

“(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating a voluntary consensus standards or not later than 90 days after the date of the enactment of the Standards Development Organization Advancement Act of 2004, whichever is later, file simultaneously with

Deadline.

the Attorney General and the Commission, a written notification disclosing—

“(A) the name and principal place of business of the standards development organization, and

“(B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4 to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.”,

(2) in subsection (b)—

(A) in the 1st sentence by inserting “, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms” before the period at the end, and

(B) in the last sentence by inserting “or available to such organization, as the case may be” before the period,

(3) in subsection (d)(2) by inserting “, or the standards development activity,” after “venture”,

(4) in subsection (e)—

(A) by striking “person who” and inserting “person or standards development organization that”, and

(B) by inserting “or any standards development organization” after “person” the last place it appears, and

(5) in subsection (g)(1) by inserting “or standards development organization” after “person”.

SEC. 108. RULE OF CONSTRUCTION.

15 USC 4301
note.

Nothing in this title shall be construed to alter or modify the antitrust treatment under existing law of—

(1) parties participating in standards development activity of standards development organizations within the scope of this title, including the existing standard under which the conduct of the parties is reviewed, regardless of the standard under which the conduct of the standards development organizations in which they participate are reviewed, or

(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the title.

TITLE II—ANTITRUST CRIMINAL PENALTY ENHANCEMENT AND REFORM ACT OF 2004

Antitrust
Criminal Penalty
Enhancement
and Reform Act
of 2004

SEC. 201. SHORT TITLE.

15 USC 1 note.

This title may be cited as the “Antitrust Criminal Penalty Enhancement and Reform Act of 2004”.

Subtitle A—Antitrust Enforcement Enhancements and Cooperation Incentives

15 USC 1 note.

SEC. 211. SUNSET.

(a) **IN GENERAL.**—Except as provided in subsection (b), the provisions of sections 211 through 214 shall cease to have effect 5 years after the date of enactment of this Act.

(b) **EXCEPTION.**—With respect to an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect, the provisions of sections 211 through 214 of this subtitle shall continue in effect.

15 USC 1 note.

SEC. 212. DEFINITIONS.

In this subtitle:

(1) **ANTITRUST DIVISION.**—The term “Antitrust Division” means the United States Department of Justice Antitrust Division.

(2) **ANTITRUST LENIENCY AGREEMENT.**—The term “antitrust leniency agreement,” or “agreement,” means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.

(3) **ANTITRUST LENIENCY APPLICANT.**—The term “antitrust leniency applicant,” or “applicant,” means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

(4) **CLAIMANT.**—The term “claimant” means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of the Sherman Act or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.

(5) **COOPERATING INDIVIDUAL.**—The term “cooperating individual” means, with respect to an antitrust leniency agreement, a current or former director, officer, or employee of the antitrust leniency applicant who is covered by the agreement.

(6) **PERSON.**—The term “person” has the meaning given it in subsection (a) of the first section of the Clayton Act.

15 USC 1 note.

SEC. 213. LIMITATION ON RECOVERY.

(a) **IN GENERAL.**—Subject to subsection (d), in any civil action alleging a violation of section 1 or 3 of the Sherman Act, or alleging a violation of any similar State law, based on conduct covered by a currently effective antitrust leniency agreement, the amount of damages recovered by or on behalf of a claimant from an antitrust leniency applicant who satisfies the requirements of subsection (b), together with the amounts so recovered from cooperating individuals who satisfy such requirements, shall not exceed that portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.

(b) **REQUIREMENTS.**—Subject to subsection (c), an antitrust leniency applicant or cooperating individual satisfies the requirements

of this subsection with respect to a civil action described in subsection (a) if the court in which the civil action is brought determines, after considering any appropriate pleadings from the claimant, that the applicant or cooperating individual, as the case may be, has provided satisfactory cooperation to the claimant with respect to the civil action, which cooperation shall include—

(1) providing a full account to the claimant of all facts known to the applicant or cooperating individual, as the case may be, that are potentially relevant to the civil action;

(2) furnishing all documents or other items potentially relevant to the civil action that are in the possession, custody, or control of the applicant or cooperating individual, as the case may be, wherever they are located; and

(3)(A) in the case of a cooperating individual—

(i) making himself or herself available for such interviews, depositions, or testimony in connection with the civil action as the claimant may reasonably require; and

(ii) responding completely and truthfully, without making any attempt either falsely to protect or falsely to implicate any person or entity, and without intentionally withholding any potentially relevant information, to all questions asked by the claimant in interviews, depositions, trials, or any other court proceedings in connection with the civil action; or

(B) in the case of an antitrust leniency applicant, using its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation described in clauses (i) and (ii) and subparagraph (A).

(c) **TIMELINESS.**—If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a State, or subdivision of a State, has issued compulsory process in connection with an investigation of allegations of a violation of section 1 or 3 of the Sherman Act or any similar State law based on conduct covered by the antitrust leniency agreement or after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's initial cooperation with the claimant.

(d) **CONTINUATION.**—Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 4, 4A, and 4C of the Clayton Act relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

SEC. 214. RIGHTS, AUTHORITIES, AND LIABILITIES NOT AFFECTED. 15 USC 1 note.

Nothing in this subtitle shall be construed to—

(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 213(b) from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement;

(2) create any right to challenge any decision by the Antitrust Division with respect to an antitrust leniency agreement; or

(3) affect, in any way, the joint and several liability of any party to a civil action described in section 213(a), other than that of the antitrust leniency applicant and cooperating individuals as provided in section 213(a) of this title.

SEC. 215. INCREASED PENALTIES FOR ANTITRUST VIOLATIONS.

(a) **RESTRAINT OF TRADE AMONG THE STATES.**—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by—

- (1) striking “\$10,000,000” and inserting “\$100,000,000”;
- (2) striking “\$350,000” and inserting “\$1,000,000”; and
- (3) striking “three” and inserting “10”.

(b) **MONOPOLIZING TRADE.**—Section 2 of the Sherman Act (15 U.S.C. 2) is amended by—

- (1) striking “\$10,000,000” and inserting “\$100,000,000”;
- (2) striking “\$350,000” and inserting “\$1,000,000”; and
- (3) striking “three” and inserting “10”.

(c) **OTHER RESTRAINTS OF TRADE.**—Section 3 of the Sherman Act (15 U.S.C. 3) is amended by—

- (1) striking “\$10,000,000” and inserting “\$100,000,000”;
- (2) striking “\$350,000” and inserting “\$1,000,000”; and
- (3) striking “three” and inserting “10”.

Subtitle B—Tunney Act Reform

15 USC 16 note.

SEC. 221. PUBLIC INTEREST DETERMINATION.

(a) **CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.**—

(1) **FINDINGS.**—Congress finds that—

(A) the purpose of the Tunney Act was to ensure that the entry of antitrust consent judgments is in the public interest; and

(B) it would misconstrue the meaning and Congressional intent in enacting the Tunney Act to limit the discretion of district courts to review antitrust consent judgments solely to determining whether entry of those consent judgments would make a “mockery of the judicial function”.

(2) **PURPOSES.**—The purpose of this section is to effectuate the original Congressional intent in enacting the Tunney Act and to ensure that United States settlements of civil antitrust suits are in the public interest.

(b) **PUBLIC INTEREST DETERMINATION.**—Section 5 of the Clayton Act (15 U.S.C. 16) is amended—

(1) in subsection (d), by inserting at the end the following: “Upon application by the United States, the district court may, for good cause (based on a finding that the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication), authorize an alternative method of public dissemination of the public comments received and the response to those comments.”;

(2) in subsection (e)—

(A) in the matter before paragraph (1), by—

(i) striking “court may” and inserting “court shall”;

and

(ii) inserting “(1)” before “Before”; and

(B) striking paragraphs (1) and (2) and inserting the following:

“(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

“(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

“(2) Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.”; and

(3) in subsection (g), by inserting “by any officer, director, employee, or agent of such defendant” before “, or other person”.

Approved June 22, 2004.

LEGISLATIVE HISTORY—H.R. 1086:

HOUSE REPORTS: No. 108–125 and Pt. 2 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 149 (2003): June 10, considered and passed House.

Vol. 150 (2004): Apr. 2, considered and passed Senate, amended.
June 2, House concurred in Senate amendment.



Public Law 108–238
108th Congress

An Act

June 22, 2004
[S. 1233]

To authorize assistance for the National Great Blacks in Wax Museum and Justice Learning Center.

National Great
Black Americans
Commemoration
Act of 2004.
Maryland.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Great Black Americans Commemoration Act of 2004”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Black Americans have served honorably in Congress, in senior executive branch positions, in the law, the judiciary, and other fields, yet their record of service is not well known by the public, is not included in school history lessons, and is not adequately presented in the Nation’s museums.

(2) The Great Blacks in Wax Museum, Inc. in Baltimore, Maryland, a nonprofit organization, is the Nation’s first wax museum presenting the history of great Black Americans, including those who have served in Congress, in senior executive branch positions, in the law, the judiciary, and other fields, as well as others who have made significant contributions to benefit the Nation.

(3) The Great Blacks in Wax Museum, Inc. plans to expand its existing facilities to establish the National Great Blacks in Wax Museum and Justice Learning Center, which is intended to serve as a national museum and center for presentation of wax figures and related interactive educational exhibits portraying the history of great Black Americans.

(4) The wax medium has long been recognized as a unique and artistic means to record human history through preservation of the faces and personages of people of prominence, and historically, wax exhibits were used to commemorate noted figures in ancient Egypt, Babylon, Greece, and Rome, in medieval Europe, and in the art of the Italian renaissance.

(5) The Great Blacks in Wax Museum, Inc. was founded in 1983 by Drs. Elmer and Joanne Martin, 2 Baltimore educators who used their personal savings to purchase wax figures, which they displayed in schools, churches, shopping malls, and festivals in the mid-Atlantic region.

(6) The goal of the Martins was to test public reaction to the idea of a Black history wax museum and so positive was the response over time that the museum has been heralded by the public and the media as a national treasure.

(7) The museum has been the subject of feature stories by CNN, the Wall Street Journal, the Baltimore Sun, the Washington Post, the New York Times, the Chicago Sun Times, the Dallas Morning News, the Los Angeles Times, USA Today, the Afro American Newspaper, Crisis, Essence Magazine, and others.

(8) More than 300,000 people from across the Nation visit the museum annually.

(9) The new museum will carry on the time honored artistic tradition of the wax medium; in particular, it will recognize the significant value of this medium to commemorate and appreciate great Black Americans whose faces and personages are not widely recognized.

(10) The museum will employ the most skilled artisans in the wax medium, use state-of-the-art interactive exhibition technologies, and consult with museum professionals throughout the Nation, and its exhibits will feature the following:

(A) Blacks who have served in the Senate and House of Representatives of the United States, including those who represented constituencies in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia during the 19th century.

(B) Blacks who have served in the judiciary, in the Department of Justice, as prominent attorneys, in law enforcement, and in the struggle for equal rights under the law.

(C) Black veterans of various military engagements, including the Buffalo Soldiers and Tuskegee Airmen, and the role of Blacks in the settlement of the western United States.

(D) Blacks who have served in senior executive branch positions, including members of Presidents' Cabinets, Assistant Secretaries and Deputy Secretaries of Federal agencies, and Presidential advisers.

(E) Other Blacks whose accomplishments and contributions to human history during the last millennium and to the Nation through more than 400 years are exemplary, including Black educators, authors, scientists, inventors, athletes, clergy, and civil rights leaders.

(11) The museum plans to develop collaborative programs with other museums, serve as a clearinghouse for training, technical assistance, and other resources involving use of the wax medium, and sponsor traveling exhibits to provide enriching museum experiences for communities throughout the Nation.

(12) The museum has been recognized by the State of Maryland and the City of Baltimore as a preeminent facility for presenting and interpreting Black history, using the wax medium in its highest artistic form.

(13) The museum is located in the heart of an area designated as an empowerment zone, and is considered to be a catalyst for economic and cultural improvements in this economically disadvantaged area.

SEC. 3. ASSISTANCE FOR NATIONAL GREAT BLACKS IN WAX MUSEUM AND JUSTICE LEARNING CENTER.

(a) **ASSISTANCE FOR MUSEUM.**—Subject to subsection (b), the Attorney General, acting through the Office of Justice Programs of the Department of Justice, shall, from amounts made available under subsection (c), make a grant to the Great Blacks in Wax Museum, Inc. in Baltimore, Maryland, to be used only for carrying out programs relating to civil rights and juvenile justice through the National Great Blacks in Wax Museum and Justice Learning Center.

(b) **GRANT REQUIREMENTS.**—To receive a grant under subsection (a), the Great Blacks in Wax Museum, Inc. shall submit to the Attorney General a proposal for the use of the grant, which shall include detailed plans for the programs referred to in subsection (a).

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$5,000,000, to remain available through the end of fiscal year 2009.

Approved June 22, 2004.

LEGISLATIVE HISTORY—S. 1233:

HOUSE REPORTS: No. 108–372, Pt. 1 (Comm. on Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): July 14, considered and passed Senate.

Vol. 150 (2004): June 1, considered and passed House, amended.
June 3, Senate concurred in House amendment.



Public Law 108–239
108th Congress

An Act

To designate the facility of the United States Postal Service located at 3751 West 6th Street in Los Angeles, California, as the “Dosan Ahn Chang Ho Post Office”.

June 25, 2004
[H.R. 1822]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 3751 West 6th Street in Los Angeles, California, shall be known and designated as the “Dosan Ahn Chang Ho Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Dosan Ahn Chang Ho Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 1822:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 20, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–240
108th Congress

An Act

June 25, 2004
[H.R. 2130]

To redesignate the facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, as the “New Bridge Landing Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION.

The facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, and known as the North Hackensack Station Post Office, shall be known and designated as the “New Bridge Landing Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “New Bridge Landing Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 2130:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 18, considered and passed House.
Vol. 150 (2004): June 9, considered and passed Senate.



Public Law 108–241
108th Congress

An Act

To designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the “Major Henry A. Commiskey, Sr. Post Office Building”.

June 25, 2004
[H.R. 2438]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, shall be known and designated as the “Major Henry A. Commiskey, Sr. Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Major Henry A. Commiskey, Sr. Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 2438:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 4, considered and passed House.
Vol. 150 (2004): June 9, considered and passed Senate.



Public Law 108–242
108th Congress

An Act

June 25, 2004
[H.R. 3029]

To designate the facility of the United States Postal Service located at 255 North Main Street in Jonesboro, Georgia, as the “S. Truett Cathy Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 255 North Main Street in Jonesboro, Georgia, shall be known and designated as the “S. Truett Cathy Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “S. Truett Cathy Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3029 (S. 1596):

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 4, considered and passed House.
Vol. 150 (2004): June 9, considered and passed Senate.



Public Law 108–243
108th Congress

An Act

To designate the facility of the United States Postal Service located at 304 West Michigan Street in Stuttgart, Arkansas, as the “Lloyd L. Burke Post Office”.

June 25, 2004
[H.R. 3059]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 304 West Michigan Street in Stuttgart, Arkansas, shall be known and designated as the “Lloyd L. Burke Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Lloyd L. Burke Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3059:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 24, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–244
108th Congress

An Act

June 25, 2004
[H.R. 3068]

To designate the facility of the United States Postal Service located at 2055 Siesta Drive in Sarasota, Florida, as the “Brigadier General (AUS-Ret.) John H. McLain Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 2055 Siesta Drive in Sarasota, Florida, shall be known and designated as the “Brigadier General (AUS-Ret.) John H. McLain Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Brigadier General (AUS-Ret.) John H. McLain Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3068:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 20, considered and passed House.

Vol. 150 (2004): June 9, considered and passed Senate.



Public Law 108–245
108th Congress

An Act

To designate the facility of the United States Postal Service located at 14 Chestnut Street in Liberty, New York, as the “Ben R. Gerow Post Office Building”.

June 25, 2004
[H.R. 3234]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 14 Chestnut Street in Liberty, New York, shall be known and designated as the “Ben R. Gerow Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Ben R. Gerow Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3234 (S. 1763):

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 28, considered and passed House.

Vol. 150 (2004): June 9, considered and passed Senate.



Public Law 108–246
108th Congress

An Act

June 25, 2004
[H.R. 3300]

To designate the facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, as the “Walter F. Ehrnfelt, Jr. Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, shall be known and designated as the “Walter F. Ehrnfelt, Jr. Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Walter F. Ehrnfelt, Jr. Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3300:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 18, considered and passed House.
Vol. 150 (2004): June 9, considered and passed Senate.



Public Law 108–247
108th Congress

An Act

To designate the facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, as the “George Henry White Post Office Building”.

June 25, 2004
[H.R. 3353]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, shall be known and designated as the “George Henry White Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “George Henry White Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3353:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 17, considered and passed House.
Vol. 150 (2004): June 9, considered and passed Senate.



Public Law 108–248
108th Congress

An Act

June 25, 2004
[H.R. 3536]

To designate the facility of the United States Postal Service located at 210 Main Street in Malden, Illinois, as the “Army Staff Sgt. Lincoln Hollinsaid Malden Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 210 Main Street in Malden, Illinois, shall be known and designated as the “Army Staff Sgt. Lincoln Hollinsaid Malden Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Army Staff Sgt. Lincoln Hollinsaid Malden Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3536:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 9, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–249
108th Congress

An Act

To designate the facility of the United States Postal Service located at 185 State Street in Manhattan, Illinois, as the “Army Pvt. Shawn Pahnke Manhattan Post Office”.

June 25, 2004
[H.R. 3537]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 185 State Street in Manhattan, Illinois, shall be known and designated as the “Army Pvt. Shawn Pahnke Manhattan Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Army Pvt. Shawn Pahnke Manhattan Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3537:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Mar. 9, considered and passed House.
June 9, considered and passed Senate.



Public Law 108–250
108th Congress

An Act

June 25, 2004
[H.R. 3538]

To designate the facility of the United States Postal Service located at 201 South Chicago Avenue in Saint Anne, Illinois, as the “Marine Capt. Ryan Beaupre Saint Anne Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 201 South Chicago Avenue in Saint Anne, Illinois, shall be known and designated as the “Marine Capt. Ryan Beaupre Saint Anne Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Marine Capt. Ryan Beaupre Saint Anne Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3538:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 9, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–251
108th Congress

An Act

To designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the “Barber Conable Post Office Building”.

June 25, 2004
[H.R. 3690]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, shall be known and designated as the “Barber Conable Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Barber Conable Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3690 (S. 2104):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Feb. 25, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–252
108th Congress

An Act

June 25, 2004
[H.R. 3733]

To designate the facility of the United States Postal Service located at 410 Huston Street in Altamont, Kansas, as the “Myron V. George Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 410 Huston Street in Altamont, Kansas, shall be known and designated as the “Myron V. George Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Myron V. George Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3733:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Mar. 16, considered and passed House.
June 9, considered and passed Senate.



Public Law 108–253
108th Congress

An Act

To designate the facility of the United States Postal Service located at 223 South Main Street in Roxboro, North Carolina, as the “Oscar Scott Woody Post Office Building”.

June 25, 2004
[H.R. 3740]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 223 South Main Street in Roxboro, North Carolina, shall be known and designated as the “Oscar Scott Woody Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Oscar Scott Woody Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3740 (S. 2153):

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 18, considered and passed House.

June 9, continued and passed Senate.



Public Law 108–254
108th Congress

An Act

June 25, 2004
[H.R. 3769]

To designate the facility of the United States Postal Service located at 137 East Young High Pike in Knoxville, Tennessee, as the “Ben Atchley Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 137 East Young High Pike in Knoxville, Tennessee, shall be known and designated as the “Ben Atchley Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Ben Atchley Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3769:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 2, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–255
108th Congress

An Act

To designate the facility of the United States Postal Service located at 607 Pershing Drive in Laclede, Missouri, as the “General John J. Pershing Post Office”.

June 25, 2004
[H.R. 3855]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 607 Pershing Drive in Laclede, Missouri, shall be known and designated as the “General John J. Pershing Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “General John J. Pershing Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3855 (S. 2441):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 20, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–256
108th Congress

An Act

June 25, 2004
[H.R. 3917]

To designate the facility of the United States Postal Service located at 695 Marconi Boulevard in Copiague, New York, as the “Maxine S. Postal United States Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 695 Marconi Boulevard in Copiague, New York, shall be known and designated as the “Maxine S. Postal United States Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Maxine S. Postal United States Post Office”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3917 (S. 2255):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 29, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–257
108th Congress

An Act

To redesignate the facility of the United States Postal Service located at 14–24 Abbott Road in Fair Lawn, New Jersey, as the “Mary Ann Collura Post Office Building”.

June 25, 2004
[H.R. 3939]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION.

The facility of the United States Postal Service located at 14–24 Abbott Road in Fair Lawn, New Jersey, and known as the Fair Lawn Main Post Office, shall be known and designated as the “Mary Ann Collura Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Mary Ann Collura Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3939 (S. 2291):

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 11, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–258
108th Congress

An Act

June 25, 2004
[H.R. 3942]

To redesignate the facility of the United States Postal Service located at 7 Commercial Boulevard in Middletown, Rhode Island, as the “Rhode Island Veterans Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION.

The facility of the United States Postal Service located at 7 Commercial Boulevard in Middletown, Rhode Island, is hereby redesignated as the “Rhode Island Veterans Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Rhode Island Veterans Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 3942:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 27, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–259
108th Congress

An Act

To designate the facility of the United States Postal Service located at 475 Kell Farm Drive in Cape Girardeau, Missouri, as the “Richard G. Wilson Processing and Distribution Facility”.

June 25, 2004
[H.R. 4037]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 475 Kell Farm Drive in Cape Girardeau, Missouri, shall be known and designated as the “Richard G. Wilson Processing and Distribution Facility”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Richard G. Wilson Processing and Distribution Facility”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 4037 (S. 2442):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 20, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–260
108th Congress

An Act

June 25, 2004
[H.R. 4176]

To designate the facility of the United States Postal Service located at 122 West Elwood Avenue in Raeford, North Carolina, as the “Bobby Marshall Gentry Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 122 West Elwood Avenue in Raeford, North Carolina, shall be known and designated as the “Bobby Marshall Gentry Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Bobby Marshall Gentry Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 4176:

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 17, 18, considered and passed House.

June 9, considered and passed Senate.



Public Law 108–261
108th Congress

An Act

To designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the “Dr. Miguel A. Nevárez Post Office Building”.

June 25, 2004
[H.R. 4299]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, shall be known and designated as the “Dr. Miguel A. Nevárez Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Dr. Miguel A. Nevárez Post Office Building”.

Approved June 25, 2004.

LEGISLATIVE HISTORY—H.R. 4299:

CONGRESSIONAL RECORD, Vol. 150 (2004):
May 11, considered and passed House.
June 9, considered and passed Senate.



Public Law 108–262
108th Congress

An Act

June 30, 2004
[H.R. 4589]

To reauthorize the Temporary Assistance for Needy Families block grant program through September 30, 2004, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TANF and
Related
Programs
Continuation
Act of 2004.
42 USC 1305
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “TANF and Related Programs Continuation Act of 2004”.

SEC. 2. EXTENSION OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT PROGRAM THROUGH SEPTEMBER 30, 2004.

(a) **IN GENERAL.**—Activities authorized by part A of title IV of the Social Security Act, and by sections 510, 1108(b), and 1925 of such Act, shall continue through September 30, 2004, in the manner authorized for fiscal year 2002, notwithstanding section 1902(e)(1)(A) of such Act, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the fourth quarter of fiscal year 2004 at the level provided for such activities through the fourth quarter of fiscal year 2002.

(b) **CONFORMING AMENDMENT.**—Section 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C. 603(a)(3)(H)(ii)) is amended by striking “June 30” and inserting “September 30”.

SEC. 3. EXTENSION OF THE NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE AND CHILD WELFARE WAIVER AUTHORITY THROUGH SEPTEMBER 30, 2004.

Activities authorized by sections 429A and 1130(a) of the Social Security Act shall continue through September 30, 2004, in the manner authorized for fiscal year 2002, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the fourth quarter of fiscal year 2004

at the level provided for such activities through the fourth quarter of fiscal year 2002.

Approved June 30, 2004.

LEGISLATIVE HISTORY—H.R. 4589:

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 22, considered and passed House and Senate.



Public Law 108–263
108th Congress

An Act

June 30, 2004
[H.R. 4635]

To provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

Surface
Transportation
Extension Act of
2004, Part III.
23 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Surface Transportation Extension Act of 2004, Part III”.

SEC. 2. ADVANCES.

(a) **IN GENERAL.**—Section 2(a) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 104 note; 117 Stat. 1110; 118 Stat. 478; 118 Stat. 627) is amended by striking “and the Surface Transportation Extension Act of 2004, Part II” and inserting “the Surface Transportation Extension Act of 2004, Part II, and the Surface Transportation Extension Act of 2004, Part III”.

(b) **PROGRAMMATIC DISTRIBUTIONS.**—

(1) **SPECIAL RULES FOR MINIMUM GUARANTEE.**—Section 2(b)(4) of such Act is amended by striking “\$2,100,000,000” and inserting “\$2,333,333,333”.

(2) **EXTENSION OF OFF-SYSTEM BRIDGE SETASIDE.**—Section 144(g)(3) of title 23, United States Code, is amended by striking “June 30” inserting “July 31”.

(c) **AUTHORIZATION OF CONTRACT AUTHORITY.**—Section 1101(c)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1111; 118 Stat. 478; 118 Stat. 627) is amended by striking “\$24,270,225,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$26,998,288,667 for the period of October 1, 2003, through July 31, 2004”.

(d) **LIMITATION ON OBLIGATIONS.**—Section 2(e) of the Surface Transportation Extension Act of 2003 (117 Stat. 1111; 118 Stat. 478; 118 Stat. 627) is amended—

(1) in the matter preceding subparagraph (A) of paragraph (1) by striking “June 30” and inserting “July 31”;

(2) in paragraph (1)(A)—

(A) by striking “of 2004 and” and inserting “of 2004,”;

(B) by inserting after “Part II” the following: “, and the Surface Transportation Extension Act of 2004, Part III”; and

(C) by striking “and such Act” and inserting “ and such Acts”;

(3) in paragraph (1)(B) by striking “ $\frac{9}{12}$ ” and inserting “ $\frac{10}{12}$ ”;

(4) in paragraph (2)—

(A) by striking “June 30” and inserting “July 31”;

(B) by striking “\$25,382,250,000” and inserting “\$28,202,500,000”; and

(C) by striking “\$479,250,000” and inserting “\$532,500,000”; and

(5) in paragraph (3) by striking “June 30” and inserting “July 31”.

SEC. 3. ADMINISTRATIVE EXPENSES.

Section 4(a) of the Surface Transportation Extension Act of 2003 (117 Stat. 1113; 118 Stat. 479; 118 Stat. 628) is amended by striking “\$337,500,000” and inserting “\$343,628,000”.

SEC. 4. OTHER FEDERAL-AID HIGHWAY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE I OF TEA–21.—

(1) FEDERAL LANDS HIGHWAYS.—

(A) INDIAN RESERVATION ROADS.—Section 1101(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112; 117 Stat. 1113; 118 Stat. 479; 118 Stat. 628) is amended—

(i) in the first sentence by striking “\$206,250,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$229,166,667 for the period of October 1, 2003, through July 31, 2004”; and

(ii) in the second sentence by striking “\$9,750,000” and inserting “\$10,833,333”.

(B) PUBLIC LANDS HIGHWAYS.—Section 1101(a)(8)(B) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480; 118 Stat. 628) is amended by striking “\$184,500,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$205,000,000 for the period of October 1, 2003, through July 31, 2004”.

(C) PARK ROADS AND PARKWAYS.—Section 1101(a)(8)(C) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480; 118 Stat. 628) is amended by striking “\$123,750,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$137,500,000 for the period of October 1, 2003, through July 31, 2004”.

(D) REFUGE ROADS.—Section 1101(a)(8)(D) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480; 118 Stat. 628) is amended by striking “\$15,000,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$16,666,667 for the period of October 1, 2003, through July 31, 2004”.

(2) NATIONAL CORRIDOR PLANNING AND DEVELOPMENT AND COORDINATED BORDER INFRASTRUCTURE PROGRAMS.—Section 1101(a)(9) of such Act (112 Stat. 112; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 628) is amended by striking “\$105,000,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$116,666,667 for the period of October 1, 2003, through July 31, 2004”.

(3) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—

(A) IN GENERAL.—Section 1101(a)(10) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 628) is amended by striking “\$28,500,000 for the period of

October 1, 2003, through June 30, 2004” and inserting “\$31,666,667 for the period of October 1, 2003, through July 31, 2004”.

(B) SET ASIDE FOR ALASKA, NEW JERSEY, AND WASHINGTON.—Section 5(a)(3)(B) of the Surface Transportation Extension Act of 2003 (117 Stat. 1114; 118 Stat. 480; 118 Stat. 628) is amended—

(i) in clause (i) by striking “\$7,500,000” and inserting “\$8,333,333”;

(ii) in clause (ii) by striking “\$3,750,000” and inserting “\$4,166,667”; and

(iii) in clause (iii) by striking “\$3,750,000” and inserting “\$4,166,667”.

(4) NATIONAL SCENIC BYWAYS PROGRAM.—Section 1101(a)(11) of the Transportation Equity Act for the 21st Century (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 629) is amended by striking “\$20,625,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$22,916,667 for the period of October 1, 2003, through July 31, 2004”.

(5) VALUE PRICING PILOT PROGRAM.—Section 1101(a)(12) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 629) is amended by striking “\$8,250,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$9,166,667 for the period of October 1, 2003, through July 31, 2004”.

(6) HIGHWAY USE TAX EVASION PROJECTS.—Section 1101(a)(14) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 629) is amended by striking “\$3,750,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$4,166,667 for the period of October 1, 2003, through July 31, 2004”.

(7) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—Section 1101(a)(15) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 481; 118 Stat. 629) is amended by striking “\$82,500,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$91,666,667 for the period of October 1, 2003, through July 31, 2004”.

(8) SAFETY GRANTS.—Section 1212(i)(1)(D) of such Act (23 U.S.C. 402 note; 112 Stat. 196; 112 Stat. 840; 117 Stat. 1114; 118 Stat. 481; 118 Stat. 629) is amended by striking “\$375,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$416,667 for the period of October 1, 2003, through July 31, 2004”.

(9) TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM.—Section 1221(e)(1) of such Act (23 U.S.C. 101 note; 112 Stat. 223; 117 Stat. 1114; 118 Stat. 481; 118 Stat. 629) is amended by striking “\$18,750,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$20,833,333 for the period of October 1, 2003, through July 31, 2004”.

(10) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION.—Section 188 of title 23, United States Code, is amended—

(A) by striking subsection (a)(1)(F) and inserting the following:

“(F) \$116,666,667 for the period of October 1, 2003, through July 31, 2004.”;

(B) in subsection (a)(2) by striking “\$1,500,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$1,666,667 for the period of October 1, 2003, through July 31, 2004”; and

(C) in the item relating to fiscal year 2004 in the table contained in subsection (c) by striking “\$1,950,000,000” and inserting “\$2,166,666,667”.

(b) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE V OF TEA-21.—

(1) SURFACE TRANSPORTATION RESEARCH.—Section 5001(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 419; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630) is amended by striking “\$78,750,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$87,500,000 for the period of October 1, 2003, through July 31, 2004”.

(2) TECHNOLOGY DEPLOYMENT PROGRAM.—Section 5001(a)(2) of such Act (112 Stat. 419; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630) is amended by striking “\$41,250,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$45,833,333 for the period of October 1, 2003, through July 31, 2004”.

(3) TRAINING AND EDUCATION.—Section 5001(a)(3) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630) is amended by striking “\$15,750,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$17,500,000 for the period of October 1, 2003, through July 31, 2004”.

(4) BUREAU OF TRANSPORTATION STATISTICS.—Section 5001(a)(4) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630) is amended by striking “\$23,250,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$25,833,333 for the period of October 1, 2003, through July 31, 2004”.

(5) ITS STANDARDS, RESEARCH, OPERATIONAL TESTS, AND DEVELOPMENT.—Section 5001(a)(5) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630) is amended by striking “\$86,250,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$95,833,333 for the period of October 1, 2003, through July 31, 2004”.

(6) ITS DEPLOYMENT.—Section 5001(a)(6) of such Act (112 Stat. 420; 117 Stat. 1116; 118 Stat. 482; 118 Stat. 630) is amended by striking “\$93,000,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$103,333,333 for the period of October 1, 2003, through July 31, 2004”.

(7) UNIVERSITY TRANSPORTATION RESEARCH.—Section 5001(a)(7) of such Act (112 Stat. 420; 117 Stat. 1116; 118 Stat. 482; 118 Stat. 630) is amended by striking “\$20,250,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$22,500,000 for the period of October 1, 2003, through July 31, 2004”.

(c) METROPOLITAN PLANNING.—Section 5(c)(1) of the Surface Transportation Extension Act of 2003 (117 Stat. 1116; 118 Stat. 482; 118 Stat. 630) is amended by striking “\$180,000,000 for the period of October 1, 2003, through June 30, 2004” and inserting

“\$200,000,000 for the period of October 1, 2003, through July 31, 2004”.

(d) TERRITORIES.—Section 1101(d)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1116; 118 Stat. 482; 118 Stat. 630) is amended by striking “\$27,300,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$30,333,333 for the period of October 1, 2003, through July 31, 2004”.

(e) ALASKA HIGHWAY.—Section 1101(e)(1) of such Act (117 Stat. 1116; 118 Stat. 482; 118 Stat. 630) is amended by striking “\$14,100,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$15,666,667 for the period of October 1, 2003, through July 31, 2004”.

(f) OPERATION LIFESAVER.—Section 1101(f)(1) of such Act (117 Stat. 1117; 118 Stat. 482; 118 Stat. 631) is amended by striking “\$375,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$416,667 for the period of October 1, 2003, through July 31, 2004”.

(g) BRIDGE DISCRETIONARY.—Section 1101(g)(1) of such Act (117 Stat. 1117; 118 Stat. 482; 118 Stat. 631) is amended—

(1) by striking “\$75,000,000” and inserting “\$83,333,333”; and

(2) by striking “June 30” and inserting “July 31”.

(h) INTERSTATE MAINTENANCE.—Section 1101(h)(1) of such Act (117 Stat. 1117; 118 Stat. 482; 118 Stat. 631) is amended—

(1) by striking “\$75,000,000” and inserting “\$83,333,333”; and

(2) by striking “June 30” and inserting “July 31”.

(i) RECREATIONAL TRAILS ADMINISTRATIVE COSTS.—Section 1101(i)(1) of such Act (117 Stat. 1117; 118 Stat. 482; 118 Stat. 631) is amended by striking “\$562,500 for the period of October 1, 2003, through June 30, 2004” and inserting “\$625,000 for the period of October 1, 2003, through July 31, 2004”.

(j) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—Section 1101(j)(1) of such Act (117 Stat. 1118; 118 Stat. 482; 118 Stat. 631) is amended—

(1) by striking “\$3,937,500” and inserting “\$4,375,000”;

(2) by striking “\$187,500” and inserting “\$208,833”; and

(3) by striking “June 30” each place it appears and inserting “July 31”.

(k) NONDISCRIMINATION.—Section 1101(k) of such Act (117 Stat. 1118; 118 Stat. 482; 118 Stat. 631) is amended—

(1) in paragraph (1) by striking “\$7,500,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$8,333,333 for the period of October 1, 2003, through July 31, 2004”; and

(2) in paragraph (2) by striking “\$7,500,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$8,333,333 for the period of October 1, 2003, through July 31, 2004”.

(l) ADMINISTRATION OF FUNDS.—Section 5(l) of the Surface Transportation Extension Act of 2003 (117 Stat. 1118; 118 Stat. 483; 118 Stat. 631) is amended—

(1) by striking “and section 4 of the Surface Transportation Extension Act of 2004, Part II” and inserting “section 4 of the Surface Transportation Extension Act of 2004, Part II,

and section 4 of the Surface Transportation Extension Act of 2004, Part III”;

(2) by striking “or the amendment made by section 4(a)(1) of the Surface Transportation Extension Act, Part II” and inserting “the amendment made by section 4(a)(1) of the Surface Transportation Extension Act, Part II, or the amendment made by section 4(a)(1) of the Surface Transportation Extension Act, Part III”.

(m) REDUCTION OF ALLOCATED PROGRAMS.—Section 5(m) of such Act (117 Stat. 1119; 118 Stat. 483; 118 Stat. 632) is amended—

(1) by striking “and section 4 of the Surface Transportation Extension Act of 2004, Part II” and inserting “section 4 of the Surface Transportation Extension Act of 2004, Part II, and section 4 of the Surface Transportation Extension Act of 2004, Part III”;

(2) by striking the second comma following “by this section” the second place it appears; and

(3) by striking “and by section 4 of the Surface Transportation Extension Act of 2004, Part II” each place it appears and inserting “by section 4 of the Surface Transportation Extension Act of 2004, Part II, and by section 4 of the Surface Transportation Extension Act of 2004, Part III”.

(n) PROGRAM CATEGORY RECONCILIATION.—Section 5(n) of such Act (117 Stat. 1119; 118 Stat. 483; 118 Stat. 632) is amended by striking “and section 4 of the Surface Transportation Extension Act of 2004, Part II” and inserting “section 4 of the Surface Transportation Extension Act of 2004, Part II, and section 4 of the Surface Transportation Extension Act of 2004, Part III”.

SEC. 5. EXTENSION OF HIGHWAY SAFETY PROGRAMS.

(a) SEAT BELT SAFETY INCENTIVE GRANTS.—Section 157(g)(1) of title 23, United States Code, is amended by striking “\$84,000,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$93,333,333 for the period of October 1, 2003, through July 31, 2004”.

(b) PREVENTION OF INTOXICATED DRIVER INCENTIVE GRANTS.—Section 163(e)(1) of such title is amended by striking “\$90,000,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$100,000,000 for the period of October 1, 2003, through July 31, 2004”.

SEC. 6. SPORT FISHING AND BOATING SAFETY.

(a) FUNDING FOR NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—Section 4(c)(6) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(c)(6)) is amended to read as follows:

“(6) \$8,333,332 for the period of October 1, 2003, through July 31, 2004;”.

(b) CLEAN VESSEL ACT FUNDING.—Section 4(b)(4) of such Act (16 U.S.C. 777c(b)(4)) is amended—

(1) in the paragraph heading by striking “9 MONTHS” and inserting “10 MONTHS”;

(2) in the matter preceding subparagraph (A)—

(A) by striking “April 30” and inserting “July 31”; and

(B) by striking “\$61,499,999” and inserting “\$68,333,332”;

(3) in subparagraph (A) by striking “\$7,499,999” and inserting “\$8,333,332”; and

(4) in subparagraph (B) by striking “\$6,000,001” and inserting “\$6,666,668”.

(c) BOAT SAFETY FUNDS.—Section 13106(c) of title 46, United States Code, is amended—

- (1) by striking “\$3,750,001” and inserting “\$4,166,668”; and
- (2) by striking “\$1,500,001” and inserting “\$1,666,668”.

SEC. 7. EXTENSION OF FEDERAL TRANSIT PROGRAMS.

(a) ALLOCATING AMOUNTS.—Section 5309(m) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking “June 30, 2004” each place it appears and inserting “July 31, 2004”;

(B) in subparagraph (A) by striking “\$899,540,711” and inserting “\$999,489,679”;

(C) in subparagraph (B) by striking “\$986,987,712” and inserting “\$1,096,653,013”; and

(D) in subparagraph (C) by striking “\$452,713,140” and inserting “\$503,014,600”;

(2) by striking paragraph (2)(B)(iii) and inserting the following:

“(iii) OCTOBER 1, 2003 THROUGH JULY 31, 2004.—Of the amounts made available under paragraph (1)(B), \$8,615,533 shall be available for the period beginning on October 1, 2003, and ending on July 31, 2004, for capital projects described in clause (i).”;

(3) in paragraph (3)(B)—

(A) by striking “\$2,236,725” and inserting “\$2,485,250”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(4) in paragraph (3)(C)—

(A) by striking “\$37,278,750” and inserting “\$41,420,833”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”.

(b) APPORTIONMENT OF APPROPRIATIONS FOR FIXED GUIDEWAY MODERNIZATION.—The heading for section 8(b)(1) of the Surface Transportation Extension Act of 2003 (49 U.S.C. 5337 note) is amended by striking “JUNE 30, 2004” and inserting “JULY 31, 2004”.

(c) FORMULA GRANTS AUTHORIZATIONS.—Section 5338(a) of title 49, United States Code, is amended—

(1) in the heading to paragraph (2) by striking “JUNE 30, 2004” and inserting “JULY 31, 2004”;

(2) in paragraph (2)(A)(vi)—

(A) by striking “\$2,289,809,940” and inserting “\$2,544,233,267”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”;

(3) in paragraph (2)(B)(vi)—

(A) by striking “\$572,452,485” and inserting “\$636,058,317”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(4) in paragraph (2)(C) by striking “June 30, 2004” and inserting “July 31, 2004”.

(d) FORMULA GRANT FUNDS.—Section 8(d) of the Surface Transportation Extension Act of 2003 (118 Stat. 633) is amended to read as follows:

“(d) ALLOCATION OF FORMULA GRANT FUNDS FOR OCTOBER 1, 2003, THROUGH JULY 31, 2004.—Of the aggregate of amounts made available by or appropriated under section 5338(a)(2) of title 49, United States Code, for the period of October 1, 2003, through July 31, 2004—

“(1) \$4,017,779 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307 of such title;

“(2) \$41,420,833 shall be available for bus and bus facilities grants under section 5309 of such title;

“(3) \$75,098,291 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310 of such title;

“(4) \$199,323,382 shall be available to provide financial assistance for other than urbanized areas under section 5311 of such title;

“(5) \$5,757,496 shall be available to provide financial assistance in accordance with section 3038(g) of the Transportation Equity Act for the 21st Century; and

“(6) \$2,854,673,803 shall be available to provide financial assistance for urbanized areas under section 5307 of such title.”.

(e) CAPITAL PROGRAM AUTHORIZATIONS.—Section 5338(b)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “JUNE 30, 2004” and inserting “JULY 31, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$1,871,393,250” and inserting “\$2,079,325,834”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$467,848,313” and inserting “\$519,831,458”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”.

(f) PLANNING AUTHORIZATIONS AND ALLOCATIONS.—Section 5338(c)(2) of such title is amended—

(1) in the heading by striking “JUNE 30, 2004” and inserting “JULY 31, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$43,690,695” and inserting “\$48,545,217”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$10,736,280” and inserting “\$11,929,200”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”.

(g) RESEARCH AUTHORIZATIONS.—Section 5338(d)(2) of such title is amended—

(1) in the heading by striking “JUNE 30, 2004” and inserting “JULY 31, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$31,463,265” and inserting “\$34,959,183”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”;

(3) in subparagraph (B)(vi)—

(A) by striking “\$8,052,210” and inserting “\$8,946,900”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(4) in subparagraph (C) by striking “June 30, 2004” and inserting “July 31, 2004”.

(h) RESEARCH FUNDS.—Section 8(h) of the Surface Transportation Extension Act of 2003 (118 Stat. 635) is amended to read as follows:

“(h) ALLOCATION OF RESEARCH FUNDS FOR OCTOBER 1, 2003, THROUGH JULY 31, 2004.—Of the funds made available by or appropriated under section 5338(d)(2) of title 49, United States Code, for the period of October 1, 2003, through July 31, 2004—

“(1) not less than \$4,349,188 shall be available for providing rural transportation assistance under section 5311(b)(2) of such title;

“(2) not less than \$6,834,438 shall be available for carrying out transit cooperative research programs under section 5313(a) of such title;

“(3) not less than \$3,313,667 shall be available to carry out programs under the National Transit Institute under section 5315 of such title, including not more than \$828,416 to carry out section 5315(a)(16) of such title; and

“(4) any amounts not made available under paragraphs (1) through (3) shall be available for carrying out national planning and research programs under sections 5311(b)(2), 5312, 5313(a), 5314, and 5322 of such title.”.

(i) UNIVERSITY TRANSPORTATION RESEARCH AUTHORIZATIONS.—Section 5338(e)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “JUNE 30, 2004” and inserting “JULY 31, 2004”;

(2) in subparagraph (A)—

(A) by striking “\$3,578,760” and inserting “\$3,976,400”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”;

(3) in subparagraph (B)—

(A) by striking “\$894,690” and inserting “\$994,100”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(4) in subparagraph (C) by striking “June 30, 2004” each place it appears and inserting “July 31, 2004”.

(j) UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—

(1) IN GENERAL.—Section 8(j) of the Surface Transportation Extension Act of 2003 (118 Stat. 635) is amended to read as follows:

“(j) ALLOCATION OF UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—

“(1) IN GENERAL.—Of the amounts made available under section 5338(e)(2)(A) of title 49, United States Code, for the period October 1, 2003, through July 31, 2004—

“(A) \$1,656,833 shall be available for the center identified in section 5505(j)(4)(A) of such title; and

“(B) \$1,656,833 shall be available for the center identified in section 5505(j)(4)(F) of such title.

“(2) TRAINING AND CURRICULUM DEVELOPMENT.—Notwithstanding section 5338(e)(2) of title 49, United States Code, any amounts made available under such section for the period October 1, 2003, through July 31, 2004, that remain after distribution under paragraph (1), shall be available for the purposes specified in section 3015(d) of the Transportation Equity Act for the 21st Century (112 Stat. 857).”.

(2) CONFORMING AMENDMENT.—Section 3015(d)(2) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5338 note; 112 Stat. 857; 118 Stat. 487; 118 Stat. 636) is amended by striking “June 30, 2004” and inserting “July 31, 2004”.

(k) ADMINISTRATION AUTHORIZATIONS.—Section 5338(f)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “JUNE 30, 2004” and inserting “JULY 31, 2004”;

(2) in subparagraph (A)(vi)—

(A) by striking “\$45,032,730” and inserting “\$50,036,366”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(3) in subparagraph (B)(vi)—

(A) by striking “\$11,258,183” and inserting “\$12,509,093”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”.

(l) JOB ACCESS AND REVERSE COMMUTE PROGRAM.—Section 3037(l) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note) is amended—

(1) in paragraph (1)(A)(vi)—

(A) by striking “\$74,557,500” and inserting “\$82,841,667”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”;

(2) in paragraph (1)(B)(vi)—

(A) by striking “\$18,639,375” and inserting “\$20,710,416”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”;

(3) in paragraph (2) by striking “June 30, 2004, \$7,455,750” and inserting “July 31, 2004, \$8,284,166”; and

(4) in paragraph (4) by striking “\$14,911,500” and inserting “\$16,568,333”.

(m) RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.—Section 3038(g) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) is amended—

(1) in paragraph (1)(F)—

(A) by striking “\$3,914,268” and inserting “\$4,349,188”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(2) in paragraph (2)—

(A) by striking “\$1,267,478” and inserting “\$1,408,308”; and

(B) by striking “June 30, 2004” and inserting “July 31, 2004”.

(n) URBANIZED AREA FORMULA GRANTS.—Section 5307(b)(2) of title 49, United States Code, is amended—

(1) in the heading by striking “JUNE 30, 2004” and inserting “JULY 31, 2004”; and

(2) in subparagraph (A) by striking “June 30, 2004” and inserting “July 31, 2004”;

(o) OBLIGATION CEILING.—Section 3040(6) of the Transportation Equity Act for the 21st Century (112 Stat. 394; 118 Stat. 637) is amended—

(1) by striking “\$5,449,407,675” and inserting “\$6,054,897,417”; and

(2) by striking “June 30, 2004” and inserting “July 31, 2004”.

(p) FUEL CELL BUS AND BUS FACILITIES PROGRAM.—Section 3015(b) of the Transportation Equity Act for the 21st Century (112 Stat. 361; 118 Stat. 637) is amended—

(1) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(2) by striking “\$3,616,039” and inserting “\$4,017,821”.

(q) ADVANCED TECHNOLOGY PILOT PROJECT.—Section 3015(c)(2) of the Transportation Equity Act for the 21st Century (49 U.S.C. 322 note; 118 Stat. 637) is amended—

(1) by striking “June 30, 2004” and inserting “July 31, 2004”; and

(2) by striking “\$3,727,876” and inserting “\$4,142,083”.

(r) PROJECTS FOR NEW FIXED GUIDEWAY SYSTEMS AND EXTENSIONS TO EXISTING SYSTEMS.—Section 3030 of the Transportation Equity Act for the 21st Century (112 Stat. 373; 118 Stat. 637) is amended by striking “June 30, 2004” each place it appears and inserting “July 31, 2004”.

(s) NEW JERSEY URBAN CORE PROJECT.—Section 3031(a)(3) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2122; 112 Stat. 379; 117 Stat. 1126; 118 Stat. 489; 118 Stat. 637) is amended by striking “June 30, 2004” each place it appears and inserting “July 31, 2004”.

(t) TREATMENT OF FUNDS.—Section 8(t) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 101 note; 118 Stat. 637) is amended—

(1) in paragraph (1) by striking “and by section 7 of the Surface Transportation Extension Act of 2004, Part II” and inserting “, by section 7 of the Surface Transportation Extension Act of 2004, Part II, and by section 7 of the Surface Transportation Extension Act of 2004, Part III”; and

(2) in paragraph (2) by striking “⁹/₁₂” and inserting “¹⁰/₁₂”.

(u) LOCAL SHARE.—Section 3011(a) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5307 note; 118 Stat. 637) is amended by striking “June 30” and inserting “July 31”.

SEC. 8. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION PROGRAMS.

(a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2009(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 337; 117 Stat. 1119; 118 Stat. 489; 118 Stat. 637) is amended

23 USC 322 note.

by striking “, and \$123,019,875 for the period of October 1, 2003, through June 30, 2004” and inserting “, and \$136,688,750 for the period of October 1, 2003, through July 31, 2004”.

(b) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2009(a)(2) of such Act (112 Stat. 337; 117 Stat. 1119; 118 Stat. 489; 118 Stat. 637) is amended by striking “\$53,681,400 for the period of October 1, 2003, through June 30, 2004” and inserting “\$59,646,000 for the period of October 1, 2003, through July 31, 2004”.

(c) OCCUPANT PROTECTION INCENTIVE GRANTS.—Section 2009(a)(3) of such Act (112 Stat. 337; 117 Stat. 1120; 118 Stat. 489; 118 Stat. 638) is amended by striking “\$14,911,500 for the period of October 1, 2003, through June 30, 2004” and inserting “\$16,568,333 for the period of October 1, 2003, through July 31, 2004”.

(d) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANTS.—Section 2009(a)(4) of such Act (112 Stat. 337; 117 Stat. 1120; 118 Stat. 489; 118 Stat. 638) is amended by striking “\$29,823,000 for the period of October 1, 2003, through June 30, 2004” and inserting “\$33,136,667 for the period of October 1, 2003, through July 31, 2004”.

(e) NATIONAL DRIVER REGISTER.—Section 2009(a)(6) of such Act (112 Stat. 338; 117 Stat. 1120; 118 Stat. 638) is amended by striking “\$2,684,070 for the period of October 1, 2003, through June 30, 2004” and inserting “\$2,982,300 for the period of October 1, 2003, through July 31, 2004”.

SEC. 9. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PROGRAM.

(a) ADMINISTRATIVE EXPENSES.—Section 7(a)(1) of the Surface Transportation Extension Act of 2003 (117 Stat. 1120; 118 Stat. 490; 118 Stat. 638) is amended by striking “\$131,811,967 for the period October 1, 2003 through June 30, 2004” and inserting “\$146,725,000 for the period October 1, 2003, through July 31, 2004”.

(b) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—Section 31104(a)(7) of title 49, United States Code, is amended to read as follows:

“(7) Not more than \$140,833,333 for the period of October 1, 2003, through July 31, 2004.”.

(c) INFORMATION SYSTEMS AND COMMERCIAL DRIVER’S LICENSE GRANTS.—

(1) AUTHORIZATION OF APPROPRIATION.—Section 31107(a)(5) of such title is amended to read as follows:

“(5) \$16,666,667 for the period of October 1, 2003, through July 31, 2004.”.

(2) EMERGENCY CDL GRANTS.—Section 7(c)(2) of the Surface Transportation Extension Act of 2003 (117 Stat. 1121; 118 Stat. 490; 118 Stat. 638) is amended—

(A) by striking “June 30,” and inserting “July 31,”; and

(B) by striking “\$748,634” and inserting “\$833,333”.

(d) CRASH CAUSATION STUDY.—Section 7(d) of such Act (117 Stat. 1121; 118 Stat. 490; 118 Stat. 638) is amended—

(1) by striking “\$748,634” and inserting “\$833,333”; and

(2) by striking “June 30” and inserting “July 31”.

**SEC. 10. EXTENSION OF AUTHORIZATION FOR USE OF TRUST FUNDS
FOR OBLIGATIONS UNDER TEA-21.**

(a) HIGHWAY TRUST FUND.—

26 USC 9503.

(1) IN GENERAL.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1986 is amended—

(A) in the matter before subparagraph (A), by striking “July 1, 2004” and inserting “August 1, 2004”,

(B) by striking “or” at the end of subparagraph (G),

(C) by striking the period at the end of subparagraph (H) and inserting “, or”,

(D) by inserting after subparagraph (H), the following new subparagraph:

“(I) authorized to be paid out of the Highway Trust Fund under the Surface Transportation Extension Act of 2004, Part III.”, and

(E) in the matter after subparagraph (I), as added by this paragraph, by striking “Surface Transportation Extension Act of 2004, Part II” and inserting “Surface Transportation Extension Act of 2004, Part III”.

(2) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) of such Code is amended—

(A) in the matter before subparagraph (A), by striking “July 1, 2004” and inserting “August 1, 2004”,

(B) in subparagraph (E), by striking “or” at the end of such subparagraph,

(C) in subparagraph (F), by inserting “, or” at the end of such subparagraph,

(D) by inserting after subparagraph (F) the following new subparagraph:

“(G) the Surface Transportation Extension Act of 2004, Part III.”, and

(E) in the matter after subparagraph (G), as added by this paragraph, by striking “Surface Transportation Extension Act of 2004, Part II” and inserting “Surface Transportation Extension Act of 2004, Part III”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 9503(b)(5) of such Code is amended by striking “July 1, 2004” and inserting “August 1, 2004”.

(b) AQUATIC RESOURCES TRUST FUND.—

26 USC 9504.

(1) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) of the Internal Revenue Code of 1986 is amended by striking “Surface Transportation Extension Act of 2004, Part II” each place it appears and inserting “Surface Transportation Extension Act of 2004, Part III”.

(2) BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 of such Code is amended—

(A) by striking “July 1, 2004” and inserting “August 1, 2004”, and

(B) by striking “Surface Transportation Extension Act of 2004, Part II” and inserting “Surface Transportation Extension Act of 2004, Part III”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) of such Code is amended by striking “July 1, 2004” and inserting “August 1, 2004”.

23 USC 9503
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(d) TEMPORARY RULE REGARDING ADJUSTMENTS.—During the period beginning on the date of the enactment of the Surface Transportation Extension Act of 2003 and ending on July 31, 2004, for purposes of making any estimate under section 9503(d) of the Internal Revenue Code of 1986 of receipts of the Highway Trust Fund, the Secretary of the Treasury shall treat—

(1) each expiring provision of paragraphs (1) through (4) of section 9503(b) of such Code which is related to appropriations or transfers to such Fund to have been extended through the end of the 24-month period referred to in section 9503(d)(1)(B) of such Code, and

(2) with respect to each tax imposed under the sections referred to in section 9503(b)(1) of such Code, the rate of such tax during the 24-month period referred to in section 9503(d)(1)(B) of such Code to be the same as the rate of such tax as in effect on the date of the enactment of the Surface Transportation Extension Act of 2003.

Approved June 30, 2004.

LEGISLATIVE HISTORY—H.R. 4635:

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 23, considered and passed House and Senate.



Public Law 108–264
108th Congress

An Act

June 30, 2004
[S. 2238]

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Bunning-
Bereuter-
Blumenauer
Flood Insurance
Reform Act of
2004.
42 USC 4001
note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Congressional findings.

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

- Sec. 101. Extension of program and consolidation of authorizations.
- Sec. 102. Establishment of pilot program for mitigation of severe repetitive loss properties.
- Sec. 103. Amendments to existing flood mitigation assistance program.
- Sec. 104. FEMA authority to fund mitigation activities for individual repetitive claims properties.
- Sec. 105. Amendments to additional coverage for compliance with land use and control measures.
- Sec. 106. Actuarial rate properties.
- Sec. 107. Geospatial digital flood hazard data.
- Sec. 108. Replacement of mobile homes on original sites.
- Sec. 109. Reiteration of FEMA responsibility to map mudslides.

TITLE II—MISCELLANEOUS PROVISIONS

- Sec. 201. Definitions.
- Sec. 202. Supplemental forms.
- Sec. 203. Acknowledgement form.
- Sec. 204. Flood insurance claims handbook.
- Sec. 205. Appeal of decisions relating to flood insurance coverage.
- Sec. 206. Study and report on use of cost compliance coverage.
- Sec. 207. Minimum training and education requirements.
- Sec. 208. GAO study and report.
- Sec. 209. Prospective payment of flood insurance premiums.
- Sec. 210. Report on changes to fee schedule or fee payment arrangements.

42 USC 4011
note.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

- (1) the national flood insurance program—
 - (A) identifies the flood risk;
 - (B) provides flood risk information to the public;
 - (C) encourages State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses; and
 - (D) makes flood insurance available on a nationwide basis that would otherwise not be available, to accelerate

recovery from floods, mitigate future losses, save lives, and reduce the personal and national costs of flood disasters;

(2) the national flood insurance program insures approximately 4,400,000 policyholders;

(3) approximately 48,000 properties currently insured under the program have experienced, within a 10-year period, 2 or more flood losses where each such loss exceeds the amount \$1,000;

(4) approximately 10,000 of these repetitive-loss properties have experienced either 2 or 3 losses that cumulatively exceed building value or 4 or more losses, each exceeding \$1,000;

(5) repetitive-loss properties constitute a significant drain on the resources of the national flood insurance program, costing about \$200,000,000 annually;

(6) repetitive-loss properties comprise approximately 1 percent of currently insured properties but are expected to account for 25 to 30 percent of claims losses;

(7) the vast majority of repetitive-loss properties were built before local community implementation of floodplain management standards under the program and thus are eligible for subsidized flood insurance;

(8) while some property owners take advantage of the program allowing subsidized flood insurance without requiring mitigation action, others are trapped in a vicious cycle of suffering flooding, then repairing flood damage, then suffering flooding, without the means to mitigate losses or move out of harm's way;

(9) mitigation of repetitive-loss properties through buyouts, elevations, relocations, or flood-proofing will produce savings for policyholders under the program and for Federal taxpayers through reduced flood insurance losses and reduced Federal disaster assistance;

(10) a strategy of making mitigation offers aimed at high-priority repetitive-loss properties and shifting more of the burden of recovery costs to property owners who choose to remain vulnerable to repetitive flood damage can encourage property owners to take appropriate actions that reduce loss of life and property damage and benefit the financial soundness of the program;

(11) the method for addressing repetitive-loss properties should be flexible enough to take into consideration legitimate circumstances that may prevent an owner from taking a mitigation action; and

(12) focusing the mitigation and buy-out of repetitive loss properties upon communities and property owners that choose to voluntarily participate in a mitigation and buy-out program will maximize the benefits of such a program, while minimizing any adverse impact on communities and property owners.

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

SEC. 101. EXTENSION OF PROGRAM AND CONSOLIDATION OF AUTHORIZATIONS.

(a) **BORROWING AUTHORITY.**—The first sentence of section 1309(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)), is amended by striking “through December” and all that follows through “, and” and inserting “through the date specified in section 1319, and”.

(b) **AUTHORITY FOR CONTRACTS.**—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026), is amended by striking “after” and all that follows and inserting “after September 30, 2008.”.

(c) **EMERGENCY IMPLEMENTATION.**—Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)), is amended by striking “during the period” and all that follows through “in accordance” and inserting “during the period ending on the date specified in section 1319, in accordance”.

(d) **AUTHORIZATION OF APPROPRIATIONS FOR STUDIES.**—Section 1376(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4127(c)), is amended by striking “through” and all that follows and inserting “through the date specified in section 1319, for studies under this title.”.

SEC. 102. ESTABLISHMENT OF PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

(a) **IN GENERAL.**—The National Flood Insurance Act of 1968 is amended by inserting after section 1361 (42 U.S.C. 4102) the following:

42 USC 4102a.

“SEC. 1361A. PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

“(a) **AUTHORITY.**—To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities that decide to participate in the pilot program established under this section for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b)) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

“(b) **SEVERE REPETITIVE LOSS PROPERTY.**—For purposes of this section, the term ‘severe repetitive loss property’ has the following meaning:

“(1) **SINGLE-FAMILY PROPERTIES.**—In the case of a property consisting of 1 to 4 residences, such term means a property that—

“(A) is covered under a contract for flood insurance made available under this title; and

“(B) has incurred flood-related damage—

“(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this title, with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

“(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

“(2) MULTIFAMILY PROPERTIES.—In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide.

Regulations.

“(c) ELIGIBLE ACTIVITIES.—Amounts provided under this section to a State or community may be used only for the following activities:

“(1) MITIGATION ACTIVITIES.—To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition, and floodproofing of structures, and minor physical localized flood control projects, and the demolition and rebuilding of properties to at least Base Flood Elevation or greater, if required by any local ordinance.

“(2) PURCHASE.—To purchase severe repetitive loss properties, subject to subsection (g).

“(d) MATCHING REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), in any fiscal year the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

“(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

“(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

“(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

“(3) NON-FEDERAL FUNDS.—For purposes of this subsection, the term ‘non-Federal funds’ includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

“(e) NOTICE OF MITIGATION PROGRAM.—

“(1) IN GENERAL.—Upon selecting a State or community to receive assistance under subsection (a) to carry out eligible activities, the Director shall notify the owners of a severe

repetitive loss property, in plain language, within that State or community—

“(A) that their property meets the definition of a severe repetitive loss property under this section;

“(B) that they may receive an offer of assistance under this section;

“(C) of the types of assistance potentially available under this section;

“(D) of the implications of declining such offer of assistance under this section; and

“(E) that there is a right to appeal under this section.

“(2) IDENTIFICATION OF SEVERE REPETITIVE LOSS PROPERTIES.—The Director shall take such steps as are necessary to identify severe repetitive loss properties, and submit that information to the relevant States and communities.

“(f) STANDARDS FOR MITIGATION OFFERS.—The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

“(1) PRIORITY.—In determining the properties for which to provide assistance for eligible activities under subsection (c), the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time, in a manner consistent with the allocation formula under paragraph (5).

“(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) as soon as practicable.

“(3) CONSULTATION.—In determining for which eligible activities under subsection (c) to provide assistance with respect to a severe repetitive loss property, the relevant States and communities shall consult, to the extent practicable, with the owner of the property.

“(4) DEFERENCE TO LOCAL MITIGATION DECISIONS.—The Director shall not, by rule, regulation, or order, establish a priority for funding eligible activities under this section that gives preference to one type or category of eligible activity over any other type or category of eligible activity.

“(5) ALLOCATION.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), of the total amount made available for assistance under this section in any fiscal year, the Director shall allocate assistance to a State, and the communities located within that State, based upon the percentage of the total number of severe repetitive loss properties located within that State.

“(B) REDISTRIBUTION.—Any funds allocated to a State, and the communities within the State, under subparagraph (A) that have not been obligated by the end of each fiscal year shall be redistributed by the Director to other States and communities to carry out eligible activities in accordance with this section.

“(C) EXCEPTION.—Of the total amount made available for assistance under this section in any fiscal year, 10 percent shall be made available to communities that—

“(i) contain one or more severe repetitive loss properties; and

“(ii) are located in States that receive little or no assistance, as determined by the Director, under the allocation formula under subparagraph (A).

“(6) NOTICE.—Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c), the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

“(g) PURCHASE OFFERS.—A State or community may take action under subsection (c)(2) to purchase a severe repetitive loss property only if the following requirements are met:

“(1) USE OF PROPERTY.—The State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of section 404(b)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 404(b).

“(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties and of associated land to engage in eligible activities as soon as possible.

“(3) PURCHASE PRICE.—The amount of purchase offer is not less than the greatest of—

“(A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;

“(B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and

“(C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property, or an amount equal to the current fair market value of the property.

“(4) COMPARABLE HOUSING PAYMENT.—If a purchase offer made under paragraph (2) is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the flood hazard area in the same community, the Director shall make available an additional relocation payment to the homeowner-occupant to apply to the difference.

“(h) INCREASED PREMIUMS IN CASES OF REFUSAL TO MITIGATE.—

“(1) IN GENERAL.—In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property, the Director shall—

“(A) notify each holder of a recorded interest on the property of such refusal; and Notification.

“(B) notwithstanding subsections (a) through (c) of section 1308, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property

and any subsequent increases pursuant to paragraph (2) and subject to the limitation under paragraph (3).

“(2) INCREASED PREMIUMS UPON SUBSEQUENT FLOOD DAMAGE.—Notwithstanding subsections (a) through (c) of section 1308, if the owner of a severe repetitive loss property does not accept an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property and a claim payment exceeding \$1,500 is made under flood insurance coverage under this title for damage to the property caused by a flood event occurring after such offer is made, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time of such flood event, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to this paragraph and subject to the limitation under paragraph (3).

“(3) LIMITATION ON INCREASED PREMIUMS.—In no case may the chargeable premium rate for a severe repetitive loss property be increased pursuant to this subsection to an amount exceeding the applicable estimated risk premium rate for the area (or subdivision thereof) under section 1307(a)(1).

“(4) TREATMENT OF DEDUCTIBLES.—Any increase in chargeable premium rates required under this subsection for a severe repetitive loss property may be carried out, to the extent appropriate, as determined by the Director, by adjusting any deductible charged in connection with flood insurance coverage under this title for the property.

“(5) NOTICE OF CONTINUED OFFER.—Upon each renewal or modification of any flood insurance coverage under this title for a severe repetitive loss property, the Director shall notify the owner that the offer made pursuant to subsection (c) is still open.

“(6) APPEALS.—

“(A) IN GENERAL.—Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) or (2) with respect to such property, based only upon the following grounds:

“(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

“(ii) Based on independent information, such as contractor estimates or appraisals, the property owner believes that the price offered for purchasing the property is not an accurate estimation of the value of the property, or the amount of Federal funds offered for mitigation activities, when combined with funds from non-Federal sources, will not cover the actual cost of mitigation.

“(iii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places will be interfered with, impaired, or disrupted.

“(iv) The flooding that resulted in the flood insurance claims described in subsection (b)(2) for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

“(v) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

“(vi) The owner of the property, based on independent information, such as contractor estimates or other appraisals, demonstrates that an alternative eligible activity under subsection (c) is at least as cost effective as the initial offer of assistance.

“(B) PROCEDURE.—An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable.

Deadlines.

“(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

“(i) if a final determination is made in favor of the property owner under subparagraph (A) exist, the third party hearing such appeal shall require the Director to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c); and

“(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1)(B) or (2), as applicable, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

“(D) COSTS.—If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

“(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

Deadline.

“(ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.

“(E) REPORT.—Not later than 6 months after the date of the enactment of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, the Director shall submit a report describing the rules, procedures, and administration for appeals under this paragraph to—

“(i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

“(ii) the Committee on Financial Services of the House of Representatives.

“(i) DISCRETIONARY ACTIONS IN CASES OF FRAUDULENT CLAIMS.—If the Director determines that a fraudulent claim was made under flood insurance coverage under this title for a severe repetitive loss property, the Director may—

“(1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this title for the property; or

“(2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this title to such policyholder for the property.

“(j) RULES.—

“(1) IN GENERAL.—The Director shall, by rule—

“(A) subject to subsection (f)(4), develop procedures for the distribution of funds to States and communities to carry out eligible activities under this section; and

“(B) ensure that the procedures developed under paragraph (1)—

“(i) require the Director to notify States and communities of the availability of funding under this section, and that participation in the pilot program under this section is optional;

“(ii) provide that the Director may assist States and communities in identifying severe repetitive loss properties within States or communities;

“(iii) allow each State and community to select properties to be the subject of eligible activities, and the appropriate eligible activity to be performed with respect to each severe repetitive loss property; and

“(iv) require each State or community to submit a list of severe repetitive loss properties to the Director that the State or community would like to be the subject of eligible activities under this section.

Deadline.

“(2) CONSULTATION.—Not later than 90 days after the date of enactment of this Act, the Director shall consult with State and local officials in carrying out paragraph (1)(A), and provide an opportunity for an oral presentation, on the record, of data and arguments from such officials.

“(k) FUNDING.—

“(1) IN GENERAL.—Pursuant to section 1310(a)(8), the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section in each of fiscal years 2005, 2006, 2007, 2008, and 2009, except that the amount so used in each such fiscal year may not exceed \$40,000,000 and shall remain available until expended. Notwithstanding

any other provision of this title, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

“(2) ADMINISTRATIVE EXPENSES.—Of the amounts made available under this subsection, the Director may use up to 5 percent for expenses associated with the administration of this section.

“(1) TERMINATION.—The Director may not provide assistance under this section to any State or community after September 30, 2009.”.

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (7), by striking “and” at the end; and
(2) by striking paragraph (8) and inserting the following:

“(8) for financial assistance under section 1361A to States and communities for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 1361A(i); and”.

SEC. 103. AMENDMENTS TO EXISTING FLOOD MITIGATION ASSISTANCE PROGRAM.

(a) STANDARD FOR APPROVAL OF MITIGATION PLANS.—Section 1366(e)(3) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following new sentence: “The Director may approve only mitigation plans that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.”.

(b) PRIORITY FOR MITIGATION ASSISTANCE.—Section 1366(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by striking paragraph (4) and inserting the following:

“(4) PRIORITY FOR MITIGATION ASSISTANCE.—In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to such properties, or to such subsets of such properties as the Director may establish, that the Director determines are in the best interests of the National Flood Insurance Fund and for which matching amounts under subsection (f) are available.”.

(c) COORDINATION WITH STATES AND COMMUNITIES.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following:

“(m) COORDINATION WITH STATES AND COMMUNITIES.—The Director shall, in consultation and coordination with States and communities take such actions as are appropriate to encourage and improve participation in the national flood insurance program of owners of properties, including owners of properties that are not located in areas having special flood hazards (the 100-year floodplain), but are located within flood prone areas.”.

(d) FUNDING.—Section 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d) is amended—

(1) in subsection (b), by striking paragraph (1) and inserting the following:

“(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding \$40,000,000, to remain available until expended;”;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

“(c) ADMINISTRATIVE EXPENSES.—The Director may use not more than 5 percent of amounts made available under subsection (b) to cover salaries, expenses, and other administrative costs incurred by the Director to make grants and provide assistance under sections 1366 and 1323.”.

(e) REDUCED COMMUNITY MATCH.—Section 1366(g) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(g)), is amended—

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

“(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

“(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

“(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.”.

(f) NATIONAL FLOOD MITIGATION FUND.—Section 1366(b)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(b)(2)), is amended by striking “\$1,500,000” and inserting “7.5 percent of the available funds under this section”.

SEC. 104. FEMA AUTHORITY TO FUND MITIGATION ACTIVITIES FOR INDIVIDUAL REPETITIVE CLAIMS PROPERTIES.

(a) IN GENERAL.—Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by adding at the end the following:

42 USC 4030.

“SEC. 1323. GRANTS FOR REPETITIVE INSURANCE CLAIMS PROPERTIES.

“(a) IN GENERAL.—The Director may provide funding for mitigation actions that reduce flood damages to individual properties for which 1 or more claim payments for losses have been made under flood insurance coverage under this title, but only if the Director determines that—

“(1) such activities are in the best interest of the National Flood Insurance Fund; and

“(2) such activities cannot be funded under the program under section 1366 because—

“(A) the requirements of section 1366(g) are not being met by the State or community in which the property is located; or

“(B) the State or community does not have the capacity to manage such activities.

“(b) PRIORITY FOR WORST-CASE PROPERTIES.—In determining the properties for which funding is to be provided under this section,

the Director shall consult with the States in which such properties are located and provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time.”.

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended by adding at the end the following:

“(9) for funding, not to exceed \$10,000,000 in any fiscal year, for mitigation actions under section 1323, except that, notwithstanding any other provision of this title, amounts made available pursuant to this paragraph shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.”.

SEC. 105. AMENDMENTS TO ADDITIONAL COVERAGE FOR COMPLIANCE WITH LAND USE AND CONTROL MEASURES.

(a) COMPLIANCE WITH LAND USE AND CONTROL MEASURES.—Section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking “compliance” and inserting “implementing measures that are consistent”; and

(B) by inserting “by the community” after “established”;

(2) in paragraph (2), by striking “have flood damage in which the cost of repairs equals or exceeds 50 percent of the value of the structure at the time of the flood event; and” and inserting “are substantially damaged structures;”

(3) in paragraph (3), by striking “compliance with land use and control measures.” and inserting “the implementation of such measures; and”; and

(4) by inserting after paragraph (3) and before the last undesignated paragraph the following:

“(4) properties for which an offer of mitigation assistance is made under—

“(A) section 1366 (Flood Mitigation Assistance Program);

“(B) section 1368 (Repetitive Loss Priority Program and Individual Priority Property Program);

“(C) the Hazard Mitigation Grant Program authorized under section 404 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5170c);

“(D) the Predisaster Hazard Mitigation Program under section 203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5133); and

“(E) any programs authorized or for which funds are appropriated to address any unmet needs or for which supplemental funds are made available.”.

(b) DEFINITIONS.—Section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is amended—

(1) by striking paragraph (7) and inserting the following:

“(7) the term ‘repetitive loss structure’ means a structure covered by a contract for flood insurance that—

“(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and

- “(B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.”;
- (2) in paragraph (13), by striking “and” at the end;
- (3) in paragraph (14), by striking the period and inserting “; and”; and
- (4) by adding at the end the following:
 “(15) the term ‘substantially damaged structure’ means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the Director, or by a community ordinance, whichever is lower.”.

SEC. 106. ACTUARIAL RATE PROPERTIES.

(a) **IN GENERAL.**—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by striking subsection (c) and inserting the following:

“(c) **ACTUARIAL RATE PROPERTIES.**—Subject only to the limitations provided under paragraphs (1) and (2), the chargeable rate shall not be less than the applicable estimated risk premium rate for such area (or subdivision thereof) under section 1307(a)(1) with respect to the following properties:

“(1) **POST-FIRM PROPERTIES.**—Any property the construction or substantial improvement of which the Director determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the Director under paragraph (2) of section 1360 for the area in which such property is located, whichever is later, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e).

“(2) **CERTAIN LEASED COASTAL AND RIVER PROPERTIES.**—Any property leased from the Federal Government (including residential and nonresidential properties) that the Director determines is located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.”.

(b) **INAPPLICABILITY OF ANNUAL LIMITATIONS ON PREMIUM INCREASES.**—Section 1308(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is amended by striking “Notwithstanding” and inserting “Except with respect to properties described under paragraph (2) or (3) of subsection (c), and notwithstanding”.

SEC. 107. GEOSPATIAL DIGITAL FLOOD HAZARD DATA.

For the purposes of flood insurance and floodplain management activities conducted pursuant to the National Flood Insurance Program under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), geospatial digital flood hazard data distributed by the Federal Emergency Management Agency, or its designee, or the printed products derived from that data, are interchangeable and legally equivalent for the determination of the location of 1 in 100 year and 1 in 500 year flood planes, provided that all other geospatial data shown on the printed product meets or exceeds any accuracy standard promulgated by the Federal Emergency Management Agency.

SEC. 108. REPLACEMENT OF MOBILE HOMES ON ORIGINAL SITES.

Section 1315 of the National Flood Insurance Act of 1968 (42 U.S.C. 4022) is amended by adding at the end the following:

“(c) REPLACEMENT OF MOBILE HOMES ON ORIGINAL SITES.—

“(1) COMMUNITY PARTICIPATION.—The placement of any mobile home on any site shall not affect the eligibility of any community to participate in the flood insurance program under this title and the Flood Disaster Protection Act of 1973 (notwithstanding that such placement may fail to comply with any elevation or flood damage mitigation requirements), if—

“(A) such mobile home was previously located on such site;

“(B) such mobile home was relocated from such site because of flooding that threatened or affected such site; and

“(C) such replacement is conducted not later than the expiration of the 180-day period that begins upon the subsidence (in the area of such site) of the body of water that flooded to a level considered lower than flood levels.

Deadline.

“(2) DEFINITION.—For purposes of this subsection, the term ‘mobile home’ has the meaning given such term in the law of the State in which the mobile home is located.”.

SEC. 109. REITERATION OF FEMA RESPONSIBILITY TO MAP MUDSLIDES.

42 USC 4101 note.

As directed in section 1360(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(b)), the Director of the Federal Emergency Management Agency is again directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of such section 1360, in order to make known the degree of hazard within each such zone at the earliest possible date.

TITLE II—MISCELLANEOUS PROVISIONS

42 USC 4011 note.

SEC. 201. DEFINITIONS.

In this title, the following definitions shall apply:

(1) DIRECTOR.—The term “Director” means the Director of the Federal Emergency Management Agency.

(2) FLOOD INSURANCE POLICY.—The term “flood insurance policy” means a flood insurance policy issued under the National Flood Insurance Act of 1968 (42 U.S.C. et seq.).

(3) PROGRAM.—The term “Program” means the National Flood Insurance Program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

SEC. 202. SUPPLEMENTAL FORMS.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop supplemental forms to be issued in conjunction with the issuance of a flood insurance policy that set forth, in simple terms—

Deadline.

(1) the exact coverages being purchased by a policyholder;

(2) any exclusions from coverage that apply to the coverages purchased;

(3) an explanation, including illustrations, of how lost items and damages will be valued under the policy at the time of loss;

(4) the number and dollar value of claims filed under a flood insurance policy over the life of the property, and the effect, under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), of the filing of any further claims under a flood insurance policy with respect to that property; and

(5) any other information that the Director determines will be helpful to policyholders in understanding flood insurance coverage.

(b) DISTRIBUTION.—The forms developed under subsection (a) shall be given to—

(1) all holders of a flood insurance policy at the time of purchase and renewal; and

(2) insurance companies and agents that are authorized to sell flood insurance policies.

SEC. 203. ACKNOWLEDGEMENT FORM.

Deadline.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop an acknowledgement form to be signed by the purchaser of a flood insurance policy that contains—

(1) an acknowledgement that the purchaser has received a copy of the standard flood insurance policy, and any forms developed under section 202; and

(2) an acknowledgement that the purchaser has been told that the contents of a property or dwelling are not covered under the terms of the standard flood insurance policy, and that the policyholder has the option to purchase additional coverage for such contents.

(b) DISTRIBUTION.—Copies of an acknowledgement form executed under subsection (a) shall be made available to the purchaser and the Director.

SEC. 204. FLOOD INSURANCE CLAIMS HANDBOOK.

Deadline.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop a flood insurance claims handbook that contains—

(1) a description of the procedures to be followed to file a claim under the Program, including how to pursue a claim to completion;

(2) how to file supplementary claims, proof of loss, and any other information relating to the filing of claims under the Program; and

(3) detailed information regarding the appeals process established under section 205.

(b) DISTRIBUTION.—The handbook developed under subsection (a) shall be made available to—

(1) each insurance company and agent authorized to sell flood insurance policies; and

(2) each purchaser, at the time of purchase and renewal, of a flood insurance policy, and at the time of any flood loss sustained by such purchaser.

Deadline.
Regulations.

SEC. 205. APPEAL OF DECISIONS RELATING TO FLOOD INSURANCE COVERAGE.

Not later than 6 months after the date of enactment of this Act, the Director shall, by regulation, establish an appeals process through which holders of a flood insurance policy may appeal the

decisions, with respect to claims, proofs of loss, and loss estimates relating to such flood insurance policy, of—

- (1) any insurance agent or adjuster, or insurance company;
- or
- (2) any employee or contractor of the Federal Emergency Management Agency.

SEC. 206. STUDY AND REPORT ON USE OF COST COMPLIANCE COVERAGE. Deadline.

Not later than 1 year after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall submit to Congress a report that sets forth—

- (1) the use of cost of compliance coverage under section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) in connection with flood insurance policies;
- (2) any barriers to policyholders using the funds provided by cost of compliance coverage under that section 1304(b) under a flood insurance policy, and recommendations to address those barriers; and
- (3) the steps that the Federal Emergency Management Agency has taken to ensure that funds paid for cost of compliance coverage under that section 1304(b) are being used to lessen the burdens on all homeowners and the Program.

SEC. 207. MINIMUM TRAINING AND EDUCATION REQUIREMENTS.

The Director of the Federal Emergency Management Agency shall, in cooperation with the insurance industry, State insurance regulators, and other interested parties—

- (1) establish minimum training and education requirements for all insurance agents who sell flood insurance policies; and
- (2) not later than 6 months after the date of enactment of this Act, publish these requirements in the Federal Register, and inform insurance companies and agents of the requirements.

Deadline.
Federal Register,
publication.

SEC. 208. GAO STUDY AND REPORT.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study of—

- (1) the adequacy of the scope of coverage provided under flood insurance policies in meeting the intended goal of Congress that flood victims be restored to their pre-flood conditions, and any recommendations to ensure that goal is being met;
- (2) the adequacy of payments to flood victims under flood insurance policies; and
- (3) the practices of the Federal Emergency Management Agency and insurance adjusters in estimating losses incurred during a flood, and how such practices affect the adequacy of payments to flood victims.

(b) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report regarding the results of the study under subsection (a). Deadline.

SEC. 209. PROSPECTIVE PAYMENT OF FLOOD INSURANCE PREMIUMS.

Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by adding at the end the following:

“(f) **ADJUSTMENT OF PREMIUM.**—Notwithstanding any other provision of law, if the Director determines that the holder of a flood insurance policy issued under this Act is paying a lower

premium than is required under this section due to an error in the flood plain determination, the Director may only prospectively charge the higher premium rate.”.

Deadline.

SEC. 210. REPORT ON CHANGES TO FEE SCHEDULE OR FEE PAYMENT ARRANGEMENTS.

Not later than 3 months after the date of enactment of this Act, the Director shall submit a report on any changes or modifications made to the fee schedule or fee payment arrangements between the Federal Emergency Management Agency and insurance adjusters who provide services with respect to flood insurance policies to—

- (1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and
- (2) the Committee on Financial Services of the House of Representatives.

Approved June 30, 2004.

LEGISLATIVE HISTORY—S. 2238 (H.R. 253):

HOUSE REPORTS: No. 108–266 accompanying H.R. 253 (Comm. on Financial Services).

SENATE REPORTS: No. 108–262 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 15, considered and passed Senate.

June 21, considered and passed House.



Public Law 108–265
108th Congress

An Act

To amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to reauthorize child nutrition programs, and for other purposes.

June 30, 2004
[S. 2507]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Child Nutrition and WIC Reauthorization Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Child Nutrition
and WIC
Reauthorization
Act of 2004.
Inter-
governmental
relations.
42 USC 1751
note.

Sec. 1. Short title; Table of contents.

TITLE I—AMENDMENTS TO RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

- Sec. 101. Nutrition promotion.
- Sec. 102. Nutrition requirements.
- Sec. 103. Provision of information.
- Sec. 104. Direct certification.
- Sec. 105. Household applications.
- Sec. 106. Duration of eligibility for free or reduced price meals.
- Sec. 107. Runaway, homeless, and migrant youth.
- Sec. 108. Certification by local educational agencies.
- Sec. 109. Exclusion of military housing allowances.
- Sec. 110. Waiver of requirement for weighted averages for nutrient analysis.
- Sec. 111. Food safety.
- Sec. 112. Purchases of locally produced foods.
- Sec. 113. Special assistance.
- Sec. 114. Food and nutrition projects integrated with elementary school curricula.
- Sec. 115. Procurement training.
- Sec. 116. Summer food service program for children.
- Sec. 117. Commodity distribution program.
- Sec. 118. Notice of irradiated food products.
- Sec. 119. Child and adult care food program.
- Sec. 120. Fresh fruit and vegetable program.
- Sec. 121. Summer food service residential camp eligibility.
- Sec. 122. Access to local foods and school gardens.
- Sec. 123. Year-round services for eligible entities.
- Sec. 124. Free lunch and breakfast eligibility.
- Sec. 125. Training, technical assistance, and food service management institute.
- Sec. 126. Administrative error reduction.
- Sec. 127. Compliance and accountability.
- Sec. 128. Information clearinghouse.
- Sec. 129. Program evaluation.

TITLE II—AMENDMENTS TO CHILD NUTRITION ACT OF 1966

- Sec. 201. Severe need assistance.
- Sec. 202. State administrative expenses.
- Sec. 203. Special supplemental nutrition program for women, infants, and children.

- Sec. 204. Local wellness policy.
 Sec. 205. Team nutrition network.
 Sec. 206. Review of best practices in the breakfast program.

TITLE III—COMMODITY DISTRIBUTION PROGRAMS

- Sec. 301. Commodity distribution programs.

TITLE IV—MISCELLANEOUS

- Sec. 401. Sense of Congress regarding efforts to prevent and reduce childhood obesity.

TITLE V—IMPLEMENTATION

- Sec. 501. Guidance and regulations.
 Sec. 502. Effective dates.

TITLE I—AMENDMENTS TO RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT

SEC. 101. NUTRITION PROMOTION.

The Richard B. Russell National School Lunch Act is amended by inserting after section 4 (42 U.S.C. 1753) the following:

42 USC 1754.

“SEC. 5. NUTRITION PROMOTION.

“(a) **IN GENERAL.**—Subject to the availability of funds made available under subsection (g), the Secretary shall make payments to State agencies for each fiscal year, in accordance with this section, to promote nutrition in food service programs under this Act and the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(b) **TOTAL AMOUNT FOR EACH FISCAL YEAR.**—The total amount of funds available for a fiscal year for payments under this section shall equal not more than the product obtained by multiplying—

“(1) $\frac{1}{2}$ cent; by

“(2) the number of lunches reimbursed through food service programs under this Act during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs.

“(c) **PAYMENTS TO STATES.**—

“(1) **ALLOCATION.**—Subject to paragraph (2), from the amount of funds available under subsection (g) for a fiscal year, the Secretary shall allocate to each State agency an amount equal to the greater of—

“(A) a uniform base amount established by the Secretary; or

“(B) an amount determined by the Secretary, based on the ratio that—

“(i) the number of lunches reimbursed through food service programs under this Act in schools, institutions, and service institutions in the State that participate in the food service programs; bears to

“(ii) the number of lunches reimbursed through the food service programs in schools, institutions, and service institutions in all States that participate in the food service programs.

“(2) **REDUCTIONS.**—The Secretary shall reduce allocations to State agencies qualifying for an allocation under paragraph (1)(B), in a manner determined by the Secretary, to the extent

necessary to ensure that the total amount of funds allocated under paragraph (1) is not greater than the amount appropriated under subsection (g).

“(d) USE OF PAYMENTS.—

“(1) USE BY STATE AGENCIES.—A State agency may reserve, to support dissemination and use of nutrition messages and material developed by the Secretary, up to—

“(A) 5 percent of the payment received by the State for a fiscal year under subsection (c); or

“(B) in the case of a small State (as determined by the Secretary), a higher percentage (as determined by the Secretary) of the payment.

“(2) DISBURSEMENT TO SCHOOLS AND INSTITUTIONS.—Subject to paragraph (3), the State agency shall disburse any remaining amount of the payment to school food authorities and institutions participating in food service programs described in subsection (a) to disseminate and use nutrition messages and material developed by the Secretary.

“(3) SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—In addition to any amounts reserved under paragraph (1), in the case of the summer food service program for children established under section 13, the State agency may—

“(A) retain a portion of the funds made available under subsection (c) (as determined by the Secretary); and

“(B) use the funds, in connection with the program, to disseminate and use nutrition messages and material developed by the Secretary.

“(e) DOCUMENTATION.—A State agency, school food authority, and institution receiving funds under this section shall maintain documentation of nutrition promotion activities conducted under this section.

“(f) REALLOCATION.—The Secretary may reallocate, to carry out this section, any amounts made available to carry out this section that are not obligated or expended, as determined by the Secretary.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.”.

SEC. 102. NUTRITION REQUIREMENTS.

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by striking paragraph (2) and inserting the following:

“(2) FLUID MILK.—

“(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this Act—

“(i) shall offer students fluid milk in a variety of fat contents;

“(ii) may offer students flavored and unflavored fluid milk and lactose-free fluid milk; and

“(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student’s diet and that specifies the substitute for fluid milk.

“(B) SUBSTITUTES.—

“(i) STANDARDS FOR SUBSTITUTION.—A school may substitute for the fluid milk provided under subparagraph (A), a nondairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary (which shall, among other requirements to be determined by the Secretary, include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow’s milk) for students who cannot consume fluid milk because of a medical or other special dietary need other than a disability described in subparagraph (A)(iii).

“(ii) NOTICE.—The substitutions may be made if the school notifies the State agency that the school is implementing a variation allowed under this subparagraph, and if the substitution is requested by written statement of a medical authority or by a student’s parent or legal guardian that identifies the medical or other special dietary need that restricts the student’s diet, except that the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes.

“(iii) EXCESS EXPENSES BORNE BY SCHOOL FOOD AUTHORITY.—Expenses incurred in providing substitutions under this subparagraph that are in excess of expenses covered by reimbursements under this Act shall be paid by the school food authority.

“(C) RESTRICTIONS ON SALE OF MILK PROHIBITED.—A school that participates in the school lunch program under this Act shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

“(i) on the school premises; or

“(ii) at any school-sponsored event.”.

SEC. 103. PROVISION OF INFORMATION.

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended by adding at the end the following:

“(4) PROVISION OF INFORMATION.—

“(A) GUIDANCE.—Prior to the beginning of the school year beginning July 2004, the Secretary shall issue guidance to States and school food authorities to increase the consumption of foods and food ingredients that are recommended for increased serving consumption in the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

“(B) RULES.—Not later than 2 years after the date of enactment of this paragraph, the Secretary shall promulgate rules, based on the most recent Dietary Guidelines for Americans, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).”.

Deadline.

SEC. 104. DIRECT CERTIFICATION.

(a) **IN GENERAL.**—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (9) through (13), respectively; and

(2) in paragraph (2)—

(A) in subparagraph (B)—

(i) by striking “(B) Applications” and inserting the following:

“(B) APPLICATIONS AND DESCRIPTIVE MATERIAL.—

“(i) **IN GENERAL.**—Applications”;

(ii) in the second sentence, by striking “Such forms and descriptive material” and inserting the following:

“(ii) **INCOME ELIGIBILITY GUIDELINES.**—Forms and descriptive material distributed in accordance with clause (i)”;

(iii) by adding at the end the following:

“(iii) **CONTENTS OF DESCRIPTIVE MATERIAL.**—

“(I) **IN GENERAL.**—Descriptive material distributed in accordance with clause (i) shall contain a notification that—

“(aa) participants in the programs listed in subclause (II) may be eligible for free or reduced price meals; and

“(bb) documentation may be requested for verification of eligibility for free or reduced price meals.

“(II) **PROGRAMS.**—The programs referred to in subclause (I)(aa) are—

“(aa) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

“(bb) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

“(cc) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

“(dd) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).”;

(B) by striking “(C)(i)” and inserting “(3)”;

(C) by striking clause (ii) of subparagraph (C) (as it existed before the amendment made by subparagraph (B)) and all that follows through the end of subparagraph (D) and inserting the following:

“(4) **DIRECT CERTIFICATION FOR CHILDREN IN FOOD STAMP HOUSEHOLDS.**—

“(A) **IN GENERAL.**—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

Contracts.

“(B) PROCEDURES.—Subject to paragraph (6), the agreement shall establish procedures under which a child who is a member of a household receiving assistance under the food stamp program shall be certified as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

“(C) CERTIFICATION.—Subject to paragraph (6), under the agreement, the local educational agency conducting eligibility determinations for a school lunch program under this Act and a school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall certify a child who is a member of a household receiving assistance under the food stamp program as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

“(D) APPLICABILITY.—This paragraph applies to—

“(i) in the case of the school year beginning July 2006, a school district that had an enrollment of 25,000 students or more in the preceding school year;

“(ii) in the case of the school year beginning July 2007, a school district that had an enrollment of 10,000 students or more in the preceding school year; and

“(iii) in the case of the school year beginning July 2008 and each subsequent school year, each local educational agency.”.

(b) ADMINISTRATION.—

(1) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by subsection (a)) is amended by inserting after paragraph (4) the following:

“(5) DISCRETIONARY CERTIFICATION.—

“(A) IN GENERAL.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as—

“(i) a member of a family that is receiving assistance under the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

“(ii) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)));

“(iii) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

“(iv) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).”.

“(B) CHILDREN OF HOUSEHOLDS RECEIVING FOOD STAMPS.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as a member of a household that is receiving food stamps under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

“(6) USE OR DISCLOSURE OF INFORMATION.—

“(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

“(i) a person directly connected with the administration or enforcement of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either Act);

“(ii) a person directly connected with the administration or enforcement of—

“(I) a Federal education program;

“(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

“(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this Act;

“(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

“(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

“(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children’s health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

“(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

“(II) verifying the eligibility of children for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

“(v) a third party contractor described in paragraph (3)(G)(iv).

“(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the

child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

“(C) CRIMINAL PENALTY.—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

“(D) REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational agency or school food authority acting in accordance with that option—

“(i) has a written agreement with 1 or more State or local agencies administering health programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to enroll children in those health programs; and

“(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in health programs referred to in subparagraph (A)(iv); and

“(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

“(E) USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

“(7) FREE AND REDUCED PRICE POLICY STATEMENT.—

“(A) IN GENERAL.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this Act unless there is a substantive change in the free and reduced price policy of the local educational agency.

“(B) ROUTINE CHANGE.—A routine change in the policy of a local educational agency (such as an annual adjustment of the income eligibility guidelines for free and reduced price meals) shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

“(8) COMMUNICATIONS.—

“(A) IN GENERAL.—Any communication with a household under this subsection or subsection (d) shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

“(B) ELECTRONIC AVAILABILITY.—In addition to the distribution of applications and descriptive material in paper form as provided for in this paragraph, the applications

and material may be made available electronically via the Internet.”.

(2) AGREEMENT FOR DIRECT CERTIFICATION AND COOPERATION.—Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end the following:

“(u) AGREEMENT FOR DIRECT CERTIFICATION AND COOPERATION.—

“(1) IN GENERAL.—Each State agency shall enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

“(2) CONTENTS.—The agreement shall establish procedures that ensure that—

“(A) any child receiving benefits under this Act shall be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application; and

“(B) each State agency shall cooperate in carrying out paragraphs (3)(F) and (4) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).”.

(c) FUNDING.—

(1) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to assist States in carrying out the amendments contained in this section and the provisions of section 9(b)(3) of the Richard B. Russell National School Lunch Act (as amended by section 105(a)) \$9,000,000, to remain available until expended.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to assist States in carrying out the amendments made by this section and the provisions of section 9(b)(3) of the Richard B. Russell National School Lunch Act (as amended by section 105(a)) the funds transferred under paragraph (1), without further appropriation.

(d) CONFORMING AMENDMENTS.—

(1) Effective July 1, 2008, paragraph (5) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as added by subsection (b)(1)) is amended—

(A) by striking subparagraph (B);

(B) by striking “CERTIFICATION.—” and all that follows through “IN GENERAL.—” and inserting “CERTIFICATION.—”; and

(C) by redesignating clauses (i) through (iv) as subparagraphs (A) through (D), respectively, and indenting appropriately.

(2) Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) (as amended by subsection (a)(1)) is amended—

(A) in subsection (b)(12)(B), by striking “paragraph (2)(C)” and inserting “this subsection”; and

(B) in the second sentence of subsection (d)(1), by striking “subsection (b)(2)(C)” and inserting “subsection (b)(3)(G)”.

Regulations.

Effective date.

Effective date.
42 USC 1758
note.

(3) Section 11(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(e)) is amended in the first sentence by striking “section 9(b)(3)” and inserting “section 9(b)(9)”.

SEC. 105. HOUSEHOLD APPLICATIONS.

(a) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by section 104(a)(2)(B)) is amended by striking paragraph (3) and inserting the following:

“(3) HOUSEHOLD APPLICATIONS.—

“(A) DEFINITION OF HOUSEHOLD APPLICATION.—In this paragraph, the term ‘household application’ means an application for a child of a household to receive free or reduced price school lunches under this Act, or free or reduced price school breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), for which an eligibility determination is made other than under paragraph (4) or (5).

“(B) ELIGIBILITY DETERMINATION.—

“(i) IN GENERAL.—An eligibility determination shall be made on the basis of a complete household application executed by an adult member of the household or in accordance with guidance issued by the Secretary.

“(ii) ELECTRONIC SIGNATURES AND APPLICATIONS.—A household application may be executed using an electronic signature if—

“(I) the application is submitted electronically; and

“(II) the electronic application filing system meets confidentiality standards established by the Secretary.

“(C) CHILDREN IN HOUSEHOLD.—

“(i) IN GENERAL.—The household application shall identify the names of each child in the household for whom meal benefits are requested.

“(ii) SEPARATE APPLICATIONS.—A State educational agency or local educational agency may not request a separate application for each child in the household that attends schools under the same local educational agency.

“(D) VERIFICATION OF SAMPLE.—

“(i) DEFINITIONS.—In this subparagraph:

“(I) ERROR PRONE APPLICATION.—The term ‘error prone application’ means an approved household application that—

“(aa) indicates monthly income that is within \$100, or an annual income that is within \$1,200, of the income eligibility limitation for free or reduced price meals; or

“(bb) in lieu of the criteria established under item (aa), meets criteria established by the Secretary.

“(II) NON-RESPONSE RATE.—The term ‘non-response rate’ means (in accordance with guidelines established by the Secretary) the percentage of approved household applications for which

verification information has not been obtained by a local educational agency after attempted verification under subparagraphs (F) and (G).

“(ii) VERIFICATION OF SAMPLE.—Each school year, a local educational agency shall verify eligibility of the children in a sample of household applications approved for the school year by the local educational agency, as determined by the Secretary in accordance with this subsection.

“(iii) SAMPLE SIZE.—Except as otherwise provided in this paragraph, the sample for a local educational agency for a school year shall equal the lesser of—

“(I) 3 percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

“(II) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

“(iv) ALTERNATIVE SAMPLE SIZE.—

“(I) IN GENERAL.—If the conditions described in subclause (IV) are met, the verification sample size for a local educational agency shall be the sample size described in subclause (II) or (III), as determined by the local educational agency.

“(II) 3,000/3 PERCENT OPTION.—The sample size described in this subclause shall be the lesser of 3,000, or 3 percent of, applications selected at random from applications approved by the local educational agency for the school year, as of October 1 of the school year.

“(III) 1,000/1 PERCENT PLUS OPTION.—

“(aa) IN GENERAL.—The sample size described in this subclause shall be the sum of—

“(AA) the lesser of 1,000, or 1 percent of, all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; and

“(BB) the lesser of 500, or $\frac{1}{2}$ of 1 percent of, applications approved by the local educational agency for the school year, as of October 1 of the school year, that provide a case number (in lieu of income information) showing participation in a program described in item (bb) selected from those approved applications that provide a case number (in lieu of income information) verifying the participation.

“(bb) PROGRAMS.—The programs described in this item are—

“(AA) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

“(BB) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

“(CC) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.

“(IV) CONDITIONS.—The conditions referred to in subclause (I) shall be met for a local educational agency for a school year if—

“(aa) the nonresponse rate for the local educational agency for the preceding school year is less than 20 percent; or

“(bb) the local educational agency has more than 20,000 children approved by application by the local educational agency as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and—

“(AA) the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

“(BB) in the case of the school year beginning July 2005, the local educational agency attempts to verify all approved household applications selected for verification through use of public agency records from at least 2 of the programs or sources of information described in subparagraph (F)(i).

“(v) ADDITIONAL SELECTED APPLICATIONS.—A sample for a local educational agency for a school year under clauses (iii) and (iv)(III)(AA) shall include the number of additional randomly selected approved household applications that are required to comply with the sample size requirements in those clauses.

“(E) PRELIMINARY REVIEW.—

“(i) REVIEW FOR ACCURACY.—

“(I) IN GENERAL.—Prior to conducting any other verification activity for approved household applications selected for verification, the local educational agency shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial eligibility determination, unless otherwise determined by the Secretary.

“(II) WAIVER.—The requirements of subclause (I) shall be waived for a local educational agency if the local educational agency is using a technology-based solution that demonstrates a high level of accuracy, to the satisfaction of the Secretary, in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

“(ii) CORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is correct, the local educational agency shall verify the approved household application.

“(iii) INCORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is incorrect, the local educational agency shall (as determined by the Secretary)—

“(I) correct the eligibility status of the household;

“(II) notify the household of the change;

Notification.

“(III) in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

“(IV) in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

“(F) DIRECT VERIFICATION.—

“(i) IN GENERAL.—Subject to clauses (ii) and (iii), to verify eligibility for free or reduced price meals for approved household applications selected for verification, the local educational agency may (in accordance with criteria established by the Secretary) first obtain and use income and program participation information from a public agency administering—

“(I) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

“(II) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

“(III) the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

“(IV) the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

“(V) a similar income-tested program or other source of information, as determined by the Secretary.

“(ii) FREE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for free meals for approved household applications selected for verification shall include the most recent available information (other than information

Records.

reflecting program participation or income before the 180-day period ending on the date of application for free meals) that is relied on to administer—

“(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

“(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

“(aa) a State in which the income eligibility limit applied under section 1902(l)(2)(C) of that Act (42 U.S.C. 1396a(l)(2)(C)) is not more than 133 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)); or

“(bb) a State that otherwise identifies households that have income that is not more than 133 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)).

Records.

“(iii) REDUCED PRICE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for reduced price meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for reduced price meals) that is relied on to administer—

“(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

“(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

“(aa) a State in which the income eligibility limit applied under section 1902(l)(2)(C) of that Act (42 U.S.C. 1396a(l)(2)(C)) is not more than 185 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)); or

“(bb) a State that otherwise identifies households that have income that is not more than 185 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)).

Deadline.

“(iv) EVALUATION.—Not later than 3 years after the date of enactment of this subparagraph, the Secretary shall complete an evaluation of—

“(I) the effectiveness of direct verification carried out under this subparagraph in decreasing the portion of the verification sample that must be verified under subparagraph (G) while ensuring that adequate verification information is obtained; and

“(II) the feasibility of direct verification by State agencies and local educational agencies.

“(v) EXPANDED USE OF DIRECT VERIFICATION.—If the Secretary determines that direct verification significantly decreases the portion of the verification sample that must be verified under subparagraph (G), while ensuring that adequate verification information is obtained, and can be conducted by most State agencies and local educational agencies, the Secretary may require a State agency or local educational agency to implement direct verification through 1 or more of the programs described in clause (i), as determined by the Secretary, unless the State agency or local educational agency demonstrates (under criteria established by the Secretary) that the State agency or local educational agency lacks the capacity to conduct, or is unable to implement, direct verification.

“(G) HOUSEHOLD VERIFICATION.—

“(i) IN GENERAL.—If an approved household application is not verified through the use of public agency records, a local educational agency shall provide to the household written notice that—

Notice.

“(I) the approved household application has been selected for verification; and

“(II) the household is required to submit verification information to confirm eligibility for free or reduced price meals.

“(ii) PHONE NUMBER.—The written notice in clause (i) shall include a toll-free phone number that parents and legal guardians in households selected for verification can call for assistance with the verification process.

“(iii) FOLLOWUP ACTIVITIES.—If a household does not respond to a verification request, a local educational agency shall make at least 1 attempt to obtain the necessary verification from the household in accordance with guidelines and regulations promulgated by the Secretary.

“(iv) CONTRACT AUTHORITY FOR SCHOOL FOOD AUTHORITIES.—A local educational agency may contract (under standards established by the Secretary) with a third party to assist the local educational agency in carrying out clause (iii).

“(H) VERIFICATION DEADLINE.—

“(i) GENERAL DEADLINE.—

“(I) IN GENERAL.—Subject to subclause (II), not later than November 15 of each school year, a local educational agency shall complete the verification activities required for the school year (including followup activities).

“(II) EXTENSION.—Under criteria established by the Secretary, a State may extend the deadline established under subclause (I) for a school year for a local educational agency to December 15 of the school year.

“(ii) ELIGIBILITY CHANGES.—Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility

determinations made for household applications in accordance with criteria established by the Secretary.

“(I) LOCAL CONDITIONS.—In the case of a natural disaster, civil disorder, strike, or other local condition (as determined by the Secretary), the Secretary may substitute alternatives for—

“(i) the sample size and sample selection criteria established under subparagraph (D); and

“(ii) the verification deadline established under subparagraph (H).

“(J) INDIVIDUAL REVIEW.—In accordance with criteria established by the Secretary, the local educational agency may, on individual review—

“(i) decline to verify no more than 5 percent of approved household applications selected under subparagraph (D); and

“(ii) replace the approved household applications with other approved household applications to be verified.

“(K) FEASIBILITY STUDY.—

“(i) IN GENERAL.—The Secretary shall conduct a study of the feasibility of using computer technology (including data mining) to reduce—

“(I) overcertification errors in the school lunch program under this Act;

“(II) waste, fraud, and abuse in connection with this paragraph; and

“(III) errors, waste, fraud, and abuse in other nutrition programs, as determined to be appropriate by the Secretary.

“(ii) REPORT.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

“(I) the results of the feasibility study conducted under this subsection;

“(II) how a computer system using technology described in clause (i) could be implemented;

“(III) a plan for implementation; and

“(IV) proposed legislation, if necessary, to implement the system.”.

(b) CONFORMING AMENDMENTS.—Section 1902(a)(7) of the Social Security Act (42 U.S.C. 1396a(a)(7)) is amended—

(1) by striking “connected with the” and inserting “connected with—

“(A) the”;

(2) by adding “and” after the semicolon; and

(3) by adding at the end the following:

“(B) at State option, the exchange of information necessary to verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 and free or reduced price lunches under the Richard B. Russell National School Lunch Act, in accordance with section 9(b) of that Act, using data standards and formats established by the State agency;”.

(c) EVALUATION FUNDING.—

(1) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to conduct the evaluation required by section 9(b)(3)(F)(iv) of the Richard B. Russell National School Lunch Act (as amended by subsection (a)) \$2,000,000, to remain available until expended. Effective date.

(2) RECEIPT AND ACCEPTANCE.—The Secretary of Agriculture shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

SEC. 106. DURATION OF ELIGIBILITY FOR FREE OR REDUCED PRICE MEALS.

Paragraph (9) of section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as redesignated by section 104(a)(1)) is amended—

(1) by striking “(9) Any” and inserting the following:

“(9) ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES.—

“(A) FREE LUNCHES.—Any”;

(2) by striking “Any” in the second sentence and inserting the following:

“(B) REDUCED PRICE LUNCHES.—

“(i) IN GENERAL.—Any”;

(3) by striking “The” in the last sentence and inserting the following:

“(ii) MAXIMUM PRICE.—The”; and

(4) by adding at the end the following:

“(C) DURATION.—Except as otherwise specified in paragraph (3)(E), (3)(H)(ii), and section 11(a), eligibility for free or reduced price meals for any school year shall remain in effect—

“(i) beginning on the date of eligibility approval for the current school year; and

“(ii) ending on a date during the subsequent school year determined by the Secretary.”.

SEC. 107. RUNAWAY, HOMELESS, AND MIGRANT YOUTH.

(a) CATEGORICAL ELIGIBILITY FOR FREE LUNCHES AND BREAKFASTS.—Section 9(b)(12)(A) of the Richard B. Russell National School Lunch Act (as redesignated by section 104(a)(1) of this Act) is amended—

(1) in clause (ii), by striking “or” at the end;

(2) in clause (iii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(iv) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)));

“(v) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

“(vi) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).”.

(b) DOCUMENTATION.—Section 9(d)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(d)(2)) is amended—

- (1) in subparagraph (B), by striking “or”;
- (2) in subparagraph (C), by striking the period at the end and inserting a semicolon; and
- (3) by inserting after subparagraph (C) the following:

“(D) documentation has been provided to the appropriate local educational agency showing that the child meets the criteria specified in clauses (iv) or (v) of subsection (b)(12)(A); or

“(E) documentation has been provided to the appropriate local educational agency showing the status of the child as a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)).”.

SEC. 108. CERTIFICATION BY LOCAL EDUCATIONAL AGENCIES.

(a) **CERTIFICATION BY LOCAL EDUCATIONAL AGENCY.**—Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758) is amended—

- (1) in the second sentence of subsection (b)(11) (as redesignated by section 104(a)(1)), by striking “Local school authorities” and inserting “Local educational agencies”; and
- (2) in subsection (d)(2)—
 - (A) by striking “local school food authority” each place it appears and inserting “local educational agency”; and
 - (B) in subparagraph (A), by striking “such authority” and inserting “the local educational agency”.

(b) **DEFINITION OF LOCAL EDUCATIONAL AGENCY.**—Section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)) is amended—

- (1) by redesignating paragraph (8) as paragraph (3) and moving the paragraph to appear after paragraph (2);
- (2) by redesignating paragraphs (3) through (7) (as those paragraphs existed before the amendment made by paragraph (1)) as paragraphs (5) through (9), respectively; and
- (3) by inserting after paragraph (3) (as redesignated by paragraph (1)) the following:

“(4) **LOCAL EDUCATIONAL AGENCY.**—

“(A) **IN GENERAL.**—The term ‘local educational agency’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

“(B) **INCLUSION.**—The term ‘local educational agency’ includes, in the case of a private nonprofit school, an appropriate entity determined by the Secretary.”.

(c) **SCHOOL BREAKFAST PROGRAM.**—Section 4(b)(1)(E) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(E)) is amended by striking “school food authority” each place it appears and inserting “local educational agency”.

SEC. 109. EXCLUSION OF MILITARY HOUSING ALLOWANCES.

Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by section 104(a)(1)) is amended in paragraph (13) by striking “For each of fiscal years 2002 and 2003 and through June 30, 2004, the” and inserting “The”.

SEC. 110. WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.

Section 9(f)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(5)) is amended by striking “September 30, 2003” and inserting “September 30, 2009”.

SEC. 111. FOOD SAFETY.

Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(h)) is amended—

(1) in the subsection heading, by striking “INSPECTIONS”;

(2) in paragraph (1)—

(A) by striking “Except as provided in paragraph (2), a” and inserting “A”;

(B) by striking “shall, at least once” and inserting: “shall—

“(A) at least twice”;

(C) by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

“(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

“(C) on request, provide a copy of the report to a member of the public.”; and

(3) by striking paragraph (2) and inserting the following:

“(2) STATE AND LOCAL GOVERNMENT INSPECTIONS.—Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

“(3) AUDITS AND REPORTS BY STATES.—For each of fiscal years 2006 through 2009, each State shall annually—

“(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

“(B) submit to the Secretary a report of the results of the audit.

“(4) AUDIT BY THE SECRETARY.—For each of fiscal years 2006 through 2009, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

“(5) SCHOOL FOOD SAFETY PROGRAM.—Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.”.

Reports.
Public
information.

SEC. 112. PURCHASES OF LOCALLY PRODUCED FOODS.

Section 9(j)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(j)(2)(A)) is amended by striking “2007” and inserting “2009”.

SEC. 113. SPECIAL ASSISTANCE.

Section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended by inserting “or school district” after “school” each place it appears in subparagraphs (C) through (E) (other than as part of “school year”, “school years”, “school lunch”, “school breakfast”, and “4-school-year period”).

SEC. 114. FOOD AND NUTRITION PROJECTS INTEGRATED WITH ELEMENTARY SCHOOL CURRICULA.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (m).

SEC. 115. PROCUREMENT TRAINING.

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) (as amended by section 114) is amended by inserting after subsection (l) the following:

“(m) PROCUREMENT TRAINING.—

“(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (4), the Secretary shall provide technical assistance and training to States, State agencies, schools, and school food authorities in the procurement of goods and services for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)).

“(2) BUY AMERICAN TRAINING.—Activities carried out under paragraph (1) shall include technical assistance and training to ensure compliance with subsection (n).

“(3) PROCURING SAFE FOODS.—Activities carried out under paragraph (1) shall include technical assistance and training on procuring safe foods, including the use of model specifications for procuring safe foods.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$1,000,000 for each of fiscal years 2005 through 2009, to remain available until expended.”.

SEC. 116. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) SEAMLESS SUMMER OPTION.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended by adding at the end the following:

“(8) SEAMLESS SUMMER OPTION.—Except as otherwise determined by the Secretary, a service institution that is a public or private nonprofit school food authority may provide summer or school vacation food service in accordance with applicable provisions of law governing the school lunch program established under this Act or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).”.

(b) SEAMLESS SUMMER REIMBURSEMENTS.—Section 13(b)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(b)(1)) is amended by adding at the end the following:

“(D) SEAMLESS SUMMER REIMBURSEMENTS.—A service institution described in subsection (a)(8) shall be reimbursed for meals and meal supplements in accordance with the applicable provisions under this Act (other than subparagraphs (A), (B), and (C) of this paragraph and paragraph (4)) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), as determined by the Secretary.”.

(c) SUMMER FOOD SERVICE ELIGIBILITY CRITERIA.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) (as amended by subsection (a)) is amended by adding at the end the following—

“(9) EXEMPTION.—

“(A) IN GENERAL.—For each of calendar years 2005 and 2006 in rural areas of the State of Pennsylvania (as determined by the Secretary), the threshold for determining ‘areas in which poor economic conditions exist’ under paragraph (1)(C) shall be 40 percent.

“(B) EVALUATION.—

“(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in subparagraph (A) as compared to the eligibility criteria described in paragraph (1)(C).

“(ii) IMPACT.—The evaluation shall assess the impact of the threshold in subparagraph (A) on—

“(I) the number of sponsors offering meals through the summer food service program;

“(II) the number of sites offering meals through the summer food service program;

“(III) the geographic location of the sites;

“(IV) services provided to eligible children; and

“(V) other factors determined by the Secretary.

“(iii) REPORT.—Not later than January 1, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subparagraph.

“(iv) FUNDING.—

“(I) IN GENERAL.—On January 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subparagraph \$400,000, to remain available until expended.

Effective date.

“(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subparagraph the funds transferred under subclause (I), without further appropriation.”

(d) SUMMER FOOD SERVICE RURAL TRANSPORTATION.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) (as amended by subsection (c)) is amended by adding at the end the following:

“(10) SUMMER FOOD SERVICE RURAL TRANSPORTATION.—

“(A) IN GENERAL.—The Secretary shall provide grants, through not more than 5 eligible State agencies selected by the Secretary, to not more than 60 eligible service institutions selected by the Secretary to increase participation at congregate feeding sites in the summer food service program for children authorized by this section through innovative approaches to limited transportation in rural areas.

Grants.

“(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph—

“(i) a State agency shall submit an application to the Secretary, in such manner as the Secretary shall establish, and meet criteria established by the Secretary; and

“(ii) a service institution shall agree to the terms and conditions of the grant, as established by the Secretary.

“(C) DURATION.—A service institution that receives a grant under this paragraph may use the grant funds during the 3-fiscal year period beginning in fiscal year 2005.

“(D) REPORTS.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

“(i) not later than January 1, 2007, an interim report that describes—

“(I) the use of funds made available under this paragraph; and

“(II) any progress made by using funds from each grant provided under this paragraph; and

“(ii) not later than January 1, 2008, a final report that describes—

“(I) the use of funds made available under this paragraph;

“(II) any progress made by using funds from each grant provided under this paragraph;

“(III) the impact of this paragraph on participation in the summer food service program for children authorized by this section; and

“(IV) any recommendations by the Secretary concerning the activities of the service institutions receiving grants under this paragraph.

“(E) FUNDING.—

“(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph—

“(I) on October 1, 2005, \$2,000,000; and

“(II) on October 1, 2006, and October 1, 2007, \$1,000,000.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

“(iii) AVAILABILITY OF FUNDS.—Funds transferred under clause (i) shall remain available until expended.

“(iv) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.”.

(e) REAUTHORIZATION.—Section 13(q) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(q)) is amended by striking “June 30, 2004” and inserting “September 30, 2009”.

(f) SIMPLIFIED SUMMER FOOD PROGRAMS.—

(1) DEFINITION OF ELIGIBLE STATE.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended by striking paragraph (1) and inserting the following:

“(1) DEFINITION OF ELIGIBLE STATE.—In this subsection, the term ‘eligible State’ means—

Effective dates.

“(A) a State participating in the program under this subsection as of May 1, 2004; and

“(B) a State in which (based on data available in April 2004)—

“(i) the percentage obtained by dividing—

“(I) the sum of—

“(aa) the average daily number of children attending the summer food service program in the State in July 2003; and

“(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in July 2003; by

“(II) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in March 2003; is less than

“(ii) 66.67 percent of the percentage obtained by dividing—

“(I) the sum of—

“(aa) the average daily number of children attending the summer food service program in all States in July 2003; and

“(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in July 2003; by

“(II) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in March 2003.”.

(2) DURATION.—Section 18(f)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)(2)) is amended by striking “During the period beginning October 1, 2000, and ending June 30, 2004, the” and inserting “The”.

(3) PRIVATE NONPROFIT ORGANIZATIONS.—Section 18(f)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)(3)) is amended in subparagraphs (A) and (B) by striking “(other than a service institution described in section 13(a)(7))” both places it appears.

(4) REPORT.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended by striking paragraph (6) and inserting the following:

“(6) REPORT.—Not later than April 30, 2007, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes—

“(A) the evaluations completed by the Secretary under paragraph (5); and

“(B) any recommendations of the Secretary concerning the programs.”.

(5) CONFORMING AMENDMENTS.—Section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) is amended—

(A) by striking the subsection heading and inserting the following:

“(f) SIMPLIFIED SUMMER FOOD PROGRAMS.—”;

- (B) in paragraph (2)—
 - (i) by striking the paragraph heading and inserting the following:

“(2) PROGRAMS.—”; and
 - (ii) by striking “pilot project” and inserting “program”;
- (C) in subparagraph (A) and (B) of paragraph (3), by striking “pilot project” both places it appears and inserting “program”; and
- (D) in paragraph (5)—
 - (i) in the paragraph heading by striking “PILOT PROJECTS” and inserting “PROGRAMS”; and
 - (ii) by striking “pilot project” each place it appears and inserting “program”.

SEC. 117. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking “, during the period beginning July 1, 1974, and ending June 30, 2004,”.

SEC. 118. NOTICE OF IRRADIATED FOOD PRODUCTS.

Section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end the following:

“(h) NOTICE OF IRRADIATED FOOD PRODUCTS.—

“(1) IN GENERAL.—The Secretary shall develop a policy and establish procedures for the purchase and distribution of irradiated food products in school meals programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(2) MINIMUM REQUIREMENTS.—The policy and procedures shall ensure, at a minimum, that—

“(A) irradiated food products are made available only at the request of States and school food authorities;

“(B) reimbursements to schools for irradiated food products are equal to reimbursements to schools for food products that are not irradiated;

“(C) States and school food authorities are provided factual information on the science and evidence regarding irradiation technology, including—

“(i) notice that irradiation is not a substitute for safe food handling techniques; and

“(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals programs;

“(D) States and school food authorities are provided model procedures for providing to school food authorities, parents, and students—

“(i) factual information on the science and evidence regarding irradiation technology; and

“(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals;

“(E) irradiated food products distributed to the Federal school meals program under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) are labeled with a symbol or other printed notice that—

“(i) indicates that the product was irradiated; and

Procedures.

“(ii) is prominently displayed in a clear and understandable format on the container;
“(F) irradiated food products are not commingled in containers with food products that are not irradiated; and
“(G) schools that offer irradiated food products are encouraged to offer alternatives to irradiated food products as part of the meal plan used by the schools.”.

SEC. 119. CHILD AND ADULT CARE FOOD PROGRAM.

(a) DEFINITION OF INSTITUTION.—

(1) IN GENERAL.—Section 17(a)(2)(B)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(a)(2)(B)(i)) is amended by striking “during” and all that follows through “2004.”.

(2) CONFORMING AMENDMENT.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended by striking subsection (p).

(b) DURATION OF DETERMINATION AS TIER I FAMILY OR GROUP DAY CARE HOME.—Section 17(f)(3)(E)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)(E)(iii)) is amended by striking “3 years” and inserting “5 years”.

(c) AUDITS.—Section 17(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(i)) is amended by striking “(i) The” and inserting the following:

“(i) AUDITS.—

“(1) DISREGARDS.—

“(A) IN GENERAL.—Subject to subparagraph (B), in conducting management evaluations, reviews, or audits under this section, the Secretary or a State agency may disregard any overpayment to an institution for a fiscal year if the total overpayment to the institution for the fiscal year does not exceed an amount that is consistent with the disregards allowed in other programs under this Act and recognizes the cost of collecting small claims, as determined by the Secretary.

“(B) CRIMINAL OR FRAUD VIOLATIONS.—In carrying out this paragraph, the Secretary and a State agency shall not disregard any overpayment for which there is evidence of a violation of a criminal law or civil fraud law.

“(2) FUNDING.—The”.

(d) DURATION OF AGREEMENTS.—Section 17(j) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(j)) is amended—

(1) by striking “(j) The” and inserting the following:

“(j) AGREEMENTS.—

“(1) IN GENERAL.—The”; and

(2) by adding at the end the following:

“(2) DURATION.—An agreement under paragraph (1) shall remain in effect until terminated by either party to the agreement.”.

(e) RURAL AREA ELIGIBILITY DETERMINATION FOR DAY CARE HOMES.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) (as amended by subsection (a)(2)) is amended by inserting after subsection (o) the following:

“(p) RURAL AREA ELIGIBILITY DETERMINATION FOR DAY CARE HOMES.—

Applicability.

“(1) DEFINITION OF SELECTED TIER I FAMILY OR GROUP DAY CARE HOME.—In this subsection, the term ‘selected tier I family or group day care home’ means a family or group day home that meets the definition of tier I family or group day care home under subclause (I) of subsection (f)(3)(A)(ii) except that items (aa) and (bb) of that subclause shall be applied by substituting ‘40 percent’ for ‘50 percent’.

“(2) ELIGIBILITY.—For each of fiscal years 2006 and 2007, in rural areas of the State of Nebraska (as determined by the Secretary), the Secretary shall provide reimbursement to selected tier I family or group day care homes (as defined in paragraph (1)) under subsection (f)(3) in the same manner as tier I family or group day care homes (as defined in subsection (f)(3)(A)(ii)(I)).

“(3) EVALUATION.—

“(A) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in paragraph (2) as compared to the eligibility criteria described in subsection (f)(3)(A)(ii)(I).

“(B) IMPACT.—The evaluation shall assess the impact of the change in eligibility requirements on—

“(i) the number of family or group day care homes offering meals under this section;

“(ii) the number of family or group day care homes offering meals under this section that are defined as tier I family or group day care homes as a result of paragraph (1) that otherwise would be defined as tier II family or group day care homes under subsection (f)(3)(A)(iii);

“(iii) the geographic location of the family or group day care homes;

“(iv) services provided to eligible children; and

“(v) other factors determined by the Secretary.

“(C) REPORT.—Not later than March 31, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subsection.

“(D) FUNDING.—

“(i) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph \$400,000, to remain available until expended.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.”

(f) MANAGEMENT SUPPORT.—Section 17(q)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(q)(3)) is amended by striking “1999 through 2003” and inserting “2005 and 2006”.

(g) AGE LIMITS.—Section 17(t)(5)(A)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(t)(5)(A)(i)) is amended—
(1) in subclause (I)—

Effective date.

(A) by striking “12” and inserting “18”; and

(B) by inserting “or” after the semicolon;

(2) by striking subclause (II); and

(3) by redesignating subclause (III) as subclause (II).

(h) TECHNICAL AMENDMENTS.—Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended—

(1) in subsection (a)(6)(B), by inserting “and adult” after “child”; and

(2) in subsection (t)(3), by striking “subsection (a)(1)” and inserting “subsection (a)(5)”.

(i) PAPERWORK REDUCTION.—The Secretary of Agriculture, in conjunction with States and participating institutions, shall examine the feasibility of reducing paperwork resulting from regulations and recordkeeping requirements for State agencies, family child care homes, child care centers, and sponsoring organizations participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766). 42 USC 1766 note.

(j) EARLY CHILD NUTRITION EDUCATION.—

(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (6), for a period of 4 successive years, the Secretary of Agriculture shall award to 1 or more entities with expertise in designing and implementing health education programs for limited-English-proficient individuals 1 or more grants to enhance obesity prevention activities for child care centers and sponsoring organizations providing services to limited-English-proficient individuals through the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) in each of 4 States selected by the Secretary in accordance with paragraph (2). 42 USC 1766 note.

(2) STATES.—The Secretary shall provide grants under this subsection in States that have experienced a growth in the limited-English-proficient population of the States of at least 100 percent between the years 1990 and 2000, as measured by the census. Grants.

(3) REQUIRED ACTIVITIES.—Activities carried out under paragraph (1) shall include—

(A) developing an interactive and comprehensive tool kit for use by lay health educators and training activities;

(B) conducting training and providing ongoing technical assistance for lay health educators; and

(C) establishing collaborations with child care centers and sponsoring organizations participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) to—

(i) identify limited-English-proficient children and families; and

(ii) enhance the capacity of the child care centers and sponsoring organizations to use appropriate obesity prevention strategies.

(4) EVALUATION.—Each grant recipient shall identify an institution of higher education to conduct an independent evaluation of the effectiveness of the grant.

(5) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Health, Education, Labor, and Pensions, of the Senate a report that includes—

(A) the evaluation completed by the institution of higher education under paragraph (4);

(B) the effectiveness of lay health educators in reducing childhood obesity; and

(C) any recommendations of the Secretary concerning the grants.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$250,000 for each of fiscal years 2005 through 2009.

SEC. 120. FRESH FRUIT AND VEGETABLE PROGRAM.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by striking subsection (g) and inserting the following:

“(g) FRESH FRUIT AND VEGETABLE PROGRAM.—

“(1) IN GENERAL.—For the school year beginning July 2004 and each subsequent school year, the Secretary shall carry out a program to make free fresh fruits and vegetables available, to the maximum extent practicable, to—

“(A) 25 elementary or secondary schools in each of the 4 States authorized to participate in the program under this subsection on May 1, 2004;

“(B) 25 elementary or secondary schools (as selected by the Secretary in accordance with paragraph (3)) in each of 4 States (including a State for which funds were allocated under the program described in paragraph (3)(B)(ii)) that are not participating in the program under this subsection on May 1, 2004; and

“(C) 25 elementary or secondary schools operated on 3 Indian reservations (including the reservation authorized to participate in the program under this subsection on May 1, 2004), as selected by the Secretary.

“(2) PROGRAM.—A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day in 1 or more areas designated by the school.

“(3) SELECTION OF SCHOOLS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), in selecting additional schools to participate in the program under paragraph (1)(B), the Secretary shall—

“(i) to the maximum extent practicable, ensure that the majority of schools selected are those in which not less than 50 percent of students are eligible for free or reduced price meals under this Act;

“(ii) solicit applications from interested schools that include—

“(I) information pertaining to the percentage of students enrolled in the school submitting the application who are eligible for free or reduced price school lunches under this Act;

“(II) a certification of support for participation in the program signed by the school food manager,

the school principal, and the district superintendent (or equivalent positions, as determined by the school); and

“(III) such other information as may be requested by the Secretary;

“(iii) for each application received, determine whether the application is from a school in which not less than 50 percent of students are eligible for free or reduced price meals under this Act; and

“(iv) give priority to schools that submit a plan for implementation of the program that includes a partnership with 1 or more entities that provide non-Federal resources (including entities representing the fruit and vegetable industry) for—

“(I) the acquisition, handling, promotion, or distribution of fresh and dried fruits and fresh vegetables; or

“(II) other support that contributes to the purposes of the program.

“(B) NONAPPLICABILITY TO EXISTING PARTICIPANTS.—Subparagraph (A) shall not apply to a school, State, or Indian reservation authorized—

“(i) to participate in the program on May 1, 2004;

or

“(ii) to receive funding for free fruits and vegetables under funds provided for public health improvement under the heading ‘DISEASE CONTROL, RESEARCH, AND TRAINING’ under the heading ‘CENTERS FOR DISEASE CONTROL AND PREVENTION’ in title II of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004 (Division E of Public Law 108–199; 118 Stat. 238).

“(4) NOTICE OF AVAILABILITY.—To be eligible to participate in the program under this subsection, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

“(5) REPORTS.—

“(A) INTERIM REPORTS.—Not later than September 30 of each of fiscal years 2005 through 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report that describes the activities carried out under this subsection during the fiscal year covered by the report.

“(B) FINAL REPORT.—Not later than December 31, 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a final report that describes the results of the program under this subsection.

“(6) FUNDING.—

“(A) EXISTING FUNDS.—The Secretary shall use to carry out this subsection any funds that remain under this subsection on the day before the date of enactment of this subparagraph.

“(B) MANDATORY FUNDS.—

Effective date.

“(i) IN GENERAL.—On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection \$9,000,000, to remain available until expended.

“(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds made available under this subparagraph, without further appropriation.

“(C) AUTHORIZATION OF APPROPRIATIONS.—In addition to any amounts made available under subparagraphs (A) and (B), there are authorized to be appropriated such sums as are necessary to expand the program carried out under this subsection.

“(D) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.”.

SEC. 121. SUMMER FOOD SERVICE RESIDENTIAL CAMP ELIGIBILITY.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following:

“(h) SUMMER FOOD SERVICE RESIDENTIAL CAMP ELIGIBILITY.—

“(1) IN GENERAL.—During the month after the date of enactment of this subsection through September, 2004, and the months of May through September, 2005, the Secretary shall modify eligibility criteria, at not more than 1 private nonprofit residential camp in each of not more than 2 States, as determined by the Secretary, for the purpose of identifying and evaluating alternative methods of determining the eligibility of residential private nonprofit camps to participate in the summer food service program for children established under section 13.

“(2) ELIGIBILITY.—To be eligible for the criteria modified under paragraph (1), a residential camp—

“(A) shall be a service institution (as defined in section 13(a)(1));

“(B) may not charge a fee to any child in residence at the camp; and

“(C) shall serve children who reside in an area in which poor economic conditions exist (as defined in section 13(a)(1)).

“(3) PAYMENTS.—

“(A) IN GENERAL.—Under this subsection, the Secretary shall provide reimbursement for meals served to all children at a residential camp at the payment rates specified in section 13(b)(1).

“(B) REIMBURSABLE MEALS.—A residential camp selected by the Secretary may receive reimbursement for

not more than 3 meals, or 2 meals and 1 supplement, during each day of operation.

“(4) EVALUATION.—

“(A) INFORMATION FROM RESIDENTIAL CAMPS.—Not later than December 31, 2005, a residential camp selected under paragraph (1) shall report to the Secretary such information as is required by the Secretary concerning the requirements of this subsection.

Deadline.
Reports.

“(B) REPORT TO CONGRESS.—Not later than March 31, 2006, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the effect of this subsection on program participation and other factors, as determined by the Secretary.”.

SEC. 122. ACCESS TO LOCAL FOODS AND SCHOOL GARDENS.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 121) is amended by adding at the end the following:

“(i) ACCESS TO LOCAL FOODS AND SCHOOL GARDENS.—

“(1) IN GENERAL.—The Secretary may provide assistance, through competitive matching grants and technical assistance, to schools and nonprofit entities for projects that—

“(A) improve access to local foods in schools and institutions participating in programs under this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) through farm-to-cafeteria activities, including school gardens, that may include the acquisition of food and appropriate equipment and the provision of training and education;

“(B) are, at a minimum, designed to—

“(i) procure local foods from small- and medium-sized farms for school meals; and

“(ii) support school garden programs;

“(C) support nutrition education activities or curriculum planning that incorporates the participation of school children in farm-based agricultural education activities, that may include school gardens;

“(D) develop a sustained commitment to farm-to-cafeteria projects in the community by linking schools, State departments of agriculture, agricultural producers, parents, and other community stakeholders;

“(E) require \$100,000 or less in Federal contributions;

“(F) require a Federal share of costs not to exceed 75 percent;

“(G) provide matching support in the form of cash or in-kind contributions (including facilities, equipment, or services provided by State and local governments and private sources); and

“(H) cooperate in an evaluation carried out by the Secretary.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2004 through 2009.”.

SEC. 123. YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 122) is amended by adding at the end the following:

“(j) YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.—

“(1) IN GENERAL.—A service institution that is described in section 13(a)(6) (excluding a public school), or a private nonprofit organization described in section 13(a)(7), and that is located in the State of California may be reimbursed—

“(A) for up to 2 meals during each day of operation served—

“(i) during the months of May through September;

“(ii) in the case of a service institution that operates a food service program for children on school vacation, at anytime under a continuous school calendar; and

“(iii) in the case of a service institution that provides meal service at a nonschool site to children who are not in school for a period during the school year due to a natural disaster, building repair, court order, or similar case, at anytime during such a period; and

“(B) for a snack served during each day of operation after school hours, weekends, and school holidays during the regular school calendar.

“(2) PAYMENTS.—The service institution shall be reimbursed consistent with section 13(b)(1).

“(3) ADMINISTRATION.—To receive reimbursement under this subsection, a service institution shall comply with section 13, other than subsections (b)(2) and (c)(1) of that section.

“(4) EVALUATION.—Not later than September 30, 2007, the State agency shall submit to the Secretary a report on the effect of this subsection on participation in the summer food service program for children established under section 13.

“(5) FUNDING.—The Secretary shall provide to the State of California such sums as are necessary to carry out this subsection for each of fiscal years 2005 through 2009.”.

SEC. 124. FREE LUNCH AND BREAKFAST ELIGIBILITY.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) (as amended by section 123) is amended by adding at the end the following:

“(k) FREE LUNCH AND BREAKFAST ELIGIBILITY.—

“(1) IN GENERAL.—Subject to the availability of funds under paragraph (4), the Secretary shall expand the service of free lunches and breakfasts provided at schools participating in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) in all or part of 5 States selected by the Secretary (of which at least 1 shall be a largely rural State with a significant Native American population).

“(2) INCOME ELIGIBILITY.—The income guidelines for determining eligibility for free lunches or breakfasts under this subsection shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B).

“(3) EVALUATION.—

Deadline.
Reports.

“(A) IN GENERAL.—Not later than 3 years after the implementation of this subsection, the Secretary shall conduct an evaluation to assess the impact of the changed income eligibility guidelines by comparing the school food authorities operating under this subsection to school food authorities not operating under this subsection. Deadline.

“(B) IMPACT ASSESSMENT.—

“(i) CHILDREN.—The evaluation shall assess the impact of this subsection separately on—

“(I) children in households with incomes less than 130 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B); and

“(II) children in households with incomes greater than 130 percent and not greater than 185 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B).

“(ii) FACTORS.—The evaluation shall assess the impact of this subsection on—

“(I) certification and participation rates in the school lunch and breakfast programs;

“(II) rates of lunch- and breakfast-skipping;

“(III) academic achievement;

“(IV) the allocation of funds authorized in title I of the Elementary and Secondary Education Act (20 U.S.C. 6301) to local educational agencies and public schools; and

“(V) other factors determined by the Secretary.

“(C) COST ASSESSMENT.—The evaluation shall assess the increased costs associated with providing additional free, reduced price, or paid meals in the school food authorities operating under this subsection.

“(D) REPORT.—On completion of the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this paragraph.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.”.

SEC. 125. TRAINING, TECHNICAL ASSISTANCE, AND FOOD SERVICE MANAGEMENT INSTITUTE.

(a) IN GENERAL.—Section 21(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(a)(1)) is amended by striking “activities and” and all that follows and inserting “activities and provide—

“(A) training and technical assistance to improve the skills of individuals employed in—

“(i) food service programs carried out with assistance under this Act and, to the maximum extent practicable, using individuals who administer exemplary local food service programs in the State;

“(ii) school breakfast programs carried out with assistance under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

“(iii) as appropriate, other federally assisted feeding programs; and

“(B) assistance, on a competitive basis, to State agencies for the purpose of aiding schools and school food authorities with at least 50 percent of enrolled children certified to receive free or reduced price meals (and, if there are any remaining funds, other schools and school food authorities) in meeting the cost of acquiring or upgrading technology and information management systems for use in food service programs carried out under this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), if the school or school food authority submits to the State agency an infrastructure development plan that—

“(i) addresses the cost savings and improvements in program integrity and operations that would result from the use of new or upgraded technology;

“(ii) ensures that there is not any overt identification of any child by special tokens or tickets, announced or published list of names, or by any other means;

“(iii) provides for processing and verifying applications for free and reduced price school meals;

“(iv) integrates menu planning, production, and serving data to monitor compliance with section 9(f)(1); and

“(v) establishes compatibility with statewide reporting systems;

“(C) assistance, on a competitive basis, to State agencies with low proportions of schools or students that—

“(i) participate in the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

“(ii) demonstrate the greatest need, for the purpose of aiding schools in meeting costs associated with initiating or expanding a school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), including outreach and informational activities; and”.

(b) DUTIES OF FOOD SERVICE MANAGEMENT INSTITUTE.—Section 21(c)(2)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(c)(2)(B)) is amended—

(1) by striking clauses (vi) and (vii) and inserting the following:

“(vi) safety, including food handling, hazard analysis and critical control point plan implementation, emergency readiness, responding to a food recall, and food biosecurity training;”;

(2) by redesignating clauses (viii) through (x) as clauses (vii) through (ix), respectively.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) TRAINING ACTIVITIES AND TECHNICAL ASSISTANCE.—Section 21(e)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(e)(1)) is amended by striking “2003” and inserting “2009”.

(2) FOOD SERVICE MANAGEMENT INSTITUTE.—Section 21(e)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(e)(2)(A)) is amended in the first sentence—

(A) by striking “provide to the Secretary” and all that follows through “1998, and” and inserting “provide to the Secretary”; and

(B) by striking “1999 and” and inserting “2004 and \$4,000,000 for fiscal year 2005”.

SEC. 126. ADMINISTRATIVE ERROR REDUCTION.

(a) FEDERAL SUPPORT FOR TRAINING AND TECHNICAL ASSISTANCE.—Section 21 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1) is amended by adding at the end the following:

“(f) ADMINISTRATIVE TRAINING AND TECHNICAL ASSISTANCE MATERIAL.—In collaboration with State educational agencies, local educational agencies, and school food authorities of varying sizes, the Secretary shall develop and distribute training and technical assistance material relating to the administration of school meals programs that are representative of the best management and administrative practices.

“(g) FEDERAL ADMINISTRATIVE SUPPORT.—

“(1) FUNDING.—

“(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection—

Effective date.

“(i) on October 1, 2004, and October 1, 2005, \$3,000,000; and

“(ii) on October 1, 2006, October 1, 2007, and October 1, 2008, \$2,000,000.

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

“(C) AVAILABILITY OF FUNDS.—Funds transferred under subparagraph (A) shall remain available until expended.

“(2) USE OF FUNDS.—The Secretary may use funds provided under this subsection—

“(A) to provide training and technical assistance and material related to improving program integrity and administrative accuracy in school meals programs; and

“(B) to assist State educational agencies in reviewing the administrative practices of local educational agencies, to the extent determined by the Secretary.”.

(b) SELECTED ADMINISTRATIVE REVIEWS.—

(1) IN GENERAL.—Section 22(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)) is amended by adding at the end the following:

“(3) ADDITIONAL REVIEW REQUIREMENT FOR SELECTED LOCAL EDUCATIONAL AGENCIES.—

“(A) DEFINITION OF SELECTED LOCAL EDUCATIONAL AGENCIES.—In this paragraph, the term ‘selected local educational agency’ means a local educational agency that has a demonstrated high level of, or a high risk for, administrative error, as determined by the Secretary.

“(B) ADDITIONAL ADMINISTRATIVE REVIEW.—In addition to any review required by subsection (a) or paragraph (1), each State educational agency shall conduct an administrative review of each selected local educational agency during the review cycle established under subsection (a).

“(C) SCOPE OF REVIEW.—In carrying out a review under subparagraph (B), a State educational agency shall only review the administrative processes of a selected local educational agency, including application, certification, verification, meal counting, and meal claiming procedures.

“(D) RESULTS OF REVIEW.—If the State educational agency determines (on the basis of a review conducted under subparagraph (B)) that a selected local educational agency fails to meet performance criteria established by the Secretary, the State educational agency shall—

“(i) require the selected local educational agency to develop and carry out an approved plan of corrective action;

“(ii) except to the extent technical assistance is provided directly by the Secretary, provide technical assistance to assist the selected local educational agency in carrying out the corrective action plan; and

“(iii) conduct a followup review of the selected local educational agency under standards established by the Secretary.

“(4) RETAINING FUNDS AFTER ADMINISTRATIVE REVIEWS.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), if the local educational agency fails to meet administrative performance criteria established by the Secretary in both an initial review and a followup review under paragraph (1) or (3) or subsection (a), the Secretary may require the State educational agency to retain funds that would otherwise be paid to the local educational agency for school meals programs under procedures prescribed by the Secretary.

“(B) AMOUNT.—The amount of funds retained under subparagraph (A) shall equal the value of any overpayment made to the local educational agency or school food authority as a result of an erroneous claim during the time period described in subparagraph (C).

“(C) TIME PERIOD.—The period for determining the value of any overpayment under subparagraph (B) shall be the period—

“(i) beginning on the date the erroneous claim was made; and

“(ii) ending on the earlier of the date the erroneous claim is corrected or—

“(I) in the case of the first followup review conducted by the State educational agency of the local educational agency under this section after

July 1, 2005, the date that is 60 days after the beginning of the period under clause (i); or

“(II) in the case of any subsequent followup review conducted by the State educational agency of the local educational agency under this section, the date that is 90 days after the beginning of the period under clause (i).

“(5) USE OF RETAINED FUNDS.—

“(A) IN GENERAL.—Subject to subparagraph (B), funds retained under paragraph (4) shall—

“(i) be returned to the Secretary, and may be used—

“(I) to provide training and technical assistance related to administrative practices designed to improve program integrity and administrative accuracy in school meals programs to State educational agencies and, to the extent determined by the Secretary, to local educational agencies and school food authorities;

“(II) to assist State educational agencies in reviewing the administrative practices of local educational agencies in carrying out school meals programs; and

“(III) to carry out section 21(f); or

“(ii) be credited to the child nutrition programs appropriation account.

“(B) STATE SHARE.—A State educational agency may retain not more than 25 percent of an amount recovered under paragraph (4), to carry out school meals program integrity initiatives to assist local educational agencies and school food authorities that have repeatedly failed, as determined by the Secretary, to meet administrative performance criteria.

“(C) REQUIREMENT.—To be eligible to retain funds under subparagraph (B), a State educational agency shall—

“(i) submit to the Secretary a plan describing how the State educational agency will use the funds to improve school meals program integrity, including measures to give priority to local educational agencies from which funds were retained under paragraph (4);

“(ii) consider using individuals who administer exemplary local food service programs in the provision of training and technical assistance; and

“(iii) obtain the approval of the Secretary for the plan.”.

(2) INTERPRETATION.—Nothing in the amendment made by paragraph (1) affects the requirements for fiscal actions as described in the regulations issued pursuant to section 22(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(a)).

42 USC 1769c
note.

(c) TRAINING AND TECHNICAL ASSISTANCE.—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended—

(1) in subsection (e)—

(A) by striking “(e) Each” and inserting the following:

“(e) PLANS FOR USE OF ADMINISTRATIVE EXPENSE FUNDS.—

“(1) IN GENERAL.—Each”; and

(B) by striking “After submitting” and all that follows through “change in the plan.” and inserting the following:

“(2) UPDATES AND INFORMATION MANAGEMENT SYSTEMS.—

“(A) IN GENERAL.—After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

“(B) PLAN CONTENTS.—Each State plan shall, at a minimum, include a description of how technology and information management systems will be used to improve program integrity by—

“(i) monitoring the nutrient content of meals served;

“(ii) training local educational agencies, school food authorities, and schools in how to use technology and information management systems (including verifying eligibility for free or reduced price meals using program participation or income data gathered by State or local agencies); and

“(iii) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data.

“(3) TRAINING AND TECHNICAL ASSISTANCE.—Each State shall submit to the Secretary for approval a plan describing the manner in which the State intends to implement subsection (g) and section 22(b)(3) of the Richard B. Russell National School Lunch Act.”;

(2) by redesignating subsection (g) as subsection (j); and

(3) by inserting after subsection (f) the following:

“(g) STATE TRAINING.—

“(1) IN GENERAL.—At least annually, each State shall provide training in administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) to local educational agency and school food authority administrative personnel and other appropriate personnel, with emphasis on the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

“(2) FEDERAL ROLE.—The Secretary shall—

“(A) provide training and technical assistance to a State; or

“(B) at the option of the Secretary, directly provide training and technical assistance described in paragraph (1).

Procedures.

“(3) REQUIRED PARTICIPATION.—In accordance with procedures established by the Secretary, each local educational agency or school food authority shall ensure that an individual conducting or overseeing administrative procedures described in paragraph (1) receives training at least annually, unless determined otherwise by the Secretary.

“(h) FUNDING FOR TRAINING AND ADMINISTRATIVE REVIEWS.—

“(1) FUNDING.—

Effective date.

“(A) IN GENERAL.—On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection \$4,000,000, to remain available until expended.

“(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

“(2) USE OF FUNDS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall use funds provided under this subsection to assist States in carrying out subsection (g) and administrative reviews of selected local educational agencies carried out under section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c).

“(B) EXCEPTION.—The Secretary may retain a portion of the amount provided to cover costs of activities carried out by the Secretary in lieu of the State.

“(3) ALLOCATION.—The Secretary shall allocate funds provided under this subsection to States based on the number of local educational agencies that have demonstrated a high level of, or a high risk for, administrative error, as determined by the Secretary, taking into account the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

“(4) REALLOCATION.—The Secretary may reallocate, to carry out this section, any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.”.

SEC. 127. COMPLIANCE AND ACCOUNTABILITY.

Section 22(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(d)) is amended by striking “\$3,000,000 for each of the fiscal years 1994 through 2003” and inserting “\$6,000,000 for each of fiscal years 2004 through 2009”.

SEC. 128. INFORMATION CLEARINGHOUSE.

Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)) is amended in the first sentence—

(1) by striking “1998, and” and inserting “1998,”; and

(2) by striking “through 2003” and inserting “through 2004, and \$250,000 for each of fiscal years 2005 through 2009”.

SEC. 129. PROGRAM EVALUATION.

The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by adding at the end the following:

“SEC. 28. PROGRAM EVALUATION.

42 USC 1769i.

“(a) PERFORMANCE ASSESSMENTS.—

“(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (3), the Secretary, acting through the Administrator of the Food and Nutrition Service, may conduct annual national performance assessments of the meal programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(2) COMPONENTS.—In conducting an assessment, the Secretary may assess—

“(A) the cost of producing meals and meal supplements under the programs described in paragraph (1); and

“(B) the nutrient profile of meals, and status of menu planning practices, under the programs.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$5,000,000 for fiscal year 2004 and each subsequent fiscal year.

“(b) CERTIFICATION IMPROVEMENTS.—

“(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (5), the Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct a study of the feasibility of improving the certification process used for the school lunch program established under this Act.

“(2) PILOT PROJECTS.—In carrying out this subsection, the Secretary may conduct pilot projects to improve the certification process used for the school lunch program.

“(3) COMPONENTS.—In carrying out this subsection, the Secretary shall examine the use of—

“(A) other income reporting systems;

“(B) an integrated benefit eligibility determination process managed by a single agency;

“(C) income or program participation data gathered by State or local agencies; and

“(D) other options determined by the Secretary.

“(4) WAIVERS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may waive such provisions of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) as are necessary to carry out this subsection.

“(B) PROVISIONS.—The protections of section 9(b)(6) shall apply to any study or pilot project carried out under this subsection.

“(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection such sums as are necessary.”.

Applicability.

TITLE II—AMENDMENTS TO CHILD NUTRITION ACT OF 1966

SEC. 201. SEVERE NEED ASSISTANCE.

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) is amended by striking subsection (d) and inserting the following:

“(d) SEVERE NEED ASSISTANCE.—

“(1) IN GENERAL.—Each State educational agency shall provide additional assistance to schools in severe need, which shall include only those schools (having a breakfast program or desiring to initiate a breakfast program) in which—

“(A) during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price; or

“(B) in the case of a school in which lunches were not served during the most recent second preceding school year, the Secretary otherwise determines that the requirements of subparagraph (A) would have been met.

“(2) ADDITIONAL ASSISTANCE.—A school, on the submission of appropriate documentation about the need circumstances in that school and the eligibility of the school for additional

assistance, shall be entitled to receive the meal reimbursement rate specified in subsection (b)(2).”.

SEC. 202. STATE ADMINISTRATIVE EXPENSES.

(a) **MINIMUM STATE ADMINISTRATIVE EXPENSE GRANTS.**—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended—

(1) by striking the section heading and all that follows through “(a)(1) Each” and inserting the following:

“SEC. 7. STATE ADMINISTRATIVE EXPENSES.

“(a) AMOUNT AND ALLOCATION OF FUNDS.—

“(1) AMOUNT AVAILABLE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), each”;

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by inserting after the first sentence the following:

“(B) MINIMUM AMOUNT.—In the case of each of fiscal years 2005 through 2007, the Secretary shall make available to each State for administrative costs not less than the initial allocation made to the State under this subsection for fiscal year 2004.”;

(ii) by striking “The Secretary” and inserting the following:

“(C) ALLOCATION.—The Secretary”; and

(iii) by striking the last sentence; and

(B) in paragraph (2)—

(i) by striking “(2) The” and inserting the following:

“(2) EXPENSE GRANTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the”;

(ii) in the second sentence—

(I) by striking “In no case” and inserting the following:

“(B) MINIMUM AMOUNT.—

“(i) IN GENERAL.—In no case”;

(II) by striking “this subsection” and inserting “this paragraph”; and

(III) by striking “\$100,000” and inserting “\$200,000 (as adjusted under clause (ii))”; and

(iii) by adding at the end the following:

“(ii) ADJUSTMENT.—On October 1, 2008, and each October 1 thereafter, the minimum dollar amount for a fiscal year specified in clause (i) shall be adjusted to reflect the percentage change between—

“(I) the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

“(II) the value of that index for the 12-month period ending June 30 of the preceding fiscal year.”.

Effective date.

(b) **TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.**—Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended by inserting after subsection (h) (as added by section 126(c)(3)) the following:

“(i) TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.—

“(1) IN GENERAL.—Each State shall submit to the Secretary, for approval by the Secretary, an amendment to the plan required by subsection (e) that describes the manner in which funds provided under this section will be used for technology and information management systems.

“(2) REQUIREMENTS.—The amendment shall, at a minimum, describe the manner in which the State will improve program integrity by—

“(A) monitoring the nutrient content of meals served;

“(B) providing training to local educational agencies, school food authorities, and schools on the use of technology and information management systems for activities including—

“(i) menu planning;

“(ii) collection of point-of-sale data; and

“(iii) the processing of applications for free and reduced price meals; and

“(C) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data across schools and school food authorities.

“(3) TECHNOLOGY INFRASTRUCTURE GRANTS.—

“(A) IN GENERAL.—Subject to the availability of funds made available under paragraph (4) to carry out this paragraph, the Secretary shall, on a competitive basis, provide funds to States to be used to provide grants to local educational agencies, school food authorities, and schools to defray the cost of purchasing or upgrading technology and information management systems for use in programs authorized by this Act (other than section 17) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

“(B) INFRASTRUCTURE DEVELOPMENT PLAN.—To be eligible to receive a grant under this paragraph, a school or school food authority shall submit to the State a plan to purchase or upgrade technology and information management systems that addresses potential cost savings and methods to improve program integrity, including—

“(i) processing and verification of applications for free and reduced price meals;

“(ii) integration of menu planning, production, and serving data to monitor compliance with section 9(f)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1)); and

“(iii) compatibility with statewide reporting systems.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2005 through 2009, to remain available until expended.”.

(c) REAUTHORIZATION.—Subsection (j) of section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as redesignated by section 126(c)(2)) is amended by striking “2003” and inserting “2009”.

SEC. 203. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.**(a) DEFINITIONS.—**

(1) **NUTRITION EDUCATION.**—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended by striking paragraph (7) and inserting the following:

“(7) **NUTRITION EDUCATION.**—The term ‘nutrition education’ means individual and group sessions and the provision of material that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.”.

(2) **SUPPLEMENTAL FOODS.**—Section 17(b)(14) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(14)) is amended in the first sentence by inserting after “children” the following: “and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns”.

(3) **OTHER TERMS.**—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended by adding at the end the following:

“(22) **PRIMARY CONTRACT INFANT FORMULA.**—The term ‘primary contract infant formula’ means the specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation under this section and for which a contract is awarded by the State agency as a result of that bid.

“(23) **STATE ALLIANCE.**—The term ‘State alliance’ means 2 or more State agencies that join together for the purpose of procuring infant formula under the program by soliciting competitive bids for infant formula.”.

(b) ELIGIBILITY.—

(1) **CERTIFICATION PERIOD.**—Section 17(d)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)) is amended—

(A) by striking “(3)(A) Persons” and inserting the following:

“(3) **CERTIFICATION.**—

“(A) **PROCEDURES.**—

“(i) **IN GENERAL.**—Subject to clause (ii), a person”;

and

(B) by adding at the end of subparagraph (A) the following:

“(ii) **BREASTFEEDING WOMEN.**—A State may elect to certify a breastfeeding woman for a period of 1 year postpartum or until a woman discontinues breastfeeding, whichever is earlier.”.

(2) **PHYSICAL PRESENCE.**—Section 17(d)(3)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)(ii)) is amended—

(A) in subclause (I)(bb), by striking “from a provider other than the local agency; or” and inserting a semicolon;

(B) in subclause (II), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(III) an infant under 8 weeks of age—

“(aa) who cannot be present at certification for a reason determined appropriate by the local agency; and

“(bb) for whom all necessary certification information is provided.”.

(c) ADMINISTRATION.—

(1) PROCESSING VENDOR APPLICATIONS; PARTICIPANT ACCESS.—Section 17(f)(1)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)) is amended—

(A) in clause (i) by inserting “at any of the authorized retail stores under the program” after “the program”;

(B) by redesignating clauses (ii) through (x) as clauses (iii) through (xi), respectively; and

(C) by inserting after clause (i) the following:

“(ii) procedures for accepting and processing vendor applications outside of the established timeframes if the State agency determines there will be inadequate access to the program, including in a case in which a previously authorized vendor sells a store under circumstances that do not permit timely notification to the State agency of the change in ownership;”.

(2) ALLOWABLE USE OF FUNDS.—

(A) IN GENERAL.—Section 17(f)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(11)) is amended—

(i) by striking “(11) The Secretary” and inserting the following:

“(11) SUPPLEMENTAL FOODS.—

“(A) IN GENERAL.—The Secretary”;

(ii) in the second sentence, by striking “To the degree” and inserting the following:

“(B) APPROPRIATE CONTENT.—To the degree”; and

(iii) by adding at the end the following:

“(C) ALLOWABLE USE OF FUNDS.—Subject to the availability of funds, the Secretary shall award grants to not more than 10 local sites determined by the Secretary to be geographically and culturally representative of State, local, and Indian agencies, to evaluate the feasibility of including fresh, frozen, or canned fruits and vegetables (to be made available through private funds) as an addition to the supplemental foods prescribed under this section.

“(D) REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.—As frequently as determined by the Secretary to be necessary to reflect the most recent scientific knowledge, the Secretary shall—

“(i) conduct a scientific review of the supplemental foods available under the program; and

“(ii) amend the supplemental foods available, as necessary, to reflect nutrition science, public health concerns, and cultural eating patterns.”.

(B) RULEMAKING.—Not later than 18 months after the date of receiving the review initiated by the National Academy of Sciences, Institute of Medicine in September 2003 of the supplemental foods available for the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Secretary shall promulgate a final rule updating the prescribed supplemental foods available through the program.

(3) USE OF CLAIMS FROM LOCAL AGENCIES.—Section 17(f)(21) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(21)) is amended—

(A) in the paragraph heading, by striking “VENDORS” and inserting “LOCAL AGENCIES, VENDORS,”; and

(B) by striking “vendors” and inserting “local agencies, vendors,”.

(4) INFANT FORMULA BENEFITS.—

(A) IN GENERAL.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end the following:

“(25) INFANT FORMULA BENEFITS.—A State agency may round up to the next whole can of infant formula to allow all participants under the program to receive the full-authorized nutritional benefit specified by regulation.”.

(B) APPLICABILITY.—The amendment made by subparagraph (A) applies to infant formula provided under a contract resulting from a bid solicitation issued on or after October 1, 2004.

(5) NOTIFICATION OF VIOLATIONS.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) (as amended by paragraph (4)) is amended by adding at the end the following:

“(26) NOTIFICATION OF VIOLATIONS.—If a State agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a penalty or sanction, the State agency shall notify the vendor of the initial violation in writing prior to documentation of another violation, unless the State agency determines that notifying the vendor would compromise an investigation.”.

(d) REAUTHORIZATION OF WIC PROGRAM.—Section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) is amended by striking “(g)(1)” and all that follows through “As authorized” in paragraph (1) and inserting the following:

“(g) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—

“(A) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2009.

“(B) ADVANCE APPROPRIATIONS; AVAILABILITY.—As authorized”.

(e) NUTRITION SERVICES AND ADMINISTRATION FUNDS; COMPETITIVE BIDDING; RETAILERS.—

(1) IN GENERAL.—Section 17(h)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(2)(A)) is amended by striking “For each of the fiscal years 1995 through 2003, the” and inserting “The”.

(2) HEALTHY PEOPLE 2010 INITIATIVE.—Section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended—

(A) in subparagraph (D), by striking “; and” and inserting a semicolon;

(B) in subparagraph (E), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(F) partner with communities, State and local agencies, employers, health care professionals, and other entities in the private sector to build a supportive breastfeeding

environment for women participating in the program under this section to support the breastfeeding goals of the Healthy People 2010 initiative.”

(3) SIZE OF STATE ALLIANCES.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) is amended by adding at the end the following:

“(iv) SIZE OF STATE ALLIANCES.—

“(I) IN GENERAL.—Except as provided in subclauses (II) through (IV), no State alliance may exist among States if the total number of infants served by States participating in the alliance as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, would exceed 100,000.

“(II) ADDITION OF INFANT PARTICIPANTS.—In the case of a State alliance that exists on the date of enactment of this clause, the alliance may continue and may expand to serve more than 100,000 infants but, except as provided in subclause (III), may not expand to include any additional State agency.

“(III) ADDITION OF SMALL STATE AGENCIES AND INDIAN STATE AGENCIES.—Any State alliance may expand to include any State agency that served less than 5,000 infant participants as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, or any Indian State agency, if the State agency or Indian State agency requests to join the State alliance.

“(IV) SECRETARIAL WAIVER.—The Secretary may waive the requirements of this clause not earlier than 30 days after submitting to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a written report that describes the cost-containment and competitive benefits of the proposed waiver.”

(4) PRIMARY CONTRACT INFANT FORMULA.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(8)(A)) (as amended by paragraph (3)) is amended—

(i) in clause (ii)(I), by striking “contract brand of” and inserting “primary contract”;

(ii) in clause (iii), by inserting “for a specific infant formula for which manufacturers submit a bid” after “lowest net price”; and

(iii) by adding at the end the following:

“(v) FIRST CHOICE OF ISSUANCE.—The State agency shall use the primary contract infant formula as the first choice of issuance (by formula type), with all other infant formulas issued as an alternative to the primary contract infant formula.”

(B) APPLICABILITY.—The amendments made by subparagraph (A) apply to a contract resulting from a bid solicitation issued on or after October 1, 2004.

(5) REBATE INVOICES.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (4)(A)(iii)) is amended by adding at the end the following:

“(vi) REBATE INVOICES.—Each State agency shall have a system to ensure that infant formula rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section.”.

(6) UNCOUPLING MILK AND SOY BIDS.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (5)) is amended by adding at the end the following:

“(vii) SEPARATE SOLICITATIONS.—In soliciting bids for infant formula under a competitive bidding system, any State agency, or State alliance, that served under the program a monthly average of more than 100,000 infants during the preceding 12-month period shall solicit bids from infant formula manufacturers under procedures that require that bids for rebates or discounts are solicited for milk-based and soy-based infant formula separately.”.

(B) APPLICABILITY.—The amendment made by this paragraph applies to a bid solicitation issued on or after October 1, 2004.

42 USC 1786
note.

(7) CENT-FOR-CENT ADJUSTMENTS.—

(A) IN GENERAL.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (6)(A)) is amended by adding at the end the following:

“(viii) CENT-FOR-CENT ADJUSTMENTS.—A bid solicitation for infant formula under the program shall require the manufacturer to adjust for price changes subsequent to the opening of the bidding process in a manner that requires—

“(I) a cent-for-cent increase in the rebate amounts if there is an increase in the lowest national wholesale price for a full truckload of the particular infant formula; and

“(II) a cent-for-cent decrease in the rebate amounts if there is a decrease in the lowest national wholesale price for a full truckload of the particular infant formula.”.

(B) CONFORMING AMENDMENT.—Section 17(h)(8)(A)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)(ii)) is amended by striking “rise” and inserting “change”.

(C) APPLICABILITY.—The amendments made by this paragraph apply to a bid solicitation issued on or after October 1, 2004.

42 USC 1786
note.

(8) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) (as amended by paragraph (7)(A)) is amended by adding at the end the following:

“(ix) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—The State agency shall maintain a list of—

“(I) infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations); and

“(II) infant formula manufacturers registered with the Food and Drug Administration that provide infant formula.

“(x) PURCHASE REQUIREMENT.—A vendor authorized to participate in the program under this section shall only purchase infant formula from the list described in clause (ix).”

(9) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (10) and inserting the following:

“(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

“(A) IN GENERAL.—For each of fiscal years 2006 through 2009, the Secretary shall use for the purposes specified in subparagraph (B), \$64,000,000 or the amount of nutrition services and administration funds and supplemental food funds for the prior fiscal year that have not been obligated, whichever is less.

“(B) PURPOSES.—Of the amount made available under subparagraph (A) for a fiscal year, not more than—

“(i) \$14,000,000 shall be used for—

“(I) infrastructure for the program under this section;

“(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

“(III) special State projects of regional or national significance to improve the services of the program;

“(ii) \$30,000,000 shall be used to establish, improve, or administer management information systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program; and

“(iii) \$20,000,000 shall be used for special nutrition education such as breast feeding peer counselors and other related activities.

“(C) PROPORTIONAL DISTRIBUTION.—In a case in which less than \$64,000,000 is available to carry out this paragraph, the Secretary shall make a proportional distribution of funds allocated under subparagraph (B).”

(10) VENDOR COST CONTAINMENT.—

(A) Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (11) and inserting the following:

“(11) VENDOR COST CONTAINMENT.—

“(A) PEER GROUPS.—

“(i) IN GENERAL.—The State agency shall—

“(I) establish a vendor peer group system;

“(II) in accordance with subparagraphs (B) and (C), establish competitive price criteria and allowable reimbursement levels for each vendor peer group; and

“(III) if the State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I)—

“(aa) distinguish between vendors described in subparagraph (D)(ii)(I) and other vendors by establishing—

“(AA) separate peer groups for vendors described in subparagraph (D)(ii)(I); or

“(BB) distinct competitive price criteria and allowable reimbursement levels for vendors described in subparagraph (D)(ii)(I) within a peer group that contains both vendors described in subparagraph (D)(ii)(I) and other vendors; and

“(bb) establish competitive price criteria and allowable reimbursement levels that comply with subparagraphs (B) and (C), respectively, and that do not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

Nothing in this paragraph shall be construed to compel a State agency to achieve lower food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

“(ii) EXEMPTIONS.—The Secretary may exempt from the requirements of clause (i)—

“(I) a State agency that elects not to authorize any types of vendors described in subparagraph (D)(ii)(I) and that demonstrates to the Secretary that—

“(aa) compliance with clause (i) would be inconsistent with efficient and effective operation of the program administered by the State under this section; or

“(bb) an alternative cost-containment system would be as effective as a vendor peer group system; or

“(II) a State agency—

“(aa) in which the sale of supplemental foods that are obtained with food instruments from vendors described in subparagraph (D)(ii)(I) constituted less than 5 percent of total sales of supplemental foods that were obtained with food instruments in the State in the year preceding a year in which the exemption is effective; and

“(bb) that demonstrates to the Secretary that an alternative cost-containment system

would be as effective as the vendor peer group system and would not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

“(B) COMPETITIVE PRICING.—

“(i) IN GENERAL.—The State agency shall establish competitive price criteria for each peer group for the selection of vendors for participation in the program that—

“(I) ensure that the retail prices charged by vendor applicants for the program are competitive with the prices charged by other vendors; and

“(II) consider—

“(aa) the shelf prices of the vendor for all buyers; or

“(bb) the prices that the vendor bid for supplemental foods, which shall not exceed the shelf prices of the vendor for all buyers.

“(ii) PARTICIPANT ACCESS.—In establishing competitive price criteria, the State agency shall consider participant access by geographic area.

“(iii) SUBSEQUENT PRICE INCREASES.—The State agency shall establish procedures to ensure that a retail store selected for participation in the program does not, subsequent to selection, increase prices to levels that would make the store ineligible for selection to participate in the program.

“(C) ALLOWABLE REIMBURSEMENT LEVELS.—

“(i) IN GENERAL.—The State agency shall establish allowable reimbursement levels for supplemental foods for each vendor peer group that ensure—

“(I) that payments to vendors in the vendor peer group reflect competitive retail prices; and

“(II) that the State agency does not reimburse a vendor for supplemental foods at a level that would make the vendor ineligible for authorization under the criteria established under subparagraph (B).

“(ii) PRICE FLUCTUATIONS.—The allowable reimbursement levels may include a factor to reflect fluctuations in wholesale prices.

“(iii) PARTICIPANT ACCESS.—In establishing allowable reimbursement levels, the State agency shall consider participant access in a geographic area.

“(D) EXEMPTIONS.—The State agency may exempt from competitive price criteria and allowable reimbursement levels established under this paragraph—

“(i) pharmacy vendors that supply only exempt infant formula or medical foods that are eligible under the program; and

“(ii) vendors—

“(I)(aa) for which more than 50 percent of the annual revenue of the vendor from the sale of food items consists of revenue from the sale

Procedures.

of supplemental foods that are obtained with food instruments; or

“(bb) who are new applicants likely to meet the criteria of item (aa) under criteria approved by the Secretary; and

“(II) that are nonprofit.

“(E) COST CONTAINMENT.—If a State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I), the State agency shall demonstrate to the Secretary, and the Secretary shall certify, that the competitive price criteria and allowable reimbursement levels established under this paragraph for vendors described in subparagraph (D)(ii)(I) do not result in average payments per voucher to vendors described in subparagraph (D)(ii)(I) that are higher than average payments per voucher to comparable vendors other than vendors described in subparagraph (D)(ii)(I).

Certification.

“(F) LIMITATION ON PRIVATE RIGHTS OF ACTION.—Nothing in this paragraph may be construed as creating a private right of action.

“(G) IMPLEMENTATION.—A State agency shall comply with this paragraph not later than 18 months after the date of enactment of this paragraph.”.

Deadline.

(B) CONFORMING AMENDMENT.—Section 17(f)(1)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(i)) is amended by inserting before the semicolon the following: “, including a description of the State agency’s vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11).”.

(11) IMPOSITION OF COSTS ON RETAIL STORES.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by striking paragraph (12) and inserting the following:

“(12) IMPOSITION OF COSTS ON RETAIL STORES.—The Secretary may not impose, or allow a State agency to impose, the costs of any equipment, system, or processing required for electronic benefit transfers on any retail store authorized to transact food instruments, as a condition for authorization or participation in the program.”.

(12) UNIVERSAL PRODUCT CODES DATABASE.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) (as amended by paragraph (11)) is amended by adding at the end the following:

“(13) UNIVERSAL PRODUCT CODES DATABASE.—The Secretary shall—

“(A) establish a national universal product code database for use by all State agencies in carrying out the program; and

“(B) make available from appropriated funds such sums as are required for hosting, hardware and software configuration, and support of the database.”.

(13) INCENTIVE ITEMS.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) (as amended by paragraph (12)) is amended by adding at the end the following:

“(14) INCENTIVE ITEMS.—A State agency shall not authorize or make payments to a vendor described in paragraph

(11)(D)(ii)(I) that provides incentive items or other free merchandise, except food or merchandise of nominal value (as determined by the Secretary), to program participants unless the vendor provides to the State agency proof that the vendor obtained the incentive items or merchandise at no cost.”.

(f) SPEND FORWARD AUTHORITY.—Section 17(i)(3)(A)(ii)(I) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)(A)(ii)(I)) is amended by striking “1 percent” and inserting “3 percent”.

(g) MIGRANT AND COMMUNITY HEALTH CENTERS INITIATIVE.—Section 17(j) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(j)) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

(h) FARMERS’ MARKET NUTRITION PROGRAM.—

(1) ROADSIDE STANDS.—Section 17(m)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(1)) is amended by inserting “and (at the option of a State) roadside stands” after “farmers’ markets”.

(2) MATCHING FUNDS.—Section 17(m)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(3)) is amended by striking “total” both places it appears and inserting “administrative”.

(3) BENEFIT VALUE.—Section 17(m)(5)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(5)(C)(ii)) is amended by striking “\$20” and inserting “\$30”.

(4) REAUTHORIZATION.—Section 17(m)(9)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(9)(A)) is amended by striking clause (i) and inserting the following:

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2009.”.

(i) DEMONSTRATION PROJECT RELATING TO USE OF WIC PROGRAM FOR IDENTIFICATION AND ENROLLMENT OF CHILDREN IN CERTAIN HEALTH PROGRAMS.—

(1) IN GENERAL.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by striking subsection (r).

(2) CONFORMING AMENDMENT.—Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (p).

42 USC 1751
note.
Deadline.

SEC. 204. LOCAL WELLNESS POLICY.

(a) IN GENERAL.—Not later than the first day of the school year beginning after June 30, 2006, each local educational agency participating in a program authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for schools under the local educational agency that, at a minimum—

(1) includes goals for nutrition education, physical activity, and other school-based activities that are designed to promote student wellness in a manner that the local educational agency determines is appropriate;

(2) includes nutrition guidelines selected by the local educational agency for all foods available on each school campus under the local educational agency during the school day with

the objectives of promoting student health and reducing childhood obesity;

(3) provides an assurance that guidelines for reimbursable school meals shall not be less restrictive than regulations and guidance issued by the Secretary of Agriculture pursuant to subsections (a) and (b) of section 10 of the Child Nutrition Act (42 U.S.C. 1779) and sections 9(f)(1) and 17(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1), 1766(a)), as those regulations and guidance apply to schools;

(4) establishes a plan for measuring implementation of the local wellness policy, including designation of 1 or more persons within the local educational agency or at each school, as appropriate, charged with operational responsibility for ensuring that the school meets the local wellness policy; and

(5) involves parents, students, representatives of the school food authority, the school board, school administrators, and the public in the development of the school wellness policy.

(b) TECHNICAL ASSISTANCE AND BEST PRACTICES.—

(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Education and in consultation with the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall make available to local educational agencies, school food authorities, and State educational agencies, on request, information and technical assistance for use in—

- (A) establishing healthy school nutrition environments;
- (B) reducing childhood obesity; and
- (C) preventing diet-related chronic diseases.

(2) CONTENT.—Technical assistance provided by the Secretary under this subsection shall—

(A) include relevant and applicable examples of schools and local educational agencies that have taken steps to offer healthy options for foods sold or served in schools;

(B) include such other technical assistance as is required to carry out the goals of promoting sound nutrition and establishing healthy school nutrition environments that are consistent with this section;

(C) be provided in such a manner as to be consistent with the specific needs and requirements of local educational agencies; and

(D) be for guidance purposes only and not be construed as binding or as a mandate to schools, local educational agencies, school food authorities, or State educational agencies.

(3) FUNDING.—

(A) IN GENERAL.—On July 1, 2006, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection \$4,000,000, to remain available until September 30, 2009.

Effective date.

(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

SEC. 205. TEAM NUTRITION NETWORK.

(a) TEAM NUTRITION NETWORK.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) is amended to read as follows:

“SEC. 19. TEAM NUTRITION NETWORK.

“(a) PURPOSES.—The purposes of the team nutrition network are—

“(1) to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children, including those based on the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

“(2) to provide assistance to States for the development of comprehensive and integrated nutrition education and active living programs in schools and facilities that participate in child nutrition programs;

“(3) to provide training and technical assistance and disseminate team nutrition messages to States, school and community nutrition programs, and child nutrition food service professionals;

“(4) to coordinate and collaborate with other nutrition education and active living programs that share similar goals and purposes; and

“(5) to identify and share innovative programs with demonstrated effectiveness in helping children to maintain a healthy weight by enhancing student understanding of healthful eating patterns and the importance of regular physical activity.

“(b) DEFINITION OF TEAM NUTRITION NETWORK.—In this section, the term ‘team nutrition network’ means a statewide multidisciplinary program for children to promote healthy eating and physical activity based on scientifically valid information and sound educational, social, and marketing principles.

“(c) GRANTS.—

“(1) IN GENERAL.—Subject to the availability of funds for use in carrying out this section, in addition to any other funds made available to the Secretary for team nutrition purposes, the Secretary, in consultation with the Secretary of Education, may make grants to State agencies for each fiscal year, in accordance with this section, to establish team nutrition networks to promote nutrition education through—

“(A) the use of team nutrition network messages and other scientifically based information; and

“(B) the promotion of active lifestyles.

“(2) FORM.—A portion of the grants provided under this subsection may be in the form of competitive grants.

“(3) FUNDS FROM NONGOVERNMENTAL SOURCES.—In carrying out this subsection, the Secretary may accept cash contributions from nongovernmental organizations made expressly to further the purposes of this section, to be managed by the Food and Nutrition Service, for use by the Secretary and the States in carrying out this section.

“(d) ALLOCATION.—Subject to the availability of funds for use in carrying out this section, the total amount of funds made available for a fiscal year for grants under this section shall equal not more than the sum of—

“(1) the product obtained by multiplying $\frac{1}{2}$ cent by the number of lunches reimbursed through food service programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs; and

“(2) the total value of funds received by the Secretary in support of this section from nongovernmental sources.

“(e) REQUIREMENTS FOR STATE PARTICIPATION.—To be eligible to receive a grant under this section, a State agency shall submit to the Secretary a plan that—

“(1) is subject to approval by the Secretary; and

“(2) is submitted at such time and in such manner, and that contains such information, as the Secretary may require, including—

“(A) a description of the goals and proposed State plan for addressing the health and other consequences of children who are at risk of becoming overweight or obese;

“(B) an analysis of the means by which the State agency will use and disseminate the team nutrition messages and material developed by the Secretary;

“(C) an explanation of the ways in which the State agency will use the funds from the grant to work toward the goals required under subparagraph (A), and to promote healthy eating and physical activity and fitness in schools throughout the State;

“(D) a description of the ways in which the State team nutrition network messages and activities will be coordinated at the State level with other health promotion and education activities;

“(E) a description of the consultative process that the State agency employed in the development of the model nutrition and physical activity programs, including consultations with individuals and organizations with expertise in promoting public health, nutrition, or physical activity;

“(F) a description of how the State agency will evaluate the effectiveness of each program developed by the State agency;

“(G) an annual summary of the team nutrition network activities;

“(H) a description of the ways in which the total school environment will support healthy eating and physical activity; and

“(I) a description of how all communications to parents and legal guardians of students who are members of a household receiving or applying for assistance under the program shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

“(f) STATE COORDINATOR.—Each State that receives a grant under this section shall appoint a team nutrition network coordinator who shall—

“(1) administer and coordinate the team nutrition network within and across schools, school food authorities, and other child nutrition program providers in the State; and

“(2) coordinate activities of the Secretary, acting through the Food and Nutrition Service, and State agencies responsible for other children’s health, education, and wellness programs to implement a comprehensive, coordinated team nutrition network program.

“(g) AUTHORIZED ACTIVITIES.—A State agency that receives a grant under this section may use funds from the grant—

“(1)(A) to collect, analyze, and disseminate data regarding the extent to which children and youths in the State are overweight, physically inactive, or otherwise suffering from nutrition-related deficiencies or disease conditions; and

“(B) to identify the programs and services available to meet those needs;

“(2) to implement model elementary and secondary education curricula using team nutrition network messages and material developed by the Secretary to create a comprehensive, coordinated nutrition and physical fitness awareness and obesity prevention program;

“(3) to implement pilot projects in schools to promote physical activity and to enhance the nutritional status of students;

“(4) to improve access to local foods through farm-to-cafeteria activities that may include the acquisition of food and the provision of training and education;

“(5) to implement State guidelines in health (including nutrition education and physical education guidelines) and to emphasize regular physical activity during school hours;

“(6) to establish healthy eating and lifestyle policies in schools;

“(7) to provide training and technical assistance to teachers and school food service professionals consistent with the purposes of this section;

“(8) to collaborate with public and private organizations, including community-based organizations, State medical associations, and public health groups, to develop and implement nutrition and physical education programs targeting lower income children, ethnic minorities, and youth at a greater risk for obesity.

“(h) LOCAL NUTRITION AND PHYSICAL ACTIVITY GRANTS.—

“(1) IN GENERAL.—Subject to the availability of funds to carry out this subsection, the Secretary, in consultation with the Secretary of Education, shall provide assistance to selected local educational agencies to create healthy school nutrition environments, promote healthy eating habits, and increase physical activity, consistent with the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), among elementary and secondary education students.

“(2) SELECTION OF SCHOOLS.—In selecting local educational agencies for grants under this subsection, the Secretary shall—

“(A) provide for the equitable distribution of grants among—

“(i) urban, suburban, and rural schools; and

“(ii) schools with varying family income levels;

“(B) consider factors that affect need, including local educational agencies with significant minority or low-income student populations; and

“(C) establish a process that allows the Secretary to conduct an evaluation of how funds were used.

“(3) REQUIREMENT FOR PARTICIPATION.—To be eligible to receive assistance under this subsection, a local educational agency shall, in consultation with individuals who possess education or experience appropriate for representing the general field of public health, including nutrition and fitness professionals, submit to the Secretary an application that shall include—

“(A) a description of the need of the local educational agency for a nutrition and physical activity program, including an assessment of the nutritional environment of the school;

“(B) a description of how the proposed project will improve health and nutrition through education and increased access to physical activity;

“(C) a description of how the proposed project will be aligned with the local wellness policy required under section 204 of the Child Nutrition and WIC Reauthorization Act of 2004;

“(D) a description of how funds under this subsection will be coordinated with other programs under this Act, the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), or other Acts, as appropriate, to improve student health and nutrition;

“(E) a statement of the measurable goals of the local educational agency for nutrition and physical education programs and promotion;

“(F) a description of the procedures the agency will use to assess and publicly report progress toward meeting those goals; and

“(G) a description of how communications to parents and guardians of participating students regarding the activities under this subsection shall be in an understandable and uniform format, and, to the extent maximum practicable, in a language that parents can understand.

“(4) DURATION.—Subject to the availability of funds made available to carry out this subsection, a local educational agency receiving assistance under this subsection shall conduct the project during a period of 3 successive school years beginning with the initial fiscal year for which the local educational agency receives funds.

“(5) AUTHORIZED ACTIVITIES.—An eligible applicant that receives assistance under this subsection—

“(A) shall use funds provided to—

“(i) promote healthy eating through the development and implementation of nutrition education programs and curricula based on the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); and

“(ii) increase opportunities for physical activity through after school programs, athletics, intramural activities, and recess; and

“(B) may use funds provided to—

“(i) educate parents and students about the relationship of a poor diet and inactivity to obesity and other health problems;

“(ii) develop and implement physical education programs that promote fitness and lifelong activity;

“(iii) provide training and technical assistance to food service professionals to develop more appealing, nutritious menus and recipes;

“(iv) incorporate nutrition education into physical education, health education, and after school programs, including athletics;

“(v) involve parents, nutrition professionals, food service staff, educators, community leaders, and other interested parties in assessing the food options in the school environment and developing and implementing an action plan to promote a balanced and healthy diet;

“(vi) provide nutrient content or nutrition information on meals served through the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act and items sold a la carte during meal times;

“(vii) encourage the increased consumption of a variety of healthy foods, including fruits, vegetables, whole grains, and low-fat dairy products, through new initiatives to creatively market healthful foods, such as salad bars and fruit bars;

“(viii) offer healthy food choices outside program meals, including by making low-fat and nutrient dense options available in vending machines, school stores, and other venues; and

“(ix) provide nutrition education, including sports nutrition education, for teachers, coaches, food service staff, athletic trainers, and school nurses.

“(6) REPORT.—Not later than 18 months after completion of the projects and evaluations under this subsection, the Secretary shall—

“(A) submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition and Forestry of the Senate a report describing the results of the evaluation under this subsection; and

“(B) make the report available to the public, including through the Internet.

“(i) NUTRITION EDUCATION SUPPORT.—In carrying out the purpose of this section to support nutrition education, the Secretary may provide for technical assistance and grants to improve the quality of school meals and access to local foods in schools and institutions.

“(j) LIMITATION.—Material prepared under this section regarding agricultural commodities, food, or beverages, must be factual and without bias.

“(k) TEAM NUTRITION NETWORK INDEPENDENT EVALUATION.—

“(1) IN GENERAL.—Subject to the availability of funds to carry out this subsection, the Secretary shall offer to enter into an agreement with an independent, nonpartisan, science-based research organization—

“(A) to conduct a comprehensive independent evaluation of the effectiveness of the team nutrition initiative and the team nutrition network under this section; and

“(B) to identify best practices by schools in—

“(i) improving student understanding of healthful eating patterns;

“(ii) engaging students in regular physical activity and improving physical fitness;

“(iii) reducing diabetes and obesity rates in school children;

“(iv) improving student nutrition behaviors on the school campus, including by increasing healthier meal choices by students, as evidenced by greater inclusion of fruits, vegetables, whole grains, and lean dairy and protein in meal and snack selections;

“(v) providing training and technical assistance for food service professionals resulting in the availability of healthy meals that appeal to ethnic and cultural taste preferences;

“(vi) linking meals programs to nutrition education activities;

“(vii) successfully involving parents, school administrators, the private sector, public health agencies, nonprofit organizations, and other community partners;

“(viii) ensuring the adequacy of time to eat during school meal periods; and

“(ix) successfully generating revenue through the sale of food items, while providing healthy options to students through vending, student stores, and other venues.

“(2) REPORT.—Not later than 3 years after funds are made available to carry out this subsection, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the findings of the independent evaluation.

“(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.”.

(b) CONFORMING AMENDMENT.—Section 21(c)(2)(E) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(c)(2)(E)) is amended by striking “, including” and all that follows through “1966”.

SEC. 206. REVIEW OF BEST PRACTICES IN THE BREAKFAST PROGRAM.

42 USC 1773
note.

(a) REVIEW.—

(1) IN GENERAL.—Subject to the availability of funds under subsection (c), the Secretary of Agriculture shall enter into an agreement with a research organization to collect and disseminate a review of best practices to assist school food authorities in addressing existing impediments at the State

and local level that hinder the growth of the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(2) RECOMMENDATIONS.—The review shall describe model breakfast programs and offer recommendations for schools to overcome obstacles, including—

(A) the length of the school day;

(B) bus schedules; and

(C) potential increases in costs at the State and local level.

Deadline.
Internet.

(b) DISSEMINATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall—

(1) make the review required under subsection (a) available to school food authorities via the Internet, including recommendations to improve participation in the school breakfast program; and

(2) transmit to Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the review.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

TITLE III—COMMODITY DISTRIBUTION PROGRAMS

SEC. 301. COMMODITY DISTRIBUTION PROGRAMS.

Section 15 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note; Public Law 100–237) is amended by striking subsection (e).

TITLE IV—MISCELLANEOUS

SEC. 401. SENSE OF CONGRESS REGARDING EFFORTS TO PREVENT AND REDUCE CHILDHOOD OBESITY.

(a) FINDINGS.—Congress finds that—

(1) childhood obesity in the United States has reached critical proportions;

(2) childhood obesity is associated with numerous health risks and the incidence of chronic disease later in life;

(3) the prevention of obesity among children yields significant benefits in terms of preventing disease and the health care costs associated with such diseases;

(4) further scientific and medical data on the prevalence of childhood obesity is necessary in order to inform efforts to fight childhood obesity; and

(5) the State of Arkansas—

(A) is the first State in the United States to have a comprehensive statewide initiative to combat and prevent childhood obesity by—

(i) annually measuring the body mass index of public school children in the State from kindergarten through 12th grade; and

(ii) providing that information to the parents of each child with associated information about the health implications of the body mass index of the child;

(B) maintains, analyzes, and reports on annual and longitudinal body mass index data for the public school children in the State; and

(C) develops and implements appropriate interventions at the community and school level to address obesity, the risk of obesity, and the condition of being overweight, including efforts to encourage healthy eating habits and increased physical activity.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the State of Arkansas, in partnership with the University of Arkansas for Medical Sciences and the Arkansas Center for Health Improvement, should be commended for its leadership in combating childhood obesity; and

(2) the efforts of the State of Arkansas to implement a statewide initiative to combat and prevent childhood obesity are exemplary and could serve as a model for States across the United States.

TITLE V—IMPLEMENTATION

SEC. 501. GUIDANCE AND REGULATIONS.

42 USC 1758
note.

(a) GUIDANCE.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall issue guidance to implement the amendments made by sections 102, 103, 104, 105, 106, 107, 111, 116, 119(c), 119(g), 120, 126(b), 126(c), 201, 203(a)(3), 203(b), 203(c)(5), 203(e)(3), 203(e)(4), 203(e)(5), 203(e)(6), 203(e)(7), 203(e)(10), and 203(h)(1).

(b) INTERIM FINAL REGULATIONS.—The Secretary may promulgate interim final regulations to implement the amendments described in subsection (a).

(c) REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall promulgate final regulations to implement the amendments described in subsection (a).

Deadline.

SEC. 502. EFFECTIVE DATES.

42 USC 1754
note.

(a) IN GENERAL.—Except as otherwise provided in this Act, this Act and the amendments made by this Act take effect on the date of enactment of this Act.

(b) SPECIAL EFFECTIVE DATES.—

(1) JULY 1, 2004.—The amendments made by sections 106, 107, 126(c), and 201 take effect on July 1, 2004.

(2) OCTOBER 1, 2004.—The amendments made by sections 119(c), 119(g), 202(a), 203(a), 203(b), 203(c)(1), 203(c)(5), 203(e)(5), 203(e)(8), 203(e)(10), 203(e)(13), 203(f), 203(h)(1), and 203(h)(2) take effect on October 1, 2004.

(3) JANUARY 1, 2005.—The amendments made by sections 116(f)(1) and 116(f)(3) take effect on January 1, 2005.

(4) JULY 1, 2005.—The amendments made by sections 102, 104, 105, 111, and 126(b) take effect on July 1, 2005.

(5) OCTOBER 1, 2005.—The amendments made by sections 116(d) and 203(e)(9) take effect on October 1, 2005.

Approved June 30, 2004.

LEGISLATIVE HISTORY—S. 2507 (H.R. 3873):

HOUSE REPORTS: No. 108–445 accompanying H.R. 3873 (Comm. on Education and the Workforce).

SENATE REPORTS: No. 108–279 (Comm. on Agriculture, Nutrition, and Forestry).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 23, considered and passed Senate.

June 24, considered and passed House.



Public Law 108–266
108th Congress

An Act

To assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries.

July 2, 2004

[H.R. 3378]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Marine Turtle Conservation Act of 2004”.

Marine Turtle
Conservation Act
of 2004.
16 USC 6601
note.

SEC. 2. FINDINGS AND PURPOSES.

16 USC 6601.

(a) FINDINGS.—The Congress finds that—

(1) marine turtle populations have declined to the point that the long-term survival of the loggerhead, green, hawksbill, Kemp’s ridley, olive ridley, and leatherback turtle in the wild is in serious jeopardy;

(2) 6 of the 7 recognized species of marine turtles are listed as threatened or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all 7 species have been included in Appendix I of CITES;

(3) because marine turtles are long-lived, late-maturing, and highly migratory, marine turtles are particularly vulnerable to the impacts of human exploitation and habitat loss;

(4) illegal international trade seriously threatens wild populations of some marine turtle species, particularly the hawksbill turtle;

(5) the challenges facing marine turtles are immense, and the resources available have not been sufficient to cope with the continued loss of nesting habitats caused by human activities and the consequent diminution of marine turtle populations;

(6) because marine turtles are flagship species for the ecosystems in which marine turtles are found, sustaining healthy populations of marine turtles provides benefits to many other species of wildlife, including many other threatened or endangered species;

(7) marine turtles are important components of the ecosystems that they inhabit, and studies of wild populations of marine turtles have provided important biological insights;

(8) changes in marine turtle populations are most reliably indicated by changes in the numbers of nests and nesting females; and

(9) the reduction, removal, or other effective addressing of the threats to the long-term viability of populations of marine turtles will require the joint commitment and effort of—

(A) countries that have within their boundaries marine turtle nesting habitats; and

(B) persons with expertise in the conservation of marine turtles.

(b) **PURPOSE.**—The purpose of this Act is to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries by supporting and providing financial resources for projects to conserve the nesting habitats, conserve marine turtles in those habitats, and address other threats to the survival of marine turtles.

16 USC 6602.

SEC. 3. DEFINITIONS.

In this Act:

(1) **CITES.**—The term “CITES” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249).

(2) **CONSERVATION.**—The term “conservation” means the use of all methods and procedures necessary to protect nesting habitats of marine turtles in foreign countries and of marine turtles in those habitats, including—

(A) protection, restoration, and management of nesting habitats;

(B) onsite research and monitoring of nesting populations, nesting habitats, annual reproduction, and species population trends;

(C) assistance in the development, implementation, and improvement of national and regional management plans for nesting habitat ranges;

(D) enforcement and implementation of CITES and laws of foreign countries to—

(i) protect and manage nesting populations and nesting habitats; and

(ii) prevent illegal trade of marine turtles;

(E) training of local law enforcement officials in the interdiction and prevention of—

(i) the illegal killing of marine turtles on nesting habitat; and

(ii) illegal trade in marine turtles;

(F) initiatives to resolve conflicts between humans and marine turtles over habitat used by marine turtles for nesting;

(G) community outreach and education; and

(H) strengthening of the ability of local communities to implement nesting population and nesting habitat conservation programs.

(3) **FUND.**—The term “Fund” means the Marine Turtle Conservation Fund established by section 5.

(4) **MARINE TURTLE.**—

(A) **IN GENERAL.**—The term “marine turtle” means any member of the family Cheloniidae or Dermochelyidae.

(B) **INCLUSIONS.**—The term “marine turtle” includes—

(i) any part, product, egg, or offspring of a turtle described in subparagraph (A); and

(ii) a carcass of such a turtle.

(5) **MULTINATIONAL SPECIES CONSERVATION FUND.**—The term “Multinational Species Conservation Fund” means the

fund established under the heading “multinational species conservation fund” in title I of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 4246).

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 4. MARINE TURTLE CONSERVATION ASSISTANCE.

16 USC 6603.

(a) IN GENERAL.—Subject to the availability of funds and in consultation with other Federal officials, the Secretary shall use amounts in the Fund to provide financial assistance for projects for the conservation of marine turtles for which project proposals are approved by the Secretary in accordance with this section.

(b) PROJECT PROPOSALS.—

(1) ELIGIBLE APPLICANTS.—A proposal for a project for the conservation of marine turtles may be submitted to the Secretary by—

(A) any wildlife management authority of a foreign country that has within its boundaries marine turtle nesting habitat if the activities of the authority directly or indirectly affect marine turtle conservation; or

(B) any other person or group with the demonstrated expertise required for the conservation of marine turtles.

(2) REQUIRED ELEMENTS.—A project proposal shall include—

(A) a statement of the purposes of the project;

(B) the name of the individual with overall responsibility for the project;

(C) a description of the qualifications of the individuals that will conduct the project;

(D) a description of—

(i) methods for project implementation and outcome assessment;

(ii) staff and community management for the project; and

(iii) the logistics of the project;

(E) an estimate of the funds and time required to complete the project;

(F) evidence of support for the project by appropriate governmental entities of the countries in which the project will be conducted, if the Secretary determines that such support is required for the success of the project;

(G) information regarding the source and amount of matching funding available for the project; and

(H) any other information that the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this Act.

(c) PROJECT REVIEW AND APPROVAL.—

Deadlines.

(1) IN GENERAL.—The Secretary shall—

(A) not later than 30 days after receiving a project proposal, provide a copy of the proposal to other Federal officials, as appropriate; and

Records.

(B) review each project proposal in a timely manner to determine whether the proposal meets the criteria specified in subsection (d).

(2) CONSULTATION; APPROVAL OR DISAPPROVAL.—Not later than 180 days after receiving a project proposal, and subject

to the availability of funds, the Secretary, after consulting with other Federal officials, as appropriate, shall—

(A) consult on the proposal with the government of each country in which the project is to be conducted;

(B) after taking into consideration any comments resulting from the consultation, approve or disapprove the project proposal; and

Notification.

(C) provide written notification of the approval or disapproval to the person that submitted the project proposal, other Federal officials, and each country described in subparagraph (A).

(d) **CRITERIA FOR APPROVAL.**—The Secretary may approve a project proposal under this section if the project will help recover and sustain viable populations of marine turtles in the wild by assisting efforts in foreign countries to implement marine turtle conservation programs.

(e) **PROJECT SUSTAINABILITY.**—To the maximum extent practicable, in determining whether to approve project proposals under this section, the Secretary shall give preference to conservation projects that are designed to ensure effective, long-term conservation of marine turtles and their nesting habitats.

(f) **MATCHING FUNDS.**—In determining whether to approve project proposals under this section, the Secretary shall give preference to projects for which matching funds are available.

(g) **PROJECT REPORTING.**—

(1) **IN GENERAL.**—Each person that receives assistance under this section for a project shall submit to the Secretary periodic reports (at such intervals as the Secretary may require) that include all information that the Secretary, after consultation with other government officials, determines is necessary to evaluate the progress and success of the project for the purposes of ensuring positive results, assessing problems, and fostering improvements.

(2) **AVAILABILITY TO THE PUBLIC.**—Reports under paragraph (1), and any other documents relating to projects for which financial assistance is provided under this Act, shall be made available to the public.

16 USC 6604.

SEC. 5. MARINE TURTLE CONSERVATION FUND.

(a) **ESTABLISHMENT.**—There is established in the Multinational Species Conservation Fund a separate account to be known as the “Marine Turtle Conservation Fund”, consisting of—

(1) amounts transferred to the Secretary of the Treasury for deposit into the Fund under subsection (e);

(2) amounts appropriated to the Fund under section 6; and

(3) any interest earned on investment of amounts in the Fund under subsection (c).

(b) **EXPENDITURES FROM FUND.**—

(1) **IN GENERAL.**—Subject to paragraph (2), on request by the Secretary, the Secretary of the Treasury shall transfer from the Fund to the Secretary, without further appropriation, such amounts as the Secretary determines are necessary to carry out section 4.

(2) **ADMINISTRATIVE EXPENSES.**—Of the amounts in the account available for each fiscal year, the Secretary may expend not more than 3 percent, or up to \$80,000, whichever is greater,

to pay the administrative expenses necessary to carry out this Act.

(c) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(4) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(d) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(e) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations to provide assistance under section 4. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit in the Fund.

SEC. 6. ADVISORY GROUP.

16 USC 6605.

(a) IN GENERAL.—To assist in carrying out this Act, the Secretary may convene an advisory group consisting of individuals representing public and private organizations actively involved in the conservation of marine turtles.

(b) PUBLIC PARTICIPATION.—

(1) MEETINGS.—The Advisory Group shall—

(A) ensure that each meeting of the advisory group is open to the public; and

(B) provide, at each meeting, an opportunity for interested persons to present oral or written statements concerning items on the agenda.

(2) NOTICE.—The Secretary shall provide to the public timely notice of each meeting of the advisory group.

(3) MINUTES.—Minutes of each meeting of the advisory group shall be kept by the Secretary and shall be made available to the public.

(c) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory group.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

16 USC 6606.

There is authorized to be appropriated to the Fund \$5,000,000 for each of fiscal years 2005 through 2009.

Deadline.
16 USC 6607.

SEC. 8. REPORT TO CONGRESS.

Not later than October 1, 2005, the Secretary shall submit to the Congress a report on the results and effectiveness of the program carried out under this Act, including recommendations concerning how this Act might be improved and whether the Fund should be continued in the future.

Approved July 2, 2004.

LEGISLATIVE HISTORY—H.R. 3378 (S. 1210):

HOUSE REPORTS: No. 108–507 (Comm. on Resources).

SENATE REPORTS: No. 108–167 accompanying S. 1210 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 14, considered and passed House.

June 18, considered and passed Senate.



Public Law 108–267
108th Congress

An Act

To amend the Indian Self-Determination and Education Assistance Act to redesignate the American Indian Education Foundation as the National Fund for Excellence in American Indian Education.

July 2, 2004
[H.R. 3504]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION OF AMERICAN INDIAN EDUCATION FOUNDATION.

(a) REDESIGNATION.—Section 501(a) of title V of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458bbb(a)), as added by Public Law 106–568, is amended by striking “the American Indian Education Foundation” and inserting “a foundation to be known as the ‘National Fund for Excellence in American Indian Education’ (hereinafter referred to as the ‘Foundation’)”.

(b) CONFORMING AMENDMENTS.—Title V of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458bbb), as added by Public Law 106–568, is amended—

(1) in the heading to read as follows:

“TITLE V—NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION”;

and

(2) in the heading of section 501 to read as follows:

118 STAT. 798

PUBLIC LAW 108–267—JULY 2, 2004

**“SEC. 501. NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN
EDUCATION.”.**

Approved July 2, 2004.

LEGISLATIVE HISTORY—H.R. 3504:

HOUSE REPORTS: No. 108–510, Pt 1 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 14, considered and passed House.

June 18, considered and passed Senate.



Public Law 108–268
108th Congress

An Act

To provide for the transfer of the Nebraska Avenue Naval Complex in the District of Columbia to facilitate the establishment of the headquarters for the Department of Homeland Security, to provide for the acquisition by the Department of the Navy of suitable replacement facilities, and for other purposes.

July 2, 2004
[H.R. 4322]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRANSFER OF NEBRASKA AVENUE NAVAL COMPLEX, DISTRICT OF COLUMBIA.

(a) **TRANSFER REQUIRED.**—Except as provided in subsection (b), the Secretary of the Navy shall transfer the parcel of Department of the Navy real property in the District of Columbia known as the Nebraska Avenue Complex to the jurisdiction, custody, and control of the Administrator of General Services for the purpose of permitting the Administrator to use the Complex to accommodate the Department of Homeland Security. The Complex shall be transferred in its existing condition.

(b) **AUTHORITY TO RETAIN MILITARY FAMILY HOUSING.**—At the option of the Secretary of the Navy, the Secretary may retain jurisdiction, custody, and control over that portion of the Complex that, as of the date of the enactment of this Act, is being used to provide Navy family housing.

(c) **TIME FOR TRANSFER AND RELOCATION OF NAVY ACTIVITIES.**—Deadline.
Not later than nine months after the date of the enactment of this Act, the Secretary of the Navy shall—

(1) complete the transfer of the Complex to the Administrator of General Services under subsection (a); and

(2) relocate Department of the Navy activities at the Complex to other locations.

(d) **PAYMENT OF INITIAL RELOCATION COSTS.**—

(1) **PAYMENT RESPONSIBILITY.**—Subject to the availability of appropriations for this purpose, the Secretary of the Department of Homeland Security shall be responsible for the payment of—

(A) all reasonable costs, including costs to move furnishings and equipment, related to the initial relocation of Department of the Navy activities from the Nebraska Avenue Complex; and

(B) all reasonable costs incident to the initial occupancy by such activities of interim leased space, including rental costs for the first year.

(2) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out paragraph (1), there is authorized to be appropriated to the Department of Homeland Security such sums as may be necessary for fiscal years 2005 through 2007.

(e) PAYMENT OF LONG-TERM RELOCATION COSTS.—

(1) SENSE OF CONGRESS REGARDING PAYMENT.—It is the sense of the Congress that the Secretary of the Navy should receive, from Federal agencies other than the Department of Defense, funds authorized and appropriated for the purpose of covering all reasonable costs, not paid under subsection (d), that are incurred or will be incurred by the Secretary to permanently relocate Department of the Navy activities from the Complex under subsection (c)(2).

(2) SUBMISSION OF COST ESTIMATES.—As soon as practicable after the date of the enactment of this Act, the Secretary of the Navy shall submit to the Director of the Office of Management and Budget and the Congress an initial estimate of the amounts that will be necessary to cover the costs to permanently relocate Department of the Navy activities from the portion of the Complex to be transferred under subsection (a). The Secretary shall include in the estimate anticipated land acquisition and construction costs. The Secretary shall revise the estimate as necessary whenever information regarding the actual costs for the relocation is obtained.

(f) TREATMENT OF FUNDS.—(1) Funds received by the Secretary of the Navy, from sources outside the Department of Defense, to relocate Department of the Navy activities from the Complex shall be used to pay the costs incurred by the Secretary to permanently relocate Department of the Navy activities from the Complex. A military construction project carried out using such funds is deemed to be an authorized military construction project for purposes of section 2802 of title 10, United States Code. Section 2822 of such title shall continue to apply to any military family housing unit proposed to be constructed or acquired using such funds.

Applicability.

Notification.

(2) When a decision is made to carry out a military construction project using such funds, the Secretary of the Navy shall notify Congress in writing of that decision, including the justification for the project and the current estimate of the cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by Congress or, if earlier, the end of the 14-day period beginning on the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code.

(g) EFFECT OF FAILURE TO RECEIVE SUFFICIENT FUNDS FOR RELOCATION COSTS.—

Deadline.
Reports.

(1) CONGRESSIONAL NOTIFICATION.—At the end of the five-year period beginning on the date on which the transfer of the Complex is to be completed under subsection (c)(1), the Secretary of the Navy shall submit to Congress a report—

(A) specifying the total amount needed to cover both the initial and permanent costs of relocating Department of the Navy activities from the portion of the Complex transferred under subsection (a);

(B) specifying the total amount of the initial relocation costs paid by the Secretary of the Department of Homeland Security under subsection (d); and

(C) specifying the total amount of appropriated funds received by the Secretary of the Navy, from sources outside the Department of Defense, to cover the permanent relocation costs.

(2) **ROLE OF OMB.**—The Secretary of the Navy shall obtain the assistance and concurrence of the Director of the Office of Management and Budget in determining the total amount needed to cover both the initial and permanent costs of relocating Department of the Navy activities from the portion of the Complex transferred under subsection (a), as required by paragraph (1)(A).

(3) **CERTIFICATION REGARDING RELOCATION COSTS.**—Not later than 30 days after the date on which the report under paragraph (1) is required to be submitted to Congress, the President shall certify to Congress whether the amounts specified in the report pursuant to subparagraphs (B) and (C) of such paragraph are sufficient to cover both the initial and permanent costs of relocating Department of the Navy activities from the portion of the Complex transferred under subsection (a). The President shall make this certification only after consultation with the Chairmen and ranking minority members of the Committee on Armed Services and the Committee on Appropriations of the House of Representatives and the Chairmen and ranking minority members of the Committee on Armed Services and the Committee on Appropriations of the Senate.

Deadline.
President.

(4) **RESTORATION OF COMPLEX TO NAVY.**—If the President certifies under paragraph (3) that amounts referred to in subparagraphs (B) and (C) of paragraph (1) are insufficient to cover Navy relocation costs, the Administrator of General Services, at the request of the Secretary of the Navy, shall restore the Complex to the jurisdiction, custody, and control of the Secretary of the Navy.

(5) **NAVY SALE OF COMPLEX.**—If the Complex is restored to the Secretary of the Navy, the Secretary shall convey the Complex by competitive sale. Amounts received by the United States as consideration from any sale under this paragraph shall be deposited in the special account in the Treasury established pursuant to paragraph (5) of section 572(b) of title 40,

United States Code, and shall be available for use as provided in subparagraph (B)(i) of such paragraph.

Approved July 2, 2004.

LEGISLATIVE HISTORY—H.R. 4322:

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 14, considered and passed House.

June 21, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

July 2, Presidential statement.



Public Law 108–269
108th Congress

An Act

To amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in the State of Oregon.

July 2, 2004
[S. 1848]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATION OF BEND PINE NURSERY LAND CONVEYANCE.

(a) DESIGNATION OF RECIPIENTS AND CONSIDERATION.—Section 3 of the Bend Pine Nursery Land Conveyance Act (Public Law 106–526; 114 Stat. 2512) is amended—

(1) in subsection (a), by striking paragraph (1) and redesignating paragraphs (2) through (7) as paragraphs (1) through (6), respectively;

(2) in subsection (e)—

(A) by striking “this section” both places it appears and inserting “subsection (a)”;

(B) in paragraph (1), by striking “Subject to paragraph (3), the” and inserting “The”; and

(C) by striking paragraph (3); and

(3) by adding at the end the following:

“(g) BEND PINE NURSERY CONVEYANCE.—

“(1) CONVEYANCE TO PARK AND RECREATION DISTRICT.—Upon receipt of consideration in the amount of \$3,503,676 from the Bend Metro Park and Recreation District in Deschutes County, Oregon, the Secretary shall convey to the Bend Metro Park and Recreation District all right, title, and interest of the United States in and to a parcel of real property consisting of approximately 185 acres and containing the Bend Pine Nursery, as depicted on the site plan map entitled ‘Bend Pine Nursery Administrative Site, May 13, 2004’. Subject to paragraph (2), the real property conveyed to the Bend Metro Park and Recreation District shall be used only for public recreation purposes and may be developed for those purposes. If the Secretary determines that the real property subject to this condition is converted, in whole or in part, to a use other than public recreation, the Secretary shall require the Bend Metro Park and Recreation District to pay to the United States an amount equal to the fair market value of the property at the time of conversion, less the consideration paid under this paragraph.

“(2) RECONVEYANCE OF PORTION TO SCHOOL DISTRICT.—As soon as practicable after the receipt by the Bend Metro Park and Recreation District of the real property described

in paragraph (1), the Bend Metro Park and Recreation District shall convey to the Administrative School District No. 1, Deschutes County, Oregon, without consideration, a parcel of real property located in the northwest corner of the real property described in paragraph (1) and consisting of approximately 15 acres. The deed of conveyance shall contain a covenant requiring that the real property conveyed to the School District be used only for public education purposes.”.

114 Stat. 2513.

(b) CONFORMING AMENDMENT.—Section 4(a) of such Act is amended by striking “section 3(a)” and inserting “section 3”.

Approved July 2, 2004.

LEGISLATIVE HISTORY—S. 1848 (H.R. 3505):

HOUSE REPORTS: No. 108–494 accompanying H.R. 3505 (Comm. on Resources).

SENATE REPORTS: No. 108–238 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 19, considered and passed Senate.

June 21, considered and passed House.



Public Law 108–270
108th Congress

An Act

To provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, and 326–K, and for other purposes.

July 7, 2004
[H.R. 884]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Western
Shoshone Claims
Distribution Act.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Western Shoshone Claims Distribution Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **COMMITTEE.**—The term “Committee” means the administrative committee established under section 4(c)(1).

(2) **WESTERN SHOSHONE JOINT JUDGMENT FUNDS.**—The term “Western Shoshone joint judgment funds” means—

(A) the funds appropriated in satisfaction of the judgment awards granted to the Western Shoshone Indians in Docket Numbers 326–A–1 and 326–A–3 before the United States Court of Claims; and

(B) all interest earned on those funds.

(3) **WESTERN SHOSHONE JUDGMENT FUNDS.**—The term “Western Shoshone judgment funds” means—

(A) the funds appropriated in satisfaction of the judgment award granted to the Western Shoshone Indians in Docket Number 326–K before the Indian Claims Commission; and

(B) all interest earned on those funds.

(4) **JUDGMENT ROLL.**—The term “judgment roll” means the Western Shoshone judgment roll established by the Secretary under section 3(b)(1).

(5) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(6) **TRUST FUND.**—The term “Trust Fund” means the Western Shoshone Educational Trust Fund established under section 4(b)(1).

(7) **WESTERN SHOSHONE MEMBER.**—The term “Western Shoshone member” means an individual who—

(A)(i) appears on the judgment roll; or

(ii) is the lineal descendant of an individual appearing on the roll; and

(B)(i) satisfies all eligibility criteria established by the Committee under section 4(c)(4)(D)(iii);

(ii) meets any application requirements established by the Committee; and

(iii) agrees to use funds distributed in accordance with section 4(b)(2)(B) for educational purposes approved by the Committee.

SEC. 3. DISTRIBUTION OF WESTERN SHOSHONE JUDGMENT FUNDS.

(a) **IN GENERAL.**—The Western Shoshone judgment funds shall be distributed in accordance with this section.

(b) **JUDGMENT ROLL.**—

(1) **IN GENERAL.**—The Secretary shall establish a Western Shoshone judgment roll consisting of all individuals who—

(A) have at least $\frac{1}{4}$ degree of Western Shoshone blood;

(B) are citizens of the United States; and

(C) are living on the date of enactment of this Act.

(2) **INELIGIBLE INDIVIDUALS.**—Any individual that is certified by the Secretary to be eligible to receive a per capita payment from any other judgment fund based on an aboriginal land claim awarded by the Indian Claims Commission, the United States Claims Court, or the United States Court of Federal Claims, that was appropriated on or before the date of enactment of this Act, shall not be listed on the judgment roll.

(3) **REGULATIONS REGARDING JUDGMENT ROLL.**—The Secretary shall—

(A) publish in the Federal Register all regulations governing the establishment of the judgment roll; and

(B) use any documents acceptable to the Secretary in establishing proof of eligibility of an individual to—

(i) be listed on the judgment roll; and

(ii) receive a per capita payment under this Act.

(4) **FINALITY OF DETERMINATION.**—The determination of the Secretary on an application of an individual to be listed on the judgment roll shall be final.

(c) **DISTRIBUTION.**—

(1) **IN GENERAL.**—On establishment of the judgment roll, the Secretary shall make a per capita distribution of 100 percent of the Western Shoshone judgment funds, in shares as equal as practicable, to each person listed on the judgment roll.

(2) **REQUIREMENTS FOR DISTRIBUTION PAYMENTS.**—

(A) **LIVING COMPETENT INDIVIDUALS.**—The per capita share of a living, competent individual who is 19 years or older on the date of distribution of the Western Shoshone judgment funds under paragraph (1) shall be paid directly to the individual.

(B) **LIVING, LEGALLY INCOMPETENT INDIVIDUALS.**—The per capita share of a living, legally incompetent individual shall be administered in accordance with regulations promulgated and procedures established by the Secretary under section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)).

(C) **DECEASED INDIVIDUALS.**—The per capita share of an individual who is deceased as of the date of distribution of the Western Shoshone judgment funds under paragraph (1) shall be paid to the heirs and legatees of the individual

Federal Register,
publication.

in accordance with regulations promulgated by the Secretary.

(D) INDIVIDUALS UNDER THE AGE OF 19.—The per capita share of an individual who is not yet 19 years of age on the date of distribution of the Western Shoshone judgment funds under paragraph (1) shall be—

(i) held by the Secretary in a supervised individual Indian money account; and

(ii) distributed to the individual—

(I) after the individual has reached the age of 18 years; and

(II) in 4 equal payments (including interest earned on the per capita share), to be made—

(aa) with respect to the first payment, on the eighteenth birthday of the individual (or, if the individual is already 18 years of age, as soon as practicable after the date of establishment of the Indian money account of the individual); and

(bb) with respect to the 3 remaining payments, not later than 90 days after each of the 3 subsequent birthdays of the individual.

(3) APPLICABLE LAW.—Notwithstanding section 7 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407), a per capita share (or the availability of that share) paid under this section shall not—

(A) be subject to Federal or State income taxation;

(B) be considered to be income or resources for any purpose; or

(C) be used as a basis for denying or reducing financial assistance or any other benefit to which a household or Western Shoshone member would otherwise be entitled to receive under—

(i) the Social Security Act (42 U.S.C. 301 et seq.);

or

(ii) any other Federal or federally-assisted program.

(4) UNPAID FUNDS.—The Secretary shall add to the Western Shoshone joint judgment funds held in the Trust Fund under section 4(b)(1)—

(A) all per capita shares (including interest earned on those shares) of living competent adults listed on the judgment roll that remain unpaid as of the date that is—

(i) 6 years after the date of distribution of the Western Shoshone judgment funds under paragraph (1); or

(ii) in the case of an individual described in paragraph (2)(D), 6 years after the date on which the individual reaches 18 years of age; and

(B) any other residual principal and interest funds remaining after the distribution under paragraph (1) is complete.

SEC. 4. DISTRIBUTION OF WESTERN SHOSHONE JOINT JUDGMENT FUNDS.

(a) IN GENERAL.—The Western Shoshone joint judgment funds shall be distributed in accordance with this section.

Deadline.

(b) WESTERN SHOSHONE EDUCATIONAL TRUST FUND.—

(1) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the Secretary shall establish in the Treasury of the United States, for the benefit of Western Shoshone members, a trust fund to be known as the “Western Shoshone Educational Trust Fund”, consisting of—

(A) the Western Shoshone joint judgment funds; and

(B) the funds added under section 3(b)(4).

(2) AMOUNTS IN TRUST FUND.—With respect to amounts in the Trust fund—

(A) the principal amount—

(i) shall not be expended or disbursed; and

(ii) shall be invested in accordance with section 1 of the Act of June 24, 1938 (25 U.S.C. 162a); and

(B) all interest income earned on the principal amount after the date of establishment of the Trust fund—

(i) shall be distributed by the Committee—

(I) to Western Shoshone members in accordance with this Act, to be used as educational grants or for other forms of educational assistance determined appropriate by the Committee; and

(II) to pay the reasonable and necessary expenses of the Committee (as defined in the written rules and procedures of the Committee); but (ii) shall not be distributed under this paragraph

on a per capita basis.

(c) ADMINISTRATIVE COMMITTEE.—

(1) ESTABLISHMENT.—There is established an administrative committee to oversee the distribution of educational grants and assistance under subsection (b)(2).

(2) MEMBERSHIP.—The Committee shall be composed of 7 members, of which—

(A) 1 member shall represent the Western Shoshone Te-Moak Tribe and be appointed by that Tribe;

(B) 1 member shall represent the Duckwater Shoshone Tribe and be appointed by that Tribe;

(C) 1 member shall represent the Yomba Shoshone Tribe and be appointed by that Tribe;

(D) 1 member shall represent the Ely Shoshone Tribe and be appointed by that Tribe;

(E) 1 member shall represent the Western Shoshone Committee of the Duck Valley Reservation and be appointed by that Committee;

(F) 1 member shall represent the Fallon Band of Western Shoshone and be appointed by that Band; and

(G) 1 member shall represent the general public and be appointed by the Secretary.

(3) TERM.—

(A) IN GENERAL.—Each member of the Committee shall serve a term of 4 years.

(B) VACANCIES.—If a vacancy remains unfilled in the membership of the Committee for a period of more than 60 days—

(i) the Committee shall appoint a temporary replacement from among qualified members of the organization for which the replacement is being made; and

(ii) that member shall serve until such time as the organization (or, in the case of a member described in paragraph (2)(G), the Secretary) designates a permanent replacement.

(4) DUTIES.—The Committee shall—

(A) distribute interest funds from the Trust Fund under subsection (b)(2)(B)(i);

(B) for each fiscal year, compile a list of names of all individuals approved to receive those funds;

(C) ensure that those funds are used in a manner consistent with this Act;

(D) develop written rules and procedures, subject to the approval of the Secretary, that cover such matters as—

(i) operating procedures;

(ii) rules of conduct;

(iii) eligibility criteria for receipt of funds under subsection (b)(2)(B)(i);

(iv) application selection procedures;

(v) procedures for appeals to decisions of the Committee;

(vi) fund disbursement procedures; and

(vii) fund recoupment procedures;

(E) carry out financial management in accordance with paragraph (6); and

(F) in accordance with subsection (b)(2)(C)(ii), use a portion of the interest funds from the Trust Fund to pay the reasonable and necessary expenses of the Committee (including per diem rates for attendance at meetings that are equal to those paid to Federal employees in the same geographic location), except that not more than \$100,000 of those funds may be used to develop written rules and procedures described in subparagraph (D).

(5) JURISDICTION OF TRIBAL COURTS.—At the discretion of the Committee and with the approval of the appropriate tribal government, a tribal court, or a court of Indian offenses operated under section 11 of title 25, Code of Federal Regulations (or a successor regulation), shall have jurisdiction to hear an appeal of a decision of the Committee.

(6) FINANCIAL MANAGEMENT.—

(A) FINANCIAL STATEMENT.—The Committee shall employ an independent certified public accountant to prepare a financial statement for each fiscal year that discloses—

(i) the operating expenses of the Committee for the fiscal year; and

(ii) the total amount of funds disbursed under subsection (b)(2)(B)(i) for the fiscal year.

(B) DISTRIBUTION OF INFORMATION.—For each fiscal year, the Committee shall provide to the Secretary, to each organization represented on the Committee, and, on the request of a Western Shoshone member, to the Western Shoshone member, a copy of—

(i) the financial statement prepared under subparagraph (A); and

(ii) the list of names compiled under paragraph (4)(B).

(d) CONSULTATION.—The Secretary shall consult with the Committee on the management and investment of the funds distributed under this section.

SEC. 5. REGULATIONS.

The Secretary may promulgate such regulations as are necessary to carry out this Act.

Approved July 7, 2004.

LEGISLATIVE HISTORY—H.R. 884 (S. 618):

HOUSE REPORTS: No. 108–299 (Comm. on Resources).

SENATE REPORTS: No. 108–151 accompanying S. 618 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 21, considered and passed House.

June 24, considered and passed Senate.



Public Law 108–271
108th Congress

An Act

To provide new human capital flexibilities with respect to the GAO, and for other purposes.

July 7, 2004

[H.R. 2751]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

GAO Human
Capital Reform
Act of 2004.

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 31.

(a) **SHORT TITLE.**—This Act may be cited as the “GAO Human Capital Reform Act of 2004”.

31 USC 701 note.

(b) **AMENDMENT OF TITLE 31.**—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 31, United States Code.

SEC. 2. AMENDMENTS TO PUBLIC LAW 106–303.

(a) **AUTHORITIES MADE PERMANENT.**—Sections 1 and 2 of Public Law 106–303 (5 U.S.C. 8336 note and 5597 note) are amended by striking “for purposes of the period beginning on the date of the enactment of this Act and ending on December 31, 2003” each place it appears and inserting “October 13, 2000”.

(b) **SENSE OF CONGRESS.**—

(1) **VOLUNTARY EARLY RETIREMENT AUTHORITY.**—Section 1 of Public Law 106–303 is amended by adding at the end the following:

5 USC 8336 note.

“(e) **SENSE OF CONGRESS.**—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.”.

(2) **VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**—Section 2 of Public Law 106–303 is amended by adding at the end the following:

5 USC 5597 note.

“(g) **SENSE OF CONGRESS.**—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.”.

(c) **ADDITIONAL LIMITATION RELATING TO VSIPS.**—Section 2(b) of Public Law 106–303 is amended by striking paragraph (2) and inserting the following:

“(2) subsection (a)(2)(G) of such section shall be applied—

“(A) by construing the citations therein to be references to the appropriate authorities in connection with employees of the General Accounting Office; and

“(B) by deeming such subsection to be amended by striking ‘Code.’ and inserting ‘Code, or who, during the

thirty-six month period preceding the date of separation, performed service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code.’.”.

SEC. 3. ANNUAL PAY ADJUSTMENTS.

(a) OFFICERS AND EMPLOYEES GENERALLY.—Paragraph (3) of section 732(c) is amended to read as follows:

“(3) except as provided under section 733(a)(3)(B) of this title, basic rates of officers and employees of the Office shall be adjusted annually to such extent as determined by the Comptroller General, and in making that determination the Comptroller General shall consider—

“(A) the principle that equal pay should be provided for work of equal value within each local pay area;

“(B) the need to protect the purchasing power of officers and employees of the Office, taking into consideration the Consumer Price Index or other appropriate indices;

“(C) any existing pay disparities between officers and employees of the Office and non-Federal employees in each local pay area;

“(D) the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area;

“(E) the appropriate distribution of agency funds between annual adjustments under this section and performance-based compensation; and

“(F) such other criteria as the Comptroller General considers appropriate, including, but not limited to, the funding level for the Office, amounts allocated for performance-based compensation, and the extent to which the Office is succeeding in fulfilling its mission and accomplishing its strategic plan;

notwithstanding any other provision of this paragraph, an adjustment under this paragraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;”.

(b) OFFICERS AND EMPLOYEES IN THE OFFICE SENIOR EXECUTIVE SERVICE.—Subparagraph (B) of section 733(a)(3) is amended to read as follows:

“(B) adjusted annually by the Comptroller General after taking into consideration the factors listed under section 732(c)(3) of this title, except that an adjustment under this subparagraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;”.

(c) CONFORMING AMENDMENT.—Section 732(b)(6) is amended by striking “title 5.” and inserting “title 5, except as provided under subsection (c)(3) of this section and section 733(a)(3)(B) of this title.”.

SEC. 4. PAY RETENTION.

Paragraph (5) of section 732(c) is amended to read as follows:

“(5) the Comptroller General shall prescribe regulations under which an officer or employee of the Office shall be entitled to pay retention if, as a result of any reduction-in-force or

Regulations.

other workforce adjustment procedure, position reclassification, or other appropriate circumstances as determined by the Comptroller General, such officer or employee is placed in or holds a position in a lower grade or band with a maximum rate of basic pay that is less than the rate of basic pay payable to the officer or employee immediately before the reduction in grade or band; such regulations—

“(A) shall provide that the officer or employee shall be entitled to continue receiving the rate of basic pay that was payable to the officer or employee immediately before the reduction in grade or band until such time as the retained rate becomes less than the maximum rate for the grade or band of the position held by such officer or employee; and

“(B) shall include provisions relating to the minimum period of time for which an officer or employee must have served or for which the position must have been classified at the higher grade or band in order for pay retention to apply, the events that terminate the right to pay retention (apart from the one described in subparagraph (A)), and exclusions based on the nature of an appointment; in prescribing regulations under this subparagraph, the Comptroller General shall be guided by the provisions of sections 5362 and 5363 of title 5.”.

SEC. 5. RELOCATION BENEFITS.

Section 731 is amended by adding after subsection (e) the following:

“(f) The Comptroller General shall prescribe regulations under which officers and employees of the Office may, in appropriate circumstances, be reimbursed for any relocation expenses under subchapter II of chapter 57 of title 5 for which they would not otherwise be eligible, but only if the Comptroller General determines that the transfer giving rise to such relocation is of sufficient benefit or value to the Office to justify such reimbursement.”.

Regulations.

SEC. 6. INCREASED ANNUAL LEAVE FOR KEY EMPLOYEES.

Section 731 is amended by adding after subsection (f) (as added by section 5 of this Act) the following:

“(g) The Comptroller General shall prescribe regulations under which key officers and employees of the Office who have less than 3 years of service may accrue leave in accordance with section 6303(a)(2) of title 5, in those circumstances in which the Comptroller General has determined such increased annual leave is appropriate for the recruitment or retention of such officers and employees. Such regulations shall define key officers and employees and set forth the factors in determining which officers and employees should be allowed to accrue leave in accordance with this subsection.”.

Regulations.

SEC. 7. EXECUTIVE EXCHANGE PROGRAM.

Section 731 is amended by adding after subsection (g) (as added by section 6 of this Act) the following:

“(h) The Comptroller General may by regulation establish an executive exchange program under which officers and employees of the Office may be assigned to private sector organizations, and employees of private sector organizations may be assigned to the Office, to further the institutional interests of the Office or Congress, including for the purpose of providing training to officers and

employees of the Office. Regulations to carry out any such program—

“(1) shall include provisions (consistent with sections 3702 through 3704 of title 5) as to matters concerning—

“(A) the duration and termination of assignments;

“(B) reimbursements; and

“(C) status, entitlements, benefits, and obligations of program participants;

“(2) shall limit—

“(A) the number of officers and employees who are assigned to private sector organizations at any one time to not more than 15; and

“(B) the number of employees from private sector organizations who are assigned to the Office at any one time to not more than 30;

“(3) shall require that an employee of a private sector organization assigned to the Office may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned;

“(4) shall require that, before approving the assignment of an officer or employee to a private sector organization, the Comptroller General shall determine that the assignment is an effective use of the Office’s funds, taking into account the best interests of the Office and the costs and benefits of alternative methods of achieving the same results and objectives; and

“(5) shall not allow any assignment under this subsection to commence after the end of the 5-year period beginning on the date of the enactment of this subsection.

“(i) An employee of a private sector organization assigned to the Office under the executive exchange program shall be considered to be an employee of the Office for purposes of—

“(1) chapter 73 of title 5;

“(2) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

“(3) sections 1343, 1344, and 1349(b) of this title;

“(4) chapter 171 of title 28 (commonly referred to as the ‘Federal Tort Claims Act’) and any other Federal tort liability statute;

“(5) the Ethics in Government Act of 1978 (5 U.S.C. App.);

“(6) section 1043 of the Internal Revenue Code of 1986; and

“(7) section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).”.

31 USC 702 note.

Government
organization.

SEC. 8. REDESIGNATION.

(a) IN GENERAL.—The General Accounting Office is hereby redesignated the Government Accountability Office.

(b) REFERENCES.—Any reference to the General Accounting Office in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office.

SEC. 9. PERFORMANCE MANAGEMENT SYSTEM.

Paragraph (1) of section 732(d) is amended to read as follows:

“(1) for a system to appraise the performance of officers and employees of the General Accounting Office that meets the requirements of section 4302 of title 5 and in addition includes—

“(A) a link between the performance management system and the agency’s strategic plan;

“(B) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;

“(C) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period and setting timetables for review;

“(D) effective transparency and accountability measures to ensure that the management of the system is fair, credible, and equitable, including appropriate independent reasonableness, reviews, internal assessments, and employee surveys; and

“(E) a means to ensure that adequate agency resources are allocated for the design, implementation, and administration of the performance management system;”.

SEC. 10. CONSULTATION.

31 USC 731 note.

Before the implementation of any changes authorized under this Act, the Comptroller General shall consult with any interested groups or associations representing officers and employees of the General Accounting Office.

SEC. 11. REPORTING REQUIREMENTS.

31 USC 719 note.

(a) ANNUAL REPORTS.—The Comptroller General shall include—

(1) in each report submitted to Congress under section 719(a) of title 31, United States Code, during the 5-year period beginning on the date of enactment of this Act, a summary review of all actions taken under sections 2, 3, 4, 6, 7, 9, and 10 of this Act during the period covered by such report, including—

(A) the respective numbers of officers and employees—

(i) separating from the service under section 2 of this Act;

(ii) receiving pay retention under section 4 of this Act;

(iii) receiving increased annual leave under section 6 of this Act; and

(iv) engaging in the executive exchange program under section 7 of this Act, as well as the number of private sector employees participating in such program and a review of the general nature of the work performed by the individuals participating in such program;

(B) a review of all actions taken to formulate the appropriate methodologies to implement the pay adjustments provided for under section 3 of this Act, except that nothing under this subparagraph shall be required if no changes are made in any such methodology during the period covered by such report; and

(C) an assessment of the role of sections 2, 3, 4, 6, 7, 9, and 10 of this Act in contributing to the General

Accounting Office's ability to carry out its mission, meet its performance goals, and fulfill its strategic plan; and (2) in each report submitted to Congress under such section 719(a) after the effective date of section 3 of this Act and before the close of the 5-year period referred to in paragraph (1)—

(A) a detailed description of the methodologies applied under section 3 of this Act and the manner in which such methodologies were applied to determine the appropriate annual pay adjustments for officers and employees of the Office;

(B) the amount of the annual pay adjustments afforded to officers and employees of the Office under section 3 of this Act; and

(C) a description of any extraordinary economic conditions or serious budget constraints which had a significant impact on the determination of the annual pay adjustments for officers and employees of the Office.

Deadline.

(b) **FINAL REPORT.**—Not later than 6 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report concerning the implementation of this Act. Such report shall include—

(1) a summary of the information included in the annual reports required under subsection (a);

(2) recommendations for any legislative changes to section 2, 3, 4, 6, 7, 9, or 10 of this Act; and

(3) any assessment furnished by the General Accounting Office Personnel Appeals Board or any interested groups or associations representing officers and employees of the Office for inclusion in such report.

Applicability.

(c) **ADDITIONAL REPORTING.**—Notwithstanding any other provision of this section, the reporting requirement under subsection (a)(2)(C) shall apply in the case any report submitted under section 719(a) of title 31, United States Code, whether during the 5-year period beginning on the date of enactment of this Act (as required by subsection (a)) or at any time thereafter.

SEC. 12. TECHNICAL AMENDMENT.

Section 732(h)(3)(A) is amended by striking “reduction force” and inserting “reduction in force”.

31 USC 731 note.

SEC. 13. EFFECTIVE DATES.

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) **PAY ADJUSTMENTS.**—

(1) **IN GENERAL.**—Section 3 of this Act and the amendments made by that section shall take effect on October 1, 2005, and shall apply in the case of any annual pay adjustment taking effect on or after that date.

(2) **INTERIM AUTHORITIES.**—In connection with any pay adjustment taking effect under section 732(c)(3) or 733(a)(3)(B) of title 31, United States Code, before October 1, 2005, the Comptroller General may by regulation—

(A) provide that such adjustment not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment; and

(B) provide that such adjustment be reduced if and to the extent necessary because of extraordinary economic conditions or serious budget constraints.

(3) ADDITIONAL AUTHORITY.—

(A) IN GENERAL.—The Comptroller General may by regulation delay the effective date of section 3 of this Act and the amendments made by that section for groups of officers and employees that the Comptroller General considers appropriate.

(B) INTERIM AUTHORITIES.—If the Comptroller General provides for a delayed effective date under subparagraph (A) with respect to any group of officers or employees, paragraph (2) shall, for purposes of such group, be applied by substituting such date for “October 1, 2005”.

Applicability.

Approved July 7, 2004.

LEGISLATIVE HISTORY—H.R. 2751 (S. 1522):

HOUSE REPORTS: No. 108–380 (Comm. on Government Reform).

SENATE REPORTS: No. 108–216 accompanying S. 1522 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Feb. 25, considered and passed House.

June 24, considered and passed Senate.



Public Law 108–272
108th Congress

Joint Resolution

July 7, 2004
[H.J. Res. 97]

Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

50 USC 1701
note.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress approves the renewal of the import restrictions contained in section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003.

Approved July 7, 2004.

LEGISLATIVE HISTORY—H.J. Res. 97 (S.J. Res. 39):

SENATE REPORTS: No. 108–281 accompanying S.J. Res. 39 (Comm. on Finance).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 14, considered and passed House.

June 24, considered and passed Senate.



Public Law 108–273
108th Congress

An Act

To designate the United States courthouse and post office building located at 93 Atocha Street in Ponce, Puerto Rico, as the “Luis A. Ferré United States Courthouse and Post Office Building”.

July 7, 2004
[S. 2017]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LUIS A. FERRÉ UNITED STATES COURTHOUSE AND POST OFFICE BUILDING.

(a) DESIGNATION.—The United States courthouse and post office building located at 93 Atocha Street in Ponce, Puerto Rico, shall be known and designated as the “Luis A. Ferré United States Courthouse and Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper or other record of the United States to the courthouse and post office building referred to in subsection (a) shall be deemed to be a reference to the Luis A. Ferré United States Courthouse and Post Office Building.

Approved July 7, 2004.

LEGISLATIVE HISTORY—S. 2017 (H.R. 3742):

HOUSE REPORTS: No. 108–556 accompanying H.R. 3742 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 9, considered and passed Senate.

June 22, considered and passed House.



Public Law 108–274
108th Congress

An Act

To extend and modify the trade benefits under the African Growth and Opportunity Act.

July 13, 2004
[H.R. 4103]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AGOA
Acceleration Act
of 2004.
19 USC 3701
note.
19 USC 3701
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “AGOA Acceleration Act of 2004”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The African Growth and Opportunity Act (in this section and section 3 referred to as “the Act”) has helped to spur economic growth and bolster economic reforms in the countries of sub-Saharan Africa and has fostered stronger economic ties between the countries of sub-Saharan Africa and the United States; as a result, exports from the United States to sub-Saharan Africa reached record levels after the enactment of the Act, while exports from sub-Saharan Africa to the United States have increased considerably.

(2) The Act’s eligibility requirements have reinforced democratic values and the rule of law, and have strengthened adherence to internationally recognized worker rights in eligible sub-Saharan African countries.

(3) The Act has helped to bring about substantial increases in foreign investment in sub-Saharan Africa, especially in the textile and apparel sectors, where tens of thousands of new jobs have been created.

(4) As a result of the Agreement on Textiles and Apparel of the World Trade Organization, under which quotas maintained by WTO member countries on textile and apparel products end on January 1, 2005, sub-Saharan Africa’s textile and apparel industry will be severely challenged by countries whose industries are more developed and have greater capacity, economies of scale, and better infrastructure.

(5) The underdeveloped physical and financial infrastructure in sub-Saharan Africa continues to discourage investment in the region.

(6) Regional integration establishes a foundation on which sub-Saharan African countries can coordinate and pursue policies grounded in African interests and history to achieve sustainable development.

(7) Expanded trade because of the Act has improved fundamental economic conditions within sub-Saharan Africa. The Act has helped to create jobs in the poorest region of the

world, and most sub-Saharan African countries have sought to take advantage of the opportunities provided by the Act.

(8) Agricultural biotechnology holds promise for helping solve global food security and human health crises in Africa and, according to recent studies, has made contributions to the protection of the environment by reducing the application of pesticides, reducing soil erosion, and creating an environment more hospitable to wildlife.

(9) (A) One of the greatest challenges facing African countries continues to be the HIV/AIDS epidemic, which has infected as many as one out of every four people in some countries, creating tremendous social, political, and economic costs. African countries need continued United States financial and technical assistance to combat this epidemic.

(B) More awareness and involvement by governments are necessary. Countries like Uganda, recognizing the threat of HIV/AIDS, have boldly attacked it through a combination of education, public awareness, enhanced medical infrastructure and resources, and greater access to medical treatment. An effective HIV/AIDS prevention and treatment strategy involves all of these steps.

(10) African countries continue to need trade capacity assistance to establish viable economic capacity, a well-grounded rule of law, and efficient government practices.

SEC. 3. STATEMENT OF POLICY.

19 USC 3701
note.

The Congress supports—

(1) a continued commitment to increase trade between the United States and sub-Saharan Africa and increase investment in sub-Saharan Africa to the benefit of workers, businesses, and farmers in the United States and in sub-Saharan Africa, including by developing innovative approaches to encourage development and investment in sub-Saharan Africa;

(2) a reduction of tariff and nontariff barriers and other obstacles to trade between the countries of sub-Saharan Africa and the United States, with particular emphasis on reducing barriers to trade in emerging sectors of the economy that have the greatest potential for development;

(3) development of sub-Saharan Africa's physical and financial infrastructure;

(4) international efforts to fight HIV/AIDS, malaria, tuberculosis, other infectious diseases, and serious public health problems;

(5) many of the aims of the New Partnership for African Development (NEPAD), which include—

(A) reducing poverty and increasing economic growth;

(B) promoting peace, democracy, security, and human rights;

(C) promoting African integration by deepening linkages between African countries and by accelerating Africa's economic and political integration into the rest of the world;

(D) attracting investment, debt relief, and development assistance;

(E) promoting trade and economic diversification;

(F) broadening global market access for United States and African exports;

(G) improving transparency, good governance, and political accountability;

(H) expanding access to social services, education, and health services with a high priority given to addressing HIV/AIDS, malaria, tuberculosis, other infectious diseases, and other public health problems;

(I) promoting the role of women in social and economic development by reinforcing education and training and by assuring their participation in political and economic arenas; and

(J) building the capacity of governments in sub-Saharan Africa to set and enforce a legal framework, as well as to enforce the rule of law;

(6) negotiation of reciprocal trade agreements between the United States and sub-Saharan African countries, with the overall goal of expanding trade across all of sub-Saharan Africa;

(7) the President seeking to negotiate, with interested eligible sub-Saharan African countries, bilateral trade agreements that provide investment opportunities, in accordance with section 2102(b)(3) of the Trade Act of 2002 (19 U.S.C. 3802(b)(3));

(8) efforts by the President to negotiate with the member countries of the Southern African Customs Union in order to provide the opportunity to deepen and make permanent the benefits of the Act while giving the United States access to the markets of these African countries for United States goods and services, by reducing tariffs and non-tariff barriers, strengthening intellectual property protection, improving transparency, establishing general dispute settlement mechanisms, and investor-state and state-to-state dispute settlement mechanisms in investment;

(9) a comprehensive and ambitious trade agreement with the Southern African Customs Union, covering all products and sectors, in order to mature the economic relationship between sub-Saharan African countries and the United States and because such an agreement would deepen United States economic and political ties to the region, lend momentum to United States development efforts, encourage greater United States investment, and promote regional integration and economic growth;

(10) regional integration among sub-Saharan African countries and business partnerships between United States and African firms; and

(11) economic diversification in sub-Saharan African countries and expansion of trade beyond textiles and apparel.

19 USC 3701
note.

SEC. 4. SENSE OF CONGRESS ON RECIPROCITY AND REGIONAL ECONOMIC INTEGRATION.

It is the sense of the Congress that—

(1) the preferential market access opportunities for eligible sub-Saharan African countries will be complemented and enhanced if those countries are implementing actively and fully, consistent with any remaining applicable phase-in periods, their obligations under the World Trade Organization, including obligations under the Agreement on Trade-Related Aspects of Intellectual Property, the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Trade-

Related Investment Measures, as well as the other agreements described in section 101(d) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d));

(2) eligible sub-Saharan African countries should participate in and support mutual trade liberalization in ongoing negotiations under the auspices of the World Trade Organization, including by making reciprocal commitments with respect to improving market access for industrial and agricultural goods, and for services, recognizing that such commitments may need to reflect special and differential treatment for developing countries;

(3) some of the most pernicious trade barriers against exports by developing countries are the trade barriers maintained by other developing countries; therefore, eligible sub-Saharan African countries will benefit from the reduction of trade barriers in other developing countries, especially in developing countries that represent some of the greatest potential markets for African goods and services; and

(4) all countries should make sanitary and phytosanitary decisions on the basis of sound science.

SEC. 5. SENSE OF CONGRESS ON INTERPRETATION OF TEXTILE AND APPAREL PROVISIONS OF AGOA.

19 USC 3701
note.

It is the sense of the Congress that the executive branch, particularly the Committee for the Implementation of Textile Agreements (CITA), the Bureau of Customs and Border Protection of the Department of Homeland Security, and the Department of Commerce, should interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act, relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible sub-Saharan African countries.

SEC. 6. DEFINITION.

19 USC 3701
note.

In this Act, the term “eligible sub-Saharan African country” means an eligible sub-Saharan African country under the African Growth and Opportunity Act.

SEC. 7. EXTENSION OF AFRICAN GROWTH AND OPPORTUNITY ACT.

19 USC 3701
note.

(a) GENERALIZED SYSTEM OF PREFERENCES.—

(1) EXTENSION OF PROGRAM.—Section 506B of the Trade Act of 1974 (19 U.S.C. 2466b) is amended by striking “2008” and inserting “2015”.

(2) INPUTS FROM FORMER BENEFICIARY COUNTRIES.—Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) is amended—

(A) in subsection (b)(2)(B), by inserting “or former beneficiary sub-Saharan African countries” after “countries”; and

(B) in subsection (c)—

(i) by striking “title, the terms” and inserting “title—

“(1) the terms”; and

(ii) by adding at the end the following:

“(2) the term ‘former beneficiary sub-Saharan African country’ means a country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act, ceased to be designated as such

a country by reason of its entering into a free trade agreement with the United States.”.

(b) APPAREL ARTICLES.—(1) Section 112(b)(1) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(1)) is amended by striking “(including” and inserting “or both (including”.

(2) Section 112(b)(3) of the African Growth and Opportunity Act (19 U.S.C. 3721 (b)(3)) is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking “either in the United States or one or more beneficiary sub-Saharan African countries” each place it appears and inserting “in the United States or one or more beneficiary sub-Saharan African countries, or both”; and

(ii) by striking “subject to the following:” and inserting “whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (1) or (2)), subject to the following:”; and

(B) by striking subparagraphs (A) and (B) and inserting the following:

“(A) LIMITATIONS ON BENEFITS.—

“(i) IN GENERAL.—Preferential treatment under this paragraph shall be extended in the 1-year period beginning October 1, 2003, and in each of the 11 succeeding 1-year periods, to imports of apparel articles in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available.

“(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the term ‘applicable percentage’ means—

“(I) 4.747 percent for the 1-year period beginning October 1, 2003, increased in each of the 5 succeeding 1-year periods by equal increments, so that for the 1-year period beginning October 1, 2007, the applicable percentage does not exceed 7 percent; and

“(II) for each succeeding 1-year period until September 30, 2015, not to exceed 7 percent.

“(B) SPECIAL RULE FOR LESSER DEVELOPED COUNTRIES.—

“(i) IN GENERAL.—Preferential treatment under this paragraph shall be extended through September 30, 2007, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric or the yarn used to make such articles, in an amount not to exceed the applicable percentage of the aggregate square meter equivalents of all apparel articles imported into the United States in

the preceding 12-month period for which data are available.

“(ii) APPLICABLE PERCENTAGE.—For purposes of the subparagraph, the term ‘applicable percentage’ means—

“(I) 2.3571 percent for the 1-year period beginning October 1, 2003;

“(II) 2.6428 percent for the 1-year period beginning October 1, 2004;

“(III) 2.9285 percent for the 1-year period beginning October 1, 2005; and

“(IV) 1.6071 percent for the 1-year period beginning October 1, 2006.

“(iii) LESSER DEVELOPED BENEFICIARY SUB-SAHARAN AFRICAN COUNTRY.—For purposes of this subparagraph, the term ‘lesser developed beneficiary sub-Saharan African country’ means—

“(I) a beneficiary sub-Saharan African country that had a per capita gross national product of less than \$1,500 in 1998, as measured by the International Bank for Reconstruction and Development;

“(II) Botswana; and

“(III) Namibia.”

(3) Section 112(b)(5)(A) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(5)(A)) is amended to read as follows:

“(A) IN GENERAL.—Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 to the NAFTA.”

(c) HANDLOOMED, HANDMADE, FOLKLORE ARTICLES AND ETHNIC PRINTED FABRICS.—Section 112(b)(6) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(6)) is amended to read as follows:

“(6) HANDLOOMED, HANDMADE, FOLKLORE ARTICLES AND ETHNIC PRINTED FABRICS.—

“(A) IN GENERAL.—A handloomed, handmade, folklore article or an ethnic printed fabric of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of such beneficiary country or countries. For purposes of this section, the President, after consultation with the beneficiary sub-Saharan African country or countries concerned, shall determine which, if any, particular textile and apparel goods of the country (or countries) shall be treated as being handloomed, handmade, or folklore articles or an ethnic printed fabric.

“(B) REQUIREMENTS FOR ETHNIC PRINTED FABRIC.—Ethnic printed fabrics qualified under this paragraph are—

“(i) fabrics containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the Harmonized Tariff Schedule of the United States;

“(ii) of the type that contains designs, symbols, and other characteristics of African prints—

“(I) normally produced for and sold on the indigenous African market; and

“(II) normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets;

“(iii) printed, including waxed, in one or more eligible beneficiary sub-Saharan countries; and

“(iv) fabrics formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary sub-Saharan African country from yarn originating in either the United States or one or more beneficiary sub-Saharan African countries.”.

(d) REGIONAL AND U.S. SOURCES.—Section 112(b)(7) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(7)) is amended by inserting “or former beneficiary sub-Saharan African countries” after “and one or more beneficiary sub-Saharan African countries” each place it appears.

(e) SPECIAL RULES.—

(1) CERTAIN COMPONENTS.—Section 112(d) of the African Growth and Opportunity Act (19 U.S.C. 3721(d)) is amended by adding at the end the following:

“(3) CERTAIN COMPONENTS.—An article otherwise eligible for preferential treatment under this section will not be ineligible for such treatment because the article contains—

“(A) any collars or cuffs (cut or knit-to-shape),

“(B) drawstrings,

“(C) shoulder pads or other padding,

“(D) waistbands,

“(E) belt attached to the article,

“(F) straps containing elastic, or

“(G) elbow patches,

that do not meet the requirements set forth in subsection (b), regardless of the country of origin of the item referred to in the applicable subparagraph of this paragraph.”.

(2) DE MINIMIS RULE.—Section 112(d)(2) of the African Growth and Opportunity Act (19 U.S.C. 3721(d)(2)) is amended—

(A) by inserting “or former beneficiary sub-Saharan African countries” after “countries”; and

(B) by striking “7 percent” and inserting “10 percent”.

(f) DEFINITIONS.—Section 112(e) of the African Growth and Opportunity Act (19 U.S.C. 3721(e)) is amended by adding at the end the following:

“(4) FORMER SUB-SAHARAN AFRICAN COUNTRY.—The term ‘former sub-Saharan African country’ means a country that, after being designated as a beneficiary sub-Saharan African country under this Act, ceased to be designated as such a beneficiary sub-Saharan country by reason of its entering into a free trade agreement with the United States.”.

19 USC 3701
note.

SEC. 8. ENTRIES OF CERTAIN APPAREL ARTICLES PURSUANT TO THE AFRICAN GROWTH AND OPPORTUNITY ACT.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the Secretary of the Treasury shall liquidate or reliquidate as free of duty and free of any quantitative restrictions, limitations, or

consultation levels entries of articles described in subsection (d) made on or after October 1, 2000, and before the date of the enactment of this Act.

(b) **REQUESTS.**—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Secretary of the Treasury within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Secretary to locate the entry or reconstruct the entry if it cannot be located. Deadline.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation. Deadline.

(d) **ENTRIES.**—The entries referred to in subsection (a) are entries of apparel articles that meet the requirements of section 112(b) of the African Growth and Opportunity Act, as amended by section 3108 of the Trade Act of 2002 and this Act.

SEC. 9. DEVELOPMENT STUDY AND CAPACITY BUILDING.

(a) **REPORTS.**—The President shall, by not later than 1 year after the date of the enactment of this Act, conduct a study on each eligible sub-Saharan African country, that— President.
19 USC 3701
note.
Deadline.

(1) identifies sectors of the economy of that country with the greatest potential for growth, including through export sales;

(2) identifies barriers, both domestically and internationally, that are impeding growth in such sectors; and

(3) makes recommendations on how the United States Government and the private sector can provide technical assistance to that country to assist in dismantling such barriers and in promoting investment in such sectors.

(b) **DISSEMINATION OF INFORMATION.**—The President shall disseminate information in each study conducted under subsection (a) to the appropriate United States agencies for the purpose of implementing recommendations on the provision of technical assistance and in identifying opportunities for United States investors, businesses, and farmers.

SEC. 10. ACTIVITIES IN SUPPORT OF INFRASTRUCTURE TO SUPPORT INCREASING TRADE CAPACITY AND ECOTOURISM. 19 USC 3701 note.

(a) **FINDINGS.**—The Congress finds the following:

(1) Ecotourism, which consists of—

(A) responsible and sustainable travel and visitation to relatively undisturbed natural areas in order to enjoy and appreciate nature (and any accompanying cultural features, both past and present) and animals, including species that are rare or endangered,

(B) promotion of conservation and provision for beneficial involvement of local populations, and

(C) visitation designed to have low negative impact upon the environment,

is expected to expand 30 percent globally over the next decade.

(2) Ecotourism will increase trade capacity by sustaining otherwise unsustainable infrastructure, such as road, port, water, energy, and telecommunication development.

(3) According to the United States Department of State and the United Nations Environment Programme, sustainable

tourism, such as ecotourism, can be an important part of the economic development of a region, especially a region with natural and cultural protected areas.

(4) Sub-Saharan Africa enjoys an international comparative advantage in ecotourism because it features extensive protected areas that host a variety of ecosystems and traditional cultures that are major attractions for nature-oriented tourism.

(5) National parks and reserves in sub-Saharan Africa should be considered a basis for regional development, involving communities living within and adjacent to them and, given their strong international recognition, provide an advantage in ecotourism marketing and promotion.

(6) Desert areas in sub-Saharan Africa represent complex ecotourism attractions, showcasing natural, geological, and archaeological features, and nomad and other cultures and traditions.

(7) Many natural zones in sub-Saharan Africa cross the political borders of several countries; therefore, transboundary cooperation is fundamental for all types of ecotourism development.

(8) The commercial viability of ecotourism is enhanced when small and medium enterprises, particularly microenterprises, successfully engage with the tourism industry in sub-Saharan Africa.

(9) Adequate capacity building is an essential component of ecotourism development if local communities are to be real stakeholders that can sustain an equitable approach to ecotourism management.

(10) Ecotourism needs to generate local community benefits by utilizing sub-Saharan Africa's natural heritage, parks, wildlife reserves, and other protected areas that can play a significant role in encouraging local economic development by sourcing food and other locally produced resources.

(b) ACTION BY THE PRESIDENT.—The President shall develop and implement policies to—

(1) encourage the development of infrastructure projects that will help to increase trade capacity and a sustainable ecotourism industry in eligible sub-Saharan African countries;

(2) encourage and facilitate transboundary cooperation among sub-Saharan African countries in order to facilitate trade;

(3) encourage the provision of technical assistance to eligible sub-Saharan African countries to establish and sustain adequate trade capacity development; and

(4) encourage micro-, small-, and medium-sized enterprises in eligible sub-Saharan African countries to participate in the ecotourism industry.

19 USC 3701
note.

SEC. 11. ACTIVITIES IN SUPPORT OF TRANSPORTATION, ENERGY, AGRICULTURE, AND TELECOMMUNICATIONS INFRASTRUCTURE.

(a) FINDINGS.—The Congress finds the following:

(1) In order to increase exports from, and trade among, eligible sub-Saharan African countries, transportation systems in those countries must be improved to increase transport efficiencies and lower transport costs.

(2) Vibrant economic growth requires a developed telecommunication and energy infrastructure.

(3) Sub-Saharan Africa is rich in exportable agricultural goods, but development of this industry remains stymied because of an underdeveloped infrastructure.

(b) ACTION BY THE PRESIDENT.—In order to enhance trade with Africa and to bring the benefits of trade to African countries, the President shall develop and implement policies to encourage investment in eligible sub-Saharan African countries, particularly with respect to the following:

(1) Infrastructure projects that support, in particular, development of land transport road and railroad networks and ports, and the continued upgrading and liberalization of the energy and telecommunications sectors.

(2) The establishment and expansion of modern information and communication technologies and practices to improve the ability of citizens to research and disseminate information relating to, among other things, the economy, education, trade, health, agriculture, the environment, and the media.

(3) Agriculture, particularly in processing and capacity enhancement.

SEC. 12. FACILITATION OF TRANSPORTATION.

19 USC 3701
note.

In order to facilitate and increase trade flows between eligible sub-Saharan African countries and the United States, the President shall foster improved port-to-port and airport-to-airport relationships. These relationships should facilitate—

(1) increased coordination between customs services at ports and airports in the United States and such countries in order to reduce time in transit;

(2) interaction between customs and technical staff from ports and airports in the United States and such countries in order to increase efficiency and safety procedures and protocols relating to trade;

(3) coordination between chambers of commerce, freight forwarders, customs brokers, and others involved in consolidating and moving freight; and

(4) trade through air service between airports in the United States and such countries by increasing frequency and capacity.

SEC. 13. AGRICULTURAL TECHNICAL ASSISTANCE.

President.
19 USC 3701
note.

(a) IDENTIFICATION OF COUNTRIES.—The President shall identify not fewer than 10 eligible sub-Saharan African countries as having the greatest potential to increase marketable exports of agricultural products to the United States and the greatest need for technical assistance, particularly with respect to pest risk assessments and complying with sanitary and phytosanitary rules of the United States.

(b) PERSONNEL.—The President shall assign at least 20 full-time personnel for the purpose of providing assistance to the countries identified under subsection (a) to ensure that exports of agricultural products from those countries meet the requirements of United States law.

SEC. 14. TRADE ADVISORY COMMITTEE ON AFRICA.

President.
19 USC 3701
note.

The President shall convene the trade advisory committee on Africa established by Executive Order 11846 of March 27, 1975, under section 135(c) of the Trade Act of 1974, in order to facilitate

the goals and objectives of the African Growth and Opportunity Act and this Act, and to maintain ongoing discussions with African trade and agriculture ministries and private sector organizations on issues of mutual concern, including regional and international trade concerns and World Trade Organization issues.

Approved July 13, 2004.

LEGISLATIVE HISTORY—H.R. 4103:

HOUSE REPORTS: No. 108–501 (Comm. on Ways and Means).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 14, considered and passed House.

June 24, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

July 13, Presidential remarks.



Public Law 108–275
108th Congress

An Act

To amend title 18, United States Code, to establish penalties for aggravated identity theft, and for other purposes.

July 15, 2004
[H.R. 1731]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Identity Theft Penalty Enhancement Act”.

Identity Theft
Penalty
Enhancement
Act.
18 USC 1001
note.

SEC. 2. AGGRAVATED IDENTITY THEFT.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding after section 1028, the following:

“§ 1028A. Aggravated identity theft

“(a) OFFENSES.—

“(1) IN GENERAL.—Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

“(2) TERRORISM OFFENSE.—Whoever, during and in relation to any felony violation enumerated in section 2332b(g)(5)(B), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person or a false identification document shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 5 years.

“(b) CONSECUTIVE SENTENCE.—Notwithstanding any other provision of law—

“(1) a court shall not place on probation any person convicted of a violation of this section;

“(2) except as provided in paragraph (4), no term of imprisonment imposed on a person under this section shall run concurrently with any other term of imprisonment imposed on the person under any other provision of law, including any term of imprisonment imposed for the felony during which the means of identification was transferred, possessed, or used;

“(3) in determining any term of imprisonment to be imposed for the felony during which the means of identification was transferred, possessed, or used, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term

of imprisonment imposed or to be imposed for a violation of this section; and

“(4) a term of imprisonment imposed on a person for a violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28.

“(c) DEFINITION.—For purposes of this section, the term ‘felony violation enumerated in subsection (c)’ means any offense that is a felony violation of—

“(1) section 641 (relating to theft of public money, property, or rewards), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), or section 664 (relating to theft from employee benefit plans);

“(2) section 911 (relating to false personation of citizenship);

“(3) section 922(a)(6) (relating to false statements in connection with the acquisition of a firearm);

“(4) any provision contained in this chapter (relating to fraud and false statements), other than this section or section 1028(a)(7);

“(5) any provision contained in chapter 63 (relating to mail, bank, and wire fraud);

“(6) any provision contained in chapter 69 (relating to nationality and citizenship);

“(7) any provision contained in chapter 75 (relating to passports and visas);

“(8) section 523 of the Gramm-Leach-Bliley Act (15 U.S.C. 6823) (relating to obtaining customer information by false pretenses);

“(9) section 243 or 266 of the Immigration and Nationality Act (8 U.S.C. 1253 and 1306) (relating to willfully failing to leave the United States after deportation and creating a counterfeit alien registration card);

“(10) any provision contained in chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) (relating to various immigration offenses); or

“(11) section 208, 811, 1107(b), 1128B(a), or 1632 of the Social Security Act (42 U.S.C. 408, 1011, 1307(b), 1320a-7b(a), and 1383a) (relating to false statements relating to programs under the Act).”.

(b) AMENDMENT TO CHAPTER ANALYSIS.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following new item:

“1028A. Aggravated identity theft.”.

(c) APPLICATION OF DEFINITIONS FROM SECTION 1028.—Section 1028(d) of title 18, United States Code, is amended by inserting “and section 1028A” after “In this section”.

SEC. 3. AMENDMENTS TO EXISTING IDENTITY THEFT PROHIBITION.

Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)(7)—

(A) by striking “transfers” and inserting “transfers, possesses,”; and

(B) by striking “abet,” and inserting “abet, or in connection with,”;

(2) in subsection (b)(1)(D), by striking “transfer” and inserting “transfer, possession,”;

(3) in subsection (b)(2), by striking “three years” and inserting “5 years”; and

(4) in subsection (b)(4), by inserting after “facilitate” the following: “an act of domestic terrorism (as defined under section 2331(5) of this title) or”.

SEC. 4. AGGREGATION OF VALUE FOR PURPOSES OF SECTION 641.

The penultimate paragraph of section 641 of title 18 of the United States Code is amended by inserting “in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case,” after “value of such property” .

SEC. 5. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION. 28 USC 994 note.

(a) **IN GENERAL.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend its guidelines and its policy statements to ensure that the guideline offense levels and enhancements appropriately punish identity theft offenses involving an abuse of position.

(b) **REQUIREMENTS.**—In carrying out this section, the United States Sentencing Commission shall do the following:

(1) Amend U.S.S.G. section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) to apply to and punish offenses in which the defendant exceeds or abuses the authority of his or her position in order to obtain unlawfully or use without authority any means of identification, as defined section 1028(d)(4) of title 18, United States Code.

(2) Ensure reasonable consistency with other relevant directives, other sentencing guidelines, and statutory provisions.

(3) Make any necessary and conforming changes to the sentencing guidelines.

(4) Ensure that the guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

In addition to any other sums authorized to be appropriated for this purpose, there is authorized to be appropriated to the Department of Justice, for the investigation and prosecution of

identity theft and related credit card and other fraud cases constituting felony violations of law, \$2,000,000 for fiscal year 2005 and \$2,000,000 for each of the 4 succeeding fiscal years.

Approved July 15, 2004.

LEGISLATIVE HISTORY—H.R. 1731 (S. 153):

HOUSE REPORTS: No. 108–528 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 23, considered and passed House.

June 25, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

July 15, Presidential remarks.



Public Law 108–276
108th Congress

An Act

To amend the Public Health Service Act to provide protections and countermeasures against chemical, radiological, or nuclear agents that may be used in a terrorist attack against the United States by giving the National Institutes of Health contracting flexibility, infrastructure improvements, and expediting the scientific peer review process, and streamlining the Food and Drug Administration approval process of countermeasures.

July 21, 2004
[S. 15]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Project BioShield Act of 2004”.

Project BioShield
Act of 2004.
42 USC 201 note.

SEC. 2. BIOMEDICAL COUNTERMEASURE RESEARCH AND DEVELOPMENT—AUTHORITIES.

(a) **IN GENERAL.**—Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 319F the following section:

“SEC. 319F–1. AUTHORITY FOR USE OF CERTAIN PROCEDURES REGARDING QUALIFIED COUNTERMEASURE RESEARCH AND DEVELOPMENT ACTIVITIES.

42 USC 247d–6a.

“(a) **IN GENERAL.**—

“(1) **AUTHORITY.**—In conducting and supporting research and development activities regarding countermeasures under section 319F(h), the Secretary may conduct and support such activities in accordance with this section and, in consultation with the Director of the National Institutes of Health, as part of the program under section 446, if the activities concern qualified countermeasures.

“(2) **QUALIFIED COUNTERMEASURE.**—For purposes of this section, the term ‘qualified countermeasure’ means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that the Secretary determines to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002) to—

“(A) treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

“(B) treat, identify, or prevent harm from a condition that may result in adverse health consequences or death

and may be caused by administering a drug, biological product, or device that is used as described in subparagraph (A).

“(3) INTERAGENCY COOPERATION.—

“(A) IN GENERAL.—In carrying out activities under this section, the Secretary is authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

“(B) LIMITATION.—An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section.

“(4) AVAILABILITY OF FACILITIES TO THE SECRETARY.—In any grant, contract, or cooperative agreement entered into under the authority provided in this section with respect to a biocontainment laboratory or other related or ancillary specialized research facility that the Secretary determines necessary for the purpose of performing, administering, or supporting qualified countermeasure research and development, the Secretary may provide that the facility that is the object of such grant, contract, or cooperative agreement shall be available as needed to the Secretary to respond to public health emergencies affecting national security.

“(5) TRANSFERS OF QUALIFIED COUNTERMEASURES.—Each agreement for an award of a grant, contract, or cooperative agreement under section 319F(h) for the development of a qualified countermeasure shall provide that the recipient of the award will comply with all applicable export-related controls with respect to such countermeasure.

“(b) EXPEDITED PROCUREMENT AUTHORITY.—

“(1) INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR QUALIFIED COUNTERMEASURE PROCUREMENTS.—

“(A) IN GENERAL.—For any procurement by the Secretary of property or services for use (as determined by the Secretary) in performing, administering, or supporting qualified countermeasure research or development activities under this section that the Secretary determines necessary to respond to pressing research and development needs under this section, the amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), as applicable pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), shall be deemed to be \$25,000,000 in the administration, with respect to such procurement, of—

“(i) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

“(ii) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

“(B) APPLICATION OF CERTAIN PROVISIONS.—Notwithstanding subparagraph (A) and the provision of law and regulations referred to in such subparagraph, each of the following provisions shall apply to procurements described in this paragraph to the same extent that such provisions would apply to such procurements in the absence of subparagraph (A):

“(i) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

“(ii) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57(a) and (b)).

“(iii) Section 304C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254d) (relating to the examination of contractor records).

“(iv) Section 3131 of title 40, United States Code (relating to bonds of contractors of public buildings or works).

“(v) Subsection (a) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) (relating to contingent fees to middlemen).

“(vi) Section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962).

“(vii) Section 1354 of title 31, United States Code (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

“(C) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for procurements that are under this paragraph, including requirements with regard to documenting the justification for use of the authority in this paragraph with respect to the procurement involved.

“(D) AUTHORITY TO LIMIT COMPETITION.—In conducting a procurement under this paragraph, the Secretary may not use the authority provided for under subparagraph (A) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

“(2) PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.—

“(A) IN GENERAL.—In using the authority provided in section 303(c)(1) of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)) to use procedures other than competitive procedures in the case of a procurement described in paragraph (1) of this subsection, the phrase ‘available from only one responsible source’ in such section 303(c)(1) shall be deemed to mean ‘available from only one responsible source or only from a limited number of responsible sources’.

“(B) RELATION TO OTHER AUTHORITIES.—The authority under subparagraph (A) is in addition to any other authority to use procedures other than competitive procedures.

“(C) APPLICABLE GOVERNMENT-WIDE REGULATIONS.—The Secretary shall implement this paragraph in accordance with government-wide regulations implementing such section 303(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency

has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

“(3) INCREASED MICROPURCHASE THRESHOLD.—

“(A) IN GENERAL.—For a procurement described by paragraph (1), the amount specified in subsections (c), (d), and (f) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) shall be deemed to be \$15,000 in the administration of that section with respect to such procurement.

“(B) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for purchases that are under this paragraph and that are greater than \$2,500.

“(C) EXCEPTION TO PREFERENCE FOR PURCHASE CARD MECHANISM.—No provision of law establishing a preference for using a Government purchase card method for purchases shall apply to purchases that are under this paragraph and that are greater than \$2,500.

“(4) REVIEW.—

“(A) REVIEW ALLOWED.—Notwithstanding subsection (f), section 1491 of title 28, United States Code, and section 3556 of title 31 of such Code, review of a contracting agency decision relating to a procurement described in paragraph (1) may be had only by filing a protest—

“(i) with a contracting agency; or

“(ii) with the Comptroller General under subchapter V of chapter 35 of title 31, United States Code.

“(B) OVERRIDE OF STAY OF CONTRACT AWARD OR PERFORMANCE COMMITTED TO AGENCY DISCRETION.—Notwithstanding section 1491 of title 28, United States Code, and section 3553 of title 31 of such Code, the following authorizations by the head of a procuring activity are committed to agency discretion:

“(i) An authorization under section 3553(c)(2) of title 31, United States Code, to award a contract for a procurement described in paragraph (1) of this subsection.

“(ii) An authorization under section 3553(d)(3)(C) of such title to perform a contract for a procurement described in paragraph (1) of this subsection.

“(c) AUTHORITY TO EXPEDITE PEER REVIEW.—

“(1) IN GENERAL.—The Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, employ such expedited peer review procedures (including consultation with appropriate scientific experts) as the Secretary, in consultation with the Director of NIH, deems appropriate to obtain assessment of scientific and technical merit and likely contribution to the field of qualified countermeasure research, in place of the peer review and advisory council review procedures that would be required under sections 301(a)(3),

405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494, as applicable to a grant, contract, or cooperative agreement—

“(A) that is for performing, administering, or supporting qualified countermeasure research and development activities; and

“(B) the amount of which is not greater than \$1,500,000.

“(2) SUBSEQUENT PHASES OF RESEARCH.—The Secretary’s determination of whether to employ expedited peer review with respect to any subsequent phases of a research grant, contract, or cooperative agreement under this section shall be determined without regard to the peer review procedures used for any prior peer review of that same grant, contract, or cooperative agreement. Nothing in the preceding sentence may be construed to impose any requirement with respect to peer review not otherwise required under any other law or regulation.

“(d) AUTHORITY FOR PERSONAL SERVICES CONTRACTS.—

“(1) IN GENERAL.—For the purpose of performing, administering, or supporting qualified countermeasure research and development activities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, obtain by contract (in accordance with section 3109 of title 5, United States Code, but without regard to the limitations in such section on the period of service and on pay) the personal services of experts or consultants who have scientific or other professional qualifications, except that in no case shall the compensation provided to any such expert or consultant exceed the daily equivalent of the annual rate of compensation for the President.

“(2) FEDERAL TORT CLAIMS ACT COVERAGE.—

“(A) IN GENERAL.—A person carrying out a contract under paragraph (1), and an officer, employee, or governing board member of such person, shall, subject to a determination by the Secretary, be deemed to be an employee of the Department of Health and Human Services for purposes of claims under sections 1346(b) and 2672 of title 28, United States Code, for money damages for personal injury, including death, resulting from performance of functions under such contract.

“(B) EXCLUSIVITY OF REMEDY.—The remedy provided by subparagraph (A) shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the entity involved (person, officer, employee, or governing board member) for any act or omission within the scope of the Federal Tort Claims Act.

“(C) RECOURSE IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

“(i) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this paragraph, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover against any entity identified in subparagraph (B) for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of

any such entity to carry out any obligation or responsibility assumed by such entity under a contract with the United States or from any grossly negligent or reckless conduct or intentional or willful misconduct on the part of such entity.

“(ii) VENUE.—The United States may maintain an action under this subparagraph against such entity in the district court of the United States in which such entity resides or has its principal place of business.

“(3) INTERNAL CONTROLS TO BE INSTITUTED.—

Procedures.

“(A) IN GENERAL.—The Secretary shall institute appropriate internal controls for contracts under this subsection, including procedures for the Secretary to make a determination of whether a person, or an officer, employee, or governing board member of a person, is deemed to be an employee of the Department of Health and Human Services pursuant to paragraph (2).

“(B) DETERMINATION OF EMPLOYEE STATUS TO BE FINAL.—A determination by the Secretary under subparagraph (A) that a person, or an officer, employee, or governing board member of a person, is or is not deemed to be an employee of the Department of Health and Human Services shall be final and binding on the Secretary and the Attorney General and other parties to any civil action or proceeding.

“(4) NUMBER OF PERSONAL SERVICES CONTRACTS LIMITED.—The number of experts and consultants whose personal services are obtained under paragraph (1) shall not exceed 30 at any time.

“(e) STREAMLINED PERSONNEL AUTHORITY.—

“(1) IN GENERAL.—In addition to any other personnel authorities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, without regard to those provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, appoint professional and technical employees, not to exceed 30 such employees at any time, to positions in the National Institutes of Health to perform, administer, or support qualified countermeasure research and development activities in carrying out this section.

“(2) LIMITATIONS.—The authority provided for under paragraph (1) shall be exercised in a manner that—

“(A) recruits and appoints individuals based solely on their abilities, knowledge, and skills;

“(B) does not discriminate for or against any applicant for employment on any basis described in section 2302(b)(1) of title 5, United States Code;

“(C) does not allow an official to appoint an individual who is a relative (as defined in section 3110(a)(3) of such title) of such official;

“(D) does not discriminate for or against an individual because of the exercise of any activity described in paragraph (9) or (10) of section 2302(b) of such title; and

“(E) accords a preference, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of such title).

“(3) INTERNAL CONTROLS TO BE INSTITUTED.—The Secretary shall institute appropriate internal controls for appointments under this subsection.

“(f) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions by the Secretary under the authority of this section are committed to agency discretion.”.

(b) TECHNICAL AMENDMENT.—Section 481A of the Public Health Service Act (42 U.S.C. 287a-2) is amended—

(1) in subsection (a)(1), by inserting “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”;

(2) in subsection (c)—

(A) in paragraph (1), by inserting “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”; and

(B) in paragraph (2), in the matter preceding subparagraph (A), by striking “subsection (i)” and inserting “subsection (i)(1)”;

(3) in subsection (d), by inserting “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”;

(4) in subsection (e)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”;

(ii) in subparagraph (A), by inserting “(or, in the case of the Institute, 75 percent)” after “50 percent”; and

(iii) in subparagraph (B), by inserting “(or, in the case of the Institute, 75 percent)” after “40 percent”;

(B) in paragraph (2), by inserting “or the Director of the National Institute of Allergy and Infectious Diseases” after “Director of the Center”; and

(C) in paragraph (4), by inserting “of the Center or the Director of the National Institute of Allergy and Infectious Diseases” after “Director”;

(5) in subsection (f)—

(A) in paragraph (1), by inserting “in the case of an award by the Director of the Center,” before “the applicant”; and

(B) in paragraph (2), by inserting “of the Center or the Director of the National Institute of Allergy and Infectious Diseases” after “Director”; and

(6) in subsection (i)—

(A) by striking “APPROPRIATIONS.—For the purpose of carrying out this section,” and inserting the following: “APPROPRIATIONS.—

“(1) CENTER.—For the purpose of carrying out this section with respect to the Center,”; and

(B) by adding at the end the following:

“(2) NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES.—For the purpose of carrying out this section with

respect to the National Institute of Allergy and Infectious Diseases, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.”.

(c) **ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS.**—Section 2106 of the Public Health Service Act (42 U.S.C. 300aa-6) is amended—

(1) in subsection (a), by striking “authorized to be appropriated” and all that follows and inserting the following: “authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.”; and

(2) in subsection (b), by striking “authorized to be appropriated” and all that follows and inserting the following: “authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.”.

(d) **TECHNICAL AMENDMENTS.**—Section 319F of the Public Health Service Act (42 U.S.C. 247d-6) is amended—

(1) in subsection (a), by inserting “the Secretary of Homeland Security,” after “Management Agency,”; and

(2) in subsection (h)(4)(B), by striking “to diagnose conditions” and inserting “to treat, identify, or prevent conditions”.

42 USC 247d-6a
note.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section has any legal effect on sections 302(2), 302(4), 304(a), or 304(b) of the Homeland Security Act of 2002.

42 USC 247d-6b.

SEC. 3. BIOMEDICAL COUNTERMEASURES PROCUREMENT.

(a) **ADDITIONAL AUTHORITY REGARDING STRATEGIC NATIONAL STOCKPILE.**—

(1) **TRANSFER OF PROGRAM.**—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (116 Stat. 611; 42 U.S.C. 300hh-12) is transferred from such Act to the Public Health Service Act, is redesignated as section 319F-2, and is inserted after section 319F-1 of the Public Health Service Act (as added by section 2 of this Act).

(2) **ADDITIONAL AUTHORITY.**—Section 319F-2 of the Public Health Service Act, as added by paragraph (1), is amended to read as follows:

“SEC. 319F-2. STRATEGIC NATIONAL STOCKPILE.

“(a) STRATEGIC NATIONAL STOCKPILE.—

“(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Homeland Security (referred to in this section as the ‘Homeland Security Secretary’), shall maintain a stockpile or stockpiles of drugs, vaccines and other biological products, medical devices, and other supplies in such numbers, types, and amounts as are determined by the Secretary to be appropriate and practicable, taking into account other available sources, to provide for the emergency health security of the United States, including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency.

“(2) PROCEDURES.—The Secretary, in managing the stockpile under paragraph (1), shall—

“(A) consult with the working group under section 319F(a);

“(B) ensure that adequate procedures are followed with respect to such stockpile for inventory management and accounting, and for the physical security of the stockpile;

“(C) in consultation with Federal, State, and local officials, take into consideration the timing and location of special events;

“(D) review and revise, as appropriate, the contents of the stockpile on a regular basis to ensure that emerging threats, advanced technologies, and new countermeasures are adequately considered;

“(E) devise plans for the effective and timely supply-chain management of the stockpile, in consultation with appropriate Federal, State and local agencies, and the public and private health care infrastructure;

“(F) deploy the stockpile as required by the Secretary of Homeland Security to respond to an actual or potential emergency;

“(G) deploy the stockpile at the discretion of the Secretary to respond to an actual or potential public health emergency or other situation in which deployment is necessary to protect the public health or safety; and

“(H) ensure the adequate physical security of the stockpile.

“(b) SMALLPOX VACCINE DEVELOPMENT.—

“(1) IN GENERAL.—The Secretary shall award contracts, enter into cooperative agreements, or carry out such other activities as may reasonably be required in order to ensure that the stockpile under subsection (a) includes an amount of vaccine against smallpox as determined by such Secretary to be sufficient to meet the health security needs of the United States.

“(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the private distribution, purchase, or sale of vaccines from sources other than the stockpile described in subsection (a).

“(c) ADDITIONAL AUTHORITY REGARDING PROCUREMENT OF CERTAIN BIOMEDICAL COUNTERMEASURES; AVAILABILITY OF SPECIAL RESERVE FUND.—

“(1) IN GENERAL.—

“(A) USE OF FUND.—A security countermeasure may, in accordance with this subsection, be procured with amounts in the special reserve fund under paragraph (10).

“(B) SECURITY COUNTERMEASURE.—For purposes of this subsection, the term ‘security countermeasure’ means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 351(i) of this Act (42 U.S.C. 262(i))), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that—

“(i)(I) the Secretary determines to be a priority (consistent with sections 302(2) and 304(a) of the Homeland Security Act of 2002) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent identified as a material threat under paragraph (2)(A)(ii), or to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent;

“(II) the Secretary determines under paragraph (2)(B)(ii) to be a necessary countermeasure; and

“(III)(aa) is approved or cleared under chapter V of the Federal Food, Drug, and Cosmetic Act or licensed under section 351 of this Act; or

“(bb) is a countermeasure for which the Secretary determines that sufficient and satisfactory clinical experience or research data (including data, if available, from pre-clinical and clinical trials) support a reasonable conclusion that the countermeasure will qualify for approval or licensing within eight years after the date of a determination under paragraph (5); or

“(ii) is authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act.

“(2) DETERMINATION OF MATERIAL THREATS.—

“(A) MATERIAL THREAT.—The Homeland Security Secretary, in consultation with the Secretary and the heads of other agencies as appropriate, shall on an ongoing basis—

“(i) assess current and emerging threats of chemical, biological, radiological, and nuclear agents; and

“(ii) determine which of such agents present a material threat against the United States population sufficient to affect national security.

“(B) PUBLIC HEALTH IMPACT; NECESSARY COUNTERMEASURES.—The Secretary shall on an ongoing basis—

“(i) assess the potential public health consequences for the United States population of exposure to agents identified under subparagraph (A)(ii); and

“(ii) determine, on the basis of such assessment, the agents identified under subparagraph (A)(ii) for which countermeasures are necessary to protect the public health.

“(C) NOTICE TO CONGRESS.—The Secretary and the Homeland Security Secretary shall promptly notify the designated congressional committees (as defined in paragraph (10)) that a determination has been made pursuant to subparagraph (A) or (B).

“(D) ASSURING ACCESS TO THREAT INFORMATION.—In making the assessment and determination required under subparagraph (A), the Homeland Security Secretary shall use all relevant information to which such Secretary is entitled under section 202 of the Homeland Security Act of 2002, including but not limited to information, regardless of its level of classification, relating to current and emerging threats of chemical, biological, radiological, and nuclear agents.

“(3) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The Secretary, in consultation with the Homeland Security Secretary, shall assess on an ongoing basis the availability and appropriateness of specific countermeasures to address specific threats identified under paragraph (2).

“(4) CALL FOR DEVELOPMENT OF COUNTERMEASURES; COMMITMENT FOR RECOMMENDATION FOR PROCUREMENT.—

“(A) PROPOSAL TO THE PRESIDENT.—If, pursuant to an assessment under paragraph (3), the Homeland Security Secretary and the Secretary make a determination that a countermeasure would be appropriate but is either currently unavailable for procurement as a security countermeasure or is approved, licensed, or cleared only for alternative uses, such Secretaries may jointly submit to the President a proposal to—

“(i) issue a call for the development of such countermeasure; and

“(ii) make a commitment that, upon the first development of such countermeasure that meets the conditions for procurement under paragraph (5), the Secretaries will, based in part on information obtained pursuant to such call, make a recommendation under paragraph (6) that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

“(B) COUNTERMEASURE SPECIFICATIONS.—The Homeland Security Secretary and the Secretary shall, to the extent practicable, include in the proposal under subparagraph (A)—

“(i) estimated quantity of purchase (in the form of number of doses or number of effective courses of treatments regardless of dosage form);

“(ii) necessary measures of minimum safety and effectiveness;

“(iii) estimated price for each dose or effective course of treatment regardless of dosage form; and

“(iv) other information that may be necessary to encourage and facilitate research, development, and manufacture of the countermeasure or to provide specifications for the countermeasure.

“(C) PRESIDENTIAL APPROVAL.—If the President approves a proposal under subparagraph (A), the Homeland Security Secretary and the Secretary shall make known to persons who may respond to a call for the countermeasure involved—

“(i) the call for the countermeasure;

“(ii) specifications for the countermeasure under subparagraph (B); and

“(iii) the commitment described in subparagraph (A)(ii).

“(5) SECRETARY’S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR FUNDING FROM SPECIAL RESERVE FUND.—

“(A) IN GENERAL.—The Secretary, in accordance with the provisions of this paragraph, shall identify specific security countermeasures that the Secretary determines, in consultation with the Homeland Security Secretary, to be appropriate for inclusion in the stockpile under subsection (a) pursuant to procurements made with amounts in the special reserve fund under paragraph (10) (referred to in this subsection individually as a ‘procurement under this subsection’).

“(B) REQUIREMENTS.—In making a determination under subparagraph (A) with respect to a security countermeasure, the Secretary shall determine and consider the following:

“(i) The quantities of the product that will be needed to meet the needs of the stockpile.

“(ii) The feasibility of production and delivery within eight years of sufficient quantities of the product.

“(iii) Whether there is a lack of a significant commercial market for the product at the time of procurement, other than as a security countermeasure.

“(6) RECOMMENDATION FOR PRESIDENT’S APPROVAL.—

“(A) RECOMMENDATION FOR PROCUREMENT.—In the case of a security countermeasure that the Secretary has, in accordance with paragraphs (3) and (5), determined to be appropriate for procurement under this subsection, the Homeland Security Secretary and the Secretary shall jointly submit to the President, in coordination with the Director of the Office of Management and Budget, a recommendation that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

“(B) PRESIDENTIAL APPROVAL.—The special reserve fund under paragraph (10) is available for a procurement of a security countermeasure only if the President has approved a recommendation under subparagraph (A) regarding the countermeasure.

“(C) NOTICE TO DESIGNATED CONGRESSIONAL COMMITTEES.—The Secretary and the Homeland Security Secretary shall notify the designated congressional committees of each decision of the President to approve a recommendation under subparagraph (A). Such notice shall include an explanation of the decision to make available the special reserve fund under paragraph (10) for procurement of such a countermeasure, including, where available, the number of, nature of, and other information concerning potential suppliers of such countermeasure, and whether other potential suppliers of the same or similar countermeasures were considered and rejected for procurement under this section and the reasons therefor.

“(D) SUBSEQUENT SPECIFIC COUNTERMEASURES.—Procurement under this subsection of a security countermeasure for a particular purpose does not preclude the subsequent procurement under this subsection of any other security countermeasure for such purpose if the Secretary has determined under paragraph (5)(A) that such countermeasure is appropriate for inclusion in the stockpile and if, as determined by the Secretary, such countermeasure provides improved safety or effectiveness, or for other reasons enhances preparedness to respond to threats of use of a biological, chemical, radiological, or nuclear agent. Such a determination by the Secretary is committed to agency discretion.

“(E) RULE OF CONSTRUCTION.—Recommendations and approvals under this paragraph apply solely to determinations that the special reserve fund under paragraph (10)

Applicability.

will be made available for a procurement of a security countermeasure, and not to the substance of contracts for such procurement or other matters relating to awards of such contracts.

“(7) PROCUREMENT.—

“(A) IN GENERAL.—For purposes of a procurement under this subsection that is approved by the President under paragraph (6), the Homeland Security Secretary and the Secretary shall have responsibilities in accordance with subparagraphs (B) and (C).

“(B) INTERAGENCY AGREEMENT; COSTS.—

“(i) INTERAGENCY AGREEMENT.—The Homeland Security Secretary shall enter into an agreement with the Secretary for procurement of a security countermeasure in accordance with the provisions of this paragraph. The special reserve fund under paragraph (10) shall be available for payments made by the Secretary to a vendor for such procurement.

“(ii) OTHER COSTS.—The actual costs to the Secretary under this section, other than the costs described in clause (i), shall be paid from the appropriation provided for under subsection (f)(1).

“(C) PROCUREMENT.—

“(i) IN GENERAL.—The Secretary shall be responsible for—

“(I) arranging for procurement of a security countermeasure, including negotiating terms (including quantity, production schedule, and price) of, and entering into, contracts and cooperative agreements, and for carrying out such other activities as may reasonably be required, in accordance with the provisions of this subparagraph; and

“(II) promulgating such regulations as the Secretary determines necessary to implement the provisions of this subsection.

Regulations.

“(ii) CONTRACT TERMS.—A contract for procurements under this subsection shall (or, as specified below, may) include the following terms:

“(I) PAYMENT CONDITIONED ON DELIVERY.—The contract shall provide that no payment may be made until delivery has been made of a portion, acceptable to the Secretary, of the total number of units contracted for, except that, notwithstanding any other provision of law, the contract may provide that, if the Secretary determines (in the Secretary’s discretion) that an advance payment is necessary to ensure success of a project, the Secretary may pay an amount, not to exceed 10 percent of the contract amount, in advance of delivery. The contract shall provide that such advance payment is required to be repaid if there is a failure to perform by the vendor under the contract. Nothing in this subclause may be construed as affecting rights of vendors under provisions of law or regulation (including the Federal Acquisition Regulation) relating to termination of contracts for the convenience of the Government.

“(II) DISCOUNTED PAYMENT.—The contract may provide for a discounted price per unit of a product that is not licensed, cleared, or approved as described in paragraph (1)(B)(i)(III)(aa) at the time of delivery, and may provide for payment of an additional amount per unit if the product becomes so licensed, cleared, or approved before the expiration date of the contract (including an additional amount per unit of product delivered before the effective date of such licensing, clearance, or approval).

“(III) CONTRACT DURATION.—The contract shall be for a period not to exceed five years, except that, in first awarding the contract, the Secretary may provide for a longer duration, not exceeding eight years, if the Secretary determines that complexities or other difficulties in performance under the contract justify such a period. The contract shall be renewable for additional periods, none of which shall exceed five years.

“(IV) STORAGE BY VENDOR.—The contract may provide that the vendor will provide storage for stocks of a product delivered to the ownership of the Federal Government under the contract, for such period and under such terms and conditions as the Secretary may specify, and in such case amounts from the special reserve fund under paragraph (10) shall be available for costs of shipping, handling, storage, and related costs for such product.

“(V) PRODUCT APPROVAL.—The contract shall provide that the vendor seek approval, clearance, or licensing of the product from the Secretary; for a timetable for the development of data and other information to support such approval, clearance, or licensing; and that the Secretary may waive part or all of this contract term on request of the vendor or on the initiative of the Secretary.

“(VI) NON-STOCKPILE TRANSFERS OF SECURITY COUNTERMEASURES.—The contract shall provide that the vendor will comply with all applicable export-related controls with respect to such countermeasure.

“(iii) AVAILABILITY OF SIMPLIFIED ACQUISITION PROCEDURES.—

“(I) IN GENERAL.—If the Secretary determines that there is a pressing need for a procurement of a specific countermeasure, the amount of the procurement under this subsection shall be deemed to be below the threshold amount specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), for purposes of application to such procurement, pursuant to section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)), of—

“(aa) section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)) and its implementing regulations; and

“(bb) section 302A(b) of such Act (41 U.S.C. 252a(b)) and its implementing regulations.

“(II) APPLICATION OF CERTAIN PROVISIONS.—Notwithstanding subclause (I) and the provision of law and regulations referred to in such clause, each of the following provisions shall apply to procurements described in this clause to the same extent that such provisions would apply to such procurements in the absence of subclause (I):

“(aa) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

“(bb) Subsections (a) and (b) of section 7 of the Anti-Kickback Act of 1986 (41 U.S.C. 57(a) and (b)).

“(cc) Section 304C of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254d) (relating to the examination of contractor records).

“(dd) Section 3131 of title 40, United States Code (relating to bonds of contractors of public buildings or works).

“(ee) Subsection (a) of section 304 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(a)) (relating to contingent fees to middlemen).

“(ff) Section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962).

“(gg) Section 1354 of title 31, United States Code (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

“(III) INTERNAL CONTROLS TO BE ESTABLISHED.—The Secretary shall establish appropriate internal controls for procurements made under this clause, including requirements with respect to documentation of the justification for the use of the authority provided under this paragraph with respect to the procurement involved.

“(IV) AUTHORITY TO LIMIT COMPETITION.—In conducting a procurement under this subparagraph, the Secretary may not use the authority provided for under subclause (I) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

“(iv) PROCEDURES OTHER THAN FULL AND OPEN COMPETITION.—

“(I) IN GENERAL.—In using the authority provided in section 303(c)(1) of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)) to use procedures other than competitive procedures in the case of a procurement under this subsection, the phrase ‘available from only one responsible source’ in such section 303(c)(1) shall be deemed to mean ‘available from only one responsible source or only from a limited number of responsible sources’.

“(II) RELATION TO OTHER AUTHORITIES.—The authority under subclause (I) is in addition to any other authority to use procedures other than competitive procedures.

“(III) APPLICABLE GOVERNMENT-WIDE REGULATIONS.—The Secretary shall implement this clause in accordance with government-wide regulations implementing such section 303(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

“(v) PREMIUM PROVISION IN MULTIPLE AWARD CONTRACTS.—

“(I) IN GENERAL.—If, under this subsection, the Secretary enters into contracts with more than one vendor to procure a security countermeasure, such Secretary may, notwithstanding any other provision of law, include in each of such contracts a provision that—

“(aa) identifies an increment of the total quantity of security countermeasure required, whether by percentage or by numbers of units; and

“(bb) promises to pay one or more specified premiums based on the priority of such vendors’ production and delivery of the increment identified under item (aa), in accordance with the terms and conditions of the contract.

“(II) DETERMINATION OF GOVERNMENT’S REQUIREMENT NOT REVIEWABLE.—If the Secretary includes in each of a set of contracts a provision as described in subclause (I), such Secretary’s determination of the total quantity of security countermeasure required, and any amendment of such determination, is committed to agency discretion.

“(vi) EXTENSION OF CLOSING DATE FOR RECEIPT OF PROPOSALS NOT REVIEWABLE.—A decision by the Secretary to extend the closing date for receipt of proposals for a procurement under this subsection is committed to agency discretion.

“(vii) LIMITING COMPETITION TO SOURCES RESPONDING TO REQUEST FOR INFORMATION.—In conducting a procurement under this subsection, the Secretary may exclude a source that has not responded to a request for information under section 303A(a)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a(a)(1)(B)) if such request has given notice that the Secretary may so exclude such a source.

“(8) INTERAGENCY COOPERATION.—

“(A) IN GENERAL.—In carrying out activities under this section, the Homeland Security Secretary and the Secretary are authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

“(B) LIMITATION.—An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section to the Homeland Security Secretary or to the Secretary.

“(9) RESTRICTIONS ON USE OF FUNDS.—Amounts in the special reserve fund under paragraph (10) shall not be used to pay—

“(A) costs for the purchase of vaccines under procurement contracts entered into before the date of the enactment of the Project BioShield Act of 2004; or

“(B) costs other than payments made by the Secretary to a vendor for a procurement of a security countermeasure under paragraph (7).

“(10) DEFINITIONS.—

“(A) SPECIAL RESERVE FUND.—For purposes of this subsection, the term ‘special reserve fund’ has the meaning given such term in section 510 of the Homeland Security Act of 2002.

“(B) DESIGNATED CONGRESSIONAL COMMITTEES.—For purposes of this section, the term ‘designated congressional committees’ means the following committees of the Congress:

“(i) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

“(ii) In the Senate: the appropriate committees.

“(d) DISCLOSURES.—No Federal agency shall disclose under section 552 of title 5, United States Code, any information identifying the location at which materials in the stockpile under subsection (a) are stored.

“(e) DEFINITION.—For purposes of subsection (a), the term ‘stockpile’ includes—

“(1) a physical accumulation (at one or more locations) of the supplies described in subsection (a); or

“(2) a contractual agreement between the Secretary and a vendor or vendors under which such vendor or vendors agree to provide to such Secretary supplies described in subsection (a).

“(f) AUTHORIZATION OF APPROPRIATIONS.—

“(1) STRATEGIC NATIONAL STOCKPILE.—For the purpose of carrying out subsection (a), there are authorized to be appropriated \$640,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006. Such authorization is in addition to amounts in the special reserve fund referred to in subsection (c)(10)(A).

“(2) SMALLPOX VACCINE DEVELOPMENT.—For the purpose of carrying out subsection (b), there are authorized to be appropriated \$509,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.”.

(b) AMENDMENTS TO HOMELAND SECURITY ACT OF 2002.—Title V of the Homeland Security Act of 2002 (116 Stat. 2212; 6 U.S.C. 311 et seq.) is amended—

(1) in section 502(3) (6 U.S.C. 312(3))—

(A) in subparagraph (B), by striking “the Strategic National Stockpile,”; and

(B) in subparagraph (D), by inserting “, including requiring deployment of the Strategic National Stockpile,” after “resources”; and

(2) by adding at the end the following:

6 USC 320.

“SEC. 510. PROCUREMENT OF SECURITY COUNTERMEASURES FOR STRATEGIC NATIONAL STOCKPILE.

“(a) AUTHORIZATION OF APPROPRIATIONS.—For the procurement of security countermeasures under section 319F-2(c) of the Public Health Service Act (referred to in this section as the ‘security countermeasures program’), there is authorized to be appropriated up to \$5,593,000,000 for the fiscal years 2004 through 2013. Of the amounts appropriated under the preceding sentence, not to exceed \$3,418,000,000 may be obligated during the fiscal years 2004 through 2008, of which not to exceed \$890,000,000 may be obligated during fiscal year 2004.

“(b) SPECIAL RESERVE FUND.—For purposes of the security countermeasures program, the term ‘special reserve fund’ means the ‘Biodefense Countermeasures’ appropriations account or any other appropriation made under subsection (a).

“(c) AVAILABILITY.—Amounts appropriated under subsection (a) become available for a procurement under the security countermeasures program only upon the approval by the President of such availability for the procurement in accordance with paragraph (6)(B) of such program.

“(d) RELATED AUTHORIZATIONS OF APPROPRIATIONS.—

“(1) THREAT ASSESSMENT CAPABILITIES.—For the purpose of carrying out the responsibilities of the Secretary for terror threat assessment under the security countermeasures program, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006, for the hiring of professional personnel within the Directorate for Information Analysis and Infrastructure Protection, who shall be analysts responsible for chemical, biological, radiological, and nuclear threat assessment (including but not limited to analysis of chemical, biological, radiological, and nuclear

agents, the means by which such agents could be weaponized or used in a terrorist attack, and the capabilities, plans, and intentions of terrorists and other non-state actors who may have or acquire such agents). All such analysts shall meet the applicable standards and qualifications for the performance of intelligence activities promulgated by the Director of Central Intelligence pursuant to section 104 of the National Security Act of 1947.

“(2) INTELLIGENCE SHARING INFRASTRUCTURE.—For the purpose of carrying out the acquisition and deployment of secure facilities (including information technology and physical infrastructure, whether mobile and temporary, or permanent) sufficient to permit the Secretary to receive, not later than 180 days after the date of enactment of the Project BioShield Act of 2004, all classified information and products to which the Under Secretary for Information Analysis and Infrastructure Protection is entitled under subtitle A of title II, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006.”.

Deadline.
Classified
information.

(c) STOCKPILE FUNCTIONS TRANSFERRED.—

(1) IN GENERAL.—Except as provided in paragraph (2), there shall be transferred to the Secretary of Health and Human Services the functions, personnel, assets, unexpended balances, and liabilities of the Strategic National Stockpile, including the functions of the Secretary of Homeland Security relating thereto.

Government
organization.
42 USC 247d–6b
note.

(2) EXCEPTIONS.—

(A) FUNCTIONS.—The transfer of functions pursuant to paragraph (1) shall not include such functions as are explicitly assigned to the Secretary of Homeland Security by this Act (including the amendments made by this Act).

(B) ASSETS AND UNEXPENDED BALANCES.—The transfer of assets and unexpended balances pursuant to paragraph (1) shall not include the funds appropriated under the heading “BIODEFENSE COUNTERMEASURES” in the Department of Homeland Security Appropriations Act, 2004 (Public Law 108–90).

(3) CONFORMING AMENDMENT.—Section 503 of the Homeland Security Act of 2002 (6 U.S.C. 313) is amended by striking paragraph (6).

SEC. 4. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

(a) IN GENERAL.—Section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3) is amended to read as follows:

“SEC. 564. AUTHORIZATION FOR MEDICAL PRODUCTS FOR USE IN EMERGENCIES.

“(a) IN GENERAL.—

“(1) EMERGENCY USES.—Notwithstanding sections 505, 510(k), and 515 of this Act and section 351 of the Public Health Service Act, and subject to the provisions of this section, the Secretary may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an ‘emergency use’).

“(2) APPROVAL STATUS OF PRODUCT.—An authorization under paragraph (1) may authorize an emergency use of a product that—

“(A) is not approved, licensed, or cleared for commercial distribution under a provision of law referred to in such paragraph (referred to in this section as an ‘unapproved product’); or

“(B) is approved, licensed, or cleared under such a provision, but which use is not under such provision an approved, licensed, or cleared use of the product (referred to in this section as an ‘unapproved use of an approved product’).

“(3) RELATION TO OTHER USES.—An emergency use authorized under paragraph (1) for a product is in addition to any other use that is authorized for the product under a provision of law referred to in such paragraph.

“(4) DEFINITIONS.—For purposes of this section:

“(A) The term ‘biological product’ has the meaning given such term in section 351 of the Public Health Service Act.

“(B) The term ‘emergency use’ has the meaning indicated for such term in paragraph (1).

“(C) The term ‘product’ means a drug, device, or biological product.

“(D) The term ‘unapproved product’ has the meaning indicated for such term in paragraph (2)(A).

“(E) The term ‘unapproved use of an approved product’ has the meaning indicated for such term in paragraph (2)(B).

“(b) DECLARATION OF EMERGENCY.—

“(1) IN GENERAL.—The Secretary may declare an emergency justifying the authorization under this subsection for a product on the basis of—

“(A) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents;

“(B) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a specified biological, chemical, radiological, or nuclear agent or agents; or

“(C) a determination by the Secretary of a public health emergency under section 319 of the Public Health Service Act that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents.

“(2) TERMINATION OF DECLARATION.—

“(A) IN GENERAL.—A declaration under this subsection shall terminate upon the earlier of—

“(i) a determination by the Secretary, in consultation as appropriate with the Secretary of Homeland

Security or the Secretary of Defense, that the circumstances described in paragraph (1) have ceased to exist; or

“(ii) the expiration of the one-year period beginning on the date on which the declaration is made.

“(B) RENEWAL.—Notwithstanding subparagraph (A), the Secretary may renew a declaration under this subsection, and this paragraph shall apply to any such renewal. Applicability.

“(C) DISPOSITION OF PRODUCT.—If an authorization under this section with respect to an unapproved product ceases to be effective as a result of a termination under subparagraph (A) of this paragraph, the Secretary shall consult with the manufacturer of such product with respect to the appropriate disposition of the product.

“(3) ADVANCE NOTICE OF TERMINATION.—The Secretary shall provide advance notice that a declaration under this subsection will be terminated. The period of advance notice shall be a period reasonably determined to provide—

“(A) in the case of an unapproved product, a sufficient period for disposition of the product, including the return of such product (except such quantities of product as are necessary to provide for continued use consistent with subsection (f)(2)) to the manufacturer (in the case of a manufacturer that chooses to have such product returned); and

“(B) in the case of an unapproved use of an approved product, a sufficient period for the disposition of any labeling, or any information under subsection (e)(2)(B)(ii), as the case may be, that was provided with respect to the emergency use involved.

“(4) PUBLICATION.—The Secretary shall promptly publish in the Federal Register each declaration, determination, advance notice of termination, and renewal under this subsection. Federal Register, publication.

“(c) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—The Secretary may issue an authorization under this section with respect to the emergency use of a product only if, after consultation with the Director of the National Institutes of Health and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the circumstances of the emergency involved), the Secretary concludes—

“(1) that an agent specified in a declaration under subsection (b) can cause a serious or life-threatening disease or condition;

“(2) that, based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that—

“(A) the product may be effective in diagnosing, treating, or preventing—

“(i) such disease or condition; or

“(ii) a serious or life-threatening disease or condition caused by a product authorized under this section, approved or cleared under this Act, or licensed under section 351 of the Public Health Service Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and

“(B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product;

“(3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and

“(4) that such other criteria as the Secretary may by regulation prescribe are satisfied.

“(d) SCOPE OF AUTHORIZATION.—An authorization of a product under this section shall state—

“(1) each disease or condition that the product may be used to diagnose, prevent, or treat within the scope of the authorization;

“(2) the Secretary’s conclusions, made under subsection (c)(2)(B), that the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product; and

“(3) the Secretary’s conclusions, made under subsection (c), concerning the safety and potential effectiveness of the product in diagnosing, preventing, or treating such diseases or conditions, including an assessment of the available scientific evidence.

“(e) CONDITIONS OF AUTHORIZATION.—

“(1) UNAPPROVED PRODUCT.—

“(A) REQUIRED CONDITIONS.—With respect to the emergency use of an unapproved product, the Secretary, to the extent practicable given the circumstances of the emergency, shall, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

“(i) Appropriate conditions designed to ensure that health care professionals administering the product are informed—

“(I) that the Secretary has authorized the emergency use of the product;

“(II) of the significant known and potential benefits and risks of the emergency use of the product, and of the extent to which such benefits and risks are unknown; and

“(III) of the alternatives to the product that are available, and of their benefits and risks.

“(ii) Appropriate conditions designed to ensure that individuals to whom the product is administered are informed—

“(I) that the Secretary has authorized the emergency use of the product;

“(II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

“(III) of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of

the alternatives to the product that are available and of their benefits and risks.

“(iii) Appropriate conditions for the monitoring and reporting of adverse events associated with the emergency use of the product.

“(iv) For manufacturers of the product, appropriate conditions concerning recordkeeping and reporting, including records access by the Secretary, with respect to the emergency use of the product.

“(B) AUTHORITY FOR ADDITIONAL CONDITIONS.—With respect to the emergency use of an unapproved product, the Secretary may, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

“(i) Appropriate conditions on which entities may distribute the product with respect to the emergency use of the product (including limitation to distribution by government entities), and on how distribution is to be performed.

“(ii) Appropriate conditions on who may administer the product with respect to the emergency use of the product, and on the categories of individuals to whom, and the circumstances under which, the product may be administered with respect to such use.

“(iii) Appropriate conditions with respect to the collection and analysis of information, during the period when the authorization is in effect, concerning the safety and effectiveness of the product with respect to the emergency use of such product.

“(iv) For persons other than manufacturers of the product, appropriate conditions concerning recordkeeping and reporting, including records access by the Secretary, with respect to the emergency use of the product.

“(2) UNAPPROVED USE.—With respect to the emergency use of a product that is an unapproved use of an approved product:

“(A) For a manufacturer of the product who carries out any activity for which the authorization is issued, the Secretary shall, to the extent practicable given the circumstances of the emergency, establish conditions described in clauses (i) and (ii) of paragraph (1)(A), and may establish conditions described in clauses (iii) and (iv) of such paragraph.

“(B)(i) If the authorization under this section regarding the emergency use authorizes a change in the labeling of the product, but the manufacturer of the product chooses not to make such change, such authorization may not authorize distributors of the product or any other person to alter or obscure the labeling provided by the manufacturer.

“(ii) In the circumstances described in clause (i), for a person who does not manufacture the product and who chooses to act under this clause, an authorization under this section regarding the emergency use shall, to the

extent practicable given the circumstances of the emergency, authorize such person to provide appropriate information with respect to such product in addition to the labeling provided by the manufacturer, subject to compliance with clause (i). While the authorization under this section is effective, such additional information shall not be considered labeling for purposes of section 502.

“(C) The Secretary may establish with respect to the distribution and administration of the product for the unapproved use conditions no more restrictive than those established by the Secretary with respect to the distribution and administration of the product for the approved use.

“(3) GOOD MANUFACTURING PRACTICE.—With respect to the emergency use of a product for which an authorization under this section is issued (whether an unapproved product or an unapproved use of an approved product), the Secretary may waive or limit, to the extent appropriate given the circumstances of the emergency, requirements regarding current good manufacturing practice otherwise applicable to the manufacture, processing, packing, or holding of products subject to regulation under this Act, including such requirements established under section 501.

“(4) ADVERTISING.—The Secretary may establish conditions on advertisements and other promotional descriptive printed matter that relate to the emergency use of a product for which an authorization under this section is issued (whether an unapproved product or an unapproved use of an approved product), including, as appropriate—

“(A) with respect to drugs and biological products, requirements applicable to prescription drugs pursuant to section 502(n); or

“(B) with respect to devices, requirements applicable to restricted devices pursuant to section 502(r).

“(f) DURATION OF AUTHORIZATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), an authorization under this section shall be effective until the earlier of the termination of the declaration under subsection (b) or a revocation under subsection (g).

“(2) CONTINUED USE AFTER END OF EFFECTIVE PERIOD.—Notwithstanding the termination of the declaration under subsection (b) or a revocation under subsection (g), an authorization shall continue to be effective to provide for continued use of an unapproved product with respect to a patient to whom it was administered during the period described by paragraph (1), to the extent found necessary by such patient’s attending physician.

“(g) REVOCATION OF AUTHORIZATION.—

“(1) REVIEW.—The Secretary shall periodically review the circumstances and the appropriateness of an authorization under this section.

“(2) REVOCATION.—The Secretary may revoke an authorization under this section if the criteria under subsection (c) for issuance of such authorization are no longer met or other circumstances make such revocation appropriate to protect the public health or safety.

“(h) PUBLICATION; CONFIDENTIAL INFORMATION.—

“(1) PUBLICATION.—The Secretary shall promptly publish in the Federal Register a notice of each authorization, and each termination or revocation of an authorization under this section, and an explanation of the reasons therefor (which may include a summary of data or information that has been submitted to the Secretary in an application under section 505(i) or section 520(g), even if such summary may indirectly reveal the existence of such application).

Federal Register,
publication.

“(2) CONFIDENTIAL INFORMATION.—Nothing in this section alters or amends section 1905 of title 18, United States Code, or section 552(b)(4) of title 5 of such Code.

“(i) ACTIONS COMMITTED TO AGENCY DISCRETION.—Actions under the authority of this section by the Secretary, by the Secretary of Defense, or by the Secretary of Homeland Security are committed to agency discretion.

“(j) RULES OF CONSTRUCTION.—The following applies with respect to this section:

Applicability.

“(1) Nothing in this section impairs the authority of the President as Commander in Chief of the Armed Forces of the United States under article II, section 2 of the United States Constitution.

“(2) Nothing in this section impairs the authority of the Secretary of Defense with respect to the Department of Defense, including the armed forces, under other provisions of Federal law.

“(3) Nothing in this section (including any exercise of authority by a manufacturer under subsection (e)(2)) impairs the authority of the United States to use or manage quantities of a product that are owned or controlled by the United States (including quantities in the stockpile maintained under section 319F–2 of the Public Health Service Act).

“(k) RELATION TO OTHER PROVISIONS.—If a product is the subject of an authorization under this section, the use of such product within the scope of the authorization shall not be considered to constitute a clinical investigation for purposes of section 505(i), section 520(g), or any other provision of this Act or section 351 of the Public Health Service Act.

“(l) OPTION TO CARRY OUT AUTHORIZED ACTIVITIES.—Nothing in this section provides the Secretary any authority to require any person to carry out any activity that becomes lawful pursuant to an authorization under this section, and no person is required to inform the Secretary that the person will not be carrying out such activity, except that a manufacturer of a sole-source unapproved product authorized for emergency use shall report to the Secretary within a reasonable period of time after the issuance by the Secretary of such authorization if such manufacturer does not intend to carry out any activity under the authorization. This section only has legal effect on a person who carries out an activity for which an authorization under this section is issued. This section does not modify or affect activities carried out pursuant to other provisions of this Act or section 351 of the Public Health Service Act. Nothing in this subsection may be construed as restricting the Secretary from imposing conditions on persons who carry out any activity pursuant to an authorization under this section.”.

(b) REPEAL OF TERMINATION PROVISION.—Subsection (d) of section 1603 of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 1107a note) is repealed.

42 USC 247d-6c. **SEC. 5. REPORTS REGARDING AUTHORITIES UNDER THIS ACT.****(a) SECRETARY OF HEALTH AND HUMAN SERVICES.—****(1) ANNUAL REPORTS ON PARTICULAR EXERCISES OF AUTHORITY.—**

(A) RELEVANT AUTHORITIES.—The Secretary of Health and Human Services (referred to in this subsection as the “Secretary”) shall submit reports in accordance with subparagraph (B) regarding the exercise of authority under the following provisions of law:

(i) With respect to section 319F-1 of the Public Health Service Act (as added by section 2 of this Act):

(I) Subsection (b)(1) (relating to increased simplified acquisition threshold).

(II) Subsection (b)(2) (relating to procedures other than full and open competition).

(III) Subsection (c) (relating to expedited peer review procedures).

(ii) With respect to section 319F-2 of the Public Health Service Act (as added by section 3 of this Act):

(I) Subsection (c)(7)(C)(iii) (relating to simplified acquisition procedures).

(II) Subsection (c)(7)(C)(iv) (relating to procedures other than full and open competition).

(III) Subsection (c)(7)(C)(v) (relating to premium provision in multiple-award contracts).

(iii) With respect to section 564 of the Federal Food, Drug, and Cosmetic Act (as added by section 4 of this Act):

(I) Subsection (a)(1) (relating to emergency uses of certain drugs and devices).

(II) Subsection (b)(1) (relating to a declaration of an emergency).

(III) Subsection (e) (relating to conditions on authorization).

(B) CONTENTS OF REPORTS.—The Secretary shall annually submit to the designated congressional committees a report that summarizes—

(i) the particular actions that were taken under the authorities specified in subparagraph (A), including, as applicable, the identification of the threat agent, emergency, or the biomedical countermeasure with respect to which the authority was used;

(ii) the reasons underlying the decision to use such authorities, including, as applicable, the options that were considered and rejected with respect to the use of such authorities;

(iii) the number of, nature of, and other information concerning the persons and entities that received a grant, cooperative agreement, or contract pursuant to the use of such authorities, and the persons and entities that were considered and rejected for such a grant, cooperative agreement, or contract, except that the report need not disclose the identity of any such person or entity; and

(iv) whether, with respect to each procurement that is approved by the President under section 319F-2(c)(6) of the Public Health Service Act (as added by

section 3 of this Act), a contract was entered into within one year after such approval by the President.

(2) ANNUAL SUMMARIES REGARDING CERTAIN ACTIVITY.—The Secretary shall annually submit to the designated congressional committees a report that summarizes the activity undertaken pursuant to the following authorities under section 319F-1 of the Public Health Service Act (as added by section 2 of this Act):

(A) Subsection (b)(3) (relating to increased micropurchase threshold).

(B) Subsection (d) (relating to authority for personal services contracts).

(C) Subsection (e) (relating to streamlined personnel authority).

With respect to subparagraph (B), the report shall include a provision specifying, for the one-year period for which the report is submitted, the number of persons who were paid amounts greater than \$100,000 and the number of persons who were paid amounts between \$50,000 and \$100,000.

(3) REPORT ON ADDITIONAL BARRIERS TO PROCUREMENT OF SECURITY COUNTERMEASURES.—Not later than one year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Homeland Security, shall report to the designated congressional committees any potential barriers to the procurement of security countermeasures that have not been addressed by this Act.

(b) GENERAL ACCOUNTING OFFICE REVIEW.—

(1) IN GENERAL.—Four years after the date of the enactment of this Act, the Comptroller General of the United States shall initiate a study—

Deadline.

(A)(i) to review the Secretary of Health and Human Services' utilization of the authorities granted under this Act with respect to simplified acquisition procedures, procedures other than full and open competition, increased micropurchase thresholds, personal services contracts, streamlined personnel authority, and the purchase of security countermeasures under the special reserve fund; and

(ii) to make recommendations to improve the utilization or effectiveness of such authorities in the future;

(B)(i) to review and assess the adequacy of the internal controls instituted by such Secretary with respect to such authorities, where required by this Act; and

(ii) to make recommendations to improve the effectiveness of such controls;

(C)(i) to review such Secretary's utilization of the authority granted under this Act to authorize an emergency use of a biomedical countermeasure, including the means by which the Secretary determines whether and under what conditions any such authorizations should be granted and the benefits and adverse impacts, if any, resulting from the use of such authority; and

(ii) to make recommendations to improve the utilization or effectiveness of such authority and to enhance protection of the public health;

(D) to identify any purchases or procurements that would not have been made or would have been significantly

delayed except for the authorities described in subparagraph (A)(i); and

(E)(i) to determine whether and to what extent activities undertaken pursuant to the biomedical countermeasure research and development authorities established in this Act have enhanced the development of biomedical countermeasures affecting national security; and

(ii) to make recommendations to improve the ability of the Secretary to carry out these activities in the future.

(2) **ADDITIONAL PROVISIONS REGARDING DETERMINATION ON DEVELOPMENT OF BIOMEDICAL COUNTERMEASURES AFFECTING NATIONAL SECURITY.**—In the report under paragraph (1), the determination under subparagraph (E) of such paragraph shall include—

(A) the Comptroller General's assessment of the current availability of countermeasures to address threats identified by the Secretary of Homeland Security;

(B) the Comptroller General's assessment of the extent to which programs and activities under this Act will reduce any gap between the threat and the availability of countermeasures to an acceptable level of risk; and

(C)(i) the Comptroller General's assessment of threats to national security that are posed by technology that will enable, during the 10-year period beginning on the date of the enactment of this Act, the development of antibiotic resistant, mutated, or bioengineered strains of biological agents; and

(ii) recommendations on short-term and long-term governmental strategies for addressing such threats, including recommendations for Federal policies regarding research priorities, the development of countermeasures, and investments in technology.

(3) **REPORT.**—A report providing the results of the study under paragraph (1) shall be submitted to the designated congressional committees not later than five years after the date of the enactment of this Act.

(c) **REPORT REGARDING BIOCONTAINMENT FACILITIES.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Health and Human Services shall jointly report to the designated congressional committees whether there is a lack of adequate large-scale biocontainment facilities necessary for the testing of security countermeasures in accordance with Food and Drug Administration requirements.

(d) **DESIGNATED CONGRESSIONAL COMMITTEES.**—For purposes of this section, the term “designated congressional committees” means the following committees of the Congress:

(1) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

(2) In the Senate: the appropriate committees.

SEC. 6. OUTREACH.

The Secretary of Health and Human Services shall develop outreach measures to ensure to the extent practicable that diverse

institutions, including Historically Black Colleges and Universities and those serving large proportions of Black or African Americans, American Indians, Appalachian Americans, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, Hispanics or Latinos, or other underrepresented populations, are meaningfully aware of available research and development grants, contracts, cooperative agreements, and procurements conducted under sections 2 and 3 of this Act.

SEC. 7. RECOMMENDATION FOR EXPORT CONTROLS ON CERTAIN BIO-MEDICAL COUNTERMEASURES.

42 USC 247d–6a
note.

Upon the award of any grant, contract, or cooperative agreement under section 2 or 3 of this Act for the research, development, or procurement of a qualified countermeasure or a security countermeasure (as those terms are defined in this Act), the Secretary of Health and Human Services shall, in consultation with the heads of other appropriate Federal agencies, determine whether the countermeasure involved in such grant, contract, or cooperative agreement is subject to existing export-related controls and, if not, may make a recommendation to the appropriate Federal agency or agencies that such countermeasure should be included on the list of controlled items subject to such controls.

SEC. 8. ENSURING COORDINATION, COOPERATION AND THE ELIMINATION OF UNNECESSARY DUPLICATION IN PROGRAMS DESIGNED TO PROTECT THE HOMELAND FROM BIOLOGICAL, CHEMICAL, RADIOLOGICAL, AND NUCLEAR AGENTS.

42 USC 247d–6a
note.

(a) **ENSURING COORDINATION OF PROGRAMS.**—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall ensure that the activities of their respective Departments coordinate, complement, and do not unnecessarily duplicate programs to identify potential domestic threats from biological, chemical, radiological or nuclear agents, detect domestic incidents involving such agents, analyze such incidents, and develop necessary countermeasures. The aforementioned Secretaries shall further ensure that information and technology possessed by the Departments relevant to these activities are shared with the other Departments.

(b) **DESIGNATION OF AGENCY COORDINATION OFFICER.**—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall each designate an officer or employee of their respective Departments who shall coordinate, through regular meetings and communications, with the other aforementioned Departments such programs and activities carried out by their Departments.

SEC. 9. AUTHORITY OF THE SECRETARY OF HEALTH AND HUMAN SERVICES DURING NATIONAL EMERGENCIES.

Section 1135(b) of the Social Security Act (42 U.S.C. 1320b–5(b)) is amended—

(1) by striking paragraph (3) and inserting the following:
“(3) actions under section 1867 (relating to examination and treatment for emergency medical conditions and women in labor) for—

“(A) a transfer of an individual who has not been stabilized in violation of subsection (c) of such section if the transfer is necessitated by the circumstances of the

declared emergency in the emergency area during the emergency period; or

“(B) the direction or relocation of an individual to receive medical screening in an alternate location pursuant to an appropriate State emergency preparedness plan;”;

(2) in paragraph (5), by striking “and” at the end;

(3) in paragraph (6), by striking the period and inserting “, and”;

(4) by inserting after paragraph (6), the following:

“(7) sanctions and penalties that arise from noncompliance with the following requirements (as promulgated under the authority of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note)—

“(A) section 164.510 of title 45, Code of Federal Regulations, relating to—

“(i) requirements to obtain a patient’s agreement to speak with family members or friends; and

“(ii) the requirement to honor a request to opt out of the facility directory;

“(B) section 164.520 of such title, relating to the requirement to distribute a notice; or

“(C) section 164.522 of such title, relating to—

“(i) the patient’s right to request privacy restrictions; and

“(ii) the patient’s right to request confidential communications.”; and

(5) by adding at the end the following: “A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.”.

Approved July 21, 2004.

LEGISLATIVE HISTORY—S. 15:

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 19, considered and passed Senate.

July 14, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

July 21, Presidential remarks.



Public Law 108–277
108th Congress

An Act

To amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

July 22, 2004
[H.R. 218]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Law Enforcement Officers Safety Act of 2004”.

Law Enforcement
Officers Safety
Act of 2004.
18 USC 921 note.

SEC. 2. EXEMPTION OF QUALIFIED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 926A the following:

“§ 926B. Carrying of concealed firearms by qualified law enforcement officers

“(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

“(b) This section shall not be construed to supersede or limit the laws of any State that—

“(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

“(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

“(c) As used in this section, the term ‘qualified law enforcement officer’ means an employee of a governmental agency who—

“(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

“(2) is authorized by the agency to carry a firearm;

“(3) is not the subject of any disciplinary action by the agency;

“(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

“(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

“(6) is not prohibited by Federal law from receiving a firearm.

“(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer.

“(e) As used in this section, the term ‘firearm’ does not include—

“(1) any machinegun (as defined in section 5845 of the National Firearms Act);

“(2) any firearm silencer (as defined in section 921 of this title); and

“(3) any destructive device (as defined in section 921 of this title).”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 926A the following:

“926B. Carrying of concealed firearms by qualified law enforcement officers.”.

SEC. 3. EXEMPTION OF QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS FROM STATE LAWS PROHIBITING THE CARRYING OF CONCEALED FIREARMS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is further amended by inserting after section 926B the following:

“§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

“(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

“(b) This section shall not be construed to supersede or limit the laws of any State that—

“(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

“(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

“(c) As used in this section, the term ‘qualified retired law enforcement officer’ means an individual who—

“(1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

“(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

“(3)(A) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

“(B) retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

“(4) has a nonforfeitable right to benefits under the retirement plan of the agency;

“(5) during the most recent 12-month period, has met, at the expense of the individual, the State’s standards for training and qualification for active law enforcement officers to carry firearms;

“(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

“(7) is not prohibited by Federal law from receiving a firearm.

“(d) The identification required by this subsection is—

“(1) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

“(2)(A) a photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

“(B) a certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

“(e) As used in this section, the term ‘firearm’ does not include—

“(1) any machinegun (as defined in section 5845 of the National Firearms Act);

“(2) any firearm silencer (as defined in section 921 of this title); and

“(3) a destructive device (as defined in section 921 of this title).”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is further amended by inserting after the item relating to section 926B the following:

“926C. Carrying of concealed firearms by qualified retired law enforcement officers.”.

Approved July 22, 2004.

LEGISLATIVE HISTORY—H.R. 218 (S. 253):

HOUSE REPORTS: No. 108–560 (Comm. on the Judiciary).

SENATE REPORTS: No. 108–29 accompanying S. 253 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 23, considered and passed House.

July 7, considered and passed Senate.



Public Law 108–278
108th Congress

An Act

July 22, 2004
[H.R. 3846]

To authorize the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land.

Tribal Forest
Protection Act
of 2004.
25 USC 3101
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Tribal Forest Protection Act of 2004”.

25 USC 3115a.

SEC. 2. TRIBAL FOREST ASSETS PROTECTION.

(a) DEFINITIONS.—In this section:

(1) FEDERAL LAND.—The term “Federal land” means—

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) INDIAN FOREST LAND OR RANGELAND.—The term “Indian forest land or rangeland” means land that—

(A) is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe; and

(B)(i)(I) is Indian forest land (as defined in section 304 of the National Indian Forest Resources Management Act (25 U.S.C. 3103)); or

(II) has a cover of grasses, brush, or any similar vegetation; or

(ii) formerly had a forest cover or vegetative cover that is capable of restoration.

(3) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(4) SECRETARY.—The term “Secretary” means—

(A) the Secretary of Agriculture, with respect to land under the jurisdiction of the Forest Service; and

(B) the Secretary of the Interior, with respect to land under the jurisdiction of the Bureau of Land Management.

(b) AUTHORITY TO PROTECT INDIAN FOREST LAND OR RANGELAND.—

(1) IN GENERAL.—Not later than 120 days after the date on which an Indian tribe submits to the Secretary a request to enter into an agreement or contract to carry out a project to protect Indian forest land or rangeland (including a project to restore Federal land that borders on or is adjacent to Indian forest land or rangeland) that meets the criteria described in subsection (c), the Secretary may issue public notice of initiation of any necessary environmental review or of the potential of entering into an agreement or contract with the Indian tribe pursuant to section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)), or such other authority as appropriate, under which the Indian tribe would carry out activities described in paragraph (3). Deadline.

(2) ENVIRONMENTAL ANALYSIS.—Following completion of any necessary environmental analysis, the Secretary may enter into an agreement or contract with the Indian tribe as described in paragraph (1).

(3) ACTIVITIES.—Under an agreement or contract entered into under paragraph (2), the Indian tribe may carry out activities to achieve land management goals for Federal land that is—

(A) under the jurisdiction of the Secretary; and

(B) bordering or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe.

(c) SELECTION CRITERIA.—The criteria referred to in subsection (b), with respect to an Indian tribe, are whether—

(1) the Indian forest land or rangeland under the jurisdiction of the Indian tribe borders on or is adjacent to land under the jurisdiction of the Forest Service or the Bureau of Land Management;

(2) Forest Service or Bureau of Land Management land bordering on or adjacent to the Indian forest land or rangeland under the jurisdiction of the Indian tribe—

(A) poses a fire, disease, or other threat to—

(i) the Indian forest land or rangeland under the jurisdiction of the Indian tribe; or

(ii) a tribal community; or

(B) is in need of land restoration activities;

(3) the agreement or contracting activities applied for by the Indian tribe are not already covered by a stewardship contract or other instrument that would present a conflict on the subject land; and

(4) the Forest Service or Bureau of Land Management land described in the application of the Indian tribe presents or involves a feature or circumstance unique to that Indian tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).

(d) NOTICE OF DENIAL.—If the Secretary denies a tribal request under subsection (b)(1), the Secretary may issue a notice of denial to the Indian tribe, which—

(1) identifies the specific factors that caused, and explains the reasons that support, the denial;

(2) identifies potential courses of action for overcoming specific issues that led to the denial; and

(3) proposes a schedule of consultation with the Indian tribe for the purpose of developing a strategy for protecting the Indian forest land or rangeland of the Indian tribe and interests of the Indian tribe in Federal land.

(e) PROPOSAL EVALUATION AND DETERMINATION FACTORS.—In entering into an agreement or contract in response to a request of an Indian tribe under subsection (b)(1), the Secretary may—

(1) use a best-value basis; and

(2) give specific consideration to tribally-related factors in the proposal of the Indian tribe, including—

(A) the status of the Indian tribe as an Indian tribe;

(B) the trust status of the Indian forest land or rangeland of the Indian tribe;

(C) the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal;

(D) the treaty rights or other reserved rights of the Indian tribe relating to the land subject to the proposal;

(E) the indigenous knowledge and skills of members of the Indian tribe;

(F) the features of the landscape of the land subject to the proposal, including watersheds and vegetation types;

(G) the working relationships between the Indian tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and

(H) the access by members of the Indian tribe to the land subject to the proposal.

(f) NO EFFECT ON EXISTING AUTHORITY.—Nothing in this Act—

(1) prohibits, restricts, or otherwise adversely affects the participation of any Indian tribe in stewardship agreements or contracting under the authority of section 347 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 2104 note; Public Law 105-277) (as amended by section 323 of the Department of the Interior and Related Agencies Appropriations Act, 2003 (117 Stat. 275)) or other authority invoked pursuant to this Act; or

(2) invalidates any agreement or contract under that authority.

(g) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report that

describes the Indian tribal requests received and agreements or contracts that have been entered into under this Act.

Approved July 22, 2004.

LEGISLATIVE HISTORY—H.R. 3846:

HOUSE REPORTS: No. 108–509, Pt. 1 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 21, considered and passed House.

June 25, considered and passed Senate.



Public Law 108–279
108th Congress

An Act

July 22, 2004
[S. 1167]

To resolve boundary conflicts in Barry and Stone Counties in the State of Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. RESOLUTION OF BOUNDARY CONFLICTS, VICINITY OF
MARK TWAIN NATIONAL FOREST, BARRY AND STONE
COUNTIES, MISSOURI.**

(a) DEFINITIONS.—In this section:

(1) The term “appropriate Secretary” means the Secretary of the Army or the Secretary of Agriculture.

(2) The term “boundary conflict” means the situation in which the private claim of ownership to certain lands, based on subsequent Federal land surveys, overlaps or conflicts with Federal ownership of the same lands.

(3) The term “Federal land surveys” means any land survey made by any agency or department of the Federal Government using Federal employees, or by Federal contract with State-licensed private land surveyors or corporations and businesses licensed to provide professional land surveying services in the State of Missouri for Table Rock Reservoir.

(4) The term “original land surveys” means the land surveys made by the United States General Land Office as part of the Public Land Survey System in the State of Missouri, and upon which Government land patents were issued conveying the land.

(5) The term “Public Land Survey System” means the rectangular system of original Government land surveys made by the United States General Land Office and its successor, the Bureau of Land Management, under Federal laws providing for the survey of the public lands upon which the original land patents were issued.

(6) The term “qualifying claimant” means a private owner of real property in Barry or Stone County, Missouri, who has a boundary conflict as a result of good faith and innocent reliance on subsequent Federal land surveys, and as a result of such reliance, has occupied or improved Federal lands administered by the appropriate Secretary.

(7) The term “subsequent Federal land surveys” means any Federal land surveys made after the original land surveys that are inconsistent with the Public Land Survey System.

(b) RESOLUTION OF BOUNDARY CONFLICTS.—The Secretary of the Army and the Secretary of Agriculture shall cooperatively undertake actions to rectify boundary conflicts and landownership claims against Federal lands resulting from subsequent Federal

land surveys and correctly reestablish the corners of the Public Land Survey System in Barry and Stone Counties, Missouri, and shall attempt to do so in a manner which imposes the least cost and inconvenience to affected private landowners.

(c) NOTICE OF BOUNDARY CONFLICT.—

(1) SUBMISSION AND CONTENTS.—A qualifying claimant shall notify the appropriate Secretary in writing of a claim that a boundary conflict exists with Federal land administered by the appropriate Secretary. The notice shall be accompanied by the following information, which, except as provided in subsection (e)(2)(B), shall be provided without cost to the United States:

(A) A land survey plat and legal description of the affected Federal lands, which are based upon a land survey completed and certified by a Missouri State-licensed professional land surveyor and done in conformity with the Public Land Survey System and in compliance with the applicable State and Federal land surveying laws.

(B) Information relating to the claim of ownership of the Federal lands, including supporting documentation showing that the landowner relied on a subsequent Federal land survey due to actions by the Federal Government in making or approving surveys for the Table Rock Reservoir.

(2) DEADLINE FOR SUBMISSION.—To obtain relief under this section, a qualifying claimant shall submit the notice and information required by paragraph (1) within 15 years after the date of the enactment of this Act.

(d) RESOLUTION AUTHORITIES.—In addition to using existing authorities, the appropriate Secretary is authorized to take any of the following actions in order to resolve boundary conflicts with qualifying claimants involving lands under the administrative jurisdiction of the appropriate Secretary:

(1) Convey by quitclaim deed right, title, and interest in land of the United States subject to a boundary conflict consistent with the rights, title, and interest associated with the privately-owned land from which a qualifying claimant has based a claim.

(2) Confirm Federal title to, and retain in Federal management, any land subject to a boundary conflict, if the appropriate Secretary determines that there are Federal interests, including improvements, authorized uses, easements, hazardous materials, or historical and cultural resources, on the land that necessitates retention of the land or interests in land.

(3) Compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained in Federal management pursuant to paragraph (2).

(e) CONSIDERATION AND COST.—

(1) CONVEYANCE WITHOUT CONSIDERATION.—The conveyance of land under subsection (d)(1) shall be made without consideration.

(2) COSTS.—The appropriate Secretary shall—

(A) pay administrative, personnel, and any other costs associated with the implementation of this section by his or her Department, including the costs of survey, marking, and monumenting property lines and corners; and

(B) reimburse the qualifying claimant for reasonable out-of-pocket survey costs necessary to establish a claim under this section.

(3) VALUATION.—Compensation paid to a qualifying claimant pursuant to subsection (d)(3) for land retained in Federal ownership pursuant to subsection (d)(2) shall be valued on the basis of the contributory value of the tract of land to the larger adjoining private parcel and not on the basis of the land being a separate tract. The appropriate Secretary shall not consider the value of any Federal improvements to the land. The appropriate Secretary shall be responsible for compensation provided as a result of subsequent Federal land surveys conducted or commissioned by the appropriate Secretary's Department.

(f) PREEXISTING CONDITIONS; RESERVATIONS; EXISTING RIGHTS AND USES.—

(1) PREEXISTING CONDITIONS.—The appropriate Secretary shall not compensate a qualifying claimant or any other person for any preexisting condition or reduction in value of any land subject to a boundary conflict because of any existing or outstanding permits, use authorizations, reservations, timber removal, or other land use or condition.

(2) EXISTING RESERVATIONS AND RIGHTS AND USES.—Any conveyance pursuant to subsection (d)(1) shall be subject to—

(A) reservations for existing public uses for roads, utilities, and facilities; and

(B) permits, rights-of-way, contracts and any other authorization to use the property.

(3) TREATMENT OF LAND SUBJECT TO SPECIAL USE AUTHORIZATION OR PERMIT.—For any land subject to a special use authorization or permit for access or utilities, the appropriate Secretary may convert, at the request of the holder, such authorization to a permanent easement prior to any conveyance pursuant to subsection (d)(1).

(4) FUTURE RESERVATIONS.—The appropriate Secretary may reserve rights for future public uses in a conveyance made pursuant to subsection (d)(1) if the qualifying claimant is compensated for the reservation in cash or in land of equal value.

(5) HAZARDOUS SUBSTANCES.—The requirements of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9620(h)) shall not apply to conveyances or transfers of jurisdiction pursuant to subsection (d), but the United States shall continue to be liable for the cleanup costs of any hazardous substances on the lands so conveyed or transferred if the contamination by hazardous substances is caused by actions of the United States or its agents.

(g) RELATION TO OTHER CONVEYANCE AUTHORITY.—Nothing in this section affects the Quiet Title Act (28 U.S.C. 2409a) or other applicable law, or affects the exchange and disposal authorities of the Secretary of Agriculture, including the Small Tracts Act (16 U.S.C. 521c), or the exchange and disposal authorities of the Secretary of the Army.

(h) ADDITIONAL TERMS AND CONDITIONS.—The appropriate Secretary may require such additional terms and conditions in connection with a conveyance under subsection (d)(1) as the Secretary considers appropriate to protect the interests of the United States.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

Approved July 22, 2004.

LEGISLATIVE HISTORY—S. 1167:

SENATE REPORTS: No. 108–234 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 19, considered and passed Senate.

July 12, considered and passed House.



Public Law 108–280
108th Congress

An Act

July 30, 2004
[H.R. 4916]

To provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

Surface
Transportation
Extension Act of
2004, Part IV.
23 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Surface Transportation Extension Act of 2004, Part IV”.

SEC. 2. ADVANCES.

(a) IN GENERAL.—Section 2(a) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 104 note; 117 Stat. 1110; 118 Stat. 478; 118 Stat. 627; 118 Stat. 698) is amended by striking “and the Surface Transportation Extension Act of 2004, Part III” and inserting “the Surface Transportation Extension Act of 2004, Part III, and the Surface Transportation Extension Act of 2004, Part IV”.

(b) PROGRAMMATIC DISTRIBUTIONS.—

(1) SPECIAL RULES FOR MINIMUM GUARANTEE.—Section 2(b)(4) of such Act is amended by striking “\$2,333,333,333” and inserting “\$2,800,000,000”.

(2) EXTENSION OF OFF-SYSTEM BRIDGE SETASIDE.—Section 144(g)(3) of title 23, United States Code, is amended by striking “2003 and in the period of October 1, 2003, through July 31, 2004,” and inserting “2004”.

(c) AUTHORIZATION OF CONTRACT AUTHORITY.—Section 1101(c)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1111; 118 Stat. 478; 118 Stat. 627; 118 Stat. 698) is amended by striking “\$26,998,288,667 for the period of October 1, 2003, through July 31, 2004” and inserting “\$30,469,806,615 for the period of October 1, 2003, through September 24, 2004”.

23 USC 104 note.

(d) LIMITATION ON OBLIGATIONS.—Section 2(e) of the Surface Transportation Extension Act of 2003 (117 Stat. 1111; 118 Stat. 478; 118 Stat. 627) is amended—

(1) in the matter preceding subparagraph (A) of paragraph (1) by striking “July 31” and inserting “September 24”;

(2) in paragraph (1)(A)—

(A) by striking “Part II, and” and inserting “Part II,”; and

(B) by inserting after “Part III” the following: “, and the Surface Transportation Extension Act of 2004, Part IV”;

(3) in paragraph (1)(B) by striking “ $10\frac{1}{2}$ ” and inserting “ $49\frac{1}{2}$ ”;

(4) in paragraph (2)—

(A) by striking “July 31” and inserting “September 24”;

(B) by striking “\$28,202,500,000” and inserting “\$31,890,519,230”; and

(C) by striking “\$532,500,000” and inserting “\$602,134,615”;

(5) in paragraph (3) by striking “July 31” and inserting “September 24”; and

(6) by adding at the end the following:

“(5) CALCULATION OF RATIO.—For purposes of the calculation of the ratio under section 110(a)(3) of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108-199; 118 Stat. 291; 23 U.S.C. 104 note)—

“(A) the obligation limitation for Federal-aid Highways referred to in section 110(a)(3)(A) of such Act shall be deemed to be the obligation limitation for Federal-aid highways and highway safety construction programs for fiscal year 2004 identified under the heading ‘FEDERAL-AID HIGHWAYS’ in such Act (118 Stat. 290); and

“(B) the total of sums authorized to be appropriated for Federal-aid highways and highway safety construction programs (other than sums authorized to be appropriated for sections set forth in paragraphs (1) through (7) of section 110(b) of such Act and sums authorized to be appropriated for section 105 of title 23, United States Code, equal to the amount referred to in subsection 110(b)(8) of such Act) for such fiscal year, referred to in section 110(a)(3)(B) of such Act, shall be deemed to be \$34,606,000,000, less the aggregate of the amounts not distributed under section 110(a)(1) of such Act.”.

SEC. 3. REPAYMENT FROM FUTURE APPORTIONMENTS.

Section 2(c) of the Surface Transportation Extension Act of 2003 (117 Stat. 1111) is amended—

23 USC 104 note.

(1) in paragraph (1) by striking “a law reauthorizing the Federal-aid highway program enacted after the date of enactment of this Act” and inserting “the Surface Transportation Extension Act of 2004, Part IV”; and

(2) in paragraph (2) by striking “a law described in paragraph (1)” and inserting “the Surface Transportation Extension Act of 2004, Part IV”.

SEC. 4. OTHER FEDERAL-AID HIGHWAY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE I OF TEA-21.—

(1) FEDERAL LANDS HIGHWAYS.—

(A) INDIAN RESERVATION ROADS.—Section 1101(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112; 117 Stat. 1113; 118 Stat. 479; 118 Stat. 628; 118 Stat. 699) is amended—

(i) in the first sentence by striking “2003 and \$229,166,667 for the period of October 1, 2003, through July 31,”; and

(ii) by striking the second sentence.

(B) PUBLIC LANDS HIGHWAYS.—Section 1101(a)(8)(B) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480; 118 Stat. 628; 118 Stat. 699) is amended by striking “2003 and \$205,000,000 for the period of October 1, 2003, through July 31,”.

(C) PARK ROADS AND PARKWAYS.—Section 1101(a)(8)(C) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480; 118 Stat. 628; 118 Stat. 699) is amended by striking “2003 and \$137,500,000 for the period of October 1, 2003, through July 31,”.

(D) REFUGE ROADS.—Section 1101(a)(8)(D) of such Act (112 Stat. 112; 117 Stat. 1113; 118 Stat. 480; 118 Stat. 628; 118 Stat. 699) is amended by striking “2003 and \$16,666,667 for the period of October 1, 2003, through July 31,”.

(2) NATIONAL CORRIDOR PLANNING AND DEVELOPMENT AND COORDINATED BORDER INFRASTRUCTURE PROGRAMS.—Section 1101(a)(9) of such Act (112 Stat. 112; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 628; 118 Stat. 699) is amended by striking “2003 and \$116,666,667 for the period of October 1, 2003, through July 31,”.

(3) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—

(A) IN GENERAL.—Section 1101(a)(10) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 628; 118 Stat. 699) is amended by striking “2003 and \$31,666,667 for the period of October 1, 2003, through July 31,”.

(B) SET ASIDE FOR ALASKA, NEW JERSEY, AND WASHINGTON.—Section 5(a)(3)(B) of the Surface Transportation Extension Act of 2003 (117 Stat. 1114; 118 Stat. 480; 118 Stat. 628; 118 Stat. 700) is amended—

(i) in clause (i) by striking “\$8,333,333” and inserting “\$10,000,000”;

(ii) in clause (ii) by striking “\$4,166,667” and inserting “\$5,000,000”; and

(iii) in clause (iii) by striking “\$4,166,667” and inserting “\$5,000,000”.

(4) NATIONAL SCENIC BYWAYS PROGRAM.—Section 1101(a)(11) of the Transportation Equity Act for the 21st Century (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 629; 118 Stat. 700) is amended by striking “fiscal year 2003, and \$22,916,667 for the period of October 1, 2003, through July 31, 2004” and inserting “fiscal years 2003 and 2004”.

(5) VALUE PRICING PILOT PROGRAM.—Section 1101(a)(12) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 629; 118 Stat. 700) is amended by striking “2003 and \$9,166,667 for the period of October 1, 2003, through July 31,”.

(6) HIGHWAY USE TAX EVASION PROJECTS.—Section 1101(a)(14) of such Act (112 Stat. 113; 117 Stat. 1114; 118 Stat. 480; 118 Stat. 629; 118 Stat. 700) is amended by striking “2003 and \$4,166,667 for the period of October 1, 2003, through July 31,”.

(7) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—Section 1101(a)(15) of such Act (112 Stat. 113; 117 Stat. 1114;

118 Stat. 481; 118 Stat. 629; 118 Stat. 700) is amended by striking “2003 and \$91,666,667 for the period of October 1, 2003, through July 31,”.

(8) SAFETY GRANTS.—Section 1212(i)(1)(D) of such Act (23 U.S.C. 402 note; 112 Stat. 196; 112 Stat. 840; 117 Stat. 1114; 118 Stat. 481; 118 Stat. 629; 118 Stat. 700) is amended by striking “2003 and \$416,667 for the period of October 1, 2003, through July 31,”.

(9) TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM.—Section 1221(e)(1) of such Act (23 U.S.C. 101 note; 112 Stat. 223; 117 Stat. 1114; 118 Stat. 481; 118 Stat. 629; 118 Stat. 700) is amended by striking “2003 and \$20,833,333 for the period of October 1, 2003, through July 31,”.

(10) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION.—Section 188 of title 23, United States Code, is amended—

(A) by striking subsection (a)(1)(F) and inserting the following:

“(F) \$130,000,000 for fiscal year 2004.”;

(B) in subsection (a)(2) by striking “2003 and \$1,666,667 for the period of October 1, 2003, through July 31,”; and

(C) in the item relating to fiscal year 2004 in the table contained in subsection (c) by striking “\$2,166,666,667” and inserting “\$2,600,000,000”.

(b) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE V OF TEA-21.—

(1) SURFACE TRANSPORTATION RESEARCH.—Section 5001(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 419; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630; 118 Stat. 701) is amended by striking “\$87,500,000 for the period of October 1, 2003, through July 31, 2004” and inserting “\$103,000,000 for fiscal year 2004”.

(2) TECHNOLOGY DEPLOYMENT PROGRAM.—Section 5001(a)(2) of such Act (112 Stat. 419; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630; 118 Stat. 701) is amended by striking “\$45,833,333 for the period of October 1, 2003, through July 31, 2004” and inserting “\$50,000,000 for fiscal year 2004”.

(3) TRAINING AND EDUCATION.—Section 5001(a)(3) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630; 118 Stat. 701) is amended by striking “\$17,500,000 for the period of October 1, 2003, through July 31, 2004” and inserting “\$20,000,000 for fiscal year 2004”.

(4) BUREAU OF TRANSPORTATION STATISTICS.—Section 5001(a)(4) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630; 118 Stat. 701) is amended by striking “2003 and \$25,833,333 for the period of October 1, 2003, through July 31,”.

(5) ITS STANDARDS, RESEARCH, OPERATIONAL TESTS, AND DEVELOPMENT.—Section 5001(a)(5) of such Act (112 Stat. 420; 117 Stat. 1115; 118 Stat. 481; 118 Stat. 630; 118 Stat. 701) is amended by striking “\$95,833,333 for the period of October 1, 2003, through July 31, 2004” and inserting “\$110,000,000 for fiscal year 2004”.

(6) ITS DEPLOYMENT.—Section 5001(a)(6) of such Act (112 Stat. 420; 117 Stat. 1116; 118 Stat. 482; 118 Stat. 630; 118

Stat. 701) is amended by striking “\$103,333,333 for the period of October 1, 2003, through July 31, 2004” and inserting “\$122,000,000 for fiscal year 2004”.

(7) UNIVERSITY TRANSPORTATION RESEARCH.—Section 5001(a)(7) of such Act (112 Stat. 420; 117 Stat. 1116; 118 Stat. 482; 118 Stat. 630; 118 Stat. 701) is amended by striking “\$22,500,000 for the period of October 1, 2003, through July 31, 2004” and inserting “\$26,500,000 for fiscal year 2004”.

(c) METROPOLITAN PLANNING.—Section 5(c)(1) of the Surface Transportation Extension Act of 2003 (117 Stat. 1116; 118 Stat. 482; 118 Stat. 630; 118 Stat. 701) is amended by striking “\$200,000,000 for the period of October 1, 2003, through July 31, 2004” and inserting “\$240,000,000 for fiscal year 2004”.

(d) TERRITORIES.—Section 1101(d)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1116; 118 Stat. 482; 118 Stat. 630; 118 Stat. 702) is amended by striking “\$30,333,333 for the period of October 1, 2003, through July 31, 2004” and inserting “\$36,400,000 for fiscal year 2004”.

(e) ALASKA HIGHWAY.—Section 1101(e)(1) of such Act (117 Stat. 1116; 118 Stat. 482; 118 Stat. 630; 118 Stat. 702) is amended by striking “\$15,666,667 for the period of October 1, 2003, through July 31, 2004” and inserting “\$18,800,000 for fiscal year 2004”.

(f) OPERATION LIFESAVER.—Section 1101(f)(1) of such Act (117 Stat. 1117; 118 Stat. 482; 118 Stat. 631; 118 Stat. 702) is amended by striking “\$416,667 for the period of October 1, 2003, through July 31, 2004” and inserting “\$500,000 for fiscal year 2004”.

(g) BRIDGE DISCRETIONARY.—Section 1101(g)(1) of such Act (117 Stat. 1117; 118 Stat. 482; 118 Stat. 631; 108 Stat. 702) is amended—

(1) by striking “\$83,333,333” and inserting “\$100,000,000”;

and

(2) by striking “the period of October 1, 2003 through July 31,” and inserting “fiscal year”.

(h) INTERSTATE MAINTENANCE.—Section 1101(h)(1) of such Act (117 Stat. 1117; 118 Stat. 482; 118 Stat. 631; 118 Stat. 702) is amended—

(1) by striking “\$83,333,333” and inserting “\$100,000,000”;

and

(2) by striking “the period of October 1, 2003, through July 31,” and inserting “fiscal year”.

(i) RECREATIONAL TRAILS ADMINISTRATIVE COSTS.—Section 1101(i)(1) of such Act (117 Stat. 1117; 118 Stat. 482; 118 Stat. 631; 118 Stat. 702) is amended by striking “\$625,000 for the period of October 1, 2003, through July 31, 2004” and inserting “\$750,000 for fiscal year 2004”.

(j) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—Section 1101(j)(1) of such Act (117 Stat. 1118; 118 Stat. 482; 118 Stat. 631; 118 Stat. 702) is amended—

(1) by striking “\$4,375,000” and inserting “\$5,250,000”;

(2) by striking “\$208,833 instead of”;

(3) by striking “the period of October 1, 2003, through July 31, 2004” each place it appears and inserting “fiscal year 2004”; and

(4) by striking the comma preceding “for eligible”.

(k) NONDISCRIMINATION.—Section 1101(k) of such Act (117 Stat. 1118; 118 Stat. 482; 118 Stat. 631; 118 Stat. 702) is amended—

(1) in paragraph (1) by striking “\$8,333,333 for the period of October 1, 2003, through July 31, 2004” and inserting “\$10,000,000 for fiscal year 2004”; and

(2) in paragraph (2) by striking “\$8,333,333 for the period of October 1, 2003, through July 31, 2004” and inserting “\$10,000,000 for fiscal year 2004”.

(l) ADMINISTRATION OF FUNDS.—Section 5(l) of the Surface Transportation Extension Act of 2003 (117 Stat. 1118; 118 Stat. 483; 118 Stat. 631; 118 Stat. 702) is amended—

(1) by striking “and section 4 of the Surface Transportation Extension Act of 2004, Part III” and inserting “section 4 of the Surface Transportation Extension Act of 2004, Part III, and section 4 of the Surface Transportation Extension Act of 2004, Part IV”;

(2) by striking “the amendment made by section 4(a)(1) of the Surface Transportation Extension Act, Part II” and all that follows before the period at the end and inserting “the amendment made by section 4(a)(1) of the Surface Transportation Extension Act of 2004, Part II, the amendment made by section 4(a)(1) of the Surface Transportation Extension Act of 2004, Part III, or the amendment made by section 4(a)(1) of the Surface Transportation Extension Act of 2004, Part IV”.

(m) REDUCTION OF ALLOCATED PROGRAMS.—Section 5(m) of such Act (117 Stat. 1119; 118 Stat. 483; 118 Stat. 632; 118 Stat. 703) is amended—

(1) by striking “and section 4 of the Surface Transportation Extension Act of 2004, Part III” and inserting “section 4 of the Surface Transportation Extension Act of 2004, Part III, and section 4 of the Surface Transportation Extension Act of 2004, Part IV”;

(2) by striking “and by section 4 of the Surface Transportation Extension Act of 2004, Part III” each place it appears and inserting “by section 4 of the Surface Transportation Extension Act of 2004, Part III, and by section 4 of the Surface Transportation Extension Act of 2004, Part IV”.

(n) PROGRAM CATEGORY RECONCILIATION.—Section 5(n) of such Act (117 Stat. 1119; 118 Stat. 483; 118 Stat. 632; 118 Stat. 703) is amended by striking “and section 4 of the Surface Transportation Extension Act of 2004, Part III” and inserting “section 4 of the Surface Transportation Extension Act of 2004, Part III, and section 4 of the Surface Transportation Extension Act of 2004, Part IV”.

SEC. 5. EXTENSION OF HIGHWAY SAFETY PROGRAMS.

(a) SEAT BELT SAFETY INCENTIVE GRANTS.—Section 157(g)(1) of title 23, United States Code, is amended by striking “\$93,333,333 for the period of October 1, 2003, through July 31, 2004” and inserting “\$112,000,000 for fiscal year 2004”.

(b) PREVENTION OF INTOXICATED DRIVER INCENTIVE GRANTS.—Section 163(e)(1) of such title is amended by striking “\$100,000,000 for the period of October 1, 2003, through July 31, 2004” and inserting “\$110,000,000 for fiscal year 2004”.

SEC. 6. SPORT FISHING AND BOATING SAFETY.

(a) FUNDING FOR NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.—Section 4(c)(6) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(c)(6)) is amended to read as follows:

“(6) \$10,000,000 for fiscal year 2004;”.

(b) CLEAN VESSEL ACT FUNDING.—Section 4(b)(4) of such Act (16 U.S.C. 777c(b)(4)) is amended—

(1) in the paragraph heading by striking “FIRST 9 MONTHS OF”;

(2) in the matter preceding subparagraph (A)—

(A) by striking “the period of October 1, 2003, through July 31, 2004” and inserting “fiscal year 2004”; and

(B) by striking “\$68,333,332” and inserting “\$82,000,000”;

(3) in subparagraph (A) by striking “\$8,333,332” and inserting “\$10,000,000”; and

(4) in subparagraph (B) by striking “\$6,666,668” and inserting “\$8,000,000”.

(c) BOAT SAFETY FUNDS.—Section 13106(c) of title 46, United States Code, is amended—

(1) by striking “\$4,166,668” and inserting “\$5,000,000”; and

(2) by striking “\$1,666,668” and inserting “\$2,000,000”.

SEC. 7. EXTENSION OF FEDERAL TRANSIT PROGRAMS.

(a) ALLOCATING AMOUNTS.—Section 5309(m) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A) by striking “2003 and for the period of October 1, 2003, through July 31,”;

(B) in subparagraph (A) by striking “, except” and all that follows before the semicolon and inserting “, except for fiscal year 2004 during which \$1,206,506,000 will be available”;

(C) in subparagraph (B) by striking “, except” and all that follows before the semicolon and inserting “, except for fiscal year 2004 during which \$1,323,794,000 will be available”; and

(D) in subparagraph (C) by striking “, except” and all that follows before the period and inserting “, except for fiscal year 2004 during which \$607,200,000 will be available”;

(2) in paragraph (2)(B)—

(A) in clause (i) by striking “2003” and inserting “2004”; and

(B) by striking clause (iii);

(3) in paragraph (3)(B) by striking “2003 (and \$2,485,250 shall be available for the period October 1, 2003, through July 31, 2004)” and inserting “2004”; and

(4) in paragraph (3)(C)—

(A) by striking “1999 through 2003” and inserting “1999 through 2004”;

(B) by striking “\$41,420,833” and inserting “\$50,000,000”; and

(C) by striking “the period October 1, 2003, through July 31, 2004” and inserting “fiscal year 2004”.

(b) APPORTIONMENT OF APPROPRIATIONS FOR FIXED GUIDEWAY MODERNIZATION.—Section 8(b)(1) of the Surface Transportation Extension Act of 2003 (49 U.S.C. 5337 note) is repealed.

(c) FORMULA GRANTS AUTHORIZATIONS.—Section 5338(a)(2) of title 49, United States Code, is amended—

(1) in the paragraph heading by striking “2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH JULY 31,”;

(2) by striking subparagraph (A)(vi) and inserting the following:

“(vi) \$3,071,200,000 for fiscal year 2004.”;

(3) by striking subparagraph (B)(vi) and inserting the following:

“(vi) \$767,800,000 for fiscal year 2004.”; and

(4) in subparagraph (C) by striking “a fiscal year (other than for the period of October 1, 2003, through July 31, 2004)” and inserting “each of fiscal years 1999 through 2003”.

(d) FORMULA GRANT FUNDS.—Section 8(d) of the Surface Transportation Extension Act of 2003 (118 Stat. 633; 118 Stat. 705) is amended to read as follows:

“(d) ALLOCATION OF FORMULA GRANT FUNDS FOR FISCAL YEAR 2004.—Of the aggregate of amounts made available by or appropriated under section 5338(a)(2) of title 49, United States Code, for fiscal year 2004—

“(1) \$4,849,950 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307 of such title;

“(2) \$50,000,000 shall be available for bus and bus facilities grants under section 5309 of such title;

“(3) \$90,652,801 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310 of such title;

“(4) \$240,607,643 shall be available to provide financial assistance for other than urbanized areas under section 5311 of such title;

“(5) \$6,950,000 shall be available to provide financial assistance in accordance with section 3038(g) of the Transportation Equity Act for the 21st Century; and

“(6) \$3,445,939,606 shall be available to provide financial assistance for urbanized areas under section 5307 of such title.”.

(e) CAPITAL PROGRAM AUTHORIZATIONS.—Section 5338(b)(2) of title 49, United States Code, is amended—

(1) in the paragraph heading by striking “2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH JULY 31,”;

(2) by striking subparagraph (A)(vi) and inserting the following:

“(vi) \$2,510,000,000 for fiscal year 2004.”; and

(3) by striking subparagraph (B)(vi) and inserting the following:

“(vi) \$627,500,000 for fiscal year 2004.”.

(f) PLANNING AUTHORIZATIONS AND ALLOCATIONS.—Section 5338(c)(2) of such title is amended—

(1) in the paragraph heading by striking “2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH JULY 31,”;

(2) by striking subparagraph (A)(vi) and inserting the following:

“(vi) \$58,600,000 for fiscal year 2004.”;

(3) by striking subparagraph (B)(vi) and inserting the following:

“(vi) \$14,400,000 for fiscal year 2004.”; and

(4) in subparagraph (C) by striking “or any portion of a fiscal year”.

(g) RESEARCH AUTHORIZATIONS.—Section 5338(d)(2) of such title is amended—

(1) in the paragraph heading by striking “2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH JULY 31,”;

(2) by striking subparagraph (A)(vi) and inserting the following:

“(vi) \$42,200,000 for fiscal year 2004.”;

(3) by striking subparagraph (B)(vi) and inserting the following:

“(vi) \$10,800,000 for fiscal year 2004.”; and

(4) in subparagraph (C) by striking “(other than for the period of October 1, 2003, through July 31, 2004)”.

(h) RESEARCH FUNDS.—Section 8(h) of the Surface Transportation Extension Act of 2003 (118 Stat. 635; 118 Stat. 706) is repealed.

(i) UNIVERSITY TRANSPORTATION RESEARCH AUTHORIZATIONS.—Section 5338(e)(2) of title 49, United States Code, is amended—

(1) in the paragraph heading by striking “2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH JULY 31,”;

(2) in subparagraph (A) by striking “2003 and \$3,976,400 for the period of October 1, 2003, through July 31,”;

(3) in subparagraph (B) by striking “2003 and \$994,100 for the period of October 1, 2003, through July 31,”; and

(4) in each of subparagraphs (C)(i) and (C)(iii) by striking “(other than for the period of October 1, 2003, through July 31, 2004)”.

(j) UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—

(1) IN GENERAL.—Section 8(j) of the Surface Transportation Extension Act of 2003 (118 Stat. 635; 118 Stat. 706) is repealed.

(2) CONFORMING AMENDMENT.—Section 3015(d)(2) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5338 note; 112 Stat. 857; 118 Stat. 487; 118 Stat. 636; 118 Stat. 707) is amended by striking “or 2003 and in the period October 31, 2003, through July 31, 2004” and inserting “, 2003, or 2004”.

(k) ADMINISTRATION AUTHORIZATIONS.—Section 5338(f)(2) of title 49, United States Code, is amended—

(1) in the paragraph heading by striking “2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH JULY 31,”;

(2) by striking subparagraph (A)(vi) and inserting the following:

“(vi) \$60,400,000 for fiscal year 2004.”; and

(3) by striking subparagraph (B)(vi) and inserting the following:

“(vi) \$15,100,000 for fiscal year 2004.”.

(l) JOB ACCESS AND REVERSE COMMUTE PROGRAM.—Section 3037(l) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note) is amended—

(1) by striking paragraph (1)(A)(vi) and inserting the following:

“(vi) \$100,000,000 for fiscal year 2004.”;

(2) by striking paragraph (1)(B)(vi) and inserting the following:

“(vi) \$25,000,000 for fiscal year 2004.”;

(3) in paragraph (2) by striking “; except that” and all that follows before the period at the end; and

(4) in paragraph (4) by striking “\$16,568,333” and inserting “\$20,000,000”.

(m) RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.—Section 3038(g) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) is amended—

(1) by striking paragraph (1)(F) and inserting after paragraph (1)(E) the following:

“(F) \$5,250,000 for fiscal year 2004.”; and

(2) in paragraph (2) by striking “\$6,800,000” and all that follows through “July 31, 2004” and inserting “\$1,700,000 shall be available for each of fiscal years 2000 through 2004”.

(n) URBANIZED AREA FORMULA GRANTS.—Section 5307(b)(2) of title 49, United States Code, is amended—

(1) in the paragraph heading by striking “FISCAL YEAR 2003 AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH JULY 31, 2004” and inserting “FISCAL YEARS 2003 AND 2004”; and

(2) in subparagraph (A) by striking “fiscal year 2003, and for the period of October 1, 2003, through July 31, 2004” and inserting “fiscal years 2003 and 2004”.

(o) OBLIGATION CEILING.—Section 3040 of the Transportation Equity Act for the 21st Century (112 Stat. 394; 118 Stat. 637; 118 Stat. 708) is amended by striking paragraph (6) and inserting the following:

“(6) \$7,309,000,000 in fiscal year 2004.”.

(p) FUEL CELL BUS AND BUS FACILITIES PROGRAM.—Section 3015(b) of the Transportation Equity Act for the 21st Century (112 Stat. 361; 118 Stat. 637; 118 Stat. 708) is amended by striking “(or, in the case of the period of October 1, 2003, through July 31, 2004 \$4,017,821)”.

(q) ADVANCED TECHNOLOGY PILOT PROJECT.—Section 3015(c)(2) of the Transportation Equity Act for the 21st Century (49 U.S.C. 322 note; 118 Stat. 637; 118 Stat. 708) is amended by striking “2003, and for the period of October 1, 2003, through July 31, 2004 \$5,000,000 per fiscal year and \$4,142,083 for such period” and inserting “2004, \$5,000,000 per fiscal year”.

23 USC 322 note.

(r) PROJECTS FOR NEW FIXED GUIDEWAY SYSTEMS AND EXTENSIONS TO EXISTING SYSTEMS.—Section 3030 of the Transportation Equity Act for the 21st Century (112 Stat. 373; 118 Stat. 637; 118 Stat. 708) is amended—

(1) by striking “2003 and for the period of October 1, 2003, through July 31, 2004,” each place it appears and inserting “2004”; and

(2) in subsection (d)(3) by redesignating the second subparagraph (D), relating to the Memphis-Shelby International Airport intermodal facility, as subparagraph (H) and aligning the margin of such subparagraph with subparagraph (G).

(s) NEW JERSEY URBAN CORE PROJECT.—Section 3031(a)(3) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2122; 112 Stat. 379; 117 Stat. 1126; 118 Stat. 489; 118 Stat. 637; 118 Stat. 708) is amended by striking “2003, and for the period of October 1, 2003, through July 31,” each place it appears.

(t) TREATMENT OF FUNDS.—Section 8(t) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 101 note; 118 Stat. 637; 118 Stat. 708) is amended—

(1) in paragraph (1) by striking “, and by section 7 of the Surface Transportation Extension Act of 2004, Part III”

and inserting “by section 7 of the Surface Transportation Extension Act of 2004, Part III, and by section 7 of the Surface Transportation Extension Act of 2004, Part IV”; and

(2) in paragraph (2) by striking “, except that” and all that follows before the period at the end.

(u) **LOCAL SHARE.**—Section 3011(a) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5307 note; 118 Stat. 637; 118 Stat. 708) is amended by striking “2003, and for the period of October 1, 2003 through July 31,”.

SEC. 8. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION PROGRAMS.

(a) **CHAPTER 4 HIGHWAY SAFETY PROGRAMS.**—Section 2009(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 337; 117 Stat. 1119; 118 Stat. 489; 118 Stat. 637; 118 Stat. 709) is amended by striking “\$136,688,750 for the period of October 1, 2003, through July 31, 2004” and inserting “\$165,000,000 for fiscal year 2004”.

(b) **HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.**—Section 2009(a)(2) of such Act (112 Stat. 337; 117 Stat. 1119; 118 Stat. 489; 118 Stat. 637; 118 Stat. 709) is amended by striking “2003 and \$59,646,000 for the period of October 1, 2003, through July 31,”.

(c) **OCCUPANT PROTECTION INCENTIVE GRANTS.**—Section 2009(a)(3) of such Act (112 Stat. 337; 117 Stat. 1120; 118 Stat. 489; 118 Stat. 638; 118 Stat. 709) is amended by striking “\$16,568,333 for the period of October 1, 2003, through July 31, 2004” and inserting “\$20,000,000 for fiscal year 2004”.

(d) **ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANTS.**—Section 2009(a)(4) of such Act (112 Stat. 337; 117 Stat. 1120; 118 Stat. 489; 118 Stat. 638; 118 Stat. 709) is amended by striking “\$33,136,667 for the period of October 1, 2003, through July 31, 2004” and inserting “\$40,000,000 for fiscal year 2004”.

(e) **NATIONAL DRIVER REGISTER.**—Section 2009(a)(6) of such Act (112 Stat. 338; 117 Stat. 1120; 118 Stat. 638; 118 Stat. 709) is amended by striking “\$2,982,300 for the period of October 1, 2003, through July 31, 2004” and inserting “\$3,600,000 for fiscal year 2004”.

SEC. 9. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PROGRAM.

(a) **ADMINISTRATIVE EXPENSES.**—Section 7(a)(1) of the Surface Transportation Extension Act of 2003 (117 Stat. 1120; 118 Stat. 490; 118 Stat. 638; 118 Stat. 709) is amended by striking “\$146,725,000 for the period October 1, 2003, through July 31, 2004” and inserting “\$176,070,000 for fiscal year 2004”.

(b) **MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.**—Section 31104(a)(7) of title 49, United States Code, is amended to read as follows:

“(7) Not more than \$169,000,000 for fiscal year 2004.”.

(c) **INFORMATION SYSTEMS AND COMMERCIAL DRIVER’S LICENSE GRANTS.**—

(1) **AUTHORIZATION OF APPROPRIATION.**—Section 31107(a)(5) of such title is amended to read as follows:

“(5) \$20,000,000 for the fiscal year 2004.”.

(2) **EMERGENCY CDL GRANTS.**—Section 7(c)(2) of the Surface Transportation Extension Act of 2003 (117 Stat. 1121; 118 Stat. 490; 118 Stat. 638; 118 Stat. 709) is amended—

(A) by striking “the period of October 1, 2003 through June 30,” and inserting “fiscal year”; and

(B) by striking “\$833,333” and inserting “\$1,000,000”.

(d) CRASH CAUSATION STUDY.—Section 7(d) of such Act (117 Stat. 1121; 118 Stat. 490; 118 Stat. 638) is amended—

(1) by striking “\$833,333” and inserting “\$1,000,000”; and

(2) by striking “the period of October 1, 2003 through July 31,” and inserting “fiscal year”.

SEC. 10. EXTENSION OF AUTHORIZATION FOR USE OF TRUST FUNDS FOR OBLIGATIONS UNDER TEA-21.

(a) HIGHWAY TRUST FUND.—

(1) IN GENERAL.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1986 is amended—

26 USC 9503.

(A) in the matter before subparagraph (A), by striking “August 1, 2004” and inserting “October 1, 2004”,

(B) by striking “or” at the end of subparagraph (H),

(C) by striking the period at the end of subparagraph (I) and inserting “, or”,

(D) by inserting after subparagraph (I) the following new subparagraph:

“(J) authorized to be paid out of the Highway Trust Fund under the Surface Transportation Extension Act of 2004, Part IV.”, and

(E) in the matter after subparagraph (J), as added by this paragraph, by striking “Surface Transportation Extension Act of 2004, Part III” and inserting “Surface Transportation Extension Act of 2004, Part IV”.

(2) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) of such Code is amended—

(A) in the matter before subparagraph (A), by striking “August 1, 2004” and inserting “October 1, 2004”,

(B) in subparagraph (F), by striking “or” at the end of such subparagraph,

(C) in subparagraph (G), by inserting “or” at the end of such subparagraph,

(D) by inserting after subparagraph (G) the following new subparagraph:

“(H) the Surface Transportation Extension Act of 2004, Part IV.”, and

(E) in the matter after subparagraph (H), as added by this paragraph, by striking “Surface Transportation Extension Act of 2004, Part III” and inserting “Surface Transportation Extension Act of 2004, Part IV”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 9503(b)(5) of such Code is amended by striking “August 1, 2004” and inserting “October 1, 2004”.

(4) SPECIAL RULE FOR CORE HIGHWAY PROGRAMS.—

(A) IN GENERAL.—In the case of a core highway program, subsections (b)(5) and (c)(1) of section 9503 of such Code shall be applied by substituting “September 25, 2004” for “October 1, 2004”.

26 USC 9503
note.
Applicability.

(B) CORE HIGHWAY PROGRAM.—For purposes of subparagraph (A), the term “core highway program” means any program (other than any program carried out by the National Highway Traffic Safety Administration and any

program carried out by the Federal Motor Carrier Administration) funded from the Highway Trust Fund (other than the Mass Transit Account).

(b) AQUATIC RESOURCES TRUST FUND.—

26 USC 9504.

(1) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) of the Internal Revenue Code of 1986 is amended by striking “Surface Transportation Extension Act of 2004, Part III” each place it appears and inserting “Surface Transportation Extension Act of 2004, Part IV”.

(2) BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 of such Code is amended—

(A) by striking “August 1, 2004” and inserting “October 1, 2004”, and

(B) by striking “Surface Transportation Extension Act of 2004, Part III” and inserting “Surface Transportation Extension Act of 2004, Part IV”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) of such Code is amended by striking “August 1, 2004” and inserting “October 1, 2004”.

26 USC 9503
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Effective date.
Termination
date.

(d) TEMPORARY RULE REGARDING ADJUSTMENTS.—During the period beginning on the date of the enactment of the Surface Transportation Extension Act of 2003 and ending on September 30, 2004, for purposes of making any estimate under section 9503(d) of the Internal Revenue Code of 1986 of receipts of the Highway Trust Fund, the Secretary of the Treasury shall treat—

(1) each expiring provision of paragraphs (1) through (4) of section 9503(b) of such Code which is related to appropriations or transfers to such Fund to have been extended through the end of the 24-month period referred to in section 9503(d)(1)(B) of such Code, and

(2) with respect to each tax imposed under the sections referred to in section 9503(b)(1) of such Code, the rate of such tax during the 24-month period referred to in section 9503(d)(1)(B) of such Code to be the same as the rate of such tax as in effect on the date of the enactment of the Surface Transportation Extension Act of 2003.

Approved July 30, 2004.

LEGISLATIVE HISTORY—H.R. 4916:

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 22, considered and passed House and Senate.



Public Law 108–281
108th Congress

An Act

To amend the E-Government Act of 2002 with respect to rulemaking authority of the Judicial Conference.

Aug. 2, 2004
[H.R. 1303]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RULEMAKING AUTHORITY OF JUDICIAL CONFERENCE.

Section 205(c) of the E-Government Act of 2002 (Public Law 107–347; 44 U.S.C. 3501 note) is amended by striking paragraph (3) and inserting the following:

“(3) PRIVACY AND SECURITY CONCERNS.—

“(A)(i) The Supreme Court shall prescribe rules, in accordance with sections 2072 and 2075 of title 28, United States Code, to protect privacy and security concerns relating to electronic filing of documents and the public availability under this subsection of documents filed electronically or converted to electronic form.

“(ii) Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts.

“(iii) Such rules shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.

“(iv) Except as provided in clause (v), to the extent that such rules provide for the redaction of certain categories of information in order to protect privacy and security concerns, such rules shall provide that a party that wishes to file an otherwise proper document containing such protected information may file an unredacted document under seal, which shall be retained by the court as part of the record, and which, at the discretion of the court and subject to any applicable rules issued in accordance with chapter 131 of title 28, United States Code, shall be either in lieu of, or in addition to, a redacted copy in the public file.

“(v) Such rules may require the use of appropriate redacted identifiers in lieu of protected information described in clause (iv) in any pleading, motion, or other paper filed with the court (except with respect to a paper that is an exhibit or other evidentiary matter, or with respect to a reference list described in this subclause), or in any written discovery response—

“(I) by authorizing the filing under seal, and permitting the amendment as of right under seal, of a reference list that—

“(aa) identifies each item of unredacted protected information that the attorney or, if there is no attorney, the party, certifies is relevant to the case; and

“(bb) specifies an appropriate redacted identifier that uniquely corresponds to each item of unredacted protected information listed; and

“(II) by providing that all references in the case to the redacted identifiers in such reference list shall be construed, without more, to refer to the corresponding unredacted item of protected information.

“(B)(i) Subject to clause (ii), the Judicial Conference of the United States may issue interim rules, and interpretive statements relating to the application of such rules, which conform to the requirements of this paragraph and which shall cease to have effect upon the effective date of the rules required under subparagraph (A).

“(ii) Pending issuance of the rules required under subparagraph (A), any rule or order of any court, or of the Judicial Conference, providing for the redaction of certain categories of information in order to protect privacy and security concerns arising from electronic filing or electronic conversion shall comply with, and be construed in conformity with, subparagraph (A)(iv).

“(C) Not later than 1 year after the rules prescribed under subparagraph (A) take effect, and every 2 years thereafter, the Judicial Conference shall submit to Congress a report on the adequacy of those rules to protect privacy and security.”.

Deadlines.
Reports.

Approved August 2, 2004.

LEGISLATIVE HISTORY—H.R. 1303:

HOUSE REPORTS: No. 108–239 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 7, considered and passed House.

Vol. 150 (2004): July 9, considered and passed Senate.

July 13, Senate vitiated passage.

July 15, considered and passed Senate.



Public Law 108–282
108th Congress

An Act

To amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

Aug. 2, 2004
[S. 741]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**TITLE I—MINOR USE AND MINOR
SPECIES HEALTH**

Minor Use and
Minor Species
Animal Health
Act of 2004.

SECTION 101. SHORT TITLE.

21 USC 301 note.

This title may be cited as the “Minor Use and Minor Species Animal Health Act of 2004”.

SEC. 102. MINOR USE AND MINOR SPECIES ANIMAL HEALTH.

21 USC 360ccc
note.

(a) FINDINGS.—Congress makes the following findings:

(1) There is a severe shortage of approved new animal drugs for use in minor species.

(2) There is a severe shortage of approved new animal drugs for treating animal diseases and conditions that occur infrequently or in limited geographic areas.

(3) Because of the small market shares, low-profit margins involved, and capital investment required, it is generally not economically feasible for new animal drug applicants to pursue approvals for these species, diseases, and conditions.

(4) Because the populations for which such new animal drugs are intended may be small and conditions of animal management may vary widely, it is often difficult to design and conduct studies to establish drug safety and effectiveness under traditional new animal drug approval processes.

(5) It is in the public interest and in the interest of animal welfare to provide for special procedures to allow the lawful use and marketing of certain new animal drugs for minor species and minor uses that take into account these special circumstances and that ensure that such drugs do not endanger animal or public health.

(6) Exclusive marketing rights for clinical testing expenses have helped encourage the development of “orphan” drugs for human use, and comparable incentives should encourage the development of new animal drugs for minor species and minor uses.

(b) AMENDMENTS TO THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.—

(1) DEFINITIONS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

“(nn) The term ‘major species’ means cattle, horses, swine, chickens, turkeys, dogs, and cats, except that the Secretary may add species to this definition by regulation.

“(oo) The term ‘minor species’ means animals other than humans that are not major species.

“(pp) The term ‘minor use’ means the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually.”.

21 USC 360b.

(2) THREE-YEAR EXCLUSIVITY FOR MINOR USE AND MINOR SPECIES APPROVALS.—Section 512(c)(2)(F) (ii), (iii), and (v) of the Federal Food, Drug, and Cosmetic Act is amended by striking “(other than bioequivalence or residue studies)” and inserting “(other than bioequivalence studies or residue depletion studies, except residue depletion studies for minor uses or minor species)” every place it appears.

(3) SCOPE OF REVIEW FOR MINOR USE AND MINOR SPECIES APPLICATIONS.—Section 512(d) of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following new paragraph:

“(5) In reviewing an application that proposes a change to add an intended use for a minor use or a minor species to an approved new animal drug application, the Secretary shall reevaluate only the relevant information in the approved application to determine whether the application for the minor use or minor species can be approved. A decision to approve the application for the minor use or minor species is not, implicitly or explicitly, a reaffirmation of the approval of the original application.”.

(4) MINOR USE AND MINOR SPECIES NEW ANIMAL DRUGS.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by adding at the end the following:

“Subchapter F—New Animal Drugs for Minor Use and Minor Species

21 USC 360ccc.

“SEC. 571. CONDITIONAL APPROVAL OF NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES.

“(a)(1) Except as provided in paragraph (3) of this section, any person may file with the Secretary an application for conditional approval of a new animal drug intended for a minor use or a minor species. Such an application may not be a supplement to an application approved under section 512. Such application must comply in all respects with the provisions of section 512 of this Act except sections 512(a)(4), 512(b)(2), 512(c)(1), 512(c)(2), 512(c)(3), 512(d)(1), 512(e), 512(h), and 512(n) unless otherwise stated in this section, and any additional provisions of this section. New animal drugs are subject to application of the same safety standards that would be applied to such drugs under section 512(d) (including, for antimicrobial new animal drugs, with respect to antimicrobial resistance).

“(2) The applicant shall submit to the Secretary as part of an application for the conditional approval of a new animal drug—

“(A) all information necessary to meet the requirements of section 512(b)(1) except section 512(b)(1)(A);

“(B) full reports of investigations which have been made to show whether or not such drug is safe under section 512(d) (including, for an antimicrobial new animal drug, with respect to antimicrobial resistance) and there is a reasonable expectation of effectiveness for use; Reports.

“(C) data for establishing a conditional dose;

“(D) projections of expected need and the justification for that expectation based on the best information available;

“(E) information regarding the quantity of drug expected to be distributed on an annual basis to meet the expected need; and

“(F) a commitment that the applicant will conduct additional investigations to meet the requirements for the full demonstration of effectiveness under section 512(d)(1)(E) within 5 years.

“(3) A person may not file an application under paragraph (1) if—

“(A) the application seeks conditional approval of a new animal drug that is contained in, or is a product of, a transgenic animal.

“(B) the person has previously filed an application for conditional approval under paragraph (1) for the same drug in the same dosage form for the same intended use whether or not subsequently conditionally approved by the Secretary under subsection (b), or

“(C) the person obtained the application, or data or other information contained therein, directly or indirectly from the person who filed for conditional approval under paragraph (1) for the same drug in the same dosage form for the same intended use whether or not subsequently conditionally approved by the Secretary under subsection (b).

“(b) Within 180 days after the filing of an application pursuant to subsection (a), or such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall either— Deadline.

“(1) issue an order, effective for one year, conditionally approving the application if the Secretary finds that none of the grounds for denying conditional approval, specified in subsection (c) of this section applies and publish a Federal Register notice of the conditional approval, or Federal Register, publication.

“(2) give the applicant notice of an opportunity for an informal hearing on the question whether such application can be conditionally approved.

“(c) If the Secretary finds, after giving the applicant notice and an opportunity for an informal hearing, that—

“(1) any of the provisions of section 512(d)(1) (A) through (D) or (F) through (I) are applicable;

“(2) the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such drug, is insufficient to show that there is a reasonable expectation that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof; or

“(3) another person has received approval under section 512 for the same drug in the same dosage form for the same

	<p>intended use, and that person is able to assure the availability of sufficient quantities of the drug to meet the needs for which the drug is intended;</p> <p>the Secretary shall issue an order refusing to conditionally approve the application. If, after such notice and opportunity for an informal hearing, the Secretary finds that paragraphs (1) through (3) do not apply, the Secretary shall issue an order conditionally approving the application effective for one year and publish a Federal Register notice of the conditional approval. Any order issued under this subsection refusing to conditionally approve an application shall state the findings upon which it is based.</p>
Federal Register, publication.	<p>“(d) A conditional approval under this section is effective for a 1-year period and is thereafter renewable by the Secretary annually for up to 4 additional 1-year terms. A conditional approval shall be in effect for no more than 5 years from the date of approval under subsection (b)(1) or (c) of this section unless extended as provided for in subsection (h) of this section. The following shall also apply:</p>
Applicability.	<p>“(1) No later than 90 days from the end of the 1-year period for which the original or renewed conditional approval is effective, the applicant may submit a request to renew a conditional approval for an additional 1-year term.</p>
Deadline.	<p>“(2) A conditional approval shall be deemed renewed at the end of the 1-year period, or at the end of a 90-day extension that the Secretary may, at the Secretary’s discretion, grant by letter in order to complete review of the renewal request, unless the Secretary determines before the expiration of the 1-year period or the 90-day extension that—</p> <p>“(A) the applicant failed to submit a timely renewal request;</p> <p>“(B) the request fails to contain sufficient information to show that—</p> <p>“(i) the applicant is making sufficient progress toward meeting approval requirements under section 512(d)(1)(E), and is likely to be able to fulfill those requirements and obtain an approval under section 512 before the expiration of the 5-year maximum term of the conditional approval;</p> <p>“(ii) the quantity of the drug that has been distributed is consistent with the conditionally approved intended use and conditions of use, unless there is adequate explanation that ensures that the drug is only used for its intended purpose; or</p> <p>“(iii) the same drug in the same dosage form for the same intended use has not received approval under section 512, or if such a drug has been approved, that the holder of the approved application is unable to assure the availability of sufficient quantities of the drug to meet the needs for which the drug is intended; or</p> <p>“(C) any of the provisions of section 512(e)(1) (A) through (B) or (D) through (F) are applicable.</p> <p>“(3) If the Secretary determines before the end of the 1-year period or the 90-day extension, if granted, that a conditional approval should not be renewed, the Secretary shall issue an order refusing to renew the conditional approval, and such conditional approval shall be deemed withdrawn and no</p>

longer in effect. The Secretary shall thereafter provide an opportunity for an informal hearing to the applicant on the issue whether the conditional approval shall be reinstated.

“(e)(1) The Secretary shall issue an order withdrawing conditional approval of an application filed pursuant to subsection (a) if the Secretary finds that another person has received approval under section 512 for the same drug in the same dosage form for the same intended use and that person is able to assure the availability of sufficient quantities of the drug to meet the needs for which the drug is intended.

“(2) The Secretary shall, after due notice and opportunity for an informal hearing to the applicant, issue an order withdrawing conditional approval of an application filed pursuant to subsection (a) if the Secretary finds that—

“(A) any of the provisions of section 512(e)(1) (A) through (B) or (D) through (F) are applicable; or

“(B) on the basis of new information before the Secretary with respect to such drug, evaluated together with the evidence available to the Secretary when the application was conditionally approved, that there is not a reasonable expectation that such drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

“(3) The Secretary may also, after due notice and opportunity for an informal hearing to the applicant, issue an order withdrawing conditional approval of an application filed pursuant to subsection (a) if the Secretary finds that any of the provisions of section 512(e)(2) are applicable.

“(f)(1) The label and labeling of a new animal drug with a conditional approval under this section shall—

“(A) bear the statement, ‘conditionally approved by FDA pending a full demonstration of effectiveness under application number’; and

“(B) contain such other information as prescribed by the Secretary.

“(2) An intended use that is the subject of a conditional approval under this section shall not be included in the same product label with any intended use approved under section 512.

“(g) A conditionally approved new animal drug application may not be amended or supplemented to add indications for use.

“(h) 180 days prior to the termination date established under subsection (d) of this section, an applicant shall have submitted all the information necessary to support a complete new animal drug application in accordance with section 512(b)(1) or the conditional approval issued under this section is no longer in effect. Following review of this information, the Secretary shall either—

“(1) issue an order approving the application under section 512(c) if the Secretary finds that none of the grounds for denying approval specified in section 512(d)(1) applies, or

“(2) give the applicant an opportunity for a hearing before the Secretary under section 512(d) on the question whether such application can be approved.

Upon issuance of an order approving the application, product labeling and administrative records of approval shall be modified accordingly. If the Secretary has not issued an order under section 512(c) approving such application prior to the termination date established under subsection (d) of this section, the conditional

Deadline.

Records.

approval issued under this section is no longer in effect unless the Secretary grants an extension of an additional 180-day period so that the Secretary can complete review of the application. The decision to grant an extension is committed to the discretion of the Secretary and not subject to judicial review.

“(i) The decision of the Secretary under subsection (c), (d), or (e) of this section refusing or withdrawing conditional approval of an application shall constitute final agency action subject to judicial review.

“(j) In this section and section 572, the term ‘transgenic animal’ means an animal whose genome contains a nucleotide sequence that has been intentionally modified in vitro, and the progeny of such an animal; Provided that the term ‘transgenic animal’ does not include an animal of which the nucleotide sequence of the genome has been modified solely by selective breeding.

21 USC 360ccc–1.

“SEC. 572. INDEX OF LEGALLY MARKETED UNAPPROVED NEW ANIMAL DRUGS FOR MINOR SPECIES.

“(a)(1) The Secretary shall establish an index limited to—

“(A) new animal drugs intended for use in a minor species for which there is a reasonable certainty that the animal or edible products from the animal will not be consumed by humans or food-producing animals; and

“(B) new animal drugs intended for use only in a hatchery, tank, pond, or other similar contained man-made structure in an early, non-food life stage of a food-producing minor species, where safety for humans is demonstrated in accordance with the standard of section 512(d) (including, for an antimicrobial new animal drug, with respect to antimicrobial resistance).

“(2) The index shall not include a new animal drug that is contained in or a product of a transgenic animal.

“(b) Any person intending to file a request under this section shall be entitled to one or more conferences to discuss the requirements for indexing a new animal drug.

“(c)(1) Any person may submit a request to the Secretary for a determination whether a new animal drug may be eligible for inclusion in the index. Such a request shall include—

“(A) information regarding the need for the new animal drug, the species for which the new animal drug is intended, the proposed intended use and conditions of use, and anticipated annual distribution;

“(B) information to support the conclusion that the proposed use meets the conditions of subparagraph (A) or (B) of subsection (a)(1) of this section;

“(C) information regarding the components and composition of the new animal drug;

“(D) a description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such new animal drug;

“(E) an environmental assessment that meets the requirements of the National Environmental Policy Act of 1969, as amended, and as defined in 21 CFR Part 25, as it appears on the date of enactment of this provision and amended thereafter or information to support a categorical exclusion from the requirement to prepare an environmental assessment;

“(F) information sufficient to support the conclusion that the proposed use of the new animal drug is safe under section 512(d) with respect to individuals exposed to the new animal drug through its manufacture or use; and

“(G) such other information as the Secretary may deem necessary to make this eligibility determination.

“(2) Within 90 days after the submission of a request for a determination of eligibility for indexing based on subsection (a)(1)(A) of this section, or 180 days for a request submitted based on subsection (a)(1)(B) of this section, the Secretary shall grant or deny the request, and notify the person who requested such determination of the Secretary’s decision. The Secretary shall grant the request if the Secretary finds that—

Deadline.
Notification.

“(A) the same drug in the same dosage form for the same intended use is not approved or conditionally approved;

“(B) the proposed use of the drug meets the conditions of subparagraph (A) or (B) of subsection (a)(1), as appropriate;

“(C) the person requesting the determination has established appropriate specifications for the manufacture and control of the new animal drug and has demonstrated an understanding of the requirements of current good manufacturing practices;

“(D) the new animal drug will not significantly affect the human environment; and

“(E) the new animal drug is safe with respect to individuals exposed to the new animal drug through its manufacture or use.

If the Secretary denies the request, the Secretary shall thereafter provide due notice and an opportunity for an informal conference. A decision of the Secretary to deny an eligibility request following an informal conference shall constitute final agency action subject to judicial review.

“(d)(1) With respect to a new animal drug for which the Secretary has made a determination of eligibility under subsection (c), the person who made such a request may ask that the Secretary add the new animal drug to the index established under subsection (a). The request for addition to the index shall include—

“(A) a copy of the Secretary’s determination of eligibility issued under subsection (c);

Records.

“(B) a written report that meets the requirements in subsection (d)(2) of this section;

Reports.

“(C) a proposed index entry;

“(D) facsimile labeling;

“(E) anticipated annual distribution of the new animal drug;

“(F) a written commitment to manufacture the new animal drug and animal feeds bearing or containing such new animal drug according to current good manufacturing practices;

“(G) a written commitment to label, distribute, and promote the new animal drug only in accordance with the index entry;

“(H) upon specific request of the Secretary, information submitted to the expert panel described in paragraph (3); and

“(I) any additional requirements that the Secretary may prescribe by general regulation or specific order.

“(2) The report required in paragraph (1) shall—

“(A) be authored by a qualified expert panel;

“(B) include an evaluation of all available target animal safety and effectiveness information, including anecdotal information;

“(C) state the expert panel’s opinion regarding whether the benefits of using the new animal drug for the proposed use in a minor species outweigh its risks to the target animal, taking into account the harm being caused by the absence of an approved or conditionally approved new animal drug for the minor species in question;

“(D) include information from which labeling can be written; and

“(E) include a recommendation regarding whether the new animal drug should be limited to use under the professional supervision of a licensed veterinarian.

“(3) A qualified expert panel, as used in this section, is a panel that—

“(A) is composed of experts qualified by scientific training and experience to evaluate the target animal safety and effectiveness of the new animal drug under consideration;

“(B) operates external to FDA; and

“(C) is not subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Regulations.

The Secretary shall define the criteria for selection of a qualified expert panel and the procedures for the operation of the panel by regulation.

Deadline.

“(4) Within 180 days after the receipt of a request for listing a new animal drug in the index, the Secretary shall grant or deny the request. The Secretary shall grant the request if the request for indexing continues to meet the eligibility criteria in subsection (a) and the Secretary finds, on the basis of the report of the qualified expert panel and other information available to the Secretary, that the benefits of using the new animal drug for the proposed use in a minor species outweigh its risks to the target animal, taking into account the harm caused by the absence of an approved or conditionally-approved new animal drug for the minor species in question. If the Secretary denies the request, the Secretary shall thereafter provide due notice and the opportunity for an informal conference. The decision of the Secretary following an informal conference shall constitute final agency action subject to judicial review.

“(e)(1) The index established under subsection (a) shall include the following information for each listed drug—

“(A) the name and address of the person who holds the index listing;

“(B) the name of the drug and the intended use and conditions of use for which it is being indexed;

“(C) product labeling; and

“(D) conditions and any limitations that the Secretary deems necessary regarding use of the drug.

Publication.

“(2) The Secretary shall publish the index, and revise it periodically.

“(3) The Secretary may establish by regulation a process for reporting changes in the conditions of manufacturing or labeling of indexed products.

“(f)(1) If the Secretary finds, after due notice to the person who requested the index listing and an opportunity for an informal conference, that—

“(A) the expert panel failed to meet the requirements as set forth by the Secretary by regulation;

“(B) on the basis of new information before the Secretary, evaluated together with the evidence available to the Secretary when the new animal drug was listed in the index, the benefits of using the new animal drug for the indexed use do not outweigh its risks to the target animal;

“(C) the conditions of subsection (c)(2) of this section are no longer satisfied;

“(D) the manufacture of the new animal drug is not in accordance with current good manufacturing practices;

“(E) the labeling, distribution, or promotion of the new animal drug is not in accordance with the index entry;

“(F) the conditions and limitations of use associated with the index listing have not been followed; or

“(G) the request for indexing contains any untrue statement of material fact,

the Secretary shall remove the new animal drug from the index. The decision of the Secretary following an informal conference shall constitute final agency action subject to judicial review.

“(2) If the Secretary finds that there is a reasonable probability that the use of the drug would present a risk to the health of humans or other animals, the Secretary may—

“(A) suspend the listing of such drug immediately;

“(B) give the person listed in the index prompt notice of the Secretary’s action; and

“(C) afford that person the opportunity for an informal conference.

The decision of the Secretary following an informal conference shall constitute final agency action subject to judicial review.

“(g) For purposes of indexing new animal drugs under this section, to the extent consistent with the public health, the Secretary shall promulgate regulations for exempting from the operation of section 512 minor species new animal drugs and animal feeds bearing or containing new animal drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of minor species animal drugs. Such regulations may, at the discretion of the Secretary, among other conditions relating to the protection of the public health, provide for conditioning such exemption upon the establishment and maintenance of such records, and the making of such reports to the Secretary, by the manufacturer or the sponsor of the investigation of such article, of data (including but not limited to analytical reports by investigators) obtained as a result of such investigational use of such article, as the Secretary finds will enable the Secretary to evaluate the safety and effectiveness of such article in the event of the filing of a request for an index listing pursuant to this section.

Regulations.

“(h) The labeling of a new animal drug that is the subject of an index listing shall state, prominently and conspicuously—

“(1) ‘NOT APPROVED BY FDA.—Legally marketed as an FDA indexed product. Extra-label use is prohibited.’;

“(2) except in the case of new animal drugs indexed for use in an early life stage of a food-producing animal, ‘This product is not to be used in animals intended for use as food for humans or other animals.’; and

Records.
Reports.

“(3) such other information as may be prescribed by the Secretary in the index listing.

“(i)(1) In the case of any new animal drug for which an index listing pursuant to subsection (a) is in effect, the person who has an index listing shall establish and maintain such records, and make such reports to the Secretary, of data relating to experience, and other data or information, received or otherwise obtained by such person with respect to such drug, or with respect to animal feeds bearing or containing such drug, as the Secretary may by general regulation, or by order with respect to such listing, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination, whether there is or may be ground for invoking subsection (f). Such regulation or order shall provide, where the Secretary deems it to be appropriate, for the examination, upon request, by the persons to whom such regulation or order is applicable, of similar information received or otherwise obtained by the Secretary.

“(2) Every person required under this subsection to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

“(j)(1) Safety and effectiveness data and information which has been submitted in support of a request for a new animal drug to be indexed under this section and which has not been previously disclosed to the public shall be made available to the public, upon request, unless extraordinary circumstances are shown—

“(A) if no work is being or will be undertaken to have the drug indexed in accordance with the request,

“(B) if the Secretary has determined that such drug cannot be indexed and all legal appeals have been exhausted,

“(C) if the indexing of such drug is terminated and all legal appeals have been exhausted, or

“(D) if the Secretary has determined that such drug is not a new animal drug.

“(2) Any request for data and information pursuant to paragraph (1) shall include a verified statement by the person making the request that any data or information received under such paragraph shall not be disclosed by such person to any other person—

“(A) for the purpose of, or as part of a plan, scheme, or device for, obtaining the right to make, use, or market, or making, using, or marketing, outside the United States, the drug identified in the request for indexing; and

“(B) without obtaining from any person to whom the data and information are disclosed an identical verified statement, a copy of which is to be provided by such person to the Secretary, which meets the requirements of this paragraph.

21 USC 360ccc-2. **“SEC. 573. DESIGNATED NEW ANIMAL DRUGS FOR MINOR USE OR MINOR SPECIES.**

“(a) DESIGNATION.—

“(1) The manufacturer or the sponsor of a new animal drug for a minor use or use in a minor species may request that the Secretary declare that drug a ‘designated new animal drug’. A request for designation of a new animal drug shall

be made before the submission of an application under section 512(b) or section 571 for the new animal drug.

“(2) The Secretary may declare a new animal drug a ‘designated new animal drug’ if—

“(A) it is intended for a minor use or use in a minor species; and

“(B) the same drug in the same dosage form for the same intended use is not approved under section 512 or 571 or designated under this section at the time the request is made.

“(3) Regarding the termination of a designation—

“(A) the sponsor of a new animal drug shall notify the Secretary of any decision to discontinue active pursuit of approval under section 512 or 571 of an application for a designated new animal drug. The Secretary shall terminate the designation upon such notification;

“(B) the Secretary may also terminate designation if the Secretary independently determines that the sponsor is not actively pursuing approval under section 512 or 571 with due diligence;

“(C) the sponsor of an approved designated new animal drug shall notify the Secretary of any discontinuance of the manufacture of such new animal drug at least one year before discontinuance. The Secretary shall terminate the designation upon such notification; and

“(D) the designation shall terminate upon the expiration of any applicable exclusivity period under subsection (c).

“(4) Notice respecting the designation or termination of designation of a new animal drug shall be made available to the public.

“(b) GRANTS AND CONTRACTS FOR DEVELOPMENT OF DESIGNATED NEW ANIMAL DRUGS.—

“(1) The Secretary may make grants to and enter into contracts with public and private entities and individuals to assist in defraying the costs of qualified safety and effectiveness testing expenses and manufacturing expenses incurred in connection with the development of designated new animal drugs.

“(2) For purposes of paragraph (1) of this section—

“(A) The term ‘qualified safety and effectiveness testing’ means testing—

“(i) which occurs after the date such new animal drug is designated under this section and before the date on which an application with respect to such drug is submitted under section 512; and

“(ii) which is carried out under an investigational exemption under section 512(j).

“(B) The term ‘manufacturing expenses’ means expenses incurred in developing processes and procedures associated with manufacture of the designated new animal drug which occur after the new animal drug is designated under this section and before the date on which an application with respect to such new animal drug is submitted under section 512 or 571.

“(c) EXCLUSIVITY FOR DESIGNATED NEW ANIMAL DRUGS.—

Notifications.
Terminations.

“(1) Except as provided in subsection (c)(2), if the Secretary approves or conditionally approves an application for a designated new animal drug, the Secretary may not approve or conditionally approve another application submitted for such new animal drug with the same intended use as the designated new animal drug for another applicant before the expiration of seven years from the date of approval or conditional approval of the application.

“(2) If an application filed pursuant to section 512 or section 571 is approved for a designated new animal drug, the Secretary may, during the 7-year exclusivity period beginning on the date of the application approval or conditional approval, approve or conditionally approve another application under section 512 or section 571 for such drug for such minor use or minor species for another applicant if—

“(A) the Secretary finds, after providing the holder of such an approved application notice and opportunity for the submission of views, that in the granted exclusivity period the holder of the approved application cannot assure the availability of sufficient quantities of the drug to meet the needs for which the drug was designated; or

“(B) such holder provides written consent to the Secretary for the approval or conditional approval of other applications before the expiration of such exclusivity period.”.

(5) CONFORMING AMENDMENTS.—

21 USC 321.

(A) Section 201(u) of the Federal Food, Drug, and Cosmetic Act is amended by striking “512” and inserting “512, 571”.

(B) Section 201(v) of the Federal Food, Drug, and Cosmetic Act is amended by inserting the following after paragraph (2): “Provided that any drug intended for minor use or use in a minor species that is not the subject of a final regulation published by the Secretary through notice and comment rulemaking finding that the criteria of paragraphs (1) and (2) have not been met (or that the exception to the criterion in paragraph (1) has been met) is a new animal drug.”.

21 USC 331.

(C) Section 301(e) of the Federal Food, Drug, and Cosmetic Act is amended by striking “512(a)(4)(C), 512(j), (l) or (m)” and inserting “512(a)(4)(C), 512 (j), (l) or (m), 572(i).”

(D) Section 301(j) of the Federal Food, Drug, and Cosmetic Act is amended by striking “520” and inserting “520, 571, 572, 573.”

21 USC 351.

(E) Section 502 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following new subsection:

“(w) If it is a new animal drug—

“(1) that is conditionally approved under section 571 and its labeling does not conform with the approved application or section 571(f), or that is not conditionally approved under section 571 and its label bears the statement set forth in section 571(f)(1)(A); or

“(2) that is indexed under section 572 and its labeling does not conform with the index listing under section 572(e) or 572(h), or that has not been indexed under section 572 and its label bears the statement set forth in section 572(h).”.

(F) Section 503(f) of the Federal Food, Drug, and Cosmetic Act is amended—

21 USC 353.

(i) in paragraph (1)(A)(ii) by striking “512” and inserting “512, a conditionally-approved application under section 571, or an index listing under section 572”; and

(ii) in paragraph (3) by striking “section 512” and inserting “section 512, 571, or 572”.

(G) Section 504(a)(1) of the Federal Food, Drug, and Cosmetic Act is amended by striking “512(b)” and inserting “512(b), a conditionally-approved application filed pursuant to section 571, or an index listing pursuant to section 572”.

21 USC 354.

(H) Sections 504(a)(2)(B) and 504(b) of the Federal Food, Drug, and Cosmetic Act are amended by striking “512(i)” each place it appears and inserting “512(i), or the index listing pursuant to section 572(e)”.

(I) Section 512(a) of the Federal Food, Drug, and Cosmetic Act is amended by striking paragraphs (1) and (2) and inserting the following:

21 USC 360b.

“(1) A new animal drug shall, with respect to any particular use or intended use of such drug, be deemed unsafe for purposes of section 501(a)(5) and section 402(a)(2)(C)(ii) unless—

“(A) there is in effect an approval of an application filed pursuant to subsection (b) with respect to such use or intended use of such drug, and such drug, its labeling, and such use conform to such approved application;

“(B) there is in effect a conditional approval of an application filed pursuant to section 571 with respect to such use or intended use of such drug, and such drug, its labeling, and such use conform to such conditionally approved application; or

“(C) there is in effect an index listing pursuant to section 572 with respect to such use or intended use of such drug in a minor species, and such drug, its labeling, and such use conform to such index listing.

A new animal drug shall also be deemed unsafe for such purposes in the event of removal from the establishment of a manufacturer, packer, or distributor of such drug for use in the manufacture of animal feed in any State unless at the time of such removal such manufacturer, packer, or distributor has an unrevoked written statement from the consignee of such drug, or notice from the Secretary, to the effect that, with respect to the use of such drug in animal feed, such consignee (i) holds a license issued under subsection (m) and has in its possession current approved labeling for such drug in animal feed; or (ii) will, if the consignee is not a user of the drug, ship such drug only to a holder of a license issued under subsection (m).

“(2) An animal feed bearing or containing a new animal drug shall, with respect to any particular use or intended use of such animal feed be deemed unsafe for purposes of section 501(a)(6) unless—

“(A) there is in effect—

“(i) an approval of an application filed pursuant to subsection (b) with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such approved application;

“(ii) a conditional approval of an application filed pursuant to section 571 with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such conditionally approved application; or

“(iii) an index listing pursuant to section 572 with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such index listing; and

“(B) such animal feed is manufactured at a site for which there is in effect a license issued pursuant to subsection (m)(1) to manufacture such animal feed.”.

21 USC 360b.

(J) Section 512(b)(3) of the Federal Food, Drug, and Cosmetic Act is amended by striking “under paragraph (1) or a request for an investigational exemption under subsection (j)” and inserting “under paragraph (1), section 571, or a request for an investigational exemption under subsection (j)”.

(K) Section 512(d)(4) of the Federal Food, Drug, and Cosmetic Act is amended by striking “have previously been separately approved” and inserting “have previously been separately approved pursuant to an application submitted under section 512(b)(1)”.

(L) Section 512(f) of the Federal Food, Drug, and Cosmetic Act is amended by striking “subsection (d), (e), or (m)” and inserting “subsection (d), (e), or (m), or section 571 (c), (d), or (e)”.

(M) Section 512(g) of the Federal Food, Drug, and Cosmetic Act is amended by striking “this section” and inserting “this section, or section 571”.

(N) Section 512(i) of the Federal Food, Drug, and Cosmetic Act is amended by striking “subsection (b)” and inserting “subsection (b) or section 571” and by inserting “or upon failure to renew a conditional approval under section 571” after “or upon its suspension”.

(O) Section 512(l)(1) of the Federal Food, Drug, and Cosmetic Act is amended by striking “subsection (b)” and inserting “subsection (b) or section 571”.

(P) Section 512(m)(1)(C) of the Federal Food, Drug, and Cosmetic Act is amended by striking “applicable regulations published pursuant to subsection (i)” and inserting “applicable regulations published pursuant to subsection (i) or for indexed new animal drugs in accordance with the index listing published pursuant to section 572(e)(2) and the labeling requirements set forth in section 572(h)”.

(Q) Section 512(m)(3) of the Federal Food, Drug, and Cosmetic Act is amended by inserting “or an index listing pursuant to section 572(e)” after “subsection (i)” each place it appears.

(R) Section 512(p)(1) of the Federal Food, Drug, and Cosmetic Act is amended by striking “subsection (b)(1)” and inserting “subsection (b)(1) or section 571(a)”.

(S) Section 512(p)(2) of the Federal Food, Drug, and Cosmetic Act is amended by striking “subsection (b)(1)” and inserting “subsection (b)(1) or section 571(a)”.

(T) Section 108(b)(3) of Public Law 90–399 is amended by striking “section 201(w) as added by this Act” and inserting “section 201(v)”.

21 USC 360b
note.

(6) REGULATIONS.—On the date of enactment of this Act, the Secretary of Health and Human Services shall implement sections 571 and 573 of the Federal Food, Drug, and Cosmetic Act and subsequently publish implementing regulations. Not later than 12 months after the date of enactment of this Act, the Secretary shall issue proposed regulations to implement section 573 of the Federal Food, Drug, and Cosmetic Act (as added by this Act), and not later than 24 months after the date of enactment of this Act, the Secretary shall issue final regulations implementing section 573 of the Federal Food, Drug, and Cosmetic Act. Not later than 18 months after the date of enactment of this Act, the Secretary shall issue proposed regulations to implement section 572 of the Federal Food, Drug, and Cosmetic Act (as added by this Act), and not later than 36 months after the date of enactment of this Act, the Secretary shall issue final regulations implementing section 572 of the Federal Food, Drug, and Cosmetic Act. Not later than 30 months after the date of enactment of this Act, the Secretary shall issue proposed regulations to implement section 571 of the Federal Food, Drug, and Cosmetic Act (as added by this Act), and not later than 42 months after the date of enactment of this Act, the Secretary shall issue final regulations implementing section 571 of the Federal Food, Drug, and Cosmetic Act. These timeframes shall be extended by 12 months for each fiscal year, in which the funds authorized to be appropriated under subsection (i) are not in fact appropriated.

Effective date.
Deadlines.
Publication.
21 USC 360ccc
note.

(7) OFFICE.—The Secretary of Health and Human Services shall establish within the Center for Veterinary Medicine (of the Food and Drug Administration), an Office of Minor Use and Minor Species Animal Drug Development that reports directly to the Director of the Center for Veterinary Medicine. This office shall be responsible for overseeing the development and legal marketing of new animal drugs for minor uses and minor species. There is authorized to be appropriated to carry out this subsection \$1,200,000 for fiscal year 2004 and such sums as may be necessary for each fiscal year thereafter.

Government
organization.
21 USC 393 note.

Appropriation
authorization.

(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out section 573(b) of the Federal Food, Drug, and Cosmetic Act (as added by this section) \$1,000,000 for the fiscal year following publication of final implementing regulations, \$2,000,000 for the subsequent fiscal year, and such sums as may be necessary for each fiscal year thereafter.

TITLE II—FOOD ALLERGEN LABELING AND CONSUMER PROTECTION

Food Allergen
Labeling and
Consumer
Protection Act of
2004.
21 USC 301 note.

SEC. 201. SHORT TITLE.

This title may be cited as the “Food Allergen Labeling and Consumer Protection Act of 2004”.

SEC. 202. FINDINGS.

21 USC 343 note.

Congress finds that—

(1) it is estimated that—

(A) approximately 2 percent of adults and about 5 percent of infants and young children in the United States suffer from food allergies; and

(B) each year, roughly 30,000 individuals require emergency room treatment and 150 individuals die because of allergic reactions to food;

(2)(A) eight major foods or food groups—milk, eggs, fish, Crustacean shellfish, tree nuts, peanuts, wheat, and soybeans—account for 90 percent of food allergies;

(B) at present, there is no cure for food allergies; and

(C) a food allergic consumer must avoid the food to which the consumer is allergic;

(3)(A) in a review of the foods of randomly selected manufacturers of baked goods, ice cream, and candy in Minnesota and Wisconsin in 1999, the Food and Drug Administration found that 25 percent of sampled foods failed to list peanuts or eggs as ingredients on the food labels; and

(B) nationally, the number of recalls because of unlabeled allergens rose to 121 in 2000 from about 35 a decade earlier;

(4) a recent study shows that many parents of children with a food allergy were unable to correctly identify in each of several food labels the ingredients derived from major food allergens;

(5)(A) ingredients in foods must be listed by their “common or usual name”;

(B) in some cases, the common or usual name of an ingredient may be unfamiliar to consumers, and many consumers may not realize the ingredient is derived from, or contains, a major food allergen; and

(C) in other cases, the ingredients may be declared as a class, including spices, flavorings, and certain colorings, or are exempt from the ingredient labeling requirements, such as incidental additives; and

(6)(A) celiac disease is an immune-mediated disease that causes damage to the gastrointestinal tract, central nervous system, and other organs;

(B) the current recommended treatment is avoidance of glutens in foods that are associated with celiac disease; and

(C) a multicenter, multiyear study estimated that the prevalence of celiac disease in the United States is 0.5 to 1 percent of the general population.

SEC. 203. FOOD LABELING; REQUIREMENT OF INFORMATION REGARDING ALLERGENIC SUBSTANCES.

(a) IN GENERAL.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

“(w)(1) If it is not a raw agricultural commodity and it is, or it contains an ingredient that bears or contains, a major food allergen, unless either—

“(A) the word ‘Contains’, followed by the name of the food source from which the major food allergen is derived, is printed immediately after or is adjacent to the list of ingredients (in a type size no smaller than the type size used in the list of ingredients) required under subsections (g) and (i); or

“(B) the common or usual name of the major food allergen in the list of ingredients required under subsections (g) and (i) is followed in parentheses by the name of the food source from which the major food allergen is derived, except that the name of the food source is not required when—

“(i) the common or usual name of the ingredient uses the name of the food source from which the major food allergen is derived; or

“(ii) the name of the food source from which the major food allergen is derived appears elsewhere in the ingredient list, unless the name of the food source that appears elsewhere in the ingredient list appears as part of the name of a food ingredient that is not a major food allergen under section 201(qq)(2)(A) or (B).

“(2) As used in this subsection, the term ‘name of the food source from which the major food allergen is derived’ means the name described in section 201(qq)(1); provided that in the case of a tree nut, fish, or Crustacean shellfish, the term ‘name of the food source from which the major food allergen is derived’ means the name of the specific type of nut or species of fish or Crustacean shellfish.

“(3) The information required under this subsection may appear in labeling in lieu of appearing on the label only if the Secretary finds that such other labeling is sufficient to protect the public health. A finding by the Secretary under this paragraph (including any change in an earlier finding under this paragraph) is effective upon publication in the Federal Register as a notice.

Federal Register,
publication.

“(4) Notwithstanding subsection (g), (i), or (k), or any other law, a flavoring, coloring, or incidental additive that is, or that bears or contains, a major food allergen shall be subject to the labeling requirements of this subsection.

“(5) The Secretary may by regulation modify the requirements of subparagraph (A) or (B) of paragraph (1), or eliminate either the requirement of subparagraph (A) or the requirements of subparagraph (B) of paragraph (1), if the Secretary determines that the modification or elimination of the requirement of subparagraph (A) or the requirements of subparagraph (B) is necessary to protect the public health.

“(6)(A) Any person may petition the Secretary to exempt a food ingredient described in section 201(qq)(2) from the allergen labeling requirements of this subsection.

“(B) The Secretary shall approve or deny such petition within 180 days of receipt of the petition or the petition shall be deemed denied, unless an extension of time is mutually agreed upon by the Secretary and the petitioner.

“(C) The burden shall be on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that such food ingredient, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health.

“(D) A determination regarding a petition under this paragraph shall constitute final agency action.

“(E) The Secretary shall promptly post to a public site all petitions received under this paragraph within 14 days of receipt and the Secretary shall promptly post the Secretary’s response to each.

Public
information.
Deadline.

“(7)(A) A person need not file a petition under paragraph (6) to exempt a food ingredient described in section 201(qq)(2) from the allergen labeling requirements of this subsection, if the person files with the Secretary a notification containing—

“(i) scientific evidence (including the analytical method used) that demonstrates that the food ingredient (as derived by the method specified in the notification, where applicable) does not contain allergenic protein; or

“(ii) a determination by the Secretary that the ingredient does not cause an allergic response that poses a risk to human health under a premarket approval or notification program under section 409.

Deadlines.

“(B) The food ingredient may be introduced or delivered for introduction into interstate commerce as a food ingredient that is not a major food allergen 90 days after the date of receipt of the notification by the Secretary, unless the Secretary determines within the 90-day period that the notification does not meet the requirements of this paragraph, or there is insufficient scientific evidence to determine that the food ingredient does not contain allergenic protein or does not cause an allergenic response that poses a risk to human health.

Public
information.
Deadline.

“(C) The Secretary shall promptly post to a public site all notifications received under this subparagraph within 14 days of receipt and promptly post any objections thereto by the Secretary.

“(x) Notwithstanding subsection (g), (i), or (k), or any other law, a spice, flavoring, coloring, or incidental additive that is, or that bears or contains, a food allergen (other than a major food allergen), as determined by the Secretary by regulation, shall be disclosed in a manner specified by the Secretary by regulation.”.

21 USC 343 note.

(b) EFFECT ON OTHER AUTHORITY.—The amendments made by this section that require a label or labeling for major food allergens do not alter the authority of the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) to require a label or labeling for other food allergens.

(c) CONFORMING AMENDMENTS.—

(1) Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) (as amended by section 102(b)) is amended by adding at the end the following:

“(qq) The term ‘major food allergen’ means any of the following:

“(1) Milk, egg, fish (e.g., bass, flounder, or cod), Crustacean shellfish (e.g., crab, lobster, or shrimp), tree nuts (e.g., almonds, pecans, or walnuts), wheat, peanuts, and soybeans.

“(2) A food ingredient that contains protein derived from a food specified in paragraph (1), except the following:

“(A) Any highly refined oil derived from a food specified in paragraph (1) and any ingredient derived from such highly refined oil.

“(B) A food ingredient that is exempt under paragraph (6) or (7) of section 403(w).”.

(2) Section 403A(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–1(a)(2)) is amended by striking “or 403(i)(2)” and inserting “403(i)(2), 403(w), or 403(x)”.

Applicability.
21 USC 321 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any food that is labeled on or after January 1, 2006.

SEC. 204. REPORT ON FOOD ALLERGENS.

Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that—

(1)(A) analyzes—

(i) the ways in which foods, during manufacturing and processing, are unintentionally contaminated with major food allergens, including contamination caused by the use by manufacturers of the same production line to produce both products for which major food allergens are intentional ingredients and products for which major food allergens are not intentional ingredients; and

(ii) the ways in which foods produced on dedicated production lines are unintentionally contaminated with major food allergens; and

(B) estimates how common the practices described in subparagraph (A) are in the food industry, with breakdowns by food type as appropriate;

(2) advises whether good manufacturing practices or other methods can be used to reduce or eliminate cross-contact of foods with the major food allergens;

(3) describes—

(A) the various types of advisory labeling (such as labeling that uses the words “may contain”) used by food producers;

(B) the conditions of manufacture of food that are associated with the various types of advisory labeling; and

(C) the extent to which advisory labels are being used on food products;

(4) describes how consumers with food allergies or the caretakers of consumers would prefer that information about the risk of cross-contact be communicated on food labels as determined by using appropriate survey mechanisms;

(5) states the number of inspections of food manufacturing and processing facilities conducted in the previous 2 years and describes—

(A) the number of facilities and food labels that were found to be in compliance or out of compliance with respect to cross-contact of foods with residues of major food allergens and the proper labeling of major food allergens;

(B) the nature of the violations found; and

(C) the number of voluntary recalls, and their classifications, of foods containing undeclared major food allergens; and

(6) assesses the extent to which the Secretary and the food industry have effectively addressed cross-contact issues.

SEC. 205. INSPECTIONS RELATING TO FOOD ALLERGENS.

21 USC 374a.

The Secretary of Health and Human Services shall conduct inspections consistent with the authority under section 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374) of facilities in which foods are manufactured, processed, packed, or held—

(1) to ensure that the entities operating the facilities comply with practices to reduce or eliminate cross-contact of a food

with residues of major food allergens that are not intentional ingredients of the food; and

(2) to ensure that major food allergens are properly labeled on foods.

Deadlines.
Regulations.
21 USC 343 note.

SEC. 206. GLUTEN LABELING.

Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with appropriate experts and stakeholders, shall issue a proposed rule to define, and permit use of, the term “gluten-free” on the labeling of foods. Not later than 4 years after the date of enactment of this Act, the Secretary shall issue a final rule to define, and permit use of, the term “gluten-free” on the labeling of foods.

42 USC 242r.

SEC. 207. IMPROVEMENT AND PUBLICATION OF DATA ON FOOD-RELATED ALLERGIC RESPONSES.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Commissioner of Food and Drugs, shall improve (including by educating physicians and other health care providers) the collection of, and publish as it becomes available, national data on—

- (1) the prevalence of food allergies;
- (2) the incidence of clinically significant or serious adverse events related to food allergies; and
- (3) the use of different modes of treatment for and prevention of allergic responses to foods.

(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

42 USC 243 note.

SEC. 208. FOOD ALLERGIES RESEARCH.

Government
organization.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, shall convene an ad hoc panel of nationally recognized experts in allergy and immunology to review current basic and clinical research efforts related to food allergies.

Deadline.
Public
information.

(b) RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act, the panel shall make recommendations to the Secretary for enhancing and coordinating research activities concerning food allergies, which the Secretary shall make public.

SEC. 209. FOOD ALLERGENS IN THE FOOD CODE.

The Secretary of Health and Human Services shall, in the Conference for Food Protection, as part of its efforts to encourage cooperative activities between the States under section 311 of the Public Health Service Act (42 U.S.C. 243), pursue revision of the Food Code to provide guidelines for preparing allergen-free foods in food establishments, including in restaurants, grocery store delicatessens and bakeries, and elementary and secondary school cafeterias. The Secretary shall consider guidelines and recommendations developed by public and private entities for public and private food establishments for preparing allergen-free foods in pursuing this revision.

SEC. 210. RECOMMENDATIONS REGARDING RESPONDING TO FOOD-RELATED ALLERGIC RESPONSES. 42 USC 300d–2 note.

The Secretary of Health and Human Services shall, in providing technical assistance relating to trauma care and emergency medical services to State and local agencies under section 1202(b)(3) of the Public Health Service Act (42 U.S.C. 300d–2(b)(3)), include technical assistance relating to the use of different modes of treatment for and prevention of allergic responses to foods.

Approved August 2, 2004.

LEGISLATIVE HISTORY—S. 741:

HOUSE REPORTS: No. 108–608 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 108–226 (Comm. on Health, Education, Labor, and Pensions).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 8, considered and passed Senate.

July 20, considered and passed House.



Public Law 108–283
108th Congress

An Act

Aug. 2, 2004

[S. 2264]

Northern Uganda
Crisis Response
Act.

To require a report on the conflict in Uganda, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Northern Uganda Crisis Response Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States and the Republic of Uganda enjoy a strong bilateral relationship and continue to work closely together in fighting the human immunodeficiency virus and acquired immune deficiency syndrome (“HIV/AIDS”) pandemic and combating international terrorism.

(2) For more than 17 years, the Government of Uganda has been engaged in a conflict with the Lord’s Resistance Army that has inflicted hardship and suffering on the people of northern and eastern Uganda.

(3) The members of the Lord’s Resistance Army have used brutal tactics during this conflict, including abducting and forcing individuals into sexual servitude, and forcing a large number of children, estimated to be between 16,000 and 26,000 children, in Uganda to serve in such Army’s military forces.

(4) The Secretary of State has designated the Lord’s Resistance Army as a terrorist organization and placed the Lord’s Resistance Army on the Terrorist Exclusion list pursuant to section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)).

(5) According to Human Rights Watch, since the mid-1990s the only known sponsor of the Lord’s Resistance Army has been the Government of Sudan, though such Government denies providing assistance to the Lord’s Resistance Army.

(6) More than 1,000,000 people have been displaced from their homes in Uganda as a result of the conflict.

(7) The conflict has resulted in a lack of security for the people of Uganda, and as a result of such lack, each night more than 18,000 children leave their homes and flee to the relative safety of town centers, creating a massive “night commuter” phenomenon that leaves already vulnerable children subject to exploitation and abuse.

(8) Individuals who have been displaced by the conflict in Uganda often suffer from acute malnutrition and the mortality rate for children in northern Uganda who have been displaced is very high.

(9) In the latter part of 2003, humanitarian and human rights organizations operating in northern Uganda reported an increase in violence directed at their efforts and at civilians, including a sharp increase in child abductions.

(10) The Government of Uganda's military efforts to resolve this conflict, including the arming and training of local militia forces, have not ensured the security of civilian populations in the region to date.

(11) The continued instability and lack of security in Uganda has severely hindered the ability of any organization or governmental entity to deliver regular humanitarian assistance and services to individuals who have been displaced or otherwise negatively affected by the conflict.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that the Government of the United States should—

(1) work vigorously to support ongoing efforts to explore the prospects for a peaceful resolution of the conflict in northern and eastern Uganda;

(2) work with the Government of Uganda and the international community to make available sufficient resources to meet the immediate relief and development needs of the towns and cities in Uganda that are supporting large numbers of people who have been displaced by the conflict;

(3) urge the Government of Uganda and the international community to assume greater responsibility for the protection of civilians and economic development in regions in Uganda affected by the conflict, and to place a high priority on providing security, economic development, and humanitarian assistance to the people of Uganda;

(4) work with the international community, the Government of Uganda, and civil society in northern and eastern Uganda to develop a plan whereby those now displaced may return to their homes or to other locations where they may become economically productive;

(5) urge the leaders and members of the Lord's Resistance Army to stop the abduction of children, and urge all armed forces in Uganda to stop the use of child soldiers, and seek the release of all individuals who have been abducted;

(6) make available increased resources for assistance to individuals who were abducted during the conflict, child soldiers, and other children affected by the conflict;

(7) work with the Government of Uganda, other countries, and international organizations to ensure that sufficient resources and technical support are devoted to the demobilization and reintegration of rebel combatants and abductees forced by their captors to serve in non-combatant support roles;

(8) cooperate with the international community to support civil society organizations and leaders in Uganda, including Acholi religious leaders, who are working toward a just and lasting resolution to the conflict;

(9) urge the Government of Uganda to improve the professionalism of Ugandan military personnel currently stationed in northern and eastern Uganda, with an emphasis on respect for human rights, accountability for abuses, and effective civilian protection;

(10) work with the international community to assist institutions of civil society in Uganda to increase the capacity of such institutions to monitor the human rights situation in northern Uganda and to raise awareness of abuses of human rights that occur in that area;

(11) urge the Government of Uganda to permit international human rights monitors to establish a presence in northern and eastern Uganda;

(12) monitor the creation of civilian militia forces in northern and eastern Uganda and publicize any concerns regarding the recruitment of children into such forces or the potential that the establishment of such forces will invite increased targeting of civilians in the conflict or exacerbate ethnic tension and violence; and

(13) make clear that the relationship between the Government of Sudan and the Government of the United States cannot improve unless no credible evidence indicates that authorities of the Government of Sudan are complicit in efforts to provide weapons or other support to the Lord's Resistance Army.

SEC. 4. REPORT.

(a) REQUIREMENTS.—Not later than 6 months after the date of enactment of this Act, the Secretary of State shall submit a report to the appropriate congressional committees on the conflict in Uganda.

(b) CONTENT.—The report required by subsection (a) shall include a description of the following:

(1) The individuals or entities that are providing financial and material support for the Lord's Resistance Army, including a description of any such support provided by the Government of Sudan or by senior officials of such Government.

(2) The activities of the Lord's Resistance Army that create obstacles that prohibit the provision of humanitarian assistance or the protection of the civilian population in Uganda.

(3) The practices employed by the Ugandan People's Defense Forces in northern and eastern Uganda to ensure that children and civilians are protected, that civilian complaints are addressed, and that any member of the armed forces that abuses a civilian is held accountable for such abuse.

(4) The actions carried out by the Government of the United States, the Government of Uganda, or the international community to protect civilians, especially women and children, who have been displaced by the conflict in Uganda, including women and children that leave their homes and flee to cities and towns at night in search of security from sexual exploitation and gender-based violence.

(c) FORM OF REPORT.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" means

the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

Approved August 2, 2004.

LEGISLATIVE HISTORY—S. 2264:

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 7, considered and passed Senate.

July 14, 19, considered and passed House.



Public Law 108–284
108th Congress

Joint Resolution

Aug. 2, 2004
[S.J. Res. 38]

Providing for the appointment of Eli Broad as a citizen regent of the Board of Regents of the Smithsonian Institution.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in accordance with section 5581 of the Revised Statutes (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, resulting from the death of Barber B. Conable, Jr., is filled by the appointment of Eli Broad of California. The appointment is for a term of 6 years, beginning upon the date of enactment of this joint resolution.

Approved August 2, 2004.

LEGISLATIVE HISTORY—S.J. Res. 38:

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 9, considered and passed Senate.

July 20, considered and passed House.



Public Law 108–285
108th Congress

An Act

To facilitate self-help housing homeownership opportunities.

Aug. 2, 2004

[H.R. 4363]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Helping Hands for Homeownership Act of 2004”.

Helping Hands
for
Homeownership
Act of 2004.
42 USC 1441
note.

SEC. 2. ASSISTANCE FOR SELF-HELP HOUSING PROVIDERS.

Paragraph (1) of section 11(b) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) is amended by striking “dwelling” and inserting “dwellings”.

SEC. 3. DESIGNATION OF DOUG BEREUTER SECTION 502 SINGLE FAMILY HOUSING LOAN GUARANTEE PROGRAM.

42 USC 1472
note.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that—

(1) the Cranston-Gonzalez National Affordable Housing Act, enacted November 28, 1990, established the section 502 single family housing loan guarantee program of the Rural Housing Service of the United States Department of Agriculture;

(2) Congressman Doug Bereuter of Nebraska was the legislative author of the single family housing loan guarantee program;

(3) 316,625 single family loans have been guaranteed under the program since its implementation in 1991;

(4) the program facilitates home ownership for low- to moderate-income borrowers in rural areas and nonmetropolitan communities who are unable to obtain conventional home mortgage financing; and

(5) in 2003, the average income of a borrower with a loan guaranteed under the section 502 guarantee program was \$34,124.

(b) DESIGNATION.—Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended—

(1) by redesignating paragraphs (1) through (13) as paragraphs (2) through (14), respectively;

(2) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) SHORT TITLE.—This subsection may be cited as the ‘Doug Bereuter Section 502 Single Family Housing Loan Guarantee Act’.”; and

(3) by striking the subsection designation and heading and inserting the following:

“(h) DOUG BEREUTER SECTION 502 SINGLE FAMILY HOUSING LOAN GUARANTEE PROGRAM.—”.

(c) CONFORMING AMENDMENTS.—Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)), as amended by section 2 of this Act, is further amended—

(1) in paragraph (5)(A), by striking “paragraph (12)(A)” and inserting “paragraph (13)”; and

(2) in paragraph (14)—

(A) in subparagraph (A), by striking “GENERAL” and inserting “GENERAL”; and

(B) in subparagraph (E)—

(i) by striking “paragraph (1) and paragraphs (2), (5), (6)(A), (7), and (9)” and inserting “paragraph (2) and paragraphs (3), (6), (7)(A), (8), and (10)”; and

(ii) by striking “paragraphs (1) through (12)” and inserting “paragraphs (2) through (13)”.

Approved August 2, 2004.

LEGISLATIVE HISTORY—H.R. 4363:

HOUSE REPORTS: No. 108–546 (Comm. on Financial Services).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 21, considered and passed House.

July 14, considered and passed Senate.



Public Law 108–286
108th Congress

An Act

To implement the United States-Australia Free Trade Agreement.

Aug. 3, 2004

[H.R. 4759]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States-Australia Free Trade Agreement Implementation Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

United States-
Australia Free
Trade Agreement
Implementation
Act.
19 USC 3805
note.

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

Sec. 3. Definitions.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

Sec. 101. Approval and entry into force of the Agreement.

Sec. 102. Relationship of the Agreement to United States and State law.

Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.

Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.

Sec. 105. Administration of dispute settlement proceedings.

Sec. 106. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

Sec. 201. Tariff modifications.

Sec. 202. Additional duties on certain agricultural goods.

Sec. 203. Rules of origin.

Sec. 204. Customs user fees.

Sec. 205. Disclosure of incorrect information.

Sec. 206. Enforcement relating to trade in textile and apparel goods.

Sec. 207. Regulations.

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

Sec. 311. Commencing of action for relief.

Sec. 312. Commission action on petition.

Sec. 313. Provision of relief.

Sec. 314. Termination of relief authority.

Sec. 315. Compensation authority.

Sec. 316. Confidential business information.

Subtitle B—Textile and Apparel Safeguard Measures

Sec. 321. Commencement of action for relief.

Sec. 322. Determination and provision of relief.

Sec. 323. Period of relief.

Sec. 324. Articles exempt from relief.

Sec. 325. Rate after termination of import relief.

Sec. 326. Termination of relief authority.

Sec. 327. Compensation authority.

Sec. 328. Business confidential information.

Subtitle C—Cases Under Title II of the Trade Act of 1974

Sec. 331. Findings and action on goods from Australia.

TITLE IV—PROCUREMENT

Sec. 401. Eligible products.

19 USC 3805
note.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and Australia, entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Australia for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

19 USC 3805
note.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term “Agreement” means the United States-Australia Free Trade Agreement approved by Congress under section 101(a)(1).

(2) HTS.—The term “HTS” means the Harmonized Tariff Schedule of the United States.

(3) TEXTILE OR APPAREL GOOD.—The term “textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

19 USC 3805
note.

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Australia Free Trade Agreement entered into on May 18, 2004, with the Government of Australia and submitted to Congress on July 6, 2004; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 6, 2004.

President.

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—

At such time as the President determines that Australia has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Australia providing for

the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

19 USC 3805
note.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) CONSTRUCTION.—Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States,

or

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term “State law” includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

19 USC 3805
note.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States

Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date on which the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—

Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104, may not take effect before the

15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) **WAIVER OF 15-DAY RESTRICTION.**—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

Deadlines.

(b) **INITIAL REGULATIONS.**—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

President.
19 USC 3805
note.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the United States International Trade Commission;

Reports.

(2) the President has submitted a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor; and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

President.
19 USC 3805
note.

(a) **ESTABLISHMENT OR DESIGNATION OF OFFICE.**—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 21 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 21 of the Agreement.

SEC. 106. EFFECTIVE DATES; EFFECT OF TERMINATION.19 USC 3805
note.

(a) **EFFECTIVE DATES.**—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force.

(b) **EXCEPTIONS.**—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) **TERMINATION OF THE AGREEMENT.**—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.19 USC 3805
note.

(a) **TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.**—The President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such continuation of duty-free or excise treatment, or
- (3) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, and 2.6, and Annex 2–B of the Agreement.

(b) **OTHER TARIFF MODIFICATIONS.**—Subject to the consultation and layover provisions of section 104, the President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such modifications as the United States may agree to with Australia regarding the staging of any duty treatment set forth in Annex 2–B of the Agreement,
- (3) such continuation of duty-free or excise treatment, or
- (4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Australia provided for by the Agreement.

(c) **CONVERSION TO AD VALOREM RATES.**—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 2–B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.19 USC 3805
note.

(a) **GENERAL PROVISIONS.**—

(1) **APPLICABILITY OF SUBSECTION.**—This subsection applies to additional duties assessed under subsections (b), (c), and (d).

(2) **APPLICABLE NTR (MFN) RATE OF DUTY.**—For purposes of subsections (b), (c), and (d), the term “applicable NTR (MFN) rate of duty” means, with respect to a safeguard good, a rate of duty that is the lesser of—

(A) the column 1 general rate of duty that would have been imposed under the HTS on the same safeguard good entered, without a claim for preferential treatment, at the time the additional duty is imposed under subsection (b), (c), or (d), as the case may be; or

(B) the column 1 general rate of duty that would have been imposed under the HTS on the same safeguard good

entered, without a claim for preferential treatment, on December 31, 2004.

(3) SCHEDULE RATE OF DUTY.—For purposes of subsections (b) and (c), the term “schedule rate of duty” means, with respect to a safeguard good, the rate of duty for that good set out in the Schedule of the United States to Annex 2–B of the Agreement.

(4) SAFEGUARD GOOD.—In this subsection, the term “safeguard good” means—

(A) a horticulture safeguard good described subsection (b)(1)(B); or

(B) a beef safeguard good described in subsection (c)(1) or subsection (d)(1)(A).

(5) EXCEPTIONS.—No additional duty shall be assessed on a good under subsection (b), (c), or (d) if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(6) TERMINATION.—The assessment of an additional duty on a good under subsection (b) or (c), whichever is applicable, shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 2–B of the Agreement.

Deadline.

(7) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under subsection (b), (c), or (d), the Secretary shall notify the Government of Australia in writing of such action and shall provide to that Government data supporting the assessment of the additional duty.

(b) ADDITIONAL DUTIES ON HORTICULTURE SAFEGUARD GOODS.—

(1) DEFINITIONS.—In this subsection:

(A) F.O.B.—The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(B) HORTICULTURE SAFEGUARD GOOD.—The term “horticulture safeguard good” means a good—

(i) that qualifies as an originating good under section 203;

(ii) that is included in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement; and

(iii) for which a claim for preferential treatment under the Agreement has been made.

(C) UNIT IMPORT PRICE.—The “unit import price” of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement.

(D) TRIGGER PRICE.—The “trigger price” for a good is the trigger price indicated for that good in the United States Horticulture Safeguard List set forth in Annex 3–A of the Agreement or any amendment thereto.

(2) **ADDITIONAL DUTIES.**—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section, the Secretary of the Treasury shall assess a duty on a horticulture safeguard good, in the amount determined under paragraph (3), if the Secretary determines that the unit import price of the good when it enters the United States is less than the trigger price for that good.

(3) **CALCULATION OF ADDITIONAL DUTY.**—The additional duty assessed under this subsection on a horticulture safeguard good shall be an amount determined in accordance with the following table:

If the excess of the trigger price over the unit import price is:	The additional duty is an amount equal to:
Not more than 10 percent of the trigger price	0.
More than 10 percent but not more than 40 percent of the trigger price	30 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price	50 percent of such excess.
More than 60 percent but not more than 75 percent of the trigger price	70 percent of such excess.
More than 75 percent of the trigger price	100 percent of such excess.

(c) **ADDITIONAL DUTIES ON BEEF SAFEGUARD GOODS BASED ON QUANTITY OF IMPORTS.**—

(1) **DEFINITION.**—In this subsection, the term “beef safeguard good” means a good—

(A) that qualifies as an originating good under section 203;

(B) that is listed in paragraph 3 of Annex I of the General Notes to the Schedule of the United States to Annex 2–B of the Agreement; and

(C) for which a claim for preferential treatment under the Agreement has been made.

(2) **ADDITIONAL DUTIES.**—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) and (5) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (3), on a beef safeguard good imported into the United States in a calendar year if the Secretary determines that, prior to such importation, the total volume of beef safeguard goods imported into the United States in that calendar year is equal to or greater than 110 percent of the volume set out for beef safeguard goods in the corresponding year in the table contained in paragraph 3(a) of Annex I of the General Notes to the Schedule of the United States to Annex 2–B of the Agreement. For purposes of this subsection, the years 1 through 19 set out in the table contained in paragraph 3(a) of such Annex I correspond to the calendar years 2005 through 2023.

(3) **CALCULATION OF ADDITIONAL DUTY.**—The additional duty on a beef safeguard good under this subsection shall

be an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.

(4) WAIVER.—

(A) IN GENERAL.—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) NOTICE AND CONSULTATIONS.—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

(i) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

(I) the reasons supporting the determination to grant the waiver; and

(II) the proposed scope and duration of the waiver.

(C) NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

(5) EFFECTIVE DATES.—This subsection takes effect on January 1, 2013, and shall not be effective after December 31, 2022.

(d) ADDITIONAL DUTIES ON BEEF SAFEGUARD GOODS BASED ON PRICE.—

(1) DEFINITIONS.—In this subsection:

(A) BEEF SAFEGUARD GOOD.—The term “beef safeguard good” means a good—

(i) that qualifies as an originating good under section 203;

(ii) that is classified under subheading 0201.10.50, 0201.20.80, 0201.30.80, 0202.10.50, 0202.20.80, or 0202.30.80 of the HTS; and

(iii) for which a claim for preferential treatment under the Agreement has been made.

(B) CALENDAR QUARTER.—

(i) IN GENERAL.—The term “calendar quarter” means any 3-month period beginning on January 1, April 1, July 1, or October 1 of a calendar year.

(ii) FIRST CALENDAR QUARTER.—The term “first calendar quarter” means the calendar quarter beginning on January 1.

Federal Register,
publication.

Termination
date.

(iii) SECOND CALENDAR QUARTER.—The term “second calendar quarter” means the calendar quarter beginning on April 1.

(iv) THIRD CALENDAR QUARTER.—The term “third calendar quarter” means the calendar quarter beginning on July 1.

(v) FOURTH CALENDAR QUARTER.—The term “fourth calendar quarter” means the calendar quarter beginning on October 1.

(C) MONTHLY AVERAGE INDEX PRICE.—The term “monthly average index price” means the simple average, as determined by the Secretary of Agriculture, for a calendar month of the daily average index prices for Wholesale Boxed Beef Cut-Out Value Select 1–3 Central U.S. 600–750 lbs., or its equivalent, as such simple average is reported by the Agricultural Marketing Service of the Department of Agriculture in Report LM–XB459 or any equivalent report.

(D) 24-MONTH TRIGGER PRICE.—The term “24-month trigger price” means, with respect to any calendar month, the average of the monthly average index prices for the 24 preceding calendar months, multiplied by 0.935.

(2) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a) of this section and paragraphs (4) through (6) of this subsection, the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (3), on a beef safeguard good imported into the United States if—

(A)(i) the good is imported in the first calendar quarter, second calendar quarter, or third calendar quarter of a calendar year; and

(ii) the monthly average index price, in any 2 calendar months of the preceding calendar quarter, is less than the 24-month trigger price; or

(B)(i) the good is imported in the fourth calendar quarter of a calendar year; and

(ii)(I) the monthly average index price, in any 2 calendar months of the preceding calendar quarter, is less than the 24-month trigger price; or

(II) the monthly average index price, in any of the 4 calendar months preceding January 1 of the succeeding calendar year, is less than the 24-month trigger price.

(3) CALCULATION OF ADDITIONAL DUTY.—The additional duty on a beef safeguard good under this subsection shall be an amount equal to 65 percent of the applicable NTR (MFN) rate of duty for that good.

(4) LIMITATION.—An additional duty shall be assessed under this subsection on a beef safeguard good imported into the United States in a calendar year only if, prior to the importation of that good, the total quantity of beef safeguard goods imported into the United States in that calendar year is equal to or greater than the sum of—

(A) the quantity of goods of Australia eligible to enter the United States in that year specified in Additional United States Note 3 to Chapter 2 of the HTS; and

(B)(i) in 2023, 70,420 metric tons; or

(ii) in 2024, and in each year thereafter, a quantity that is 0.6 percent greater than the quantity provided for in the preceding year under this subparagraph.

(5) **WAIVER.**—

(A) **IN GENERAL.**—The United States Trade Representative is authorized to waive the application of this subsection, if the Trade Representative determines that extraordinary market conditions demonstrate that the waiver would be in the national interest of the United States, after the requirements of subparagraph (B) are met.

(B) **NOTICE AND CONSULTATIONS.**—Promptly after receiving a request for a waiver of this subsection, the Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and may make the determination provided for in subparagraph (A) only after consulting with—

(i) appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(ii) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding—

(I) the reasons supporting the determination to grant the waiver; and

(II) the proposed scope and duration of the waiver.

(C) **NOTIFICATION OF THE SECRETARY OF THE TREASURY AND PUBLICATION.**—Upon granting a waiver under this paragraph, the Trade Representative shall promptly notify the Secretary of the Treasury of the period in which the waiver will be in effect, and shall publish notice of the waiver in the Federal Register.

(6) **EFFECTIVE DATE.**—This subsection takes effect on January 1, 2023.

Federal Register,
publication.

19 USC 3805
note.

SEC. 203. RULES OF ORIGIN.

(a) **APPLICATION AND INTERPRETATION.**—In this section:

(1) **TARIFF CLASSIFICATION.**—The basis for any tariff classification is the HTS.

(2) **REFERENCE TO HTS.**—Whenever in this section there is a reference to a heading or subheading, such reference shall be a reference to a heading or subheading of the HTS.

(3) **COST OR VALUE.**—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Australia or the United States).

(b) **ORIGINATING GOODS.**—For purposes of this Act and for purposes of implementing the preferential treatment provided for under the Agreement, a good is an originating good if—

(1) the good is a good wholly obtained or produced entirely in the territory of Australia, the United States, or both;

(2) the good—

(A) is produced entirely in the territory of Australia, the United States, or both, and—

(i) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4–A or Annex 5–A of the Agreement;

(ii) the good otherwise satisfies any applicable regional value-content requirement referred to in Annex 5–A of the Agreement; or

(iii) the good meets any other requirements specified in Annex 4–A or Annex 5–A of the Agreement; and

(B) the good satisfies all other applicable requirements of this section;

(3) the good is produced entirely in the territory of Australia, the United States, or both, exclusively from materials described in paragraph (1) or (2); or

(4) the good otherwise qualifies as an originating good under this section.

(c) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 5–A of the Agreement is an originating good if—

(A) the value of all nonoriginating materials that—
(i) are used in the production of the good, and
(ii) do not undergo the required change in tariff classification,

does not exceed 10 percent of the adjusted value of the good;

(B) the good meets all other applicable requirements of this section; and

(C) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement for the good.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 that is used in the production of a good provided for in chapter 4 of the HTS.

(B) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 that is used in the production of a good provided for in subheading 1901.10, 1901.20, or 1901.90, heading 2105, or subheading 2106.90, 2202.90, or 2309.90.

(C) A nonoriginating material provided for in heading 0805 or any of subheadings 2009.11 through 2009.39 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, or in subheading 2106.90 or 2202.90.

(D) A nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, or in heading 1512, 1514, or 1515.

(E) A nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703.

(F) A nonoriginating material provided for in chapter 17 of the HTS or heading 1805.00.00 that is used in the production of a good provided for in subheading 1806.10.

(G) A nonoriginating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in heading 2207 or 2208.

(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) TEXTILE AND APPAREL GOODS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4–A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Australia or the United States.

(C) YARN, FABRIC, OR FIBER.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term “component of the good that determines the tariff classification of the good” means all of the fibers in the yarn, fabric, or group of fibers.

(d) ACCUMULATION.—

(1) ORIGINATING MATERIALS USED IN PRODUCTION OF GOODS OF OTHER COUNTRY.—Originating materials from the territory of Australia or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of Australia, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(e) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of a good referred to in Annex 5–A of the Agreement, except for goods to which paragraph (4) applies, shall be calculated by the importer, exporter, or producer of the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3).

(2) BUILD-DOWN METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-down method:

$$\text{RVC} = \frac{\text{AV}-\text{VNM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term “RVC” means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term “AV” means the adjusted value of the good.

(iii) VNM.—The term “VNM” means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(3) BUILD-UP METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term “RVC” means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term “AV” means the adjusted value of the good.

(iii) VOM.—The term “VOM” means the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

(4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE GOODS.—

(A) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of an automotive good referred to in Annex 5–A of the Agreement shall be calculated by the importer, exporter, or producer of the good, on the basis of the following net cost method:

$$\text{RVC} = \frac{\text{NC}-\text{VNM}}{\text{NC}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) AUTOMOTIVE GOOD.—The term “automotive good” means a good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or in any of headings 8701 through 8708.

(ii) RVC.—The term “RVC” means the regional value-content of the automotive good, expressed as a percentage.

(iii) NC.—The term “NC” means the net cost of the automotive good.

(iv) VNM.—The term “VNM” means the value of nonoriginating materials that are acquired and used by the producer in the production of the automotive good, but does not include the value of a material that is self-produced.

(C) MOTOR VEHICLES.—

(i) **BASIS OF CALCULATION.**—For purposes of determining the regional value-content under subparagraph (A) for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula contained in subparagraph (A), over the producer's fiscal year—

(I) with respect to all motor vehicles in any one of the categories described in clause (ii); or

(II) with respect to all motor vehicles in any such category that are exported to the territory of the United States or Australia.

(ii) **CATEGORIES.**—A category is described in this clause if it—

(I) is the same model line of motor vehicles, is in the same class of vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated;

(II) is the same class of motor vehicles, and is produced in the same plant in the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated; or

(III) is the same model line of motor vehicles produced in either the territory of Australia or the United States, as the good described in clause (i) for which regional value-content is being calculated.

(D) **OTHER AUTOMOTIVE GOODS.**—For purposes of determining the regional value-content under subparagraph (A) for automotive goods provided for in any of subheadings 8407.31 through 8407.34, in subheading 8408.20, or in heading 8409, 8706, 8707, or 8708, that are produced in the same plant, an importer, exporter, or producer may—

(i) average the amounts calculated under the formula contained in subparagraph (A) over—

(I) the fiscal year of the motor vehicle producer to whom the automotive goods are sold,

(II) any quarter or month, or

(III) its own fiscal year,

if the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(ii) determine the average referred to in clause (i) separately for such goods sold to one or more motor vehicle producers; or

(iii) make a separate determination under clause (i) or (ii) for automotive goods that are exported to the territory of the United States or Australia.

(E) **CALCULATING NET COST.**—Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the automotive good under subparagraph (B) shall be calculated by—

(i) calculating the total cost incurred with respect to all goods produced by the producer of the automotive

good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(f) VALUE OF MATERIALS.—

(1) IN GENERAL.—For the purpose of calculating the regional value-content of a good under subsection (e), and for purposes of applying the de minimis rules under subsection (c), the value of a material is—

(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material;

(B) in the case of a material acquired in the territory in which the good is produced, the value, determined in accordance with Articles 1 through 8, article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, as set forth in regulations promulgated by the Secretary of the Treasury providing for the application of such Articles in the absence of an importation; or

(C) in the case of a material that is self-produced, the sum of—

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit equivalent to the profit added in the normal course of trade.

(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS.—

(A) ORIGINATING MATERIAL.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Australia, the United States, or both, to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise -

recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(B) NONORIGINATING MATERIAL.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of Australia, the United States, or both, to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Australia, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(iv) The cost of processing incurred in the territory of Australia, the United States, or both, in the production of the nonoriginating material.

(v) The cost of originating materials used in the production of the nonoriginating material in the territory of Australia, the United States, or both.

(g) ACCESSORIES, SPARE PARTS, OR TOOLS.—

(1) IN GENERAL.—Subject to paragraph (2), accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools shall—

(A) be treated as originating goods if the good is an originating good; and

(B) be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5–A of the Agreement.

(2) CONDITIONS.—Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are not invoiced separately from the good;

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

(C) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(h) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term “inventory management method” means—

- (i) averaging;
- (ii) “last-in, first-out”;
- (iii) “first-in, first-out”; or
- (iv) any other method—

(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Australia or the United States); or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for a particular fungible good or fungible material shall continue to use that method for that fungible good or fungible material throughout the fiscal year of that person.

(i) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4–A or Annex 5–A of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers for shipment shall be disregarded in determining whether—

(1) the nonoriginating materials used in the production of a good undergo the applicable change in tariff classification set out in Annex 4–A or Annex 5–A of the Agreement; and

(2) the good satisfies a regional value-content requirement.

(k) INDIRECT MATERIALS.—An indirect material shall be treated as an originating material without regard to where it is produced, and its value shall be the cost registered in the accounting records of the producer of the good.

(l) THIRD COUNTRY OPERATIONS.—A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Australia or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of Australia or the United States.

(m) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set forth in Annex 4–A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(n) DEFINITIONS.—In this section:

(1) **ADJUSTED VALUE.**—The term “adjusted value” means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the good from the country of exportation to the place of importation.

(2) **CLASS OF MOTOR VEHICLES.**—The term “class of motor vehicles” means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90.

(B) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in any of subheadings 8703.21 through 8703.90.

(3) **FUNGIBLE GOOD OR FUNGIBLE MATERIAL.**—The term “fungible good” or “fungible material” means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

(4) **GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**—The term “generally accepted accounting principles” means the recognized consensus or substantial authoritative support in the territory of Australia or the United States, as the case may be, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(5) **GOOD WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF AUSTRALIA, THE UNITED STATES, OR BOTH.**—The term “good wholly obtained or produced entirely in the territory of Australia, the United States, or both” means—

(A) a mineral good extracted in the territory of Australia, the United States, or both;

(B) a vegetable good, as such goods are provided for in the HTS, harvested in the territory of Australia, the United States, or both;

(C) a live animal born and raised in the territory of Australia, the United States, or both;

(D) a good obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of Australia, the United States, or both;

(E) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Australia or the United States and flying the flag of that country;

(F) a good produced exclusively from products referred to in subparagraph (E) on board factory ships registered or recorded with Australia or the United States and flying the flag of that country;

(G) a good taken by Australia or the United States or a person of Australia or the United States from the seabed or beneath the seabed outside territorial waters, if Australia or the United States has rights to exploit such seabed;

(H) a good taken from outer space, if such good is obtained by Australia or the United States or a person of Australia or the United States and not processed in the territory of a country other than Australia or the United States;

(I) waste and scrap derived from—

(i) production in the territory of Australia, the United States, or both; or

(ii) used goods collected in the territory of Australia, the United States, or both, if such goods are fit only for the recovery of raw materials;

(J) a recovered good derived in the territory of Australia or the United States from goods that have passed their life expectancy, or are no longer usable due to defects, and utilized in the territory of that country in the production of remanufactured goods; or

(K) a good produced in the territory of Australia, the United States, or both, exclusively—

(i) from goods referred to in any of subparagraphs

(A) through (I), or

(ii) from the derivatives of goods referred to in clause (i),

at any stage of production.

(6) **INDIRECT MATERIAL.**—The term “indirect material” means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment or buildings;

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the

good can reasonably be demonstrated to be a part of that production.

(7) MATERIAL.—The term “material” means a good that is used in the production of another good.

(8) MATERIAL THAT IS SELF-PRODUCED.—The term “material that is self-produced” means an originating material that is produced by a producer of a good and used in the production of that good.

(9) MODEL LINE.—The term “model line” means a group of motor vehicles having the same platform or model name.

(10) NONALLOWABLE INTEREST COSTS.—The term “nonallowable interest costs” means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the country (whether Australia or the United States).

(11) NONORIGINATING MATERIAL.—The term “nonoriginating material” means a material that does not qualify as originating under this section.

(12) PREFERENTIAL TREATMENT.—The term “preferential treatment” means the customs duty rate, and the treatment under article 2.12 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

(13) PRODUCER.—The term “producer” means a person who engages in the production of a good in the territory of Australia or the United States.

(14) PRODUCTION.—The term “production” means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(15) REASONABLY ALLOCATE.—The term “reasonably allocate” means to apportion in a manner that would be appropriate under generally accepted accounting principles.

(16) RECOVERED GOODS.—The term “recovered goods” means materials in the form of individual parts that result from—

(A) the complete disassembly of goods which have passed their life expectancy, or are no longer usable due to defects, into individual parts; and

(B) the cleaning, inspecting, or testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

(17) REMANUFACTURED GOOD.—The term “remanufactured good” means an industrial good that is assembled in the territory of Australia or the United States, that is classified under chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032, other than a good classified under heading 8418 or 8516 or any of headings 8701 through 8706, and that—

(A) is entirely or partially comprised of recovered goods;

(B) has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(C) enjoys a factory warranty similar to a like good that is new.

(18) TOTAL COST.—The term “total cost” means all product costs, period costs, and other costs for a good incurred in the territory of Australia, the United States, or both.

(19) USED.—The term “used” means used or consumed in the production of goods.

(o) **PRESIDENTIAL PROCLAMATION AUTHORITY.**—

(1) **IN GENERAL.**—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4–A and Annex 5–A of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) **MODIFICATIONS.**—

(A) **IN GENERAL.**—Subject to the consultation and lay-over provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

(B) **ADDITIONAL PROCLAMATIONS.**—Notwithstanding subparagraph (A), and subject to the consultation and lay-over provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Australia pursuant to article 4.2.5 of the Agreement; and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

SEC. 204. CUSTOMS USER FEES.

19 USC 3805
note.

Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is amended by adding after paragraph (13) the following:

“(14) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States-Australia Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.”.

SEC. 205. DISCLOSURE OF INCORRECT INFORMATION.

19 USC 3805
note.

Section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)) is amended—

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following new paragraph:

“(8) **PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT.**—

“(A) **IN GENERAL.**—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Australia Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

Regulations.

“(B) **TIME PERIODS FOR MAKING CORRECTIONS.**—In the regulations referred to in subparagraph (A), the Secretary

of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.”.

19 USC 3805
note.

SEC. 206. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) ACTION DURING VERIFICATION.—

(1) IN GENERAL.—If the Secretary of the Treasury requests the Government of Australia to conduct a verification pursuant to article 4.3 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) DETERMINATION.—A determination under this paragraph is a determination—

(A) that an exporter or producer in Australia is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act; or

(ii) is a good of Australia,

is accurate.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under

subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

SEC. 207. REGULATIONS.

19 USC 3805
note.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (n) of section 203 and section 204;

(2) amendments to existing law made by the sections referred to in paragraph (1); and

(3) proclamations issued under section 203(o).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

19 USC 3805
note.

As used in this title:

(1) **AUSTRALIAN ARTICLE.**—The term “Australian article” means an article that qualifies as an originating good under section 203(b) of this Act.

(2) **AUSTRALIAN TEXTILE OR APPAREL ARTICLE.**—The term “Australian textile or apparel article” means an article—

(A) that is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)); and

(B) that is an Australian article.

(3) **COMMISSION.**—The term “Commission” means the United States International Trade Commission.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

19 USC 3805
note.

(a) **FILING OF PETITION.**—

(1) **IN GENERAL.**—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

Records.

(2) **PROVISIONAL RELIEF.**—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

(3) **CRITICAL CIRCUMSTANCES.**—Any allegation that critical circumstances exist shall be included in the petition.

(b) **INVESTIGATION AND DETERMINATION.**—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, an Australian article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Australian article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) **APPLICABLE PROVISIONS.**—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

(1) Paragraphs (1)(B) and (3) of subsection (b).

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (i).

(d) **ARTICLES EXEMPT FROM INVESTIGATION.**—No investigation may be initiated under this section with respect to any Australian article if, after the date on which the Agreement enters into force, import relief has been provided with respect to that Australian article under this subtitle.

19 USC 3805
note.
Deadline.

SEC. 312. COMMISSION ACTION ON PETITION.

(a) **DETERMINATION.**—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) **APPLICABLE PROVISIONS.**—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) **ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.**—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to

vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) **REPORT TO PRESIDENT.**—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) **PUBLIC NOTICE.**—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

Federal Register,
publication.

SEC. 313. PROVISION OF RELIEF.

(a) **IN GENERAL.**—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

19 USC 3805
note.
Deadline.
President.

(b) **EXCEPTION.**—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) **NATURE OF RELIEF.**—

(1) **IN GENERAL.**—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 2–B of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

President.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 9.2.7 of the Agreement) of such relief at regular intervals during the period in which the relief is in effect.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 2 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

Deadline.

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

Federal Register,
publication.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

Reports.
Deadline.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof,

may not, in the aggregate, be in effect for more than 4 years.

(e) **RATE AFTER TERMINATION OF IMPORT RELIEF.**—When import relief under this section is terminated with respect to an article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 2–B of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the provision of relief under subsection (a); and

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the applicable NTR (MFN) rate of duty for that article set out in the Schedule of the United States to Annex 2–B of the Agreement; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 2–B of the Agreement for the elimination of the tariff.

(f) **ARTICLES EXEMPT FROM RELIEF.**—No import relief may be provided under this section on any article that—

(1) is subject to—

(A) import relief under subtitle B; or

(B) an assessment of additional duty under subsection (b), (c), or (d) of section 202; or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

19 USC 3805
note.

(a) **GENERAL RULE.**—Subject to subsection (b), no import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force.

(b) **EXCEPTION.**—If an article for which relief is provided under this subtitle is an article for which the period for tariff elimination, set out in the Schedule of the United States to Annex 2–B of the Agreement, is greater than 10 years, no relief under this subtitle may be provided for that article after the date on which such period ends.

(c) **PRESIDENTIAL DETERMINATION.**—Import relief may be provided under this subtitle in the case of an Australian article after the date on which such relief would, but for this subsection, terminate under subsection (a) or (b), if the President determines that Australia has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

19 USC 3805
note.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

19 USC 3805
note.

Section 202(a)(8) of the Trade Act of 1974 (19 U.S.C. 2252(a)(8)) is amended in the first sentence—

(1) by striking “and”; and

(2) by inserting before the period at the end “, and title III of the United States-Australia Free Trade Agreement Implementation Act”.

Subtitle B—Textile and Apparel Safeguard Measures

President.
19 USC 3805
note.

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) **IN GENERAL.**—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) **ALLEGATION OF CRITICAL CIRCUMSTANCES.**—An interested party filing a request under this section may—

(1) allege that critical circumstances exist such that delay in the provision of relief would cause damage that would be difficult to repair; and

(2) based on such allegation, request that relief be provided on a provisional basis.

Federal Register,
publication.

(c) **PUBLICATION OF REQUEST.**—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

President.
19 USC 3805
note.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) **DETERMINATION.**—

(1) **IN GENERAL.**—If a positive determination is made under section 321(c), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, an Australian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) **SERIOUS DAMAGE.**—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) **PROVISION OF RELIEF.**—

(1) **IN GENERAL.**—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage

and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(c) CRITICAL CIRCUMSTANCES.—

(1) PRESIDENTIAL DETERMINATION.—When a request filed under section 321(a) contains an allegation of critical circumstances and a request for provisional relief under section 321(b), the President shall, not later than 60 days after the request is filed, determine, on the basis of available information, whether—

Deadline.

(A) there is clear evidence that—

(i) imports from Australia have increased as the result of the reduction or elimination of a customs duty under the Agreement; and

(ii) such imports are causing serious damage, or actual threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

(B) delay in taking action under this subtitle would cause damage to that industry that would be difficult to repair.

(2) EXTENT OF PROVISIONAL RELIEF.—If the determinations under subparagraphs (A) and (B) of paragraph (1) are affirmative, the President shall determine the extent of provisional relief that is necessary to remedy or prevent the serious damage. The nature of the provisional relief available shall be the relief described in subsection (b)(2). Within 30 days after making affirmative determinations under subparagraphs (A) and (B) of paragraph (1), the President, if the President considers provisional relief to be warranted, shall provide, for a period not to exceed 200 days, such provisional relief that the President considers necessary to remedy or prevent the serious damage.

Deadline.

(3) SUSPENSION OF LIQUIDATION.—If provisional relief is provided under paragraph (2), the President shall order the suspension of liquidation of all imported articles subject to the affirmative determinations under subparagraphs (A) and (B) of paragraph (1) that are entered, or withdrawn from warehouse for consumption, on or after the date of the determinations.

(4) TERMINATION OF PROVISIONAL RELIEF.—

(A) IN GENERAL.—Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) the President makes a negative determination under subsection (a) regarding serious damage or actual threat thereof by imports of such article;

(ii) action described in subsection (b) takes effect with respect to such article;

(iii) a decision by the President not to take any action under subsection (b) with respect to such article becomes final; or

(iv) the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) **SUSPENSION OF LIQUIDATION.**—Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) **RATES OF DUTY.**—If an increase in, or the imposition of, a duty that is provided under subsection (b) on an imported article is different from a duty increase or imposition that was provided for such an article under this subsection, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(D) **RATE OF DUTY IF PROVISIONAL RELIEF.**—If provisional relief is provided under this subsection with respect to an imported article and neither a duty increase nor a duty imposition is provided under subsection (b) for such article, the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at the rate of duty that applied before the provisional relief was provided.

19 USC 3805
note.

SEC. 323. PERIOD OF RELIEF.

(a) **IN GENERAL.**—Subject to subsection (b), the import relief that the President provides under subsections (b) and (c) of section 322 may not, in the aggregate, be in effect for more than 2 years.

(b) **EXTENSION.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) **LIMITATION.**—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 4 years.

19 USC 3805
note.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) import relief previously has been provided under this subtitle with respect to that article; or

(2) the article is subject to import relief under—

(A) subtitle A; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.19 USC 3805
note.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.19 USC 3805
note.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

SEC. 327. COMPENSATION AUTHORITY.19 USC 3805
note.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.19 USC 3805
note.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

Subtitle C—Cases Under Title II of the Trade Act of 1974

SEC. 331. FINDINGS AND ACTION ON GOODS FROM AUSTRALIA.19 USC 3805
note.

(a) **EFFECT OF IMPORTS.**—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article from Australia are a substantial cause of serious injury or threat thereof.

(b) **PRESIDENTIAL DETERMINATION REGARDING AUSTRALIAN IMPORTS.**—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall determine whether imports from Australia are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is in the negative, may exclude from such action imports from Australia.

TITLE IV—PROCUREMENT19 USC 3805
note.**SEC. 401. ELIGIBLE PRODUCTS.**

Section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)(A)) is amended—

- (1) by striking “or” at the end of clause (i);
- (2) by striking the period at the end of clause (ii) and inserting “; or”; and

- (3) by adding at the end the following new clause:

“(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States.”.

Approved August 3, 2004.

LEGISLATIVE HISTORY—H.R. 4759 (S. 2610):

HOUSE REPORTS: No. 108–597 (Comm. on Ways and Means).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 14, considered and passed House.

July 15, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Aug. 3, Presidential remarks.



Public Law 108–287
108th Congress

An Act

Making appropriations for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

Aug. 5, 2004
[H.R. 4613]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2005, for military functions administered by the Department of Defense, and for other purposes, namely:

Department
of Defense
Appropriations
Act, 2005.

TITLE I

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty, (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, \$29,381,422,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, \$24,347,807,000.

MILITARY PERSONNEL, MARINE CORPS

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except

members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, \$9,581,102,000.

MILITARY PERSONNEL, AIR FORCE

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, \$24,155,911,000.

RESERVE PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 10211, 10302, and 3038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, \$3,663,890,000.

RESERVE PERSONNEL, NAVY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Navy Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, \$2,084,032,000.

RESERVE PERSONNEL, MARINE CORPS

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, \$623,073,000.

RESERVE PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 10211, 10305, and 8038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Air Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, \$1,451,950,000.

NATIONAL GUARD PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under section 10211, 10302, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, \$5,901,729,000.

NATIONAL GUARD PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 10211, 10305, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, \$2,540,242,000.

TITLE II

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed \$11,144,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, \$25,764,634,000: *Provided*, That of funds made available under

this heading, \$1,900,000 shall be available for Fort Baker, in accordance with the terms and conditions as provided under the heading “Operation and Maintenance, Army”, in Public Law 107–117.

OPERATION AND MAINTENANCE, NAVY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed \$4,525,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes, \$29,687,245,000.

OPERATION AND MAINTENANCE, MARINE CORPS

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law, \$3,629,901,000.

OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; and not to exceed \$7,699,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, \$28,113,533,000: *Provided*, That notwithstanding any other provision of law, that of the funds available under this heading, \$750,000 shall only be available to the Secretary of the Air Force for a grant to Florida Memorial College for the purpose of funding minority aviation training.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, \$17,449,619,000: *Provided*, That not more than \$25,000,000 may be used for the Combatant Commander Initiative Fund authorized under section 166a of title 10, United States Code, and of which not to exceed \$32,000,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes: *Provided further*, That notwithstanding any other provision of law, of the funds provided in this Act for Civil Military programs under this heading, \$500,000 shall be available for a grant for Outdoor Odyssey, Roaring Run, Pennsylvania, to support the Youth Development and Leadership program and Department of Defense STARBASE program: *Provided further*, That of the funds made available under this heading, \$2,550,000 shall be available only for a Washington-based internship and immersion program to allow U.S. Asian-American Pacific Islander undergraduate college and university students from economically disadvantaged

backgrounds to participate in academic and educational programs in the Department of Defense and related Federal defense agencies: *Provided further*, That notwithstanding any other provision of law, the Office of Economic Adjustment of the Department of Defense may make grants and supplement other Federal funds using funds made available by this Act under this heading in accordance with the guidance provided in the Joint Explanatory Statement of the Committee of the Conference for the Conference Report to accompany H.R. 4613 and these projects shall hereafter be considered to be authorized by law: *Provided further*, That of the funds provided under this heading that are available for commercial imagery purchases, \$500,000 shall be used by the National Geospatial-Intelligence Agency to pay for imagery and high-resolution terrain data collected in 2003 in support of the California wildfires: *Provided further*, That of the funds provided under this heading not less than \$27,000,000 shall be made available for the Procurement Technical Assistance Cooperative Agreement Program, of which not less than \$3,600,000 shall be available for centers defined in 10 U.S.C. 2411(1)(D): *Provided further*, That none of the funds appropriated or otherwise made available by this Act may be used to plan or implement the consolidation of a budget or appropriations liaison office of the Office of the Secretary of Defense, the office of the Secretary of a military department, or the service headquarters of one of the Armed Forces into a legislative affairs or legislative liaison office: *Provided further*, That \$4,000,000, to remain available until expended, is available only for expenses relating to certain classified activities, and may be transferred as necessary by the Secretary to operation and maintenance appropriations or research, development, test and evaluation appropriations, to be merged with and to be available for the same time period as the appropriations to which transferred: *Provided further*, That any ceiling on the investment item unit cost of items that may be purchased with operation and maintenance funds shall not apply to the funds described in the preceding proviso: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

OPERATION AND MAINTENANCE, ARMY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, \$1,991,128,000.

OPERATION AND MAINTENANCE, NAVY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, \$1,237,638,000.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, \$187,196,000.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, \$2,242,590,000.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft), \$4,442,386,000.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For expenses of training, organizing, and administering the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; transportation of things, hire of passenger motor vehicles; supplying and equipping the Air National Guard, as authorized by law; expenses for repair, modification, maintenance, and issue of supplies and equipment, including those furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau, \$4,472,738,000.

OVERSEAS CONTINGENCY OPERATIONS TRANSFER ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For expenses directly relating to Overseas Contingency Operations by United States military forces, \$10,000,000, to remain available until expended: *Provided*, That the Secretary of Defense

may transfer these funds only to military personnel accounts; operation and maintenance accounts within this title; the Defense Health Program appropriation; procurement accounts; research, development, test and evaluation accounts; and to working capital funds: *Provided further*, That the funds transferred shall be merged with and shall be available for the same purposes and for the same time period, as the appropriation to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided in this paragraph is in addition to any other transfer authority contained elsewhere in this Act.

UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

For salaries and expenses necessary for the United States Court of Appeals for the Armed Forces, \$10,825,000, of which not to exceed \$5,000 may be used for official representation purposes.

ENVIRONMENTAL RESTORATION, ARMY

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, \$400,948,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Army, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, NAVY

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Navy, \$266,820,000, to remain available until transferred: *Provided*, That the Secretary of the Navy shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Navy, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Navy, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, AIR FORCE

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Air Force, \$397,368,000, to remain available until transferred: *Provided*, That the Secretary of the Air Force shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Air Force, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Air Force, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For the Department of Defense, \$23,684,000, to remain available until transferred: *Provided*, That the Secretary of Defense shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of Defense, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of Defense, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, FORMERLY USED DEFENSE SITES

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, \$266,516,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris at sites formerly used by the Department of Defense, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AID

For expenses relating to the Overseas Humanitarian, Disaster, and Civic Aid programs of the Department of Defense (consisting of the programs provided under sections 401, 402, 404, 2557, and

2561 of title 10, United States Code), \$59,000,000, to remain available until September 30, 2006.

FORMER SOVIET UNION THREAT REDUCTION ACCOUNT

For assistance to the republics of the former Soviet Union, including assistance provided by contract or by grants, for facilitating the elimination and the safe and secure transportation and storage of nuclear, chemical and other weapons; for establishing programs to prevent the proliferation of weapons, weapons components, and weapon-related technology and expertise; for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components and weapons technology and expertise, and for defense and military contacts, \$409,200,000, to remain available until September 30, 2007: *Provided*, That of the amounts provided under this heading, \$15,000,000 shall be available only to support the dismantling and disposal of nuclear submarines, submarine reactor components, and security enhancements for transport and storage of nuclear warheads in the Russian Far East.

TITLE III

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$2,854,541,000, to remain available for obligation until September 30, 2007.

MISSILE PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$1,307,000,000, to remain available for obligation until September 30, 2007.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES,
ARMY

For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$2,467,495,000, to remain available for obligation until September 30, 2007.

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$1,590,952,000, to remain available for obligation until September 30, 2007.

OTHER PROCUREMENT, ARMY

For construction, procurement, production, and modification of vehicles, including tactical, support, and non-tracked combat vehicles; the purchase of passenger motor vehicles for replacement only; and the purchase of 1 vehicle required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed \$200,000 per vehicle; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$4,955,296,000, to remain available for obligation until September 30, 2007.

AIRCRAFT PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and

construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, \$8,912,042,000, to remain available for obligation until September 30, 2007.

WEAPONS PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, \$2,114,720,000, to remain available for obligation until September 30, 2007.

PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$888,340,000, to remain available for obligation until September 30, 2007.

SHIPBUILDING AND CONVERSION, NAVY

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical, long leadtime components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, as follows:

- Carrier Replacement Program (AP), \$626,084,000;
- NSSN, \$1,581,143,000;
- NSSN (AP), \$871,864,000;
- SSGN, \$469,226,000;
- SSGN (AP), \$48,000,000;
- CVN Refuelings (AP), \$333,061,000;
- SSN Submarine Refuelings (AP), \$19,368,000;
- SSBN Submarine Refuelings, \$262,229,000;
- SSBN Submarine Refuelings (AP), \$63,971,000;
- DDG–51 Destroyer, \$3,444,950,000;

DD(X) (AP), \$305,516,000;
DDG-51 Destroyer Modernization, \$50,000,000;
LPD-17, \$966,559,000;
LHD-8, \$236,018,000;
LHA-R (AP), \$150,000,000;
LCU (X), \$25,048,000;
LCAC Landing Craft Air Cushion, \$90,490,000;
Prior year shipbuilding costs, \$484,390,000;
Service Craft, \$36,899,000;
Power Unit Assembly Facility, \$11,300,000; and

For outfitting, post delivery, conversions, and first destination transportation, \$351,327,000.

In all: \$10,427,443,000, to remain available for obligation until September 30, 2009: *Provided*, That additional obligations may be incurred after September 30, 2009, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: *Provided further*, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: *Provided further*, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards.

OTHER PROCUREMENT, NAVY

For procurement, production, and modernization of support equipment and materials not otherwise provided for, Navy ordnance (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of passenger motor vehicles for replacement only, and the purchase of 9 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed \$200,000 per vehicle; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, \$4,875,786,000, to remain available for obligation until September 30, 2007: *Provided*, That funds available in this appropriation may be used for TRIDENT modifications associated with force protection and security requirements.

PROCUREMENT, MARINE CORPS

For expenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, \$1,432,203,000, to remain available for obligation until September 30, 2007.

AIRCRAFT PROCUREMENT, AIR FORCE

For construction, procurement, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, \$13,648,304,000, to remain available for obligation until September 30, 2007: *Provided*, That amounts provided under this heading shall be used for the procurement of 15 C–17 aircraft: *Provided further*, That amounts provided under this heading shall be used for the advance procurement of not less than 15 C–17 aircraft: *Provided further*, That the Secretary of the Air Force shall fully fund the procurement of not less than 15 C–17 aircraft in fiscal year 2006: *Provided further*, That the Secretary of the Air Force shall allocate a reduction of \$158,600,000 proportionately to each budget activity, activity group, subactivity group, and each program, project, and activity funded by this appropriation.

MISSILE PROCUREMENT, AIR FORCE

For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, \$4,458,113,000, to remain available for obligation until September 30, 2007.

PROCUREMENT OF AMMUNITION, AIR FORCE

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, \$1,327,459,000, to remain available for obligation until September 30, 2007.

OTHER PROCUREMENT, AIR FORCE

For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of passenger motor vehicles for replacement only, and the purchase of 1 vehicle required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed \$200,000 per vehicle; lease of passenger motor vehicles; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, \$13,071,297,000, to remain available for obligation until September 30, 2007.

PROCUREMENT, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of passenger motor vehicles for replacement only; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, \$2,956,047,000, to remain available for obligation until September 30, 2007.

NATIONAL GUARD AND RESERVE EQUIPMENT

Deadline.

For procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons, and other procurement for the reserve components of the Armed Forces, \$350,000,000, to remain available for obligation until September 30, 2007: *Provided*, That the Chiefs of the Reserve and National Guard components shall, not later than 30 days after the enactment of this Act, individually submit to the congressional defense committees the modernization priority assessment for their respective Reserve or National Guard component.

DEFENSE PRODUCTION ACT PURCHASES

For activities by the Department of Defense pursuant to sections 108, 301, 302, and 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2078, 2091, 2092, and 2093), \$42,765,000, to remain available until expended.

TITLE IV

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, \$10,698,989,000, to remain available for obligation until September 30, 2006: *Provided*, That of the amounts provided under this heading, \$11,500,000 for Molecular Genetics and Musculoskeletal Research in program element 0602787A shall remain available until expended.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, \$17,043,812,000, to remain available for obligation until September 30, 2006: *Provided*, That funds appropriated in this paragraph which are available for the V–22 may be used to meet unique operational requirements of the Special Operations Forces: *Provided further*, That funds appropriated in this paragraph shall be available for the Cobra Judy program.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, \$20,890,922,000, to remain available for obligation until September 30, 2006.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment, \$20,983,624,000, to remain available for obligation until September 30, 2006.

OPERATIONAL TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, necessary for the independent activities of the Director, Operational Test and Evaluation, in the direction and supervision of operational test and evaluation, including initial operational test and evaluation which is conducted prior to, and in support of, production decisions; joint operational testing and evaluation; and administrative expenses in connection therewith, \$314,835,000, to remain available for obligation until September 30, 2006.

TITLE V

REVOLVING AND MANAGEMENT FUNDS

DEFENSE WORKING CAPITAL FUNDS

For the Defense Working Capital Funds, \$1,174,210,000.

NATIONAL DEFENSE SEALIFT FUND

For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, \$1,204,626,000, to remain available until expended: *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: *Provided further*, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: *Provided further*, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes.

TITLE VI

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For expenses, not otherwise provided for, for medical and health care programs of the Department of Defense, as authorized by law, \$18,171,436,000, of which \$17,297,419,000 shall be for Operation and maintenance, of which not to exceed 2 percent shall remain available until September 30, 2006, and of which up to \$8,953,494,000 may be available for contracts entered into under the TRICARE program; of which \$367,035,000, to remain available for obligation until September 30, 2007, shall be for Procurement; and of which \$506,982,000, to remain available for obligation until September 30, 2006, shall be for Research, development, test and evaluation: *Provided*, That notwithstanding any other provision of law, of the amount made available under this heading for Operation and maintenance, \$9,500,000 shall remain available until expended, and shall be available only for deposit into the Army Fisher House Non-Appropriated Fund Instrumentality and shall be used in support and upkeep of existing Fisher Houses managed by the Army: *Provided further*, That notwithstanding any other

provision of law, of the amount made available under this heading for Research, development, test and evaluation, not less than \$7,500,000 shall be available for HIV prevention educational activities undertaken in connection with U.S. military training, exercises, and humanitarian assistance activities conducted primarily in African nations: *Provided further*, That Title VI of the Department of Defense Appropriations Act, 2004, in the appropriation for the Defense Health Program, is amended by adding before the period a comma and the following: “and of which not less than \$4,250,000 shall be available for HIV prevention educational activities undertaken in connection with U.S. military training, exercises, and humanitarian assistance activities conducted primarily in African nations”.

117 Stat. 1069.

CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, ARMY

For expenses, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile, \$1,372,990,000, of which \$1,088,801,000 shall be for Operation and maintenance; \$78,980,000 shall be for Procurement to remain available until September 30, 2007; \$205,209,000 shall be for Research, development, test and evaluation to remain available until September 30, 2006; and no less than \$137,404,000 may be for the Chemical Stockpile Emergency Preparedness Program, of which \$44,631,000 shall be for activities on military installations and \$92,773,000 shall be to assist State and local governments.

DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

(INCLUDING TRANSFER OF FUNDS)

For drug interdiction and counter-drug activities of the Department of Defense, for transfer to appropriations available to the Department of Defense for military personnel of the reserve components serving under the provisions of title 10 and title 32, United States Code; for Operation and maintenance; for Procurement; and for Research, development, test and evaluation, \$906,522,000: *Provided*, That the funds appropriated under this heading shall be available for obligation for the same time period and for the same purpose as the appropriation to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority contained elsewhere in this Act.

OFFICE OF THE INSPECTOR GENERAL

For expenses and activities of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$204,562,000, of which \$202,362,000 shall be for Operation and maintenance, of which not to exceed \$700,000 is available for emergencies and extraordinary expenses to be

expended on the approval or authority of the Inspector General, and payments may be made on the Inspector General's certificate of necessity for confidential military purposes; and of which \$2,100,000, to remain available until September 30, 2007, shall be for Procurement; and of which \$100,000, to remain available until September 30, 2006, shall be for Research, development, test and evaluation.

TITLE VII

RELATED AGENCIES

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain the proper funding level for continuing the operation of the Central Intelligence Agency Retirement and Disability System, \$239,400,000.

INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Intelligence Community Management Account, \$310,466,000, of which \$26,953,000 for the Advanced Research and Development Committee shall remain available until September 30, 2006: *Provided*, That of the funds appropriated under this heading, \$39,422,000 shall be transferred to the Department of Justice for the National Drug Intelligence Center to support the Department of Defense's counter-drug intelligence responsibilities, and of the said amount, \$1,500,000 for Procurement shall remain available until September 30, 2007 and \$1,000,000 for Research, development, test and evaluation shall remain available until September 30, 2006: *Provided further*, That the National Drug Intelligence Center shall maintain the personnel and technical resources to provide timely support to law enforcement authorities and the intelligence community by conducting document and computer exploitation of materials collected in Federal, State, and local law enforcement activity associated with counter-drug, counter-terrorism, and national security investigations and operations.

NATIONAL SECURITY EDUCATION TRUST FUND

For the purposes of title VIII of Public Law 102–183, \$8,000,000, to be derived from the National Security Education Trust Fund, to remain available until expended.

TITLE VIII

GENERAL PROVISIONS

SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 8002. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply

to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.

SEC. 8003. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.

SEC. 8004. No more than 20 percent of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last 2 months of the fiscal year: *Provided*, That this section shall not apply to obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers' Training Corps.

(TRANSFER OF FUNDS)

SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed \$3,500,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: *Provided further*, That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress: *Provided further*, That a request for multiple reprogrammings of funds using authority provided in this section must be made prior to June 30, 2005: *Provided further*, That transfers among military personnel appropriations shall not be taken into account for purposes of the limitation on the amount of funds that may be transferred under this section.

Notification.

Deadline.

(TRANSFER OF FUNDS)

SEC. 8006. During the current fiscal year, cash balances in working capital funds of the Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: *Provided*, That transfers may be made between such funds: *Provided further*, That transfers may be made between working capital funds and the “Foreign Currency Fluctuations, Defense” appropriation and the “Operation and Maintenance” appropriation accounts in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that such transfers may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure or increase the value of war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

Notification.

SEC. 8007. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the congressional defense committees.

Contracts.
Notifications.
10 USC 2306b
note.

SEC. 8008. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any 1 year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any 1 year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government’s liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed \$500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement: *Provided further*, That none of the funds provided in this Act may be used for a multiyear contract executed after the date of the enactment of this Act unless in the case of any such contract—

(1) the Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract;

(2) cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;

(3) the contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and

(4) the contract does not provide for a price adjustment based on a failure to award a follow-on contract.

Funds appropriated in title III of this Act may be used for a multiyear procurement contract as follows:

Lightweight 155mm Howitzer.

SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported as required by section 401(d) of title 10, United States Code: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

10 USC 401 note.

Reports.

SEC. 8010. (a) During fiscal year 2005, the civilian personnel of the Department of Defense may not be managed on the basis of any end-strength, and the management of such personnel during that fiscal year shall not be subject to any constraint or limitation (known as an end-strength) on the number of such personnel who may be employed on the last day of such fiscal year.

(b) The fiscal year 2006 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2006 Department of Defense budget request shall be prepared and submitted to the Congress as if subsections (a) and (b) of this provision were effective with regard to fiscal year 2006.

(c) Nothing in this section shall be construed to apply to military (civilian) technicians.

SEC. 8011. None of the funds appropriated in this or any other Act may be used to initiate a new installation overseas without 30-day advance notification to the Committees on Appropriations.

Notification.

SEC. 8012. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

Lobbying.

SEC. 8013. None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Secretary of Veterans Affairs from the Department

Applicability.

of Defense Education Benefits Fund when time spent as a full-time student is credited toward completion of a service commitment: *Provided*, That this subsection shall not apply to those members who have reenlisted with this option prior to October 1, 1987: *Provided further*, That this subsection applies only to active components of the Army.

SEC. 8014. (a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE.—None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by more than 10 Department of Defense civilian employees unless—

(1) the conversion is based on the result of a public-private competition that includes a most efficient and cost effective organization plan developed by such activity or function;

(2) the Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of—

(A) 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by Federal employees; or

(B) \$10,000,000; and

(3) the contractor does not receive an advantage for a proposal that would reduce costs for the Department of Defense by—

(A) not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract; or

(B) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees under chapter 89 of title 5, United States Code.

(b) EXCEPTIONS.—

(1) The Department of Defense, without regard to subsection (a) of this section or subsections (a), (b), or (c) of section 2461 of title 10, United States Code, and notwithstanding any administrative regulation, requirement, or policy to the contrary shall have full authority to enter into a contract for the performance of any commercial or industrial type function of the Department of Defense that—

(A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47);

(B) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or

(C) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C.

450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).

(2) This section shall not apply to depot contracts or contracts for depot maintenance as provided in sections 2469 and 2474 of title 10, United States Code.

(c) TREATMENT OF CONVERSION.—The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited toward any competitive or outsourcing goal, target, or measurement that may be established by statute, regulation, or policy and is deemed to be awarded under the authority of, and in compliance with, subsection (h) of section 2304 of title 10, United States Code, for the competition or outsourcing of commercial activities.

(TRANSFER OF FUNDS)

SEC. 8015. Funds appropriated in title III of this Act for the Department of Defense Pilot Mentor-Protege Program may be transferred to any other appropriation contained in this Act solely for the purpose of implementing a Mentor-Protege Program developmental assistance agreement pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note), as amended, under the authority of this provision or any other transfer authority contained in this Act.

SEC. 8016. None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: *Provided*, That for the purpose of this section manufactured will include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting process): *Provided further*, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States: *Provided further*, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations that such an acquisition must be made in order to acquire capability for national security purposes.

Certification.

SEC. 8017. None of the funds appropriated by this Act available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: *Provided*, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States

Regulations.

Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

10 USC 2687
note.

SEC. 8018. Notwithstanding any other provision of law, during the current fiscal year and hereafter, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: *Provided*, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: *Provided further*, That the Department of Defense's budget submission for subsequent fiscal years shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: *Provided further*, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: *Provided further*, That each such executive agreement with a NATO member host nation shall be reported to the congressional defense committees, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of any such agreement established under this provision.

Reports.
Deadline.

SEC. 8019. None of the funds available to the Department of Defense may be used to demilitarize or dispose of M–1 Carbines, M–1 Garand rifles, M–14 rifles, .22 caliber rifles, .30 caliber rifles, or M–1911 pistols.

SEC. 8020. No more than \$500,000 of the funds appropriated or made available in this Act shall be used during a single fiscal year for any single relocation of an organization, unit, activity or function of the Department of Defense into or within the National Capital Region: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the congressional defense committees that such a relocation is required in the best interest of the Government.

Certification.

SEC. 8021. In addition to the funds provided elsewhere in this Act, \$8,000,000 is appropriated only for incentive payments authorized by section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544): *Provided*, That a prime contractor or a subcontractor at any tier that makes a subcontract award to any subcontractor or supplier as defined in 25 U.S.C. 1544 or a small business owned and controlled by an individual or individuals defined under 25 U.S.C. 4221(9) shall be considered a contractor for the purposes of being allowed additional compensation under section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) whenever the prime contract or subcontract amount is over \$500,000 and involves the expenditure of funds appropriated by an Act making Appropriations

for the Department of Defense with respect to any fiscal year: *Provided further*, That notwithstanding 41 U.S.C. 430, this section shall be applicable to any Department of Defense acquisition of supplies or services, including any contract and any subcontract at any tier for acquisition of commercial items produced or manufactured, in whole or in part by any subcontractor or supplier defined in 25 U.S.C. 1544 or a small business owned and controlled by an individual or individuals defined under 25 U.S.C. 4221(9): *Provided further*, That businesses certified as 8(a) by the Small Business Administration pursuant to section 8(a)(15) of Public Law 85–536, as amended, shall have the same status as other program participants under section 602 of Public Law 100–656, 102 Stat. 3825 (Business Opportunity Development Reform Act of 1988) for purposes of contracting with agencies of the Department of Defense.

SEC. 8022. None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A–76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 30 months after initiation of such study for a multi-function activity.

SEC. 8023. Funds appropriated by this Act for the American Forces Information Service shall not be used for any national or international political or psychological activities.

SEC. 8024. Notwithstanding any other provision of law or regulation, the Secretary of Defense may adjust wage rates for civilian employees hired for certain health care occupations as authorized for the Secretary of Veterans Affairs by section 7455 of title 38, United States Code.

SEC. 8025. (a) Of the amount appropriated by title II under the heading “OPERATION AND MAINTENANCE, AIR FORCE”, up to \$2,500,000 may be used for the acquisition of Native Allotment F–14589 by the Secretary of the Air Force in accordance with this section (including for the appraisal under this section), and for fully compensating the owners of such allotment for the damages caused to such owners by Air Force occupancy of property comprising that allotment.

(b) The acquisition under this section may be made only with the consent of the owners of Native Allotment F–14589 and only for the appraised fair market value of that allotment, as determined by the appraiser under subsection (c).

(c) Not later than 60 days after the date of the enactment of this Act, the Secretary of the Air Force shall select, jointly with the owners of Native Allotment F–14589, and retain a qualified appraiser to appraise the fair market value of that allotment. The appraiser shall be an appraiser who is independent of the Department of the Air Force and the owners of the allotment. The Secretary shall ensure that the appraiser completes the appraisal not later than 180 days after the date of the enactment of this Act. The Secretary shall pay the costs of the appraisal.

Deadlines.

(d) The Secretary of the Air Force shall complete the acquisition of Native Allotment F–14589 not later than September 30, 2005, subject to the conditions set forth in subsection (b).

Deadline.

SEC. 8026. During the current fiscal year, the Department of Defense is authorized to incur obligations of not to exceed \$350,000,000 for purposes specified in section 2350j(c) of title 10, United States Code, in anticipation of receipt of contributions, only from the Government of Kuwait, under that section: *Provided*,

That upon receipt, such contributions from the Government of Kuwait shall be credited to the appropriations or fund which incurred such obligations.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8027. (a) Of the funds made available in this Act, not less than \$24,971,000 shall be available for the Civil Air Patrol Corporation, of which—

(1) \$21,588,000 shall be available from “Operation and Maintenance, Air Force” to support Civil Air Patrol Corporation operation and maintenance, readiness, counterdrug activities, and drug demand reduction activities involving youth programs;

(2) \$2,581,000 shall be available from “Aircraft Procurement, Air Force”; and

(3) \$802,000 shall be available from “Other Procurement, Air Force” for vehicle procurement.

(b) The Secretary of the Air Force should waive reimbursement for any funds used by the Civil Air Patrol for counter-drug activities in support of Federal, State, and local government agencies.

SEC. 8028. (a) None of the funds appropriated in this Act are available to establish a new Department of Defense (department) federally funded research and development center (FFRDC), either as a new entity, or as a separate entity administrated by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other non-profit entities.

(b) No member of a Board of Directors, Trustees, Overseers, Advisory Group, Special Issues Panel, Visiting Committee, or any similar entity of a defense FFRDC, and no paid consultant to any defense FFRDC, except when acting in a technical advisory capacity, may be compensated for his or her services as a member of such entity, or as a paid consultant by more than one FFRDC in a fiscal year: *Provided*, That a member of any such entity referred to previously in this subsection shall be allowed travel expenses and per diem as authorized under the Federal Joint Travel Regulations, when engaged in the performance of membership duties.

(c) Notwithstanding any other provision of law, none of the funds available to the department from any source during fiscal year 2005 may be used by a defense FFRDC, through a fee or other payment mechanism, for construction of new buildings, for payment of cost sharing for projects funded by Government grants, for absorption of contract overruns, or for certain charitable contributions, not to include employee participation in community service and/or development.

(d) Notwithstanding any other provision of law, of the funds available to the department during fiscal year 2005, not more than 5,400 staff years of technical effort (staff years) may be funded for defense FFRDCs: *Provided*, That of the specific amount referred to previously in this subsection, not more than 1,050 staff years may be funded for the defense studies and analysis FFRDCs: *Provided further*, That this subsection shall not apply to staff years funded in the National Foreign Intelligence Program (NFIP).

(e) The Secretary of Defense shall, with the submission of the department’s fiscal year 2006 budget request, submit a report presenting the specific amounts of staff years of technical effort to be allocated for each defense FFRDC during that fiscal year.

Reports.

(f) Notwithstanding any other provision of this Act, the total amount appropriated in this Act for FFRDCs is hereby reduced by \$125,000,000.

SEC. 8029. None of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: *Provided*, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: *Provided further*, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That these restrictions shall not apply to contracts which are in being as of the date of the enactment of this Act.

Applicability.

SEC. 8030. For the purposes of this Act, the term “congressional defense committees” means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

SEC. 8031. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: *Provided*, That the Senior Acquisition Executive of the military department or Defense Agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: *Provided further*, That Office of Management and Budget Circular A–76 shall not apply to competitions conducted under this section.

Certification.

SEC. 8032. (a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary’s blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

41 USC 10b–2.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

(b) The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2005. Such report shall separately indicate the dollar value of items for which the Buy American

Reports.

Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) For purposes of this section, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).

SEC. 8033. Appropriations contained in this Act that remain available at the end of the current fiscal year, and at the end of each fiscal year hereafter, as a result of energy cost savings realized by the Department of Defense shall remain available for obligation for the next fiscal year to the extent, and for the purposes, provided in section 2865 of title 10, United States Code.

(INCLUDING TRANSFER OF FUNDS)

10 USC 2667
note.

SEC. 8034. Amounts deposited during the current fiscal year and hereafter to the special account established under 40 U.S.C. 572(b)(5)(A) and to the special account established under 10 U.S.C. 2667(d)(1) are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 572(b)(5)(B) and 10 U.S.C. 2667(d)(1)(B), to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.

SEC. 8035. None of the funds appropriated in this Act shall be used to study, demonstrate, or implement any plans privatizing, divesting or transferring of any Civil Works missions, functions, or responsibilities for the United States Army Corps of Engineers to other government agencies without specific direction in a subsequent Act of Congress.

President.
10 USC 221 note.

SEC. 8036. The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the defense agencies.

10 USC 374 note.

SEC. 8037. Notwithstanding any other provision of law, funds available during the current fiscal year and hereafter for “Drug Interdiction and Counter-Drug Activities, Defense” may be obligated for the Young Marines program.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8038. During the current fiscal year, amounts contained in the Department of Defense Overseas Military Facility Investment Recovery Account established by section 2921(c)(1) of the National Defense Authorization Act of 1991 (Public Law 101–510; 10 U.S.C. 2687 note) shall be available until expended for the payments specified by section 2921(c)(2) of that Act.

SEC. 8039. (a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the Air Force may convey at no cost to the Air Force, without consideration, to Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota relocatable military housing units located at Grand Forks

Air Force Base and Minot Air Force Base that are excess to the needs of the Air Force.

(b) **PROCESSING OF REQUESTS.**—The Secretary of the Air Force shall convey, at no cost to the Air Force, military housing units under subsection (a) in accordance with the request for such units that are submitted to the Secretary by the Operation Walking Shield Program on behalf of Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota.

(c) **RESOLUTION OF HOUSING UNIT CONFLICTS.**—The Operation Walking Shield Program shall resolve any conflicts among requests of Indian tribes for housing units under subsection (a) before submitting requests to the Secretary of the Air Force under subsection (b).

(d) **INDIAN TRIBE DEFINED.**—In this section, the term “Indian tribe” means any recognized Indian tribe included on the current list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe Act of 1994 (Public Law 103–454; 108 Stat. 4792; 25 U.S.C. 479a–1).

SEC. 8040. During the current fiscal year, appropriations which are available to the Department of Defense for operation and maintenance may be used to purchase items having an investment item unit cost of not more than \$250,000.

SEC. 8041. (a) During the current fiscal year, none of the appropriations or funds available to the Department of Defense Working Capital Funds shall be used for the purchase of an investment item for the purpose of acquiring a new inventory item for sale or anticipated sale during the current fiscal year or a subsequent fiscal year to customers of the Department of Defense Working Capital Funds if such an item would not have been chargeable to the Department of Defense Business Operations Fund during fiscal year 1994 and if the purchase of such an investment item would be chargeable during the current fiscal year to appropriations made to the Department of Defense for procurement.

(b) The fiscal year 2006 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2006 Department of Defense budget shall be prepared and submitted to the Congress on the basis that any equipment which was classified as an end item and funded in a procurement appropriation contained in this Act shall be budgeted for in a proposed fiscal year 2006 procurement appropriation and not in the supply management business area or any other area or category of the Department of Defense Working Capital Funds.

SEC. 8042. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 2006: *Provided*, That funds appropriated, transferred, or otherwise credited to the Central Intelligence Agency Central Services Working Capital Fund during this or any prior or subsequent fiscal year shall remain available until expended: *Provided further*, That any funds appropriated or transferred to the Central Intelligence Agency for advanced research and development acquisition, for agent operations, and for covert action programs authorized by the President under section 503 of the National Security Act of 1947, as amended, shall remain available until September 30, 2006.

50 USC 403u
note.

SEC. 8043. Notwithstanding any other provision of law, funds made available in this Act for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.

SEC. 8044. Of the funds appropriated to the Department of Defense under the heading “Operation and Maintenance, Defense-Wide”, not less than \$10,000,000 shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritization of mitigation and cost to complete estimates for mitigation, on Indian lands resulting from Department of Defense activities.

SEC. 8045. (a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).

(b) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a “Made in America” inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.

(c) In the case of any equipment or products purchased with appropriations provided under this Act, it is the sense of the Congress that any entity of the Department of Defense, in expending the appropriation, purchase only American-made equipment and products, provided that American-made equipment and products are cost-competitive, quality-competitive, and available in a timely fashion.

SEC. 8046. None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;

(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support: *Provided*, That this limitation shall not apply to contracts in an amount of less than \$25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been

confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

SEC. 8047. (a) Except as provided in subsection (b) and (c), none of the funds made available by this Act may be used—

(1) to establish a field operating agency; or

(2) to pay the basic pay of a member of the Armed Forces or civilian employee of the department who is transferred or reassigned from a headquarters activity if the member or employee's place of duty remains at the location of that headquarters.

(b) The Secretary of Defense or Secretary of a military department may waive the limitations in subsection (a), on a case-by-case basis, if the Secretary determines, and certifies to the Committees on Appropriations of the House of Representatives and Senate that the granting of the waiver will reduce the personnel requirements or the financial requirements of the department.

(c) This section does not apply to field operating agencies funded within the National Foreign Intelligence Program.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8048. (a) Upon a determination by the Secretary of the Navy that the vessel USNS Capable (T-AGOS 16) is no longer needed by the Navy, the Secretary shall transfer such vessel to the National Oceanic and Atmospheric Administration as an exploration and research ship.

(b) Upon a transfer of the vessel USNS Capable (T-AGOS 16) under subsection (a), the Secretary of the Navy shall transfer to the Secretary of Commerce \$18,000,000 out of funds appropriated by title IV under the heading “Research, Development, Test and Evaluation, Navy”. The amount so transferred shall be available to the National Oceanographic and Atmospheric Administration for the conversion of the vessel for use as an exploration and research ship.

(RESCISSIONS)

SEC. 8049. Of the funds appropriated in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

“Shipbuilding and Conversion, Navy, 2002/2006”,
\$14,000,000;

“Former Soviet Union Threat Reduction, 2003/2005”,
\$50,000,000;

“Aircraft Procurement, Navy, 2003/2005”, \$50,000,000;

“Aircraft Procurement, Air Force, 2003/2005”, \$50,000,000;

“Other Procurement, Army, 2004/2006”, \$16,000,000;

“Aircraft Procurement, Navy, 2004/2006”, \$32,800,000;

“Shipbuilding and Conversion, Navy, 2004/2008”,
\$10,300,000;

“Weapons Procurement, Navy, 2004/2006”, \$25,200,000;

“Other Procurement, Navy, 2004/2006”, \$41,700,000;

“Procurement, Marine Corps, 2004/2006”, \$40,200,000;

“Other Procurement, Air Force, 2004/2006”, \$100,000,000;

“Procurement, Defense-Wide, 2004/2006”, \$34,571,000;

“Research, Development, Test and Evaluation, Army, 2004/
2005”, \$30,000,000;

“Research, Development, Test and Evaluation, Navy, 2004/2005”, \$148,500,000;

“Research, Development, Test and Evaluation, Air Force, 2004/2005”, \$57,666,000; and

“Research, Development, Test and Evaluation, Defense-Wide, 2004/2005”, \$78,700,000.

SEC. 8050. None of the funds available in this Act may be used to reduce the authorized positions for military (civilian) technicians of the Army National Guard, the Air National Guard, Army Reserve and Air Force Reserve for the purpose of applying any administratively imposed civilian personnel ceiling, freeze, or reduction on military (civilian) technicians, unless such reductions are a direct result of a reduction in military force structure.

SEC. 8051. None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People’s Republic of North Korea unless specifically appropriated for that purpose.

SEC. 8052. During the current fiscal year and hereafter, funds appropriated in this Act are available to compensate members of the National Guard for duty performed pursuant to a plan submitted by a Governor of a State and approved by the Secretary of Defense under section 112 of title 32, United States Code: *Provided*, That during the performance of such duty, the members of the National Guard shall be under State command and control: *Provided further*, That such duty shall be treated as full-time National Guard duty for purposes of sections 12602(a)(2) and (b)(2) of title 10, United States Code.

SEC. 8053. Funds appropriated in this Act for operation and maintenance of the Military Departments, Combatant Commands and Defense Agencies shall be available for reimbursement of pay, allowances and other expenses which would otherwise be incurred against appropriations for the National Guard and Reserve when members of the National Guard and Reserve provide intelligence or counterintelligence support to Combatant Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Foreign Intelligence Program (NFIP), the Joint Military Intelligence Program (JMIP), and the Tactical Intelligence and Related Activities (TIARA) aggregate: *Provided*, That nothing in this section authorizes deviation from established Reserve and National Guard personnel and training procedures.

Certification.

SEC. 8054. During the current fiscal year, none of the funds appropriated in this Act may be used to reduce the civilian medical and medical support personnel assigned to military treatment facilities below the September 30, 2003 level: *Provided*, That the Service Surgeons General may waive this section by certifying to the congressional defense committees that the beneficiary population is declining in some catchment areas and civilian strength reductions may be consistent with responsible resource stewardship and capitation-based budgeting.

Deadline.
Certification.
10 USC 2674
note.

SEC. 8055. (a) LIMITATION ON PENTAGON RENOVATION COSTS.—Not later than the date each year on which the President submits to Congress the budget under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a certification that the total cost for the planning, design, construction, and installation of equipment for the renovation of wedges 2 through 5 of the Pentagon Reservation, cumulatively, will not

exceed four times the total cost for the planning, design, construction, and installation of equipment for the renovation of wedge 1.

(b) ANNUAL ADJUSTMENT.—For purposes of applying the limitation in subsection (a), the Secretary shall adjust the cost for the renovation of wedge 1 by any increase or decrease in costs attributable to economic inflation, based on the most recent economic assumptions issued by the Office of Management and Budget for use in preparation of the budget of the United States under section 1104 of title 31, United States Code.

(c) EXCLUSION OF CERTAIN COSTS.—For purposes of calculating the limitation in subsection (a), the total cost for wedges 2 through 5 shall not include—

(1) any repair or reconstruction cost incurred as a result of the terrorist attack on the Pentagon that occurred on September 11, 2001;

(2) any increase in costs for wedges 2 through 5 attributable to compliance with new requirements of Federal, State, or local laws; and

(3) any increase in costs attributable to additional security requirements that the Secretary of Defense considers essential to provide a safe and secure working environment.

(d) CERTIFICATION COST REPORTS.—As part of the annual certification under subsection (a), the Secretary shall report the projected cost (as of the time of the certification) for—

(1) the renovation of each wedge, including the amount adjusted or otherwise excluded for such wedge under the authority of paragraphs (2) and (3) of subsection (c) for the period covered by the certification; and

(2) the repair and reconstruction of wedges 1 and 2 in response to the terrorist attack on the Pentagon that occurred on September 11, 2001.

(e) DURATION OF CERTIFICATION REQUIREMENT.—The requirement to make an annual certification under subsection (a) shall apply until the Secretary certifies to Congress that the renovation of the Pentagon Reservation is completed.

Applicability.

SEC. 8056. Notwithstanding any other provision of law, that not more than 35 percent of funds provided in this Act for environmental remediation may be obligated under indefinite delivery/indefinite quantity contracts with a total contract value of \$130,000,000 or higher.

SEC. 8057. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

10 USC 374 note.

(b) None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

50 USC 403f note.

(TRANSFER OF FUNDS)

SEC. 8058. Appropriations available under the heading “Operation and Maintenance, Defense-Wide” for the current fiscal year and hereafter for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred

10 USC 2865 note.

to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.

SEC. 8059. None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: *Provided*, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That this restriction shall not apply to the purchase of “commercial items”, as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items.

SEC. 8060. Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.

SEC. 8061. None of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the congressional defense committees that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

Contracts.

SEC. 8062. Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year for construction or service performed in whole or in part in a State (as defined in section 381(d) of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: *Provided*, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.

SEC. 8063. None of the funds made available in this or any other Act may be used to pay the salary of any officer or employee of the Department of Defense who approves or implements the transfer of administrative responsibilities or budgetary resources of any program, project, or activity financed by this Act to the jurisdiction of another Federal agency not financed by this Act without the express authorization of Congress: *Provided*, That this limitation shall not apply to transfers of funds expressly provided

for in Defense Appropriations Acts, or provisions of Acts providing supplemental appropriations for the Department of Defense.

SEC. 8064. (a) LIMITATION ON TRANSFER OF DEFENSE ARTICLES AND SERVICES.—Notwithstanding any other provision of law, none of the funds available to the Department of Defense for the current fiscal year may be obligated or expended to transfer to another nation or an international organization any defense articles or services (other than intelligence services) for use in the activities described in subsection (b) unless the congressional defense committees, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.

Notification.

(b) COVERED ACTIVITIES.—This section applies to—

Applicability.

(1) any international peacekeeping or peace-enforcement operation under the authority of chapter VI or chapter VII of the United Nations Charter under the authority of a United Nations Security Council resolution; and

(2) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation.

(c) REQUIRED NOTICE.—A notice under subsection (a) shall include the following:

(1) A description of the equipment, supplies, or services to be transferred.

(2) A statement of the value of the equipment, supplies, or services to be transferred.

(3) In the case of a proposed transfer of equipment or supplies—

(A) a statement of whether the inventory requirements of all elements of the Armed Forces (including the reserve components) for the type of equipment or supplies to be transferred have been met; and

(B) a statement of whether the items proposed to be transferred will have to be replaced and, if so, how the President proposes to provide funds for such replacement.

SEC. 8065. To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, for the current fiscal year and hereafter the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed \$15,000,000,000: *Provided further*, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.

10 USC 2540
note.

Reports.

SEC. 8066. None of the funds available to the Department of Defense under this Act shall be obligated or expended to pay

a contractor under a contract with the Department of Defense for costs of any amount paid by the contractor to an employee when—

(1) such costs are for a bonus or otherwise in excess of the normal salary paid by the contractor to the employee; and

(2) such bonus is part of restructuring costs associated with a business combination.

SEC. 8067. Funds appropriated for the Department of Defense and for intelligence activities in this Act are available for transfer to the Department of State as remittance for a fee charged by the Department of State for fiscal year 2005 for the maintenance, upgrade, or construction of United States diplomatic facilities only to the extent that the amount of the fee so charged (when added to other amounts of such fees previously charged for that fiscal year) exceeds the total amount of the unreimbursed costs incurred by the departments and agencies funded by this Act during that fiscal year in providing goods and services to the Department of State.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8068. During the current fiscal year, no more than \$30,000,000 of appropriations made in this Act under the heading “Operation and Maintenance, Defense-Wide” may be transferred to appropriations available for the pay of military personnel, to be merged with, and to be available for the same time period as the appropriations to which transferred, to be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code.

SEC. 8069. During the current fiscal year, in the case of an appropriation account of the Department of Defense for which the period of availability for obligation has expired or which has closed under the provisions of section 1552 of title 31, United States Code, and which has a negative unliquidated or unexpended balance, an obligation or an adjustment of an obligation may be charged to any current appropriation account for the same purpose as the expired or closed account if—

(1) the obligation would have been properly chargeable (except as to amount) to the expired or closed account before the end of the period of availability or closing of that account;

(2) the obligation is not otherwise properly chargeable to any current appropriation account of the Department of Defense; and

(3) in the case of an expired account, the obligation is not chargeable to a current appropriation of the Department of Defense under the provisions of section 1405(b)(8) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended (31 U.S.C. 1551 note): *Provided*, That in the case of an expired account, if subsequent review or investigation discloses that there was not in fact a negative unliquidated or unexpended balance in the account, any charge to a current account under the authority of this section shall be reversed and recorded against the expired account: *Provided further*, That the total amount charged to a current appropriation under this section may not exceed an amount equal to 1 percent of the total appropriation for that account.

SEC. 8070. Hereafter, funds appropriated for Operation and maintenance and for the Defense Health Program in this Act, and in future appropriations acts for the Department of Defense, for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects, or any planning studies, environmental assessments, or similar activities related to installation support functions, may be obligated at the time the reimbursable order is accepted by the performing activity: *Provided*, That for the purpose of this section, supervision and administration costs includes all in-house Government cost.

10 USC 2241
note.

SEC. 8071. (a) Notwithstanding any other provision of law, the Chief of the National Guard Bureau may permit the use of equipment of the National Guard Distance Learning Project by any person or entity on a space-available, reimbursable basis. The Chief of the National Guard Bureau shall establish the amount of reimbursement for such use on a case-by-case basis.

(b) Amounts collected under subsection (a) shall be credited to funds available for the National Guard Distance Learning Project and be available to defray the costs associated with the use of equipment of the project under that subsection. Such funds shall be available for such purposes without fiscal year limitation.

SEC. 8072. Using funds available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: *Provided*, That in the City of Kaiserslautern such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: *Provided further*, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.

SEC. 8073. None of the funds appropriated in title IV of this Act may be used to procure end-items for delivery to military forces for operational training, operational use or inventory requirements: *Provided*, That this restriction does not apply to end-items used in development, prototyping, and test activities preceding and leading to acceptance for operational use: *Provided further*, That this restriction does not apply to programs funded within the National Foreign Intelligence Program: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

SEC. 8074. None of the funds made available in this Act may be used to approve or license the sale of the F-22 advanced tactical fighter to any foreign government.

SEC. 8075. (a) The Secretary of Defense may, on a case-by-case basis, waive with respect to a foreign country each limitation on the procurement of defense items from foreign sources provided in law if the Secretary determines that the application of the limitation with respect to that country would invalidate cooperative programs entered into between the Department of Defense and the foreign country, or would invalidate reciprocal trade agreements for the procurement of defense items entered into under section

2531 of title 10, United States Code, and the country does not discriminate against the same or similar defense items produced in the United States for that country.

Applicability.

(b) Subsection (a) applies with respect to—

(1) contracts and subcontracts entered into on or after the date of the enactment of this Act; and

(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (a).

(c) Subsection (a) does not apply to a limitation regarding construction of public vessels, ball and roller bearings, food, and clothing or textile materials as defined by section 11 (chapters 50–65) of the Harmonized Tariff Schedule and products classified under headings 4010, 4202, 4203, 6401 through 6406, 6505, 7019, 7218 through 7229, 7304.41 through 7304.49, 7306.40, 7502 through 7508, 8105, 8108, 8109, 8211, 8215, and 9404.

SEC. 8076. (a) PROHIBITION.—None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

Human rights.

(b) MONITORING.—The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to conduct any training program referred to in subsection (a), full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.

(c) WAIVER.—The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a) if he determines that such waiver is required by extraordinary circumstances.

(d) REPORT.—Not more than 15 days after the exercise of any waiver under subsection (c), the Secretary of Defense shall submit a report to the congressional defense committees describing the extraordinary circumstances, the purpose and duration of the training program, the United States forces and the foreign security forces involved in the training program, and the information relating to human rights violations that necessitates the waiver.

SEC. 8077. (a) The Secretary of Defense, in coordination with the Secretary of Health and Human Services, may carry out a program to distribute surplus dental and medical equipment of the Department of Defense, at no cost to the Department of Defense, to Indian Health Service facilities and to federally-qualified health centers (within the meaning of section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B))).

(b) In carrying out this provision, the Secretary of Defense shall give the Indian Health Service a property disposal priority equal to the priority given to the Department of Defense and its twelve special screening programs in distribution of surplus dental and medical supplies and equipment.

SEC. 8078. None of the funds appropriated or made available in this Act to the Department of the Navy shall be used to develop, lease or procure the T-AKE class of ships unless the main propulsion diesel engines and propulsors are manufactured in the United

States by a domestically operated entity: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes or there exists a significant cost or quality difference.

Certification.

SEC. 8079. None of the funds appropriated or otherwise made available by this or other Department of Defense Appropriations Acts may be obligated or expended for the purpose of performing repairs or maintenance to military family housing units of the Department of Defense, including areas in such military family housing units that may be used for the purpose of conducting official Department of Defense business.

SEC. 8080. Notwithstanding any other provision of law, funds appropriated in this Act under the heading “Research, Development, Test and Evaluation, Defense-Wide” for any advanced concept technology demonstration project may only be obligated 30 days after a report, including a description of the project, the planned acquisition and transition strategy and its estimated annual and total cost, has been provided in writing to the congressional defense committees: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying to the congressional defense committees that it is in the national interest to do so.

Reports.

Certification.

SEC. 8081. The Secretary of Defense shall provide a classified quarterly report, beginning 30 days after enactment of this Act, to the House and Senate Appropriations Committees, Subcommittees on Defense on certain matters as directed in the classified annex accompanying this Act.

Reports.
Deadline.

SEC. 8082. During the current fiscal year, refunds attributable to the use of the Government travel card, refunds attributable to the use of the Government Purchase Card and refunds attributable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance, and research, development, test and evaluation accounts of the Department of Defense which are current when the refunds are received.

SEC. 8083. (a) REGISTERING FINANCIAL MANAGEMENT INFORMATION TECHNOLOGY SYSTEMS WITH DOD CHIEF INFORMATION OFFICER.—None of the funds appropriated in this Act may be used for a mission critical or mission essential financial management information technology system (including a system funded by the defense working capital fund) that is not registered with the Chief Information Officer of the Department of Defense. A system shall be considered to be registered with that officer upon the furnishing to that officer of notice of the system, together with such information concerning the system as the Secretary of Defense may prescribe. A financial management information technology system shall be considered a mission critical or mission essential information technology system as defined by the Under Secretary of Defense (Comptroller).

(b) CERTIFICATIONS AS TO COMPLIANCE WITH FINANCIAL MANAGEMENT MODERNIZATION PLAN.—

(1) During the current fiscal year, a financial management automated information system, a mixed information system

supporting financial and non-financial systems, or a system improvement of more than \$1,000,000 may not receive Milestone A approval, Milestone B approval, or full rate production, or their equivalent, within the Department of Defense until the Under Secretary of Defense (Comptroller) certifies, with respect to that milestone, that the system is being developed and managed in accordance with the Department's Financial Management Modernization Plan. The Under Secretary of Defense (Comptroller) may require additional certifications, as appropriate, with respect to any such system.

Notification.

(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1).

(c) CERTIFICATIONS AS TO COMPLIANCE WITH CLINGER-COHEN ACT.—

(1) During the current fiscal year, a major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production approval, or their equivalent, within the Department of Defense until the Chief Information Officer certifies, with respect to that milestone, that the system is being developed in accordance with the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.). The Chief Information Officer may require additional certifications, as appropriate, with respect to any such system.

Notification.

(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1). Each such notification shall include, at a minimum, the funding baseline and milestone schedule for each system covered by such a certification and confirmation that the following steps have been taken with respect to the system:

- (A) Business process reengineering.
- (B) An analysis of alternatives.
- (C) An economic analysis that includes a calculation of the return on investment.
- (D) Performance measures.
- (E) An information assurance strategy consistent with the Department's Global Information Grid.

(d) DEFINITIONS.—For purposes of this section:

(1) The term “Chief Information Officer” means the senior official of the Department of Defense designated by the Secretary of Defense pursuant to section 3506 of title 44, United States Code.

(2) The term “information technology system” has the meaning given the term “information technology” in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

SEC. 8084. During the current fiscal year, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: *Provided*, That this restriction shall not apply if the department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: *Provided further*, That the Secretary of Defense may waive this restriction on a

Certification.

case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

SEC. 8085. None of the funds provided in this Act may be used to transfer to any nongovernmental entity ammunition held by the Department of Defense that has a center-fire cartridge and a United States military nomenclature designation of “armor penetrator”, “armor piercing (AP)”, “armor piercing incendiary (API)”, or “armor-piercing incendiary-tracer (API-T)”, except to an entity performing demilitarization services for the Department of Defense under a contract that requires the entity to demonstrate to the satisfaction of the Department of Defense that armor piercing projectiles are either: (1) rendered incapable of reuse by the demilitarization process; or (2) used to manufacture ammunition pursuant to a contract with the Department of Defense or the manufacture of ammunition for export pursuant to a License for Permanent Export of Unclassified Military Articles issued by the Department of State.

SEC. 8086. Notwithstanding any other provision of law, the Chief of the National Guard Bureau, or his designee, may waive payment of all or part of the consideration that otherwise would be required under 10 U.S.C. 2667, in the case of a lease of personal property for a period not in excess of 1 year to any organization specified in 32 U.S.C. 508(d), or any other youth, social, or fraternal non-profit organization as may be approved by the Chief of the National Guard Bureau, or his designee, on a case-by-case basis.

SEC. 8087. None of the funds appropriated by this Act shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: *Provided*, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: *Provided further*, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: *Provided further*, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.

Alcohol and
alcoholic
beverages.
10 USC 2488
note.

Contracts.
Applicability.

SEC. 8088. Up to \$3,000,000 of the funds appropriated under the heading “Operation and Maintenance, Navy” in this Act for the Pacific Missile Range Facility may be made available to contract for the repair, maintenance, and operation of adjacent off-base water, drainage, and flood control systems, electrical upgrade to support additional missions critical to base operations, and support for a range footprint expansion to further guard against encroachment.

SEC. 8089. Funds available to the Department of Defense for the Global Positioning System during the current fiscal year may be used to fund civil requirements associated with the satellite and ground control segments of such system’s modernization program.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8090. (a) Of the amounts appropriated in this Act under the heading, “Research, Development, Test and Evaluation, Defense-Wide”, \$60,000,000 shall remain available until expended: *Provided*, That notwithstanding any other provision of law, the Secretary of Defense is authorized to transfer such funds to other activities of the Federal Government.

Contracts.

(b) Of the amounts appropriated in this Act under the heading, “Operation and Maintenance, Army”, \$185,000,000 shall remain available until expended: *Provided*, That notwithstanding any other provision of law, the Secretary of Defense is authorized to transfer such funds to other activities of the Federal Government: *Provided further*, That the Secretary of Defense is authorized to enter into and carry out contracts for the acquisition of real property, construction, personal services, and operations related to projects described in further detail in the Classified Annex accompanying the Department of Defense Appropriations Act, 2005, consistent with the terms and conditions set forth therein: *Provided further*, That contracts entered into under the authority of this section may provide for such indemnification as the Secretary determines to be necessary: *Provided further*, That projects authorized by this section shall comply with applicable Federal, State, and local law to the maximum extent consistent with the national security, as determined by the Secretary of Defense.

Applicability.
10 USC 113 note.

SEC. 8091. Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104–208; 110 Stat. 3009–111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2005.

SEC. 8092. (a) Of the amounts appropriated in this Act under the heading “Research, Development, Test and Evaluation, Navy”, \$214,678,000 shall be available for the construction of the first prototype vessel under the Littoral Combat Ship program.

(b) None of the funds provided in this Act may be obligated to prepare a fiscal year 2006 budget request for a third vessel under the Littoral Combat Ship program in fiscal year 2006: *Provided*, That funds for the second vessel shall be for a second source supplier: *Provided further*, That all subsequent ships shall be purchased with “Shipbuilding and Conversion, Navy” funds beginning in fiscal year 2007.

SEC. 8093. In addition to amounts provided elsewhere in this Act, \$2,000,000 is hereby appropriated for “Defense Health Program”, to remain available for obligation until expended: *Provided*, That notwithstanding any other provision of law, these funds shall be available only for a grant to the Fisher House Foundation, Inc., only for the construction and furnishing of additional Fisher Houses to meet the needs of military family members when confronted with the illness or hospitalization of an eligible military beneficiary.

SEC. 8094. Amounts appropriated in title II of this Act are hereby reduced by \$300,000,000 to reflect savings attributable to efficiencies and management improvements in the funding of miscellaneous or other contracts in the military departments, as follows:

- (1) From “Operation and Maintenance, Army”, \$66,700,000.
- (2) From “Operation and Maintenance, Navy”, \$77,900,000.

(3) From “Operation and Maintenance, Marine Corps”, \$6,100,000.

(4) From “Operation and Maintenance, Air Force”, \$149,300,000.

SEC. 8095. The total amount appropriated or otherwise made available in this Act is hereby reduced by \$500,000,000 to limit excessive growth in the procurement of advisory and assistance services, to be distributed as follows:

“Operation and Maintenance, Army”, \$25,000,000;

“Operation and Maintenance, Defense-Wide”, \$225,000,000;

“Research, Development, Test and Evaluation, Army”, \$50,000,000; and

“Research, Development, Test and Evaluation, Defense-Wide”, \$200,000,000.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8096. Of the amounts appropriated in this Act under the heading “Research, Development, Test and Evaluation, Defense-Wide”, \$155,290,000 shall be made available for the Arrow missile defense program: *Provided*, That of this amount, \$68,000,000 shall be available for the purpose of producing Arrow missile components in the United States and Arrow missile components and missiles in Israel to meet Israel’s defense requirements, consistent with each nation’s laws, regulations and procedures: *Provided further*, That funds made available under this provision for production of missiles and missile components may be transferred to appropriations available for the procurement of weapons and equipment, to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred: *Provided further*, That the transfer authority provided under this provision is in addition to any other transfer authority contained in this Act.

SEC. 8097. Notwithstanding any other provision of law, of the amounts provided in this Act and in Public Law 108–87 under the heading “Research, Development, Test and Evaluation, Navy”, \$1,500,000, and \$500,000, respectively, shall be provided as a grant (or grants) to the California Central Coast Research Partnership (C3RP) through the California Polytechnic State University Foundation: *Provided*, That the Secretary of the Navy shall make said grant (or grants) within 90 days of the enactment of this Act.

Grants.

Deadline.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8098. (a) In addition to amounts provided elsewhere in this Act, \$34,000,000 is hereby appropriated for “Aircraft Procurement, Navy”: *Provided*, That these funds shall be available only for transfer to the Coast Guard for mission essential equipment for Coast Guard HC–130J aircraft.

(b) In addition to amounts appropriated or otherwise made available in this Act, there is hereby appropriated \$40,000,000, for “Operation and Maintenance, Defense-Wide”: *Provided*, That, of the funds provided herein, \$30,000,000, to remain available until expended, shall be transferred within 15 days of the enactment of this Act to the Department of Agriculture, Forest Service “Wildland Fire Management” account and shall be merged with

other funds in this account and shall be made available for hazardous fuels reduction, hazard mitigation, and rehabilitation activities of the Forest Service in the San Bernardino National Forest, and \$10,000,000, to remain available until expended, shall be transferred within 15 days of the enactment of this Act to the Forest Service, “Capital Improvement and Maintenance” account and shall be made available to construct a wildfire management training facility in San Bernardino County: *Provided further*, That the transfer authority provided in this section is in addition to any other transfer authority available to the Department of Defense.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8099. Of the amounts appropriated in this Act under the heading “Shipbuilding and Conversion, Navy”, \$484,390,000 shall be available until September 30, 2005, to fund prior year shipbuilding cost increases: *Provided*, That upon enactment of this Act, the Secretary of the Navy shall transfer such funds to the following appropriations in the amounts specified: *Provided further*, That the amounts transferred shall be merged with and be available for the same purposes as the appropriations to which transferred:

To:

Under the heading, “Shipbuilding and Conversion, Navy, 1996/2005”:

LPD-17 Amphibious Transport Dock Ship Program, \$55,000,000.

Under the heading, “Shipbuilding and Conversion, Navy, 1999/2005”:

New SSN, \$10,000,000;

LPD-17 Amphibious Transport Dock Ship Program, \$38,100,000.

Under the heading, “Shipbuilding and Conversion, Navy, 2000/2005”:

DDG-51 Destroyer Program, \$44,963,000;

LPD-17 Amphibious Transport Dock Ship Program, \$171,681,000.

Under the heading, “Shipbuilding and Conversion, Navy, 2001/2005”:

DDG-51 Destroyer Program, \$83,316,000;

New SSN, \$67,330,000.

Under the heading, “Shipbuilding and Conversion, Navy, 2002/2005”:

LCAC SLEP, \$2,100,000.

Under the heading, “Shipbuilding and Conversion, Navy, 2003/2005”:

LCAC SLEP, \$11,900,000:

Provided further, That section 126 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1410; 10 U.S.C. 7291 note) is repealed.

SEC. 8100. The Secretary of the Navy may settle, or compromise, and pay any and all admiralty claims under 10 U.S.C. 7622 arising out of the collision involving the U.S.S. GREENEVILLE and the EHIME MARU, in any amount and without regard to the monetary limitations in subsections (a) and (b) of that section: *Provided*, That such payments shall be made from funds available to the Department of the Navy for operation and maintenance.

SEC. 8101. None of the funds available to the Department of Defense may be obligated to implement any action which alters the command responsibility or permanent assignment of forces until 270 days after such plan has been provided to the congressional defense committees.

SEC. 8102. Notwithstanding any other provision of law or regulation, the Secretary of Defense may exercise the provisions of 38 U.S.C. 7403(g) for occupations listed in 38 U.S.C. 7403(a)(2) as well as the following:

Pharmacists, Audiologists, and Dental Hygienists.

(A) The requirements of 38 U.S.C. 7403(g)(1)(A) shall Applicability.

apply.

(B) The limitations of 38 U.S.C. 7403(g)(1)(B) shall not apply.

SEC. 8103. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2005 until the enactment of the Intelligence Authorization Act for fiscal year 2005.

SEC. 8104. In addition to funds made available elsewhere in this Act, \$5,500,000 is hereby appropriated and shall remain available until expended to provide assistance, by grant or otherwise (such as, but not limited to, the provision of funds for repairs, maintenance, construction, and/or for the purchase of information technology, text books, teaching resources), to public schools that have unusually high concentrations of special needs military dependents enrolled: *Provided*, That in selecting school systems to receive such assistance, special consideration shall be given to school systems in States that are considered overseas assignments, and all schools within these school systems shall be eligible for assistance: *Provided further*, That up to 2 percent of the total appropriated funds under this section shall be available to support the administration and execution of the funds or program and/or events that promote the purpose of this appropriation (e.g. payment of travel and per diem of school teachers attending conferences or a meeting that promotes the purpose of this appropriation and/or consultant fees for on-site training of teachers, staff, or Joint Venture Education Forum (JVEF) Committee members): *Provided further*, That up to \$2,000,000 shall be available for the Department of Defense to establish a non-profit trust fund to assist in the public-private funding of public school repair and maintenance projects, or provide directly to non-profit organizations who in return will use these monies to provide assistance in the form of repair, maintenance, or renovation to public school systems that have high concentrations of special needs military dependents and are located in States that are considered overseas assignments: *Provided further*, That to the extent a Federal agency provides this assistance, by contract, grant, or otherwise, it may accept and expend non-Federal funds in combination with these Federal funds to provide assistance for the authorized purpose, if the non-Federal entity requests such assistance and the non-Federal funds are provided on a reimbursable basis.

SEC. 8105. The total amount appropriated in title IV of this Act is hereby reduced by \$197,500,000 to reduce cost growth in information technology development and modernization, to be derived as follows:

- (1) From “Other Procurement, Army”, \$39,500,000.
- (2) From “Other Procurement, Navy”, \$10,800,000.
- (3) From “Other Procurement, Air Force”, \$49,000,000.
- (4) From “Procurement, Defense-Wide”, \$20,100,000.
- (5) From “Research, Development, Test and Evaluation, Army”, \$3,500,000.
- (6) From “Research, Development, Test and Evaluation, Navy”, \$10,800,000.
- (7) From “Research, Development, Test and Evaluation, Air Force”, \$3,500,000.
- (8) From “Research, Development, Test and Evaluation, Defense-Wide”, \$60,300,000.

SEC. 8106. None of the funds in this Act may be used to initiate a new start program without prior written notification to the Office of Secretary of Defense and the congressional defense committees.

SEC. 8107. The amounts appropriated in title II of this Act are hereby reduced by \$316,000,000 to reflect cash balance and rate stabilization adjustments in Department of Defense Working Capital Funds, as follows:

- (1) From “Operation and Maintenance, Navy”, \$150,000,000.
- (2) From “Operation and Maintenance, Air Force”, \$166,000,000.

SEC. 8108. (a) In addition to the amounts provided elsewhere in this Act, the amount of \$6,000,000 is hereby appropriated to the Department of Defense for “Operation and Maintenance, Army National Guard”. Such amount shall be made available to the Secretary of the Army only to make a grant in the amount of \$6,000,000 to the entity specified in subsection (b) to facilitate access by veterans to opportunities for skilled employment in the construction industry.

Grants.

(b) The entity referred to in subsection (a) is the Center for Military Recruitment, Assessment and Veterans Employment, a nonprofit labor-management co-operation committee provided for by section 302(c)(9) of the Labor-Management Relations Act, 1947 (29 U.S.C. 186(c)(9)), for the purposes set forth in section 6(b) of the Labor Management Cooperation Act of 1978 (29 U.S.C. 175a note).

SEC. 8109. FINANCING AND FIELDING OF KEY ARMY CAPABILITIES.—The Department of Defense and the Department of the Army shall make future budgetary and programming plans to fully finance the Non-Line of Sight Future Force cannon and resupply vehicle program (NLOS–C) in order to field this system in fiscal year 2010, consistent with the broader plan to field the Future Combat System (FCS) in fiscal year 2010: *Provided*, That if the Army is precluded from fielding the FCS program by fiscal year 2010, then the Army shall develop the NLOS–C independent of the broader FCS development timeline to achieve fielding by fiscal year 2010. In addition the Army will deliver eight (8) combat operational pre-production NLOS–C systems by the end of calendar year 2008. These systems shall be in addition to those systems necessary for developmental and operational testing: *Provided further*, That the Army shall ensure that budgetary and programmatic plans will provide for no fewer than seven (7) Stryker Brigade Combat Teams.

SEC. 8110. Of the funds made available in this Act, not less than \$87,900,000 shall be available to maintain an attrition reserve force of 18 B–52 aircraft, of which \$3,700,000 shall be available from “Military Personnel, Air Force”, \$55,300,000 shall be available from “Operation and Maintenance, Air Force”, and \$28,900,000 shall be available from “Aircraft Procurement, Air Force”: *Provided*, That the Secretary of the Air Force shall maintain a total force of 94 B–52 aircraft, including 18 attrition reserve aircraft, during fiscal year 2005: *Provided further*, That the Secretary of Defense shall include in the Air Force budget request for fiscal year 2006 amounts sufficient to maintain a B–52 force totaling 94 aircraft.

SEC. 8111. Of the funds made available under the heading “Operation and Maintenance, Air Force”, \$9,000,000 shall be available to realign railroad track on Elmendorf Air Force Base and Fort Richardson: *Provided*, That of the funds made available under the heading “Operation and Maintenance, Air Force”, \$14,000,000 shall be available for engineering and environment studies necessary to extend the railroad to Stryker Brigade Combat Team training areas north of Fort Wainwright, Alaska: *Provided further*, That the Secretary of the Air Force is authorized, using funds available under the heading “Operation and Maintenance, Air Force”, to complete a phased repair project, which repairs may include upgrades and additions, to the infrastructure of the operational ranges managed by the Air Force in Alaska. The total cost of such phased projects shall not exceed \$32,000,000.

(TRANSFER OF FUNDS)

SEC. 8112. Of the amounts appropriated in Public Law 107–206 under the heading “Defense Emergency Response Fund”, an amount up to the fair market value of the leasehold interest in adjacent properties necessary for the force protection requirements of Tooele Army Depot, Utah, may be made available to resolve any property disputes associated with Tooele Army Depot, Utah, and to acquire such leasehold interest as required: *Provided*, That none of these funds may be used to acquire fee title to the properties.

SEC. 8113. In addition to the amounts appropriated or otherwise made available elsewhere in this Act, \$51,425,000 is hereby appropriated to the Department of Defense, to remain available until September 30, 2005: *Provided*, That the Secretary of Defense shall make grants in the amounts specified as follows: \$5,000,000 to the Intrepid Sea-Air-Space Foundation; \$1,875,000 to the Presidio Trust only for renovations of the parade field; \$1,000,000 to the Fort Ticonderoga Association; \$8,500,000 to the Military Aviation Museum of the Pacific; \$10,000,000 to the Wings of Liberty Military Museum at Fort Campbell; \$2,550,000 to the United Services Organization; \$5,000,000 to the Galena IDEA Distance Learning Program; \$1,500,000 to the Wing Luke Asian Museum; \$8,000,000 to the Center for Applied Science and Engineering; \$1,000,000 to the Women in Military Service for America Memorial Foundation; \$2,000,000 to the American Red Cross Greater Alleghenies Blood Services Center; \$4,000,000 to the Clarksville-Montgomery County School System; and \$1,000,000 to the National Museum of Cavalry and Armor at Fort Knox.

SEC. 8114. None of the funds appropriated in this Act under the heading “Overseas Contingency Operations Transfer Account” may be transferred or obligated for Department of Defense expenses

Reports.
Deadlines.

not directly related to the conduct of overseas contingencies: *Provided*, That the Secretary of Defense shall submit a report no later than 30 days after the end of each fiscal quarter to the Committees on Appropriations of the Senate and House of Representatives that details any transfer of funds from the “Overseas Contingency Operations Transfer Account”: *Provided further*, That the report shall explain any transfer for the maintenance of real property, pay of civilian personnel, base operations support, and weapon, vehicle or equipment maintenance.

Applicability.

SEC. 8115. For purposes of section 1553(b) of title 31, United States Code, any subdivision of appropriations made in this Act under the heading “Shipbuilding and Conversion, Navy” shall be considered to be for the same purpose as any subdivision under the heading “Shipbuilding and Conversion, Navy” appropriations in any prior fiscal year, and the 1 percent limitation shall apply to the total amount of the appropriation.

10 USC 221 note.

SEC. 8116. The budget of the President for fiscal year 2006 submitted to the Congress pursuant to section 1105 of title 31, United States Code shall include separate budget justification documents for costs of United States Armed Forces’ participation in contingency operations for the Military Personnel accounts, the Operation and Maintenance accounts, and the Procurement accounts: *Provided*, That these documents shall include a description of the funding requested for each contingency operation, for each military service, to include all Active and Reserve components, and for each appropriations account: *Provided further*, That these documents shall include estimated costs for each element of expense or object class, a reconciliation of increases and decreases for each contingency operation, and programmatic data including, but not limited to, troop strength for each Active and Reserve component, and estimates of the major weapons systems deployed in support of each contingency: *Provided further*, That these documents shall include budget exhibits OP–5 and OP–32 (as defined in the Department of Defense Financial Management Regulation) for all contingency operations for the budget year and the two preceding fiscal years.

10 USC 2533a
note.

SEC. 8117. None of the funds in this Act may be used for research, development, test, evaluation, procurement or deployment of nuclear armed interceptors of a missile defense system.

Applicability.
Contracts.

SEC. 8118. Notwithstanding any other provision of law, section 2533a(f) of title 10, United States Code, shall hereafter not apply to any fish, shellfish, or seafood product. This section applies to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

SEC. 8119. Of the amounts provided in title II of this Act under the heading, “Operation and Maintenance, Defense-Wide”, \$20,000,000 is available for the Regional Defense Counter-terrorism Fellowship Program, to fund the education and training of foreign military officers, ministry of defense civilians, and other foreign security officials, to include United States military officers and civilian officials whose participation directly contributes to the education and training of these foreign students.

SEC. 8120. None of the funds appropriated or made available in this Act shall be used to reduce or disestablish the operation of the 53rd Weather Reconnaissance Squadron of the Air Force

Reserve, if such action would reduce the WC–130 Weather Reconnaissance mission below the levels funded in this Act: *Provided*, That the Air Force shall allow the 53rd Weather Reconnaissance Squadron to perform other missions in support of national defense requirements during the non-hurricane season.

SEC. 8121. (a) LAND CONVEYANCES, NORTON AIR FORCE BASE, CALIFORNIA.—

(1) FOREST SERVICE CONVEYANCE.—Subject to paragraph (2), the Secretary of Agriculture shall convey to the Inland Valley Development Agency all right, title, and interest of the United States in and to a parcel of real property consisting of approximately 3.74 acres designated as parcel D–1 (including the former Air Force S–2 Headquarters Building) on the former Norton Air Force Base, California.

(2) As consideration for the transfer under paragraph (1), the Inland Valley Development Agency shall execute a long-term ground lease with the Secretary of Agriculture, upon terms acceptable to the Federal Aviation Administration, to provide the United States Forest Service with a replacement parcel of land of approximately 7.5 acres at the San Bernardino International Airport adjacent to current facilities of the Forest Service to be used for aeronautical purposes in furtherance of wildfire prevention and containment.

(b) AIR FORCE CONVEYANCE.—

(1) Subject to paragraph (2), the Secretary of the Air Force shall convey to the Inland Valley Development Agency all right, title, and interest of the United States in and to certain parcels of real property, including improvements thereon, located on or adjacent to the former Norton Air Force Base, California, that as of the date of the enactment of this Act have been determined through a record of decision to be eligible to be transferred to, or held in trust for, the San Manuel Band of Mission Indians.

(2) The Secretary of the Air Force shall make a conveyance under paragraph (1) with respect to any parcel of real property to which that paragraph applies only upon delivery to the Secretary of an instrument executed by the San Manuel Band of Mission Indians that releases and extinguishes any real property interest of the San Manuel Band of Mission Indians in that parcel of real property.

SEC. 8122. (a) The total amount appropriated or otherwise made available in titles II, III and IV of this Act is hereby reduced by \$711,000,000 to reflect savings from assumed management improvements, to be distributed as follows:

“Title II”, \$200,000,000;

“Title III”, \$300,000,000; and

“Title IV”, \$211,000,000.

(b) The Secretary of Defense shall allocate this reduction proportionately to each budget activity, activity group, subactivity group, and each program, project, and activity within each applicable appropriation account.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8123. (a) The amount appropriated in title II for “Operation and Maintenance, Air Force” is hereby reduced by

\$967,200,000 to reflect cash balance and rate stabilization adjustments in the Department of Defense Transportation Working Capital Fund.

Deadline.

(b) Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall transfer \$967,200,000 from the Department of Defense Transportation Working Capital Fund to “Operation and Maintenance, Air Force” to offset the reduction made by subsection (a). The transfer required by this subsection is in addition to any other transfer authority provided to the Department of Defense.

SEC. 8124. None of the funds provided in this Act shall be available for integration of foreign intelligence information unless the information has been lawfully collected and processed during the conduct of authorized foreign intelligence activities: *Provided*, That information pertaining to United States persons shall only be handled in accordance with protections provided in the Fourth Amendment of the United States Constitution as implemented through Executive Order No. 12333.

Contracts.
California.

SEC. 8125. Of the amount appropriated under the heading “Operation and Maintenance, Marine Corps” for the Marine Corps Air-Ground Task Force Training Center, Twenty Nine Palms, California, \$3,900,000 shall be available to the Secretary of the Navy to enter into a contract, notwithstanding any other provision of law, for the widening of Adobe Road, which is used by members of the Marine Corps stationed at the installation and their dependents, and for construction of pedestrian and bike lanes for the road, to provide for the safety of the Marines stationed at the installation.

Grants.
California.

SEC. 8126. In addition to amounts appropriated or otherwise made available in this Act, there is hereby appropriated \$2,500,000, for “Operation and Maintenance, Marine Corps”: *Provided*, That the Secretary of the Navy shall make a grant in that amount to the “Hi-Desert Memorial Health Care District”, Joshua Tree, California, for the purposes of providing a capability for non-invasive assessment, diagnostic testing and treatment in support of service personnel and their families stationed at the Marine Corps Air-Ground Task Force Training Center.

SEC. 8127. (a) LAND CONVEYANCE, ARMY RESERVE TRAINING CENTER, WOOSTER, OHIO.—The Secretary of the Army may convey, without consideration, to the City of Wooster, Ohio, all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, that is located at 1676 Portage Road, Wooster, Ohio, and contains a former Army Reserve Training Center.

(b) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the City of Wooster, Ohio.

(c) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 8128. (a) At the time members of reserve components of the Armed Forces are called or ordered to active duty under section 12302(a) of title 10, United States Code, each member

shall be notified in writing of the expected period during which the member will be mobilized.

(b) The Secretary of Defense may waive the requirements of subsection (a) in any case in which the Secretary determines that it is necessary to do so to respond to a national security emergency or to meet dire operational requirements of the Armed Forces.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8129. The Secretary of the Navy may transfer funds from any available Department of the Navy appropriation to any available Navy ship construction appropriation for the purpose of liquidating necessary changes resulting from inflation, market fluctuations, or rate adjustments for any ship construction program appropriated in law: *Provided*, That the Secretary may transfer not to exceed \$100,000,000 under the authority provided by this section: *Provided further*, That the funding transferred shall be available for the same time period as the appropriation to which transferred: *Provided further*, That the Secretary may not transfer any funds until 30 days after the proposed transfer has been reported to the Committee on Appropriations of the Senate and the House of Representatives, unless sooner notified by the Committees that there is no objection to the proposed transfer: *Provided further*, That the transfer authority provided by this section is in addition to any other transfer authority contained elsewhere in this Act.

Reports.

SEC. 8130. The amounts appropriated in title II of this Act are hereby reduced by \$50,000,000 to reflect savings attributable to the offsetting of payments to contractors for the collection, pursuant to law, of unpaid taxes owed to the United States, as follows:

- (1) From “Operation and Maintenance, Army”, \$11,000,000.
- (2) From “Operation and Maintenance, Navy”, \$13,000,000.
- (3) From “Operation and Maintenance, Marine Corps”, \$1,000,000.
- (4) From “Operation and Maintenance, Air Force”, \$25,000,000.

SEC. 8131. The total amount appropriated in title IV is hereby reduced by \$350,000,000 to decrease amounts budgeted in anticipation of the application of non-statutory funding set asides: *Provided*, That this reduction shall be allocated proportionately to each budgeted program, program element, project, and activity: *Provided further*, That funds made available for programs of the National Foreign Intelligence Program (NFIP) are exempt from the application of this provision.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8132. TANKER REPLACEMENT TRANSFER FUND.—In addition to funds made available elsewhere in this Act, there is hereby appropriated \$100,000,000, to remain available until transferred: *Provided*, That these funds are appropriated to the “Tanker Replacement Transfer Fund” (referred to as “the Fund” elsewhere in this section), which is hereby established in the Treasury: *Provided further*, That the Secretary of the Air Force may transfer amounts in the Fund to “Operation and Maintenance, Air Force”, “Aircraft Procurement, Air Force”, and “Research, Development, Test and Evaluation, Air Force”, only for the purposes of proceeding with

a tanker acquisition program: *Provided further*, That funds transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation or fund to which transferred: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further*, That the Secretary of the Air Force shall, not fewer than 15 days prior to making transfers using funds provided in this section, notify the congressional defense committees in writing of the details of any such transfer: *Provided further*, That the Secretary shall submit a report no later than 30 days after the end of each fiscal quarter to the congressional defense committees summarizing the details of the transfer of funds from this appropriation.

Deadline.
Notification.

Reports.
Deadline.

Reports.

SEC. 8133. None of the funds appropriated or otherwise made available by this Act may be used to amend or cancel, or implement any amendment or cancellation of, Department of Defense Directive 1344.7, “Personal Commercial Solicitation on DOD Installations”, until after the end of the 90-day period beginning on the date on which the report containing the results of the investigation regarding insurance premium allotment processing, which is underway as of the date of the enactment of this Act, is submitted to the congressional defense committees (as defined in section 101(a)(16) of title 10, United States Code), the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate.

Reports.
Deadline.

SEC. 8134. The Secretary of Defense shall provide a report to the congressional defense committees not later than October 15, 2004, that addresses how the Department of Defense (DOD) is improving the dud rate of cluster munitions to meet existing DOD policies. This report shall address: (1) the types and quantities of munitions systems that employ cluster munitions presently in DOD’s inventory that do and do not meet the 1-percent dud rate policy; (2) DOD efforts to ensure the development of cluster munitions that meet the 1-percent dud rate policy, including a list of programs funded in fiscal year 2005; and (3) a schedule describing the DOD cluster munitions inventory profile from the present until the time this inventory will meet the 1-percent dud rate policy.

SEC. 8135. Up to \$2,600,000 of the funds appropriated under the heading, “Operation and Maintenance, Navy” in this Act may be made available to contract for the installation, repair, maintenance, and operation of on-base and adjacent off-base drainage and flood control systems critical to base operations and the public health and safety of community residents in the vicinity of the Naval Magazine Lualualei.

SEC. 8136. From funds provided under the heading “Operation and Maintenance, Navy”, the Secretary of the Navy may make a grant in the amount of \$2,100,000 to the Chicago Public Schools for establishment of a Naval Military Academy High School, Chicago, Illinois, in partnership with the Great Lakes Naval Training Center.

SEC. 8137. Of the amount appropriated by title III under the heading “Aircraft Procurement, Air Force”, \$880,000 shall be available to the Secretary of the Air Force for a grant to Rocky Mountain College, Montana, for the purchase of three Piper aircraft, and an aircraft simulator, for support of aviation training.

SEC. 8138. It is the sense of the Senate that—

(1) any request for funds for a fiscal year for an ongoing military operation overseas, including operations in Afghanistan and Iraq, should be included in the annual budget of the President for such fiscal year as submitted to Congress under section 1105(a) of title 31, United States Code; and

(2) any funds provided for such fiscal year for such a military operation should be provided in appropriations Acts for such fiscal year through appropriations to specific accounts set forth in such Acts.

SEC. 8139. Notwithstanding any other provision of law, the Secretary of the Air Force may, using funds available to the Air Force, demolish or provide for the demolition of any facilities or other improvements on real property at the former Wurtsmith Air Force Base.

SEC. 8140. (a) The total amount appropriated or otherwise made available in this Act is hereby reduced by \$768,100,000 to reflect excessive unobligated balances, to be distributed as follows:

“Operation and Maintenance, Army”, \$160,800,000;

“Operation and Maintenance, Navy”, \$171,900,000;

“Operation and Maintenance, Marine Corps”, \$15,700,000;

“Operation and Maintenance, Air Force”, \$142,400,000; and

“Operation and Maintenance, Defense-Wide”, \$277,300,000.

(b) The Secretary of Defense shall allocate this reduction proportionately to each budget activity, activity group, subactivity group, and each program, project, and activity within each applicable appropriation account.

SEC. 8141. (a) The total amount appropriated or otherwise made available in title II of this Act is hereby reduced by \$100,000,000 to limit excessive growth in the travel and transportation of persons.

(b) The Secretary of Defense shall allocate this reduction proportionately to each budget activity, activity group, subactivity group, and each program, project, and activity within each applicable appropriation account.

(INCLUDING RESCISSIONS)

SEC. 8142. Of the funds appropriated in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

“Aircraft Procurement, Navy, 2002/2004”, \$50,000,000; and

“Aircraft Procurement, Air Force, 2002/2004”, \$50,000,000:

Provided, That in addition to funds made available elsewhere in this Act, \$100,000,000 is hereby appropriated, in the specified amounts to the following accounts:

“Aircraft Procurement, Navy, 2003/2005”, \$50,000,000; and

“Aircraft Procurement, Air Force, 2003/2005”, \$50,000,000:

Provided further, That this section shall become effective upon enactment of this Act. Effective date.

TITLE IX

ADDITIONAL WAR-RELATED APPROPRIATIONS

DEPARTMENT OF DEFENSE—MILITARY

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For an additional amount for “Military Personnel, Army”, \$915,700,000.

MILITARY PERSONNEL, NAVY

For an additional amount for “Military Personnel, Navy”, \$27,700,000.

MILITARY PERSONNEL, MARINE CORPS

For an additional amount for “Military Personnel, Marine Corps”, \$241,700,000.

MILITARY PERSONNEL, AIR FORCE

For an additional amount for “Military Personnel, Air Force”, \$64,900,000.

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for “Operation and Maintenance, Army”, \$13,550,000,000.

OPERATION AND MAINTENANCE, NAVY

For an additional amount for “Operation and Maintenance, Navy”, \$367,000,000.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for “Operation and Maintenance, Marine Corps”, \$1,665,000,000.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for “Operation and Maintenance, Air Force”, \$419,000,000.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

For an additional amount for “Operation and Maintenance, Defense-Wide”, \$404,000,000.

IRAQ FREEDOM FUND

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Iraq Freedom Fund”, \$3,800,000,000, to remain available for transfer until September 30, 2006, only to support operations in Iraq or Afghanistan and classified activities: *Provided*, That the Secretary of Defense may transfer the funds provided herein to appropriations for military personnel; operation and maintenance; Overseas Humanitarian, Disaster, and Civic Aid; procurement; research, development, test and evaluation; the Defense Health Program; and working capital funds: *Provided further*, That of the amounts provided under this heading, \$1,800,000,000 shall only be for classified programs, described in further detail in the classified annex accompanying this Act: *Provided further*, That up to \$100,000,000 shall be available for the Department of Homeland Security, “United States Coast Guard, Operating Expenses”: *Provided further*, That funds transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation or fund to which transferred: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the Secretary of Defense shall, not fewer than 5 days prior to making transfers from this appropriation, notify the congressional defense committees in writing of the details of any such transfer: *Provided further*, That the Secretary shall submit a report no later than 30 days after the end of each fiscal quarter to the congressional defense committees summarizing the details of the transfer of funds from this appropriation.

Notification.

Reports.
Deadline.

PROCUREMENT

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES,
ARMY

For an additional amount for “Procurement of Weapons and Tracked Combat Vehicles, Army”, \$50,000,000, to remain available until September 30, 2007.

PROCUREMENT OF AMMUNITION, ARMY

For an additional amount for “Procurement of Ammunition, Army”, \$110,000,000, to remain available until September 30, 2007.

OTHER PROCUREMENT, ARMY

For an additional amount for “Other Procurement, Army”, \$755,000,000, to remain available until September 30, 2007.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for “Aircraft Procurement, Navy”, \$79,000,000, to remain available until September 30, 2007.

PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

For an additional amount for “Procurement of Ammunition, Navy and Marine Corps”, \$30,000,000, to remain available until September 30, 2007.

PROCUREMENT, MARINE CORPS

For an additional amount for “Procurement, Marine Corps”, \$150,000,000, to remain available until September 30, 2007.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for “Other Procurement, Air Force”, \$110,000,000, to remain available until September 30, 2007.

PROCUREMENT, DEFENSE-WIDE

For an additional amount for “Procurement, Defense-Wide”, \$50,000,000, to remain available until September 30, 2007.

NATIONAL GUARD AND RESERVE EQUIPMENT

For an additional amount for “National Guard and Reserve Equipment”, \$50,000,000, to remain available until September 30, 2007.

REVOLVING AND MANAGEMENT FUNDS

DEFENSE WORKING CAPITAL FUNDS

For an additional amount for “Defense Working Capital Funds”, \$1,478,000,000.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For an additional amount for “Defense Health Program”, \$683,000,000 for Operation and maintenance.

GENERAL PROVISIONS, TITLE IX

Applicability.

SEC. 9001. Appropriations provided in this title are available for obligation until September 30, 2005, unless otherwise so provided in this title: *Provided*, That notwithstanding any other provision of law or of this Act, funds in this title are available for obligation, and authorities in this title shall apply, upon enactment of this Act.

SEC. 9002. Notwithstanding any other provision of law or of this Act, funds made available in this title are in addition to amounts provided elsewhere in this Act.

(TRANSFER OF FUNDS)

SEC. 9003. (a) Upon his determination that such action is necessary in the national interest, the Secretary of Defense may transfer between appropriations up to \$1,500,000,000 of the funds made available to the Department of Defense in this title: *Provided*,

That the Secretary shall notify the Congress promptly of each transfer made pursuant to the authority in this section: *Provided further*, That the authority provided in this section is in addition to any other transfer authority available to the Department of Defense and is subject to the same terms and conditions as the authority provided in section 8005 of this Act.

Notification.

(b) Section 8005 of the Department of Defense Appropriations Act, 2004 (Public Law 108–87; 117 Stat. 1071), is amended—

(1) by striking “\$2,100,000,000” and inserting in lieu thereof “\$2,800,000,000”; and

(2) by striking all after the third proviso and inserting the following: “: *Provided further*, That transfers among military personnel appropriations shall not be taken into account for purposes of the limitation on the amount of funds that may be transferred under this section.”.

(c) Section 168(a) of division H of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 456), is repealed upon enactment of this Act.

SEC. 9004. Funds appropriated in this title, or made available by the transfer of funds in or pursuant to this title, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414).

SEC. 9005. None of the funds provided in this title may be used to finance programs or activities denied by Congress in fiscal years 2004 and 2005 appropriations to the Department of Defense or to initiate a procurement or research, development, test and evaluation new start program without prior written notification to the congressional defense committees.

SEC. 9006. Notwithstanding any other provision of law, from funds made available in this title to the Department of Defense for operation and maintenance, not to exceed \$500,000,000 may be used by the Secretary of Defense, with the concurrence of the Secretary of State, to train, equip and provide related assistance only to the New Iraqi Army and the Afghan National Army to enhance their capability to combat terrorism and to support U.S. military operations in Iraq and Afghanistan: *Provided*, That such assistance may include the provision of equipment, supplies, services, training and funding: *Provided further*, That the authority to provide assistance under this section is in addition to any other authority to provide assistance to foreign nations: *Provided further*, That the Secretary of Defense shall notify the congressional defense committees, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate not less than 15 days before providing assistance under the authority of this section.

Afghanistan.
Terrorism.

Notification.
Deadline.

SEC. 9007. From funds made available in this title to the Department of Defense, not to exceed \$300,000,000 may be used, notwithstanding any other provision of law, to fund the Commander's Emergency Response Program, for the purpose of enabling military commanders in Iraq to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the Iraqi people, and to fund a similar program to assist the people of Afghanistan: *Provided*, That the Secretary of Defense shall provide quarterly reports to the congressional defense committees

Iraq.
Afghanistan.

Reports.

regarding the source of funds and the allocation and use of funds made available pursuant to the authority provided in this section.

22 USC 7532. SEC. 9008. Section 202(b) of the Afghanistan Freedom Support Act of 2002 (Public Law 107–327, as amended by section 2206 of Public Law 108–106) is amended by striking “\$450,000,000” and inserting in lieu thereof “\$550,000,000”.

Reports. SEC. 9009. During the current fiscal year, funds available to the Department of Defense for operation and maintenance may be used, notwithstanding any other provision of law, to provide supplies, services, transportation, including airlift and sealift, and other logistical support to coalition forces supporting military and stability operations in Iraq and Afghanistan: *Provided*, That the Secretary of Defense shall provide quarterly reports to the congressional defense committees regarding support provided under this section.

Deadlines. SEC. 9010. (a) Not later than April 30 and October 31 of each year, the Secretary of Defense shall submit to Congress a report on the military operations of the Armed Forces and the reconstruction activities of the Department of Defense in Iraq and Afghanistan.

10 USC 113 note.

(b) Each report shall include the following information:

(1) For each of Iraq and Afghanistan for the half-fiscal year ending during the month preceding the due date of the report, the amount expended for military operations of the Armed Forces and the amount expended for reconstruction activities, together with the cumulative total amounts expended for such operations and activities.

(2) An assessment of the progress made toward preventing attacks on United States personnel.

(3) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the readiness of the Armed Forces.

(4) An assessment of the effects of the operations and activities in Iraq and Afghanistan on the recruitment and retention of personnel for the Armed Forces.

(5) For the half-fiscal year ending during the month preceding the due date of the report, the costs incurred for repair of Department of Defense equipment used in the operations and activities in Iraq and Afghanistan.

(6) The foreign countries, international organizations, and nongovernmental organizations that are contributing support for the ongoing military operations and reconstruction activities, together with a discussion of the amount and types of support contributed by each during the half-fiscal year ending during the month preceding the due date of the report.

(7) The extent to which, and the schedule on which, the Selected Reserve of the Ready Reserve of the Armed Forces is being involuntarily ordered to active duty under section 12304 of title 10, United States Code.

(8) For each unit of the National Guard of the United States and the other reserve components of the Armed Forces on active duty pursuant to an order to active duty under section 12304 of title 10, United States Code, the following information:

(A) The unit.

(B) The projected date of return of the unit to its home station.

(C) The extent (by percentage) to which the forces deployed within the United States and outside the United States in support of a contingency operation are composed of reserve component forces.

SEC. 9011. Congress, consistent with international and United States law, reaffirms that torture of prisoners of war and detainees is illegal and does not reflect the policies of the United States Government or the values of the people of the United States.

SEC. 9012. The President shall provide to the Congress a report detailing the estimated costs over the period from fiscal year 2006 to 2011 of Operation Iraqi Freedom and Operation Enduring Freedom, or any related military operations in and around Iraq and Afghanistan, and the estimated costs of reconstruction, internal security, and related economic support to Iraq and Afghanistan: *Provided*, That the President may waive the requirement to submit this report only if the President certifies in writing to the Congress that estimates of these future military and economic support costs cannot be provided for purposes of national security: *Provided further*, That the report referenced above shall be submitted no later than January 1, 2005.

President.
Reports.

Certification.

Deadline.

SEC. 9013. None of the funds made available in this title may be used to fund any contract in contravention of section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)).

SEC. 9014. The Secretary of Defense may present promotional materials, including a United States flag, to any member of an Active or Reserve component under the Secretary's jurisdiction who, as determined by the Secretary, participates in Operation Enduring Freedom or Operation Iraqi Freedom.

SEC. 9015. Amounts appropriated or otherwise made available in this title are each designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of this Act.

TITLE X

OTHER MATTERS

CHAPTER 1

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

For an additional amount for “Diplomatic and Consular Programs” for costs associated with United States Mission operations, technological support, logistical support, and necessary security costs in Iraq, \$665,300,000, to remain available until expended.

EMBASSY SECURITY, CONSTRUCTION, AND MAINTENANCE

For an additional amount for “Embassy Security, Construction, and Maintenance” for interim facilities for the United States Mission in Iraq, \$20,000,000, to remain available until expended.

GENERAL PROVISIONS, THIS CHAPTER

Applicability.
Deadline.

SEC. 11001. For the purposes of applying sections 204 and 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (division B of Public Law 108–199) to matters in title II of such Act under the heading “National Institute of Standards and Technology” (118 Stat. 69), in the account under the heading “Industrial Technology Services”, the Secretary of Commerce shall make all determinations based on the Industrial Technology Services funding level of \$218,782,000 for reprogramming and transferring of funds for the Manufacturing Extension Partnership program and may submit such a reprogramming or transfer, as the case may be, to the appropriate committees within 30 days after the date of the enactment of this Act.

Grants.
Massachusetts.
New York.

SEC. 11002. In addition to amounts otherwise made available in this Act, \$50,000,000, is made available upon enactment for “Office of Justice Programs—State and Local Law Enforcement Assistance” for discretionary grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs for reimbursement to State and local law enforcement entities for security and related costs, including overtime, associated with the 2004 Presidential Candidate Nominating Conventions, to remain available until September 30, 2005: *Provided*, That from funds provided in this section the Office of Justice Programs shall make grants in the amount of \$25,000,000 to the City of Boston, Massachusetts; and \$25,000,000 to the City of New York, New York.

Applicability.

SEC. 11003. To ensure the continuity of Criminal Justice Act (CJA) representations by panel attorneys, \$26,000,000 is appropriated to the Judiciary, “Courts of Appeals, District Courts, and Other Judicial Services, Defender Services”, to remain available until expended: *Provided*, That the entire amount shall become available upon enactment of this Act: *Provided further*, That the amounts made available in this section shall only be used for CJA panel attorney representations.

SEC. 11004. Authorities contained in sections 402, 407, and 605 of division B of Public Law 108–199 shall also apply to amounts provided in this title for the Department of State.

CHAPTER 2

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

INTERNATIONAL DISASTER AND FAMINE ASSISTANCE

For an additional amount for “International Disaster and Famine Assistance”, \$70,000,000, to remain available until expended: *Provided*, That funds appropriated by this paragraph shall be available to respond to the humanitarian crisis in the Darfur region of Sudan and in Chad.

DEPARTMENT OF STATE

MIGRATION AND REFUGEE ASSISTANCE

For an additional amount for “Migration and Refugee Assistance”, \$25,000,000, to remain available until expended: *Provided*, That funds appropriated by this paragraph shall be available to respond to the humanitarian crisis in the Darfur region of Sudan and in Chad.

GENERAL PROVISIONS, THIS CHAPTER

SEC. 12001. (a)(1) Notwithstanding section 514 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321h), the President may transfer to Israel, in exchange for concessions to be negotiated by the Secretary of Defense, with the concurrence of the Secretary of State, any or all of the items described in paragraph (2).

(2) The items referred to in paragraph (1) are armor, artillery, automatic weapons ammunition, missiles, and other munitions that—

- (A) are obsolete or surplus items;
- (B) are in the inventory of the Department of Defense;
- (C) are intended for use as reserve stocks for Israel; and
- (D) as of the date of enactment of this Act, are located

in a stockpile in Israel.

(b) The value of concessions negotiated pursuant to subsection (a) shall be at least equal to the fair market value of the items transferred. The concessions may include cash compensation, services, waiver of charges otherwise payable by the United States, and other items of value.

(c) Not later than 30 days before making a transfer under the authority of this section, the President shall transmit a notification of the proposed transfer to the Committees on Foreign Relations and Armed Services of the Senate and the Committees on International Relations and Armed Services of the House of Representatives. The notification shall identify the items to be transferred and the concessions to be received.

Deadline.
President.
Notification.

(d) No transfer may be made under the authority of this section more than 2 years after the date of the enactment of this Act.

SEC. 12002. Section 514(b)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321h(b)(2)) is amended—

(1) in subparagraph (A), by striking “for fiscal year 2003” and inserting “for each of fiscal years 2004 and 2005”; and

(2) in subparagraph (B), by striking “for fiscal year 2003” and inserting “for a fiscal year”.

CHAPTER 3

SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2004
FOR URGENT WILDLAND FIRE SUPPRESSION ACTIVITIES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WILDLAND FIRE MANAGEMENT

Reports.
Deadline.

For an additional amount for fiscal year 2004 for “Wildland Fire Management”, \$100,000,000, to remain available until expended, for urgent wildland fire suppression activities related to the fiscal year 2004 fire season pursuant to section 312 of S. Con. Res. 95 (108th Congress): *Provided*, That such funds are also available for repayment of advances to other appropriations accounts from which funds are transferred for such purposes: *Provided further*, That cost containment measures shall be implemented within this account for fiscal year 2004, and the Secretary of the Interior shall submit to the Committees on Appropriations of the Senate and the House of Representatives a report on such cost containment measures by December 31, 2004.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

WILDLAND FIRE MANAGEMENT

Establishment.
Reports.

For an additional amount for fiscal year 2004 for “Wildland Fire Management”, \$400,000,000, to remain available until expended, for urgent wildland fire suppression activities related to the fiscal year 2004 fire season pursuant to section 312 of S. Con. Res. 95 (108th Congress): *Provided*, That such funds are also available for repayment of advances to other appropriations accounts from which funds are transferred for such purposes: *Provided further*, That the Secretary of Agriculture shall establish an independent cost-control review panel to examine and report on fire suppression costs for individual wildfire incidents that exceed \$10,000,000 in cost: *Provided further*, That if the independent review panel report finds that appropriate actions were not taken to control suppression costs for one or more such wildfire incidents, then an amount equal to the aggregate estimated excess costs of suppressing those wildfire incidents shall be transferred to the Treasury from unobligated balances remaining at the end of fiscal year 2004 in the Wildland Fire Management account, if available.

CHAPTER 4

GENERAL PROVISIONS, THIS TITLE

Applicability.

SEC. 14001. Appropriations provided in this title are available for obligation until September 30, 2005, unless otherwise so provided in this title.

SEC. 14002. Funds in this title are available for obligation and authorities in this title shall apply upon enactment of this Act.

SEC. 14003. (a) Public Law 108–199 is amended in division F, title I, section 110(g) by striking “Of the” and inserting “Prior to distributing”; striking “each” every time it appears and inserting “the”; striking “project” every time it appears and inserting “projects”.

Ante, p. 293.

(b) The limitation under the heading “Federal-aid Highways (Limitation on Obligations) (Highway Trust Fund)” in Public Law 108–199 is increased by such sums as may be necessary to ensure that each State receives an amount of obligation authority equal to what each State would have received under division F, title I, section 110(a)(6) of Public Law 108–199 but for the amendment made to division F, title I, section 110(g) of Public Law 108–199 by subsection (a) of this section: *Provided*, That such additional authority shall remain available during fiscal years 2004 and 2005: *Provided further*, That for each State receiving an amount of obligation authority greater than what each State would have received under division F, title I, section 110(a)(6) of Public Law 108–199 but for the amendment made to division F, title I, section 110(g) of Public Law 108–199 by subsection (a) of this section, such additional obligation authority shall remain available during fiscal years 2004 and 2005.

SEC. 14004. (a) RESCISSION.—Upon enactment of this Act, there is rescinded an amount equal to \$795,280 from the amount appropriated to carry out part B of title VII of the Higher Education Act of 1965, in title III of division E of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 3). This amount shall reduce the funds available for the projects specified in the statement of the managers on the Conference Report 108–401 accompanying the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 3).

(b) DISREGARD AMOUNT.—In the statement of the managers on the Conference Report 108–401 accompanying the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 3), in the matter in title III of division E, relating to the Fund for the Improvement of Postsecondary Education under the heading “Higher Education”, the provision specifying \$800,000 for Wahpeton State School of Science and North Dakota State University to recruit, retain and train pharmacy technicians shall be disregarded.

(c) APPROPRIATION.—There is appropriated an amount equal to \$795,280 to the Department of Labor, Employment and Training Administration for “Training and Employment Services”, available for obligation for the period from July 1, 2004, through June 30, 2005, of which—

(1) \$200,000 shall be made available to the North Dakota State School of Science to recruit, retain, and train pharmacy technicians;

(2) \$297,640 shall be made available to Bismarck State College for training and education related to its electric power plant technologies curriculum; and

(3) \$297,640 shall be made available for Minot State University for the Job Corps Fellowship Training Program.

(d) The matter under the heading “Institute of Museum and Library Services” in title IV of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004, (Public Law 108–199, division E) is amended by striking “Michigan Space and Science Center, Jackson, Michigan,

Ante, p. 270.

for development of the strategic plan, operational costs and personnel” and inserting “Jackson Intermediate School District, Jackson, Michigan, for equipment and materials for the Math and Science Resource Library”.

SEC. 14005. Of the unobligated amounts available for the District of Columbia Public Schools under this heading, \$10,600,000 are rescinded immediately upon enactment of this Act. For a Federal payment to the District of Columbia under this heading, \$10,600,000, available immediately upon enactment of this Act, to improve public school education in the District of Columbia, to remain available until September 30, 2005.

SEC. 14006. The numerical limitation contained in section 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B)) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(ii)(b) of such Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) who is employed (or has received an offer of employment) as a fish roe processor, a fish roe technician, or a supervisor of fish roe processing.

SEC. 14007. 2005 DISCRETIONARY LIMITS. (a) IN GENERAL.—For the purposes of section 302(a) of the Congressional Budget Act of 1974, the allocation of the appropriate levels of budget totals for the Senate Committee on Appropriations for fiscal year 2005 shall be—

(1) for total discretionary spending—

(A) \$821,419,000,000 in total new budget authority;

and

(B) \$905,328,000,000 in total budget outlays; and

(2) for mandatory—

(A) \$460,008,000,000 in total new budget authority;

and

(B) \$445,525,000,000 in total budget outlays;

until a concurrent resolution on the budget for fiscal year 2005 is agreed to by the Senate and the House of Representatives pursuant to section 301 of the Congressional Budget Act of 1974.

(b) ADJUSTMENTS AND LIMITS.—The following limits and adjustments provided in S. Con. Res. 95 (108th Congress) shall apply to subsection (a):

(1) Sections 311 and 403 for fiscal year 2005.

(2) Sections 312 and 402 which shall apply to both fiscal years 2004 and 2005.

(c) DEFINITION.—In this section, the term “total discretionary spending” includes the discretionary category, the mass transit category, and the highway category.

(d) REPEAL.—Section 504 of H. Con. Res. 95 (108th Congress) is repealed.

(e) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

SEC. 14008. Amounts appropriated or otherwise made available in chapters 1 and 2 of this title are each designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of this Act.

Applicability.

This Act may be cited as the “Department of Defense Appropriations Act, 2005”.

Approved August 5, 2004.

LEGISLATIVE HISTORY—H.R. 4613 (S. 2559):

HOUSE REPORTS: Nos. 108–553 (Comm. on Appropriations) and 108–622 (Comm. of Conference).

SENATE REPORTS: No. 108–284 accompanying S. 2559 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 22, considered and passed House.

June 24, considered and passed Senate, amended, in lieu of S. 2559.

July 22, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Aug. 5, Presidential remarks.



Public Law 108–288
108th Congress

An Act

Aug. 6, 2004
[H.R. 1572]

To designate the United States courthouse located at 100 North Palafox Street in Pensacola, Florida, as the “Winston E. Arnow United States Courthouse”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States courthouse located at 100 North Palafox Street in Pensacola, Florida, shall be known and designated as the “Winston E. Arnow United States Courthouse”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the “Winston E. Arnow United States Courthouse”.

Approved August 6, 2004.

LEGISLATIVE HISTORY—H.R. 1572:

HOUSE REPORTS: No. 108–216 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Sept. 3, considered and passed House.

Vol. 150 (2004): July 19, considered and passed Senate.



Public Law 108–289
108th Congress

An Act

To provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

Aug. 6, 2004
[H.R. 1914]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Jamestown 400th Anniversary Commemorative Coin Act of 2004”.

Jamestown 400th
Anniversary
Commemorative
Coin Act of 2004.
31 USC 5112
note.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The founding of the colony at Jamestown, Virginia, in 1607, the first permanent English colony in America, and the capital of Virginia for 92 years, has major significance in the history of the United States.

(2) The Jamestown Settlement brought people from throughout the Atlantic Basin together to form a society that drew upon the strengths and characteristics of English, European, African, and Native American cultures.

(3) The economic, political, religious, and social institutions that developed during the first 9 decades of the existence of Jamestown continue to have profound effects on the United States, particularly in English common law and language, cross cultural relationships, manufacturing, and economic structure and status.

(4) The National Park Service, the Association for the Preservation of Virginia Antiquities, and the Jamestown-Yorktown Foundation of the Commonwealth of Virginia collectively own and operate significant resources related to the early history of Jamestown.

(5) In 2000, Congress established the Jamestown 400th Commemoration Commission to ensure a suitable national observance of the Jamestown 2007 anniversary and to support and facilitate marketing efforts for a commemorative coin, stamp, and related activities for the Jamestown 2007 observances.

(6) A commemorative coin will bring national and international attention to the lasting legacy of Jamestown, Virginia.

(7) The proceeds from a surcharge on the sale of such commemorative coin will assist the financing of a suitable national observance in 2007 of the 400th anniversary of the founding of Jamestown, Virginia.

SEC. 2. COIN SPECIFICATIONS.

(a) **DENOMINATIONS.**—The Secretary of the Treasury (hereafter in this Act referred to as the “Secretary”) shall mint and issue the following coins:

(1) **\$5 GOLD COINS.**—Not more than 100,000 5 dollar coins, which shall—

(A) weigh 8.359 grams;

(B) have a diameter of 0.850 inches; and

(C) contain 90 percent gold and 10 percent alloy.

(2) **\$1 SILVER COINS.**—Not more than 500,000 1 dollar coins, which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(b) **LEGAL TENDER.**—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) **NUMISMATIC ITEMS.**—For purposes of sections 5134 and 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 3. SOURCES OF BULLION.

The Secretary shall obtain gold and silver for minting coins under this Act pursuant to the authority of the Secretary under other provisions of law.

SEC. 4. DESIGN OF COINS.

(a) **DESIGN REQUIREMENTS.**—

(1) **IN GENERAL.**—The design of the coins minted under this Act shall be emblematic of the settlement of Jamestown, Virginia, the first permanent English settlement in America.

(2) **DESIGNATION AND INSCRIPTIONS.**—On each coin minted under this Act there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year “2007”; and

(C) inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, and “E Pluribus Unum”.

(b) **SELECTION.**—The design for the coins minted under this Act shall be—

(1) selected by the Secretary after consultation with—

(A) the Jamestown 2007 Steering Committee, created by the Jamestown-Yorktown Foundation of the Commonwealth of Virginia;

(B) the National Park Service; and

(C) the Commission of Fine Arts; and

(2) reviewed by the citizens advisory committee established under section 5135 of title 31, United States Code.

SEC. 5. ISSUANCE OF COINS.

(a) **QUALITY OF COINS.**—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) **MINT FACILITY.**—Only 1 facility of the United States Mint may be used to strike any particular combination of denomination and quality of the coins minted under this Act.

(c) **PERIOD FOR ISSUANCE.**—The Secretary may issue coins minted under this Act only during the period beginning on January 1, 2007, and ending on December 31, 2007.

SEC. 6. SALE OF COINS.

(a) **SALE PRICE.**—Notwithstanding any other provision of law, the coins issued under this Act shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, overhead expenses, and marketing).

(b) **BULK SALES.**—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) **PREPAID ORDERS.**—

(1) **IN GENERAL.**—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) **DISCOUNT.**—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

SEC. 7. SURCHARGES.

(a) **SURCHARGE REQUIRED.**—All sales shall include a surcharge of \$35 per coin for the \$5 coins and \$10 per coin for the \$1 coins.

(b) **DISTRIBUTION.**—Subject to section 5134(f) of title 31, United States Code, all surcharges which are received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary as follows:

(1) **PROGRAMS TO PROMOTE UNDERSTANDING OF THE LEGACIES OF JAMESTOWN.**— $\frac{1}{2}$ of the surcharges shall be used to support programs to promote the understanding of the legacies of Jamestown and for such purpose shall be paid to the Jamestown-Yorktown Foundation of the Commonwealth of Virginia.

(2) **OTHER PURPOSES FOR SURCHARGES.**—

(A) **IN GENERAL.**— $\frac{1}{2}$ of the surcharges shall be used for the following purposes:

(i) To sustain the ongoing mission of preserving Jamestown.

(ii) To enhance national and international educational programs relating to Jamestown, Virginia.

(iii) To improve infrastructure and archaeological research activities relating to Jamestown, Virginia.

(iv) To conduct other programs to support the commemoration of the 400th anniversary of the settlement of Jamestown, Virginia.

(B) **RECIPIENTS OF SURCHARGES FOR SUCH OTHER PURPOSES.**—The surcharges referred to in subparagraph (A) shall be distributed by the Secretary in equal shares to the following organizations for the purposes described in such subparagraph:

(i) The Secretary of the Interior.

(ii) The Association for the Preservation of Virginia Antiquities.

(iii) The Jamestown-Yorktown Foundation of the Commonwealth of Virginia.

(c) **AUDITS.**—The Jamestown-Yorktown Foundation of the Commonwealth of Virginia, the Secretary of the Interior, and the Association for the Preservation of Virginia Antiquities shall each be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code.

(d) **LIMITATION.**—Notwithstanding subsection (a), no surcharge may be included with respect to the issuance under this Act of

any coin during a calendar year if, as of the time of such issuance, the issuance of such coin would result in the number of commemorative coin programs issued during such year to exceed the annual 2 commemorative coin program issuance limitation under section 5112(m)(1) of title 31, United States Code (as in effect on the date of the enactment of this Act). The Secretary of the Treasury may issue guidance to carry out this subsection.

Approved August 6, 2004.

LEGISLATIVE HISTORY—H.R. 1914:

HOUSE REPORTS: No. 108–472, Pt. 1 (Comm. on Financial Services) and Pt. 2 (Comm. on Ways and Means).

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 14, considered and passed House.

July 20, considered and passed Senate.



Public Law 108–290
108th Congress

An Act

To require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

Aug. 6, 2004
[H.R. 2768]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “John Marshall Commemorative Coin Act”.

John Marshall
Commemorative
Coin Act.
31 USC 5112
note.

SEC. 2. FINDINGS.

The Congress hereby finds as follows:

(1) John Marshall served as the Chief Justice of the United States Supreme Court from 1801 to 1835, the longest tenure of any Chief Justice in the Nation’s history.

(2) John Marshall authored more than 500 opinions, including virtually all of the most important cases decided by the Supreme Court during his tenure.

(3) Under his leadership, the Supreme Court of the United States gave shape to the fundamental principles of the Constitution, most notably the principle of judicial review.

(4) John Marshall’s service to the United States—not only as a Chief Justice, but also as a soldier in the Revolutionary War, as a Member of Congress, and as Secretary of State—truly makes him one of the most important figures in our Nation’s history.

SEC. 3. COIN SPECIFICATIONS.

(a) **DENOMINATION.**—In commemoration of the 250th anniversary of the birth of Chief Justice John Marshall, the Secretary of the Treasury (hereafter in this Act referred to as the “Secretary”) shall mint and issue not more than 400,000 \$1 coins, each of which shall—

(1) weigh 26.73 grams;

(2) have a diameter of 1.500 inches; and

(3) contain 90 percent silver and 10 percent copper.

(b) **LEGAL TENDER.**—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) **NUMISMATIC ITEMS.**—For purposes of sections 5134 and 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. DESIGN OF COINS.

(a) **DESIGN REQUIREMENTS.**—

(1) **IN GENERAL.**—The design of the coins minted under this Act shall be emblematic of Chief Justice John Marshall and his immeasurable contributions to the Constitution of the United States and the Supreme Court of the United States.

(2) **DESIGNATION AND INSCRIPTIONS.**—On each coin minted under this Act there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year “2005”; and

(C) inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, and “E Pluribus Unum”.

(b) **SELECTION.**—The design for the coins minted under this Act shall be—

(1) selected by the Secretary after consultation with the Commission of Fine Arts, and the Supreme Court Historical Society; and

(2) reviewed by the Citizens Coin Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) **QUALITY OF COINS.**—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) **MINT FACILITY.**—Only 1 facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.

(c) **COMMENCEMENT OF ISSUANCE.**—The Secretary may issue coins minted under this Act beginning January 1, 2005.

(d) **TERMINATION OF MINTING AUTHORITY.**—No coins may be minted under this Act after December 31, 2005.

SEC. 6. SALE OF COINS.

(a) **SALE PRICE.**—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in section 7(a) with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) **BULK SALES.**—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) **PREPAID ORDERS.**—

(1) **IN GENERAL.**—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) **DISCOUNT.**—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(d) **MARKETING.**—The Secretary, in cooperation with the Legacy Fund of the Library of Congress, shall develop and implement a marketing program to promote and sell the coins issued under this Act both within the United States and internationally.

SEC. 7. SURCHARGES.

(a) **IN GENERAL.**—All sales of coins minted under this Act shall include a surcharge of \$10 per coin.

(b) **DISTRIBUTION.**—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be promptly paid by

the Secretary to the Supreme Court Historical Society for the purposes of—

(1) supporting historical research and educational programs about the Supreme Court and the Constitution of the United States and related topics;

(2) supporting fellowship programs, internships, and docents at the Supreme Court; and

(3) collecting and preserving antiques, artifacts, and other historical items related to the Supreme Court and the Constitution of the United States and related topics.

(c) AUDITS.—The Supreme Court Historical Society shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received by the Society under subsection (b).

(d) LIMITATION.—Notwithstanding subsection (a), no surcharge may be included with respect to the issuance under this Act of any coin during a calendar year if, as of the time of such issuance, the issuance of such coin would result in the number of commemorative coin programs issued during such year to exceed the annual 2 commemorative coin program issuance limitation under section 5112(m)(1) of title 31, United States Code (as in effect on the date of the enactment of this Act). The Secretary of the Treasury may issue guidance to carry out this subsection.

Approved August 6, 2004.

LEGISLATIVE HISTORY—H.R. 2768:

HOUSE REPORTS: No. 108–473, Pt. 1 (Comm. on Financial Services) and Pt. 2 (Comm. on Ways and Means).

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 14, considered and passed House.

July 20, considered and passed Senate.



Public Law 108–291
108th Congress

An Act

Aug. 6, 2004
[H.R. 3277]

Marine Corps
230th
Anniversary
Commemorative
Coin Act.
31 USC 5112
note.

To require the Secretary of the Treasury to mint coins in commemoration of the 230th Anniversary of the United States Marine Corps, and to support construction of the Marine Corps Heritage Center.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Marine Corps 230th Anniversary Commemorative Coin Act”.

SEC. 2. FINDINGS.

The Congress finds that—

(1) November 10, 2005, marks the 230th anniversary of the United States Marine Corps;

(2) the United States Marine Corps has, over the course of its illustrious 230-year history, fought gallantly in defense of the United States;

(3) the United States Marine Corps has, over the course of its storied history, established itself as the Nation’s military leader in amphibious warfare, and will continue in that role as the United States faces the challenges of the 21st Century;

(4) the United States Marine Corps continues to exemplify the warrior ethos that has made it a fighting force of international repute;

(5) all Americans should commemorate the legacy of the United States Marine Corps so that the values embodied in the “Corps” are recognized for the significant contribution they have made in protecting the United States against its enemies;

(6) in 2001, the Congress authorized the construction of the Marine Corps Heritage Center, the purpose of which is to provide a multipurpose facility to be used for historical displays for the public viewing, curation, and storage of artifacts, research facilities, classrooms, offices, and associated activities, consistent with the mission of the Marine Corps;

(7) the Marine Corps Heritage Center is scheduled to open on November 10, 2005;

(8) the United States should pay tribute to the 230th anniversary of the United States Marine Corps by minting and issuing a commemorative silver dollar coin; and

(9) the surcharge proceeds from the sale of a commemorative coin, which would have no net costs to the taxpayers, would raise valuable funding for the construction of the Marine Corps Heritage Center.

SEC. 3. COIN SPECIFICATIONS.

(a) **\$1 SILVER COINS.**—The Secretary of the Treasury (hereafter in this Act referred to as the “Secretary”) shall mint and issue not more than 500,000 \$1 coins, each of which shall—

- (1) weigh 26.73 grams;
- (2) have a diameter of 1.500 inches; and
- (3) contain 90 percent silver and 10 percent copper.

(b) **LEGAL TENDER.**—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

SEC. 4. DESIGN OF COINS.

(a) **DESIGN REQUIREMENTS.**—

(1) **IN GENERAL.**—The design of the coins minted under this Act shall be emblematic of the warrior ethos of the United States Marine Corps.

(2) **DESIGNATION AND INSCRIPTIONS.**—On each coin minted under this Act, there shall be—

- (A) a designation of the value of the coin;
- (B) an inscription of the year “2005”; and
- (C) inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, and “E Pluribus Unum”.

(b) **SELECTION.**—The design for the coins minted under this Act shall be—

- (1) selected by the Secretary, after consultation with the Marine Corps Historical Division and the Commission of Fine Arts; and
- (2) reviewed by the Citizens Coinage Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) **QUALITY OF COINS.**—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) **MINT FACILITY.**—Only 1 facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.

(c) **PERIOD FOR ISSUANCE.**—The Secretary may issue coins minted under this Act only during the 1-year period beginning on January 1, 2005.

SEC. 6. SALE OF COINS.

(a) **SALE PRICE.**—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

- (1) the face value of the coins;
- (2) the surcharge provided in subsection (b) with respect to such coins; and
- (3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) **SURCHARGES.**—All sales of coins issued under this Act shall include a surcharge of \$10 per coin.

(c) **BULK SALES.**—The Secretary shall make bulk sales of coins issued under this Act at a reasonable discount.

(d) **PREPAID ORDERS.**—

(1) **IN GENERAL.**—The Secretary shall accept prepaid orders for coins minted under this Act before the issuance of such coins.

(2) **DISCOUNT.**—Sale prices with respect to prepaid orders under paragraph (1) should be at a reasonable discount.

(e) **LIMITATION.**—Notwithstanding subsection (b), no surcharge may be included with respect to the issuance under this Act of any coin during a calendar year if, as of the time of such issuance, the issuance of such coin would result in the number of commemorative coin programs issued during such year to exceed the annual 2 commemorative coin program issuance limitation under section 5112(m)(1) of title 31, United States Code (as in effect on the date of the enactment of this Act). The Secretary of the Treasury may issue guidance to carry out this subsection.

SEC. 7. DISTRIBUTION OF SURCHARGES.

(a) **DISTRIBUTION.**—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Marine Corps Heritage Foundation for the purposes of construction of the Marine Corps Heritage Center, as authorized by section 1 of Public Law 106–398 (114 Stat. 1654).

(b) **AUDIT.**—The Marine Corps Heritage Foundation shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received under subsection (a).

Approved August 6, 2004.

LEGISLATIVE HISTORY—H.R. 3277:

HOUSE REPORTS: No. 108–474, Pt. 1 (Comm. on Financial Services) and Pt. 2 (Comm. on Ways and Means).

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 14, considered and passed House.

July 20, considered and passed Senate.



Public Law 108–292
108th Congress

An Act

To designate the facility of the United States Postal Service located at 4737 Mile Stretch Drive in Holiday, Florida, as the “Sergeant First Class Paul Ray Smith Post Office Building”.

Aug. 6, 2004
[H.R. 4380]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 4737 Mile Stretch Drive in Holiday, Florida, shall be known and designated as the “Sergeant First Class Paul Ray Smith Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Sergeant First Class Paul Ray Smith Post Office Building”.

Approved August 6, 2004.

LEGISLATIVE HISTORY—H.R. 4380:

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 12, considered and passed House.

July 19, considered and passed Senate.



Public Law 108–293
108th Congress

An Act

Aug. 9, 2004
[H.R. 2443]

An Act to authorize appropriations for the Coast Guard for fiscal year 2005, to amend various laws administered by the Coast Guard, and for other purposes.

Coast Guard and
Maritime
Transportation
Act of 2004.
14 USC 1 note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be referred to as the “Coast Guard and Maritime Transportation Act of 2004”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—AUTHORIZATION

- Sec. 101. Authorization of appropriations.
- Sec. 102. Authorized levels of military strength and training.

TITLE II—COAST GUARD MANAGEMENT

- Sec. 201. Long-term leases.
- Sec. 202. Nonappropriated fund instrumentalities.
- Sec. 203. Term of enlistments.
- Sec. 204. Enlisted member critical skill training bonus.
- Sec. 205. Indemnity for disabling vessels liable to seizure or examination.
- Sec. 206. Administrative, collection, and enforcement costs for certain fees and charges.
- Sec. 207. Expansion of Coast Guard housing authorities.
- Sec. 208. Requirement for constructive credit.
- Sec. 209. Maximum ages for retention in an active status.
- Sec. 210. Travel card management.
- Sec. 211. Coast Guard fellows and detailees.
- Sec. 212. Long-term lease of special use real property.
- Sec. 213. National Coast Guard Museum.
- Sec. 214. Limitation on number of commissioned officers.
- Sec. 215. Redistricting notification requirement.
- Sec. 216. Report on shock mitigation standards.
- Sec. 217. Recommendations to Congress by Commandant of the Coast Guard.
- Sec. 218. Coast Guard education loan repayment program.
- Sec. 219. Contingent expenses.
- Sec. 220. Reserve admirals.
- Sec. 221. Confidential investigative expenses.
- Sec. 222. Innovative construction alternatives.
- Sec. 223. Delegation of port security authority.
- Sec. 224. Fisheries enforcement plans and reporting.
- Sec. 225. Use of Coast Guard and military child development centers.
- Sec. 226. Treatment of property owned by auxiliary units and dedicated solely for auxiliary use.

TITLE III—NAVIGATION

- Sec. 301. Marking of underwater wrecks.
- Sec. 302. Use of electronic devices; cooperative agreements.

- Sec. 303. Inland navigation rules promulgation authority.
- Sec. 304. Saint Lawrence Seaway.

TITLE IV—SHIPPING

- Sec. 401. Reports from charterers.
- Sec. 402. Removal of mandatory revocation for proved drug convictions in suspension and revocation cases.
- Sec. 403. Records of merchant mariners' documents.
- Sec. 404. Exemption of unmanned barges from certain citizenship requirements.
- Sec. 405. Compliance with International Safety Management Code.
- Sec. 406. Penalties.
- Sec. 407. Revision of temporary suspension criteria in document suspension and revocation cases.
- Sec. 408. Revision of bases for document suspension and revocation cases.
- Sec. 409. Hours of service on towing vessels.
- Sec. 410. Electronic charts.
- Sec. 411. Prevention of departure.
- Sec. 412. Service of foreign nationals for maritime educational purposes.
- Sec. 413. Classification societies.
- Sec. 414. Drug testing reporting.
- Sec. 415. Inspection of towing vessels.
- Sec. 416. Potable water.
- Sec. 417. Transportation of platform jackets.
- Sec. 418. Renewal of advisory groups.

TITLE V—FEDERAL MARITIME COMMISSION

- Sec. 501. Authorization of appropriations for Federal Maritime Commission.
- Sec. 502. Report on ocean shipping information gathering efforts.

TITLE VI—MISCELLANEOUS

- Sec. 601. Increase in civil penalties for violations of certain bridge statutes.
- Sec. 602. Conveyance of decommissioned Coast Guard cutters.
- Sec. 603. Tonnage measurement.
- Sec. 604. Operation of vessel STAD AMSTERDAM.
- Sec. 605. Great Lakes National Maritime Enhancement Institute.
- Sec. 606. Koss Cove.
- Sec. 607. Miscellaneous certificates of documentation.
- Sec. 608. Requirements for coastwise endorsement.
- Sec. 609. Correction of references to National Driver Register.
- Sec. 610. Wateree River.
- Sec. 611. Merchant mariners' documents pilot program.
- Sec. 612. Conveyance.
- Sec. 613. Bridge administration.
- Sec. 614. Sense of Congress regarding carbon monoxide and watercraft.
- Sec. 615. Mitigation of penalty due to avoidance of a certain condition.
- Sec. 616. Certain vessels to be tour vessels.
- Sec. 617. Sense of Congress regarding timely review and adjustment of Great Lakes pilotage rates.
- Sec. 618. Westlake chemical barge documentation.
- Sec. 619. Correction to definition.
- Sec. 620. LORAN-C.
- Sec. 621. Deepwater report.
- Sec. 622. Judicial review of National Transportation Safety Board final orders.
- Sec. 623. Interim authority for dry bulk cargo residue disposal.
- Sec. 624. Small passenger vessel report.
- Sec. 625. Conveyance of motor lifeboat.
- Sec. 626. Study on routing measures.
- Sec. 627. Conveyance of light stations.
- Sec. 628. Waiver.
- Sec. 629. Approval of modular accommodation units for living quarters.

TITLE VII—AMENDMENTS RELATING TO OIL POLLUTION ACT OF 1990

- Sec. 701. Vessel response plans for nontank vessels over 400 gross tons.
- Sec. 702. Requirements for tank level and pressure monitoring devices.
- Sec. 703. Liability and cost recovery.
- Sec. 704. Oil Spill Recovery Institute.
- Sec. 705. Alternatives.
- Sec. 706. Authority to settle.
- Sec. 707. Report on implementation of the Oil Pollution Act of 1990.
- Sec. 708. Loans for fishermen and aquaculture producers impacted by oil spills.

TITLE VIII—MARITIME TRANSPORTATION SECURITY

- Sec. 801. Enforcement.

- Sec. 802. In rem liability for civil penalties and costs.
- Sec. 803. Maritime information.
- Sec. 804. Maritime transportation security grants.
- Sec. 805. Security assessment of waters under the jurisdiction of the United States.
- Sec. 806. Membership of Area Maritime Security Advisory Committees.
- Sec. 807. Joint operational centers for port security.
- Sec. 808. Investigations.
- Sec. 809. Vessel and intermodal security reports.

TITLE I—AUTHORIZATION

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are authorized to be appropriated for fiscal year 2005 for necessary expenses of the Coast Guard as follows:

(1) For the operation and maintenance of the Coast Guard, \$5,404,300,000, of which \$25,000,000 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, \$1,500,000,000, of which—

(A) \$23,500,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990, to remain available until expended;

(B) \$1,100,000,000 is authorized for acquisition and construction of shore and offshore facilities, vessels, and aircraft, including equipment related thereto, and other activities that constitute the Integrated Deepwater System; and

(C) \$161,000,000 shall be available for Rescue 21.

(3) For research, development, test, and evaluation of technologies, materials, and human factors directly relating to improving the performance of the Coast Guard's mission in search and rescue, aids to navigation, marine safety, marine environmental protection, enforcement of laws and treaties, ice operations, oceanographic research, and defense readiness, \$24,200,000, to remain available until expended, of which \$3,500,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, \$1,085,460,000, to remain available until expended.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, and for personnel and administrative costs associated with the Bridge Alteration Program, \$19,650,000, of which—

(A) \$17,150,000, to remain available until expended;

and

(B) \$2,500,000, to remain available until expended, which may be utilized for construction of a new Chelsea

Street Bridge over the Chelsea River in Boston, Massachusetts.

(6) For environmental compliance and restoration at Coast Guard facilities (other than parts and equipment associated with operation and maintenance), \$17,000,000, to remain available until expended.

(7) For maintenance and operation of facilities, supplies, equipments, and services necessary for the Coast Guard Reserve, as authorized by law, \$117,000,000.

SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

(a) **ACTIVE DUTY STRENGTH.**—The Coast Guard is authorized an end-of-year strength for active duty personnel of 45,500 for the years ending on September 30, 2004, and September 30, 2005.

(b) **MILITARY TRAINING STUDENT LOADS.**—The Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training for fiscal year 2005, 2,500 student years.

(2) For flight training for fiscal year 2005, 125 student years.

(3) For professional training in military and civilian institutions for fiscal year 2005, 350 student years.

(4) For officer acquisition for fiscal year 2005, 1,200 student years.

TITLE II—COAST GUARD MANAGEMENT

SEC. 201. LONG-TERM LEASES.

Section 93 of title 14, United States Code, is amended—

(1) by redesignating paragraphs (a) through (x) in order as paragraphs (1) through (23);

(2) in paragraph (18) (as so redesignated) by striking the comma at the end and inserting a semicolon;

(3) by inserting “(a)” before “For the purpose”; and

(4) by adding at the end the following:

“(b)(1) Notwithstanding subsection (a)(14), a lease described in paragraph (2) of this subsection may be for a term of up to 20 years.

“(2) A lease referred to in paragraph (1) is a lease—

“(A) to the United States Coast Guard Academy Alumni Association for the construction of an Alumni Center on the grounds of the United States Coast Guard Academy; or

“(B) to an entity with which the Commandant has a cooperative agreement under section 4(e) of the Ports and Waterways Safety Act, and for which a term longer than 5 years is necessary to carry out the agreement.”.

SEC. 202. NONAPPROPRIATED FUND INSTRUMENTALITIES.

(a) **IN GENERAL.**—Chapter 7 of title 14, United States Code, is amended by adding at the end the following:

“§ 152. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide or obtain goods and services

“The Coast Guard Exchange System, or a morale, welfare, and recreation system of the Coast Guard, may enter into a contract

or other agreement with any element or instrumentality of the Coast Guard or with another Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the efficient management and operation of the Coast Guard Exchange System or that morale, welfare, and recreation system.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 7 of title 14, United States Code, is amended by adding at the end the following:

“152. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide or obtain goods and services.”.

SEC. 203. TERM OF ENLISTMENTS.

Section 351(a) of title 14, United States Code, is amended by striking “terms of full years not exceeding six years.” and inserting “a period of at least two years but not more than six years.”.

SEC. 204. ENLISTED MEMBER CRITICAL SKILL TRAINING BONUS.

(a) IN GENERAL.—Chapter 11 of title 14, United States Code, is amended by inserting after section 373 the following:

“§ 374. Critical skill training bonus

“(a) The Secretary may provide a bonus, not to exceed \$20,000, to an enlisted member who completes training in a skill designated as critical, if at least four years of obligated active service remain on the member’s enlistment at the time the training is completed. A bonus under this section may be paid in a single lump sum or in periodic installments.

“(b) If an enlisted member voluntarily or because of misconduct does not complete the member’s term of obligated active service, the Secretary may require the member to repay the United States, on a pro rata basis, all sums paid under this section. The Secretary may charge interest on the amount repaid at a rate, to be determined quarterly, equal to 150 percent of the average of the yields on the 91-day Treasury bills auctioned during the calendar quarter preceding the date on which the amount to be repaid is determined.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 11 of title 14, United States Code, is amended by inserting the following after the item relating to section 373: “374. Critical skill training bonus.”.

SEC. 205. INDEMNITY FOR DISABLING VESSELS LIABLE TO SEIZURE OR EXAMINATION.

(a) REPEAL OF REQUIREMENT TO FIRE WARNING SHOT.—Subsection (a) of section 637 of title 14, United States Code, is amended—

(1) by inserting “(1)” after “(a)”;

(2) by striking “after a” and all that follows through “signal,” and inserting “subject to paragraph (2),”;

(3) by adding at the end the following:

“(2) Before firing at or into a vessel as authorized in paragraph (1), the person in command or in charge of the authorized vessel or authorized aircraft shall fire a gun as a warning signal, except that the prior firing of a gun as a warning signal is not required if that person determines that the firing of a warning signal would unreasonably endanger persons or property in the vicinity of the vessel to be stopped.”.

(b) EXTENSION TO MILITARY AIRCRAFT OF COAST GUARD INTERDICTION AUTHORITY.—Subsection (c) of such section is amended—

- (1) in paragraph (1) by inserting “or” after the semicolon; and
- (2) in paragraph (2) by—

(A) inserting “or military aircraft” after “surface naval vessel”; and

(B) striking “; or” and all that follows through paragraph (3) and inserting a period.

(c) REPEAL OF TERMINATION OF APPLICABILITY TO NAVAL AIRCRAFT.—Subsection (d) of such section is repealed.

(d) REPORT.—The Commandant of the Coast Guard shall transmit a report annually to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives describing the location, vessels or aircraft, circumstances, and consequences of each incident in the 12-month period covered by the report in which the person in command or in charge of an authorized vessel or an authorized aircraft (as those terms are used in section 637 of title 14, United States Code) fired at or into a vessel without prior use of the warning signal as authorized by that section. 14 USC 637 note.

(e) TECHNICAL CORRECTION.—

(1) CORRECTION.—Section 637 of title 14, United States Code, is amended in the section heading by striking “**immunity**” and inserting “**indemnity**”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of title 14, United States Code, is amended by striking the item relating to section 637 and inserting the following:

“637. Stopping vessels; indemnity for firing at or into vessel.”.

SEC. 206. ADMINISTRATIVE, COLLECTION, AND ENFORCEMENT COSTS FOR CERTAIN FEES AND CHARGES.

Section 664 of title 14, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (f);

(2) by inserting after subsection (b) the following:

“(c) In addition to the collection of fees and charges established under this section, the Secretary may recover from the person liable for the fee or charge the costs of collecting delinquent payments of the fee or charge, and enforcement costs associated with delinquent payments of the fees and charges.

“(d)(1) The Secretary may employ any Federal, State, or local agency or instrumentality, or any private enterprise or business, to collect a fee or charge established under this section.

“(2) A private enterprise or business employed by the Secretary to collect fees or charges—

“(A) shall be subject to reasonable terms and conditions agreed to by the Secretary and the enterprise or business;

“(B) shall provide appropriate accounting to the Secretary; and

“(C) may not institute litigation as part of that collection.

“(e) The Secretary shall account for the agency’s costs of collecting a fee or charge as a reimbursable expense, subject to the availability of appropriations, and the costs shall be credited to the account from which expended.”; and

(3) by adding at the end the following:

“(g) In this section the term ‘costs of collecting a fee or charge’ includes the reasonable administrative, accounting, personnel, contract, equipment, supply, training, and travel expenses of calculating, assessing, collecting, enforcing, reviewing, adjusting, and reporting on a fee or charge.”.

SEC. 207. EXPANSION OF COAST GUARD HOUSING AUTHORITIES.

(a) **ELIGIBLE ENTITY DEFINED.**—Section 680 of title 14, United States Code, is amended—

(1) by redesignating paragraphs (3) and (4) in order as paragraphs (4) and (5); and

(2) by inserting after paragraph (2) the following:

“(3) The term ‘eligible entity’ means any private person, corporation, firm, partnership, or company and any State or local government or housing authority of a State or local government.”.

(b) **DIRECT LOANS FOR PROVIDING HOUSING.**—Section 682 of title 14, United States Code, is amended—

(1) in the section heading by striking “**Loan guarantees**” and inserting “**Direct loans and loan guarantees**”;

(2) by redesignating subsections (a) and (b) as (b) and (c) respectively;

(3) by inserting before subsection (b) (as so redesignated) the following:

“(a) **DIRECT LOANS.**—(1) Subject to subsection (c), the Secretary may make direct loans to an eligible entity in order to provide funds to the eligible entity for the acquisition or construction of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

“(2) The Secretary shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.”;

(4) in subsection (b) (as so redesignated) by striking “subsection (b),” and inserting “subsection (c),”; and

(5) in subsection (c) (as so redesignated)—

(A) in the heading by striking “**GUARANTEE**”; and

(B) by striking “**Loan guarantees**” and inserting “**Direct loans and loan guarantees**”.

(c) **LIMITED PARTNERSHIPS WITH ELIGIBLE ENTITIES.**—Section 684 of title 14, United States Code, is amended—

(1) in the section heading by striking “**nongovernmental**” and inserting “**eligible**”;

(2) in subsection (a) by striking “nongovernmental” and inserting “eligible”;

(3) in subsection (b)(1) by striking “a nongovernmental” and inserting “an eligible”;

(4) in subsection (b)(2) by striking “a nongovernmental” and inserting “an eligible”; and

(5) in subsection (c) by striking “nongovernmental” and inserting “eligible”.

(d) **HOUSING DEMONSTRATION PROJECTS IN ALASKA.**—Section 687(g) of title 14, United States Code, is amended—

(1) in the heading by striking “**PROJECT**” and inserting “**PROJECTS**”;

(2) in paragraph (1) by striking “a demonstration project” and inserting “demonstration projects”;

(3) in paragraph (1) by striking “Kodiak, Alaska,” and inserting “Kodiak, Alaska, or any other Coast Guard installation in Alaska;”;

(4) in paragraph (2) by striking “the demonstration project” and inserting “such a demonstration project”; and

(5) in paragraph (4) by striking “the demonstration project” and inserting “such demonstration projects”.

(e) DIFFERENTIAL LEASE PAYMENTS.—Chapter 18 of title 14, United States Code, is amended by inserting after section 687 the following:

“§ 687a. Differential lease payments

“Pursuant to an agreement entered into by the Secretary and a lessor of military family housing or military unaccompanied housing to members of the armed forces, the Secretary may pay the lessor an amount, in addition to the rental payments for the housing made by the members, as the Secretary determines appropriate to encourage the lessor to make the housing available to members of the armed forces as military family housing or as military unaccompanied housing.”.

(f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 18 of title 14, United States Code, is amended—

(1) by striking the item related to section 682 and inserting the following:

“682. Direct loans and loan guarantees.”;

(2) in the item related to section 684 by striking “non-governmental” and inserting “eligible”; and

(3) by inserting after the item related to section 687 the following:

“687a. Differential lease payments.”.

SEC. 208. REQUIREMENT FOR CONSTRUCTIVE CREDIT.

Section 727 of title 14, United States Code, is amended in the second sentence by striking “three years” and inserting “one year”.

SEC. 209. MAXIMUM AGES FOR RETENTION IN AN ACTIVE STATUS.

Section 742 of title 14, United States Code, is amended to read as follows:

“§ 742. Maximum ages for retention in an active status

“(a) A Reserve officer, if qualified, shall be transferred to the Retired Reserve on the day the officer becomes 60 years of age unless on active duty. If not qualified for retirement, a Reserve officer shall be discharged effective upon the day the officer becomes 60 years of age unless on active duty.

“(b) A Reserve officer on active duty shall, if qualified, be retired effective upon the day the officer become 62 years of age. If not qualified for retirement, a Reserve officer on active duty shall be discharged effective upon the day the officer becomes 62 years of age.

“(c) Notwithstanding subsection (a) and (b), the Secretary may authorize the retention of a Reserve rear admiral or rear admiral (lower half) in an active status not longer than the day on which the officer concerned becomes 64 years of age.

“(d) For purposes of this section, ‘active duty’ does not include active duty for training, duty on a board, or duty of a limited or temporary nature if assigned to active duty from an inactive duty status.”.

SEC. 210. TRAVEL CARD MANAGEMENT.

(a) IN GENERAL.—Chapter 13 of title 14, United States Code, is amended by adding at the end the following:

“§ 517. Travel card management

“(a) IN GENERAL.—The Secretary may require that travel or transportation allowances due a civilian employee or military member of the Coast Guard be disbursed directly to the issuer of a Federal contractor-issued travel charge card, but only in an amount not to exceed the authorized travel expenses charged by that Coast Guard member to that travel charge card issued to that employee or member.

“(b) WITHHOLDING OF NONDISPUTED OBLIGATIONS.—The Secretary may also establish requirements similar to those established by the Secretary of Defense pursuant to section 2784a of title 10 for deduction or withholding of pay or retired pay from a Coast Guard employee, member, or retired member who is delinquent in payment under the terms of the contract under which the card was issued and does not dispute the amount of the delinquency.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 13 of title 14, United States Code, is amended by inserting after the item relating to section 516 the following:

“517. Travel card management.”.

SEC. 211. COAST GUARD FELLOWS AND DETAILEES.

Deadline.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Attorney General, shall by not later than 6 months after the date of the enactment of this Act—

(1) review the Coast Guard Commandant Instruction 5730.3, regarding congressional detailees (COMDTINST 5370.3), dated April 18, 2003, and compare the standards set forth in the instruction to the standards applied by other executive agencies to congressional detailees;

(2) determine if any changes to such instruction are necessary to protect against conflicts of interest and preserve the doctrine of separation of powers; and

Reports.

(3) submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the findings and conclusions of the review.

SEC. 212. LONG-TERM LEASE OF SPECIAL USE REAL PROPERTY.

(a) IN GENERAL.—Section 672 of title 14, United States Code, is amended by—

(1) striking the heading and inserting the following:

“§ 672. Long-term lease of special purpose facilities”;

(2) in subsection (a), inserting “special purpose facilities, including,” after “automatic renewal clauses, for”; and

(3) striking “(b) The” and inserting:

“(b) For purposes of this section, the term ‘special purpose facilities’ means any facilities used to carry out Coast Guard aviation, maritime, or navigation missions other than general purpose office and storage space facilities.

“(c) In the case of ATON, VTS, or NDS sites, the”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17, United States Code, is amended by striking the item relating to section 672 and inserting the following:

“672. Long-term lease of special purpose facilities.”.

SEC. 213. NATIONAL COAST GUARD MUSEUM.

(a) IN GENERAL.—Chapter 5 of title 14, United States Code, is amended by adding at the end the following:

“§ 98. National Coast Guard Museum

“(a) ESTABLISHMENT.—The Commandant may establish a National Coast Guard Museum, on lands which will be federally owned and administered by the Coast Guard, and are located in New London, Connecticut, at, or in close proximity to, the Coast Guard Academy.

“(b) LIMITATION ON EXPENDITURES.—(1) Except as provided in paragraph (2), the Secretary shall not expend any appropriated Federal funds for the engineering, design, or construction of any museum established under this section.

“(2) The Secretary shall fund the operation and maintenance of the National Coast Guard Museum with nonappropriated and non-Federal funds to the maximum extent practicable. The priority use of Federal operation and maintenance funds should be to preserve and protect historic Coast Guard artifacts.

“(c) FUNDING PLAN.—Before the date on which the Commandant establishes a museum under subsection (a), the Commandant shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a plan for constructing, operating, and maintaining such a museum, including—

“(1) estimated planning, engineering, design, construction, operation, and maintenance costs;

“(2) the extent to which appropriated, nonappropriated, and non-Federal funds will be used for such purposes, including the extent to which there is any shortfall in funding for engineering, design, or construction; and

“(3) a certification by the Inspector General of the department in which the Coast Guard is operating that the estimates provided pursuant to paragraphs (1) and (2) are reasonable and realistic.

“(d) AUTHORITY.—The Commandant may not establish a Coast Guard museum except as set forth in this section.”.

(b) CLERICAL AMENDMENT.—The chapter analysis at the beginning of chapter 5 of title 14, United States Code, is amended by adding at the end the following:

“98. National Coast Guard Museum.”.

SEC. 214. LIMITATION ON NUMBER OF COMMISSIONED OFFICERS.

Section 42 of title 14, United States Code, is amended—

(1) in subsection (a), by striking “6,200” and inserting “6,700 in each fiscal year 2004, 2005, and 2006”; and

Certification.

(2) in subsection (b), by striking “commander 12.0; lieutenant commander 18.0” and inserting “commander 15.0; lieutenant commander 22.0”.

14 USC 93 note.

SEC. 215. REDISTRICTING NOTIFICATION REQUIREMENT.

The Commandant shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate at least 180 days before—

- (1) implementing any plan to reduce the number of, change the location of, or change the geographic area covered by any existing Coast Guard Districts; or
- (2) permanently transferring more than 10 percent of the personnel or equipment from a district office where such personnel or equipment is based.

SEC. 216. REPORT ON SHOCK MITIGATION STANDARDS.

(a) **REPORT REQUIREMENT.**—Not later than 180 days after the date of the enactment of this Act, the Commandant of the Coast Guard shall issue a report on the necessity of, and possible standards for, decking materials for Coast Guard vessels to mitigate the adverse effects on crew members from shock and vibration.

(b) **RECOMMENDED STANDARDS.**—The standards recommended in the report may—

- (1) incorporate appropriate industry or manufacturing standards; and
- (2) consider the weight and durability of decking material, the effects of repeated use and varying weather conditions, and the capability of decking material to lessen impact.

SEC. 217. RECOMMENDATIONS TO CONGRESS BY COMMANDANT OF THE COAST GUARD.

Section 93 of title 14, United States Code, is amended—

- (1) in paragraph (w) by striking “and” after the semicolon at the end;
- (2) in paragraph (x) by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:
“(y) after informing the Secretary, make such recommendations to the Congress relating to the Coast Guard as the Commandant considers appropriate.”.

SEC. 218. COAST GUARD EDUCATION LOAN REPAYMENT PROGRAM.

(a) **PROGRAM AUTHORIZED.**—Chapter 13 of title 14, United States Code, is amended by inserting after section 471 the following:

“§ 472. Education loan repayment program

“(a)(1) Subject to the provisions of this section, the Secretary may repay—

“(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

“(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

“(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.).

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

“(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed on active duty as an enlisted member of the Coast Guard in a specialty specified by the Secretary.

“(b) The portion or amount of a loan that may be repaid under subsection (a) is $33\frac{1}{3}$ percent or \$1,500, whichever is greater, for each year of service.

“(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of such loan shall accrue and be paid in the same manner as is otherwise required.

“(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

“(e) The Secretary shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out this section during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a).”.

Regulations.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 14, United States Code, is amended by inserting after the item relating to section 471 the following: “472. Education loan repayment program.”.

SEC. 219. CONTINGENT EXPENSES.

Section 476 of title 14, United States Code, is amended—

- (1) by striking “\$7,500” and inserting “\$50,000”; and
- (2) by striking the second sentence.

SEC. 220. RESERVE ADMIRALS.

(a) PRECEDENCE.—Section 725 of title 14, United States Code, is amended by adding at the end the following:

“(d) Notwithstanding any other law, a Reserve officer shall not lose precedence by reason of promotion to the grade of rear admiral or rear admiral (lower half), if the promotion is determined in accordance with a running mate system.

“(e) The Secretary shall adjust the date of rank of a Reserve officer so that no changes of precedence occur.”.

(b) PROMOTION.—Section 736(b) of title 14, United States Code, is amended to read as follows:

“(b) Notwithstanding any other provision of law and subject to subsection (c), if promotion of an inactive duty promotion list officer to the grade of rear admiral or rear admiral (lower half) is determined in accordance with a running mate system, a reserve officer, if acceptable to the President and the Senate, shall be promoted to the next higher grade no later than the date the officer’s running mate is promoted.”.

(c) DATE OF APPOINTMENT.—Section 736(c) of title 14, United States Code, is amended by striking “of subsection (a)”.

(d) MAXIMUM SERVICE.—Section 743 of title 14, United States Code, is amended to read as follows:

“§743. Rear admiral and rear admiral (lower half); maximum service in grade

“(a) Unless retained in or removed from an active status under any other law, a reserve rear admiral or rear admiral (lower half) shall be retired on July 1 of the promotion year immediately following the promotion year in which that officer completes 4 years

of service after the appointment of the officer to rear admiral (lower half).

“(b) Notwithstanding any other provision of law, if promotion of inactive duty promotion list officers to the grade of rear admiral is not determined in accordance with a running mate system, a Reserve officer serving in an active status in the grade of rear admiral (lower half) shall be promoted to the grade of rear admiral, if acceptable to the President and the Senate, on the date the officer has served 2 years in an active status in grade of rear admiral (lower half), or in the case of a vacancy occurring prior to having served 2 years in an active status, on the date the vacancy occurs, if the officer served at least 1 year in an active status in the grade of rear admiral (lower half).”.

SEC. 221. CONFIDENTIAL INVESTIGATIVE EXPENSES.

Section 658 of title 14, United States Code, is amended by striking “\$15,000 per annum” and inserting “\$45,000 each fiscal year”.

14 USC 93 note.

SEC. 222. INNOVATIVE CONSTRUCTION ALTERNATIVES.

The Commandant of the Coast Guard may consult with the Office of Naval Research and other Federal agencies with research and development programs that may provide innovative construction alternatives for the Integrated Deepwater System.

SEC. 223. DELEGATION OF PORT SECURITY AUTHORITY.

The undesignated text following paragraph (b) of the second unnumbered paragraph of section 1 of title II of the Act of June 15, 1917 (chapter 30; 40 Stat. 220; 50 U.S.C. 191) is amended by adding at the beginning the following: “The President may delegate the authority to issue such rules and regulations to the Secretary of the department in which the Coast Guard is operating.”.

16 USC 1861b.

SEC. 224. FISHERIES ENFORCEMENT PLANS AND REPORTING.

(a) **FISHERIES ENFORCEMENT PLANS.**—In preparing the Coast Guard’s annual fisheries enforcement plan, the Commandant of the Coast Guard shall consult with the Under Secretary of Commerce for Oceans and Atmosphere and with State and local enforcement authorities.

Notification.

(b) **FISHERY PATROLS.**—Prior to undertaking fisheries patrols, the Commandant of the Coast Guard shall notify the Under Secretary of Commerce for Oceans and Atmosphere and appropriate State and local enforcement authorities of the projected dates for such patrols.

(c) **ANNUAL SUMMARY.**—The Commandant of the Coast Guard shall prepare and make available to the Under Secretary of Commerce for Oceans and Atmosphere, State and local enforcement entities, and other relevant stakeholders, an annual summary report of fisheries enforcement activities for the preceding year, including a summary of the number of patrols, law enforcement actions taken, and resource hours expended.

14 USC 515 note.

SEC. 225. USE OF COAST GUARD AND MILITARY CHILD DEVELOPMENT CENTERS.

The Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, when operating other than as a service in the Navy, may agree to provide child care services

to members of the armed forces, with reimbursement, in Coast Guard and military child development centers supported in whole or in part with appropriated funds. For purposes of military child development centers operated under the authority of subchapter II of chapter 88 of title 10, United States Code, the child of a member of the Coast Guard shall be considered the same as the child of a member of any of the other armed forces.

SEC. 226. TREATMENT OF PROPERTY OWNED BY AUXILIARY UNITS AND DEDICATED SOLELY FOR AUXILIARY USE.

Section 821 of title 14, United States Code, is amended by adding at the end the following:

“(d)(1) Except as provided in paragraph (2), personal property of the auxiliary shall not be considered property of the United States.

“(2) The Secretary may treat personal property of the auxiliary as property of the United States—

“(A) for the purposes of—

“(i) the statutes and matters referred to in paragraphs (1) through (6) of subsection (b); and

“(ii) section 641 of this title; and

“(B) as otherwise provided in this chapter.

“(3) The Secretary may reimburse the Auxiliary, and each organizational element and unit of the Auxiliary, for necessary expenses of operation, maintenance, and repair or replacement of personal property of the Auxiliary.

“(4) In this subsection, the term ‘personal property of the Auxiliary’ means motor boats, yachts, aircraft, radio stations, motorized vehicles, trailers, or other equipment that is under the administrative jurisdiction of the Coast Guard Auxiliary or an organizational element or unit of the Auxiliary and that is used solely for the purposes described in this subsection.”.

TITLE III—NAVIGATION

SEC. 301. MARKING OF UNDERWATER WRECKS.

Section 15 of the Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 409) is amended—

(1) by striking “day and a lighted lantern” in the second sentence inserting “day and, unless otherwise granted a waiver by the Commandant of the Coast Guard, a light”; and

(2) by adding at the end “The Commandant of the Coast Guard may waive the requirement to mark a wrecked vessel, raft, or other craft with a light at night if the Commandant determines that placing a light would be impractical and granting such a waiver would not create an undue hazard to navigation.”.

SEC. 302. USE OF ELECTRONIC DEVICES; COOPERATIVE AGREEMENTS.

Section 4(a) of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1223(a)) is amended by—

(1)(A) striking “and” after the semicolon at the end of paragraph (4);

(B) striking the period at the end of paragraph (5) and inserting “; and”; and

(C) adding at the end the following:

“(6) may prohibit the use on vessels of electronic or other devices that interfere with communication and navigation equipment, except that such authority shall not apply to electronic or other devices certified to transmit in the maritime services by the Federal Communications Commission and used within the frequency bands 157.1875–157.4375 MHz and 161.7875–162.0375 MHz.”; and

(2) adding at the end the following:

“(e) COOPERATIVE AGREEMENTS.—(1) The Secretary may enter into cooperative agreements with public or private agencies, authorities, associations, institutions, corporations, organizations, or other persons to carry out the functions under subsection (a)(1).

“(2) A nongovernmental entity may not under this subsection carry out an inherently governmental function.

“(3) As used in this paragraph, the term ‘inherently governmental function’ means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of judgment in making a decision for the Government.”.

SEC. 303. INLAND NAVIGATION RULES PROMULGATION AUTHORITY.

(a) REPEAL OF INLAND RULES.—Section 2 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001–38) is repealed.

33 USC 2071. (b) AUTHORITY TO ISSUE REGULATIONS.—Section 3 of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001) is amended to read as follows:

“SEC. 3. INLAND NAVIGATION RULES.

“The Secretary of the Department in which the Coast Guard is operating may issue inland navigation regulations applicable to all vessels upon the inland waters of the United States and technical annexes that are as consistent as possible with the respective annexes to the International Regulations.”.

33 USC 2001 note. (c) EFFECTIVE DATE.—Subsection (a) is effective on the effective date of final regulations prescribed by the Secretary of the Department in which the Coast Guard is operating under section 3 of the Inland Navigation Rules Act of 1980 (33 U.S.C. 2001), as amended by this Act.

SEC. 304. SAINT LAWRENCE SEAWAY.

Section 3(2) of the Ports and Waterways Safety Act (33 U.S.C. 1222(2)) is amended by inserting “, except that ‘Secretary’ means the Secretary of Transportation with respect to the application of this Act to the Saint Lawrence Seaway” after “in which the Coast Guard is operating”.

TITLE IV—SHIPPING

SEC. 401. REPORTS FROM CHARTERERS.

Section 12120 of title 46, United States Code, is amended by striking “owners and masters” and inserting “owners, masters, and charterers”.

SEC. 402. REMOVAL OF MANDATORY REVOCATION FOR PROVED DRUG CONVICTIONS IN SUSPENSION AND REVOCATION CASES.

Section 7704(b) of title 46, United States Code, is amended by inserting “suspended or” after “shall be”.

SEC. 403. RECORDS OF MERCHANT MARINERS’ DOCUMENTS.

Section 7319 of title 46, United States Code, is amended by striking the second sentence.

SEC. 404. EXEMPTION OF UNMANNED BARGES FROM CERTAIN CITIZENSHIP REQUIREMENTS.

(a) **LIMITATION ON COMMAND.**—Section 12110(d) of title 46, United States Code, is amended by inserting “or an unmanned barge operating outside of the territorial waters of the United States,” after “recreational endorsement,”.

(b) **PENALTY.**—Section 12122(b)(6) of title 46, United States Code, is amended by inserting “or an unmanned barge operating outside of the territorial waters of the United States,” after “recreational endorsement,”.

SEC. 405. COMPLIANCE WITH INTERNATIONAL SAFETY MANAGEMENT CODE.

(a) **APPLICATION OF EXISTING LAW.**—Section 3202(a) of title 46, United States Code, is amended to read as follows:

“(a) **MANDATORY APPLICATION.**—This chapter applies to a vessel that—

“(1)(A) is transporting more than 12 passengers described in section 2101(21)(A) of this title; or

“(B) is of at least 500 gross tons as measured under section 14302 of this title and is a tanker, freight vessel, bulk freight vessel, high speed freight vessel, or self-propelled mobile offshore drilling unit; and

“(2)(A) is engaged on a foreign voyage; or

“(B) is a foreign vessel departing from a place under the jurisdiction of the United States on a voyage, any part of which is on the high seas.”.

(b) **COMPLIANCE OF REGULATIONS WITH INTERNATIONAL SAFETY MANAGEMENT CODE.**—Section 3203(b) of title 46, United States Code, is amended by striking “vessels engaged on a foreign voyage.” and inserting “vessels to which this chapter applies under section 3202(a) of this title.”.

SEC. 406. PENALTIES.

Section 4311(b) of title 46, United States Code, is amended to read as follows:

“(b)(1) A person violating section 4307(a) of this title is liable to the United States Government for a civil penalty of not more than \$5,000, except that the maximum civil penalty may be not more than \$250,000 for a related series of violations.

“(2) If the Secretary decides under section 4310(f) that a recreational vessel or associated equipment contains a defect related to safety or fails to comply with an applicable regulation and directs the manufacturer to provide the notifications specified in this chapter, any person, including a director, officer or executive employee of a corporation, who knowingly and willfully fails to comply with that order, may be fined not more than \$10,000, imprisoned for not more than one year, or both.

“(3) When a corporation violates section 4307(a), or fails to comply with the Secretary’s decision under section 4310(f), any director, officer, or executive employee of the corporation who knowingly and willfully ordered, or knowingly and willfully authorized, a violation is individually liable to the Government for a penalty under paragraphs (1) or (2) in addition to the corporation. However, the director, officer, or executive employee is not liable individually under this subsection if the director, officer, or executive employee can demonstrate by a preponderance of the evidence that—

“(A) the order or authorization was issued on the basis of a decision, in exercising reasonable and prudent judgment, that the defect or the nonconformity with standards and regulations constituting the violation would not cause or constitute a substantial risk of personal injury to the public; and

“(B) at the time of the order or authorization, the director, officer, or executive employee advised the Secretary in writing of acting under this subparagraph and subparagraph (A).”.

SEC. 407. REVISION OF TEMPORARY SUSPENSION CRITERIA IN DOCUMENT SUSPENSION AND REVOCATION CASES.

Section 7702(d) of title 46, United States Code, is amended—

(1) in paragraph (1) by striking “if, when acting under the authority of that license, certificate, or document—” and inserting “if—”;

(2) in paragraph (1)(B)(i), by inserting “, while acting under the authority of that license, certificate, or document,” after “has”;

(3) by striking “or” after the semicolon at the end of paragraph (1)(B)(ii);

(4) by striking the period at the end of paragraph (1)(B)(iii) and inserting “; or”; and

(5) by adding at the end of paragraph (1)(B) the following:
“(iv) is a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.”.

SEC. 408. REVISION OF BASES FOR DOCUMENT SUSPENSION AND REVOCATION CASES.

Section 7703 of title 46, United States Code, is amended—

(1) in paragraph (1)(B)—

(A) by striking “incompetence,”; and

(B) by striking the comma after “misconduct”;

(2) by striking “or” after the semicolon at the end of paragraph (2);

(3) by striking the period at the end of paragraph (3) and inserting a semicolon; and

(4) by adding at the end the following:

“(4) has committed an act of incompetence relating to the operation of a vessel; or

“(5) is a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.”.

SEC. 409. HOURS OF SERVICE ON TOWING VESSELS.

(a) REGULATIONS.—Section 8904 of title 46, United States Code, is amended by adding at the end of the following:

“(c) The Secretary may prescribe by regulation requirements for maximum hours of service (including recording and record-keeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding the sheer).”.

(b) DEMONSTRATION PROJECT.—Prior to prescribing regulations under this section the Secretary shall conduct and report to the Congress on the results of a demonstration project involving the implementation of Crew Endurance Management Systems on towing vessels. The report shall include a description of the public and private sector resources needed to enable implementation of Crew Endurance Management Systems on all United States-flag towing vessels.

Reports.
46 USC 8904
note.

SEC. 410. ELECTRONIC CHARTS.

The Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.) is amended by inserting after section 4 the following:

33 USC 1223a.

“SEC. 4A. ELECTRONIC CHARTS.

“(a) SYSTEM REQUIREMENTS.—

“(1) REQUIREMENTS.—Subject to paragraph (2), the following vessels, while operating on the navigable waters of the United States, shall be equipped with and operate electronic charts under regulations prescribed by the Secretary of the department in which the Coast Guard is operating:

“(A) A self-propelled commercial vessel of at least 65 feet overall length.

“(B) A vessel carrying more than a number of passengers for hire determined by the Secretary.

“(C) A towing vessel of more than 26 feet in overall length and 600 horsepower.

“(D) Any other vessel for which the Secretary decides that electronic charts are necessary for the safe navigation of the vessel.

“(2) EXEMPTIONS AND WAIVERS.—The Secretary may—

“(A) exempt a vessel from paragraph (1), if the Secretary finds that electronic charts are not necessary for the safe navigation of the vessel on the waters on which the vessel operates; and

“(B) waive the application of paragraph (1) with respect to operation of vessels on navigable waters of the United States specified by the Secretary, if the Secretary finds that electronic charts are not needed for safe navigation on those waters.

“(b) REGULATIONS.—The Secretary of the department in which the Coast Guard is operating shall prescribe regulations implementing subsection (a) before January 1, 2007, including requirements for the operation and maintenance of the electronic charts required under subsection (a).”.

Deadline.

SEC. 411. PREVENTION OF DEPARTURE.

(a) IN GENERAL.—Section 3505 of title 46, United States Code, is amended to read as follows:

“§ 3505. Prevention of departure

“Notwithstanding section 3303 of this title, a foreign vessel carrying a citizen of the United States as a passenger or embarking passengers from a United States port may not depart from a United

States port if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea to which the United States Government is currently a party.”.

(b) CONFORMING AMENDMENT.—Section 3303 of title 46, United States Code, is amended by inserting “and section 3505” after “chapter 37”.

SEC. 412. SERVICE OF FOREIGN NATIONALS FOR MARITIME EDUCATIONAL PURPOSES.

Section 8103(b)(1)(A) of title 46, United State Code, is amended to read as follows:

“(A) each unlicensed seaman must be—

“(i) a citizen of the United States;

“(ii) an alien lawfully admitted to the United States for permanent residence; or

“(iii) a foreign national who is enrolled in the United States Merchant Marine Academy.”.

SEC. 413. CLASSIFICATION SOCIETIES.

(a) IN GENERAL.—Section 3316 of title 46, United States Code, is amended by adding at the end the following:

“(c)(1) A classification society (including an employee or agent of that society) may not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States unless—

“(A) the society has applied for approval under this subsection and the Secretary has reviewed and approved that society with respect to the conduct of that society under paragraph (2); or

“(B) the society is a full member of the International Association of Classification Societies.

“(2) The Secretary may approve a person for purposes of paragraph (1) only if the Secretary determines that—

“(A) the vessels surveyed by the person while acting as a classification society have an adequate safety record; and

“(B) the person has an adequate program to—

“(i) develop and implement safety standards for vessels surveyed by the person;

“(ii) make the safety records of the person available to the Secretary in an electronic format;

“(iii) provide the safety records of a vessel surveyed by the person to any other classification society that requests those records for the purpose of conducting a survey of the vessel; and

“(iv) request the safety records of a vessel the person will survey from any classification society that previously surveyed the vessel.”.

46 USC 3316
note.

(b) APPLICATION.—Section 3316(c)(1) of title 46, United States Code, shall apply with respect to operation as a classification society on or after January 1, 2005.

SEC. 414. DRUG TESTING REPORTING.

(a) IN GENERAL.—Chapter 77 of title 46, United States Code, is amended by adding at the end:

“§ 7706. Drug testing reporting

“(a) RELEASE OF DRUG TEST RESULTS TO COAST GUARD.—Not later than 2 weeks after receiving from a Medical Review Officer a report of a verified positive drug test or verified test violation by a civilian employee of a Federal agency, an officer in the Public Health Services, or an officer in the National Oceanic and Atmospheric Administration Commissioned Officer Corps, who is employed in any capacity on board a vessel operated by the agency, the head of the agency shall release to the Commandant of the Coast Guard the report.

“(b) STANDARDS, PROCEDURES, AND REGULATIONS.—The head of a Federal agency shall carry out a release under subsection (a) in accordance with the standards, procedures, and regulations applicable to the disclosure and reporting to the Coast Guard of drug tests results and drug test records of individuals employed on vessels documented under the laws of the United States.

“(c) WAIVER.—Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (5 U.S.C. 7301 note), the report of a drug test of an employee may be released under this section without the prior written consent of the employee.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 77 of title 46, United States Code, is amended by adding at the end the following:

“7706. Drug testing reporting.”.

SEC. 415. INSPECTION OF TOWING VESSELS.

(a) VESSELS SUBJECT TO INSPECTION.—Section 3301 of title 46, United States Code, is amended by adding at the end the following:

“(15) towing vessels.”.

(b) SAFETY MANAGEMENT SYSTEM.—Section 3306 of chapter 33 of title 46, United States Code, is amended by adding at the end the following:

“(j) The Secretary may establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels.”.

SEC. 416. POTABLE WATER.

(a) IN GENERAL.—Section 3305(a) of title 46, United States Code, is amended—

(1) by redesignating paragraphs (4) and (5) in order as paragraphs (5) and (6); and

(2) by inserting after paragraph (3) the following:

“(4) has an adequate supply of potable water for drinking and washing by passengers and crew;”.

(b) ADEQUACY DETERMINATION.—Section 3305(a) of title 46, United States Code, as amended by subsection (a), is further amended—

(1) by inserting “(1)” after “(a)”;

(2) by redesignating paragraphs (1) through (6) as subparagraphs (A) through (F), respectively; and

(3) by adding at the end the following:

“(2) In determining the adequacy of the supply of potable water under paragraph (1)(D), the Secretary shall consider—

“(A) the size and type of vessel;

“(B) the number of passengers or crew on board;

“(C) the duration and routing of voyages; and

“(D) guidelines for potable water recommended by the Centers for Disease Control and Prevention and the Public Health Service.”.

SEC. 417. TRANSPORTATION OF PLATFORM JACKETS.

Federal Register,
publication.
Deadlines.

The thirteenth proviso (pertaining to transportation by launch barge) of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883) is amended to read as follows: “*Provided further*, That the transportation of any platform jacket in or on a non-coastwise qualified launch barge, that was built before December 31, 2000, and has a launch capacity of 12,000 long tons or more, between two points in the United States, at one of which there is an installation or other device within the meaning of section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), shall not be deemed transportation subject to this section if the Secretary of Transportation makes a determination, in accordance with procedures established pursuant to this proviso that a suitable coastwise-qualified vessel is not available for use in the transportation and, if needed, launch or installation of a platform jacket and; that the Secretary of Transportation shall adopt procedures implementing this proviso that are reasonably designed to provide timely information so as to maximize the use of coastwise qualified-vessels, which procedures shall, among other things, establish that for purposes of this proviso, a coastwise-qualified vessel shall be deemed to be not available only (1) if upon application by an owner or operator for the use of a non-coastwise qualified launch barge for transportation of a platform jacket under this section, which application shall include all relevant information, including engineering details and timing requirements, the Secretary promptly publishes a notice in the Federal Register describing the project and the platform jacket involved, advising that all relevant information reasonably needed to assess the transportation requirements for the platform jacket will be made available to interested parties upon request, and requesting that information on the availability of coastwise-qualified vessels be submitted within 30 days after publication of that notice; and (2) if either (A) no information is submitted to the Secretary within that 30 day period, or (B) although the owner or operator of a coastwise-qualified vessel submits information to the Secretary asserting that the owner or operator has a suitable coastwise-qualified vessel available for this transportation, the Secretary, within 90 days of the date on which the notice is first published determines that the coastwise-qualified vessel is not suitable or reasonably available for the transportation; and that, for the purposes of this proviso, the term ‘coastwise-qualified vessel’ means a vessel that has been issued a certificate of documentation with a coastwise endorsement under section 12106 of title 46, United States Code, and the term ‘platform jacket’ refers to a single physical component and includes any type of offshore exploration, development, or production structure or component thereof, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure), hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as ‘topsides’).”.

SEC. 418. RENEWAL OF ADVISORY GROUPS.

(a) **COMMERCIAL FISHING INDUSTRY VESSEL SAFETY ADVISORY COMMITTEE.**—Section 4508(e)(1) of title 46, United States Code, is amended by striking “of September 30, 2005” and inserting “on September 30, 2010”.

(b) **HOUSTON-GALVESTON NAVIGATION SAFETY ADVISORY COMMITTEE.**—Section 18 of the Coast Guard Authorization Act of 1991 (Public Law 102–241; 105 Stat. 2213) is amended—

(1) in subsection (b) by striking “eighteen” and inserting “19”;

(2) by adding at the end of subsection (b) the following: “(12) One member representing recreational boating interests.”; and

(3) in subsection (h) by striking “September 30, 2005” and inserting “September 30, 2010”.

(c) **LOWER MISSISSIPPI RIVER WATERWAY SAFETY ADVISORY COMMITTEE.**—Section 19(g) of the Coast Guard Authorization Act of 1991 (Public Law 102–241) is amended by striking “September 30, 2005” and inserting “September 30, 2010”.

110 Stat. 3918.

(d) **GREAT LAKES PILOTAGE ADVISORY COMMITTEE.**—Section 9307(f)(1) of title 46, United States Code, is amended by striking “September 30, 2005” and inserting “September 30, 2010”.

(e) **NAVIGATION SAFETY ADVISORY COUNCIL.**—Section 5(d) of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073(d)) is amended by striking “September 30, 2005” and inserting “September 30, 2010”.

(f) **NATIONAL BOATING SAFETY ADVISORY COUNCIL.**—Section 13110(e) of title 46, United States Code, is amended by striking “September 30, 2005” and inserting “September 30, 2010”.

(g) **TOWING SAFETY ADVISORY COMMITTEE.**—Public Law 96–380 (33 U.S.C. 1231a) is amended in subsection (e) by striking “September 30, 2005” and inserting “September 30, 2010”.

TITLE V—FEDERAL MARITIME COMMISSION

SEC. 501. AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL MARITIME COMMISSION.

There are authorized to be appropriated to the Federal Maritime Commission—

- (1) for fiscal year 2005, \$19,500,000;
- (2) for fiscal year 2006, \$20,750,000;
- (3) for fiscal year 2007, \$21,500,000; and
- (4) for fiscal year 2008, \$22,575,000.

SEC. 502. REPORT ON OCEAN SHIPPING INFORMATION GATHERING EFFORTS.

The Federal Maritime Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report within 90 days after the date of the enactment of this Act on the status of any agreements, or ongoing discussions with, other Federal, State, or local government agencies concerning the sharing of ocean shipping information for the purpose of assisting law enforcement or anti-terrorism

efforts. The Commission shall include in the report recommendations on how the Commission's ocean shipping information could be better utilized by it and other Federal agencies to improve port security.

TITLE VI—MISCELLANEOUS

SEC. 601. INCREASE IN CIVIL PENALTIES FOR VIOLATIONS OF CERTAIN BRIDGE STATUTES.

(a) **GENERAL BRIDGE ACT OF 1906.**—Section 5(b) of Act of March 23, 1906 (chapter 1130; 33 U.S.C. 495), popularly known as the General Bridge Act, is amended by striking “\$1,000” and inserting “\$5,000 for a violation occurring in 2004; \$10,000 for a violation occurring in 2005; \$15,000 for a violation occurring in 2006; \$20,000 for a violation occurring in 2007; and \$25,000 for a violation occurring in 2008 and any year thereafter”.

(b) **DRAWBRIDGES.**—Section 5(c) of the Act entitled “An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved August 18, 1894 (33 U.S.C. 499(c)), is amended by striking “\$1,000” and inserting “\$5,000 for a violation occurring in 2004; \$10,000 for a violation occurring in 2005; \$15,000 for a violation occurring in 2006; \$20,000 for a violation occurring in 2007; and \$25,000 for a violation occurring in 2008 and any year thereafter”.

(c) **ALTERATION, REMOVAL, OR REPAIR OF BRIDGES.**—Section 18(c) of the Act entitled “An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved March 3, 1899 (33 U.S.C. 502(c)) is amended by striking “\$1,000” and inserting “\$5,000 for a violation occurring in 2004; \$10,000 for a violation occurring in 2005; \$15,000 for a violation occurring in 2006; \$20,000 for a violation occurring in 2007; and \$25,000 for a violation occurring in 2008 and any year thereafter”.

(d) **GENERAL BRIDGE ACT OF 1946.**—Section 510(b) of the General Bridge Act of 1946 (33 U.S.C. 533(b)) is amended by striking “\$1,000” and inserting “\$5,000 for a violation occurring in 2004; \$10,000 for a violation occurring in 2005; \$15,000 for a violation occurring in 2006; \$20,000 for a violation occurring in 2007; and \$25,000 for a violation occurring in 2008 and any year thereafter”.

SEC. 602. CONVEYANCE OF DECOMMISSIONED COAST GUARD CUTTERS.

(a) **IN GENERAL.**—The Commandant of the Coast Guard may convey all right, title, and interest of the United States in and to a vessel described in subsection (b) to the person designated in subsection (b) with respect to the vessel (in this section referred to as the “recipient”), without consideration, if the person complies with the conditions under subsection (c).

(b) **VESSELS DESCRIBED.**—The vessels referred to in subsection (a) are the following:

(1) The Coast Guard Cutter **BRAMBLE**, to be conveyed to the Port Huron Museum of Arts and History (a nonprofit corporation under the laws of the State of Michigan), located in Port Huron, Michigan.

(2) The Coast Guard Cutter PLANETREE, to be conveyed to Jewish Life (a nonprofit corporation under the laws of the State of California), located in Sherman Oaks, California.

(3) The Coast Guard Cutter SUNDEW, to be conveyed to Duluth Entertainment and Convention Center Authority (a nonprofit corporation under the laws of the State of Minnesota), located in Duluth, Minnesota.

(c) CONDITIONS.—As a condition of any conveyance of a vessel under subsection (a), the Commandant shall require the recipient—

(1) to agree—

(A) to use the vessel for purposes of education and historical display;

(B) not to use the vessel for commercial transportation purposes;

(C) to make the vessel available to the United States Government if needed for use by the Commandant in time of war or a national emergency; and

(D) to hold the Government harmless for any claims arising from exposure to hazardous materials, including asbestos and polychlorinated biphenyls (PCBs), after conveyance of the vessel, except for claims arising from use of the vessel by the Government under subparagraph (C);

(2) to have funds available that will be committed to operate and maintain the vessel conveyed in good working condition—

(A) in the form of cash, liquid assets, or a written loan commitment; and

(B) in an amount of at least \$700,000; and

(3) to agree to any other conditions the Commandant considers appropriate.

(d) MAINTENANCE AND DELIVERY OF VESSEL.—Prior to conveyance of a vessel under this section, the Commandant may, to the extent practical, and subject to other Coast Guard mission requirements, make every effort to maintain the integrity of the vessel and its equipment until the time of delivery. The Commandant shall deliver a vessel conveyed under this section at the place where the vessel is located, in its present condition, and without cost to the Government. The conveyance of a vessel under this section shall not be considered a distribution in commerce for purposes of section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(e) OTHER EXCESS EQUIPMENT.—The Commandant may convey to the recipient of a vessel under this section any excess equipment or parts from other decommissioned Coast Guard vessels for use to enhance the vessel's operability and function as an historical display.

SEC. 603. TONNAGE MEASUREMENT.

(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating may apply section 8104(o)(2) of title 46, United States Code, to the vessels described in subsection (b) without regard to the tonnage of those vessels.

(b) VESSELS DESCRIBED.—The vessels referred to in subsection (a) are the following:

(1) The M/V BLUEFIN (United States official number 620431).

(2) The M/V COASTAL MERCHANT (United States official number 1038382).

(c) APPLICATION.—Subsection (a) shall not apply to a vessel described in subsection (b)—

(1) until the Secretary determines that the application of subsection (a) will not compromise safety; and

(2) on or after any date on which the Secretary determines that the vessel has undergone any major modification.

SEC. 604. OPERATION OF VESSEL STAD AMSTERDAM.

(a) IN GENERAL.—Notwithstanding section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289), and the ruling by the Acting Director of the International Trade Compliance Division of the Customs Service on May 17, 2002 (Customs Bulletins and Decisions, Vol. 36, No. 23, June 5, 2002), the vessel STAD AMSTERDAM (International Maritime Organization number 9185554) shall be authorized to carry within United States waters and between ports or places in the United States individuals who are not directly and substantially connected with the operation, navigation, ownership, or business of the vessel, who are friends, guests, or employees of the owner of the vessel, and who are not actual or prospective customers for hire of the vessel.

(b) LIMITATION.—This section does not authorize the vessel STAD AMSTERDAM—

(1) to be used to carry individuals for a fare or to be chartered on a for hire basis in the coastwise trade; or

(2) to carry individuals described in subsection (a) within United States waters and between ports or places in the United States for more than 45 calendar days in any calendar year.

(c) REVOCATION.—The Secretary of the department in which the Coast Guard is operating shall revoke the authorization provided by subsection (a) if the Secretary determines that the STAD AMSTERDAM has been operated in violation of the limitations imposed by subsection (b).

SEC. 605. GREAT LAKES NATIONAL MARITIME ENHANCEMENT INSTITUTE.

(a) AUTHORITY TO DESIGNATE INSTITUTE.—The Secretary of Transportation may designate a National Maritime Enhancement Institute for the Great Lakes region under section 8 of the Act of October 13, 1989 (103 Stat. 694; 46 U.S.C. App. 1121–2). In making any decision on the designation of such an institute, the Secretary shall consider the unique characteristics of Great Lakes maritime industry and trade.

(b) STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Transportation shall conduct a study that—

(A) evaluates short sea shipping market opportunities on the Great Lakes, including the expanded use of freight ferries, improved mobility, and regional supply chain efficiency;

(B) evaluates markets for foreign trade between ports on the Great Lakes and draft-limited ports in Europe and Africa;

(C) evaluates the environmental benefits of waterborne transportation in the Great Lakes region;

(D) analyzes the effect on Great Lakes shipping of the tax imposed by section 4461(a) of the Internal Revenue Code of 1986;

(E) evaluates the state of shipbuilding and ship repair bases on the Great Lakes;

(F) evaluates opportunities for passenger vessel services on the Great Lakes;

(G) analyzes the origin-to-destination flow of freight cargo in the Great Lakes region that may be transported on vessels to relieve congestion in other modes of transportation;

(H) evaluates the economic viability of establishing transshipment facilities for oceangoing cargoes on the Great Lakes;

(I) evaluates the adequacy of the infrastructure in Great Lakes ports to meet the needs of marine commerce; and

(J) evaluates new vessel designs for domestic and international shipping on the Great Lakes.

(2) USE OF NATIONAL MARITIME ENHANCEMENT INSTITUTES.—In conducting the study required by paragraph (1), the Secretary may utilize the services of any recognized National Maritime Enhancement Institute.

(3) REPORTS.—The Secretary shall submit an annual report on the findings and conclusions of the study under this section to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(A) by not later than 1 year after the date of the enactment of this Act; and

(B) by not later than 1 year after the date of submission of the report under subparagraph (A).

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$1,500,000 for each of fiscal years 2005 and 2006 to carry out paragraph (1).

SEC. 606. KOSS COVE.

Alaska.

(a) IN GENERAL.—Notwithstanding any other provision of law or existing policy, the cove described in subsection (b) shall be known and designated as “Koss Cove”, in honor of the late Able Bodied Seaman Eric Steiner Koss of the National Oceanic and Atmospheric Administration vessel RAINIER who died in the performance of a nautical charting mission off the coast of Alaska.

(b) COVE DESCRIBED.—The cove referred to in subsection (a) is—

(1) adjacent to and southeast of Point Elrington, Alaska, and forms a portion of the southern coast of Elrington Island;

(2) $\frac{3}{4}$ mile across the mouth;

(3) centered at 59 degrees 56.1 minutes North, 148 degrees 14 minutes West; and

(4) 45 miles from Seward, Alaska.

(c) REFERENCES.—Any reference in any law, regulation, document, record, map, or other paper of the United States to the cove described in subsection (b) is deemed to be a reference to Koss Cove.

SEC. 607. MISCELLANEOUS CERTIFICATES OF DOCUMENTATION.

Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 App. U.S.C. 289), and section 12106 of title 46, United States Code, the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the following vessels:

(1) OCEAN LEADER (United States official number 679511).

(2) REVELATION (United States official number 1137565).

(3) W. N. RAGLAND (Washington State registration number WN5506NE).

(4) M/T MISS LINDA (United States official number 1140552).

SEC. 608. REQUIREMENTS FOR COASTWISE ENDORSEMENT.

(a) IN GENERAL.—Section 12106 of title 46, United States Code, is amended—

(1) by striking subsection (e)(1)(B) and inserting the following:

“(B) the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) meets the requirements of subsection (f);” and

(2) by adding at the end the following:

“(f) OWNERSHIP CERTIFICATION REQUIREMENT.—

“(1) IN GENERAL.—A person meets the requirements of this subsection if that person transmits to the Secretary each year the certification required by paragraph (2) or (3) with respect to a vessel.

“(2) INVESTMENT CERTIFICATION.—To meet the certification requirement of this paragraph, a person shall certify that it—

“(A) is a leasing company, bank, or financial institution;

“(B) owns, or holds the beneficial interest in, the vessel solely as a passive investment;

“(C) does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and

“(D) is independent from, and not an affiliate of, any charterer of the vessel or any other person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

“(3) CERTAIN TANK VESSELS.—

“(A) In general.—To meet the certification requirement of this paragraph, a person shall certify that—

“(i) the aggregate book value of the vessels owned by such person and United States affiliates of such person does not exceed 10 percent of the aggregate book value of all assets owned by such person and its United States affiliates;

“(ii) not more than 10 percent of the aggregate revenues of such person and its United States affiliates is derived from the ownership, operation, or management of vessels;

“(iii) at least 70 percent of the aggregate tonnage of all cargo carried by all vessels owned by such person

and its United States affiliates and documented under this section is qualified proprietary cargo;

“(iv) any cargo other than qualified proprietary cargo carried by all vessels owned by such person and its United States affiliates and documented under this section consists of oil, petroleum products, petrochemicals, or liquified natural gas;

“(v) no vessel owned by such person or any of its United States affiliates and documented under this section carries molten sulphur; and

“(vi) such person owned 1 or more vessels documented under subsection (e) of this section as of the date of enactment of the Coast Guard and Maritime Transportation Act of 2004.

“(B) APPLICATION ONLY TO CERTAIN VESSELS.—A person may make a certification under this paragraph only with respect to—

“(i) a tank vessel having a tonnage of not less than 6,000 gross tons, as measured under section 14502 of this title (or an alternative tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title); or

“(ii) a towing vessel associated with a non-self-propelled tank vessel that meets the requirements of clause (i), where the 2 vessels function as a single self-propelled vessel.

“(4) DEFINITIONS.—In this subsection:

“(A) AFFILIATE.—The term ‘affiliate’ means, with respect to any person, any other person that is—

“(i) directly or indirectly controlled by, under common control with, or controlling such person; or

“(ii) named as being part of the same consolidated group in any report or other document submitted to the United States Securities and Exchange Commission or the Internal Revenue Service.

“(B) CARGO.—The term ‘cargo’ does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of paragraph (3).

“(C) OIL.—The term ‘oil’ has the meaning given that term in section 2101(20) of this title.

“(D) PASSIVE INVESTMENT.—The term ‘passive investment’ means an investment in which neither the investor nor any affiliate of such investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the management, use, or operation of the asset that is the subject of the investment.

“(E) QUALIFIED PROPRIETARY CARGO.—The term ‘qualified proprietary cargo’ means—

“(i) oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who submits to the Secretary an application or annual certification under paragraph (3), or by an affiliate of such person, immediately before, during, or immediately after such cargo is carried in coastwise trade on a vessel owned by such person;

“(ii) oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person who submits to the Secretary an application or an annual certification under paragraph (3), or by an affiliate of such person, but that is carried in coastwise trade by a vessel owned by such person and which is part of an arrangement in which vessels owned by such person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by such person, or an affiliate of such person, is carried in coastwise trade on 1 or more other vessels, not owned by such person, or an affiliate of such person, if such other vessel or vessels are also part of the same arrangement;

“(iii) in the case of a towing vessel associated with a non-self-propelled tank vessel where the 2 vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who owns both such towing vessel and the non-self-propelled tank vessel, or any United States affiliate of such person, immediately before, during, or immediately after such cargo is carried in coastwise trade on either of the 2 vessels; or

“(iv) any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters or a tank vessel that is a liquefied natural gas carrier that—

“(I) was delivered by the builder of such vessel to the owner of such vessel after December 31, 1999; and

“(II) was purchased by a person for the purpose, and with the reasonable expectation, of transporting on such vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of such vessel, or an affiliate of such owner, from Alaska to the continental United States.

“(F) UNITED STATES AFFILIATE.—The term ‘United States affiliate’ means, with respect to any person, an affiliate the principal place of business of which is located in the United States.”.

(b) TREATMENT OF OWNER OF CERTAIN VESSELS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a person shall be treated as a citizen of the United States under section 12102(a) of title 46, United States Code, section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), for purposes of issuance of a coastwise endorsement under section 12106(e) of title 46, United States Code (as that section was in effect on the day before the date of enactment of this Act), for a vessel owned by the person on the date of enactment of this Act, or any replacement vessel of a similar size and function, if the person—

(A) owned a vessel before January 1, 2001, that had a coastwise endorsement under section 12106(e) of title 46, United States Code; and

(B) as of the date of the enactment of this Act, derives substantially all of its revenue from leasing vessels engaged in the transportation or distribution of petroleum products and other cargo in Alaska.

(2) LIMITATION ON COASTWISE TRADE.—A vessel owned by a person described in paragraph (1) for which a coastwise endorsement is issued under section 12106(e) of title 46, United States Code, may be employed in the coastwise trade only within Alaska and in the coastwise trade to and from Alaska.

(3) TERMINATION.—The application of this subsection to a person described in paragraph (1) shall terminate if all of that person's vessels described in paragraph (1) are sold to a person eligible to document vessels under section 12106(a) of title 46, United States Code.

(c) APPLICATION TO CERTAIN CERTIFICATES.—

46 USC 12106
note.

(1) IN GENERAL.—The amendments made by this section, and any regulations published after February 4, 2004, with respect to coastwise endorsements, shall not apply to a certificate of documentation, or renewal thereof, endorsed with a coastwise endorsement for a vessel under section 12106(e) of title 46, United States Code, or a replacement vessel of a similar size and function, that was issued prior to the date of enactment of this Act as long as the vessel is owned by the person named therein, or by a subsidiary or affiliate of that person, and the controlling interest in such owner has not been transferred to a person that was not an affiliate of such owner as of the date of enactment of this Act. Notwithstanding the preceding sentence, however, the amendments made by this section shall apply, beginning 3 years after the date of enactment of this Act, with respect to offshore supply vessels (as defined in section 2101(19) of title 46, United States Code, as that section was in effect on the date of enactment of this Act) with a certificate of documentation endorsed with a coastwise endorsement as of the date of enactment of this Act, and the Secretary of the Department in which the Coast Guard is operating shall revoke any such certificate if the vessel does not by then meet the requirements of section 12106(e) of title 46, United States Code, as amended by this section.

(2) REPLACEMENT VESSEL.—For the purposes of this subsection, “replacement vessel” means—

(A) a temporary replacement vessel for a period of not to exceed 180 days if the vessel described in paragraph (1) is unavailable due to an act of God or a marine casualty; or

(B) a permanent replacement vessel if—

(i) the vessel described in paragraph (1) is unavailable for more than 180 days due to an act of God or a marine casualty; or

(ii) a contract to purchase or construct such replacement vessel is executed not later than December 31, 2004.

(d) WAIVER.—The Secretary of Transportation shall waive or reduce the qualified proprietary cargo requirement of section

46 USC 12106
note.

Applicability.

Deadline.
46 USC 12106
note.

12106(f)(3)(A)(iii) of title 46, United States Code, for a vessel if the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) notifies the Secretary that circumstances beyond the direct control of such person or its affiliates prevent, or reasonably threaten to prevent, such person from satisfying such requirement, and the Secretary does not, with good cause, determine otherwise. The waiver or reduction shall apply during the period of time that such circumstances exist.

(e) REGULATIONS.—No later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall prescribe final regulations to carry out this section, including amendments made by this section to section 12106 of title 46, United States Code.

SEC. 609. CORRECTION OF REFERENCES TO NATIONAL DRIVER REGISTER.

Title 46, United States Code, is amended—

(1) in section 7302—

(A) by striking “section 206(b)(7) of the National Driver Register Act of 1982 (23 U.S.C. 401 note)” and inserting “30305(b)(5) of title 49”; and

(B) by striking “section 205(a)(3)(A) or (B) of that Act” and inserting “30304(a)(3)(A) or (B) of title 49”;

(2) in section 7702(d)(1)(B)(iii) by striking “section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982” and inserting “section 30304(a)(3)(A) or (B) of title 49”; and

(3) in section 7703(3) by striking “section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982” and inserting “section 30304(a)(3)(A) or (B) of title 49”.

33 USC 59kk.

SEC. 610. WATEREE RIVER.

For purposes of bridge administration, the portion of the Wateree River in the State of South Carolina, from a point 100 feet upstream of the railroad bridge located at approximately mile marker 10.0 to a point 100 feet downstream of such bridge, is declared to not be navigable waters of the United States for purposes of the General Bridge Act of 1946 (33 U.S.C. 525 et seq.).

46 USC 7302
note.

SEC. 611. MERCHANT MARINERS' DOCUMENTS PILOT PROGRAM.

The Secretary of the department in which the Coast Guard is operating may conduct a pilot program to demonstrate methods to improve processes and procedures for issuing merchant mariners' documents.

SEC. 612. CONVEYANCE.

Alaska.

(a) AUTHORITY TO CONVEY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the department in which the Coast Guard is operating shall convey, by an appropriate means of conveyance, all right, title, and interest of the United States in and to Sentinel Island, Alaska, to the entity to which the Sentinel Island Light Station is conveyed under section 308(b) of the National Historic Preservation Act (16 U.S.C. 470w–7(b)).

(2) IDENTIFICATION OF PROPERTY.—The Secretary may identify, describe, and determine the property to be conveyed under this subsection.

(3) LIMITATION.—The Secretary may not under this section convey—

(A) any historical artifact, including any lens or lantern, located on property conveyed under this section at or before the time of the conveyance; or

(B) any interest in submerged land.

(b) GENERAL TERMS AND CONDITIONS.—

(1) IN GENERAL.—Any conveyance of property under this section shall be made—

(A) without payment of consideration; and

(B) subject to the terms and conditions required by this section and other terms and conditions the Secretary may consider appropriate, including the reservation of easements and other rights on behalf of the United States.

(2) REVERSIONARY INTEREST.—In addition to any term or condition established under this section, any conveyance of property under this section shall be subject to the condition that all right, title, and interest in the property, at the option of the Secretary shall revert to the United States and be placed under the administrative control of the Secretary, if—

(A) the property, or any part of the property—

(i) ceases to be available and accessible to the public, on a reasonable basis, for educational, park, recreational, cultural, historic preservation, or other similar purposes specified for the property in the terms of conveyance;

(ii) ceases to be maintained in a manner that is consistent with its present or future use as a site for Coast Guard aids to navigation or compliance with this section; or

(iii) ceases to be maintained in a manner consistent with the conditions in paragraph (4) established by the Secretary pursuant to the National Historic Preservation Act (16 U.S.C. 470 et seq.); or

(B) at least 30 days before that reversion, the Secretary provides written notice to the owner that the property is needed for national security purposes.

Deadline.
Notification.

(3) MAINTENANCE OF NAVIGATION FUNCTIONS.—Any conveyance of property under this section shall be made subject to the conditions that the Secretary considers to be necessary to assure that—

(A) the lights, antennas, and associated equipment located on the property conveyed that are active aids to navigation shall continue to be operated and maintained by the United States for as long as they are needed for this purpose;

(B) the owner of the property may not interfere or allow interference in any manner with aids to navigation without express written permission from the Commandant of the Coast Guard;

(C) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes to the property conveyed as may be necessary for navigational purposes;

(D) the United States shall have the right, at any time, to enter the property without notice for the purpose of operating, maintaining, and inspecting aids to navigation

and for the purpose of enforcing compliance with this subsection; and

(E) the United States shall have an easement of access to and across the property for the purpose of maintaining the aids to navigation in use on the property.

(4) MAINTENANCE OF PROPERTY.—

(A) **IN GENERAL.**—Subject to subparagraph (B), the owner of a property conveyed under this section shall maintain the property in a proper, substantial, and workmanlike manner, and in accordance with any conditions established by the Secretary pursuant to the National Historic Preservation Act (16 U.S.C. 470 et seq.) and other applicable laws.

(B) **LIMITATION.**—The owner of a property conveyed under this section is not required to maintain any active aids to navigation on the property, except private aids to navigation authorized under section 83 of title 14, United States Code.

(c) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **AIDS TO NAVIGATION.**—The term “aids to navigation” means equipment used for navigation purposes, including a light, antenna, radio, sound signal, electronic navigation equipment, or other associated equipment that are operated or maintained by the United States.

(2) **OWNER.**—The term “owner” means, for property conveyed under this section, the person to which property is conveyed under subsection (a)(1), and any successor or assign of that person.

SEC. 613. BRIDGE ADMINISTRATION.

Section 325(b) of the Department of Transportation and Related Agencies Appropriations Act, 1983 (Pub. L. 97–369; 96 Stat. 1765) is amended by striking “provides at least thirty feet of vertical clearance Columbia River datum and at least eighty feet of horizontal clearance, as” and inserting “is so”.

SEC. 614. SENSE OF CONGRESS REGARDING CARBON MONOXIDE AND WATERCRAFT.

It is the sense of the Congress that the Coast Guard should continue—

(1) to place a high priority on addressing the safety risks posed to boaters by elevated levels of carbon monoxide that are unique to watercraft; and

(2) to work with vessel and engine manufacturers, the American Boat & Yacht Council, other Federal agencies, and the entire boating community in order to determine the best ways to adequately address this public safety issue and minimize the number of tragic carbon monoxide-related boating deaths that occur each year.

SEC. 615. MITIGATION OF PENALTY DUE TO AVOIDANCE OF A CERTAIN CONDITION.

(a) **TREATMENT OF VIOLATION.**—For purposes of any administrative proceeding to consider mitigation of any civil penalty for a violation described in subsection (b), such violation is deemed to have been committed by reason of a safety concern.

(b) VIOLATION DESCRIBED.—A violation referred to in subsection (a) is any violation of the Act of June 19, 1886 (chapter 421; 46 App. U.S.C. 289), occurring before April 1, 2003, and consisting of operation of a passenger vessel in transporting passengers between the Port of New Orleans and another port on the Gulf of Mexico at a time when the master of the vessel determined that the vertical clearance on the Mississippi River at Chalmette, Louisiana, was insufficient to allow the safe return transport of passengers on that vessel to the Port of New Orleans.

(c) RELATED PENALTY AMOUNT.—Any civil penalty assessed for a violation of that Act by a vessel described in subsection (b), that was committed when that vessel was repositioning to the Port of New Orleans in July 2003, shall be mitigated to an amount not to exceed \$100 per passenger.

SEC. 616. CERTAIN VESSELS TO BE TOUR VESSELS.

(a) VESSELS DEEMED TOUR VESSELS.—Notwithstanding any other law, a passenger vessel that is not less than 100 gross tons and not greater than 300 gross tons is deemed to be a tour vessel for the purpose of permit allocation regulations under section 3(h) of Public Law 91–383 (16 U.S.C. 1a–2(h)) and section 3 of the Act of August 25, 1916 (16 U.S.C. 3), with respect to vessel operations in Glacier Bay National Park and Preserve, Alaska (in this section referred to as “Glacier Bay”), if the Secretary of the department in which the Coast Guard is operating determines that the vessel—

- (1) has equipment installed that permits all graywater and blackwater to be stored on board for at least 24 hours;
- (2) has a draft of not greater than 15 feet;
- (3) has propulsion equipment of not greater than 5,000 horsepower; and
- (4) is documented under the laws of the United States.

(b) REALLOCATION OF PERMITS.—

(1) REALLOCATION REQUIRED.—Subject to paragraph (2), the Secretary of the Interior, upon application by the operator of a passenger vessel deemed to be a tour vessel under subsection (a), shall reallocate to that vessel any available tour vessel concession permit not used by another vessel, if at the time of application that permit is not sought by a tour vessel of less than 100 gross tons.

(2) LIMITATIONS.—No more than three passenger vessels that are deemed to be a tour vessel under subsection (a) may hold a tour vessel concession permit at any given time, and no more than one such vessel may enter Glacier Bay on any particular date.

(c) COMPLIANCE WITH VESSEL REQUIREMENTS.—

(1) REQUIREMENT TO COMPLY.—Except as otherwise provided in this section, a vessel reallocated a tour vessel concession permit under this section shall comply with all regulations and requirements for Glacier Bay applicable to vessels of at least 100 gross tons.

(2) REVOCATION OF PERMIT.—The Secretary of the Interior may revoke a tour vessel concession permit reallocated to a vessel under this section if that vessel—

(A) discharges graywater or blackwater in Glacier Bay;

or

(B) violates a vessel operating requirement for Glacier Bay that applies to vessels that are at least 100 gross tons, including restrictions pertaining to speed, route, and closed waters.

(d) TREATMENT OF ENTRIES INTO GLACIER BAY.—An entry into Glacier Bay by a vessel reallocated a tour vessel concession permit under this section shall count against the daily vessel quota and seasonal-use days applicable to entries by tour vessels and shall not count against the daily vessel quota or seasonal-use days of any other class of vessel.

SEC. 617. SENSE OF CONGRESS REGARDING TIMELY REVIEW AND ADJUSTMENT OF GREAT LAKES PILOTAGE RATES.

It is the sense of the Congress that the Secretary of the department in which the Coast Guard is operating should, on a timely basis, review and adjust the rates payable under part 401 of title 46, Code of Federal Regulations, for services performed by United States registered pilots on the Great Lakes.

SEC. 618. WESTLAKE CHEMICAL BARGE DOCUMENTATION.

Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883) and section 12106 of title 46, United States Code, the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for each of the following vessels:

- (1) Barge WCAO–101 (United States official number 506677).
- (2) Barge WCAO–102 (United States official number 506851).
- (3) Barge WCAO–103 (United States official number 506852).
- (4) Barge WCAO–104 (United States official number 507172).
- (5) Barge WCAO–105 (United States official number 507173).
- (6) Barge WCAO–106 (United States official number 620514).
- (7) Barge WCAO–107 (United States official number 620515).
- (8) Barge WCAO–108 (United States official number 620516).
- (9) Barge WCAO–3002 (United States official number 295147).
- (10) Barge WCAO–3004 (United States official number 517396).

8 USC 1701.

SEC. 619. CORRECTION TO DEFINITION.

Paragraph (4) of section 2 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173) is amended by striking subparagraph (G) and inserting the following: “(G) The Coast Guard.”

SEC. 620. LORAN-C.

There are authorized to be appropriated to the Department of Transportation, in addition to funds authorized for the Coast Guard for operation of the LORAN-C system, for capital expenses related to LORAN-C navigation infrastructure, \$25,000,000 for

fiscal year 2005. The Secretary of Transportation may transfer from the Federal Aviation Administration and other agencies of the Department funds appropriated as authorized under this section in order to reimburse the Coast Guard for related expenses.

SEC. 621. DEEPWATER REPORT.

(a) **REPORT.**—No later than 180 days after enactment of this Act, the Coast Guard shall provide a written report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives with respect to performance under the first term of the Integrated Deepwater System contract.

(b) **CONTENTS.**—The report shall include the following:

(1) An analysis of how well the prime contractor has met the two key performance goals of operational effectiveness and minimizing total ownership costs.

(2) A description of the measures implemented by the prime contractor to meet these goals and how these measures have been or will be applied for subcontracts awarded during the 5-year term of the contract, as well as criteria used by the Coast Guard to assess the contractor's performance against these goals.

(3) To the extent available, performance and cost comparisons of alternatives examined in implementing the contract.

(4) A detailed description of the measures that the Coast Guard has taken to implement the recommendations of the General Accounting Office's March 2004 report on the Deepwater program (including the development of measurable award fee criteria, improvements to integrated product teams, and a plan for ensuring competition of subcontracts).

(5) A description of any anticipated changes to the mix of legacy and replacement assets over the life of the program, including Coast Guard infrastructure and human capital needs for integrating such assets, and a timetable and estimated costs for maintaining each legacy asset and introducing each replacement asset over the life of the contract, including a comparison to any previous estimates of such costs on an asset-specific basis.

SEC. 622. JUDICIAL REVIEW OF NATIONAL TRANSPORTATION SAFETY BOARD FINAL ORDERS.

Section 1153 of title 49, United States Code, is amended by adding at the end the following:

“(d) **COMMANDANT SEEKING JUDICIAL REVIEW OF MARITIME MATTERS.**—If the Commandant of the Coast Guard decides that an order of the Board issued pursuant to a review of a Coast Guard action under section 1133 of this title will have an adverse impact on maritime safety or security, the Commandant may obtain judicial review of the order under subsection (a). The Commandant, in the official capacity of the Commandant, shall be a party to the judicial review proceedings.”.

SEC. 623. INTERIM AUTHORITY FOR DRY BULK CARGO RESIDUE DISPOSAL.

33 USC 1901
note.

(a) **EXTENSION OF INTERIM AUTHORITY.**—The Secretary of the Department in which the Coast Guard is operating shall continue to implement and enforce United States Coast Guard 1997 Enforcement Policy for Cargo Residues on the Great Lakes (hereinafter

in this section referred to as the “Policy”) or revisions thereto, in accordance with that policy, for the purpose of regulating incidental discharges from vessels of residues of dry bulk cargo into the waters of the Great Lakes under the jurisdiction of the United States, until the earlier of—

- (1) the date regulations are promulgated under subsection (b) for the regulation of incidental discharges from vessels of dry bulk cargo residue into the waters of the Great Lakes under the jurisdiction of the United States; or
- (2) September 30, 2008.

(b) **PERMANENT AUTHORITY.**—Notwithstanding any other law, the Commandant of the Coast Guard may promulgate regulations governing the discharge of dry bulk cargo residue on the Great Lakes.

Deadline.

(c) **ENVIRONMENTAL ASSESSMENT.**—No later than 90 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall commence the environmental assessment necessary to promulgate the regulations under subsection (b).

SEC. 624. SMALL PASSENGER VESSEL REPORT.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall study and report to the Congress regarding measures that should be taken to increase the likelihood of survival of passengers on small passenger vessels who may be in the water resulting from the capsizing of, sinking of, or other marine casualty involving the small passenger vessel. The study shall include a review of the adequacy of existing measures—

- (1) to keep the passengers out of the water, including inflatable life rafts and other out-of-the-water survival crafts;

- (2) to protect individuals from hypothermia and cold shock in water having a temperature of less than 68 degrees Fahrenheit;

- (3) for safe egress of passengers wearing personal flotation devices; and

- (4) for the enforcement efforts and degree of compliance regarding the 1996 amendments to the Small Passenger Vessel Regulations (part 185 of title 46, Code of Federal Regulations) requiring the master of a small passenger vessel to require passengers to wear personal flotation devices when possible hazardous conditions exist including—

- (A) when transiting hazardous bars or inlets;

- (B) during severe weather;

- (C) in the event of flooding, fire, or other events that may call for evacuation; and

- (D) when the vessel is being towed, except during the towing of a non-self-propelled vessel under normal operating conditions.

(b) **CONTENTS.**—The report under this section shall include—

- (1) a section regarding the efforts the Coast Guard has undertaken to enforce the regulations described in subsection (a)(4);

- (2) a section detailing compliance with these regulations, to include the number of vessels and masters cited for violations of those regulations for fiscal years 1998 through 2003;

(3) a section detailing the number and types of marine casualties that occurred in fiscal years 1998 through 2003 that included violations of those regulations; and

(4) a section providing recommendation on improving compliance with, and possible modifications to, those regulations.

SEC. 625. CONVEYANCE OF MOTOR LIFEBOAT.

(a) **IN GENERAL.**—The Commandant of the Coast Guard shall convey all right, title, and interest of the United States in and to the Coast Guard 44-foot Motor Lifeboat Vessel #44345 formerly assigned to the Group Grand Haven Command, to the city of Ludington, Michigan, without consideration, if the recipient complies with the conditions under subsection (b).

(b) **CONDITIONS.**—As a condition of any conveyance of a vessel under subsection (a), the Commandant shall require the recipient to—

(1) agree—

(A) to use the vessel for purposes of education and historical display;

(B) not to use the vessel for commercial transportation purposes;

(C) to make the vessel available to the United States Government if needed for use by the Commandant in time of war or a national emergency; and

(D) to hold the Government harmless for any claims arising from exposure to hazardous materials, including asbestos and polychlorinated biphenyls (PCBs), after conveyance of the vessel, except for claims arising from use of the vessel by the Government under subparagraph (C);

(2) have funds available that will be committed to operate and maintain the vessel conveyed in good working condition, in the form of cash, liquid assets, or a written loan commitment; and

(3) agree to any other conditions the Commandant considers appropriate.

(c) **MAINTENANCE AND DELIVERY OF VESSEL.**—Before conveying a vessel under this section, the Commandant shall, to the extent practical, and subject to other Coast Guard mission requirements, make every effort to maintain the integrity of the vessel and its equipment until the time of delivery. The Commandant shall deliver a vessel conveyed under this section at the place where the vessel is located, in its present condition, and without cost to the Government. The conveyance of a vessel under this section shall not be considered a distribution in commerce for purposes of section 6(e) of Public Law 94–469 (15 U.S.C. 2605(e)).

(d) **OTHER EXCESS EQUIPMENT.**—The Commandant may convey to the recipient of a vessel under this section any excess equipment or parts from other decommissioned Coast Guard vessels for use to enhance the vessel's operability and function as an historical display.

SEC. 626. STUDY ON ROUTING MEASURES.

The Secretary of the department in which the Coast Guard is operating—

(1) shall cooperate with the Administrator of the National Oceanic and Atmospheric Administration in analyzing potential

Deadline.
Reports.

vessel routing measures for reducing vessel strikes of North Atlantic Right Whales, as described in the notice published at pages 30857 through 30861 of volume 69 of the Federal Register; and

(2) within 18 months after the date of the enactment of this Act, shall provide a final report of its analysis to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 627. CONVEYANCE OF LIGHT STATIONS.

Section 308(c) of the National Historic Preservation Act (16 U.S.C. 470w–7(c)) is amended by adding at the end the following:

“(4) LIGHT STATIONS ORIGINALLY CONVEYED UNDER OTHER AUTHORITY.—Upon receiving notice of an executed or intended conveyance by an owner who—

“(A) received from the Federal Government under authority other than this Act an historic light station in which the United States retains a reversionary or other interest; and

“(B) is conveying it to another person by sale, gift, or any other manner,
the Secretary shall review the terms of the executed or proposed conveyance to ensure that any new owner is capable of or is complying with any and all conditions of the original conveyance. The Secretary may require the parties to the conveyance and relevant Federal agencies to provide such information as is necessary to complete this review. If the Secretary determines that the new owner has not or is unable to comply with those conditions, the Secretary shall immediately advise the Administrator, who shall invoke any reversionary interest or take such other action as may be necessary to protect the interests of the United States.”.

SEC. 628. WAIVER.

The Secretary of the department in which the Coast Guard is operating may waive the application of section 2101(21) of title 46, United States Code, with respect to one of two adult chaperones who do not meet the requirements of subparagraph (A)(i), (ii), or (iii) of such section on board each vessel owned or chartered by the Florida National High Adventure Sea Base program of the Boy Scouts of America, if the Secretary determines that such a waiver will not compromise safety.

SEC. 629. APPROVAL OF MODULAR ACCOMMODATION UNITS FOR LIVING QUARTERS.

(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall approve the use of a modular accommodation unit on a floating offshore facility to provide accommodations for up to 12 individuals, if —

(1) the unit is approximately 12 feet in length and 40 feet in width;

(2) before March 31, 2002—

(A) the Secretary approved use of the unit to provide accommodations on such a facility; and

(B) the unit was used to provide such accommodations; and

(3) the Secretary determines that use of the unit under the approval will not compromise safety.

(b) APPLICATION.—The approval by the Secretary under this section shall apply for the 5-year period beginning on the date of the enactment of this Act.

TITLE VII—AMENDMENTS RELATING TO OIL POLLUTION ACT OF 1990

SEC. 701. VESSEL RESPONSE PLANS FOR NONTANK VESSELS OVER 400 GROSS TONS.

(a) NONTANK VESSEL DEFINED.—Section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321) is amended—

(1) by striking “and” after the semicolon in paragraph (24)(B);

(2) by striking “threat.” in paragraph (25) and inserting “threat; and”; and

(3) by adding at the end the following:

“(26) ‘nontank vessel’ means a self-propelled vessel of 400 gross tons as measured under section 14302 of title 46, United States Code, or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion and that—

“(A) is a vessel of the United States; or

“(B) operates on the navigable waters of the United States.”.

(b) AMENDMENTS TO REQUIRE RESPONSE PLANS.—Section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) is amended—

(1) in paragraph (5) in the heading by inserting “, NONTANK VESSEL,” after “VESSEL”;

(2) in paragraph (5)(A)—

(A) by inserting: “(i)” after “(A)”; and

(B) by adding at the end the following:

“(ii) The President shall also issue regulations which require an owner or operator of a non-tank vessel to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.”;

(3) in paragraph (5)(B), in the matter preceding clause (i), by inserting “, nontank vessels,” after “vessels”;

(4) in paragraph (5)(B), by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by inserting after clause (i) the following:

“(ii) A nontank vessel.”;

(5) in paragraph (5)(D)—

(A) by inserting “, nontank vessel,” after “vessel”;

(B) by striking “and” after the semicolon at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting “; and”; and

(D) by adding after clause (iv) the following:

“(v) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on the date of the enactment of the Coast Guard and Maritime Transportation Act of 2004 and ensure consistency to the extent practicable.”;

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(6) by inserting “non-tank vessel,” in paragraph (5)(E) after “vessel,” each place it appears;

(7) in paragraph (5)(F)—

(A) by inserting “non-tank vessel,” after “vessel,”;

(B) by striking “vessel or” and inserting “vessel, non-tank vessel, or”.

(8) in paragraph (5)(G) by inserting “nontank vessel,” after “vessel,”;

(9) in paragraph (5)(H) by inserting “and nontank vessel” after “each tank vessel”;

(10) in paragraph (6) in the matter preceding subparagraph (A) by striking “Not later than 2 years after the date of enactment of this section, the President shall require—” and inserting “The President may require—”;

(11) in paragraph (6)(B) by inserting “, and nontank vessels carrying oil of any kind as fuel for main propulsion,” after “cargo”; and

(12) in paragraph (7) by inserting “, nontank vessel,” after “vessel”.

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(c) IMPLEMENTATION DATE.—No later than one year after the date of enactment of this Act, the owner or operator of a nontank vessel (as defined section 311(j)(9) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(9), as amended by this section) shall prepare and submit a vessel response plan for such vessel.

(d) ADDITION OF NOXIOUS LIQUID SUBSTANCES TO THE LIST OF HAZARDOUS SUBSTANCES FOR WHICH THE COAST GUARD MAY REQUIRE A RESPONSE PLAN.—Section 311(j)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)) is further amended—

(1) by redesignating subparagraphs (B) through (H) as subparagraphs (C) through (I), respectively;

(2) by inserting after subparagraph (A) the following:

“(B) The Secretary of the Department in which the Coast Guard is operating may issue regulations which require an owner or operator of a tank vessel, a non-tank vessel, or a facility described in subparagraph (C) that transfers noxious liquid substances in bulk to or from a vessel to prepare and submit to the Secretary a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of a noxious liquid substance that is not designated as a hazardous substance or regulated as oil in any other law or regulation. For purposes of this paragraph, the term ‘noxious liquid substance’ has the same meaning when that term is used in the MARPOL Protocol described in section 2(a)(3) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)(3)).”;

(3) by striking “subparagraph (B)” in subparagraph (A) and inserting “subparagraph (C)”;

(4) by striking “subparagraph (A)” in subparagraph (C), as redesignated, and inserting “subparagraphs (A) and (B)”;

and

(5) by striking “subparagraph (D),” in clause (i) of subparagraph (F), as redesignated, and inserting “subparagraph (E),”.

SEC. 702. REQUIREMENTS FOR TANK LEVEL AND PRESSURE MONITORING DEVICES.

(a) REQUIREMENTS.—Section 4110 of the Oil Pollution Act of 1990 (46 U.S.C. 3703 note) is amended—

(1) in subsection (a), by striking “Not later than 1 year after the date of the enactment of this Act, the Secretary shall” and inserting “The Secretary may”; and

(2) in subsection (b)—

(A) by striking “Not later than 1 year after the date of the enactment of this Act, the Secretary shall” and inserting “No sooner than 1 year after the Secretary prescribes regulations under subsection (a), the Secretary may”; and

(B) by striking “the standards” and inserting “any standards”.

(b) STUDY.—

(1) STUDY REQUIREMENT.—The Secretary of the department in which the Coast Guard is operating shall conduct a study analyzing the costs and benefits of methods other than those described in subsections (a) and (b) of section 4110 of the Oil Pollution Act of 1990 for effectively detecting the loss of oil from oil cargo tanks. The study may include technologies, monitoring procedures, and other methods.

(2) INPUT.—In conducting the study, the Secretary may seek input from Federal agencies, industry, and other entities.

(3) REPORT.—The Secretary shall submit a report on the findings and conclusions of the study to the Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives by not later than 180 days after the date of the enactment of this Act.

SEC. 703. LIABILITY AND COST RECOVERY.

(a) DEFINITION OF OWNER OR OPERATOR.—Section 1001(26) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(26)) is amended to read as follows:

“(26) ‘owner or operator’—

“(A) means—

“(i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

“(ii) in the case of an onshore or offshore facility, any person owning or operating such facility;

“(iii) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

“(iv) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand;

“(v) notwithstanding subparagraph (B)(i), and in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including for purposes of liability under section 1002, any State or local government that has caused or contributed to a discharge or substantial threat of a discharge of oil from a vessel or facility ownership or control of which was acquired involuntarily through—

“(I) seizure or otherwise in connection with law enforcement activity;

“(II) bankruptcy;

“(III) tax delinquency;

“(IV) abandonment; or

“(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign;

“(vi) notwithstanding subparagraph (B)(ii), a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person—

“(I) exercises decision making control over the environmental compliance related to the vessel or facility, such that the person has undertaken responsibility for oil handling or disposal practices related to the vessel or facility; or

“(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has assumed or manifested responsibility—

“(aa) for the overall management of the vessel or facility encompassing day-to-day decision making with respect to environmental compliance; or

“(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance; and

“(B) does not include—

“(i) A unit of state or local government that acquired ownership or control of a vessel or facility involuntarily through—

“(I) seizure or otherwise in connection with law enforcement activity;

“(II) bankruptcy;

“(III) tax delinquency;

“(IV) abandonment; or

“(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign;

“(ii) a person that is a lender that does not participate in management of a vessel or facility, but holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility; or

“(iii) a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person—

“(I) forecloses on the vessel or facility; and

“(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a removal action under section 311(c) of the Federal Water Pollution

Control Act (33 U.S.C. 1321(c)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements;”

(b) OTHER DEFINITIONS.—Section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701) is amended by striking “and” after the semicolon at the end of paragraph (36), by striking the period at the end of paragraph (37) and inserting a semicolon, and by adding at the end the following:

“(38) ‘participate in management’—

“(A)(i) means actually participating in the management or operational affairs of a vessel or facility; and

“(ii) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations; and

“(B) does not include—

“(i) performing an act or failing to act prior to the time at which a security interest is created in a vessel or facility;

“(ii) holding a security interest or abandoning or releasing a security interest;

“(iii) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

“(iv) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

“(v) monitoring or undertaking one or more inspections of the vessel or facility;

“(vi) requiring a removal action or other lawful means of addressing a discharge or substantial threat of a discharge of oil in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

“(vii) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

“(viii) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

“(ix) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

“(x) conducting a removal action under 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan,

if such actions do not rise to the level of participating in management under subparagraph (A) of this paragraph and paragraph (26)(A)(vi);

“(39) ‘extension of credit’ has the meaning provided in section 101(20)(G)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(i));

“(40) ‘financial or administrative function’ has the meaning provided in section 101(20)(G)(ii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(ii));

“(41) ‘foreclosure’ and ‘foreclose’ each has the meaning provided in section 101(20)(G)(iii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(iii));

“(42) ‘lender’ has the meaning provided in section 101(20)(G)(iv) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(iv));

“(43) ‘operational function’ has the meaning provided in section 101(20)(G)(v) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(v)); and

“(44) ‘security interest’ has the meaning provided in section 101(20)(G)(vi) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601(20)(G)(vi)).”.

(c) DEFINITION OF CONTRACTUAL RELATIONSHIP.—Section 1003 of the Oil Pollution Act of 1990 (33 U.S.C. 2703) is amended by adding at the end the following:

“(d) DEFINITION OF CONTRACTUAL RELATIONSHIP.—

“(1) IN GENERAL.—For purposes of subsection (a)(3) the term ‘contractual relationship’ includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless—

“(A) the real property on which the facility concerned is located was acquired by the responsible party after the placement of the oil on, in, or at the real property on which the facility concerned is located;

“(B) one or more of the circumstances described in subparagraph (A), (B), or (C) of paragraph (2) is established by the responsible party by a preponderance of the evidence; and

“(C) the responsible party complies with paragraph (3).

“(2) REQUIRED CIRCUMSTANCE.—The circumstances referred to in paragraph (1)(B) are the following:

“(A) At the time the responsible party acquired the real property on which the facility is located the responsible party did not know and had no reason to know that oil that is the subject of the discharge or substantial threat of discharge was located on, in, or at the facility.

“(B) The responsible party is a government entity that acquired the facility—

“(i) by escheat;

“(ii) through any other involuntary transfer or acquisition; or

“(iii) through the exercise of eminent domain authority by purchase or condemnation.

“(C) The responsible party acquired the facility by inheritance or bequest.

“(3) ADDITIONAL REQUIREMENTS.—For purposes of paragraph (1)(C), the responsible party must establish by a preponderance of the evidence that the responsible party—

“(A) has satisfied the requirements of section 1003(a)(3)(A) and (B);

“(B) has provided full cooperation, assistance, and facility access to the persons that are authorized to conduct removal actions, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial removal action;

“(C) is in compliance with any land use restrictions established or relied on in connection with the removal action; and

“(D) has not impeded the effectiveness or integrity of any institutional control employed in connection with the removal action.

“(4) REASON TO KNOW.—

“(A) APPROPRIATE INQUIRIES.—To establish that the responsible party had no reason to know of the matter described in paragraph (2)(A), the responsible party must demonstrate to a court that—

“(i) on or before the date on which the responsible party acquired the real property on which the facility is located, the responsible party carried out all appropriate inquiries, as provided in subparagraphs (B) and (D), into the previous ownership and uses of the real property on which the facility is located in accordance with generally accepted good commercial and customary standards and practices; and

“(ii) the responsible party took reasonable steps to—

“(I) stop any continuing discharge;

“(II) prevent any substantial threat of discharge; and

“(III) prevent or limit any human, environmental, or natural resource exposure to any previously discharged oil.

“(B) REGULATIONS ESTABLISHING STANDARDS AND PRACTICES.—Not later than 2 years after the date of the enactment of this paragraph, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under subparagraph (A).

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“(C) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in subparagraph (B), the Secretary shall include in such standards and practices provisions regarding each of the following:

“(i) The results of an inquiry by an environmental professional.

“(ii) Interviews with past and present owners, operators, and occupants of the facility and the real

property on which the facility is located for the purpose of gathering information regarding the potential for oil at the facility and on the real property on which the facility is located.

“(iii) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property on which the facility is located since the property was first developed.

“(iv) Searches for recorded environmental cleanup liens against the facility and the real property on which the facility is located that are filed under Federal, State, or local law.

“(v) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and waste handling, generation, treatment, disposal, and spill records, concerning oil at or near the facility and on the real property on which the facility is located.

“(vi) Visual inspections of the facility, the real property on which the facility is located, and adjoining properties.

“(vii) Specialized knowledge or experience on the part of the responsible party.

“(viii) The relationship of the purchase price to the value of the facility and the real property on which the facility is located, if oil was not at the facility or on the real property.

“(ix) Commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located.

“(x) The degree of obviousness of the presence or likely presence of oil at the facility and on the real property on which the facility is located, and the ability to detect the oil by appropriate investigation.

“(D) INTERIM STANDARDS AND PRACTICES.—

“(i) REAL PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to real property purchased before May 31, 1997, in making a determination with respect to a responsible party described in subparagraph (A), a court shall take into account—

“(I) any specialized knowledge or experience on the part of the responsible party;

“(II) the relationship of the purchase price to the value of the facility and the real property on which the facility is located, if the oil was not at the facility or on the real property;

“(III) commonly known or reasonably ascertainable information about the facility and the real property on which the facility is located;

“(IV) the obviousness of the presence or likely presence of oil at the facility and on the real property on which the facility is located; and

“(V) the ability of the responsible party to detect oil by appropriate inspection.

“(ii) REAL PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to real property purchased on or after May 31, 1997, until the Secretary promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as ‘Standard E1527–97’, entitled ‘Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process’, shall satisfy the requirements in subparagraph (A).

“(E) SITE INSPECTION AND TITLE SEARCH.—In the case of real property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, inspection and title search of the facility and the real property on which the facility is located that reveal no basis for further investigation shall be considered to satisfy the requirements of this paragraph.

“(5) PREVIOUS OWNER OR OPERATOR.—Nothing in this paragraph or in section 1003(a)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if a responsible party obtained actual knowledge of the discharge or substantial threat of discharge of oil at such facility when the responsible party owned the facility and then subsequently transferred ownership of the facility or the real property on which the facility is located to another person without disclosing such knowledge, the responsible party shall be treated as liable under 1002(a) and no defense under section 1003(a) shall be available to such responsible party.

“(6) LIMITATION ON DEFENSE.—Nothing in this paragraph shall affect the liability under this Act of a responsible party who, by any act or omission, caused or contributed to the discharge or substantial threat of discharge of oil which is the subject of the action relating to the facility.”.

SEC. 704. OIL SPILL RECOVERY INSTITUTE.

Section 5006 of the Oil Pollution Act of 1990 (33 U.S.C. 2736) is amended—

(1) in the first subsection (c), as added by section 1102(b)(4) of Public Law 104–324 (110 Stat. 3965), by striking “with the eleventh year following the date of enactment of the Coast Guard Authorization Act of 1996,” and inserting “October 1, 2012”; and

(2) by redesignating the second subsection (c) as subsection (d).

SEC. 705. ALTERNATIVES.

Section 4115(e)(3) of the Oil Pollution Act of 1990 (46 U.S.C. 3703a note) is amended to read as follows:

“(3) No later than one year after the date of enactment of the Coast Guard and Maritime Transportation Act of 2004, the Secretary shall, taking into account the recommendations contained in the report by the Marine Board of the National Research Council entitled ‘Environmental Performance of Tanker Design in Collision and Grounding’ and dated 2001, establish and publish an environmental equivalency evaluation index (including the methodology to develop that index) to assess overall outflow performance due to collisions and

Deadline.

groundings for double hull tank vessels and alternative hull designs.”.

SEC. 706. AUTHORITY TO SETTLE.

Section 1015 of the Oil Pollution Act of 1990 (33 U.S.C. 2715) is amended by adding at the end the following:

“(d) **AUTHORITY TO SETTLE.**—The head of any department or agency responsible for recovering amounts for which a person is liable under this title may consider, compromise, and settle a claim for such amounts, including such costs paid from the Fund, if the claim has not been referred to the Attorney General. In any case in which the total amount to be recovered may exceed \$500,000 (excluding interest), a claim may be compromised and settled under the preceding sentence only with the prior written approval of the Attorney General.”.

SEC. 707. REPORT ON IMPLEMENTATION OF THE OIL POLLUTION ACT OF 1990.

No later than 180 days after the date of the enactment of this Act, the Commandant of the Coast Guard shall provide a written report to the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that shall include the following:

(1) The status of the levels of funds currently in the Oil Spill Liability Trust Fund and projections for levels of funds over the next 5 years, including a detailed accounting of expenditures of funds from the Oil Spill Liability Trust Fund for each of fiscal years 2000 through 2004 by all agencies that receive such funds.

(2) The domestic and international implications of changing the phase-out date for single hull vessels pursuant to section 3703a of title 46, United States Code, from 2015 to 2010.

(3) The costs and benefits of requiring vessel monitoring systems on tank vessels used to transport oil or other hazardous cargo, and of using additional aids to navigation, such as RACONs.

(4) A summary of the extent to which the response costs and damages for oil spill incidents have exceeded the liability limits established in section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704), and a description of the steps that the Coast Guard has taken or plans to take to implement subsection (d)(4) of that section.

(5) A summary of manning, inspection, and other safety issues for tank barges and towing vessels used in connection with them, including—

(A) a description of applicable Federal regulations, guidelines, and other policies;

(B) a record of infractions of applicable requirements described in subparagraph (A) over the past 10 years;

(C) an analysis of oil spill data over the past 10 years, comparing the number and size of oil spills from tank barges with those from tanker vessels of a similar size; and

(D) recommendations on areas of possible improvements to existing regulations, guidelines and policies with respect to tank barges and towing vessels.

SEC. 708. LOANS FOR FISHERMEN AND AQUACULTURE PRODUCERS IMPACTED BY OIL SPILLS.

(a) **INTEREST; PARTIAL PAYMENT OF CLAIMS.**—Section 1013 of the Oil Pollution Act of 1990 (33 U.S.C. 2713) is amended by adding at the end the following:

“(f) **LOAN PROGRAM.**—

“(1) **IN GENERAL.**—The President shall establish a loan program under the Fund to provide interim assistance to fishermen and aquaculture producer claimants during the claims procedure. President.

“(2) **ELIGIBILITY FOR LOAN.**—A loan may be made under paragraph (1) only to a fisherman or aquaculture producer that—

“(A) has incurred damages for which claims are authorized under section 1002;

“(B) has made a claim pursuant to this section that is pending; and

“(C) has not received an interim payment under section 1005(a) for the amount of the claim, or part thereof, that is pending.

“(3) **TERMS AND CONDITIONS OF LOANS.**—A loan awarded under paragraph (1)—

“(A) shall have flexible terms, as determined by the President;

“(B) shall be for a period ending on the later of—

“(i) the date that is 5 years after the date on which the loan is made; or

“(ii) the date on which the fisherman or aquaculture producer receives payment for the claim to which the loan relates under the procedure established by subsections (a) through (e) of this section; and

“(C) shall be at a low interest rate, as determined by the President.”.

(b) **USES OF THE FUND.**—Section 1012(a) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)) is amended—

(1) by striking “Act.” in paragraph (5)(C) and inserting “Act; and”; and

(2) by adding at the end the following:

“(6) the making of loans pursuant to the program established under section 1013(f).”.

(c) **STUDY.**—Not later than 270 days after the date of enactment of this Act, the Secretary of Commerce, in consultation with the Administrator of the Environmental Protection Agency, shall submit to the Congress a study that contains— Deadline.

(1) an assessment of the effectiveness of the claims procedures and emergency response programs under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) concerning claims filed by, and emergency responses carried out to protect the interests of, fishermen and aquaculture producers; and

(2) any legislative or other recommendations to improve the procedures and programs referred to in paragraph (1).

TITLE VIII—MARITIME TRANSPORTATION SECURITY

SEC. 801. ENFORCEMENT.

(a) IN GENERAL.—Chapter 701 of title 46, United States Code, is amended by adding at the end the following:

“§ 70118. Firearms, arrests, and seizure of property

“Subject to guidelines approved by the Secretary, members of the Coast Guard may, in the performance of official duties—

“(1) carry a firearm; and

“(2) while at a facility—

“(A) make an arrest without warrant for any offense against the United States committed in their presence; and

“(B) seize property as otherwise provided by law.

“§ 70119. Enforcement by State and local officers

“(a) IN GENERAL.—Any State or local government law enforcement officer who has authority to enforce State criminal laws may make an arrest for violation of a security zone regulation prescribed under section 1 of title II of the Act of June 15, 1917 (chapter 30; 50 U.S.C. 191) or security or safety zone regulation under section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)) or a safety zone regulation prescribed under section 10(d) of the Deepwater Port Act of 1974 (33 U.S.C. 1509(d)) by a Coast Guard official authorized by law to prescribe such regulations, if—

“(1) such violation is a felony; and

“(2) the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

“(b) OTHER POWERS NOT AFFECTED.—The provisions of this section are in addition to any power conferred by law to such officers. This section shall not be construed as a limitation of any power conferred by law to such officers, or any other officer of the United States or any State. This section does not grant to such officers any powers not authorized by the law of the State in which those officers are employed.”.

(b) CLERICAL AMENDMENT.—The chapter analysis at the beginning of chapter 701 of title 46, United States Code, is amended by adding at the end the following:

“70118. Enforcement.

“70119. Enforcement by State and local officers.”.

SEC. 802. IN REM LIABILITY FOR CIVIL PENALTIES AND COSTS.

(a) AMENDMENTS TO TITLE 46, UNITED STATES CODE.—Chapter 701 of title 46, United States Code, is amended—

(1) by redesignating section 70117 as 70119; and

(2) by inserting after section 70116 the following:

“§ 70117. In rem liability for civil penalties and certain costs

“(a) CIVIL PENALTIES.—Any vessel operated in violation of this chapter or any regulations prescribed under this chapter shall be liable in rem for any civil penalty assessed pursuant to section 70120 for such violation, and may be proceeded against for such

liability in the United States district court for any district in which the vessel may be found.

“(b) REIMBURSABLE COSTS OF SERVICE PROVIDERS.—A vessel shall be liable in rem for the reimbursable costs incurred by any service provider related to implementation and enforcement of this chapter and arising from a violation by the operator of the vessel of this chapter or any regulations prescribed under this chapter, and may be proceeded against for such liability in the United States district court for any district in which such vessel may be found.

“(c) DEFINITIONS.—In this subsection—

“(1) the term ‘reimbursable costs’ means costs incurred by any service provider acting in conformity with a lawful order of the Federal government or in conformity with the instructions of the vessel operator; and

“(2) the term ‘service provider’ means any port authority, facility or terminal operator, shipping agent, Federal, State, or local government agency, or other person to whom the management of the vessel at the port of supply is entrusted, for—

“(A) services rendered to or in relation to vessel crew on board the vessel, or in transit to or from the vessel, including accommodation, detention, transportation, and medical expenses; and

“(B) required handling of cargo or other items on board the vessel.

“§ 70118. Withholding of clearance

“(a) REFUSAL OR REVOCATION OF CLEARANCE.—If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty under section 70119, or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty under section 70120, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

“(b) CLEARANCE UPON FILING OF BOND OR OTHER SURETY.—The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection.”.

(b) ACT OF JUNE 15, 1917.—Section 2 of title II of the Act of June 15, 1917 (chapter 30; 50 U.S.C. 192), is amended—

(1) in subsection (c) by striking “Act” each place it appears and inserting “title”; and

(2) by adding at the end the following:

“(d) IN REM LIABILITY.—Any vessel that is used in violation of this title, or of any regulation issued under this title, shall be liable in rem for any civil penalty assessed pursuant to subsection (c) and may be proceeded against in the United States district court for any district in which such vessel may be found.

“(e) WITHHOLDING OF CLEARANCE.—

“(1) IN GENERAL.—If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under subsection (c), or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty or fine under this section, the Secretary may, with respect to such vessel, refuse or revoke

any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

“(2) CLEARANCE UPON FILING OF BOND OR OTHER SURETY.—The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection.”.

(c) CLERICAL AMENDMENT.—The chapter analysis at the beginning of chapter 701 of title 46, United States Code, is amended by striking the last item and inserting the following:

“70117. In rem liability for civil penalties and certain costs.

“70118. Enforcement by injunction or withholding of clearance.

“70119. Civil penalty.”.

SEC. 803. MARITIME INFORMATION.

(a) MARITIME INTELLIGENCE.—Section 70113(a) of title 46, United States Code, is amended by adding at the end the following: “The system may include a vessel risk profiling component that assigns incoming vessels a terrorism risk rating.”.

(b) VESSEL TRACKING SYSTEM.—Section 70115 of title 46, United States Code, is amended in the first sentence by striking “may” and inserting “shall, consistent with international treaties, conventions, and agreements to which the United States is a party,”.

(c) MARITIME INFORMATION.—Within 90 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives containing a plan for the implementation of section 70113 of title 46, United States Code. The plan shall—

(1) identify Federal agencies with maritime information relating to vessels, crew, passengers, cargo, and cargo shippers, those agencies’ maritime information collection and analysis activities, and the resources devoted to those activities;

(2) establish a lead agency within the Department of Homeland Security to coordinate the efforts of other Department agencies in the collection of maritime information and to identify and avoid unwanted redundancy in those efforts;

(3) identify redundancy in the collection and analysis of maritime information by agencies within the department in which the Coast Guard is operating;

(4) establish a timeline for coordinating the collection of maritime information among agencies within the department in which the Coast Guard is operating;

(5) include recommendations on co-locating agency personnel in order to maximize expertise, minimize costs, and avoid redundancy in both the collection and analysis of maritime information;

(6) establish a timeline for the incorporation of information on vessel movements derived through the implementation of sections 70114 and 70115 of title 46, United States Code, into the system for collecting and analyzing maritime information;

(7) include recommendations on educating Federal officials on the identification of security risks posed through commercial maritime transportation operations;

(8) include an assessment of the availability and expertise of private sector maritime information resources;

Deadline.
Reports.

Establishment.

(9) include recommendations on how private sector maritime information resources could be utilized to analyze maritime security risks;

(10) include recommendations on how to disseminate information collected and analyzed through Federal maritime security coordinators, including the manner and extent to which State, local, and private security personnel should be utilized, which should be developed after consideration by the Secretary of the need for nondisclosure of sensitive security information; and

(11) include recommendations on the need for and how the department could help support a maritime information sharing and analysis center for the purpose of collecting and disseminating real-time or near real-time information to and from public and private entities, along with recommendations on the appropriate levels of funding to help disseminate maritime security information to the private sector.

(d) **LIMITATION ON ESTABLISHMENT OF LEAD AGENCY.**—The Secretary may not establish a lead agency within the Department of Homeland Security to coordinate the efforts of other Department agencies in the collection of maritime information, until at least 90 days after the plan under subsection (c) is submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 804. MARITIME TRANSPORTATION SECURITY GRANTS.

(a) **GRANT PROGRAM.**—Section 70107(a) of title 46, United States Code, is amended to read as follows:

“(a) **IN GENERAL.**—The Secretary shall establish a grant program for making a fair and equitable allocation of funds to implement Area Maritime Transportation Security Plans and facility security plans among port authorities, facility operators, and State and local government agencies required to provide port security services. Before awarding a grant under the program, the Secretary shall provide for review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administrator. In administering the grant program, the Secretary shall take into account national economic and strategic defense concerns.”.

(b) **SECRETARY ADMINISTERING.**—Section 70107 of title 46, United States Code, is amended—

(1) by striking “Secretary of Transportation” each place it appears and inserting “Secretary”;

(2) by striking “Department of Transportation” each place it appears and inserting “department in which the Coast Guard is operating”.

(c) **EFFECTIVE DATE.**—Subsections (a) and (b)—

(1) shall take effect October 1, 2004; and

(2) shall not affect any grant made before that date.

(d) **REPORT ON DESIGN OF MARITIME TRANSPORTATION SECURITY GRANT PROGRAM.**—Within 90 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of House of Representatives on the design of the maritime transportation security grant program established under section 70107(a) of title 46, United

46 USC 70107
note.

States Code. In the report, the Secretary shall include recommendations on—

- (1) whether the grant program should be discretionary or formula-based and the reasons for the recommendation;
- (2) requirements for ensuring that Federal funds will not be substituted for grantee funds;
- (3) targeting requirements to ensure that funding is directed in a manner that considers—
 - (A) national economic and strategic defense concerns; and
 - (B) the fiscal capacity of the recipients to fund facility security plan requirements without grant funds; and
- (4) matching requirements to ensure that Federal funds provide an incentive to grantees for the investment of their own funds in the improvements financed in part by Federal funds provided under the program.

Deadline.

SEC. 805. SECURITY ASSESSMENT OF WATERS UNDER THE JURISDICTION OF THE UNITED STATES.

Not later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall—

- (1) conduct a vulnerability assessment under section 70102(b) of title 46, United States Code, of the waters under the jurisdiction of the United States that are adjacent to nuclear facilities that may be damaged by a transportation security incident as defined in section 70101 (6) of title 46, United States Code;
- (2) coordinate with the appropriate Federal agencies in preparing the vulnerability assessment required under paragraph (1); and
- (3) submit the vulnerability assessments required under paragraph (1) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 806. MEMBERSHIP OF AREA MARITIME SECURITY ADVISORY COMMITTEES.

Section 70112(b) of title 46, United States Code, is amended by adding at the end to following:

- “(5) The membership of an Area Maritime Security Advisory Committee shall include representatives of the port industry, terminal operators, port labor organizations, and other users of the port areas.”.

Reports.
Deadline.

SEC. 807. JOINT OPERATIONAL CENTERS FOR PORT SECURITY.

The Commandant of the Coast Guard shall report to the Congress, within 180 days after the date of the enactment of this Act, on the implementation and use of joint operational centers for port security at certain United States seaports. The report shall—

- (1) compare and contrast the composition and operational characteristics of existing joint operational centers for port security, including those in Norfolk, Virginia, Charleston, South Carolina, and San Diego, California;
- (2) examine the use of such centers to implement—
 - (A) the plans developed under section 70103 of title 46, United States Code;

Virginia.
South Carolina.
California.

(B) maritime intelligence activities under section 70113 of title 46, United States Code;

(C) short and long range vessel tracking under sections 70114 and 70115 of title 46, United States Code; and

(D) secure transportation systems under section 70116 of title 46, United States Code; and

(3) estimate the number, location and costs of such centers necessary to implement the activities authorized under sections 70103, 70113, 70114, 70115, and 70116 of title 46, United States Code.

SEC. 808. INVESTIGATIONS.

(a) IN GENERAL.—Section 70107 of title 46, United States Code, is amended by striking subsection (i) and inserting the following:

“(i) INVESTIGATIONS.—

“(1) IN GENERAL.—The Secretary shall conduct investigations, fund pilot programs, and award grants, to examine or develop—

“(A) methods or programs to increase the ability to target for inspection vessels, cargo, crewmembers, or passengers that will arrive or have arrived at any port or place in the United States;

“(B) equipment to detect accurately explosives, chemical, or biological agents that could be used in a transportation security incident against the United States;

“(C) equipment to detect accurately nuclear or radiological materials, including scintillation-based detection equipment capable of signalling the presence of nuclear or radiological materials;

“(D) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including sensors that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit that information to the appropriate law enforcement authorities;

“(E) tools, including the use of satellite tracking systems, to increase the awareness of maritime areas and to identify potential transportation security incidents that could have an impact on facilities, vessels, and infrastructure on or adjacent to navigable waterways, including underwater access;

“(F) tools to mitigate the consequences of a transportation security incident on, adjacent to, or under navigable waters of the United States, including sensor equipment, and other tools to help coordinate effective response to a transportation security incident;

“(G) applications to apply existing technologies from other areas or industries to increase overall port security;

“(H) improved container design, including blast-resistant containers; and

“(I) methods to improve security and sustainability of port facilities in the event of a maritime transportation security incident, including specialized inspection facilities.

“(2) IMPLEMENTATION OF TECHNOLOGY.—

“(A) IN GENERAL.—In conjunction with ongoing efforts to improve security at United States ports, the Secretary

may conduct pilot projects at United States ports to test the effectiveness and applicability of new port security projects, including—

“(i) testing of new detection and screening technologies;

“(ii) projects to protect United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access; and

“(iii) tools for responding to a transportation security incident at United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access.

“(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$35,000,000 for each of fiscal years 2005 through 2009 to carry out this subsection.

“(3) NATIONAL PORT SECURITY CENTERS.—

“(A) IN GENERAL.—The Secretary may make grants or enter into cooperative agreements with eligible nonprofit institutions of higher learning to conduct investigations in collaboration with ports and the maritime transportation industry focused on enhancing security of the Nation’s ports in accordance with this subsection through National Port Security Centers.

“(B) APPLICATIONS.—To be eligible to receive a grant under this paragraph, a nonprofit institution of higher learning, or a consortium of such institutions, shall submit an application to the Secretary in such form and containing such information as the Secretary may require.

“(C) COMPETITIVE SELECTION PROCESS.—The Secretary shall select grant recipients under this paragraph through a competitive process on the basis of the following criteria:

“(i) Whether the applicant can demonstrate that personnel, laboratory, and organizational resources will be available to the applicant to carry out the investigations authorized in this paragraph.

“(ii) The applicant’s capability to provide leadership in making national and regional contributions to the solution of immediate and long-range port and maritime transportation security and risk mitigation problems.

“(iii) Whether the applicant can demonstrate that is has an established, nationally recognized program in disciplines that contribute directly to maritime transportation safety and education.

“(iv) Whether the applicant’s investigations will involve major United States ports on the East Coast, the Gulf Coast, and the West Coast, and Federal agencies and other entities with expertise in port and maritime transportation.

“(v) Whether the applicant has a strategic plan for carrying out the proposed investigations under the grant.

“(4) ADMINISTRATIVE PROVISIONS.—

“(A) NO DUPLICATION OF EFFORT.—Before making any grant, the Secretary shall coordinate with other Federal

agencies to ensure the grant will not duplicate work already being conducted with Federal funding.

“(B) ACCOUNTING.—The Secretary shall by regulation establish accounting, reporting, and review procedures to ensure that funds made available under paragraph (1) are used for the purpose for which they were made available, that all expenditures are properly accounted for, and that amounts not used for such purposes and amounts not expended are recovered. Regulations.

“(C) RECORDKEEPING.—Recipients of grants shall keep all records related to expenditures and obligations of funds provided under paragraph (1) and make them available upon request to the Inspector General of the department in which the Coast Guard is operating and the Secretary for audit and examination.

“(5) ANNUAL REVIEW AND REPORT.—The Inspector General of the department in which the Coast Guard is operating shall annually review the programs established under this subsection to ensure that the expenditures and obligations of funds are consistent with the purposes for which they are provided, and report the findings to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.”.

SEC. 809. VESSEL AND INTERMODAL SECURITY REPORTS.

(a) IN GENERAL.—Within 180 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit the reports and plan required under subsections (b), (c), (e), (f), and (j) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(b) REPORT REGARDING SECURITY INSPECTION OF VESSELS AND VESSEL-BORNE CARGO CONTAINERS ENTERING THE UNITED STATES.—

(1) REQUIREMENT.—The Secretary shall prepare a report regarding the numbers and types of vessels and vessel-borne cargo containers that enter the United States in a year.

(2) CONTENTS.—The report shall include the following:

(A) A section regarding security inspection of vessels that includes the following:

(i) A complete breakdown of the numbers and types of vessels that entered the United States in the most recent 1-year period for which information is available.

(ii) The cost incurred by the Federal Government in inspecting such vessels in such 1-year period, including specification and comparison of such cost for each type of vessel.

(iii) An estimate of the per-vessel cost that would be incurred by the Federal Government in inspecting each type of vessel that enters the United States each year, including costs for personnel, vessels, equipment, and funds.

(iv) An estimate of the annual total cost that would be incurred by the Federal Government in inspecting all vessels that enter the United States each year,

including costs for personnel, vessels, equipment, and funds.

(B) A section regarding security inspection of containers that includes the following:

(i) A complete breakdown of the numbers and types of vessel-borne cargo containers that entered the United States in the most recent 1-year period for which information is available, including specification of the number of 1 TEU containers and the number of 2 TEU containers.

(ii) The cost incurred by the Federal Government in inspecting such containers in such 1-year period, including specification and comparison of such cost for a 1 TEU container and for a 2 TEU container, and the number of each inspected.

(iii) An estimate of the per-container cost that would be incurred by the Federal Government in inspecting each type of vessel-borne container that enters the United States each year, including costs for personnel, vessels, and equipment.

(iv) An estimate of the annual total cost that would be incurred by the Federal Government in inspecting, and where allowed by international agreement, inspecting in a foreign port, all vessel-borne containers that enter the United States each year, including costs for personnel, vessels, and equipment.

(c) **PLAN FOR IMPLEMENTING SECURE SYSTEMS OF TRANSPORTATION.**—The Secretary shall prepare a plan for the implementation of section 70116 of title 46, United States Code. The plan shall—

(1) include a timeline for establishing standards and procedures pursuant to section 70116(b) of title 46, United States Code;

(2) provide a preliminary assessment of resources necessary to evaluate and certify secure systems of transportation, and the resources necessary to validate that the secure systems of transportation are operating in compliance with the certification requirements;

(3) contain an analysis of whether establishing a voluntary user fee to fund the certification of private secure systems of transportation, paid for by the person applying for certification, would enhance cargo security;

(4) contain an analysis of the need for and feasibility of establishing a system to inspect, monitor, and track intermodal shipping containers within the United States; and

(5) contain an analysis of the need for and feasibility of developing international standards for secure systems of transportation, including recommendations, that includes an examination of working with appropriate international organizations to develop standards to enhance the physical security of shipping containers consistent with section 70116 of title 46, United States Code.

(d) **INSPECTOR GENERAL IMPLEMENTATION REPORT.**—One year after the date on which the plan under subsection (c) is submitted to the Congress, the Inspector General of the department in which the Coast Guard is operating shall transmit a report evaluating the progress made by the department in implementing the plan to the Committee on Commerce, Science, and Transportation of

the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(e) **REPORT ON RADIATION DETECTORS.**—The Secretary shall prepare a report on progress in the installation of a system of radiation detection at all major United States seaports, and a timeline and expected completion date for the system. In the report, the Secretary shall include a preliminary analysis of any issues related to the installation or efficacy of the radiation detection equipment, as well as a cost estimate for completing installation of the system.

(f) **REPORT ON NONINTRUSIVE INSPECTION AT FOREIGN PORTS.**—The Secretary shall prepare a report—

(1) on whether and to what extent foreign seaports have been willing to utilize nonintrusive screening equipment at their ports to screen cargo, including the number of cargo containers that have been screened at foreign seaports, and the ports where they were screened;

(2) indicating which foreign ports may be willing to utilize nonintrusive screening equipment for cargo exported for import into the United States; and

(3) indicating ways to increase the effectiveness of the United States Government's targeting and screening activities outside the United States and to what extent additional resources and program changes will be necessary to maximize scrutiny of cargo in foreign seaports that is destined for the United States.

(g) **EVALUATION OF CARGO INSPECTION TARGETING SYSTEM FOR INTERNATIONAL INTERMODAL CARGO CONTAINERS.**—Within 180 days after the date of the enactment of this Act and annually thereafter, the Inspector General of the department in which the Coast Guard is operating shall prepare a report that includes an assessment of—

(1) the effectiveness of the current tracking system to determine whether it is adequate to prevent international intermodal containers from being used for purposes of terrorism;

(2) the sources of information, and the quality of the information at the time of reporting, used by the system to determine whether targeting information is collected from the best and most credible sources and evaluate data sources to determine information gaps and weaknesses;

(3) the targeting system for reporting and analyzing inspection statistics, as well as testing effectiveness;

(4) the competence and training of employees operating the system to determine whether they are sufficiently capable to detect potential terrorist threats; and

(5) whether the system is an effective system to detect potential acts of terrorism and whether additional steps need to be taken in order to remedy deficiencies in targeting international intermodal containers for inspection.

(h) **ACTION REPORT.**—If the Inspector General of the department in which the Coast Guard is operating determines in any of the reports prepared under subsection (g) that the targeting system is insufficiently effective as a means of detecting potential acts of terrorism utilizing international intermodal containers, then the Secretary of the department in which the Coast Guard is operating

Deadlines.
46 USC 70101
note.

shall, within 90 days, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure House of Representatives on what actions will be taken to correct deficiencies identified in the Inspector General Report.

Deadlines.

(i) COMPLIANCE WITH SECURITY STANDARDS ESTABLISHED PURSUANT TO MARITIME TRANSPORTATION SECURITY PLANS.—Within 180 days after the date of the enactment of this Act and annually thereafter, the Secretary of the department in which the Coast Guard is operating shall prepare a report on compliance and steps taken to ensure compliance by ports, terminals, vessel operators, and shippers with security standards established pursuant to section 70103 of title 46, United States Code. The reports shall also include a summary of security standards established pursuant to such section during the previous year. The Secretary shall submit the reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

Reports.

(j) EMPTY CONTAINERS.—The Secretary of the department in which the Coast Guard is operating shall prepare a report on the practice and policies in place at United States ports to secure shipment of empty containers and trailers. The Secretary shall include in the report recommendations with respect to whether additional Federal actions are necessary to ensure the safe and secure delivery of cargo and to prevent potential acts of terrorism involving such containers and trailers.

46 USC 70101
note.

(k) REPORT AND PLAN FORMATS.—The Secretary and the Inspector General of the department in which the Coast Guard is operating may submit any plan or report required by this section in both classified and redacted formats, if the Secretary determines that it is appropriate or necessary.

Approved August 9, 2004.

LEGISLATIVE HISTORY—H.R. 2443 (S. 733):

HOUSE REPORTS: Nos. 108–233 (Comm. on Transportation and Infrastructure) and 108–617 (Comm. of Conference).

SENATE REPORTS: No. 108–202 accompanying S. 733 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 5, considered and passed House.

Vol. 150 (2004): Mar. 30, considered and passed Senate, amended.

July 21, House agreed to conference report.

July 22, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Aug. 9, Presidential statement.



Public Law 108–294
108th Congress

An Act

To redesignate the facilities of the United States Postal Service located at 7715 and 7748 S. Cottage Grove Avenue in Chicago, Illinois, as the “James E. Worsham Post Office” and the “James E. Worsham Carrier Annex Building”, respectively, and for other purposes.

Aug. 9, 2004
[H.R. 3340]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JAMES E. WORSHAM POST OFFICE.

(a) REDESIGNATION.—The facility of the United States Postal Service located at 7715 S. Cottage Grove Avenue in Chicago, Illinois, shall be known and designated as the “James E. Worsham Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in this section shall be deemed to be a reference to the “James E. Worsham Post Office”.

SEC. 2. JAMES E. WORSHAM CARRIER ANNEX BUILDING.

(a) REDESIGNATION.—The facility of the United States Postal Service located at 7748 S. Cottage Grove Avenue in Chicago, Illinois, shall be known and designated as the “James E. Worsham Carrier Annex Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in this section shall be deemed to be a reference to the “James E. Worsham Carrier Annex Building”.

Approved August 9, 2004.

LEGISLATIVE HISTORY—H.R. 3340:

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 6, considered and passed House.

July 22, considered and passed Senate.



Public Law 108–295
108th Congress

An Act

Aug. 9, 2004
[H.R. 3463]

To amend titles III and IV of the Social Security Act to improve the administration of unemployment taxes and benefits.

SUTA Dumping
Prevention Act
of 2004.
Inter-
governmental
relations.
42 USC 1305
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “SUTA Dumping Prevention Act of 2004”.

SEC. 2. TRANSFER OF UNEMPLOYMENT EXPERIENCE UPON TRANSFER OR ACQUISITION OF A BUSINESS.

(a) IN GENERAL.—Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end the following:

“(k)(1) For purposes of subsection (a), the unemployment compensation law of a State must provide—

“(A) that if an employer transfers its business to another employer, and both employers are (at the time of transfer) under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to (and combined with the unemployment experience attributable to) the employer to whom such business is so transferred,

“(B) that unemployment experience shall not, by virtue of the transfer of a business, be transferred to the person acquiring such business if—

“(i) such person is not otherwise an employer at the time of such acquisition, and

“(ii) the State agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions,

“(C) that unemployment experience shall (or shall not) be transferred in accordance with such regulations as the Secretary of Labor may prescribe to ensure that higher rates of contributions are not avoided through the transfer or acquisition of a business,

“(D) that meaningful civil and criminal penalties are imposed with respect to—

“(i) persons that knowingly violate or attempt to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

“(ii) persons that knowingly advise another person to violate those provisions of the State law which implement

subparagraph (A) or (B) or regulations under subparagraph (C), and

“(E) for the establishment of procedures to identify the transfer or acquisition of a business for purposes of this subsection.

“(2) For purposes of this subsection—

“(A) the term ‘unemployment experience’, with respect to any person, refers to such person’s experience with respect to unemployment or other factors bearing a direct relation to such person’s unemployment risk;

“(B) the term ‘employer’ means an employer as defined under the State law;

“(C) the term ‘business’ means a trade or business (or a part thereof);

“(D) the term ‘contributions’ has the meaning given such term by section 3306(g) of the Internal Revenue Code of 1986;

“(E) the term ‘knowingly’ means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved; and

“(F) the term ‘person’ has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986.”.

(b) STUDY AND REPORTING REQUIREMENTS.—

(1) STUDY.—The Secretary of Labor shall conduct a study of the implementation of the provisions of section 303(k) of the Social Security Act (as added by subsection (a)) to assess the status and appropriateness of State actions to meet the requirements of such provisions.

(2) REPORT.—Not later than July 15, 2007, the Secretary of Labor shall submit to the Congress a report that contains the findings of the study required by paragraph (1) and recommendations for any Congressional action that the Secretary considers necessary to improve the effectiveness of section 303(k) of the Social Security Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall, with respect to a State, apply to certifications for payments (under section 302(a) of the Social Security Act) in rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the State legislature beginning on or after the date of the enactment of this Act.

(d) DEFINITIONS.—For purposes of this section—

(1) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(2) the term “rate year” means the rate year as defined in the applicable State law; and

(3) the term “State law” means the unemployment compensation law of the State, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1986.

SEC. 3. USE OF NEW HIRE INFORMATION TO ASSIST IN ADMINISTRATION OF UNEMPLOYMENT COMPENSATION PROGRAMS.

Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) is amended by adding at the end the following:

“(8) INFORMATION COMPARISONS AND DISCLOSURE TO ASSIST IN ADMINISTRATION OF UNEMPLOYMENT COMPENSATION PROGRAMS.—

“(A) IN GENERAL.—If, for purposes of administering an unemployment compensation program under Federal

Applicability.
42 USC 503 note.

or State law, a State agency responsible for the administration of such program transmits to the Secretary the names and social security account numbers of individuals, the Secretary shall disclose to such State agency information on such individuals and their employers maintained in the National Directory of New Hires, subject to this paragraph.

“(B) CONDITION ON DISCLOSURE BY THE SECRETARY.—The Secretary shall make a disclosure under subparagraph (A) only to the extent that the Secretary determines that the disclosure would not interfere with the effective operation of the program under this part.

“(C) USE AND DISCLOSURE OF INFORMATION BY STATE AGENCIES.—

“(i) IN GENERAL.—A State agency may not use or disclose information provided under this paragraph except for purposes of administering a program referred to in subparagraph (A).

“(ii) INFORMATION SECURITY.—The State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of information obtained under this paragraph and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures.

“(iii) PENALTY FOR MISUSE OF INFORMATION.—An officer or employee of the State agency who fails to comply with this subparagraph shall be subject to the sanctions under subsection (1)(2) to the same extent as if such officer or employee was an officer or employee of the United States.

“(D) PROCEDURAL REQUIREMENTS.—State agencies requesting information under this paragraph shall adhere to uniform procedures established by the Secretary governing information requests and data matching under this paragraph.

“(E) REIMBURSEMENT OF COSTS.—The State agency shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in

furnishing the information requested under this paragraph.”.

Approved August 9, 2004.

LEGISLATIVE HISTORY—H.R. 3463:

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 14, considered and passed House.

July 22, considered and passed Senate.



Public Law 108–296
108th Congress

An Act

Aug. 9, 2004
[H.R. 4222]

To designate the facility of the United States Postal Service located at 550 Nebraska Avenue in Kansas City, Kansas, as the “Newell George Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 550 Nebraska Avenue in Kansas City, Kansas, shall be known and designated as the “Newell George Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Newell George Post Office Building”.

Approved August 9, 2004.

LEGISLATIVE HISTORY—H.R. 4222:
CONGRESSIONAL RECORD,

Vol. 150 (2004):
June 21, considered and passed House.
July 22, considered and passed Senate.



Public Law 108–297
108th Congress

An Act

To amend title 49, United States Code, to make certain conforming changes to provisions governing the registration of aircraft and the recordation of instruments in order to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, known as the “Cape Town Treaty”.

Aug. 9, 2004
[H.R. 4226]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as “Cape Town Treaty Implementation Act of 2004”.

Cape Town
Treaty
Implementation
Act of 2004.
49 USC 40101
note.
49 USC 44101
note.

SEC. 2. FINDINGS AND PURPOSE.

(a) **FINDINGS.**—Congress finds the following:

(1) The Cape Town Treaty (as defined in section 44113 of title 49, United States Code) extends modern commercial laws for the sale, finance, and lease of aircraft and aircraft engines to the international arena in a manner consistent with United States law and practice.

(2) The Cape Town Treaty provides for internationally established and recognized financing and leasing rights that will provide greater security and commercial predictability in connection with the financing and leasing of highly mobile assets, such as aircraft and aircraft engines.

(3) The legal and financing framework of the Cape Town Treaty will provide substantial economic benefits to the aviation and aerospace sectors, including the promotion of exports, and will facilitate the acquisition of newer, safer aircraft around the world.

(4) Only technical changes to United States law and regulations are required since the asset-based financing and leasing concepts embodied in the Cape Town Treaty are already reflected in the United States in the Uniform Commercial Code.

(5) The new electronic registry system established under the Cape Town Treaty will work in tandem with current aircraft document recordation systems of the Federal Aviation Administration, which have served United States industry well.

(6) The United States Government was a leader in the development of the Cape Town Treaty.

(b) **PURPOSE.**—Accordingly, the purpose of this Act is to provide for the implementation of the Cape Town Treaty in the United States by making certain technical amendments to the provisions of chapter 441 of title 49, United States Code, directing the Federal

Aviation Administration to complete the necessary rulemaking processes as expeditiously as possible, and clarifying the applicability of the Treaty during the rulemaking process.

SEC. 3. RECORDATION OF SECURITY INSTRUMENTS.

(a) ESTABLISHMENT OF SYSTEM.—Section 44107(a) of title 49, United States Code, is amended—

(1) in paragraph (2)(A) by striking “750” and inserting “550”; and

(2) in paragraph (3) by striking “clause (1) or (2) of this subsection” and inserting “paragraph (1) or (2)”.

(b) INTERNATIONAL REGISTRY.—Section 44107 of such title is amended by adding at the end the following:

“(e) INTERNATIONAL REGISTRY.—

“(1) DESIGNATION OF UNITED STATES ENTRY POINT.—As permitted under the Cape Town Treaty, the Federal Aviation Administration Civil Aviation Registry is designated as the United States Entry Point to the International Registry relating to—

“(A) civil aircraft of the United States;

“(B) an aircraft for which a United States identification number has been assigned but only with regard to a notice filed under paragraph (2); and

“(C) aircraft engines.

“(2) SYSTEM FOR FILING NOTICE OF PROSPECTIVE INTERESTS.—

“(A) ESTABLISHMENT.—The Administrator shall establish a system for filing notices of prospective assignments and prospective international interests in, and prospective sales of, aircraft or aircraft engines described in paragraph (1) under the Cape Town Treaty.

“(B) MAINTENANCE OF VALIDITY.—A filing of a notice of prospective assignment, interest, or sale under this paragraph and the registration with the International Registry relating to such assignment, interest, or sale shall not be valid after the 60th day following the date of the filing unless documents eligible for recording under subsection (a) relating to such notice are filed for recordation on or before such 60th day.

“(3) AUTHORIZATION FOR REGISTRATION OF AIRCRAFT.—A registration with the International Registry relating to an aircraft described in paragraph (1) (other than subparagraph (C)) is valid only if (A) the person seeking the registration first files documents eligible for recording under subsection (a) and relating to the registration with the United States Entry Point, and (B) the United States Entry Point authorizes the registration.”.

49 USC 44101
note.

SEC. 4. REGULATIONS.

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration shall issue regulations necessary to carry out this Act, including any amendments made by this Act.

(b) CONTENTS OF REGULATIONS.—Regulations to be issued under this Act shall specify, at a minimum, the requirements for—

(1) the registration of aircraft previously registered in a country in which the Cape Town Treaty is in effect; and

(2) the cancellation of registration of a civil aircraft of the United States based on a request made in accordance with the Cape Town Treaty.

(c) EXPEDITED RULEMAKING PROCESS.—

(1) FINAL RULE.—The Administrator shall issue regulations under this section by publishing a final rule by December 31, 2004.

Publication.

(2) EFFECTIVE DATE.—The final rule shall not be effective before the date the Cape Town Treaty enters into force with respect to the United States.

(3) ECONOMIC ANALYSIS.—The Administrator shall not be required to prepare an economic analysis of the cost and benefits of the final rule.

(d) APPLICABILITY OF TREATY.—Notwithstanding parts 47.37(a)(3)(ii) and 47.47(a)(2) of title 14, of the Code of Federal Regulations, Articles IX(5) and XIII of the Cape Town Treaty shall apply to the matters described in subsection (b) until the earlier of the effective date of the final rule under this section or December 31, 2004.

SEC. 5. LIMITATION ON VALIDITY OF CONVEYANCES, LEASES, AND SECURITY INSTRUMENTS.

Section 44108(c)(2) of title 49, United States Code, is amended by striking the period at the end and inserting “or the Cape Town Treaty, as applicable.”.

SEC. 6. DEFINITIONS.

(a) IN GENERAL.—Chapter 441 of title 49, United States Code, is amended by adding at the end the following:

“§ 44113. Definitions

“In this chapter, the following definitions apply:

“(1) CAPE TOWN TREATY.—The term ‘Cape Town Treaty’ means the Convention on International Interests in Mobile Equipment, as modified by the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, signed at Rome on May 9, 2003.

“(2) UNITED STATES ENTRY POINT.—The term ‘United States Entry Point’ means the Federal Aviation Administration Civil Aviation Registry.

“(3) INTERNATIONAL REGISTRY.—The term ‘International Registry’ means the registry established under the Cape Town Treaty.”.

(b) CONFORMING AMENDMENT.—The analysis for such chapter is amended by adding at the end the following:

“44113. Definitions.”.

SEC. 7. EFFECTIVE DATE AND PRESERVATION OF PRIOR RIGHTS.

This Act, including any amendments made by this Act, shall take effect on the date the Cape Town Treaty (as defined in section 44113 of title 49, United States Code) enters into force with respect to the United States and shall not apply to any registration or recordation that was made before such effective date under chapter

49 USC 44101
note.

441 of such title or any legal rights relating to such registration or recordation.

Approved August 9, 2004.

LEGISLATIVE HISTORY—H.R. 4226:

HOUSE REPORTS: No. 108–526 (Comm. on Transportation and Infrastructure).
CONGRESSIONAL RECORD,

Vol. 150 (2004):

June 22, considered and passed House.

July 21, considered and passed Senate.



Public Law 108–298
108th Congress

An Act

To designate the facility of the United States Postal Service located at 7450 Natural Bridge Road in St. Louis, Missouri, as the “Vitas ‘Veto’ Reid Post Office Building”.

Aug. 9, 2004
[H.R. 4327]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 7450 Natural Bridge Road in St. Louis, Missouri, shall be known and designated as the “Vitas ‘Veto’ Reid Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Vitas ‘Veto’ Reid Post Office Building”.

Approved August 9, 2004.

LEGISLATIVE HISTORY—H.R. 4327:

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 6, considered and passed House.

July 22, considered and passed Senate.



Public Law 108–299
108th Congress

An Act

Aug. 9, 2004
[H.R. 4417]

To modify certain deadlines pertaining to machine-readable, tamper-resistant entry and exit documents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATION OF CERTAIN DEADLINES FOR MACHINE-READABLE, TAMPER-RESISTANT ENTRY AND EXIT DOCUMENTS.

Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732) is amended, in each of subsections (b)(2)(A), (c)(1), and (c)(2), by striking “2004,” and inserting “2005,”.

Approved August 9, 2004.

LEGISLATIVE HISTORY—H.R. 4417:
CONGRESSIONAL RECORD,

Vol. 150 (2004):
June 14, considered and passed House.
July 22, considered and passed Senate.



Public Law 108–300
108th Congress

An Act

To designate the facility of the United States Postal Service located at 73 South Euclid Avenue in Montauk, New York, as the “Perry B. Duryea, Jr. Post Office”.

Aug. 9, 2004
[H.R. 4427]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 73 South Euclid Avenue in Montauk, New York, shall be known and designated as the “Perry B. Duryea, Jr. Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Perry B. Duryea, Jr. Post Office”.

Approved August 9, 2004.

LEGISLATIVE HISTORY—H.R. 4427:

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 6, considered and passed House.

July 22, considered and passed Senate.



Public Law 108–301
108th Congress

An Act

Aug. 9, 2004
[S. 2712]

To preserve the ability of the Federal Housing Administration to insure mortgages under sections 238 and 519 of the National Housing Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT TO GENERAL AND SPECIAL RISK PROGRAM ACCOUNT.

Ante, p. 386.

Under the heading “FEDERAL HOUSING ADMINISTRATION—GENERAL AND SPECIAL RISK PROGRAM ACCOUNT” in title II of Division G of the Consolidated Appropriations Act, 2004 (Public Law 108–199), in the first proviso, strike “\$25,000,000,000” and insert “\$29,000,000,000”.

Approved August 9, 2004.

LEGISLATIVE HISTORY—S. 2712:

CONGRESSIONAL RECORD,

Vol. 150 (2004):

July 22, considered and passed Senate and House.



Public Law 108–302
108th Congress

An Act

To implement the United States-Morocco Free Trade Agreement.

Aug. 17, 2004
[H.R. 4842]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States-Morocco Free Trade Agreement Implementation Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

United States-
Morocco Free
Trade Agreement
Implementation
Act.
19 USC 3805
note.

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

- Sec. 101. Approval and entry into force of the Agreement.
- Sec. 102. Relationship of the Agreement to United States and State law.
- Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.
- Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.
- Sec. 105. Administration of dispute settlement proceedings.
- Sec. 106. Arbitration of claims.
- Sec. 107. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.
- Sec. 202. Additional duties on certain agricultural goods.
- Sec. 203. Rules of origin.
- Sec. 204. Enforcement relating to trade in textile and apparel goods.
- Sec. 205. Regulations.

TITLE III—RELIEF FROM IMPORTS

- Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

- Sec. 311. Commencing of action for relief.
- Sec. 312. Commission action on petition.
- Sec. 313. Provision of relief.
- Sec. 314. Termination of relief authority.
- Sec. 315. Compensation authority.
- Sec. 316. Confidential business information.

Subtitle B—Textile and Apparel Safeguard Measures

- Sec. 321. Commencement of action for relief.
- Sec. 322. Determination and provision of relief.
- Sec. 323. Period of relief.
- Sec. 324. Articles exempt from relief.
- Sec. 325. Rate after termination of import relief.
- Sec. 326. Termination of relief authority.
- Sec. 327. Compensation authority.
- Sec. 328. Business confidential information.

19 USC 3805
note.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and Morocco entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States and Morocco for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

19 USC 3805
note.

SEC. 3. DEFINITIONS.

In this Act:

(1) **AGREEMENT.**—The term “Agreement” means the United States-Morocco Free Trade Agreement approved by Congress under section 101(a)(1).

(2) **HTS.**—The term “HTS” means the Harmonized Tariff Schedule of the United States.

(3) **TEXTILE OR APPAREL GOOD.**—The term “textile or apparel good” means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

19 USC 3805
note.

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) **APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.**—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), Congress approves—

(1) the United States-Morocco Free Trade Agreement entered into on June 15, 2004, with Morocco and submitted to Congress on July 15, 2004; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to Congress on July 15, 2004.

President.
Effective date.

(b) **CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.**—At such time as the President determines that Morocco has taken measures necessary to bring it into compliance with those provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Morocco providing for the entry into force, on or after January 1, 2005, of the Agreement with respect to the United States.

19 USC 3805
note.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) **RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.**—

(1) **UNITED STATES LAW TO PREVAIL IN CONFLICT.**—No provision of the Agreement, nor the application of any such provision

to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) CONSTRUCTION.—Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, or

(B) to limit any authority conferred under any law of the United States, unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term “State law” includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

19 USC 3805
note.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States

Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

Deadlines.

(b) **INITIAL REGULATIONS.**—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

President.
19 USC 3805
note.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the United States International Trade Commission;

(2) the President has submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor; and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

19 USC 3805
note.
President.

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) **ESTABLISHMENT OR DESIGNATION OF OFFICE.**—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for each fiscal year after fiscal year 2004 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

19 USC 3805
note.

SEC. 106. ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.15.1(a)(i)(C) or article 10.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.19 USC 3805
note.

(a) **EFFECTIVE DATES.**—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) **EXCEPTIONS.**—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) **TERMINATION OF THE AGREEMENT.**—On the date on which the Agreement terminates, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to be effective.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.19 USC 3805
note.

(a) **TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.**—

(1) **PROCLAMATION AUTHORITY.**—The President may proclaim—

- (A) such modifications or continuation of any duty,
- (B) such continuation of duty-free or excise treatment,

or

- (C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 4.1, 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15, and Annex IV of the Agreement.

(2) **EFFECT ON MOROCCAN GSP STATUS.**—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of Morocco as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement.

President.
Termination
date.

(b) **OTHER TARIFF MODIFICATIONS.**—Subject to the consultation and layover provisions of section 104, the President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such modifications as the United States may agree to with Morocco regarding the staging of any duty treatment set forth in Annex IV of the Agreement,
- (3) such continuation of duty-free or excise treatment, or
- (4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Morocco provided for by the Agreement.

(c) **CONVERSION TO AD VALOREM RATES.**—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Tariff Schedule of the United States to Annex IV of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.19 USC 3805
note.

(a) **DEFINITIONS.**—In this section:

(1) **AGRICULTURAL SAFEGUARD GOOD.**—The term “agricultural safeguard good” means a good—

- (A) that qualifies as an originating good under section 203;

(B) that is included in the U.S. Agricultural Safeguard List set forth in Annex 3-A of the Agreement; and

(C) for which a claim for preferential treatment under the Agreement has been made.

(2) APPLICABLE NTR (MFN) RATE OF DUTY.—The term “applicable NTR (MFN) rate of duty” means, with respect to an agricultural safeguard good, a rate of duty that is the lesser of—

(A) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on the date on which the additional duty is imposed under subsection (b); or

(B) the column 1 general rate of duty that would have been imposed under the HTS on the same agricultural safeguard good entered, without a claim for preferential tariff treatment, on December 31, 2004.

(3) F.O.B.—The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(4) SCHEDULE RATE OF DUTY.—The term “schedule rate of duty” means, with respect to an agricultural safeguard good, the rate of duty for that good set out in the Tariff Schedule of the United States to Annex IV of the Agreement.

(5) TRIGGER PRICE.—The “trigger price” for a good means the trigger price indicated for that good in the U.S. Agricultural Safeguard List set forth in Annex 3-A of the Agreement or any amendment thereto.

(6) UNIT IMPORT PRICE.—The “unit import price” of a good means the price of the good determined on the basis of the F.O.B. import price of the good, expressed in either dollars per kilogram or dollars per liter, whichever unit of measure is indicated for the good in the U.S. Agricultural Safeguard List set forth in Annex 3-A of the Agreement.

(b) ADDITIONAL DUTIES ON AGRICULTURAL SAFEGUARD GOODS.—

(1) ADDITIONAL DUTIES.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to paragraphs (3), (4), (5), and (6) of this subsection, the Secretary of the Treasury shall assess a duty on an agricultural safeguard good, in the amount determined under paragraph (2), if the Secretary determines that the unit import price of the good when it enters the United States is less than the trigger price for that good.

(2) CALCULATION OF ADDITIONAL DUTY.—The additional duty assessed under this subsection on an agricultural safeguard good shall be an amount determined in accordance with the following table:

If the excess of the trigger price over the unit import price is:	The additional duty is an amount equal to:
Not more than 10 percent of the trigger price	0.

More than 10 percent but not more than 40 percent of the trigger price	30 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price	50 percent of such excess.
More than 60 percent but not more than 75 percent of the trigger price	70 percent of such excess.
More than 75 percent of the trigger price	100 percent of such excess.

(3) EXCEPTIONS.—No additional duty shall be assessed on a good under this subsection if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(4) TERMINATION.—The assessment of an additional duty on a good under this subsection shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Tariff Schedule of the United States to Annex IV of the Agreement.

(5) TARIFF-RATE QUOTAS.—If an agricultural safeguard good is subject to a tariff-rate quota under the Agreement, any additional duty assessed under this subsection shall be applied only to over-quota imports of the good.

(6) NOTICE.—Not later than 60 days after the date on which the Secretary of the Treasury assesses an additional duty on a good under this subsection, the Secretary shall notify the Government of Morocco in writing of such action and shall provide to the Government of Morocco data supporting the assessment of additional duties.

Deadline.

SEC. 203. RULES OF ORIGIN.

19 USC 3805
note.

(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a heading or sub-heading, such reference shall be a reference to a heading or subheading of the HTS.

(b) ORIGINATING GOODS.—

(1) IN GENERAL.—For purposes of this Act and for purposes of implementing the preferential tariff treatment provided for under the Agreement, a good is an originating good if—

(A) the good is imported directly—

(i) from the territory of Morocco into the territory of the United States; or

(ii) from the territory of the United States into the territory of Morocco; and

(B)(i) the good is a good wholly the growth, product, or manufacture of Morocco or the United States, or both;

(ii) the good (other than a good to which clause (iii) applies) is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both, and meets the requirements of paragraph (2); or

(iii)(I) the good is a good covered by Annex 4–A or 5–A of the Agreement;

(II)(aa) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in such Annex as a result of production occurring entirely in the territory of Morocco or the United States, or both; or

(bb) the good otherwise satisfies the requirements specified in such Annex; and

(III) the good satisfies all other applicable requirements of this section.

(2) REQUIREMENTS.—A good described in paragraph (1)(B)(ii) is an originating good only if the sum of—

(A) the value of each material produced in the territory of Morocco or the United States, or both, and

(B) the direct costs of processing operations performed in the territory of Morocco or the United States, or both, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) CUMULATION.—

(1) ORIGINATING GOOD OR MATERIAL INCORPORATED INTO GOODS OF OTHER COUNTRY.—An originating good or a material produced in the territory of Morocco or the United States, or both, that is incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is grown, produced, or manufactured in the territory of Morocco or the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(d) VALUE OF MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the value of a material produced in the territory of Morocco or the United States, or both, includes the following:

(A) The price actually paid or payable for the material by the producer of such good.

(B) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in subparagraph (A).

(C) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap.

(D) Taxes or customs duties imposed on the material by Morocco, the United States, or both, if the taxes or customs duties are not remitted upon exportation from the territory of Morocco or the United States, as the case may be.

(2) EXCEPTION.—If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of Morocco or the United States, or both, includes the following:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses.

(B) A reasonable amount for profit.

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

(e) PACKAGING AND PACKING MATERIALS AND CONTAINERS FOR RETAIL SALE AND FOR SHIPMENT.—Packaging and packing materials and containers for retail sale and shipment shall be disregarded in determining whether a good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers have been included in meeting the requirements set forth in subsection (b)(2).

(f) INDIRECT MATERIALS.—Indirect materials shall be disregarded in determining whether a good qualifies as an originating good, except that the cost of such indirect materials may be included in meeting the requirements set forth in subsection (b)(2).

(g) TRANSIT AND TRANSSHIPMENT.—A good shall not be considered to meet the requirement of subsection (b)(1)(A) if, after exportation from the territory of Morocco or the United States, the good undergoes production, manufacturing, or any other operation outside the territory of Morocco or the United States, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of the United States or Morocco.

(h) TEXTILE AND APPAREL GOODS.—

(1) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4-A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Morocco or the United States.

(C) YARN, FABRIC, OR GROUP OF FIBERS.—For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term “component of the good that determines the tariff classification of the good” means all of the fibers in the yarn, fabric, or group of fibers.

(2) GOODS PUT UP IN SETS FOR RETAIL SALE.—Notwithstanding the rules set forth in Annex 4-A of the Agreement, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

(i) DEFINITIONS.—In this section:

(1) DIRECT COSTS OF PROCESSING OPERATIONS.—

(A) IN GENERAL.—The term “direct costs of processing operations”, with respect to a good, includes, to the extent they are includable in the appraised value of the good when imported into Morocco or the United States, as the case may be, the following:

(i) All actual labor costs involved in the growth, production, or manufacture of the good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel.

(ii) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the good.

(iii) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the good.

(iv) Costs of inspecting and testing the good.

(v) Costs of packaging the good for export to the territory of the other country.

(B) EXCEPTIONS.—The term “direct costs of processing operations” does not include costs that are not directly attributable to a good or are not costs of growth, production, or manufacture of the good, such as—

(i) profit; and

(ii) general expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and sales staff salaries, commissions, or expenses.

(2) GOOD.—The term “good” means any merchandise, product, article, or material.

(3) GOOD WHOLLY THE GROWTH, PRODUCT, OR MANUFACTURE OF MOROCCO, THE UNITED STATES, OR BOTH.—The term “good wholly the growth, product, or manufacture of Morocco, the United States, or both” means—

(A) a mineral good extracted in the territory of Morocco or the United States, or both;

(B) a vegetable good, as such a good is provided for in the HTS, harvested in the territory of Morocco or the United States, or both;

(C) a live animal born and raised in the territory of Morocco or the United States, or both;

(D) a good obtained from live animals raised in the territory of Morocco or the United States, or both;

(E) a good obtained from hunting, trapping, or fishing in the territory of Morocco or the United States, or both;

(F) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Morocco or the United States and flying the flag of that country;

(G) a good produced from goods referred to in subparagraph (F) on board factory ships registered or recorded with Morocco or the United States and flying the flag of that country;

(H) a good taken by Morocco or the United States or a person of Morocco or the United States from the seabed or beneath the seabed outside territorial waters,

if Morocco or the United States has rights to exploit such seabed;

(I) a good taken from outer space, if such good is obtained by Morocco or the United States or a person of Morocco or the United States and not processed in the territory of a country other than Morocco or the United States;

(J) waste and scrap derived from—

(i) production or manufacture in the territory of Morocco or the United States, or both; or

(ii) used goods collected in the territory of Morocco or the United States, or both, if such goods are fit only for the recovery of raw materials;

(K) a recovered good derived in the territory of Morocco or the United States from used goods and utilized in the territory of that country in the production of remanufactured goods; and

(L) a good produced in the territory of Morocco or the United States, or both, exclusively—

(i) from goods referred to in subparagraphs (A) through (J), or

(ii) from the derivatives of goods referred to in clause (i),

at any stage of production.

(4) **INDIRECT MATERIAL.**—The term “indirect material” means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment and buildings;

(D) lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture.

(5) **MATERIAL.**—The term “material” means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in Morocco, the United States, or both.

(6) **MATERIAL PRODUCED IN THE TERRITORY OF MOROCCO OR THE UNITED STATES, OR BOTH.**—The term “material produced in the territory of Morocco or the United States, or both” means a good that is either wholly the growth, product, or manufacture of Morocco, the United States, or both, or a new or different article of commerce that has been grown, produced,

or manufactured in the territory of Morocco or the United States, or both.

(7) NEW OR DIFFERENT ARTICLE OF COMMERCE.—

(A) IN GENERAL.—The term “new or different article of commerce” means, except as provided in subparagraph (B), a good that—

(i) has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of Morocco, the United States, or both; and

(ii) has a new name, character, or use distinct from the good or material from which it was transformed.

(B) EXCEPTION.—A good shall not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good.

(8) RECOVERED GOODS.—The term “recovered goods” means materials in the form of individual parts that result from—

(A) the complete disassembly of used goods into individual parts; and

(B) the cleaning, inspecting, testing, or other processing of those parts that is necessary for improvement to sound working condition.

(9) REMANUFACTURED GOOD.—The term “remanufactured good” means an industrial good that is assembled in the territory of Morocco or the United States and that—

(A) is entirely or partially comprised of recovered goods;

(B) has a similar life expectancy to, and meets similar performance standards as, a like good that is new; and

(C) enjoys a factory warranty similar to that of a like good that is new.

(10) SIMPLE COMBINING OR PACKAGING OPERATIONS.—The term “simple combining or packaging operations” means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or packing or repacking components together.

(11) SUBSTANTIALLY TRANSFORMED.—The term “substantially transformed” means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that—

(A)(i) the good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(ii) the physical properties of the good or material are changed to a significant extent; or

(iii) the operation undergone by the good or material is complex by reason of the number of processes and materials involved and the time and level of skill required to perform those processes; and

(B) the good or material loses its separate identity in the manufacturing or processing operation.

(j) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4–A and Annex 5–A of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and lay-over provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and lay-over provisions of section 104, the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with Morocco pursuant to article 4.3.6 of the Agreement; and

(ii) before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4–A of the Agreement.

SEC. 204. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

19 USC 3805
note.

(a) ACTION DURING VERIFICATION.—

(1) IN GENERAL.—If the Secretary of the Treasury requests the Government of Morocco to conduct a verification pursuant to article 4.4 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) DETERMINATION.—A determination under this paragraph is a determination—

(A) that an exporter or producer in Morocco is complying with applicable customs laws, regulations, procedures, requirements, or practices affecting trade in textile or apparel goods; or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act, or

(ii) is a good of Morocco,
is accurate.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a)(1) includes—

(1) suspension of liquidation of the entry of any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A), in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) suspension of liquidation of the entry of a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a)(1) is insufficient to make a determination under subsection (a)(2), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action referred to in subsection (c) includes—

(1) publication of the name and address of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B); and

(3) denial of entry into the United States of—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification referred to in subsection (a)(1) regarding compliance described in subsection (a)(2)(A); or

(B) a textile or apparel good for which a claim has been made that is the subject of a verification referred to in subsection (a)(1) regarding a claim described in subsection (a)(2)(B).

19 USC 3805
note.

SEC. 205. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (i) of section 203;

(2) amendments to existing law made by the subsections referred to in paragraph (1); and

(3) proclamations issued under section 203(j).

TITLE III—RELIEF FROM IMPORTS

19 USC 3805
note.

SEC. 301. DEFINITIONS.

In this title:

(1) MOROCCAN ARTICLE.—The term “Moroccan article” means an article that qualifies as an originating good under section 203(b) of this Act or receives preferential tariff treatment under paragraphs 9 through 15 of article 4.3 of the Agreement.

(2) MOROCCAN TEXTILE OR APPAREL ARTICLE.—The term “Moroccan textile or apparel article” means an article that—

(A) is listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)); and

(B) is a Moroccan article.

(3) COMMISSION.—The term “Commission” means the United States International Trade Commission.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

19 USC 3805
note.

(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Moroccan article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the Moroccan article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

(1) Paragraphs (1)(B) and (3) of subsection (b).

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Moroccan article if, after the date on which the Agreement enters into force, import relief has been provided with respect to that Moroccan article under this subtitle.

SEC. 312. COMMISSION ACTION ON PETITION.

19 USC 3805
note.
Deadline.

(a) DETERMINATION.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) **APPLICABLE PROVISIONS.**—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) **ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.**—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to that described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) **REPORT TO PRESIDENT.**—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) **PUBLIC NOTICE.**—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

Federal Register,
publication.

19 USC 3805
note.
Deadline.
President.

SEC. 313. PROVISION OF RELIEF.

(a) **IN GENERAL.**—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and

to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief (including provisional relief) that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex IV of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization of such relief at regular intervals during the period in which the relief is in effect.

President.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President provides under this section may not be in effect for more than 3 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before

Deadline.

the date any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition and whether there is evidence that the industry is making a positive adjustment to import competition.

Notice.
Federal Register,
publication.
Public
information.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

Reports.
Deadline.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(C) PERIOD OF IMPORT RELIEF.—Any import relief provided under this section, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that—

(1) is subject to an assessment of additional duty under section 202(b); or

(2) has been subject to import relief under this subtitle after the date on which the Agreement enters into force.

19 USC 3805
note.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle with respect to a good after the date that is 5 years after the date on which duty-free treatment must be provided by the United States to that good pursuant to Annex IV of the Agreement.

(b) PRESIDENTIAL DETERMINATION.—Import relief may be provided under this subtitle in the case of a Moroccan article after the date on which such relief would, but for this subsection, terminate under subsection (a), if the President determines that Morocco has consented to such relief.

19 USC 3805
note.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act.

19 USC 3805
note.

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

Section 202(a)(8) of the Trade Act of 1974 (19 U.S.C. 2252(a)(8)) is amended in the first sentence—

(1) by striking “and”; and

(2) by inserting before the period at the end “, and title III of the United States-Morocco Free Trade Agreement Implementation Act”.

Subtitle B—Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

President.
19 USC 3805
note.

Notice.
Federal Register,
publication.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Moroccan textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as described in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry to import competition.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to

President.
19 USC 3805
note.

imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

19 USC 3805
note.

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle for a period of not more than 2 years, if the President determines that—

(A) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(B) there is evidence that the industry is making a positive adjustment to import competition.

(2) LIMITATION.—Any relief provided under this subtitle, including any extensions thereof, may not, in the aggregate, be in effect for more than 5 years.

19 USC 3805
note.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) the article has been subject to import relief under this subtitle after the date on which the Agreement enters into force; or

(2) the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974.

19 USC 3805
note.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date on which the relief terminates.

19 USC 3805
note.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 10 years after the date on which duties on the article are eliminated pursuant to the Agreement.

19 USC 3805
note.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under this subtitle shall be treated as action taken under chapter 1 of title II of such Act.

19 USC 3805
note.

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which is submitted in a proceeding under this subtitle and which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at

the time of submission, that such information would be released, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information to the President in a proceeding under this subtitle, the party also shall submit a nonconfidential version of the information, in which the confidential business information is summarized or, if necessary, deleted.

Approved August 17, 2004.

LEGISLATIVE HISTORY—H.R. 4842 (S. 2677):

HOUSE REPORTS: No. 108–627 (Comm. on Ways and Means).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 22, considered and passed House and Senate.



Public Law 108–303
108th Congress

An Act

Sept. 8, 2004
[H.R. 5005]

Making emergency supplemental appropriations for the fiscal year ending September 30, 2004, for additional disaster assistance.

Emergency
Supplemental
Appropriations
for Disaster
Relief Act, 2004.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, to provide emergency supplemental appropriations for additional disaster assistance, namely:

DEPARTMENT OF HOMELAND SECURITY EMERGENCY
PREPAREDNESS AND RESPONSE

DISASTER RELIEF

For an additional amount for “Disaster Relief”, \$2,000,000,000, to remain available until expended, of which up to \$30,000,000 may be transferred to “Small Business Administration--Salaries and Expenses”, for administrative expenses to carry out the disaster loans program authorized by section 7(b) of the Small Business Act: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H.Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

This Act may be cited as the “Emergency Supplemental Appropriations for Disaster Relief Act, 2004”.

Approved September 8, 2004.

LEGISLATIVE HISTORY—H.R. 5005:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 7, considered and passed House and Senate.



Public Law 108–304
108th Congress

An Act

To designate certain conduct by sports agents relating to the signing of contracts with student athletes as unfair and deceptive acts or practices to be regulated by the Federal Trade Commission.

Sept. 24, 2004
[H.R. 361]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sports Agent Responsibility and Trust Act”.

Sports Agent
Responsibility
and Trust Act.
Education.
15 USC 7801
note.

SEC. 2. DEFINITIONS.

15 USC 7801.

As used in this Act, the following definitions apply:

(1) **AGENCY CONTRACT.**—The term “agency contract” means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) **ATHLETE AGENT.**—The term “athlete agent” means an individual who enters into an agency contract with a student athlete, or directly or indirectly recruits or solicits a student athlete to enter into an agency contract, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) **ATHLETIC DIRECTOR.**—The term “athletic director” means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) **COMMISSION.**—The term “Commission” means the Federal Trade Commission.

(5) **ENDORSEMENT CONTRACT.**—The term “endorsement contract” means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual’s person, name, image, or likeness in the promotion of any product, service, or event.

(6) **INTERCOLLEGIATE SPORT.**—The term “intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of college athletics.

(7) **PROFESSIONAL SPORTS CONTRACT.**—The term “professional sports contract” means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(8) **STATE.**—The term “State” includes a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(9) **STUDENT ATHLETE.**—The term “student athlete” means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

15 USC 7802.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE CONTACT BETWEEN AN ATHLETE AGENT AND A STUDENT ATHLETE.

(a) **CONDUCT PROHIBITED.**—It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) **REQUIRED DISCLOSURE BY ATHLETE AGENTS TO STUDENT ATHLETES.**—

(1) **IN GENERAL.**—In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete’s parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) **SIGNATURE OF STUDENT ATHLETE.**—The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete’s parent or legal guardian, prior to entering into the agency contract.

(3) **REQUIRED LANGUAGE.**—The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete’s parent or legal guardian, a conspicuous notice in boldface type stating: “Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic

event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract.”.

SEC. 4. ENFORCEMENT.

15 USC 7803.

(a) **UNFAIR OR DECEPTIVE ACT OR PRACTICE.**—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) **ACTIONS BY THE COMMISSION.**—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

SEC. 5. ACTIONS BY STATES.

15 USC 7804.

(a) **IN GENERAL.**—

(1) **CIVIL ACTIONS.**—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 3 of this Act, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this Act; or

(C) obtain damage, restitution, or other compensation on behalf of residents of the State.

(2) **NOTICE.**—

(A) **IN GENERAL.**—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) **EXEMPTION.**—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) **INTERVENTION.**—

(1) **IN GENERAL.**—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) **EFFECT OF INTERVENTION.**—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

- (1) conduct investigations;
- (2) administer oaths or affirmations; or
- (3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for a violation of section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(f) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

- (1) is an inhabitant; or
- (2) may be found.

15 USC 7805.

Deadline.

SEC. 6. PROTECTION OF EDUCATIONAL INSTITUTION.

(a) NOTICE REQUIRED.—Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) CIVIL REMEDY.—

(1) IN GENERAL.—An educational institution has a right of action against an athlete agent for damages caused by a violation of this Act.

(2) DAMAGES.—Damages of an educational institution may include and are limited to actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this Act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate actions likely to be imposed by such an association or conference.

(3) COSTS AND ATTORNEYS FEES.—In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) EFFECT ON OTHER RIGHTS, REMEDIES AND DEFENSES.—This section does not restrict the rights, remedies, or defenses of any person under law or equity.

15 USC 7806.

SEC. 7. LIMITATION.

Nothing in this Act shall be construed to prohibit an individual from seeking any remedies available under existing Federal or State law or equity.

SEC. 8. SENSE OF CONGRESS.

15 USC 7807.

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

Approved September 24, 2004.

LEGISLATIVE HISTORY—H.R. 361:

HOUSE REPORTS: No. 108–24, Pt. 1 (Comm. on Energy and Commerce) and Pt. 2 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 149 (2003): June 4, considered and passed House.
Vol. 150 (2004): Sept. 9, considered and passed Senate.



Public Law 108–305
108th Congress

An Act

Sept. 24, 2004
[H.R. 3908]

To provide for the conveyance of the real property located at 1081 West Main Street in Ravenna, Ohio.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LAND CONVEYANCE.

The Secretary of Labor shall convey, without charge or consideration, to Portage County, Ohio, all right, title, and interest of the United States (including all Federal equity) in and to the parcel of real property located at 1081 West Main Street in Ravenna, Ohio, to the extent such right, title, or interest was acquired through grants to the State of Ohio under title III of the Social Security Act (42 U.S.C. 501 et seq.) or the Wagner-Peyser Act (29 U.S.C. 49 et seq.) or through funds distributed to the State of Ohio under section 903 of the Social Security Act (42 U.S.C. 1103).

Approved September 24, 2004.

LEGISLATIVE HISTORY—H.R. 3908:

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 2, considered and passed House.

Sept. 10, considered and passed Senate.



Public Law 108–306
108th Congress

An Act

To provide an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through September 30, 2004, and for other purposes.

Sept. 24, 2004
[H.R. 5008]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF PROGRAMS
UNDER SMALL BUSINESS ACT AND SMALL BUSINESS
INVESTMENT ACT OF 1958.**

The authorization for any program, authority, or provision, including any pilot program, that was extended through June 4, 2004, by section 1 of Public Law 108–217 is further extended through September 30, 2004, under the same terms and conditions.

Ante, p. 591.

SEC. 2. TECHNICAL AMENDMENT.

Section 2 of Public Law 108–205 is amended by striking “October 1, 2003” and inserting “March 15, 2004”. The amendment made by the preceding sentence shall take effect as if included in the enactment of the section to which it relates.

Ante, p. 553.

SEC. 3. COMPENSATION OF AGENTS.

Section 5 of the Small Business Act (15 U.S.C. 634) is amended—

(1) in subsection (g)(4), by adding at the end the following:

“(C) The Administration may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under section 7(a)(23). The agent may receive, as compensation for services, any interest earned on the fee while in the control of the agent before the time at which the agent is contractually required to remit the fee to the Administration.”; and

(2) in subsection (h)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

“(2) The agent described in paragraph (1)(B) may be compensated through any of the fees assessed under this section and any interest earned on any funds collected by the agent while such funds are in the control of the agent and before the time at which the agent is contractually required to transfer

such funds to the Administration or to the holders of the trust certificates, as appropriate.”.

Approved September 24, 2004.

LEGISLATIVE HISTORY—H.R. 5008:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 13, considered and passed House.
Sept. 14, considered and passed Senate.



Public Law 108–307
108th Congress

An Act

To revise the boundary of Harpers Ferry National Historical Park, and for other purposes.

Sept. 24, 2004
[S. 1576]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Harpers Ferry National Historical Park Boundary Revision Act of 2004”.

SEC. 2. HARPERS FERRY NATIONAL HISTORICAL PARK.

The first section of the Act of June 30, 1944 (58 Stat. 645, chapter 328; 16 U.S.C. 450bb), is amended to read as follows:

“SECTION 1. HARPERS FERRY NATIONAL HISTORICAL PARK.

“(a) IN GENERAL.—To carry out the purposes of this Act, the Secretary of the Interior (referred to in this Act as the ‘Secretary’) is authorized to acquire, by purchase from a willing seller with donated or appropriated funds, by donation, or by exchange, land or an interest in land within the boundaries as generally depicted on the map entitled ‘Boundary Map, Harpers Ferry National Historical Park’, numbered 385–80,021A, and dated April 1979.

“(b) BRADLEY AND RUTH NASH ADDITION.—The Secretary is authorized to acquire, by donation only, approximately 27 acres of land or interests in land that are outside the boundary of the Harpers Ferry National Historical Park and generally depicted on the map entitled ‘Proposed Bradley and Ruth Nash Addition—Harpers Ferry National Historical Park’, numbered 385–80056, and dated April 1, 1989.

“(c) BOUNDARY EXPANSION.—

“(1) IN GENERAL.—The Secretary is authorized to acquire, by purchase from a willing seller with donated or appropriated funds, by donation, or by exchange, land or an interest in land within the area depicted as ‘Private Lands’ on the map entitled ‘Harpers Ferry National Historical Park Proposed Boundary Expansion’, numbered 385/80,126, and dated July 14, 2003.

“(2) ADMINISTRATION.—The Secretary shall—

“(A) transfer to the National Park Service for inclusion in the Harpers Ferry National Historical Park (referred to in this Act as the ‘Park’) the land depicted on the map referred to in paragraph (1) as ‘U.S. Fish and Wildlife Service Lands’ and revise the boundary of the Park accordingly; and

Harpers Ferry
National
Historical Park
Boundary
Revision Act
of 2004.
West Virginia.
16 USC 450bb
note.

“(B) revise the boundary of the Park to include the land depicted on the map referred to in paragraph (1) as ‘Appalachian NST’ and exclude that land from the boundary of the Appalachian National Scenic Trail.

“(d) MAXIMUM NUMBER OF ACRES.—The number of acres of the Park shall not exceed 3,745.

“(e) MAPS.—The maps referred to in this section shall be on file and available for public inspection in the appropriate offices of the National Park Service.

“(f) ACQUIRED LAND.—Land or an interest in land acquired under this section shall become a part of the Park, subject to the laws (including regulations) applicable to the Park.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.”.

SEC. 3. CONFORMING AMENDMENTS.

Sections 2 and 3 of the Act of June 30, 1944 (58 Stat. 646, chapter 328; 16 U.S.C. 450bb–1, 450bb–2), are amended by striking “Secretary of the Interior” each place it appears and inserting “Secretary”.

Approved September 24, 2004.

LEGISLATIVE HISTORY—S. 1576:

HOUSE REPORTS: No. 108–655 (Comm. on Resources).

SENATE REPORTS: No. 108–236 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 19, considered and passed Senate.

Sept. 13, considered and passed House.



Public Law 108–308
108th Congress

An Act

To reauthorize the Temporary Assistance for Needy Families block grant program through March 31, 2005, and for other purposes.

Sept. 30, 2004
[H.R. 5149]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Welfare Reform Extension Act, Part VIII”.

Welfare Reform
Extension Act,
Part VIII.
42 USC 1305
note.

SEC. 2. EXTENSION OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT PROGRAM THROUGH MARCH 31, 2005.

(a) **IN GENERAL.**—Activities authorized by part A of title IV of the Social Security Act, and by sections 510, 1108(b), and 1925 of such Act, shall continue through March 31, 2005, in the manner authorized for fiscal year 2004, notwithstanding section 1902(e)(1)(A) of such Act, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the second quarter of fiscal year 2005 at the level provided for such activities through the second quarter of fiscal year 2004.

(b) **CONFORMING AMENDMENTS.**—

(1) **SUPPLEMENTAL GRANTS FOR POPULATION INCREASES IN CERTAIN STATES.**—Section 403(a)(3)(H)(ii) of the Social Security Act (42 U.S.C. 603(a)(3)(H)(ii)) is amended by striking “September 30, 2004” and inserting “March 31, 2005”.

(2) **CONTINGENCY FUND.**—Section 403(b)(3)(C)(ii) of such Act (42 U.S.C. 603(b)(3)(C)(ii)) is amended by striking “2004” and inserting “2005”.

(3) **MAINTENANCE OF EFFORT.**—Section 409(a)(7) of such Act (42 U.S.C. 609(a)(7)) is amended—

(A) in subparagraph (A), by striking “or 2005” and inserting “2005, or 2006”; and

(B) in subparagraph (B)(ii), by striking “2004” and inserting “2005”.

SEC. 3. EXTENSION OF THE NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE AND CHILD WELFARE WAIVER AUTHORITY THROUGH MARCH 31, 2005.

Activities authorized by sections 429A and 1130(a) of the Social Security Act shall continue through March 31, 2005, in the manner authorized for fiscal year 2004, and out of any money in the Treasury of the United States not otherwise appropriated, there

are hereby appropriated such sums as may be necessary for such purpose. Grants and payments may be made pursuant to this authority through the second quarter of fiscal year 2005 at the level provided for such activities through the second quarter of fiscal year 2004.

Approved September 30, 2004.

LEGISLATIVE HISTORY—H.R. 5149:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 29 considered in House.

Sept. 30, considered and passed House and Senate.



Public Law 108–309
108th Congress

Joint Resolution

Making continuing appropriations for the fiscal year 2005, and for other purposes.

Sept. 30, 2004
[H.J. Res. 107]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for fiscal year 2005, and for other purposes, namely:

SEC. 101. Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for fiscal year 2004 for continuing projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this joint resolution) which were conducted in fiscal year 2004, at a rate for operations not exceeding the current rate, and for which appropriations, funds, or other authority was made available in the following appropriations Acts:

(1) The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2004.

(2) The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004, notwithstanding section 15 of the State Department Basic Authorities Act of 1956, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

(3) The District of Columbia Appropriations Act, 2004.

(4) The Energy and Water Development Appropriations Act, 2004, notwithstanding section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

(5) The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, notwithstanding section 10 of Public Law 91–672 and section 15 of the State Department Basic Authorities Act of 1956.

(6) The Department of Homeland Security Appropriations Act, 2004.

(7) The Department of the Interior and Related Agencies Appropriations Act, 2004.

(8) The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004.

(9) The Legislative Branch Appropriations Act, 2004.

(10) The Military Construction Appropriations Act, 2004.

(11) The Transportation, Treasury, and Independent Agencies Appropriations Act, 2004.

(12) The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004.

SEC. 102. Appropriations made by section 101 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 103. The appropriations Acts listed in section 101 shall be deemed to include miscellaneous and supplemental appropriation laws enacted during fiscal year 2004.

SEC. 104. No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during fiscal year 2004.

SEC. 105. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 106. Activities authorized for 2004 by sections 1902(a)(10)(E)(iv) and 1933 of the Social Security Act shall continue through the date specified in section 107(c) of this joint resolution: *Provided*, That for purposes of the budget scoring guidance in effect for the Congress and the Executive branch respectively, and notwithstanding rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105-217, the provisions of this section shall be deemed to be direct spending.

Expiration date.

SEC. 107. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) November 20, 2004, whichever first occurs.

SEC. 108. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 109. Appropriations and funds made available by or authority granted pursuant to this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 110. Notwithstanding any other provision of this joint resolution, except section 107, for those programs that had high initial rates of operation or complete distribution of fiscal year 2004 appropriations at the beginning of that fiscal year because of distributions of funding to States, foreign countries, grantees or others, similar distributions of funds for fiscal year 2005 shall not be made and no grants shall be awarded for such programs funded by this resolution that would impinge on final funding prerogatives.

SEC. 111. This joint resolution shall be implemented so that only the most limited funding action of that permitted in the joint

resolution shall be taken in order to provide for continuation of projects and activities.

SEC. 112. Activities authorized by section 403(f) of Public Law 103–356, as amended by section 632 of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (Public Law 108–199, division F), and activities authorized under the heading “Treasury Franchise Fund” in the Treasury Department Appropriations Act, 1997 (Public Law 104–208, division A, section 101(f)), as amended by section 123 of the Treasury Department Appropriations Act, 2003 (Public Law 108–7, division J), may continue through the date specified in section 107(c) of this joint resolution.

SEC. 113. The authority provided by section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1723) shall continue in effect through the date specified in section 107(c) of this joint resolution: *Provided*, That such authority shall not be available until after the date on which the Secretary of Defense submits all of the quarterly reports required for fiscal year 2004 under subsection (d) of such section 2808.

Reports.

SEC. 114. Notwithstanding any other provision of this joint resolution, except sections 107 and 108, amounts are made available for the Strategic National Stockpile (“SNS”) at a rate for operations not exceeding the lower of the amount which would be made available under H.R. 5006, as passed by the House of Representatives on September 9, 2004, or S. 2810, as reported by the Committee on Appropriations of the Senate on September 15, 2004: *Provided*, That no funds shall be made available for the SNS to the Department of Homeland Security under this joint resolution: *Provided further*, That amounts made available to the Department of Homeland Security under this joint resolution are reduced by the amount otherwise attributable to funding for the SNS: *Provided further*, That the terms and conditions of H.R. 5006 shall apply to funds made available under this section.

Applicability.

SEC. 115. Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) shall be applied by substituting the date specified in section 107(c) of this joint resolution for “October 1, 2004”.

Applicability.

SEC. 116. The authorities provided by sections 344, 1023, and 1306 of Public Law 108–136, sections 1318 and 1319 of Public Law 108–11, and section 302j(a) of title 37, United States Code, shall continue in effect through the date specified in section 107(c) of this joint resolution or the date of enactment into law of a defense authorization Act for fiscal year 2005, whichever is earlier.

SEC. 117. Section 6 of Public Law 107–57, as amended by section 2213 of Public Law 108–106, shall be applied by substituting the date specified in section 107(c) of this joint resolution for “October 1, 2004”, and sections 508 and 512 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (Public Law 108–199, division D), as made applicable to fiscal year 2005 by the provisions of this joint resolution, shall not apply with respect to Pakistan through the date specified in section 107(c) of this joint resolution.

Applicability.

SEC. 118. Programs, activities, eligibility requirements, and advisory committees authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) through fiscal year 2004, shall

	<p>remain in effect through the date specified in section 107(c) of this joint resolution.</p>
Applicability.	<p>SEC. 119. (a) Section 616(d) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (Public Law 108–199, division D) shall apply to funds made available by this joint resolution pursuant to section 619(a) of such Act: <i>Provided</i>, That for purposes of funds made available by this joint resolution that are used to carry out section 616(d) of such Act, a candidate country is a country that satisfies the requirements of subparagraphs (A) and (B) of section 606(a)(2) of such Act.</p>
Applicability.	<p>SEC. 120. Notwithstanding any other provision of this joint resolution, except section 107, the District of Columbia may expend local funds for programs and activities under the heading, “District of Columbia Funds—Operating Expenses” at the rate set forth for such programs and activities under title II of H.R. 4850 of the 108th Congress, as passed by the House of Representatives: <i>Provided</i>, That section 2302 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11) shall be applied by substituting the date specified in section 107(c) of this joint resolution for “September 30, 2004”.</p>
Termination date. Government organization.	<p>SEC. 121. Section 1302 of the Panama Canal Act of 1979 (22 U.S.C. 3712) is amended by adding the following new subsection at the end:</p> <p>“(e)(1) The Panama Canal Commission and the Office of Transition Administration (described in section 3504 of Public Law 106–65) shall terminate on October 1, 2004.</p> <p>“(2) Upon termination pursuant to paragraph (1), the Panama Canal Revolving Fund shall be transferred to the General Services Administration (GSA). GSA shall use the amounts in the Fund to make payments of any outstanding liabilities of the Commission, as well as any expenses associated with the termination of the Office of Transition Administration and the Commission. The fund shall be the exclusive source available for payment of any outstanding liabilities of the Commission.”.</p> <p>SEC. 122. (a) Notwithstanding any other provision of law or of this joint resolution, except section 107, such amounts as may be necessary for administrative expenses of the following operating administrations shall be available to the Secretary of Transportation out of the Highway Trust Fund (other than the Mass Transit Account) at a rate for operations not exceeding the current rate and for which authority was made available under the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004:</p> <ol style="list-style-type: none"> (1) Federal Highway Administration, for purposes described in 23 U.S.C. 104(a)(1)(A); (2) Bureau of Transportation Statistics, in accordance with 49 U.S.C. 111; (3) National Highway Traffic Safety Administration, in accordance with chapter 301 of title 49, United States Code, and part C of subtitle VI of title 49, United States Code; (4) National Highway Traffic Safety Administration, in accordance with 23 U.S.C. 402, 403, 405, 410 and chapter 303 of title 49, United States Code; and (5) Federal Motor Carrier Safety Administration, for purposes described in 23 U.S.C. 104(a)(1)(B): <p><i>Provided</i>, That funds authorized under this subsection shall be available for obligation in the same manner as if the funds were</p>

apportioned under chapter 1 of title 23, United States Code: *Provided further*, That paragraphs (1), (2), and (3) of this subsection shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs.

(b) Notwithstanding any other provision of law or of this joint resolution, except section 107, such amounts as may be necessary for administrative expenses of the Federal Transit Administration, in accordance with the Federal Transit Administration's programs authorized by chapter 53 of title 49, United States Code, shall be available to the Secretary of Transportation out of the Mass Transit Account of the Highway Trust Fund at a rate for operations not exceeding the current rate and for which authority was made available under the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004: *Provided*, That funds authorized under this subsection shall be available for obligation in the same manner provided under section 5338(g) of title 49, United States Code.

(c) Notwithstanding any other provision of law or of this joint resolution, except section 107, such amounts as may be necessary for the Federal Motor Carrier Safety Administration to make grants to and enter into contracts with States for personnel costs for implementation of 49 U.S.C. 31102, commercial driver's license program improvements, border enforcement operations, and section 210 of Public Law 106–159 shall be available to the Secretary of Transportation out of the Highway Trust Fund (other than the Mass Transit Account) at a rate not exceeding the current rate and for which authority was made available under the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004: *Provided*, That funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code and shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs.

(d) For purposes of the budget scoring guidance in effect for the Congress and the Executive branch respectively, and notwithstanding rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105–217, the provisions of subsections (a), (b), and (c) with regard to contract authority shall be deemed to be direct spending.

(e) Notwithstanding any other provision of law, amounts shall continue to be appropriated or credited to the Highway Trust Fund after the date of any expenditure pursuant to this joint resolution.

SEC. 123. Notwithstanding any other provision of law, the Overseas Private Investment Corporation is authorized to undertake any program authorized by title IV of the Foreign Assistance Act of 1961 in Iraq, subject to the regular notification procedures of the Committees on Appropriations, through the date specified in section 107(c) of this joint resolution.

SEC. 124. Notwithstanding any other provision of this joint resolution, and notwithstanding the language in the paragraph under the heading "Housing for Persons With Disabilities" in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004, the Secretary of Housing and Urban Development shall make \$14,610,000 from amounts appropriated under such heading in fiscal year 2004 available for amendments to existing tenant-based

Contracts.

Applicability.

assistance contracts entered into prior to fiscal year 2004 pursuant to section 811 of the Cranston-Gonzalez National Affordable Housing Act (with only one amendment authorized for any such contract).

SEC. 125. Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) shall be applied by substituting the date specified in section 107(c) of this joint resolution for “September 30, 2004”.

SEC. 126. For entitlements and other mandatory payments whose budget authority was provided in appropriations Acts for fiscal year 2004, and for activities under the Food Stamp Act of 1977, activities shall be continued at the rate to maintain program levels under current law, under the authority and conditions provided in the applicable appropriations Act for fiscal year 2004, to be continued through the date specified in section 107(c): *Provided*, That notwithstanding section 107, funds shall be available and obligations for mandatory payments due on or about November 1 and December 1, 2004, may continue to be made.

SEC. 127. Notwithstanding section 101 of this joint resolution, amounts are provided for “Special Supplemental Nutrition Program for Women, Infants and Children (WIC),” at a rate for operations not to exceed \$5,087,000,000.

SEC. 128. Notwithstanding section 101 of this joint resolution, amounts are provided for “Election Assistance Commission—Salaries and Expenses”, at a rate for operations not to exceed \$7,800,000: *Provided*, That such amounts may be apportioned to reflect the agency activities associated with a Federal election.

SEC. 129. Funds available under this joint resolution for “Bureau of Indian Affairs—Indian Land and Water Claims Settlements and Miscellaneous Payments to Indians” shall be available for payments by the United States pursuant to the settlement of *Seneca Nation of Indians v. State of New York*.

SEC. 130. Amounts available under this joint resolution to carry out subtitle D of title XXXVI of Public Law 106–398 shall be deemed to include transfers of funds from other accounts made during fiscal year 2004 to carry out the purposes of the subtitle and the amounts available under this joint resolution for the accounts from which funds were transferred shall be adjusted for the transfer.

SEC. 131. For the purposes of the Ricky Ray Hemophilia Relief Fund Act of 1998 (Public Law 105–369), the term “expended” in section 101(d) of such Act and the term “payment” in section 103 of such Act shall mean “delivered orders-obligations unpaid” as defined in the United States Standard General Ledger Accounts and Definitions.

SEC. 132. Notwithstanding any other provision of this joint resolution, except section 108, for expenses necessary to carry out the Presidential Transition Act of 1963, \$2,500,000.

117 Stat. 1225.

SEC. 133. Title II of Public Law 108–106 is amended under the heading “Iraq Relief and Reconstruction Fund” by—

(1) striking “\$3,243,000,000” and inserting “\$5,090,000,000” for security and law enforcement;

(2) striking “\$1,318,000,000” and inserting “\$1,960,000,000” for justice, public safety infrastructure, and civil society;

(3) striking “\$5,560,000,000” and inserting “\$4,455,000,000” for the electric sector;

(4) striking “\$1,890,000,000” and inserting “\$1,723,000,000” for oil infrastructure;

(5) striking “\$4,332,000,000” and inserting “\$2,361,000,000” for water resources and sanitation;

(6) striking “\$153,000,000” and inserting “\$845,000,000” for private sector development; and

(7) striking “\$280,000,000” and inserting “\$342,000,000” for education, refugees, human rights and governance.

SEC. 134. Title II of Public Law 108–106 is amended under the heading “Iraq Relief and Reconstruction Fund”—

117 Stat. 1225.

(1) in the sixth proviso, by striking “\$29,000,000” and inserting “\$119,000,000”; and

(2) in the seventh proviso by—

(A) striking “Coalition Provisional Authority” and inserting “United States Agency for International Development”; and

(B) striking “to fully pay for its” and inserting “for”.

SEC. 135. Sections 569 and 574 of H.R. 4818, as passed by the House of Representatives on July 15, 2004, are hereby enacted into law: *Provided*, That not to exceed \$360,000,000 of the funds made available by Public Law 108–106 under the heading “Iraq Relief and Reconstruction Fund” may be made available for the purposes of such section 569.

Enactment by
reference.
22 USC 2151
note.

SEC. 136. During the portion of fiscal year 2005 covered by this joint resolution, the Corps of Engineers shall continue work on all uncompleted projects underway in fiscal year 2004, notwithstanding budget proposals to withhold funding for shore protection and certain construction projects, and shall not divert funds into any reserve fund not specifically authorized by an Act of Congress.

Approved September 30, 2004.

LEGISLATIVE HISTORY—H.J. Res. 107:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 29, considered and passed House and Senate.



Public Law 108–310
108th Congress

An Act

Sept. 30, 2004
[H.R. 5183]

To provide an extension of highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century.

Surface
Transportation
Extension Act of
2004, Part V.
23 USC 101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Surface Transportation Extension Act of 2004, Part V”.

23 USC 104 note.

SEC. 2. ADVANCES.

(a) IN GENERAL.—

(1) APPORTIONMENT RATIO.—Except as provided in paragraph (2), the Secretary of Transportation shall apportion funds made available under section 1101(l) of the Transportation Equity Act for the 21st Century (112 Stat. 111; 118 Stat. 876), as amended by this section, to each State in the ratio that—

(A) the State’s total fiscal year 2004 obligation authority for funds apportioned for the Federal-aid highway program; bears to

(B) all States’ total fiscal year 2004 obligation authority for funds apportioned for the Federal-aid highway program.

(2) EXCEPTION.—The ratios determined under this subsection shall be subject to the same adjustments as the adjustments made under section 105(f) of title 23, United States Code.

(b) PROGRAMMATIC DISTRIBUTIONS.—

(1) PROGRAMS.—Of the funds to be apportioned to each State under subsection (a), the Secretary shall ensure that the State is apportioned an amount of the funds, determined under paragraph (2), for the Interstate maintenance program, the National Highway System program, the bridge program, the surface transportation program, the congestion mitigation and air quality improvement program, the recreational trails program, the Appalachian development highway system program, and the minimum guarantee.

(2) IN GENERAL.—The amount that each State shall be apportioned under this subsection for each item referred to in paragraph (1) shall be determined by multiplying—

(A) the amount apportioned to the State under subsection (a); by

(B) the ratio that—

(i) the amount of funds apportioned for the item to the State for fiscal year 2004; bears to

(ii) the total of the amount of funds apportioned for the items to the State for fiscal year 2004.

(3) ADMINISTRATION OF FUNDS.—Funds authorized by the amendment made under subsection (d) shall be administered as if the funds had been apportioned, allocated, deducted, or set aside, as the case may be, under title 23, United States Code; except that the deductions and set-asides in the following sections of such title shall not apply to such funds: sections 104(a)(1)(A), 104(a)(1)(B), 104(b)(1)(A), 104(d)(1), 104(d)(2), 104(f)(1), 104(h)(1), 118(c)(1), 140(b), 140(c), and 144(g)(1).

(4) SPECIAL RULES FOR MINIMUM GUARANTEE.—In carrying out the minimum guarantee under section 105(c) of title 23, United States Code, with funds apportioned under this section for the minimum guarantee, the \$2,800,000,000 set forth in paragraph (1) of such section 105(c) shall be treated as being \$1,866,666,667 and the aggregate of amounts apportioned to the States under this section for the minimum guarantee shall be treated, for purposes of such section 105(c), as amounts made available under section 105 of such title.

(5) EXTENSION OF OFF-SYSTEM BRIDGE SETASIDE.—Section 144(g)(3) of title 23, United States Code, is amended by inserting after “2004” the following: “and in the period of October 1, 2004, through May 31, 2005.”.

(c) REPAYMENT FROM FUTURE APPORTIONMENTS.—

(1) IN GENERAL.—The Secretary shall reduce the amount that would be apportioned, but for this section, to a State for programs under chapter 1 of title 23, United States Code, for fiscal year 2005, under a multiyear law reauthorizing the Federal-aid highway program enacted after the date of enactment of this Act by the amount that is apportioned to each State under subsection (a) and section 5(c) for each such program.

(2) PROGRAM CATEGORY RECONCILIATION.—The Secretary may establish procedures under which funds apportioned under subsection (a) for a program category for which funds are not authorized under a law described in paragraph (1) may be restored to the Federal-aid highway program.

(d) AUTHORIZATION OF CONTRACT AUTHORITY.—Section 1101 of the Transportation Equity Act for the 21st Century (112 Stat. 111–115; 117 Stat. 1118; 118 Stat. 876) is amended by adding at the end the following:

“(1) ADVANCE AUTHORIZATION FOR FISCAL YEAR 2005.—

“(1) IN GENERAL.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 2(a) of the Surface Transportation Extension Act of 2004, Part V \$22,685,936,000 for the period of October 1, 2004, through May 31, 2005.

“(2) SPECIAL RULE.—Funds apportioned under section 2(a) of the Surface Transportation Extension Act of 2004, Part V shall be subject to a limitation on obligations for Federal-aid highways and highway safety construction programs.

“(3) CONTRACT AUTHORITY.—Funds made available by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.”.

(e) LIMITATION ON OBLIGATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), upon enactment of an Act making appropriations for the Department of Transportation for fiscal year 2005 (other than an Act or resolution making continuing appropriations), the Secretary shall distribute $\frac{8}{12}$ of the obligation limitation for Federal-aid highways and highway safety construction programs provided by such Act according to the provisions of such Act.

(2) EXCEPTIONS.—

(A) DETERMINATION OF AMOUNTS.—Any instruction in such Act that would require the distribution or reservation of obligation limitation prior to distributing the remainder of the obligation limitation to the States shall be executed as if the program, project, or activity for which obligation limitation is so distributed or reserved was authorized at an amount equivalent to the greater of—

(i) the amount authorized for such program, project, or activity in this Act; or

(ii) $\frac{8}{12}$ of the amount provided for or limitation set on such program, project, or activity in the Act making appropriations for the Department of Transportation for fiscal year 2005.

(B) MINIMUM GUARANTEE.—Obligations for the period October 1, 2004, through May 31, 2005, shall not exceed the obligation limitation distributed by this subsection, except that this limitation shall not apply to \$426,000,000 in obligations for minimum guarantee for such period.

(3) TIME PERIOD FOR OBLIGATIONS.—After May 31, 2005, no funds shall be obligated for any Federal-aid highway program project until the date of enactment of a multiyear law reauthorizing the Federal-aid highway program enacted after the date of enactment of this Act.

(4) TREATMENT OF OBLIGATIONS.—Any obligation of obligation authority distributed under this subsection shall be considered to be an obligation for Federal-aid highways and highway safety construction programs for fiscal year 2005 for the purposes of any obligation limitation set in an Act making appropriations for the Department of Transportation for fiscal year 2005.

SEC. 3. TRANSFERS OF UNOBLIGATED APPORTIONMENTS.

(a) IN GENERAL.—In addition to any other authority of a State to transfer funds, for fiscal year 2005, a State may transfer any funds apportioned to the State for any program under section 104(b) (including amounts apportioned under section 104(b)(3) or set aside, made available, or suballocated under section 133(d)) or section 144 of title 23, United States Code, before, on, or after the date of enactment of this Act, that are subject to any limitation on obligations, and that are not obligated, to any other of those programs.

(b) TREATMENT OF TRANSFERRED FUNDS.—Any funds transferred to another program under subsection (a) shall be subject to the provisions of the program to which the funds are transferred, except that funds transferred to a program under section 133 (other than subsections (d)(1) and (d)(2)) of title 23, United States Code, shall not be subject to section 133(d) of that title.

(c) RESTORATION OF APPORTIONMENTS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of a multiyear law reauthorizing the Federal-aid highway program enacted after the date of enactment of this Act, the Secretary of Transportation shall restore any funds that a State transferred under subsection (a) for any project not eligible for the funds but for this section to the program category from which the funds were transferred.

(2) PROGRAM CATEGORY RECONCILIATION.—The Secretary may establish procedures under which funds transferred under subsection (a) from a program category for which funds are not authorized may be restored to the Federal-aid highway program.

(3) LIMITATION ON STATUTORY CONSTRUCTION.—No provision of law, except a statute enacted after the date of enactment of this Act that expressly limits the application of this subsection, shall impair the authority of the Secretary to restore funds pursuant to this subsection.

(d) GUIDANCE.—The Secretary may issue guidance for use in carrying out this section.

(e) PROHIBITION OF TRANSFERS.—Notwithstanding any other provision of this section, no funds may be transferred by a State under subsection (a)—

(1) from amounts apportioned to the State for the congestion mitigation and air quality improvement program; and

(2) from amounts apportioned to the State for the surface transportation program and that are subject to any of paragraphs (1), (2), and (3)(A)(i) of section 133(d) of title 23, United States Code.

SEC. 4. ADMINISTRATIVE EXPENSES.

(a) AUTHORIZATION OF CONTRACT AUTHORITY.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) for administrative expenses of the Federal-aid highway program \$234,682,667 for fiscal year 2005.

(b) CONTRACT AUTHORITY.—Funds made available by this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, and shall be subject to a limitation on obligations for Federal-aid highways and highway safety construction programs; except that such funds shall remain available until expended.

SEC. 5. OTHER FEDERAL-AID HIGHWAY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE I OF TEA21.—

(1) FEDERAL LANDS HIGHWAYS.—

(A) INDIAN RESERVATION ROADS.—Section 1101(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112; 118 Stat. 877) is amended—

(i) by inserting before the period at the end the following: “and \$183,333,333 for the period of October 1, 2004, through May 31, 2005”; and

(ii) by adding at the end the following: “The minimum amount made available for such period that the Secretary, in cooperation with the Secretary of the Interior, shall reserve for Indian reservation road bridges under section 202(d)(4) of title 23, United States Code, shall be \$8,666,667 instead of \$13,000,000.”.

(B) PUBLIC LANDS HIGHWAYS.—Section 1101(a)(8)(B) of such Act (112 Stat. 112; 118 Stat. 878) is amended by inserting before the period at the end the following: “and \$164,000,000 for the period of October 1, 2004, through May 31, 2005”.

(C) PARK ROADS AND PARKWAYS.—Section 1101(a)(8)(C) of such Act (112 Stat. 112; 118 Stat. 878) is amended by inserting before the period at the end the following: “and \$110,000,000 for the period of October 1, 2004, through May 31, 2005”.

(D) REFUGE ROADS.—Section 1101(a)(8)(D) of such Act (112 Stat. 112; 118 Stat. 878) is amended by inserting before the period at the end the following: “and \$13,333,333 for the period of October 1, 2004, through May 31, 2005”.

(2) NATIONAL CORRIDOR PLANNING AND DEVELOPMENT AND COORDINATED BORDER INFRASTRUCTURE PROGRAMS.—Section 1101(a)(9) of such Act (112 Stat. 112; 118 Stat. 878) is amended by inserting before the period at the end the following: “and \$93,333,333 for the period of October 1, 2004, through May 31, 2005”.

(3) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—

(A) IN GENERAL.—Section 1101(a)(10) of such Act (112 Stat. 113; 118 Stat. 878) is amended by inserting before the period at the end the following: “and \$25,333,333 for the period of October 1, 2004, through May 31, 2005”.

(B) SET ASIDE FOR ALASKA, NEW JERSEY, AND WASHINGTON.—To carry out section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 129 note; 105 Stat. 2005; 112 Stat. 185; 118 Stat. 878), of funds made available by the amendment made by subparagraph (A)—

(i) \$6,666,667 shall be available for section 1064(d)(2);

(ii) \$3,333,333 shall be available for section 1064(d)(3); and

(iii) \$3,333,333 shall be available for section 1064(d)(4).

(4) NATIONAL SCENIC BYWAYS PROGRAM.—Section 1101(a)(11) of the Transportation Equity Act for the 21st Century (112 Stat. 113; 118 Stat. 878) is amended—

(A) by striking “and” the last place it appears; and

(B) by inserting before the period at the end the following: “, and \$17,666,667 for the period of October 1, 2004, through May 31, 2005”.

(5) VALUE PRICING PILOT PROGRAM.—Section 1101(a)(12) of such Act (112 Stat. 113; 118 Stat. 878) is amended by inserting before the period at the end the following: “, and \$7,333,333 for the period of October 1, 2004, through May 31, 2005”.

(6) HIGHWAY USE TAX EVASION PROJECTS.—Section 1101(a)(14) of such Act (112 Stat. 113; 118 Stat. 878) is amended by inserting before the period at the end the following: “and \$3,333,333 for the period of October 1, 2004, through May 31, 2005”.

(7) COMMONWEALTH OF PUERTO RICO HIGHWAY PROGRAM.—

(A) IN GENERAL.—Section 1101(a)(15) of such Act (112 Stat. 113; 118 Stat. 879) is amended by inserting before the period at the end the following: “and \$73,333,333 for the period of October 1, 2004, through May 31, 2005”.

(B) CONFORMING AMENDMENT.—Section 1214(r)(1) of such Act (112 Stat. 209; 117 Stat. 1114) is amended by striking “2004” and inserting “2005”.

(8) SAFETY GRANTS.—Section 1212(i)(1)(D) of such Act (23 U.S.C. 402 note; 112 Stat. 196; 112 Stat. 840; 118 Stat. 879) is amended by inserting before the period at the end the following: “and \$333,333 for the period of October 1, 2004, through May 31, 2005”.

(9) TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PILOT PROGRAM.—Section 1221(e)(1) of such Act (23 U.S.C. 101 note; 112 Stat. 223; 118 Stat. 879) is amended by inserting before the period at the end the following: “and \$16,666,667 for the period of October 1, 2004, through May 31, 2005”.

(10) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION.—Section 188 of title 23, United States Code, is amended—

(A) in subsection (a)(1)—

(i) by striking “and” at the end of subparagraph (E);

(ii) by striking the period at the end of subparagraph (F) and inserting “; and”; and

(iii) by adding at the end the following:

“(G) \$86,666,667 for the period of October 1, 2004, through May 31, 2005.”;

(B) in subsection (a)(2) by inserting after “2004” the following: “and \$1,333,333 for the period of October 1, 2004, through May 31, 2005”; and

(C) in subsection (c)—

(i) by striking “2004” and inserting “2005”; and

(ii) by striking the period at the end of the table and inserting the following:

“2005\$1,733,333,333.”.

(11) NATIONAL SCENIC BYWAYS CLEARINGHOUSE.—Section 1215(b)(3) of the Transportation Equity Act of the 21st Century (112 Stat. 210) is amended by inserting before the period at the end “and \$1,000,000 for the period of October 1, 2004, through May 31, 2005”.

(b) AUTHORIZATION OF APPROPRIATIONS UNDER TITLE V OF TEA21.—

(1) SURFACE TRANSPORTATION RESEARCH.—Section 5001(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 419; 118 Stat. 879) is amended—

(A) by striking “2003, and” and inserting “2003,”; and

(B) by inserting after “2004” the following: “, and \$68,666,667 for the period of October 1, 2004, through May 31, 2005”.

(2) TECHNOLOGY DEPLOYMENT PROGRAM.—Section 5001(a)(2) of such Act (112 Stat. 419; 118 Stat. 879) is amended—

(A) by striking “2003, and” and inserting “2003,”; and

(B) by inserting after “2004” the following: “, and \$33,333,333 for the period of October 1, 2004, through May 31, 2005”.

(3) TRAINING AND EDUCATION.—Section 5001(a)(3) of such Act (112 Stat. 420; 118 Stat. 879) is amended—

(A) by striking “2003, and” and inserting “2003,”; and

(B) by inserting after “2004” the following: “, and \$13,333,333 for the period of October 1, 2004, through May 31, 2005”.

(4) BUREAU OF TRANSPORTATION STATISTICS.—Section 5001(a)(4) of such Act (112 Stat. 420; 118 Stat. 879) is amended by inserting before the period at the end the following: “, and \$20,666,667 for the period of October 1, 2004, through May 31, 2005”.

(5) ITS STANDARDS, RESEARCH, OPERATIONAL TESTS, AND DEVELOPMENT.—Section 5001(a)(5) of such Act (112 Stat. 420; 118 Stat. 879) is amended—

(A) by striking “2003, and” and inserting “2003,”; and

(B) by inserting after “2004” the following: “, and \$73,333,333 for the period of October 1, 2004, through May 31, 2005”.

(6) ITS DEPLOYMENT.—Section 5001(a)(6) of such Act (112 Stat. 420; 118 Stat. 880) is amended—

(A) by striking “2003, and” and inserting “2003,”; and

(B) by inserting after “2004” the following: “, and \$81,333,333 for the period of October 1, 2004, through May 31, 2005”.

(7) UNIVERSITY TRANSPORTATION RESEARCH.—Section 5001(a)(7) of such Act (112 Stat. 420; 118 Stat. 880) is amended—

(A) by striking “2003, and” and inserting “2003,”; and

(B) by inserting after “2004” the following: “, and \$17,666,667 for the period of October 1, 2004, through May 31, 2005”.

(c) METROPOLITAN PLANNING.—

(1) AUTHORIZATION OF CONTRACT AUTHORITY.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 134 of title 23, United States Code, \$145,000,000 for the period of October 1, 2004, through May 31, 2005.

(2) DISTRIBUTION OF FUNDS.—The Secretary shall distribute funds made available by this subsection to the States in accordance with section 104(f)(2) of title 23, United States Code.

(3) CONTRACT AUTHORITY.—Funds made available by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, and shall be subject to a limitation on obligations for Federal-aid highways and highway safety construction programs.

(d) TERRITORIES.—Section 1101(d)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 111–115; 117 Stat. 1116; 118 Stat. 880) is amended by inserting after “2004” the following: “and \$24,266,667 for the period of October 1, 2004, through May 31, 2005”.

(e) ALASKA HIGHWAY.—Section 1101(e)(1) of such Act (117 Stat. 1116; 118 Stat. 880) is amended by inserting after “2004” the

following: “and \$12,533,333 for the period of October 1, 2004, through May 31, 2005”.

(f) OPERATION LIFESAVER.—Section 1101(f)(1) of such Act (117 Stat. 1117; 118 Stat. 880) is amended by inserting after “2004” the following: “and \$333,333 for the period of October 1, 2004, through May 31, 2005”.

(g) BRIDGE DISCRETIONARY.—Section 1101(g)(1) of such Act (117 Stat. 1117; 118 Stat. 880) is amended by inserting after “2004” the following: “and \$66,666,667 for the period of October 1, 2004, through May 31, 2005”.

(h) INTERSTATE MAINTENANCE.—Section 1101(h)(1) of such Act (117 Stat. 1117; 118 Stat. 880) is amended by inserting after “2004” the following: “and \$66,666,667 for the period of October 1, 2004, through May 31, 2005”.

(i) RECREATIONAL TRAILS ADMINISTRATIVE COSTS.—Section 1101(i)(1) of such Act (117 Stat. 1117; 118 Stat. 880) is amended by inserting after “2004” the following: “and \$500,000 for the period of October 1, 2004, through May 31, 2005”.

(j) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—Section 1101(j)(1) of such Act (117 Stat. 1118; 118 Stat. 881) is amended—

(1) by inserting before “; except” the following: “and \$3,500,000 for the period of October 1, 2004, through May 31, 2005”; and

(2) by inserting before “for eligible” the following: “and not less than \$166,667 instead of \$250,000 shall be available for the period of October 1, 2004, through May 31, 2005”.

(k) NONDISCRIMINATION.—Section 1101(k) of such Act (117 Stat. 1118; 118 Stat. 881) is amended—

(1) in paragraph (1) by inserting after “2004” the following: “and \$6,666,667 for the period of October 1, 2004, through May 31, 2005”; and

(2) in paragraph (2) by inserting after “2004” the following: “and \$6,666,667 for the period of October 1, 2004, through May 31, 2005”.

(l) ADMINISTRATION OF FUNDS.—Funds authorized by the amendments made by this section shall be administered as if the funds had been apportioned, allocated, deducted, or set aside, as the case may be, under title 23, United States Code, except that the deductions under sections 104(a)(1)(A) and 104(a)(1)(B) of such title shall not apply to funds made available by the amendment made by subsection (a)(1) of this section.

(m) REDUCTION OF ALLOCATED PROGRAMS.—The Secretary of Transportation shall reduce the amount that would be made available, but for this section, for fiscal year 2005 for allocation under a program, that is continued both by a multiyear law reauthorizing such program enacted after the date of enactment of this Act and by this section, by the amount made available for such program by this section.

(n) PROGRAM CATEGORY RECONCILIATION.—The Secretary may establish procedures under which funds allocated under this section for fiscal year 2005 for a program category for which funds are not authorized for fiscal year 2005 under a multiyear law reauthorizing the Federal-aid highway program enacted after the date of enactment of this Act may be restored to the Federal-aid highway program.

SEC. 6. EXTENSION OF HIGHWAY SAFETY PROGRAMS.**(a) CHAPTER 1 HIGHWAY SAFETY PROGRAMS.—**

(1) SEAT BELT SAFETY INCENTIVE GRANTS.—Section 157 of title 23, United States Code, is amended—

(A) in subsection (a)(3) by striking “2002” and inserting “2003”;

(B) in subsection (a)(8)(B) by striking “2002” and inserting “2003”;

(C) in subsection (b) by striking “2003” and inserting “2005”;

(D) in subsection (c)(1) by striking “2003” and inserting “2004”;

(E) in subsection (c)(2) by striking “2003” and inserting “2004”;

(F) in subsection (f)(4) by striking “2003” and inserting “2004”;

(G) in subsection (g)(1)—

(i) by striking “and”; and

(ii) by inserting before the period at the end the following: “, and \$74,666,667 for the period of October 1, 2004, through May 31, 2005”;

(H) in the heading to subsection (g)(3)(B) by striking “2004” and inserting “2005”; and

(I) in subsection (g)(3)(B) by striking “2004” and inserting “2005”.

(2) PREVENTION OF INTOXICATED DRIVER INCENTIVE GRANTS.—Section 163(e)(1) of such title is amended—

(A) by striking “and”; and

(B) by inserting before the period at the end the following: “, and \$73,333,333 for the period of October 1, 2004, through May 31, 2005”.

(b) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2009(a)(1) of the Transportation Equity Act for the 21st Century (112 Stat. 337; 118 Stat. 886) is amended—

(1) by striking “and”; and

(2) by inserting before the period at the end the following: “, and \$110,000,000 for the period of October 1, 2004, through May 31, 2005”.

(c) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2009(a)(2) of such Act (112 Stat. 337; 118 Stat. 886) is amended by inserting after “2004” the following: “, and \$48,000,000 for the period of October 1, 2004, through May 31, 2005”.

(d) OCCUPANT PROTECTION INCENTIVE GRANTS.—Section 2009(a)(3) of such Act (112 Stat. 337; 118 Stat. 886) is amended—

(1) by striking “and” the last place it appears; and

(2) by inserting before the period at the end the following: “, and \$13,333,333 for the period of October 1, 2004, through May 31, 2005”.

(e) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANTS.—

(1) EXTENSION OF PROGRAM.—Section 410 of title 23, United States Code, is amended—

(A) in subsection (a)(3) by striking “7” and inserting “8”; and

(B) in subsection (a)(4)(C) by striking “and seventh” and inserting “, seventh, and eighth”.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 2009(a)(4) of such Act (112 Stat. 337; 118 Stat. 886) is amended—

(A) by striking “and” the last place it appears; and

(B) by inserting before the period at the end the following: “, and \$26,666,667 for the period of October 1, 2004, through May 31, 2005”.

(f) NATIONAL DRIVER REGISTER.—Section 2009(a)(6) of such Act (112 Stat. 338; 118 Stat. 886) is amended by inserting after “2004” the following: “, and \$2,400,000 for the period of October 1, 2004, through May 31, 2005”.

(g) ALLOCATIONS.—Section 2009(b) of such Act (112 Stat. 338) is amended—

(1) in paragraph (1) by striking “2004” and inserting “2005”;

and

(2) in paragraph (2) by striking “2004” and inserting “2005”.

(h) APPLICABILITY OF TITLE 23.—Section 2009(c) of such Act (112 Stat. 338) is amended by striking “2004” and inserting “2005”.

SEC. 7. EXTENSION OF MOTOR CARRIER SAFETY ADMINISTRATION PROGRAM.

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration \$160,552,536 for the period of October 1, 2004, through May 31, 2005.

(2) USE OF FUNDS.—Funds authorized by this subsection may be used for personnel costs; administrative infrastructure; rent; information technology; and programs for research and technology, regulatory development, and other operating expenses and similar matters. Such funds available may also be used to make grants to, or enter into contracts with, States, local governments, or other persons for implementation of the Commercial Driver’s License Improvement Grants and the Border Enforcement Grants programs.

(b) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—Section 31104(a) of title 49, United States Code, is amended by adding at the end the following:

“(8) Not more than \$112,512,329 for the period of October 1, 2004, through May 31, 2005.”.

(c) INFORMATION SYSTEMS AND COMMERCIAL DRIVER’S LICENSE GRANTS.—

(1) AUTHORIZATION OF APPROPRIATION.—Section 31107(a) of such title is amended— 49 USC 31107.

(A) by striking “and” at the end of paragraph (4);

(B) by striking the period at the end of paragraph

(5) and inserting “; and”; and

(C) by adding at the end the following:

“(6) \$13,315,068 for the period of October 1, 2004 through May 31, 2005.”.

(2) EMERGENCY CDL GRANTS.—From amounts made available by section 31107(a) of title 49, United States Code, for the period of October 1, 2004 through May 31, 2005, the Secretary of Transportation may make grants of up to \$665,753 to a State whose commercial driver’s license program may

fail to meet the compliance requirements of section 31311(a) of such title.

(d) CRASH CAUSATION STUDY.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) for the Federal Motor Carrier Safety Administration to continue the crash causation study required by section 224 of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31100 note; 113 Stat. 1770–1771), \$665,753 for the period of October 1, 2004 through May 31, 2005.

(e) CONTRACT AUTHORITY.—Funds made available by this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

Termination
date.

(f) RULE STAY.—The hours-of-service regulations applicable to property-carrying commercial drivers contained in the Final Rule published on April 28, 2003 (68 Fed. Reg. 22456–22517), as amended on September 30, 2003 (68 Fed. Reg. 56208–56212), and made applicable to motor carriers and drivers on January 4, 2004, shall be in effect until the earlier of—

(1) the effective date of a new final rule addressing the issues raised by the July 16, 2004, decision of the United States Court of Appeals for the District of Columbia in *Public Citizen, et al. v. Federal Motor Carrier Safety Administration* (No. 03–1165); or

(2) September 30, 2005.

SEC. 8. EXTENSION OF FEDERAL TRANSIT PROGRAMS.

(a) ALLOCATING AMOUNTS.—Section 5309(m) of title 49, United States Code, is amended—

(1) in the matter preceding subparagraph (A) of paragraph (1) by inserting “and for the period of October 1, 2004, through May 31, 2005” after “2004”;

(2) in paragraph (2)(B) by inserting after clause (ii) the following:

“(iii) OCTOBER 1, 2004 THROUGH MAY 31, 2005.—

Of the amounts made available under paragraph (1)(B), \$6,933,333 shall be available for the period of October 1, 2004, through May 31, 2005, for capital projects described in clause (i).”;

(3) in paragraph (3)(B) by inserting after “2004” the following: “(and \$2,000,000 shall be available for the period October 1, 2004, through May 31, 2005)”; and

(4) in paragraph (3)(C) by inserting after “2004” the following: “, and \$33,333,333 shall be available for the period October 1, 2004, through May 31, 2005.”.

49 USC 5337
note.

(b) APPORTIONMENT OF APPROPRIATIONS FOR FIXED GUIDEWAY MODERNIZATION.—The Secretary of Transportation shall determine the amount that each urbanized area is to be apportioned for fixed guideway modernization under section 5337 of title 49, United States Code, on a pro rata basis to reflect the partial fiscal year 2005 funding made available by sections 5338(b)(2)(A)(vii) and 5338(b)(2)(B)(vii) of such title.

49 USC 5338.

(c) FORMULA GRANTS AUTHORIZATIONS.—Section 5338(a) of such title is amended—

(1) in the heading to paragraph (2) by inserting “AND FOR THE PERIOD OF OCTOBER 1, 2004, THROUGH MAY 31, 2005” after “2004”;

(2) by striking “and” at the end of paragraphs (2)(A)(v) and (2)(B)(v);

(3) by striking the period at the end of paragraphs (2)(A)(vi) and (2)(B)(vi) and inserting “; and”;

(4) by adding at the end of paragraph (2)(A) the following:

“(vii) \$2,201,760,000 for the period of October 1, 2004, through May 31, 2005.”;

(5) by adding at the end in paragraph (2)(B) the following:

“(vii) \$550,440,000 for the period of October 1, 2004, through May 31, 2005.”; and

(6) in paragraph (2)(C) by striking “2003” and inserting the following: “2005 (other than for the period of October 1, 2004, through May 31, 2005)”.

(d) ALLOCATION OF FORMULA GRANT FUNDS FOR OCTOBER 1, 2004, THROUGH MAY 31, 2005.—Of the aggregate of amounts made available by and appropriated under section 5338(a)(2) of title 49, United States Code, for the period of October 1, 2004, through May 31, 2005—

(1) \$3,233,300 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307 of such title;

(2) \$33,333,333 shall be available for clean fuels formula grants under section 5308 of such title;

(3) \$65,064,001 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310 of such title;

(4) \$172,690,702 shall be available to provide financial assistance for other than urbanized areas under section 5311 of such title;

(5) \$4,633,333 shall be available to provide financial assistance in accordance with section 3038(g) of the Transportation Equity Act for the 21st Century; and

(6) \$2,473,245,331 shall be available to provide financial assistance for urbanized areas under section 5307 of such title.

(e) CAPITAL PROGRAM AUTHORIZATIONS.—Section 5338(b) of such title is amended—

(1) in the heading to paragraph (2) by inserting “AND FOR THE PERIOD OF OCTOBER 1, 2004, THROUGH MAY 31, 2005” after “2004”;

(2) by striking “and” at the end of paragraphs (2)(A)(v) and (2)(B)(v);

(3) by striking the period at the end of paragraphs (2)(A)(vi) and (2)(B)(vi) and inserting “; and”;

(4) by adding at the end of paragraph (2)(A) the following:

“(vii) \$1,740,960,000 for the period of October 1, 2004, through May 31, 2005.”; and

(5) by adding at the end of paragraph (2)(B) the following:

“(vii) \$435,240,000 for the period of October 1, 2004, through May 31, 2005.”.

(f) PLANNING AUTHORIZATIONS AND ALLOCATIONS.—Section 5338(c) is amended—

(1) in the heading to paragraph (2) by inserting “AND FOR THE PERIOD OF OCTOBER 1, 2004, THROUGH MAY 31, 2005” after “2004”;

(2) by striking “and” at the end of paragraphs (2)(A)(v) and (2)(B)(v);

23 USC 5338.

(3) by striking the period at the end of paragraphs (2)(A)(vi) and (2)(B)(vi) and inserting “; and”;

(4) by adding at the end of paragraph (2)(A) the following:
“(vii) \$41,813,334 for the period of October 1, 2004, through May 31, 2005.”;

(5) by adding at the end of paragraph (2)(B) the following:
“(vii) \$10,453,333 for the period of October 1, 2004, through May 31, 2005.”; and

(6) in paragraph (2)(C) by inserting “or any portion of a fiscal year” after “fiscal year”.

(g) RESEARCH AUTHORIZATIONS.—Section 5338(d) of such title is amended—

(1) in the heading to paragraph (2) by inserting “AND FOR THE PERIOD OF OCTOBER 1, 2004, THROUGH MAY 31, 2005” after “2004”;

(2) by striking “and” at the end of paragraphs (2)(A)(v) and (2)(B)(v);

(3) by striking the period at the end of paragraphs (2)(A)(vi) and (2)(B)(vi) and inserting “; and”;

(4) by adding at the end of paragraph (2)(A) the following:
“(vii) \$28,266,667 for the period of October 1, 2004, through May 31, 2005.”;

(5) by adding at the end of paragraph (2)(B) the following:
“(vii) \$7,066,667 for the period of October 1, 2004, through May 31, 2005.”; and

(6) in paragraph (2)(C) by inserting after “a fiscal year” the following: “(other than for the period of October 1, 2004, through May 31, 2005)”.

(h) ALLOCATION OF RESEARCH FUNDS FOR OCTOBER 1, 2004, THROUGH MAY 31, 2005.—Of the funds made available by or appropriated under section 5338(d)(2) of title 49, United States Code, for the period of October 1, 2004, through May 31, 2005—

(1) not less than \$3,500,000 shall be available for providing rural transportation assistance under section 5311(b)(2) of such title;

(2) not less than \$5,500,000 shall be available for carrying out transit cooperative research programs under section 5313(a) of such title;

(3) not less than \$2,666,667 shall be available to carry out programs under the National Transit Institute under section 5315 of such title, including not more than \$666,667 shall be available to carry out section 5315(a)(16) of such title; and

(4) any amounts not made available under paragraphs (1) through (3) shall be available for carrying out national planning and research programs under sections 5311(b)(2), 5312, 5313(a), 5314, and 5322 of such title.

(i) UNIVERSITY TRANSPORTATION RESEARCH AUTHORIZATIONS.—Section 5338(e) of such title is amended—

(1) in the heading to paragraph (2) by inserting “AND FOR THE PERIOD OF OCTOBER 1, 2004, THROUGH MAY 31, 2005” after “2004”;

(2) in paragraph (2)(A) by inserting after “2004” the following: “and \$3,200,000 for the period of October 1, 2004, through May 31, 2005”;

(3) in paragraph (2)(B) by inserting after “2004” the following: “and \$800,000 for the period of October 1, 2004, through May 31, 2005”; and

(4) in paragraphs (2)(C)(i) and (2)(C)(iii) by inserting after “fiscal year” the following: “(other than for the period of October 1, 2004, through May 31, 2005)”.

(j) ALLOCATION OF UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—

(1) IN GENERAL.—Of the amounts made available under section 5338(e)(2)(A) of title 49, United States Code, for the period October 1, 2004, through May 31, 2005—

(A) \$1,333,333 shall be available for the center identified in section 5505(j)(4)(A) of such title; and

(B) \$1,333,333 shall be available for the center identified in section 5505(j)(4)(F) of such title.

(2) TRAINING AND CURRICULUM DEVELOPMENT.—Notwithstanding section 5338(e)(2) of such title, any amounts made available under such section for the period October 1, 2004, through May 31, 2005, that remain after distribution under paragraph (1), shall be available for the purposes identified in section 3015(d) of the Transportation Equity Act for the 21st Century (112 Stat. 857).

(3) CONFORMING AMENDMENT.—Section 3015(d)(2) of the Transportation Equity Act for the 21st Century (112 Stat. 857; 118 Stat. 884) is amended by inserting “or in the period October 1, 2004, through May 31, 2005” after “2004”.

49 USC 5338
note.

(k) ADMINISTRATION AUTHORIZATIONS.—Section 5338(f) of such title is amended—

(1) in the heading to paragraph (2) by inserting “AND FOR THE PERIOD OF OCTOBER 1, 2004, THROUGH MAY 31, 2005” after “2004”;

(2) by striking “and” at the end of paragraphs (2)(A)(v) and (2)(B)(v);

(3) by striking the period at the end of paragraphs (2)(A)(vi) and (2)(B)(vi) and inserting “; and”;

(4) by adding at the end of paragraph (2)(A) the following:
“(vii) \$41,600,000 for the period of October 1, 2004, through May 31, 2005.”; and

(5) by adding at the end of paragraph (2)(B) the following:
“(vii) \$10,400,000 for the period of October 1, 2004, through May 31, 2005.”.

(l) JOB ACCESS AND REVERSE COMMUTE PROGRAM.—Section 3037(l) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5309 note; 112 Stat. 391–392; 118 Stat. 884) is amended—

(1) by striking “and” at the end of paragraphs (1)(A)(v) and (1)(B)(v);

(2) by striking the period at the end of paragraphs (1)(A)(vi) and (1)(B)(vi) and inserting “; and”;

(3) by adding at the end of paragraph (1)(A) the following:
“(vii) \$80,000,000 for the period of October 1, 2004, through May 31, 2005.”;

(4) by adding at the end of paragraph (1)(B) the following:
“(vii) \$20,000,000 for the period of October 1, 2004, through May 31, 2005.”; and

(5) by inserting before the period at the end of paragraph (2) the following: “; except that in the period of October 1, 2004, through May 31, 2005, not more than \$6,666,667 shall be used for such projects”.

(m) RURAL TRANSPORTATION ACCESSIBILITY INCENTIVE PROGRAM.—Section 3038(g) of such Act (49 U.S.C. 5310 note; 112 Stat. 393; 118 Stat. 885) is amended—

(1) by adding at the end of paragraph (1) the following:
“(G) \$3,500,000 for the period of October 1, 2004, through May 31, 2005.”; and

(2) in paragraph (2) by inserting after “2004” the following:
“(and \$1,133,333 shall be available for the period of October 1, 2004, through May 31, 2005)”.

(n) URBANIZED AREA FORMULA GRANTS.—Section 5307(b) of title 49, United States Code, is amended—

(1) in the heading to paragraph (2) by inserting “AND FOR THE PERIOD OF OCTOBER 1, 2004, THROUGH MAY 31, 2005” after “2004”; and

(2) in paragraph (2)(A) by inserting “and for the period of October 1, 2004, through May 31, 2005” after “2004”.

(o) OBLIGATION CEILING.—Section 3040 of the Transportation Equity Act for the 21st Century (112 Stat. 394; 118 Stat. 885) is amended—

(1) by striking “and” at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting “; and”; and

(3) by adding at the end the following:

“(7) \$5,172,000,000 for the period of October 1, 2004, through May 31, 2005.”.

(p) FUEL CELL BUS AND BUS FACILITIES PROGRAM.—Section 3015(b) of such Act (112 Stat. 361; 118 Stat. 885) is amended by inserting “(or, in the case of the period of October 1, 2004, through May 31, 2005, \$3,233,333)” after “\$4,850,000”.

23 USC 322 note. (q) ADVANCED TECHNOLOGY PILOT PROJECT.—Section 3015(c)(2) of such Act (49 U.S.C. 322 note; 112 Stat. 361; 118 Stat. 885) is amended—

(1) by inserting “and for the period of October 1, 2004, through May 31, 2005,” after “2004.”; and

(2) by inserting “and \$3,333,333 for such period” after “\$5,000,000 per fiscal year”.

(r) PROJECTS FOR NEW FIXED GUIDEWAY SYSTEMS AND EXTENSIONS TO EXISTING SYSTEMS.—Section 3030 of such Act (112 Stat. 373–381; 118 Stat. 885) is amended—

(1) in subsections (a) and (b) by inserting “and for the period of October 1, 2004, through May 31, 2005,” after “2004”; and

(2) in subsection (c)(1) by inserting “and for the period of October 1, 2004, through May 31, 2005” after “2004”.

(s) NEW JERSEY URBAN CORE PROJECT.—Subparagraphs (A), (B), and (C) of section 3031(a)(3) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2122; 112 Stat. 379; 118 Stat. 885) are amended by inserting “and for the period of October 1, 2004, through May 31, 2005,” after “2004”.

23 USC 101 note. (t) TREATMENT OF FUNDS.—Amounts made available under the amendments made by this section shall be treated for purposes of section 1101(b) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note) as amounts made available for programs under title III of such Act.

(u) LOCAL SHARE.—Section 3011(a) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5307 note; 118 Stat. 637;

118 Stat. 708; 118 Stat. 886) is amended by inserting “and for the period of October 1, 2004, through May 31, 2005” after “2004”.

SEC. 9. SPORT FISHING AND BOATING SAFETY.

(a) **FUNDING FOR NATIONAL OUTREACH AND COMMUNICATIONS PROGRAM.**—Section 4(c) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(c)) is amended—

(1) by striking “and” at the end of paragraph (5);

(2) by inserting “and” after the semicolon at the end of paragraph (6); and

(3) by inserting after paragraph (6) the following:

“(7) \$6,666,664 for the period of October 1, 2004, through May 31, 2005;”.

(b) **CLEAN VESSEL ACT FUNDING.**—Section 4(b) of such Act (16 U.S.C. 777c(b)) is amended—

(1) in paragraph (4) by striking the paragraph heading and inserting “FISCAL YEAR 2004”;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

“(5) **FIRST 8 MONTHS OF FISCAL YEAR 2005.**—For the period of October 1, 2004, through May 31, 2005, of the balance of each annual appropriation remaining after making the distribution under subsection (a), an amount equal to \$54,666,664, reduced by 82 percent of the amount appropriated for that fiscal year from the Boat Safety Account of the Aquatic Resources Trust Fund established by section 9504 of the Internal Revenue Code of 1986 to carry out the purposes of section 13106(a) of title 46, United States Code, shall be used as follows:

“(A) \$6,666,664 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 5604(c) of the Clean Vessel Act of 1992 (33 U.S.C. 1322 note).

“(B) \$5,333,334 shall be available to the Secretary of the Interior for 3 fiscal years for obligation for qualified projects under section 7404(d) of the Sportfishing and Boating Safety Act of 1998 (16 U.S.C. 777g–1(d)).

“(C) The balance remaining after the application of subparagraphs (A) and (B) shall be transferred to the Secretary of Transportation and shall be expended for State recreational boating safety programs under section 13106 of title 46, United States Code.”.

(c) **BOAT SAFETY FUNDS.**—Section 13106(c) of title 46, United States Code, is amended to read as follows:

“(c)(1) Of the amount transferred to the Secretary of Transportation under paragraph (5)(C) of section 4(b) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(b)), \$3,333,336 is available to the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program under this title, of which \$1,333,336 shall be available to the Secretary only to ensure compliance with chapter 43 of this title.

“(2) No funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized by this section.

Federal Register,
publication.

“(3) Amounts made available by this subsection shall remain available until expended.

“(4) The Secretary shall publish annually in the Federal Register a detailed accounting of the projects, programs, and activities funded under this subsection.”.

SEC. 10. BUDGET LIMITATIONS.

2 USC 901.

(a) ADJUSTMENTS TO ANNUALIZED DISCRETIONARY SPENDING LIMITS.—In the matter that precedes subparagraph (A) of section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985, strike “through 2002”.

(b) DISCRETIONARY SPENDING LIMITS.—Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(1) Strike paragraphs (1) through (7) and redesignate paragraph (8) (which relates to fiscal year 2005) as paragraph (1) and in such redesignated paragraph strike “(1) with respect to fiscal year 2005”, redesignate the remaining matter as subparagraph (C), and before such redesignated matter insert the following:

“(1) with respect to fiscal year 2005—

“(A) for the highway category: \$31,113,000,000 in outlays;

“(B) for the mass transit category: \$1,453,000,000 in new budget authority and \$6,535,000,000 in outlays; and”.

(2) Redesignate paragraphs (9) through (16) as paragraphs (2) through (9).

2 USC 900.

(c) CATEGORY DEFINED.—Section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subparagraph (B) by inserting after “Century” the following: “and the Surface Transportation Extension Act of 2004, Part V”; and

(2) in subparagraph (C)—

(A) by inserting after “Century” the first place it appears the following: “and the Surface Transportation Extension Act of 2004, Part V”; and

(B) by striking “that Act” and inserting “those Acts”.

(d) CONFORMANCE WITH THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2005.—Notwithstanding any other provision of law, all adjustments made pursuant to section 110(a)(2) of title 23, United States Code, to sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) in fiscal year 2005 shall be deemed to be zero.

(e) SENSE OF CONGRESS ON ADJUSTMENT TO ALIGN HIGHWAY SPENDING WITH REVENUES.—It is the sense of Congress that, in any multiyear reauthorization of the Federal-aid highway program, the alignment of highway spending with revenues under section 251(b)(1)(B)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 should be restructured to minimize year-to-year fluctuations in highway spending levels and to ensure the uniform enforcement of such levels.

(f) SENSE OF CONGRESS ON FULLY GUARANTEED FUNDING.—It is the sense of Congress—

(1) in any multiyear law reauthorizing of the Federal-aid highway program enacted after the date of the enactment

of this Act, the level of obligation limitations for fiscal year 2005 under the highway category and the mass transit category in section 8103 of the Transportation Equity Act for the 21st Century (2 U.S.C. 901 note), as amended and extended, should equal the obligation limitations for such categories authorized in such multiyear law;

(2) the highway account category obligation limitation level for fiscal year 2005 should be equal to the sum of the Federal Highway Administration, National Highway Safety Administration, and Federal Motor Carrier Safety Administration obligation limitations for fiscal year 2005 in such multiyear law; and

(3) the mass transit category obligation limitation level for fiscal year 2005 should be equal to the sum of budget authority and obligation limitation authorizations for Federal Transit Administration programs for fiscal year 2005 in such multiyear reauthorization.

SEC. 11. LEVEL OF OBLIGATION LIMITATIONS.

(a) HIGHWAY CATEGORY.—Section 8103(a) of the Transportation Equity Act for the 21st Century (2 U.S.C. 901 note; 112 Stat. 492; 117 Stat. 1128) is amended—

(1) by striking “and” at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting “; and”; and

(3) by adding at the end the following:

“(7) for fiscal year 2005, \$35,392,000,000.”.

(b) MASS TRANSIT CATEGORY.—Section 8103(b) of such Act (2 U.S.C. 901 note; 112 Stat. 492; 117 Stat. 1128) is amended—

(1) by striking “and” at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting “; and”; and

(3) by adding at the end the following:

“(7) for fiscal year 2005, \$7,265,000,000.”.

(c) TREATMENT OF FUNDS.—Notwithstanding any other provision of law, funds made available under this Act, including the amendments made by this Act, shall be deemed to be zero for the purposes of section 110 of the title 23, United States Code.

SEC. 12. EXTENSION OF HIGHWAY PROGRAMS THROUGH END OF FISCAL YEAR 2004.

(a) ADVANCES.—Section 2(a) of the Surface Transportation Extension Act of 2003 (23 U.S.C. 104 note; 117 Stat. 1110; 118 Stat. 876) is amended by striking “and the Surface Transportation Extension Act of 2004, Part IV” and inserting “the Surface Transportation Extension Act of 2004, Part IV, and the Surface Transportation Extension Act of 2004, Part V”.

(b) AUTHORIZATION OF CONTRACT AUTHORITY.—Section 1101(c)(1) of the Transportation Equity Act for the 21st Century (117 Stat. 1111; 118 Stat. 876) is amended by striking “the period of October 1, 2003, through September 24,” and inserting “fiscal year”.

(c) LIMITATION ON OBLIGATIONS.—Section 2(e) of the Surface Transportation Extension Act of 2003 (117 Stat. 1111; 118 Stat. 478; 118 Stat. 876) is amended—

(1) by striking paragraphs (1) through (4) and inserting:

“(1) DISTRIBUTION OF OBLIGATION AUTHORITY.—For the fiscal year 2004, the Secretary shall distribute the obligation

23 USC 104 note.

limitation made available for Federal-aid highways and highway safety construction programs under the heading ‘Federal-aid highways’ in the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108-199; 118 Stat. 291; 118 Stat. 1013), in accordance with section 110 of such Act.”; and

(2) by redesignating paragraph (5) as paragraph (2).

(d) PERIOD OF AVAILABILITY.—Obligation authority made available for fiscal year 2004 under section 2 of the Surface Transportation Extension Act of 2003 as a result of the amendments made by this section, that is in addition to obligation authority previously made available for fiscal year 2004 under section 2 of such Act (117 Stat. 1110; 118 Stat. 478; 118 Stat. 627; 118 Stat. 698; 118 Stat. 876), shall remain available for obligation during fiscal years 2004 and 2005, or for additional fiscal years if so made available in a law enacted before the date of enactment of this Act.

(e) PAYMENT FROM FUTURE APPORTIONMENTS.—The Surface Transportation Extension Act of 2003 (117 Stat. 1110) is amended—

23 USC 104 note.

(1) by striking section 2(c) (117 Stat. 1111; 118 Stat. 877);

(2) by striking section 3(c)(1) (117 Stat. 1112) and inserting the following:

“(1) IN GENERAL.—As soon as practicable after the date of enactment of the Surface Transportation Extension Act of 2004, Part V, the Secretary of Transportation shall restore any funds that a State transferred under subsection (a).”; and

(3) by striking section 5(n) (117 Stat. 1119; 118 Stat. 483; 118 Stat. 632; 118 Stat. 703; 118 Stat. 881).

(f) SUPPLEMENTAL MINIMUM GUARANTEE.—

(1) GENERAL RULE.—For fiscal year 2004, the Secretary shall allocate among the States amounts sufficient to ensure that each State’s percentage of the total apportionments for such fiscal year pursuant to sections 2(a) and 5(c) of the Surface Transportation Extension Act of 2003 and amounts apportioned under this section shall equal the percentage listed for each State in section 105(b) of title 23, United States Code. The shares in such section shall be adjusted in accordance with section 105(f) of such title. The minimum amount allocated to a State under this subsection for the fiscal year shall be \$1,000,000.

(2) AUTHORIZATION.—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to carry out this subsection for fiscal year 2004.

(3) ADMINISTRATION OF FUNDS.—Funds apportioned to a State under this subsection—

(A) shall be available for obligation in the same manner as if such funds were apportioned to the State under chapter 1 of title 23, United States Code;

(B) shall be combined with funds apportioned to the State for the minimum guarantee program under section 2(a) of the Surface Transportation Extension Act of 2003; and

(C) shall be administered in the same manner as funds apportioned under section 105 of such title.

(4) OBLIGATION LIMITATION.—Funds apportioned under this subsection shall be subject to any limitation on obligations

for Federal-aid highways and highway safety construction programs.

(g) CALCULATION OF ESTIMATED TRUST FUND CONTRIBUTIONS.—The amendment made by section 13(c) of this Act shall have no effect on the estimates of tax payments attributable to highway users in each State paid into the Highway Trust Fund for purposes of apportioning funds to States in fiscal year 2004 until enactment of a multiyear law reauthorizing surface transportation programs.

26 USC 9503
note.

SEC. 13. EXTENSION OF AUTHORIZATION FOR USE OF TRUST FUNDS FOR OBLIGATIONS UNDER TEA-21.

(a) HIGHWAY TRUST FUND.—

(1) IN GENERAL.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1986 is amended—

26 USC 9503.

(A) in the matter before subparagraph (A), by striking “October 1, 2004” and inserting “June 1, 2005”;

(B) by striking “or” at the end of subparagraph (I);

(C) by striking the period at the end of subparagraph (J) and inserting “, or”;

(D) by inserting after subparagraph (J) the following new subparagraph:

“(K) authorized to be paid out of the Highway Trust Fund under the Surface Transportation Extension Act of 2004, Part V.”; and

(E) in the matter after subparagraph (K), as added by this paragraph, by striking “Surface Transportation Extension Act of 2004, Part IV” and inserting “Surface Transportation Extension Act of 2004, Part V”.

(2) MASS TRANSIT ACCOUNT.—Paragraph (3) of section 9503(e) of such Code is amended—

(A) in the matter before subparagraph (A), by striking “October 1, 2004” and inserting “June 1, 2005”;

(B) in subparagraph (G), by striking “or” at the end of such subparagraph;

(C) in subparagraph (H), by inserting “or” at the end of such subparagraph;

(D) by inserting after subparagraph (H) the following new subparagraph:

“(I) the Surface Transportation Extension Act of 2004, Part V.”; and

(E) in the matter after subparagraph (I), as added by this paragraph, by striking “Surface Transportation Extension Act of 2004, Part IV” and inserting “Surface Transportation Extension Act of 2004, Part V”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Subparagraph (B) of section 9503(b)(5) of such Code is amended by striking “October 1, 2004” and inserting “June 1, 2005”.

(4) CONFORMING AMENDMENT.—Subsection (a) of section 10 of the Surface Transportation Extension Act of 2004, Part IV is amended by striking paragraph (4).

26 USC 9503
note.

(b) AQUATIC RESOURCES TRUST FUND.—

(1) SPORT FISH RESTORATION ACCOUNT.—Paragraph (2) of section 9504(b) of the Internal Revenue Code of 1986 is amended by striking “Surface Transportation Extension Act of 2004, Part IV” each place it appears and inserting “Surface Transportation Extension Act of 2004, Part V”.

26 USC 9504.

26 USC 9504. (2) BOAT SAFETY ACCOUNT.—Subsection (c) of section 9504 of such Code is amended—

(A) by striking “October 1, 2004” and inserting “June 1, 2005”; and

(B) by striking “Surface Transportation Extension Act of 2004, Part IV” and inserting “Surface Transportation Extension Act of 2004, Part V”.

(3) EXCEPTION TO LIMITATION ON TRANSFERS.—Paragraph (2) of section 9504(d) of such Code is amended by striking “October 1, 2004” and inserting “June 1, 2005”.

26 USC 9503. (c) ALL ALCOHOL FUEL TAXES TRANSFERRED TO HIGHWAY TRUST FUND FOR FISCAL YEAR 2004.—Subparagraphs (E) and (F) of section 9503(b)(4) (relating to certain taxes not transferred to Highway Trust Fund) are each amended by inserting “before October 1, 2003, and for the period beginning after September 30, 2004, and” before “before October 1, 2005”.

26 USC 9503
note.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) TRANSFERS TO HIGHWAY TRUST FUND.—The amendments made by subsection (c) shall apply to taxes imposed after September 30, 2003.

(e) TEMPORARY RULE REGARDING ADJUSTMENTS.—During the period beginning on the date of the enactment of the Surface Transportation Extension Act of 2003 and ending on May 31, 2005, for purposes of making any estimate under section 9503(d) of the Internal Revenue Code of 1986 of receipts of the Highway Trust Fund, the Secretary of the Treasury shall treat—

(1) each expiring provision of paragraphs (1) through (4) of section 9503(b) of such Code which is related to appropriations or transfers to such Fund to have been extended through the end of the 24-month period referred to in section 9503(d)(1)(B) of such Code; and

(2) with respect to each tax imposed under the sections referred to in section 9503(b)(1) of such Code, the rate of such tax during the 24-month period referred to in section 9503(d)(1)(B) of such Code to be the same as the rate of such tax as in effect on the date of the enactment of the Surface Transportation Extension Act of 2003.

(f) APPORTIONMENT OF HIGHWAY TRUST FUNDS FOR FISCAL YEAR 2004.—Section 9503(d)(3) of the Internal Revenue Code of 1986 shall not apply to any apportionment to the States of the amounts

authorized to be appropriated from the Highway Trust Fund for the fiscal year ending September 30, 2004.

Approved September 30, 2004.

LEGISLATIVE HISTORY—H.R. 5183:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 30, considered and passed House and Senate.



Public Law 108–311
108th Congress

An Act

Oct. 4, 2004
[H.R. 1308]

To amend the Internal Revenue Code of 1986 to provide tax relief for working families, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Working
Families Tax
Relief Act of
2004.

26 USC 1 note.

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Working Families Tax Relief Act of 2004”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—EXTENSION OF FAMILY TAX PROVISIONS

Sec. 101. Repeal of scheduled reductions in child tax credit, marriage penalty relief, and 10-percent rate bracket.

Sec. 102. Acceleration of increase in refundability of the child tax credit.

Sec. 103. 1-year extension of minimum tax relief to individuals.

Sec. 104. Earned income includes combat pay.

Sec. 105. Application of EGTRRA sunset to this title.

TITLE II—UNIFORM DEFINITION OF CHILD

Sec. 201. Uniform definition of child, etc.

Sec. 202. Modifications of definition of head of household.

Sec. 203. Modifications of dependent care credit.

Sec. 204. Modifications of child tax credit.

Sec. 205. Modifications of earned income credit.

Sec. 206. Modifications of deduction for personal exemption for dependents.

Sec. 207. Technical and conforming amendments.

Sec. 208. Effective date.

TITLE III—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

Sec. 301. Research credit.

Sec. 302. Parity in the application of certain limits to mental health benefits.

Sec. 303. Work opportunity credit and welfare-to-work credit.

Sec. 304. Qualified zone academy bonds.

Sec. 305. Cover over of tax on distilled spirits.

Sec. 306. Deduction for corporate donations of scientific property and computer technology.

Sec. 307. Deduction for certain expenses of school teachers.

Sec. 308. Expensing of environmental remediation costs.

Sec. 309. Certain New York Liberty Zone benefits.

Sec. 310. Tax incentives for investment in the District of Columbia.

Sec. 311. Disclosure of tax information to facilitate combined employment tax reporting.

- Sec. 312. Allowance of nonrefundable personal credits against regular and minimum tax liability.
- Sec. 313. Credit for electricity produced from certain renewable resources.
- Sec. 314. Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.
- Sec. 315. Indian employment tax credit.
- Sec. 316. Accelerated depreciation for business property on Indian reservation.
- Sec. 317. Disclosure of return information relating to student loans.
- Sec. 318. Elimination of phaseout of credit for qualified electric vehicles for 2004 and 2005.
- Sec. 319. Elimination of phaseout for deduction for clean-fuel vehicle property for 2004 and 2005.
- Sec. 320. Disclosures relating to terrorist activities.
- Sec. 321. Joint review of strategic plans and budget for the Internal Revenue Service.
- Sec. 322. Availability of medical savings accounts.

TITLE IV—TAX TECHNICAL CORRECTIONS

- Sec. 401. Amendments related to Medicare Prescription Drug, Improvement, and Modernization Act of 2003.
- Sec. 402. Amendments related to Jobs and Growth Tax Relief Reconciliation Act of 2003.
- Sec. 403. Amendments related to Job Creation and Worker Assistance Act of 2002.
- Sec. 404. Amendments related to Economic Growth and Tax Relief Reconciliation Act of 2001.
- Sec. 405. Amendments related to Community Renewal Tax Relief Act of 2000.
- Sec. 406. Amendments related to Taxpayer Relief Act of 1997.
- Sec. 407. Amendments related to Small Business Job Protection Act of 1996.
- Sec. 408. Clerical amendments.

TITLE I—EXTENSION OF FAMILY TAX PROVISIONS

SEC. 101. REPEAL OF SCHEDULED REDUCTIONS IN CHILD TAX CREDIT, MARRIAGE PENALTY RELIEF, AND 10-PERCENT RATE BRACKET.

(a) CHILD TAX CREDIT.—Subsection (a) of section 24 (relating to child tax credit) is amended to read as follows:

“(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer an amount equal to \$1,000.”.

(b) MARRIAGE PENALTY RELIEF IN STANDARD DEDUCTION.—

(1) IN GENERAL.—Paragraph (2) of section 63(c) (relating to basic standard deduction) is amended to read as follows:

“(2) BASIC STANDARD DEDUCTION.—For purposes of paragraph (1), the basic standard deduction is—

“(A) 200 percent of the dollar amount in effect under subparagraph (C) for the taxable year in the case of—

“(i) a joint return, or

“(ii) a surviving spouse (as defined in section 2(a)),

“(B) \$4,400 in the case of a head of household (as defined in section 2(b)), or

“(C) \$3,000 in any other case.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 63(c)(4) is amended by striking “(2)(D)” each place it occurs and inserting “(2)(C)”.

(B) Section 63(c) is amended by striking paragraph (7).

(c) MARRIAGE PENALTY RELIEF IN 15-PERCENT INCOME TAX BRACKET.—Paragraph (8) of section 1(f) is amended to read as follows: 26 USC 1.

“(8) **ELIMINATION OF MARRIAGE PENALTY IN 15-PERCENT BRACKET.**—With respect to taxable years beginning after December 31, 2003, in prescribing the tables under paragraph (1)—

“(A) the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (a) (and the minimum taxable income in the next higher taxable income bracket in such table) shall be 200 percent of the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (c) (after any other adjustment under this subsection), and

“(B) the comparable taxable income amounts in the table contained in subsection (d) shall be $\frac{1}{2}$ of the amounts determined under subparagraph (A).”.

(d) **10-PERCENT RATE BRACKET.**—

(1) **IN GENERAL.**—Clause (i) of section 1(i)(1)(B) is amended by striking “(\$12,000 in the case of taxable years beginning after December 31, 2004, and before January 1, 2008)”.

(2) **INFLATION ADJUSTMENT.**—Subparagraph (C) of section 1(i)(1) is amended to read as follows:

“(C) **INFLATION ADJUSTMENT.**—In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2003—

“(i) the cost-of-living adjustment shall be determined under subsection (f)(3) by substituting ‘2002’ for ‘1992’ in subparagraph (B) thereof, and

“(ii) the adjustments under clause (i) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.”.

26 USC 1 note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 102. ACCELERATION OF INCREASE IN REFUNDABILITY OF THE CHILD TAX CREDIT.

(a) **ACCELERATION OF REFUNDABILITY.**—Section 24(d)(1)(B)(i) (relating to portion of credit refundable) is amended by striking “(10 percent in the case of taxable years beginning before January 1, 2005)”.

26 USC 24 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 103. EXTENSION OF MINIMUM TAX RELIEF TO INDIVIDUALS.

(a) **IN GENERAL.**—Subparagraphs (A) and (B) of section 55(d)(1) of the Internal Revenue Code of 1986 (relating to exemption amount for taxpayers other than corporations) are each amended by striking “2003 and 2004” and inserting “2003, 2004, and 2005”.

26 USC 55 note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 104. EARNED INCOME INCLUDES COMBAT PAY.

(a) **CHILD TAX CREDIT.**—Section 24(d)(1) (relating to portion of credit refundable) is amended by adding at the end the following new sentence: “For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated

as earned income which is taken into account in computing taxable income for the taxable year.”.

(b) EARNED INCOME CREDIT.—Subparagraph (B) of section 32(c)(2) (relating to earned income) is amended—

(1) by striking “and” at the end of clause (iv),

(2) by striking the period at the end of clause (v) and inserting “, and”, and

(3) by adding at the end the following:

“(vi) in the case of any taxable year ending—

“(I) after the date of the enactment of this clause, and

“(II) before January 1, 2006,

a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.”.

(c) EFFECTIVE DATE.—

(1) CHILD TAX CREDIT.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003. 26 USC 24 note.

(2) EARNED INCOME CREDIT.—The amendments made by subsection (b) shall apply to taxable years ending after the date of the enactment of this Act. 26 USC 32 note.

SEC. 105. APPLICATION OF EGTRRA SUNSET TO THIS TITLE.

26 USC 1 note.

Each amendment made by this title shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

TITLE II—UNIFORM DEFINITION OF CHILD

SEC. 201. UNIFORM DEFINITION OF CHILD, ETC.

Section 152 is amended to read as follows:

“SEC. 152. DEPENDENT DEFINED.

“(a) IN GENERAL.—For purposes of this subtitle, the term ‘dependent’ means—

“(1) a qualifying child, or

“(2) a qualifying relative.

“(b) EXCEPTIONS.—For purposes of this section—

“(1) DEPENDENTS INELIGIBLE.—If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

“(2) MARRIED DEPENDENTS.—An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual’s spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

“(3) CITIZENS OR NATIONALS OF OTHER COUNTRIES.—

“(A) IN GENERAL.—The term ‘dependent’ does not include an individual who is not a citizen or national of the United States unless such individual is a resident

of the United States or a country contiguous to the United States.

“(B) EXCEPTION FOR ADOPTED CHILD.—Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of ‘dependent’ if—

“(i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer’s household, and

“(ii) the taxpayer is a citizen or national of the United States.

“(c) QUALIFYING CHILD.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualifying child’ means, with respect to any taxpayer for any taxable year, an individual—

“(A) who bears a relationship to the taxpayer described in paragraph (2),

“(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

“(C) who meets the age requirements of paragraph (3), and

“(D) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable year of the taxpayer begins.

“(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

“(A) a child of the taxpayer or a descendant of such a child, or

“(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

“(3) AGE REQUIREMENTS.—

“(A) IN GENERAL.—For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual—

“(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

“(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

“(B) SPECIAL RULE FOR DISABLED.—In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

“(4) SPECIAL RULE RELATING TO 2 OR MORE CLAIMING QUALIFYING CHILD.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

“(i) a parent of the individual, or

“(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

“(B) MORE THAN 1 PARENT CLAIMING QUALIFYING CHILD.—If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

“(i) the parent with whom the child resided for the longest period of time during the taxable year, or

“(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

“(d) QUALIFYING RELATIVE.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualifying relative’ means, with respect to any taxpayer for any taxable year, an individual—

“(A) who bears a relationship to the taxpayer described in paragraph (2),

“(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

“(C) with respect to whom the taxpayer provides over one-half of the individual’s support for the calendar year in which such taxable year begins, and

“(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

“(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

“(A) A child or a descendant of a child.

“(B) A brother, sister, stepbrother, or stepsister.

“(C) The father or mother, or an ancestor of either.

“(D) A stepfather or stepmother.

“(E) A son or daughter of a brother or sister of the taxpayer.

“(F) A brother or sister of the father or mother of the taxpayer.

“(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

“(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer’s household.

“(3) SPECIAL RULE RELATING TO MULTIPLE SUPPORT AGREEMENTS.—For purposes of paragraph (1)(C), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

“(A) no one person contributed over one-half of such support,

“(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

“(C) the taxpayer contributed over 10 percent of such support, and

“(D) each person described in subparagraph (B) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

“(4) SPECIAL RULE RELATING TO INCOME OF HANDICAPPED DEPENDENTS.—

“(A) IN GENERAL.—For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

“(i) the availability of medical care at such workshop is the principal reason for the individual’s presence there, and

“(ii) the income arises solely from activities at such workshop which are incident to such medical care.

“(B) SHELTERED WORKSHOP DEFINED.—For purposes of subparagraph (A), the term ‘sheltered workshop’ means a school—

“(i) which provides special instruction or training designed to alleviate the disability of the individual, and

“(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

“(5) SPECIAL RULES FOR SUPPORT.—For purposes of this subsection—

“(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent, and

“(B) in the case of the remarriage of a parent, support of a child received from the parent’s spouse shall be treated as received from the parent.

“(e) SPECIAL RULE FOR DIVORCED PARENTS.—

“(1) IN GENERAL.—Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

“(A) a child receives over one-half of the child’s support during the calendar year from the child’s parents—

“(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

“(ii) who are separated under a written separation agreement, or

“(iii) who live apart at all times during the last 6 months of the calendar year, and

“(B) such child is in the custody of 1 or both of the child’s parents for more than one-half of the calendar year,

such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) are met.

“(2) REQUIREMENTS.—For purposes of paragraph (1), the requirements described in this paragraph are met if—

“(A) a decree of divorce or separate maintenance or written separation agreement between the parents applicable to the taxable year beginning in such calendar year provides that—

“(i) the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, or

“(ii) the custodial parent will sign a written declaration (in such manner and form as the Secretary may prescribe) that such parent will not claim such child as a dependent for such taxable year, or

“(B) in the case of such an agreement executed before January 1, 1985, the noncustodial parent provides at least \$600 for the support of such child during such calendar year.

For purposes of subparagraph (B), amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

“(3) CUSTODIAL PARENT AND NONCUSTODIAL PARENT.—For purposes of this subsection—

“(A) CUSTODIAL PARENT.—The term ‘custodial parent’ means the parent with whom a child shared the same principal place of abode for the greater portion of the calendar year.

“(B) NONCUSTODIAL PARENT.—The term ‘noncustodial parent’ means the parent who is not the custodial parent.

“(4) EXCEPTION FOR MULTIPLE-SUPPORT AGREEMENTS.—This subsection shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of subsection (d)(3).

“(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

“(1) CHILD DEFINED.—

“(A) IN GENERAL.—The term ‘child’ means an individual who is—

“(i) a son, daughter, stepson, or stepdaughter of the taxpayer, or

“(ii) an eligible foster child of the taxpayer.

“(B) ADOPTED CHILD.—In determining whether any of the relationships specified in subparagraph (A)(i) or paragraph (4) exists, a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer, shall be treated as a child of such individual by blood.

“(C) ELIGIBLE FOSTER CHILD.—For purposes of subparagraph (A)(ii), the term ‘eligible foster child’ means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

“(2) STUDENT DEFINED.—The term ‘student’ means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

“(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

“(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

“(3) DETERMINATION OF HOUSEHOLD STATUS.—An individual shall not be treated as a member of the taxpayer’s household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

“(4) BROTHER AND SISTER.—The terms ‘brother’ and ‘sister’ include a brother or sister by the half blood.

“(5) SPECIAL SUPPORT TEST IN CASE OF STUDENTS.—For purposes of subsections (c)(1)(D) and (d)(1)(C), in the case of an individual who is—

“(A) a child of the taxpayer, and

“(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account.

“(6) TREATMENT OF MISSING CHILDREN.—

“(A) IN GENERAL.—Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

“(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

“(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping, shall be treated as meeting the requirement of subsection (c)(1)(B) with respect to a taxpayer for all taxable years ending during the period that the child is kidnapped.

“(B) PURPOSES.—Subparagraph (A) shall apply solely for purposes of determining—

“(i) the deduction under section 151(c),

“(ii) the credit under section 24 (relating to child tax credit),

“(iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and

“(iv) the earned income credit under section 32.

“(C) COMPARABLE TREATMENT OF CERTAIN QUALIFYING RELATIVES.—For purposes of this section, a child of the taxpayer—

“(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

Applicability.

“(ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping, shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

“(D) TERMINATION OF TREATMENT.—Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

“(7) CROSS REFERENCES.—

“For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).”.

SEC. 202. MODIFICATIONS OF DEFINITION OF HEAD OF HOUSEHOLD.

(a) HEAD OF HOUSEHOLD.—Clause (i) of section 2(b)(1)(A) is amended to read as follows:

“(i) a qualifying child of the individual (as defined in section 152(c), determined without regard to section 152(e)), but not if such child—

“(I) is married at the close of the taxpayer’s taxable year, and

“(II) is not a dependent of such individual by reason of section 152(b)(2) or 152(b)(3), or both, or”.

(b) CONFORMING AMENDMENTS.—

(1) Section 2(b)(2) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(2) Clauses (i) and (ii) of section 2(b)(3)(B) are amended to read as follows:

“(i) subparagraph (H) of section 152(d)(2), or

“(ii) paragraph (3) of section 152(d).”.

SEC. 203. MODIFICATIONS OF DEPENDENT CARE CREDIT.

(a) IN GENERAL.—Section 21(a)(1) is amended by striking “In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))” and inserting “In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual”.

(b) QUALIFYING INDIVIDUAL.—Paragraph (1) of section 21(b) is amended to read as follows:

“(1) QUALIFYING INDIVIDUAL.—The term ‘qualifying individual’ means—

“(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

“(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

“(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.”.

(c) CONFORMING AMENDMENT.—Paragraph (1) of section 21(e) is amended to read as follows:

“(1) PLACE OF ABODE.—An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.”.

SEC. 204. MODIFICATIONS OF CHILD TAX CREDIT.

(a) IN GENERAL.—Paragraph (1) of section 24(c) is amended to read as follows:

“(1) IN GENERAL.—The term ‘qualifying child’ means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.”.

(b) CONFORMING AMENDMENT.—Section 24(c)(2) is amended by striking “the first sentence of section 152(b)(3)” and inserting “subparagraph (A) of section 152(b)(3)”.

SEC. 205. MODIFICATIONS OF EARNED INCOME CREDIT.

(a) QUALIFYING CHILD.—Paragraph (3) of section 32(c) is amended to read as follows:

“(3) QUALIFYING CHILD.—

“(A) IN GENERAL.—The term ‘qualifying child’ means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

“(B) MARRIED INDIVIDUAL.—The term ‘qualifying child’ shall not include an individual who is married as of the close of the taxpayer’s taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

“(C) PLACE OF ABODE.—For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

“(D) IDENTIFICATION REQUIREMENTS.—

“(i) IN GENERAL.—A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

“(ii) OTHER METHODS.—The Secretary may prescribe other methods for providing the information described in clause (i).”.

(b) CONFORMING AMENDMENTS.—

(1) Section 32(c)(1) is amended by striking subparagraph (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (C), (D), (E), and (F), respectively.

(2) Section 32(c)(4) is amended by striking “(3)(E)” and inserting “(3)(C)”.

(3) Section 32(m) is amended by striking “subsections (c)(1)(F)” and inserting “subsections (c)(1)(E)”.

SEC. 206. MODIFICATIONS OF DEDUCTION FOR PERSONAL EXEMPTION FOR DEPENDENTS.

Subsection (c) of section 151 is amended to read as follows:

“(c) ADDITIONAL EXEMPTION FOR DEPENDENTS.—An exemption of the exemption amount for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year.”.

SEC. 207. TECHNICAL AND CONFORMING AMENDMENTS.

(1) Section 2(a)(1)(B)(i) is amended by inserting “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

(2) Section 21(e)(5) is amended—

(A) by striking “paragraph (2) or (4) of” in subparagraph (A), and

(B) by striking “within the meaning of section 152(e)(1)” and inserting “as defined in section 152(e)(3)(A)”.

(3) Section 21(e)(6)(B) is amended by striking “section 151(c)(3)” and inserting “section 152(f)(1)”.

(4) Section 25B(c)(2)(B) is amended by striking “151(c)(4)” and inserting “152(f)(2)”.

(5)(A) Subparagraphs (A) and (B) of section 51(i)(1) are each amended by striking “paragraphs (1) through (8) of section 152(a)” both places it appears and inserting “subparagraphs (A) through (G) of section 152(d)(2)”.

(B) Section 51(i)(1)(C) is amended by striking “152(a)(9)” and inserting “152(d)(2)(H)”.

(6) Section 72(t)(2)(D)(i)(III) is amended by inserting “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

(7) Section 72(t)(7)(A)(iii) is amended by striking “151(c)(3)” and inserting “152(f)(1)”.

(8) Section 42(i)(3)(D)(ii)(I) is amended by inserting “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

(9) Subsections (b) and (c)(1) of section 105 are amended by inserting “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

(10) Section 120(d)(4) is amended by inserting “(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)” after “section 152”.

(11) Section 125(e)(1)(D) is amended by inserting “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

(12) Section 129(c)(2) is amended by striking “151(c)(3)” and inserting “152(f)(1)”.

(13) The first sentence of section 132(h)(2)(B) is amended by striking “151(c)(3)” and inserting “152(f)(1)”.

(14) Section 153 is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(15) Section 170(g)(1) is amended by inserting “(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)” after “section 152”.

(16) Section 170(g)(3) is amended by striking “paragraphs (1) through (8) of section 152(a)” and inserting “subparagraphs (A) through (G) of section 152(d)(2)”.

(17) Section 213(a) is amended by inserting “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

(18) The second sentence of section 213(d)(11) is amended by striking “paragraphs (1) through (8) of section 152(a)” and inserting “subparagraphs (A) through (G) of section 152(d)(2)”.

(19) Section 220(d)(2)(A) is amended by inserting “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

(20) Section 221(d)(4) is amended by inserting “(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)” after “section 152”.

(21) Section 529(e)(2)(B) is amended by striking “paragraphs (1) through (8) of section 152(a)” and inserting “subparagraphs (A) through (G) of section 152(d)(2)”.

(22) Section 2032A(c)(7)(D) is amended by striking “section 151(c)(4)” and inserting “section 152(f)(2)”.

(23) Section 2057(d)(2)(B) is amended by inserting “, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof” after “section 152”.

(24) Section 7701(a)(17) is amended by striking “152(b)(4), 682,” and inserting “682”.

26 USC 7702.

(25) Section 7702B(f)(2)(C)(iii) is amended by striking “paragraphs (1) through (8) of section 152(a)” and inserting “subparagraphs (A) through (G) of section 152(d)(2)”.

(26) Section 7703(b)(1) is amended—

(A) by striking “151(c)(3)” and inserting “152(f)(1)”, and

(B) by striking “paragraph (2) or (4) of”.

26 USC 2 note.

SEC. 208. EFFECTIVE DATE.

The amendments made by this title shall apply to taxable years beginning after December 31, 2004.

TITLE III—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

SEC. 301. RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Section 41(h)(1)(B) (relating to termination) is amended by striking “June 30, 2004” and inserting “December 31, 2005”.

(2) CONFORMING AMENDMENT.—Section 45C(b)(1)(D) is amended by striking “June 30, 2004” and inserting “December 31, 2005”.

26 USC 41 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 2004.

SEC. 302. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) IN GENERAL.—Section 9812(f) is amended—

(1) by striking “and” at the end of paragraph (1), and
(2) by striking paragraph (2) and inserting the following new paragraphs:

“(2) on or after January 1, 2004, and before the date of the enactment of the Working Families Tax Relief Act of 2004, and

“(3) after December 31, 2005.”.

(b) ERISA.—Section 712(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a(f)) is amended by striking “on or after December 31, 2004” and inserting “after December 31, 2005”.

(c) PHSA.—Section 2705(f) of the Public Health Service Act (42 U.S.C. 300gg-5(f)) is amended by striking “on or after December 31, 2004” and inserting “after December 31, 2005”.

(d) EFFECTIVE DATES.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 9812 note.

SEC. 303. WORK OPPORTUNITY CREDIT AND WELFARE-TO-WORK CREDIT.

(a) EXTENSION OF CREDIT.—

(1) IN GENERAL.—Section 51(c)(4) is amended by striking “December 31, 2003” and inserting “December 31, 2005”.

(2) LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51A(f) is amended by striking “December 31, 2003” and inserting “December 31, 2005”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after December 31, 2003. 26 USC 51 note.

SEC. 304. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking “and 2003” and inserting “2003, 2004, and 2005”. 26 USC 1397.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after December 31, 2003. 26 USC 1397E note.

SEC. 305. COVER OVER OF TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking “January 1, 2004” and inserting “January 1, 2006”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to articles brought into the United States after December 31, 2003. 26 USC 7652 note.

SEC. 306. DEDUCTION FOR CORPORATE DONATIONS OF SCIENTIFIC PROPERTY AND COMPUTER TECHNOLOGY.

(a) IN GENERAL.—Section 170(e)(6)(G) is amended by striking “2003” and inserting “2005”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2003. 26 USC 170 note.

SEC. 307. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) is amended by striking “or 2003” and inserting “, 2003, 2004, or 2005”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses paid or incurred in taxable years beginning after December 31, 2003. 26 USC 62 note.

SEC. 308. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) EXTENSION OF TERMINATION DATE.—Subsection (h) of section 198 is amended by striking “December 31, 2003” and inserting “December 31, 2005”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenditures paid or incurred after December 31, 2003. 26 USC 198 note.

SEC. 309. CERTAIN NEW YORK LIBERTY ZONE BENEFITS.

(a) EXTENSION OF TAX-EXEMPT BOND FINANCING.—Subparagraph (D) of section 1400L(d)(2) is amended by striking “2005” and inserting “2010”.

(b) EXTENSION OF ADVANCE REFUNDINGS.—Section 1400L(e)(1) is amended by striking “2005” and inserting “2006”.

(c) CLARIFICATION OF BONDS ELIGIBLE FOR ADVANCE REFUNDING.—Section 1400L(e)(2)(B) (relating to bonds described) is amended by striking “, or” and inserting “or the Municipal Assistance Corporation, or”.

26 USC 1400L
note.

(d) EFFECTIVE DATE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002.

SEC. 310. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA.

(a) DESIGNATION OF ZONE.—Subsection (f) of section 1400 is amended by striking “December 31, 2003” both places it appears and inserting “December 31, 2005”.

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—Subsection (b) of section 1400A is amended by striking “December 31, 2003” and inserting “December 31, 2005”.

(c) ZERO PERCENT CAPITAL GAINS RATE.—

(1) IN GENERAL.—Subsection (b) of section 1400B is amended by striking “January 1, 2004” each place it appears and inserting “January 1, 2006”.

(2) CONFORMING AMENDMENTS.—

(A) Section 1400B(e)(2) is amended—

(i) by striking “December 31, 2008” and inserting “December 31, 2010”, and

(ii) by striking “2008” in the heading and inserting “2010”.

(B) Section 1400B(g)(2) is amended by striking “December 31, 2008” and inserting “December 31, 2010”.

(C) Section 1400F(d) is amended by striking “December 31, 2008” and inserting “December 31, 2010”.

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking “January 1, 2004” and inserting “January 1, 2006”.

26 USC 1400
note.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 2004.

(2) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—The amendment made by subsection (b) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 311. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

(a) IN GENERAL.—Paragraph (5) of section 6103(d) (relating to disclosure to State tax officials and State and local law enforcement agencies) is amended to read as follows:

“(5) DISCLOSURE FOR COMBINED EMPLOYMENT TAX REPORTING.—

“(A) IN GENERAL.—The Secretary may disclose taxpayer identity information and signatures to any agency, body, or commission of any State for the purpose of carrying out with such agency, body, or commission a combined Federal and State employment tax reporting program approved by the Secretary. Subsections (a)(2) and (p)(4) and sections 7213 and 7213A shall not apply with respect

to disclosures or inspections made pursuant to this paragraph.

“(B) TERMINATION.—The Secretary may not make any disclosure under this paragraph after December 31, 2005.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act. 26 USC 6103 note.

SEC. 312. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—
(1) by striking “RULE FOR 2000, 2001, 2002, AND 2003.—” and inserting “RULE FOR TAXABLE YEARS 2000 THROUGH 2005.—”, and

(2) by striking “or 2003” and inserting “2003, 2004, or 2005”.

(b) CONFORMING PROVISIONS.—

(1) Section 904(h) is amended by striking “or 2003” and inserting “2003, 2004, or 2005”.

(2) The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to taxable years beginning during 2004 or 2005. 26 USC 23 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003. 26 USC 26 note.

SEC. 313. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraphs (A), (B), and (C) of section 45(c)(3) are each amended by striking “January 1, 2004” and inserting “January 1, 2006”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to facilities placed in service after December 31, 2003. 26 USC 45 note.

SEC. 314. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) is amended by striking “January 1, 2004” and inserting “January 1, 2006”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003. 26 USC 613A note.

SEC. 315. INDIAN EMPLOYMENT TAX CREDIT.

Section 45A(f) (relating to termination) is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

SEC. 316. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATION.

Section 168(j)(8) (relating to termination) is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

SEC. 317. DISCLOSURE OF RETURN INFORMATION RELATING TO STUDENT LOANS.

Section 6103(l)(13)(D) (relating to termination) is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

SEC. 318. ELIMINATION OF PHASEOUT OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES FOR 2004 AND 2005.

(a) IN GENERAL.—Paragraph (2) of section 30(b) is amended to read as follows:

“(2) PHASEOUT.—In the case of any qualified electric vehicle placed in service after December 31, 2005, the credit otherwise allowable under subsection (a) (determined after the application of paragraph (1)) shall be reduced by 75 percent.”.

26 USC 30 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003.

SEC. 319. ELIMINATION OF PHASEOUT FOR DEDUCTION FOR CLEAN-FUEL VEHICLE PROPERTY FOR 2004 AND 2005.

(a) IN GENERAL.—Subparagraph (B) of section 179A(b)(1) is amended to read as follows:

“(B) PHASEOUT.—In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2005, the limit otherwise allowable under subparagraph (A) shall be reduced by 75 percent.”.

26 USC 179A
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property placed in service after December 31, 2003.

SEC. 320. DISCLOSURES RELATING TO TERRORIST ACTIVITIES.

(a) IN GENERAL.—Clause (iv) of section 6103(i)(3)(C) and subparagraph (E) of section 6103(i)(7) are both amended by striking “December 31, 2003” and inserting “December 31, 2005”.

(b) DISCLOSURE OF TAXPAYER IDENTITY TO LAW ENFORCEMENT AGENCIES INVESTIGATING TERRORISM.—Subparagraph (A) of section 6103(i)(7) is amended by adding at the end the following new clause:

“(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer’s identity shall not be treated as taxpayer return information.”.

26 USC 6103
note.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to disclosures on or after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001.

SEC. 321. JOINT REVIEW OF STRATEGIC PLANS AND BUDGET FOR THE INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Paragraph (2) of section 8021(f) (relating to joint reviews) is amended by striking “2004” and inserting “2005”.

(b) REPORT.—Subparagraph (C) of section 8022(3) (regarding reports) is amended—

(1) by striking “2004” and inserting “2005”, and

(2) by striking “with respect to—” and all that follows and inserting “with respect to the matters addressed in the joint review referred to in section 8021(f)(2).”.

Deadline.
26 USC 8021
note.

(c) TIME FOR JOINT REVIEW.—The joint review required by section 8021(f)(2) of the Internal Revenue Code of 1986 to be made before June 1, 2004, shall be treated as timely if made before June 1, 2005.

SEC. 322. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) **IN GENERAL.**—Paragraphs (2) and (3)(B) of section 220(i) (defining cut-off year) are each amended by striking “2003” each place it appears in the text and headings and inserting “2005”.

(b) **CONFORMING AMENDMENTS.**—

(1) Paragraph (2) of section 220(j) is amended—

(A) in the text by striking “or 2002” each place it appears and inserting “2002, or 2004”, and

(B) in the heading by striking “OR 2002” and inserting “2002, OR 2004”.

(2) Subparagraph (A) of section 220(j)(4) is amended by striking “and 2002” and inserting “2002, and 2004”.

(3) Subparagraph (C) of section 220(j)(2) is amended to read as follows:

“(C) **NO LIMITATION FOR 2000 OR 2003.**—The numerical limitation shall not apply for 2000 or 2003.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2004. 26 USC 220 note.

(d) **TIME FOR FILING REPORTS, ETC.**—

(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2004, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act.

(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2004 shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2004 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.

Deadlines.
26 USC 220 note.

TITLE IV—TAX TECHNICAL CORRECTIONS

SEC. 401. AMENDMENTS RELATED TO MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003.

(a) **AMENDMENTS RELATED TO SECTION 1201 OF THE ACT.**—

(1) Paragraph (2) of section 26(b) is amended by striking “and” at the end of subparagraph (Q), by striking the period at the end of subparagraph (R) and inserting “, and”, and by adding at the end the following new subparagraph:

26 USC 26.

“(S) section 223(f)(4) (relating to additional tax on health savings account distributions not used for qualified medical expenses).

(2) Paragraph (3) of section 35(g) is amended to read as follows:

“(3) **MEDICAL AND HEALTH SAVINGS ACCOUNTS.**—Amounts distributed from an Archer MSA (as defined in section 220(d)) or from a health savings account (as defined in section 223(d)) shall not be taken into account under subsection (a).”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect as if included in section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. 26 USC 26 note.

**SEC. 402. AMENDMENTS RELATED TO JOBS AND GROWTH TAX RELIEF
RECONCILIATION ACT OF 2003.**

(a) AMENDMENTS RELATED TO SECTION 302 OF THE ACT.—

26 USC 1.

(1) Clause (i) of section 1(h)(1)(D) is amended by inserting “(determined without regard to paragraph (11))” after “net capital gain”.

(2) Subclause (I) of section 1(h)(11)(B)(iii) is amended—

(A) by striking “section 246(c)(1)” and inserting “section 246(c)”,

(B) by striking “120-day period” and inserting “121-day period”, and

(C) by striking “90-day period” and inserting “91-day period”.

(3) Clause (ii) of section 1(h)(11)(D) is amended by striking “an individual” and inserting “a taxpayer to whom this section applies”.

(4) Paragraph (4) of section 691(c) is amended by striking “of any gain”.

(5)(A) Subparagraph (B) of section 854(b)(1) is amended—

(i) by striking clauses (iii) and (iv), and

(ii) by amending clause (i) to read as follows:

“(i) IN GENERAL.—In any case in which—

“(I) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies),

“(II) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend, and

“(III) the qualified dividend income of such investment company for such taxable year is less than 95 percent of its gross income,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend designated by the regulated investment company.”.

(B) Subparagraph (C) of section 854(b)(1) is amended to read as follows:

“(C) LIMITATIONS.—

“(i) SUBPARAGRAPH (A).—The aggregate amount which may be designated as dividends under subparagraph (A) shall not exceed the aggregate dividends received by the company for the taxable year.

“(ii) SUBPARAGRAPH (B).—The aggregate amount which may be designated as qualified dividend income under subparagraph (B) shall not exceed the sum of—

“(I) the qualified dividend income of the company for the taxable year, and

“(II) the amount of any earnings and profits which were distributed by the company for such taxable year and accumulated in a taxable year with respect to which this part did not apply.”.

(C) Paragraph (2) of section 854(b) is amended by striking “as a dividend for purposes of the maximum rate under section 1(h)(11) and” and inserting “as qualified dividend income for purposes of section 1(h)(11) and as dividends for purposes of”.

(D) Paragraph (5) of section 854(b) is amended to read as follows:

“(5) QUALIFIED DIVIDEND INCOME.—For purposes of this subsection, the term ‘qualified dividend income’ has the meaning given such term by section 1(h)(11)(B).”.

(E) Paragraph (2) of section 857(c) is amended to read as follows:

“(2) SECTION (1)(h)(11).—

“(A) IN GENERAL.—In any case in which—

“(i) a dividend is received from a real estate investment trust (other than a capital gain dividend), and

“(ii) such trust meets the requirements of section 856(a) for the taxable year during which it paid such dividend,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend designated by the real estate investment trust.

“(B) LIMITATION.—The aggregate amount which may be designated as qualified dividend income under subparagraph (A) shall not exceed the sum of—

“(i) the qualified dividend income of the trust for the taxable year,

“(ii) the excess of—

“(I) the sum of the real estate investment trust taxable income computed under section 857(b)(2) for the preceding taxable year and the income subject to tax by reason of the application of the regulations under section 337(d) for such preceding taxable year, over

“(II) the sum of the taxes imposed on the trust for such preceding taxable year under section 857(b)(1) and by reason of the application of such regulations, and

“(iii) the amount of any earnings and profits which were distributed by the trust for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

“(C) NOTICE TO SHAREHOLDERS.—The amount of any distribution by a real estate investment trust which may be taken into account as qualified dividend income shall not exceed the amount so designated by the trust in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year. Deadline.

“(D) QUALIFIED DIVIDEND INCOME.—For purposes of this paragraph, the term ‘qualified dividend income’ has the meaning given such term by section 1(h)(11)(B).”.

(F) With respect to any taxable year of a regulated investment company or real estate investment trust ending on or before November 30, 2003, the period for providing notice of the qualified dividend amount to shareholders under sections 854(b)(2) and 857(c)(2)(C) of the Internal Revenue Code of 1986, as amended by this section, shall not expire before the date on which the statement under section 6042(c) of such Code is required to be furnished with respect to the last calendar year beginning in such taxable year. 26 USC 854 note.

(6) Paragraph (2) of section 302(f) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended to read as follows: 26 USC 1 note.

“(2) PASS-THRU ENTITIES.—In the case of a pass-thru entity described in subparagraph (A), (B), (C), (D), (E), or (F) of section 1(h)(10) of the Internal Revenue Code of 1986, as amended by this Act, the amendments made by this section shall apply to taxable years ending after December 31, 2002; except that dividends received by such an entity on or before such date shall not be treated as qualified dividend income (as defined in section 1(h)(11)(B) of such Code, as added by this Act).”

26 USC 1 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003.

SEC. 403. AMENDMENTS RELATED TO JOB CREATION AND WORKER ASSISTANCE ACT OF 2002.

(a) AMENDMENTS RELATED TO SECTION 101 OF THE ACT.—

26 USC 168.

(1) Clause (i) of section 168(k)(2)(B) is amended to read as follows:

“(i) IN GENERAL.—The term ‘qualified property’ includes any property if such property—

“(I) meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

“(II) has a recovery period of at least 10 years or is transportation property,

“(III) is subject to section 263A, and

“(IV) meets the requirements of clause (ii) or (iii) of section 263A(f)(1)(B) (determined as if such clauses also apply to property which has a long useful life (within the meaning of section 263A(f))).”

(2)(A) Subparagraph (D) of section 168(k)(2) is amended by adding at the end the following new clauses:

“(iii) SYNDICATION.—For purposes of subparagraph (A)(ii), if—

“(I) property is originally placed in service after September 10, 2001, by the lessor of such property,

“(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date such property was originally placed in service, and

“(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale.

“(iv) LIMITATIONS RELATED TO USERS AND RELATED PARTIES.—The term ‘qualified property’ shall not include any property if—

“(I) the user of such property (as of the date on which such property is originally placed in service) or a person which is related (within the meaning of section 267(b) or 707(b)) to such user or to the taxpayer had a written binding contract in effect for the acquisition of such property at any time on or before September 10, 2001, or

“(II) in the case of property manufactured, constructed, or produced for such user’s or person’s own use, the manufacture, construction, or production of such property began at any time on or before September 10, 2001.”.

(B) Clause (ii) of section 168(k)(2)(D) is amended by inserting “clause (iii) and” before “subparagraph (A)(ii)”.

(b) AMENDMENTS RELATED TO SECTION 102 OF THE ACT.—

(1) Subparagraph (H) of section 172(b)(1) is amended by striking “a taxpayer which has”. 26 USC 172.

(2) In the case of a net operating loss for a taxable year ending during 2001 or 2002— 26 USC 172 note.

(A) an application under section 6411(a) of the Internal Revenue Code of 1986 with respect to such loss shall not fail to be treated as timely filed if filed before November 1, 2002,

(B) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before November 1, 2002, and

(C) any election made under section 172(j) of such Code shall (notwithstanding such section) be treated as timely made if made before November 1, 2002.

(3) Section 102(c)(2) of the Job Creation and Worker Assistance Act of 2002 (Public Law 107–147) is amended by striking “before January 1, 2003” and inserting “after December 31, 1990”. 26 USC 56 note.

(4)(A) Subclause (I) of section 56(d)(1)(A)(i) is amended by striking “attributable to carryovers”.

(B) Subclause (I) of section 56(d)(1)(A)(ii) is amended—
(i) by striking “for taxable years” and inserting “from taxable years”, and

(ii) by striking “carryforwards” and inserting “carryovers”.

(c) AMENDMENTS RELATED TO SECTION 301 OF THE ACT.—

(1) Subparagraph (D) of section 1400L(a)(2) is amended— 26 USC 1400L.

(A) by striking “subchapter B” and inserting “subchapter A”, and

(B) in clause (ii), by striking “subparagraph (B)” and inserting “this paragraph”.

(2) Subparagraph (D) of section 1400L(b)(2) is amended by inserting “, and clause (iv) thereof shall be applied by substituting ‘qualified New York Liberty Zone property’ for ‘qualified property’” before the period at the end.

(3) Subsection (c) of section 1400L is amended by adding at the end the following new paragraph:

“(5) ELECTION OUT.—For purposes of this subsection, rules similar to the rules of section 168(k)(2)(C)(iii) shall apply.”. Applicability.

(4) Paragraph (2) of section 1400L(f) is amended by inserting before the period “, determined without regard to subparagraph (C)(i) thereof”.

(d) AMENDMENT RELATED TO SECTION 405 OF THE ACT.—The last sentence of section 4006(a)(3)(E)(iii)(IV) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)(iii)(IV)) is amended—

(1) by inserting “or this subparagraph” after “this clause” both places it appears, and

(2) by inserting “(other than sections 4005, 4010, 4011, and 4043)” after “subsections”.

26 USC 137. (e) AMENDMENT RELATED TO SECTION 411 OF THE ACT.—Subparagraph (B) of section 411(c)(2) of the Job Creation and Worker Assistance Act of 2002 is amended by striking “Paragraph (2)” and inserting “Paragraph (1)”.

26 USC 56 note. (f) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Job Creation and Worker Assistance Act of 2002 to which they relate.

SEC. 404. AMENDMENTS RELATED TO ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001.

26 USC 530. (a) AMENDMENT RELATED TO SECTION 401 OF THE ACT.—Clause (i) of section 530(d)(2)(C) is amended by striking “higher” after “qualified”.

26 USC 45A. (b) AMENDMENTS RELATED TO SECTION 611 OF THE ACT.—
(1) Paragraph (3) of section 45A(c) is amended by inserting “, except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993” before the period at the end.

26 USC 415. (2) Subparagraph (A) of section 415(d)(4) is amended by adding at the end the following new sentence: “This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.”.

26 USC 4972. (c) AMENDMENT RELATED TO SECTION 614 OF THE ACT.—Clause (ii) of section 4972(c)(6)(A) is amended to read as follows:
“(ii) the amount of contributions described in section 401(m)(4)(A), or”.

26 USC 408. (d) AMENDMENT RELATED TO SECTION 637 OF THE ACT.—Clause (i) of section 408(p)(6)(A) is amended by adding at the end the following new sentence: “For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).”.

26 USC 403. (e) AMENDMENT RELATED TO SECTION 641 OF THE ACT.—Subparagraph (B) of section 403(a)(4) is amended to read as follows:
“(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).”.

26 USC 45A note. (f) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 to which they relate.

SEC. 405. AMENDMENTS RELATED TO COMMUNITY RENEWAL TAX RELIEF ACT OF 2000.

26 USC 1234B. (a) AMENDMENTS RELATED TO SECTION 401 OF THE ACT.—
(1) Subsection (c) of section 1234B is amended by adding at the end the following new sentence: “The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6)).”.

26 USC 1256. (2) Paragraph (6) of section 1256(g) is amended by adding at the end the following new sentence: “The Secretary may

prescribe regulations regarding the status of options the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as so defined).”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in section 401 of the Community Renewal Tax Relief Act of 2000.

26 USC 1234B
note.

SEC. 406. AMENDMENTS RELATED TO TAXPAYER RELIEF ACT OF 1997.

(a) AMENDMENT RELATED TO SECTION 211 OF THE ACT.—Subparagraph (B) of section 529(c)(5) is amended to read as follows:

26 USC 529.
Applicability.

“(B) TREATMENT OF DESIGNATION OF NEW BENEFICIARY.—The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) unless the new beneficiary is—

“(i) assigned to the same generation as (or a higher generation than) the old beneficiary (determined in accordance with section 2651), and

“(ii) a member of the family of the old beneficiary.”.

(b) AMENDMENT RELATED TO SECTION 213 OF THE ACT.—Clause (iii) of section 530(d)(4)(B) is amended by striking “account holder” and inserting “designated beneficiary”.

26 USC 530.

(c) AMENDMENT RELATED TO SECTION 226 OF THE ACT.—Section 1397E is amended by adding at the end the following new subsection:

26 USC 1397E.

“(i) S CORPORATIONS.—In the case of a qualified zone academy bond held by an S corporation which is an eligible taxpayer—

“(1) each shareholder shall take into account such shareholder’s pro rata share of the credit, and

“(2) no basis adjustments to the stock of the corporation shall be made under section 1367 on account of this section.”.

(d) AMENDMENT RELATED TO SECTION 311 OF THE ACT.—Subparagraph (B) of section 55(b)(3) is amended by striking “the amount on which a tax is determined under” and inserting “an amount equal to the excess described in”.

26 USC 55.

(e) AMENDMENTS RELATED TO SECTION 1001 OF THE ACT.—

(1) Paragraph (2) of section 1259(c) is amended by striking “The term ‘constructive sale’ shall not include any contract” and inserting “A taxpayer shall not be treated as having made a constructive sale solely because the taxpayer enters into a contract”.

26 USC 1259.

(2) Subparagraphs (A) and (B)(i) of section 1259(c)(3) are each amended by striking “be treated as a constructive sale” and inserting “cause a constructive sale”.

(3) Clause (i) of section 1259(c)(3)(A) is amended by striking “before the end of” and inserting “on or before”.

(4) Clause (ii) of section 1259(c)(3)(B) is amended by striking “substantially similar”.

(5) Subclause (I) of section 1259(c)(3)(B)(ii) is amended to read as follows:

“(I) which would (but for this subparagraph) cause the requirement of subparagraph (A)(iii) not to be met with respect to the transaction described in clause (i) of this subparagraph,”.

(6) Subclause (II) of such section is amended by inserting “on or” before “before the 30th day”.

- (7) The heading for subparagraph (B) of section 1259(c)(3) is amended by striking “POSITIONS WHICH ARE REESTABLISHED” and inserting “CERTAIN CLOSED TRANSACTIONS WHERE RISK OF LOSS ON APPRECIATED FINANCIAL POSITION DIMINISHED”.
- (f) AMENDMENTS RELATED TO SECTION 1015 OF THE ACT.—
- 26 USC 246. (1) Section 246(c)(1)(A) is amended by striking “90-day period” and inserting “91-day period”.
 (2) Section 246(c)(2)(B) is amended—
 (A) by striking “180-day period” and inserting “181-day period”, and
 (B) by striking “90-day period” and inserting “91-day period”.
- (g) AMENDMENTS RELATED TO SECTION 1053 OF THE ACT.—
- 26 USC 901. (1) Section 901(k)(1)(A)(i) is amended by striking “30-day period” and inserting “31-day period”.
 (2) Section 901(k)(3)(B) is amended—
 (A) by striking “90-day period” and inserting “91-day period”, and
 (B) by striking “30-day period” and inserting “31-day period”.
- 26 USC 55 note. (h) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 to which they relate.
- SEC. 407. AMENDMENTS RELATED TO SMALL BUSINESS JOB PROTECTION ACT OF 1996.**
- (a) AMENDMENT RELATED TO SECTION 1307 OF THE ACT.—
- 26 USC 1377. Subsection (b) of section 1377 (relating to post-termination transition period) is amended by adding at the end the following new paragraph:
 “(3) SPECIAL RULES FOR AUDIT RELATED POST-TERMINATION TRANSITION PERIODS.—
 “(A) NO APPLICATION TO CARRYOVERS.—Paragraph (1)(B) shall not apply for purposes of section 1366(d)(3).
 “(B) LIMITATION ON APPLICATION TO DISTRIBUTIONS.—Paragraph (1)(B) shall apply to a distribution described in section 1371(e) only to the extent that the amount of such distribution does not exceed the aggregate increase (if any) in the accumulated adjustments account (within the meaning of section 1368(e)) by reason of the adjustments referred to in such paragraph.”.
- (b) AMENDMENTS RELATED TO SECTION 1432 OF THE ACT.—
- 26 USC 401. Paragraph (26) of section 401(a) is amended by striking subparagraph (C) and by redesignating subparagraphs (D) through (I) as subparagraphs (C) through (H), respectively.
- 26 USC 401 note. (c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 to which they relate.
- SEC. 408. CLERICAL AMENDMENTS.**
- (a) INTERNAL REVENUE CODE OF 1986.—
- 26 USC 1. (1) Subclause (II) of section 1(g)(7)(B)(ii) is amended by striking “10 percent.” and inserting “10 percent”.
 (2) Clause (ii) of section 1(h)(6)(A) is amended—
 (A) in subclause (I), by striking “(5)(B)” and inserting “(4)(B)”, and
 (B) in subclause (II), by striking “(5)(A)” and inserting “(4)(A)”.

(3) Subclause (I) of section 42(d)(2)(D)(iii) is amended by striking “section 179(b)(7)” and inserting “section 179(d)(7)”.

(4) Subsection (f) of section 72 is amended by striking “Economic Growth and Tax Relief Reconciliation Act of 2001” and inserting “Economic Growth and Tax Relief Reconciliation Act of 2001”.

(5)(A) Section 138 and paragraph (2) of section 26(b) are each amended by striking “Medicare+Choice MSA” each place it appears in the text and inserting “Medicare Advantage MSA”.

(B) The heading for section 138 is amended to read as follows:

“SEC. 138. MEDICARE ADVANTAGE MSA.”

(C) The heading for subsection (b) of section 138 is amended by striking “MEDICARE+CHOICE MSA” and inserting “MEDICARE ADVANTAGE MSA”.

(D) The heading for paragraph (2) of section 138(c) is amended by striking “MEDICARE+CHOICE MSA” and inserting “MEDICARE ADVANTAGE MSA”.

(E) Clause (i) of section 138(c)(2)(C) is amended by striking “Medicare+Choice MSAs” and inserting “Medicare Advantage MSAs”.

(F) Subsection (f) of section 138 is amended by striking “Medicare+Choice MSA’s” and inserting “Medicare Advantage MSAs”.

(G) The item relating to section 138 in the table of sections for part III of subchapter B of chapter 1 is amended to read as follows:

“Sec. 138. Medicare Advantage MSA.”

(6) Clause (ii) of section 168(k)(2)(D) is amended—

(A) by inserting “is” after “if property”, and

(B) by striking “is” in subclause (I).

(7) Each of the following provisions is amended by inserting “Robert T. Stafford” before “Disaster Relief and Emergency Assistance Act”:

(A) Section 165(i)(1).

(B) Section 165(k).

(C) Section 1033(h)(3).

(D) Section 5064(b)(3).

(E) Section 5708(a).

(8) The heading for subparagraph (F) of section 168(k)(2) is amended by striking “MINIUMUM” and inserting “MINIMUM”.

(9) Paragraph (1) of section 246A(b) is amended by striking “section 243(c)(4)” and inserting “section 243(d)(4)”.

(10) Clause (ii) of section 263(g)(2)(B) is amended by striking “1278” and inserting “1276”.

(11) Clause (ii) of section 403(b)(7)(A) is amended by striking “section 3121(a)(1)(D)” and inserting “section 3121(a)(5)(D)”.

(12) Paragraph (1) of section 408(a) is amended by striking “457(e)(16)” and inserting “457(e)(16),”.

(13) Paragraph (2) of section 408(n) is amended by striking “section 101(6)” and inserting “paragraph (6) or (7) of section 101”.

(14) The table contained in section 411(a)(12)(B) is amended by striking the last line and inserting the following:

“6 or more 100.”.

(15) Paragraph (7) of section 414(q) is amended by striking “section” and inserting “subsection”.

(16) Subparagraph (A) of section 416(i)(1) is amended in the matter following clause (iii) by striking “in the case of plan years” and inserting “In the case of plan years”.

(17) Subparagraph (C) of section 415(c)(7) is amended by striking “subparagraph (D)” and inserting “subparagraph (B)”.

(18) The item relating to section 1234B in the table of sections for part IV of subchapter P of chapter 1 is amended to read as follows:

“Sec. 1234B. Gains or losses from securities futures contracts.”.

(19) Subsection (h) of section 1296 is amended by striking “paragraphs (2) and (3) of section 851(b)” and inserting “section 851(b)(2)”.

(20) The table of sections for part II of subchapter A of chapter 11 is amended by inserting after the item relating to section 2010 the following new item:

“Sec. 2011. Credit for State death taxes.”.

(21) The table of sections for subchapter A of chapter 13 is amended by inserting after the item relating to section 2603 the following new item:

“Sec. 2604. Credit for certain State taxes.”.

(22) Subsection (c) of section 4973 is amended by striking “subsection (a)(2)” and inserting “subsection (a)(3)”.

(23) Paragraph (2) of section 4978(a) is amended by striking “60 percent” and inserting “(60 percent)”.

(24) Paragraph (4) of section 6103(p) is amended by striking “subsection (l)(16) or (17)” each place it appears and inserting “subsection (l)(16) or (18)”.

(b) OTHER LAWS.—

(1) Subsection (c) of section 156 of the Community Renewal Tax Relief Act of 2000 (114 Stat. 2763A–623) is amended in the first sentence by inserting “than” after “not later”.

(2) Paragraph (6) of section 1(a) of Public Law 107–22 shall be applied by substituting “part VIII” for “part VII” in such paragraph.

(3) Subparagraph (A) of section 1(b)(3) of Public Law 107–22 shall be applied by substituting “EDUCATIONAL” for “EDUCATION” in the matter preceding subparagraph (A) in such section.

(4) Paragraph (1) of section 204(e) of the Railroad Retirement and Survivors’ Improvement Act of 2001 shall be applied by substituting “Section 24(d)(2)(A)(iii)” for “Section 24(d)(3)(A)(iii)” in such paragraph.

(5) Paragraph (2) of section 412(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall be applied by substituting “Section 221(f)(1)” for “Section 221(g)(1)” in such paragraph.

(6) Subsection (b) of section 531 of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall be applied by substituting “section” for “subsection” in such subsection.

Applicability.
26 USC 1400E
note.

26 USC 72.

26 USC 24.

26 USC 221.

26 USC 2011
note.

(7) Paragraph (3) of section 619(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall be applied by substituting “after the item relating to section 45D” for “at the end” in such paragraph.

(8) The table contained in section 203(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(4)(B)) is amended by striking the last line and inserting the following:

“6 or more 100.”.

(9) Paragraph (3) of section 652(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall be applied by inserting “each place it appears” before “in the next to last sentence” in such paragraph.

26 USC 4972.

Approved October 4, 2004.

LEGISLATIVE HISTORY—H.R. 1308:

HOUSE REPORTS: No. 108–696 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Mar. 19, considered and passed House.

June 5, considered and passed Senate, amended.

June 12, House concurred in Senate amendments with an amendment pursuant to H. Res. 270.

Vol. 150 (2004): Sept. 23, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Oct. 4, Presidential remarks.



Public Law 108–312
108th Congress

An Act

Oct. 5, 2004
[H.R. 265]

To provide for an adjustment of the boundaries of Mount Rainier National Park,
and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

Mount Rainier
National Park
Boundary
Adjustment Act
of 2004.
Washington.
16 USC 91 note.
16 USC 110d
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mount Rainier National Park
Boundary Adjustment Act of 2004”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Carbon River watershed within Pierce County in
the State of Washington has unique qualities of ecological,
economic, and educational importance, including clean water,
productive salmon streams, important wildlife habitat, active
geologic processes, outdoor recreational opportunities, scenic
beauty, educational opportunities, and diverse economic
opportunities.

(2) Mount Rainier National Park is one of the premier
attractions in the State of Washington, providing recreational,
educational, and economic opportunities that will be enhanced
by the construction of new campgrounds and visitor contact
facilities in the Carbon River valley outside old-growth forest
habitats and above the flood plain.

(3) Coordination of management across national forest and
national park lands in this corridor will enhance the conserva-
tion of the forest ecosystem and public enjoyment of these
public lands.

(4) Protection and development of historic and recreational
facilities in the Carbon River valley, such as trails and visitor
centers, can be facilitated by the National Park Service.

16 USC 110d.

SEC. 3. MOUNT RAINIER NATIONAL PARK BOUNDARY ADJUSTMENT.

(a) **BOUNDARY ADJUSTMENT.**—The boundary of Mount Rainier
National Park is modified to include the area within the boundary
generally depicted on the map entitled “Mount Rainier National
Park, Carbon River Boundary Adjustment”, numbered 105/92,002B,
and dated June 2003. The Secretary of the Interior shall keep
the map on file in the appropriate offices of the National Park
Service.

(b) **LAND ACQUISITION.**—The Secretary of the Interior may
acquire, only with the consent of the owner, by donation, purchase
with donated or appropriated funds, or exchange—

(1) land or interests in land, totaling not more than 800 acres, and improvements thereon within the boundary generally depicted on the map referred to in subsection (a) for development of camping and other recreational facilities; and

(2) land or interests in land, totaling not more than one acre, and improvements thereon in the vicinity of Wilkeson, Washington, for a facility to serve visitors to public lands along the Carbon and Mowich Corridors.

(c) ADMINISTRATION OF ACQUIRED LANDS.—Lands acquired under this section shall be administered by the Secretary of the Interior as part of Mount Rainier National Park in accordance with applicable laws and regulations.

SEC. 4. ASSOCIATED LANDS.

The Secretary of Agriculture shall manage that portion of the Mt. Baker-Snoqualmie National Forest lying adjacent to Mt. Rainier National Park, as identified on the map referred to in section 3(a), to maintain the area's natural setting in a manner consistent with its management as of June 1, 2003.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 265:

HOUSE REPORTS: No. 108–495 (Comm. on Resources).

SENATE REPORTS: No. 108–330 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 1, considered and passed House.

Sept. 15, considered and passed Senate.



Public Law 108–313
108th Congress

An Act

Oct. 5, 2004
[H.R. 1521]

Johnstown Flood
National
Memorial
Boundary
Adjustment Act
of 2004.
16 USC 431 note.

To provide for additional lands to be included within the boundary of the Johnstown Flood National Memorial in the State of Pennsylvania, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Johnstown Flood National Memorial Boundary Adjustment Act of 2004”.

SEC. 2. BOUNDARY OF JOHNSTOWN FLOOD NATIONAL MEMORIAL.

The boundary of the Johnstown Flood National Memorial (“Memorial”) is modified to include the area as generally depicted on the map entitled “Johnstown Flood National Memorial, Cambria County, Commonwealth of Pennsylvania”, numbered N.E.R.O. 427/80,008 and dated June, 2003. The map shall be on file and available for inspection in the appropriate offices of the National Park Service, Department of the Interior.

SEC. 3. ACQUISITION OF LANDS.

The Secretary of the Interior (“Secretary”) is authorized to acquire from willing sellers the land or interests in land as described in section 2 by donation, purchase with donated or appropriated funds, or exchange.

SEC. 4. ADMINISTRATION OF LANDS.

Lands added to the Memorial by section 2 shall be administered by the Secretary as part of the Memorial in accordance with applicable laws and regulations.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts otherwise made available for land acquisition, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 1521:

HOUSE REPORTS: No. 108–301 (Comm. on Resources).

SENATE REPORTS: No. 108–276 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 15, considered and passed House.

Vol. 150 (2004): Sept. 15, considered and passed Senate.



Public Law 108–314
108th Congress

An Act

Oct. 5, 2004
[H.R. 1616]

To authorize the exchange of certain lands within the Martin Luther King, Junior, National Historic Site for lands owned by the City of Atlanta, Georgia, and for other purposes.

Martin Luther
King, Junior,
National Historic
Site Land
Exchange Act.
16 USC 461 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Martin Luther King, Junior, National Historic Site Land Exchange Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Public Law 96–438 established the Martin Luther King, Junior, National Historic Site, and allows acquisition, by donation only, of lands owned by the State.

(2) The National Park Service owns a vacant lot that has no historic significance. The City of Atlanta has expressed interest in acquiring this property to encourage commercial development along Edgewood Avenue.

(3) The National Historic Site Visitor Center and Museum is land-locked and has no emergency ingress or egress, making it virtually impossible for firefighting equipment to reach.

(4) The acquisition of city-owned property would enable the National Park Service to establish easy street access to the National Historic Site Visitor Center and Museum, and would benefit the City by exchanging a piece of property that the City could develop.

(b) PURPOSE.—The purpose of this Act is to authorize the exchange of certain lands within the Martin Luther King, Junior, National Historic Site for lands owned by the City of Atlanta, Georgia.

SEC. 3. LAND EXCHANGE.

Section 2(b)(1) of the Act of October 10, 1980 (Public Law 96–428; 94 Stat. 1839; 16 U.S.C. 461 note) is amended by striking the period and inserting “or exchange.”.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 1616:

HOUSE REPORTS: No. 108–255 (Comm. on Resources).

SENATE REPORTS: No. 108–332 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 28, considered and passed House.

Vol. 150 (2004): Sept. 15, considered and passed Senate.



Public Law 108–315
108th Congress

An Act

Oct. 5, 2004
[H.R. 1648]

To authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley Water District and the Montecito Water District.

Carpinteria and
Montecito Water
Distribution
Systems
Conveyance Act
of 2004.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2004”.

SEC. 2. CONVEYANCE OF WATER DISTRIBUTION SYSTEMS OF THE CACHUMA PROJECT, CALIFORNIA.

(a) IN GENERAL.—The Secretary of the Interior—

(1) may convey to the Carpinteria Valley Water District, located in Santa Barbara County, California, all right, title, and interest of the United States in and to the Carpinteria Distribution System of the Cachuma Project, California, consistent with the terms and conditions set forth in the agreement entitled “Agreement Between the United States and the Carpinteria Valley Water District to Transfer Title to the Federally Owned Distribution System to the Carpinteria Valley Water District” (Agreement No. 00–XC–20–0364); and

(2) may convey to the Montecito Water District, located in Santa Barbara County, California, all right, title, and interest of the United States in and to the Montecito Water Distribution System of the Cachuma Project, California, consistent with the terms and conditions set forth in the agreement entitled “Agreement Between the United States and the Montecito Water District to Transfer Title to the Federally Owned Distribution System to the Montecito Water District” (Agreement No. 01–XC–20–0365).

Effective date.

(b) LIABILITY.—Effective upon the date of conveyance of a distribution system under this section, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the distribution system, except for damages caused by acts of negligence committed by the United States or by its employees or agents prior to the date of conveyance. Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (popularly known as the Federal Tort Claims Act) on the date of the enactment of this Act.

(c) BENEFITS.—After conveyance of a water distribution system to the Carpinteria Valley Water District or the Montecito Water District under this section—

(1) such water distribution system shall not be considered to be a part of a Federal reclamation project; and

(2) such water district shall not be eligible to receive any benefits with respect to any facility comprising that distribution system, except benefits that would be available to a similarly situated person with respect to such a facility that is not part of a Federal reclamation project.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 1648:

HOUSE REPORTS: No. 108–363 (Comm. on Resources).

SENATE REPORTS: No. 108–287 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 17, considered and passed House.

Vol. 150 (2004): Sept. 15, considered and passed Senate.



Public Law 108–316
108th Congress

An Act

Oct. 5, 2004
[H.R. 1732]

To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Williamson
County Water
Recycling Act of
2004.
43 USC 390h
note.

SECTION 1. PROJECT AUTHORIZATION.

(a) **SHORT TITLE.**—This section may be cited as the “Williamson County Water Recycling Act of 2004”.

(b) **IN GENERAL.**—The Reclamation Wastewater and Groundwater Study and Facilities Act (Title XVI of Public Law 102–575; 43 U.S.C. 390h et seq.) is amended by inserting after section 1635 the following new section:

43 USC
390h–17a.

“SEC. 1636. WILLIAMSON COUNTY, TEXAS, WATER RECYCLING AND REUSE PROJECT.

“(a) **AUTHORIZATION.**—The Secretary, in cooperation with the Lower Colorado River Authority, Texas, is authorized to participate in the design, planning, and construction of permanent facilities to reclaim and reuse water in Williamson County, Texas.

“(b) **COST SHARE.**—The Federal share of the costs of the project described in subsection (a) shall not exceed 25 percent of the total cost.

“(c) **LIMITATION.**—The Secretary shall not provide funds for the operation and maintenance of the project described in subsection (a).”.

SEC. 2. CLERICAL AMENDMENT.

The table of sections in section 2 of the Reclamation Projects Authorization and Adjustment Act of 1992 is amended by inserting after the item relating to section 1635 the following:

106 Stat. 4600.

“Sec. 1636. Williamson County, Texas, Water Recycling and Reuse Project.”.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 1732:

HOUSE REPORTS: No. 108–364 (Comm. on Resources).

SENATE REPORTS: No. 108–288 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 17, considered and passed House.

Vol. 150 (2004): Sept. 15, considered and passed Senate.



Public Law 108–317
108th Congress

An Act

Oct. 5, 2004
[H.R. 2696]

To establish Institutes to demonstrate and promote the use of adaptive ecosystem management to reduce the risk of wildfires, and restore the health of fire-adapted forest and woodland ecosystems of the interior West.

Southwest Forest
Health and
Wildfire
Prevention Act of
2004.
Arizona.
New Mexico.
16 USC 6701
note.
16 USC 6701.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Southwest Forest Health and Wildfire Prevention Act of 2004”.

SEC. 2. FINDINGS.

Congress finds that—

(1) there is an increasing threat of wildfire to millions of acres of forest land and rangeland throughout the United States;

(2) forest land and rangeland are degraded as a direct consequence of land management practices, including practices to control and prevent wildfires and the failure to harvest subdominant trees from overstocked stands that disrupt the occurrence of frequent low-intensity fires that have periodically removed flammable undergrowth;

(3) at least 39,000,000 acres of land of the National Forest System in the interior West are at high risk of wildfire;

(4) an average of 95 percent of the expenditures by the Forest Service for wildfire suppression during fiscal years 1990 through 1994 were made to suppress wildfires in the interior West;

(5) the number, size, and severity of wildfires in the interior West are increasing;

(6) of the timberland in National Forests in the States of Arizona and New Mexico, 59 percent of such land in Arizona, and 56 percent of such land in New Mexico, has an average diameter of 9 to 12 inches diameter at breast height;

(7) the population of the interior West grew twice as fast as the national average during the 1990s;

(8) catastrophic wildfires—

(A) endanger homes and communities;

(B) damage and destroy watersheds and soils; and

(C) pose a serious threat to the habitat of threatened and endangered species;

(9) a 1994 assessment of forest health in the interior West estimated that only a 15- to 30-year window of opportunity exists for effective management intervention before damage

from uncontrollable wildfire becomes widespread, with 8 years having already elapsed since the assessment;

(10) healthy forest and woodland ecosystems—

(A) reduce the risk of wildfire to forests and communities;

(B) improve wildlife habitat and biodiversity;

(C) increase tree, grass, forb, and shrub productivity;

(D) enhance watershed values;

(E) improve the environment; and

(F) provide a basis in some areas for economically and environmentally sustainable uses;

(11) sustaining the long-term ecological and economic health of interior West forests and woodland, and their associated human communities requires preventing severe wildfires before the wildfires occur and permitting natural, low-intensity ground fires;

(12) more natural fire regimes cannot be accomplished without the reduction of excess fuels and thinning of subdominant trees (which fuels and trees may be of commercial value);

(13) ecologically based forest and woodland ecosystem restoration on a landscape scale will—

(A) improve long-term community protection;

(B) minimize the need for wildfire suppression;

(C) improve resource values;

(D) improve the ecological integrity and resilience of these systems;

(E) reduce rehabilitation costs;

(F) reduce loss of critical habitat; and

(G) protect forests for future generations;

(14) although landscape scale restoration is needed to effectively reverse degradation, scientific understanding of landscape scale treatments is limited;

(15) rigorous, objective, understandable, and applied scientific information is needed for—

(A) the design, implementation, monitoring, and adaptation of landscape scale restoration treatments and improvement of wildfire management;

(B) the environmental review process; and

(C) affected entities that collaborate in the development and implementation of wildfire treatment.

SEC. 3. PURPOSES.

16 USC 6702.

The purposes of this Act are—

(1) to enhance the capacity to develop, transfer, apply, monitor, and regularly update practical science-based forest restoration treatments that will reduce the risk of severe wildfires, and improve the health of dry forest and woodland ecosystems in the interior West;

(2) to synthesize and adapt scientific findings from conventional research programs to the implementation of forest and woodland restoration on a landscape scale;

(3) to facilitate the transfer of interdisciplinary knowledge required to understand the socioeconomic and environmental impacts of wildfire on ecosystems and landscapes;

(4) to require the Institutes established under this Act to collaborate with Federal agencies—

(A) to use ecological restoration treatments to reverse declining forest health and reduce the risk of severe wildfires across the forest landscape; and

(B) to design, implement, monitor, and regularly revise representative wildfire treatments based on the use of adaptive ecosystem management;

(5) to assist land managers in—

(A) treating acres with restoration-based applications; and

(B) using new management technologies (including the transfer of understandable information, assistance with environmental review, and field and classroom training and collaboration) to accomplish the goals identified in—

(i) the National Fire Plan;

(ii) the report entitled “Protecting People and Sustaining Resources in Fire-Adapted Ecosystems-A Cohesive Strategy” (65 Fed. Reg. 67480); and

(iii) the report entitled “10-Year Comprehensive Strategy: A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment” of the Western Governors’ Association;

(6) to provide technical assistance to collaborative efforts by affected entities to develop, implement, and monitor adaptive ecosystem management restoration treatments that are ecologically sound, economically viable, and socially responsible; and

(7) to assist Federal and non-Federal land managers in providing information to the public on the role of fire and fire management in dry forest and woodland ecosystems in the interior West.

16 USC 6703.

SEC. 4. DEFINITIONS.

In this Act:

(1) ADAPTIVE ECOSYSTEM MANAGEMENT.—

(A) DEFINITION.—The term “adaptive ecosystem management” means a natural resource management process under which planning, implementation, monitoring, research, evaluation, and incorporation of new knowledge are combined into a management approach that—

(i) is based on scientific findings and the needs of society;

(ii) treats management actions as experiments;

(iii) acknowledges the complexity of these systems and scientific uncertainty; and

(iv) uses the resulting new knowledge to modify future management methods and policy.

(B) CLARIFICATION.—This paragraph shall not define the term “adaptive ecosystem management” for the purposes of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

(2) AFFECTED ENTITIES.—The term “affected entities” includes—

(A) land managers;

(B) stakeholders;

(C) concerned citizens; and

(D) the States of the interior West, including political subdivisions of the States.

(3) DRY FOREST AND WOODLAND ECOSYSTEM.—The term “dry forest and woodland ecosystem” means an ecosystem that is dominated by ponderosa pines and associated dry forest and woodland types.

(4) INSTITUTE.—The term “Institute” means an Institute established under section 5(a).

(5) INTERIOR WEST.—The term “interior West” means the States of Arizona, Colorado, Idaho, Nevada, New Mexico, and Utah.

(6) LAND MANAGER.—

(A) IN GENERAL.—The term “land manager” means a person or entity that practices or guides natural resource management.

(B) INCLUSIONS.—The term “land manager” includes a Federal, State, local, or tribal land management agency.

(7) RESTORATION.—The term “restoration” means a process undertaken to move an ecosystem or habitat toward—

(A) a sustainable structure of the ecosystem or habitat; or

(B) a condition that supports a natural complement of species, natural function, or ecological process (such as a low-intensity fire).

(8) SECRETARY.—The term “Secretary” means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(9) SECRETARIES.—The term “Secretaries” means—

(A) the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) the Secretary of the Interior.

(10) STAKEHOLDER.—The term “stakeholder” means any person interested in or affected by management of forest or woodland ecosystems.

(11) SUBDOMINANT TREES.—Are trees that occur underneath the canopy or extend into the canopy but are smaller and less vigorous than dominant trees.

(12) OVERSTOCKED STANDS.—Where the number of trees per acre exceeds the natural carrying capacity of the site.

(13) RESILIENCE.—The ability of a system to absorb disturbance without being pushed into a different, possibly less desirable stable state.

SEC. 5. ESTABLISHMENT OF INSTITUTES.

16 USC 6704.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall—

(1) not later than 180 days after the date of enactment of this Act, establish Institutes to promote the use of adaptive ecosystem management to reduce the risk of wildfires, and restore the health of forest and woodland ecosystems, in the interior West; and

Deadline.

(2) provide assistance to the Institutes to promote the use of collaborative processes and adaptive ecosystem management in accordance with paragraph (1).

(b) LOCATION.—

(1) EXISTING INSTITUTES.—The Secretary may designate an institute in existence on the date of enactment of this Act to serve as an Institute established under this Act.

(2) STATES.—Of the Institutes established under this Act, the Secretary shall establish 1 Institute in each of—

(A) the State of Arizona, to be located at Northern Arizona University;

(B) the State of New Mexico, to be located at New Mexico Highlands University, while engaging the full resources of the consortium of universities represented in the Institute of Natural Resource Analysis and Management (INRAM); and

(C) the State of Colorado.

(c) DUTIES.—Each Institute shall—

(1) develop, conduct research on, transfer, promote, and monitor restoration-based hazardous fuel reduction treatments to reduce the risk of severe wildfires and improve the health of dry forest and woodland ecosystems in the interior West;

(2) synthesize and adapt scientific findings from conventional research to implement restoration-based hazardous fuel reduction treatments on a landscape scale using an adaptive ecosystem management framework;

(3) translate for and transfer to affected entities any scientific and interdisciplinary knowledge about restoration-based hazardous fuel reduction treatments;

(4) assist affected entities with the design of adaptive management approaches (including monitoring) for the implementation of restoration-based hazardous fuel reduction treatments; and

(5) provide peer-reviewed annual reports.

(d) QUALIFICATIONS.—Each Institute shall—

(1) develop and demonstrate capabilities in the natural, physical, social, and policy sciences; and

(2) explicitly integrate those disciplines in the performance of the duties listed in subsection (c).

(e) COOPERATION.—Each Institute may cooperate with—

(1) researchers and cooperative extension programs at colleges, community colleges, and universities in the States of Arizona, New Mexico, and Colorado that have a demonstrated capability to conduct research described in subsection (c); and

(2) other organizations and entities in the interior West (such as the Western Governors' Association).

(f) ANNUAL WORK PLANS.—As a condition of the receipt of funds made available under this Act, for each fiscal year, each Institute shall develop in consultation with the Secretary, for review by the Secretary, in consultation with the Secretary of the Interior, an annual work plan that includes assurances, satisfactory to the Secretaries, that the proposed work of the Institute will serve the informational needs of affected entities.

(g) ESTABLISHMENT OF ADDITIONAL INSTITUTES.—If after 2 years after the date of the enactment of this Act, the Secretary finds that the Institute model established at the locations named in subsection (b)(2) would be constructive for other interior West States, the Secretary may establish 1 institute in each of those States.

SEC. 6. COOPERATION BETWEEN INSTITUTES AND FEDERAL AGENCIES.

In carrying out this Act, the Secretary, in consultation with the Secretary of the Interior—

(1) to the extent that funds are appropriated for the purpose, shall provide financial and technical assistance to the

Institutes to carry out the duties of the Institutes under section 5;

(2) shall encourage Federal agencies to use, on a cooperative basis, information and expertise provided by the Institutes;

(3) shall encourage cooperation and coordination between Federal programs relating to—

(A) ecological restoration;

(B) wildfire risk reduction; and

(C) wildfire management technologies;

(4) notwithstanding chapter 63 of title 31, United States Code, may—

(A) enter into contracts, cooperative agreements, and interagency personnel agreements to carry out this Act; and

(B) carry out other transactions under this Act;

(5) may accept funds from other Federal agencies to supplement or fully fund grants made, and contracts entered into, by the Secretaries;

(6) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this Act;

(7) shall encourage professional education and public information activities relating to the purposes of this Act; and

(8) may promulgate such regulations as the Secretaries determine are necessary to carry out this Act.

SEC. 7. MONITORING AND EVALUATION.

16 USC 6706.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Secretary, in consultation with the Secretary of the Interior, shall complete and submit to the Committee on Resources and the Committee on Agriculture of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate a detailed evaluation of the programs and activities of each Institute—

Deadline.

(1) to ensure, to the maximum extent practicable, that the research, communication tools, and information transfer activities of each Institute are sufficient to achieve the purposes of this Act, including—

(A) implementing active adaptive ecosystem management practices at the landscape level;

(B) reducing unnecessary planning costs;

(C) avoiding duplicative and conflicting efforts;

(D) increasing public acceptance of active adaptive ecosystem management practices; and

(E) achieving general satisfaction on the part of affected entities;

(2) to determine the extent to which each Institute has implemented its duties under section 5(c); and

(3) to determine whether continued provision of Federal assistance to each Institute is warranted.

(b) TERMINATION OF ASSISTANCE.—If, as a result of an evaluation under subsection (a), the Secretary, in consultation with the Secretary of the Interior, determines that an Institute does not qualify for further Federal assistance under this Act, the Institute shall receive no further Federal assistance under this Act until such time as the qualifications of the Institute are reestablished to the satisfaction of the Secretaries.

16 USC 6707.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There is authorized to be appropriated to carry out this Act \$15,000,000 for each fiscal year.

(b) **LIMITATION.**—No funds made available under subsection (a) shall be used to pay the costs of constructing any facilities.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 2696:

HOUSE REPORTS: No. 108–397, Pt. 1 (Comm. on Resources).

SENATE REPORTS: No. 108–252 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 149 (2004):

Feb. 24, considered and passed House.

Sept. 15, considered and passed Senate.



Public Law 108–318
108th Congress

An Act

To amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project.

Oct. 5, 2004
[H.R. 3209]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF ACREAGE FOR IRRIGATION WATER.

Section 501 of the Reclamation Project Authorization Act of 1972 (43 U.S.C. 615ddddd) is amended by striking “fifty-three thousand acres” and inserting “approximately 53,000 acres”.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 3209:

HOUSE REPORTS: No. 108–356 (Comm. on Resources).

SENATE REPORTS: No. 108–289 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 17, considered and passed House.

Vol. 150 (2004): Sept. 15, considered and passed Senate.



Public Law 108–319
108th Congress

An Act

Oct. 5, 2004

[H.R. 3249]

To extend the term of the Forest Counties Payments Committee.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

16 USC 500 note.

**SECTION 1. EXTENSION OF TERM OF FOREST COUNTIES PAYMENTS
COMMITTEE.**

Effective date.

Effective as of October 11, 2003, section 320(e) of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291; 114 Stat. 994; 16 U.S.C. 500 note), is amended by striking “three years after the date of the enactment of this Act” and inserting “on September 30, 2007”.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 3249:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 28, considered and passed House.

Vol. 150 (2004): Sept. 15, considered and passed Senate.



Public Law 108–320
108th Congress

An Act

To amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit Malcolm Baldrige National Quality Awards to be made to nonprofit organizations.

Oct. 5, 2004
[H.R. 3389]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT.

Section 17(c)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a(c)(1)) is amended by adding at the end the following:

“(F) Nonprofit organizations.”.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 3389:

HOUSE REPORTS: No. 108–419 (Comm. on Science).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 3, considered and passed House.

Sept. 23, considered and passed Senate.



Public Law 108–321
108th Congress

An Act

Oct. 5, 2004

[H.R. 3768]

Timucuan
Ecological and
Historic Preserve
Boundary
Revision Act of
2004.
16 USC 698n
note.

To expand the Timucuan Ecological and Historic Preserve, Florida.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Timucuan Ecological and Historic
Preserve Boundary Revision Act of 2004”.

**SEC. 2. REVISION OF BOUNDARY OF TIMUCUAN ECOLOGICAL AND HIS-
TORIC PRESERVE, FLORIDA.**

Section 201(a) of Public Law 100–249 (16 U.S.C. 698n) is
amended—

(1) by striking “(a) ESTABLISHMENT.—There is hereby” and
inserting the following:

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is”; and

(2) by adding at the end the following:

“(2) MODIFICATION OF BOUNDARY.—

“(A) IN GENERAL.—In addition to the land described
in paragraph (1), the Preserve shall include approximately
8.5 acres of land located in Nassau County, Florida, as
generally depicted on the map entitled ‘Timucuan
Ecological and Historic Preserve American Beach Adjust-
ment’, numbered 006/80012 and dated June 2003.

“(B) DUTIES OF SECRETARY.—The Secretary of the
Interior shall—

“(i) revise the boundaries of the Preserve so as
to encompass the land described in subparagraph (A);
and

“(ii) maintain the map described in subparagraph
(A) on file and available for public inspection in the
appropriate offices of the National Park Service.”.

Approved October 5, 2004.

LEGISLATIVE HISTORY—H.R. 3768:

HOUSE REPORTS: No. 108–493 (Comm. on Resources).

SENATE REPORTS: No. 108–333 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 17, considered and passed House.

Sept. 15, considered and passed Senate.



Public Law 108–322
108th Congress

Joint Resolution

Oct. 5, 2004

[S.J. Res. 41]

Commemorating the opening of the National Museum of the American Indian.

Whereas the National Museum of the American Indian Act (20 U.S.C. 808 et seq.) established within the Smithsonian Institution the National Museum of the American Indian and authorized the construction of a facility to house the National Museum of the American Indian on the National Mall in the District of Columbia;

Whereas the National Museum of the American Indian officially opens on September 21, 2004; and

Whereas the National Museum of the American Indian will be the only national museum devoted exclusively to the history and art of cultures indigenous to the Americas, and will give all Americans the opportunity to learn of the cultural legacy, historic grandeur, and contemporary culture of Native Americans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NATIONAL MUSEUM OF THE AMERICAN INDIAN.

Congress—

(1) recognizes the important and unique contribution of Native Americans to the cultural legacy of the United States, both in the past and currently;

(2) honors the cultural achievements of all Native Americans;

(3) celebrates the official opening of the National Museum of the American Indian; and

(4) requests the President to issue a proclamation encouraging all Americans to take advantage of the resources of the National Museum of the American Indian to learn about the history and culture of Native Americans.

Approved October 5, 2004.

LEGISLATIVE HISTORY—S.J. Res. 41:

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 22, considered and passed Senate.

Sept. 21, considered and passed House.



Public Law 108–323
108th Congress

An Act

Oct. 6, 2004
[H.R. 4654]

To reauthorize the Tropical Forest Conservation Act of 1998 through fiscal year 2007, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDUCTION OF DEBT UNDER THE FOREIGN ASSISTANCE ACT OF 1961 AND TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954.

Section 806(d) of the Tropical Forest Conservation Act of 1998 (22 U.S.C. 2431d(d)) is amended by adding at the end the following new paragraphs:

- “(4) \$20,000,000 for fiscal year 2005.
- “(5) \$25,000,000 for fiscal year 2006.
- “(6) \$30,000,000 for fiscal year 2007.”.

SEC. 2. USE OF FUNDS TO CONDUCT PROGRAM AUDITS AND EVALUATIONS.

Section 806 of the Tropical Forest Conservation Act of 1998 (22 U.S.C. 2431d) is amended by adding at the end the following new subsection:

“(e) USE OF FUNDS TO CONDUCT PROGRAM AUDITS AND EVALUATIONS.—Of the amounts made available to carry out this part for a fiscal year, \$200,000 is authorized to be made available to carry out audits and evaluations of programs under this part, including personnel costs associated with such audits and evaluations.”.

SEC. 3. AUTHORITY TO ALLOW FOR PAYMENTS OF INTEREST AND PRINCIPAL IN LOCAL CURRENCIES.

(a) AUTHORITY UNDER THE FOREIGN ASSISTANCE ACT OF 1961.—Section 806(c) of the Tropical Forest Conservation Act of 1998 (22 U.S.C. 2431d(c)) is amended—

- (1) in the matter preceding paragraph (1), by striking “The following” and inserting “(1) The following”;
- (2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and
- (3) by adding at the end the following:

“(2) In addition to the application of the provisions relating to repayment of principal under section 705 of this Act to the reduction of debt under subsection (a)(1) (in accordance with paragraph (1)(A) of this subsection), repayment of principal on a new obligation established under subsection (b) may be made in the

local currency of the beneficiary country and deposited in the Tropical Forest Fund of the country in the same manner as the provisions relating to payment of interest on new obligations under section 706 of this Act.”.

(b) AUTHORITY UNDER TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954.—Section 807(c) of the Tropical Forest Conservation Act of 1998 (22 U.S.C. 2431e(c)) is amended—

(1) in the matter preceding paragraph (1), by striking “The following” and inserting “(1) The following”;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

“(2) In addition to the application of the provisions relating to repayment of principal under section 605 of the Agricultural Trade Development and Assistance Act of 1954 to the reduction of debt under subsection (a)(1) (in accordance with paragraph (1)(A) of this subsection), repayment of principal on a new obligation established under subsection (b) may be made in the local currency of the beneficiary country and deposited in the Tropical Forest Fund of the country in the same manner as the provisions relating to payment of interest on new obligations under section 606 of such Act.”.

(c) CONFORMING AMENDMENT.—Section 810(a) of the Tropical Forest Conservation Act of 1998 (22 U.S.C. 2431h(a)) is amended by inserting “and principal” after “interest”.

Approved October 6, 2004.

LEGISLATIVE HISTORY—H.R. 4654:

HOUSE REPORTS: No. 108–603 (Comm. on International Relations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 7, considered and passed House.

Sept. 28, considered and passed Senate.



Public Law 108–324
108th Congress

An Act

Oct. 13, 2004
[H.R. 4837]

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

Military
Construction
Appropriations
and Emergency
Hurricane
Supplemental
Appropriations
Act, 2005.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005”.

SEC. 2. REFERENCES.

Except as expressly provided otherwise, any reference to “this Act” contained in any division of this Act shall be treated as referring only to the provisions of that division.

Military
Construction
Appropriations
Act, 2005.

**DIVISION A—MILITARY CONSTRUCTION APPROPRIATIONS
ACT, 2005**

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated for military construction, family housing, and base realignment and closure functions administered by the Department of Defense, for the fiscal year ending September 30, 2005, and for other purposes, namely:

MILITARY CONSTRUCTION, ARMY

(INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Army as currently authorized by law, including personnel in the Army Corps of Engineers and other personal services necessary for the purposes of this appropriation, and for construction and operation of facilities in support of the functions of the Commander in Chief, \$1,981,084,000, to remain available until September 30, 2009: *Provided*, That of this amount, not to exceed \$156,999,000 shall be available for study, planning, design, architect and engineer services, and host nation support, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That of the funds appropriated for “Military Construction,

Army” under Public Law 107-249, \$7,276,000 are rescinded: *Provided further*, That of the funds appropriated for “Military Construction, Army” under Public Law 107-64; \$3,924,000 are rescinded: *Provided further*, That of the funds appropriated for “Military Construction, Army” under Public Law 106-246, \$7,776,000 are rescinded.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

(INCLUDING RESCISSION)

For acquisition, construction, installation, and equipment of temporary or permanent public works, naval installations, facilities, and real property for the Navy and Marine Corps as currently authorized by law, including personnel in the Naval Facilities Engineering Command and other personal services necessary for the purposes of this appropriation, \$1,069,947,000, to remain available until September 30, 2009: *Provided*, That of this amount, not to exceed \$90,830,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That of the funds appropriated for “Military Construction, Navy” under Public Law 108-132, \$24,000,000 are rescinded.

MILITARY CONSTRUCTION, AIR FORCE

(INCLUDING RESCISSION)

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Air Force as currently authorized by law, \$866,331,000, to remain available until September 30, 2009: *Provided*, That of this amount, not to exceed \$130,711,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That of the funds appropriated for “Military Construction, Air Force” under Public Law, 108-106, \$21,800,000 are rescinded.

MILITARY CONSTRUCTION, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS AND RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, installations, facilities, and real property for activities and agencies of the Department of Defense (other than the military departments), as currently authorized by law, \$686,055,000, to remain available until September 30, 2009: *Provided*, That such amounts of this appropriation as may be determined by the Secretary of Defense may be transferred to such appropriations of the Department of Defense available for military construction or family housing as the Secretary may designate, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to

which transferred: *Provided further*, That of the amount appropriated, not to exceed \$62,800,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That of the funds appropriated for “Military Construction, Defense-Wide” under Public Law 107-249, \$16,737,000 are rescinded: *Provided further*, That of the funds appropriated for “Military Construction, Defense-Wide” under Public Law 107-64, \$6,000,000 are rescinded.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army National Guard, and contributions therefor, as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, \$446,748,000, to remain available until September 30, 2009.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

(INCLUDING RESCISSION)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard, and contributions therefor, as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, \$243,043,000, to remain available until September 30, 2009: *Provided*, That of the funds appropriated for “Military Construction, Air National Guard” under Public Law 108-132, \$5,000,000 are rescinded.

MILITARY CONSTRUCTION, ARMY RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army Reserve as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, \$92,377,000, to remain available until September 30, 2009.

MILITARY CONSTRUCTION, NAVAL RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the reserve components of the Navy and Marine Corps as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, \$44,246,000, to remain available until September 30, 2009.

MILITARY CONSTRUCTION, AIR FORCE RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air Force Reserve as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, \$123,977,000, to remain available until September 30, 2009.

NORTH ATLANTIC TREATY ORGANIZATION

SECURITY INVESTMENT PROGRAM

(INCLUDING RESCISSION)

For the United States share of the cost of the North Atlantic Treaty Organization Security Investment Program for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area as authorized by section 2806 of title 10, United States Code, and Military Construction Authorization Acts, \$165,800,000, to remain available until expended: *Provided*, That of the funds appropriated for “North Atlantic Treaty Organization Security Investment Program” under Public Law 108–132, \$5,000,000 are rescinded.

FAMILY HOUSING CONSTRUCTION, ARMY

(INCLUDING RESCISSION)

For expenses of family housing for the Army for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, \$636,099,000, to remain available until September 30, 2009: *Provided*, That of the funds appropriated for “Family Housing Construction, Army” under Public Law 107–249, \$21,000,000 are rescinded.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

For expenses of family housing for the Army for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, \$926,507,000.

FAMILY HOUSING CONSTRUCTION, NAVY AND MARINE CORPS

(INCLUDING RESCISSIONS)

For expenses of family housing for the Navy and Marine Corps for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, \$139,107,000, to remain available until September 30, 2009: *Provided*, That of the funds appropriated for “Family Housing Construction, Navy and Marine Corps” under Public Law 108–132, \$6,737,000 are rescinded: *Provided further*, That of the funds appropriated for “Family Housing Construction, Navy and Marine Corps” under Public Law 107–64, \$5,564,000 are rescinded.

FAMILY HOUSING OPERATION AND MAINTENANCE, NAVY AND
MARINE CORPS

For expenses of family housing for the Navy and Marine Corps for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, \$696,304,000.

FAMILY HOUSING CONSTRUCTION, AIR FORCE

(INCLUDING RESCISSIONS)

For expenses of family housing for the Air Force for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, \$846,959,000, to remain available until September 30, 2009: *Provided*, That of the funds appropriated for “Family Housing Construction, Air Force” under Public Law 108-132, \$6,000,000 are rescinded: *Provided further*, That of the funds appropriated for “Family Housing Construction, Air Force” under Public Law 107-64, \$25,720,000 are rescinded: *Provided further*, That of the funds appropriated for “Family Housing Construction, Air Force” under Public Law 106-246, \$13,451,000 are rescinded.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

For expenses of family housing for the Air Force for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, \$853,384,000.

FAMILY HOUSING CONSTRUCTION, DEFENSE-WIDE

For expenses of family housing for the activities and agencies of the Department of Defense (other than the military departments) for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, \$49,000, to remain available until September 30, 2009.

FAMILY HOUSING OPERATION AND MAINTENANCE, DEFENSE-WIDE

For expenses of family housing for the activities and agencies of the Department of Defense (other than the military departments) for operation and maintenance, leasing, and minor construction, as authorized by law, \$49,575,000.

DEPARTMENT OF DEFENSE FAMILY HOUSING IMPROVEMENT FUND

(INCLUDING RESCISSIONS)

For the Department of Defense Family Housing Improvement Fund, \$2,500,000, to remain available until expended, for family housing initiatives undertaken pursuant to section 2883 of title 10, United States Code, providing alternative means of acquiring and improving military family housing and supporting facilities: *Provided*, That of the funds appropriated for “Department of Defense Family Housing Improvement Fund” under Public Law 108-132, \$8,301,000 are rescinded: *Provided further*, That of the funds appropriated for “Department of Defense Family Housing Improvement Fund” under Public Law 107-249, \$10,808,000 are rescinded.

CHEMICAL DEMILITARIZATION CONSTRUCTION, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For expenses of construction, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile, as currently authorized by law, \$81,886,000, to remain available until September 30, 2009: *Provided*, That such amounts of this appropriation as may be determined by the Secretary of Defense may be transferred to such appropriations of the Department of Defense available for military construction as the Secretary may designate, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation to which transferred.

BASE REALIGNMENT AND CLOSURE ACCOUNT

For deposit into the Department of Defense Base Closure Account 1990 established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), \$246,116,000, to remain available until expended.

GENERAL PROVISIONS

SEC. 101. None of the funds made available in this Act shall be expended for payments under a cost-plus-a-fixed-fee contract for construction, where cost estimates exceed \$25,000, to be performed within the United States, except Alaska, without the specific approval in writing of the Secretary of Defense setting forth the reasons therefor. Contracts.

SEC. 102. Funds appropriated to the Department of Defense for construction shall be available for hire of passenger motor vehicles.

SEC. 103. Funds appropriated to the Department of Defense for construction may be used for advances to the Federal Highway Administration, Department of Transportation, for the construction of access roads as authorized by section 210 of title 23, United States Code, when projects authorized therein are certified as important to the national defense by the Secretary of Defense.

SEC. 104. None of the funds made available in this Act may be used to begin construction of new bases in the United States for which specific appropriations have not been made.

SEC. 105. None of the funds made available in this Act shall be used for purchase of land or land easements in excess of 100 percent of the value as determined by the Army Corps of Engineers or the Naval Facilities Engineering Command, except: (1) where there is a determination of value by a Federal court; (2) purchases negotiated by the Attorney General or his designee; (3) where the estimated value is less than \$25,000; or (4) as otherwise determined by the Secretary of Defense to be in the public interest.

SEC. 106. None of the funds made available in this Act shall be used to: (1) acquire land; (2) provide for site preparation; or (3) install utilities for any family housing, except housing for which

funds have been made available in annual Military Construction Appropriations Acts.

SEC. 107. None of the funds made available in this Act for minor construction may be used to transfer or relocate any activity from one base or installation to another, without prior notification to the Committees on Appropriations of both Houses of Congress.

SEC. 108. None of the funds made available in this Act may be used for the procurement of steel for any construction project or activity for which American steel producers, fabricators, and manufacturers have been denied the opportunity to compete for such steel procurement.

SEC. 109. None of the funds available to the Department of Defense for military construction or family housing during the current fiscal year may be used to pay real property taxes in any foreign nation.

SEC. 110. None of the funds made available in this Act may be used to initiate a new installation overseas without prior notification to the Committees on Appropriations of both Houses of Congress.

SEC. 111. None of the funds made available in this Act may be obligated for architect and engineer contracts estimated by the Government to exceed \$500,000 for projects to be accomplished in Japan, in any NATO member country, or in countries bordering the Arabian Sea, unless such contracts are awarded to United States firms or United States firms in joint venture with host nation firms.

SEC. 112. None of the funds made available in this Act for military construction in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Sea, may be used to award any contract estimated by the Government to exceed \$1,000,000 to a foreign contractor: *Provided*, That this section shall not be applicable to contract awards for which the lowest responsive and responsible bid of a United States contractor exceeds the lowest responsive and responsible bid of a foreign contractor by greater than 20 percent: *Provided further*, That this section shall not apply to contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese contractor.

Notification.
Deadline.

SEC. 113. The Secretary of Defense is to inform the appropriate committees of both Houses of Congress, including the Committees on Appropriations, of the plans and scope of any proposed military exercise involving United States personnel 30 days prior to its occurring, if amounts expended for construction, either temporary or permanent, are anticipated to exceed \$100,000.

SEC. 114. Not more than 20 percent of the funds made available in this Act which are limited for obligation during the current fiscal year shall be obligated during the last 2 months of the fiscal year.

(TRANSFER OF FUNDS)

SEC. 115. Funds appropriated to the Department of Defense for construction in prior years shall be available for construction authorized for each such military department by the authorizations enacted into law during the current session of Congress.

SEC. 116. For military construction or family housing projects that are being completed with funds otherwise expired or lapsed

for obligation, expired or lapsed funds may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any.

SEC. 117. Notwithstanding any other provision of law, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project: (1) are obligated from funds available for military construction projects; and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.

10 USC 2860
note.

SEC. 118. The Secretary of Defense is to provide the Committees on Appropriations of both Houses of Congress with an annual report by February 15, containing details of the specific actions proposed to be taken by the Department of Defense during the current fiscal year to encourage other member nations of the North Atlantic Treaty Organization, Japan, Korea, and United States allies bordering the Arabian Sea to assume a greater share of the common defense burden of such nations and the United States.

Reports.
Deadline.

(TRANSFER OF FUNDS)

SEC. 119. In addition to any other transfer authority available to the Department of Defense, proceeds deposited to the Department of Defense Base Closure Account established by section 207(a)(1) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526) pursuant to section 207(a)(2)(C) of such Act, may be transferred to the account established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), to be merged with, and to be available for the same purposes and the same time period as that account.

(TRANSFER OF FUNDS)

SEC. 120. Subject to 30 days prior notification to the Committees on Appropriations of both Houses of Congress, such additional amounts as may be determined by the Secretary of Defense may be transferred to: (1) the Department of Defense Family Housing Improvement Fund from amounts appropriated for construction in "Family Housing" accounts, to be merged with and to be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund; or (2) the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in "Military Construction" accounts, to be merged with and to be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund: *Provided*, That appropriations made available to the Funds shall be available to cover the costs, as defined in section 502(5) of the Congressional Budget Act of 1974, of direct loans or loan guarantees issued by the Department of Defense pursuant to the provisions of subchapter IV of chapter 169, title 10, United States Code, pertaining to alternative means of acquiring and improving military family housing, military unaccompanied housing, and supporting facilities.

Deadline.
Contracts.
Notice.

SEC. 121. None of the funds made available in this Act may be obligated for Partnership for Peace Programs in the New Independent States of the former Soviet Union.

SEC. 122. (a) Not later than 60 days before issuing any solicitation for a contract with the private sector for military family housing the Secretary of the military department concerned shall submit to the Committees on Appropriations of both Houses of Congress the notice described in subsection (b).

(b)(1) A notice referred to in subsection (a) is a notice of any guarantee (including the making of mortgage or rental payments) proposed to be made by the Secretary to the private party under the contract involved in the event of—

(A) the closure or realignment of the installation for which housing is provided under the contract;

(B) a reduction in force of units stationed at such installation; or

(C) the extended deployment overseas of units stationed at such installation.

(2) Each notice under this subsection shall specify the nature of the guarantee involved and assess the extent and likelihood, if any, of the liability of the Federal Government with respect to the guarantee.

(TRANSFER OF FUNDS)

SEC. 123. In addition to any other transfer authority available to the Department of Defense, amounts may be transferred from the account established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), to the fund established by section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to pay for expenses associated with the Homeowners Assistance Program. Any amounts transferred shall be merged with and be available for the same purposes and for the same time period as the fund to which transferred.

10 USC 2821
note.

SEC. 124. Notwithstanding this or any other provision of law, funds made available in this Act for operation and maintenance of family housing shall be the exclusive source of funds for repair and maintenance of all family housing units, including general or flag officer quarters: *Provided*, That not more than \$35,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days prior notification to the appropriate Committees on Appropriations of both Houses of Congress, except that an after-the-fact notification shall be submitted if the limitation is exceeded solely due to costs associated with environmental remediation that could not be reasonably anticipated at the time of the budget submission: *Provided further*, That the Under Secretary of Defense (Comptroller) is to report annually to the Committees on Appropriations of both Houses of Congress all operation and maintenance expenditures for each individual general or flag officer quarters for the prior fiscal year.

Reports.

SEC. 125. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 126. None of the funds made available in this Act under the heading “North Atlantic Treaty Organization Security Investment Program”, and no funds appropriated for any fiscal year before fiscal year 2005 for that program that remain available for obligation, may be obligated or expended for the conduct of studies of missile defense.

SEC. 127. Section 128(b)(3)(A) of Public Law 108–132 is amended by striking the words “December 31, 2004” and replacing with “August 15, 2005”. 10 USC 111 note.

SEC. 128. Whenever the Secretary of Defense or any other official of the Department of Defense is requested by the Subcommittee on Military Construction of the Committee on Appropriations of either House of Congress to respond to a question or inquiry submitted by the chairman or another member of that subcommittee pursuant to a subcommittee hearing or other activity, the Secretary (or other official) shall respond to the request, in writing, within 21 days of the date on which the request is transmitted to the Secretary (or other official). Deadline.

SEC. 129. Amounts contained in the Ford Island Improvement Account established under 10 U.S.C. 2814(h) are appropriated and shall be available until expended for the purposes specified in 10 U.S.C. 2814(i)(1) or until transferred pursuant to the provisions of 10 U.S.C. 2814(i)(3).

SEC. 130. The fitness center at Homestead Air Reserve Base, Florida, shall be known and designated as the “Sam Johnson Fitness Center”. Any reference to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Sam Johnson Fitness Center. Federal buildings and facilities.

SEC. 131. (a) TRANSFER OF CERTAIN EXCESS PROPERTY AT FORT HUNTER LIGGETT, CALIFORNIA.—

(1) Notwithstanding any other provision of law, whenever the Secretary of the Army determines that any portion of real property consisting of approximately 165,000 acres at Fort Hunter Liggett, California, is excess to the military needs of the Army, and the Secretary of Defense concurs that the property is not needed to meet other Department of Defense requirements, the Secretary of the Army shall first offer the property to the Secretary of Agriculture.

(2) If the Secretary of Agriculture determines, pursuant to negotiations with the Secretary of the Army, to accept the property offered under paragraph (1), the Secretary of the Army shall transfer administrative jurisdiction of such property to the Secretary of Agriculture.

(b) MANAGEMENT OF TRANSFERRED PROPERTY.—

(1) The Secretary of Agriculture shall manage any property transferred under subsection (a) as part of the National Forest System under the Act of March 1, 1911 (commonly known as “Weeks Law”) (16 U.S.C. 480 et seq.), and other laws relating to the National Forest System.

(2) Any property managed under paragraph (1) shall be subject to the concurrent jurisdiction of the State of California.

(c) ADJUSTMENT OF BOUNDARIES.—

(1) Effective upon the transfer of property under subsection (a), the boundaries of Los Padres National Forest shall be modified to incorporate such property. The Chief of the United States Forest Service shall file and make available for public inspection in the Office of the Chief of the United States Forest

Effective date.

Service in Washington, District of Columbia, a map reflecting any modification of the boundaries of Los Padres National Forest pursuant to the preceding sentence.

(2) Any property incorporated within the boundaries of Los Padres National Forest under this section shall be deemed to have been within the boundaries of Los Padres National Forest as of January 1, 1965, for purposes of section 7(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)).

(d) ENVIRONMENTAL MATTERS.—As part of the transfer of property under subsection (a), the Secretary of the Army shall perform, in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), all environmental remediation actions necessary to respond to environmental contamination or injury to natural resources attributable to former military activities on the property.

SEC. 132. Unless stated otherwise, all reports and notifications required by division A shall be submitted to the Subcommittee on Military Construction of the Committee on Appropriations of each House of Congress.

This division may be cited as the “Military Construction Appropriations Act, 2005”.

Emergency
Supplemental
Appropriations
for Hurricane
Disasters
Assistance Act of
2005.

DIVISION B—EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR HURRICANE DISASTERS ASSISTANCE ACT, 2005

AN ACT

Making emergency supplemental appropriations for the fiscal year ending September 30, 2005, for additional disaster assistance relating to natural disasters, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2005, to provide emergency supplemental appropriations for additional disaster assistance relating to natural disasters, and for other purposes, namely:

CHAPTER 1

DEPARTMENT OF AGRICULTURE

FARM SERVICE AGENCY

EMERGENCY CONSERVATION PROGRAM

For an additional amount for “Emergency Conservation Program”, for expenses resulting from natural disasters, \$100,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

NATURAL RESOURCES CONSERVATION SERVICE
EMERGENCY WATERSHED PROTECTION PROGRAM

For an additional amount for “Emergency Watershed Protection Program” to repair damages to the waterways and watersheds resulting from natural disasters, \$250,000,000, to remain available until expended: *Provided*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

RURAL DEVELOPMENT

RURAL COMMUNITY ADVANCEMENT PROGRAM

For an additional amount for the “Rural Community Advancement Program”, \$68,000,000, to remain available until expended: *Provided*, That \$50,000,000 shall be available for water and waste disposal grants as authorized by 7 U.S.C. 1926(a): *Provided further*, That \$18,000,000 shall be for the cost of community facility direct loans and grants as authorized by 7 U.S.C. 1926(a): *Provided further*, That loans and grants under this heading shall be available for projects in communities affected by hurricanes and tropical storms in calendar year 2003 or 2004: *Provider further*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

For additional gross obligations for the principal amount of direct loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, \$17,000,000 for section 504 housing repair loans: *Provided*, That this loan level shall be considered an estimate and not a limitation.

For the additional cost of direct loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974: section 504 housing repair loans, \$5,000,000, to remain available until expended: *Provided*, That such loans shall only be available for projects in communities affected by hurricanes and tropical storms in calendar year 2003 or 2004: *Provided further*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

RURAL HOUSING ASSISTANCE GRANTS

For an additional amount for “Rural Housing Assistance Grants”, \$13,000,000, to remain available until expended, of which \$8,000,000 shall be for grants and contracts for very low-income

housing repair, made by the Rural Housing Service, as authorized by 42 U.S.C. 1474, and of which \$5,000,000 shall be for domestic farm labor housing grants and contracts, as authorized by 42 U.S.C. 1486: *Provided*, That of the funds made available for domestic farm labor housing grants, the Secretary may use up to \$3,000,000 to provide grants authorized under 42 U.S.C. 5177a(a): *Provided further*, That such grants and contracts under this heading shall only be available for projects in communities affected by hurricanes and tropical storms in calendar year 2003 or 2004: *Provided further*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

GENERAL PROVISIONS—THIS CHAPTER

SEC. 101. AGRICULTURAL DISASTER ASSISTANCE.

(a) CROP DISASTER ASSISTANCE.—

(1) DEFINITIONS.—In this subsection:

(A) ADDITIONAL COVERAGE.—The term “additional coverage” has the meaning given the term in section 502(b)(1) of the Federal Crop Insurance Act (7 U.S.C. 1502(b)(1)).

(B) INSURABLE COMMODITY.—The term “insurable commodity” means an agricultural commodity (excluding livestock) for which the producers on a farm are eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(C) NONINSURABLE COMMODITY.—The term “noninsurable commodity” means an eligible crop for which the producers on a farm are eligible to obtain assistance under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

(2) EMERGENCY FINANCIAL ASSISTANCE.—Notwithstanding section 508(b)(7) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)(7)), the Secretary of Agriculture shall use such sums as are necessary of funds of the Commodity Credit Corporation to make emergency financial assistance authorized under this subsection available to producers on a farm (other than producers of cottonseed or sugar cane) that have incurred qualifying crop or quality losses for the 2003, 2004, or 2005 crop (as elected by a producer), but limited to only one of the crop years listed, due to damaging weather or related condition, as determined by the Secretary: *Provided*, That qualifying crop losses for the 2005 crop are limited to only those losses caused by a hurricane or tropical storm of the 2004 hurricane season in counties declared disaster areas by the President of the United States: *Provided further*, That notwithstanding the crop year election limitation in this paragraph, \$53,000,000 shall be provided to the Secretary of Agriculture, of which \$50,000,000 shall be for crop losses in the Commonwealth of Virginia, and of which \$3,000,000 shall be for fruit and vegetable losses in the State of North Carolina: *Provided further*, That these losses resulted from hurricanes, tropical storms, and other weather related disasters that occurred during calendar year 2003, to remain available until expended.

(3) ADMINISTRATION.—The Secretary shall make assistance available under this subsection in the same manner as provided under section 815 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A-55), including using the same loss thresholds for the quantity and quality losses as were used in administering that section.

(4) INELIGIBILITY FOR ASSISTANCE.—Except as provided in paragraph (5), the producers on a farm shall not be eligible for assistance under this subsection with respect to losses to an insurable commodity or noninsurable commodity if the producers on the farm—

(A) in the case of an insurable commodity, did not obtain a policy or plan of insurance for the insurable commodity under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) for the crop incurring the losses;

(B) in the case of a noninsurable commodity, did not file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsurable commodity under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) for the crop incurring the losses;

(C) had adjusted gross incomes, as defined by section 1001D of the Food Security Act of 1985, of greater than \$2,500,000 in 2003; or

(D) were not in compliance with highly erodible land conservation and wetland conservation provisions.

(5) CONTRACT WAIVER.—The Secretary may waive paragraph (4) with respect to the producers on a farm if the producers enter into a contract with the Secretary under which the producers agree—

(A) in the case of an insurable commodity, to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) providing additional coverage for the insurable commodity for each of the next 2 crops; and

(B) in the case of a noninsurable commodity, to file the required paperwork and pay the administrative fee by the applicable State filing deadline, for the noninsurable commodity for each of the next 2 crops under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

(6) EFFECT OF VIOLATION.—In the event of the violation of a contract under paragraph (5) by a producer, the producer shall reimburse the Secretary for the full amount of the assistance provided to the producer under this subsection.

(7) PAYMENT LIMITATIONS.—

(A) LIMIT ON AMOUNT OF ASSISTANCE.—Assistance provided under this subsection to a producer for losses to a crop, together with the amounts specified in subparagraph (B) applicable to the same crop, may not exceed 95 percent of what the value of the crop would have been in the absence of the losses, as estimated by the Secretary.

(B) OTHER PAYMENTS.—In applying the limitation in subparagraph (A), the Secretary shall include the following:

(i) Any crop insurance payment made under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.)

or payment under section 196 of the Federal Agricultural Improvement and Reform Act of 1996 (7 U.S.C. 7333) that the producer receives for losses to the same crop.

(ii) The value of the crop that was not lost (if any), as estimated by the Secretary.

(C) EFFECT OF FLORIDA DISASTER PROGRAMS.—Persons that received payments from section 32 of the Act of August 24, 1935 with respect to 2004 hurricane crop losses are not eligible for payments under this subsection.

(b) LIVESTOCK ASSISTANCE PROGRAM.—

(1) EMERGENCY FINANCIAL ASSISTANCE.—The Secretary of Agriculture shall use such sums as are necessary of funds of the Commodity Credit Corporation to make and administer payments for livestock losses to producers for 2003 or 2004 losses (as elected by a producer), but not both, in a county that has received an emergency designation by the President or the Secretary after January 1, 2003, of which an amount determined by the Secretary shall be made available for the American Indian livestock program under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A-51).

(2) ADMINISTRATION.—The Secretary shall make assistance available under this subsection in the same manner as provided under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A-51).

(3) MITIGATION.—In determining the eligibility for or amount of payments for which a producer is eligible under the livestock assistance program, the Secretary shall not penalize a producer that takes actions (recognizing disaster conditions) that reduce the average number of livestock the producer owned for grazing during the production year for which assistance is being provided.

(c) TREE ASSISTANCE PROGRAM.—

(1) EMERGENCY ASSISTANCE.—The Secretary of Agriculture shall use such sums as are necessary of the funds of the Commodity Credit Corporation to provide assistance under the tree assistance program established under sections 10201 through 10204 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8201 et seq.) to producers who suffered tree losses during the period beginning on December 1, 2003, and ending on December 31, 2004.

(2) ADDITIONAL ASSISTANCE.—In addition to providing assistance to eligible orchardists under the tree assistance program, the Secretary shall use an additional \$15,000,000 of the funds of the Commodity Credit Corporation to provide reimbursement under sections 10203 and 10204 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8203, 8204) to eligible forest land owners who produce periodic crops of timber from trees for commercial purposes and who have suffered tree losses during the period specified in paragraph (1).

(3) EFFECT OF FLORIDA DISASTER PROGRAMS.—Persons that received payments from section 32 of the Act of August 24,

1935 with respect to 2004 hurricane crop losses are not eligible for payments under this section.

(d) EMERGENCY CONSERVATION PROGRAM.—The Secretary of Agriculture shall use an additional \$50,000,000 of the funds of the Commodity Credit Corporation to provide assistance under the Emergency Conservation Program under title IV of the Agriculture Credit Act of 1978 (16 U.S.C. 2201 et seq.).

(e) OFFSET.—Section 1241(a)(3) of the Food Security Act of 1985 (16 U.S.C. 3841(a)(3)) is amended by inserting before the period at the end the following: “, using not more than \$6,037,000,000 for the period of fiscal years 2005 through 2014”.

(f) That for purposes of the budget scoring guidance in effect for the Congress and the Executive branch respectively, and notwithstanding the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105–217, any savings from subsection (e) shall not be scored until fiscal year 2008.

(g) The issuance of regulations shall be made without regard to: (1) the notice and comment provisions of section 553 of title 5, United States Code; (2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (3) chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”): *Provided*, That in carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

SEC. 102. The Secretary of Agriculture shall use \$40,000,000, of which, \$7,200,000 shall be provided to the State of Hawaii for assistance to an agricultural transportation cooperative in Hawaii, the members of which are eligible to participate in the Farm Service Agency administered Commodity Loan Program, and of which \$32,800,000 shall be to make payments to processors in Florida that are eligible to obtain a loan under section 156(a) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7272(a)) to compensate first processors and producers for crop and other losses that are related to hurricanes, tropical storms, excessive rains, and floods in Florida during calendar year 2004, to be calculated and paid on the basis of losses on 40 acre harvesting units, in counties declared a disaster by the President of the United States in 2004 due to hurricanes, on the same terms and conditions, to the extent practicable, as the payments made under section 207 of the Agricultural Assistance Act of 2003 (Public Law 108–7).

SEC. 103. The Secretary of Agriculture shall use \$10,000,000 to make payments to dairy producers for dairy production losses, and dairy spoilage losses in counties declared a disaster by the President of the United States in 2004 due to hurricanes.

SEC. 104. The Secretary of Agriculture shall use \$10,000,000 to provide assistance to producers and first handlers of the 2004 crop of cottonseed located in counties declared a disaster by the President of the United States in 2004 due to hurricanes.

SEC. 105. (a) The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out section 101, 102, 103, 104, 108, 109, 110, and 111 of this chapter, to remain available until expended.

(b) The amounts provided under sections 101, 102, 103, 104, 108, 109, 110, and 111 in this chapter are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

New Jersey.

SEC. 106. (a) RURAL COMMUNITY ADVANCEMENT PROGRAM.—The communities in Burlington and Camden Counties in New Jersey, affected by the flood which occurred on July 12, 2004, are deemed to be rural areas during fiscal year 2005 for purposes of subtitle E of the Consolidated Farm and Rural Development Act. Any limitations under subtitle E of the Consolidated Farm and Rural Development Act that are based on the income of families shall not apply during fiscal year 2005 with respect to such communities, or to businesses or families residing in such communities.

(b) RURAL HOUSING INSURANCE FUND AND RURAL HOUSING ASSISTANCE GRANTS.—The communities referred to in subsection (a) are deemed to be rural areas during fiscal year 2005 for purposes of the direct and guaranteed loan programs under title V of the Housing Act of 1949 and the grant programs under sections 504, 509(c), 525, and 533 of such title V. Any limitations under title V of the Housing Act of 1949 that are based on the income of families shall not apply during fiscal year 2005 with respect to such communities or to families residing in such communities.

SEC. 107. The Secretary of Agriculture shall provide financial and technical assistance to repair, and if necessary, replace Hope Mills Dam, Cumberland County, North Carolina, in accordance with the dam safety standards of the state of North Carolina: *Provided*, That from within the funds provided in this chapter for the Emergency Watershed Protection program of the Natural Resources Conservation Service \$1,600,000 is provided for this purpose.

SEC. 108. The Secretary shall provide \$90,000,000 to the fund established by section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), to make payments with respect to 2004 hurricane losses.

SEC. 109. The Secretary, acting through the Farm Service Agency, may use not more than \$4,000,000 to cover administrative expenses associated with the implementation of sections 101 and 102 of this chapter.

SEC. 110. In addition to amounts provided in this Act for the tree assistance program, \$10,000,000 shall be made available to the Secretary of Agriculture, to remain available until expended, to provide assistance to eligible private forest landowners owning not more than 5,000 acres of forest crop in counties declared Presidential disaster areas as a result of hurricane, tropical storm, or related events for the purposes of debris removal, replanting of timber, and other such purposes.

SEC. 111. In addition to amounts provided in this Act for the tree assistance program, \$8,500,000 shall be made available to the Secretary of Agriculture, to remain available until expended, to provide assistance under the tree assistance program established under subtitle C of title X of the Farm Security and Rural Investment Act of 2002 to pecan producers in counties declared a disaster by the President of the United States who suffered tree loss or damage due to damaging weather related to any hurricane or tropical storm of the 2004 hurricane season: *Provided*, That the funds made available under this section shall also be made available

to cover costs associated with pruning, rehabilitating, and other appropriate activities as determined by the Secretary.

CHAPTER 2

DEPARTMENT OF JUSTICE

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses”, \$5,500,000, to remain available until September 30, 2005, for emergency hurricane-related expenses: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

BUILDINGS AND FACILITIES

For an additional amount for “Buildings and Facilities”, \$18,600,000, to remain available until expended for emergency hurricane-related expenses: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH AND FACILITIES

For an additional amount for “Operations, Research, and Facilities”, \$16,900,000, to remain available until September 30, 2006, of which \$9,000,000 shall be for reseeding, rehabilitation and restoration of oyster reefs in Alabama, Florida, Louisiana, and Mississippi: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For an additional amount for “Procurement, Acquisition and Construction”, \$3,800,000, to remain available until September 30, 2007: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

SMALL BUSINESS ADMINISTRATION

DISASTER LOANS PROGRAM ACCOUNT

For an additional amount for “Disaster Loans Program Account” for the cost of direct loans, \$501,000,000, to remain available until expended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in Section 502 of the Congressional Budget Act of 1974.

In addition, for an additional amount for “Disaster Loans Program Account” for administrative expenses to carry out the disaster loan program, \$428,000,000, to remain available until expended, which may be transferred to the appropriations for “Salaries and Expenses”: *Provided*, That no funds shall be transferred to the appropriations for “Salaries and Expenses” for indirect administrative expenses: *Provided further*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

CHAPTER 3

DEPARTMENT OF DEFENSE

DEPARTMENT OF DEFENSE—MILITARY

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Army”, \$8,600,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

OPERATION AND MAINTENANCE, NAVY

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Navy”, \$458,000,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

OPERATION AND MAINTENANCE, MARINE CORPS

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Marine Corps”, \$1,300,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

OPERATION AND MAINTENANCE, AIR FORCE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Air Force”, \$165,400,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Defense-Wide”, \$100,000,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That the Secretary of Defense may transfer these funds to appropriations for military personnel; operation and maintenance; the Defense Health Program; and working capital funds: *Provided further*, That funds transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation or fund to which transferred: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the Secretary of Defense shall, not fewer than 15 days prior to making transfers from this appropriation, notify the congressional defense committees in writing of the details of any such transfer: *Provided further*, That the Secretary shall submit a report no later than 30 days after the end of each fiscal quarter to the congressional defense committees summarizing the details of the transfer of funds from this appropriation: *Provided further*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

Deadline.
Notification.

Deadline.
Reports.

OPERATION AND MAINTENANCE, ARMY RESERVE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Army Reserve”, \$1,400,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

OPERATION AND MAINTENANCE, NAVY RESERVE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Navy Reserve”, \$1,000,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Air Force Reserve”, \$2,400,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Army National Guard”, \$10,500,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Operation and Maintenance, Air National Guard”, \$2,200,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

PROCUREMENT

OTHER PROCUREMENT, AIR FORCE

For an additional amount for “Other Procurement, Air Force”, \$2,500,000, to remain available until September 30, 2007, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

PROCUREMENT, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Procurement, Defense-Wide”, \$140,000,000, to remain available until September 30, 2007, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004, for the costs of repairs to structures and facilities, replacement of destroyed or damaged equipment, and preparation and recovery of naval vessels under construction: *Provided*, That the Secretary of Defense may transfer these funds to appropriations for operation and maintenance; procurement; and research, development, test and evaluation: *Provided further*, That funds transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation or fund to which transferred: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the Secretary of Defense shall, not fewer than 15 days prior to making transfers from this appropriation, notify the congressional defense committees in writing of the details of any such transfer: *Provided further*, That the Secretary shall submit a report no later than 30 days after the end of each fiscal quarter to the congressional defense committees summarizing the details of the transfer of funds from this appropriation: *Provided further*, That not less than \$10,500,000 shall be transferred to “Aircraft

Deadline.
Notification.

Deadline.
Reports.

Procurement, Air Force” for the procurement of WC–130 Hurricane Tracking Equipment: *Provided further*, That not less than \$10,000,000 shall be transferred to “Missile Procurement, Air Force”, and not less than \$10,000,000 shall be transferred to “Other Procurement, Air Force” for costs associated with delayed satellite launches: *Provided further*, That not less than \$18,700,000 shall be transferred to “Other Procurement, Air Force” for Continuity of Operations equipment procurement at Headquarters United States Central Command: *Provided further*, That not less than \$20,000,000 shall be available only for replacement of laboratory and test range equipment at Eglin Air Force Base: *Provided further*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

REVOLVING AND MANAGEMENT FUNDS

DEFENSE WORKING CAPITAL FUNDS

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Defense Working Capital Funds”, \$4,100,000, for emergency hurricane and other natural disaster-related expenses, and which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for “Defense Health Program”, \$12,000,000, for emergency hurricane and other natural disaster-related expenses, which shall be available for transfer to reimburse costs incurred in fiscal year 2004: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

GENERAL PROVISIONS—THIS CHAPTER

SEC. 301. Appropriations provided in this chapter are available for obligation until September 30, 2005, unless otherwise so provided in this chapter.

SEC. 302. Funds appropriated in this Act, or made available by the transfer of funds in or pursuant to this Act, for intelligence activities are deemed to be specifically authorized by the Congress

for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414).

SEC. 303. Unless specifically enumerated elsewhere in this chapter, none of the funds provided in this chapter may be used to finance programs or activities denied by Congress in fiscal years 2004 and 2005 defense appropriations, or to initiate a procurement or research, development, test and evaluation new start program without prior notification to the congressional defense committees. Notification.

SEC. 304. Section 8007 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 970), is amended by striking the words “in session”.

(TRANSFER OF FUNDS)

SEC. 305. Upon his determination that such action is necessary in the national interest to address emergency hurricane and other natural disaster-related expenses, the Secretary of Defense may transfer between appropriations up to \$200,000,000 of the funds made available to the Department of Defense in this chapter: *Provided*, That the Secretary shall notify the Congress promptly of each transfer made pursuant to the authority in this section: *Provided further*, That the authority provided in this section is in addition to any other transfer authority available to the Department of Defense and is subject to the same terms and conditions as the authority provided in section 8005 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287): *Provided further*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287. Notification.

SEC. 306. Section 9010(b) of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 1008; 10 U.S.C. 113 note), is amended by striking “section 12304” in paragraphs (7) and (8) and inserting “section 12302”.

(INCLUDING TRANSFER OF FUNDS)

SEC. 307. TECHNICAL ADJUSTMENTS TO PUBLIC LAW 108–287. Notwithstanding any other provision in law, the following adjustments and transfers shall apply to funds previously made available and to restrictions in the Department of Defense Appropriations Act, 2005 (Public Law 108–287): Applicability.

(1) ARMORED PASSENGER VEHICLES.—Under the heading, “Other Procurement, Army”, strike “purchase of 1 vehicle” and insert “purchase of 21 vehicles”, and under the heading, “Other Procurement, Army”, strike “not to exceed \$200,000” and insert “not to exceed \$275,000”: *Provided*, That any purchases under the authority of this section in excess of one vehicle may only be in direct support of force protection requirements. Ante, p. 960.

(2) TRANSFER OF FUNDS.—Upon enactment of this Act, the Secretary of Defense shall make the following transfer of funds: *Provided*, That the amounts transferred shall be made available for the same purpose and the same time period as the appropriation to which transferred: *Provided further*, That the authority provided in this section is in addition to any other

transfer authority available to the Department of Defense: *Provided further*, That all such amounts in this section are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287: *Provided further*, That the amounts shall be transferred between the following appropriations, in the amounts specified:

To:

Under the heading, “Research, Development, Test and Evaluation, Defense-Wide, 2005/2006”, \$5,950,000.

From:

Under the heading, “Operation and Maintenance, Army”, \$5,950,000.

To:

Under the heading, “Procurement, Marine Corps, 2005/2007”, as provided in title IX of Public Law 108–287, \$7,000,000.

From:

Under the heading, “Operation and Maintenance, Marine Corps”, as provided in title IX of Public Law 108–287, \$7,000,000.

To:

The Department of Veterans Affairs, under the heading, “Medical Services”, \$500,000.

From:

Under the heading, “Defense Health Program”, Operation and Maintenance, \$500,000.

To:

Under the heading, “Operation and Maintenance, Army National Guard”, \$1,400,000.

From:

Under the heading, “Operation and Maintenance, Army”, \$1,400,000.

Applicability.

(3) SECTION 9014 AUTHORITIES.—The authority provided in section 9014 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 1009), shall apply with respect to the period beginning on June 29, 2003, and ending on August 4, 2004, in addition to the period of applicability provided pursuant to section 9001 of that Act.

Ante, p. 1007.

SEC. 308. Section 9007 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287), is amended by striking “\$300,000,000”, and inserting “\$500,000,000”.

Ante, p. 1007.

SEC. 309. Section 9006 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287), is amended by striking “New Iraqi Army”, and inserting “Iraqi Armed Forces, to include the Iraqi National Guard”.

CHAPTER 4

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

GENERAL INVESTIGATIONS

For an additional amount for “General Investigations” for emergency expenses for the update of studies necessitated by storm damage to shore protection projects, \$400,000, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

CONSTRUCTION, GENERAL

For an additional amount for “Construction, General” for emergency expenses for repair of storm damage for authorized shore protection projects and assessment of project performance of such projects, \$62,600,000, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES, ARKANSAS, ILLINOIS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI AND TENNESSEE

For an additional amount for “Flood Control, Mississippi River and Tributaries, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee” for emergency expenses for levee and revetment repair and for emergency dredging, \$6,000,000, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

OPERATION AND MAINTENANCE, GENERAL

For an additional amount for “Operation and Maintenance, General” for emergency expenses for repair of storm damage to authorized projects, \$145,400,000, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

FLOOD CONTROL AND COASTAL EMERGENCIES

For an additional amount for “Flood Control and Coastal Emergencies” for emergency expenses for repair of damage to flood control and hurricane shore protection projects by storms and other natural disasters, \$148,000,000, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

SEC. 401. For an additional amount to address drought conditions in the State of Nevada, \$5,000,000 is provided to the Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, for the Southern Nevada Water Authority for modification of the water intake at Lake Mead, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

SEC. 402. For an additional amount to address storm damage, \$10,000,000 is provided for the Secretary of the Army, acting through the Chief of Engineers, to repair, restore, and clean-up Corps projects and facilities; dredge navigation channels; restore and clean out area streams; provide emergency streambank protection; restore other crucial public infrastructure (including sewer and water facilities); document flood impacts; and undertake other flood recovery efforts deemed necessary and advisable by the Chief of Engineers for federally declared disaster areas in West Virginia, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

CHAPTER 5

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

INTERNATIONAL DISASTER AND FAMINE ASSISTANCE

Caribbean. For an additional amount for “International Disaster and Famine Assistance”, \$100,000,000, to remain available until September 30, 2005: *Provided*, That funds appropriated by this paragraph shall be available to respond to the disasters caused by hurricanes and tropical storms in the Caribbean region: *Provided further*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287: *Provided further*, That funds appropriated by this paragraph shall be available notwithstanding section 10

of Public Law 91–672 and section 15 of the State Department Basic Authorities Act of 1956.

CHAPTER 6

DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

OPERATING EXPENSES

For an additional amount for “Operating Expenses” for expenses resulting from the recent natural disasters in the southeastern United States, \$33,367,310, to remain available until expended: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

EMERGENCY PREPAREDNESS AND RESPONSE

DISASTER RELIEF

For an additional amount for “Disaster Relief”, \$6,500,000,000, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

CHAPTER 7

DEPARTMENT OF THE INTERIOR

UNITED STATES FISH AND WILDLIFE SERVICE

CONSTRUCTION

For an additional amount for “Construction”, \$40,552,000, to remain available until expended, to address damages from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

NATIONAL PARK SERVICE

CONSTRUCTION

For an additional amount for “Construction”, \$50,802,000, to remain available until expended, to address damages from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For an additional amount for “Surveys, Investigations, and Research”, \$1,000,000, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

RELATED AGENCY

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

STATE AND PRIVATE FORESTRY

For an additional amount for “State and Private Forestry”, \$49,100,000, to remain available until expended, to address damages from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

NATIONAL FOREST SYSTEM

For an additional amount for “National Forest System”, \$12,153,000, to remain available until expended, to address damages from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

WILDLAND FIRE MANAGEMENT

For an additional amount for “Wildland Fire Management”, \$1,028,000, to remain available until expended, to address damages from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

CAPITAL IMPROVEMENT AND MAINTENANCE

For an additional amount for “Capital Improvement and Maintenance”, \$50,815,000, to remain available until expended, to address damages from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

CHAPTER 8

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENTAL MANAGEMENT

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For an additional amount for “Public Health and Social Services Emergency Fund” to support aging services, social services and health services associated with natural disaster recovery and response efforts, \$50,000,000, to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

CHAPTER 9

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

For an additional amount for “Military Construction, Navy and Marine Corps”, \$138,800,000, to remain available until September 30, 2007, for emergency expenses resulting from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287: *Provided further*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects not otherwise authorized by law: *Provided further*, That none of these funds may be obligated for new construction projects until fourteen days after the Secretary of the Navy provides a notification that describes the project, including the form 1391, to the Subcommittee on Military Construction of the Committee on Appropriations and the Committee on Armed Services of both Houses of Congress.

Notification.

MILITARY CONSTRUCTION, ARMY RESERVE

For an additional amount for “Military Construction, Army Reserve”, \$8,700,000, to remain available until September 30, 2007, for emergency expenses resulting from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287: *Provided further*, That notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and military construction projects not otherwise authorized by law.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

For an additional amount for “Family Housing Operation and Maintenance, Army”, \$1,200,000, to remain available until September 30, 2005, for emergency expenses resulting from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

FAMILY HOUSING OPERATION AND MAINTENANCE, NAVY AND MARINE CORPS

For an additional amount for “Family Housing Operation and Maintenance, Navy and Marine Corps”, \$9,100,000, to remain available until September 30, 2005, for emergency expenses resulting from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for “Family Housing Operation and Maintenance, Air Force”, \$11,400,000, to remain available until September 30, 2005, for emergency expenses resulting from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

BASE REALIGNMENT AND CLOSURE ACCOUNT

For an additional amount to be deposited into the Department of Defense Base Closure Account 1990, \$50,000, to remain available until September 30, 2005, for emergency expenses resulting from natural disasters: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

CHAPTER 10

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For an additional amount for “Facilities and Equipment”, for expenses resulting from the recent natural disasters in the southeastern United States, \$5,100,000, to be derived from the airport and airway trust fund and to remain available until expended:

Provided, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

EMERGENCY ASSISTANCE TO AIRPORTS

(AIRPORT AND AIRWAY TRUST FUND)

For emergency capital costs to repair or replace public use facilities at public use airports listed in the Federal Aviation Administration's National Plan of Integrated Airport Systems resulting from damage from hurricanes Charley, Frances, Ivan, and Jeanne, to enable the Federal Aviation Administrator to compensate airports for such costs, \$25,000,000, to be derived from the airport and airway trust fund and to remain available until expended: *Provided*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAYS

EMERGENCY RELIEF PROGRAM

(HIGHWAY TRUST FUND)

For an additional amount for “Emergency Relief Program”, for emergency expenses resulting from 2004 Hurricanes Charley, Frances, Gaston, Ivan, and Jeanne, as authorized by 23 U.S.C. 125, \$1,202,000,000, to be derived from the Highway Trust Fund (other than the Mass Transit Account) and to remain available until expended: *Provided*, That notwithstanding 23 U.S.C. 125(d)(1), the Secretary of Transportation may obligate more than \$100,000,000 for projects arising from hurricanes Charley, Frances, Ivan, and Jeanne: *Provided further*, That any amounts in excess of those necessary for emergency expenses relating to the above hurricanes may be used for other projects authorized under 23 U.S.C. 125: *Provided further*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

EXECUTIVE OFFICE OF THE PRESIDENT

UNANTICIPATED NEEDS

For an additional amount for “Unanticipated Needs”, not to exceed \$70,000,000, to remain available until September 30, 2005, for the American Red Cross for reimbursement of disaster relief and recovery expenditures and emergency services associated with Hurricanes Charley, Frances, Ivan, and Jeanne, and only to the extent funds are not made available for those activities by other

Reports.

federal sources: *Provided*, That these funds may be administered by any authorized federal government agency to meet the purposes of this provision and that total administrative costs shall not exceed three percent of the total appropriation: *Provided further*, That the Comptroller General shall audit the use of these funds by the American Red Cross: *Provided further*, That such amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287

CHAPTER 11

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

For an additional amount for “Medical services” for expenses related to recent natural disasters in the Southeast, \$38,283,000, to remain available until September 30, 2005: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

MEDICAL ADMINISTRATION

For an additional amount for “Medical administration” for expenses related to recent natural disasters in the Southeast, \$1,940,000, to remain available until September 30, 2005: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

MEDICAL FACILITIES

For an additional amount for “Medical facilities” for expenses related to recent natural disasters, \$46,909,000, to remain available until September 30, 2006: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For an additional amount for “General operating expenses”, for expenses related to recent natural disasters, \$545,000, to remain available until September 30, 2005: *Provided*, That the amounts

provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

NATIONAL CEMETERY ADMINISTRATION

For an additional amount for “National Cemetery Administration”, for expenses related to recent natural disasters in the Southeast, \$50,000, to remain available until September 30, 2005: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

CONSTRUCTION, MINOR PROJECTS

For an additional amount for “Construction, minor projects”, for expenses related to recent natural disasters, \$36,343,000, to remain available until expended: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

For an additional amount for “Community development fund”, for activities authorized under title I of the Housing and Community Development Act of 1974, for use only for disaster relief, long-term recovery, and mitigation in communities affected by disasters designated by the President between August 31, 2003 and October 1, 2004, except those activities reimbursable by the Federal Emergency Management Agency or available through the Small Business Administration, and for reimbursement for expenditures incurred from the regular Community Development Block Grant formula allocation used to achieve these same purposes, \$150,000,000, to remain available until September 30, 2007: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287: *Provided further*, That all funds under this heading shall be awarded by the Secretary to states (including Indian tribes for all purposes under this heading) to be administered by each state in conjunction with its community development block grants program: *Provided further*, That notwithstanding 42 U.S.C. 5306(d)(2), states are authorized to provide such assistance to entitlement communities: *Provided further*, That in administering these funds, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the

Federal Register,
publication.
Deadline.

Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute: *Provided further*, That the Secretary may waive the requirements that activities benefit persons of low and moderate income, except that at least 50 percent of the funds under this heading must benefit primarily persons of low and moderate income unless the Secretary makes a finding of compelling need: *Provided further*, That the Secretary shall publish in the Federal Register any waiver of any statute or regulation authorized under this heading no later than 5 days before the effective date of such waiver: *Provided further*, That any project or activity underway prior to a Presidential disaster declaration may not receive funds under this heading unless the disaster directly impacted the project: *Provided further*, That each state shall provide not less than 10 percent in non-Federal public matching funds or its equivalent value (other than administrative costs) for any funds allocated to the state under this heading.

INDEPENDENT AGENCIES

ENVIRONMENTAL PROTECTION AGENCY

BUILDINGS AND FACILITIES

For an additional amount for “Buildings and facilities” for expenses related to recent natural disasters, \$3,000,000, to remain available until September 30, 2006: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SPACE FLIGHT CAPABILITIES

For an additional amount for “Space flight capabilities”, to repair assets damaged and take other emergency measures due to the effects of hurricanes and other disasters declared by the President, \$126,000,000, to remain available until expended: *Provided*, That the amounts provided herein are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287.

GENERAL PROVISION—THIS CHAPTER

(TRANSFER OF FUNDS)

SEC. 1101. From funds that are available in the unobligated balances of any funds appropriated under “Medical services”, for fiscal year 2004, the Secretary of Veterans Affairs may transfer up to \$125,000,000 to “General operating expenses”, for costs associated with processing claims where the basis of the entitlement is claimed disability incurred as a result of a veteran’s service,

subject to a determination by the Secretary of Veterans Affairs that such additional funds are necessary.

CHAPTER 12

GENERAL PROVISION—THIS ACT

SEC. 1201. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

This division may be cited as the “Emergency Supplemental Appropriations for Hurricane Disasters Assistance Act, 2005”.

DIVISION C—ALASKA NATURAL GAS PIPELINE

Alaska Natural
Gas Pipeline Act.

SEC. 101. SHORT TITLE.

15 USC 720 note.

This division may be cited as the “Alaska Natural Gas Pipeline Act”.

SEC. 102. DEFINITIONS.

15 USC 720.

In this division:

(1) **ALASKA NATURAL GAS.**—The term “Alaska natural gas” means natural gas derived from the area of the State of Alaska lying north of 64 degrees north latitude.

(2) **ALASKA NATURAL GAS TRANSPORTATION PROJECT.**—The term “Alaska natural gas transportation project” means any natural gas pipeline system that carries Alaska natural gas to the border between Alaska and Canada (including related facilities subject to the jurisdiction of the Commission) that is authorized under—

(A) the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.); or

(B) section 103.

(3) **ALASKA NATURAL GAS TRANSPORTATION SYSTEM.**—The term “Alaska natural gas transportation system” means the Alaska natural gas transportation project authorized under the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.) and designated and described in section 2 of the President’s decision.

(4) **COMMISSION.**—The term “Commission” means the Federal Energy Regulatory Commission.

(5) **FEDERAL COORDINATOR.**—The term “Federal Coordinator” means the head of the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects established by section 106(a).

(6) **PRESIDENT’S DECISION.**—The term “President’s decision” means the decision and report to Congress on the Alaska natural gas transportation system—

(A) issued by the President on September 22, 1977, in accordance with section 7 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719e); and

(B) approved by Public Law 95–158 (15 U.S.C. 719f note; 91 Stat. 1268).

(7) **SECRETARY.**—The term “Secretary” means the Secretary of Energy.

(8) STATE.—The term “State” means the State of Alaska.

15 USC 720a.

SEC. 103. ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(a) AUTHORITY OF THE COMMISSION.—Notwithstanding the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), the Commission may, in accordance with section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)), consider and act on an application for the issuance of a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project other than the Alaska natural gas transportation system.

(b) ISSUANCE OF CERTIFICATE.—

(1) IN GENERAL.—The Commission shall issue a certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project under this section if the applicant has satisfied the requirements of section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)).

(2) CONSIDERATIONS.—In considering an application under this section, the Commission shall presume that—

(A) a public need exists to construct and operate the proposed Alaska natural gas transportation project; and

(B) sufficient downstream capacity will exist to transport the Alaska natural gas moving through the project to markets in the contiguous United States.

Deadline.

(c) EXPEDITED APPROVAL PROCESS.—Not later than 60 days after the date of issuance of the final environmental impact statement under section 104 for an Alaska natural gas transportation project, the Commission shall issue a final order granting or denying any application for a certificate of public convenience and necessity for the project under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) and this section.

(d) PROHIBITION OF CERTAIN PIPELINE ROUTE.—No license, permit, lease, right-of-way, authorization, or other approval required under Federal law for the construction of any pipeline to transport natural gas from land within the Prudhoe Bay oil and gas lease area may be granted for any pipeline that follows a route that—

(1) traverses land beneath navigable waters (as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)) beneath, or the adjacent shoreline of, the Beaufort Sea; and

(2) enters Canada at any point north of 68 degrees north latitude.

(e) OPEN SEASON.—

Deadline.
Regulations.

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Commission shall issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects (including procedures for the allocation of capacity).

(2) REGULATIONS.—The regulations referred to in paragraph (1) shall—

(A) include the criteria for and timing of any open seasons;

(B) promote competition in the exploration, development, and production of Alaska natural gas; and

(C) for any open season for capacity exceeding the initial capacity, provide the opportunity for the transportation of natural gas other than from the Prudhoe Bay and Point Thomson units.

(3) APPLICABILITY.—Except in a case in which an expansion is ordered in accordance with section 105, initial or expansion capacity on any Alaska natural gas transportation project shall be allocated in accordance with procedures to be established by the Commission in regulations issued under paragraph (1).

(f) PROJECTS IN THE CONTIGUOUS UNITED STATES.—

(1) IN GENERAL.—An application for additional or expanded pipeline facilities that may be required to transport Alaska natural gas from Canada to markets in the contiguous United States may be made in accordance with the Natural Gas Act (15 U.S.C. 717a et seq.).

(2) EXPANSION.—To the extent that a pipeline facility described in paragraph (1) includes the expansion of any facility constructed in accordance with the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.), that Act shall continue to apply.

(g) STUDY OF IN-STATE NEEDS.—The holder of the certificate of public convenience and necessity issued, modified, or amended by the Commission for an Alaska natural gas transportation project shall demonstrate that the holder has conducted a study of Alaska in-State needs, including tie-in points along the Alaska natural gas transportation project for in-State access.

(h) ALASKA ROYALTY GAS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Commission, on a request by the State and after a hearing, may provide for reasonable access to the Alaska natural gas transportation project by the State (or State designee) for the transportation of royalty gas of the State for the purpose of meeting local consumption needs within the State.

(2) EXCEPTION.—The rates of shippers of subscribed capacity on an Alaska natural gas transportation project described in paragraph (1), as in effect as of the date on which access under that paragraph is granted, shall not be increased as a result of such access.

(i) REGULATIONS.—The Commission may issue such regulations as are necessary to carry out this section.

SEC. 104. ENVIRONMENTAL REVIEWS.

15 USC 720b.

(a) COMPLIANCE WITH NEPA.—The issuance of a certificate of public convenience and necessity authorizing the construction and operation of any Alaska natural gas transportation project under section 103 shall be treated as a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(b) DESIGNATION OF LEAD AGENCY.—

(1) IN GENERAL.—The Commission—

(A) shall be the lead agency for purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) shall be responsible for preparing the environmental impact statement required by section 102(2)(c) of

that Act (42 U.S.C. 4332(2)(c)) with respect to an Alaska natural gas transportation project under section 103.

(2) CONSOLIDATION OF STATEMENTS.—In carrying out paragraph (1), the Commission shall prepare a single environmental impact statement, which shall consolidate the environmental reviews of all Federal agencies considering any aspect of the Alaska natural gas transportation project covered by the environmental impact statement.

(c) OTHER AGENCIES.—

(1) IN GENERAL.—Each Federal agency considering an aspect of the construction and operation of an Alaska natural gas transportation project under section 103 shall—

(A) cooperate with the Commission; and

(B) comply with deadlines established by the Commission in the preparation of the environmental impact statement under this section.

(2) SATISFACTION OF NEPA REQUIREMENTS.—The environmental impact statement prepared under this section shall be adopted by each Federal agency described in paragraph (1) in satisfaction of the responsibilities of the Federal agency under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to the Alaska natural gas transportation project covered by the environmental impact statement.

Deadlines.

(d) EXPEDITED PROCESS.—The Commission shall—

(1) not later than 1 year after the Commission determines that the application under section 103 with respect to an Alaska natural gas transportation project is complete, issue a draft environmental impact statement under this section; and

(2) not later than 180 days after the date of issuance of the draft environmental impact statement, issue a final environmental impact statement, unless the Commission for good cause determines that additional time is needed.

15 USC 720c.

SEC. 105. PIPELINE EXPANSION.

(a) AUTHORITY.—With respect to any Alaska natural gas transportation project, on a request by 1 or more persons and after giving notice and an opportunity for a hearing, the Commission may order the expansion of the Alaska natural gas project if the Commission determines that such an expansion is required by the present and future public convenience and necessity.

(b) RESPONSIBILITIES OF COMMISSION.—Before ordering an expansion under subsection (a), the Commission shall—

(1) approve or establish rates for the expansion service that are designed to ensure the recovery, on an incremental or rolled-in basis, of the cost associated with the expansion (including a reasonable rate of return on investment);

(2) ensure that the rates do not require existing shippers on the Alaska natural gas transportation project to subsidize expansion shippers;

(3) find that a proposed shipper will comply with, and the proposed expansion and the expansion of service will be undertaken and implemented based on, terms and conditions consistent with the tariff of the Alaska natural gas transportation project in effect as of the date of the expansion;

(4) find that the proposed facilities will not adversely affect the financial or economic viability of the Alaska natural gas transportation project;

(5) find that the proposed facilities will not adversely affect the overall operations of the Alaska natural gas transportation project;

(6) find that the proposed facilities will not diminish the contract rights of existing shippers to previously subscribed certificated capacity;

(7) ensure that all necessary environmental reviews have been completed; and

(8) find that adequate downstream facilities exist or are expected to exist to deliver incremental Alaska natural gas to market.

(c) **REQUIREMENT FOR A FIRM TRANSPORTATION AGREEMENT.**—Any order of the Commission issued in accordance with this section shall be void unless the person requesting the order executes a firm transportation agreement with the Alaska natural gas transportation project within such reasonable period of time as the order may specify.

(d) **LIMITATION.**—Nothing in this section expands or otherwise affects any authority of the Commission with respect to any natural gas pipeline located outside the State.

(e) **REGULATIONS.**—The Commission may issue such regulations as are necessary to carry out this section.

SEC. 106. FEDERAL COORDINATOR.

15 USC 720d.

(a) **ESTABLISHMENT.**—There is established, as an independent office in the executive branch, the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

(b) **FEDERAL COORDINATOR.**—

(1) **APPOINTMENT.**—The Office shall be headed by a Federal Coordinator for Alaska Natural Gas Transportation Projects, who shall be appointed by the President, by and with the advice and consent of the Senate, to serve a term to last until 1 year following the completion of the project referred to in section 103.

President.
Congress.

(2) **COMPENSATION.**—The Federal Coordinator shall be compensated at the rate prescribed for level III of the Executive Schedule (5 U.S.C. 5314).

(c) **DUTIES.**—The Federal Coordinator shall be responsible for—

(1) coordinating the expeditious discharge of all activities by Federal agencies with respect to an Alaska natural gas transportation project; and

(2) ensuring the compliance of Federal agencies with the provisions of this division.

(d) **REVIEWS AND ACTIONS OF OTHER FEDERAL AGENCIES.**—

(1) **EXPEDITED REVIEWS AND ACTIONS.**—All reviews conducted and actions taken by any Federal agency relating to an Alaska natural gas transportation project authorized under this section shall be expedited, in a manner consistent with completion of the necessary reviews and approvals by the deadlines under this division.

(2) **PROHIBITION OF CERTAIN TERMS AND CONDITIONS.**—No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be

permitted, but is not required, by any applicable law if the Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(3) PROHIBITION OF CERTAIN ACTIONS.—Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

(4) LIMITATION.—The Federal Coordinator shall not have authority to—

(A) override—

(i) the implementation or enforcement of regulations issued by the Commission under section 103; or

(ii) an order by the Commission to expand the project under section 105; or

(B) impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

(e) STATE COORDINATION.—

(1) IN GENERAL.—The Federal Coordinator and the State shall enter into a joint surveillance and monitoring agreement similar to the agreement in effect during construction of the Trans-Alaska Pipeline, to be approved by the President and the Governor of the State, for the purpose of monitoring the construction of the Alaska natural gas transportation project.

(2) PRIMARY RESPONSIBILITY.—With respect to an Alaska natural gas transportation project—

(A) the Federal Government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses Federal land or private land; and

(B) the State government shall have primary surveillance and monitoring responsibility in areas where the Alaska natural gas transportation project crosses State land.

(f) TRANSFER OF FEDERAL INSPECTOR FUNCTIONS AND AUTHORITY.—On appointment of the Federal Coordinator by the President, all of the functions and authority of the Office of Federal Inspector of Construction for the Alaska Natural Gas Transportation System vested in the Secretary under section 3012(b) of the Energy Policy Act of 1992 (15 U.S.C. 719e note; Public Law 102-486), including all functions and authority described and enumerated in the Reorganization Plan No. 1 of 1979 (44 Fed. Reg. 33663), Executive Order No. 12142 of June 21, 1979 (44 Fed. Reg. 36927), and section 5 of the President's decision, shall be transferred to the Federal Coordinator.

(g) TEMPORARY AUTHORITY.—The functions, authorities, duties, and responsibilities of the Federal Coordinator shall be vested in the Secretary until the later of the appointment of the Federal

Expiration date.

Coordinator by the President, or 18 months after the date of enactment of this Act.

SEC. 107. JUDICIAL REVIEW.

15 USC 720e.

(a) **EXCLUSIVE JURISDICTION.**—Except for review by the Supreme Court on writ of certiorari, the United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction to determine—

(1) the validity of any final order or action (including a failure to act) of any Federal agency or officer under this division;

(2) the constitutionality of any provision of this division, or any decision made or action taken under this division; or

(3) the adequacy of any environmental impact statement prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this division.

(b) **DEADLINE FOR FILING CLAIM.**—A claim arising under this division may be brought not later than 60 days after the date of the decision or action giving rise to the claim.

(c) **EXPEDITED CONSIDERATION.**—The United States Court of Appeals for the District of Columbia Circuit shall set any action brought under subsection (a) for expedited consideration, taking into account the national interest of enhancing national energy security by providing access to the significant gas reserves in Alaska needed to meet the anticipated demand for natural gas.

(d) **AMENDMENT OF THE ALASKA NATURAL GAS TRANSPORTATION ACT OF 1976.**—Section 10(c) of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719h) is amended—

(1) by striking “(c)(1) A claim” and inserting the following:

“(c) **JURISDICTION.**—

“(1) **SPECIAL COURTS.**—

“(A) **IN GENERAL.**—A claim”;

(2) by striking “Such court shall have” and inserting the following:

“(B) **EXCLUSIVE JURISDICTION.**—The Special Court shall have”;

(3) by inserting after paragraph (1) the following:

“(2) **EXPEDITED CONSIDERATION.**—The Special Court shall set any action brought under this section for expedited consideration, taking into account the national interest described in section 2.”; and

(4) in paragraph (3), by striking “(3) The enactment” and inserting the following:

“(3) **ENVIRONMENTAL IMPACT STATEMENTS.**—The enactment”.

SEC. 108. STATE JURISDICTION OVER IN-STATE DELIVERY OF NATURAL GAS.

15 USC 720f.

(a) **LOCAL DISTRIBUTION.**—Any facility receiving natural gas from an Alaska natural gas transportation project for delivery to consumers within the State—

(1) shall be deemed to be a local distribution facility within the meaning of section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)); and

(2) shall not be subject to the jurisdiction of the Commission.

(b) **ADDITIONAL PIPELINES.**—Except as provided in section 103(d), nothing in this division shall preclude or otherwise affect a future natural gas pipeline that may be constructed to deliver natural gas to Fairbanks, Anchorage, Matanuska-Susitna Valley, or the Kenai peninsula or Valdez or any other site in the State for consumption within or distribution outside the State.

(c) **RATE COORDINATION.**—

(1) **IN GENERAL.**—In accordance with the Natural Gas Act (15 U.S.C. 717a et seq.), the Commission shall establish rates for the transportation of natural gas on any Alaska natural gas transportation project.

(2) **CONSULTATION.**—In carrying out paragraph (1), the Commission, in accordance with section 17(b) of the Natural Gas Act (15 U.S.C. 717p(b)), shall consult with the State regarding rates (including rate settlements) applicable to natural gas transported on and delivered from the Alaska natural gas transportation project for use within the State.

15 USC 720g.

Deadline.

SEC. 109. STUDY OF ALTERNATIVE MEANS OF CONSTRUCTION.

(a) **REQUIREMENT OF STUDY.**—If no application for the issuance of a certificate or amended certificate of public convenience and necessity authorizing the construction and operation of an Alaska natural gas transportation project has been filed with the Commission by the date that is 18 months after the date of enactment of this Act, the Secretary shall conduct a study of alternative approaches to the construction and operation of such an Alaska natural gas transportation project.

(b) **SCOPE OF STUDY.**—The study under subsection (a) shall take into consideration the feasibility of—

(1) establishing a Federal Government corporation to construct an Alaska natural gas transportation project; and

(2) securing alternative means of providing Federal financing and ownership (including alternative combinations of Government and private corporate ownership) of the Alaska natural gas transportation project.

(c) **CONSULTATION.**—In conducting the study under subsection (a), the Secretary shall consult with the Secretary of the Treasury and the Secretary of the Army (acting through the Chief of Engineers).

(d) **REPORT.**—On completion of any study under subsection (a), the Secretary shall submit to Congress a report that describes—

(1) the results of the study; and

(2) any recommendations of the Secretary (including proposals for legislation to implement the recommendations).

15 USC 720h.

SEC. 110. CLARIFICATION OF ANGTA STATUS AND AUTHORITIES.

(a) **SAVINGS CLAUSE.**—Nothing in this division affects—

(1) any decision, certificate, permit, right-of-way, lease, or other authorization issued under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g); or

(2) any Presidential finding or waiver issued in accordance with that Act.

(b) **CLARIFICATION OF AUTHORITY TO AMEND TERMS AND CONDITIONS TO MEET CURRENT PROJECT REQUIREMENTS.**—Any Federal agency responsible for granting or issuing any certificate, permit, right-of-way, lease, or other authorization under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) may add to, amend, or rescind any term or condition included

in the certificate, permit, right-of-way, lease, or other authorization to meet current project requirements (including the physical design, facilities, and tariff specifications), if the addition, amendment, or rescission—

(1) would not compel any change in the basic nature and general route of the Alaska natural gas transportation system as designated and described in section 2 of the President's decision; or

(2) would not otherwise prevent or impair in any significant respect the expeditious construction and initial operation of the Alaska natural gas transportation system.

(c) **UPDATED ENVIRONMENTAL REVIEWS.**—The Secretary shall require the sponsor of the Alaska natural gas transportation system to submit such updated environmental data, reports, permits, and impact analyses as the Secretary determines are necessary to develop detailed terms, conditions, and compliance plans required by section 5 of the President's decision.

SEC. 111. SENSE OF CONGRESS CONCERNING USE OF STEEL MANUFACTURED IN NORTH AMERICA NEGOTIATION OF A PROJECT LABOR AGREEMENT.

15 USC 720i.

It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should make every effort to—

(A) use steel that is manufactured in North America; and

(B) negotiate a project labor agreement to expedite construction of the pipeline.

SEC. 112. SENSE OF CONGRESS AND STUDY CONCERNING PARTICIPATION BY SMALL BUSINESS CONCERNS.

15 USC 720j.

(a) **DEFINITION OF SMALL BUSINESS CONCERN.**—In this section, the term “small business concern” has the meaning given the term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) an Alaska natural gas transportation project would provide significant economic benefits to the United States and Canada; and

(2) to maximize those benefits, the sponsors of the Alaska natural gas transportation project should maximize the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(c) **STUDY.**—

(1) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study to determine the extent to which small business concerns participate in the construction of oil and gas pipelines in the United States.

(2) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to Congress a report that describes results of the study under paragraph (1).

(3) **UPDATES.**—The Comptroller General shall—

(A) update the study at least once every 5 years until construction of an Alaska natural gas transportation project is completed; and

Reports. (B) on completion of each update, submit to Congress a report containing the results of the update.

15 USC 720k.

SEC. 113. ALASKA PIPELINE CONSTRUCTION TRAINING PROGRAM.

(a) PROGRAM.—

Grants. (1) ESTABLISHMENT.—The Secretary of Labor (in this section referred to as the “Secretary”) shall make grants to the Alaska Workforce Investment Board—

(A) to recruit and train adult and dislocated workers in Alaska, including Alaska Natives, in the skills required to construct and operate an Alaska gas pipeline system; and

(B) for the design and construction of a training facility to be located in Fairbanks, Alaska, to support an Alaska gas pipeline training program.

(2) COORDINATION WITH EXISTING PROGRAMS.—The training program established with the grants authorized under paragraph (1) shall be consistent with the vision and goals set forth in the State of Alaska Unified Plan, as developed pursuant to the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(b) REQUIREMENTS FOR GRANTS.—The Secretary shall make a grant under subsection (a) only if—

(1) the Governor of the State of Alaska requests the grant funds and certifies in writing to the Secretary that there is a reasonable expectation that the construction of the Alaska natural gas pipeline system will commence by the date that is 2 years after the date of the certification; and

(2) the Secretary of Energy concurs in writing to the Secretary with the certification made under paragraph (1) after considering—

(A) the status of necessary Federal and State permits;

(B) the availability of financing for the Alaska natural gas pipeline project; and

(C) other relevant factors.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section \$20,000,000. Not more than 15 percent of the funds may be used for the facility described in subsection (a)(1)(B).

15 USC 720l.

SEC. 114. SENSE OF CONGRESS CONCERNING NATURAL GAS DEMAND.

It is the sense of Congress that—

(1) North American demand for natural gas will increase dramatically over the course of the next several decades;

(2) both the Alaska Natural Gas Pipeline and the Mackenzie Delta Natural Gas project in Canada will be necessary to help meet the increased demand for natural gas in North America;

(3) Federal and State officials should work together with officials in Canada to ensure both projects can move forward in a mutually beneficial fashion;

(4) Federal and State officials should acknowledge that the smaller scope, fewer permitting requirements, and lower cost of the Mackenzie Delta project means it will most likely be completed before the Alaska Natural Gas Pipeline;

(5) natural gas production in the 48 contiguous States and Canada will not be able to meet all domestic demand in the coming decades; and

(6) as a result, natural gas delivered from Alaskan North Slope will not displace or reduce the commercial viability of Canadian natural gas produced from the Mackenzie Delta or production from the 48 contiguous States.

SEC. 115. SENSE OF CONGRESS CONCERNING ALASKAN OWNERSHIP. 15 USC 720m.

It is the sense of Congress that—

(1) Alaska Native Regional Corporations, companies owned and operated by Alaskans, and individual Alaskans should have the opportunity to own shares of the Alaska natural gas pipeline in a way that promotes economic development for the State; and

(2) to facilitate economic development in the State, all project sponsors should negotiate in good faith with any willing Alaskan person that desires to be involved in the project.

SEC. 116. LOAN GUARANTEES.

15 USC 720n.

(a) **AUTHORITY.**—(1) The Secretary may enter into agreements with 1 or more holders of a certificate of public convenience and necessity issued under section 103(b) of this division or section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project.

(2) Subject to the requirements of this section, the Secretary may also enter into agreements with 1 or more owners of the Canadian portion of a qualified infrastructure project to issue Federal guarantee instruments with respect to loans and other debt obligations for a qualified infrastructure project as though such owner were a holder described in paragraph (1).

(3) The authority of the Secretary to issue Federal guarantee instruments under this section for a qualified infrastructure project shall expire on the date that is 2 years after the date on which the final certificate of public convenience and necessity (including any Canadian certificates of public convenience and necessity) is issued for the project. A final certificate shall be considered to have been issued when all certificates of public convenience and necessity have been issued that are required for the initial transportation of commercially economic quantities of natural gas from Alaska to the continental United States.

Expiration date.

(b) **CONDITIONS.**—(1) The Secretary may issue a Federal guarantee instrument for a qualified infrastructure project only after a certificate of public convenience and necessity under section 103(b) of this division or an amended certificate under section 9 of the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719g) has been issued for the project.

(2) The Secretary may issue a Federal guarantee instrument under this section for a qualified infrastructure project only if the loan or other debt obligation guaranteed by the instrument has been issued by an eligible lender.

(3) The Secretary shall not require as a condition of issuing a Federal guarantee instrument under this section any contractual commitment or other form of credit support of the sponsors (other than equity contribution commitments and completion guarantees), or any throughput or other guarantee from prospective shippers

greater than such guarantees as shall be required by the project owners.

(c) LIMITATIONS ON AMOUNTS.—(1) The amount of loans and other debt obligations guaranteed under this section for a qualified infrastructure project shall not exceed 80 percent of the total capital costs of the project, including interest during construction.

(2) The principal amount of loans and other debt obligations guaranteed under this section shall not exceed, in the aggregate, \$18,000,000,000, which amount shall be indexed for United States dollar inflation from the date of enactment of this Act, as measured by the Consumer Price Index.

(d) LOAN TERMS AND FEES.—(1) The Secretary may issue Federal guarantee instruments under this section that take into account repayment profiles and grace periods justified by project cash flows and project-specific considerations. The term of any loan guaranteed under this section shall not exceed 30 years.

(2) An eligible lender may assess and collect from the borrower such other fees and costs associated with the application and origination of the loan or other debt obligation as are reasonable and customary for a project finance transaction in the oil and gas sector.

(e) REGULATIONS.—The Secretary may issue regulations to carry out this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to cover the cost of loan guarantees under this section, as defined by section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)). Such sums shall remain available until expended.

(g) DEFINITIONS.—In this section:

(1) CONSUMER PRICE INDEX.—The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers, United States city average, as published by the Bureau of Labor Statistics, or if such index shall cease to be published, any successor index or reasonable substitute thereof.

(2) ELIGIBLE LENDER.—The term “eligible lender” means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986 (26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. 414(d)) that is a qualified institutional buyer.

(3) FEDERAL GUARANTEE INSTRUMENT.—The term “Federal guarantee instrument” means any guarantee or other pledge by the Secretary to pledge the full faith and credit of the United States to pay all of the principal and interest on any loan or other debt obligation entered into by a holder of a certificate of public convenience and necessity.

(4) QUALIFIED INFRASTRUCTURE PROJECT.—The term “qualified infrastructure project” means an Alaskan natural gas transportation project consisting of the design, engineering, finance, construction, and completion of pipelines and related transportation and production systems (including gas treatment

plants), and appurtenances thereto, that are used to transport natural gas from the Alaska North Slope to the continental United States.

Approved October 13, 2004.

LEGISLATIVE HISTORY—H.R. 4837 (S. 2674):

HOUSE REPORTS: Nos. 108–607 (Comm. on Appropriations) and 108–733 (Comm. of Conference).

SENATE REPORTS: No. 108–309 accompanying S. 2674 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 21, 22, considered and passed House.

Sept. 15, 20, considered and passed Senate, amended.

Oct. 9, House agreed to conference report. Senate considered conference report.

Oct. 11, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Oct. 13, Presidential statement.



Public Law 108–325
108th Congress

An Act

Oct. 13, 2004
[S. 1778]

To authorize a land conveyance between the United States and the City of Craig, Alaska, and for other purposes.

Craig Recreation
Land Purchase
Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Craig Recreation Land Purchase Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) CITY.—The term “City” means the City of Craig, Alaska.

(2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

SEC. 3. CONVEYANCE TO SECRETARY OF AGRICULTURE.

Deadline.

(a) IN GENERAL.—If, not later than 180 days after the date on which the City receives a copy of the appraisal conducted under subsection (c), the City offers to convey to the Secretary all right, title, and interest of the City in and to the parcels of non-Federal land described in subsection (b), the Secretary, subject to the availability of appropriations, shall—

(1) accept the offer; and

(2) on conveyance of the land to the Secretary, pay to the City an amount equal to the appraised value of the land, as determined under subsection (c).

(b) DESCRIPTION OF LAND.—The non-Federal land referred to in subsection (a) consists of—

(1) the municipal land identified on the map entitled “Informational Map, Sunnahae Trail and Recreation Parcel and Craig Cannery Property” and dated August 2003;

(2) lots 1 and 1A, Block 11–A, as identified on the City of Craig Subdivision Plat, Craig Tideland Addition, Patent # 155 (Inst. 69–982, Ketchikan Recording Office), dated April 21, 2004, consisting of approximately 22,353 square feet of land; and

(3) the portion of Beach Road eastward of a projected line between the southwest corner of lot 1, Block 11, USS 1430 and the northwest corner of lot 1, Block 11–A, as identified on the City of Craig Subdivision Plat, Craig Tideland Addition, Patent # 155 (Inst. 69–982, Ketchikan Recording Office), dated April 21, 2004, consisting of approximately 4,700 square feet of land.

(c) APPRAISALS.—

(1) IN GENERAL.—Before conveying the land under subsection (a), the Secretary shall—

(A) conduct an appraisal of the land, in accordance with—

(i) the Uniform Appraisal Standards for Federal Land Acquisitions;

(ii) the Uniform Standards of Professional Appraisal Practice; and

(iii) Forest Service Appraisal Directives; and

(B) submit to the City a copy of the appraisal.

(2) PAYMENT OF COSTS.—

(A) CITY.—The City shall pay the costs of appraising the land described in subsection (b)(1).

(B) SECRETARY.—The Secretary shall pay the costs of appraising the land described in paragraphs (2) and (3) of subsection (b).

(d) MANAGEMENT.—Any land acquired under subsection (a) shall be—

(1) included in the Tongass National Forest; and

(2) administered by the Secretary in accordance with the laws (including regulations) and forest plan applicable to the Tongass National Forest.

SEC. 4. ACQUISITION OF LAND BY THE CITY OF CRAIG.

The amount received by the City under section 3(a)(2) shall be used by the City to acquire the Craig cannery property, as depicted on the map entitled “Informational Map, Sunnahae Trail and Recreation Parcel and Craig Cannery Property” and dated August 2003.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) to the Forest Service for the reconstruction of the Sunnahae Trail, \$250,000; and

(2) such sums as are necessary to carry out this Act.

Approved October 13, 2004.

LEGISLATIVE HISTORY—S. 1778 (H.R. 3427):

HOUSE REPORTS: No. 108-644 accompanying H.R. 3427 (Comm. on Resources).

SENATE REPORTS: No. 108-271 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 108–326
108th Congress

An Act

Oct. 16, 2004
[H.R. 982]

To clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF TAX TREATMENT OF BONDS AND OTHER OBLIGATIONS ISSUED BY GOVERNMENT OF AMERICAN SAMOA.

(a) EXEMPTION OF ALL BONDS FROM INCOME TAXATION BY STATE AND LOCAL GOVERNMENTS.—Subsection (b) of section 202 of Public Law 98–454 (48 U.S.C. 1670) is amended to read as follows:

“(b) EXEMPTION OF ALL BONDS FROM INCOME TAXATION BY STATE AND LOCAL GOVERNMENTS.—

“(1) IN GENERAL.—The interest on any bond or other obligation issued by or on behalf of the Government of American Samoa shall be exempt from taxation by the Government of American Samoa and the governments of any of the several States, the District of Columbia, any territory or possession of the United States, and any subdivision thereof.

“(2) EXEMPTION APPLICABLE ONLY TO INCOME TAXES.—The exemption provided by paragraph (1) shall not apply to gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.”.

48 USC 1670
note.

SEC. 2. EFFECTIVE DATE.

This Act shall apply to obligations issued after the date of the enactment of this Act.

Approved October 16, 2004.

LEGISLATIVE HISTORY—H.R. 982:

HOUSE REPORTS: No. 108–102, Pt. 1 (Comm. on the Judiciary) and Pt. 2 (Comm. on Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 4, considered and passed House.

Vol. 150 (2004): Sept. 29, considered and passed Senate.



Public Law 108–327
108th Congress

An Act

To amend the Fish and Wildlife Act of 1956 to reauthorize volunteer programs and community partnerships for national wildlife refuges, and for other purposes.

Oct. 16, 2004
[H.R. 2408]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Wildlife Refuge Volunteer Act of 2004”.

National Wildlife
Refuge Volunteer
Act of 2004.
16 USC 742a
note.

SEC. 2. REAUTHORIZATION OF VOLUNTEER PROGRAMS AND COMMUNITY PARTNERSHIPS UNDER FISH AND WILDLIFE ACT OF 1956.

Section 7(f) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(f)) is amended to read as follows:

“(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior to carry out subsections (b), (c), (d), and (e) \$2,000,000 for each of fiscal years 2004 through 2009.”.

SEC. 3. AUTHORIZATION OF PROJECTS UNDER NATIONAL WILDLIFE REFUGE SYSTEM VOLUNTEER AND COMMUNITY PARTNERSHIP ENHANCEMENT ACT OF 1998.

16 USC 742f–1.

Section 4(a) of the National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 (16 U.S.C. 742f note) is amended—

- (1) in the heading by striking “PILOT”;
- (2) by striking “pilot project” each place it appears and inserting “project”;
- (3) in paragraph (1) by striking “, but not more than 20 pilot projects nationwide”;
- (4) in paragraph (3)—
 - (A) by striking “pilot projects” and inserting “projects”;
 - and
 - (B) by striking “after the date of the enactment of this Act” and inserting “after the date of the enactment of the National Wildlife Refuge Volunteer Act of 2004, and every 3 years thereafter”; and
- (5) in paragraph (4) by striking “each of fiscal years 1999 through 2002” and inserting “for each fiscal year through fiscal year 2009”.

SEC. 4. CLARIFICATION OF COOPERATIVE AGREEMENT AUTHORITY.

Section 7(d)(2)(A) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(d)(2)(A)) is amended to read as follows:

“(A) IN GENERAL.—Notwithstanding chapter 63 of title 31, United States Code, the Secretary of the Interior may negotiate and enter into a cooperative agreement with a partner organization, academic institution, State or local government agency, or other person to implement one or more projects or programs for a refuge or complex of geographically related refuges in accordance with the purposes of this subsection and in compliance with the policies of other relevant authorities, regulations, and policy guidance.”.

Approved October 16, 2004.

LEGISLATIVE HISTORY—H.R. 2408:

HOUSE REPORTS: No. 108–385 (Comm. on Resources).

SENATE REPORTS: No. 108–315 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 23, considered and passed House.

Sept. 30, considered and passed Senate.



Public Law 108–328
108th Congress

An Act

To amend the Safe Drinking Water Act to reauthorize the New York City Watershed Protection Program.

Oct. 16, 2004
[H.R. 2771]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NEW YORK CITY WATERSHED PROTECTION PROGRAM.

Section 1443(d)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–2(d)(4)) is amended by striking “1997 through 2003” and inserting “2003 through 2010”.

Approved October 16, 2004.

LEGISLATIVE HISTORY—H.R. 2771 (S. 1425):

HOUSE REPORTS: No. 108–476 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 108–205 accompanying S. 1425 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 5, considered and passed House.

Sept. 30, considered and passed Senate.



Public Law 108–329
108th Congress

An Act

Oct. 16, 2004
[H.R. 4115]

To amend the Act of November 2, 1966 (80 Stat. 1112), to allow binding arbitration clauses to be included in all contracts affecting the land within the Salt River Pima-Maricopa Indian Reservation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BINDING ARBITRATION FOR SALT RIVER PIMA-MARICOPA INDIAN RESERVATION CONTRACTS.

(a) IN GENERAL.—Section 2(c) of the Act of November 2, 1966 (25 U.S.C. 416a(c)), is amended—

(1) in the first sentence—

(A) by striking “Any lease” and all that follows through “affecting land” and inserting “Any contract, including a lease, affecting land”; and

(B) by striking “such lease or contract” and inserting “such contract”; and

(2) in the second sentence, by striking “Such leases or contracts entered into pursuant to such Acts” and inserting “Such contracts”.

25 USC 416a
note.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (Public Law 106–179).

Approved October 16, 2004.

LEGISLATIVE HISTORY—H.R. 4115 (S. 2277):

HOUSE REPORTS: No. 108–535 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 19, considered and passed House.

Sept. 29, considered and passed Senate.



Public Law 108–330
108th Congress

An Act

To amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, to establish requirements for the Future Years Homeland Security Program of the Department, and for other purposes.

Oct. 16, 2004
[H.R. 4259]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as “Department of Homeland Security Financial Accountability Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Influential financial management leadership is of vital importance to the mission success of the Department of Homeland Security. For this reason, the Chief Financial Officer of the Department must be a key figure in the Department’s management.

(2) To provide a sound financial leadership structure, the provisions of law enacted by the Chief Financial Officers Act of 1990 (Public Law 101–576) provide that the Chief Financial Officer of each of the Federal executive departments is to be a Presidential appointee who reports directly to the Secretary of that department on financial management matters. Because the Department of Homeland Security was only recently created, the provisions enacted by that Act must be amended to include the Department within these provisions.

(3) The Department of Homeland Security was created by consolidation of 22 separate Federal agencies, each with its own accounting and financial management system. None of these systems was developed with a view to executing the mission of the Department of Homeland Security to prevent terrorist attacks within the United States, reduce the Nation’s vulnerability to terrorism, and minimize the damage and assist in the recovery from terrorist attacks. For these reasons, a strong Chief Financial Officer is needed within the Department both to consolidate financial management operations, and to insure that management control systems are comprehensively designed to achieve the mission and execute the strategy of the Department.

(4) The provisions of law enacted by the Chief Financial Officers Act of 1990 require agency Chief Financial Officers to improve the financial information available to agency managers and the Congress. Those provisions also specify that

Department of
Homeland
Security
Financial
Accountability
Act.
6 USC 101 note.
6 USC 342 note.

agency financial management systems must provide for the systematic measurement of performance. In the case of the Department of Homeland Security, therefore, it is vitally important that management control systems be designed with a clear view of a homeland security strategy, including the priorities of the Department in addressing those risks of terrorism deemed most significant based upon a comprehensive assessment of potential threats, vulnerabilities, criticality, and consequences. For this reason, Federal law should be amended to clearly state the responsibilities of the Chief Financial Officer of the Department of Homeland Security to provide management control information, for the benefit of managers within the Department and to help inform the Congress, that permits an assessment of the Department's performance in executing a homeland security strategy.

SEC. 3. CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) **IN GENERAL.**—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting after subparagraph (F) the following:

“(G) The Department of Homeland Security.”.

(b) **APPOINTMENT OR DESIGNATION OF CFO.**—The President shall appoint or designate a Chief Financial Officer of the Department of Homeland Security under the amendment made by subsection (a) by not later than 180 days after the date of the enactment of this Act.

(c) **CONTINUED SERVICE OF CURRENT OFFICIAL.**—An individual serving as Chief Financial Officer of the Department of Homeland Security immediately before the enactment of this Act, or another person who is appointed to replace such an individual in an acting capacity after the enactment of this Act, may continue to serve in that position until the date of the confirmation or designation, as applicable (under section 901(a)(1)(B) of title 31, United States Code), of a successor under the amendment made by subsection (a).

(d) **CONFORMING AMENDMENTS.**—

(1) **HOMELAND SECURITY ACT OF 2002.**—The Homeland Security Act of 2002 (Public Law 107-296) is amended—

(A) in section 103 (6 U.S.C. 113)—

(i) in subsection (d) by striking paragraph (4), and redesignating paragraph (5) as paragraph (4);

(ii) by redesignating subsection (e) as subsection (f); and

(iii) by inserting after subsection (d) the following:

“(e) **CHIEF FINANCIAL OFFICER.**—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31, United States Code.”; and

(B) in section 702 (6 U.S.C. 342) by striking “shall report” and all that follows through the period and inserting “shall perform functions as specified in chapter 9 of title 31, United States Code, and, with respect to all such functions and other responsibilities that may be assigned to the Chief Financial Officer from time to time, shall also report to the Under Secretary for Management.”.

President.
Deadline.
31 USC 901 note.

(2) FEMA.—Section 901(b)(2) of title 31, United States Code, is amended by striking subparagraph (B), and by redesignating subparagraphs (C) through (H) in order as subparagraphs (B) through (G).

SEC. 4. FUNCTIONS OF CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) PERFORMANCE AND ACCOUNTABILITY REPORTS.—Section 3516 of title 31, United States Code, is amended by adding at the end the following:

“(f) The Secretary of Homeland Security—

“(1) shall for each fiscal year submit a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security;

“(2) shall include in each performance and accountability report an audit opinion of the Department’s internal controls over its financial reporting; and

“(3) shall design and implement Department-wide management controls that—

“(A) reflect the most recent homeland security strategy developed pursuant to section 874(b)(2) of the Homeland Security Act of 2002; and

“(B) permit assessment, by the Congress and by managers within the Department, of the Department’s performance in executing such strategy.”.

(b) IMPLEMENTATION OF AUDIT OPINION REQUIREMENT.—The Secretary of Homeland Security shall include audit opinions in performance and accountability reports under section 3516(f) of title 31, United States Code, as amended by subsection (a), only for fiscal years after fiscal year 2005.

31 USC 3516
note.

(c) ASSERTION OF INTERNAL CONTROLS.—The Secretary of Homeland Security shall include in the performance and accountability report for fiscal year 2005 submitted by the Secretary under section 3516(f) of title 31, United States Code, an assertion of the internal controls that apply to financial reporting by the Department of Homeland Security.

(d) AUDIT OPINIONS OF INTERNAL CONTROLS OVER FINANCIAL REPORTING BY CHIEF FINANCIAL OFFICER AGENCIES.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Chief Financial Officers Council and the President’s Council on Integrity and Efficiency established by Executive Order 12805 of May 11, 1992, shall jointly conduct a study of the potential costs and benefits of requiring the agencies listed in section 901(b) of title 31, United States Code, to obtain audit opinions of their internal controls over their financial reporting.

Deadline.

(2) REPORT.—Upon completion of the study under paragraph (1), the Chief Financial Officers Council and the President’s Council on Integrity and Efficiency shall promptly submit a report on the results of the study to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Comptroller General of the United States.

(3) GENERAL ACCOUNTING OFFICE ANALYSIS.—Not later than 90 days after receiving the report under paragraph (2), the

Deadline.

Comptroller General shall perform an analysis of the information provided in the report and report the findings of the analysis to the committees referred to in paragraph (2).

SEC. 5. FUTURE YEARS HOMELAND SECURITY PROGRAM AND HOMELAND SECURITY STRATEGY.

6 USC 454.

Section 874 of the Homeland Security Act of 2002 (6 U.S.C. 112) is amended by striking subsection (b) and inserting the following:

“(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall—

“(1) include the same type of information, organizational structure, and level of detail as the future years defense program submitted to Congress by the Secretary of Defense under section 221 of title 10, United States Code;

“(2) set forth the homeland security strategy of the Department, which shall be developed and updated as appropriate annually by the Secretary, that was used to develop program planning guidance for the Future Years Homeland Security Program; and

“(3) include an explanation of how the resource allocations included in the Future Years Homeland Security Program correlate to the homeland security strategy set forth under paragraph (2).”.

SEC. 6. ESTABLISHMENT OF OFFICE OF PROGRAM ANALYSIS AND EVALUATION.

Section 702 of the Homeland Security Act of 2002 (6 U.S.C. 342) is amended by—

(1) inserting “(a) In General.—” before the first sentence; and

(2) adding at the end the following:

“(b) PROGRAM ANALYSIS AND EVALUATION FUNCTION.—

Deadline.

“(1) ESTABLISHMENT OF OFFICE OF PROGRAM ANALYSIS AND EVALUATION.—Not later than 90 days after the date of enactment of this subsection, the Secretary shall establish an Office of Program Analysis and Evaluation within the Department (in this section referred to as the ‘Office’).

“(2) RESPONSIBILITIES.—The Office shall perform the following functions:

“(A) Analyze and evaluate plans, programs, and budgets of the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the most recent homeland security strategy developed pursuant to section 874(b)(2).

“(B) Develop and perform analyses and evaluations of alternative plans, programs, personnel levels, and budget submissions for the Department in relation to United States homeland security objectives, projected threats, vulnerability assessments, estimated costs, resource constraints, and the most recent homeland security strategy developed pursuant to section 874(b)(2).

“(C) Establish policies for, and oversee the integration of, the planning, programming, and budgeting system of the Department.

“(D) Review and ensure that the Department meets performance-based budget requirements established by the Office of Management and Budget.

“(E) Provide guidance for, and oversee the development of, the Future Years Homeland Security Program of the Department, as specified under section 874.

“(F) Ensure that the costs of Department programs, including classified programs, are presented accurately and completely.

“(G) Oversee the preparation of the annual performance plan for the Department and the program and performance section of the annual report on program performance for the Department, consistent with sections 1115 and 1116, respectively, of title 31, United States Code.

“(H) Provide leadership in developing and promoting improved analytical tools and methods for analyzing homeland security planning and the allocation of resources.

“(I) Any other responsibilities delegated by the Secretary consistent with an effective program analysis and evaluation function.

“(3) DIRECTOR OF PROGRAM ANALYSIS AND EVALUATION.—There shall be a Director of Program Analysis and Evaluation, who—

“(A) shall be a principal staff assistant to the Chief Financial Officer of the Department for program analysis and evaluation; and

“(B) shall report to an official no lower than the Chief Financial Officer.

“(4) REORGANIZATION.—

“(A) IN GENERAL.—The Secretary may allocate or reallocate the functions of the Office, or discontinue the Office, in accordance with section 872(a).

“(B) EXEMPTION FROM LIMITATIONS.—Section 872(b) shall not apply to any action by the Secretary under this paragraph.”.

SEC. 7. NOTIFICATION REGARDING TRANSFER OR REPROGRAMMING OF FUNDS FOR DEPARTMENT OF HOMELAND SECURITY.

Section 702 of the Homeland Security Act of 2002 (6 U.S.C. 342) is further amended by adding at the end the following:

“(c) NOTIFICATION REGARDING TRANSFER OR REPROGRAMMING OF FUNDS.—In any case in which appropriations available to the Department or any officer of the Department are transferred or reprogrammed and notice of such transfer or reprogramming is submitted to the Congress (including any officer, office, or Committee of the Congress), the Chief Financial Officer of the Department shall simultaneously submit such notice to the Select Committee on Homeland Security (or any successor to the jurisdiction of that committee) and the Committee on Government Reform of

the House of Representatives, and to the Committee on Governmental Affairs of the Senate.”.

Approved October 16, 2004.

LEGISLATIVE HISTORY—H.R. 4259 (S. 1567):

HOUSE REPORTS: No. 108–533, Pt. 1 (Comm. on Government Reform).

SENATE REPORTS: No. 108–211 accompanying S. 1567 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 20, considered and passed House.

Sept. 29, considered and passed Senate.



Public Law 108–331
108th Congress

An Act

To authorize the Board of Regents of the Smithsonian Institution to carry out construction and related activities in support of the collaborative Very Energetic Radiation Imaging Telescope Array System (VERITAS) project on Kitt Peak near Tucson, Arizona.

Oct. 16, 2004
[H.R. 5105]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZING BOARD OF REGENTS OF SMITHSONIAN INSTITUTION TO CARRY OUT CONSTRUCTION AND RELATED ACTIVITIES IN SUPPORT OF VERITAS ASTROPHYSICAL OBSERVATORY PROJECT.

20 USC 50 note.

The Board of Regents of the Smithsonian Institution is authorized to carry out construction and related activities in support of the collaborative Very Energetic Radiation Imaging Telescope Array System (VERITAS) project on Kitt Peak near Tucson, Arizona.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

20 USC 50 note.

There is authorized to be appropriated \$1,000,000 for fiscal year 2005 to carry out section 1.

Approved October 16, 2004.

LEGISLATIVE HISTORY—H.R. 5105:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Sept. 29, considered and passed House.
Oct. 1, considered and passed Senate.



Public Law 108–332
108th Congress

An Act

Oct. 16, 2004

[S. 2292]

Global Anti-
Semitism Review
Act of 2004.
22 USC 2651
note.

22 USC 2731
note.

Mahatir
Mohammad.

To require a report on acts of anti-Semitism around the world.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Global Anti-Semitism Review
Act of 2004”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Acts of anti-Semitism in countries throughout the world, including some of the world’s strongest democracies, have increased significantly in frequency and scope over the last several years.

(2) During the last 3 months of 2003 and the first 3 months of 2004, there were numerous instances of anti-Semitic violence around the world, including the following incidents:

(A) In Putrajaya, Malaysia, on October 16, 2003, former Prime Minister Mahatir Mohammad told the 57 national leaders assembled for the Organization of the Islamic Conference that Jews “rule the world by proxy”, and called for a “final victory” by the world’s 1.3 billion Muslims, who, he said, “cannot be defeated by a few million Jews.”.

(B) In Istanbul, Turkey, on November 15, 2003, simultaneous car bombs exploded outside two synagogues filled with worshippers, killing 24 people and wounding more than 250 people.

(C) In Australia on January 5, 2004, poison was used to ignite, and burn anti-Semitic slogans into, the lawns of the Parliament House in the state of Tasmania.

(D) In St. Petersburg, Russia, on February 15, 2004, vandals desecrated approximately 50 gravestones in a Jewish cemetery, painting the stones with swastikas and anti-Semitic graffiti.

(E) In Toronto, Canada, over the weekend of March 19 through March 21, 2004, vandals attacked a Jewish school, a Jewish cemetery, and area synagogues, painting swastikas and anti-Semitic slogans on the walls of a synagogue and on residential property in a nearby, predominantly Jewish, neighborhood.

(F) In Toulon, France, on March 23, 2004, a Jewish synagogue and community center were set on fire.

(3) Anti-Semitism in old and new forms is also increasingly emanating from the Arab and Muslim world on a sustained

basis, including through books published by government-owned publishing houses in Egypt and other Arab countries.

(4) In November 2002, state-run television in Egypt broadcast the anti-Semitic series entitled “Horseman Without a Horse”, which is based upon the fictitious conspiracy theory known as the Protocols of the Elders of Zion. The Protocols have been used throughout the last century by despots such as Adolf Hitler to justify violence against Jews.

(5) In November 2003, Arab television featured an anti-Semitic series, entitled “Ash-Shatat” (or “The Diaspora”), which depicts Jewish people hatching a plot for Jewish control of the world.

(6) The sharp rise in anti-Semitic violence has caused international organizations such as the Organization for Security and Cooperation in Europe (OSCE) to elevate, and bring renewed focus to, the issue, including the convening by the OSCE in June 2003 of a conference in Vienna dedicated solely to the issue of anti-Semitism.

(7) The OSCE convened a conference again on April 28–29, 2004, in Berlin, to address the problem of anti-Semitism with the United States delegation led by former Mayor of New York City, Ed Koch.

Ed Koch.

(8) The United States Government has strongly supported efforts to address anti-Semitism through bilateral relationships and interaction with international organizations such as the OSCE, the European Union, and the United Nations.

(9) Congress has consistently supported efforts to address the rise in anti-Semitic violence. During the 107th Congress, both the Senate and the House of Representatives passed resolutions expressing strong concern with the sharp escalation of anti-Semitic violence in Europe and calling on the Department of State to thoroughly document the phenomenon.

(10) Anti-Semitism has at times taken the form of vilification of Zionism, the Jewish national movement, and incitement against Israel.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the United States Government should continue to strongly support efforts to combat anti-Semitism worldwide through bilateral relationships and interaction with international organizations such as the OSCE, the European Union, and the United Nations; and

(2) the Department of State should thoroughly document acts of anti-Semitism that occur around the world.

SEC. 4. REPORTS.

Not later than November 15, 2004, the Secretary of State shall submit to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a one-time report on acts of anti-Semitism around the world, including a description of—

(1) acts of physical violence against, or harassment of, Jewish people, and acts of violence against, or vandalism of, Jewish community institutions, such as schools, synagogues, or cemeteries, that occurred in each country;

(2) the responses of the governments of those countries to such actions;

(3) the actions taken by such governments to enact and enforce laws relating to the protection of the right to religious freedom of Jewish people;

(4) the efforts by such governments to promote anti-bias and tolerance education; and

(5) instances of propaganda in government and nongovernment media that attempt to justify or promote racial hatred or incite acts of violence against Jewish people.

SEC. 5. AUTHORIZATION FOR ESTABLISHMENT OF OFFICE TO MONITOR AND COMBAT ANTI-SEMITISM.

The State Department Basic Authorities Act of 1956 is amended by adding after section 58 (22 U.S.C. 2730) the following new section:

22 USC 2731.

“SEC. 59. MONITORING AND COMBATING ANTI-SEMITISM.

“(a) OFFICE TO MONITOR AND COMBAT ANTI-SEMITISM.—

“(1) ESTABLISHMENT OF OFFICE.—The Secretary shall establish within the Department of State an Office to Monitor and Combat anti-Semitism (in this section referred to as the ‘Office’).

“(2) HEAD OF OFFICE.—

“(A) SPECIAL ENVOY FOR MONITORING AND COMBATING ANTI-SEMITISM.—The head of the Office shall be the Special Envoy for Monitoring and Combating anti-Semitism (in this section referred to as the ‘Special Envoy’).

“(B) APPOINTMENT OF HEAD OF OFFICE.—The Secretary shall appoint the Special Envoy. If the Secretary determines that such is appropriate, the Secretary may appoint the Special Envoy from among officers and employees of the Department. The Secretary may allow such officer or employee to retain the position (and the responsibilities associated with such position) held by such officer or employee prior to the appointment of such officer or employee to the position of Special Envoy under this paragraph.

“(b) PURPOSE OF OFFICE.—Upon establishment, the Office shall assume the primary responsibility for—

“(1) monitoring and combating acts of anti-Semitism and anti-Semitic incitement that occur in foreign countries;

“(2) coordinating and assisting in the preparation of that portion of the report required by sections 116(d)(7) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)(7) and 2304(b)) relating to an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement for inclusion in the annual Country Reports on Human Rights Practices; and

“(3) coordinating and assisting in the preparation of that portion of the report required by section 102(b)(1)(A)(iv) of the International Religious Freedom Act of 1998 (22 U.S.C. 6412(b)(1)(A)(iv)) relating to an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement for inclusion in the Annual Report on International Religious Freedom.

“(c) CONSULTATIONS.—The Special Envoy shall consult with domestic and international nongovernmental organizations and multilateral organizations and institutions, as the Special Envoy considers appropriate to fulfill the purposes of this section.”.

SEC. 6. INCLUSION IN DEPARTMENT OF STATE ANNUAL REPORTS OF INFORMATION CONCERNING ACTS OF ANTI-SEMITISM IN FOREIGN COUNTRIES.

(a) INCLUSION IN COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.—The Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended—

(1) in section 116(d) (22 U.S.C. 2151n(d))—

(A) by redesignating paragraphs (8), (9), and (10), as paragraphs (9), (10), and (11), respectively; and

(B) by inserting after paragraph (7) the following new paragraph:

“(8) wherever applicable, a description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur during the preceding year, including descriptions of—

“(A) acts of physical violence against, or harassment of Jewish people, and acts of violence against, or vandalism of Jewish community institutions, including schools, synagogues, and cemeteries;

“(B) instances of propaganda in government and non-government media that attempt to justify or promote racial hatred or incite acts of violence against Jewish people;

“(C) the actions, if any, taken by the government of the country to respond to such violence and attacks or to eliminate such propaganda or incitement;

“(D) the actions taken by such government to enact and enforce laws relating to the protection of the right to religious freedom of Jewish people; and

“(E) the efforts of such government to promote anti-bias and tolerance education;”; and

(2) after the fourth sentence of section 502B(b) (22 U.S.C. 2304(b)), by inserting the following new sentence: “Wherever applicable, a description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur, including the descriptions of such acts required under section 116(d)(8).”.

(b) INCLUSION IN ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM.—Section 102(b)(1)(A) of the International Religious Freedom Act of 1998 (22 U.S.C. 6412(b)(1)(A)) is amended—

(1) in clause (ii), by striking “and” at the end;

(2) in clause (iii), by striking the period at the end and inserting “; and”; and

(3) by adding after clause (iii) the following new clause:

“(iv) wherever applicable, an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur in that country during the preceding year, including—

“(I) acts of physical violence against, or harassment of, Jewish people, acts of violence against, or vandalism of, Jewish community institutions, and instances of propaganda in government and nongovernment media that incite such acts; and

“(II) the actions taken by the government of that country to respond to such violence and attacks or to eliminate such propaganda or incitement, to enact and enforce laws relating to the protection of the right to religious freedom of

Jewish people, and to promote anti-bias and tolerance education.”.

Applicability.
22 USC 2151n
note.

(c) EFFECTIVE DATE OF INCLUSIONS.—The amendments made by subsections (a) and (b) shall apply beginning with the first report under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) and section 102(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6312(b)) submitted more than 180 days after the date of the enactment of this Act.

Approved October 16, 2004.

LEGISLATIVE HISTORY—S. 2292:

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 7, considered and passed Senate.

Oct. 8, considered and passed House, amended.

Oct. 10, Senate concurred in House amendments.



Public Law 108–333
108th Congress

An Act

To promote human rights and freedom in the Democratic People’s Republic of Korea, and for other purposes.

Oct. 18, 2004
[H.R. 4011]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “North Korean Human Rights Act of 2004”.

North Korean
Human Rights
Act of 2004.
22 USC 7801
note.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings.
- Sec. 4. Purposes.
- Sec. 5. Definitions.

TITLE I—PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

- Sec. 101. Sense of Congress regarding negotiations with North Korea.
- Sec. 102. Support for human rights and democracy programs.
- Sec. 103. Radio broadcasting to North Korea.
- Sec. 104. Actions to promote freedom of information.
- Sec. 105. United Nations Commission on Human Rights.
- Sec. 106. Establishment of regional framework.
- Sec. 107. Special Envoy on Human Rights in North Korea.

TITLE II—ASSISTING NORTH KOREANS IN NEED

- Sec. 201. Report on United States humanitarian assistance.
- Sec. 202. Assistance provided inside North Korea.
- Sec. 203. Assistance provided outside of North Korea.

TITLE III—PROTECTING NORTH KOREAN REFUGEES

- Sec. 301. United States policy toward refugees and defectors.
- Sec. 302. Eligibility for refugee or asylum consideration.
- Sec. 303. Facilitating submission of applications for admission as a refugee.
- Sec. 304. United Nations High Commissioner for Refugees.
- Sec. 305. Annual reports.

SEC. 3. FINDINGS.

22 USC 7801.

Congress makes the following findings:

(1) According to the Department of State, the Government of North Korea is “a dictatorship under the absolute rule of Kim Jong Il” that continues to commit numerous, serious human rights abuses.

Kim Jong Il.

(2) The Government of North Korea attempts to control all information, artistic expression, academic works, and media activity inside North Korea and strictly curtails freedom of speech and access to foreign broadcasts.

(3) The Government of North Korea subjects all its citizens to systematic, intensive political and ideological indoctrination

Kim Il Sung.

in support of the cult of personality glorifying Kim Jong Il and the late Kim Il Sung that approaches the level of a state religion.

(4) The Government of North Korea divides its population into categories, based on perceived loyalty to the leadership, which determines access to food, employment, higher education, place of residence, medical facilities, and other resources.

(5) According to the Department of State, “[t]he [North Korean] Penal Code is [d]raconian, stipulating capital punishment and confiscation of assets for a wide variety of ‘crimes against the revolution,’ including defection, attempted defection, slander of the policies of the Party or State, listening to foreign broadcasts, writing ‘reactionary’ letters, and possessing reactionary printed matter”.

(6) The Government of North Korea executes political prisoners, opponents of the regime, some repatriated defectors, some members of underground churches, and others, sometimes at public meetings attended by workers, students, and school-children.

(7) The Government of North Korea holds an estimated 200,000 political prisoners in camps that its State Security Agency manages through the use of forced labor, beatings, torture, and executions, and in which many prisoners also die from disease, starvation, and exposure.

(8) According to eyewitness testimony provided to the United States Congress by North Korean camp survivors, camp inmates have been used as sources of slave labor for the production of export goods, as targets for martial arts practice, and as experimental victims in the testing of chemical and biological poisons.

(9) According to credible reports, including eyewitness testimony provided to the United States Congress, North Korean Government officials prohibit live births in prison camps, and forced abortion and the killing of newborn babies are standard prison practices.

(10) According to the Department of State, “[g]enuine religious freedom does not exist in North Korea” and, according to the United States Commission on International Religious Freedom, “[t]he North Korean state severely represses public and private religious activities” with penalties that reportedly include arrest, imprisonment, torture, and sometimes execution.

(11) More than 2,000,000 North Koreans are estimated to have died of starvation since the early 1990s because of the failure of the centralized agricultural and public distribution systems operated by the Government of North Korea.

(12) According to a 2002 United Nations-European Union survey, nearly one out of every ten children in North Korea suffers from acute malnutrition and four out of every ten children in North Korea are chronically malnourished.

(13) Since 1995, the United States has provided more than 2,000,000 tons of humanitarian food assistance to the people of North Korea, primarily through the World Food Program.

(14) Although United States food assistance has undoubtedly saved many North Korean lives and there have been minor improvements in transparency relating to the distribution of such assistance in North Korea, the Government of North Korea continues to deny the World Food Program forms

of access necessary to properly monitor the delivery of food aid, including the ability to conduct random site visits, the use of native Korean-speaking employees, and travel access throughout North Korea.

(15) The risk of starvation, the threat of persecution, and the lack of freedom and opportunity in North Korea have caused large numbers, perhaps even hundreds of thousands, of North Koreans to flee their homeland, primarily into China.

(16) North Korean women and girls, particularly those who have fled into China, are at risk of being kidnapped, trafficked, and sexually exploited inside China, where many are sold as brides or concubines, or forced to work as prostitutes.

(17) The Governments of China and North Korea have been conducting aggressive campaigns to locate North Koreans who are in China without permission and to forcibly return them to North Korea, where they routinely face torture and imprisonment, and sometimes execution.

(18) Despite China's obligations as a party to the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, China routinely classifies North Koreans seeking asylum in China as mere "economic migrants" and returns them to North Korea without regard to the serious threat of persecution they face upon their return.

(19) The Government of China does not provide North Koreans whose asylum requests are rejected a right to have the rejection reviewed prior to deportation despite its obligations under the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

(20) North Koreans who seek asylum while in China are routinely imprisoned and tortured, and in some cases killed, after they are returned to North Korea.

(21) The Government of China has detained, convicted, and imprisoned foreign aid workers attempting to assist North Korean refugees in proceedings that did not comply with Chinese law or international standards.

(22) In January 2000, North Korean agents inside China allegedly abducted the Reverend Kim Dong-shik, a United States permanent resident and advocate for North Korean refugees, whose condition and whereabouts remain unknown.

Kim Dong-shik.

(23) Between 1994 and 2003, South Korea has admitted approximately 3,800 North Korean refugees for domestic resettlement, a number that is small in comparison with the total number of North Korean escapees but far greater than the number legally admitted in any other country.

(24) Although the principal responsibility for North Korean refugee resettlement naturally falls to the Government of South Korea, the United States should play a leadership role in focusing international attention on the plight of these refugees, and formulating international solutions to that profound humanitarian dilemma.

(25) In addition to infringing the rights of its own citizens, the Government of North Korea has been responsible in years past for the abduction of numerous citizens of South Korea and Japan, whose condition and whereabouts remain unknown.

22 USC 7802.

SEC. 4. PURPOSES.

The purposes of this Act are—

(1) to promote respect for and protection of fundamental human rights in North Korea;

(2) to promote a more durable humanitarian solution to the plight of North Korean refugees;

(3) to promote increased monitoring, access, and transparency in the provision of humanitarian assistance inside North Korea;

(4) to promote the free flow of information into and out of North Korea; and

(5) to promote progress toward the peaceful reunification of the Korean peninsula under a democratic system of government.

22 USC 7803.

SEC. 5. DEFINITIONS.

In this Act:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on International Relations of the House of Representatives; and

(B) the Committee on Foreign Relations of the Senate.

(2) **CHINA.**—The term “China” means the People’s Republic of China.

(3) **HUMANITARIAN ASSISTANCE.**—The term “humanitarian assistance” means assistance to meet humanitarian needs, including needs for food, medicine, medical supplies, clothing, and shelter.

(4) **NORTH KOREA.**—The term “North Korea” means the Democratic People’s Republic of Korea.

(5) **NORTH KOREANS.**—The term “North Koreans” means persons who are citizens or nationals of North Korea.

(6) **SOUTH KOREA.**—The term “South Korea” means the Republic of Korea.

TITLE I—PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

22 USC 7811.

SEC. 101. SENSE OF CONGRESS REGARDING NEGOTIATIONS WITH NORTH KOREA.

It is the sense of Congress that the human rights of North Koreans should remain a key element in future negotiations between the United States, North Korea, and other concerned parties in Northeast Asia.

22 USC 7812.

SEC. 102. SUPPORT FOR HUMAN RIGHTS AND DEMOCRACY PROGRAMS.

President.
Grants.

(a) **SUPPORT.**—The President is authorized to provide grants to private, nonprofit organizations to support programs that promote human rights, democracy, rule of law, and the development of a market economy in North Korea. Such programs may include appropriate educational and cultural exchange programs with North Korean participants, to the extent not otherwise prohibited by law.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There are authorized to be appropriated to the President \$2,000,000 for each of the fiscal years 2005 through 2008 to carry out this section.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

SEC. 103. RADIO BROADCASTING TO NORTH KOREA.

22 USC 7813.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should facilitate the unhindered dissemination of information in North Korea by increasing its support for radio broadcasting to North Korea, and that the Broadcasting Board of Governors should increase broadcasts to North Korea from current levels, with a goal of providing 12-hour-per-day broadcasting to North Korea, including broadcasts by Radio Free Asia and Voice of America.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Broadcasting Board of Governors shall submit to the appropriate congressional committees a report that—

(1) describes the status of current United States broadcasting to North Korea; and

(2) outlines a plan for increasing such broadcasts to 12 hours per day, including a detailed description of the technical and fiscal requirements necessary to implement the plan.

SEC. 104. ACTIONS TO PROMOTE FREEDOM OF INFORMATION.

22 USC 7814.

(a) ACTIONS.—The President is authorized to take such actions as may be necessary to increase the availability of information inside North Korea by increasing the availability of sources of information not controlled by the Government of North Korea, including sources such as radios capable of receiving broadcasting from outside North Korea.

President.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President \$2,000,000 for each of the fiscal years 2005 through 2008 to carry out subsection (a).

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, and in each of the 3 years thereafter, the Secretary of State, after consultation with the heads of other appropriate Federal departments and agencies, shall submit to the appropriate congressional committees a report, in classified form, on actions taken pursuant to this section.

SEC. 105. UNITED NATIONS COMMISSION ON HUMAN RIGHTS.

22 USC 7815.

It is the sense of Congress that the United Nations has a significant role to play in promoting and improving human rights in North Korea, and that—

(1) the United Nations Commission on Human Rights (UNCHR) has taken positive steps by adopting Resolution 2003/10 and Resolution 2004/13 on the situation of human rights in North Korea, and particularly by requesting the appointment of a Special Rapporteur on the situation of human rights in North Korea; and

(2) the severe human rights violations within North Korea warrant country-specific attention and reporting by the United Nations Working Group on Arbitrary Detention, the Working Group on Enforced and Involuntary Disappearances, the Special

Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, the Special Rapporteur on the Right to Food, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Special Rapporteur on Freedom of Religion or Belief, and the Special Rapporteur on Violence Against Women.

22 USC 7816.

SEC. 106. ESTABLISHMENT OF REGIONAL FRAMEWORK.

(a) FINDINGS.—The Congress finds that human rights initiatives can be undertaken on a multilateral basis, such as the Organization for Security and Cooperation in Europe (OSCE), which established a regional framework for discussing human rights, scientific and educational cooperation, and economic and trade issues.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should explore the possibility of a regional human rights dialogue with North Korea that is modeled on the Helsinki process, engaging all countries in the region in a common commitment to respect human rights and fundamental freedoms.

22 USC 7817.

SEC. 107. SPECIAL ENVOY ON HUMAN RIGHTS IN NORTH KOREA.President.
Appointment.

(a) SPECIAL ENVOY.—The President shall appoint a special envoy for human rights in North Korea within the Department of State (hereafter in this section referred to as the “Special Envoy”). The Special Envoy should be a person of recognized distinction in the field of human rights.

(b) CENTRAL OBJECTIVE.—The central objective of the Special Envoy is to coordinate and promote efforts to improve respect for the fundamental human rights of the people of North Korea.

(c) DUTIES AND RESPONSIBILITIES.—The Special Envoy shall—

(1) engage in discussions with North Korean officials regarding human rights;

(2) support international efforts to promote human rights and political freedoms in North Korea, including coordination and dialogue between the United States and the United Nations, the European Union, North Korea, and the other countries in Northeast Asia;

(3) consult with non-governmental organizations who have attempted to address human rights in North Korea;

(4) make recommendations regarding the funding of activities authorized in section 102;

(5) review strategies for improving protection of human rights in North Korea, including technical training and exchange programs; and

(6) develop an action plan for supporting implementation of the United Nations Commission on Human Rights Resolution 2004/13.

(d) REPORT ON ACTIVITIES.—Not later than 180 days after the date of the enactment of this Act, and annually for the subsequent 5 year-period, the Special Envoy shall submit to the appropriate congressional committees a report on the activities undertaken in the preceding 12 months under subsection (c).

TITLE II—ASSISTING NORTH KOREANS IN NEED

SEC. 201. REPORT ON UNITED STATES HUMANITARIAN ASSISTANCE. 22 USC 7831.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, and in each of the 2 years thereafter, the Administrator of the United States Agency for International Development, in conjunction with the Secretary of State, shall submit to the appropriate congressional committees a report that describes—

(1) all activities to provide humanitarian assistance inside North Korea, and to North Koreans outside of North Korea, that receive United States funding;

(2) any improvements in humanitarian transparency, monitoring, and access inside North Korea during the previous 1-year period, including progress toward meeting the conditions identified in paragraphs (1) through (4) of section 202(b); and

(3) specific efforts to secure improved humanitarian transparency, monitoring, and access inside North Korea made by the United States and United States grantees, including the World Food Program, during the previous 1-year period.

(b) FORM.—The information required by subsection (a)(1) may be provided in classified form if necessary.

SEC. 202. ASSISTANCE PROVIDED INSIDE NORTH KOREA. 22 USC 7832.

(a) HUMANITARIAN ASSISTANCE THROUGH NONGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS.—It is the sense of the Congress that—

(1) at the same time that Congress supports the provision of humanitarian assistance to the people of North Korea on humanitarian grounds, such assistance also should be provided and monitored so as to minimize the possibility that such assistance could be diverted to political or military use, and to maximize the likelihood that it will reach the most vulnerable North Koreans;

(2) significant increases above current levels of United States support for humanitarian assistance provided inside North Korea should be conditioned upon substantial improvements in transparency, monitoring, and access to vulnerable populations throughout North Korea; and

(3) the United States should encourage other countries that provide food and other humanitarian assistance to North Korea to do so through monitored, transparent channels, rather than through direct, bilateral transfers to the Government of North Korea.

(b) UNITED STATES ASSISTANCE TO THE GOVERNMENT OF NORTH KOREA.—It is the sense of Congress that—

(1) United States humanitarian assistance to any department, agency, or entity of the Government of North Korea shall—

(A) be delivered, distributed, and monitored according to internationally recognized humanitarian standards;

(B) be provided on a needs basis, and not used as a political reward or tool of coercion;

(C) reach the intended beneficiaries, who should be informed of the source of the assistance; and

(D) be made available to all vulnerable groups in North Korea, no matter where in the country they may be located; and

(2) United States nonhumanitarian assistance to North Korea shall be contingent on North Korea's substantial progress toward—

(A) respect for the basic human rights of the people of North Korea, including freedom of religion;

(B) providing for family reunification between North Koreans and their descendants and relatives in the United States;

(C) fully disclosing all information regarding citizens of Japan and the Republic of Korea abducted by the Government of North Korea;

(D) allowing such abductees, along with their families, complete and genuine freedom to leave North Korea and return to the abductees' original home countries;

(E) reforming the North Korean prison and labor camp system, and subjecting such reforms to independent international monitoring; and

(F) decriminalizing political expression and activity.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Agency for International Development shall submit to the appropriate congressional committees a report describing compliance with this section.

22 USC 7833.

President.

SEC. 203. ASSISTANCE PROVIDED OUTSIDE OF NORTH KOREA.

(a) ASSISTANCE.—The President is authorized to provide assistance to support organizations or persons that provide humanitarian assistance to North Koreans who are outside of North Korea without the permission of the Government of North Korea.

(b) TYPES OF ASSISTANCE.—Assistance provided under subsection (a) should be used to provide—

(1) humanitarian assistance to North Korean refugees, defectors, migrants, and orphans outside of North Korea, which may include support for refugee camps or temporary settlements; and

(2) humanitarian assistance to North Korean women outside of North Korea who are victims of trafficking, as defined in section 103(14) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(14)), or are in danger of being trafficked.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to funds otherwise available for such purposes, there are authorized to be appropriated to the President \$20,000,000 for each of the fiscal years 2005 through 2008 to carry out this section.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

TITLE III—PROTECTING NORTH KOREAN REFUGEES

SEC. 301. UNITED STATES POLICY TOWARD REFUGEES AND DEFECTORS. 22 USC 7841.

(a) **REPORT.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of State, in consultation with the heads of other appropriate Federal departments and agencies, shall submit to the appropriate congressional committees and the Committees on the Judiciary of the House of Representatives and the Senate a report that describes the situation of North Korean refugees and explains United States Government policy toward North Korean nationals outside of North Korea.

(b) **CONTENTS.**—The report shall include—

(1) an assessment of the circumstances facing North Korean refugees and migrants in hiding, particularly in China, and of the circumstances they face if forcibly returned to North Korea;

(2) an assessment of whether North Koreans in China have effective access to personnel of the United Nations High Commissioner for Refugees, and of whether the Government of China is fulfilling its obligations under the 1951 Convention Relating to the Status of Refugees, particularly Articles 31, 32, and 33 of such Convention;

(3) an assessment of whether North Koreans presently have unobstructed access to United States refugee and asylum processing, and of United States policy toward North Koreans who may present themselves at United States embassies or consulates and request protection as refugees or asylum seekers and resettlement in the United States;

(4) the total number of North Koreans who have been admitted into the United States as refugees or asylees in each of the past 5 years;

(5) an estimate of the number of North Koreans with family connections to United States citizens; and

(6) a description of the measures that the Secretary of State is taking to carry out section 303.

(c) **FORM.**—The information required by paragraphs (1) through (5) of subsection (b) shall be provided in unclassified form. All or part of the information required by subsection (b)(6) may be provided in classified form, if necessary.

SEC. 302. ELIGIBILITY FOR REFUGEE OR ASYLUM CONSIDERATION. 22 USC 7842.

(a) **PURPOSE.**—The purpose of this section is to clarify that North Koreans are not barred from eligibility for refugee status or asylum in the United States on account of any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea. It is not intended in any way to prejudice whatever rights to citizenship North Koreans may enjoy under the Constitution of the Republic of Korea, or to apply to former North Korean nationals who have availed themselves of those rights.

(b) **TREATMENT OF NATIONALS OF NORTH KOREA.**—For purposes of eligibility for refugee status under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or for asylum under section 208 of such Act (8 U.S.C. 1158), a national of the Democratic

People's Republic of Korea shall not be considered a national of the Republic of Korea.

22 USC 7843.

SEC. 303. FACILITATING SUBMISSION OF APPLICATIONS FOR ADMISSION AS A REFUGEE.

The Secretary of State shall undertake to facilitate the submission of applications under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) by citizens of North Korea seeking protection as refugees (as defined in section 101(a)(42) of such Act (8 U.S.C. 1101(a)(42))).

22 USC 7844.

SEC. 304. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES.

(a) ACTIONS IN CHINA.—It is the sense of Congress that—

(1) the Government of China has obligated itself to provide the United Nations High Commissioner for Refugees (UNHCR) with unimpeded access to North Koreans inside its borders to enable the UNHCR to determine whether they are refugees and whether they require assistance, pursuant to the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and Article III, paragraph 5 of the 1995 Agreement on the Upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Branch Office in the People's Republic of China (referred to in this section as the "UNHCR Mission Agreement");

(2) the United States, other UNHCR donor governments, and UNHCR should persistently and at the highest levels continue to urge the Government of China to abide by its previous commitments to allow UNHCR unimpeded access to North Korean refugees inside China;

(3) the UNHCR, in order to effectively carry out its mandate to protect refugees, should liberally employ as professionals or Experts on Mission persons with significant experience in humanitarian assistance work among displaced North Koreans in China;

(4) the UNHCR, in order to effectively carry out its mandate to protect refugees, should liberally contract with appropriate nongovernmental organizations that have a proven record of providing humanitarian assistance to displaced North Koreans in China;

(5) the UNHCR should pursue a multilateral agreement to adopt an effective "first asylum" policy that guarantees safe haven and assistance to North Korean refugees; and

(6) should the Government of China begin actively fulfilling its obligations toward North Korean refugees, all countries, including the United States, and relevant international organizations should increase levels of humanitarian assistance provided inside China to help defray costs associated with the North Korean refugee presence.

(b) ARBITRATION PROCEEDINGS.—It is further the sense of Congress that—

(1) if the Government of China continues to refuse to provide the UNHCR with access to North Koreans within its borders, the UNHCR should initiate arbitration proceedings pursuant to Article XVI of the UNHCR Mission Agreement and appoint an arbitrator for the UNHCR; and

(2) because access to refugees is essential to the UNHCR mandate and to the purpose of a UNHCR branch office, a

failure to assert those arbitration rights in present circumstances would constitute a significant abdication by the UNHCR of one of its core responsibilities.

SEC. 305. ANNUAL REPORTS.

22 USC 7845.

(a) **IMMIGRATION INFORMATION.**—Not later than 1 year after the date of the enactment of this Act, and every 12 months thereafter for each of the following 5 years, the Secretary of State and the Secretary of Homeland Security shall submit a joint report to the appropriate congressional committees and the Committees on the Judiciary of the House of Representatives and the Senate on the operation of this title during the previous year, which shall include—

(1) the number of aliens who are nationals or citizens of North Korea who applied for political asylum and the number who were granted political asylum; and

(2) the number of aliens who are nationals or citizens of North Korea who applied for refugee status and the number who were granted refugee status.

(b) **COUNTRIES OF PARTICULAR CONCERN.**—The President shall include in each annual report on proposed refugee admission pursuant to section 207(d) of the Immigration and Nationality Act (8 U.S.C. 1157(d)), information about specific measures taken to facilitate access to the United States refugee program for individuals who have fled countries of particular concern for violations of religious freedom, identified pursuant to section 402(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6442(b)). The report shall include, for each country of particular concern, a description of access of the nationals or former habitual residents of that country to a refugee determination on the basis of—

President.

- (1) referrals by external agencies to a refugee adjudication;
- (2) groups deemed to be of special humanitarian concern to the United States for purposes of refugee resettlement; and
- (3) family links to the United States.

Approved October 18, 2004.

LEGISLATIVE HISTORY—H.R. 4011:

HOUSE REPORTS: No. 108–478, Pt. 1 (Comm. on International Relations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 21, considered and passed House.

Sept. 28, considered and passed Senate, amended.

Oct. 4, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Oct. 18, Presidential statement.



Public Law 108–334
108th Congress

An Act

Oct. 18, 2004
[H.R. 4567]

Making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

Department of
Homeland
Security
Appropriations
Act, 2005.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes, namely:

TITLE I—DEPARTMENTAL MANAGEMENT AND OPERATIONS

OFFICE OF THE SECRETARY AND EXECUTIVE MANAGEMENT

For necessary expenses of the Office of the Secretary of Homeland Security, as authorized by section 102 of the Homeland Security Act of 2002 (6 U.S.C. 112), and executive management of the Department of Homeland Security, as authorized by law, \$85,034,000: *Provided*, That not to exceed \$40,000 shall be for official reception and representation expenses.

OFFICE OF THE UNDER SECRETARY FOR MANAGEMENT

For necessary expenses of the Office of the Under Secretary for Management, as authorized by sections 701–705 of the Homeland Security Act of 2002 (6 U.S.C. 341–345), \$151,153,000: *Provided*, That not to exceed \$3,000 shall be for official reception and representation expenses: *Provided further*, That of the total amount provided, \$65,081,000 shall remain available until expended solely for the alteration and improvement of facilities, tenant improvements, and relocation costs to consolidate Department headquarters operations.

OFFICE OF THE CHIEF FINANCIAL OFFICER

For necessary expenses of the Office of the Chief Financial Officer, as authorized by section 103 of the Homeland Security Act of 2002 (6 U.S.C. 113), \$13,000,000.

OFFICE OF THE CHIEF INFORMATION OFFICER

For necessary expenses of the Office of the Chief Information Officer, as authorized by section 103 of the Homeland Security Act of 2002 (6 U.S.C. 113), and Department-wide technology investments, \$275,270,000; of which \$67,270,000 shall be available for salaries and expenses; and of which \$208,000,000 shall be available

for development and acquisition of information technology equipment, software, services, and related activities for the Department of Homeland Security, and for the costs of conversion to narrowband communications, including the cost for operation of the land mobile radio legacy systems, to remain available until expended: *Provided*, That none of the funds appropriated shall be used to support or supplement the appropriations provided for the United States Visitor and Immigrant Status Indicator Technology project or the Automated Commercial Environment.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.), \$82,317,000, of which not to exceed \$100,000 may be used for certain confidential operational expenses, including the payment of informants, to be expended at the direction of the Inspector General.

TITLE II—SECURITY, ENFORCEMENT, AND INVESTIGATIONS

BORDER AND TRANSPORTATION SECURITY

OFFICE OF THE UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY

SALARIES AND EXPENSES

For necessary expenses of the Office of the Under Secretary for Border and Transportation Security, as authorized by subtitle A of title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.), \$9,617,000: *Provided*, That not to exceed \$3,000 shall be for official reception and representation expenses.

UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY

For necessary expenses for the development of the United States Visitor and Immigrant Status Indicator Technology project, as authorized by section 110 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (8 U.S.C. 1221 note), \$340,000,000, to remain available until expended: *Provided*, That of the funds appropriated under this heading, \$254,000,000 may not be obligated for the United States Visitor and Immigrant Status Indicator Technology project until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure prepared by the Secretary of Homeland Security that:

- (1) meets the capital planning and investment control review requirements established by the Office of Management and Budget, including Circular A-11, part 7;
- (2) complies with the Department of Homeland Security enterprise information systems architecture;
- (3) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government;

(4) is reviewed and approved by the Department of Homeland Security Investment Review Board, the Secretary of Homeland Security, and the Office of Management and Budget; and
(5) is reviewed by the Government Accountability Office.

CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

(INCLUDING RESCISSION OF FUNDS)

For necessary expenses for enforcement of laws relating to border security, immigration, customs, and agricultural inspections and regulatory activities related to plant and animal imports; acquisition, lease, maintenance and operation of aircraft; purchase and lease of up to 4,500 (3,935 for replacement only) police-type vehicles; and contracting with individuals for personal services abroad; \$4,534,119,000; of which \$3,000,000 shall be derived from the Harbor Maintenance Trust Fund for administrative expenses related to the collection of the Harbor Maintenance Fee pursuant to section 9505(c)(3) of the Internal Revenue Code of 1986 and notwithstanding section 1511(e)(1) of the Homeland Security Act of 2002 (6 U.S.C. 551(e)(1)); of which not to exceed \$35,000 shall be for official reception and representation expenses; of which not less than \$131,436,000 shall be for Air and Marine Operations; of which not to exceed \$156,162,000 shall remain available until September 30, 2006, for inspection and surveillance technology, unmanned aerial vehicles, and equipment for the Container Security Initiative; of which such sums as become available in the Customs User Fee Account, except sums subject to section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)), shall be derived from that account; of which not to exceed \$150,000 shall be available for payment for rental space in connection with preclearance operations; of which not to exceed \$1,000,000 shall be for awards of compensation to informants, to be accounted for solely under the certificate of the Under Secretary for Border and Transportation Security; and of which not to exceed \$5,000,000 shall be available for payments or advances arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities related to immigration: *Provided*, That for fiscal year 2005, the aggregate overtime limitation prescribed in section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) shall be \$35,000; and notwithstanding any other provision of law, none of the funds appropriated in this Act may be available to compensate any employee of the Bureau of Customs and Border Protection for aggregate overtime and premium pay, from whatever source, in an amount that exceeds such limitation, except in individual cases determined by the Under Secretary for Border and Transportation Security, or a designee, to be necessary for national security purposes, to prevent excessive costs, or in cases of immigration emergencies: *Provided further*, That of the total amount provided, \$12,725,000 shall be for activities to enforce laws against forced child labor in fiscal year 2005, of which not to exceed \$4,000,000 shall remain available until expended: *Provided further*, That none of the funds appropriated in this Act may be obligated to construct permanent Border Patrol checkpoints in the Bureau of Customs and Border Protection's Tucson sector: *Provided further*, That the

Commissioner, Bureau of Customs and Border Protection, is directed to submit to the Committees on Appropriations of the Senate and the House of Representatives a plan for expenditure that includes location, design, costs, and benefits of each proposed Tucson sector permanent checkpoint: *Provided further*, That the Bureau of Customs and Border Protection shall relocate its tactical checkpoints in the Tucson sector at least an average of once every 14 days in a manner designed to prevent persons subject to inspection from predicting the location of any such checkpoint.

In addition, of the funds appropriated under this heading in chapter 6 of title I of Public Law 108-11 (117 Stat. 583), \$63,010,000 are rescinded.

AUTOMATION MODERNIZATION

For expenses for customs and border protection automated systems, \$449,909,000, to remain available until expended, of which not less than \$321,690,000 shall be for the development of the Automated Commercial Environment: *Provided*, That none of the funds appropriated under this heading may be obligated for the Automated Commercial Environment until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure prepared by the Under Secretary for Border and Transportation Security that:

- (1) meets the capital planning and investment control review requirements established by the Office of Management and Budget, including Circular A-11, part 7;
- (2) complies with the Department of Homeland Security's enterprise information systems architecture;
- (3) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government;
- (4) is reviewed and approved by the Department of Homeland Security Investment Review Board, the Secretary of Homeland Security, and the Office of Management and Budget; and
- (5) is reviewed by the Government Accountability Office.

AIR AND MARINE INTERDICTION, OPERATIONS, MAINTENANCE, AND PROCUREMENT

For necessary expenses for the operations, maintenance, and procurement of marine vessels, aircraft, and other related equipment of the air and marine program, including operational training and mission-related travel, and rental payments for facilities occupied by the air or marine interdiction and demand reduction programs, the operations of which include the following: the interdiction of narcotics and other goods; the provision of support to Federal, State, and local agencies in the enforcement or administration of laws enforced by the Department of Homeland Security; and at the discretion of the Under Secretary for Border and Transportation Security, the provision of assistance to Federal, State, and local agencies in other law enforcement and emergency humanitarian efforts, \$257,535,000, to remain available until expended: *Provided*, That no aircraft or other related equipment, with the exception of aircraft that are one of a kind and have been identified as excess to Bureau of Customs and Border Protection requirements and aircraft that have been damaged beyond repair, shall be transferred to any other Federal agency, department, or office outside

of the Department of Homeland Security during fiscal year 2005 without the prior approval of the Committees on Appropriations of the Senate and the House of Representatives.

CONSTRUCTION

For necessary expenses to plan, construct, renovate, equip, and maintain buildings and facilities necessary for the administration and enforcement of the laws relating to customs and immigration, \$91,718,000, to remain available until expended.

IMMIGRATION AND CUSTOMS ENFORCEMENT

SALARIES AND EXPENSES

For necessary expenses for enforcement of immigration and customs laws, detention and removals, and investigations; and purchase and lease of up to 2,300 (2,000 for replacement only) police-type vehicles, \$2,438,494,000, of which not to exceed \$5,000,000 shall be available until expended for conducting special operations pursuant to section 3131 of the Customs Enforcement Act of 1986 (19 U.S.C. 2081); of which not to exceed \$15,000 shall be for official reception and representation expenses; of which not to exceed \$1,000,000 shall be for awards of compensation to informants, to be accounted for solely under the certificate of the Under Secretary for Border and Transportation Security; of which not less than \$102,000 shall be for promotion of public awareness of the child pornography tipline; of which not less than \$203,000 shall be for Project Alert; and of which not to exceed \$11,216,000 shall be available to fund or reimburse other Federal agencies for the costs associated with the care, maintenance, and repatriation of smuggled illegal aliens: *Provided*, That none of the funds appropriated shall be available to compensate any employee for overtime in an annual amount in excess of \$35,000, except that the Under Secretary for Border and Transportation Security may waive that amount as necessary for national security purposes and in cases of immigration emergencies: *Provided further*, That of the total amount provided, \$3,045,000 shall be for activities to enforce laws against forced child labor in fiscal year 2005, of which not to exceed \$2,000,000 shall remain available until expended.

FEDERAL AIR MARSHALS

For necessary expenses of the Federal Air Marshals, \$662,900,000.

FEDERAL PROTECTIVE SERVICE

The revenues and collections of security fees credited to this account, not to exceed \$478,000,000, shall be available until expended for necessary expenses related to the protection of federally-owned and leased buildings and for the operations of the Federal Protective Service.

AUTOMATION MODERNIZATION

For expenses of immigration and customs enforcement automated systems, \$39,605,000, to remain available until expended: *Provided*, That none of the funds appropriated under this heading may be

obligated until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure prepared by the Under Secretary for Border and Transportation Security that:

(1) meets the capital planning and investment control review requirements established by the Office of Management and Budget, including Circular A-11, part 7;

(2) complies with the Department of Homeland Security enterprise information systems architecture;

(3) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government;

(4) is reviewed and approved by the Department of Homeland Security Investment Review Board, the Secretary of Homeland Security, and the Office of Management and Budget; and

(5) is reviewed by the Government Accountability Office.

CONSTRUCTION

For necessary expenses to plan, construct, renovate, equip, and maintain buildings and facilities necessary for the administration and enforcement of the laws relating to customs and immigration, \$26,179,000, to remain available until expended.

TRANSPORTATION SECURITY ADMINISTRATION

AVIATION SECURITY

For necessary expenses of the Transportation Security Administration related to providing civil aviation security services pursuant to the Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 597), \$4,323,523,000, to remain available until expended, of which not to exceed \$3,000 shall be for official reception and representation expenses: *Provided*, That of the total amount provided under this heading, not to exceed \$2,049,173,000 shall be for passenger screening activities; not to exceed \$1,452,460,000 shall be for baggage screening activities, of which \$180,000,000 shall be available only for procurement of checked baggage explosive detection systems and \$45,000,000 shall be available only for installation of checked baggage explosive detection systems; and not to exceed \$821,890,000 shall be for airport security direction and enforcement presence: *Provided further*, That security service fees authorized under section 44940 of title 49, United States Code, shall be credited to this appropriation as offsetting collections: *Provided further*, That, except as provided in the following proviso, the sum herein appropriated from the General Fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2005, so as to result in a final fiscal year appropriation from the General Fund estimated at not more than \$2,500,523,000: *Provided further*, That the Government Accountability Office shall review, using a methodology deemed appropriate by the Comptroller General, the calendar year 2000 cost information for screening passengers and property pursuant to section 44940(a)(2) of title 49, United States Code, of air carriers and foreign air carriers engaged in air transportation and intrastate air transportation and report the information within 6 months of enactment of the Act but no earlier than March 31, 2005, to the Committees on Appropriations of the Senate and House of

Reports.
Deadline.

Representatives; the House Transportation and Infrastructure Committee; and the Senate Committee on Commerce, Science, and Transportation: *Provided further*, That the Comptroller General, or any of the Comptroller General's duly authorized representatives, shall have access, for the purpose of reviewing such cost information, to the personnel and to the books; accounts; documents; papers; records (including electronic records); and automated data and files of such air carriers, airport authorities, and their contractors; that the Comptroller General deems relevant for purposes of reviewing the information sought pursuant to the provisions of the preceding proviso: *Provided further*, That the Comptroller General may obtain and duplicate any such records, documents, working papers, automated data and files, or other information relevant to such reviews without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code: *Provided further*, That the Comptroller General shall maintain the same level of confidentiality for information made available under the preceding provisos as that required under section 716(e) of title 31, United States Code: *Provided further*, That upon the request of the Comptroller General, the Secretary of the Department of Homeland Security shall transfer to the Government Accountability Office from appropriations available for administration expenses of the Transportation Security Administration, the amount requested by the Comptroller General, not to exceed \$5,000,000, to cover the full costs of any review and report of the calendar year 2000 cost information conducted by the Comptroller General, with 15 days advance notice by the Transportation Security Administration to the Committees on Appropriations of the Senate and House of Representatives: *Provided further*, That the Comptroller General shall credit funds transferred under the authority of the preceding proviso to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the review and report: *Provided further*, That any funds transferred and credited under the authority of the preceding provisos that are not needed for the Comptroller General's performance of such review and report shall be returned to the Department of Homeland Security and credited to the appropriation from which transferred: *Provided further*, That beginning with amounts due in calendar year 2005, if the result of this review is that an air carrier or foreign air carrier has not paid the appropriate fee to the Transportation Security Administration pursuant to section 44940(a)(2) of title 49 United States Code, the Secretary of Homeland Security shall undertake all necessary actions to ensure that such amounts are collected: *Provided further*, That such collections received during fiscal year 2005 shall be credited to this appropriation as offsetting collections and shall be available only for security modifications at commercial airports: *Provided further*, That if the Secretary exercises his discretion to set the fee under 44940(a)(2) of title 49 United States Code, such determination shall not be subject to judicial review: *Provided further*, That none of the funds in this Act shall be used to recruit or hire personnel into the Transportation Security Administration which would cause the agency to exceed a staffing level of 45,000 full-time equivalent screeners: *Provided further*, That notwithstanding 49 U.S.C. 44923, the government's share of the cost for

a project under any letter of intent shall be 75 percent for any medium or large hub airport.

MARITIME AND LAND SECURITY

For necessary expenses of the Transportation Security Administration related to maritime and land transportation security grants and services pursuant to the Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 597), \$48,000,000, to remain available until September 30, 2006.

In addition, fees authorized by section 520 of Public Law 108-90 shall be credited to this appropriation and shall be available until expended: *Provided*, That in fiscal year 2005, fee collections shall be used for initial administrative costs of credentialing activities.

INTELLIGENCE

For necessary expenses for intelligence activities pursuant to the Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 597), \$14,000,000.

RESEARCH AND DEVELOPMENT

For necessary expenses for research and development related to transportation security, \$178,000,000, to remain available until expended: *Provided*, That of the total amount provided under this heading, \$54,000,000 shall be available for the research and development of explosive detection devices.

ADMINISTRATION

For necessary expenses for administrative activities of the Transportation Security Administration to carry out the Aviation and Transportation Security Act (Public Law 107-71; 115 Stat. 597), \$519,852,000, to remain available until September 30, 2006.

UNITED STATES COAST GUARD

OPERATING EXPENSES

For necessary expenses for the operation and maintenance of the Coast Guard not otherwise provided for, purchase or lease of not to exceed 25 passenger motor vehicles for replacement only, payments pursuant to section 156 of Public Law 97-377 (42 U.S.C. 402 note) and section 229(b) of the Social Security Act (42 U.S.C. 429(b)), and recreation and welfare, \$5,157,220,000, of which \$1,204,000,000 shall be for defense-related activities; of which \$24,500,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990; and of which not to exceed \$3,000 shall be for official reception and representation expenses: *Provided*, That none of the funds appropriated by this or any other Act shall be available for administrative expenses in connection with shipping commissioners in the United States: *Provided further*, That none of the funds provided by this Act shall be available for expenses incurred for yacht documentation under section 12109 of title 46, United States Code, except to the extent fees are collected from yacht owners and credited to this appropriation: *Provided further*,

That notwithstanding section 1116(c) of title 10, United States Code, amounts made available under this heading may be used to make payments into the Department of Defense Medicare-Eligible Retiree Health Care Fund for fiscal year 2005 under section 1116(a) of such title.

ENVIRONMENTAL COMPLIANCE AND RESTORATION

For necessary expenses to carry out the Coast Guard's environmental compliance and restoration functions under chapter 19 of title 14, United States Code, \$17,000,000, to remain available until expended.

RESERVE TRAINING

For necessary expenses of the Coast Guard Reserve, as authorized by law; operations and maintenance of the reserve program; personnel and training costs; and equipment and services; \$113,000,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

(INCLUDING RESCISSION OF FUNDS)

For necessary expenses of acquisition, construction, renovation, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto; and maintenance, rehabilitation, lease and operation of facilities and equipment, as authorized by law, \$982,200,000, of which \$20,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990; of which \$19,750,000 shall be available until September 30, 2009, to acquire, repair, renovate, or improve vessels, small boats, and related equipment; of which \$2,500,000 shall be available until September 30, 2009, to increase aviation capability; of which \$158,000,000 shall be available until September 30, 2007, for other equipment; of which \$5,000,000 shall be available until September 30, 2007, for shore facilities and aids to navigation facilities; of which \$73,000,000 shall be available for personnel compensation and benefits and related costs; and of which \$723,950,000 shall be available until September 30, 2009, for the Integrated Deepwater Systems program: *Provided*, That the Commandant of the Coast Guard is authorized to dispose of surplus real property, by sale or lease, and the proceeds shall be credited to this appropriation as offsetting collections and shall be available until September 30, 2007, only for Rescue 21: *Provided further*, That the Secretary of Homeland Security shall submit to the Congress, in conjunction with the President's fiscal year 2006 budget, a new Deepwater baseline that identifies revised acquisition timelines for each asset contained in the Deepwater program; a timeline and detailed justification for each new asset that is determined to be necessary to fulfill homeland and national security functions or multi-agency procurements as identified by the Joint Requirements Council; a detailed description of the revised mission requirements and their corresponding impact on the Deepwater program's acquisition timeline; and funding levels for each asset, whether new or continuing: *Provided further*, That the Secretary shall annually submit to the Congress, at the time that the President's budget is submitted under section 1105(a) of title 31, a future-years capital investment

plan for the Coast Guard that identifies for each capital budget line item—

- (1) the proposed appropriation included in that budget;
- (2) the total estimated cost of completion;
- (3) projected funding levels for each fiscal year for the next 5 fiscal years or until project completion, whichever is earlier;
- (4) an estimated completion date at the projected funding levels; and
- (5) changes, if any, in the total estimated cost of completion or estimated completion date from previous future-years capital investment plans submitted to the Congress:

Provided further, That the Secretary shall ensure that amounts specified in the future-years capital investment plan are consistent to the maximum extent practicable with proposed appropriations necessary to support the programs, projects, and activities of the Coast Guard in the President's budget as submitted under section 1105(a) of title 31 for that fiscal year: *Provided further*, That any inconsistencies between the capital investment plan and proposed appropriations shall be identified and justified: *Provided further*, That consistent with the preceding provisos, the budget for fiscal year 2006 that is submitted under section 1105(a) of title 31, United States Code, shall include an amount for the Coast Guard that is sufficient to fund delivery of a long-term maritime patrol aircraft capability that is consistent with the original procurement plan for the CN-235 aircraft beyond the three aircraft already funded in previous fiscal years.

In addition, of the funds appropriated under this heading in Public Law 108-90, \$16,000,000 are rescinded.

ALTERATION OF BRIDGES

For necessary expenses for alteration or removal of obstructive bridges, \$15,900,000, to remain available until expended.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

For necessary expenses for applied scientific research, development, test, and evaluation, and for maintenance, rehabilitation, lease and operation of facilities and equipment, as authorized by law, \$18,500,000, to remain available until expended, of which \$2,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990: *Provided*, That there may be credited to and used for the purposes of this appropriation funds received from State and local governments, other public authorities, private sources, and foreign countries, for expenses incurred for research, development, testing, and evaluation.

RETIRED PAY

For retired pay, including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose, payments under the Retired Serviceman's Family Protection and Survivor Benefits Plans, payment for career status bonuses under the National Defense Authorization Act, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, \$1,085,460,000.

UNITED STATES SECRET SERVICE

SALARIES AND EXPENSES

For necessary expenses of the United States Secret Service, including purchase of not to exceed 610 vehicles for police-type use, which shall be for replacement only, and hire of passenger motor vehicles; purchase of American-made motorcycles; hire of aircraft; services of expert witnesses at such rates as may be determined by the Director; rental of buildings in the District of Columbia, and fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control, as may be necessary to perform protective functions; payment of per diem or subsistence allowances to employees where a protective assignment during the actual day or days of the visit of a protectee requires an employee to work 16 hours per day or to remain overnight at his or her post of duty; conduct of and participation in firearms matches; presentation of awards; travel of Secret Service employees on protective missions without regard to the limitations on such expenditures in this or any other Act if approval is obtained in advance from the Committees on Appropriations of the Senate and the House of Representatives; research and development; grants to conduct behavioral research in support of protective research and operations; and payment in advance for commercial accommodations as may be necessary to perform protective functions; \$1,172,125,000, of which not to exceed \$25,000 shall be for official reception and representation expenses; of which not to exceed \$100,000 shall be to provide technical assistance and equipment to foreign law enforcement organizations in counterfeit investigations; of which \$2,100,000 shall be for forensic and related support of investigations of missing and exploited children; and of which \$5,000,000 shall be a grant for activities related to the investigations of exploited children and shall remain available until expended: *Provided*, That up to \$18,000,000 provided for protective travel shall remain available until September 30, 2006: *Provided further*, That of the total amount appropriated, not less than \$5,000,000 shall be available solely for the unanticipated costs related to security operations for National Special Security Events, to remain available until expended: *Provided further*, That the United States Secret Service is authorized to obligate funds in anticipation of reimbursements from agencies and entities, as defined in section 105 of title 5, United States Code, receiving training sponsored by the James J. Rowley Training Center, except that total obligations at the end of the fiscal year shall not exceed total budgetary resources available under this heading at the end of the fiscal year.

OPERATING EXPENSES

(RESCISSION OF FUNDS)

Of the funds appropriated under this heading in chapter 6 of title I of Public Law 108-11 (117 Stat. 581), \$750,279 are rescinded.

ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND RELATED
EXPENSES

For necessary expenses for acquisition, construction, repair, alteration, and improvement of facilities, \$3,633,000, to remain available until expended.

TITLE III—PREPAREDNESS AND RECOVERY

OFFICE OF STATE AND LOCAL GOVERNMENT COORDINATION AND
PREPAREDNESS

MANAGEMENT AND ADMINISTRATION

For necessary expenses for the Office of State and Local Government Coordination and Preparedness, \$3,546,000: *Provided*, That not to exceed \$2,000 shall be for official reception and representation expenses.

STATE AND LOCAL PROGRAMS

For grants, contracts, cooperative agreements, and other activities, including grants to State and local governments for terrorism prevention activities, notwithstanding any other provision of law, \$3,086,300,000, which shall be allocated as follows:

- (1) \$1,100,000,000 for formula-based grants and \$400,000,000 for law enforcement terrorism prevention grants pursuant to section 1014 of the USA PATRIOT ACT (42 U.S.C. 3714): *Provided*, That the application for grants shall be made available to States within 45 days after enactment of this Act; that States shall submit applications within 45 days after the grant announcement; and that the Office of State and Local Government Coordination and Preparedness shall act within 15 days after receipt of an application: *Provided further*, That each State shall obligate not less than 80 percent of the total amount of the grant to local governments within 60 days after the grant award. Deadlines.
- (2) \$1,200,000,000 for discretionary grants, as determined by the Secretary of Homeland Security, of which—
 - (A) \$885,000,000 shall be for use in high-threat, high-density urban areas, of which \$25,000,000 shall be available for assistance to organizations (as described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax section 501(a) of such Code) as determined by the Secretary of Homeland Security to be at high-risk of international terrorist attack;
 - (B) \$150,000,000 shall be for port security grants, which shall be distributed under the same terms and conditions as provided for under Public Law 107-117;
 - (C) \$5,000,000 shall be for trucking industry security grants;
 - (D) \$10,000,000 shall be for intercity bus security grants; and
 - (E) \$150,000,000 shall be for intercity passenger rail transportation (as defined in section 24102 of title 49, United States Code), freight rail, and transit security grants:

Deadline.

Provided, That no less than 80 percent of any grant under this paragraph to a State shall be made available by the State to local governments within 60 days after the receipt of the funds: *Provided further*, That section 1014(c)(3) of the USA PATRIOT ACT (42 U.S.C. 3714(c)(3)) shall not apply to grants under this paragraph.

(3) \$50,000,000 shall be available for the establishment of a technology transfer program: *Provided*, That of the amount made available under this paragraph, \$10,000,000 is available to be used for commercially-available equipment testing and validation to determine appropriateness for inclusion in the technology transfer program.

(4) \$336,300,000 for training, exercises, technical assistance, and other programs:

Reports.

Provided, That, none of the grants provided under this heading shall be used for the construction or renovation of facilities; except for a minor perimeter security project, not to exceed \$1,000,000, as determined necessary by the Secretary of Homeland Security: *Provided further*, That the proceeding proviso shall not apply to grants under (2)(B) and (E) of this heading: *Provided further*, That grantees shall provide additional reports on their use of funds, as determined necessary by the Secretary of Homeland Security: *Provided further*, That funds appropriated for law enforcement terrorism prevention grants under paragraph (1) and discretionary grants under paragraph (2)(A) of this heading shall be available for operational costs, to include personnel overtime and overtime associated with Office of State and Local Government Coordination and Preparedness certified training, as needed: *Provided further*, That in accordance with the Department's implementation plan for Homeland Security Presidential Directive 8, the Office of State and Local Government Coordination and Preparedness shall provide State and local jurisdictions with nationally-accepted first responder preparedness levels no later than January 31, 2005; include in the fiscal year 2005 formula-based grant guidance guidelines for State and local jurisdictions to adopt national preparedness standards in fiscal year 2006; and issue final guidance on the implementation of the National Preparedness Goal no later than March 31, 2005: *Provided further*, That the fiscal year 2005 formula-based and law enforcement terrorism prevention grants under paragraph (1) shall be allocated in the same manner as fiscal year 2004.

Deadline.

FIREFIGHTER ASSISTANCE GRANTS

For necessary expenses for programs authorized by the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.), \$715,000,000, of which \$650,000,000 shall be available to carry out section 33 (15 U.S.C. 2229) and \$65,000,000 shall be available to carry out section 34 (15 U.S.C. 2229a) of the Act, to remain available until September 30, 2006: *Provided*, That not to exceed 5 percent of this amount shall be available for program administration.

EMERGENCY MANAGEMENT PERFORMANCE GRANTS

For necessary expenses for emergency management performance grants, as authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.),

the Earthquake Hazards Reductions Act of 1977 (42 U.S.C. 7701 et seq.), and Reorganization Plan No. 3 of 1978 (5 U.S.C. App.), \$180,000,000: *Provided*, That total administrative costs shall not exceed 3 percent of the total appropriation.

COUNTERTERRORISM FUND

For necessary expenses, as determined by the Secretary of Homeland Security, to reimburse any Federal agency for the costs of providing support to counter, investigate, or respond to unexpected threats or acts of terrorism, including payment of rewards in connection with these activities, \$8,000,000, to remain available until expended: *Provided*, That the Secretary shall notify the Committees on Appropriations of the Senate and the House of Representatives 15 days prior to the obligation of any amount of these funds in accordance with section 503 of this Act.

Notification.
Deadline.

EMERGENCY PREPAREDNESS AND RESPONSE

OFFICE OF THE UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE

For necessary expenses for the Office of the Under Secretary for Emergency Preparedness and Response, as authorized by section 502 of the Homeland Security Act of 2002 (6 U.S.C. 312), \$4,211,000.

PREPAREDNESS, MITIGATION, RESPONSE, AND RECOVERY

For necessary expenses for preparedness, mitigation, response, and recovery activities of the Directorate of Emergency Preparedness and Response, \$239,499,000, including activities authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.), the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), sections 107 and 303 of the National Security Act of 1947 (50 U.S.C. 404, 405), Reorganization Plan No. 3 of 1978 (5 U.S.C. App.), and the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.): *Provided*, That of the total amount appropriated, \$30,000,000 shall be for Urban Search and Rescue Teams, of which not to exceed 3 percent may be made available for administrative costs.

OPERATING EXPENSES

(RESCISSION OF FUNDS)

Of the funds appropriated under this heading in chapter 6 of title I of Public Law 108–11 (11 Stat. 581), \$5,000,000 are rescinded.

ADMINISTRATIVE AND REGIONAL OPERATIONS

For necessary expenses for administrative and regional operations of the Directorate of Emergency Preparedness and Response, \$202,939,000, including activities authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.

5121 et seq.), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.), the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), sections 107 and 303 of the National Security Act of 1947 (50 U.S.C. 404, 405), Reorganization Plan No. 3 of 1978 (5 U.S.C. App.), and the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.): *Provided*, That not to exceed \$3,000 shall be for official reception and representation expenses.

PUBLIC HEALTH PROGRAMS

For necessary expenses for countering potential biological, disease, and chemical threats to civilian populations, \$34,000,000.

RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

The aggregate charges assessed during fiscal year 2005, as authorized in title III of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (42 U.S.C. 5196e), shall not be less than 100 percent of the amounts anticipated by the Department of Homeland Security necessary for its radiological emergency preparedness program for the next fiscal year: *Provided*, That the methodology for assessment and collection of fees shall be fair and equitable and shall reflect costs of providing such services, including administrative costs of collecting such fees: *Provided further*, That fees received under this heading shall be deposited in this account as offsetting collections and will become available for authorized purposes on October 1, 2005, and remain available until expended.

DISASTER RELIEF

For necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), \$2,042,380,000, to remain available until expended.

DISASTER ASSISTANCE DIRECT LOAN PROGRAM ACCOUNT

For administrative expenses to carry out the direct loan program, as authorized by section 319 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5162), \$567,000: *Provided*, That gross obligations for the principal amount of direct loans shall not exceed \$25,000,000: *Provided further*, That the cost of modifying such loans shall be as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).

FLOOD MAP MODERNIZATION FUND

For necessary expenses pursuant to section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101), \$200,000,000, and such additional sums as may be provided by State and local governments or other political subdivisions for cost-shared mapping activities under section 1360(f)(2) of such Act, to remain available until expended: *Provided*, That total administrative costs shall not exceed 3 percent of the total appropriation.

NATIONAL FLOOD INSURANCE FUND

(INCLUDING TRANSFER OF FUNDS)

For activities under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), not to exceed \$33,336,000 for salaries and expenses associated with flood mitigation and flood insurance operations; and not to exceed \$79,257,000 for flood hazard mitigation, to remain available until September 30, 2006, including up to \$20,000,000 for expenses under section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c), which amount shall be available for transfer to the National Flood Mitigation Fund until September 30, 2006, and which amount shall be derived from offsetting collections assessed and collected pursuant to section 1307 of that Act (42 U.S.C. 4014), and shall be retained and used for necessary expenses under this heading: *Provided*, That in fiscal year 2005, no funds in excess of: (1) \$55,000,000 for operating expenses; (2) \$562,881,000 for agents' commissions and taxes; and (3) \$30,000,000 for interest on Treasury borrowings shall be available from the National Flood Insurance Fund.

NATIONAL FLOOD MITIGATION FUND

Notwithstanding subparagraphs (B) and (C) of subsection (b)(3), and subsection (f), of section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c), \$20,000,000, to remain available until September 30, 2006, for activities designed to reduce the risk of flood damage to structures pursuant to such Act, of which \$20,000,000 shall be derived from the National Flood Insurance Fund.

NATIONAL PRE-DISASTER MITIGATION FUND

For a pre-disaster mitigation grant program pursuant to title II of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131 et seq.), \$100,000,000, to remain available until expended: *Provided*, That grants made for pre-disaster mitigation shall be awarded on a competitive basis subject to the criteria in section 203(g) of such Act (42 U.S.C. 5133(g)), and notwithstanding section 203(f) of such Act, shall be made without reference to State allocations, quotas, or other formula-based allocation of funds: *Provided further*, That total administrative costs shall not exceed 3 percent of the total appropriation.

EMERGENCY FOOD AND SHELTER

To carry out an emergency food and shelter program pursuant to title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11331 et seq.), \$153,000,000, to remain available until expended: *Provided*, That total administrative costs shall not exceed 3.5 percent of the total appropriation.

TITLE IV—RESEARCH AND DEVELOPMENT, TRAINING,
ASSESSMENTS, AND SERVICES

CITIZENSHIP AND IMMIGRATION SERVICES

For necessary expenses for citizenship and immigration services, \$160,000,000.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

SALARIES AND EXPENSES

For necessary expenses of the Federal Law Enforcement Training Center, including materials and support costs of Federal law enforcement basic training; purchase of not to exceed 117 vehicles for police-type use and hire of passenger motor vehicles; expenses for student athletic and related activities; the conduct of and participation in firearms matches and presentation of awards; public awareness and enhancement of community support of law enforcement training; room and board for student interns; a flat monthly reimbursement to employees authorized to use personal cell phones for official duties; and services as authorized by section 3109 of title 5, United States Code; \$177,440,000, of which up to \$36,174,000 for materials and support costs of Federal law enforcement basic training shall remain available until September 30, 2006; and of which not to exceed \$12,000 shall be for official reception and representation expenses: *Provided*, That the Center is authorized to obligate funds in anticipation of reimbursements from agencies receiving training sponsored by the Center, except that total obligations at the end of the fiscal year shall not exceed total budgetary resources available at the end of the fiscal year.

ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND RELATED
EXPENSES

For acquisition of necessary additional real property and facilities, construction, and ongoing maintenance, facility improvements, and related expenses of the Federal Law Enforcement Training Center, \$44,917,000, to remain available until expended: *Provided*, That the Center is authorized to accept reimbursement to this appropriation from government agencies requesting the construction of special use facilities.

INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

MANAGEMENT AND ADMINISTRATION

For salaries and expenses of the immediate Office of the Under Secretary for Information Analysis and Infrastructure Protection and for management and administration of programs and activities, as authorized by title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.), \$132,064,000: *Provided*, That not to exceed \$5,000 shall be for official reception and representation expenses.

ASSESSMENTS AND EVALUATIONS

For necessary expenses for information analysis and infrastructure protection as authorized by title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.), \$761,644,000, to remain available until September 30, 2006: *Provided*, That the Under Secretary for Information Analysis and Infrastructure Protection shall submit a report at the end of each quarter of the fiscal year to the Committees on Appropriations of the Senate and the House of Representatives on each sole-source contractual agreement entered into

Reports.

through the commitment of amounts available from funds appropriated under this heading by this or previous appropriations Acts, including the amount, recipient and purpose of the agreement.

SCIENCE AND TECHNOLOGY

MANAGEMENT AND ADMINISTRATION

For salaries and expenses of the immediate Office of the Under Secretary for Science and Technology and for management and administration of programs and activities, as authorized by title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.), \$68,586,000: *Provided*, That not to exceed \$3,000 shall be for official reception and representation expenses.

RESEARCH, DEVELOPMENT, ACQUISITION, AND OPERATIONS

For necessary expenses for science and technology research, including advanced research projects; development; test and evaluation; acquisition; and operations; as authorized by title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.), \$1,046,864,000, to remain available until expended.

TITLE V—GENERAL PROVISIONS

SEC. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 502. Subject to the requirements of section 503 of this Act, the unexpended balances of prior appropriations provided for activities in this Act may be transferred to appropriation accounts for such activities established pursuant to this Act: *Provided*, That balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

SEC. 503. (a) None of the funds provided by this Act, provided by previous appropriations Acts to the agencies in or transferred to the Department of Homeland Security that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose; or (5) contracts out any functions or activities for which funds have been appropriated for Federal full-time equivalent positions; unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such reprogramming of funds.

Notification.

(b) None of the funds provided by this Act, provided by previous appropriation Acts to the agencies in or transferred to the Department of Homeland Security that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection

Notification.	<p>of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for programs, projects, or activities through a reprogramming of funds in excess of \$5,000,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by the Congress; or (3) results from any general savings from a reduction in personnel that would result in a change in existing programs, projects, or activities as approved by the Congress; unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such reprogramming of funds.</p>
Notification.	<p>(c) Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Homeland Security by this Act or provided by previous appropriations Acts may be transferred between such appropriations, but no such appropriations, except as otherwise specifically provided, shall be increased by more than 10 percent by such transfers: <i>Provided</i>, That any transfer under this section shall be treated as a reprogramming of funds under subsection (b) of this section and shall not be available for obligation unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such transfer.</p>
Deadline.	<p>(d) Notifications pursuant to subsections (a), (b) and (c) of this subsection shall not be made later than June 30, except in extraordinary circumstances which imminently threaten the safety of human life or the protection of property.</p>
Establishment. 6 USC 464a note.	<p>SEC. 504. Except as otherwise specifically provided by law, not to exceed 50 percent of unobligated balances remaining available at the end of fiscal year 2005 from appropriations for salaries and expenses for fiscal year 2005 in this Act shall remain available through September 30, 2006, in the account and for the purposes for which the appropriations were provided: <i>Provided</i>, That prior to the obligation of such funds, a request shall be submitted to the Committees on Appropriations of the Senate and the House of Representatives for approval in accordance with section 503 of this Act.</p> <p>SEC. 505. Funds made available by this Act for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2005 until the enactment of an Act authorizing intelligence activities for fiscal year 2005.</p> <p>SEC. 506. The Federal Law Enforcement Training Center shall establish an accrediting body, to include representatives from the Federal law enforcement community and non-Federal accreditation experts involved in law enforcement training, to establish standards for measuring and assessing the quality and effectiveness of Federal law enforcement training programs, facilities, and instructors.</p> <p>SEC. 507. None of the funds in this Act may be used to make a grant allocation, discretionary grant award, discretionary contract award, or to issue a letter of intent totaling in excess of \$1,000,000 unless the Secretary of Homeland Security notifies the Committees on Appropriations of the Senate and House of Representatives at least 3 full business days in advance: <i>Provided</i>, That no notification shall involve funds that are not available for obligation.</p> <p>SEC. 508. Notwithstanding any other provision of law, no agency shall purchase, construct, or lease any additional facilities, except</p>

within or contiguous to existing locations, to be used for the purpose of conducting Federal law enforcement training without the advance approval of the Committees on Appropriations of the Senate and the House of Representatives, except that the Federal Law Enforcement Training Center is authorized to obtain the temporary use of additional facilities by lease, contract, or other agreement for training which cannot be accommodated in existing Center facilities.

SEC. 509. The Director of the Federal Law Enforcement Training Center (FLETC) shall schedule basic and/or advanced law enforcement training at all four training facilities under FLETC's control to ensure that these training centers are operated at the highest capacity throughout the fiscal year.

SEC. 510. None of the funds appropriated or otherwise made available by this Act may be used for expenses of any construction, repair, alteration, or acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, has not been approved, except that necessary funds may be expended for each project for required expenses for the development of a proposed prospectus.

SEC. 511. For fiscal year 2005 and thereafter, none of the funds appropriated or otherwise made available by this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Transportation Security Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to aviation security: *Provided*, That the prohibition of funds in this section does not apply to—

- (1) negotiations between the agency and airport sponsors to achieve agreement on “below-market” rates for these items, or
- (2) space for necessary security checkpoints.

SEC. 512. None of the funds in this Act may be used in contravention of the applicable provisions of the Buy American Act (41 U.S.C. 10a et seq.).

SEC. 513. The Secretary of Homeland Security is directed to research, develop, and procure certified systems to inspect and screen air cargo on passenger aircraft at the earliest date possible: *Provided*, That until such technology is procured and installed, the Secretary shall take all possible actions to enhance the known shipper program to prohibit high-risk cargo from being transported on passenger aircraft: *Provided further*, That the Secretary shall amend Security Directives and programs in effect on the date of enactment of this Act to, at a minimum, triple the percentage of cargo inspected on passenger aircraft.

SEC. 514. The Commandant of the Coast Guard shall provide to the Congress each year, at the time that the President's budget is submitted under section 1105(a) of title 31, United States Code, a list of approved but unfunded Coast Guard priorities and the funds needed for each such priority in the same manner and with the same contents as the unfunded priorities lists submitted by the chiefs of other Armed Services.

14 USC 663 note.

SEC. 515. (a) IN GENERAL.—Chapter 449 of title 49, United States Code, is amended by inserting after section 44944 the following new section:

“§ 44945. Disposition of unclaimed money

“Notwithstanding section 3302 of title 31, unclaimed money recovered at any airport security checkpoint shall be retained by the Transportation Security Administration and shall remain available until expended for the purpose of providing civil aviation security as required in this chapter.”.

49 USC 44945
note.

(b) ANNUAL REPORT.—Not later than 180 days after the date of enactment of this Act and annually thereafter, the Administrator of the Transportation Security Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives; the Committee on Appropriations of the House of Representatives; the Committee on Commerce, Science and Transportation of the Senate; and the Committee on Appropriations of the Senate, a report that contains a detailed description of the amount of unclaimed money recovered in total and at each individual airport, and specifically how the unclaimed money is being used to provide civil aviation security.

(c) CLERICAL AMENDMENT.—The analysis for chapter 449 of title 49, United States Code, is amended by adding the following new item after the item relating to section 44944:

“44945. Disposition of unclaimed money.”.

SEC. 516. Notwithstanding section 3302 of title 31, United States Code, the Administrator of the Transportation Security Administration may impose a reasonable charge for the lease of real and personal property to Transportation Security Administration employees and for use by Transportation Security Administration employees and may credit amounts received to the appropriation or fund initially charged for operating and maintaining the property, which amounts shall be available, without fiscal year limitation, for expenditure for property management, operation, protection, construction, repair, alteration, and related activities.

Applicability.

SEC. 517. The acquisition management system of the Transportation Security Administration shall apply to the acquisition of services, as well as equipment, supplies, and materials.

6 USC 111 note.

SEC. 518. Notwithstanding any other provision of law, the authority of the Office of Personnel Management to conduct personnel security and suitability background investigations, update investigations, and periodic reinvestigations of applicants for, or appointees in, positions in the Office of the Secretary and Executive Management, the Office of the Under Secretary of Management, the Directorate of Science and Technology, and the Directorate of Information Analysis and Infrastructure Protection of the Department of Homeland Security is transferred to the Department of Homeland Security: *Provided*, That on request of the Department of Homeland Security, the Office of Personnel Management shall cooperate with and assist the Department in any investigation or reinvestigation under this section.

SEC. 519. Section 312(g) of the Homeland Security Act of 2002 (6 U.S.C. 192(g)) is amended to read as follows:

“(g) TERMINATION.—The Homeland Security Institute shall terminate 5 years after its establishment.”.

SEC. 520. Section 311(c)(2) of the Homeland Security Act of 2002 (6 U.S.C. 191(c)(2)) is amended to read as follows:

“(2) ORIGINAL APPOINTMENTS.—The original members of the Advisory Committee shall be appointed to three classes. One class of six shall have a term of 1 year, one class of

seven a term of 2 years, and one class of seven a term of 3 years.”.

SEC. 521. Notwithstanding any other provision of law, funds appropriated under paragraphs (1) and (2) of the State and Local Programs heading under title III of this Act are exempt from section 6503(a) of title 31, United States Code.

SEC. 522. (a) None of the funds provided by this or previous appropriations Acts may be obligated for deployment or implementation, on other than a test basis, of the Computer Assisted Passenger Prescreening System (CAPPS II) or Secure Flight or other follow on/successor programs, that the Transportation Security Administration (TSA), or any other Department of Homeland Security component, plans to utilize to screen aviation passengers, until the Government Accountability Office has reported to the Committees on Appropriations of the Senate and the House of Representatives that—

Reports.

(1) a system of due process exists whereby aviation passengers determined to pose a threat are either delayed or prohibited from boarding their scheduled flights by the TSA may appeal such decision and correct erroneous information contained in CAPPS II or Secure Flight or other follow on/successor programs;

(2) the underlying error rate of the government and private data bases that will be used both to establish identity and assign a risk level to a passenger will not produce a large number of false positives that will result in a significant number of passengers being treated mistakenly or security resources being diverted;

(3) the TSA has stress-tested and demonstrated the efficacy and accuracy of all search tools in CAPPS II or Secure Flight or other follow on/successor programs and has demonstrated that CAPPS II or Secure Flight or other follow on/successor programs can make an accurate predictive assessment of those passengers who may constitute a threat to aviation;

(4) the Secretary of Homeland Security has established an internal oversight board to monitor the manner in which CAPPS II or Secure Flight or other follow on/successor programs are being developed and prepared;

(5) the TSA has built in sufficient operational safeguards to reduce the opportunities for abuse;

(6) substantial security measures are in place to protect CAPPS II or Secure Flight or other follow on/successor programs from unauthorized access by hackers or other intruders;

(7) the TSA has adopted policies establishing effective oversight of the use and operation of the system;

(8) there are no specific privacy concerns with the technological architecture of the system;

(9) the TSA has, pursuant to the requirements of section 44903 (i)(2)(A) of title 49, United States Code, modified CAPPS II or Secure Flight or other follow on/successor programs with respect to intrastate transportation to accommodate States with unique air transportation needs and passengers who might otherwise regularly trigger primary selectee status; and

(10) appropriate life-cycle cost estimates, and expenditure and program plans exist.

(b) During the testing phase permitted by paragraph (a) of this section, no information gathered from passengers, foreign or

domestic air carriers, or reservation systems may be used to screen aviation passengers, or delay or deny boarding to such passengers, except in instances where passenger names are matched to a government watch list.

(c) None of the funds provided in this or any previous appropriations Act may be utilized to develop or test algorithms assigning risk to passengers whose names are not on government watch lists.

(d) None of the funds provided in this or any previous appropriations Act may be utilized to test an identity verification system that utilizes at least one database that is obtained from or remains under the control of a non-Federal entity until TSA has developed measures to determine the impact of such verification on aviation security and the Government Accountability Office has reported on its evaluation of the measures.

(e) TSA shall cooperate fully with the Government Accountability Office, and provide timely responses to the Government Accountability Office requests for documentation and information.

Deadline.

(f) The Government Accountability Office shall submit the report required under paragraph (a) of this section no later than March 28, 2005.

SEC. 523. Section 835 of the Homeland Security Act of 2002 (Public Law 107-296; 6 U.S.C. 395) is amended—

(1) in subsection (a), by inserting before the period “, or any subsidiary of such an entity”;

(2) in subsection (b)(1), by inserting “before, on, or” after the “completes”;

(3) in subsection (c)(1)(B), by striking “which is after the date of enactment of this Act and”; and

(4) in subsection (d), by striking “homeland” and inserting “national”.

SEC. 524. None of the funds made available in this Act may be used to amend the oath of allegiance required by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448).

SEC. 525. Notwithstanding any other provision of law, the fiscal year 2004 aggregate overtime limitation prescribed in subsection 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 261 and 267) shall be \$30,000.

SEC. 526. Notwithstanding any other provision of law, notifications pursuant to section 503 of this Act or any other authority for reprogramming of funds shall be made solely to the Committees on Appropriations of the Senate and House of Representatives.

SEC. 527. None of the funds appropriated by this Act may be used to process or approve a competition under Office of Management and Budget Circular A-76 for services provided as of June 1, 2004, by employees (including employees serving on a temporary or term basis) of Citizenship and Immigration Services of the Department of Homeland Security who are known as of that date as Immigration Information Officers, Contact Representatives, or Investigative Assistants.

SEC. 528. None of the funds available in this Act shall be available to maintain the United States Secret Service as anything but a distinct entity within the Department of Homeland Security and shall not be used to merge the United States Secret Service with any other department function, cause any personnel and operational elements of the United States Secret Service to report to an individual other than the Director of the United States Secret

Service, or cause the Director to report directly to any individual other than the Secretary of Homeland Security.

This Act may be cited as the “Department of Homeland Security Appropriations Act, 2005”.

Approved October 18, 2004.

LEGISLATIVE HISTORY—H.R. 4567 (S. 2537):

HOUSE REPORTS: Nos. 108-541 (Comm. on Appropriations) and 108-774 (Comm. of Conference).

SENATE REPORTS: No. 108-280 accompanying S. 2537 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 17, 18, considered and passed House.

Sept. 8-10, 13, 14, considered and passed Senate, amended, in lieu of S. 2537.

Oct. 9, House agreed to conference report.

Oct. 11, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Oct. 18, Presidential statement.



Public Law 108–335
108th Congress

An Act

Oct. 18, 2004

[H.R. 4850]

District of
Columbia
Appropriations
Act, 2005.

Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against revenues of said District for the fiscal year ending September 30, 2005, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the District of Columbia and related agencies for the fiscal year ending September 30, 2005, and for other purposes, namely:

TITLE I—FEDERAL FUNDS

FEDERAL PAYMENT FOR RESIDENT TUITION SUPPORT

Reports.

For a Federal payment to the District of Columbia, to be deposited into a dedicated account, for a nationwide program to be administered by the Mayor, for District of Columbia resident tuition support, \$25,600,000, to remain available until expended: *Provided*, That such funds, including any interest accrued thereon, may be used on behalf of eligible District of Columbia residents to pay an amount based upon the difference between in-State and out-of-State tuition at public institutions of higher education, or to pay up to \$2,500 each year at eligible private institutions of higher education: *Provided further*, That the awarding of such funds may be prioritized on the basis of a resident's academic merit, the income and need of eligible students and such other factors as may be authorized: *Provided further*, That the District of Columbia government shall maintain a dedicated account for the Resident Tuition Support Program that shall consist of the Federal funds appropriated to the Program in this Act and any subsequent appropriations, any unobligated balances from prior fiscal years, and any interest earned in this or any fiscal year: *Provided further*, That the account shall be under the control of the District of Columbia Chief Financial Officer, who shall use those funds solely for the purposes of carrying out the Resident Tuition Support Program: *Provided further*, That the Office of the Chief Financial Officer shall provide a quarterly financial report to the Committees on Appropriations of the House of Representatives and Senate for these funds showing, by object class, the expenditures made and the purpose therefor: *Provided further*, That not more than \$1,200,000 of the total amount appropriated for this program may be used for administrative expenses.

FEDERAL PAYMENT FOR EMERGENCY PLANNING AND SECURITY
COSTS IN THE DISTRICT OF COLUMBIA

For necessary expenses, as determined by the Mayor of the District of Columbia in written consultation with the elected county or city officials of surrounding jurisdictions, \$15,000,000, to remain available until expended, to reimburse the District of Columbia for the costs of providing public safety at events related to the presence of the national capital in the District of Columbia and for the costs of providing support to respond to immediate and specific terrorist threats or attacks in the District of Columbia or surrounding jurisdictions: *Provided*, That any amount provided under this heading shall be available only after notice of its proposed use has been transmitted by the President to Congress and such amount has been apportioned pursuant to chapter 15 of title 31, United States Code.

Notification.
President.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA COURTS

For salaries and expenses for the District of Columbia Courts, \$190,800,000, to be allocated as follows: for the District of Columbia Court of Appeals, \$8,952,000, of which not to exceed \$1,500 is for official reception and representation expenses; for the District of Columbia Superior Court, \$84,948,000, of which not to exceed \$1,500 is for official reception and representation expenses; for the District of Columbia Court System, \$40,699,000, of which not to exceed \$1,500 is for official reception and representation expenses; and \$56,201,000, to remain available until September 30, 2006, for capital improvements for District of Columbia courthouse facilities: *Provided*, That notwithstanding any other provision of law, a single contract or related contracts for development and construction of facilities may be employed which collectively include the full scope of the project: *Provided further*, That the solicitation and contract shall contain the clause “availability of Funds” found at 48 CFR 52.232-18: *Provided further*, That funds made available for capital improvements shall be expended consistent with the General Services Administration master plan study and building evaluation report: *Provided further*, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies, with payroll and financial services to be provided on a contractual basis with the General Services Administration (GSA), and such services shall include the preparation of monthly financial reports, copies of which shall be submitted directly by GSA to the President and to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate: *Provided further*, That 30 days after providing written notice to the Committees on Appropriations of the House of Representatives and Senate, the District of Columbia Courts may reallocate not more than \$1,000,000 of the funds provided under this heading among the items and entities funded under this heading for operations, and not more than 4 percent of the funds provided under this heading for facilities.

Contracts.
Reports.

DEFENDER SERVICES IN DISTRICT OF COLUMBIA COURTS

For payments authorized under section 11-2604 and section 11-2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act), payments for counsel appointed in proceedings in the Family Court of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code, or pursuant to contractual agreements to provide guardian ad litem representation, training, technical assistance and such other services as are necessary to improve the quality of guardian ad litem representation, payments for counsel appointed in adoption proceedings under chapter 3 of title 16, D.C. Code, and payments for counsel authorized under section 21-2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986), \$38,500,000, to remain available until expended: *Provided*, That the funds provided in this Act under the heading “Federal Payment to the District of Columbia Courts” (other than the \$56,201,000 provided under such heading for capital improvements for District of Columbia courthouse facilities) may also be used for payments under this heading: *Provided further*, That in addition to the funds provided under this heading, the Joint Committee on Judicial Administration in the District of Columbia shall use funds provided in this Act under the heading “Federal Payment to the District of Columbia Courts” (other than the \$56,201,000 provided under such heading for capital improvements for District of Columbia courthouse facilities), to make payments described under this heading for obligations incurred during any fiscal year: *Provided further*, That funds provided under this heading shall be administered by the Joint Committee on Judicial Administration in the District of Columbia: *Provided further*, That notwithstanding any other provision of law, this appropriation shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for expenses of other Federal agencies, with payroll and financial services to be provided on a contractual basis with the General Services Administration (GSA), and such services shall include the preparation of monthly financial reports, copies of which shall be submitted directly by GSA to the President and to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate.

Contracts.
Reports.

FEDERAL PAYMENT TO THE COURT SERVICES AND OFFENDER
SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

(INCLUDING TRANSFER OF FUNDS)

For salaries and expenses, including the transfer and hire of motor vehicles, of the Court Services and Offender Supervision Agency for the District of Columbia and the Public Defender Service for the District of Columbia, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, \$180,000,000, of which not to exceed \$2,000 is for official reception and representation expenses related to Community Supervision and Pretrial Services Agency programs; of which not to exceed \$25,000 is for dues and assessments relating to the implementation of

the Court Services and Offender Supervision Agency Interstate Supervision Act of 2002; of which \$110,853,000 shall be for necessary expenses of Community Supervision and Sex Offender Registration, to include expenses relating to the supervision of adults subject to protection orders or the provision of services for or related to such persons; of which \$39,314,000 shall be available to the Pretrial Services Agency; and of which \$29,833,000 shall be transferred to the Public Defender Service for the District of Columbia: *Provided*, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies: *Provided further*, That the Director is authorized to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs, and equipment and vocational training services to educate and train offenders and defendants: *Provided further*, That the Director shall keep accurate and detailed records of the acceptance and use of any gift or donation under the previous proviso, and shall make such records available for audit and public inspection: *Provided further*, That the Court Services and Offender Supervision Agency Director is authorized to accept and use reimbursement from the D.C. Government for space and services provided on a cost reimbursable basis: *Provided further*, That the Public Defender Service is authorized to charge fees to cover costs of materials distributed to attendees of educational events, including conferences, sponsored by the Public Defender Service, and notwithstanding section 3302 of title 31, United States Code, said fees shall be credited to the Public Defender Service account to be available for use without further appropriation.

Records.
Public
information.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

For a Federal payment to the District of Columbia Water and Sewer Authority, \$4,800,000, to remain available until expended, to continue implementation of the Combined Sewer Overflow Long-Term Plan: *Provided*, That the District of Columbia Water and Sewer Authority provides a 100 percent match for this payment.

FEDERAL PAYMENT FOR THE ANACOSTIA WATERFRONT INITIATIVE

For a Federal payment to the District of Columbia Department of Transportation, \$3,000,000, to remain available until September 30, 2006, for design and construction of a continuous pedestrian and bicycle trail system from the Potomac River to the District's border with Maryland.

FEDERAL PAYMENT TO THE CRIMINAL JUSTICE COORDINATING COUNCIL

For a Federal payment to the Criminal Justice Coordinating Council, \$1,300,000, to remain available until expended, to support initiatives related to the coordination of Federal and local criminal justice resources in the District of Columbia.

FEDERAL PAYMENT FOR THE UNIFIED COMMUNICATIONS CENTER

For a Federal payment to the District of Columbia, \$6,000,000, to remain available until expended, for the Unified Communications Center.

FEDERAL PAYMENT FOR TRANSPORTATION ASSISTANCE

For a Federal payment to the District of Columbia Department of Transportation, \$2,500,000, of which \$1,000,000 shall be allocated to implement a downtown circulator transit system, and of which \$1,500,000 shall be to offset a portion of the District of Columbia's allocated operating subsidy payment to the Washington Metropolitan Area Transit Authority.

FEDERAL PAYMENT FOR PUBLIC SCHOOL LIBRARIES

For a Federal payment to the District of Columbia Public Schools, \$6,000,000, to remain available until expended, for a public school library enhancement program: *Provided*, That the District of Columbia Public Schools provides a 100 percent match for this payment: *Provided further*, That the Federal portion is for the acquisition of library resources: *Provided further*, That the matching portion is for any necessary facilities upgrades.

FEDERAL PAYMENT FOR THE FAMILY LITERACY PROGRAM

For a Federal payment to the District of Columbia, \$1,000,000, for a Family Literacy Program to address the needs of literacy-challenged parents while endowing their children with an appreciation for literacy and strengthening familial ties: *Provided*, That the District of Columbia shall provide a 100 percent match with local funds as a condition of receiving this payment.

FEDERAL PAYMENT FOR FOSTER CARE IMPROVEMENTS IN THE DISTRICT OF COLUMBIA

For a Federal payment to the District of Columbia for foster care improvements, \$5,000,000, to remain available until expended: *Provided*, That \$3,250,000 shall be for the Child and Family Services Agency, of which \$2,000,000 shall be for the early intervention program to provide intensive and immediate services for foster children; of which \$750,000 shall be for the emergency support fund to purchase services or technology necessary to allow children to remain in the care of an approved and licensed family member; of which \$500,000 shall be for technology upgrades: *Provided further*, That \$1,250,000 shall be for the Department of Mental Health to provide all court-ordered or agency-required mental health screenings, assessments and treatments for children under the supervision of the Child and Family Services Agency: *Provided further*, That \$500,000 shall be for the Washington Metropolitan Council of Governments, to continue a program in conjunction with the Foster and Adoptive Parents Advocacy Center, to provide respite care for and recruitment of foster parents: *Provided further*, That these Federal funds shall supplement and not supplant local funds for the purposes described under this heading.

FEDERAL PAYMENT TO THE OFFICE OF THE CHIEF FINANCIAL
OFFICER OF THE DISTRICT OF COLUMBIA

For a Federal payment to the Office of the Chief Financial Officer of the District of Columbia, \$32,500,000: *Provided*, That these funds shall be available for the projects and in the amounts specified in the statement of the managers on the conference report accompanying this Act: *Provided further*, That each entity that receives funding under this heading shall submit to the Office of the Chief Financial Officer of the District of Columbia and the Committees on Appropriations of the House of Representatives and Senate a report on the activities to be carried out with such funds no later than March 15, 2005.

Reports.
Deadline.

FEDERAL PAYMENT FOR SCHOOL IMPROVEMENT

For a Federal payment for a school improvement program in the District of Columbia, \$40,000,000, to be allocated as follows: for the District of Columbia Public Schools, \$13,000,000 to improve public school education in the District of Columbia; for the State Education Office, \$13,000,000 to expand quality public charter schools in the District of Columbia, to remain available until September 30, 2006; for the Secretary of the Department of Education, \$14,000,000 to provide opportunity scholarships for students in the District of Columbia in accordance with division C, title III of the District of Columbia Appropriations Act, 2004 (Public Law 108-199; 118 Stat. 126), of which up to \$1,000,000 may be used to administer and fund assessments: *Provided*, That of the \$13,000,000 for the District of Columbia Public Schools, not less than \$2,000,000 shall be for a new incentive fund to reward high performing or significantly improved public schools; not less than \$2,000,000 shall be to support the Transformation School Initiative directed to schools in need of improvement: *Provided further*, That of the remaining amounts, the Superintendent of the District of Columbia Public Schools shall use such sums as necessary to provide grants to schools which are not eligible for other programs referenced under this heading, and to contract for management consulting services and implement recommended reforms: *Provided further*, That the Comptroller General shall conduct a financial audit of the District of Columbia Public Schools: *Provided further*, That of the \$13,000,000 provided for public charter schools in the District of Columbia, \$2,000,000 shall be for the City Build Initiative to create neighborhood-based charter schools; \$2,750,000 shall be for the Direct Loan Fund for Charter Schools; \$150,000 shall be for administrative expenses of the Office of Charter School Financing and Support to expand outreach and support of charter schools; \$100,000 shall be for the D.C. Public Charter School Association to enhance the quality of charter schools; \$4,000,000 shall be for the development of an incubator facility for public charter schools; \$2,000,000 shall be for a charter school college preparatory program; and \$2,000,000 shall be for a new incentive fund to reward high performing or significantly improved public charter schools: *Provided further*, That the District of Columbia government shall establish a dedicated account for the Office of Charter School Financing and Support (the Office) that shall consist of the Federal funds appropriated in this Act, any subsequent appropriations, any unobligated balances from prior fiscal years, any additional grants, and any interest and principal derived from

Grants.
Contracts.

Reports.

loans made to Charter Schools, and repayment of dollars utilized to support credit enhancement earned in this or any fiscal year: *Provided further*, That the account shall be under the control of the District of Columbia Chief Financial Officer who shall use those funds solely for the purposes of carrying out the Credit Enhancement Program, Direct Loan Fund Grant Program, and any other charter school financing under the management of the Office: *Provided further*, That in this and subsequent fiscal years the Office of the Chief Financial Officer shall conduct an annual audit of the funds expended by the Office and provide an annual financial report to the Mayor, the Council of the District of Columbia, the Office of the District of Columbia Treasurer and the Committees on Appropriations of the House of Representatives and Senate for these funds showing, by object class, the expenditures made and the purpose therefor: *Provided further*, That not more than \$250,000 of the total amount appropriated for this program may be used for administrative expenses and training expenses related to the cost of the National Charter School Conference(s) to be hosted by December 2006; and no more than 5 percent of the funds appropriated for the direct loan fund may be used for administrative expenses related to the administration and annual audit of the direct loan, grant, and credit enhancement programs.

FEDERAL PAYMENT FOR BIOTERRORISM AND FORENSICS LABORATORY

For a Federal payment to the District of Columbia, \$8,000,000, to remain available until September 30, 2006, for design, planning, and procurement costs associated with the construction of a bioterrorism and forensics laboratory: *Provided*, That the District of Columbia shall provide an additional \$2,300,000 with local funds as a condition of receiving this payment.

TITLE II—DISTRICT OF COLUMBIA FUNDS

OPERATING EXPENSES

DIVISION OF EXPENSES

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the general fund of the District of Columbia, except as otherwise specifically provided: *Provided*, That notwithstanding any other provision of law, except as provided in section 450A of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1-204.50a) and provisions of this Act, the total amount appropriated in this Act for operating expenses for the District of Columbia for fiscal year 2005 under this heading shall not exceed the lesser of the sum of the total revenues of the District of Columbia for such fiscal year or \$6,199,114,000 (of which \$4,165,485,000 shall be from local funds, \$1,687,554,000 shall be from Federal grant funds, \$332,761,000 shall be from other funds, and \$13,314,000 shall be from private funds), in addition, \$114,900,000 from funds previously appropriated in this Act as Federal payments: *Provided further*, That this amount may be increased by proceeds of one-time transactions, which are expended for emergency or unanticipated operating or capital needs: *Provided further*, That such increases shall be approved by enactment of local District law and shall comply with

all reserve requirements contained in the District of Columbia Home Rule Act as amended by this Act: *Provided further*, That the Chief Financial Officer of the District of Columbia shall take such steps as are necessary to assure that the District of Columbia meets these requirements, including the apportioning by the Chief Financial Officer of the appropriations and funds made available to the District during fiscal year 2005, except that the Chief Financial Officer may not reprogram for operating expenses any funds derived from bonds, notes, or other obligations issued for capital projects.

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, \$416,069,000 (including \$261,068,000 from local funds, \$100,256,000 from Federal grant funds, and \$54,745,000 from other funds), in addition, \$32,500,000 from funds previously appropriated in this Act under the heading “Federal Payment to the Chief Financial Officer of the District of Columbia”, and \$500,000 from funds previously appropriated in this Act under the heading “Federal Payment for Foster Care Improvements in the District of Columbia” shall be available to the Metropolitan Washington Council of Governments: *Provided*, That not to exceed \$9,300 for the Mayor, \$9,300 for the Chairman of the Council of the District of Columbia, \$9,300 for the City Administrator, and \$9,300 for the Office of the Chief Financial Officer shall be available from this appropriation for official reception and representation expenses: *Provided further*, That any program fees collected from the issuance of debt shall be available for the payment of expenses of the debt management program of the District of Columbia: *Provided further*, That no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission: *Provided further*, That the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally generated revenues: *Provided further*, That notwithstanding any other provision of law, or Mayor’s Order 86-45, issued March 18, 1986, the Office of the Chief Technology Officer’s delegated small purchase authority shall be \$500,000: *Provided further*, That the District of Columbia government may not require the Office of the Chief Technology Officer to submit to any other procurement review process, or to obtain the approval of or be restricted in any manner by any official or employee of the District of Columbia government, for purchases that do not exceed \$500,000.

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, \$334,745,000 (including \$55,764,000 from local funds, \$93,050,000 from Federal grant funds, \$185,806,000 from other funds, and \$125,000 from private funds), of which \$13,000,000 collected by the District of Columbia in the form of BID tax revenue shall be paid to the respective BIDs pursuant to the Business Improvement Districts Act of 1996 (D.C. Law 11-134; D.C. Official Code, sec. 2-1215.01 et seq.), and the Business Improvement Districts Amendment Act of 1997 (D.C. Law 12-26; D.C. Official Code, sec. 2-1215.15 et seq.): *Provided*, That such funds are available for acquiring services provided by the General Services Administration: *Provided further*, That Business Improvement Districts shall be exempt from taxes levied by the

District of Columbia: *Provided further*, That local funds in the amount of \$1,200,000 shall be appropriated for the Excel Institute.

PUBLIC SAFETY AND JUSTICE

Reimbursement.

Public safety and justice, \$797,423,000 (including \$760,849,000 from local funds, \$6,599,000 from Federal grant funds, \$29,966,000 from other funds, and \$9,000 from private funds), in addition, \$1,300,000 from funds previously appropriated in this Act under the heading “Federal Payment to the Criminal Justice Coordinating Council”: *Provided*, That not to exceed \$500,000 shall be available from this appropriation for the Chief of Police for the prevention and detection of crime: *Provided further*, That the Mayor shall reimburse the District of Columbia National Guard for expenses incurred in connection with services that are performed in emergencies by the National Guard in a militia status and are requested by the Mayor, in amounts that shall be jointly determined and certified as due and payable for these services by the Mayor and the Commanding General of the District of Columbia National Guard: *Provided further*, That such sums as may be necessary for reimbursement to the District of Columbia National Guard under the preceding proviso shall be available from this appropriation, and the availability of the sums shall be deemed as constituting payment in advance for emergency services involved.

PUBLIC EDUCATION SYSTEM

(INCLUDING TRANSFER OF FUNDS)

Public education system, including the development of national defense education programs, \$1,223,424,000 (including \$1,058,709,000 from local funds, \$151,978,000 from Federal grant funds, \$8,957,000 from other funds, \$3,780,000 from private funds) in addition, \$25,600,000 from funds previously appropriated in this Act under the heading “Federal Payment for Resident Tuition Support”, \$6,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for Public School Libraries”, and \$26,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for School Improvement in the District of Columbia” to be allocated as follows:

(1) DISTRICT OF COLUMBIA PUBLIC SCHOOLS.—\$888,944,000 (including \$760,494,000 from local funds, \$117,450,000 from Federal grant funds, \$7,330,000 from other funds, \$3,670,000 from private funds), in addition, \$6,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for Public School Libraries” shall be available for District of Columbia Public Schools and \$13,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for School Improvement in the District of Columbia” shall be available for District of Columbia Public Schools: *Provided*, That notwithstanding any other provision of law, rule, or regulation, the evaluation process and instruments for evaluating District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes: *Provided further*, That this appropriation shall not be available to subsidize the education of any nonresident of the District of Columbia at any District of Columbia public elementary

or secondary school during fiscal year 2005 unless the non-resident pays tuition to the District of Columbia at a rate that covers 100 percent of the costs incurred by the District of Columbia that are attributable to the education of the non-resident (as established by the Superintendent of the District of Columbia Public Schools): *Provided further*, That notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the District of Columbia Public Schools on July 1, 2005, an amount equal to 10 percent of the total amount of the local funds appropriations request provided for the District of Columbia Public Schools in the proposed budget of the District of Columbia for fiscal year 2006 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the District of Columbia Public Schools under the District of Columbia Appropriations Act, 2006: *Provided further*, That not to exceed \$9,300 for the Superintendent of Schools shall be available from this appropriation for official reception and representation expenses.

(2) TEACHERS' RETIREMENT FUND.—\$9,200,000 from local funds shall be available for the Teacher's Retirement Fund.

(3) STATE EDUCATION OFFICE.—\$43,104,000 (including \$10,015,000 from local funds, \$32,913,000 from Federal grant funds, and \$176,000 from other funds), in addition, \$25,600,000 from funds previously appropriated in this Act under the heading "Federal Payment for Resident Tuition Support" shall be available for the State Education Office and \$13,000,000 from funds previously appropriated in this Act under the heading "Federal Payment for School Improvement in the District of Columbia" shall be available for the State Education Office: *Provided*, That of the amounts provided to the State Education Office, \$500,000 from local funds shall remain available until June 30, 2006 for an audit of the student enrollment of each District of Columbia Public School and of each District of Columbia public charter school.

(4) DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOLS.—\$196,802,000 from local funds shall be available for District of Columbia public charter schools: *Provided*, That there shall be quarterly disbursement of funds to the District of Columbia public charter schools, with the first payment to occur within 15 days of the beginning of the fiscal year: *Provided further*, That if the entirety of this allocation has not been provided as payments to any public charter schools currently in operation through the per pupil funding formula, the funds shall remain available for public education in accordance with section 2403(b)(2) of the District of Columbia School Reform Act of 1995 (D.C. Official Code, sec. 38-1804.03(b)(2)): *Provided further*, That of the amounts made available to District of Columbia public charter schools, \$100,000 shall be made available to the Office of the Chief Financial Officer as authorized by section 2403(b)(5) of the District of Columbia School Reform Act of 1995 (D.C. Official Code, sec. 38-1804.03(b)(5)): *Provided further*, That \$750,000 of this amount shall be available to the District of Columbia Public Charter School Board for administrative costs: *Provided further*, That notwithstanding the amounts otherwise provided under this heading or any

other provision of law, there shall be appropriated to the District of Columbia public charter schools on July 1, 2005, an amount equal to 25 percent of the total amount of the local funds appropriations request provided for payments to public charter schools in the proposed budget of the District of Columbia for fiscal year 2006 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for such payments under the District of Columbia Appropriations Act, 2006.

(5) UNIVERSITY OF THE DISTRICT OF COLUMBIA SUBSIDY.—\$49,602,000 from local funds shall be available for the University of the District of Columbia subsidy: *Provided*, That this appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 2005, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area: *Provided further*, That notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the University of the District of Columbia on July 1, 2005, an amount equal to 10 percent of the total amount of the local funds appropriations request provided for the University of the District of Columbia in the proposed budget of the District of Columbia for fiscal year 2006 (as submitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the University of the District of Columbia under the District of Columbia Appropriations Act, 2006: *Provided further*, That not to exceed \$9,300 for the President of the University of the District of Columbia shall be available from this appropriation for official reception and representation expenses.

(6) DISTRICT OF COLUMBIA PUBLIC LIBRARIES.—\$30,831,000 (including \$28,978,000 from local funds, \$1,093,000 from Federal grant funds, \$651,000 from other funds, and \$110,000 from private funds) shall be available for the District of Columbia Public Libraries: *Provided*, That not to exceed \$7,500 for the Public Librarian shall be available from this appropriation for official reception and representation expenses.

(7) COMMISSION ON THE ARTS AND HUMANITIES.—\$4,941,000 (including \$3,618,000 from local funds, \$523,000 from Federal grant funds, and \$800,000 from other funds) shall be available for the Commission on the Arts and Humanities.

HUMAN SUPPORT SERVICES

(INCLUDING TRANSFER OF FUNDS)

Human support services, \$2,533,825,000 (including \$1,165,314,000 from local funds, \$1,331,670,000 from Federal grant funds, \$27,441,000 from other funds, \$9,400,000 from private funds), in addition, \$4,500,000 from funds previously appropriated in this Act under the heading “Federal Payment to Foster Care Improvements in the District of Columbia”: *Provided*, That \$29,600,000 of this appropriation, to remain available until expended, shall

be available solely for District of Columbia employees' disability compensation: *Provided further*, That no less than \$8,498,720, to remain available until expended, shall be deposited in the Addiction Recovery Fund, established pursuant to section 5 of the Choice in Drug Treatment Act of 2000, effective July 8, 2000 (D.C. Law 13-146; D.C. Official Code, sec. 7-3004), to be used exclusively for the purpose of the Choice in Drug Treatment program, established pursuant to section 4 of the Choice in Drug Treatment Act of 2000 (D.C. Law 13-146; D.C. Official Code, sec. 7-3003), of which \$7,500,000 shall be provided from local funds: *Provided further*, That none of the \$8,498,720 for the Choice in Drug Treatment program shall be used by the Department of Health's Addiction Prevention and Recovery Administration to provide youth residential treatment services or youth outpatient treatment services: *Provided further*, That no less than \$2,000,000 shall be available to the Department of Health's Addiction Prevention and Recovery Administration exclusively for the purpose of providing youth residential treatment services: *Provided further*, That no less than \$1,575,416 shall be available to the Department of Health's Addiction Prevention and Recovery Administration exclusively for the purpose of providing youth outpatient treatment services, of which \$750,000 shall be made available exclusively to provide intensive outpatient treatment slots, outpatient treatment slots, and other program costs for youth in the care of the Youth Services Administration: *Provided further*, That no less than \$1,400,000 shall be used by the Department of Health's Addiction Prevention and Recovery Administration to fund a Child and Family Services Agency pilot project entitled Family Treatment Court: *Provided further*, That \$1,200,000 of local funds, to remain available until expended, shall be deposited in the Adoption Voucher Fund, established pursuant to section 3805(a) of the Adoption Voucher Fund Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code, sec. 4-344(a)), to be used exclusively for the purposes set forth in section 3805(b) of the Adoption Voucher Fund Act (D.C. Official Code, sec. 4-344(b)): *Provided further*, That no less than \$300,000 shall be used by the Department of Health's Environmental Health Administration to operate the Total Maximum Daily Load program: *Provided further*, That no less than \$1,268,500 shall be used by the Department of Health's Environmental Health Administration to operate its air quality programs, of which no less than \$242,000 shall be used to fund 4 full-time air quality employees: *Provided further*, That the Department of Human Services, Youth Services Administration shall not expend any appropriated fiscal year 2005 funds until the Mayor has submitted to the Council by September 30, 2004, a plan, including time lines, to close the Oak Hill Youth Center at the earliest feasible date. All of the above proviso amounts in this heading relate back to and are a subset of the first-referenced appropriation amount of \$2,533,825,000.

PUBLIC WORKS

Public works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and leasing of passenger-carrying vehicles, \$331,936,000 (including \$312,035,000 from local funds, \$4,000,000 from Federal funds, and \$15,901,000

from other funds), in addition, \$2,500,000 from funds previously appropriated in this Act under the heading “Federal Payment for Transportation Assistance”: *Provided*, That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business.

CASH RESERVE

For the cumulative cash reserve established pursuant to section 202(j)(2) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (D.C. Official Code, sec. 47-392.02(j)(2)), \$50,000,000 from local funds.

REPAYMENT OF LOANS AND INTEREST

For payment of principal, interest, and certain fees directly resulting from borrowing by the District of Columbia to fund District of Columbia capital projects as authorized by sections 462, 475, and 490 of the District of Columbia Home Rule Act (D.C. Official Code, secs. 1-204.62, 1-204.75, and 1-204.90), \$347,700,000 from local funds.

PAYMENT OF INTEREST ON SHORT-TERM BORROWING

For payment of interest on short-term borrowing, \$4,000,000 from local funds.

CERTIFICATES OF PARTICIPATION

For principal and interest payments on the District’s Certificates of Participation, issued to finance the ground lease underlying the building located at One Judiciary Square, \$11,252,000 from local funds.

SETTLEMENTS AND JUDGMENTS

For making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government, \$20,270,000 from local funds: *Provided*, That this appropriation shall not be construed as modifying or affecting the provisions of section 303 of this Act.

WILSON BUILDING

For expenses associated with the John A. Wilson building, \$3,633,000 from local funds.

WORKFORCE INVESTMENTS

For workforce investments, \$38,114,000 from local funds, to be transferred by the Mayor of the District of Columbia within the various appropriation headings in this Act for which employees are properly payable: *Provided*, That of this amount \$3,548,000 shall remain available until expended to meet the requirements of the Compensation Agreement Between the District of Columbia Government Units 1 and 2 Approval Resolution of 2004, effective February 17, 2004 (Res. 15-459; 51 DCR 2325).

NON-DEPARTMENTAL AGENCY

To account for anticipated costs that cannot be allocated to specific agencies during the development of the proposed budget, \$13,946,000 (including \$4,000,000 from local funds and \$9,946,000 from other funds) to be transferred by the Mayor of the District of Columbia within the various appropriations headings in this Act: *Provided*, That \$4,000,000 from local funds shall be for anticipated costs associated with the No Child Left Behind Act.

EMERGENCY PLANNING AND SECURITY FUND

For Emergency Planning and Security Fund, \$15,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for Emergency Planning and Security Costs in the District of Columbia”.

OLD CONVENTION CENTER DEMOLITION RESERVE

For the Old Convention Center Demolition Reserve, such amounts as may be necessary, not to exceed \$11,000,000, from the District’s general fund balance.

TAX INCREMENT FINANCING PROGRAM

For a Tax Increment Financing Program, such amounts as are necessary to meet the Tax Increment Financing requirements, not to exceed \$9,710,000 from the District’s general fund balance.

EQUIPMENT LEASE OPERATING

For Equipment Lease Operating \$23,109,000 from local funds: *Provided*, That for equipment leases, the Mayor may finance \$19,453,000 of equipment cost, plus cost of issuance not to exceed 2 percent of the par amount being financed on a lease purchase basis with a maturity not to exceed 5 years.

EMERGENCY AND CONTINGENCY RESERVE FUNDS

For the emergency reserve fund and the contingency reserve fund under section 450A of the District of Columbia Home Rule Act (Public Law 98-198, as amended; D.C. Official Code, sec. 1-204.50a), such additional amounts from the District’s general fund balance as are necessary to meet the balance requirements for such funds under section 450A.

FAMILY LITERACY

From funds previously appropriated in this Act under the heading “Federal Payment for the Family Literacy Program”, \$1,000,000.

PAY-AS-YOU-GO CAPITAL

For Pay-As-You-Go Capital funds in lieu of capital financing, \$6,531,000 from local funds, to be transferred to the Capital Fund.

PAY-AS-YOU-GO CONTINGENCY

For Pay-As-You-Go Contingency Fund, \$43,137,000, subject to the Criteria for Spending Pay-As-You-Go Funding Act of 2004, approved by the Council of the District of Columbia on 1st reading, May 14, 2004 (Title I of Bill 15-768), there are authorized to be transferred from the contingency fund to certain other headings of this Act as necessary to carry out the purposes of this Act. Expenditures from the Pay-As-You-Go Contingency Fund shall be subject to the approval of the Council by resolution.

REVISED REVENUE ESTIMATE CONTINGENCY PRIORITY

If the Chief Financial Officer for the District of Columbia certifies through a revised revenue estimate that funds are available from local funds, such available funds shall be expended as provided in the Contingency for Recordation and Transfer Tax Reduction and the Office of Property Management and Library Expenditures Act of 2004, approved by the Council of the District of Columbia on 1st reading, May 14, 2004 (Bill 15-768), including up to \$2,000,000 to the Office of Property Management, up to \$1,200,000 to the District of Columbia Public Library, up to \$256,000 to the D.C. Police and Firefighters Retirement and Relief Board, and \$132,600 for the Police and Fire Clinic.

ENTERPRISE AND OTHER FUNDS

WATER AND SEWER AUTHORITY

Applicability.

For operation of the Water and Sewer Authority, \$287,206,000 from other funds, of which \$15,180,402 shall be apportioned for repayment of loans and interest incurred for capital improvement projects and payable to the District's debt service fund. For construction projects, \$371,040,000, to be distributed as follows: \$181,656,000 for the Blue Plains Wastewater Treatment Plant, \$43,800,000 for the sewer program, \$9,118,000 for the stormwater program, \$122,627,000 for the water program, and \$13,839,000 for the capital equipment program; in addition, \$4,800,000 from funds previously appropriated in this Act under the heading "Federal Payment to the District of Columbia Water and Sewer Authority": *Provided*, That the requirements and restrictions that are applicable to general fund capital improvement projects and set forth in this Act under the Capital Outlay appropriation account shall apply to projects approved under this appropriation account.

WASHINGTON AQUEDUCT

For operation of the Washington Aqueduct, \$47,972,000 from other funds.

STORMWATER PERMIT COMPLIANCE ENTERPRISE FUND

For operation of the Stormwater Permit Compliance Enterprise Fund, \$3,792,000 from other funds.

LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND

For the Lottery and Charitable Games Enterprise Fund, established by the District of Columbia Appropriation Act, 1982, for

the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia (D.C. Law 3-172; D.C. Official Code, sec. 3-1301 et seq. and sec. 22-1716 et seq.), \$247,000,000 from other funds: *Provided*, That the District of Columbia shall identify the source of funding for this appropriation title from the District's own locally generated revenues: *Provided further*, That no revenues from Federal sources shall be used to support the operations or activities of the Lottery and Charitable Games Control Board: *Provided further*, That the Lottery and Charitable Games Enterprise Fund is hereby authorized to make transfers to the general fund of the District of Columbia, in excess of this appropriation, if such funds are available for transfer.

SPORTS AND ENTERTAINMENT COMMISSION

For the Sports and Entertainment Commission, \$7,322,000 from other funds: *Provided*, That the paragraph under the heading "Sports and Entertainment Commission" in Public Law 108-199 (118 Stat. 125) is amended by striking the term "local funds" and inserting the term "other funds" in its place.

DISTRICT OF COLUMBIA RETIREMENT BOARD

For the District of Columbia Retirement Board, established pursuant to section 121 of the District of Columbia Retirement Reform Act of 1979 (D.C. Official Code, sec. 1-711), \$15,277,000 from the earnings of the applicable retirement funds to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board: *Provided*, That the District of Columbia Retirement Board shall provide to the Congress and to the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: *Provided further*, That the District of Columbia Retirement Board shall provide the Mayor, for transmittal to the Council of the District of Columbia, an itemized accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report.

Reports.

WASHINGTON CONVENTION CENTER ENTERPRISE FUND

For the Washington Convention Center Enterprise Fund, \$77,176,000 from other funds.

NATIONAL CAPITAL REVITALIZATION CORPORATION

For the National Capital Revitalization Corporation, \$7,850,000 from other funds.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

For the University of the District of Columbia, \$85,102,000 (including, \$49,603,000 from local funds previously appropriated in this Act under the heading "Public Education Systems", \$15,192,000 from Federal funds, \$19,434,000 from other funds, and \$873,000 from private funds): *Provided*, That this appropriation shall not be available to subsidize the education of nonresidents

of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 2005, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area.

UNEMPLOYMENT INSURANCE TRUST FUND

For the Unemployment Insurance Trust Fund, \$180,000,000 from other funds.

OTHER POST EMPLOYEE BENEFITS TRUST FUND

For the Other Post Employee Benefits Trust Fund, \$953,000 from other funds.

DISTRICT OF COLUMBIA PUBLIC LIBRARY TRUST FUND

For the District of Columbia Public Library Trust Fund, \$17,000 from other funds: *Provided*, That \$7,000 shall be for the Theodore W. Noyes Trust Fund: *Provided further*, That \$10,000 shall be for the Peabody Trust Fund.

CAPITAL OUTLAY

(INCLUDING RESCISSIONS)

For construction projects, an increase of \$1,087,649,000, of which \$839,898,000 shall be from local funds, \$38,542,000 from Highway Trust funds, \$37,000,000 from the Rights-of-way funds, \$172,209,000 from Federal grant funds, and a rescission of \$361,763,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of \$725,886,000, to remain available until expended; in addition, \$6,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for the Unified Communications Center”, \$3,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for the Anacostia Waterfront Initiative”, and \$8,000,000 from funds previously appropriated in this Act under the heading “Federal Payment for Bioterrorism and Forensics Laboratory”: *Provided*, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: *Provided further*, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: *Provided further*, That the Office of the Chief Technology Officer of the District of Columbia shall implement the following information technology projects on behalf of the District of Columbia Public Schools: Student Information System (project number T2240), Student Information System PCS (project number T2241), Enterprise Resource Planning (project number T2242), E-Rate (project number T2243), and SETS Expansion PCS (project number T2244).

Schools.

TITLE III—GENERAL PROVISIONS

SEC. 301. Whenever in this Act, an amount is specified within an appropriation for particular purposes or objects of expenditure, such amount, unless otherwise specified, shall be considered as the maximum amount that may be expended for said purpose or object rather than an amount set apart exclusively therefor.

SEC. 302. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor, or, in the case of the Council of the District of Columbia, funds may be expended with the authorization of the Chairman of the Council.

SEC. 303. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government.

SEC. 304. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly provided herein.

SEC. 305. (a) Except as provided in subsection (b), no part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

(b) The District of Columbia may use local funds provided in this Act to carry out lobbying activities on any matter other than—

(1) the promotion or support of any boycott; or

(2) statehood for the District of Columbia or voting representation in Congress for the District of Columbia.

(c) Nothing in this section may be construed to prohibit any elected official from advocating with respect to any of the issues referred to in subsection (b).

SEC. 306. (a) None of the funds provided under this Act to the agencies funded by this Act, both Federal and District government agencies, that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditures for an agency through a reprogramming of funds which—

(1) creates new programs;

(2) eliminates a program, project, or responsibility center;

(3) establishes or changes allocations specifically denied, limited or increased under this Act;

(4) increases funds or personnel by any means for any program, project, or responsibility center for which funds have been denied or restricted;

(5) reestablishes any program or project previously deferred through reprogramming;

(6) augments any existing program, project, or responsibility center through a reprogramming of funds in excess of \$1,000,000 or 10 percent, whichever is less; or

(7) increases by 20 percent or more personnel assigned to a specific program, project or responsibility center, unless

the Committees on Appropriations of the House of Representatives and Senate are notified in writing 15 days in advance of the reprogramming.

(b) None of the local funds contained in this Act may be available for obligation or expenditure for an agency through a transfer of any local funds in excess of \$1,000,000 from one appropriation heading to another unless the Committees on Appropriations of the House of Representatives and Senate are notified in writing 15 days in advance of the transfer, except that in no event may the amount of any funds transferred exceed 4 percent of the local funds in the appropriations.

SEC. 307. Consistent with the provisions of section 1301(a) of title 31, United States Code, appropriations under this Act shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

SEC. 308. Notwithstanding any other provisions of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code, sec. 1-601.01 et seq.), enacted pursuant to section 422(3) of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1-2041.22(3)), shall apply with respect to the compensation of District of Columbia employees. For pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5, United States Code.

Deadline.

SEC. 309. No later than 30 days after the end of the first quarter of fiscal year 2005, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia and the Committees on Appropriations of the House of Representatives and Senate the new fiscal year 2005 revenue estimates as of the end of such quarter. These estimates shall be used in the budget request for fiscal year 2006. The officially revised estimates at midyear shall be used for the midyear report.

Reports.

SEC. 310. No sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in section 303 of the District of Columbia Procurement Practices Act of 1985 (D.C. Law 6-85; D.C. Official Code, sec. 2-303.03), except that the District of Columbia government or any agency thereof may renew or extend sole source contracts for which competition is not feasible or practical, but only if the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated rules and procedures and has been reviewed and certified by the Chief Financial Officer of the District of Columbia.

SEC. 311. None of the Federal funds provided in this Act may be used by the District of Columbia to provide for salaries, expenses, or other costs associated with the offices of United States Senator or United States Representative under section 4(d) of the District of Columbia Statehood Constitutional Convention Initiatives of 1979 (D.C. Law 3-171; D.C. Official Code, sec. 1-123).

Abortion.

SEC. 312. None of the funds appropriated under this Act shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.

SEC. 313. None of the Federal funds made available in this Act may be used to implement or enforce the Health Care Benefits Expansion Act of 1992 (D.C. Law 9-114; D.C. Official Code, sec.

32-701 et seq.) or to otherwise implement or enforce any system of registration of unmarried, cohabiting couples, including but not limited to registration for the purpose of extending employment, health, or governmental benefits to such couples on the same basis that such benefits are extended to legally married couples.

SEC. 314. (a) Notwithstanding any other provision of this Act, the Mayor, in consultation with the Chief Financial Officer of the District of Columbia may accept, obligate, and expend Federal, private, and other grants received by the District government that are not reflected in the amounts appropriated in this Act.

(b)(1) No such Federal, private, or other grant may be accepted, obligated, or expended pursuant to subsection (a) until—

(A) the Chief Financial Officer of the District of Columbia submits to the Council a report setting forth detailed information regarding such grant; and

(B) the Council has reviewed and approved the acceptance, obligation, and expenditure of such grant.

(2) For purposes of paragraph (1)(B), the Council shall be deemed to have reviewed and approved the acceptance, obligation, and expenditure of a grant if—

(A) no written notice of disapproval is filed with the Secretary of the Council within 14 calendar days of the receipt of the report from the Chief Financial Officer under paragraph (1)(A); or

(B) if such a notice of disapproval is filed within such deadline, the Council does not by resolution disapprove the acceptance, obligation, or expenditure of the grant within 30 calendar days of the initial receipt of the report from the Chief Financial Officer under paragraph (1)(A).

(c) No amount may be obligated or expended from the general fund or other funds of the District of Columbia government in anticipation of the approval or receipt of a grant under subsection (b)(2) or in anticipation of the approval or receipt of a Federal, private, or other grant not subject to such subsection.

(d) The Chief Financial Officer of the District of Columbia may adjust the budget for Federal, private, and other grants received by the District government reflected in the amounts appropriated in this Act, or approved and received under subsection (b)(2) to reflect a change in the actual amount of the grant.

(e) The Chief Financial Officer of the District of Columbia shall prepare a quarterly report setting forth detailed information regarding all Federal, private, and other grants subject to this section. Each such report shall be submitted to the Council of the District of Columbia and to the Committees on Appropriations of the House of Representatives and Senate not later than 15 days after the end of the quarter covered by the report.

Reports.

Reports.
Deadline.

SEC. 315. (a) Except as otherwise provided in this section, none of the funds made available by this Act or by any other Act may be used to provide any officer or employee of the District of Columbia with an official vehicle unless the officer or employee uses the vehicle only in the performance of the officer's or employee's official duties. For purposes of this paragraph, the term "official duties" does not include travel between the officer's or employee's residence and workplace, except in the case of—

(1) an officer or employee of the Metropolitan Police Department who resides in the District of Columbia or is otherwise designated by the Chief of the Department;

(2) at the discretion of the Fire Chief, an officer or employee of the District of Columbia Fire and Emergency Medical Services Department who resides in the District of Columbia and is on call 24 hours a day or is otherwise designated by the Fire Chief;

(3) the Mayor of the District of Columbia; and

(4) the Chairman of the Council of the District of Columbia.

Deadline.
Reports.

(b) The Chief Financial Officer of the District of Columbia shall submit by March 1, 2005, an inventory, as of September 30, 2004, of all vehicles owned, leased or operated by the District of Columbia government. The inventory shall include, but not be limited to, the department to which the vehicle is assigned; the year and make of the vehicle; the acquisition date and cost; the general condition of the vehicle; annual operating and maintenance costs; current mileage; and whether the vehicle is allowed to be taken home by a District officer or employee and if so, the officer or employee's title and resident location.

SEC. 316. None of the funds contained in this Act may be used for purposes of the annual independent audit of the District of Columbia government for fiscal year 2005 unless—

(1) the audit is conducted by the Inspector General of the District of Columbia, in coordination with the Chief Financial Officer of the District of Columbia, pursuant to section 208(a)(4) of the District of Columbia Procurement Practices Act of 1985 (D.C. Official Code, sec. 2-302.8); and

(2) the audit includes as a basic financial statement a comparison of audited actual year-end results with the revenues submitted in the budget document for such year and the appropriations enacted into law for such year using the format, terminology, and classifications contained in the law making the appropriations for the year and its legislative history.

SEC. 317. (a) None of the funds contained in this Act may be used by the District of Columbia Corporation Counsel or any other officer or entity of the District government to provide assistance for any petition drive or civil action which seeks to require Congress to provide for voting representation in Congress for the District of Columbia.

(b) Nothing in this section bars the District of Columbia Corporation Counsel from reviewing or commenting on briefs in private lawsuits, or from consulting with officials of the District government regarding such lawsuits.

Hypodermic
needle exchange.

SEC. 318. (a) None of the funds contained in this Act may be used for any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

(b) Any individual or entity who receives any funds contained in this Act and who carries out any program described in subsection (a) shall account for all funds used for such program separately from any funds contained in this Act.

SEC. 319. None of the funds contained in this Act may be used after the expiration of the 60-day period that begins on the date of the enactment of this Act to pay the salary of any chief financial officer of any office of the District of Columbia government (including any independent agency of the District of Columbia) who has not filed a certification with the Mayor and the Chief Financial Officer of the District of Columbia that the officer understands the duties and restrictions applicable to the officer and the officer's agency as a result of this Act (and the amendments

made by this Act), including any duty to prepare a report requested either in the Act or in any of the reports accompanying the Act and the deadline by which each report must be submitted. The Chief Financial Officer of the District of Columbia shall provide to the Committees on Appropriations of the House of Representatives and Senate by the 10th day after the end of each quarter a summary list showing each report, the due date, and the date submitted to the committees.

Deadline.
Reports.

SEC. 320. (a) None of the funds contained in this Act may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 802) or any tetrahydrocannabinols derivative.

(b) The Legalization of Marijuana for Medical Treatment Initiative of 1998, also known as Initiative 59, approved by the electors of the District of Columbia on November 3, 1998, shall not take effect.

Marijuana.

SEC. 321. Nothing in this Act may be construed to prevent the Council or Mayor of the District of Columbia from addressing the issue of the provision of contraceptive coverage by health insurance plans, but it is the intent of Congress that any legislation enacted on such issue should include a “conscience clause” which provides exceptions for religious beliefs and moral convictions.

SEC. 322. The Mayor of the District of Columbia shall submit to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate quarterly reports addressing—

Reports.

(1) crime, including the homicide rate, implementation of community policing, the number of police officers on local beats, and the closing down of open-air drug markets;

(2) access to substance and alcohol abuse treatment, including the number of treatment slots, the number of people served, the number of people on waiting lists, and the effectiveness of treatment programs;

(3) management of parolees and pre-trial violent offenders, including the number of halfway houses escapes and steps taken to improve monitoring and supervision of halfway house residents to reduce the number of escapes to be provided in consultation with the Court Services and Offender Supervision Agency for the District of Columbia;

(4) education, including access to special education services and student achievement to be provided in consultation with the District of Columbia Public Schools and the District of Columbia public charter schools;

(5) improvement in basic District services, including rat control and abatement;

(6) application for and management of Federal grants, including the number and type of grants for which the District was eligible but failed to apply and the number and type of grants awarded to the District but for which the District failed to spend the amounts received; and

(7) indicators of child well-being.

SEC. 323. (a) No later than 30 calendar days after the date of the enactment of this Act, the Chief Financial Officer of the District of Columbia shall submit to the appropriate committees

Deadline.

of Congress, the Mayor, and the Council of the District of Columbia a revised appropriated funds operating budget in the format of the budget that the District of Columbia government submitted pursuant to section 442 of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1-204.42), for all agencies of the District of Columbia government for fiscal year 2005 that is in the total amount of the approved appropriation and that realigns all budgeted data for personal services and other-than-personal-services, respectively, with anticipated actual expenditures.

Applicability.

(b) This section shall apply only to an agency where the Chief Financial Officer of the District of Columbia certifies that a reallocation is required to address unanticipated changes in program requirements.

SEC. 324. None of the funds contained in this Act may be used to issue, administer, or enforce any order by the District of Columbia Commission on Human Rights relating to docket numbers 93-030-(PA) and 93-031-(PA).

SEC. 325. None of the Federal funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 326. Notwithstanding any other law, the District of Columbia Courts shall transfer to the general treasury of the District of Columbia all fines levied and collected by the Courts under section 10(b)(1) and (2) of the District of Columbia Traffic Act (D.C. Official Code, sec. 50-2201.05(b)(1) and (2)). The transferred funds shall remain available until expended and shall be used by the Office of the Corporation Counsel for enforcement and prosecution of District traffic alcohol laws in accordance with section 10(b)(3) of the District of Columbia Traffic Act (D.C. Official Code, sec. 50-2201.05(b)(3)).

SEC. 327. None of the funds contained in this Act may be made available to pay—

(1) the fees of an attorney who represents a party in an action or an attorney who defends an action, including an administrative proceeding, brought against the District of Columbia Public Schools under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) in excess of \$4,000 for that action; or

(2) the fees of an attorney or firm whom the Chief Financial Officer of the District of Columbia determines to have a pecuniary interest, either through an attorney, officer or employee of the firm, in any special education diagnostic services, schools, or other special education service providers.

SEC. 328. The Chief Financial Officer of the District of Columbia shall require attorneys in special education cases brought under the Individuals with Disabilities Act (IDEA) in the District of Columbia to certify in writing that the attorney or representative rendered any and all services for which they receive awards, including those received under a settlement agreement or as part of an administrative proceeding, under the IDEA from the District of Columbia. As part of the certification, the Chief Financial Officer of the District of Columbia shall require all attorneys in IDEA cases to disclose any financial, corporate, legal, memberships on boards of directors, or other relationships with any special education

diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients as part of this certification. The Chief Financial Officer shall prepare and submit quarterly reports to the Committees on Appropriations of the House of Representatives and Senate on the certification of and the amount paid by the government of the District of Columbia, including the District of Columbia Public Schools, to attorneys in cases brought under IDEA. The Inspector General of the District of Columbia may conduct investigations to determine the accuracy of the certifications.

Reports.

SEC. 329. Sections 11-1701(b)(5), 11-1704(b), 11-1723(b), 11-2102(a)(2), and the second and third sentences of section 11-1724, of the District of Columbia Official Code, are hereby repealed.

SEC. 330. Section 11-1728 of the District of Columbia Official Code, is amended to read as follows:

“SEC. 11-1728. RECRUITMENT AND TRAINING OF PERSONNEL AND TRAVEL.

“(a) The Executive Officer shall be responsible for recruiting such qualified personnel as may be necessary for the District of Columbia Courts and for providing in-service training for court personnel.

“(b) Travel under Federal supply schedules is authorized for the travel of court personnel on official business. The joint committee shall prescribe such requirements, conditions and restrictions for such travel as it considers appropriate, and shall include policies and procedures for preventing abuses of that travel authority.”.

SEC. 331. The amount appropriated by this Act may be increased by no more than \$15,000,000 from funds identified in the comprehensive annual financial report as the District’s fiscal year 2004 unexpended general fund surplus. The District may obligate and expend these amounts only in accordance with the following conditions:

(1) The Chief Financial Officer of the District of Columbia shall certify that the use of any such amounts is not anticipated to have a negative impact on the District’s long-term financial, fiscal, and economic vitality.

(2) The District of Columbia may only use these funds for the following expenditures:

- (A) Unanticipated one-time expenditures.
- (B) Expenditures to avoid deficit spending.
- (C) Debt Reduction.
- (D) Unanticipated program needs.
- (E) Expenditures to avoid revenue shortfalls.

(3) The amounts shall be obligated and expended in accordance with laws enacted by the Council in support of each such obligation or expenditure.

(4) The amounts may not be used to fund the agencies of the District of Columbia government under court ordered receivership.

(5) The amounts may be obligated and expended only if approved by the Committees on Appropriations of the House of Representatives and Senate in advance of any obligation or expenditure.

SEC. 332. Section 450A of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code, sec. 1-204.50a), is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

Deadline.

“(1) IN GENERAL.—There is established an emergency cash reserve fund (‘emergency reserve fund’) as an interest-bearing account (separate from other accounts in the General Fund) into which the Mayor shall make a deposit in cash not later than October 1 of each fiscal year of such an amount as may be required to maintain a balance in the fund of at least 2 percent of the operating expenditures as defined in paragraph (2) of this subsection or such amount as may be required for deposit in a fiscal year in which the District is replenishing the emergency reserve fund pursuant to subsection (a)(7).”.

(B) Paragraph (2) is amended to read as follows:

“(2) IN GENERAL.—For the purpose of this subsection, operating expenditures is defined as the amount reported in the District of Columbia’s Comprehensive Annual Financial Report for the fiscal year immediately preceding the current fiscal year as the actual operating expenditure from local funds, less such amounts that are attributed to debt service payments for which a separate reserve fund is already established under this Act.”.

(C) Paragraph (7) is amended to read as follows:

“(7) REPLENISHMENT.—The District of Columbia shall appropriate sufficient funds each fiscal year in the budget process to replenish any amounts allocated from the emergency reserve fund during the preceding fiscal years so that not less than 50 percent of any amount allocated in the preceding fiscal year or the amount necessary to restore the emergency reserve fund to the 2 percent required balance, whichever is less, is replenished by the end of the first fiscal year following each such allocation and 100 percent of the amount allocated or the amount necessary to restore the emergency reserve fund to the 2 percent required balance, whichever is less, is replenished by the end of the second fiscal year following each such allocation.”.

(2) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

Deadline.

“(1) IN GENERAL.—There is established a contingency cash reserve fund (‘contingency reserve fund’) as an interest-bearing account, separate from other accounts in the General Fund, into which the Mayor shall make a deposit in cash not later than October 1 of each fiscal year of such amount as may be required to maintain a balance in the fund of at least 4 percent of the operating expenditures as defined in paragraph (2) of this subsection or such amount as may be required for deposit in a fiscal year in which the District is replenishing the emergency reserve fund pursuant to subsection (b)(6).”.

(B) Paragraph (2) is amended to read as follows:

“(2) IN GENERAL.—For the purpose of this subsection, operating expenditures is defined as the amount reported in the District of Columbia’s Comprehensive Annual Financial Report for the fiscal year immediately preceding the current fiscal year as the actual operating expenditure from local funds, less such amounts that are attributed to debt service payments for which a separate reserve fund is already established under this Act.”.

(C) Paragraph (6) is amended to read as follows:

“(6) REPLENISHMENT.—The District of Columbia shall appropriate sufficient funds each fiscal year in the budget process to replenish any amounts allocated from the contingency reserve fund during the preceding fiscal years so that not less than 50 percent of any amount allocated in the preceding fiscal year or the amount necessary to restore the contingency reserve fund to the 4 percent required balance, whichever is less, is replenished by the end of the first fiscal year following each such allocation and 100 percent of the amount allocated or the amount necessary to restore the contingency reserve fund to the 4 percent required balance, whichever is less, is replenished by the end of the second fiscal year following each such allocation.”.

SEC. 333. For fiscal year 2005, the Chief Financial Officer shall re-calculate the emergency and contingency cash reserve funds amount established by section 450A of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code, sec. 1-204.50a), as amended by this Act and is authorized to transfer funds between the emergency and contingency cash reserve funds to reach the required percentages: *Provided*, That for fiscal year 2005, the Chief Financial Officer may transfer funds from the emergency and contingency cash reserve funds to the general fund of the District of Columbia to the extent that such funds are not necessary to meet the requirements established for each fund: *Provided further*, That the Chief Financial Officer may not transfer funds from the emergency or the contingency reserve funds to the extent that such a transfer would lower the fiscal year 2005 total percentage below 7 percent of operating expenditures, as amended by this Act.

SEC. 334. (a) Section 6 of the Policemen and Firemen’s Retirement and Disability Act Amendments of 1957 (sec. 5-732, D.C. Official Code) is amended by striking the period at the end of the first sentence and inserting the following: “, and for the administrative costs associated with making such benefit payments.”.

(b) The amendment made by subsection (a) shall apply with respect to fiscal year 2005 and each succeeding fiscal year. Applicability.

SEC. 335. (a) CONTINUING AVAILABILITY OF AMOUNTS IN CHARTER SCHOOL FUND.—Section 2403(b)(1) of the District of Columbia School Reform Act of 1995 (sec. 38-1804.03(b)(1), D.C. Official Code) is amended by adding at the end the following new sentence: “Amounts in the Charter School Fund shall remain available until expended, and any amounts in the Fund remaining unobligated or unexpended at the end of a fiscal year shall not revert to the General Fund of the District of Columbia.”.

(b) AVAILABILITY OF ADDITIONAL LOCAL FUNDS FOR CHARTER SCHOOL FUND.—Section 2403(b)(2)(A) of such Act (sec. 38-1804.03(b)(2)(A), D.C. Official Code) is amended by inserting after “District of Columbia,” the following: “together with any other local funds that the Chief Financial Officer of the District of Columbia certifies are necessary to carry out the purposes of the Fund during the fiscal year,”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal year 2005 and each succeeding fiscal year. Applicability.

SEC. 336. (a) CONTINUATION OF CERTAIN AUTHORITY OF CHIEF FINANCIAL OFFICER.—Section 2302 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11; 117

Stat. 593), is amended by striking “September 30, 2004” and inserting “September 30, 2005”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Emergency Wartime Supplemental Appropriations Act, 2003.

SEC. 337. (a) Section 106(b) of the District of Columbia Public Works Act of 1954 (sec. 34-2401.25(b), D.C. Official Code) is amended by striking paragraph (5).

(b) Section 212(b) of such Act (sec. 34-2112(b), D.C. Official Code) is amended by striking paragraph (5).

Applicability.

(c) The amendments made by this section shall apply with respect to quarters occurring during fiscal year 2005 and each succeeding fiscal year.

SEC. 338. Notwithstanding any other provision of this Act, there is hereby appropriated for the Office of the Inspector General such amounts in local funds, as are consistent with the annual estimates for the expenditures and appropriations necessary for the operation of the Office of the Inspector General as prepared by the Inspector General and submitted to the Mayor and forwarded to the Council pursuant to D.C. Official Code 2-302.08(a)(2)(A) for fiscal year 2005: *Provided*, That the Office of the Chief Financial Officer shall take such steps as are necessary to implement the provisions of this subsection.

SEC. 339. The paragraph under the heading “Federal Payment for Incentives for Adoption of Children” in Public Law 106-113, approved November 29, 1999 (113 Stat. 1501), is amended to add the following proviso: “: *Provided further*, That the funds provided under this heading for the establishment of a scholarship fund for District of Columbia children of adoptive families, and District of Columbia children without parents due to the September 11, 2001 terrorist attack to be used for post high school education and training, once obligated by the District to establish the scholarship fund, shall remain obligated and be retained by the District for 25 years from the date of obligation to allow for any individual who is within the class of persons to be assisted by this provision to reach post high school and to present expenditures to be extinguished by the fund”.

20 USC 1155.

SEC. 340. AUTHORITY OF OPCSFS. (a) Section 161(3)(E)(i) of Public Law 106-522 shall be amended to include a new section known as (E)(i)(IV) to establish regulations for administering lease guarantees through the credit enhancement fund to public charter schools in the District of Columbia.

(b) The first sentence of section 143 of the District of Columbia Appropriations Act of 2003 (Public Law 108-7; 117 Stat. 130) approved April 20, 2003 is amended by striking the phrase, “under the authority of the Department of Banking and Financial Institutions” and inserting “under the authority of the Mayor” in its place.

SEC. 341. PROCESS FOR FILING CHARTER PETITIONS. D.C. Code 38-1802.01 is amended by adding a new subsection (e) as follows:

“(e) A petition to establish a public charter school in the District of Columbia, or to convert a District of Columbia public school or an existing private or independent school, is a public document.”.

SEC. 342. AMENDMENTS TO CHARTER SCHOOL LAW. (a) PROCESS FOR FILING CHARTER PETITIONS.—Section 2201 of the District of Columbia School Reform Act of 1995 (D.C. Code 38-1802.01) is amended—

(1) in subsection (a)(3)(B), by striking “two-thirds” and inserting “51 percent”; and

(2) in subsection (b)(3)(B), by striking “two-thirds” and inserting “51 percent”.

(b) EMPLOYEES.—Section 2207 of the District of Columbia School Reform Act of 1995 (D.C. Code 38-1802.07) is amended by adding at the end the following:

“(d) TEACHERS REMAINING AT CONVERTED PUBLIC CHARTER SCHOOLS.—A teacher employed at a District of Columbia public school that converts to a public charter school under section 2201 shall have the option of remaining at the charter school during the school’s first year of operation after receiving an extended leave of absence under subsection (a)(1). After this 1-year period, the teacher may continue to be employed at the public charter school, at the sole discretion of the public charter school, or shall maintain current status within the District of Columbia public school system.”.

(c) PUBLIC SCHOOL SERVICES TO PUBLIC CHARTER SCHOOLS.—Section 2209(b) of the District of Columbia School Reform Act of 1995 (D.C. Code 38-1802.09(b)) is amended—

(1) in paragraph (1)—

(A) by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—Notwithstanding any other provision of law, regulation, or order relating to the disposition of a facility or property described in subparagraph (B), or to the disposition of any property of the District of Columbia, the Mayor and the District of Columbia government shall give a right of first offer, which right shall be annually reinstated with respect to any facility or property not previously disposed of, or under contract to be disposed of, to an eligible applicant whose petition to establish a public charter school has been conditionally approved under section 2203(d)(2), or a Board of Trustees, with respect to the purchase, lease, transfer, or use of a facility or property described in subparagraph (B).”;

(B) by amending subparagraph (B)(iii) to read as follows:

“(iii) With respect to which—

“(I) the Board of Education has transferred jurisdiction to the Mayor and over which the Mayor has jurisdiction on the effective date of this subclause; or

“(II) over which the Mayor or any successor agency gains jurisdiction after the effective date of this subclause.”; and

(C) by adding at the end the following:

“(C) TERMS OF PURCHASE OR LEASE.—The terms of purchase or lease of a facility or property described in subparagraph (B) shall—

“(i) be negotiated by the Mayor;

“(ii) include rent or an acquisition price, as applicable, that is at least 25 percent less than the appraised value of the property (based on use of the property for school purposes); and

“(iii) include a lease period, if the property is to be leased, of not less than 25 years, and renewable for additional 25-year periods as long as the eligible

applicant or Board of Trustees maintains its charter.”; and

(2) in paragraph (2)(A), by striking “preference” and inserting “a right to first offer”; and

(3) by adding at the end the following:

“(3) CONVERSION PUBLIC CHARTER SCHOOLS.—Any District of Columbia public school that was approved to become a conversion public charter school under section 2201 before the effective date of this subsection or is approved to become a conversion public charter school after the effective date of this subsection, shall have the right to exclusively occupy the facilities the school occupied as a District of Columbia public school under a lease for a period of not less than 25 years, renewable for additional 25-year periods as long as the school maintains its charter at the non-profit rate, or if there is no non-profit rate, at 25 percent less than the fair market rate for school use.”.

SEC. 343. ANNUAL REPORT TO CONGRESS. Section 2211 of the School Reform Act of 1995 (D.C. Code 38-1802.11) is amended by—

(1) adding the following new subparagraph at the end of section 2211(a)(1):

“(D) Shall ensure that each public charter school complies with the annual reporting requirement of subsection 38-1802.04(b)(11) of this Act, including submission of the audited financial statement required by sub-subsection (B)(ix) of that section.”; and

(2) adding the following before the period at the end of subparagraph (d):

“(10) details of major Board actions; (11) major findings from school reviews of academic, financial, and compliance with health and safety standards and resulting Board action or recommendations; (12) details of the fifth year review process and outcomes; (13) summary of annual financial audits of all charter schools, including (a) the number of schools that failed to timely submit the audited financial statement required by that section; (b) the number of schools whose audits revealed a failure to follow required accounting practices or other material deficiencies; and (c) the steps taken by the authority to ensure that deficiencies found by the audits are rectified; (14) number of schools which have required intervention by authorizing board to address any academic or operational issue; (15) what recommendations an authorizing board has made to correct identified deficiencies”.

SEC. 344. TRANSFER TO DISTRICT OF COLUMBIA. (a) TRANSFER OF JURISDICTION.—

Deadline.

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, subject to subsection (b), the Director of the National Park Service (referred to in this section as the “NPS”), acting on behalf of the Secretary of the Interior, shall transfer jurisdiction to the government of the District of Columbia, without consideration, the property described in paragraph (2).

(2) PROPERTY.—The property referred to in paragraph (1) is—

(A) a portion of National Park Service land in Anacostia Park, U.S. Reservation 343, Section G, the boundaries of which are the Anacostia River to the west, Watts Branch to the south, Kenilworth Aquatic Gardens to the north, and Anacostia Avenue to the east which includes the community center currently occupied under permit by the District of Columbia known as the “Kenilworth Parkside Community Center”; and

(B) all of U.S. Reservation 523.

(b) CONDITIONS OF TRANSFER.—

(1) TERM.—Jurisdiction will be transferred from the NPS to the District of Columbia.

(2) CONDITION OF TRANSFER.—The transfer of jurisdiction under subsection (a)(1) shall be subject to such terms and conditions, to be included in a Declaration of Covenants to be mutually executed between NPS and the District of Columbia to ensure that the property transferred under that subsection—

(A) is used only for the provision of public recreational facilities, open space, or public outdoor recreational opportunities; and

(B) nothing in this Act precludes the District of Columbia from entering into a lease for all or part of the property with a public not-for-profit entity for the management or maintenance of the property.

(3) TERMINATION.—

(A) IN GENERAL.—The transfer under subsection (a)(1) shall terminate if—

(i) any term or condition of the transfer described in paragraph (2) or contained within the Declaration of Covenants described in paragraph (2) is violated, as determined by the NPS; and

(ii) the violation is not corrected by the date that is 90 days after the date on which the Mayor of the District of Columbia receives from the NPS a written notice of the violation.

Deadline.

(B) DETERMINATION OF CORRECTION.—A violation of a term or condition of the transfer under subsection (a)(1) shall be determined to have been corrected under subparagraph (A)(ii) if, after notification of the violation, the District of Columbia and the NPS enter into an agreement that the NPS considers to be adequate to ensure that the property transferred will be used in a manner consistent with paragraph (2).

(4) PROHIBITION OF CIVIL ACTIONS.—No person may bring a civil action relating to a violation of any term or condition of the transfer described in paragraph (2) before the date that is 90 days after the person notifies the Mayor of the District of Columbia of the alleged violation (including the intent of the person to bring a civil action for termination of the transfer under paragraph (3)).

(5) REMOVAL OF STRUCTURES; REHABILITATION.—The transfer under subsection (a)(1) shall be subject to the condition that, in the event of a termination of the transfer under paragraph (3), the District of Columbia shall bear the cost of removing structures on, or rehabilitating, the property transferred.

(6) ADMINISTRATION OF PROPERTY.—If the transfer under subsection (a)(1) is terminated under paragraph (3), the property covered by the transfer shall be returned to the NPS and administered as a unit of the National Park System in the District of Columbia in accordance with—

(A) the Act of August 25, 1916 (commonly known as the “National Park Service Organic Act”) (16 U.S.C. 1 et seq.); and

(B) other laws (including regulations) generally applicable to units of the National Park System.

SEC. 345. The project for the Chicago Sanitary and Ship Canal Dispersal Barrier, Illinois, initiated under section 1135 of Public Law 99-662, is authorized at a total cost of \$9,100,000 with a Federal cost of \$6,825,000 and a non-Federal cost of \$2,275,000.

SEC. 346. BIENNIAL EVALUATION OF CHARTER SCHOOL AUTHORIZING BOARDS. (a) Biennial management evaluation of the District of Columbia Chartering Authorities for the District of Columbia Public Charter Schools shall be conducted by the Comptroller General of the United States.

(b) Evaluation shall include the following:

(1) Establish standards to assess each authorizer’s procedures and oversight quality.

(2) Identify gaps in oversight and recommendations.

(3) Review processes of charter school applications.

(4) Extent of ongoing monitoring, technical assistance, and sanctions provided to schools.

(5) Compliance with annual reporting requirements.

(6) Actual budget expenditures for the preceding 2 fiscal years.

(7) Comparison of budget expenditures with mandated responsibilities.

(8) Alignment with best practices.

(9) Quality and timeliness of meeting section 2211(d) of the School Reform Act of 1995 (D.C. Code 38-1802.11(d)), as amended.

Deadline.

(c) INITIAL INTERIM REPORT TO CONGRESS.—The Government Accountability Office shall submit to the Committees on Appropriations of the House of Representatives and Senate, no later than May 1, 2005, a baseline report on the performance of each authorizer in meeting the requirements of the School Reform Act of 1995.

Applicability.

(d) Hereafter section 2214(f) of Public Law 104-143 (D.C. Code 38-1802.14(f)), shall apply to the District of Columbia Board of Education Charter Schools Office.

SEC. 347. CLARIFYING OPERATIONS OF PUBLIC CHARTER SCHOOL BOARD. Section 2214 of the School Reform Act of 1995 (Public Law 104-134; D.C. Code 38-1802.14), is amended—

110 Stat. 1321-133.

(1) by striking subsection (f) and inserting the following:

“(f) AUDIT.—The Board shall maintain its accounts according to Generally Accepted Accounting Principles for Not-for-Profit Organizations. The Board shall provide for an audit of the financial statements of the Board by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General of the United States. The findings and recommendations of any such audit shall be forwarded to the Mayor, the District of Columbia Council, the

appropriate congressional committees, and the Office of the Chief Financial Officer.”; and

(2) adding at the end the following:

“(h) CONTRACTING AND PROCUREMENT.—The Board shall have the authority to solicit, award, and execute contracts independently of the Office of Contracting and Procurement and the Chief Procurement Officer. Nothing in chapter 3 of title 2 of the District of Columbia Code shall affect the authority of the Board under this subsection.”.

This Act may be cited as the “District of Columbia Appropriations Act, 2005”.

Approved October 18, 2004.

LEGISLATIVE HISTORY—H.R. 4850 (S. 2826):

HOUSE REPORTS: Nos. 108–610 (Comm. on Appropriations) and 108–734 (Comm. of Conference).

SENATE REPORTS: No. 108–354 accompanying S. 2826 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 20, considered and passed House.

Sept. 22, considered and passed Senate, amended, in lieu of S. 2826.

Oct. 6, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Oct. 18, Presidential statement.



Public Law 108–336
108th Congress

An Act

Oct. 18, 2004
[S. 551]

Southern Ute
and Colorado
Inter-
governmental
Agreement
Implementation
Act of 2004.

To provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004”.

SEC. 2. FINDINGS AND PURPOSE.

(a) **FINDINGS.**—Congress, after review and in recognition of the purposes and uniqueness of the Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado, finds that—

(1) the Intergovernmental Agreement is consistent with the special legal relationship between Federal Government and the Tribe; and

(2) air quality programs developed in accordance with the Intergovernmental Agreement and submitted by the Tribe for approval by the Administrator may be implemented in a manner that is consistent with the Clean Air Act (42 U.S.C. 7401 et seq.).

(b) **PURPOSE.**—The purpose of this Act is to provide for the implementation and enforcement of air quality control programs under the Clean Air Act (42 U.S.C. 7401 et seq.) and other air quality programs developed in accordance with the Intergovernmental Agreement that provide for—

(1) the regulation of air quality within the exterior boundaries of the Reservation; and

(2) the establishment of a Southern Ute Indian Tribe/State of Colorado Environmental Commission.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) **COMMISSION.**—The term “Commission” means the Southern Ute Indian Tribe/State of Colorado Environmental Commission established by the State and the Tribe in accordance with the Intergovernmental Agreement.

(3) INTERGOVERNMENTAL AGREEMENT.—The term “Intergovernmental Agreement” means the agreement entered into by the Tribe and the State on December 13, 1999.

(4) RESERVATION.—The term “Reservation” means the Southern Ute Indian Reservation.

(5) STATE.—The term “State” means the State of Colorado.

(6) TRIBE.—The term “Tribe” means the Southern Ute Indian Tribe.

SEC. 4. TRIBAL AUTHORITY.

(a) AIR PROGRAM APPLICATIONS.—

(1) IN GENERAL.—The Administrator is authorized to treat the Tribe as a State for the purpose of any air program applications submitted to the Administrator by the Tribe under section 301(d) of the Clean Air Act (42 U.S.C. 7601(d)) to carry out, in a manner consistent with the Clean Air Act (42 U.S.C. 7401 et seq.), the Intergovernmental Agreement.

(2) APPLICABILITY.—If the Administrator approves an air program application of the Tribe, the approved program shall be applicable to all air resources within the exterior boundaries of the Reservation.

(b) TERMINATION.—If the Tribe or the State terminates the Intergovernmental Agreement, the Administrator shall promptly take appropriate administrative action to withdraw treatment of the Tribe as a State for the purpose described in subsection (a)(1).

SEC. 5. CIVIL ENFORCEMENT.

(a) IN GENERAL.—If any person fails to comply with a final civil order of the Tribe or the Commission made in accordance with the Clean Air Act (42 U.S.C. 7401 et seq.) or any other air quality program established under the Intergovernmental Agreement, the Tribe or the Commission, as appropriate, may bring a civil action for declaratory or injunctive relief, or for other orders in aid of enforcement, in the United States District Court for the District of Colorado.

(b) NO EFFECT ON RIGHTS OR AUTHORITY.—Nothing in this Act alters, amends, or modifies any right or authority of any person (as defined in section 302(e) of the Clean Air Act (42 U.S.C. 7601(e)) to bring a civil action under section 304 of the Clean Air Act (42 U.S.C. 7603).

SEC. 6. JUDICIAL REVIEW.

Any decision by the Commission that would be subject to appellate review if it were made by the Administrator—

(1) shall be subject to appellate review by the United States Court of Appeals for the Tenth Circuit; and

(2) may be reviewed by the Court of Appeals applying the same standard that would be applicable to a decision of the Administrator.

SEC. 7. DISCLAIMER.

Nothing in this Act—

(1) modifies any provision of—

(A) the Clean Air Act (42 U.S.C. 7401 et seq.);

(B) Public Law 98-290 (25 U.S.C. 668 note); or

(C) any lawful administrative rule promulgated in accordance with those statutes; or

(2) affects or influences in any manner any past or prospective judicial interpretation or application of those statutes by the United States, the Tribe, the State, or any Federal, tribal, or State court.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 551:

HOUSE REPORTS: No. 108–712, Pt. 1 (Comm. on Resources) and Pt. 2 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 108–201 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 21, considered and passed Senate.

Vol. 150 (2004): Oct. 4, considered and passed House.



Public Law 108–337
108th Congress

An Act

To authorize the subdivision and dedication of restricted land owned by Alaska Natives.

Oct. 18, 2004
[S. 1421]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Alaska Native Allotment Subdivision Act”.

Alaska Native
Allotment
Subdivision Act.
43 USC 1617
note.

SEC. 2. DEFINITIONS.

In this Act:

(1) **RESTRICTED LAND.**—The term “restricted land” means land in the State that is subject to Federal restrictions against alienation and taxation.

(2) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(3) **STATE.**—The term “State” means the State of Alaska.

43 USC 1617
note.

SEC. 3. SUBDIVISION AND DEDICATION OF ALASKA NATIVE RESTRICTED LAND.

43 USC 1617
note.

(a) **IN GENERAL.**—An Alaska Native owner of restricted land may, subject to the approval of the Secretary—

(1) subdivide the restricted land in accordance with the laws of the—

(A) State; or

(B) applicable local platting authority; and

(2) execute a certificate of ownership and dedication with respect to the restricted land subdivided under paragraph (1) with the same effect under State law as if the restricted land subdivided and dedicated were held by unrestricted fee simple title.

(b) **RATIFICATION OF PRIOR SUBDIVISIONS AND DEDICATIONS.**—Any subdivision or dedication of restricted land executed before the date of enactment of this Act that has been approved by the Secretary and by the relevant State or local platting authority, as appropriate, shall be considered to be ratified and confirmed by Congress as of the date on which the Secretary approved the subdivision or dedication.

SEC. 4. EFFECT ON STATUS OF LAND NOT DEDICATED.

43 USC 1617
note.

Except in a case in which a specific interest in restricted land is dedicated under section 3(a)(2), nothing in this Act terminates, diminishes, or otherwise affects the continued existence and applicability of Federal restrictions against alienation and taxation

on restricted land or interests in restricted land (including restricted land subdivided under section 3(a)(1)).

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 1421:

SENATE REPORTS: No. 108-251 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Oct. 4, considered and passed House.



Public Law 108–338
108th Congress

An Act

To direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery.

Oct. 18, 2004
[S. 1537]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE OF PROPERTY IN POPE COUNTY, ARKANSAS.

(a) **CONVEYANCE ON CONDITION SUBSEQUENT.**—Not later than 90 days after the date of enactment of this Act, subject to valid existing rights and the condition stated in subsection (c), the Secretary of Agriculture, acting through the Chief of the Forest Service (referred to in this section as the “Secretary”), shall convey to the New Hope Cemetery Association (referred to in this section as the “association”), for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b). Deadline.

(b) **DESCRIPTION OF LAND.**—The parcel of land referred to in subsection (a) is the parcel of National Forest System land (including any improvements on the land) that—

(1) is known as “New Hope Cemetery Tract 6686c”;

(2) consists of approximately 1.1 acres; and

(3) is more particularly described as a portion of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of section 30, T. 11, R. 17W, Pope County, Arkansas.

(c) **CONDITION ON USE OF LAND.**—

(1) **IN GENERAL.**—The association shall use the parcel conveyed under subsection (a) as a cemetery.

(2) **REVERSION.**—If the Secretary, after notice to the association and an opportunity for a hearing, makes a finding that the association has used or permitted the use of the parcel for any purpose other than the purpose specified in paragraph (1), and the association fails to discontinue that use, title to

the parcel shall, at the option of the Secretary, revert to the United States, to be administered by the Secretary.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 1537:

HOUSE REPORTS: No. 108–654 (Comm. on Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 24, considered and passed Senate.

Vol. 150 (2004): Sept. 28, considered and passed House.



Public Law 108–339
108th Congress

An Act

To replace certain Coastal Barrier Resources System maps.

Oct. 18, 2004

[S. 1663]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPLACEMENT OF CERTAIN COASTAL BARRIER RESOURCES SYSTEM MAPS.

16 USC 3503
note.

(a) IN GENERAL.—The 2 maps subtitled “NC–07P”, relating to the Coastal Barrier Resources System unit designated as Coastal Barrier Resources System Cape Fear Unit NC–07P, that are included in the set of maps entitled “Coastal Barrier Resources System” and referred to in section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)), are hereby replaced by 2 other maps relating to those units entitled “Coastal Barrier Resources System Cape Fear Unit, NC–07P” and dated May 5, 2004.

(b) AVAILABILITY.—The Secretary of the Interior shall keep the maps referred to in subsection (a) on file and available for inspection in accordance with the provisions of section 4(b) of the Coastal Barrier Resources Act (16 U.S.C. 3503(b)).

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 1663:

SENATE REPORTS: No. 108–179 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 6, considered and passed Senate.

Vol. 150 (2004): June 14, considered and passed House, amended.
Sept. 28, Senate concurred in House amendment.



Public Law 108–340
108th Congress

An Act

Oct. 18, 2004
[S. 1687]

Manhattan
Project National
Historical Park
Study Act.
State listing.

To direct the Secretary of the Interior to conduct a study on the preservation and interpretation of the historic sites of the Manhattan Project for potential inclusion in the National Park System.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Manhattan Project National Historical Park Study Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) STUDY.—The term “study” means the study authorized by section 3(a).

(3) STUDY AREA.—

(A) IN GENERAL.—The term “study area” means the historically significant sites associated with the Manhattan Project.

(B) INCLUSIONS.—The term “study area” includes—

(i) Los Alamos National Laboratory and townsite in the State of New Mexico;

(ii) the Hanford Site in the State of Washington; and

(iii) Oak Ridge Reservation in the State of Tennessee.

SEC. 3. SPECIAL RESOURCE STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Energy, shall conduct a special resource study of the study area to assess the national significance, suitability, and feasibility of designating 1 or more sites within the study area as a unit of the National Park System in accordance with section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)).

(2) ADMINISTRATION.—In conducting the study, the Secretary shall—

(A) consult with interested Federal, State, tribal, and local officials, representatives of organizations, and members of the public;

(B) evaluate, in coordination with the Secretary of Energy, the compatibility of designating 1 or more sites within the study area as a unit of the National Park

System with maintaining the security, productivity, and management goals of the Department of Energy and public health and safety; and

(C) consider research in existence on the date of enactment of this Act by the Department of Energy on the historical significance and feasibility of preserving and interpreting the various sites and structures in the study area.

(b) REPORT.—Not later than 2 years after the date on which funds are made available to carry out the study, the Secretary shall submit to Congress a report that describes the findings of the study and the conclusions and recommendations of the Secretary.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 1687:

SENATE REPORTS: No. 108–270 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 108–341
108th Congress

An Act

Oct. 18, 2004
[S. 1814]

To transfer Federal lands between the Secretary of Agriculture and the Secretary of the Interior.

Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSES AND DEFINITIONS.

(a) **PURPOSES.**—The purposes of this Act are—

(1) to transfer administrative jurisdiction of certain Federal lands in Missouri from the Secretary of the Interior to the Secretary of Agriculture for continued Federal operation of the Mingo Job Corps Civilian Conservation Center; and

(2) to not change the Secretary of Labor’s role or authority regarding this Job Corps Center.

(b) **DEFINITIONS.**—For the purposes of this Act—

(1) “Center” means the Mingo Job Corps Civilian Conservation Center in Stoddard County, Missouri, referenced in section 2(a) of this Act;

(2) “eligible employee” means a person who, as of the date of enactment of this Act, is a full-time, part-time, or intermittent annual or per hour permanent Federal Government employee of the Fish and Wildlife Service at the Mingo Job Corps Civilian Conservation Center, including the two fully funded Washington Office Job Corps support staff;

(3) “Environmental Authorities” mean all applicable Federal, State and local laws (including regulations) and requirements related to protection of human health, natural resources, or the environment, including but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.); the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.); the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.); the Clean Air Act (42 U.S.C. 7401, et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.); the Toxic Substances Control Act (15 U.S.C. 2601, et seq.); the Safe Drinking Water Act (42 U.S.C. 300f, et seq.); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.);

(4) “U.S. Fish and Wildlife Service” means the United States Fish and Wildlife Service as referenced at title 16, United States Code, section 742b(b);

(5) “Forest Service” means the Department of Agriculture Forest Service as established by the Secretary of Agriculture pursuant to the authority of title 16, United States Code, section 551;

(6) “Job Corps” means the national Job Corps program established within the Department of Labor, as set forth in the Workforce Investment Act of 1998, Public Law No. 105-220, §§ 141–161, 112 Stat. 1006–1021 (1998) (codified at 29 U.S.C. 2881–2901);

(7) “National Forest System” means that term as defined at title 16, United States Code, section 1609(a); and

(8) “National Wildlife Refuge System” means that term as defined at title 16, United States Code, section 668dd.

SEC. 2. TRANSFER OF ADMINISTRATION.

(a) **TRANSFER OF CENTER.**—Administrative jurisdiction over the Mingo Job Corps Civilian Conservation Center, comprising approximately 87 acres in Stoddard County, Missouri, as generally depicted on a map entitled “Mingo National Wildlife Refuge”, dated September 17, 2002, to be precisely identified in accordance with subsection (c) of this section, is hereby transferred, without consideration, from the Secretary of the Interior to the Secretary of Agriculture.

(b) **MAPS AND LEGAL DESCRIPTIONS.**—

(1) The map referenced in this section shall be on file and available for public inspection in the Office of the Chief, Forest Service, Washington, DC, and in the office of the Chief of Realty, U.S. Fish and Wildlife Service, Arlington, Virginia.

(2) Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall file a legal description and map of all of the lands comprising the Center and being transferred by section 2(a) of this Act with the Committee on Resources of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate, and such description and map shall have the same force and effect as if included in this Act, except that the Secretary of the Interior may make typographical corrections as necessary.

(c) **APPLICABLE LAWS.**—

(1) Subject to section 3, the Center transferred pursuant to subsection (a) shall be administered by the Secretary of Agriculture and shall be subject to the laws and regulations applicable to the National Forest System.

(2) This transfer shall not conflict or interfere with any laws and regulations applicable to Job Corps.

SEC. 3. IMPLEMENTATION OF TRANSFER.

(a) **REVERSION REQUIREMENT.**—

(1) In the event that the Center is no longer used or administered for Job Corps purposes, as concurred to by the Secretary of Labor, the Secretary of Agriculture shall so notify the Secretary of the Interior, and the Secretary of the Interior shall have 180 days from the date of such notice to exercise discretion to reassume jurisdiction over such lands.

(2) The reversionary provisions of subsection (a) shall be effected, without further action by the Congress, through a Letter of Transfer executed by the Chief, Forest Service, and the Director, United States Fish and Wildlife Service, and with notice thereof published in the Federal Register within 60 days of the date of the Letter of Transfer.

(b) **AUTHORIZATIONS.**—

Notification.
Deadline.

Federal Register,
publication.
Deadline.

(1) IN GENERAL.—A permit or other authorization granted by the U.S. Fish and Wildlife Service on the Center that is in effect on the date of enactment of this Act will continue with the concurrence of the Forest Service.

(2) REISSUANCE.—A permit or authorization described in paragraph (1) may be reissued or terminated under terms and conditions prescribed by the Forest Service.

(3) EXERCISE OF RIGHTS.—The Forest Service may exercise any of the rights of the U.S. Fish and Wildlife Service contained in any permit or other authorization, including any right to amend, modify, and revoke the permit or authorization.

(c) CONTRACTS.—

(1) EXISTING CONTRACTS.—The Forest Service is authorized to undertake all rights and obligations of the U.S. Fish and Wildlife Service under contracts entered into by the U.S. Fish and Wildlife Service on the Center that is in effect on the date of enactment of this Act.

(2) NOTICE OF NOVATION.—The Forest Service shall promptly notify all contractors that it is assuming the obligations of the U.S. Fish and Wildlife Service under such contracts.

(3) DISPUTES.—Any contract disputes under the Contracts Disputes Act (41 U.S.C. 601, et seq.) regarding the administration of the Center and arising prior to the date of enactment of this Act shall be the responsibility of the U.S. Fish and Wildlife Service.

(d) MEMORANDUM OF AGREEMENT.—

(1) IN GENERAL.—The Chief, Forest Service, and the Director, U.S. Fish and Wildlife Service, are authorized to enter into a memorandum of agreement concerning implementation of this Act, including procedures for—

(A) the orderly transfer of employees of the U.S. Fish and Wildlife Service to the Forest Service;

(B) the transfer of property, fixtures, and facilities;

(C) the transfer of records;

(D) the maintenance and use of roads and trails; and

(E) other transfer issues.

(e) AGREEMENTS WITH THE SECRETARY OF LABOR.—In the operation of the Center, the Forest Service will undertake the rights and obligations of the U.S. Fish and Wildlife Service with respect to existing agreements with the Secretary of Labor pursuant to Public Law 105-220 (29 U.S.C. 2887, et seq.), and the Forest Service will be the responsible agency for any subsequent agreements or amendments to existing agreements.

(f) RECORDS.—

(1) AREA MANAGEMENT RECORDS.—The Forest Service shall have access to all records of the U.S. Fish and Wildlife Service pertaining to the management of the Center.

(2) PERSONNEL RECORDS.—The personnel records of eligible employees transferred pursuant to this Act, including the Official Personnel Folder, Employee Performance File, and other related files, shall be transferred to the Forest Service.

(3) LAND TITLE RECORDS.—The U.S. Fish and Wildlife Service shall provide to the Forest Service records pertaining to land titles, surveys, and other records pertaining to transferred real property and facilities.

(g) TRANSFER OF PERSONAL PROPERTY.—

(1) **IN GENERAL.**—All federally owned personal property present at the Center is hereby transferred without consideration to the jurisdiction of the Forest Service, except that with regard to personal property acquired by the Fish and Wildlife Service using funds provided by the Department of Labor under the Job Corps program, the Forest Service shall dispose of any such property in accordance with the procedures stated in section 7(e) of the 1989 Interagency Agreement for Administration of Job Corps Civilian Conservation Center Program, as amended, between the Department of Labor and the Department of the Interior.

(2) **INVENTORY.**—Not later than 60 days after the date of enactment of this Act, the U.S. Fish and Wildlife Service shall provide the Forest Service with an inventory of all property and facilities at the Center.

Deadline.

(3) **PROPERTY INCLUDED.**—Property under this subsection includes, but is not limited to, buildings, office furniture and supplies, computers, office equipment, vehicles, tools, equipment, maintenance supplies, and publications.

(4) **EXCLUSION OF PROPERTY.**—At the request of the authorized representative of the U.S. Fish and Wildlife Service, the Forest Service may exclude movable property from transfer based on a showing by the U.S. Fish and Wildlife Service that the property is needed for the mission of the U.S. Fish and Wildlife Service, cannot be replaced in a cost-effective manner, and is not needed for management of the Center.

SEC. 4. COMPLIANCE WITH ENVIRONMENTAL AUTHORITIES.

(a) DOCUMENTATION OF EXISTING CONDITIONS.—

(1) **IN GENERAL.**—Within 60 days after the date of enactment of this Act, the U.S. Fish and Wildlife Service shall provide the Forest Service and the Office of Job Corps, Employment and Training Administration, Department of Labor, all reasonably ascertainable documentation and information that exists on the environmental condition of the land comprising the Center.

Deadline.

(2) **ADDITIONAL DOCUMENTATION.**—The U.S. Fish and Wildlife Service shall provide the Forest Service and the Office of Job Corps, Employment and Training Administration, Department of Labor, with any additional documentation and information regarding the environmental condition of the Center as such documentation and information becomes available.

(b) ACTIONS REQUIRED.—

(1) **ASSESSMENT.**—Within 120 days after the date of enactment of this Act, the U.S. Fish and Wildlife Service shall provide the Forest Service and the Office of Job Corps, Employment and Training Administration, Department of Labor, an assessment, consistent with ASTM Standard E1527, indicating what action, if any, is required on the Center under any Environmental Authorities.

Deadline.

(2) **MEMORANDUM OF AGREEMENT.**—If the findings of the environmental assessment indicate that action is required under applicable Environmental Authorities with respect to any portion of the Center, the Forest Service and the U.S. Fish and Wildlife Service shall enter into a memorandum of agreement that—

(A) provides for the performance by the U.S. Fish and Wildlife Service of the required actions identified in the environmental assessment; and

(B) includes a schedule for the timely completion of the required actions to be taken as agreed to by U.S. Fish and Wildlife Service and Forest Service.

Deadline.

(c) DOCUMENTATION OF ACTIONS.—After a mutually agreeable amount of time following completion of the environmental assessment, but not exceeding 180 days from such completion, the U.S. Fish and Wildlife Service shall provide the Forest Service and the Office of Job Corps, Employment and Training Administration, Department of Labor, with documentation demonstrating that all actions required under applicable Environmental Authorities have been taken that are necessary to protect human health and the environment with respect to any hazardous substance, pollutant, contaminant, hazardous waste, hazardous material, or petroleum product or derivative of a petroleum product on the Center.

(d) CONTINUATION OF RESPONSIBILITIES AND LIABILITIES.—

(1) IN GENERAL.—The transfer of the Center and the requirements of this section shall not in any way affect the responsibilities and liabilities of the U.S. Fish and Wildlife Service at the Center under any applicable Environmental Authorities.

(2) ACCESS.—At all times after the date of enactment of this Act, the U.S. Fish and Wildlife Service and its agents shall be accorded any access to the Center that may be reasonably required to carry out the responsibility or satisfy the liability referred to in paragraph (1).

(3) NO LIABILITY.—The Forest Service shall not be liable under any applicable Environmental Authorities for matters that are related directly or indirectly to activities of the U.S. Fish and Wildlife Service or the Department of Labor on the Center occurring on or before the date of enactment of this Act, including liability for—

(A) costs or performance of response actions required under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et seq.) at or related to the Center; or

(B) costs, penalties, fines, or performance of actions related to noncompliance with applicable Environmental Authorities at or related to the Center or related to the presence, release, or threat of release of any hazardous substance, pollutant, or contaminant, hazardous waste, hazardous material, or petroleum product or derivative of a petroleum product of any kind at or related to the Center, including contamination resulting from migration.

(4) NO EFFECT ON RESPONSIBILITIES OR LIABILITIES.—Except as provided in paragraph (3), nothing in this title affects, modifies, amends, repeals, alters, limits or otherwise changes, directly or indirectly, the responsibilities or liabilities under applicable Environmental Authorities with respect to the Forest Service after the date of enactment of this Act.

(e) OTHER FEDERAL AGENCIES.—Subject to the other provisions of this section, a Federal agency that carried or carries out operations at the Center resulting in the violation of an environmental authority shall be responsible for all costs associated with corrective actions and subsequent remediation.

SEC. 5. PERSONNEL.**(a) IN GENERAL.—**

(1) **EMPLOYMENT.**—Notwithstanding section 3503 of title 5, United States Code, the Forest Service will accept the transfer of eligible employees at their current pay and grade levels to administer the Center as of the date of enactment of this Act.

(b) **TRANSFER-APPOINTMENT IN THE FOREST SERVICE.**—Eligible employees will transfer, without a break in Federal service and without competition, from the Department of the Interior, U.S. Fish and Wildlife Service, to the Department of Agriculture, Forest Service, upon an agreed date by both agencies.

(c) **EMPLOYEE BENEFIT TRANSITION.**—Employees of the U.S. Fish and Wildlife Service who transfer to the Forest Service—

(1) shall retain all benefits and/or eligibility for benefits of Federal employment without interruption in coverage or reduction in coverage, including those pertaining to any retirement, Thrift Savings Plan (TSP), Federal Employee Health Benefit (FEHB), Federal Employee Group Life Insurance (FEGLI), leave, or other employee benefits;

(2) shall retain their existing status with respect to the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS);

(3) shall be entitled to carry over any leave time accumulated during their Federal Government employment;

(4) shall retain their existing level of competitive employment status and tenure; and

(5) shall retain their existing GM, GS, or WG grade level and pay.

SEC. 6. IMPLEMENTATION COSTS AND APPROPRIATIONS.

(a) The U.S. Fish and Wildlife Service and the Forest Service will cover their own costs in implementing this Act.

(b) There is hereby authorized to be appropriated such sums as may be necessary to carry out this Act.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 1814:

HOUSE REPORTS: No. 108-716, Pt. 1 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 20, considered and passed Senate.

Oct. 4, considered and passed House.



Public Law 108–342
108th Congress

An Act

Oct. 18, 2004
[S. 2052]

To amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail.

El Camino Real
de los Tejas
National Historic
Trail Act.
Texas.
Louisiana.
Mexico.
16 USC 1241
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “El Camino Real de los Tejas National Historic Trail Act”.

SEC. 2. DESIGNATION OF EL CAMINO REAL DE LOS TEJAS NATIONAL HISTORIC TRAIL.

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended by adding at the end the following:

“(24) EL CAMINO REAL DE LOS TEJAS NATIONAL HISTORIC TRAIL.—

“(A) IN GENERAL.—El Camino Real de los Tejas (the Royal Road to the Tejas) National Historic Trail, a combination of historic routes (including the Old San Antonio Road) totaling approximately 2,580 miles, extending from the Rio Grande near Eagle Pass and Laredo, Texas, to Natchitoches, Louisiana, as generally depicted on the map entitled ‘El Camino Real de los Tejas’ contained in the report entitled ‘National Historic Trail Feasibility Study and Environmental Assessment: El Camino Real de los Tejas, Texas-Louisiana’, dated July 1998.

“(B) MAP.—A map generally depicting the trail shall be on file and available for public inspection in the appropriate offices of the National Park Service.

“(C) ADMINISTRATION.—(i) The Secretary of the Interior (referred to in this paragraph as ‘the Secretary’) shall administer the trail.

“(ii) The Secretary shall administer those portions of the trail on non-Federal land only with the consent of the owner of such land and when such trail portion qualifies for certification as an officially established component of the trail, consistent with section 3(a)(3). An owner’s approval of a certification agreement shall satisfy the consent requirement. A certification agreement may be terminated at any time.

“(iii) The designation of the trail does not authorize any person to enter private property without the consent of the owner.

“(D) CONSULTATION.—The Secretary shall consult with appropriate State and local agencies in the planning and development of the trail.

“(E) COORDINATION OF ACTIVITIES.—The Secretary may coordinate with United States and Mexican public and non-governmental organizations, academic institutions, and, in consultation with the Secretary of State, the Government of Mexico and its political subdivisions, for the purpose of exchanging trail information and research, fostering trail preservation and educational programs, providing technical assistance, and working to establish an international historic trail with complementary preservation and education programs in each nation.

“(F) LAND ACQUISITION.—The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-administered area without the consent of the owner of the land or interest in land.”.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 2052:

SENATE REPORTS: No. 108-321 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 108–343
108th Congress

An Act

Oct. 18, 2004

[S. 2319]

Tapoco Project
Licensing Act
of 2004.
16 USC 403 note.

To authorize and facilitate hydroelectric power licensing of the Tapoco Project.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Tapoco Project Licensing Act of 2004”.

16 USC 403 note.

SEC. 2. DEFINITIONS.

In this Act:

(1) **APGI.**—The term “APGI” means Alcoa Power Generating Inc. (including its successors and assigns).

(2) **COMMISSION.**—The term “Commission” means the Federal Energy Regulatory Commission.

(3) **MAP.**—The term “map” means the map entitled “Tapoco Hydroelectric Project, P–2169, Settlement Agreement, Appendix B, Proposed Land Swap Areas, National Park Service and APGI”, numbered TP514, Issue No. 9, and dated June 8, 2004.

(4) **PARK.**—The term “Park” means Great Smoky Mountains National Park.

(5) **PROJECT.**—The term “Project” means the Tapoco Hydroelectric Project, FERC Project No. 2169, including the Chilhowee Dam and Reservoir in the State of Tennessee.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

16 USC 403 note.

SEC. 3. LAND EXCHANGE.

(a) **AUTHORIZATION.**—

(1) **IN GENERAL.**—Upon the conveyance by APGI of title acceptable to the Secretary of the land identified in paragraph (2), the Secretary shall simultaneously convey to APGI title to the land identified in paragraph (3).

(2) **DESCRIPTION OF LAND TO BE CONVEYED BY APGI.**—The land to be conveyed by APGI to the Secretary is the approximately 186 acres of land, subject to any encumbrances existing before February 21, 2003—

(A) within the authorized boundary of the Park, located northeast of United States Highway 129 and adjacent to the APGI power line; and

(B) as generally depicted on the map as “Proposed Property Transfer from APGI to National Park Service”.

(3) **DESCRIPTION OF LAND TO BE CONVEYED BY THE SECRETARY.**—The land to be conveyed by the Secretary to APGI

are the approximately 110 acres of land within the Park that are—

- (A) adjacent to or flooded by the Chilhowee Reservoir;
- (B) within the boundary of the Project as of February 21, 2003; and
- (C) as generally depicted on the map as “Proposed Property Transfer from National Park Service to APGI”.

(b) MINOR ADJUSTMENTS TO CONVEYED LAND.—The Secretary and APGI may mutually agree to make minor boundary or acreage adjustments to the land identified in paragraphs (2) and (3) of subsection (a).

(c) OPPORTUNITY TO MITIGATE.—If the Secretary determines that all or part of the land to be conveyed to the Park under subsection (a) is unsuitable for inclusion in the Park, APGI shall have the opportunity to make the land suitable for inclusion in the Park.

(d) CONSERVATION EASEMENT.—The Secretary shall reserve a conservation easement over any land transferred to APGI under subsection (a)(3) that, subject to any terms and conditions imposed by the Commission in any license that the Commission may issue for the Project, shall—

(1) specifically prohibit any development of the land by APGI, other than any development that is necessary for the continued operation and maintenance of the Chilhowee Reservoir;

(2) authorize public access to the easement area, subject to National Park Service regulations; and

(3) authorize the National Park Service to enforce Park regulations on the land and in and on the waters of Chilhowee Reservoir lying on the land, to the extent not inconsistent with any license condition considered necessary by the Commission.

(e) APPLICABILITY OF CERTAIN LAWS.—Section 5(b) of Public Law 90-401 (16 U.S.C. 460l-22(b)), shall not apply to the land exchange authorized under this section.

(f) REVERSION.—

(1) IN GENERAL.—The deed from the Secretary to APGI shall contain a provision that requires the land described in subsection (a)(3) to revert to the United States if—

(A) the Chilhowee Reservoir ceases to exist; or

(B) the Commission issues a final order decommissioning the Project from which no further appeal may be taken.

(2) APPLICABLE LAW.—A reversion under this subsection shall not eliminate APGI's responsibility to comply with all applicable provisions of the Federal Power Act (16 U.S.C. 791a et seq.), including regulations.

(g) BOUNDARY ADJUSTMENT.—

(1) IN GENERAL.—On completion of the land exchange authorized under this section, the Secretary shall—

(A) adjust the boundary of the Park to include the land described in subsection (a)(2); and

(B) administer any acquired land as part of the Park in accordance with applicable law (including regulations).

(2) NATIONAL PARK SERVICE LAND.—Notwithstanding the exchange of land under this section, the land described in subsection (a)(3) shall remain in the boundary of the Park.

Federal Register,
publication.

(3) **PUBLIC NOTICE.**—The Secretary shall publish in the Federal Register notice of any boundary revised under paragraph (1).

16 USC 403 note.

SEC. 4. PROJECT LICENSING.

Notwithstanding the continued inclusion of the land described in section 3(a)(3) in the boundary of the Park (including any modification made pursuant to section 3(b)) on completion of the land exchange, the Commission shall have jurisdiction to license the Project.

16 USC 403 note.

SEC. 5. LAND ACQUISITION.

(a) **IN GENERAL.**—The Secretary or the Secretary of Agriculture may acquire, by purchase, donation, or exchange, any land or interest in land that—

(1) may be transferred by APGI to any non-governmental organization; and

(2) is identified as “Permanent Easement” or “Term Easement” on the map entitled “Tapoco Hydroelectric Project, P-2169, Settlement Agreement, Appendix B, Proposed Land Conveyances in Tennessee”, numbered TP616, Issue No. 15, and dated March 11, 2004.

(b) **LAND ACQUIRED BY THE SECRETARY OF THE INTERIOR.**—The Secretary shall—

(1) adjust the boundary of the Park to include any land or interest in land acquired by the Secretary under subsection (a);

(2) administer any acquired land or interest in land as part of the Park in accordance with applicable law (including regulations); and

(3) publish notice of the adjustment in the Federal Register.

Federal Register,
publication.

(c) **LAND ACQUIRED BY THE SECRETARY OF AGRICULTURE.**—

(1) **BOUNDARY ADJUSTMENT.**—The Secretary of Agriculture shall—

(A) adjust the boundary of the Cherokee National Forest to include any land acquired under subsection (a);

(B) administer any acquired land or interest in land as part of the Cherokee National Forest in accordance with applicable law (including regulations); and

(C) publish notice of the adjustment in the Federal Register.

Federal Register,
publication.

(2) **MANAGEMENT.**—The Secretary of Agriculture shall evaluate the feasibility of managing any land acquired by the Secretary of Agriculture under subsection (a) in a manner that retains the primitive, back-country character of the land.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

16 USC 403 note.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 2319 (H.R. 4667):

HOUSE REPORTS: No. 108-721, Pt. 1 (Comm. on Energy and Commerce) and Pt. 2 (Comm. on Resources) both accompanying H.R. 4667.

SENATE REPORTS: No. 108-299 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Oct. 4, considered and passed House.



Public Law 108–344
108th Congress

An Act

Oct. 18, 2004

[S. 2363]

To revise and extend the Boys and Girls Clubs of America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BOYS AND GIRLS CLUBS OF AMERICA.

Section 401 of the Economic Espionage Act of 1996 (42 U.S.C. 13751 note) is amended—

(1) in subsection (a)(2)—

(A) by striking “1,200” and inserting “1,500”;

(B) by striking “4,000” and inserting “5,000”; and

(C) by striking “December 31, 2005” and inserting “December 31, 2010”;

(2) in subsection (c)—

(A) in paragraph (1), by striking “2002, 2003, 2004, 2005, and 2006” and inserting “2006, 2007, 2008, 2009, and 2010”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “1,200” and inserting “1,500”; and

(ii) in subparagraph (B)—

(I) by striking “4,000” and inserting “5,000”;

and

(II) by striking “2007” and inserting “2010”;

and

(3) in subsection (e), by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

“(A) \$80,000,000 for fiscal year 2006;

“(B) \$85,000,000 for fiscal year 2007;

“(C) \$90,000,000 for fiscal year 2008;

“(D) \$95,000,000 for fiscal year 2009; and

PUBLIC LAW 108–344—OCT. 18, 2004

118 STAT. 1377

“(E) \$100,000,000 for fiscal year 2010.”.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 2363:

HOUSE REPORTS: No. 108–601 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 3, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 108–345
108th Congress

An Act

Oct. 18, 2004
[S. 2508]

To redesignate the Ridges Basin Reservoir, Colorado, as Lake Nighthorse.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. RENAMING OF RESERVOIR.

The reservoir known as the “Ridges Basin Reservoir” located on Basin Creek, a tributary of the Animas River in Colorado, constructed under section 6(a) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (102 Stat. 2975; 114 Stat. 2763A–260), shall be known and designated as “Lake Nighthorse”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the reservoir referred to in section 1 shall be deemed to be a reference to Lake Nighthorse.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 2508:

SENATE REPORTS: No. 108–327 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 108–346
108th Congress

An Act

To direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado.

Oct. 18, 2004
[S. 2180]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Arapaho and Roosevelt National Forests Land Exchange Act of 2004”.

Arapaho and
Roosevelt
National Forests
Land Exchange
Act of 2004.

SEC. 2. LAND EXCHANGE, ARAPAHO AND ROOSEVELT NATIONAL FORESTS, COLORADO.

(a) CONVEYANCE BY CITY OF GOLDEN.—

(1) NON-FEDERAL LAND DESCRIBED.—The land exchange directed by this section shall proceed if, not later than 30 days after the date of enactment of this Act, the City of Golden, Colorado (referred to in this section as the “City”), offers to convey title acceptable to the Secretary of Agriculture (referred to in this section as the “Secretary”) to the following non-Federal land:

Deadline.

(A) Certain land located near the community of Evergreen in Park County, Colorado, comprising approximately 80 acres, as generally depicted on the map entitled “Non-Federal Lands—Cub Creek Parcel”, dated June 2003.

(B) Certain land located near Argentine Pass in Clear Creek and Summit Counties, Colorado, comprising approximately 55.909 acres, as generally depicted on the map entitled “Argentine Pass/Continental Divide Trail Lands”, dated September 2003.

(2) CONDITIONS OF CONVEYANCE.—

(A) VIDLER TUNNEL.—The conveyance of land under paragraph (1)(B) to the Secretary shall be subject to the continuing right of the City to permanently enter on, use, and occupy so much of the surface and subsurface of the land as reasonably is necessary to access, maintain, modify, or otherwise use the Vidler Tunnel to the same extent that the City would have had that right if the land had not been conveyed to the Secretary and remained in City ownership.

(B) ADVANCE APPROVAL.—The exercise of that right shall not require the City to secure any permit or other advance approval from the United States except to the extent that the City would have been required had the land not been conveyed to the Secretary and remained in City ownership.

(C) WITHDRAWAL.—On acquisition by the Secretary, the land is permanently withdrawn from all forms of entry and appropriation under the public land laws (including the mining and mineral leasing laws) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.).

(b) FEDERAL LAND DESCRIBED.—On receipt of title to the non-Federal land identified in subsection (a) that is acceptable to the Secretary, the Secretary shall simultaneously convey to the City all right, title, and interest of the United States in and to certain Federal land, comprising approximately 9.84 acres, as generally depicted on the map entitled “Empire Federal Lands—Parcel 12”, dated June 2003.

(c) EQUAL VALUE EXCHANGE.—

(1) APPRAISAL.—

(A) IN GENERAL.—The values of the Federal land identified in subsection (b) and the non-Federal land identified in subsection (a)(1)(A) shall be determined by the Secretary through appraisals performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(B) DONATION.—Except as provided in paragraph (3), the conveyance of the non-Federal land identified in subsection (a)(1)(B) shall be considered a donation for all purposes of law.

(2) SURPLUS OF NON-FEDERAL VALUE.—If the final appraised value (as approved by the Secretary) of the non-Federal land identified in subsection (a)(1)(A) exceeds the final appraised value (as approved by the Secretary) of the Federal land identified in subsection (b), the values may be equalized by—

(A) reducing the acreage of the non-Federal land identified in subsection (a)(1)(A) to be conveyed, as determined appropriate and acceptable by the Secretary and the City;

(B) making a cash equalization payment to the City, including a cash equalization payment in excess of the amount authorized by section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)); or

(C) a combination of acreage reduction and cash equalization.

(3) SURPLUS OF FEDERAL VALUE.—

(A) APPRAISAL.—If the final appraised value (as approved by the Secretary) of the Federal land identified in subsection (b) exceeds the final appraised value (as approved by the Secretary) of the non-Federal land identified in subsection (a)(1)(A), the Secretary shall—

(i) conduct an appraisal in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice for the non-Federal land to be conveyed pursuant to subsection (a)(1)(B); and

(ii) use the value to the extent necessary to equalize the values of the non-Federal land identified in subsection (a)(1)(A) and the Federal land identified in subsection (b).

(B) CASH EQUALIZATION PAYMENT.—If the Secretary declines to accept the non-Federal land identified in subsection (a)(1)(B) for any reason or if the value of the Federal land described in subsection (b) exceeds the value of all of the non-Federal land described in subsection (a)(1), the City may make a cash equalization payment to the Secretary, including a cash equalization payment in excess of the amount authorized by section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(d) EXCHANGE COSTS.—The City shall pay for—

(1) any necessary land surveys; and

(2) the costs of the appraisals, on approval of the appraiser and the issuance of appraisal instructions.

(e) TIMING AND INTERIM AUTHORIZATION.—

Deadlines.

(1) TIMING.—It is the intent of Congress that the land exchange directed by this Act shall be completed not later than 180 days after the date of enactment of this Act.

(2) INTERIM AUTHORIZATION.—Pending completion of the land exchange, not later than 45 days after the date of enactment of this Act, subject to applicable law, the Secretary shall authorize the City to construct approximately 140 feet of water pipeline on or near the existing course of the Lindstrom ditch through the Federal land identified in subsection (b).

(f) ALTERNATIVE SALE AUTHORITY.—

(1) IN GENERAL.—If the land exchange is not completed for any reason, the Secretary shall sell the Federal land identified in subsection (b) to the City at the final appraised value of the land, as approved by the Secretary.

(2) SISK ACT.—Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a) shall, without further appropriation, apply to any cash equalization payment received by the United States under this section.

Applicability.

(g) INCORPORATION, MANAGEMENT, AND STATUS OF ACQUIRED LAND.—

(1) INCORPORATION.—Land acquired by the United States under the land exchange shall become part of the Arapaho and Roosevelt National Forests.

(2) BOUNDARY.—The exterior boundary of the Forests is modified, without further action by the Secretary, as necessary to incorporate—

(A) the non-Federal land identified in subsection (a); and

(B) approximately an additional 80 acres as depicted on the map entitled “Arapaho and Roosevelt National Forest Boundary Adjustment—Cub Creek”, dated June 2003.

(3) ADMINISTRATION.—On acquisition, land or interests in land acquired under this section shall be administered in accordance with the laws (including rules and regulations) generally applicable to the National Forest System.

(4) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Arapaho and Roosevelt National Forests (as adjusted by this subsection) shall be deemed to be the boundaries of the Forests as of January 1, 1965.

(h) TECHNICAL CORRECTIONS.—The Secretary, with the agreement of the City, may make technical corrections or correct clerical errors in the maps referred to in this section.

(i) REVOCATION OF ORDERS AND WITHDRAWAL.—

(1) REVOCATION OF ORDERS.—Any public orders withdrawing any of the Federal land identified in subsection (b) from appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land.

(2) WITHDRAWAL.—On the date of enactment of this Act, if not already withdrawn or segregated from entry and appropriation under the public land laws (including the mining and mineral leasing laws) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), the Federal land identified in subsection (b) is withdrawn until the date of the conveyance of the Federal land to the City.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 2180 (H.R. 2766):

HOUSE REPORTS: No. 108-329 accompanying H.R. 2766 (Comm. on Resources).

SENATE REPORTS: No. 108-285 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Sept. 28, considered and passed House.



Public Law 108–347
108th Congress

An Act

To provide for the promotion of democracy, human rights, and rule of law in the Republic of Belarus and for the consolidation and strengthening of Belarus sovereignty and independence.

Oct. 20, 2004
[H.R. 854]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Belarus Democracy Act of 2004”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States supports the promotion of democracy, respect for human rights, and the rule of law in the Republic of Belarus consistent with its commitments as a participating state of the Organization for Security and Cooperation in Europe (OSCE).

(2) The United States has a vital interest in the independence and sovereignty of the Republic of Belarus and its integration into the European community of democracies.

(3) In November 1996, Lukashenka orchestrated an illegal and unconstitutional referendum that enabled him to impose a new constitution, abolish the duly-elected parliament, the 13th Supreme Soviet, install a largely powerless National Assembly, and extend his term of office to 2001.

(4) Democratic forces in Belarus have organized peaceful demonstrations against the Lukashenka regime in cities and towns throughout Belarus which led to beatings, mass arrests, and extended incarcerations.

(5) Victor Gonchar, Anatoly Krasovsky, and Yuri Zakharenka, who have been leaders and supporters of the democratic forces in Belarus, and Dmitry Zavadsky, a journalist known for his critical reporting in Belarus, have disappeared and are presumed dead.

(6) Former Belarus Government officials have come forward with credible allegations and evidence that top officials of the Lukashenka regime were involved in the disappearances.

(7) The Belarusian authorities have mounted a major systematic crackdown on civil society through the closure, harassment, and repression of nongovernmental organizations, and independent trade unions.

(8) The Belarusian authorities actively suppress freedom of speech and expression, including engaging in systematic reprisals against independent media.

Belarus
Democracy Act of
2004.
22 USC 5811
note.
22 USC 5811
note.

Victor Gonchar.
Anatoly
Krasovsky.
Yuri
Zakharenka.
Dmitry
Zavadsky.

(9) The Lukashenka regime has reversed the revival of Belarusian language and culture, including through the closure of the National Humanities Lyceum, the last remaining high school where classes were taught in the Belarusian language.

(10) The Lukashenka regime harasses the autocephalic Belarusian Orthodox Church, the Roman Catholic Church, the Jewish community, the Hindu Lights of Kalyasa community, evangelical Protestant churches (such as Baptist and Pentecostal groups), and other minority religious groups.

(11) The Law on Religious Freedom and Religious Organizations, passed by the National Assembly and signed by Lukashenka on October 31, 2002, establishes one of the most repressive legal regimes in the OSCE region, severely limiting religious freedom and placing excessively burdensome government controls on religious practice.

(12) The parliamentary elections of October 15, 2000, and the presidential election of September 9, 2001, were determined to be fundamentally unfair and nondemocratic.

(13) The Government of Belarus has made no substantive progress in addressing criteria established by the OSCE in 2000, ending repression and the climate of fear, permitting a functioning independent media, ensuring transparency of the elections process, and strengthening of the functions of parliament.

22 USC 5811
note.

SEC. 3. ASSISTANCE TO PROMOTE DEMOCRACY AND CIVIL SOCIETY IN BELARUS.

(a) **PURPOSES OF ASSISTANCE.**—The assistance under this section shall be available for the following purposes:

(1) To assist the people of the Republic of Belarus in regaining their freedom and to enable them to join the European community of democracies.

(2) To encourage free and fair presidential, parliamentary, and local elections in Belarus, conducted in a manner consistent with internationally accepted standards and under the supervision of internationally recognized observers.

(3) To assist in restoring and strengthening institutions of democratic governance in Belarus.

President.

(b) **AUTHORIZATION FOR ASSISTANCE.**—To carry out the purposes of subsection (a), the President is authorized to furnish assistance and other support for the activities described in subsection (c), to be provided primarily for indigenous Belarusian groups that are committed to the support of democratic processes.

(c) **ACTIVITIES SUPPORTED.**—Activities that may be supported by assistance under subsection (b) include—

(1) the observation of elections and the promotion of free and fair electoral processes;

(2) development of democratic political parties;

(3) radio and television broadcasting to and within Belarus;

(4) the development of nongovernmental organizations promoting democracy and supporting human rights;

(5) the development of independent media working within Belarus and from locations outside the country and supported by nonstate-controlled printing facilities;

(6) international exchanges and advanced professional training programs for leaders and members of the democratic

forces in skill areas central to the development of civil society; and

(7) other activities consistent with the purposes of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.— There are authorized to be appropriated to the President to carry out this section such sums as may be necessary for each of the fiscal years 2005 and 2006.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

SEC. 4. RADIO BROADCASTING TO BELARUS.

22 USC 5811
note.

(a) PURPOSE.—It is the purpose of this section to authorize increased support for United States Government and surrogate radio broadcasting to the Republic of Belarus that will facilitate the unhindered dissemination of information.

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as are otherwise authorized to be appropriated, there are authorized to be appropriated such sums as may be necessary for fiscal year 2005 and each subsequent fiscal year for radio broadcasting to the people of Belarus in languages spoken in Belarus.

SEC. 5. SENSE OF CONGRESS RELATING TO SANCTIONS AGAINST BELARUS.

22 USC 5811
note.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the sanctions described in subsection (c) should apply with respect to the Republic of Belarus until the President determines and certifies to the appropriate congressional committees that the Government of Belarus has made significant progress in meeting the conditions described in subsection (b).

(b) CONDITIONS.—The conditions referred to in subsection (a) are the following:

(1) The release of individuals in Belarus who have been jailed based on political or religious beliefs.

(2) The withdrawal of politically motivated legal charges against all opposition figures and independent journalists in Belarus.

(3) A full accounting of the disappearances of opposition leaders and journalists in Belarus, including Victor Gonchar, Anatoly Krasovsky, Yuri Zakharenka, and Dmitry Zavadsky, and the prosecution of those individuals who are responsible for their disappearances.

(4) The cessation of all forms of harassment and repression against the independent media, independent trade unions, non-governmental organizations, religious organizations (including their leadership and members), and the political opposition in Belarus.

(5) The implementation of free and fair presidential and parliamentary elections in Belarus consistent with OSCE commitments.

(c) PROHIBITION ON LOANS AND INVESTMENT.—

(1) UNITED STATES GOVERNMENT FINANCING.—No loan, credit guarantee, insurance, financing, or other similar financial assistance should be extended by any agency of the United States Government (including the Export-Import Bank and the Overseas Private Investment Corporation) to the Government

of Belarus, except with respect to the provision of humanitarian goods and agricultural or medical products.

(2) **TRADE AND DEVELOPMENT AGENCY.**—No funds available to the Trade and Development Agency should be available for activities of the Agency in or for Belarus.

(d) **MULTILATERAL FINANCIAL ASSISTANCE.**—It is further the sense of Congress that, in addition to the application of the sanctions described in subsection (c) to the Republic of Belarus (until the President determines and certifies to the appropriate congressional committees that the Government of Belarus has made significant progress in meeting the conditions described in subsection (b)), the Secretary of the Treasury should instruct the United States Executive Director of each international financial institution to which the United States is a member to use the voice and vote of the United States to oppose any extension by those institutions of any financial assistance (including any technical assistance or grant) of any kind to the Government of Belarus, except for loans and assistance that serve humanitarian needs.

22 USC 5811
note.

SEC. 6. MULTILATERAL COOPERATION.

It is the sense of Congress that the President should continue to seek to coordinate with other countries, particularly European countries, a comprehensive, multilateral strategy to further the purposes of this Act, including, as appropriate, encouraging other countries to take measures with respect to the Republic of Belarus that are similar to measures described in this Act.

22 USC 5811
note.

SEC. 7. REPORT.

(a) **REPORT.**— Not later than 90 days after the date of the enactment of this Act, and not later than 1 year thereafter, the President shall transmit to the appropriate congressional committees a report that describes, with respect to the preceding 12-month period, and to the extent practicable the following:

(1) The sale or delivery of weapons or weapons-related technologies from the Republic of Belarus to any country, the government of which the Secretary of State has determined, for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), has repeatedly provided support for acts of international terrorism.

(2) An identification of each country described in paragraph (1) and a detailed description of the weapons or weapons-related technologies involved in the sale.

(3) An identification of the goods, services, credits, or other consideration received by Belarus in exchange for the weapons or weapons-related technologies.

(4) The personal assets and wealth of Aleksandr Lukashenka and other senior leadership of the Government of Belarus.

(b) **FORM.**—A report transmitted pursuant to subsection (a) shall be in unclassified form but may contain a classified annex.

22 USC 5811
note.

SEC. 8. DECLARATION OF POLICY.

Congress hereby—

(1) calls upon the Lukashenka regime to cease its persecution of political opponents or independent journalists and to release those individuals who have been imprisoned for opposing his regime or for exercising their right to freedom of speech;

(2) expresses its grave concern about the disappearance of Victor Gonchar, Anatoly Krasovsky, Yuri Zakharenko, and Dmitry Zavadsky and calls upon the Lukashenka regime to cooperate fully with the Belrussian civil initiative “We Remember” and to extend to this organization all necessary information to find out the truth about the disappearances;

(3) calls upon the Lukashenka regime to cooperate fully with the Parliamentary Assembly of the Council of Europe (PACE) and its specially appointed representatives in matters regarding the resolution of the cases of the disappeared; and

(4) commends the democratic opposition in Belarus for their commitment to participate in October 2004 Parliamentary elections as a unified coalition and for their courage in the face of the repression of the Lukashenka regime in Belarus.

SEC. 9. DEFINITIONS.

22 USC 5811
note.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(2) OSCE.—The term “OSCE” means the Organization for Security and Cooperation in Europe.

(3) SENIOR LEADERSHIP OF THE GOVERNMENT OF BELARUS.—The term “senior leadership of the Government of Belarus” includes—

(A) the President, Prime Minister, Deputy Prime Ministers, government ministers, Chairmen of State Committees, and members of the Presidential Administration of Belarus;

(B) any official of the Government of Belarus who is personally and substantially involved in the suppression of freedom in Belarus, including judges and prosecutors; and

(C) any other individual determined by the Secretary of State (or the Secretary’s designee) to be personally and substantially involved in the formulation or execution of the policies of the Lukashenka regime that are in contradiction of internationally recognized human rights standards.

Approved October 20, 2004.

LEGISLATIVE HISTORY—H.R. 854:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 4, considered and passed House.

Oct. 6, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Oct. 20, Presidential statement.



Public Law 108–348
108th Congress

An Act

Oct. 20, 2004
[S. 2895]

To authorize the Gateway Arch in St. Louis, Missouri, to be illuminated by pink lights in honor of breast cancer awareness month.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ILLUMINATION OF GATEWAY ARCH IN HONOR OF BREAST CANCER AWARENESS MONTH.

In honor of breast cancer awareness month, the Secretary of the Interior shall authorize the Gateway Arch in St. Louis, Missouri, to be illuminated by pink lights for a certain period of time in October, to be designated by the Secretary of the Interior.

Approved October 20, 2004.

LEGISLATIVE HISTORY—S. 2895:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed Senate.

Oct. 8, considered and passed House.



Public Law 108–349
108th Congress

An Act

To amend the Congressional Accountability Act of 1995 to permit members of the Board of Directors of the Office of Compliance to serve for 2 terms.

Oct. 21, 2004
[H.R. 5122]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMITTING SECOND TERM FOR BOARD OF DIRECTORS OF OFFICE OF COMPLIANCE.

(a) IN GENERAL.—The second sentence of section 301(e)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1381(e)(1)) is amended to read as follows: “A member of the Board may be reappointed, but no individual may serve as a member for more than 2 terms.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to individuals serving on the Board of Directors of the Office of Compliance on or after September 30, 2004. 2 USC 1381 note.

Approved October 21, 2004.

LEGISLATIVE HISTORY—H.R. 5122:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Oct. 4, considered and passed Senate, amended.

Oct. 6, House concurred in Senate amendment.



Public Law 108–350
108th Congress

An Act

Oct. 21, 2004
[S. 33]

To authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites.

Arkansas.
Oklahoma.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SALE OR EXCHANGE OF LAND.

(a) IN GENERAL.—The Secretary of Agriculture (referred to in this Act as the “Secretary”) may, under such terms and conditions as the Secretary may prescribe, sell or exchange any right, title, and interest of the United States in and to the following National Forest System land and improvements:

(1) In the Ouachita National Forest—

(A) tract 1, “Work Center and two Residences” (approximately 12.4 acres), as identified on the map entitled “Ouachita National Forest, Waldron, Arkansas, Work Center and Residences” and dated July 26, 2000;

(B) tract 2, “Work Center” (approximately 10 acres), as identified on the map entitled “Ouachita National Forest, Booneville, Arkansas, Work Center” and dated July 26, 2000;

(C) tract 3, “Residence” (approximately ½ acre), as identified on the map entitled “Ouachita National Forest, Glenwood, Arkansas, Residence” and dated July 26, 2000;

(D) tract 4, “Work Center” (approximately 10.12 acres), as identified on the map entitled “Ouachita National Forest, Thornburg, Arkansas, Work Center” and dated July 26, 2000;

(E) tract 5, “Office Building” (approximately 1.5 acres), as identified on the map entitled “Ouachita National Forest, Perryville, Arkansas, Office Building” and dated July 26, 2000;

(F) tract 6, “Several Buildings, Including Office Space and Equipment Depot” (approximately 3 acres), as identified on the map entitled “Ouachita National Forest, Hot Springs, Arkansas, Buildings” and dated July 26, 2000;

(G) tract 7, “Isolated Forestland” (approximately 120 acres), as identified on the map entitled “Ouachita National Forest, Sunshine, Arkansas, Isolated Forestland” and dated July 26, 2000;

(H) tract 8, “Isolated Forestland” (approximately 40 acres), as identified on the map entitled “Ouachita National

Forest, Sunshine, Arkansas, Isolated Forestland” and dated July 26, 2000;

(I) tract 9, “Three Residences” (approximately 9.89 acres), as identified on the map entitled “Ouachita National Forest, Heavener, Oklahoma, Three Residences” and dated July 26, 2000;

(J) tract 10, “Work Center” (approximately 38.91 acres), as identified on the map entitled “Ouachita National Forest, Heavener, Oklahoma, Work Center” and dated July 26, 2000;

(K) tract 11, “Residence #1” (approximately 0.45 acres), as identified on the map entitled “Ouachita National Forest, Talihina, Oklahoma, Residence #1” and dated July 26, 2000;

(L) tract 12, “Residence #2” (approximately 0.21 acres), as identified on the map entitled “Ouachita National Forest, Talihina, Oklahoma, Residence #2” and dated July 26, 2000;

(M) tract 13, “Work Center” (approximately 5 acres), as identified on the map entitled “Ouachita National Forest, Big Cedar, Oklahoma, Work Center” and dated July 26, 2000;

(N) tract 14, “Residence” (approximately 0.5 acres), as identified on the map entitled “Ouachita National Forest, Idabel, Oklahoma, Residence” and dated July 26, 2000;

(O) tract 15, “Residence and Work Center” (approximately 40 acres), as identified on the map entitled “Ouachita National Forest, Idabel, Oklahoma, Residence and Work Center” and dated July 26, 2000; and

(P) tract 16, “Isolated Forestland” at sec. 30, T. 2 S., R. 25 W. (approximately 2.08 acres), as identified on the map entitled “Ouachita National Forest, Mt. Ida, Arkansas, Isolated Forestland” and dated August 27, 2001.

(2) In the Ozark-St. Francis National Forest—

(A) tract 1, “Tract 750, District 1, Two Residences, Administrative Office” (approximately 8.96 acres), as identified on the map entitled “Ozark-St. Francis National Forest, Mountain View, Arkansas, Tract 750, District 1, Two Residences, Administrative Office” and dated July 26, 2000;

(B) tract 2, “Tract 2736, District 5, Mountainburg Work Center” (approximately 1.61 acres), as identified on the map entitled “Ozark-St. Francis National Forest, Mountainburg, Arkansas, Tract 2736, District 5, Mountainburg Work Center” and dated July 26, 2000;

(C) tract 3, “Tract 2686, District 6, House” (approximately 0.31 acres), as identified on the map entitled “Ozark-St. Francis National Forest, Paris, Arkansas, Tract 2686, District 6 House” and dated July 26, 2000;

(D) tract 4, “Tract 2807, District 6, House” (approximately 0.25 acres), as identified on the map entitled “Ozark-St. Francis National Forest, Paris, Arkansas, Tract 2807, District 6, House” and dated July 26, 2000;

(E) tract 5, “Tract 2556, District 3, Dover Work Center” (approximately 2.0 acres), as identified on the map entitled “Ozark-St. Francis National Forest, Dover, Arkansas, Tract

2556, District 3, Dover Work Center” and dated July 26, 2000;

(F) tract 6, “Tract 2735, District 2, House” (approximately 0.514 acres), as identified on the map entitled “Ozark-St. Francis National Forest, Jasper, Arkansas, Tract 2735, District 2, House” and dated July 26, 2000; and

(G) tract 7, “Tract 2574, District 2, House” (approximately 0.75 acres), as identified on the map entitled “Ozark-St. Francis National Forest, Jasper, Arkansas, Tract 2574, District 2, House” and dated July 26, 2000.

(b) APPLICABLE AUTHORITIES.—Except as otherwise provided in this Act, any sale or exchange of land described in subsection (a) shall be subject to laws (including regulations) applicable to the conveyance and acquisition of land for National Forest System purposes.

(c) CASH EQUALIZATION.—Notwithstanding any other provision of law, the Secretary may accept cash equalization payments in excess of 25 percent of the total value of the land described in subsection (a) from any exchange under subsection (a).

(d) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—In carrying out this Act, the Secretary may use solicitations of offers for sale or exchange under this Act on such terms and conditions as the Secretary may prescribe.

(2) REJECTION OF OFFERS.—The Secretary may reject any offer under this Act if the Secretary determines that the offer is not adequate or not in the public interest.

SEC. 2. DISPOSITION OF FUNDS.

Any funds received by the Secretary through sale or by cash equalization from an exchange—

(1) shall be deposited into the fund established by Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a); and

(2) shall be available for expenditure, without further Act of appropriation, for the acquisition, construction, or improvement of administrative facilities, land, or interests in land for the national forests in the States of Arkansas and Oklahoma.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Approved October 21, 2004.

LEGISLATIVE HISTORY—S. 33:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 24, considered and passed Senate.

Vol. 150 (2004): Oct. 5, considered and passed House.



Public Law 108–351
108th Congress

An Act

Oct. 21, 2004
[S. 1791]

To amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEASE LOT CONVEYANCE.

Section 4(b) of the Lease Lot Conveyance Act of 2002 (116 Stat. 2879) is amended—

(1) by striking “As consideration” and inserting the following:

“(1) IN GENERAL.—As consideration”; and

(2) by adding at the end the following:

“(2) USE.—Amounts received under paragraph (1) shall be—

“(A) deposited by the Secretary, on behalf of the Rio Grande Project, in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391); and

“(B) made immediately available to the Irrigation Districts, to be credited in accordance with section 4(I) of the Act of December 5, 1924 (43 U.S.C. 501).”.

Approved October 21, 2004.

LEGISLATIVE HISTORY—S. 1791:

SENATE REPORTS: No. 108–272 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Oct. 6, considered and passed House.



Public Law 108–352
108th Congress

An Act

To make technical corrections to laws relating to certain units of the National Park System and to National Park programs.

Oct. 21, 2004
[S. 2178]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Park System Laws Technical Amendments Act of 2004”.

National Park
System Laws
Technical
Amendments Act
of 2004.
16 USC 1 note.

SEC. 2. LACKAWANNA VALLEY HERITAGE AREA.

Section 106 of the Lackawanna Valley National Heritage Area Act of 2000 (16 U.S.C. 461 note; Public Law 106–278) is amended by striking subsection (a) and inserting the following:

“(a) **AUTHORITIES OF MANAGEMENT ENTITY.**—For purposes of preparing and implementing the management plan, the management entity may—

“(1) make grants to, and enter into cooperative agreements with, the State and political subdivisions of the State, private organizations, or any person; and

“(2) hire and compensate staff.”.

SEC. 3. HAWAII VOLCANOES NATIONAL PARK.

Section 5 of the Act of June 20, 1938 (16 U.S.C. 392c) is amended by striking “Hawaii Volcanoes” each place it appears and inserting “Hawai‘i Volcanoes”.

SEC. 4. “I HAVE A DREAM” PLAQUE AT LINCOLN MEMORIAL.

Section 2 of Public Law 106–365 (114 Stat. 1409) is amended by striking “and expand contributions” and inserting “and expend contributions”.

40 USC 8903
note.

SEC. 5. WILD AND SCENIC RIVERS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended—

(1) by redesignating paragraph (162) (relating to White Clay Creek, Delaware and Pennsylvania) as paragraph (163);

(2) by designating the second paragraph (161) (relating to the Wekiva River, Wekiwa Springs Run, Rock Springs Run, and Black Water Creek, Florida) as paragraph (162);

(3) by designating the undesignated paragraph relating to the Wildhorse and Kiger Creeks, Oregon, as paragraph (164);

(4) by redesignating the third paragraph (161) (relating to the Lower Delaware River and associated tributaries, New Jersey and Pennsylvania) as paragraph (165) and by indenting appropriately; and

(5) by redesignating the undesignated paragraph relating to the Rivers of Caribbean National Forest, Puerto Rico, as paragraph (166).

SEC. 6. ROSIE THE RIVETER/World War II Home Front National Historical Park.

The Rosie the Riveter/World War II Home Front National Historical Park Establishment Act of 2000 (16 U.S.C. 410ggg et seq.) is amended—

16 USC 410ggg.

(1) in section 2(b), by striking “numbered 963/80000” and inserting “numbered 963/80,000”; and

16 USC 410ggg.

(2) in section 3—

(A) in subsection (a)(1), by striking “August 35” and inserting “August 25”;

(B) in subsection (b)(1), by striking “the World War II Child Development Centers, the World War II worker housing, the Kaiser-Permanente Field Hospital, and Fire Station 67A” and inserting “the Child Development Field Centers (Ruth C. Powers) (Maritime), Atchison Housing, the Kaiser-Permanente Field Hospital, and Richmond Fire Station 67A”; and

(C) in subsection (e)(2), by striking “the World War II day care centers, the World War II worker housing, the Kaiser-Permanente Field Hospital, and Fire Station 67,” and inserting “the Child Development Field Centers (Ruth C. Powers) (Maritime), Atchison Housing, the Kaiser-Permanente Field Hospital, and Richmond Fire Station 67A,”.

SEC. 7. VICKSBURG CAMPAIGN TRAIL BATTLEFIELDS.

The Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (114 Stat. 2202) is amended—

114 Stat. 2202.

(1) in section 2(a)(1), by striking “and Tennessee” and inserting “Tennessee, and Kentucky”; and

114 Stat. 2202.

(2) in section 3—

(A) in paragraph (1), by striking “and Tennessee,” and inserting “Tennessee, and Kentucky,”; and

(B) in paragraph (2)—

(i) in subparagraph (R), by striking “and” at the end;

(ii) by redesignating subparagraph (S) as subparagraph (T); and

(iii) by inserting after subparagraph (R) the following:

“(S) Fort Heiman in Calloway County, Kentucky, and resources in and around Columbus in Hickman County, Kentucky; and”.

SEC. 8. HARRIET TUBMAN SPECIAL RESOURCE STUDY.

Section 3(c) of the Harriet Tubman Special Resource Study Act (Public Law 106-516; 114 Stat. 2405) is amended by striking “Public Law 91-383” and all that follows through “(P.L. 105-391; 112 Stat. 3501)” and inserting “section 8 of Public Law 91-383 (16 U.S.C. 1a-5)”.

40 USC 502 note.

SEC. 9. PUBLIC LAND MANAGEMENT AGENCY FOUNDATIONS.

Employees of the foundations established by Acts of Congress to solicit private sector funds on behalf of Federal land management

agencies shall qualify for General Service Administration contract airfares.

SEC. 10. SHORT TITLES.

(a) NATIONAL PARK SERVICE ORGANIC ACT.—The Act of August 25, 1916 (commonly known as the “National Park Service Organic Act”) (16 U.S.C. 1 et seq.) is amended by adding at the end the following:

16 USC 1 note.

“SEC. 5. SHORT TITLE.

“This Act may be cited as the ‘National Park Service Organic Act’.”.

(b) NATIONAL PARK SYSTEM GENERAL AUTHORITIES ACT.—Public Law 91–383 (commonly known as the “National Park System General Authorities Act”) (16 U.S.C. 1a–1 et seq.) is amended by adding at the end the following:

16 USC 1 note.

“SEC. 14. SHORT TITLE.

“This Act may be cited as the ‘National Park System General Authorities Act’.”.

SEC. 11. PARK POLICE INDEMNIFICATION.

Section 2(b) of Public Law 106–437 (114 Stat. 1921) is amended by striking “the Act” and inserting “of the Act”.

16 USC 1a–6.

SEC. 12. BOSTON HARBOR ISLANDS NATIONAL RECREATION AREA.

Section 1029 of division I of the Omnibus Parks and Public Lands Management Act of 1996 (110 Stat. 4233) is amended—

16 USC 460kkk.

(1) in subsection (c)(2)(B)(i), by striking “reference” and inserting “referenced”; and

(2) in subsection (d)(4), by inserting a period after “plans”.

SEC. 13. NATIONAL HISTORIC PRESERVATION ACT.

Section 5(a)(8) of the National Historic Preservation Act Amendments of 2000 (Public Law 106–208; 114 Stat. 319) is amended by striking “section 110(1)” and inserting “section 110(l)”.

16 USC 470h–2.

SEC. 14. NATIONAL TRAILS SYSTEM ACT.

The National Trails System Act (16 U.S.C. 1241 et seq.) is amended—

(1) in section 5—

16 USC 1244.

(A) in subsection (c)—

(i) in paragraph (19), by striking “Kissimme” and inserting “Kissimmee”;

(ii) in paragraph (40)(D) by striking “later that” and inserting “later than”; and

(iii) by designating the undesignated paragraphs relating to the Metacoment-Monadnock-Mattabesett Trail and The Long Walk Trail as paragraphs (41) and (42), respectively; and

(B) in the first sentence of subsection (d), by striking “establishment.”; and

(2) in section 10(c)(1), by striking “The Ice Age” and inserting “the Ice Age”.

16 USC 1249.

SEC. 15. VICKSBURG NATIONAL MILITARY PARK.

Section 3(b) of the Vicksburg National Military Park Boundary Modification Act of 2002 (16 U.S.C. 430h–11) is amended by striking

“the Secretary add it” and inserting “the Secretary shall add the property”.

SEC. 16. ALLEGHENY PORTAGE RAILROAD NATIONAL HISTORIC SITE.

16 USC 461 note. Section 2(2) of the Allegheny Portage Railroad National Historic Site Boundary Revision Act (Public Law 107–369; 116 Stat. 3069) is amended by striking “NERO 423/80,014 and dated May 01” and inserting “NERO 423/80,014A and dated July 02”.

SEC. 17. TALLGRASS PRAIRIE NATIONAL PRESERVE.

16 USC 698u–4. Section 1006(b) of division I of the Omnibus Parks and Public Lands Management Act of 1996 (110 Stat. 4208) is amended by striking “subsection (a)(1)” and inserting “subsection (a)”.

Approved October 21, 2004.

LEGISLATIVE HISTORY—S. 2178:

SENATE REPORTS: No. 108–239 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 19, considered and passed Senate.

Oct. 6, considered and passed House.



Public Law 108–353
108th Congress

An Act

To designate the facility of the United States Postal Service located at 4141 Postmark Drive, Anchorage, Alaska, as the “Robert J. Opinsky Post Office Building”.

Oct. 21, 2004
[S. 2415]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ROBERT J. OPINSKY POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 4141 Postmark Drive, in Anchorage, Alaska, shall be known and designated as the “Robert J. Opinsky Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Robert J. Opinsky Post Office Building”.

Approved October 21, 2004.

LEGISLATIVE HISTORY—S. 2415:

CONGRESSIONAL RECORD, Vol. 150 (2004):
June 9, considered and passed Senate.
Oct. 6, considered and passed House.



Public Law 108–354
108th Congress

An Act

Oct. 21, 2004
[S. 2511]

Chimayo Water
Supply System
and Espanola
Filtration
Facility Act
of 2004.

To direct the Secretary of the Interior to conduct a feasibility study of a Chimayo water supply system, to provide for the planning, design, and construction of a water supply, reclamation, and filtration facility for Espanola, New Mexico, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Chimayo Water Supply System and Espanola Filtration Facility Act of 2004”.

**TITLE I—CHIMAYO WATER SUPPLY
SYSTEM**

SEC. 101. DEFINITIONS.

In this title:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) STUDY AREA.—The term “study area” means the Santa Cruz River Valley in the eastern margin of the Espanola Basin.

(3) SYSTEM.—The term “system” means a water supply system described in section 102(a).

(4) TOWN.—The term “Town” means the town of Chimayo, New Mexico, located in Rio Arriba County and Santa Fe County, New Mexico.

SEC. 102. CHIMAYO WATER SUPPLY SYSTEM FEASIBILITY STUDY.

(a) IN GENERAL.—The Secretary, in cooperation with appropriate State and local authorities, shall conduct a study to determine the feasibility of constructing a water supply system for the Town in the study area that includes potable water transmission lines, pump stations, and storage reservoirs.

(b) SCOPE OF STUDY.—In conducting the study under subsection (a), the Secretary shall—

(1) consider operating the system in connection with the Espanola Water Filtration Facility;

(2) consider various options for supplying water to the Town, including connection to a regional water source, local sources, sources distributed throughout the Town, and sources located on adjacent Bureau of Land Management land;

(3) consider reusing or recycling water from local or regional sources;

(4) consider using alternative water supplies such as surface water, brackish water, nonpotable water, or deep aquifer groundwater; and

(5) determine the total lifecycle costs of the system, including—

(A) long-term operation, maintenance, replacement, and treatment costs of the system; and

(B) management costs (including personnel costs).

(c) DEADLINE FOR STUDY.—As soon as practicable, but not later than 3 years after the date of enactment of this Act, the Secretary shall complete the study.

(d) COST SHARING.—The Federal share of the cost of the study shall be 75 percent.

(e) COORDINATION.—The Secretary shall coordinate activities of the Bureau of Reclamation, the Bureau of Land Management, and the United States Geological Survey in the furtherance of the study, including—

(1) accessing any Bureau of Land Management land adjacent to the study area that is necessary to carry out this section; and

(2) the drilling of any exploratory wells on Bureau of Land Management land adjacent to the study area that are necessary to determine water resources available for the Town.

(f) REPORT.—The Secretary shall submit to Congress a report on the results of the feasibility study not later than the earlier of—

(1) the date that is 1 year after the date of completion of the feasibility study; or

(2) the date that is 4 years after the date of enactment of this Act.

SEC. 103. EMERGENCY WATER SUPPLY DEVELOPMENT ASSISTANCE.

(a) IN GENERAL.—The Secretary may enter into contracts with water authorities in the study area to provide emergency water supply development assistance to any eligible person or entity, as the Secretary determines to be appropriate.

(b) ELIGIBLE ACTIVITIES.—The Secretary may provide assistance under subsection (a) for—

(1) hauling water;

(2) the installation of water purification technology at the community wells or individual point-of-use;

(3) the drilling of wells;

(4) the installation of pump stations and storage reservoirs;

(5) the installation of transmission and distribution pipelines to bring water to individual residential service connections;

(6) the engineering, design, and installation of an emergency water supply system; and

(7) any other eligible activity, as the Secretary determines to be appropriate.

(c) COST SHARING.—The Federal share of the cost of any activity under this section shall be 75 percent.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated—

(1) to carry out section 102, \$2,000,000 for the period of fiscal years 2005 through 2008; and

(2) to carry out section 103, \$3,000,000 for the period of fiscal years 2005 through 2010.

(b) LIMITATION.—Amounts made available under subsection (a)(1) shall not be available for the construction of water infrastructure for the system.

TITLE II—ESPANOLA WATER FILTRATION FACILITY

SEC. 201. DEFINITIONS.

In this title:

(1) COMPONENT.—The term “component” means a water delivery infrastructure development described in section 202(b).

(2) FACILITY.—The term “facility” means the Espanola water filtration facility described in section 202(a).

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

SEC. 202. ESPANOLA WATER FILTRATION FACILITY.

(a) IN GENERAL.—The Secretary shall provide financial assistance to the city of Espanola, New Mexico, for the construction of an Espanola water filtration facility consisting of projects—

(1) to divert and fully use imported water to meet future demands in the greater Espanola, New Mexico region, including construction of—

(A) presedimentation basins for removal of sediments;

(B) an influent pump station to supply water into treatment facilities;

(C) a pretreatment facility;

(D) filtration facilities;

(E) finished water storage facilities;

(F) a finished water booster pump station;

(G) sludge dewatering facilities; and

(H) potable water transmission lines to connect into the water distribution facilities of the city of Espanola, New Mexico; and

(2) to use reclaimed water to enhance groundwater resources and surface water supplies.

(b) PARTICIPATION.—The Secretary may provide financial assistance to the Santa Clara and San Juan Pueblos of New Mexico and the non-Federal sponsors of the facility for the study, planning, design, and construction of a water delivery infrastructure development for the Santa Clara and San Juan Pueblos as a component of the facility.

(c) COST SHARING.—The Federal share of the total cost of the facility and the component shall not exceed 25 percent.

(d) LIMITATION ON USE OF FUNDS.—Funds provided by the Secretary may not be used for the operation or maintenance of the facility or the component.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the construction of the facility \$3,000,000 for the period of fiscal years 2005 through 2009.

Approved October 21, 2004.

LEGISLATIVE HISTORY—S. 2511:

SENATE REPORTS: No. 108-328 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Oct. 6, considered and passed House.



Public Law 108–355
108th Congress

An Act

Oct. 21, 2004

[S. 2634]

Garrett Lee
Smith
Memorial Act.
42 USC 201 note.

42 USC
290bb–36 note.

To amend the Public Health Service Act to support the planning, implementation, and evaluation of organized activities involving statewide youth suicide early intervention and prevention strategies, to authorize grants to institutions of higher education to reduce student mental and behavioral health problems, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Garrett Lee Smith Memorial Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) More children and young adults die from suicide each year than from cancer, heart disease, AIDS, birth defects, stroke, and chronic lung disease combined.

(2) Over 4,000 children and young adults tragically take their lives every year, making suicide the third overall cause of death between the ages of 10 and 24. According to the Centers for Disease Control and Prevention, suicide is the third overall cause of death among college-age students.

(3) According to the National Center for Injury Prevention and Control of the Centers for Disease Control and Prevention, children and young adults accounted for 15 percent of all suicides completed in 2000.

(4) From 1952 to 1995, the rate of suicide in children and young adults tripled.

(5) From 1980 to 1997, the rate of suicide among young adults ages 15 to 19 increased 11 percent.

(6) From 1980 to 1997, the rate of suicide among children ages 10 to 14 increased 109 percent.

(7) According to the National Center of Health Statistics, suicide rates among Native Americans range from 1.5 to 3 times the national average for other groups, with young people ages 15 to 34 making up 64 percent of all suicides.

(8) Congress has recognized that youth suicide is a public health tragedy linked to underlying mental health problems and that youth suicide early intervention and prevention activities are national priorities.

(9) Youth suicide early intervention and prevention have been listed as urgent public health priorities by the President’s New Freedom Commission in Mental Health (2002), the Institute of Medicine’s Reducing Suicide: A National Imperative

(2002), the National Strategy for Suicide Prevention: Goals and Objectives for Action (2001), and the Surgeon General's Call to Action To Prevent Suicide (1999).

(10) Many States have already developed comprehensive statewide youth suicide early intervention and prevention strategies that seek to provide effective early intervention and prevention services.

(11) In a recent report, a startling 85 percent of college counseling centers revealed an increase in the number of students they see with psychological problems. Furthermore, the American College Health Association found that 61 percent of college students reported feeling hopeless, 45 percent said they felt so depressed they could barely function, and 9 percent felt suicidal.

(12) There is clear evidence of an increased incidence of depression among college students. According to a survey described in the Chronicle of Higher Education (February 1, 2002), depression among freshmen has nearly doubled (from 8.2 percent to 16.3 percent). Without treatment, researchers recently noted that “depressed adolescents are at risk for school failure, social isolation, promiscuity, self-medication with drugs and alcohol, and suicide—now the third leading cause of death among 10–24 year olds.”

(13) Researchers who conducted the study “Changes in Counseling Center Client Problems Across 13 Years” (1989–2001) at Kansas State University stated that “students are experiencing more stress, more anxiety, more depression than they were a decade ago.” (The Chronicle of Higher Education, February 14, 2003).

(14) According to the 2001 National Household Survey on Drug Abuse, 20 percent of full-time undergraduate college students use illicit drugs.

(15) The 2001 National Household Survey on Drug Abuse also reported that 18.4 percent of adults aged 18 to 24 are dependent on or abusing illicit drugs or alcohol. In addition, the study found that “serious mental illness is highly correlated with substance dependence or abuse. Among adults with serious mental illness in 2001, 20.3 percent were dependent on or abused alcohol or illicit drugs, while the rate among adults without serious mental illness was only 6.3 percent.”

(16) A 2003 Gallagher's Survey of Counseling Center Directors found that 81 percent were concerned about the increasing number of students with more serious psychological problems, 67 percent reported a need for more psychiatric services, and 63 percent reported problems with growing demand for services without an appropriate increase in resources.

(17) The International Association of Counseling Services accreditation standards recommend 1 counselor per 1,000 to 1,500 students. According to the 2003 Gallagher's Survey of Counseling Center Directors, the ratio of counselors to students is as high as 1 counselor per 2,400 students at institutions of higher education with more than 15,000 students.

SEC. 3. AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.

(a) YOUTH INTERAGENCY RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE CENTERS.—Section 520C of the Public Health Service Act (42 U.S.C. 290bb–34) is amended—

(1) in subsection (a)—

(A) by striking “Health, shall award grants” and inserting “Health—

“(1) shall award grants”;

(B) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(2) shall award a competitive grant to 1 additional research, training, and technical assistance center to carry out the activities described in subsection (d).”;

(2) in subsection (c), in the matter preceding paragraph (1), by striking “grant or contract under subsection (a)” and inserting “grant or contract under subsection (a)(1)”;

(3) in subsection (d)—

(A) by striking “APPROPRIATIONS.—For the purpose of carrying out this section” and inserting “APPROPRIATIONS.—

“(1) For the purpose of awarding grants or contracts under subsection (a)(1)”;

(B) by adding at the end the following:

“(2) For the purpose of awarding a grant under subsection (a)(2), there are authorized to be appropriated \$3,000,000 for fiscal year 2005, \$4,000,000 for fiscal year 2006, and \$5,000,000 for fiscal year 2007.”;

(4) by redesignating subsection (d) as subsection (e); and

(5) by inserting after subsection (c) the following:

“(d) ADDITIONAL CENTER.—The additional research, training, and technical assistance center established under subsection (a)(2) shall provide appropriate information, training, and technical assistance to States, political subdivisions of a State, Federally recognized Indian tribes, tribal organizations, institutions of higher education, public organizations, or private nonprofit organizations for—

“(1) the development or continuation of statewide or tribal youth suicide early intervention and prevention strategies;

“(2) ensuring the surveillance of youth suicide early intervention and prevention strategies;

“(3) studying the costs and effectiveness of statewide youth suicide early intervention and prevention strategies in order to provide information concerning relevant issues of importance to State, tribal, and national policymakers;

“(4) further identifying and understanding causes and associated risk factors for youth suicide;

“(5) analyzing the efficacy of new and existing youth suicide early intervention techniques and technology;

“(6) ensuring the surveillance of suicidal behaviors and nonfatal suicidal attempts;

“(7) studying the effectiveness of State-sponsored statewide and tribal youth suicide early intervention and prevention strategies on the overall wellness and health promotion strategies related to suicide attempts;

“(8) promoting the sharing of data regarding youth suicide with Federal agencies involved with youth suicide early intervention and prevention, and State-sponsored statewide or tribal youth suicide early intervention and prevention strategies for the purpose of identifying previously unknown mental health causes and associated risk factors for suicide in youth;

Appropriation
authorization.

“(9) evaluating and disseminating outcomes and best practices of mental and behavioral health services at institutions of higher education; and

“(10) other activities determined appropriate by the Secretary.”.

(b) SUICIDE PREVENTION FOR YOUTH.—Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended—

(1) in section 520E (42 U.S.C. 290bb-36)—

(A) in the section heading by striking “CHILDREN AND ADOLESCENTS” and inserting “YOUTH”;

(B) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—The Secretary shall award grants or cooperative agreements to public organizations, private nonprofit organizations, political subdivisions, consortia of political subdivisions, consortia of States, or Federally recognized Indian tribes or tribal organizations to design early intervention and prevention strategies that will complement the State-sponsored statewide or tribal youth suicide early intervention and prevention strategies developed pursuant to section 520E.”; Contracts.

(C) in subsection (b), by striking all after “coordinated” and inserting “with the relevant Department of Health and Human Services agencies and suicide working groups.”;

(D) in subsection (c)—

(i) in the matter preceding paragraph (1), by striking “A State” and all that follows through “desiring” and inserting “A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or federally recognized Indian tribe or tribal organization desiring”;

(ii) by redesignating paragraphs (1) through (9) as paragraphs (2) through (10), respectively;

(iii) by inserting before paragraph (2) (as so redesignated) the following:

“(1)(A) comply with the State-sponsored statewide early intervention and prevention strategy as developed under section 520E; and

“(B) in the case of a consortium of States, receive the support of all States involved.”;

(iv) in paragraph (2) (as so redesignated), by striking “children and adolescents” and inserting “youth”;

(v) in paragraph (3) (as so redesignated), by striking “best evidence-based.”;

(vi) in paragraph (4) (as so redesignated), by striking “primary” and all that follows and inserting “general, mental, and behavioral health services, and substance abuse services.”;

(vii) in paragraph (5) (as so redesignated), by striking “children and” and all that follows and inserting “youth including the school systems, educational institutions, juvenile justice system, substance abuse programs, mental health programs, foster care systems, and community child and youth support organizations.”;

(viii) by striking paragraph (8) (as so redesignated) and inserting the following:
 “(8) offer access to services and care to youth with diverse linguistic and cultural backgrounds;”; and
 (ix) by striking paragraph (9) (as so redesignated) and inserting the following:
 “(9) conduct annual self-evaluations of outcomes and activities, including consulting with interested families and advocacy organizations;”;

(E) by striking subsection (d) and inserting the following:

“(d) USE OF FUNDS.—Amounts provided under a grant or cooperative agreement under this section shall be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities described in this section. Applicants shall provide financial information to demonstrate compliance with this section.”;

(F) in subsection (e)—

(i) by striking “, contract,”; and

(ii) by inserting after “Secretary that the” the following: “application complies with the State-sponsored statewide early intervention and prevention strategy as developed under section 520E and the”;

(G) in subsection (f), by striking “, contracts,”;

(H) in subsection (g)—

(i) by striking “A State” and all that follows through “organization receiving” and inserting “A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving”; and

(ii) by striking “, contract,” each place such term appears;

(I) in subsection (h), by striking “, contracts,”;

(J) in subsection (i)—

(i) by striking “A State” and all that follows through “organization receiving” and inserting “A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving”; and

(ii) by striking “, contract,”;

(K) in subsection (k), by striking “5 years” and inserting “3 years”;

(L) in subsection (l)—

(i) in paragraph (2), by striking “21” and inserting “24”; and

(ii) in paragraph (3), by striking “which might have been”;

(M) in subsection (m)—

(i) by striking “APPROPRIATION.—” and all that follows through “For” in paragraph (1) and inserting “APPROPRIATION.—For”; and

(ii) by striking paragraph (2);

(N) by redesignating subsection (m) as subsection (n);
 and

(O) by inserting after subsection (l) the following:

“(m) DEFINITIONS.—In this section, the terms ‘early intervention’, ‘educational institution’, ‘institution of higher education’, ‘prevention’, ‘school’, and ‘youth’ have the meanings given to those terms in section 520E.”; and

(2) by redesignating section 520E as section 520E–1.

42 USC
290bb–36,
290bb–36a.

(c) YOUTH SUICIDE AND EARLY INTERVENTION AND PREVENTION STRATEGIES.—Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by inserting before section 520E–1 (as redesignated by subsection (b)) the following:

“SEC. 520E. YOUTH SUICIDE EARLY INTERVENTION AND PREVENTION STRATEGIES.

42 USC
290bb–36.

“(a) IN GENERAL.—The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall award grants or cooperative agreements to eligible entities to—

Contracts.

“(1) develop and implement State-sponsored statewide or tribal youth suicide early intervention and prevention strategies in schools, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations;

“(2) support public organizations and private nonprofit organizations actively involved in State-sponsored statewide or tribal youth suicide early intervention and prevention strategies and in the development and continuation of State-sponsored statewide youth suicide early intervention and prevention strategies;

“(3) provide grants to institutions of higher education to coordinate the implementation of State-sponsored statewide or tribal youth suicide early intervention and prevention strategies;

“(4) collect and analyze data on State-sponsored statewide or tribal youth suicide early intervention and prevention services that can be used to monitor the effectiveness of such services and for research, technical assistance, and policy development; and

“(5) assist eligible entities, through State-sponsored statewide or tribal youth suicide early intervention and prevention strategies, in achieving targets for youth suicide reductions under title V of the Social Security Act.

“(b) ELIGIBLE ENTITY.—

“(1) DEFINITION.—In this section, the term ‘eligible entity’ means—

“(A) a State;

“(B) a public organization or private nonprofit organization designated by a State to develop or direct the State-sponsored statewide youth suicide early intervention and prevention strategy; or

“(C) a Federally recognized Indian tribe or tribal organization (as defined in the Indian Self-Determination and Education Assistance Act) or an urban Indian organization (as defined in the Indian Health Care Improvement Act) that is actively involved in the development and continuation of a tribal youth suicide early intervention and prevention strategy.

“(2) LIMITATION.—In carrying out this section, the Secretary shall ensure that each State is awarded only 1 grant or cooperative agreement under this section. For purposes of the preceding sentence, a State shall be considered to have been awarded a grant or cooperative agreement if the eligible entity involved is the State or an entity designated by the State under paragraph (1)(B). Nothing in this paragraph shall be construed to apply to entities described in paragraph (1)(C).

“(c) PREFERENCE.—In providing assistance under a grant or cooperative agreement under this section, an eligible entity shall give preference to public organizations, private nonprofit organizations, political subdivisions, institutions of higher education, and tribal organizations actively involved with the State-sponsored statewide or tribal youth suicide early intervention and prevention strategy that—

“(1) provide early intervention and assessment services, including screening programs, to youth who are at risk for mental or emotional disorders that may lead to a suicide attempt, and that are integrated with school systems, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations;

“(2) demonstrate collaboration among early intervention and prevention services or certify that entities will engage in future collaboration;

“(3) employ or include in their applications a commitment to evaluate youth suicide early intervention and prevention practices and strategies adapted to the local community;

“(4) provide timely referrals for appropriate community-based mental health care and treatment of youth who are at risk for suicide in child-serving settings and agencies;

“(5) provide immediate support and information resources to families of youth who are at risk for suicide;

“(6) offer access to services and care to youth with diverse linguistic and cultural backgrounds;

“(7) offer appropriate postsuicide intervention services, care, and information to families, friends, schools, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations of youth who recently completed suicide;

“(8) offer continuous and up-to-date information and awareness campaigns that target parents, family members, child care professionals, community care providers, and the general public and highlight the risk factors associated with youth suicide and the life-saving help and care available from early intervention and prevention services;

“(9) ensure that information and awareness campaigns on youth suicide risk factors, and early intervention and prevention services, use effective communication mechanisms that are targeted to and reach youth, families, schools, educational institutions, and youth organizations;

“(10) provide a timely response system to ensure that child-serving professionals and providers are properly trained in youth suicide early intervention and prevention strategies and that child-serving professionals and providers involved in early

intervention and prevention services are properly trained in effectively identifying youth who are at risk for suicide;

“(11) provide continuous training activities for child care professionals and community care providers on the latest youth suicide early intervention and prevention services practices and strategies;

“(12) conduct annual self-evaluations of outcomes and activities, including consulting with interested families and advocacy organizations;

“(13) provide services in areas or regions with rates of youth suicide that exceed the national average as determined by the Centers for Disease Control and Prevention; and

“(14) obtain informed written consent from a parent or legal guardian of an at-risk child before involving the child in a youth suicide early intervention and prevention program.

“(d) REQUIREMENT FOR DIRECT SERVICES.—Not less than 85 percent of grant funds received under this section shall be used to provide direct services, of which not less than 5 percent shall be used for activities authorized under subsection (a)(3).

“(e) COORDINATION AND COLLABORATION.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall collaborate with relevant Federal agencies and suicide working groups responsible for early intervention and prevention services relating to youth suicide.

“(2) CONSULTATION.—In carrying out this section, the Secretary shall consult with—

“(A) State and local agencies, including agencies responsible for early intervention and prevention services under title XIX of the Social Security Act, the State Children’s Health Insurance Program under title XXI of the Social Security Act, and programs funded by grants under title V of the Social Security Act;

“(B) local and national organizations that serve youth at risk for suicide and their families;

“(C) relevant national medical and other health and education specialty organizations;

“(D) youth who are at risk for suicide, who have survived suicide attempts, or who are currently receiving care from early intervention services;

“(E) families and friends of youth who are at risk for suicide, who have survived suicide attempts, who are currently receiving care from early intervention and prevention services, or who have completed suicide;

“(F) qualified professionals who possess the specialized knowledge, skills, experience, and relevant attributes needed to serve youth at risk for suicide and their families; and

“(G) third-party payers, managed care organizations, and related commercial industries.

“(3) POLICY DEVELOPMENT.—In carrying out this section, the Secretary shall—

“(A) coordinate and collaborate on policy development at the Federal level with the relevant Department of Health and Human Services agencies and suicide working groups; and

“(B) consult on policy development at the Federal level with the private sector, including consumer, medical, suicide prevention advocacy groups, and other health and education professional-based organizations, with respect to State-sponsored statewide or tribal youth suicide early intervention and prevention strategies.

“(f) **RULE OF CONSTRUCTION; RELIGIOUS AND MORAL ACCOMMODATION.**—Nothing in this section shall be construed to require suicide assessment, early intervention, or treatment services for youth whose parents or legal guardians object based on the parents’ or legal guardians’ religious beliefs or moral objections.

“(g) **EVALUATIONS AND REPORT.**—

“(1) **EVALUATIONS BY ELIGIBLE ENTITIES.**—Not later than 18 months after receiving a grant or cooperative agreement under this section, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant or agreement.

“(2) **REPORT.**—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to the appropriate committees of Congress a report concerning the results of—

“(A) the evaluations conducted under paragraph (1);

and

“(B) an evaluation conducted by the Secretary to analyze the effectiveness and efficacy of the activities conducted with grants, collaborations, and consultations under this section.

“(h) **RULE OF CONSTRUCTION; STUDENT MEDICATION.**—Nothing in this section or section 520E-1 shall be construed to allow school personnel to require that a student obtain any medication as a condition of attending school or receiving services.

“(i) **PROHIBITION.**—Funds appropriated to carry out this section, section 520C, section 520E-1, or section 520E-2 shall not be used to pay for or refer for abortion.

“(j) **PARENTAL CONSENT.**—States and entities receiving funding under this section and section 520E-1 shall obtain prior written, informed consent from the child’s parent or legal guardian for assessment services, school-sponsored programs, and treatment involving medication related to youth suicide conducted in elementary and secondary schools. The requirement of the preceding sentence does not apply in the following cases:

“(1) In an emergency, where it is necessary to protect the immediate health and safety of the student or other students.

“(2) Other instances, as defined by the State, where parental consent cannot reasonably be obtained.

“(k) **RELATION TO EDUCATION PROVISIONS.**—Nothing in this section or section 520E-1 shall be construed to supersede section 444 of the General Education Provisions Act, including the requirement of prior parental consent for the disclosure of any education records. Nothing in this section or section 520E-1 shall be construed to modify or affect parental notification requirements for programs authorized under the Elementary and Secondary Education Act of 1965 (as amended by the No Child Left Behind Act of 2001; Public Law 107-110).

“(l) **DEFINITIONS.**—In this section:

“(1) **EARLY INTERVENTION.**—The term ‘early intervention’ means a strategy or approach that is intended to prevent an outcome or to alter the course of an existing condition.

“(2) **EDUCATIONAL INSTITUTION; INSTITUTION OF HIGHER EDUCATION; SCHOOL.**—The term—

“(A) ‘educational institution’ means a school or institution of higher education;

“(B) ‘institution of higher education’ has the meaning given such term in section 101 of the Higher Education Act of 1965; and

“(C) ‘school’ means an elementary or secondary school (as such terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965).

“(3) **PREVENTION.**—The term ‘prevention’ means a strategy or approach that reduces the likelihood or risk of onset, or delays the onset, of adverse health problems that have been known to lead to suicide.

“(4) **YOUTH.**—The term ‘youth’ means individuals who are between 10 and 24 years of age.

“(m) **AUTHORIZATION OF APPROPRIATIONS.**—

“(1) **IN GENERAL.**—For the purpose of carrying out this section, there are authorized to be appropriated \$7,000,000 for fiscal year 2005, \$18,000,000 for fiscal year 2006, and \$30,000,000 for fiscal year 2007.

“(2) **PREFERENCE.**—If less than \$3,500,000 is appropriated for any fiscal year to carry out this section, in awarding grants and cooperative agreements under this section during the fiscal year, the Secretary shall give preference to States that have rates of suicide that significantly exceed the national average as determined by the Centers for Disease Control and Prevention.”.

(d) **MENTAL AND BEHAVIORAL HEALTH SERVICES ON CAMPUS.**—Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by inserting after section 520E–1 (as redesignated by subsection (b)) the following:

“SEC. 520E–2. MENTAL AND BEHAVIORAL HEALTH SERVICES ON CAMPUS.

42 USC
290bb–36b.

“(a) **IN GENERAL.**—The Secretary, acting through the Director of the Center for Mental Health Services, in consultation with the Secretary of Education, may award grants on a competitive basis to institutions of higher education to enhance services for students with mental and behavioral health problems that can lead to school failure, such as depression, substance abuse, and suicide attempts, so that students will successfully complete their studies.

“(b) **USE OF FUNDS.**—The Secretary may not make a grant to an institution of higher education under this section unless the institution agrees to use the grant only for—

“(1) educational seminars;

“(2) the operation of hot lines;

“(3) preparation of informational material;

“(4) preparation of educational materials for families of students to increase awareness of potential mental and behavioral health issues of students enrolled at the institution of higher education;

“(5) training programs for students and campus personnel to respond effectively to students with mental and behavioral health problems that can lead to school failure, such as depression, substance abuse, and suicide attempts; or

“(6) the creation of a networking infrastructure to link colleges and universities that do not have mental health services with health care providers who can treat mental and behavioral health problems.

“(c) ELIGIBLE GRANT RECIPIENTS.—Any institution of higher education receiving a grant under this section may carry out activities under the grant through—

“(1) college counseling centers;

“(2) college and university psychological service centers;

“(3) mental health centers;

“(4) psychology training clinics; or

“(5) institution of higher education supported, evidence-based, mental health and substance abuse programs.

“(d) APPLICATION.—An institution of higher education desiring a grant under this section shall prepare and submit an application to the Secretary at such time and in such manner as the Secretary may require. At a minimum, the application shall include the following:

“(1) A description of identified mental and behavioral health needs of students at the institution of higher education.

“(2) A description of Federal, State, local, private, and institutional resources currently available to address the needs described in paragraph (1) at the institution of higher education.

“(3) A description of the outreach strategies of the institution of higher education for promoting access to services, including a proposed plan for reaching those students most in need of mental health services.

“(4) A plan to evaluate program outcomes, including a description of the proposed use of funds, the program objectives, and how the objectives will be met.

“(5) An assurance that the institution will submit a report to the Secretary each fiscal year on the activities carried out with the grant and the results achieved through those activities.

“(e) REQUIREMENT OF MATCHING FUNDS.—

“(1) IN GENERAL.—The Secretary may make a grant under this section to an institution of higher education only if the institution agrees to make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than \$1 for each \$1 of Federal funds provided in the grant, toward the costs of activities carried out with the grant (as described in subsection (b)) and other activities by the institution to reduce student mental and behavioral health problems.

“(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required under paragraph (1) may be in cash or in kind. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

“(3) WAIVER.—The Secretary may waive the requirement established in paragraph (1) with respect to an institution

Reports.

of higher education if the Secretary determines that extraordinary need at the institution justifies the waiver.

“(f) REPORTS.—For each fiscal year that grants are awarded under this section, the Secretary shall conduct a study on the results of the grants and submit to the Congress a report on such results that includes the following:

“(1) An evaluation of the grant program outcomes, including a summary of activities carried out with the grant and the results achieved through those activities.

“(2) Recommendations on how to improve access to mental and behavioral health services at institutions of higher education, including efforts to reduce the incidence of suicide and substance abuse.

“(g) DEFINITION.—In this section, the term ‘institution of higher education’ has the meaning given such term in section 101 of the Higher Education Act of 1965.

“(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated \$5,000,000 for fiscal year 2005, \$5,000,000 for fiscal year 2006, and \$5,000,000 for fiscal year 2007.”.

Approved October 21, 2004.

LEGISLATIVE HISTORY—S. 2634:

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 8, considered and passed Senate.

Sept. 8, considered in House.

Sept. 9, considered and passed House, amended. Senate concurred in House amendment.



Public Law 108–356
108th Congress

An Act

Oct. 21, 2004
[S. 2742]

To extend certain authority of the Supreme Court Police, modify the venue of prosecutions relating to the Supreme Court building and grounds, and authorize the acceptance of gifts to the United States Supreme Court.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. EXTENSION OF AUTHORITY FOR THE UNITED STATES
SUPREME COURT POLICE TO PROTECT COURT OFFI-
CIALS OFF THE SUPREME COURT GROUNDS.**

Section 6121(b)(2) of title 40, United States Code, is amended by striking “2004” and inserting “2008”.

**SEC. 2. VENUE FOR PROSECUTIONS RELATING TO THE UNITED
STATES SUPREME COURT BUILDING AND GROUNDS.**

Section 6137 of title 40, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) VENUE AND PROCEDURE.—Prosecution for a violation described in subsection (a) shall be in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, on information by the United States Attorney or an Assistant United States Attorney.”.

28 USC 1 note.

SEC. 3. GIFTS TO THE UNITED STATES SUPREME COURT.

The Chief Justice or his designee is authorized to accept, hold, administer, and utilize gifts and bequests of personal property pertaining to the history of the United States Supreme Court or

its justices, but gifts or bequests of money shall be covered into the Treasury.

Approved October 21, 2004.

LEGISLATIVE HISTORY—S. 2742:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed Senate.

Oct. 6, considered and passed House.



Public Law 108–357
108th Congress

An Act

Oct. 22, 2004
[H.R. 4520]

American Jobs
Creation Act of
2004.

26 USC 1 note.

To amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “American Jobs Creation Act of 2004”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; etc.

**TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR
EXTRATERRITORIAL INCOME**

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Deduction relating to income attributable to domestic production activities.

TITLE II—BUSINESS TAX INCENTIVES

Subtitle A—Small Business Expensing

Sec. 201. 2-year extension of increased expensing for small business.

Subtitle B—Depreciation

Sec. 211. Recovery period for depreciation of certain leasehold improvements and restaurant property.

Subtitle C—Community Revitalization

Sec. 221. Modification of targeted areas and low-income communities for new markets tax credit.

Sec. 222. Expansion of designated renewal community area based on 2000 census data.

Sec. 223. Modification of income requirement for census tracts within high migration rural counties.

Subtitle D—S Corporation Reform and Simplification

Sec. 231. Members of family treated as 1 shareholder.

Sec. 232. Increase in number of eligible shareholders to 100.

Sec. 233. Expansion of bank S corporation eligible shareholders to include IRAs.

Sec. 234. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.

Sec. 235. Transfer of suspended losses incident to divorce, etc.

Sec. 236. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.

- Sec. 237. Exclusion of investment securities income from passive income test for bank S corporations.
- Sec. 238. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.
- Sec. 239. Information returns for qualified subchapter S subsidiaries.
- Sec. 240. Repayment of loans for qualifying employer securities.

Subtitle E—Other Business Incentives

- Sec. 241. Phaseout of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
- Sec. 242. Modification of application of income forecast method of depreciation.
- Sec. 243. Improvements related to real estate investment trusts.
- Sec. 244. Special rules for certain film and television productions.
- Sec. 245. Credit for maintenance of railroad track.
- Sec. 246. Suspension of occupational taxes relating to distilled spirits, wine, and beer.
- Sec. 247. Modification of unrelated business income limitation on investment in certain small business investment companies.
- Sec. 248. Election to determine corporate tax on certain international shipping activities using per ton rate.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

- Sec. 251. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

TITLE III—TAX RELIEF FOR AGRICULTURE AND SMALL MANUFACTURERS

Subtitle A—Volumetric Ethanol Excise Tax Credit

- Sec. 301. Alcohol and biodiesel excise tax credit and extension of alcohol fuels income tax credit.
- Sec. 302. Biodiesel income tax credit.
- Sec. 303. Information reporting for persons claiming certain tax benefits.

Subtitle B—Agricultural Incentives

- Sec. 311. Special rules for livestock sold on account of weather-related conditions.
- Sec. 312. Payment of dividends on stock of cooperatives without reducing patronage dividends.
- Sec. 313. Apportionment of small ethanol producer credit.
- Sec. 314. Coordinate farmers and fishermen income averaging and the alternative minimum tax.
- Sec. 315. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
- Sec. 316. Modification to cooperative marketing rules to include value added processing involving animals.
- Sec. 317. Extension of declaratory judgment procedures to farmers' cooperative organizations.
- Sec. 318. Certain expenses of rural letter carriers.
- Sec. 319. Treatment of certain income of cooperatives.
- Sec. 320. Exclusion for payments to individuals under National Health Service Corps loan repayment program and certain State loan repayment programs.
- Sec. 321. Modification of safe harbor rules for timber REITs.
- Sec. 322. Expensing of certain reforestation expenditures.

Subtitle C—Incentives for Small Manufacturers

- Sec. 331. Net income from publicly traded partnerships treated as qualifying income of regulated investment companies.
- Sec. 332. Simplification of excise tax imposed on bows and arrows.
- Sec. 333. Reduction of excise tax on fishing tackle boxes.
- Sec. 334. Sonar devices suitable for finding fish.
- Sec. 335. Charitable contribution deduction for certain expenses incurred in support of Native Alaskan subsistence whaling.
- Sec. 336. Modification of depreciation allowance for aircraft.
- Sec. 337. Modification of placed in service rule for bonus depreciation property.
- Sec. 338. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
- Sec. 339. Credit for production of low sulfur diesel fuel.
- Sec. 340. Expansion of qualified small-issue bond program.
- Sec. 341. Oil and gas from marginal wells.

TITLE IV—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

- Sec. 401. Interest expense allocation rules.

- Sec. 402. Recharacterization of overall domestic loss.
- Sec. 403. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.
- Sec. 404. Reduction to 2 foreign tax credit baskets.
- Sec. 405. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.
- Sec. 406. Clarification of treatment of certain transfers of intangible property.
- Sec. 407. United States property not to include certain assets of controlled foreign corporation.
- Sec. 408. Translation of foreign taxes.
- Sec. 409. Repeal of withholding tax on dividends from certain foreign corporations.
- Sec. 410. Equal treatment of interest paid by foreign partnerships and foreign corporations.
- Sec. 411. Treatment of certain dividends of regulated investment companies.
- Sec. 412. Look-thru treatment for sales of partnership interests.
- Sec. 413. Repeal of foreign personal holding company rules and foreign investment company rules.
- Sec. 414. Determination of foreign personal holding company income with respect to transactions in commodities.
- Sec. 415. Modifications to treatment of aircraft leasing and shipping income.
- Sec. 416. Modification of exceptions under subpart F for active financing.
- Sec. 417. 10-year foreign tax credit carryover; 1-year foreign tax credit carryback.
- Sec. 418. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.
- Sec. 419. Exclusion of income derived from certain wagers on horse races and dog races from gross income of nonresident alien individuals.
- Sec. 420. Limitation of withholding tax for Puerto Rico corporations.
- Sec. 421. Foreign tax credit under alternative minimum tax.
- Sec. 422. Incentives to reinvest foreign earnings in United States.
- Sec. 423. Delay in effective date of final regulations governing exclusion of income from international operation of ships or aircraft.
- Sec. 424. Study of earnings stripping provisions.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

- Sec. 501. Deduction of State and local general sales taxes in lieu of State and local income taxes.

TITLE VI—FAIR AND EQUITABLE TOBACCO REFORM

- Sec. 601. Short title.

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

- Sec. 611. Termination of tobacco quota program and related provisions.
- Sec. 612. Termination of tobacco price support program and related provisions.
- Sec. 613. Conforming amendments.
- Sec. 614. Continuation of liability for 2004 and earlier crop years.

Subtitle B—Transitional Payments to Tobacco Quota Holders and Producers of Tobacco

- Sec. 621. Definitions.
- Sec. 622. Contract payments to tobacco quota holders.
- Sec. 623. Contract payments for producers of quota tobacco.
- Sec. 624. Administration.
- Sec. 625. Use of assessments as source of funds for payments.
- Sec. 626. Tobacco Trust Fund.
- Sec. 627. Limitation on total expenditures.

Subtitle C—Implementation and Transition

- Sec. 641. Treatment of tobacco loan pool stocks and outstanding loan costs.
- Sec. 642. Regulations.
- Sec. 643. Effective date.

TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Brownfields demonstration program for qualified green building and sustainable design projects.
- Sec. 702. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business taxable income.
- Sec. 703. Civil rights tax relief.
- Sec. 704. Modification of class life for certain track facilities.
- Sec. 705. Suspension of policyholders surplus account provisions.
- Sec. 706. Certain Alaska natural gas pipeline property treated as 7-year property.

- Sec. 707. Extension of enhanced oil recovery credit to certain Alaska facilities.
- Sec. 708. Method of accounting for naval shipbuilders.
- Sec. 709. Modification of minimum cost requirement for transfer of excess pension assets.
- Sec. 710. Expansion of credit for electricity produced from certain renewable resources.
- Sec. 711. Certain business credits allowed against regular and minimum tax.
- Sec. 712. Inclusion of primary and secondary medical strategies for children and adults with sickle cell disease as medical assistance under the Medicaid program.
- Sec. 713. Ceiling fans.
- Sec. 714. Certain steam generators, and certain reactor vessel heads and pressurizers, used in nuclear facilities.

TITLE VIII—REVENUE PROVISIONS

Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation

- Sec. 801. Tax treatment of expatriated entities and their foreign parents.
- Sec. 802. Excise tax on stock compensation of insiders in expatriated corporations.
- Sec. 803. Reinsurance of United States risks in foreign jurisdictions.
- Sec. 804. Revision of tax rules on expatriation of individuals.
- Sec. 805. Reporting of taxable mergers and acquisitions.
- Sec. 806. Studies.

Subtitle B—Provisions Relating to Tax Shelters

PART I—TAXPAYER-RELATED PROVISIONS

- Sec. 811. Penalty for failing to disclose reportable transactions.
- Sec. 812. Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc.
- Sec. 813. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 814. Statute of limitations for taxable years for which required listed transactions not reported.
- Sec. 815. Disclosure of reportable transactions.
- Sec. 816. Failure to furnish information regarding reportable transactions.
- Sec. 817. Modification of penalty for failure to maintain lists of investors.
- Sec. 818. Penalty on promoters of tax shelters.
- Sec. 819. Modifications of substantial understatement penalty for nonreportable transactions.
- Sec. 820. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 821. Penalty on failure to report interests in foreign financial accounts.
- Sec. 822. Regulation of individuals practicing before the Department of the Treasury.

PART II—OTHER PROVISIONS

- Sec. 831. Treatment of stripped interests in bond and preferred stock funds, etc.
- Sec. 832. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
- Sec. 833. Disallowance of certain partnership loss transfers.
- Sec. 834. No reduction of basis under section 734 in stock held by partnership in corporate partner.
- Sec. 835. Repeal of special rules for FASITS.
- Sec. 836. Limitation on transfer or importation of built-in losses.
- Sec. 837. Clarification of banking business for purposes of determining investment of earnings in United States property.
- Sec. 838. Denial of deduction for interest on underpayments attributable to nondisclosed reportable transactions.
- Sec. 839. Clarification of rules for payment of estimated tax for certain deemed asset sales.
- Sec. 840. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
- Sec. 841. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
- Sec. 842. Deposits made to suspend running of interest on potential underpayments.
- Sec. 843. Partial payment of tax liability in installment agreements.
- Sec. 844. Affirmation of consolidated return regulation authority.
- Sec. 845. Expanded disallowance of deduction for interest on convertible debt.

PART III—LEASING

- Sec. 847. Reform of tax treatment of certain leasing arrangements.
- Sec. 848. Limitation on deductions allocable to property used by governments or other tax-exempt entities.
- Sec. 849. Effective date.

Subtitle C—Reduction of Fuel Tax Evasion

- Sec. 851. Exemption from certain excise taxes for mobile machinery.
- Sec. 852. Modification of definition of off-highway vehicle.
- Sec. 853. Taxation of aviation-grade kerosene.
- Sec. 854. Dye injection equipment.
- Sec. 855. Elimination of administrative review for taxable use of dyed fuel.
- Sec. 856. Penalty on untaxed chemically altered dyed fuel mixtures.
- Sec. 857. Termination of dyed diesel use by intercity buses.
- Sec. 858. Authority to inspect on-site records.
- Sec. 859. Assessable penalty for refusal of entry.
- Sec. 860. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries.
- Sec. 861. Display of registration.
- Sec. 862. Registration of persons within foreign trade zones, etc.
- Sec. 863. Penalties for failure to register and failure to report.
- Sec. 864. Electronic filing of required information reports.
- Sec. 865. Taxable fuel refunds for certain ultimate vendors.
- Sec. 866. Two-party exchanges.
- Sec. 867. Modifications of tax on use of certain vehicles.
- Sec. 868. Dedication of revenues from certain penalties to the Highway Trust Fund.
- Sec. 869. Simplification of tax on tires.
- Sec. 870. Transmix and diesel fuel blend stocks treated as taxable fuel.
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Subtitle D—Other Revenue Provisions

- Sec. 881. Qualified tax collection contracts.
- Sec. 882. Treatment of charitable contributions of patents and similar property.
- Sec. 883. Increased reporting for noncash charitable contributions.
- Sec. 884. Donations of motor vehicles, boats, and airplanes.
- Sec. 885. Treatment of nonqualified deferred compensation plans.
- Sec. 886. Extension of amortization of intangibles to sports franchises.
- Sec. 887. Modification of continuing levy on payments to Federal vendors.
- Sec. 888. Modification of straddle rules.
- Sec. 889. Addition of vaccines against hepatitis A to list of taxable vaccines.
- Sec. 890. Addition of vaccines against influenza to list of taxable vaccines.
- Sec. 891. Extension of IRS user fees.
- Sec. 892. COBRA fees.
- Sec. 893. Prohibition on nonrecognition of gain through complete liquidation of holding company.
- Sec. 894. Effectively connected income to include certain foreign source income.
- Sec. 895. Recapture of overall foreign losses on sale of controlled foreign corporation.
- Sec. 896. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.
- Sec. 897. Denial of installment sale treatment for all readily tradable debt.
- Sec. 898. Modification of treatment of transfers to creditors in divisive reorganizations.
- Sec. 899. Clarification of definition of nonqualified preferred stock.
- Sec. 900. Modification of definition of controlled group of corporations.
- Sec. 901. Class lives for utility grading costs.
- Sec. 902. Consistent amortization of periods for intangibles.
- Sec. 903. Freeze of provisions regarding suspension of interest where Secretary fails to contact taxpayer.
- Sec. 904. Increase in withholding from supplemental wage payments in excess of \$1,000,000.
- Sec. 905. Treatment of sale of stock acquired pursuant to exercise of stock options to comply with conflict-of-interest requirements.
- Sec. 906. Application of basis rules to nonresident aliens.
- Sec. 907. Limitation of employer deduction for certain entertainment expenses.
- Sec. 908. Residence and source rules relating to United States possessions.
- Sec. 909. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.
- Sec. 910. Expansion of limitation on depreciation of certain passenger automobiles.

TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME

SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) **IN GENERAL.**—Section 114 is hereby repealed.

(b) **CONFORMING AMENDMENTS.**—

(1) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed. 26 USC 941–943.

(2) The table of subparts for such part III is amended by striking the item relating to subpart E.

(3) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(4) The second sentence of section 56(g)(4)(B)(i) is amended by striking “114 or”.

(5) Section 275(a) is amended—

(A) by inserting “or” at the end of paragraph (4)(A), by striking “or” at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(6) Paragraph (3) of section 864(e) is amended—

(A) by striking:

“(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

“(A) IN GENERAL.—For purposes of”; and inserting:

“(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of”, and

(B) by striking subparagraph (B).

(7) Section 903 is amended by striking “114, 164(a),” and inserting “164(a)”.

(8) Section 999(c)(1) is amended by striking “941(a)(5),”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transactions after December 31, 2004. 26 USC 56 note.

(d) **TRANSITIONAL RULE FOR 2005 AND 2006.**—

(1) **IN GENERAL.**—In the case of transactions during 2005 or 2006, the amount includible in gross income by reason of the amendments made by this section shall not exceed the applicable percentage of the amount which would have been so included but for this subsection. 26 USC 114 note.

(2) **APPLICABLE PERCENTAGE.**—For purposes of paragraph (1), the applicable percentage shall be as follows:

(A) For 2005, the applicable percentage shall be 20 percent.

(B) For 2006, the applicable percentage shall be 40 percent.

(e) **REVOCATION OF ELECTION TO BE TREATED AS DOMESTIC CORPORATION.**—If, during the 1-year period beginning on the date of the enactment of this Act, a corporation for which an election is in effect under section 943(e) of the Internal Revenue Code of 1986 revokes such election, no gain or loss shall be recognized with respect to property treated as transferred under clause (ii) of section 943(e)(4)(B) of such Code to the extent such property—

(1) was treated as transferred under clause (i) thereof,

or

(2) was acquired during a taxable year to which such election applies and before May 1, 2003, in the ordinary course of its trade or business.

The Secretary of the Treasury (or such Secretary's delegate) may prescribe such regulations as may be necessary to prevent the abuse of the purposes of this subsection.

(f) **BINDING CONTRACTS.**—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(1) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of such Code, as in effect on the day before the date of the enactment of this Act), and

(2) which is in effect on September 17, 2003, and at all times thereafter.

For purposes of this subsection, a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.

SEC. 102. DEDUCTION RELATING TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

(a) **IN GENERAL.**—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end the following new section:

“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

“(a) ALLOWANCE OF DEDUCTION.—

“(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to 9 percent of the lesser of—

“(A) the qualified production activities income of the taxpayer for the taxable year, or

“(B) taxable income (determined without regard to this section) for the taxable year.

Applicability.

“(2) PHASEIN.—In the case of any taxable year beginning after 2004 and before 2010, paragraph (1) and subsections (d)(1) and (d)(6) shall be applied by substituting for the percentage contained therein the transition percentage determined under the following table:

“For taxable years	The transition percentage is:
beginning in:	
2005 or 2006	3
2007, 2008, or 2009	6.

“(b) DEDUCTION LIMITED TO WAGES PAID.—

“(1) IN GENERAL.—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W-2 wages of the employer for the taxable year.

“(2) W-2 WAGES.—For purposes of paragraph (1), the term ‘W-2 wages’ means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year.

“(3) ACQUISITIONS AND DISPOSITIONS.—The Secretary shall provide for the application of this subsection in cases where

the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

“(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified production activities income’ for any taxable year means an amount equal to the excess (if any) of—

“(A) the taxpayer’s domestic production gross receipts for such taxable year, over

“(B) the sum of—

“(i) the cost of goods sold that are allocable to such receipts,

“(ii) other deductions, expenses, or losses directly allocable to such receipts, and

“(iii) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

“(2) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

Regulations.

“(3) SPECIAL RULES FOR DETERMINING COSTS.—

“(A) IN GENERAL.—For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

Applicability.

“(B) EXPORTS FOR FURTHER MANUFACTURE.—In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

“(4) DOMESTIC PRODUCTION GROSS RECEIPTS.—

“(A) IN GENERAL.—The term ‘domestic production gross receipts’ means the gross receipts of the taxpayer which are derived from—

“(i) any lease, rental, license, sale, exchange, or other disposition of—

“(I) qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States,

“(II) any qualified film produced by the taxpayer, or

“(III) electricity, natural gas, or potable water produced by the taxpayer in the United States,

“(ii) construction performed in the United States,

or

“(iii) engineering or architectural services performed in the United States for construction projects in the United States.

“(B) EXCEPTIONS.—Such term shall not include gross receipts of the taxpayer which are derived from—

“(i) the sale of food and beverages prepared by the taxpayer at a retail establishment, and

“(ii) the transmission or distribution of electricity, natural gas, or potable water.

“(5) QUALIFYING PRODUCTION PROPERTY.—The term ‘qualifying production property’ means—

“(A) tangible personal property,

“(B) any computer software, and

“(C) any property described in section 168(f)(4).

“(6) QUALIFIED FILM.—The term ‘qualified film’ means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers. Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

“(7) RELATED PERSONS.—

“(A) IN GENERAL.—The term ‘domestic production gross receipts’ shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

“(B) RELATED PERSON.—For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

“(d) DEFINITIONS AND SPECIAL RULES.—

“(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—

“(A) IN GENERAL.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity—

“(i) subject to the provisions of paragraphs (2) and (3), this section shall be applied at the shareholder, partner, or similar level, and

“(ii) the Secretary shall prescribe rules for the application of this section, including rules relating to—

“(I) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

“(II) additional reporting requirements.

“(B) APPLICATION OF WAGE LIMITATION.—Notwithstanding subparagraph (A)(i), for purposes of applying subsection (b), a shareholder, partner, or similar person which is allocated qualified production activities income from an S corporation, partnership, estate, trust, or other pass-thru entity shall also be treated as having been allocated W-2 wages from such entity in an amount equal to the lesser of—

“(i) such person’s allocable share of such wages (without regard to this subparagraph), as determined under regulations prescribed by the Secretary, or

“(ii) 2 times 9 percent of the qualified production activities income allocated to such person for the taxable year.

“(2) APPLICATION TO INDIVIDUALS.—In the case of an individual, subsection (a)(1)(B) shall be applied by substituting ‘adjusted gross income’ for ‘taxable income’. For purposes of the preceding sentence, adjusted gross income shall be determined—

“(A) after application of sections 86, 135, 137, 219, 221, 222, and 469, and

“(B) without regard to this section.

“(3) PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—

“(A) IN GENERAL.—If any amount described in paragraph (1) or (3) of section 1385(a)—

“(i) is received by a person from an organization to which part I of subchapter T applies which is engaged—

“(I) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

“(II) in the marketing of agricultural or horticultural products, and

“(ii) is allocable to the portion of the qualified production activities income of the organization which, but for this paragraph, would be deductible under subsection (a) by the organization and is designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

then such person shall be allowed a deduction under subsection (a) with respect to such amount. The taxable income of the organization shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

“(B) SPECIAL RULES.—For purposes of applying subparagraph (A), in determining the qualified production activities income which would be deductible by the organization under subsection (a)—

“(i) there shall not be taken into account in computing the organization’s taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

“(ii) in the case of an organization described in subparagraph (A)(i)(II), the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

“(4) SPECIAL RULE FOR AFFILIATED GROUPS.—

“(A) IN GENERAL.—All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

“(B) EXPANDED AFFILIATED GROUP.—For purposes of this section, the term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined—

“(i) by substituting ‘50 percent’ for ‘80 percent’ each place it appears, and

“(ii) without regard to paragraphs (2) and (4) of section 1504(b).

“(C) ALLOCATION OF DEDUCTION.—Except as provided in regulations, the deduction under subsection (a) shall be allocated among the members of the expanded affiliated group in proportion to each member’s respective amount (if any) of qualified production activities income.

“(5) TRADE OR BUSINESS REQUIREMENT.—This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

“(6) COORDINATION WITH MINIMUM TAX.—The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, the deduction under subsection (a) shall be 9 percent of the lesser of—

“(A) qualified production activities income (determined without regard to part IV of subchapter A), or

“(B) alternative minimum taxable income (determined without regard to this section) for the taxable year.

In the case of an individual, subparagraph (B) shall be applied by substituting ‘adjusted gross income’ for ‘alternative minimum taxable income’. For purposes of the preceding sentence, adjusted gross income shall be determined in the same manner as provided in paragraph (2).

“(7) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section.”.

(b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to disallowance of items not deductible in computing earnings and profits) is amended by adding at the end the following new clause:

“(v) DEDUCTION FOR DOMESTIC PRODUCTION.—

Clause (i) shall not apply to any amount allowable as a deduction under section 199.”.

26 USC 631 note.

(c) SPECIAL RULE RELATING TO ELECTION TO TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.—Any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether such taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.

(d) TECHNICAL AMENDMENTS.—

(1) Sections 86(b)(2)(A), 135(c)(4)(A), 137(b)(3)(A), and 219(g)(3)(A)(ii) are each amended by inserting “199,” before “221”.

(2) Clause (i) of section 221(b)(2)(C) is amended by inserting by inserting “199,” before “222”.

(3) Clause (i) of section 222(b)(2)(C) is amended by inserting “199,” before “911”.

(4) Paragraph (1) of section 246(b) is amended by inserting “199,” after “172,”.

(5) Clause (iii) of section 469(i)(3)(F) is amended by inserting “199,” before “219,”.

(6) Subsection (a) of section 613 is amended by inserting “and without the deduction under section 199” after “without allowances for depletion”.

(7) Subsection (a) of section 1402 is amended by striking “and” at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting “, and”, and by inserting after paragraph (15) the following new paragraph:

“(16) the deduction provided by section 199 shall not be allowed.”.

(8) The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

“Sec. 199. Income attributable to domestic production activities.”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2004. 26 USC 56 note.

TITLE II—BUSINESS TAX INCENTIVES

Subtitle A—Small Business Expensing

SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS.

Subsections (b), (c), and (d) of section 179 are each amended by striking “2006” each place it appears and inserting “2008”.

Subtitle B—Depreciation

SEC. 211. RECOVERY PERIOD FOR DEPRECIATION OF CERTAIN LEASEHOLD IMPROVEMENTS AND RESTAURANT PROPERTY.

(a) **15-YEAR RECOVERY PERIOD.**—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting a comma, and by adding at the end the following new clauses:

“(iv) any qualified leasehold improvement property placed in service before January 1, 2006, and

“(v) any qualified restaurant property placed in service before January 1, 2006.”.

(b) **QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.**—Subsection (e) of section 168 is amended by adding at the end the following new paragraph:

“(6) **QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.**—The term ‘qualified leasehold improvement property’ has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

“(A) **IMPROVEMENTS MADE BY LESSOR.**—In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed

in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

“(B) EXCEPTION FOR CHANGES IN FORM OF BUSINESS.—Property shall not cease to be qualified leasehold improvement property under subparagraph (A) by reason of—

“(i) death,

“(ii) a transaction to which section 381(a) applies,

“(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business,

“(iv) the acquisition of such property in an exchange described in section 1031, 1033, or 1038 to the extent that the basis of such property includes an amount representing the adjusted basis of other property owned by the taxpayer or a related person, or

“(v) the acquisition of such property by the taxpayer in a transaction described in section 332, 351, 361, 721, or 731 (or the acquisition of such property by the taxpayer from the transferee or acquiring corporation in a transaction described in such section), to the extent that the basis of the property in the hands of the taxpayer is determined by reference to its basis in the hands of the transferor or distributor.”.

(c) QUALIFIED RESTAURANT PROPERTY.—Subsection (e) of section 168 (as amended by subsection (b)) is further amended by adding at the end the following new paragraph:

“(7) QUALIFIED RESTAURANT PROPERTY.—The term ‘qualified restaurant property’ means any section 1250 property which is an improvement to a building if—

“(A) such improvement is placed in service more than 3 years after the date such building was first placed in service, and

“(B) more than 50 percent of the building’s square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.”.

(d) REQUIREMENT TO USE STRAIGHT LINE METHOD.—

(1) Paragraph (3) of section 168(b) is amended by adding at the end the following new subparagraphs:

“(G) Qualified leasehold improvement property described in subsection (e)(6).

“(H) Qualified restaurant property described in subsection (e)(7).”.

(2) Subparagraph (A) of section 168(b)(2) is amended by inserting before the comma “not referred to in paragraph (3)”.

(e) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by adding at the end the following new items:

“(E)(iv)	39
“(E)(v)	39”.

26 USC 168 note.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

Subtitle C—Community Revitalization

SEC. 221. MODIFICATION OF TARGETED AREAS AND LOW-INCOME COMMUNITIES FOR NEW MARKETS TAX CREDIT.

(a) TARGETED AREAS.—Paragraph (2) of section 45D(e) (relating to targeted areas) is amended to read as follows:

“(2) TARGETED POPULATIONS.—The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.”.

Regulations.

(b) TRACTS WITH LOW POPULATION.—Subsection (e) of section 45D (defining low-income community) is amended by adding at the end the following:

“(4) TRACTS WITH LOW POPULATION.—A population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of this section if such tract—

“(A) is within an empowerment zone the designation of which is in effect under section 1391, and

“(B) is contiguous to 1 or more low-income communities (determined without regard to this paragraph).”.

(c) EFFECTIVE DATES.—

(1) TARGETED AREAS.—The amendment made by subsection (a) shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act.

(2) TRACTS WITH LOW POPULATION.—The amendment made by subsection (b) shall apply to investments made after the date of the enactment of this Act.

26 USC 45D
note.

SEC. 222. EXPANSION OF DESIGNATED RENEWAL COMMUNITY AREA BASED ON 2000 CENSUS DATA.

(a) IN GENERAL.—Section 1400E (relating to designation of renewal communities) is amended by adding at the end the following new subsection:

“(g) EXPANSION OF DESIGNATED AREA BASED ON 2000 CENSUS.—

“(1) IN GENERAL.—At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

“(A)(i) at the time such community was nominated, such community would have met the requirements of this section using 1990 census data even if such tract had been included in such community, and

“(ii) such tract has a poverty rate using 2000 census data which exceeds the poverty rate for such tract using 1990 census data, or

“(B)(i) such community would be described in subparagraph (A)(i) but for the failure to meet one or more of the requirements of paragraphs (2)(C)(i), (3)(C), and (3)(D) of subsection (c) using 1990 census data,

“(ii) such community, including such tract, has a population of not more than 200,000 using either 1990 census data or 2000 census data,

“(iii) such tract meets the requirement of subsection (c)(3)(C) using 2000 census data, and

“(iv) such tract meets the requirement of subparagraph (A)(ii).

“(2) EXCEPTION FOR CERTAIN CENSUS TRACTS WITH LOW POPULATION IN 1990.—In the case of any census tract which did not have a poverty rate determined by the Bureau of the Census using 1990 census data, paragraph (1)(B) shall be applied without regard to clause (iv) thereof.

“(3) SPECIAL RULE FOR CERTAIN CENSUS TRACTS WITH LOW POPULATION IN 2000.—At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

“(A) either—

“(i) such tract has no population using 2000 census data, or

“(ii) no poverty rate for such tract is determined by the Bureau of the Census using 2000 census data,

“(B) such tract is one of general distress, and

“(C) such community, including such tract, meets the requirements of subparagraphs (A) and (B) of subsection (c)(2).

“(4) PERIOD IN EFFECT.—Any expansion under this subsection shall take effect as provided in subsection (b).”.

26 USC 1400E
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000.

SEC. 223. MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.

(a) IN GENERAL.—Section 45D(e) (relating to low-income community), as amended by this Act, is amended by inserting after paragraph (4) the following new paragraph:

“(5) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

“(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting ‘85 percent’ for ‘80 percent’.

“(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term ‘high migration rural county’ means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.”.

26 USC 45D
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

Subtitle D—S Corporation Reform and Simplification

SEC. 231. MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.

(a) **IN GENERAL.**—Paragraph (1) of section 1361(c) (relating to special rules for applying subsection (b)) is amended to read as follows:

“(1) **MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.**—

“(A) **IN GENERAL.**—For purpose of subsection (b)(1)(A)—

“(i) except as provided in clause (ii), a husband and wife (and their estates) shall be treated as 1 shareholder, and

“(ii) in the case of a family with respect to which an election is in effect under subparagraph (D), all members of the family shall be treated as 1 shareholder.

“(B) **MEMBERS OF THE FAMILY.**—For purpose of subparagraph (A)(ii)—

“(i) **IN GENERAL.**—The term ‘members of the family’ means the common ancestor, lineal descendants of the common ancestor, and the spouses (or former spouses) of such lineal descendants or common ancestor.

“(ii) **COMMON ANCESTOR.**—For purposes of this paragraph, an individual shall not be considered a common ancestor if, as of the later of the effective date of this paragraph or the time the election under section 1362(a) is made, the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this clause) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to which such spouse is (or was) married.

“(C) **EFFECT OF ADOPTION, ETC.**—In determining whether any relationship specified in subparagraph (B) exists, the rules of section 152(b)(2) shall apply. Applicability.

“(D) **ELECTION.**—An election under subparagraph (A)(ii)— Regulations.

“(i) may, except as otherwise provided in regulations prescribed by the Secretary, be made by any member of the family, and

“(ii) shall remain in effect until terminated as provided in regulations prescribed by the Secretary.”.

(b) **RELIEF FROM INADVERTENT INVALID ELECTION OR TERMINATION.**—Section 1362(f) (relating to inadvertent invalid elections or terminations), as amended by this Act, is amended—

(1) by inserting “or section 1361(c)(1)(A)(ii)” after “section 1361(b)(3)(B)(ii),” in paragraph (1), and

(2) by inserting “or section 1361(c)(1)(D)(iii)” after “section 1361(b)(3)(C),” in paragraph (1)(B).

(c) **EFFECTIVE DATES.**—

(1) **SUBSECTION (a).**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2004. 26 USC 1361 note.

26 USC 1362
note.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to elections and terminations made after December 31, 2004.

SEC. 232. INCREASE IN NUMBER OF ELIGIBLE SHAREHOLDERS TO 100.

(a) IN GENERAL.—Section 1361(b)(1)(A) (defining small business corporation) is amended by striking “75” and inserting “100”.

26 USC 1361
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 233. EXPANSION OF BANK S CORPORATION ELIGIBLE SHAREHOLDERS TO INCLUDE IRAS.

(a) IN GENERAL.—Section 1361(c)(2)(A) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (v) the following new clause:

“(vi) In the case of a corporation which is a bank (as defined in section 581), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank as of the date of the enactment of this clause.”.

(b) TREATMENT AS SHAREHOLDER.—Section 1361(c)(2)(B) (relating to treatment as shareholders) is amended by adding at the end the following new clause:

“(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.”.

(c) SALE OF BANK STOCK IN IRA RELATING TO S CORPORATION ELECTION EXEMPT FROM PROHIBITED TRANSACTION RULES.—Section 4975(d) (relating to exemptions) is amended by striking “or” at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting “; or”, and by adding at the end the following new paragraph:

“(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

“(A) such stock is in a bank (as defined in section 581),

“(B) such stock is held by such trust as of the date of the enactment of this paragraph,

“(C) such sale is pursuant to an election under section 1362(a) by such bank,

“(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

“(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

“(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made.”.

(d) CONFORMING AMENDMENT.—Section 512(e)(1) is amended by inserting “1361(c)(2)(A)(vi) or” before “1361(c)(6)”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 512 note.

SEC. 234. DISREGARD OF UNEXERCISED POWERS OF APPOINTMENT IN DETERMINING POTENTIAL CURRENT BENEFICIARIES OF ESBT.

(a) **IN GENERAL.**—Section 1361(e)(2) (defining potential current beneficiary) is amended—

(1) by inserting “(determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period)” after “of the trust” in the first sentence, and

(2) by striking “60-day” in the second sentence and inserting “1-year”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2004. 26 USC 1361 note.

SEC. 235. TRANSFER OF SUSPENDED LOSSES INCIDENT TO DIVORCE, ETC.

(a) **IN GENERAL.**—Section 1366(d)(2) (relating to indefinite carryover of disallowed losses and deductions) is amended to read as follows:

“(2) **INDEFINITE CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

“(B) **TRANSFERS OF STOCK BETWEEN SPOUSES OR INCIDENT TO DIVORCE.**—In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2004. 26 USC 1366 note.

SEC. 236. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK AMOUNTS BY QUALIFIED SUBCHAPTER S TRUST INCOME BENEFICIARIES.

(a) **IN GENERAL.**—Section 1361(d)(1) (relating to special rule for qualified subchapter S trust) is amended—

(1) by striking “and” at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting “, and”, and

(3) by adding at the end the following new subparagraph:

“(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transfers made after December 31, 2004. 26 USC 1361 note.

SEC. 237. EXCLUSION OF INVESTMENT SECURITIES INCOME FROM PASSIVE INCOME TEST FOR BANK S CORPORATIONS.

(a) **IN GENERAL.**—Section 1362(d)(3) (relating to where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits) is amended by adding at the end the following new subparagraph:

“(F) **EXCEPTION FOR BANKS; ETC.**—In the case of a bank (as defined in section 581), a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act), the term ‘passive investment income’ shall not include—

“(i) interest income earned by such bank or company, or

“(ii) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.”.

26 USC 1362
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 238. RELIEF FROM INADVERTENTLY INVALID QUALIFIED SUBCHAPTER S SUBSIDIARY ELECTIONS AND TERMINATIONS.

(a) **IN GENERAL.**—Section 1362(f) (relating to inadvertent invalid elections or terminations) is amended—

(1) by inserting “, section 1361(b)(3)(B)(ii),” after “subsection (a)” in paragraph (1),

(2) by inserting “, section 1361(b)(3)(C),” after “subsection (d)” in paragraph (1)(B),

(3) by amending paragraph (3)(A) to read as follows:

“(A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or”,

(4) by amending paragraph (4) to read as follows:

“(4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period,” and

(5) by inserting “or a qualified subchapter S subsidiary, as the case may be” after “S corporation” in the matter following paragraph (4).

26 USC 1362
note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to elections made and terminations made after December 31, 2004.

SEC. 239. INFORMATION RETURNS FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES.

(a) IN GENERAL.—Section 1361(b)(3)(A) (relating to treatment of certain wholly owned subsidiaries) is amended by inserting “and in the case of information returns required under part III of subchapter A of chapter 61” after “Secretary”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004. 26 USC 1361 note.

SEC. 240. REPAYMENT OF LOANS FOR QUALIFYING EMPLOYER SECURITIES.

(a) IN GENERAL.—Subsection (f) of section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

“(7) S CORPORATION REPAYMENT OF LOANS FOR QUALIFYING EMPLOYER SECURITIES.—A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7), or as engaging in a prohibited transaction for purposes of subsection (d)(3), merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions with respect to S corporation stock made after December 31, 1997. 26 USC 4975 note.

Subtitle E—Other Business Incentives**SEC. 241. PHASEOUT OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.**

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Clause (ii) of section 4041(a)(1)(C) is amended by striking subclauses (I), (II), and (III) and inserting the following new subclauses:

“(I) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

“(II) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

“(III) 0 after December 31, 2006.”.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) DIESEL FUEL USED IN TRAINS.—In the case of any sale for use or use after December 31, 2006, there is hereby

imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

“(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

“(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.”.

(B) Subsection (f) of section 4082 is amended by striking “section 4041(a)(1)” and inserting “subsections (a)(1) and (d)(3) of section 4041”.

(C) Subparagraph (B) of section 6421(f)(3) is amended to read as follows:

“(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).”.

(D) Subparagraph (B) of section 6427(l)(3) is amended to read as follows:

“(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).”.

(b) FUEL USED ON INLAND WATERWAYS.—Subparagraph (C) of section 4042(b)(2) is amended to read as follows:

“(C) The deficit reduction rate is—

“(i) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

“(ii) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

“(iii) 0 after December 31, 2006.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2005.

26 USC 4041
note.

SEC. 242. MODIFICATION OF APPLICATION OF INCOME FORECAST METHOD OF DEPRECIATION.

(a) IN GENERAL.—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:

“(7) TREATMENT OF PARTICIPATIONS AND RESIDUALS.—

“(A) IN GENERAL.—For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

“(B) PARTICIPATIONS AND RESIDUALS.—For purposes of this paragraph, the term ‘participations and residuals’ means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

“(C) SPECIAL RULES RELATING TO RECOMPUTATION YEARS.—If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting ‘for each taxable year in such period’ for ‘for such period’.

“(D) OTHER SPECIAL RULES.—

“(i) PARTICIPATIONS AND RESIDUALS.—Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

“(ii) COORDINATION WITH OTHER RULES.—Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B), section 263, 263A, 404, 419, or 461(h).

“(E) AUTHORITY TO MAKE ADJUSTMENTS.—The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.”

(b) DETERMINATION OF INCOME.—Section 167(g)(5) (relating to special rules) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and inserting after subparagraph (D) the following new subparagraph:

“(E) TREATMENT OF DISTRIBUTION COSTS.—For purposes of this subsection, the income with respect to any property shall be the taxpayer’s gross income from such property.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act. 26 USC 167 note.

SEC. 243. IMPROVEMENTS RELATED TO REAL ESTATE INVESTMENT TRUSTS.

(a) EXPANSION OF STRAIGHT DEBT SAFE HARBOR.—Section 856 (defining real estate investment trust) is amended—

(1) in subsection (c) by striking paragraph (7), and

(2) by adding at the end the following new subsection:

“(m) SAFE HARBOR IN APPLYING SUBSECTION (c)(4).—

“(1) IN GENERAL.—In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

“(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

“(B) Any loan to an individual or an estate.

“(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

“(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

“(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of

any entity not described in this subparagraph or payments on any obligation issued by such an entity,

“(F) Any security issued by a real estate investment trust.

“(G) Any other arrangement as determined by the Secretary.

“(2) SPECIAL RULES RELATING TO STRAIGHT DEBT SECURITIES.—

“(A) IN GENERAL.—For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

“(B) SPECIAL RULES RELATING TO CERTAIN CONTINGENCIES.—For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that—

“(i) the time of payment of such interest or principal is subject to a contingency, but only if—

“(I) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which does not exceed the greater of $\frac{1}{4}$ of 1 percent or 5 percent of the annual yield to maturity, or

“(II) neither the aggregate issue price nor the aggregate face amount of the issuer’s debt instruments held by the trust exceeds \$1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder, or

“(ii) the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, but only if such contingency is consistent with customary commercial practice.

“(C) SPECIAL RULES RELATING TO CORPORATE OR PARTNERSHIP ISSUERS.—In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

“(i) are not described in paragraph (1) (prior to the application of this subparagraph), and

“(ii) have an aggregate value greater than 1 percent of the issuer’s outstanding securities determined without regard to paragraph (3)(A)(i).

“(3) LOOK-THROUGH RULE FOR PARTNERSHIP SECURITIES.—

“(A) IN GENERAL.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

“(i) a trust’s interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

“(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

“(B) DETERMINATION OF TRUST’S INTEREST IN PARTNERSHIP ASSETS.—For purposes of subparagraph (A), with

respect to any taxable year beginning after the date of the enactment of this subparagraph—

“(i) the trust’s interest in the partnership assets shall be the trust’s proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

“(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

“(4) CERTAIN PARTNERSHIP DEBT INSTRUMENTS NOT TREATED AS A SECURITY.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

“(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust’s interest as a partner in the partnership, and

“(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership’s gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

“(5) SECRETARIAL GUIDANCE.—The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).”.

(b) CLARIFICATION OF APPLICATION OF LIMITED RENTAL EXCEPTION.—Subparagraph (A) of section 856(d)(8) (relating to special rules for taxable REIT subsidiaries) is amended to read as follows:

“(A) LIMITED RENTAL EXCEPTION.—

“(i) IN GENERAL.—The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

“(ii) RENTS MUST BE SUBSTANTIALLY COMPARABLE.—Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust’s property for comparable space.

“(iii) TIMES FOR TESTING RENT COMPARABILITY.—The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT subsidiary of the trust if such requirement is met under the terms of the lease—

“(I) at the time such lease is entered into,

“(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

“(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such modification.

With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term ‘rents from real property’ shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

“(iv) CONTROLLED TAXABLE REIT SUBSIDIARY.—For purposes of clause (iii), the term ‘controlled taxable REIT subsidiary’ means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

“(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

“(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

“(v) CONTINUING QUALIFICATION BASED ON THIRD PARTY ACTIONS.—If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

“(vi) CORRECTION PERIOD.—If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.”.

(c) DELETION OF CUSTOMARY SERVICES EXCEPTION.—Subparagraph (B) of section 857(b)(7) (relating to redetermined rents) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), (v), (vi), and (vii) as clauses (ii), (iii), (iv), (v), and (vi), respectively.

(d) CONFORMITY WITH GENERAL HEDGING DEFINITION.—Subparagraph (G) of section 856(c)(5) (relating to treatment of certain hedging instruments) is amended to read as follows:

“(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—

Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.”.

(e) CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES.—Clause (i) of section 857(b)(5)(A) (relating to imposition

of tax in case of failure to meet certain requirements) is amended by striking “90 percent” and inserting “95 percent”.

(f) SAVINGS PROVISIONS.—

(1) RULES OF APPLICATION FOR FAILURE TO SATISFY SECTION 856(c)(4).—Section 856(c) (relating to definition of real estate investment trust) is amended by inserting after paragraph (6) the following new paragraph:

“(7) RULES OF APPLICATION FOR FAILURE TO SATISFY PARAGRAPH (4).—

“(A) DE MINIMIS FAILURE.—A corporation, trust, or association that fails to meet the requirements of paragraph (4)(B)(iii) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

“(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

“(I) 1 percent of the total value of the trust’s assets at the end of the quarter for which such measurement is done, and

“(II) \$10,000,000, and

“(ii)(I) the corporation, trust, or association, following the identification of such failure, disposes of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association’s identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

“(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

“(B) FAILURES EXCEEDING DE MINIMIS AMOUNT.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

“(i) such failure involves the ownership of assets the total value of which exceeds the de minimis standard described in subparagraph (A)(i) at the end of the quarter for which such measurement is done,

“(ii) following the corporation, trust, or association’s identification of the failure to satisfy the requirements of such paragraph for a particular quarter, a description of each asset that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

“(iii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect,

“(iv) the corporation, trust, or association pays a tax computed under subparagraph (C), and

“(v)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (ii) within 6 months after the last day of the quarter in which the corporation, trust or association’s identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

“(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

“(C) TAX.—For purposes of subparagraph (B)(iv)—

“(i) TAX IMPOSED.—If a corporation, trust, or association elects the application of this subparagraph, there is hereby imposed a tax on the failure described in subparagraph (B) of such corporation, trust, or association. Such tax shall be paid by the corporation, trust, or association.

“(ii) TAX COMPUTED.—The amount of the tax imposed by clause (i) shall be the greater of—

“(I) \$50,000, or

“(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (B)(ii) for the period specified in clause (iii) by the highest rate of tax specified in section 11.

“(iii) PERIOD.—For purposes of clause (ii)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of such paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

“(iv) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.”.

(2) MODIFICATION OF RULES OF APPLICATION FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR 856(c)(3).—Paragraph (6) of section 856(c) (relating to definition of real estate investment trust) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

“(A) following the corporation, trust, or association’s identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and”.

(3) REASONABLE CAUSE EXCEPTION TO LOSS OF REIT STATUS IF FAILURE TO SATISFY REQUIREMENTS.—Subsection (g) of section 856 (relating to termination of election) is amended—

(A) in paragraph (1) by inserting before the period at the end of the first sentence the following: “unless paragraph (5) applies”, and

(B) by adding at the end the following new paragraph:

“(5) ENTITIES TO WHICH PARAGRAPH APPLIES.—This paragraph applies to a corporation, trust, or association—

“(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than subsection (c)(6) or (c)(7) of section 856),

“(B) such failures are due to reasonable cause and not due to willful neglect, and

“(C) if such corporation, trust, or association pays (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of \$50,000 for each failure to satisfy a provision of this part due to reasonable cause and not willful neglect.”.

(4) DEDUCTION OF TAX PAID FROM AMOUNT REQUIRED TO BE DISTRIBUTED.—Subparagraph (E) of section 857(b)(2) is amended by striking “(7)” and inserting “(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).”.

(5) EXPANSION OF DEFICIENCY DIVIDEND PROCEDURE.—Subsection (e) of section 860 is amended by striking “or” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting “; or”, and by adding at the end the following new paragraph:

“(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.”.

(g) EFFECTIVE DATES.—

26 USC 856 note.

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2000.

(2) SUBSECTIONS (c) THROUGH (f).—The amendments made by subsections (c), (d), (e), and (f) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 244. SPECIAL RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 180 the following new section:

“SEC. 181. TREATMENT OF CERTAIN QUALIFIED FILM AND TELEVISION PRODUCTIONS.

“(a) ELECTION TO TREAT COSTS AS EXPENSES.—

“(1) IN GENERAL.—A taxpayer may elect to treat the cost of any qualified film or television production as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

“(2) DOLLAR LIMITATION.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified film or television production the aggregate cost of which exceeds \$15,000,000.

“(B) HIGHER DOLLAR LIMITATION FOR PRODUCTIONS IN CERTAIN AREAS.—In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

“(i) a low-income community under section 45D,
or

“(ii) a distressed county or isolated area of distress
by the Delta Regional Authority established under sec-
tion 2009aa-1 of title 7, United States Code,
subparagraph (A) shall be applied by substituting
‘\$20,000,000’ for ‘\$15,000,000’.

“(b) NO OTHER DEDUCTION OR AMORTIZATION DEDUCTION
ALLOWABLE.—With respect to the basis of any qualified film or
television production to which an election is made under subsection
(a), no other depreciation or amortization deduction shall be allow-
able.

“(c) ELECTION.—

“(1) IN GENERAL.—An election under this section with
respect to any qualified film or television production shall be
made in such manner as prescribed by the Secretary and by
the due date (including extensions) for filing the taxpayer’s
return of tax under this chapter for the taxable year in which
costs of the production are first incurred.

“(2) REVOCATION OF ELECTION.—Any election made under
this section may not be revoked without the consent of the
Secretary.

“(d) QUALIFIED FILM OR TELEVISION PRODUCTION.—For pur-
poses of this section—

“(1) IN GENERAL.—The term ‘qualified film or television
production’ means any production described in paragraph (2)
if 75 percent of the total compensation of the production is
qualified compensation.

“(2) PRODUCTION.—

“(A) IN GENERAL.—A production is described in this
paragraph if such production is properly described in sec-
tion 168(f)(3). For purposes of a television series, only the
first 44 episodes of such series may be taken into account.

“(B) EXCEPTION.—A production is not described in this
paragraph if records are required under section 2257 of
title 18, United States Code, to be maintained with respect
to any performer in such production.

“(3) QUALIFIED COMPENSATION.—For purposes of paragraph
(1)—

“(A) IN GENERAL.—The term ‘qualified compensation’
means compensation for services performed in the United
States by actors, directors, producers, and other relevant
production personnel.

“(B) PARTICIPATIONS AND RESIDUALS EXCLUDED.—The
term ‘compensation’ does not include participations and
residuals (as defined in section 167(g)(7)(B)).

“(e) APPLICATION OF CERTAIN OTHER RULES.—For purposes of
this section, rules similar to the rules of subsections (b)(2) and
(c)(4) of section 194 shall apply.

“(f) TERMINATION.—This section shall not apply to qualified
film and television productions commencing after December 31,
2008.”

(b) CONFORMING AMENDMENT.—The table of sections for part
VI of subchapter B of chapter 1 is amended by inserting after
the item relating to section 180 the following new item:

“Sec. 181. Treatment of certain qualified film and television productions.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act. 26 USC 181 note.

SEC. 245. CREDIT FOR MAINTENANCE OF RAILROAD TRACK.

(a) **IN GENERAL.**—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following new section:

“SEC. 45G. RAILROAD TRACK MAINTENANCE CREDIT.

“(a) **GENERAL RULE.**—For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

“(b) **LIMITATION.**—The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

“(1) \$3,500, and

“(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year. A mile of railroad track may be taken into account by a person other than the owner only if such mile is assigned to such person by the owner for purposes of this subsection. Any mile which is so assigned may not be taken into account by the owner for purposes of this subsection.

“(c) **ELIGIBLE TAXPAYER.**—For purposes of this section, the term ‘eligible taxpayer’ means—

“(1) any Class II or Class III railroad, and

“(2) any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.

“(d) **QUALIFIED RAILROAD TRACK MAINTENANCE EXPENDITURES.**—For purposes of this section, the term ‘qualified railroad track maintenance expenditures’ means expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad.

“(e) **OTHER DEFINITIONS AND SPECIAL RULES.**—

“(1) **CLASS II OR CLASS III RAILROAD.**—For purposes of this section, the terms ‘Class II railroad’ and ‘Class III railroad’ have the respective meanings given such terms by the Surface Transportation Board.

“(2) **CONTROLLED GROUPS.**—Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

“(3) **BASIS ADJUSTMENT.**—For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

“(f) **APPLICATION OF SECTION.**—This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.”.

(b) **LIMITATION ON CARRYBACK.**—

(1) IN GENERAL.—Subsection (d) of section 39 is amended to read as follows:

“(d) TRANSITIONAL RULE.—No portion of the unused business credit for any taxable year which is attributable to a credit specified in section 38(b) or any portion thereof may be carried back to any taxable year before the first taxable year for which such specified credit or such portion is allowable (without regard to subsection (a)).”.

26 USC 39 note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to taxable years ending after December 31, 2003.

(c) CONFORMING AMENDMENTS.—

(1) Section 38(b) (relating to general business credit) is amended by striking “plus” at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting “, plus”, and by adding at the end the following new paragraph: “(16) the railroad track maintenance credit determined under section 45G(a).”.

(2) Subsection (a) of section 1016 is amended by striking “and” at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting “, and”, and by inserting after paragraph (28) the following new paragraph: “(29) in the case of railroad track with respect to which a credit was allowed under section 45G, to the extent provided in section 45G(e)(3).”.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45F the following new item:

“Sec. 45G. Railroad track maintenance credit.”.

26 USC 38 note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 246. SUSPENSION OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) IN GENERAL.—Subpart G of part II of subchapter A of chapter 51 is amended by redesignating section 5148 as section 5149 and by inserting after section 5147 the following new section:

“SEC. 5148. SUSPENSION OF OCCUPATIONAL TAX.

“(a) IN GENERAL.—Notwithstanding sections 5081, 5091, 5111, 5121, and 5131, the rate of tax imposed under such sections for the suspension period shall be zero. During such period, persons engaged in or carrying on a trade or business covered by such sections shall register under section 5141 and shall comply with the recordkeeping requirements under this part.

“(b) SUSPENSION PERIOD.—For purposes of subsection (a), the suspension period is the period beginning on July 1, 2005, and ending on June 30, 2008.”.

(b) CONFORMING AMENDMENT.—Section 5117 is amended by adding at the end the following new subsection:

“(d) SPECIAL RULE DURING SUSPENSION PERIOD.—Except as provided in subsection (b) or by the Secretary, during the suspension period (as defined in section 5148) it shall be unlawful for any dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep records under section 5114.”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart G of part II of subchapter A of chapter 51 is amended by striking the last item and inserting the following new items:

“Sec. 5148. Suspension of occupational tax.

“Sec. 5149. Cross references.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act. 26 USC 5117 note.

SEC. 247. MODIFICATION OF UNRELATED BUSINESS INCOME LIMITATION ON INVESTMENT IN CERTAIN SMALL BUSINESS INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (6) of section 514(c) (relating to acquisition indebtedness) is amended to read as follows:

“(6) CERTAIN FEDERAL FINANCING.—

“(A) IN GENERAL.—For purposes of this section, the term ‘acquisition indebtedness’ does not include—

“(i) an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, or

“(ii) indebtedness incurred by a small business investment company licensed after the date of the enactment of the American Jobs Creation Act of 2004 under the Small Business Investment Act of 1958 if such indebtedness is evidenced by a debenture—

“(I) issued by such company under section 303(a) of such Act, and

“(II) held or guaranteed by the Small Business Administration.

“(B) LIMITATION.—Subparagraph (A)(ii) shall not apply with respect to any small business investment company during any period that—

“(i) any organization which is exempt from tax under this title (other than a governmental unit) owns more than 25 percent of the capital or profits interest in such company, or

“(ii) organizations which are exempt from tax under this title (including governmental units other than any agency or instrumentality of the United States) own, in the aggregate, 50 percent or more of the capital or profits interest in such company.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to indebtedness incurred after the date of the enactment of this Act by a small business investment company licensed after the date of the enactment of this Act. 26 USC 514 note.

SEC. 248. ELECTION TO DETERMINE CORPORATE TAX ON CERTAIN INTERNATIONAL SHIPPING ACTIVITIES USING PER TON RATE.

(a) IN GENERAL.—Chapter 1 is amended by inserting after subchapter Q the following new subchapter:

**“Subchapter R—Election To Determine Corporate Tax on
Certain International Shipping Activities Using Per Ton
Rate**

“Sec. 1352. Alternative tax on qualifying shipping activities.

“Sec. 1353. Notional shipping income.

“Sec. 1354. Alternative tax election; revocation; termination.

“Sec. 1355. Definitions and special rules.

“Sec. 1356. Qualifying shipping activities.

“Sec. 1357. Items not subject to regular tax; depreciation; interest.

“Sec. 1358. Allocation of credits, income, and deductions.

“Sec. 1359. Disposition of qualifying vessels.

“SEC. 1352. ALTERNATIVE TAX ON QUALIFYING SHIPPING ACTIVITIES.

“In the case of an electing corporation, the tax imposed by section 11 shall be the amount equal to the sum of—

“(1) the tax imposed by section 11 determined after the application of this subchapter, and

“(2) a tax equal to—

“(A) the highest rate of tax specified in section 11, multiplied by

“(B) the notional shipping income for the taxable year.

“SEC. 1353. NOTIONAL SHIPPING INCOME.

“(a) IN GENERAL.—For purposes of this subchapter, the notional shipping income of an electing corporation shall be the sum of the amounts determined under subsection (b) for each qualifying vessel operated by such electing corporation.

“(b) AMOUNTS.—

“(1) IN GENERAL.—For purposes of subsection (a), the amount of notional shipping income of an electing corporation for each qualifying vessel for the taxable year shall equal the product of—

“(A) the daily notional shipping income, and

“(B) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in United States foreign trade.

“(2) TREATMENT OF VESSELS THE INCOME FROM WHICH IS NOT OTHERWISE SUBJECT TO TAX.—In the case of a qualifying vessel any of the income from which is not included in gross income by reason of section 883 or otherwise, the amount of notional shipping income from such vessel for the taxable year shall be the amount which bears the same ratio to such shipping income (determined without regard to this paragraph) as the gross income from the operation of such vessel in the United States foreign trade bears to the sum of such gross income and the income so excluded.

“(c) DAILY NOTIONAL SHIPPING INCOME.—For purposes of subsection (b), the daily notional shipping income from the operation of a qualifying vessel is—

“(1) 40 cents for each 100 tons of so much of the net tonnage of the vessel as does not exceed 25,000 net tons, and

“(2) 20 cents for each 100 tons of so much of the net tonnage of the vessel as exceeds 25,000 net tons.

“(d) MULTIPLE OPERATORS OF VESSEL.—If for any period 2 or more persons are operators of a qualifying vessel, the notional shipping income from the operation of such vessel for such period

shall be allocated among such persons on the basis of their respective ownership and charter interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

“SEC. 1354. ALTERNATIVE TAX ELECTION; REVOCATION; TERMINATION.

“(a) **IN GENERAL.**—A qualifying vessel operator may elect the application of this subchapter.

“(b) **TIME AND MANNER; YEARS FOR WHICH EFFECTIVE.**—An election under this subchapter—

“(1) shall be made in such form as prescribed by the Secretary, and

“(2) shall be effective for the taxable year for which made and all succeeding taxable years until terminated under subsection (d).

Such election may be effective for any taxable year only if made before the due date (including extensions) for filing the corporation’s return for such taxable year.

“(c) **CONSISTENT ELECTIONS BY MEMBERS OF CONTROLLED GROUPS.**—An election under subsection (a) by a member of a controlled group shall apply to all qualifying vessel operators that are members of such group.

Applicability.

“(d) **TERMINATION.**—

“(1) **BY REVOCATION.**—

“(A) **IN GENERAL.**—An election under subsection (a) may be terminated by revocation.

“(B) **WHEN EFFECTIVE.**—Except as provided in subparagraph (C)—

“(i) a revocation made during the taxable year and on or before the 15th day of the 3d month thereof shall be effective on the 1st day of such taxable year, and

“(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

“(C) **REVOCATION MAY SPECIFY PROSPECTIVE DATE.**—

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective for taxable years beginning on and after the date so specified.

“(2) **BY PERSON CEASING TO BE QUALIFYING VESSEL OPERATOR.**—

“(A) **IN GENERAL.**—An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an electing corporation) such corporation ceases to be a qualifying vessel operator.

“(B) **WHEN EFFECTIVE.**—Any termination under this paragraph shall be effective on and after the date of cessation.

“(C) **ANNUALIZATION.**—The Secretary shall prescribe such annualization and other rules as are appropriate in the case of a termination under this paragraph.

“(e) **ELECTION AFTER TERMINATION.**—If a qualifying vessel operator has made an election under subsection (a) and if such election has been terminated under subsection (d), such operator (and any successor operator) shall not be eligible to make an election under

subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

“SEC. 1355. DEFINITIONS AND SPECIAL RULES.

“(a) **DEFINITIONS.**—For purposes of this subchapter—

“(1) **ELECTING CORPORATION.**—The term ‘electing corporation’ means any corporation for which an election is in effect under this subchapter.

“(2) **ELECTING GROUP; CONTROLLED GROUP.**—

“(A) **ELECTING GROUP.**—The term ‘electing group’ means a controlled group of which one or more members is an electing corporation.

“(B) **CONTROLLED GROUP.**—The term ‘controlled group’ means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

“(3) **QUALIFYING VESSEL OPERATOR.**—The term ‘qualifying vessel operator’ means any corporation—

“(A) who operates one or more qualifying vessels, and

“(B) who meets the shipping activity requirement in subsection (c).

“(4) **QUALIFYING VESSEL.**—The term ‘qualifying vessel’ means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 10,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

“(5) **UNITED STATES FLAG VESSEL.**—The term ‘United States flag vessel’ means any vessel documented under the laws of the United States.

“(6) **UNITED STATES DOMESTIC TRADE.**—The term ‘United States domestic trade’ means the transportation of goods or passengers between places in the United States.

“(7) **UNITED STATES FOREIGN TRADE.**—The term ‘United States foreign trade’ means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

“(8) **CHARTER.**—The term ‘charter’ includes an operating agreement.

“(b) **OPERATING A VESSEL.**—For purposes of this subchapter—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is—

“(A) owned by, or chartered (including a time charter) to, the person, and

“(B) is in use as a qualifying vessel during such period.

“(2) **BAREBOAT CHARTERS.**—A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if—

“(A)(i) the vessel is temporarily surplus to the person’s requirements and the term of the charter does not exceed 3 years, or

“(ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the

vessel to such a member (including the owner of the vessel), and

“(B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

“(c) SHIPPING ACTIVITY REQUIREMENT.—For purposes of this section—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, a corporation meets the shipping activity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

“(2) SPECIAL RULE FOR 1ST YEAR OF ELECTION.—A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354(a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

“(3) CONTROLLED GROUPS.—A corporation who is a member of a controlled group meets the shipping activity requirement of this subsection only if such requirement is met determined—

“(A) by treating all members of such group as 1 person, and

“(B) by disregarding vessel charters between members of such group.

“(4) REQUIREMENT.—The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

“(d) ACTIVITIES CARRIED ON PARTNERSHIPS, ETC.—In applying this subchapter to a partner in a partnership—

“(1) each partner shall be treated as operating vessels operated by the partnership,

“(2) each partner shall be treated as conducting the activities conducted by the partnership, and

“(3) the extent of a partner's ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner's interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

Applicability.

“(e) EFFECT OF TEMPORARILY CEASING TO OPERATE A QUALIFYING VESSEL.—

“(1) IN GENERAL.—For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating—

“(A) that it has temporarily ceased to operate the qualifying vessel, and

“(B) its intention to resume operating the qualifying vessel.

“(2) NOTICE.—Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

“(3) PERIOD DISREGARD IN EFFECT.—The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which—

“(A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or

“(B) the electing corporation resumes operation of the qualifying vessel.

“(f) EFFECT OF TEMPORARILY OPERATING A QUALIFYING VESSEL IN THE UNITED STATES DOMESTIC TRADE.—

“(1) IN GENERAL.—For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating—

“(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

“(B) its intention to resume operation of the vessel in the United States foreign trade.

“(2) NOTICE.—Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation’s tax return for the taxable year in which the temporary cessation begins.

“(3) PERIOD DISREGARD IN EFFECT.—The period of temporary use under paragraph (1) continues until the earlier of the date of which—

“(A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or

“(B) the electing corporation resumes operation of the vessel in the United States foreign trade.

“(4) NO DISREGARD IF DOMESTIC TRADE USE EXCEEDS 30 DAYS.—Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

“SEC. 1356. QUALIFYING SHIPPING ACTIVITIES.

“(a) QUALIFYING SHIPPING ACTIVITIES.—For purposes of this subchapter, the term ‘qualifying shipping activities’ means—

“(1) core qualifying activities,

“(2) qualifying secondary activities, and

“(3) qualifying incidental activities.

“(b) CORE QUALIFYING ACTIVITIES.—For purposes of this subchapter, the term ‘core qualifying activities’ means activities in operating qualifying vessels in United States foreign trade.

“(c) QUALIFYING SECONDARY ACTIVITIES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualifying secondary activities’ means secondary activities but only to the extent that, without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 20 percent of the gross income derived by the corporation from its core qualifying activities.

“(2) SECONDARY ACTIVITIES.—The term ‘secondary activities’ means—

“(A) the active management or operation of vessels other than qualifying vessels in the United States foreign trade,

“(B) the provision of vessel, barge, container, or cargo-related facilities or services to any person,

“(C) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including—

“(i) ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade,

“(ii) the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and

“(iii) the provision of terminal, maintenance, repair, logistical, or other vessel, barge, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade, and

“(D) such other activities as may be prescribed by the Secretary pursuant to regulations.

“(3) COORDINATION WITH CORE ACTIVITIES.—

“(A) IN GENERAL.—Such term shall not include any core qualifying activities.

“(B) NONELECTING CORPORATIONS.—In the case of a corporation (other than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities).

“(d) QUALIFYING INCIDENTAL ACTIVITIES.—For purposes of this section, the term ‘qualified incidental activities’ means shipping-related activities if—

“(1) they are incidental to the corporation’s core qualifying activities,

“(2) they are not qualifying secondary activities, and

“(3) without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 0.1 percent of the corporation’s gross income from its core qualifying activities.

“(e) APPLICATION OF GROSS INCOME TESTS IN CASE OF ELECTING GROUP.—In the case of an electing group, subsections (c)(1) and (d)(3) shall be applied as if such group were 1 entity, and the limitations under such subsections shall be allocated among the corporations in such group.

“SEC. 1357. ITEMS NOT SUBJECT TO REGULAR TAX; DEPRECIATION; INTEREST.

“(a) EXCLUSION FROM GROSS INCOME.—Gross income of an electing corporation shall not include its income from qualifying shipping activities.

“(b) ELECTING GROUP MEMBER.—Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

“(c) DENIAL OF LOSSES, DEDUCTIONS, AND CREDITS.—

“(1) GENERAL RULE.—Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

“(2) DEPRECIATION.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), the adjusted basis (for purposes of determining gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

“(B) METHOD.—

“(i) IN GENERAL.—Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

“(ii) EXCEPTION.—Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

“(3) INTEREST.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation’s qualifying vessels bears to the fair market value of such corporation’s total assets.

“(B) ELECTING GROUP.—In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market value of such corporation’s qualifying vessels bears to the fair market value of the electing groups total assets.

“SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DEDUCTIONS.

“(a) QUALIFYING SHIPPING ACTIVITIES.—For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

“(b) EXCLUSION OF CREDITS OR DEDUCTIONS.—

“(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).

“(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

“(c) TRANSACTIONS NOT AT ARM’S LENGTH.—Section 482 applies in accordance with this subsection to a transaction or series of transactions—

“(1) as between an electing corporation and another person,

or

“(2) as between an person’s qualifying shipping activities and other activities carried on by it.

“SEC. 1359. DISPOSITION OF QUALIFYING VESSELS.

“(a) IN GENERAL.—If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized

Applicability.

if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

“(b) PERIOD WITHIN WHICH PROPERTY MUST BE REPLACED.—The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending—

“(1) 3 years after the close of the first taxable year in which the gain is realized, or

“(2) subject to such terms and conditions as may be specified by the Secretary, on such later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

“(c) APPLICATION OF SECTION TO NONCORPORATE OPERATORS.—For purposes of this section, the term ‘qualifying vessel operator’ includes any person who would be a qualifying vessel operator were such person a corporation.

“(d) TIME FOR ASSESSMENT OF DEFICIENCY ATTRIBUTABLE TO GAIN.—If a qualifying vessel operator has made the election provided in subsection (a), then—

“(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

“(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(e) BASIS OF REPLACEMENT QUALIFYING VESSEL.—In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying vessel decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.”

(b) TECHNICAL AMENDMENTS.—

(1) The second sentence of section 56(g)(4)(B)(i), as amended by this Act, is further amended by inserting “or 1357” after “section 139A”.

(2) The table of subchapters for chapter 1 is amended by inserting after the item relating to subchapter S the following new item:

“Subchapter R. Election to determine corporate tax on certain international shipping activities using per ton rate.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

26 USC 56 note.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

SEC. 251. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES.

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) (relating to definition of wages) is amended by striking “or” at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting “; or”, and by inserting after paragraph (21) the following new paragraph:

“(22) remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

“(B) any disposition by the individual of such stock.”.

42 USC 409.

(B) Section 209(a) of the Social Security Act is amended by striking “or” at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting “; or”, and by inserting after paragraph (18) the following new paragraph:

“(19) Remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

“(B) any disposition by the individual of such stock.”.

(2) RAILROAD RETIREMENT TAXES.—Subsection (e) of section 3231 is amended by adding at the end the following new paragraph:

“(12) QUALIFIED STOCK OPTIONS.—The term ‘compensation’ shall not include any remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

“(B) any disposition by the individual of such stock.”.

(3) UNEMPLOYMENT TAXES.—Section 3306(b) (relating to definition of wages) is amended by striking “or” at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting “; or”, and by inserting after paragraph (18) the following new paragraph:

“(19) remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

“(B) any disposition by the individual of such stock.”.

(b) WAGE WITHHOLDING NOT REQUIRED ON DISQUALIFYING DISPOSITIONS.—Section 421(b) (relating to effect of disqualifying dispositions) is amended by adding at the end the following new sentence: “No amount shall be required to be deducted and withheld

under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.”.

(c) WAGE WITHHOLDING NOT REQUIRED ON COMPENSATION WHERE OPTION PRICE IS BETWEEN 85 PERCENT AND 100 PERCENT OF VALUE OF STOCK.—Section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock) is amended by adding at the end the following new sentence: “No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act. 26 USC 421 note.

TITLE III—TAX RELIEF FOR AGRICULTURE AND SMALL MANUFACTURERS

Subtitle A—Volumetric Ethanol Excise Tax Credit

SEC. 301. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT AND EXTENSION OF ALCOHOL FUELS INCOME TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

“(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

“(1) the alcohol fuel mixture credit, plus

“(2) the biodiesel mixture credit.

“(b) ALCOHOL FUEL MIXTURE CREDIT.—

“(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

“(2) APPLICABLE AMOUNT.—For purposes of this subsection—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 51 cents.

“(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

“(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term ‘alcohol fuel mixture’ means a mixture of alcohol and a taxable fuel which—

“(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

“(B) is used as a fuel by the taxpayer producing such mixture.

For purposes of subparagraph (A), a mixture produced by any person at a refinery prior to a taxable event which includes ethyl tertiary butyl ether or other ethers produced from alcohol shall be treated as sold at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

“(4) OTHER DEFINITIONS.—For purposes of this subsection—

“(A) ALCOHOL.—The term ‘alcohol’ includes methanol and ethanol but does not include—

“(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

“(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

“(B) TAXABLE FUEL.—The term ‘taxable fuel’ has the meaning given such term by section 4083(a)(1).

“(5) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

“(c) BIODIESEL MIXTURE CREDIT.—

“(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

“(2) APPLICABLE AMOUNT.—For purposes of this subsection—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

“(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is \$1.00.

“(3) BIODIESEL MIXTURE.—For purposes of this section, the term ‘biodiesel mixture’ means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

“(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

“(B) is used as a fuel by the taxpayer producing such mixture.

“(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this subsection unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

“(5) OTHER DEFINITIONS.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

“(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2006.

“(d) MIXTURE NOT USED AS A FUEL, ETC.—

“(1) IMPOSITION OF TAX.—If—

“(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of

any alcohol fuel mixture or biodiesel mixture, respectively,
and

“(B) any person—

“(i) separates the alcohol or biodiesel from the mixture, or

“(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

“(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

“(e) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—Rules similar to the rules under section 40(c) shall apply for purposes of this section.”.

(b) REGISTRATION REQUIREMENT.—Section 4101(a)(1) (relating to registration), as amended by section 861, is amended by inserting “and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))” before “shall register with the Secretary”.

(c) ADDITIONAL AMENDMENTS.—

(1) Section 40(c) is amended by striking “subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)” and inserting “section 4041(b)(2), section 6426, or section 6427(e)”.

(2) Paragraph (4) of section 40(d) is amended to read as follows:

“(4) VOLUME OF ALCOHOL.—For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).”.

(3) Section 40(e)(1) is amended—

(A) by striking “2007” in subparagraph (A) and inserting “2010”, and

(B) by striking “2008” in subparagraph (B) and inserting “2011”.

(4) Section 40(h) is amended—

(A) by striking “2007” in paragraph (1) and inserting “2010”, and

(B) by striking “, 2006, or 2007” in the table contained in paragraph (2) and inserting “through 2010”.

(5) Section 4041(b)(2)(B) is amended by striking “a substance other than petroleum or natural gas” and inserting “coal (including peat)”.

(6) Section 4041 is amended by striking subsection (k).

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

“(2) GASOLINE.—The term ‘gasoline’—

“(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

“(B) includes, to the extent prescribed in regulations—

“(i) any gasoline blend stock, and

“(ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term ‘gasoline blend stock’ means any petroleum product component of gasoline.”.

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

“(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES.—Except as provided in subsection (k)—

“(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person’s trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

“(2) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

“(3) TERMINATION.—This subsection shall not apply with respect to—

“(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) sold or used after December 31, 2010, and

“(B) any biodiesel mixture (as defined in section 6426(c)(3)) sold or used after December 31, 2006.”.

(10) Section 6427(i)(3) is amended—

(A) by striking “subsection (f)” both places it appears in subparagraph (A) and inserting “subsection (e)(1)”,

(B) by striking “gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))” in subparagraph (A) and inserting “a mixture described in section 6426”,

(C) by adding at the end of subparagraph (A) the following new flush sentence:

“In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).”,

(D) by striking “subsection (f)(1)” in subparagraph (B) and inserting “subsection (e)(1)”,

(E) by striking “20 days of the date of the filing of such claim” in subparagraph (B) and inserting “45 days of the date of the filing of such claim (20 days in the case of an electronic claim)”, and

(F) by striking “ALCOHOL MIXTURE” in the heading and inserting “ALCOHOL FUEL AND BIODIESEL MIXTURE”.

(11) Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

“For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.”.

(12) Section 9503(b)(4) is amended—

(A) by adding “or” at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(13) Section 9503(c)(2)(A) is amended by adding at the end the following: “Clauses (i)(III) and (ii) shall not apply to claims under section 6427(e).”.

(14) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

(d) EFFECTIVE DATES.—

26 USC 40 note.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to fuel sold or used after December 31, 2004.

(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) shall take effect on April 1, 2005.

(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) shall take effect on the date of the enactment of this Act.

(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) shall apply to fuel sold or used after September 30, 2004.

Applicability.

(e) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (c)(10)(C)) not later than December 31, 2004.

Deadline.
26 USC 6427
note.

SEC. 302. BIODIESEL INCOME TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

“SEC. 40A. BIODIESEL USED AS FUEL.

“(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

“(1) the biodiesel mixture credit, plus

“(2) the biodiesel credit.

“(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

“(1) BIODIESEL MIXTURE CREDIT.—

“(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

“(B) QUALIFIED BIODIESEL MIXTURE.—The term ‘qualified biodiesel mixture’ means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

“(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

“(ii) is used as a fuel by the taxpayer producing such mixture.

“(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

“(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

“(ii) for the taxable year in which such sale or use occurs.

“(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

“(2) BIODIESEL CREDIT.—

“(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

“(i) is used by the taxpayer as a fuel in a trade or business, or

“(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person’s vehicle.

“(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

“(3) CREDIT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting ‘\$1.00’ for ‘50 cents’.

“(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

“(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) BIODIESEL.—The term ‘biodiesel’ means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

“(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

“(B) the requirements of the American Society of Testing and Materials D6751.

“(2) AGRI-BIODIESEL.—The term ‘agri-biodiesel’ means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

“(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC.—

“(A) MIXTURES.—If—

“(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

Applicability.

“(ii) any person—

“(I) separates the biodiesel from the mixture,
or

“(II) without separation, uses the mixture
other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

“(B) BIODIESEL.—If—

“(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

“(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

“(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

“(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—
Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

Regulations.
Applicability.

“(e) TERMINATION.—This section shall not apply to any sale or use after December 31, 2006.”.

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking “plus” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “, plus”, and by inserting after paragraph (16) the following new paragraph:

“(17) the biodiesel fuels credit determined under section 40A(a).”.

(c) CONFORMING AMENDMENTS.—

(1)(A) Section 87 is amended to read as follows:

“SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.

“Gross income includes—

“(1) the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a), and

“(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).”.

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking “fuel credit” and inserting “and biodiesel fuels credits”.

(2) Section 196(c) is amended by striking “and” at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting “, and”, and by adding at the end the following new paragraph:

“(11) the biodiesel fuels credit determined under section 40A(a).”.

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 40 the following new item:

“Sec. 40A. Biodiesel used as fuel.”.

26 USC 38 note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fuel produced, and sold or used, after December 31, 2004, in taxable years ending after such date.

SEC. 303. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

(a) **IN GENERAL.**—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new section:

“SEC. 4104. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

“(a) **IN GENERAL.**—The Secretary shall require any person claiming tax benefits—

“(1) under the provisions of section 34, 40, and 40A, to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe), and

“(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a quarterly return (in such manner as the Secretary may prescribe).

“(b) **CONTENTS OF RETURN.**—Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

Applicability.

“(c) **ENFORCEMENT.**—With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.”.

(b) **CONFORMING AMENDMENT.**—The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

“Sec. 4104. Information reporting for persons claiming certain tax benefits.”.

26 USC 4104 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2005.

Subtitle B—Agricultural Incentives

SEC. 311. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) **REPLACEMENT OF LIVESTOCK WITH OTHER FARM PROPERTY.**—Subsection (f) of section 1033 (relating to involuntary conversions) is amended—

(1) by inserting “drought, flood, or other weather-related conditions, or” after “because of”,

(2) by inserting “in the case of soil contamination or other environmental contamination” after “including real property”, and

(3) by striking “WHERE THERE HAS BEEN ENVIRONMENTAL CONTAMINATION” in the heading and inserting “IN CERTAIN CASES”.

(b) **EXTENSION OF REPLACEMENT PERIOD OF INVOLUNTARILY CONVERTED LIVESTOCK.**—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

(1) by striking “CONDITIONS.—For purposes” and inserting “CONDITIONS.—

“(1) IN GENERAL.—For purposes”, and

(2) by adding at the end the following new paragraph:

“(2) **EXTENSION OF REPLACEMENT PERIOD.**—

“(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting ‘4 years’ for ‘2 years’.

“(B) **FURTHER EXTENSION BY SECRETARY.**—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.”.

(c) **INCOME INCLUSION RULES.**—Section 451(e) (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

“(3) **SPECIAL ELECTION RULES.**—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002. 26 USC 451 note.

SEC. 312. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) **IN GENERAL.**—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following: “For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act. 26 USC 1388 note.

SEC. 313. APPORTIONMENT OF SMALL ETHANOL PRODUCER CREDIT.

(a) **ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.**—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by adding at the end the following new paragraph:

“(6) **ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.**—

“(A) **ELECTION TO ALLOCATE.**—

“(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

“(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

“(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—

“(i) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

“(ii) PATRONS.—The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

“(iii) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

“(I) such reduction, over

“(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.”.

26 USC 40 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 314. COORDINATE FARMERS AND FISHERMEN INCOME AVERAGING AND THE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Section 55(c) (defining regular tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

“(2) COORDINATION WITH INCOME AVERAGING FOR FARMERS AND FISHERMEN.—Solely for purposes of this section, section 1301 (relating to averaging of farm and fishing income) shall not apply in computing the regular tax.”.

(b) ALLOWING INCOME AVERAGING FOR FISHERMEN.—

(1) IN GENERAL.—Section 1301(a) is amended by striking “farming business” and inserting “farming business or fishing business”.

(2) DEFINITION OF ELECTED FARM INCOME.—

(A) IN GENERAL.—Clause (i) of section 1301(b)(1)(A) is amended by inserting “or fishing business” before the semicolon.

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 1301(b)(1) is amended by inserting “or fishing business” after “farming business” both places it occurs.

(3) DEFINITION OF FISHING BUSINESS.—Section 1301(b) is amended by adding at the end the following new paragraph:

“(4) FISHING BUSINESS.—The term ‘fishing business’ means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003. 26 USC 55 note.

SEC. 315. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking “retains an economic interest in such timber” and inserting “either retains an economic interest in such timber or makes an outright sale of such timber”.

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 631(b) is amended by striking “The date of disposal” and inserting “In the case of disposal of timber with a retained economic interest, the date of disposal”.

(2) The heading for section 631(b) is amended by striking “WITH A RETAINED ECONOMIC INTEREST”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2004. 26 USC 631 note.

SEC. 316. MODIFICATION TO COOPERATIVE MARKETING RULES TO INCLUDE VALUE ADDED PROCESSING INVOLVING ANIMALS.

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

“(k) COOPERATIVE MARKETING INCLUDES VALUE-ADDED PROCESSING INVOLVING ANIMALS.—For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.”.

(b) CONFORMING AMENDMENT.—Section 521(b) is amended by adding at the end the following new paragraph:

“(7) CROSS REFERENCE.—

“For treatment of value-added processing involving animals, see section 1388(k).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 521 note.

SEC. 317. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO FARMERS' COOPERATIVE ORGANIZATIONS.

(a) IN GENERAL.—Section 7428(a)(1) (relating to declaratory judgments of tax exempt organizations) is amended by striking “or” at the end of subparagraph (B) and by adding at the end the following new subparagraph:

“(D) with respect to the initial classification or continuing classification of a cooperative as an organization described in section 521(b) which is exempt from tax under section 521(a), or”.

26 USC 7428
note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pleadings filed after the date of the enactment of this Act.

SEC. 318. CERTAIN EXPENSES OF RURAL LETTER CARRIERS.

(a) IN GENERAL.—Section 162(o) (relating to treatment of certain reimbursed expenses of rural mail carriers) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following:

“(2) SPECIAL RULE WHERE EXPENSES EXCEED REIMBURSEMENTS.—Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.”.

(b) CONFORMING AMENDMENT.—The heading for section 162(o) is amended by striking “REIMBURSED”.

26 USC 162 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 319. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking clause (ii) and adding at the end the following:

“(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

“(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

“(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

“(II) generated by a generation facility not owned or leased by such company or any of its

members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

“(iv) from any nuclear decommissioning transaction, or

“(v) from any asset exchange or conversion transaction.

Clauses (ii) through (v) shall not apply to taxable years beginning after December 31, 2006.”.

(2) DEFINITIONS AND SPECIAL RULES.—Paragraph (12) of section 501(c) is amended by adding at the end the following new subparagraphs:

“(E) For purposes of subparagraph (C)(ii), the term ‘FERC’ means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

“(F) For purposes of subparagraph (C)(iii), the term ‘nuclear decommissioning transaction’ means—

“(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company’s interest in a nuclear power plant or nuclear power plant unit,

“(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

“(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

“(G) For purposes of subparagraph (C)(iv), the term ‘asset exchange or conversion transaction’ means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

“(i) generating, transmitting, distributing, or selling electric energy, or

“(ii) producing, transmitting, distributing, or selling natural gas.”.

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS, ETC.—Paragraph (12) of section 501(c), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

“(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

“(ii) For purposes of clause (i), the term ‘load loss transaction’ means any wholesale or retail sale of electric

energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

“(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

“(iv) For purposes of clause (iii), a mutual or cooperative electric company’s annual load loss for each year of the recovery period is the amount (if any) by which—

“(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

“(II) the megawatt hours of electric energy sold during the base year to such members.

“(v) For purposes of clause (iv)(II), the term ‘base year’ means—

“(I) the calendar year preceding the start-up year, or

“(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

“(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

“(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

“(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

“(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

“(x) This subparagraph shall not apply to taxable years beginning after December 31, 2006.”.

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end the following new paragraph:

“(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.”.

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

“(c) CROSS REFERENCE.—

“For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 501 note.

SEC. 320. EXCLUSION FOR PAYMENTS TO INDIVIDUALS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.

(a) IN GENERAL.—Section 108(f) (relating to student loans) is amended by adding at the end the following new paragraph:

“(4) PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act.”.

(b) TREATMENT FOR PURPOSES OF EMPLOYMENT TAXES.—Each of the following provisions is amended by inserting “108(f)(4),” after “74(c),”:

- (1) Section 3121(a)(20).
- (2) Section 3231(e)(5).
- (3) Section 3306(b)(16).
- (4) Section 3401(a)(19).
- (5) Section 209(a)(17) of the Social Security Act.

42 USC 409.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received by an individual in taxable years beginning after December 31, 2003. 26 USC 108 note.

SEC. 321. MODIFICATION OF SAFE HARBOR RULES FOR TIMBER REITS.

(a) EXPANSION OF PROHIBITED TRANSACTION SAFE HARBOR.—Section 857(b)(6) (relating to income from prohibited transactions) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraph:

“(D) CERTAIN SALES NOT TO CONSTITUTE PROHIBITED TRANSACTIONS.—For purposes of this part, the term ‘prohibited transaction’ does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) if—

“(i) the trust held the property for not less than 4 years in connection with the trade or business of producing timber,

“(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

“(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

“(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland, do not exceed 30 percent of the net selling price of the property,

“(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

“(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

“(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

“(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

“(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year,

“(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, and

“(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.”.

26 USC 857 note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 322. EXPENSING OF CERTAIN REFORESTATION EXPENDITURES.

(a) **IN GENERAL.**—So much of subsection (b) of section 194 (relating to amortization of reforestation expenditures) as precedes paragraph (2) is amended to read as follows:

“(b) **TREATMENT AS EXPENSES.**—

“(1) **ELECTION TO TREAT CERTAIN REFORESTATION EXPENDITURES AS EXPENSES.**—

“(A) **IN GENERAL.**—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

“(B) **DOLLAR LIMITATION.**—The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed

\$10,000 (\$5,000 in the case of a separate return by a married individual (as defined in section 7703)).”.

(b) NET AMORTIZABLE BASIS.—Section 194(c)(2) (defining amortizable basis) is amended by inserting “which have not been taken into account under subsection (b)” after “expenditures”.

(c) CONFORMING AMENDMENTS.—

(1) Section 194(b) is amended by striking paragraphs (3) and (4).

(2) Section 194(b)(2) is amended by striking “paragraph (1)” both places it appears and inserting “paragraph (1)(B)”.

(3) Section 194(c) is amended by striking paragraph (4) and inserting the following new paragraphs:

“(4) TREATMENT OF TRUSTS AND ESTATES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

“(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary.

“(5) APPLICATION WITH OTHER DEDUCTIONS.—No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.”.

(4) The heading for section 194 is amended by striking “AMORTIZATION” and inserting “TREATMENT”.

(5) The item relating to section 194 in the table of sections for part VI of subchapter B of chapter 1 is amended by striking “Amortization” and inserting “Treatment”.

(d) REPEAL OF REFORESTATION CREDIT.—

(1) IN GENERAL.—Section 46 (relating to amount of credit) is amended—

(A) by adding “and” at the end of paragraph (1),

(B) by striking “, and” at the end of paragraph (2) and inserting a period, and

(C) by striking paragraph (3).

(2) CONFORMING AMENDMENTS.—

(A) Section 48 is amended—

(i) by striking subsection (b),

(ii) by striking “this subsection” in paragraph (5) of subsection (a) and inserting “subsection (a)”, and

(iii) by redesignating such paragraph (5) as subsection (b).

(B) The heading for section 48 is amended by striking “; REFORESTATION CREDIT”.

(C) The item relating to section 48 in the table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by striking “, reforestation credit”.

(D) Section 50(c)(3) is amended by striking “or reforestation credit”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to expenditures paid or incurred after the date of the enactment of this Act.

Subtitle C—Incentives for Small Manufacturers

SEC. 331. NET INCOME FROM PUBLICLY TRADED PARTNERSHIPS TREATED AS QUALIFYING INCOME OF REGULATED INVESTMENT COMPANIES.

(a) **IN GENERAL.**—Paragraph (2) of section 851(b) (defining regulated investment company) is amended to read as follows:

“(2) at least 90 percent of its gross income is derived from—

“(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

“(B) net income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and”.

(b) **SOURCE FLOW-THROUGH RULE NOT TO APPLY.**—The last sentence of section 851(b) is amended by inserting “(other than a qualified publicly traded partnership as defined in subsection (h))” after “derived from a partnership”.

(c) **LIMITATION ON OWNERSHIP.**—Subsection (c) of section 851 is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

“(5) The term ‘outstanding voting securities of such issuer’ shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).”.

(d) **DEFINITION OF QUALIFIED PUBLICLY TRADED PARTNERSHIP.**—Section 851 is amended by adding at the end the following new subsection:

“(h) **QUALIFIED PUBLICLY TRADED PARTNERSHIP.**—For purposes of this section, the term ‘qualified publicly traded partnership’ means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).”.

(e) **DEFINITION OF QUALIFYING INCOME.**—Section 7704(d)(4) is amended by striking “section 851(b)(2)” and inserting “section 851(b)(2)(A)”.

(f) **LIMITATION ON COMPOSITION OF ASSETS.**—Subparagraph (B) of section 851(b)(3) is amended to read as follows:

“(B) not more than 25 percent of the value of its total assets is invested in—

“(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

“(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

“(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).”.

(g) APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE TO REGULATED INVESTMENT COMPANIES.—Subsection (k) of section 469 (relating to separate application of section in case of publicly traded partnerships) is amended by adding at the end the following new paragraph:

“(4) APPLICATION TO REGULATED INVESTMENT COMPANIES.—

For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.”.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 469 note.

SEC. 332. SIMPLIFICATION OF EXCISE TAX IMPOSED ON BOWS AND ARROWS.

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

“(1) BOWS.—

“(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

“(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

“(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

“(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.”.

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

“(3) ARROWS.—

“(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

“(B) EXCEPTION.—In the case of any arrow of which the shaft or any other component has been previously taxed under paragraph (1) or (2)—

“(i) section 6416(b)(3) shall not apply, and

“(ii) the tax imposed by subparagraph (A) shall be an amount equal to the excess (if any) of—

“(I) the amount of tax imposed by this paragraph (determined without regard to this subparagraph), over

“(II) the amount of tax paid with respect to the tax imposed under paragraph (1) or (2) on such shaft or component.

“(C) ARROW.—For purposes of this paragraph, the term ‘arrow’ means any shaft described in paragraph (2) to which additional components are attached.”.

(c) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

(1) by inserting “(other than broadheads)” after “point”, and

(2) by striking “ARROWS.—” in the heading and inserting “ARROW COMPONENTS.—”.

26 USC 4161
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after the date which is 30 days after the date of the enactment of this Act.

SEC. 333. REDUCTION OF EXCISE TAX ON FISHING TACKLE BOXES.

(a) IN GENERAL.—Subsection (a) of section 4161 (relating to sport fishing equipment) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

Applicability.

“(3) 3 PERCENT RATE OF TAX FOR TACKLE BOXES.—In the case of fishing tackle boxes, paragraph (1) shall be applied by substituting ‘3 percent’ for ‘10 percent’.”.

26 USC 4161
note.

(b) EFFECTIVE DATE.—The amendments made this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 334. SONAR DEVICES SUITABLE FOR FINDING FISH.

(a) NOT TREATED AS SPORT FISHING EQUIPMENT.—Subsection (a) of section 4162 (relating to sport fishing equipment defined) is amended by inserting “and” at the end of paragraph (8), by striking “, and” at the end of paragraph (9) and inserting a period, and by striking paragraph (10).

(b) CONFORMING AMENDMENT.—Section 4162 is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

26 USC 4162
note.

(c) EFFECTIVE DATE.—The amendments made this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 335. CHARITABLE CONTRIBUTION DEDUCTION FOR CERTAIN EXPENSES INCURRED IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHALING.

(a) IN GENERAL.—Section 170 (relating to charitable, etc., contributions and gifts), as amended by this Act, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) EXPENSES PAID BY CERTAIN WHALING CAPTAINS IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHALING.—

“(1) IN GENERAL.—In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed

\$10,000 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

“(2) AMOUNT DESCRIBED.—

“(A) IN GENERAL.—The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities.

“(B) WHALING EXPENSES.—For purposes of subparagraph (A), the term ‘whaling expenses’ includes expenses for—

“(i) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

“(ii) the supplying of food for the crew and other provisions for carrying out such activities, and

“(iii) storage and distribution of the catch from such activities.

“(3) SANCTIONED WHALING ACTIVITIES.—For purposes of this subsection, the term ‘sanctioned whaling activities’ means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.

“(4) SUBSTANTIATION OF EXPENSES.—The Secretary shall issue guidance requiring that the taxpayer substantiate the whaling expenses for which a deduction is claimed under this subsection, including by maintaining appropriate written records with respect to the time, place, date, amount, and nature of the expense, as well as the taxpayer’s eligibility for such deduction, and that (to the extent provided by the Secretary) such substantiation be provided as part of the taxpayer’s return of tax.”.

Regulations.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to contributions made after December 31, 2004.

26 USC 170 note.

SEC. 336. MODIFICATION OF DEPRECIATION ALLOWANCE FOR AIRCRAFT.

(a) AIRCRAFT TREATED AS QUALIFIED PROPERTY.—

(1) IN GENERAL.—Paragraph (2) of section 168(k) is amended by redesignating subparagraphs (C) through (F) as subparagraphs (D) through (G), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) CERTAIN AIRCRAFT.—The term ‘qualified property’ includes property—

“(i) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

“(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

“(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

“(I) 10 percent of the cost, or

“(II) \$100,000, and

“(iv) which has—

“(I) an estimated production period exceeding 4 months, and

“(II) a cost exceeding \$200,000.”.

(2) **PLACED IN SERVICE DATE.**—Clause (iv) of section 168(k)(2)(A) is amended by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 168(k)(2)(B) is amended by adding at the end the following new clause:

“(iv) **APPLICATION OF SUBPARAGRAPH.**—This subparagraph shall not apply to any property which is described in subparagraph (C).”.

(2) Section 168(k)(4)(A)(ii) is amended by striking “paragraph (2)(C)” and inserting “paragraph (2)(D)”.

(3) Section 168(k)(4)(B)(iii) is amended by inserting “and paragraph (2)(C)” after “of this paragraph”.

(4) Section 168(k)(4)(C) is amended by striking “subparagraphs (B) and (D)” and inserting “subparagraphs (B), (C), and (E)”.

(5) Section 168(k)(4)(D) is amended by striking “Paragraph (2)(E)” and inserting “Paragraph (2)(F)”.

26 USC 168 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002.

SEC. 337. MODIFICATION OF PLACED IN SERVICE RULE FOR BONUS DEPRECIATION PROPERTY.

(a) **IN GENERAL.**—Subclause (II) of section 168(k)(2)(E)(iii) (relating to syndication), as amended by the Working Families Tax Relief Act of 2004 and as redesignated by this Act, is amended by inserting before the comma at the end the following: “(or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)”.

26 USC 168 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property sold after June 4, 2004.

SEC. 338. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) **IN GENERAL.**—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

“SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

“(a) **ALLOWANCE OF DEDUCTION.**—In the case of a small business refiner (as defined in section 45H(c)(1)) which elects the application of this section, there shall be allowed as a deduction an amount equal to 75 percent of qualified capital costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year.

“(b) **REDUCED PERCENTAGE.**—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before

the application of this subsection) and the ratio of such excess to 50,000 barrels.

“(c) BASIS REDUCTION.—

“(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

“(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.”.

“(d) COORDINATION WITH OTHER PROVISIONS.—Section 280B shall not apply to amounts which are treated as expenses under this section.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking “or” at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting “, or”, and by adding at the end the following new subparagraph:

“(I) expenditures for which a deduction is allowed under section 179B.”.

(2) Section 263A(c)(3) is amended by inserting “179B,” after “section”.

(3) Section 312(k)(3)(B) is amended by striking “or 179A” each place it appears in the heading and text and inserting “179A, or 179B”.

(4) Section 1016(a) is amended by striking “and” at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting “, and”, and by inserting after paragraph (29) the following new paragraph:

“(30) to the extent provided in section 179B(c).”.

(5) Paragraphs (2)(C) and (3)(C) of section 1245(a) are each amended by inserting “179B,” after “179A”.

(6) The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179A the following new item:

“Sec. 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

26 USC 179B
note.

SEC. 339. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by inserting after section 45G the following new section:

“SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

“(a) IN GENERAL.—For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

“(b) MAXIMUM CREDIT.—

“(1) IN GENERAL.—The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

“(A) 25 percent of the qualified capital costs incurred by the small business refiner with respect to such facility, reduced by

“(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

“(2) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

“(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

“(1) SMALL BUSINESS REFINER.—The term ‘small business refiner’ means, with respect to any taxable year, a refiner of crude oil—

“(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

“(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

“(2) QUALIFIED CAPITAL COSTS.—The term ‘qualified capital costs’ means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

“(3) APPLICABLE EPA REGULATIONS.—The term ‘applicable EPA regulations’ means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

“(4) APPLICABLE PERIOD.—The term ‘applicable period’ means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

“(5) LOW SULFUR DIESEL FUEL.—The term ‘low sulfur diesel fuel’ means diesel fuel with a sulfur content of 15 parts per million or less.

“(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

“(e) SPECIAL RULE FOR DETERMINATION OF REFINERY RUNS.—For purposes this section and section 179B(b), in the calculation of average daily domestic refinery run or retained production, only

refineries which on April 1, 2003, were refineries of the refiner or a related person (within the meaning of section 613A(d)(3)), shall be taken into account.

“(f) CERTIFICATION.—

“(1) REQUIRED.—No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is determined with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer’s qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

Deadline.

“(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

“(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

Deadline.

“(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

“(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

“(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(g) COOPERATIVE ORGANIZATIONS.—

“(1) APPORTIONMENT OF CREDIT.—

“(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

“(B) FORM AND EFFECT OF ELECTION.—An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

“(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

“(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

“(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included

in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

“(3) SPECIAL RULE.—If the amount of a credit which has been apportioned to any patron under this subsection is decreased for any reason—

“(A) such amount shall not increase the tax imposed on such patron, and

“(B) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.”.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking “plus” at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting “, plus”, and by inserting after paragraph (17) the following new paragraph:

“(18) the low sulfur diesel fuel production credit determined under section 45H(a).”.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end the following new subsection:

“(d) LOW SULFUR DIESEL FUEL PRODUCTION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45H(a).”.

(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to adjustments to basis), as amended by this Act, is amended by striking “and” at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting “, and”, and by inserting after paragraph (30) the following new paragraph:

“(31) in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d).”.

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Section 196(c) (defining qualified business credits), as amended by this Act, is amended by striking “and” at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting “, and”, and by adding after paragraph (11) the following new paragraph:

“(12) the low sulfur diesel fuel production credit determined under section 45H(a).”.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45G the following new item:

“Sec. 45H. Credit for production of low sulfur diesel fuel.”.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date. 26 USC 38 note.

SEC. 340. EXPANSION OF QUALIFIED SMALL-ISSUE BOND PROGRAM.

(a) **IN GENERAL.**—Section 144(a)(4) (relating to \$10,000,000 limit in certain cases) is amended by adding at the end the following new subparagraph:

“(G) **ADDITIONAL CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.**—With respect to bonds issued after September 30, 2009, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed \$10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).”

(b) **CONFORMING AMENDMENT.**—Subparagraph (F) of section 144(a)(4) is amended by adding at the end the following new sentence: “This subparagraph shall not apply to bonds issued after September 30, 2009.”

SEC. 341. OIL AND GAS FROM MARGINAL WELLS.

(a) **IN GENERAL.**—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits), as amended by this Act, is amended by inserting after section 45H the following:

“SEC. 45I. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

“(a) **GENERAL RULE.**—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

“(1) the credit amount, and

“(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

“(b) **CREDIT AMOUNT.**—For purposes of this section—

“(1) **IN GENERAL.**—The credit amount is—

“(A) \$3 per barrel of qualified crude oil production, and

“(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

“(2) **REDUCTION AS OIL AND GAS PRICES INCREASE.**—

“(A) **IN GENERAL.**—The \$3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

“(i) the excess (if any) of the applicable reference price over \$15 (\$1.67 for qualified natural gas production), bears to

“(ii) \$3 (\$0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

“(B) **INFLATION ADJUSTMENT.**—In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting ‘2004’ for ‘1990’).

“(C) REFERENCE PRICE.—For purposes of this paragraph, the term ‘reference price’ means, with respect to any calendar year—

“(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

“(ii) in the case of qualified natural gas production, the Secretary’s estimate of the annual average well-head price per 1,000 cubic feet for all domestic natural gas.

“(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

“(1) IN GENERAL.—The terms ‘qualified crude oil production’ and ‘qualified natural gas production’ mean domestic crude oil or natural gas which is produced from a qualified marginal well.

“(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

“(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel-of-oil equivalents (as defined in section 29(d)(5)).

“(B) PROPORTIONATE REDUCTIONS.—

“(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

“(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

“(3) DEFINITIONS.—

“(A) QUALIFIED MARGINAL WELL.—The term ‘qualified marginal well’ means a domestic well—

“(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

“(ii) which, during the taxable year—

“(I) has average daily production of not more than 25 barrel-of-oil equivalents (as so defined), and

“(II) produces water at a rate not less than 95 percent of total well effluent.

“(B) CRUDE OIL, ETC.—The terms ‘crude oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have the meanings given such terms by section 613A(e).

“(d) OTHER RULES.—

“(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude

oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

“(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

“(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.”.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking “plus” at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting “, plus”, and by inserting after paragraph (18) the following:

“(19) the marginal oil and gas well production credit determined under section 45I(a).”.

(c) CARRYBACK.—Subsection (a) of section 39 (relating to carryback and carryforward of unused credits generally) is amended by adding at the end the following:

“(3) 5-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—Notwithstanding subsection (d), in the case of the marginal oil and gas well production credit—

Applicability.

“(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

“(B) paragraph (1) shall be applied by substituting ‘5 taxable years’ for ‘1 taxable years’ in subparagraph (A) thereof, and

“(C) paragraph (2) shall be applied—

“(i) by substituting ‘25 taxable years’ for ‘21 taxable years’ in subparagraph (A) thereof, and

“(ii) by substituting ‘24 taxable years’ for ‘20 taxable years’ in subparagraph (B) thereof.”.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after section 45H the following:

“Sec. 45I. Credit for producing oil and gas from marginal wells.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2004.

26 USC 38 note.

TITLE IV—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

SEC. 401. INTEREST EXPENSE ALLOCATION RULES.

(a) **ELECTION TO ALLOCATE ON WORLDWIDE BASIS.**—Section 864 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.**—For purposes of this subchapter, at the election of the worldwide affiliated group—

“(1) **ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE.**—

“(A) **IN GENERAL.**—The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

“(B) **TREATMENT OF WORLDWIDE AFFILIATED GROUP.**—The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

“(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

“(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

“(C) **WORLDWIDE AFFILIATED GROUP.**—For purposes of this paragraph, the term ‘worldwide affiliated group’ means a group consisting of—

“(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

“(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

“(2) **ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.**—Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes

of the preceding sentence, the term ‘affiliated group’ has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

“(3) TREATMENT OF TAX-EXEMPT ASSETS; BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS.—The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

Applicability.

“(4) TREATMENT OF CERTAIN FINANCIAL INSTITUTIONS.—

“(A) IN GENERAL.—For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

“(B) DESCRIPTION.—A corporation is described in this subparagraph if—

“(i) such corporation is a financial institution described in section 581 or 591,

“(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

“(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

“(C) TREATMENT OF BANK AND FINANCIAL HOLDING COMPANIES.—To the extent provided in regulations—

“(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

“(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

“(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

“(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

“(A) IN GENERAL.—If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

“(i) are members of such worldwide affiliated group, but

“(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

Applicability.

“(B) FINANCIAL CORPORATION.—For purposes of this paragraph, the term ‘financial corporation’ means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(D)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

“(C) ANTI-ABUSE RULES.—In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

“(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

“(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

“(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

“(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

“(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2008, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

“(E) DEFINITIONS RELATING TO GROUPS.—For purposes of this paragraph—

“(i) PRE-ELECTION WORLDWIDE AFFILIATED GROUP.—The term ‘pre-election worldwide affiliated group’ means, with respect to a corporation, the worldwide affiliated group of which such corporation would

Applicability.

(but for an election under this paragraph) be a member for purposes of applying paragraph (1).

“(ii) ELECTING FINANCIAL INSTITUTION GROUP.—The term ‘electing financial institution group’ means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

“(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

“(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

“(ii) preventing assets or interest expense from being taken into account more than once, and

“(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

“(6) ELECTION.—An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.”

Applicability.

(b) EXPANSION OF REGULATORY AUTHORITY.—Paragraph (7) of section 864(e) is amended—

(1) by inserting before the comma at the end of subparagraph (B) “and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection”, and

(2) by striking “and” at the end of subparagraph (E), by redesignating subparagraph (F) as subparagraph (G), and by inserting after subparagraph (E) the following new subparagraph:

“(F) preventing assets or interest expense from being taken into account more than once, and”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

26 USC 864 note.

SEC. 402. RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.

(a) GENERAL RULE.—Section 904 is amended by redesignating subsections (g), (h), (i), (j), and (k) as subsections (h), (i), (j), (k), and (l) respectively, and by inserting after subsection (f) the following new subsection:

“(g) RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.—

“(1) GENERAL RULE.—For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer’s taxable income from

sources within the United States for each succeeding taxable year which is equal to the lesser of—

“(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

“(B) 50 percent of the taxpayer’s taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

“(2) OVERALL DOMESTIC LOSS DEFINED.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘overall domestic loss’ means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term ‘domestic loss’ means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

“(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term ‘overall domestic loss’ shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.

“(3) CHARACTERIZATION OF SUBSEQUENT INCOME.—

“(A) IN GENERAL.—Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

“(B) INCOME CATEGORY.—For purposes of this paragraph, the term ‘income category’ has the meaning given such term by subsection (f)(5)(E)(i).

Regulations.

“(4) COORDINATION WITH SUBSECTION (f).—The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).”.

(b) CONFORMING AMENDMENTS.—

(1) Section 535(d)(2) is amended by striking “section 904(g)(6)” and inserting “section 904(h)(6)”.

(2) Subparagraph (A) of section 936(a)(2) is amended by striking “section 904(f)” and inserting “subsections (f) and (g) of section 904”.

26 USC 535 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses for taxable years beginning after December 31, 2006.

SEC. 403. LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) IN GENERAL.—Section 904(d)(4) (relating to look-thru rules apply to dividends from noncontrolled section 902 corporations) is amended to read as follows:

“(4) LOOK-THRU APPLIES TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.—

“(A) IN GENERAL.—For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

“(i) the portion of earnings and profits attributable to income described in such subparagraph, to

“(ii) the total amount of earnings and profits.

“(B) EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.—In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

“(C) SPECIAL RULES.—For purposes of this paragraph—

“(i) EARNINGS AND PROFITS.—

“(I) IN GENERAL.—The rules of section 316 shall apply.

“(II) REGULATIONS.—The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer’s acquisition of the stock to which the distributions relate.

“(ii) INADEQUATE SUBSTANTIATION.—If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

“(iii) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

“(iv) LOOK-THRU WITH RESPECT TO CARRYOVER OF CREDIT.—Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation from a taxable year beginning on or after January 1, 2003, to a taxable year beginning before such date for purposes of allocating such dividend among the separate categories in effect for the taxable year to which carried.”.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 904(d)(1) is hereby repealed.

(2) Section 904(d)(2)(C)(iii) is amended by adding “and” at the end of subclause (I), by striking subclause (II), and by redesignating subclause (III) as subclause (II).

(3) The last sentence of section 904(d)(2)(D) is amended to read as follows: “Such term does not include any financial services income.”.

(4) Section 904(d)(2)(E) is amended—

(A) by inserting “or (4)” after “paragraph (3)” in clause (i), and

(B) by striking clauses (ii) and (iv) and by redesignating clause (iii) as clause (ii).

(5) Section 904(d)(3)(F) is amended by striking “(D), or (E)” and inserting “or (D)”.

(6) Section 864(d)(5)(A)(i) is amended by striking “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

26 USC 864 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 404. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.

(a) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income) is amended to read as follows:

Applicability.

“(1) IN GENERAL.—The provisions of subsections (a), (b), and (c) and sections 902, 907, and 960 shall be applied separately with respect to—

“(A) passive category income, and

“(B) general category income.”.

(b) CATEGORIES.—Paragraph (2) of section 904(d) is amended by striking subparagraph (B), by redesignating subparagraph (A) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

“(A) CATEGORIES.—

“(i) PASSIVE CATEGORY INCOME.—The term ‘passive category income’ means passive income and specified passive category income.

“(ii) GENERAL CATEGORY INCOME.—The term ‘general category income’ means income other than passive category income.”.

(c) SPECIFIED PASSIVE CATEGORY INCOME.—Subparagraph (B) of section 904(d)(2), as so redesignated, is amended by adding at the end the following new clause:

“(v) SPECIFIED PASSIVE CATEGORY INCOME.—The term ‘specified passive category income’ means—

“(I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States,

“(II) taxable income attributable to foreign trade income (within the meaning of section 923(b)), and

“(III) distributions from a FSC (or a former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).”.

(d) TREATMENT OF FINANCIAL SERVICES.—Paragraph (2) of section 904(d), as amended by section 403(b)(3), is amended by striking subparagraph (D), by redesignating subparagraph (C) as subparagraph (D), and by inserting before subparagraph (D) (as so redesignated) the following new subparagraph:

“(C) TREATMENT OF FINANCIAL SERVICES INCOME AND COMPANIES.—

“(i) IN GENERAL.—Financial services income shall be treated as general category income in the case of—

“(I) a member of a financial services group, and

“(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

“(ii) FINANCIAL SERVICES GROUP.—The term ‘financial services group’ means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

“(I) United States corporations, or

“(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

“(iii) PASS-THRU ENTITIES.—The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.”.

Regulations.

(e) TREATMENT OF INCOME TAX BASE DIFFERENCES.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

“(H) TREATMENT OF INCOME TAX BASE DIFFERENCES.—

“(i) IN GENERAL.—In the case of taxable years beginning after December 31, 2006, tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).

“(ii) SPECIAL RULE FOR YEARS BEFORE 2007.—

“(I) IN GENERAL.—In the case of taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, a taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

“(II) ELECTION IRREVOCABLE.—Any such election shall apply to the taxable year for which made and all subsequent taxable years described in subclause (I) unless revoked with the consent of the Secretary.”.

Applicability.

(f) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 904(d)(2)(B) (relating to exceptions from passive income), as so redesignated, is amended by striking subclause (I) and by redesignating subclauses (II) and (III) as subclauses (I) and (II), respectively.

(2) Clause (i) of section 904(d)(2)(D) (defining financial services income), as so redesignated, is amended by adding “or” at the end of subclause (I) and by striking subclauses (II) and (III) and inserting the following new subclause:

“(II) passive income (determined without regard to subparagraph (B)(iii)(II)).”.

(3) Section 904(d)(2)(D) (defining financial services income), as so redesignated and amended by section 404(b)(3), is amended by striking clause (iii).

(4) Paragraph (3) of section 904(d) is amended to read as follows:

“(3) LOOK-THRU IN CASE OF CONTROLLED FOREIGN CORPORATIONS.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

“(B) SUBPART F INCLUSIONS.—Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

“(C) INTEREST, RENTS, AND ROYALTIES.—Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

“(D) DIVIDENDS.—Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

“(i) the portion of the earnings and profits attributable to passive category income, to

“(ii) the total amount of earnings and profits.

“(E) LOOK-THRU APPLIES ONLY WHERE SUBPART F APPLIES.—If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

“(F) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—

Regulations.

“(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

“(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

“(G) DIVIDEND.—For purposes of this paragraph, the term ‘dividend’ includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

“(H) LOOK-THRU APPLIES TO PASSIVE FOREIGN INVESTMENT COMPANY INCLUSION.—If—

“(i) a passive foreign investment company is a controlled foreign corporation, and

“(ii) the taxpayer is a United States shareholder in such controlled foreign corporation, any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.”.

(5) Paragraph (2) of section 904(d) is amended by adding at the end the following new subparagraph:

“(K) TRANSITIONAL RULES FOR 2007 CHANGES.—For purposes of paragraph (1)—

“(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

“(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income from a taxable year beginning on or after January 1, 2007, to a taxable year beginning before such date for purposes of allocating such income among the separate categories in effect for the taxable year to which carried.”.

(6) Section 904(j)(3)(A)(i) is amended by striking “subsection (d)(2)(A)” and inserting “subsection (d)(2)(B)”.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

(2) TRANSITIONAL RULE RELATING TO INCOME TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii) of the Internal Revenue Code of 1986, as added by subsection (e), shall apply to taxable years beginning after December 31, 2004.

26 USC 904 note.

SEC. 405. ATTRIBUTION OF STOCK OWNERSHIP THROUGH PARTNERSHIPS TO APPLY IN DETERMINING SECTION 902 AND 960 CREDITS.

(a) IN GENERAL.—Subsection (c) of section 902 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(7) CONSTRUCTIVE OWNERSHIP THROUGH PARTNERSHIPS.—Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.”.

(b) CLARIFICATION OF COMPARABLE ATTRIBUTION UNDER SECTION 901(b)(5).—Paragraph (5) of section 901(b) is amended by striking “any individual” and inserting “any person”.

26 USC 901 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act.

SEC. 406. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 367(d)(2) is amended by adding at the end the following new sentence: “For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.”.

26 USC 367 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.

SEC. 407. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 956(c)(2) (relating to exceptions from property treated as United States property) is amended by striking “and” at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting a semicolon, and by adding at the end the following new subparagraphs:

“(L) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

“(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

“(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

“(M) an obligation of a United States person which—

“(i) is not a domestic corporation, and

“(ii) is not—

“(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

“(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.”

(b) CONFORMING AMENDMENT.—Section 956(c)(2) is amended by striking “and (K)” in the last sentence and inserting “, (K), and (L)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

26 USC 956 note.

SEC. 408. TRANSLATION OF FOREIGN TAXES.

(a) ELECTIVE EXCEPTION FOR TAXES PAID OTHER THAN IN FUNCTIONAL CURRENCY.—Paragraph (1) of section 986(a) (relating to determination of foreign taxes and foreign corporation’s earnings and profits) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

“(D) ELECTIVE EXCEPTION FOR TAXES PAID OTHER THAN IN FUNCTIONAL CURRENCY.—

“(i) IN GENERAL.—At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer’s functional currency.

“(ii) APPLICATION TO QUALIFIED BUSINESS UNITS.—An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

“(iii) ELECTION.—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.”

Applicability.

(b) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—

(1) IN GENERAL.—Section 986(a)(1), as amended by subsection (a), is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following:

“(E) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—In the case of a regulated investment company which takes into account income on an accrual basis, subparagraphs (A) through (D) shall not apply and foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.”

(2) CONFORMING AMENDMENT.—Section 986(a)(2) is amended by inserting “or (E)” after “subparagraph (A)”.

26 USC 986 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 409. REPEAL OF WITHHOLDING TAX ON DIVIDENDS FROM CERTAIN FOREIGN CORPORATIONS.

(a) **IN GENERAL.**—Paragraph (2) of section 871(i) (relating to tax not to apply to certain interest and dividends) is amended by adding at the end the following new subparagraph:

“(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.”.

26 USC 871 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to payments made after December 31, 2004.

SEC. 410. EQUAL TREATMENT OF INTEREST PAID BY FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS.

(a) **IN GENERAL.**—Paragraph (1) of section 861(a) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following new subparagraph:

“(C) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.”.

26 USC 861 note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 411. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) **TREATMENT OF CERTAIN DIVIDENDS.**—

(1) **NONRESIDENT ALIEN INDIVIDUALS.**—Section 871 (relating to tax on nonresident alien individuals) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

“(k) **EXEMPTION FOR CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.**—

“(1) **INTEREST-RELATED DIVIDENDS.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company.

“(B) **EXCEPTIONS.**—Subparagraph (A) shall not apply—

“(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E) (i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

“(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter

3 receives a statement (which meets requirements similar to the requirements of subsection (h)(5)) that the beneficial owner of such stock is not a United States person, and

“(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such foreign country) during any period described in subsection (h)(6) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary’s determination under subsection (h)(6).

“(C) INTEREST-RELATED DIVIDEND.—For purposes of this paragraph, the term ‘interest-related dividend’ means any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated. Such term shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2007. Deadline.

“(D) QUALIFIED NET INTEREST INCOME.—For purposes of subparagraph (C), the term ‘qualified net interest income’ means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

“(E) QUALIFIED INTEREST INCOME.—For purposes of subparagraph (D), the term ‘qualified interest income’ means the sum of the following amounts derived by the regulated investment company from sources within the United States:

“(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

“(ii) Any interest includible in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to—

“(I) any interest on an obligation issued by a corporation or partnership if the regulated

investment company is a 10-percent shareholder in such corporation or partnership, and

“(II) any interest which is treated as not being portfolio interest under the rules of subsection (h)(4).

“(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

“(iv) Any interest-related dividend includable in gross income with respect to stock of another regulated investment company.

“(F) 10-PERCENT SHAREHOLDER.—For purposes of this paragraph, the term ‘10-percent shareholder’ has the meaning given such term by subsection (h)(3)(B).

“(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company.

“(B) EXCEPTION FOR ALIENS TAXABLE UNDER SUBSECTION (a)(2).—Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

“(C) SHORT-TERM CAPITAL GAIN DIVIDEND.—For purposes of this paragraph, the term ‘short-term capital gain dividend’ means any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated. Such term shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2007.

“(D) QUALIFIED SHORT-TERM GAIN.—For purposes of subparagraph (C), the term ‘qualified short-term gain’ means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph—

“(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

“(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital

Notice.
Deadline.

loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year.

To the extent provided in regulations, clause (ii) shall apply also for purposes of computing the taxable income of the regulated investment company.”.

(2) FOREIGN CORPORATIONS.—Section 881 (relating to tax on income of foreign corporations not connected with United States business) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

“(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

“(1) INTEREST-RELATED DIVIDENDS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

“(B) EXCEPTION.—Subparagraph (A) shall not apply—

“(i) to any dividend referred to in section 871(k)(1)(B), and

“(ii) to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

“(C) TREATMENT OF DIVIDENDS RECEIVED BY CONTROLLED FOREIGN CORPORATIONS.—The rules of subsection (c)(5)(A) shall apply to any (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

Applicability.

“(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.”.

(3) WITHHOLDING TAXES.—

(A) Section 1441(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

“(12) CERTAIN DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES.—

“(A) IN GENERAL.—No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

“(B) SPECIAL RULE.—For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B).”.

Applicability.

(B) Section 1442(a) (relating to withholding of tax on foreign corporations) is amended—

(i) by striking “and the reference in section 1441(c)(10)” and inserting “the reference in section 1441(c)(10)”, and

(ii) by inserting before the period at the end the following: “, and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)”.

(b) ESTATE TAX TREATMENT OF INTEREST IN CERTAIN REGULATED INVESTMENT COMPANIES.—Section 2105 (relating to property without the United States for estate tax purposes) is amended by adding at the end the following new subsection:

“(d) STOCK IN A RIC.—

“(1) IN GENERAL.—For purposes of this subchapter, stock in a regulated investment company (as defined in section 851) owned by a nonresident not a citizen of the United States shall not be deemed property within the United States in the proportion that, at the end of the quarter of such investment company’s taxable year immediately preceding a decedent’s date of death (or at such other time as the Secretary may designate in regulations), the assets of the investment company that were qualifying assets with respect to the decedent bore to the total assets of the investment company.

“(2) QUALIFYING ASSETS.—For purposes of this subsection, qualifying assets with respect to a decedent are assets that, if owned directly by the decedent, would have been—

“(A) amounts, deposits, or debt obligations described in subsection (b) of this section,

“(B) debt obligations described in the last sentence of section 2104(c), or

“(C) other property not within the United States.

“(3) TERMINATION.—This subsection shall not apply to estates of decedents dying after December 31, 2007.”.

(c) TREATMENT OF REGULATED INVESTMENT COMPANIES UNDER SECTION 897.—

(1) Paragraph (1) of section 897(h) is amended by striking “REIT” each place it appears and inserting “qualified investment entity”.

(2) Paragraphs (2) and (3) of section 897(h) are amended to read as follows:

“(2) SALE OF STOCK IN DOMESTICALLY CONTROLLED ENTITY NOT TAXED.—The term ‘United States real property interest’ does not include any interest in a domestically controlled qualified investment entity.

“(3) DISTRIBUTIONS BY DOMESTICALLY CONTROLLED QUALIFIED INVESTMENT ENTITIES.—In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.”.

(3) Subparagraphs (A) and (B) of section 897(h)(4) are amended to read as follows:

Applicability.

“(A) QUALIFIED INVESTMENT ENTITY.—

“(i) IN GENERAL.—The term ‘qualified investment entity’ means—

“(I) any real estate investment trust, and

“(II) any regulated investment company.

“(ii) TERMINATION.—Clause (i)(II) shall not apply after December 31, 2007.

“(B) DOMESTICALLY CONTROLLED.—The term ‘domestically controlled qualified investment entity’ means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.”.

(4) Subparagraphs (C) and (D) of section 897(h)(4) are each amended by striking “REIT” and inserting “qualified investment entity”.

(5) The subsection heading for subsection (h) of section 897 is amended by striking “REITS” and inserting “CERTAIN INVESTMENT ENTITIES”.

(d) EFFECTIVE DATE.—

26 USC 871 note.

(1) **IN GENERAL.—**Except as otherwise provided in this subsection, the amendments made by this section shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

(2) **ESTATE TAX TREATMENT.—**The amendment made by subsection (b) shall apply to estates of decedents dying after December 31, 2004.

(3) **CERTAIN OTHER PROVISIONS.—**The amendments made by subsection (c) (other than paragraph (1) thereof) shall take effect after December 31, 2004.

SEC. 412. LOOK-THRU TREATMENT FOR SALES OF PARTNERSHIP INTERESTS.

(a) **IN GENERAL.—**Section 954(c) (defining foreign personal holding company income) is amended by adding after paragraph (3) the following new paragraph:

“(4) LOOK-THRU RULE FOR CERTAIN PARTNERSHIP SALES.—

“(A) IN GENERAL.—In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

Regulations.

“(B) 25-PERCENT OWNER.—For purposes of this paragraph, the term ‘25-percent owner’ means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership.”.

26 USC 954 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 413. REPEAL OF FOREIGN PERSONAL HOLDING COMPANY RULES AND FOREIGN INVESTMENT COMPANY RULES.

(a) **GENERAL RULE.**—The following provisions are hereby repealed:

26 USC 551–558.

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) **EXEMPTION OF FOREIGN CORPORATIONS FROM PERSONAL HOLDING COMPANY RULES.**—

(1) **IN GENERAL.**—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

“(5) a foreign corporation,”

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting “and” at the end of paragraph (7) (as so redesignated), and

(D) by striking “; and” at the end of paragraph (8) (as so redesignated) and inserting a period.

(2) **TREATMENT OF INCOME FROM PERSONAL SERVICE CONTRACTS.**—Paragraph (1) of section 954(c) is amended by adding at the end the following new subparagraph:

“(I) **PERSONAL SERVICE CONTRACTS.**—

“(i) Amounts received under a contract under which the corporation is to furnish personal services if—

“(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

“(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

“(ii) amounts received from the sale or other disposition of such a contract.

Applicability.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.”.

(c) **CONFORMING AMENDMENTS.**—

(1) Section 1(h) is amended—

(A) in paragraph (10), by inserting “and” at the end of subparagraph (F), by striking subparagraph (G), and by redesignating subparagraph (H) as subparagraph (G), and

(B) by striking “a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or” in paragraph (11)(C)(iii).
(2) Paragraph (2) of section 171(c) is amended—

(A) by striking “, or by a foreign personal holding company, as defined in section 552”, and

(B) by striking “, or foreign personal holding company”.

(3) Paragraph (2) of section 245(a) is amended by striking “foreign personal holding company or”.

(4) Section 312 is amended by striking subsection (j).

(5) Subsection (m) of section 312 is amended by striking “, a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)”.

(6) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(7) Subparagraph (B) of section 465(c)(7) is amended by adding “or” at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(8) Paragraph (1) of section 543(b) is amended by inserting “and” at the end of subparagraph (A), by striking “, and” at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(9) Paragraph (1) of section 562(b) is amended by striking “or a foreign personal holding company described in section 552”.

(10) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesignating subsection (d) as subsection (c), and

(C) by striking “subsection (a), (b), or (c)” in subsection (c) (as so redesignated) and inserting “subsection (a) or (b)”.

(11) Subsection (d) of section 751 is amended by adding “and” at the end of paragraph (2), by striking paragraph (3), by redesignating paragraph (4) as paragraph (3), and by striking “paragraph (1), (2), or (3)” in paragraph (3) (as so redesignated) and inserting “paragraph (1) or (2)”.

(12) Paragraph (2) of section 864(d) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(13)(A) Subparagraph (A) of section 898(b)(1) is amended to read as follows:

“(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and”.

(B) Subparagraph (B) of section 898(b)(2) is amended by striking “and sections 551(f) and 554, whichever are applicable,”.

(C) Paragraph (3) of section 898(b) is amended to read as follows:

“(3) UNITED STATES SHAREHOLDER.—The term ‘United States shareholder’ has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).”.

(D) Subsection (c) of section 898 is amended to read as follows:

“(c) DETERMINATION OF REQUIRED YEAR.—

“(1) IN GENERAL.—The required year is—

“(A) the majority U.S. shareholder year, or

“(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

“(2) 1-MONTH DEFERRAL ALLOWED.—A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

“(3) MAJORITY U.S. SHAREHOLDER YEAR.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘majority U.S. shareholder year’ means the taxable year (if any) which, on each testing day, constituted the taxable year of—

“(i) each United States shareholder described in subsection (b)(2)(A), and

“(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

“(B) TESTING DAY.—The testing days shall be—

“(i) the first day of the corporation’s taxable year (determined without regard to this section), or

“(ii) the days during such representative period as the Secretary may prescribe.”.

(14) Clause (ii) of section 904(d)(2)(A) is amended to read as follows:

“(ii) CERTAIN AMOUNTS INCLUDED.—Except as provided in clause (iii), the term ‘passive income’ includes, except as provided in subparagraph (E)(iii) or paragraph (3)(I), any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).”.

(15)(A) Subparagraph (A) of section 904(h)(1), as redesignated by this Act, is amended by adding “or” at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(B) The paragraph heading of paragraph (2) of section 904(h), as so redesignated, is amended by striking “FOREIGN PERSONAL HOLDING OR”.

(16) Section 951 is amended by striking subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(17) Paragraph (3) of section 989(b) is amended by striking “, 551(a),”.

(18) Paragraph (5) of section 1014(b) is amended by inserting “and before January 1, 2005,” after “August 26, 1937,”.

(19) Subsection (a) of section 1016 is amended by striking paragraph (13).

(20)(A) Paragraph (3) of section 1212(a) is amended to read as follows:

“(3) SPECIAL RULES ON CARRYBACKS.—A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

“(A) for which it is a regulated investment company (as defined in section 851), or

“(B) for which it is a real estate investment trust (as defined in section 856).”.

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 2004. Applicability.

(21) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(22) Subsection (d) of section 1248 is amended by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(23) Paragraph (2) of section 1260(c) is amended by striking subparagraphs (H) and (I) and by redesignating subparagraph (J) as subparagraph (H).

(24)(A) Subparagraph (F) of section 1291(b)(3) is amended by striking “551(d), 959(a),” and inserting “959(a)”.

(B) Subsection (e) of section 1291 is amended by inserting “(as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004)” after “section 1246”.

(25) Paragraph (2) of section 1294(a) is amended to read as follows:

“(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION 951.—The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.”.

(26) Section 6035 is hereby repealed.

(27) Subparagraph (D) of section 6103(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(28) Subparagraph (B) of section 6501(e)(1) is amended to read as follows:

“(B) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.”.

(29) Subsection (a) of section 6679 is amended—

(A) by striking “6035, 6046, and 6046A” in paragraph (1) and inserting “6046 and 6046A”, and

(B) by striking paragraph (3).

(30) Sections 170(f)(10)(A), 508(d), 4947, and 4948(c)(4) are each amended by striking “556(b)(2),” each place it appears.

(31) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part III.

(32) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the items relating to sections 1246 and 1247.

(33) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6035.

26 USC 1 note.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(2) SUBSECTION (c)(27).—The amendments made by subsection (c)(27) shall apply to disclosures of return or return information with respect to taxable years beginning after December 31, 2004.

SEC. 414. DETERMINATION OF FOREIGN PERSONAL HOLDING COMPANY INCOME WITH RESPECT TO TRANSACTIONS IN COMMODITIES.

(a) IN GENERAL.—Clauses (i) and (ii) of section 954(c)(1)(C) (relating to commodity transactions) are amended to read as follows:

“(i) arise out of commodity hedging transactions (as defined in paragraph (4)(A)),

“(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation’s commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or”.

(b) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 954, as amended by this Act, is amended by adding after paragraph (4) the following new paragraph:

“(5) DEFINITION AND SPECIAL RULES RELATING TO COMMODITY TRANSACTIONS.—

“(A) COMMODITY HEDGING TRANSACTIONS.—For purposes of paragraph (1)(C)(i), the term ‘commodity hedging transaction’ means any transaction with respect to a commodity if such transaction—

“(i) is a hedging transaction as defined in section 1221(b)(2), determined—

“(I) without regard to subparagraph (A)(ii) thereof,

“(II) by applying subparagraph (A)(i) thereof by substituting ‘ordinary property or property described in section 1231(b)’ for ‘ordinary property’, and

“(III) by substituting ‘controlled foreign corporation’ for ‘taxpayer’ each place it appears, and

“(ii) is clearly identified as such in accordance with section 1221(a)(7).

“(B) TREATMENT OF DEALER ACTIVITIES UNDER PARAGRAPH (1)(C).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation’s foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

“(C) REGULATIONS.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.”.

(c) MODIFICATION OF EXCEPTION FOR DEALERS.—Clause (i) of section 954(c)(2)(C) is amended by inserting “and transactions involving physical settlement” after “(including hedging transactions”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after December 31, 2004. 26 USC 954 note.

SEC. 415. MODIFICATIONS TO TREATMENT OF AIRCRAFT LEASING AND SHIPPING INCOME.

(a) ELIMINATION OF FOREIGN BASE COMPANY SHIPPING INCOME.—Section 954 (relating to foreign base company income) is amended—

(1) by striking paragraph (4) of subsection (a) (relating to foreign base company shipping income), and

(2) by striking subsection (f) (relating to foreign base company shipping income).

(b) SAFE HARBOR FOR CERTAIN LEASING ACTIVITIES.—Subparagraph (A) of section 954(c)(2) is amended by adding at the end the following new sentence: “For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.”.

(c) CONFORMING AMENDMENTS.—

(1) Section 952(c)(1)(B)(iii) is amended by striking subclause (I) and redesignating subclauses (II) through (VI) as subclauses (I) through (V), respectively.

(2) Subsection (b) of section 954 is amended—

(A) by striking “the foreign base company shipping income,” in paragraph (5),

(B) by striking paragraphs (6) and (7), and

(C) by redesignating paragraph (8) as paragraph (6).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end. 26 USC 952 note.

SEC. 416. MODIFICATION OF EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING.

(a) IN GENERAL.—Section 954(h)(3) is amended by adding at the end the following:

“(E) DIRECT CONDUCT OF ACTIVITIES.—For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

“(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

“(ii) the activity is performed in the home country of the related person, and

“(iii) the related person is compensated on an arm’s-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country’s tax laws.”.

26 USC 954 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.

SEC. 417. 10-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-YEAR FOREIGN TAX CREDIT CARRYBACK.

(a) **GENERAL RULE.**—Section 904(c) (relating to carryback and carryover of excess tax paid) is amended—

(1) by striking “in the second preceding taxable year,”, and

(2) by striking “, and in the first, second, third, fourth, or fifth” and inserting “and in any of the first 10”.

(b) **EXCESS EXTRACTION TAXES.**—Paragraph (1) of section 907(f) is amended—

(1) by striking “in the second preceding taxable year,”,

(2) by striking “, and in the first, second, third, fourth, or fifth” and inserting “and in any of the first 10”, and

(3) by striking the last sentence.

26 USC 904 note.

(c) **EFFECTIVE DATE.**—

(1) **CARRYBACK.**—The amendments made by subsections (a)(1) and (b)(1) shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act.

(2) **CARRYOVER.**—The amendments made by subsections (a)(2) and (b)(2) shall apply to excess foreign taxes which (without regard to the amendments made by this section) may be carried to any taxable year ending after the date of the enactment of this Act.

SEC. 418. MODIFICATION OF THE TREATMENT OF CERTAIN REIT DISTRIBUTIONS ATTRIBUTABLE TO GAIN FROM SALES OR EXCHANGES OF UNITED STATES REAL PROPERTY INTERESTS.

(a) **IN GENERAL.**—Paragraph (1) of section 897(h) (relating to look-through of distributions) is amended by adding at the end the following new sentence: “Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.”.

(b) **CONFORMING AMENDMENT.**—Paragraph (3) of section 857(b) (relating to capital gains) is amended by adding at the end the following new subparagraph:

“(F) **CERTAIN DISTRIBUTIONS.**—In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included

in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

“(i) shall not be included in computing such shareholder’s long-term capital gains, and

“(ii) shall be included in such shareholder’s gross income as a dividend from the real estate investment trust.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 857 note.

SEC. 419. EXCLUSION OF INCOME DERIVED FROM CERTAIN WAGERS ON HORSE RACES AND DOG RACES FROM GROSS INCOME OF NONRESIDENT ALIEN INDIVIDUALS.

(a) **IN GENERAL.**—Subsection (b) of section 872 (relating to exclusions) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and inserting after paragraph (4) the following new paragraph:

“(5) **INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.**—Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.”.

(b) **CONFORMING AMENDMENT.**—Section 883(a)(4) is amended by striking “(5), (6), and (7)” and inserting “(6), (7), and (8)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to wagers made after the date of the enactment of this Act. 26 USC 872 note.

SEC. 420. LIMITATION OF WITHHOLDING TAX FOR PUERTO RICO CORPORATIONS.

(a) **IN GENERAL.**—Subsection (b) of section 881 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

“(2) **COMMONWEALTH OF PUERTO RICO.**—

“(A) **IN GENERAL.**—If dividends are received during a taxable year by a corporation—

“(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

“(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting ‘10 percent’ for ‘30 percent’.

“(B) **APPLICABILITY.**—If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico’s withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.”.

(b) **WITHHOLDING.**—Subsection (c) of section 1442 (relating to withholding of tax on foreign corporations) is amended—

(1) by striking “For purposes” and inserting the following:

“(1) **GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.**—For purposes”, and

(2) by adding at the end the following new paragraph:

“(2) COMMONWEALTH OF PUERTO RICO.—

“(A) IN GENERAL.—If dividends are received during a taxable year by a corporation—

“(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

“(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year, subsection (a) shall be applied for such taxable year by substituting ‘10 percent’ for ‘30 percent’.

“(B) APPLICABILITY.—If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico’s withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.”.

(c) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 881 is amended by striking “GUAM AND VIRGIN ISLANDS CORPORATIONS” in the heading and inserting “POSSESSIONS”.

(2) Paragraph (1) of section 881(b) is amended by striking “IN GENERAL” in the heading and inserting “GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS”.

26 USC 881 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends paid after the date of the enactment of this Act.

SEC. 421. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking “and if section 59(a)(2) did not apply”.

26 USC 53 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 422. INCENTIVES TO REINVEST FOREIGN EARNINGS IN UNITED STATES.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 (relating to controlled foreign corporations) is amended by adding at the end the following new section:

“SEC. 965. TEMPORARY DIVIDENDS RECEIVED DEDUCTION.

“(a) DEDUCTION.—

“(1) IN GENERAL.—In the case of a corporation which is a United States shareholder and for which the election under this section is in effect for the taxable year, there shall be allowed as a deduction an amount equal to 85 percent of the cash dividends which are received during such taxable year by such shareholder from controlled foreign corporations.

“(2) DIVIDENDS PAID INDIRECTLY FROM CONTROLLED FOREIGN CORPORATIONS.—If, within the taxable year for which the election under this section is in effect, a United States

shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a cash dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any cash dividend during such taxable year to—

“(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

“(B) any other controlled foreign corporation in such chain of ownership, but only to the extent of cash distributions described in section 959(b) which are made during such taxable year to the controlled foreign corporation from which such United States shareholder received such distribution.

“(b) LIMITATIONS.—

“(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

“(A) \$500,000,000,

“(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

“(C) in the case of an applicable financial statement which fails to show a specific amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount equal to the amount of such liability divided by 0.35.

The amounts described in subparagraphs (B) and (C) shall be treated as being zero if there is no such statement or such statement fails to show a specific amount of such earnings or liability, as the case may be.

“(2) DIVIDENDS MUST BE EXTRAORDINARY.—The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

“(A) the dividends received during the taxable year by such shareholder from controlled foreign corporations, over

“(B) the annual average for the base period years of—

“(i) the dividends received during each base period year by such shareholder from controlled foreign corporations,

“(ii) the amounts includible in such shareholder’s gross income for each base period year under section 951(a)(1)(B) with respect to controlled foreign corporations, and

“(iii) the amounts that would have been included for each base period year but for section 959(a) with respect to controlled foreign corporations.

The amount taken into account under clause (iii) for any base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year. Amounts described in subparagraph (B) for any base period year shall be such amounts as shown on the most recent return filed for such year; except that amended

returns filed after June 30, 2003, shall not be taken into account.

“(3) REDUCTION OF BENEFIT IF INCREASE IN RELATED PARTY INDEBTEDNESS.—The amount of dividends which would (but for this paragraph) be taken into account under subsection (a) shall be reduced by the excess (if any) of—

“(A) the amount of indebtedness of the controlled foreign corporation to any related person (as defined in section 954(d)(3)) as of the close of the taxable year for which the election under this section is in effect, over

“(B) the amount of indebtedness of the controlled foreign corporation to any related person (as so defined) as of the close of October 3, 2004.

All controlled foreign corporations with respect to which the taxpayer is a United States shareholder shall be treated as 1 controlled foreign corporation for purposes of this paragraph.

“(4) REQUIREMENT TO INVEST IN UNITED STATES.—Subsection (a) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in the United States pursuant to a domestic reinvestment plan which—

“(A) is approved by the taxpayer’s president, chief executive officer, or comparable official before the payment of such dividend and subsequently approved by the taxpayer’s board of directors, management committee, executive committee, or similar body, and

“(B) provides for the reinvestment of such dividend in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation.

“(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) APPLICABLE FINANCIAL STATEMENT.—The term ‘applicable financial statement’ means, with respect to a United States shareholder, the most recently audited financial statement (including notes and other documents which accompany such statement) which includes such shareholder—

“(A) which is certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

“(B) which is used for the purposes of a statement or report—

“(i) to creditors,

“(ii) to shareholders, or

“(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before June 30, 2003.

“(2) BASE PERIOD YEARS.—

“(A) IN GENERAL.—The base period years are the 3 taxable years—

“(i) which are among the 5 most recent taxable years ending on or before June 30, 2003, and

“(ii) which are determined by disregarding—

“(I) 1 taxable year for which the sum of the amounts described in clauses (i), (ii), and (iii) of subsection (b)(2)(B) is the largest, and

“(II) 1 taxable year for which such sum is the smallest.

“(B) SHORTER PERIOD.—If the taxpayer has fewer than 5 taxable years ending on or before June 30, 2003, then in lieu of applying subparagraph (A), the base period years shall include all the taxable years of the taxpayer ending on or before June 30, 2003.

“(C) MERGERS, ACQUISITIONS, ETC.—

“(i) IN GENERAL.—Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this paragraph. Applicability.

“(ii) SPIN-OFFS, ETC.—If there is a distribution to which section 355 (or so much of section 356 as relates to section 355) applies during the 5-year period referred to in subparagraph (A)(i) and the controlled corporation (within the meaning of section 355) is a United States shareholder—

“(I) the controlled corporation shall be treated as being in existence during the period that the distributing corporation (within the meaning of section 355) is in existence, and

“(II) for purposes of applying subsection (b)(2) to the controlled corporation and the distributing corporation, amounts described in subsection (b)(2)(B) which are received or includible by the distributing corporation or controlled corporation (as the case may be) before the distribution referred to in subclause (I) from a controlled foreign corporation shall be allocated between such corporations in proportion to their respective interests as United States shareholders of such controlled foreign corporation immediately after such distribution.

Subclause (II) shall not apply if neither the controlled corporation nor the distributing corporation is a United States shareholder of such controlled foreign corporation immediately after such distribution.

“(3) DIVIDEND.—The term ‘dividend’ shall not include amounts includible in gross income as a dividend under section 78, 367, or 1248. In the case of a liquidation under section 332 to which section 367(b) applies, the preceding sentence shall not apply to the extent the United States shareholder actually receives cash as part of the liquidation.

“(4) COORDINATION WITH DIVIDENDS RECEIVED DEDUCTION.—No deduction shall be allowed under section 243 or 245 for any dividend for which a deduction is allowed under this section.

“(5) CONTROLLED GROUPS.—

“(A) IN GENERAL.—All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.

“(B) APPLICATION OF \$500,000,000 LIMIT.—All corporations which are treated as a single employer under section 52(a) shall be limited to one \$500,000,000 amount in subsection (b)(1)(A), and such amount shall be divided among such corporations under regulations prescribed by the Secretary.

“(C) PERMANENTLY REINVESTED EARNINGS.—If a financial statement is an applicable financial statement for more than 1 United States shareholder, the amount applicable under subparagraph (B) or (C) of subsection (b)(1) shall be divided among such shareholders under regulations prescribed by the Secretary.

“(d) DENIAL OF FOREIGN TAX CREDIT; DENIAL OF CERTAIN EXPENSES.—

“(1) FOREIGN TAX CREDIT.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the deductible portion of—

“(A) any dividend, or

“(B) any amount described in subsection (a)(2) which is included in income under section 951(a)(1)(A).

No deduction shall be allowed under this chapter for any tax for which credit is not allowable by reason of the preceding sentence.

“(2) EXPENSES.—No deduction shall be allowed for expenses properly allocated and apportioned to the deductible portion described in paragraph (1).

“(3) DEDUCTIBLE PORTION.—For purposes of paragraph (1), unless the taxpayer otherwise specifies, the deductible portion of any dividend or other amount is the amount which bears the same ratio to the amount of such dividend or other amount as the amount allowed as a deduction under subsection (a) for the taxable year bears to the amount described in subsection (b)(2)(A) for such year.

“(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT REDUCED BY CREDITS, ETC.—

“(1) IN GENERAL.—Any tax under this chapter by reason of nondeductible CFC dividends shall not be treated as tax imposed by this chapter for purposes of determining—

“(A) the amount of any credit allowable under this chapter, or

“(B) the amount of the tax imposed by section 55. Subparagraph (A) shall not apply to the credit under section 53 or to the credit under section 27(a) with respect to taxes attributable to such dividends.

“(2) LIMITATION ON REDUCTION IN TAXABLE INCOME, ETC.—

“(A) IN GENERAL.—The taxable income of any United States shareholder for any taxable year shall in no event be less than the amount of nondeductible CFC dividends received during such year.

“(B) COORDINATION WITH SECTION 172.—The nondeductible CFC dividends for any taxable year shall not be taken into account—

“(i) in determining under section 172 the amount of any net operating loss for such taxable year, and

“(ii) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

“(3) NONDEDUCTIBLE CFC DIVIDENDS.—For purposes of this subsection, the term ‘nondeductible CFC dividends’ means the excess of the amount of dividends taken into account under subsection (a) over the deduction allowed under subsection (a) for such dividends.

“(f) ELECTION.—The taxpayer may elect to apply this section to—

“(1) the taxpayer’s last taxable year which begins before the date of the enactment of this section, or

“(2) the taxpayer’s first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made before the due date (including extensions) for filing the return of tax for such taxable year.”.

(b) ALTERNATIVE MINIMUM TAX.—Subparagraph (C) of section 56(g)(4) is amended by inserting after clause (v) the following new clause:

“(vi) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS FROM CONTROLLED FOREIGN CORPORATIONS.—Clause (i) shall not apply to any deduction allowable under section 965.”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

“Sec. 965. Temporary dividends received deduction.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after the date of the enactment of this Act.

26 USC 56 note.

SEC. 423. DELAY IN EFFECTIVE DATE OF FINAL REGULATIONS GOVERNING EXCLUSION OF INCOME FROM INTERNATIONAL OPERATION OF SHIPS OR AIRCRAFT.

Notwithstanding the provisions of Treasury regulation § 1.883–5, the final regulations issued by the Secretary of the Treasury relating to income derived by foreign corporations from the international operation of ships or aircraft (Treasury regulations § 1.883–1 through § 1.883–5) shall apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning after September 24, 2004.

SEC. 424. STUDY OF EARNINGS STRIPPING PROVISIONS.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary’s delegate shall conduct a study of the effectiveness of the provisions of the Internal Revenue Code of 1986 applicable to earnings stripping, including a study of—

(1) the effectiveness of section 163(j) of such Code in preventing the shifting of income outside the United States,

(2) whether any deficiencies of such provisions place United States-based businesses at a competitive disadvantage relative to foreign-based businesses,

(3) the impact of earnings stripping activities on the United States tax base,

(4) whether laws of foreign countries facilitate stripping of earnings out of the United States, and

(5) whether changes to the earning stripping rules would affect jobs in the United States.

(b) REPORT.—Not later than June 30, 2005, the Secretary shall submit to the Congress a report of the study conducted under this section, including specific recommendations as to how to improve the provisions of such Code applicable to earnings stripping.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 (relating to definitions and special rules) is amended by adding at the end the following:

“(5) GENERAL SALES TAXES.—For purposes of subsection

(a)—

“(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

“(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

“(I) without regard to the reference to State and local income taxes, and

“(II) as if State and local general sales taxes were referred to in a paragraph thereof.

“(B) DEFINITION OF GENERAL SALES TAX.—The term ‘general sales tax’ means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

“(C) SPECIAL RULES FOR FOOD, ETC.—In the case of items of food, clothing, medical supplies, and motor vehicles—

“(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

“(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

“(D) ITEMS TAXED AT DIFFERENT RATES.—Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

“(E) COMPENSATING USE TAXES.—A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term ‘compensating use tax’ means, with respect to any item, a tax which—

“(i) is imposed on the use, storage, or consumption of such item, and

“(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph

with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

“(F) SPECIAL RULE FOR MOTOR VEHICLES.—In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

“(G) SEPARATELY STATED GENERAL SALES TAXES.—If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer’s trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

“(H) AMOUNT OF DEDUCTION MAY BE DETERMINED UNDER TABLES.—

“(i) IN GENERAL.—At the election of the taxpayer for the taxable year, the amount of the deduction allowed under this paragraph for such year shall be—

“(I) the amount determined under this paragraph (without regard to this subparagraph) with respect to motor vehicles, boats, and other items specified by the Secretary, and

“(II) the amount determined under tables prescribed by the Secretary with respect to items to which subclause (I) does not apply.

“(ii) REQUIREMENTS FOR TABLES.—The tables prescribed under clause (i)—

“(I) shall reflect the provisions of this paragraph,

“(II) shall be based on the average consumption by taxpayers on a State-by-State basis (as determined by the Secretary) of items to which clause (i)(I) does not apply, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation, and

“(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).

“(I) APPLICATION OF PARAGRAPH.—This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2006.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003. 26 USC 164 note.

TITLE VI—FAIR AND EQUITABLE TOBACCO REFORM

Fair and
Equitable
Tobacco Reform
Act of 2004.

SEC. 601. SHORT TITLE.

7 USC 518 note.

This title may be cited as the “Fair and Equitable Tobacco Reform Act of 2004”.

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

SEC. 611. TERMINATION OF TOBACCO QUOTA PROGRAM AND RELATED PROVISIONS.

(a) **MARKETING QUOTAS.**—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(b) **TOBACCO INSPECTIONS.**—Section 213 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is repealed.

(c) **TOBACCO CONTROL.**—The Act of April 25, 1936 (commonly known as the Tobacco Control Act; 7 U.S.C. 515 et seq.), is repealed.

(d) **PROCESSING TAX.**—Section 9(b) of the Agricultural Adjustment Act (7 U.S.C. 609(b)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (2), by striking “tobacco,”; and

(2) in paragraph (6)(B)(i), by striking “, or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum,”.

(e) **DECLARATION OF POLICY.**—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking “tobacco,”.

(f) **DEFINITIONS.**—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking “tobacco,”;

(3) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(4) in paragraph (11)(B), by striking “and tobacco”;

(5) in paragraph (12), by striking “tobacco,”;

(6) in paragraph (14)—

(A) in subparagraph (A), by striking “(A)”;

(B) by striking subparagraphs (B), (C), and (D);

(7) by striking paragraph (15);

(8) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(9) by striking paragraph (17); and

(10) by redesignating paragraph (16) as paragraph (15).

(g) **PARITY PAYMENTS.**—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking “rice, or tobacco,” and inserting “or rice,”.

(h) **ADMINISTRATIVE PROVISIONS.**—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking “tobacco,”.

(i) **ADJUSTMENT OF QUOTAS.**—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

- (1) in the first sentence of subsection (a), by striking “rice, or tobacco” and inserting “or rice”; and
- (2) in the first sentence of subsection (b), by striking “rice, or tobacco” and inserting “or rice”.
- (j) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—
 - (1) by striking “rice, or tobacco” each place it appears in subsections (a) and (b) and inserting “or rice”; and
 - (2) in subsection (a)—
 - (A) in the first sentence, by striking “all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,”; and
 - (B) in the last sentence, by striking “\$500;” and all that follows through the period at the end of the sentence and inserting “\$500.”
- (k) REGULATIONS.—Section 375 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375) is amended—
 - (1) in subsection (a), by striking “peanuts, or tobacco” and inserting “or peanuts”; and
 - (2) by striking subsection (c).
- (l) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—
 - (1) in the first sentence of subsection (c), by striking “cotton, and tobacco” and inserting “and cotton”; and
 - (2) by striking subsections (d), (e), and (f).
- (m) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—
 - (1) in subsection (a)—
 - (A) by striking “(a)”; and
 - (B) in paragraph (6), by striking “, but this clause (6) shall not be applicable in the case of burley tobacco”; and
 - (2) by striking subsections (b) and (c).
- (n) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act of April 16, 1955 (Public Law 89-12; 7 U.S.C. 1314c note), is repealed.
- (o) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act of July 12, 1952 (7 U.S.C. 1315), is repealed.
- (p) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.
- (q) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c-1(a)(2)(B)) is amended by striking “tobacco and”.
- (r) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203; 101 Stat. 1330-8) is amended by striking subsection (c).
- (s) BURLEY TOBACCO IMPORT REVIEW.—Section 3 of Public Law 98-59 (7 U.S.C. 625) is repealed.

SEC. 612. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM AND RELATED PROVISIONS.

- (a) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445-1, 1445-2) are repealed.
- (b) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking “tobacco (except as otherwise provided herein), corn,” and inserting “corn”;

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking “, except tobacco,”; and

(B) by striking “and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers,”; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) **DEFINITION OF BASIC AGRICULTURAL COMMODITY.**—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking “tobacco,”.

(d) **POWERS OF COMMODITY CREDIT CORPORATION.**—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting “(other than tobacco)” after “agricultural commodities” each place it appears.

SEC. 613. CONFORMING AMENDMENTS.

Section 320B(c)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h(c)(1)) is amended—

(1) by inserting “(A)” after “(1)”;

(2) by striking “by” at the end and inserting “or”; and

(3) by adding at the end the following:

“(B) in the case of the 2004 marketing year, the price support rate for the kind of tobacco involved in effect under section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) at the time of the violation; by”.

7 USC 515 note.

SEC. 614. CONTINUATION OF LIABILITY FOR 2004 AND EARLIER CROP YEARS.

The amendments made by this subtitle shall not affect the liability of any person under any provision of law so amended with respect to the 2004 or an earlier crop of each kind of tobacco.

Subtitle B—Transitional Payments to Tobacco Quota Holders and Producers of Tobacco

7 USC 518.

SEC. 621. DEFINITIONS.

In this subtitle and subtitle C:

(1) **AGRICULTURAL ACT OF 1949.**—The term “Agricultural Act of 1949” means the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), as in effect on the day before the date of the enactment of this title.

(2) **AGRICULTURAL ADJUSTMENT ACT OF 1938.**—The term “Agricultural Adjustment Act of 1938” means the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.), as in effect on the day before the date of the enactment of this title.

(3) **CONSIDERED PLANTED.**—The term “considered planted” means tobacco that was planted, but failed to be produced as a result of a natural disaster, as determined by the Secretary.

(4) **CONTRACT.**—The term “contract” means a contract entered into under section 622 or 623.

(5) **CONTRACT PAYMENT.**—The term “contract payment” means a payment made under section 622 or 623 pursuant to a contract.

(6) **PRODUCER OF QUOTA TOBACCO.**—The term “producer of quota tobacco” means an owner, operator, landlord, tenant, or sharecropper that shared in the risk of producing tobacco on a farm where tobacco was produced or considered planted pursuant to a tobacco farm poundage quota or farm acreage allotment established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.).

(7) **QUOTA TOBACCO.**—The term ‘quota tobacco’ means a kind of tobacco that is subject to a farm marketing quota or farm acreage allotment for the 2004 tobacco marketing year under a marketing quota or allotment program established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.).

(8) **TOBACCO.**—The term “tobacco” means each of the following kinds of tobacco:

(A) Flue-cured tobacco, comprising types 11, 12, 13, and 14.

(B) Fire-cured tobacco, comprising types 22 and 23.

(C) Dark air-cured tobacco, comprising types 35 and 36.

(D) Virginia sun-cured tobacco, comprising type 37.

(E) Virginia fire-cured tobacco, comprising type 21.

(F) Burley tobacco, comprising type 31.

(G) Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 53, 54, and 55.

(9) **TOBACCO QUOTA HOLDER.**—The term “tobacco quota holder” means a person that was an owner of a farm, as of the date of enactment of this title, for which a basic tobacco farm marketing quota or farm acreage allotment for quota tobacco was established for the 2004 tobacco marketing year.

(10) **TOBACCO TRUST FUND.**—The term “Tobacco Trust Fund” means the Tobacco Trust Fund established under section 626.

(11) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

SEC. 622. CONTRACT PAYMENTS TO TOBACCO QUOTA HOLDERS.

7 USC 518a.

(a) **CONTRACT OFFERED.**—The Secretary shall offer to enter into a contract with each tobacco quota holder under which the tobacco quota holder shall be entitled to receive payments under this section in exchange for the termination of tobacco marketing quotas and related price support under the amendments made by sections 611 and 612. The contract payments shall constitute full and fair consideration for the termination of such tobacco marketing quotas and related price support.

(b) **ELIGIBILITY.**—To be eligible to enter into a contract to receive a contract payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a tobacco quota holder. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) **BASE QUOTA LEVEL.**—

(1) ESTABLISHMENT.—The Secretary shall establish a base quota level applicable to each tobacco quota holder identified under subsection (b).

(2) POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which the marketing quota is expressed in pounds, the base quota level for each tobacco quota holder shall be equal to the basic quota for quota tobacco established for the 2002 tobacco marketing year under a marketing quota program established under part I of subtitle B of title III of the Agriculture Adjustment Act of 1938 on the farm owned by the tobacco quota holder.

(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which there is marketing quota or allotment on an acreage basis, the base quota level for each tobacco quota holder shall be the quantity equal to the product obtained by multiplying—

(A) the basic tobacco farm marketing quota or allotment for the 2002 marketing year established by the Secretary for quota tobacco owned by the tobacco quota holder; by

(B) the average production yield, per acre, for the period covering the 2001, 2002, and 2003 crop years for that kind of tobacco in the county in which the quota tobacco is located.

(d) TREATMENT OF CERTAIN CONTRACTS AND AGREEMENTS.—

(1) EFFECT OF PURCHASE CONTRACT.—If there was an agreement for the purchase of all or part of a farm described in subsection (c) as of the date of the enactment of this title, and the parties to the sale are unable to agree to the disposition of eligibility for contract payments, the Secretary, taking into account any transfer of quota that has been agreed to, shall provide for the equitable division of the contract payments among the parties by adjusting the determination of who is the tobacco quota holder with respect to particular pounds or allotment of the quota.

(2) EFFECT OF AGREEMENT FOR PERMANENT QUOTA TRANSFER.—If the Secretary determines that there was in existence, as of the day before the date of the enactment of this title, an agreement for the permanent transfer of quota, but that the transfer was not completed by that date, the Secretary shall consider the tobacco quota holder to be the party to the agreement that, as of that date, was the owner of the farm to which the quota was to be transferred.

(e) CONTRACT PAYMENTS.—

(1) CALCULATION OF TOTAL PAYMENT AMOUNT.—The total amount of contract payments to which an eligible tobacco quota holder is entitled under this section, with respect to a kind of tobacco, shall be equal to the product obtained by multiplying—

(A) \$7.00 per pound; by

(B) the base quota level of the tobacco quota holder determined under subsection (c) with respect to that kind of tobacco.

(2) ANNUAL PAYMENT.—During each of fiscal years 2005 through 2014, the Secretary shall make a contract payment under this section to each eligible tobacco quota holder, with

respect to a kind of tobacco, in an amount equal to $\frac{1}{10}$ of the amount determined under paragraph (1) for the tobacco quota holder for that kind of tobacco.

(f) **DEATH OF TOBACCO QUOTA HOLDER.**—If a tobacco quota holder who is entitled to contract payments under this section dies and is survived by a spouse or one or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the tobacco quota holder.

SEC. 623. CONTRACT PAYMENTS FOR PRODUCERS OF QUOTA TOBACCO. 7 USC 518b.

(a) **CONTRACT OFFERED.**—The Secretary shall offer to enter into a contract with each producer of quota tobacco under which the producer of quota tobacco shall be entitled to receive payments under this section in exchange for the termination of tobacco marketing quotas and related price support under the amendments made by sections 611 and 612. The contract payments shall constitute full and fair consideration for the termination of such tobacco marketing quotas and related price support.

(b) **ELIGIBILITY.**—

(1) **APPLICATION AND DETERMINATION.**—To be eligible to enter into a contract to receive a contract payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a producer of quota tobacco. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(2) **EFFECT OF MULTIPLE PRODUCERS FOR SAME QUOTA TOBACCO.**—If, on the basis of the applications submitted under paragraph (1) or other information, the Secretary determines that two or more persons are a producer of the same quota tobacco, the Secretary shall provide for an equitable distribution among the persons of the contract payments made under this section with respect to that quota tobacco, based on relative share of such persons in the risk of producing the quota tobacco and such other factors as the Secretary considers appropriate.

(c) **BASE QUOTA LEVEL.**—

(1) **ESTABLISHMENT.**—The Secretary shall establish a base quota level applicable to each producer of quota tobacco, as determined under this subsection.

(2) **FLUE-CURED AND BURLEY TOBACCO.**—In the case of Flue-cured tobacco (types 11, 12, 13, and 14) and Burley tobacco (type 31), the base quota level for each producer of quota tobacco shall be equal to the effective tobacco marketing quota (irrespective of disaster lease and transfers) under part I of subtitle B of title III of the Agriculture Adjustment Act of 1938 for the 2002 marketing year for quota tobacco produced on the farm.

(3) **OTHER KINDS OF TOBACCO.**—In the case of each kind of tobacco (other than tobacco covered by paragraph (2)), for the purpose of calculating a contract payment to a producer of quota tobacco, the base quota level for the producer of quota tobacco shall be the quantity obtained by multiplying—

(A) the basic tobacco farm acreage allotment for the 2002 marketing year established by the Secretary for quota tobacco produced on the farm; by

(B) the average annual yield, per acre, of quota tobacco produced on the farm for the period covering the 2001, 2002, and 2003 crop years.

(d) CONTRACT PAYMENTS.—

(1) CALCULATION OF TOTAL PAYMENT AMOUNT.—Subject to subsection (b)(2), the total amount of contract payments to which an eligible producer of quota tobacco is entitled under this section, with respect to a kind of tobacco, shall be equal to the product obtained by multiplying—

(A) subject to paragraph (2), \$3.00 per pound; by

(B) the base quota level of the producer of quota tobacco determined under subsection (c) with respect to that kind of tobacco.

(2) ANNUAL PAYMENT.—During each of fiscal years 2005 through 2014, the Secretary shall make a contract payment under this section to each eligible producer of tobacco, with respect to a kind of tobacco, in an amount equal to $\frac{1}{10}$ of the amount determined under paragraph (1) for the producer for that kind of tobacco.

(3) VARIABLE PAYMENT RATES.—The rate for payments to a producer of quota tobacco under paragraph (1)(A) shall be equal to—

(A) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a marketing quota in all three of the 2002, 2003, or 2004 tobacco marketing years, the rate prescribed under paragraph (1)(A);

(B) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a marketing quota in only two of those tobacco marketing years, $\frac{2}{3}$ of the rate prescribed under paragraph (1)(A);

(C) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a marketing quota in only one of those tobacco marketing years, $\frac{1}{3}$ of the rate prescribed under paragraph (1)(A).

(e) DEATH OF TOBACCO PRODUCER.—If a producer of quota tobacco who is entitled to contract payments under this section dies and is survived by a spouse or one or more dependents, the right to receive the contract payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the producer.

7 USC 518c.

SEC. 624. ADMINISTRATION.

(a) TIME FOR PAYMENT OF CONTRACT PAYMENTS.—Contract payments required to be made for a fiscal year shall be made by the Secretary as soon as practicable.

(b) USE OF COUNTY COMMITTEES TO RESOLVE DISPUTES.—Any dispute regarding the eligibility of a person to enter into a contract or to receive contract payments, and any dispute regarding the amount of a contract payment, may be appealed to the county committee established under section 8 of the Soil Conservation

and Domestic Allotment Act (16 U.S.C. 590h) for the county or other area in which the farming operation of the person is located.

(c) **ROLE OF NATIONAL APPEALS DIVISION.**—Any adverse determination of a county committee under subsection (b) may be appealed to the National Appeals Division established under subtitle H of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6991 et seq.).

(d) **USE OF FINANCIAL INSTITUTIONS.**—The Secretary may use a financial institution to manage assets, make contract payments, and otherwise carry out this title.

(e) **PAYMENT TO FINANCIAL INSTITUTIONS.**—The Secretary shall permit a tobacco quota holder or producer of quota tobacco entitled to contract payments to assign to a financial institution the right to receive the contract payments. Upon receiving notification of the assignment, the Secretary shall make subsequent contract payments for the tobacco quota holder or producer of quota tobacco directly to the financial institution designated by the tobacco quota holder or producer of quota tobacco. The Secretary shall make information available to tobacco quota holders and producers of quota tobacco regarding their ability to elect to have the Secretary make payments directly to a financial institution under this subsection so that they may obtain a lump sum or other payment.

SEC. 625. USE OF ASSESSMENTS AS SOURCE OF FUNDS FOR PAYMENTS. 7 USC 518d.

(a) **DEFINITIONS.**—In this section:

(1) **BASE PERIOD.**—The term “base period” means the one-year period ending the June 30 before the beginning of a fiscal year.

(2) **GROSS DOMESTIC VOLUME.**—The term “gross domestic volume” means the volume of tobacco products—

(A) removed (as defined by section 5702 of the Internal Revenue Code of 1986); and

(B) not exempt from tax under chapter 52 of the Internal Revenue Code of 1986 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(3) **MARKET SHARE.**—The term “market share” means the share of each manufacturer or importer of a class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for a fiscal year for an assessment under this section.

(b) **QUARTERLY ASSESSMENTS.**—

(1) **IMPOSITION OF ASSESSMENT.**—The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments during each of fiscal years 2005 through 2014, calculated in accordance with this section, on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States during that fiscal year.

(2) **AMOUNTS.**—Beginning with the calendar quarter ending on December 31 of each of fiscal years 2005 through 2014, the assessment payments over each four-calendar quarter period shall be sufficient to cover—

(A) the contract payments made under sections 622 and 623 during that period; and

(B) other expenditures from the Tobacco Trust Fund made during the base quarter periods corresponding to the four calendar quarters of that period.

(3) DEPOSIT.—Assessments collected under this section shall be deposited in the Tobacco Trust Fund.

(c) ASSESSMENTS FOR CLASSES OF TOBACCO PRODUCTS.—

(1) INITIAL ALLOCATION.—The percentage of the total amount required by subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product in fiscal year 2005 shall be as follows:

(A) For cigarette manufacturers and importers, 96.331 percent.

(B) For cigar manufacturers and importers, 2.783 percent.

(C) For snuff manufacturers and importers, 0.539 percent.

(D) For roll-your-own tobacco manufacturers and importers, 0.171 percent.

(E) For chewing tobacco manufacturers and importers, 0.111 percent.

(F) For pipe tobacco manufacturers and importers, 0.066 percent.

(2) SUBSEQUENT ALLOCATIONS.—For subsequent fiscal years, the Secretary shall periodically adjust the percentage of the total amount required under subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product specified in paragraph (1) to reflect changes in the share of gross domestic volume held by that class of tobacco product.

(3) EFFECT OF INSUFFICIENT AMOUNTS.—If the Secretary determines that the assessment imposed under subsection (b) will result in insufficient amounts to carry out this subtitle during a fiscal year, the Secretary shall assess such additional amounts as the Secretary determines to be necessary to carry out this subtitle during that fiscal year. The additional amount shall be allocated to manufacturers and importers of each class of tobacco product specified in paragraph (1) in the same manner and based on the same percentages applicable under paragraph (1) or (2) for that fiscal year.

(d) NOTIFICATION AND TIMING OF ASSESSMENTS.—

(1) NOTIFICATION OF ASSESSMENTS.—The Secretary shall provide each manufacturer or importer subject to an assessment under subsection (b) with written notice setting forth the amount to be assessed against the manufacturer or importer for each quarterly payment period. The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under paragraph (3).

(2) CONTENT.—The notice shall include the following information with respect to the quarterly period used by the Secretary in calculating the amount:

(A) The total combined assessment for all manufacturers and importers of tobacco products.

(B) The total assessment with respect to the class of tobacco products manufactured or imported by the manufacturer or importer.

Deadline.

(C) Any adjustments to the percentage allocations among the classes of tobacco products made pursuant to paragraph (2) or (3) of subsection (c).

(D) The volume of gross sales of the applicable class of tobacco product treated as made by the manufacturer or importer for purposes of calculating the manufacturer's or importer's market share under subsection (f).

(E) The total volume of gross sales of the applicable class of tobacco product that the Secretary treated as made by all manufacturers and importers for purposes of calculating the manufacturer's or importer's market share under subsection (f).

(F) The manufacturer's or importer's market share of the applicable class of tobacco product, as determined by the Secretary under subsection (f).

(G) The market share, as determined by the Secretary under subsection (f), of each other manufacturer and importer, for each applicable class of tobacco product.

(3) TIMING OF ASSESSMENT PAYMENTS.—

(A) COLLECTION DATE.—Assessments shall be collected at the end of each calendar year quarter, except that the Secretary shall ensure that the final assessment due under this section is collected not later than September 30, 2014. Deadline.

(B) BASE PERIOD QUARTER.—The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.

(e) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—

(1) PRO RATA BASIS.—The assessment for each class of tobacco product specified in subsection (c)(1) shall be allocated on a pro rata basis among manufacturers and importers based on each manufacturer's or importer's share of gross domestic volume.

(2) LIMITATION.—No manufacturer or importer shall be required to pay an assessment that is based on a share that is in excess of the manufacturer's or importer's share of domestic volume.

(f) ALLOCATION OF TOTAL ASSESSMENTS BY MARKET SHARE.—The amount of the assessment for each class of tobacco product specified in subsection (c)(1) to be paid by each manufacturer or importer of that class of tobacco product shall be determined for each quarterly payment period by multiplying—

(1) the market share of the manufacturer or importer, as calculated with respect to that payment period, of the class of tobacco product; by

(2) the total amount of the assessment for that quarterly payment period under subsection (c), for the class of tobacco product.

(g) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

(1) IN GENERAL.—The calculation of the volume of domestic sales of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary based on information provided by the manufacturers and importers pursuant to subsection (h), as well as any other relevant information provided to or obtained by the Secretary.

(2) GROSS DOMESTIC VOLUME.—The volume of domestic sales shall be calculated based on gross domestic volume.

(3) MEASUREMENT.—For purposes of the calculations under this subsection and the certifications under subsection (h) by the Secretary, the volumes of domestic sales shall be measured by—

(A) in the case of cigarettes and cigars, the number of cigarettes and cigars; and

(B) in the case of the other classes of tobacco products specified in subsection (c)(1), in terms of number of pounds, or fraction thereof, of those products.

(h) MEASUREMENT OF VOLUME OF DOMESTIC SALES.—

Certification.

(1) SUBMISSION OF INFORMATION.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal agency on the same date that those returns or forms are filed, or required to be filed, with the agency.

(2) RETURNS AND FORMS.—The returns and forms described by this paragraph are those returns and forms that relate to—

(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of the Internal Revenue Code of 1986); and

(B) the payment of the taxes imposed under chapter 52 of the Internal Revenue Code of 1986, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

(3) EFFECT OF FAILURE TO PROVIDE REQUIRED INFORMATION.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. The Secretary may also assess against the person a civil penalty in an amount not to exceed two percent of the value of the kind of tobacco products manufactured or imported by the person during the fiscal year in which the violation occurred, as determined by the Secretary.

(i) CHALLENGE TO ASSESSMENT.—

Deadline.

(1) APPEAL TO SECRETARY.—A manufacturer or importer subject to this section may contest an assessment imposed on the manufacturer or importer under this section by notifying the Secretary, not later than 30 business days after receiving the assessment notification required by subsection (d), that the manufacturer or importer intends to contest the assessment.

Deadline.
Regulations.

(2) INFORMATION.—Not later than 180 days after the date of the enactment of this title, the Secretary shall establish by regulation a procedure under which a manufacturer or importer contesting an assessment under this subsection may present information to the Secretary to demonstrate that the assessment applicable to the manufacturer or importer is incorrect. In challenging the assessment, the manufacturer or importer may use any information that is available, including third party data on industry or individual company sales volumes.

(3) REVISION.—If a manufacturer or importer establishes that the initial determination of the amount of an assessment

is incorrect, the Secretary shall revise the amount of the assessment so that the manufacturer or importer is required to pay only the amount correctly determined.

(4) **TIME FOR REVIEW.**—Not later than 30 days after receiving notice from a manufacturer or importer under paragraph (1), the Secretary shall— Deadline.

(A) decide whether the information provided to the Secretary under paragraph (2), and any other information that the Secretary determines is appropriate, is sufficient to establish that the original assessment was incorrect; and

(B) make any revisions necessary to ensure that each manufacturer and importer pays only its correct pro rata share of total gross domestic volume from all sources.

(5) **IMMEDIATE PAYMENT OF UNDISPUTED AMOUNTS.**—The regulations promulgated by the Secretary under paragraph (2) shall provide for the immediate payment by a manufacturer or importer challenging an assessment of that portion of the assessment that is not in dispute. The manufacturer and importer may place into escrow, in accordance with such regulations, only the portion of the assessment being challenged in good faith pending final determination of the claim.

(j) **JUDICIAL REVIEW.**—

(1) **IN GENERAL.**—Any manufacturer or importer aggrieved by a determination of the Secretary with respect to the amount of any assessment may seek review of the determination in the United States District Court for the District of Columbia or for the district in which the manufacturer or importer resides or has its principal place of business at any time following exhaustion of the administrative remedies available under subsection (i).

(2) **TIME LIMITS.**—Administrative remedies shall be deemed exhausted if no decision by the Secretary is made within the time limits established under subsection (i)(4).

(3) **EXCESSIVE ASSESSMENTS.**—The court shall restrain collection of the excessive portion of any assessment or order a refund of excessive assessments already paid, along with interest calculated at the rate prescribed in section 3717 of title 31, United States Code, if it finds that the Secretary's determination is not supported by a preponderance of the information available to the Secretary.

(k) **TERMINATION DATE.**—The authority provided by this section to impose assessments terminates on September 30, 2014.

SEC. 626. TOBACCO TRUST FUND.

7 USC 518e.

(a) **ESTABLISHMENT.**—There is established in the Commodity Credit Corporation a revolving trust fund, to be known as the “Tobacco Trust Fund”, which shall be used in carrying out this subtitle. The Tobacco Trust Fund shall consist of the following:

(1) Assessments collected under section 625.

(2) Such amounts as are necessary from the Commodity Credit Corporation.

(3) Any interest earned on investment of amounts in the Tobacco Trust Fund under subsection (c).

(b) **EXPENDITURES.**—

(1) **AUTHORIZED EXPENDITURES.**—Subject to paragraph (2), and notwithstanding any other provision of law, the Secretary

shall use amounts in the Tobacco Trust Fund, in such amounts as the Secretary determines are necessary—

- (A) to make payments under sections 622 and 623;
- (B) to provide reimbursement under section 641(c);
- (C) to reimburse the Commodity Credit Corporation for costs incurred by the Commodity Credit Corporation under paragraph (2); and
- (D) to make payments to financial institutions to satisfy contractual obligations under section 622 or 623.

(2) EXPENDITURES BY COMMODITY CREDIT CORPORATION.—Notwithstanding any other provision of law, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to make payments described in paragraph (1). Not later than January 1, 2015, the Secretary shall use amounts in the Tobacco Trust Fund to fully reimburse, with interest, the Commodity Credit Corporation for all funds of the Commodity Credit Corporation expended under the authority of this paragraph. Administrative costs incurred by the Secretary or the Commodity Credit Corporation to carry out this title may not be paid using amounts in the Tobacco Trust Fund.

(c) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Commodity Credit Corporation shall invest such portion of the amounts in the Tobacco Trust Fund as are not, in the judgment of the Commodity Credit Corporation, required to meet current expenditures.

(2) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

(3) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

- (A) on original issue at the issue price; or
- (B) by purchase of outstanding obligations at the market price.

(4) SALE OF OBLIGATIONS.—Any obligation acquired by the Tobacco Trust Fund may be sold by the Commodity Credit Corporation at the market price.

(5) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Tobacco Trust Fund shall be credited to and form a part of the Fund.

Deadline.

7 USC 518f.

SEC. 627. LIMITATION ON TOTAL EXPENDITURES.

The total amount expended by the Secretary from the Tobacco Trust Fund to make payments under sections 622 and 623 and for the other authorized purposes of the Fund shall not exceed \$10,140,000,000.

Subtitle C—Implementation and Transition

7 USC 519.

SEC. 641. TREATMENT OF TOBACCO LOAN POOL STOCKS AND OUTSTANDING LOAN COSTS.

(a) DISPOSAL OF STOCKS.—To provide for the orderly disposition of quota tobacco held by an association that has entered into a loan agreement with the Commodity Credit Corporation under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–

1, 1445-2) (referred to in this section as an “association”), loan pool stocks for each kind of tobacco held by the association shall be disposed of in accordance with this section.

(b) DISPOSAL BY ASSOCIATIONS.—For each kind of tobacco held by an association, the association shall be responsible for the disposal of a specific quantity of the loan pool stocks for that kind of tobacco held by the association. The quantity transferred to the association for disposal shall be equal to the quantity determined by dividing—

(1) the amount of funds held by the association in the No Net Cost Tobacco Fund and the No Net Cost Tobacco Account established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2) for the kind of tobacco; by

(2) the average list price per pound for the kind of tobacco, as determined by the Secretary.

(c) DISPOSAL OF REMAINDER BY COMMODITY CREDIT CORPORATION.—

(1) DISPOSAL.—Any loan pool stocks of a kind of tobacco of an association that are not transferred to the association under subsection (b) for disposal shall be disposed of by Commodity Credit Corporation in a manner determined by the Secretary.

(2) REIMBURSEMENT.—As required by section 626(b)(1)(B), the Secretary shall transfer from the Tobacco Trust Fund to the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2) such amounts as the Secretary determines will be adequate to reimburse the Commodity Credit Corporation for any net losses that the Corporation may sustain under its loan agreements with the association.

(d) TRANSFER OF REMAINING NO NET COST FUNDS.—Any funds in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2) that remain after the application of subsections (b) and (c) shall be transferred to the association for distribution to producers of quota tobacco in accordance with a plan approved by the Secretary.

SEC. 642. REGULATIONS.

7 USC 519a.

(a) IN GENERAL.—The Secretary may promulgate such regulations as are necessary to implement this title and the amendments made by this title.

(b) PROCEDURE.—The promulgation of the regulations and administration of this title and the amendments made by this title shall be made without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”).

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

7 USC 518 note.

SEC. 643. EFFECTIVE DATE.

This title and the amendments made by this title shall apply to the 2005 and subsequent crops of each kind of tobacco.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. BROWNFIELDS DEMONSTRATION PROGRAM FOR QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to the definition of exempt facility bond) is amended by striking “or” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting “, or”, and by inserting at the end the following new paragraph:

“(14) qualified green building and sustainable design projects.”.

(b) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—Section 142 (relating to exempt facility bonds) is amended by adding at the end thereof the following new subsection:

“(1) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—

“(1) IN GENERAL.—For purposes of subsection (a)(14), the term ‘qualified green building and sustainable design project’ means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

“(2) DESIGNATIONS.—

Deadline.

“(A) IN GENERAL.—Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

“(B) MINIMUM CONSERVATION AND TECHNOLOGY INNOVATION OBJECTIVES.—The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

“(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

“(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

“(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

“(iv) use at least 25 megawatts of fuel cell energy generation.

“(3) LIMITED DESIGNATIONS.—A project may not be designated under this subsection unless—

“(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

Deadline.

“(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

“(4) APPLICATION.—

“(A) IN GENERAL.—A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

“(i) GREEN BUILDING AND SUSTAINABLE DESIGN.—

At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council’s LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

“(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

“(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

“(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

“(ii) BROWNFIELD REDEVELOPMENT.—The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

“(iii) STATE AND LOCAL SUPPORT.—The project receives specific State or local government resources which will support the project in an amount equal to at least \$5,000,000. For purposes of the preceding sentence, the term ‘resources’ includes tax abatement benefits and contributions in kind.

“(iv) SIZE.—The project includes at least one of the following:

“(I) At least 1,000,000 square feet of building.

“(II) At least 20 acres.

“(v) USE OF TAX BENEFIT.—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

“(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

“(II) Compliance with certification standards cited under clause (i).

“(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

“(vi) PROHIBITED FACILITIES.—An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

“(vii) EMPLOYMENT.—The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project’s economic impact, including the amount of projected employment.

“(B) PROJECT DESCRIPTION.—Each application described in subparagraph (A) shall contain for each project a description of—

“(i) the amount of electric consumption reduced as compared to conventional construction,

“(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

“(iii) the amount of the gross installed capacity of the project’s solar photovoltaic capacity measured in megawatts, and

“(iv) the amount, in megawatts, of the project’s fuel cell energy generation.

Deadline.

“(5) CERTIFICATION OF USE OF TAX BENEFIT.—No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

“(6) DEFINITIONS.—For purposes of this subsection—

“(A) RURAL STATE.—The term ‘rural State’ means any State which has—

“(i) a population of less than 4,500,000 according to the 2000 census,

“(ii) a population density of less than 150 people per square mile according to the 2000 census, and

“(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

“(B) LOCAL GOVERNMENT.—The term ‘local government’ has the meaning given such term by section 1393(a)(5).

“(C) NET BENEFIT OF TAX-EXEMPT FINANCING.—The term ‘net benefit of tax-exempt financing’ means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

“(7) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.—

“(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

“(B) LIMITATION ON AMOUNT OF BONDS.—The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding \$2,000,000,000.

“(8) TERMINATION.—Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

“(9) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

“(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

“(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

“(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).”.

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking “or (13)” and inserting “(13), or (14)”, and
(2) by striking “and qualified public educational facilities” and inserting “qualified public educational facilities, and qualified green building and sustainable design projects”.

(d) ACCOUNTABILITY.—Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially

26 USC 142 note.

Deadline.

complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

26 USC 142 note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to bonds issued after December 31, 2004.

SEC. 702. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS TAXABLE INCOME.

(a) **IN GENERAL.**—Subsection (b) of section 512 (relating to unrelated business taxable income) is amended by adding at the end the following new paragraph:

“(18) **TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.**—

“(A) **IN GENERAL.**—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

“(B) **ELIGIBLE TAXPAYER.**—For purposes of this paragraph—

“(i) **IN GENERAL.**—The term ‘eligible taxpayer’ means, with respect to a property, any organization exempt from tax under section 501(a) which—

“(I) acquires from an unrelated person a qualifying brownfield property, and

“(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of \$550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

“(ii) **EXCEPTION.**—Such term shall not include any organization which is—

“(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

“(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

“(III) the result of a reorganization of a business entity which was so potentially liable.

“(C) **QUALIFYING BROWNFIELD PROPERTY.**—For purposes of this paragraph—

“(i) **IN GENERAL.**—The term ‘qualifying brownfield property’ means any real property which is certified, before the taxpayer incurs any eligible remediation

expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

“(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property’s reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property’s presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

“(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

“(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

“(I) such property is transferred by the eligible taxpayer to an unrelated person, and

“(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer’s remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

For purposes of subclause (II), before issuing such certification, the Environmental Protection Agency or appropriate State agency shall respond to comments received pursuant to clause (ii)(V) in the same form and manner as required under section 117(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

“(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

Deadline.

“(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous

substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

“(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

“(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

“(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

“(V) Public notice and the opportunity for comment on the request for certification was completed before the date of such request. Such notice and opportunity for comment shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph). For purposes of this subclause, public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

“(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

“(iv) SUBSTANTIAL COMPLETION.—For purposes of this subparagraph, a remedial action is substantially complete when any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

“(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

Notice.

“(i) IN GENERAL.—The term ‘eligible remediation expenditures’ means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

“(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

“(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

“(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

“(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

“(ii) EXCEPTIONS.—Such term shall not include—

“(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

“(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

“(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

“(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

“(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

“(G) SPECIAL RULES FOR PARTNERSHIPS.—

“(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer’s distributive share of the qualifying partnership’s gain or loss from the sale, exchange, or other disposition of such property.

“(ii) QUALIFYING PARTNERSHIP.—The term ‘qualifying partnership’ means a partnership which—

“(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

“(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if ‘qualified partnership’ is substituted for ‘eligible taxpayer’ each place it appears therein (except subparagraph (D)(iii)), and

“(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

Applicability.

“(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

“(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

“(I) the use of special allocations of gains or losses, or

“(II) changes in ownership of partnership interests held by eligible taxpayers.

“(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

“(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

“(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer’s or qualifying partnership’s timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

“(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

“(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

“(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

“(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during

which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

“(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

“(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting ‘25 percent’ for ‘50 percent’ each place it appears therein, and

“(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

“(K) TERMINATION.—Except for purposes of determining the average eligible remediation expenditures for properties acquired during the election period under subparagraph (H), this paragraph shall not apply to any property acquired by the eligible taxpayer or qualifying partnership after December 31, 2009.”.

(b) EXCLUSION FROM DEFINITION OF DEBT-FINANCED PROPERTY.—Section 514(b)(1) (defining debt-financed property) is amended by striking “or” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting “; or”, and by inserting after subparagraph (D) the following new subparagraph:

“(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(18) in computing the gross income of any unrelated trade or business.”.

(c) SAVINGS CLAUSE.—Nothing in the amendments made by this section shall affect any duty, liability, or other requirement imposed under any other Federal or State law. Notwithstanding section 128(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a certification provided by the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4) of the Internal Revenue Code of 1986) shall not affect the liability of any person under section 107(a) of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after December 31, 2004.

SEC. 703. CIVIL RIGHTS TAX RELIEF.

(a) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (18) the following new item:

“(19) COSTS INVOLVING DISCRIMINATION SUITS, ETC.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code or a claim made under section 1862(b)(3)(A) of the Social Security

Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.”.

(b) UNLAWFUL DISCRIMINATION DEFINED.—Section 62 is amended by adding at the end the following new subsection:

“(e) UNLAWFUL DISCRIMINATION DEFINED.—For purposes of subsection (a)(19), the term ‘unlawful discrimination’ means an act that is unlawful under any of the following:

“(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).

“(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

“(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

“(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

“(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

“(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

“(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

“(8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

“(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

“(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

“(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

“(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

“(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

“(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

“(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

“(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

“(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

“(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—

“(i) providing for the enforcement of civil rights,
or

“(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.”.

26 USC 62 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fees and costs paid after the date of the enactment of this Act with respect to any judgment or settlement occurring after such date.

SEC. 704. MODIFICATION OF CLASS LIFE FOR CERTAIN TRACK FACILITIES.

(a) **7-YEAR PROPERTY.**—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

“(ii) any motorsports entertainment complex, and”.

(b) **DEFINITION.**—Section 168(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

“(15) **MOTORSPORTS ENTERTAINMENT COMPLEX.**—

“(A) **IN GENERAL.**—The term ‘motorsports entertainment complex’ means a racing track facility which—

“(i) is permanently situated on land, and

“(ii) during the 36-month period following the first day of the month in which the asset is placed in service, hosts 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

“(B) **ANCILLARY AND SUPPORT FACILITIES.**—Such term shall include, if owned by the taxpayer who owns the complex and provided for the benefit of patrons of the complex—

“(i) ancillary facilities and land improvements in support of the complex’s activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

“(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

“(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

“(C) **EXCEPTION.**—Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.

“(D) **TERMINATION.**—This paragraph shall not apply to any property placed in service after December 31, 2007.”.

26 USC 168 note.

(c) **EFFECTIVE DATE.**—

(1) IN GENERAL.—The amendments made by this section shall apply to any property placed in service after the date of the enactment of this Act.

(2) SPECIAL RULE FOR ASSET CLASS 80.0.—In the case of race track facilities placed in service after the date of the enactment of this Act, such facilities shall not be treated as theme and amusement facilities classified under asset class 80.0.

(3) NO INFERENCE.—Nothing in this section or the amendments made by this section shall be construed to affect the treatment of property placed in service on or before the date of the enactment of this Act.

SEC. 705. SUSPENSION OF POLICYHOLDERS SURPLUS ACCOUNT PROVISIONS.

(a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815 (relating to distributions to shareholders from pre-1984 policyholders surplus account) is amended by adding at the end the following:

“(g) SPECIAL RULES APPLICABLE DURING 2005 AND 2006.—In the case of any taxable year of a stock life insurance company beginning after December 31, 2004, and before January 1, 2007—

“(1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and

“(2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004. 26 USC 815 note.

SEC. 706. CERTAIN ALASKA NATURAL GAS PIPELINE PROPERTY TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking “and” at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

“(iii) any Alaska natural gas pipeline, and”.

(b) ALASKA NATURAL GAS PIPELINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting after paragraph (15) the following new paragraph:

“(16) ALASKA NATURAL GAS PIPELINE.—The term ‘Alaska natural gas pipeline’ means the natural gas pipeline system located in the State of Alaska which—

“(A) has a capacity of more than 500,000,000 Btu of natural gas per day, and

“(B) is—

“(i) placed in service after December 31, 2013, or

“(ii) treated as placed in service on January 1, 2014, if the taxpayer who places such system in service before January 1, 2014, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.”.

(c) **ALTERNATIVE SYSTEM.**—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes) is amended by inserting after the item relating to subparagraph (C)(ii) the following new item:

“(C)(iii) 22”.

26 USC 168 note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after December 31, 2004.

SEC. 707. EXTENSION OF ENHANCED OIL RECOVERY CREDIT TO CERTAIN ALASKA FACILITIES.

(a) **IN GENERAL.**—Section 43(c)(1) (defining qualified enhanced oil recovery costs) is amended by adding at the end the following new subparagraph:

“(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

“(i) is located in the area of the United States (within the meaning of section 638(1)) lying north of 64 degrees North latitude,

“(ii) prepares Alaska natural gas for transportation through a pipeline with a capacity of at least 2,000,000,000 Btu of natural gas per day, and

“(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.”.

(b) **ALASKA NATURAL GAS.**—Section 43(c) is amended by adding at the end the following new paragraph:

“(5) **ALASKA NATURAL GAS.**—For purposes of paragraph (1)(D)—

“(1) **IN GENERAL.**—The term ‘Alaska natural gas’ means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(16) (determined without regard to subparagraph (B) thereof) which is produced from a well—

“(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

“(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

“(2) **NATURAL GAS.**—The term ‘natural gas’ has the meaning given such term by section 613A(e)(2).”.

26 USC 43 note.

(c) **EFFECTIVE DATE.**—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2004.

26 USC 460 note.

SEC. 708. METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDERS.

(a) **IN GENERAL.**—In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the contract commencement date occurs shall be determined under a method identical to the method used in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987).

(b) **RECAPTURE OF TAX BENEFIT.**—In the case of a qualified naval ship contract to which subsection (a) applies, the taxpayer’s tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period

described in subsection (a) shall be increased by the excess (if any) of—

- (1) the amount of tax which would have been imposed during such period if this section had not been enacted, over
- (2) the amount of tax so imposed during such period.

(c) **QUALIFIED NAVAL SHIP CONTRACT.**—For purposes of this section:

(1) **IN GENERAL.**—The term “qualified naval ship contract” means any contract or portion thereof that is for the construction in the United States of 1 ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than 9 years after the construction commencement date.

(2) **ACCEPTANCE DATE.**—The term “acceptance date” means the date 1 year after the date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarine.

(3) **CONSTRUCTION COMMENCEMENT DATE.**—The term “construction commencement date” means the date on which the physical fabrication of any section or component of the ship or submarine begins in the taxpayer’s shipyard.

(d) **EFFECTIVE DATE.**—This section shall apply to contracts for ships or submarines with respect to which the construction commencement date occurs after the date of the enactment of this Act.

SEC. 709. MODIFICATION OF MINIMUM COST REQUIREMENT FOR TRANSFER OF EXCESS PENSION ASSETS.

(a) **AMENDMENTS OF ERISA.**—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking “Pension Funding Equity Act of 2004” and inserting “American Jobs Creation Act of 2004”.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking “Pension Funding Equity Act of 2004” and inserting “American Jobs Creation Act of 2004”.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended by striking “Pension Funding Equity Act of 2004” and inserting “American Jobs Creation Act of 2004”.

(b) **MINIMUM COST REQUIREMENTS.**—

(1) **IN GENERAL.**—Section 420(c)(3)(E) is amended by adding at the end the following new clause:

“(ii) **INSIGNIFICANT COST REDUCTIONS PERMITTED.**—

“(I) **IN GENERAL.**—An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall

be treated as if it were an equivalent reduction in retiree health coverage.

“(II) ELIGIBLE EMPLOYER.—For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer’s gross receipts.”.

26 USC 420.

(2) CONFORMING AMENDMENT.—Section 420(c)(3)(E) is amended by striking “The Secretary” and inserting:

“(i) IN GENERAL.—The Secretary”.

26 USC 420 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 710. EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources) is amended to read as follows:

“(c) QUALIFIED ENERGY RESOURCES AND REFINED COAL.—For purposes of this section:

“(1) IN GENERAL.—The term ‘qualified energy resources’ means—

- “(A) wind,
- “(B) closed-loop biomass,
- “(C) open-loop biomass,
- “(D) geothermal energy,
- “(E) solar energy,
- “(F) small irrigation power, and
- “(G) municipal solid waste.

“(2) CLOSED-LOOP BIOMASS.—The term ‘closed-loop biomass’ means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

“(3) OPEN-LOOP BIOMASS.—

“(A) IN GENERAL.—The term ‘open-loop biomass’ means—

- “(i) any agricultural livestock waste nutrients, or
- “(ii) any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

“(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

“(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

“(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

“(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

“(i) IN GENERAL.—The term ‘agricultural livestock waste nutrients’ means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

“(ii) AGRICULTURAL LIVESTOCK.—The term ‘agricultural livestock’ includes bovine, swine, poultry, and sheep.

“(4) GEOTHERMAL ENERGY.—The term ‘geothermal energy’ means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

“(5) SMALL IRRIGATION POWER.—The term ‘small irrigation power’ means power—

“(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

“(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

“(6) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ has the meaning given the term ‘solid waste’ under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).

“(7) REFINED COAL.—

“(A) IN GENERAL.—The term ‘refined coal’ means a fuel which—

“(i) is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock,

“(ii) is sold by the taxpayer with the reasonable expectation that it will be used for purpose of producing steam,

“(iii) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction, and

“(iv) is produced in such a manner as to result in an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.

“(B) QUALIFIED EMISSION REDUCTION.—The term ‘qualified emission reduction’ means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.”.

(b) EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) QUALIFIED FACILITIES.—For purposes of this section:

“(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2006.

“(2) CLOSED-LOOP BIOMASS FACILITY.—

“(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term ‘qualified facility’ means any facility—

“(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2006, or

“(ii) owned by the taxpayer which before January 1, 2006, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

“(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

“(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause,

“(ii) the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

“(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

“(3) OPEN-LOOP BIOMASS FACILITIES.—

“(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which—

“(i) in the case of a facility using agricultural livestock waste nutrients—

“(I) is originally placed in service after the date of the enactment of this subclause and before January 1, 2006, and

“(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

“(ii) in the case of any other facility, is originally placed in service before January 1, 2006.

“(B) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

“(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2006. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

“(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2006.

“(6) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2006.

“(7) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2006.

“(8) REFINED COAL PRODUCTION FACILITY.—The term ‘refined coal production facility’ means a facility which is placed in service after the date of the enactment of this paragraph and before January 1, 2009.”

(2) RULES FOR REFINED COAL PRODUCTION FACILITIES.—Subsection (e) of section 45, as so redesignated, is amended by adding at the end the following new paragraph:

“(8) REFINED COAL PRODUCTION FACILITIES.—

“(A) DETERMINATION OF CREDIT AMOUNT.—In the case of a producer of refined coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to \$4.375 per ton of qualified refined coal—

“(i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and

“(ii) sold by the taxpayer—

“(I) to an unrelated person, and

“(II) during such 10-year period and such taxable year.

“(B) PHASEOUT OF CREDIT.—The amount of the increase determined under subparagraph (A) shall be reduced by an amount which bears the same ratio to the amount of the increase (determined without regard to this subparagraph) as—

“(i) the amount by which the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied

by the reference price for such fuel in 2002, bears to

“(ii) \$8.75.

“(C) APPLICATION OF RULES.—Rules similar to the rules of the subsection (b)(3) and paragraphs (1) through (5) and (9) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.”.

(3) CONFORMING AMENDMENTS.—

(A) Section 45(e), as so redesignated, is amended by striking “subsection (c)(3)(A)” in paragraph (7)(A)(i) and inserting “subsection (d)(1)”.

(B) The heading of section 45 and the item relating to such section in the table of sections for subpart D of part IV of subchapter A of chapter 1 are each amended by inserting before the period at the end “, etc”.

(C) Paragraph (2) of section 45(b) is amended by striking “The 1.5 cent amount” and all that follows through “paragraph (1)” and inserting “The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the \$4.375 amount in subsection (e)(8)(A), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002”.

(c) SPECIAL CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD AFTER ENACTMENT DATE.—Section 45(b) is amended by adding at the end the following new paragraph:

“(4) CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD FROM CERTAIN FACILITIES.—

“(A) CREDIT RATE.—In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), or (7) of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-half.

“(B) CREDIT PERIOD.—

“(i) IN GENERAL.—Except as provided in clause (ii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

“(ii) CERTAIN OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this paragraph, the 5-year period beginning on the date of the enactment of this Act shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).”.

(d) COORDINATION WITH OTHER CREDITS.—Section 45(e), as redesignated and amended by this section, is amended by inserting after paragraph (8) the following new paragraph:

“(9) COORDINATION WITH CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.—The term ‘qualified facility’ shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.”.

(e) **COORDINATION WITH SECTION 48.**—Section 48(a)(3) (defining energy property) is amended by adding at the end the following new sentence: “Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.”.

(f) **ELIMINATION OF CERTAIN CREDIT REDUCTIONS.**—Section 45(b)(3) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by inserting “the lesser of $\frac{1}{2}$ or” before “a fraction” in the matter preceding subparagraph (A), and

(2) by adding at the end the following new sentence: “This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).”.

(g) **EFFECTIVE DATES.**—

26 USC 45 note.

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(2) **CERTAIN BIOMASS FACILITIES.**—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(3) **CREDIT RATE AND PERIOD FOR NEW FACILITIES.**—The amendments made by subsection (c) shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(4) **NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.**—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2004.

(5) **REFINED COAL PRODUCTION FACILITIES.**—Section 45(e)(8) of the Internal Revenue Code of 1986, as added by this section, shall apply to refined coal produced and sold after the date of the enactment of this Act.

SEC. 711. CERTAIN BUSINESS RELATED CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) **IN GENERAL.**—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) **SPECIAL RULES FOR SPECIFIED CREDITS.**—

“(A) **IN GENERAL.**—In the case of specified credits—

“(i) this section and section 39 shall be applied separately with respect to such credits, and

“(ii) in applying paragraph (1) to such credits—

“(I) the tentative minimum tax shall be treated as being zero, and

“(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the

credit allowed under subsection (a) for the taxable year (other than the specified credits).

“(B) SPECIFIED CREDITS.—For purposes of this subsection, the term ‘specified credits’ includes—

“(i) for taxable years beginning after December 31, 2004, the credit determined under section 40,

“(ii) the credit determined under section 45 to the extent that such credit is attributable to electricity or refined coal produced—

“(I) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

“(II) during the 4-year period beginning on the date that such facility was originally placed in service”.

(b) CONFORMING AMENDMENTS.—Paragraph (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each amended by inserting “or the specified credits” after “employee credit”.

26 USC 38 note.

(c) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 712. INCLUSION OF PRIMARY AND SECONDARY MEDICAL STRATEGIES FOR CHILDREN AND ADULTS WITH SICKLE CELL DISEASE AS MEDICAL ASSISTANCE UNDER THE MEDICAID PROGRAM.

(a) OPTIONAL MEDICAL ASSISTANCE.—

(1) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)—

(i) by striking “and” at the end of paragraph (26);

(ii) by redesignating paragraph (27) as paragraph (28); and

(iii) by inserting after paragraph (26), the following:

“(27) subject to subsection (x), primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease; and”; and

(B) by adding at the end the following:

“(x) For purposes of subsection (a)(27), the strategies, treatment, and services described in that subsection include the following:

“(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

“(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait to allow health care professionals to treat such individuals and to prevent symptoms of Sickle Cell Disease.

“(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.”.

42 USC 1396d
note.

(2) RULE OF CONSTRUCTION.—Nothing in subsections (a)(27) or (x) of section 1905 of the Social Security Act (42 U.S.C. 1396d), as added by paragraph (1), shall be construed as implying that a State medicaid program under title XIX of such Act could not have treated, prior to the date of enactment of this Act, any of the primary and secondary medical strategies

and treatment and services described in such subsections as medical assistance under such program, including as early and periodic screening, diagnostic, and treatment services under section 1905(r) of such Act.

(b) FEDERAL REIMBURSEMENT FOR EDUCATION AND OTHER SERVICES RELATED TO THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—Section 1903(a)(3) of the Social Security Act (42 U.S.C. 1396b(a)(3)) is amended—

(1) in subparagraph (D), by striking “plus” at the end and inserting “and”; and

(2) by adding at the end the following:

“(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

“(i) services to identify and educate individuals who are likely to be eligible for medical assistance under this title and who have Sickle Cell Disease or who are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

“(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who are likely to be eligible for medical assistance under this title and who have Sickle Cell Disease; plus”.

(c) DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—

42 USC 300b–1
note.

(1) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

(A) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted under this section for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

(i) the coordination of service delivery for individuals with Sickle Cell Disease;

(ii) genetic counseling and testing;

(iii) bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

(iv) training of health professionals; and

(v) identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with Sickle Cell Disease.

(B) GRANT AWARD REQUIREMENTS.—

(i) GEOGRAPHIC DIVERSITY.—The Administrator shall, to the extent practicable, award grants under this section to eligible entities located in different regions of the United States.

(ii) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to awarding grants to eligible entities that are—

(I) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center

that does not receive funds from the National Institutes of Health; or

(II) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

(2) ADDITIONAL REQUIREMENTS.—An eligible entity awarded a grant under this subsection shall use funds made available under the grant to carry out, in addition to the activities described in paragraph (1)(A), the following activities:

(A) To facilitate and coordinate the delivery of education, treatment, and continuity of care for individuals with Sickle Cell Disease under—

(i) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease;

(ii) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and

(iii) the maternal and child health program under title V of the Social Security Act (42 U.S.C. 701 et seq.) for the State in which the entity is located.

(B) To train nursing and other health staff who provide care for individuals with Sickle Cell Disease.

(C) To enter into a partnership with adult or pediatric hematologists in the region and other regional experts in Sickle Cell Disease at tertiary and academic health centers and State and county health offices.

(D) To identify and secure resources for ensuring reimbursement under the medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease.

(3) NATIONAL COORDINATING CENTER.—

Contracts.

(A) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this subsection.

(B) ACTIVITIES DESCRIBED.—The National Coordinating Center shall—

(i) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

(ii) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

(iii) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

(iv) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this subsection and such direct outcome measures as—

(I) the number and type of health care resources utilized (such as emergency room visits,

hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

(II) the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

(4) APPLICATION.—An eligible entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

(5) DEFINITIONS.—In this subsection:

(A) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Health Resources and Services Administration.

(B) ELIGIBLE ENTITY.—The term “eligible entity” means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

(i) has a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

(ii) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in clause (i), or the experts described in paragraph (2)(C), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

(C) FEDERALLY-QUALIFIED HEALTH CENTER.—The term “Federally-qualified health center” has the meaning given that term in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B)).

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, \$10,000,000 for each of fiscal years 2005 through 2009.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect on the date of enactment of this Act and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date.

42 USC 1396b
note.

SEC. 713. CEILING FANS.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

“	9902.84.14	Ceiling fans for permanent installation (provided for in subheading 8414.51.00)	Free	No change	No change	On or before 12/31/2006	”.
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(b) EFFECTIVE DATE.—The amendment made by this section applies to goods entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of enactment of this Act.

SEC. 714. CERTAIN STEAM GENERATORS, AND CERTAIN REACTOR VESSEL HEADS AND PRESSURIZERS, USED IN NUCLEAR FACILITIES.

(a) CERTAIN STEAM GENERATORS.—Heading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended by striking “12/31/2006” and inserting “12/31/2008”.

(b) CERTAIN REACTOR VESSEL HEADS AND PRESSURIZERS.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

“	9902.84.03	Reactor vessel heads and pressurizers for nuclear reactors (provided for in subheading 8401.40.00)	Free	No change	No change	On or before 12/31/2008	”.
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(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made subsection (b) shall apply to goods entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of the enactment of this Act.

TITLE VIII—REVENUE PROVISIONS

Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation

SEC. 801. TAX TREATMENT OF EXPATRIATED ENTITIES AND THEIR FOREIGN PARENTS.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

“SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES AND THEIR FOREIGN PARENTS.

“(a) TAX ON INVERSION GAIN OF EXPATRIATED ENTITIES.—

“(1) IN GENERAL.—The taxable income of an expatriated entity for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

“(2) EXPATRIATED ENTITY.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘expatriated entity’ means—

“(i) the domestic corporation or partnership referred to in subparagraph (B)(i) with respect to which a foreign corporation is a surrogate foreign corporation, and

“(ii) any United States person who is related (within the meaning of section 267(b) or 707(b)(1)) to a domestic corporation or partnership described in clause (i).

“(B) SURROGATE FOREIGN CORPORATION.—A foreign corporation shall be treated as a surrogate foreign corporation if, pursuant to a plan (or a series of related transactions)—

“(i) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

“(ii) after the acquisition at least 60 percent of the stock (by vote or value) of the entity is held—

“(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

“(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

“(iii) after the acquisition the expanded affiliated group which includes the entity does not have substantial business activities in the foreign country in which, or under the law of which, the entity is created or organized, when compared to the total business activities of such expanded affiliated group.

An entity otherwise described in clause (i) with respect to any domestic corporation or partnership trade or business shall be treated as not so described if, on or before March 4, 2003, such entity acquired directly or indirectly more than half of the properties held directly or indirectly by such corporation or more than half of the properties constituting such partnership trade or business, as the case may be.

“(3) COORDINATION WITH SUBSECTION (b).—Paragraph (1) shall not apply to any entity which is treated as a domestic corporation under subsection (b).

“(b) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—Notwithstanding section 7701(a)(4), a foreign corporation shall be treated for purposes of this title as a domestic corporation if such corporation would be a surrogate foreign corporation if subsection (a)(2) were applied by substituting ‘80 percent’ for ‘60 percent’.

“(c) DEFINITIONS AND SPECIAL RULES.—

“(1) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(2) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership under subsection (a)(2)(B)(ii)—

“(A) stock held by members of the expanded affiliated group which includes the foreign corporation, or

“(B) stock of such foreign corporation which is sold in a public offering related to the acquisition described in subsection (a)(2)(B)(i).

“(3) PLAN DEEMED IN CERTAIN CASES.—If a foreign corporation acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B)(ii) are met, such actions shall be treated as pursuant to a plan.

“(4) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

“(5) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2)(B)(ii) to the acquisition of a trade or business of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

“(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations—

“(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

“(B) to treat stock as not stock.

“(d) OTHER DEFINITIONS.—For purposes of this section—

“(1) APPLICABLE PERIOD.—The term ‘applicable period’ means the period—

“(A) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(B)(i), and

“(B) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

“(2) INVERSION GAIN.—The term ‘inversion gain’ means the income or gain recognized by reason of the transfer during the applicable period of stock or other properties by an expatriated entity, and any income received or accrued during the applicable period by reason of a license of any property by an expatriated entity—

“(A) as part of the acquisition described in subsection (a)(2)(B)(i), or

“(B) after such acquisition if the transfer or license is to a foreign related person.

Subparagraph (B) shall not apply to property described in section 1221(a)(1) in the hands of the expatriated entity.

“(3) FOREIGN RELATED PERSON.—The term ‘foreign related person’ means, with respect to any expatriated entity, a foreign person which—

“(A) is related (within the meaning of section 267(b) or 707(b)(1)) to such entity, or

“(B) is under the same common control (within the meaning of section 482) as such entity.

“(e) SPECIAL RULES.—

“(1) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits (other than the credit allowed by section 901) shall be allowed against the tax imposed by this chapter on

an expatriated entity for any taxable year described in subsection (a) only to the extent such tax exceeds the product of—

“(A) the amount of the inversion gain for the taxable year, and

“(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901, inversion gain shall be treated as from sources within the United States.

“(2) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an expatriated entity which is a partnership—

“(A) subsection (a)(1) shall apply at the partner rather than the partnership level, Applicability.

“(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

“(i) the partner’s distributive share of inversion gain of the partnership for such taxable year, plus

“(ii) gain recognized for the taxable year by the partner by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the surrogate foreign corporation, and

“(C) the highest rate of tax specified in the rate schedule applicable to the partner under this chapter shall be substituted for the rate of tax referred to in paragraph (1).

“(3) COORDINATION WITH SECTION 172 AND MINIMUM TAX.— Applicability.
Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of subsection (a).

“(4) STATUTE OF LIMITATIONS.—

“(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(B)(i) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term ‘pre-inversion year’ means any taxable year if—

“(i) any portion of the applicable period is included in such taxable year, and

“(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(B)(i) is completed.

“(f) SPECIAL RULE FOR TREATIES.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

“(g) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section

as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

“(1) the use of related persons, pass-through or other non-corporate entities, or other intermediaries, or

“(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.”.

(b) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

“Sec. 7874. Rules relating to expatriated entities and their foreign parents.”.

26 USC 7874
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 4, 2003.

SEC. 802. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by inserting after chapter 44 end the following new chapter:

**“CHAPTER 45—PROVISIONS RELATING TO
EXPATRIATED ENTITIES**

“Sec. 4985. Stock compensation of insiders in expatriated corporations.

“SEC. 4985. STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS.

“(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any expatriated corporation, there is hereby imposed on such person a tax equal to—

“(1) the rate of tax specified in section 1(h)(1)(C), multiplied by

“(2) the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual’s family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the expatriation date.

“(b) VALUE.—For purposes of subsection (a)—

“(1) IN GENERAL.—The value of specified stock compensation shall be—

“(A) in the case of a stock option (or other similar right) or a stock appreciation right, the fair value of such option or right, and

“(B) in any other case, the fair market value of such compensation.

“(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

“(A) in the case of specified stock compensation held on the expatriation date, on such date,

“(B) in the case of such compensation which is canceled during the 6 months before the expatriation date, on the day before such cancellation, and

“(C) in the case of such compensation which is granted after the expatriation date, on the date such compensation is granted.

“(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an expatriated corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(B)(i) with respect to such corporation.

“(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

“(1) any stock option which is exercised on the expatriation date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise, and

“(2) any other specified stock compensation which is exercised, sold, exchanged, distributed, cashed-out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

“(e) DEFINITIONS.—For purposes of this section—

“(1) DISQUALIFIED INDIVIDUAL.—The term ‘disqualified individual’ means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the expatriation date—

“(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation or any member of the expanded affiliated group which includes such corporation, or

“(B) would be subject to such requirements if such corporation or member were an issuer of equity securities referred to in such section.

“(2) EXPATRIATED CORPORATION; EXPATRIATION DATE.—

“(A) EXPATRIATED CORPORATION.—The term ‘expatriated corporation’ means any corporation which is an expatriated entity (as defined in section 7874(a)(2)). Such term includes any predecessor or successor of such a corporation.

“(B) EXPATRIATION DATE.—The term ‘expatriation date’ means, with respect to a corporation, the date on which the corporation first becomes an expatriated corporation.

“(3) SPECIFIED STOCK COMPENSATION.—

“(A) IN GENERAL.—The term ‘specified stock compensation’ means payment (or right to payment) granted by the expatriated corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

“(B) EXCEPTIONS.—Such term shall not include—

“(i) any option to which part II of subchapter D of chapter 1 applies, or

“(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

“(4) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section

Applicability.

1504(a) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(f) SPECIAL RULES.—For purposes of this section—

“(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

“(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the expatriated corporation or by any member of the expanded affiliated group which includes such corporation—

“(A) shall be treated as specified stock compensation, and

“(B) shall not be allowed as a deduction under any provision of chapter 1.

“(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

“(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

“(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.”.

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting “45,” before “46,”.

(2) \$1,000,000 limit on deductible compensation reduced by payment of excise tax on specified stock compensation.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

“(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.”.

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period “or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985”.

(2) The table of chapters for subtitle D is amended by inserting after the item relating to chapter 44 the following new item:

“Chapter 45. Provisions relating to expatriated entities.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on March 4, 2003; except that periods before such date shall not be taken into account in applying the periods

in subsections (a) and (e)(1) of section 4985 of the Internal Revenue Code of 1986, as added by this section.

SEC. 803. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) **IN GENERAL.**—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking “source and character” and inserting “amount, source, or character”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to any risk reinsured after the date of the enactment of this Act.

26 USC 845 note.

SEC. 804. REVISION OF TAX RULES ON EXPATRIATION OF INDIVIDUALS.

(a) **EXPATRIATION TO AVOID TAX.**—

(1) **IN GENERAL.**—Subsection (a) of section 877 (relating to treatment of expatriates) is amended to read as follows:

“(a) **TREATMENT OF EXPATRIATES.**—

“(1) **IN GENERAL.**—Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

“(2) **INDIVIDUALS SUBJECT TO THIS SECTION.**—This section shall apply to any individual if—

“(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than \$124,000,

“(B) the net worth of the individual as of such date is \$2,000,000 or more, or

“(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2004, such \$124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘2003’ for ‘1992’ in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of \$1,000.”.

(2) **REVISION OF EXCEPTIONS FROM ALTERNATIVE TAX.**—Subsection (c) of section 877 (relating to tax avoidance not presumed in certain cases) is amended to read as follows:

“(c) **EXCEPTIONS.**—

“(1) **IN GENERAL.**—Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

“(2) **DUAL CITIZENS.**—

“(A) **IN GENERAL.**—An individual is described in this paragraph if—

“(i) the individual became at birth a citizen of the United States and a citizen of another country

Applicability.

and continues to be a citizen of such other country, and

“(ii) the individual has had no substantial contacts with the United States.

“(B) SUBSTANTIAL CONTACTS.—An individual shall be treated as having no substantial contacts with the United States only if the individual—

“(i) was never a resident of the United States (as defined in section 7701(b)),

“(ii) has never held a United States passport, and

“(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual’s loss of United States citizenship.

“(3) CERTAIN MINORS.—An individual is described in this paragraph if—

“(A) the individual became at birth a citizen of the United States,

“(B) neither parent of such individual was a citizen of the United States at the time of such birth,

“(C) the individual’s loss of United States citizenship occurs before such individual attains age 18½, and

“(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual’s loss of United States citizenship.”.

(3) CONFORMING AMENDMENT.—Section 2107(a) is amended to read as follows:

“(a) TREATMENT OF EXPATRIATES.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).”.

(b) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

“(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

“(2) provides a statement in accordance with section 6039G.”.

(c) PHYSICAL PRESENCE IN THE UNITED STATES FOR MORE THAN 30 DAYS.—Section 877 (relating to expatriation to avoid tax) is amended by adding at the end the following new subsection:

“(g) PHYSICAL PRESENCE.—

“(1) IN GENERAL.—This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

“(2) EXCEPTION.—

“(A) IN GENERAL.—In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—

“(i) such employer is related (within the meaning of section 267 and 707) to such individual, or

“(ii) such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph. Not more than 30 days during any calendar year may be disregarded under this subparagraph.

“(B) INDIVIDUALS WITH TIES TO OTHER COUNTRIES.—An individual is described in this subparagraph if—

“(i) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—

“(I) such individual was born,

“(II) if such individual is married, such individual’s spouse was born, or

“(III) either of such individual’s parents were born, and

“(ii) the individual becomes fully liable for income tax in such country.

“(C) MINIMAL PRIOR PHYSICAL PRESENCE IN THE UNITED STATES.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.”

Applicability.

(d) TRANSFERS SUBJECT TO GIFT TAX.—

(1) IN GENERAL.—Subsection (a) of section 2501 (relating to taxable transfers) is amended by striking paragraph (4), by redesignating paragraph (5) as paragraph (4), and by striking paragraph (3) and inserting the following new paragraph:

“(3) EXCEPTION.—

“(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer.

“(B) CREDIT FOR FOREIGN GIFT TAXES.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually

paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.”.

(2) TRANSFERS OF CERTAIN STOCK.—Subsection (a) of section 2501 is amended by adding at the end the following new paragraph:

“(5) TRANSFERS OF CERTAIN STOCK.—

“(A) IN GENERAL.—In the case of a transfer of stock in a foreign corporation described in subparagraph (B) by a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer—

Applicability.

“(i) section 2511(a) shall be applied without regard to whether such stock is situated within the United States, and

“(ii) the value of such stock for purposes of this chapter shall be its U.S.-asset value determined under subparagraph (C).

“(B) FOREIGN CORPORATION DESCRIBED.—A foreign corporation is described in this subparagraph with respect to a donor if—

“(i) the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation, and

“(ii) such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

“(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

“(II) the total value of the stock of such corporation.

“(C) U.S.-ASSET VALUE.—For purposes of subparagraph (A), the U.S.-asset value of stock shall be the amount which bears the same ratio to the fair market value of such stock at the time of transfer as—

“(i) the fair market value (at such time) of the assets owned by such foreign corporation and situated in the United States, bears to

“(ii) the total fair market value (at such time) of all assets owned by such foreign corporation.”.

(e) ENHANCED INFORMATION REPORTING FROM INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

(1) IN GENERAL.—Subsection (a) of section 6039G is amended to read as follows:

“(a) IN GENERAL.—Notwithstanding any other provision of law, any individual to whom section 877(b) applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).”.

(2) INFORMATION TO BE PROVIDED.—Subsection (b) of section 6039G is amended to read as follows:

“(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

“(1) the taxpayer’s TIN,

“(2) the mailing address of such individual’s principal foreign residence,

“(3) the foreign country in which such individual is residing,

“(4) the foreign country of which such individual is a citizen,

“(5) information detailing the income, assets, and liabilities of such individual,

“(6) the number of days during any portion of which that the individual was physically present in the United States during the taxable year, and

“(7) such other information as the Secretary may prescribe.”.

(3) INCREASE IN PENALTY.—Subsection (d) of section 6039G is amended to read as follows:

“(d) PENALTY.—If—

“(1) an individual is required to file a statement under subsection (a) for any taxable year, and

“(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of \$10,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.”.

(4) CONFORMING AMENDMENT.—Section 6039G is amended by striking subsections (c), (f), and (g) and by redesignating subsections (d) and (e) as subsection (c) and (d), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who expatriate after June 3, 2004. 26 USC 877 note.

SEC. 805. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

“SEC. 6043A. RETURNS RELATING TO TAXABLE MERGERS AND ACQUISITIONS.

“(a) IN GENERAL.—According to the forms or regulations prescribed by the Secretary, the acquiring corporation in any taxable acquisition shall make a return setting forth—

“(1) a description of the acquisition,

“(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

“(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

“(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

“(b) NOMINEES.—According to the forms or regulations prescribed by the Secretary:

“(1) REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

“(2) REPORTING TO NOMINEES.—In the case of stock held by any person as a nominee, references in this section (other

than in subsection (c)) to a shareholder shall be treated as a reference to the nominee.

“(c) TAXABLE ACQUISITION.—For purposes of this section, the term ‘taxable acquisition’ means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

“(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

“(1) the name, address, and phone number of the information contact of the person required to make such return,

“(2) the information required to be shown on such return with respect to such shareholder, and

“(3) such other information as the Secretary may prescribe. The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.”.

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

“(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),”.

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

“(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions),”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

SEC. 806. STUDIES.

(a) TRANSFER PRICING RULES.—The Secretary of the Treasury or the Secretary’s delegate shall conduct a study regarding the effectiveness of current transfer pricing rules and compliance efforts in ensuring that cross-border transfers and other related-party transactions, particularly transactions involving intangible assets, service contracts, or leases cannot be used improperly to shift income out of the United States. The study shall include a review of the contemporaneous documentation and penalty rules under section 6662 of the Internal Revenue Code of 1986, a review of the regulatory and administrative guidance implementing the principles of section 482 of such Code to transactions involving intangible property and services and to cost-sharing arrangements, and an examination of whether increased disclosure of cross-border transactions should be required. The study shall set forth specific

26 USC 6043A
note.

Deadlines.
Reports.

recommendations to address all abuses identified in the study. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

(b) **INCOME TAX TREATIES.**—The Secretary of the Treasury or the Secretary’s delegate shall conduct a study of United States income tax treaties to identify any inappropriate reductions in United States withholding tax that provide opportunities for shifting income out of the United States, and to evaluate whether existing anti-abuse mechanisms are operating properly. The study shall include specific recommendations to address all inappropriate uses of tax treaties. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

(c) **EFFECTIVENESS OF CORPORATE EXPATRIATION PROVISIONS.**—The Secretary of the Treasury or the Secretary’s delegate shall conduct a study of the effectiveness of the provisions of this title on corporate expatriation. The study shall include such recommendations as such Secretary or delegate may have to improve the effectiveness of such provisions in carrying out the purposes of this title. Not later than December 31, 2006, such Secretary or delegate shall submit to the Congress a report of such study.

Subtitle B—Provisions Relating to Tax Shelters

Part I—Taxpayer-Related Provisions

SEC. 811. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTIONS.

(a) **IN GENERAL.**—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN.

“(a) **IMPOSITION OF PENALTY.**—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

“(b) **AMOUNT OF PENALTY.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the amount of the penalty under subsection (a) shall be—

“(A) \$10,000 in the case of a natural person, and

“(B) \$50,000 in any other case.

“(2) **LISTED TRANSACTION.**—The amount of the penalty under subsection (a) with respect to a listed transaction shall be—

“(A) \$100,000 in the case of a natural person, and

“(B) \$200,000 in any other case.

“(c) **DEFINITIONS.**—For purposes of this section:

“(1) **REPORTABLE TRANSACTION.**—The term ‘reportable transaction’ means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the

Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—The term ‘listed transaction’ means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

“(d) AUTHORITY TO RESCIND PENALTY.—

“(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

“(A) the violation is with respect to a reportable transaction other than a listed transaction, and

“(B) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

“(2) NO JUDICIAL APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any judicial proceeding.

“(3) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner with respect to the determination, including—

“(A) a statement of the facts and circumstances relating to the violation,

“(B) the reasons for the rescission, and

“(C) the amount of the penalty rescinded.

“(e) PENALTY REPORTED TO SEC.—In the case of a person—

“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

“(2) which—

“(A) is required to pay a penalty under this section with respect to a listed transaction,

“(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

“(C) is required to pay a penalty under section 6662(h) with respect to any reportable transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

“(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty imposed by this title.”.

(b) **CONFORMING AMENDMENT.**—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

“Sec. 6707A. Penalty for failure to include reportable transaction information with return.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

26 USC 6707A
note.

(d) **REPORT.**—The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

26 USC 6707A
note.

(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor.

SEC. 812. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS, OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE, ETC.

(a) **IN GENERAL.**—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

“(a) **IMPOSITION OF PENALTY.**—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

“(b) **REPORTABLE TRANSACTION UNDERSTATEMENT.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘reportable transaction understatement’ means the sum of—

“(A) the product of—

“(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer’s treatment of such item (as shown on the taxpayer’s return of tax), and

“(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

“(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer’s treatment of an item to which this section applies (as shown on the taxpayer’s return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

“(2) **ITEMS TO WHICH SECTION APPLIES.**—This section shall apply to any item which is attributable to—

“(A) any listed transaction, and

“(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Applicability.

“(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘30 percent’ for ‘20 percent’ with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

“(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(e) SPECIAL RULES.—

“(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

“(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

Applicability.

“(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

“(2) COORDINATION WITH OTHER PENALTIES.—

“(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement.

“(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

“(C) COORDINATION WITH VALUATION PENALTIES.—

“(i) SECTION 6662(e).—Section 6662(e) shall not apply to any portion of an understatement on which a penalty is imposed under this section.

“(ii) SECTION 6662(h).—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662(h).

“(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.”.

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

“The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.”.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

“(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

“(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

“(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

“(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

“(B) there is or was substantial authority for such treatment, and

“(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

“(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

“(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

“(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

“(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

“(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

“(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

“(I) the tax advisor is described in clause (ii),
or

“(II) the opinion is described in clause (iii).

“(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

“(I) is a material advisor (within the meaning of section 6111(b)(1)) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

“(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

“(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

“(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

“(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts, or

“(IV) fails to meet any other requirement as the Secretary may prescribe.”.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 6664(c) is amended by striking “this part” and inserting “section 6662 or 6663”.

(B) The heading for subsection (c) of section 6664 is amended by inserting “FOR UNDERPAYMENTS” after “EXCEPTION”.

(d) REDUCTION IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX SHELTERS.—Subparagraph (C) of section 6662(d)(2) (relating to substantial understatement of income tax) is amended to read as follows:

“(C) REDUCTION NOT TO APPLY TO TAX SHELTERS.—

“(i) IN GENERAL.—Subparagraph (B) shall not apply to any item attributable to a tax shelter.

“(ii) TAX SHELTER.—For purposes of clause (i), the term ‘tax shelter’ means—

“(I) a partnership or other entity,

“(II) any investment plan or arrangement, or

“(III) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”.

(e) CLERICAL AMENDMENTS.—

(1) The heading for section 6662 is amended to read as follows:

“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.”.

(2) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 813. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

“(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

“(1) between a federally authorized tax practitioner and—

“(A) any person,

“(B) any director, officer, employee, agent, or representative of the person, or

“(C) any other person holding a capital or profits interest in the person, and

“(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 6662(d)(2)(C)(ii)).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act. 26 USC 7525 note.

SEC. 814. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

“(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

“(A) the date on which the Secretary is furnished the information so required, or

“(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act. 26 USC 6501 note.

SEC. 815. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

“(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

“(1) information identifying and describing the transaction,

“(2) information describing any potential tax benefits expected to result from the transaction, and

“(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

“(b) DEFINITIONS.—For purposes of this section:

“(1) MATERIAL ADVISOR.—

“(A) IN GENERAL.—The term ‘material advisor’ means any person—

“(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and

“(ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) for such advice or assistance.

“(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

“(i) \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

“(ii) \$250,000 in any other case.

“(2) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ has the meaning given to such term by section 6707A(c).

“(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

“(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

“(2) exemptions from the requirements of this section, and

“(3) such rules as may be necessary or appropriate to carry out the purposes of this section.”

(b) CONFORMING AMENDMENTS.—(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”

(2) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES, ETC.

“(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain (in such manner as the Secretary may by regulations prescribe) a list—

“(1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction, and

“(2) containing such other information as the Secretary may by regulations require.”

(3) Section 6112 is amended—

(A) by redesignating subsection (c) as subsection (b),

(B) by inserting “written” before “request” in subsection (b)(1) (as so redesignated), and

(C) by striking “shall prescribe” in subsection (b)(2) (as so redesignated) and inserting “may prescribe”.

(4) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees, etc.”.

(5)(A) The heading for section 6708 is amended to read as follows:

“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.”

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

26 USC 6111
note.

SEC. 816. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

(a) **IN GENERAL.**—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

“(a) **IN GENERAL.**—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

“(1) fails to file such return on or before the date prescribed therefor, or

“(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

“(b) **AMOUNT OF PENALTY.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be \$50,000.

“(2) **LISTED TRANSACTIONS.**—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

“(A) \$200,000, or

“(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

Subparagraph (B) shall be applied by substituting ‘75 percent’ for ‘50 percent’ in the case of an intentional failure or act described in subsection (a).

Applicability.

“(c) **RESCISSION AUTHORITY.**—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

Applicability.

“(d) **REPORTABLE AND LISTED TRANSACTIONS.**—For purposes of this section, the terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).”.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking “tax shelters” and inserting “reportable transactions”.

26 USC 6707
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

**SEC. 817. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN
LISTS OF INVESTORS.**

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

“(a) IMPOSITION OF PENALTY.—

Deadline.

“(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

“(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.”.

26 USC 6708
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 818. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.”.

26 USC 6700
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

**SEC. 819. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PEN-
ALTY FOR NONREPORTABLE TRANSACTIONS.**

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

“(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

“(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, \$10,000), or

“(ii) \$10,000,000.”.

(b) SECRETARIAL LIST.—

(1) IN GENERAL.—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) SECRETARIAL LIST.—The Secretary may prescribe a list of positions which the Secretary believes do not meet the 1 or more of the standards specified in paragraph (2)(B)(i), section 6664(d)(2), and section 6694(a)(1). Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”.

Federal Register,
publication.

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 6662(d) is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

26 USC 6662
note.

SEC. 820. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

“(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

“(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

“(1) that the person has engaged in any specified conduct, and

“(2) that injunctive relief is appropriate to prevent recurrence of such conduct, the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

“(c) SPECIFIED CONDUCT.—For purposes of this section, the term ‘specified conduct’ means any action, or failure to take action, which is—

“(1) subject to penalty under section 6700, 6701, 6707, or 6708, or

“(2) in violation of any requirement under regulations issued under section 330 of title 31, United States Code.”.

(b) CONFORMING AMENDMENTS.—(1) The heading for section 7408 is amended to read as follows:

“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.”.

(2) The table of sections for subchapter A of chapter 76 is amended by striking the item relating to section 7408 and inserting the following new item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

26 USC 7408
note.

SEC. 821. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

“(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

“(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

“(B) AMOUNT OF PENALTY.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$10,000.

“(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

“(I) such violation was due to reasonable cause, and

“(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

“(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

“(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

“(I) \$100,000, or

“(II) 50 percent of the amount determined under subparagraph (D), and

“(ii) subparagraph (B)(ii) shall not apply.

“(D) AMOUNT.—The amount determined under this subparagraph is—

“(i) in the case of a violation involving a transaction, the amount of the transaction, or

“(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 822. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF THE TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting “, or censure,” after “Department”, and

(B) by adding at the end the following new flush sentence:

“The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm,

or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.”.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

31 USC 330 note.

(b) **TAX SHELTER OPINIONS, ETC.**—Section 330 of such title 31 is amended by adding at the end the following new subsection:

“(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”.

Part II—Other Provisions

SEC. 831. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) **IN GENERAL.**—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.**—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.”.

(b) **CROSS REFERENCE.**—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

“(7) **CROSS REFERENCE.**—

“**For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).**”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

26 USC 305 note.

SEC. 832. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) **IN GENERAL.**—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

“(1) **MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.**—

“(1) **IN GENERAL.**—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

“(A) such property is held by the recipient of the item for 15 days or less during the 31-day period beginning

on the date which is 15 days before the date on which the right to receive payment of such item arises, or

“(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

“(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

“(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term ‘qualified tax’ means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

“(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

“(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

“(C) DEALER.—For purposes of subparagraph (A), the term ‘dealer’ means—

“(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

“(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

“(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

“(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

“(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

“(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.”.

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting “ON DIVIDENDS” after “TAXES”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

SEC. 833. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS TRANSFERS.

(a) **TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.**—Paragraph (1) of section 704(c) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following:

“(C) if any property so contributed has a built-in loss—

“(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

“(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value at the time of contribution.

For purposes of subparagraph (C), the term ‘built-in loss’ means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value at the time of contribution.”.

(b) **SPECIAL RULES FOR TRANSFERS OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.**—

(1) **ADJUSTMENT OF PARTNERSHIP BASIS REQUIRED.**—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period “or unless the partnership has a substantial built-in loss immediately after such transfer”.

(2) **ADJUSTMENT.**—Subsection (b) of section 743 is amended by inserting “or which has a substantial built-in loss immediately after such transfer” after “section 754 is in effect”.

(3) **SUBSTANTIAL BUILT-IN LOSS.**—Section 743 is amended by adding at the end the following new subsection:

“(d) **SUBSTANTIAL BUILT-IN LOSS.**—

“(1) **IN GENERAL.**—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership’s adjusted basis in the partnership property exceeds by more than \$250,000 the fair market value of such property.

“(2) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.”.

(4) **ALTERNATIVE RULES FOR ELECTING INVESTMENT PARTNERSHIPS.**—

(A) **IN GENERAL.**—Section 743 is amended by adding after subsection (d) the following new subsection:

“(e) **ALTERNATIVE RULES FOR ELECTING INVESTMENT PARTNERSHIPS.**—

“(1) **NO ADJUSTMENT OF PARTNERSHIP BASIS.**—For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

“(2) LOSS DEFERRAL FOR TRANSFEREE PARTNER.—In the case of a transfer of an interest in an electing investment partnership, the transferee partner’s distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

“(3) NO REDUCTION IN PARTNERSHIP BASIS.—Losses disallowed under paragraph (2) shall not decrease the transferee partner’s basis in the partnership interest.

Applicability.

“(4) EFFECT OF TERMINATION OF PARTNERSHIP.—This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

“(5) CERTAIN BASIS REDUCTIONS TREATED AS LOSSES.—In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

“(6) ELECTING INVESTMENT PARTNERSHIP.—For purposes of this subsection, the term ‘electing investment partnership’ means any partnership if—

“(A) the partnership makes an election to have this subsection apply,

“(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

“(C) such partnership has never been engaged in a trade or business,

“(D) substantially all of the assets of such partnership are held for investment,

“(E) at least 95 percent of the assets contributed to such partnership consist of money,

“(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

“(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering before the date which is 24 months after the date of the first capital contribution to such partnership,

“(H) the partnership agreement of such partnership has substantive restrictions on each partner’s ability to cause a redemption of the partner’s interest, and

“(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

“(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.”.

(B) INFORMATION REPORTING.—Section 6031 is amended by adding at the end the following new subsection:

“(f) ELECTING INVESTMENT PARTNERSHIPS.—In the case of any electing investment partnership (as defined in section 743(e)(6)), the information required under subsection (b) to be furnished to any partner to whom section 743(e)(2) applies shall include such information as is necessary to enable the partner to compute the amount of losses disallowed under section 743(e).”.

(5) SPECIAL RULE FOR SECURITIZATION PARTNERSHIPS.—Section 743 is amended by adding after subsection (e) the following new subsection:

“(f) EXCEPTION FOR SECURITIZATION PARTNERSHIPS.—

“(1) NO ADJUSTMENT OF PARTNERSHIP BASIS.—For purposes of this section, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer.

“(2) SECURITIZATION PARTNERSHIP.—For purposes of paragraph (1), the term ‘securitization partnership’ means any partnership the sole business activity of which is to issue securities which provide for a fixed principal (or similar) amount and which are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of.”.

(6) CLERICAL AMENDMENTS.—(A) The section heading for section 743 is amended to read as follows:

“SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS.”.

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

“Sec. 743. Special rules where section 754 election or substantial built-in loss.”.

(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period the following: “or unless there is a substantial basis reduction”.

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting “or unless there is a substantial basis reduction” after “section 754 is in effect”.

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

“(d) SUBSTANTIAL BASIS REDUCTION.—

“(1) IN GENERAL.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds \$250,000.

“(2) REGULATIONS.—

“For regulations to carry out this subsection, see section 743(d)(2).”.

(4) EXCEPTION FOR SECURITIZATION PARTNERSHIPS.—Section 734 is amended by inserting after subsection (d) the following new subsection:

“(e) EXCEPTION FOR SECURITIZATION PARTNERSHIPS.—For purposes of this section, a securitization partnership (as defined in section 743(f)) shall not be treated as having a substantial basis reduction with respect to any distribution of property to a partner.”.

(5) CLERICAL AMENDMENTS.—(A) The section heading for section 734 is amended to read as follows:

“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION.”.

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.”.

(d) EFFECTIVE DATES.—

26 USC 704 note.

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

26 USC 743 note.

(2) SUBSECTION (b).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply to transfers after the date of the enactment of this Act.

(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting “20 years” for “15 years”.

26 USC 734 note.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to distributions after the date of the enactment of this Act.

SEC. 834. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

“(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

“(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

“(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).”.

26 USC 755 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 835. REPEAL OF SPECIAL RULES FOR FASITS.

(a) **IN GENERAL.**—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed. 26 USC 860H–860L.

(b) **CONFORMING AMENDMENTS.**—

(1) Paragraph (6) of section 56(g) is amended by striking “REMIC, or FASIT” and inserting “or REMIC”.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking “a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,” and inserting “or a REMIC to which part IV of subchapter M applies,”.

(3) Paragraph (1) of section 582(c) is amended by striking “, and any regular interest in a FASIT,”.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: “An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.”.

(B) The last sentence of section 860G(a)(3) is amended by inserting “, and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property” before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding “and” at the end of subparagraph (B), by striking “, and” at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: “For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.”.

(8)(A) Section 860G(a)(3)(A) is amended by striking “or” at the end of clause (i), by inserting “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

“(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

“(II) occurs after the startup day, and

“(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.”

(B) Section 860G(a)(7)(B) is amended to read as follows:
 “(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term ‘qualified reserve fund’ means any reasonably required reserve to—

“(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

“(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.”

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking “REMIC, or FASIT” and inserting “or REMIC”.

(10) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking “and any regular interest in a FASIT,” and

(B) by striking “or FASIT” each place it appears.

(11) Subparagraph (A) of section 7701(i)(2) is amended by striking “or a FASIT”.

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 2005.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 836. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

“(e) LIMITATIONS ON BUILT-IN LOSSES.—

“(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

“(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

“(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

“(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

“(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

“(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

“(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

“(A) IN GENERAL.—If—

“(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

“(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

“(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

“(C) ELECTION TO APPLY LIMITATION TO TRANSFEROR'S STOCK BASIS.—

“(i) IN GENERAL.—If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph—

“(I) subparagraph (A) shall not apply, and

“(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

“(ii) ELECTION.—An election under clause (i) shall be included with the return of tax for the taxable year in which the transaction occurred, shall be in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.”.

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

“(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

“(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

“(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee’s aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.”.

(c) EFFECTIVE DATES.—

26 USC 362 note.

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transactions after the date of the enactment of this Act.

26 USC 334 note.

(2) LIQUIDATIONS.—The amendment made by subsection (b) shall apply to liquidations after the date of the enactment of this Act.

SEC. 837. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

“(A) obligations of the United States, money, or deposits with—

“(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

“(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;”.

26 USC 956 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 838. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined

in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act. 26 USC 163 note.

SEC. 839. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) **IN GENERAL.**—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: “The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act. 26 USC 163 note.

SEC. 840. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) **IN GENERAL.**—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

“(10) **PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.**—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act. 26 USC 121 note.

SEC. 841. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) **ORIGINAL ISSUE DISCOUNT.**—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) **SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.**—

“(i) **IN GENERAL.**—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

“(ii) **SECRETARIAL AUTHORITY.**—The Secretary may by regulation exempt transactions from the application

of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.”.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking “The Secretary” and inserting:

“(A) IN GENERAL.—The Secretary”, and

(2) by adding at the end the following new subparagraph:

“(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any item payable to a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

“(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.”.

26 USC 163 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

SEC. 842. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

“(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

“(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

“(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent

not used for a payment of tax) which the taxpayer requests in writing.

“(d) PAYMENT OF INTEREST.—

“(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), except as provided in paragraph (4), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

Regulations.
Applicability.

“(2) DISPUTABLE TAX.—

“(A) IN GENERAL.—For purposes of this section, the term ‘disputable tax’ means the amount of tax specified at the time of the deposit as the taxpayer’s reasonable estimate of the maximum amount of any tax attributable to disputable items.

“(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

“(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

“(A) DISPUTABLE ITEM.—The term ‘disputable item’ means any item of income, gain, loss, deduction, or credit if the taxpayer—

“(i) has a reasonable basis for its treatment of such item, and

“(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer’s treatment of such item.

“(B) 30-DAY LETTER.—The term ‘30-day letter’ means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

“(4) RATE OF INTEREST.—The rate of interest under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

“(e) USE OF DEPOSITS.—

“(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

“(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.”.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

“Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84-58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date

26 USC 6603
note.

that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 843. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking “satisfy liability for payment of” and inserting “make payment on”, and

(B) by inserting “full or partial” after “facilitate”.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting “full” before “payment”.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

“(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.”.

26 USC 6159
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 844. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 is amended by adding at the end the following new sentence: “In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.”.

(b) RESULT NOT OVERTURNED.—Notwithstanding the amendment made by subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury Regulation §1.1502-20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the factual situation in *Rite Aid Corporation and Subsidiary Corporations v. United States*, 255 F.3d 1357 (Fed. Cir. 2001).

26 USC 1502
note.

(c) EFFECTIVE DATE.—This section, and the amendment made by this section, shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 845. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by inserting “or equity held by the issuer (or any related party) in any other person” after “or a related party”.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

“(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.”.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

“(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term ‘disqualified debt instrument’ does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term ‘dealer in securities’ has the meaning given such term by section 475.”.

(d) CONFORMING AMENDMENT.—Paragraph (3) of section 163(l) is amended by striking “or a related party” in the material preceding subparagraph (A) and inserting “or any other person”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after October 3, 2004. 26 USC 163 note.

Part III—Leasing

SEC. 847. REFORM OF TAX TREATMENT OF CERTAIN LEASING ARRANGEMENTS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting “(notwithstanding any other subparagraph of this paragraph)” after “shall”.

(b) LIMITATION ON DEPRECIATION AND AMORTIZATION PERIODS FOR INTANGIBLES LEASED TO TAX-EXEMPT ENTITY.—

(1) COMPUTER SOFTWARE.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

“(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).”.

(2) CERTAIN INTERESTS OR RIGHTS ACQUIRED SEPARATELY.—Paragraph (2) of section 167(f) is amended by adding at the end the following new sentence: “If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).”.

(3) SECTION 197 INTANGIBLES.—Section 197(f) (relating to special rules) is amended by adding at the end the following new paragraph:

“(10) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of any section 197 intangible which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such intangible, the amortization period under this section shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).”.

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking “and” at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

“(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

“(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

“(II) which is with respect to the property subject to the lease or substantially similar property, and”.

(d) EXPANSION OF SHORT-TERM LEASE EXEMPTION FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.—Subparagraph (A) of section 168(h)(3) is amended by adding at the end the following new sentence: “Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.”.

(e) TREATMENT OF CERTAIN INDIAN TRIBAL GOVERNMENTS AS TAX-EXEMPT ENTITIES.—Section 168(h)(2)(A) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by inserting at the end the following:

“(iv) any Indian tribal government described in section 7701(a)(40).

For purposes of applying this subsection, any Indian tribal government referred to in clause (iv) shall be treated in the same manner as a State.”.

SEC. 848. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new section:

“SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

“(a) LIMITATION ON LOSSES.—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

“(b) **DISALLOWED LOSS CARRIED TO NEXT YEAR.**—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

“(c) **DEFINITIONS.**—For purposes of this section—

“(1) **TAX-EXEMPT USE LOSS.**—The term ‘tax-exempt use loss’ means, with respect to any taxable year, the amount (if any) by which—

“(A) the sum of—

“(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

“(ii) the aggregate deductions for interest properly allocable to such property, exceed

“(B) the aggregate income from such property.

“(2) **TAX-EXEMPT USE PROPERTY.**—The term ‘tax-exempt use property’ has the meaning given to such term by section 168(h), except that such section shall be applied—

“(A) without regard to paragraphs (1)(C) and (3) thereof, and

“(B) as if property described in—

“(i) section 167(f)(1)(B),

“(ii) section 167(f)(2), and

“(iii) section 197 intangible,

were tangible property.

Such term shall not include property which would (but for this sentence) be tax-exempt use property solely by reason of section 168(h)(6) if any credit is allowable under section 42 or 47 with respect to such property.

“(d) **EXCEPTION FOR CERTAIN LEASES.**—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

“(1) **AVAILABILITY OF FUNDS.**—

“(A) **IN GENERAL.**—A lease of property meets the requirements of this paragraph if (at any time during the lease term) not more than an allowable amount of funds are—

“(i) subject to any arrangement referred to in subparagraph (B), or

“(ii) set aside or expected to be set aside, to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee’s obligations or options under the lease. For purposes of clause (ii), funds shall be treated as set aside or expected to be set aside only if a reasonable person would conclude, based on the facts and circumstances, that such funds are set aside or expected to be set aside.

“(B) **ARRANGEMENTS.**—The arrangements referred to in this subparagraph include a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, prepaid rent (within the meaning of the regulations under section 467), a sinking fund arrangement, a guaranteed investment contract, financial guaranty insurance, and any similar arrangement (whether or not such arrangement provides credit support).

“(C) ALLOWABLE AMOUNT.—

“(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term ‘allowable amount’ means an amount equal to 20 percent of the lessor’s adjusted basis in the property at the time the lease is entered into.

“(ii) HIGHER AMOUNT PERMITTED IN CERTAIN CASES.—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

“(iii) OPTION TO PURCHASE.—If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

“(iv) NO ALLOWABLE AMOUNT FOR CERTAIN ARRANGEMENTS.—The allowable amount shall be zero with respect to any arrangement which involves—

“(I) a loan from the lessee to the lessor or a lender,

“(II) any deposit received, letter of credit issued, or payment undertaking agreement entered into by a lender otherwise involved in the transaction, or

“(III) in the case of a transaction which involves a lender, any credit support made available to the lessor in which any such lender does not have a claim that is senior to the lessor.

For purposes of subclause (I), the term ‘loan’ shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

“(2) LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.—

“(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if—

“(i) the lessor—

“(I) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor’s adjusted basis in the property as of that time, and

“(II) maintains such investment throughout the term of the lease, and

“(ii) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

“(B) RISK OF LOSS.—For purposes of clause (ii), the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

“(C) PARAGRAPH NOT TO APPLY TO SHORT-TERM LEASES.—This paragraph shall not apply to any lease with a lease term of 5 years or less.

“(3) LESSEE MAY NOT BEAR MORE THAN MINIMAL RISK OF LOSS.—

“(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if there is no arrangement under which the lessee bears—

“(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, or

“(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

“(B) EXCEPTION.—The Secretary may by regulations provide that the requirements of this paragraph are not met where the lessee bears more than a minimal risk of loss.

“(C) PARAGRAPH NOT TO APPLY TO SHORT-TERM LEASES.—This paragraph shall not apply to any lease with a lease term of 5 years or less.

“(4) PROPERTY WITH MORE THAN 7-YEAR CLASS LIFE.—In the case of a lease—

“(A) of property with a class life (as defined in section 168(i)(1)) of more than 7 years, other than fixed-wing aircraft and vessels, and

“(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

“(e) SPECIAL RULES.—

“(1) TREATMENT OF FORMER TAX-EXEMPT USE PROPERTY.—

“(A) IN GENERAL.—In the case of any former tax-exempt use property—

“(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

“(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as a deduction allowable under subsection (b) with respect to such property in the next taxable year.

“(B) FORMER TAX-EXEMPT USE PROPERTY.—For purposes of this subsection, the term ‘former tax-exempt use property’ means any property which—

“(i) is not tax-exempt use property for the taxable year, but

“(ii) was tax-exempt use property for any prior taxable year.

“(2) DISPOSITION OF ENTIRE INTEREST IN PROPERTY.—If during the taxable year a taxpayer disposes of the taxpayer’s entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

“(3) COORDINATION WITH SECTION 469.—This section shall be applied before the application of section 469. Applicability.

“(4) COORDINATION WITH SECTIONS 1031 AND 1033.—

“(A) IN GENERAL.—Sections 1031(a) and 1033(a) shall not apply if—

“(i) the exchanged or converted property is tax-exempt use property subject to a lease which was entered into before March 13, 2004, and which would not have met the requirements of subsection (d) had such requirements been in effect when the lease was entered into, or

“(ii) the replacement property is tax-exempt use property subject to a lease which does not meet the requirements of subsection (d).

“(B) ADJUSTED BASIS.—In the case of property acquired by the lessor in a transaction to which section 1031 or 1033 applies, the adjusted basis of such property for purposes of this section shall be equal to the lesser of—

“(i) the fair market value of the property as of the beginning of the lease term, or

“(ii) the amount which would be the lessor’s adjusted basis if such sections did not apply to such transaction.

“(f) OTHER DEFINITIONS.—For purposes of this section—

“(1) RELATED PARTIES.—The terms ‘lessor’, ‘lessee’, and ‘lender’ each include any related party (within the meaning of section 197(f)(9)(C)(i)).

“(2) LEASE TERM.—The term ‘lease term’ has the meaning given to such term by section 168(i)(3).

“(3) LENDER.—The term ‘lender’ means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

“(4) LOAN.—The term ‘loan’ includes any similar arrangement.

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

“(1) allow in appropriate cases the aggregation of property subject to the same lease, and

“(2) provide for the determination of the allocation of interest expense for purposes of this section.”.

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

“Sec. 470. Limitation on deductions allocable to property used by governments or other tax-exempt entities.”.

26 USC 470 note.

SEC. 849. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in this section, the amendments made by this part shall apply to leases entered into after March 12, 2004.

(b) EXCEPTION.—

(1) IN GENERAL.—The amendments made by this part shall not apply to qualified transportation property.

(2) QUALIFIED TRANSPORTATION PROPERTY.—For purposes of paragraph (1), the term “qualified transportation property” means domestic property subject to a lease with respect to which a formal application—

(A) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004,

(B) is approved by the Federal Transit Administration before January 1, 2006, and

(C) includes a description of such property and the value of such property.

(3) EXCHANGES AND CONVERSION OF TAX-EXEMPT USE PROPERTY.—Section 470(e)(4) of the Internal Revenue Code of 1986, as added by section 848, shall apply to property exchanged or converted after the date of the enactment of this Act.

Applicability.

(4) INTANGIBLES AND INDIAN TRIBAL GOVERNMENTS.—The amendments made subsections (b)(2), (b)(3), and (e) of section 847, and the treatment of property described in clauses (ii) and (iii) of section 470(c)(2)(B) of the Internal Revenue Code of 1986 (as added by section 848) as tangible property, shall apply to leases entered into after October 3, 2004.

Applicability.

Subtitle C—Reduction of Fuel Tax Evasion

SEC. 851. EXEMPTION FROM CERTAIN EXCISE TAXES FOR MOBILE MACHINERY.

(a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—

(1) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end the following new paragraph:

“(8) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

“(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

“(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

“(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

26 USC 4053 note.

(b) EXEMPTION FROM TAX ON USE OF CERTAIN VEHICLES.—

(1) IN GENERAL.—Section 4483 (relating to exemptions) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) EXEMPTION FOR MOBILE MACHINERY.—No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).”.

26 USC 4483
note.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(c) EXEMPTION FROM TAX ON TIRES.—

(1) IN GENERAL.—Section 4072(b)(2) is amended by adding at the end the following flush sentence: “Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).”.

26 USC 4072
note.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(d) REFUND OF FUEL TAXES.—

(1) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

“(C) USES IN MOBILE MACHINERY.—

“(i) IN GENERAL.—The term ‘off-highway business use’ shall include any use in a vehicle which meets the requirements described in clause (ii).

“(ii) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

“(I) the design-based test, and

“(II) the use-based test.

“(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

“(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

“(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

“(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

“(iv) USE-BASED TEST.—For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 7,500 miles during the taxpayer’s taxable year. This clause shall be applied without regard to use of the vehicle by any organization which is described in section 501(c) and exempt from tax under section 501(a).”.

Applicability.

(2) NO TAX-FREE SALES.—Subsection (b) of section 4082 is amended by inserting before the period at the end the following: “and such term shall not include any use described in section 6421(e)(2)(C)”.

(3) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

“(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used solely in any off-highway business use described in section 6421(e)(2)(C).”.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

26 USC 4082
note.

SEC. 852. MODIFICATION OF DEFINITION OF OFF-HIGHWAY VEHICLE.

(a) IN GENERAL.—Section 7701(a) (relating to definitions) is amended by adding at the end the following new paragraph:

“(48) OFF-HIGHWAY VEHICLES.—

“(A) OFF-HIGHWAY TRANSPORTATION VEHICLES.—

“(i) IN GENERAL.—A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle’s capability to transport a load over the public highway is substantially limited or impaired.

“(ii) DETERMINATION OF VEHICLE’S DESIGN.—For purposes of clause (i), a vehicle’s design is determined solely on the basis of its physical characteristics.

“(iii) DETERMINATION OF SUBSTANTIAL LIMITATION OR IMPAIRMENT.—For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

“(B) NONTRANSPORTATION TRAILERS AND SEMITRAILERS.—A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall take effect on the date of the enactment of this Act.

(2) FUEL TAXES.—With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32, the amendment made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

26 USC 7701
note.

SEC. 853. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following new clause:

“(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon.”.

(2) COMMERCIAL AVIATION.—Paragraph (2) of section 4081(a) is amended by adding at the end the following new subparagraph:

“(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.”.

(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

(A) IN GENERAL.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

“(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

“(A) IN GENERAL.—For purposes of paragraph (2)(C), a refueler truck, tanker, or tank wagon shall be treated as part of a terminal if—

“(i) such terminal is located within a secured area of an airport,

“(ii) any aviation-grade kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located,

“(iii) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to such terminal, and

“(iv) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with aviation-grade kerosene at such terminal.

(B) REQUIREMENTS.—A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to a terminal if such truck, tanker, or wagon—

“(i) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

“(ii) is not registered for highway use, and

“(iii) is operated by—

“(I) the terminal operator of such terminal, or

“(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

(C) REPORTING.—The Secretary shall require under section 4101(d) reporting by such terminal operator of—

“(i) any information obtained under subparagraph (B)(iii)(II), and

“(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.”.

(B) LIST OF AIRPORTS WITH SECURED TERMINALS.—Not later than December 15, 2004, the Secretary of the Treasury shall publish and maintain a list of airports which

include a secured area in which a terminal is located (within the meaning of section 4081(a)(3)(A)(i) of the Internal Revenue Code of 1986, as added by this paragraph).

(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

“(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—For purposes of paragraph (2)(C), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.”.

(5) NONTAXABLE USES.—

(A) IN GENERAL.—Section 4082 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

“(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero.”.

(B) CONFORMING AMENDMENTS.—(i) Subsection (b) of section 4082 is amended by adding at the end the following new flush sentence:

“The term ‘nontaxable use’ does not include the use of aviation-grade kerosene in an aircraft.”.

(ii) Section 4082(d) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(6) NONAIRCRAFT USE OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—Subparagraph (B) of section 4041(a)(1) is amended by adding at the end the following new sentence: “This subparagraph shall not apply to aviation-grade kerosene.”.

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting “AND KEROSENE” after “DIESEL FUEL”.

(b) COMMERCIAL AVIATION.—Section 4083 is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

“(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term ‘commercial aviation’ means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).”.

(c) REFUNDS.—

(1) IN GENERAL.—Paragraph (4) of section 6427(l) is amended to read as follows:

“(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

“(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section

4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

“(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

“(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

“(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

“(i) is registered under section 4101, and

“(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).”.

(2) TIME FOR FILING CLAIMS.—Subparagraph (A) of section 6427(i)(4) is amended—

(A) by striking “subsection (l)(5)” both places it appears and inserting “paragraph (4)(B) or (5) of subsection (l)”, and

(B) by striking “the preceding sentence” and inserting “subsection (l)(5)”.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6427(l)(2) is amended to read as follows:

“(B) in the case of aviation-grade kerosene—

“(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

“(ii) any use in commercial aviation (within the meaning of section 4083(b)).”.

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

“(c) AVIATION-GRADE KEROSENE.—

“(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

“(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

“(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

“(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

“(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax applicable under section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.”.

(B) Section 4041(d)(2) is amended by striking “section 4091” and inserting “section 4081”.

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (i).

(E) Section 4041(m)(1) is amended to read as follows:

“(1) IN GENERAL.—In the case of the sale or use of any partially exempt methanol or ethanol fuel the rate of the tax imposed by subsection (a)(2) shall be—

“(A) after September 30, 1997, and before October 1, 2005—

“(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

“(ii) in any other case, 11.3 cents per gallon, and

“(B) after September 30, 2005—

“(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

“(ii) in any other case, 4.3 cents per gallon.”.

(F) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking “, 4081, or 4091” and inserting “or 4081”.

(G) Section 6416(b)(2) is amended by striking “4091 or”.

(H) Section 6416(b)(3) is amended by striking “or 4091” each place it appears.

(I) Section 6416(d) is amended by striking “or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)”.

(J) Section 6427(j)(1) is amended by striking “, 4081, and 4091” and inserting “and 4081”.

(K)(i) Section 6427(l)(1) is amended to read as follows:

“(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under paragraph (4)(B).”.

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking “Paragraph (1)(A) shall not apply to kerosene” and inserting “Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)”.

(L) Subparagraph (B) of section 6724(d)(1), as amended by section 805, is amended by striking clause (xvi) and by redesignating the succeeding clauses accordingly.

(M) Paragraph (2) of section 6724(d), as amended by section 805, is amended by striking subparagraph (X) and by redesignating the succeeding subparagraphs accordingly.

(N) Paragraph (1) of section 9502(b) is amended by adding “and” at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

“(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and”.

(O) The last sentence of section 9502(b) is amended to read as follows:

“There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).”.

(P) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(Q) Section 9508(c)(2)(A) is amended by striking “sections 4081 and 4091” and inserting “section 4081”.

(R) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

“Subpart A. Motor and aviation fuels.

“Subpart B. Special provisions applicable to fuels tax.”.

(S) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

“Subpart A—Motor and Aviation Fuels”.

(T) The heading for subpart B of part III of subchapter A of chapter 32, as redesignated by paragraph (1), is amended to read as follows:

“Subpart B—Special Provisions Applicable to Fuels Tax”.

26 USC 4041
note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after December 31, 2004.

26 USC 4081
note.

(f) **FLOOR STOCKS TAX.**—

(1) **IN GENERAL.**—There is hereby imposed on aviation-grade kerosene held on January 1, 2005, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the sum of—

(i) the tax imposed before such date on such kerosene under section 4091 of the Internal Revenue Code of 1986, as in effect on such date, and

(ii) in the case of kerosene held exclusively for such person’s own use, the amount which such person would (but for this clause) reasonably expect (as of such date) to be paid as a refund under section 6427(l) of such Code with respect to such kerosene.

(2) **EXCEPTION FOR FUEL HELD IN AIRCRAFT FUEL TANK.**—Paragraph (1) shall not apply to kerosene held in the fuel tank of an aircraft on January 1, 2005.

(3) **LIABILITY FOR TAX AND METHOD OF PAYMENT.**—

(A) **LIABILITY FOR TAX.**—The person holding the kerosene on January 1, 2005, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) **METHOD AND TIME FOR PAYMENT.**—The tax imposed by paragraph (1) shall be paid at such time and in such

manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(4) **TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.**—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) in any case in which tax was not imposed by section 4091 of such Code, at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) of such Code to the extent of the remainder.

(5) **HELD BY A PERSON.**—For purposes of this subsection, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(6) **OTHER LAWS APPLICABLE.**—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 854. DYE INJECTION EQUIPMENT.

(a) **IN GENERAL.**—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting “by mechanical injection” after “indelibly dyed”.

(b) **DYE INJECTOR SECURITY.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) **PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.**—

(1) **IN GENERAL.**—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

“SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

“(a) **IMPOSITION OF PENALTY.**—

“(1) **TAMPERING.**—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, such person shall pay a penalty in addition to the tax (if any).

“(2) **FAILURE TO MAINTAIN SECURITY REQUIREMENTS.**—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty in addition to the tax (if any).

“(b) **AMOUNT OF PENALTY.**—The amount of the penalty under subsection (a) shall be—

Deadline.
Regulations.
26 USC 4082
note.

“(1) for each violation described in paragraph (1), the greater of—

“(A) \$25,000, or

“(B) \$10 for each gallon of fuel involved, and

“(2) for each—

“(A) failure to maintain security standards described in paragraph (2), \$1,000, and

“(B) failure to correct a violation described in paragraph (2), \$1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

“(c) JOINT AND SEVERAL LIABILITY.—

“(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

“(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.”.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

“Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.”.

26 USC 4082
note.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the 180th day after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 855. ELIMINATION OF ADMINISTRATIVE REVIEW FOR TAXABLE USE OF DYED FUEL.

(a) IN GENERAL.—Section 6715 is amended by inserting at the end the following new subsection:

“(e) NO ADMINISTRATIVE APPEAL FOR THIRD AND SUBSEQUENT VIOLATIONS.—In the case of any person who is found to be subject to the penalty under this section after a chemical analysis of such fuel and who has been penalized under this section at least twice after the date of the enactment of this subsection, no administrative appeal or review shall be allowed with respect to such finding except in the case of a claim regarding—

“(1) fraud or mistake in the chemical analysis, or

“(2) mathematical calculation of the amount of the penalty.”.

26 USC 6715
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 856. PENALTY ON UNTAXED CHEMICALLY ALTERED DYED FUEL MIXTURES.

(a) IN GENERAL.—Section 6715(a) (relating to dyed fuel sold for use or used in taxable use, etc.) is amended by striking “or” in paragraph (2), by inserting “or” at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

“(4) any person who has knowledge that a dyed fuel which has been altered as described in paragraph (3) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel.”.

(b) CONFORMING AMENDMENT.—Section 6715(a)(3) is amended by striking “alters, or attempts to alter,” and inserting “alters, chemically or otherwise, or attempts to so alter.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

26 USC 6715
note.

SEC. 857. TERMINATION OF DYED DIESEL USE BY INTERCITY BUSES.

(a) IN GENERAL.—Paragraph (3) of section 4082(b) (relating to nontaxable use) is amended to read as follows:

“(3) any use described in section 4041(a)(1)(C)(iii)(II).”.

(b) ULTIMATE VENDOR REFUND.—Subsection (b) of section 6427 is amended by adding at the end the following new paragraph:

“(4) REFUNDS FOR USE OF DIESEL FUEL IN CERTAIN INTERCITY BUSES.—With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

“(A) is registered under section 4101, and

“(B) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).”.

(c) PAYMENT OF REFUNDS.—Subparagraph (A) of section 6427(i)(4), as amended by this Act, is amended by inserting “subsections (b)(4) and” after “filed under”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

26 USC 4082
note.

SEC. 858. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as amended by this Act, is amended by striking “and” at the end of clause (i) and by inserting after clause (ii) the following new clause:

“(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

26 USC 4083
note.

SEC. 859. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6716 the following new section:

“SEC. 6717. REFUSAL OF ENTRY.

“(a) IN GENERAL.—In addition to any other penalty provided by law, any person who refuses to admit entry or refuses to permit any other action by the Secretary authorized by section 4083(d)(1) shall pay a penalty of \$1,000 for such refusal.

“(b) JOINT AND SEVERAL LIABILITY.—

“(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated

in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

“(2) **AFFILIATED GROUPS.**—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

“(c) **REASONABLE CAUSE EXCEPTION.**—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(b) **CONFORMING AMENDMENTS.**—(1) Section 4083(d)(3), as amended by this Act, is amended—

(A) by striking “ENTRY.—The penalty” and inserting: “ENTRY.—

“(A) **FORFEITURE.**—The penalty”, and

(B) by adding at the end the following new subparagraph:

“(B) **ASSESSABLE PENALTY.**—For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.”.

(2) The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by inserting after the item relating to section 6716 the following new item:

“Sec. 6717. Refusal of entry.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2005.

SEC. 860. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) **IN GENERAL.**—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting “by pipeline or vessel” after “transferred in bulk”, and

(2) by inserting “, the operator of such pipeline or vessel,” after “the taxable fuel”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on March 1, 2005.

(c) **PUBLICATION OF REGISTERED PERSONS.**—Beginning on January 1, 2005, the Secretary of the Treasury (or the Secretary’s delegate) shall periodically publish under section 6103(k)(7) of the Internal Revenue Code of 1986 a current list of persons registered under section 4101 of such Code who are required to register under such section.

SEC. 861. DISPLAY OF REGISTRATION.

(a) **IN GENERAL.**—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking “Every” and inserting the following:

“(1) **IN GENERAL.**—Every”, and

(2) by adding at the end the following new paragraph:

“(2) **DISPLAY OF REGISTRATION.**—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.”.

(b) **CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.**—

26 USC 4083
note.

26 USC 4081
note.
Effective date.
26 USC 4101
note.

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6717 the following new section:

“SEC. 6718. FAILURE TO DISPLAY TAX REGISTRATION ON VESSELS.

“(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of \$500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

“(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the aggregate number of penalties (if any) imposed with respect to prior months by this section on such person (or a related person or any predecessor of such person or related person).

Applicability.

“(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by inserting after the item relating to section 6717 the following new item:

“Sec. 6718. Failure to display tax registration on vessels.”.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall take effect on January 1, 2005.

26 USC 4101
note.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to penalties imposed after December 31, 2004.

26 USC 6718
note.

SEC. 862. REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.

(a) IN GENERAL.—Section 4101(a), as amended by this Act, is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

“(2) REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.—The Secretary shall require registration by any person which—

“(A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or

“(B) holds an inventory position with respect to a taxable fuel in such a terminal.”.

(b) TECHNICAL AMENDMENT.—Section 6718(a), as added by this Act, is amended by striking “section 4101(a)(2)” and inserting “section 4101(a)(3)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2005.

26 USC 4101
note.

SEC. 863. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting “(\$10,000 in the case of a failure to register under section 4101)” after “\$50”.

(b) **INCREASED CRIMINAL PENALTY.**—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking “\$5,000” and inserting “\$10,000”.

(c) **ASSESSABLE PENALTY FOR FAILURE TO REGISTER.**—

(1) **IN GENERAL.**—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6718 at the end the following new section:

“SEC. 6719. FAILURE TO REGISTER.

“(a) **FAILURE TO REGISTER.**—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

“(b) **AMOUNT OF PENALTY.**—The amount of the penalty under subsection (a) shall be—

“(1) \$10,000 for each initial failure to register, and

“(2) \$1,000 for each day thereafter such person fails to register.

“(c) **REASONABLE CAUSE EXCEPTION.**—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(2) **CLERICAL AMENDMENT.**—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by inserting after the item relating to section 6718 the following new item:

“Sec. 6719. Failure to register.”.

(d) **ASSESSABLE PENALTY FOR FAILURE TO REPORT.**—

(1) **IN GENERAL.**—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

“SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

“(a) **IN GENERAL.**—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of \$10,000 in addition to the tax (if any).

“(b) **FAILURES SUBJECT TO PENALTY.**—For purposes of subsection (a), the failures described in this subsection are—

“(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

“(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

“(c) **REASONABLE CAUSE EXCEPTION.**—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.”.

(2) **CLERICAL AMENDMENT.**—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

“Sec. 6725. Failure to report information under section 4101.”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to penalties imposed after December 31, 2004.

SEC. 864. ELECTRONIC FILING OF REQUIRED INFORMATION REPORTS.

(a) **IN GENERAL.**—Section 4101(d) is amended by adding at the end the following new flush sentence:

“Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply on January 1, 2006. 26 USC 4101 note.

SEC. 865. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) **IN GENERAL.**—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

“(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

“(A) **IN GENERAL.**—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101.

“(B) **TIMING OF CLAIMS.**—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2005. 26 USC 6416 note.

SEC. 866. TWO-PARTY EXCHANGES.

(a) **IN GENERAL.**—Subpart C of part III of subchapter A of chapter 32, as amended by this Act, is amended by inserting after section 4104 the following new section:

“SEC. 4105. TWO-PARTY EXCHANGES.

“(a) **IN GENERAL.**—In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(ii).

“(b) **TWO-PARTY EXCHANGE.**—The term ‘two-party exchange’ means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

“(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

“(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

“(3) The terminal operator in its books and records treats the receiving person as the person that removes the product

across the terminal rack for purposes of reporting the transaction to the Secretary.

“(4) The transaction is the subject of a written contract.”.

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding after the last item the following new item:

“Sec. 4105. Two-party exchanges.”.

26 USC 4105
note.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 867. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) PRORATION OF TAX WHERE VEHICLE SOLD.—

(1) IN GENERAL.—Subparagraph (A) of section 4481(c)(2) (relating to where vehicle destroyed or stolen) is amended by striking “destroyed or stolen” both places it appears and inserting “sold, destroyed, or stolen”.

(2) CONFORMING AMENDMENT.—The heading for section 4481(c)(2) is amended by striking “DESTROYED OR STOLEN” and inserting “SOLD, DESTROYED, OR STOLEN”.

(b) REPEAL OF INSTALLMENT PAYMENT.—(1) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(2) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(c) ELECTRONIC FILING.—Section 4481 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

“(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.”.

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 is amended by striking subsection (f).

26 USC 4481
note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

SEC. 868. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

“(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715, 6715A, 6717, 6718, 6719, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).”.

(b) CONFORMING AMENDMENTS.—(1) The heading of subsection (b) of section 9503 is amended by inserting “AND PENALTIES” after “TAXES”.

(2) The heading of paragraph (1) of section 9503(b) is amended by striking “IN GENERAL” and inserting “CERTAIN TAXES”.

26 USC 9503
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed on or after the date of the enactment of this Act.

SEC. 869. SIMPLIFICATION OF TAX ON TIRES.

(a) **IN GENERAL.**—Subsection (a) of section 4071 is amended to read as follows:

“(a) **IMPOSITION AND RATE OF TAX.**—There is hereby imposed on taxable tires sold by the manufacturer, producer, or importer thereof a tax at the rate of 9.45 cents (4.725 cents in the case of a biasply tire or super single tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds.”.

(b) **BIASPLY AND SUPER SINGLE TIRES.**—Section 4072 is amended by adding at the end the following new subsections:

“(c) **BIASPLY.**—For purposes of this part, the term ‘biasply tire’ means a pneumatic tire on which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

“(d) **SUPER SINGLE TIRE.**—For purposes of this part, the term ‘super single tire’ means a single tire greater than 13 inches in cross section width designed to replace 2 tires in a dual fitment.”.

(b) **TAXABLE TIRE.**—Section 4072, as amended by subsection (a), is amended by redesignating subsections (a), (b), (c), and (d) as subsections (b), (c), (d), and (e) respectively, and by inserting before subsection (b) (as so redesignated) the following new subsection:

“(a) **TAXABLE TIRE.**—For purposes of this chapter, the term ‘taxable tire’ means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use.”.

(c) **EXEMPTION FOR TIRES SOLD TO DEPARTMENT OF DEFENSE.**—Section 4073 is amended to read as follows:

“SEC. 4073. EXEMPTIONS.

“The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.”.

(d) **CONFORMING AMENDMENTS.**—(1) Section 4071 is amended by striking subsection (c) and by moving subsection (e) after subsection (b) and redesignating subsection (e) as subsection (c).

(2) The item relating to section 4073 in the table of sections for part II of subchapter A of chapter 32 is amended to read as follows:

“Sec. 4073. Exemptions.”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to sales in calendar years beginning more than 30 days after the date of the enactment of this Act. 26 USC 4071 note.

SEC. 870. TRANSMIX AND DIESEL FUEL BLEND STOCKS TREATED AS TAXABLE FUEL.

(a) **IN GENERAL.**—Paragraph (3) of section 4083(a) is amended to read as follows:

“(3) **DIESEL FUEL.**—

“(A) **IN GENERAL.**—The term ‘diesel fuel’ means—

“(i) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train,

“(ii) transmix, and

“(iii) diesel fuel blend stocks identified by the Secretary.

“(B) TRANSMIX.—For purposes of subparagraph (A), the term ‘transmix’ means a byproduct of refined products pipeline operations created by the mixing of different specification products during pipeline transportation.”.

(b) CONFORMING AMENDMENT.—Subsection (h) of section 6427 is amended to read as follows:

“(h) BLEND STOCKS NOT USED FOR PRODUCING TAXABLE FUEL.—

“(1) GASOLINE BLEND STOCKS OR ADDITIVES NOT USED FOR PRODUCING GASOLINE.—Except as provided in subsection (k), if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive.

“(2) DIESEL FUEL BLEND STOCKS OR ADDITIVES NOT USED FOR PRODUCING DIESEL.—Except as provided in subsection (k), if any diesel fuel blend stock is not used by any person to produce diesel fuel and such person establishes that the ultimate use of such diesel fuel blend stock is not to produce diesel fuel, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such diesel fuel blend stock.”.

26 USC 4083
note.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to fuel removed, sold, or used after December 31, 2004.

SEC. 871. STUDY REGARDING FUEL TAX COMPLIANCE.

Deadline.
Reports.

(a) IN GENERAL.—Not later than January 31, 2005, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report regarding compliance with the tax imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32 of the Internal Revenue Code of 1986. Such report shall include the information, analysis, and recommendations specified in subsections (b), (c), and (d).

(b) TAXABLE FUEL BLENDSTOCKS.—The Secretary shall identify chemical products to be added to the list of blendstocks from lab analysis of fuel samples collected by the Internal Revenue Service which have been blended with taxable fuel but are not treated as blendstocks. The Secretary shall include statistics regarding the frequency in which a chemical product has been collected, and whether the sample contained an above normal concentration of the chemical product.

(c) WASTE PRODUCTS ADDED TO TAXABLE FUELS.—The report shall include a discussion of Internal Revenue Service findings regarding the addition of waste products to taxable fuel and any recommendations to address the taxation of such products.

(d) ERRONEOUS CLAIMS OF FUEL TAX EXEMPTIONS.—The report shall include a discussion of Internal Revenue Service findings regarding sales of taxable fuel to entities claiming exempt status as a State or local government and the frequency of erroneous certifications of tax exempt status. The Secretary, in consultation with representatives of State and local governments, shall provide

recommendations to address such erroneous claims, including recommendations on the feasibility of a State maintained list of exempt governmental entities within the State.

Subtitle D—Other Revenue Provisions

SEC. 881. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

“(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

“(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term ‘qualified tax collection contract’ means any contract which—

“(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

“(A) to locate and contact any taxpayer specified by the Secretary,

“(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 5 years, and

“(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

“(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

“(3) prohibits subcontractors from—

“(A) having contacts with taxpayers,

“(B) providing quality assurance services, and

“(C) composing debt collection notices, and

“(4) permits subcontractors to perform other services only with the approval of the Secretary.

“(c) FEES.—The Secretary may retain and use—

“(1) an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract, and

“(2) an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service.

The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

Records.

“(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

“(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C.

1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

“(f) CROSS REFERENCES.—

“(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

“(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(g).”.

(2) CONFORMING AMENDMENTS.—(A) Section 7809(a) is amended by inserting “6306,” before “7651”.

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

“Sec. 6306. Qualified tax collection contracts.”.

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.

Applicability.

“(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

“(b) MODIFICATIONS.—For purposes of subsection (a):

“(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

“(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

“(3) Such civil action shall not be an exclusive remedy with respect to such person.

“(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.”.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

“Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts.”.

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

“(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same

extent and in the same manner as such order or action applies to the Secretary.”.

(d) **INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.**—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

26 USC 7804
note.

“(e) **INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.**—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.”.

(e) **BIENNIAL REPORT.**—The Secretary of the Treasury shall biennially submit (beginning in 2005) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with respect to qualified tax collection contracts under section 6306 of the Internal Revenue Code of 1986 (as added by this section) which includes—

26 USC 6306
note.

- (1) a complete cost benefit analysis,
- (2) the impact of such contracts on collection enforcement staff levels in the Internal Revenue Service,
- (3) the impact of such contracts on the total number and amount of unpaid assessments, and on the number and amount of assessments collected by Internal Revenue Service personnel after initial contact by a contractor,
- (4) the amounts collected and the collection costs incurred (directly and indirectly) by the Internal Revenue Service,
- (5) an evaluation of contractor performance,
- (6) a disclosure safeguard report in a form similar to that required under section 6103(p)(5) of such Code, and
- (7) a measurement plan which includes a comparison of the best practices used by the private collectors with the Internal Revenue Service’s own collection techniques and mechanisms to identify and capture information on successful collection techniques used by the contractors which could be adopted by the Internal Revenue Service.

(f) **EFFECTIVE DATE.**—The amendments made to this section shall take effect on the date of the enactment of this Act.

26 USC 6306
note.

SEC. 882. TREATMENT OF CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) **IN GENERAL.**—Subparagraph (B) of section 170(e)(1) is amended by striking “or” at the end of clause (i), by adding “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) of any patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property,”.

(b) **CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.**—Section

170 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—

“(1) TREATMENT AS ADDITIONAL CONTRIBUTION.—In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

“(2) REDUCTION IN ADDITIONAL DEDUCTIONS TO EXTENT OF INITIAL DEDUCTION.—With respect to any qualified intellectual property contribution, the deduction allowed under subsection (a) shall be increased under paragraph (1) only to the extent that the aggregate amount of such increases with respect to such contribution exceed the amount allowed as a deduction under subsection (a) with respect to such contribution determined without regard to this subsection.

“(3) QUALIFIED DONEE INCOME.—For purposes of this subsection, the term ‘qualified donee income’ means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

“(4) ALLOCATION OF QUALIFIED DONEE INCOME TO TAXABLE YEARS OF DONOR.—For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

“(5) 10-YEAR LIMITATION.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

“(6) BENEFIT LIMITED TO LIFE OF INTELLECTUAL PROPERTY.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

“(7) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term ‘applicable percentage’ means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

“Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

“(8) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTION.—For purposes of this subsection, the term ‘qualified intellectual property contribution’ means any charitable contribution of qualified intellectual property—

“(A) the amount of which taken into account under this section is reduced by reason of subsection (e)(1), and

“(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

“(9) QUALIFIED INTELLECTUAL PROPERTY.—For purposes of this subsection, the term ‘qualified intellectual property’ means property described in subsection (e)(1)(B)(iii) (other than property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

“(10) OTHER SPECIAL RULES.—

“(A) APPLICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Any increase under this subsection of the deduction provided under subsection (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

“(B) NET INCOME DETERMINED BY DONEE.—The net income taken into account under paragraph (3) shall not exceed the amount of such income reported under section 6050L(b)(1).

“(C) DEDUCTION LIMITED TO 12 TAXABLE YEARS.—Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

“(D) REGULATIONS.—The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

“(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

“(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee’s exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.”.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6050L (relating to returns relating to certain dispositions of donated property) is amended to read as follows:

“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED PROPERTY.

“(a) DISPOSITIONS OF DONATED PROPERTY.—

“(1) IN GENERAL.—If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

- “(A) the name, address, and TIN of the donor,
- “(B) a description of the property,
- “(C) the date of the contribution,
- “(D) the amount received on the disposition, and
- “(E) the date of such disposition.

“(2) DEFINITIONS.—For purposes of this subsection:

“(A) CHARITABLE DEDUCTION PROPERTY.—The term ‘charitable deduction property’ means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds \$5,000.

“(B) PUBLICLY TRADED SECURITIES.—The term ‘publicly traded securities’ means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

“(b) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTIONS.—

“(1) IN GENERAL.—Each donee with respect to a qualified intellectual property contribution shall make a return (at such time and in such form and manner as the Secretary may by regulations prescribe) with respect to each specified taxable year of the donee showing—

- “(A) the name, address, and TIN of the donor,
- “(B) a description of the qualified intellectual property contributed,
- “(C) the date of the contribution, and
- “(D) the amount of net income of the donee for the

taxable year which is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section).

“(2) DEFINITIONS.—For purposes of this subsection:

“(A) IN GENERAL.—Terms used in this subsection which are also used in section 170(m) have the respective meanings given such terms in such section.

“(B) SPECIFIED TAXABLE YEAR.—The term ‘specified taxable year’ means, with respect to any qualified intellectual property contribution, any taxable year of the donee any portion of which is part of the 10-year period beginning on the date of such contribution.

“(c) STATEMENT TO BE FURNISHED TO DONORS.—Every person making a return under subsection (a) or (b) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.”.

(2) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter A of chapter 61 is amended by striking the item relating to section 6050L and inserting the following new item:

“Sec. 6050L. Returns relating to certain donated property.”.

(d) COORDINATION WITH APPRAISAL REQUIREMENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as added by this Act, is amended by inserting “subsection (e)(1)(B)(iii) or” before “section 1221(a)(1)”.

(e) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after June 3, 2004.

SEC. 883. INCREASED REPORTING FOR NONCASH CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding after paragraph (10) the following new paragraph:

“(11) QUALIFIED APPRAISAL AND OTHER DOCUMENTATION FOR CERTAIN CONTRIBUTIONS.—

“(A) IN GENERAL.—

“(i) DENIAL OF DEDUCTION.—In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than \$500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

“(ii) EXCEPTIONS.—

“(I) READILY VALUED PROPERTY.—Subparagraphs (C) and (D) shall not apply to cash, property described in section 1221(a)(1), publicly traded securities (as defined in section 6050L(a)(2)(B)), and any qualified vehicle described in paragraph (12)(A)(ii) for which an acknowledgement under paragraph (12)(B)(iii) is provided.

“(II) REASONABLE CAUSE.—Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

“(B) PROPERTY DESCRIPTION FOR CONTRIBUTIONS OF MORE THAN \$500.—In the case of contributions of property for which a deduction of more than \$500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made

a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

“(C) QUALIFIED APPRAISAL FOR CONTRIBUTIONS OF MORE THAN \$5,000.—In the case of contributions of property for which a deduction of more than \$5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

“(D) SUBSTANTIATION FOR CONTRIBUTIONS OF MORE THAN \$500,000.—In the case of contributions of property for which a deduction of more than \$500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

“(E) QUALIFIED APPRAISAL.—For purposes of this paragraph, the term ‘qualified appraisal’ means, with respect to any property, an appraisal of such property which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.

“(F) AGGREGATION OF SIMILAR ITEMS OF PROPERTY.—For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

Applicability.

“(G) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

“(H) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.”

26 USC 170 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after June 3, 2004.

SEC. 884. DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules), as amended by this Act, is amended by inserting after paragraph (11) the following new paragraph:

“(12) CONTRIBUTIONS OF USED MOTOR VEHICLES, BOATS, AND AIRPLANES.—

“(A) IN GENERAL.—In the case of a contribution of a qualified vehicle the claimed value of which exceeds \$500—

“(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the

requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and

“(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

“(B) CONTENT OF ACKNOWLEDGEMENT.—An acknowledgement meets the requirements of this subparagraph if it includes the following information:

“(i) The name and taxpayer identification number of the donor.

“(ii) The vehicle identification number or similar number.

“(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies—

“(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

“(II) the gross proceeds from the sale, and

“(III) a statement that the deductible amount may not exceed the amount of such gross proceeds.

“(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply—

“(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

“(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

“(C) CONTEMPORANEOUS.—For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of—

“(i) the sale of the qualified vehicle, or

“(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

“(D) INFORMATION TO SECRETARY.—A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

“(E) QUALIFIED VEHICLE.—For purposes of this paragraph, the term ‘qualified vehicle’ means any—

“(i) motor vehicle manufactured primarily for use on public streets, roads, and highways,

“(ii) boat, or

“(iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

“(F) REGULATIONS OR OTHER GUIDANCE.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph.

The Secretary may prescribe regulations or other guidance which exempts sales by the donee organization which are in direct furtherance of such organization's charitable purpose from the requirements of subparagraphs (A)(ii) and (B)(iv)(II).".

(b) **PENALTY FOR FRAUDULENT ACKNOWLEDGMENTS.**—

(1) **IN GENERAL.**—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6719 the following new section:

“SEC. 6720. FRAUDULENT ACKNOWLEDGMENTS WITH RESPECT TO DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

“Any donee organization required under section 170(f)(12)(A) to furnish a contemporaneous written acknowledgment to a donor which knowingly furnishes a false or fraudulent acknowledgment, or which knowingly fails to furnish such acknowledgment in the manner, at the time, and showing the information required under section 170(f)(12), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty equal to—

“(1) in the case of an acknowledgment with respect to a qualified vehicle to which section 170(f)(12)(A)(ii) applies, the greater of—

“(A) the product of the highest rate of tax specified in section 1 and the sales price stated on the acknowledgment, or

“(B) the gross proceeds from the sale of such vehicle, and

“(2) in the case of an acknowledgment with respect to any other qualified vehicle to which section 170(f)(12) applies, the greater of—

“(A) the product of the highest rate of tax specified in section 1 and the claimed value of the vehicle, or

“(B) \$5,000.”.

(2) **CONFORMING AMENDMENT.**—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by inserting after the item relating to section 6719 the following new item:

“Sec. 6720. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes.”.

26 USC 170 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to contributions made after December 31, 2004.

SEC. 885. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS.

(a) **IN GENERAL.**—Subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new section:

“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED COMPENSATION UNDER NONQUALIFIED DEFERRED COMPENSATION PLANS.

“(a) **RULES RELATING TO CONSTRUCTIVE RECEIPT.**—

“(1) **PLAN FAILURES.**—

“(A) **GROSS INCOME INCLUSION.**—

“(i) IN GENERAL.—If at any time during a taxable year a nonqualified deferred compensation plan—

“(I) fails to meet the requirements of paragraphs (2), (3), and (4), or

“(II) is not operated in accordance with such requirements,
all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

“(ii) APPLICATION ONLY TO AFFECTED PARTICIPANTS.—Clause (i) shall only apply with respect to all compensation deferred under the plan for participants with respect to whom the failure relates.

“(B) INTEREST AND ADDITIONAL TAX PAYABLE WITH RESPECT TO PREVIOUSLY DEFERRED COMPENSATION.—

“(i) IN GENERAL.—If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year shall be increased by the sum of—

“(I) the amount of interest determined under clause (ii), and

“(II) an amount equal to 20 percent of the compensation which is required to be included in gross income.

“(ii) INTEREST.—For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

“(2) DISTRIBUTIONS.—

“(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

“(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

“(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

“(iii) death,

“(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

“(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

“(vi) the occurrence of an unforeseeable emergency.

“(B) SPECIAL RULES.—

“(i) SPECIFIED EMPLOYEES.—In the case of any specified employee, the requirement of subparagraph (A)(i) is met only if distributions may not be made

before the date which is 6 months after the date of separation from service (or, if earlier, the date of death of the employee). For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise.

“(ii) UNFORESEEABLE EMERGENCY.—For purposes of subparagraph (A)(vi)—

“(I) IN GENERAL.—The term ‘unforeseeable emergency’ means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant’s spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

“(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant’s assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

“(C) DISABLED.—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

“(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

“(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant’s employer.

“(3) ACCELERATION OF BENEFITS.—The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

“(4) ELECTIONS.—

“(A) IN GENERAL.—The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

“(B) INITIAL DEFERRAL DECISION.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant’s election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations.

“(ii) FIRST YEAR OF ELIGIBILITY.—In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

“(iii) PERFORMANCE-BASED COMPENSATION.—In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of the period.

Deadline.

“(C) CHANGES IN TIME AND FORM OF DISTRIBUTION.—

The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

“(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

“(ii) in the case of an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the first payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

“(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

“(b) RULES RELATING TO FUNDING.—

“(1) OFFSHORE PROPERTY IN A TRUST.—In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

“(A) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or

“(B) at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

“(2) EMPLOYER’S FINANCIAL HEALTH.—In the case of compensation deferred under a nonqualified deferred compensation

plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

“(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer’s financial health, or

“(B) the date on which assets are so restricted, whether or not such assets are available to satisfy claims of general creditors.

“(3) INCOME INCLUSION FOR OFFSHORE TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

“(4) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO TRANSFERRED PROPERTY.—

“(A) IN GENERAL.—If amounts are required to be included in gross income by reason of paragraph (1) or (2) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

“(i) the amount of interest determined under subparagraph (B), and

“(ii) an amount equal to 20 percent of the amounts required to be included in gross income.

“(B) INTEREST.—For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1) or (2) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

“(c) NO INFERENCE ON EARLIER INCOME INCLUSION OR REQUIREMENT OF LATER INCLUSION.—Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

“(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

“(1) NONQUALIFIED DEFERRED COMPENSATION PLAN.—The term ‘nonqualified deferred compensation plan’ means any plan that provides for the deferral of compensation, other than—

“(A) a qualified employer plan, and

“(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

“(2) QUALIFIED EMPLOYER PLAN.—The term ‘qualified employer plan’ means—

“(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) (without regard to subparagraph (A)(iii)),

“(B) any eligible deferred compensation plan (within the meaning of section 457(b)), and

“(C) any plan described in section 415(m).

“(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The term ‘plan’ includes any agreement or arrangement, including an agreement or arrangement that includes one person.

“(4) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person’s rights to such compensation are conditioned upon the future performance of substantial services by any individual.

“(5) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

“(6) AGGREGATION RULES.—Except as provided by the Secretary, rules similar to the rules of subsections (b) and (c) of section 414 shall apply.

Applicability.

“(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

“(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

“(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

“(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

“(4) defining financial health for purposes of subsection (b)(2), and

“(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.”.

(b) TREATMENT OF DEFERRED AMOUNTS.—

(1) W-2 FORMS.—

(A) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking “and” at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting “, and”, and by inserting after paragraph (12) the following new paragraph:

“(13) the total amount of deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409A(d)).”.

(B) THRESHOLD.—Subsection (a) of section 6051 is amended by adding at the end the following: “In the case of the amounts required to be shown by paragraph (13), the Secretary may (by regulation) establish a minimum amount of deferrals below which paragraph (13) does not apply.”.

(2) WAGE WITHHOLDING.—Section 3401(a) (defining wages) is amended by adding at the end the following flush sentence:

	<p>“The term ‘wages’ includes any amount includible in gross income of an employee under section 409A and payment of such amount shall be treated as having been made in the taxable year in which the amount is so includible.”.</p>
26 USC 6041.	<p>(3) OTHER REPORTING.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:</p>
Applicability.	<p>“(g) NONQUALIFIED DEFERRED COMPENSATION.—Subsection (a) shall apply to—</p> <p>“(1) any deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409A(d)), whether or not paid, except that this paragraph shall not apply to deferrals which are required to be reported under section 6051(a)(13) (without regard to any de minimis exception), and</p> <p>“(2) any amount includible under section 409A and which is not treated as wages under section 3401(a).”.</p> <p>(c) CLERICAL AMENDMENT.—The table of sections for such subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new item:</p> <p>“Sec. 409A. Inclusion in gross income of deferred compensation under non-qualified deferred compensation plans.”.</p>
26 USC 409A note.	<p>(d) EFFECTIVE DATE.—</p> <p>(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred after December 31, 2004.</p> <p>(2) SPECIAL RULES.—</p> <p>(A) EARNINGS.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.</p> <p>(B) MATERIAL MODIFICATIONS.—For purposes of this subsection, amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, unless such modification is pursuant to the guidance issued under subsection (f).</p> <p>(3) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—The amendments made by this section shall not apply to any nonelective deferred compensation to which section 457 of the Internal Revenue Code of 1986 does not apply by reason of section 457(e)(12) of such Code, but only if such compensation is provided under a nonqualified deferred compensation plan—</p> <p>(A) which was in existence on May 1, 2004,</p> <p>(B) which was providing nonelective deferred compensation described in such section 457(e)(12) on such date, and</p> <p>(C) which is established or maintained by an organization incorporated on July 2, 1974.</p> <p>If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.</p> <p>(e) GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance</p>
Deadline. 26 USC 409A note.	

on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.

(f) **GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS.**—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before December 31, 2004, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), be amended—

Deadline.
26 USC 409A
note.

(1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with regard to amounts deferred after December 31, 2004, but only if amounts subject to the termination or cancellation are includible in income of the participant as earned (or, if later, when no longer subject to substantial risk of forfeiture), and

(2) to conform to the requirements of such section 409A with regard to amounts deferred after December 31, 2004.

SEC. 886. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) **IN GENERAL.**—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) **CONFORMING AMENDMENTS.**—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) **SECTION 1245.**—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

26 USC 197 note.

SEC. 887. MODIFICATION OF CONTINUING LEVY ON PAYMENTS TO FEDERAL VENDORS.

(a) **IN GENERAL.**—Section 6331(h) (relating to continuing levy on certain payments) is amended by adding at the end the following new paragraph:

“(3) **INCREASE IN LEVY FOR CERTAIN PAYMENTS.**—Paragraph (1) shall be applied by substituting ‘100 percent’ for ‘15 percent’ in the case of any specified payment due to a vendor of goods or services sold or leased to the Federal Government.”.

Applicability.

26 USC 6331
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 888. MODIFICATION OF STRADDLE RULES.

(a) **RULES RELATING TO IDENTIFIED STRADDLES.**—

(1) **IN GENERAL.**—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

“(A) **IN GENERAL.**—In the case of any straddle which is an identified straddle—

“(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

“(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

“(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.”.

(2) **IDENTIFIED STRADDLE.**—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

“(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and”, and

(B) by adding at the end the following new flush sentence:

Regulations.

“The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.”.

(3) **UNRECOGNIZED GAIN.**—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) **SPECIAL RULE FOR IDENTIFIED STRADDLES.**—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.”.

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—

For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

“(A) terminated the position for its fair market value immediately before the settlement, and

“(B) sold the property so delivered by the taxpayer at its fair market value.”.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

“(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph

(1)—

“(A) IN GENERAL.—In the case of stock, the term ‘personal property’ includes stock only if—

“(i) such stock is of a type which is actively traded and at least 1 of the positions offsetting such stock is a position with respect to such stock or substantially similar or related property, or

“(ii) such stock is of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

“(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.”.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking “; except that the term ‘personal property’ shall include stock”.

(d) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—The last sentence of section 246(c) is amended by inserting: “, other than a qualified covered call option to which section 1092(f) applies” before the period at the end.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act. 26 USC 246 note.

SEC. 889. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Paragraph (1) of section 4132(a) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

“(I) Any vaccine against hepatitis A.”.

(b) EFFECTIVE DATE.—

26 USC 4132 note.

Applicability.

(1) **SALES, ETC.**—The amendments made by subsection (a) shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) **DELIVERIES.**—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 890. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) **IN GENERAL.**—Section 4132(a)(1) (defining taxable vaccine), as amended by this Act, is amended by adding at the end the following new subparagraph:

“(N) Any trivalent vaccine against influenza.”

(b) **EFFECTIVE DATE.**—

(1) **SALES, ETC.**—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act, or

(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

(2) **DELIVERIES.**—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 891. EXTENSION OF IRS USER FEES.

(a) **IN GENERAL.**—Section 7528(c) (relating to termination) is amended by striking “December 31, 2004” and inserting “September 30, 2014”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

SEC. 892. COBRA FEES.

(a) **USE OF MERCHANDISE PROCESSING FEE.**—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by aligning subparagraph (B) with subparagraph (A); and

(2) in paragraph (2), by striking “commercial operations” and all that follows through “processing.” and inserting “customs revenue functions as defined in section 415 of the Homeland Security Act of 2002 (other than functions performed by the Office of International Affairs referred to in section 415(8) of that Act), and for automation (including the Automation Commercial Environment computer system), and for no other purpose. To the extent that funds in the Customs User Fee Account are insufficient to pay the costs of such customs revenue functions, customs duties in an amount equal to the amount of such insufficiency shall be available, to the extent

26 USC 4132
note.

26 USC 7528
note.

provided for in appropriations Acts, to pay the costs of such customs revenue functions in the amount of such insufficiency, and shall be available for no other purpose. The provisions of the first and second sentences of this paragraph specifying the purposes for which amounts in the Customs User Fee Account may be made available shall not be superseded except by a provision of law which specifically modifies or supersedes such provisions.”

(b) REIMBURSEMENT OF APPROPRIATIONS FROM COBRA FEES.—Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended by adding at the end the following:

“(E) Nothing in this paragraph shall be construed to preclude the use of appropriated funds, from sources other than the fees collected under subsection (a), to pay the costs set forth in clauses (i), (ii), and (iii) of subparagraph (A).”

(c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR COLLECTING FEES; STANDARD FOR SETTING FEES.—

(1) SENSE OF CONGRESS.—The Congress finds that—

19 USC 58c note.

(A) the fees set forth in paragraphs (1) through (8) of subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 have been reasonably related to the costs of providing customs services in connection with the activities or items for which the fees have been charged under such paragraphs; and

(B) the fees collected under such paragraphs have not exceeded, in the aggregate, the amounts paid for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activities or items for which the fees were charged under such paragraphs.

(2) EFFECTIVE PERIOD; STANDARD FOR SETTING FEES.—Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended to read as follows:

19 USC 58c.

“(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) after September 30, 2014.

“(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) after September 30, 2014.

“(ii) In fiscal year 2006 and in each succeeding fiscal year for which fees under paragraphs (1) through (8) of subsection (a) are authorized—

“(I) the Secretary of the Treasury shall charge fees under each such paragraph in amounts that are reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged under such paragraph, except that in no case may the fee charged under any such paragraph exceed by more than 10 percent the amount otherwise prescribed by such paragraph;

“(II) the amount of fees collected under such paragraphs may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fees are charged under such paragraphs;

“(III) a fee may not be collected under any such paragraph except to the extent such fee will be expended to pay the costs described in subsection (f)(3)(A) incurred in providing

customs services in connection with the activity or item for which the fee is charged under such paragraph; and

“(IV) any fee collected under any such paragraph shall be available for expenditure only to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph.”.

19 USC 58c.

(d) CLERICAL AMENDMENTS.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in subsection (a)(5)(B), by striking “\$1.75” and inserting “\$1.75.”;

(2) in subsection (b)—

(A) in paragraph (1)(A), by aligning clause (iii) with clause (ii);

(B) in paragraph (7), by striking “paragraphs” and inserting “paragraph”; and

(C) in paragraph (9), by aligning subparagraph (B) with subparagraph (A); and

(3) in subsection (e)(2), by aligning subparagraph (B) with subparagraph (A).

Deadline.
Reports.

(e) STUDY OF ALL FEES COLLECTED BY DEPARTMENT OF HOMELAND SECURITY.—The Secretary of the Treasury shall conduct a study of all the fees collected by the Department of Homeland Security, and shall submit to the Congress, not later than September 30, 2005, a report containing the recommendations of the Secretary on—

(1) what fees should be eliminated;

(2) what the rate of fees retained should be; and

(3) any other recommendations with respect to the fees that the Secretary considers appropriate.

SEC. 893. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

“(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

“(1) IN GENERAL.—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

“(A) subsection (a) and section 331 shall not apply to such distribution, and

“(B) such distribution shall be treated as a distribution to which section 301 applies.

“(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection:

“(A) IN GENERAL.—The term ‘applicable holding company’ means any domestic corporation—

“(i) which is a common parent of an affiliated group,

“(ii) stock of which is directly owned by the distributee foreign corporation,

“(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

“(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

“(B) AFFILIATED GROUP.—For purposes of this subsection, the term ‘affiliated group’ has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

“(3) COORDINATION WITH SUBPART F.—If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

“(4) REGULATIONS.—The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act. 26 USC 332 note.

SEC. 894. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) IN GENERAL.—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

“Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 864 note.

SEC. 895. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 904(f)(3) (relating to dispositions) is amended by adding at the end the following new subparagraph:

“(D) APPLICATION TO CERTAIN DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATION.—

“(i) IN GENERAL.—This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

“(ii) APPLICABLE DISPOSITION.—For purposes of clause (i), the term ‘applicable disposition’ means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation. Such term shall not include a disposition described in clause (iii) or (iv), except that clause (i)

shall apply to any gain recognized on any such disposition.

“(iii) EXCEPTION FOR CERTAIN EXCHANGES WHERE OWNERSHIP PERCENTAGE RETAINED.—A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

“(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(44)), and

“(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

“(iv) EXCEPTION FOR CERTAIN ASSET ACQUISITIONS.—A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions in which the taxpayer (or any member of a controlled group of corporations filing a consolidated return under section 1501 which includes the taxpayer) acquires the assets of a controlled foreign corporation in exchange for the shares of the controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1).

“(v) CONTROLLED FOREIGN CORPORATION.—For purposes of this subparagraph, the term ‘controlled foreign corporation’ has the meaning given such term by section 957.

“(vi) STOCK OWNERSHIP.—For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.”.

26 USC 904 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

SEC. 896. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

“(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

“(A) a debtor corporation transfers stock, or

“(B) a debtor partnership transfers a capital or profits interest in such partnership, to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act. 26 USC 108 note.

SEC. 897. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADABLE DEBT.

(a) **IN GENERAL.**—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradable) is amended by striking “is issued by a corporation or a government or political subdivision thereof and”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act. 26 USC 453 note.

SEC. 898. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) **IN GENERAL.**—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: “In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.”.

(b) **LIABILITIES IN EXCESS OF BASIS.**—Section 357(c)(1)(B) is amended by inserting “with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355” after “section 368(a)(1)(D)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act. 26 USC 357 note.

SEC. 899. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) **IN GENERAL.**—Section 351(g)(3)(A) is amended by adding at the end the following: “Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to transactions after May 14, 2003. 26 USC 351 note.

SEC. 900. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) **IN GENERAL.**—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking “possessing—” and all that follows through “(B)” and inserting “possessing”.

(b) **APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.**—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

“(5) **BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.**—

“(A) **IN GENERAL.**—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

“(2) **BROTHER-SISTER CONTROLLED GROUP.**—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

“(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

“(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.”

“(B) **APPLICABLE PROVISION.**—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

26 USC 1563
note.

SEC. 901. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) **GAS UTILITY PROPERTY.**—Section 168(e)(3)(E) (defining 15-year property), as amended by this Act, is amended by striking “and” at the end of clause (iv), by striking the period at the end of clause (v) and inserting “, and”, and by adding at the end the following new clause:

“(vi) initial clearing and grading land improvements with respect to gas utility property.”.

(b) **ELECTRIC UTILITY PROPERTY.**—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

“(F) **20-YEAR PROPERTY.**—The term ‘20-year property’ means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.”.

(c) **CONFORMING AMENDMENT.**—The table contained in section 168(g)(3)(B), as amended by this Act, is amended by inserting after the item relating to subparagraph (E)(v) the following new items:

“(E)(vi)	20”.
“(F)	25”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act. 26 USC 168 note.

SEC. 902. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) **START-UP EXPENDITURES.**—

(1) **ALLOWANCE OF DEDUCTION.**—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

“(1) **ALLOWANCE OF DEDUCTION.**—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

“(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

“(i) the amount of start-up expenditures with respect to the active trade or business, or

“(ii) \$5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed \$50,000, and

“(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.”.

(2) **CONFORMING AMENDMENT.**—Subsection (b) of section 195 is amended by striking “AMORTIZE” and inserting “DEDUCT” in the heading.

(b) **ORGANIZATIONAL EXPENDITURES.**—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

“(a) **ELECTION TO DEDUCT.**—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

Regulations.

“(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

“(A) the amount of organizational expenditures with respect to the taxpayer, or

“(B) \$5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed \$50,000, and

“(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.”.

(c) **TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.**—

(1) **IN GENERAL.**—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

“(1) **ALLOWANCE OF DEDUCTION.**—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

“(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

“(i) the amount of organizational expenses with respect to the partnership, or

“(ii) \$5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed \$50,000, and

“(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

“(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.”.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking “AMORTIZATION” and inserting “DEDUCTION” in the heading.

26 USC 195 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 903. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking “1-year period (18-month period in the case of taxable years beginning before January 1, 2004)” both places it appears and inserting “18-month period”.

(b) EXCEPTION FOR GROSS MISSTATEMENT.—Section 6404(g)(2) (relating to exceptions) is amended by striking “or” at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

“(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or”.

(c) EXCEPTION FOR LISTED AND REPORTABLE TRANSACTIONS.—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking “or” at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

“(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction with respect to which the requirement of section 6664(d)(2)(A) is not met and any listed transaction (as defined in 6707A(c)); or”.

26 USC 6404 note.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

SEC. 904. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS IN EXCESS OF \$1,000,000.

(a) **IN GENERAL.**—If an employer elects under Treasury Regulation 31.3402(g)–1 to determine the amount to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 28 percent (or the corresponding rate in effect under section 1(i)(2) of the Internal Revenue Code of 1986 for taxable years beginning in the calendar year in which the payment is made).

(b) **SPECIAL RULE FOR LARGE PAYMENTS.**—

(1) **IN GENERAL.**—Notwithstanding subsection (a), if the supplemental wage payment, when added to all such payments previously made by the employer to the employee during the calendar year, exceeds \$1,000,000, the rate used with respect to such excess shall be equal to the maximum rate of tax in effect under section 1 of such Code for taxable years beginning in such calendar year.

(2) **AGGREGATION.**—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subsection.

(c) **CONFORMING AMENDMENT.**—Section 13273 of the Revenue Reconciliation Act of 1993 (Public Law 103–66) is repealed.

107 Stat. 542.

(d) **EFFECTIVE DATE.**—The provisions of, and the amendment made by, this section shall apply to payments made after December 31, 2004.

SEC. 905. TREATMENT OF SALE OF STOCK ACQUIRED PURSUANT TO EXERCISE OF STOCK OPTIONS TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.

(a) **IN GENERAL.**—Section 421 (relating to general rules for certain stock options) is amended by adding at the end the following new subsection:

“(d) **CERTAIN SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.**—If—

“(1) a share of stock is transferred to an eligible person (as defined in section 1043(b)(1)) pursuant to such person’s exercise of an option to which this part applies, and

“(2) such share is disposed of by such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)), such disposition shall be treated as meeting the requirements of section 422(a)(1) or 423(a)(1), whichever is applicable.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

26 USC 421 note.

SEC. 906. APPLICATION OF BASIS RULES TO NONRESIDENT ALIENS.

(a) **IN GENERAL.**—Section 72 (relating to annuities and certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (w) as subsection (x) and by inserting after subsection (v) the following new subsection:

“(w) **APPLICATION OF BASIS RULES TO NONRESIDENT ALIENS.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in gross income of a distributee who is a citizen or resident of the United States, the investment

in the contract shall not include any applicable nontaxable contributions or applicable nontaxable earnings.

“(2) APPLICABLE NONTAXABLE CONTRIBUTION.—For purposes of this subsection, the term ‘applicable nontaxable contribution’ means any employer or employee contribution—

“(A) which was made with respect to compensation—

“(i) for labor or personal services performed by an employee who, at the time the labor or services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, and

“(ii) which is treated as from sources without the United States, and

“(B) which was not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were rendered) under the laws of the United States or any foreign country.

“(3) APPLICABLE NONTAXABLE EARNINGS.—For purposes of this subsection, the term ‘applicable nontaxable earnings’ means earnings—

“(A) which are paid or accrued with respect to any employer or employee contribution which was made with respect to compensation for labor or personal services performed by an employee,

“(B) with respect to which the employee was at the time the earnings were paid or accrued a nonresident alien for purposes of the laws of the United States, and

“(C) which were not subject to income tax under the laws of the United States or any foreign country.

“(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions and earnings as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.”.

(b) BASIS.—Section 83 (relating to property transferred in connection with the performance of services) is amended by adding after paragraph (3) of subsection (c) the following new paragraph:

“(4) For purposes of determining an individual’s basis in property transferred in connection with the performance of services, rules similar to the rules of section 72(w) shall apply.”.

26 USC 72 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions on or after the date of the enactment of this Act.

SEC. 907. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

“(2) EXPENSES TREATED AS COMPENSATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer’s return of tax under this chapter and as wages to such

employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).

“(B) SPECIFIED INDIVIDUALS.—

“(i) IN GENERAL.—In the case of a recipient who is a specified individual, subparagraph (A) and paragraph (9) shall each be applied by substituting ‘to the extent that the expenses do not exceed the amount of the expenses which’ for ‘to the extent that the expenses’.

Applicability.

“(ii) SPECIFIED INDIVIDUAL.—For purposes of clause (i), the term ‘specified individual’ means any individual who—

“(I) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to the taxpayer, or

“(II) would be subject to such requirements if the taxpayer were an issuer of equity securities referred to in such section.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses incurred after the date of the enactment of this Act.

26 USC 274 note.

SEC. 908. RESIDENCE AND SOURCE RULES RELATING TO UNITED STATES POSSESSIONS.

(a) RESIDENCE AND SOURCE RULES.—Subpart D of part III of subchapter N of chapter 1 (relating to possessions of the United States) is amended by adding at the end the following new section:

“SEC. 937. RESIDENCE AND SOURCE RULES INVOLVING POSSESSIONS.

“(a) BONA FIDE RESIDENT.—For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), except as provided in regulations, the term ‘bona fide resident’ means a person—

“(1) who is present for at least 183 days during the taxable year in Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be, and

“(2) who does not have a tax home (determined under the principles of section 911(d)(3) without regard to the second sentence thereof) outside such specified possession during the taxable year and does not have a closer connection (determined under the principles of section 7701(b)(3)(B)(ii)) to the United States or a foreign country than to such specified possession.

For purposes of paragraph (1), the determination as to whether a person is present for any day shall be made under the principles of section 7701(b).

“(b) SOURCE RULES.—Except as provided in regulations, for purposes of this title—

“(1) except as provided in paragraph (2), rules similar to the rules for determining whether income is income from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall apply for purposes of determining whether income is from sources within a possession specified in subsection (a)(1) or effectively connected with the conduct of a trade or business within any such possession, and

Applicability.

“(2) any income treated as income from sources within the United States or as effectively connected with the conduct

of a trade or business within the United States shall not be treated as income from sources within any such possession or as effectively connected with the conduct of a trade or business within any such possession.

“(c) REPORTING REQUIREMENT.—

“(1) IN GENERAL.—If, for any taxable year, an individual takes the position for United States income tax reporting purposes that the individual became, or ceases to be, a bona fide resident of a possession specified in subsection (a)(1), such individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

“(2) TRANSITION RULE.—If, for any of an individual’s 3 taxable years ending before the individual’s first taxable year ending after the date of the enactment of this subsection, the individual took a position described in paragraph (1), the individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.”.

(b) PENALTY.—Section 6688 is amended—

(1) by inserting “under section 937(c) or” before “by regulations”, and

(2) by striking “\$100” and inserting “\$1,000”.

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 931(d) is amended to read as follows:

“(d) EMPLOYEES OF THE UNITED STATES.—Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).”.

(2) Section 932 is amended by striking “at the close of the taxable year” and inserting “during the entire taxable year” each place it appears.

(3) Section 934(b)(4) is amended by striking “the Virgin Islands or” each place it appears.

(4) Section 935, as in effect before the effective date of its repeal, is amended—

(A) by striking “for the taxable year who” in subsection

(a) and inserting “who, during the entire taxable year”,

(B) by inserting “bona fide” before “resident” in subsection (a)(1),

(C) in subsection (b)(1)—

(i) by inserting “(other a bona fide resident of Guam during the entire taxable year)” after “United States” in subparagraph (A), and

(ii) by inserting “bona fide” before “resident” in subparagraph (B), and

(D) in subsection (b)(2) by striking “residence and”.

(5) Section 957(c) is amended—

(A) in paragraph (2)(B) by striking “conduct of an active” and inserting “active conduct of a”, and

(B) in the last sentence by striking “derived from sources within a possession, was effectively connected with the conduct of a trade or business within a possession, or”.

(6) The table of sections of subpart D of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

“Sec. 937. Residence and source rules involving possessions.”.

(d) EFFECTIVE DATE.—

26 USC 937 note.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) 183-DAY RULE.—Section 937(a)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years beginning after the date of the enactment of this Act.

(3) SOURCING.—Section 937(b)(2) of such Code (as so added) shall apply to income earned after the date of the enactment of this Act.

SEC. 909. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

“(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

“(1) IN GENERAL.—In the case of any qualifying electric transmission transaction for which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

“(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

“(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

“(ii) any portion of such cost previously taken into account under this subsection, and

“(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

“(2) QUALIFIED GAIN.—For purposes of this subsection, the term ‘qualified gain’ means, with respect to any qualifying electric transmission transaction in any taxable year—

“(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

“(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

“(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term ‘qualifying electric

transmission transaction' means any sale or other disposition before January 1, 2007, of—

“(A) property used in the trade or business of providing electric transmission services, or

“(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

“(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term ‘independent transmission company’ means—

“(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

“(B) a person—

“(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission’s rules applicable to independent transmission providers, and

“(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2), or

“(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

“(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

“(ii) a political subdivision or affiliate thereof whose transmission facilities are under the operational control of a person described in clause (i).

“(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection:

“(A) IN GENERAL.—The term ‘exempt utility property’ means property used in the trade or business of—

“(i) generating, transmitting, distributing, or selling electricity, or

“(ii) producing, transmitting, distributing, or selling natural gas.

“(B) NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.—Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

“(6) SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated

as purchased by such corporation for purposes of applying paragraph (1)(A).

“(7) TIME FOR ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

“(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

“(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

“(8) PURCHASE.—For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

“(9) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

“(10) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act, in taxable years ending after such date. 26 USC 451 note.

SEC. 910. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.

(a) IN GENERAL.—Section 179(b) (relating to limitations) is amended by adding at the end the following new paragraph:

“(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

“(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed \$25,000.

“(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—The term ‘sport utility vehicle’ means any 4-wheeled vehicle—

“(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

“(II) which is not subject to section 280F, and

“(III) which is rated at not more than 14,000 pounds gross vehicle weight.

“(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

“(I) is designed to have a seating capacity of more than 9 persons behind the driver’s seat,

“(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

“(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver’s seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.”.

26 USC 179 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act.

Approved October 22, 2004.

LEGISLATIVE HISTORY—H.R. 4520:

HOUSE REPORTS: Nos. 108–548, Pt. 1 (Comm. on Ways and Means) and 108–755 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 17, considered and passed House.

July 15, considered and passed Senate, amended.

Oct. 7, House agreed to conference report.

Oct. 8–11, Senate considered and agreed to conference report.



Public Law 108–358
108th Congress

An Act

To amend the Controlled Substances Act to clarify the definition of anabolic steroids and to provide for research and education activities relating to steroids and steroid precursors.

Oct. 22, 2004
[S. 2195]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Anabolic Steroid Control Act of 2004”.

Anabolic Steroid
Control Act of
2004.
21 USC 801 note.

SEC. 2. AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) **DEFINITIONS.**—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (41)—

(A) by realigning the margin so as to align with paragraph (40); and

(B) by striking subparagraph (A) and inserting the following:

“(A) The term ‘anabolic steroid’ means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and includes—

“(i) androstenediol—

“(I) 3 β ,17 β -dihydroxy-5 α -androstane; and

“(II) 3 α ,17 β -dihydroxy-5 α -androstane;

“(ii) androstenedione (5 α -androstane-3,17-dione);

“(iii) androstenediol—

“(I) 1-androstenediol (3 β ,17 β -dihydroxy-5 α -androst-1-ene);

“(II) 1-androstenediol (3 α ,17 β -dihydroxy-5 α -androst-1-ene);

“(III) 4-androstenediol (3 β ,17 β -dihydroxy-androst-4-ene); and

“(IV) 5-androstenediol (3 β ,17 β -dihydroxy-androst-5-ene);

“(iv) androstenedione—

“(I) 1-androstenedione ([5 α]-androst-1-en-3,17-dione);

“(II) 4-androstenedione (androst-4-en-3,17-dione); and

“(III) 5-androstenedione (androst-5-en-3,17-dione);

“(v) bolasterone (7 α ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one);

“(vi) boldenone (17 β -hydroxyandrost-1,4,-diene-3-one);

“(vii) calusterone (7 β ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one);

- “(viii) clostebol (4-chloro-17 β -hydroxyandrost-4-en-3-one);
- “(ix) dehydrochloromethyltestosterone (4-chloro-17 β -hydroxy-17 α -methyl-androst-1,4-dien-3-one);
- “(x) Δ 1-dihydrotestosterone (a.k.a. ‘1-testosterone’) (17 β -hydroxy-5 α -androst-1-en-3-one);
- “(xi) 4-dihydrotestosterone (17 β -hydroxy-androstan-3-one);
- “(xii) drostanolone (17 β -hydroxy-2 α -methyl-5 α -androstan-3-one);
- “(xiii) ethylestrenol (17 α -ethyl-17 β -hydroxyestr-4-ene);
- “(xiv) fluoxymesterone (9-fluoro-17 α -methyl-11 β ,17 β -dihydroxyandrost-4-en-3-one);
- “(xv) formebolone (2-formyl-17 α -methyl-11 α ,17 β -dihydroxyandrost-1,4-dien-3-one);
- “(xvi) furazabol (17 α -methyl-17 β -hydroxyandrostan-2,3-c-furazan);
- “(xvii) 13 β -ethyl-17 α -hydroxygon-4-en-3-one;
- “(xviii) 4-hydroxytestosterone (4,17 β -dihydroxy-androst-4-en-3-one);
- “(xix) 4-hydroxy-19-nortestosterone (4,17 β -dihydroxy-estr-4-en-3-one);
- “(xx) mestanolone (17 α -methyl-17 β -hydroxy-5 α -androstan-3-one);
- “(xxi) mesterolone (1 α -methyl-17 β -hydroxy-[5 α]-androstan-3-one);
- “(xxii) methandienone (17 α -methyl-17 β -hydroxyandrost-1,4-dien-3-one);
- “(xxiii) methandriol (17 α -methyl-3 β ,17 β -dihydroxyandrost-5-ene);
- “(xxiv) methenolone (1-methyl-17 β -hydroxy-5 α -androst-1-en-3-one);
- “(xxv) 17 α -methyl-3 β , 17 β -dihydroxy-5 α -androstan-3-one;
- “(xxvi) 17 α -methyl-3 α ,17 β -dihydroxy-5 α -androstan-3-one;
- “(xxvii) 17 α -methyl-3 β ,17 β -dihydroxyandrost-4-ene.
- “(xxviii) 17 α -methyl-4-hydroxynandrolone (17 α -methyl-4-hydroxy-17 β -hydroxyestr-4-en-3-one);
- “(xxix) methyldienolone (17 α -methyl-17 β -hydroxyestra-4,9(10)-dien-3-one);
- “(xxx) methyltrienolone (17 α -methyl-17 β -hydroxyestra-4,9-11-trien-3-one);
- “(xxxi) methyltestosterone (17 α -methyl-17 β -hydroxyandrost-4-en-3-one);
- “(xxxii) mibolerone (7 α ,17 α -dimethyl-17 β -hydroxyestr-4-en-3-one);
- “(xxxiii) 17 α -methyl- Δ 1-dihydrotestosterone (17 β -hydroxy-17 α -methyl-5 α -androst-1-en-3-one) (a.k.a. ‘17- α -methyl-1-testosterone’);
- “(xxxiv) nandrolone (17 β -hydroxyestr-4-en-3-one);
- “(xxxv) norandrostenediol—
- “(I) 19-nor-4-androstenediol (3 β , 17 β -dihydroxyestr-4-ene);
- “(II) 19-nor-4-androstenediol (3 α , 17 β -dihydroxyestr-4-ene);
- “(III) 19-nor-5-androstenediol (3 β , 17 β -dihydroxyestr-5-ene); and
- “(IV) 19-nor-5-androstenediol (3 α , 17 β -dihydroxyestr-5-ene);
- “(xxxvi) norandrostenedione—

“(I) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
 and
 “(II) 19-nor-5-androstenedione (estr-5-en-3,17-dione;
 “(xxxvii) norbolethone (13 β ,17 α -diethyl-17 β -hydroxygon-4-en-3-one);
 “(xxxviii) norclostebol (4-chloro-17 β -hydroxyestr-4-en-3-one);
 “(xxxix) norethandrolone (17 α -ethyl-17 β -hydroxyestr-4-en-3-one);
 “(xl) normethandrolone (17 α -methyl-17 β -hydroxyestr-4-en-3-one);
 “(xli) oxandrolone (17 α -methyl-17 β -hydroxy-2-oxa-[5 α]-androstan-3-one);
 “(xlii) oxymesterone (17 α -methyl-4,17 β -dihydroxyandrost-4-en-3-one);
 “(xliii) oxymetholone (17 α -methyl-2-hydroxymethylene-17 β -hydroxy-[5 α]-androstan-3-one);
 “(xliv) stanozolol (17 α -methyl-17 α -hydroxy-[5 α]-androst-2-eno[3,2-c]-pyrazole);
 “(xlv) stenbolone (17 β -hydroxy-2-methyl-[5 α]-androst-1-en-3-one);
 “(xlv) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
 “(xlvii) testosterone (17 β -hydroxyandrost-4-en-3-one);
 “(xlviii) tetrahydrogestrinone (13 β ,17 α -diethyl-17 β -hydroxygon-4,9,11-trien-3-one);
 “(xlix) trenbolone (17 β -hydroxyestr-4,9,11-trien-3-one); and
 “(xlx) any salt, ester, or ether of a drug or substance described in this paragraph.

The substances excluded under this subparagraph may at any time be scheduled by the Attorney General in accordance with the authority and requirements of subsections (a) through (c) of section 201.”; and

(2) in paragraph (44), by inserting “anabolic steroids,” after “marihuana,”.

(b) **AUTHORITY AND CRITERIA FOR CLASSIFICATION.**—Section 201(g) of the Controlled Substances Act (21 U.S.C. 811(g)) is amended—

(1) in paragraph (1), by striking “substance from a schedule if such substance” and inserting “drug which contains a controlled substance from the application of titles II and III of the Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C. 802 et seq.) if such drug”; and

(2) in paragraph (3), by adding at the end the following:

“(C) Upon the recommendation of the Secretary of Health and Human Services, a compound, mixture, or preparation which contains any anabolic steroid, which is intended for administration to a human being or an animal, and which, because of its concentration, preparation, formulation or delivery system, does not present any significant potential for abuse.”.

(c) **ANABOLIC STEROIDS CONTROL ACT.**—Section 1903 of the Anabolic Steroids Control Act of 1990 (Public Law 101–647) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

21 USC 802 note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 90 days after the date of enactment of this Act.

28 USC 994 note.

SEC. 3. SENTENCING COMMISSION GUIDELINES.

The United States Sentencing Commission shall—

(1) review the Federal sentencing guidelines with respect to offenses involving anabolic steroids;

(2) consider amending the Federal sentencing guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use; and

(3) take such other action that the Commission considers necessary to carry out this section.

Grants.
42 USC
290bb–25f.

SEC. 4. PREVENTION AND EDUCATION PROGRAMS.

(a) **IN GENERAL.**—The Secretary of Health and Human Services (referred to in this Act as the “Secretary”) shall award grants to public and nonprofit private entities to enable such entities to carry out science-based education programs in elementary and secondary schools to highlight the harmful effects of anabolic steroids.

(b) **ELIGIBILITY.**—

(1) **APPLICATION.**—To be eligible for grants under subsection (a), an entity shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(2) **PREFERENCE.**—In awarding grants under subsection (a), the Secretary shall give preference to applicants that intend to use grant funds to carry out programs based on—

(A) the Athletes Training and Learning to Avoid Steroids program;

(B) The Athletes Targeting Healthy Exercise and Nutrition Alternatives program; and

(C) other programs determined to be effective by the National Institute on Drug Abuse.

(c) **USE OF FUNDS.**—Amounts received under a grant under subsection (a) shall be used for education programs that will directly communicate with teachers, principals, coaches, as well as elementary and secondary school children concerning the harmful effects of anabolic steroids.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section, \$15,000,000 for each of fiscal years 2005 through 2010.

42 USC
290aa–4 note.

SEC. 5. NATIONAL SURVEY ON DRUG USE AND HEALTH.

(a) **IN GENERAL.**—The Secretary of Health and Human Services shall ensure that the National Survey on Drug Use and Health includes questions concerning the use of anabolic steroids.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$1,000,000 for each of fiscal years 2005 through 2010.

Approved October 22, 2004.

LEGISLATIVE HISTORY—S. 2195 (H.R. 3866):

HOUSE REPORTS: No. 108-461, Pt. 1 (Comm. on the Judiciary) and Pt. 2 (Comm. on Energy and Commerce), both accompanying H.R. 3866.

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed Senate.

Oct. 8, considered and passed House.



Public Law 108–359
108th Congress

An Act

Oct. 25, 2004
[H.R. 1533]

To amend the securities laws to permit church pension plans to be invested in collective trusts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONFORMING AMENDMENTS FOR CHURCH PLAN PARTICIPATION IN COLLECTIVE FUNDS.

(a) AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(11)) is amended by striking “such trusts or government plans, or both” and inserting “one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection”.

(b) AMENDMENTS TO THE SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended—

(1) by striking “or” at the end of clause (B); and

(2) by striking “other than any plan described in clause (A), (B), or (C)” and inserting the following: “or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D)”.

(c) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) Section 3(a)(12)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(C)) is amended—

(A) by striking “or” at the end of clause (ii); and

(B) by inserting before “other than any plan described in clause (i)” the following: “or (iv) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940,”.

(2) Section 12(g)(2)(H) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(2)(H)) is amended—

(A) by striking “or” at the end of clause (i); and

(B) by inserting before the period at the end the following: “, or (iii) a church plan, company, or account that is excluded from the definition of an investment company

under section 3(c)(14) of the Investment Company Act of 1940”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 1533:

HOUSE REPORTS: No. 108–248 (Comm. on Financial Services).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Sept. 3, considered and passed House.

Vol. 150 (2004): Oct. 1, considered and passed Senate, amended.
Oct. 8, House concurred in Senate amendment.



Public Law 108–360
108th Congress

An Act

Oct. 25, 2004
[H.R. 2608]

To reauthorize the National Earthquake Hazards Reduction Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—EARTHQUAKE HAZARD REDUCTION

- Sec. 101. Short title.
- Sec. 102. Definitions.
- Sec. 103. National earthquake hazards reduction program.
- Sec. 104. Authorization of appropriations.

TITLE II—WINDSTORM IMPACT REDUCTION

- Sec. 201. Short title.
- Sec. 202. Findings.
- Sec. 203. Definitions.
- Sec. 204. National windstorm impact reduction program.
- Sec. 205. National advisory committee on windstorm impact reduction.
- Sec. 206. Savings clause.
- Sec. 207. Authorization of appropriations.
- Sec. 208. Biennial report.
- Sec. 209. Coordination.

TITLE III—COMMERCIAL SPACE TRANSPORTATION

- Sec. 301. Authorization of appropriations.

**TITLE I—EARTHQUAKE HAZARD
REDUCTION**

National
Earthquake
Hazards
Reduction
Program
Reauthorization
Act of 2004.
42 USC 7701
note.

42 USC 7703.

SEC. 101. SHORT TITLE.

This title may be cited as the “National Earthquake Hazards Reduction Program Reauthorization Act of 2004”.

SEC. 102. DEFINITIONS.

Section 4 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.) is amended by adding at the end the following new paragraphs:

“(8) The term ‘Interagency Coordinating Committee’ means the Interagency Coordinating Committee on Earthquake Hazards Reduction established under section 5(a).

“(9) The term ‘Advisory Committee’ means the Advisory Committee established under section 5(a)(5).”.

SEC. 103. NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM.

Section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)) is amended—

(1) by amending subsection (a) to read as follows:

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established the National Earthquake Hazards Reduction Program.

“(2) PROGRAM ACTIVITIES.—The activities of the Program shall be designed to—

“(A) develop effective measures for earthquake hazards reduction;

“(B) promote the adoption of earthquake hazards reduction measures by Federal, State, and local governments, national standards and model code organizations, architects and engineers, building owners, and others with a role in planning and constructing buildings, structures, and lifelines through—

“(i) grants, contracts, cooperative agreements, and technical assistance;

“(ii) development of standards, guidelines, and voluntary consensus codes for earthquake hazards reduction for buildings, structures, and lifelines;

“(iii) development and maintenance of a repository of information, including technical data, on seismic risk and hazards reduction; and

“(C) improve the understanding of earthquakes and their effects on communities, buildings, structures, and lifelines, through interdisciplinary research that involves engineering, natural sciences, and social, economic, and decisions sciences; and

“(D) develop, operate, and maintain an Advanced National Seismic Research and Monitoring System established under section 13 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7707), the George E. Brown, Jr. Network for Earthquake Engineering Simulation established under section 14 of that Act (42 U.S.C. 7708), and the Global Seismographic Network.

“(3) INTERAGENCY COORDINATING COMMITTEE ON EARTHQUAKE HAZARDS REDUCTION.—

“(A) IN GENERAL.—There is established an Interagency Coordinating Committee on Earthquake Hazards Reduction chaired by the Director of the National Institute of Standards and Technology (referred to in this subsection as the ‘Director’).

Establishment.

“(B) MEMBERSHIP.—The committee shall be composed of the directors of—

“(i) the Federal Emergency Management Agency;

“(ii) the United States Geological Survey;

“(iii) the National Science Foundation;

“(iv) the Office of Science and Technology Policy;

and

“(v) the Office of Management and Budget.

“(C) MEETINGS.—The Committee shall meet not less than 3 times a year at the call of the Director.

“(D) PURPOSE AND DUTIES.—The Interagency Coordinating Committee shall oversee the planning, management,

and coordination of the Program. The Interagency Coordinating Committee shall—

Deadline.

“(i) develop, not later than 6 months after the date of enactment of the National Earthquake Hazards Reduction Program Reauthorization Act of 2004 and update periodically—

“(I) a strategic plan that establishes goals and priorities for the Program activities described under subsection (a)(2); and

“(II) a detailed management plan to implement such strategic plan; and

“(ii) develop a coordinated interagency budget for the Program that will ensure appropriate balance among the Program activities described under subsection (a)(2), and, in accordance with the plans developed under clause (i), submit such budget to the Director of the Office of Management and Budget at the time designated by that office for agencies to submit annual budgets.

“(4) ANNUAL REPORT.—The Interagency Coordinating Committee shall transmit, at the time of the President’s budget request to Congress, an annual report to the Committee on Science and the Committee on Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate. Such report shall include—

“(A) the Program budget for the current fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under subparagraph (3)(A);

“(B) the proposed Program budget for the next fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under subparagraph (3)(A);

“(C) a description of the activities and results of the Program during the previous year, including an assessment of the effectiveness of the Program in furthering the goals established in the strategic plan under (3)(A);

“(D) a description of the extent to which the Program has incorporated the recommendations of the Advisory Committee;

“(E) a description of activities, including budgets for the current fiscal year and proposed budgets for the next fiscal year, that are carried out by Program agencies and contribute to the Program, but are not included in the Program; and

“(F) a description of the activities, including budgets for the current fiscal year and proposed budgets for the following fiscal year, related to the grant program carried out under subsection (b)(2)(A)(i).

“(5) ADVISORY COMMITTEE.—

Establishment.

“(A) IN GENERAL.—The Director shall establish an Advisory Committee on Earthquake Hazards Reduction of at least 11 members, none of whom may be an employee (as defined in subparagraphs (A) through (F) of section 7342(a)(1) of title 5, United States Code, including representatives of research and academic institutions, industry standards development organizations, State and local

government, and financial communities who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines. The recommendations of the Advisory Committee shall be considered by Federal agencies in implementing the Program.

“(B) ASSESSMENT.—The Advisory Committee shall assess—

“(i) trends and developments in the science and engineering of earthquake hazards reduction;

“(ii) effectiveness of the Program in carrying out the activities under (a)(2);

“(iii) the need to revise the Program; and

“(iv) the management, coordination, implementation, and activities of the Program.

“(C) REPORT.—Not later than 1 year after the date of enactment of the National Earthquake Hazards Reduction Program Reauthorization Act of 2004 and at least once every 2 years thereafter, the Advisory Committee shall report to the Director on its findings of the assessment carried out under subparagraph (B) and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey Scientific Earthquake Studies Advisory Committee.

“(D) FEDERAL ADVISORY COMMITTEE ACT APPLICATION.—Section 14 of the Federal Advisory Committee Act (5 App. U.S.C. 14) shall not apply to the Advisory Committee.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “Federal Emergency Management Agency” and all that follows through “of the Agency” and inserting “National Institute of Standards and Technology shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Institute”;

(ii) by striking subparagraphs (B) and (C) and redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively;

(iii) by inserting after subparagraph (A) the following:

“(B) support the development of performance-based seismic engineering tools, and work with appropriate groups to promote the commercial application of such tools, through earthquake-related building codes, standards, and construction practices;”;

(iv) by striking “The principal official carrying out the responsibilities described in this paragraph shall be at a level no lower than that of Associate Director.”; and

(v) in subparagraph (D), as redesignated by clause (ii), by striking “National Science Foundation, the National Institutes of Standards and Technology” and inserting “Federal Emergency Management Agency, the National Science Foundation”;

(B) by striking so much of paragraph (2) as precedes subparagraph (B) and inserting the following:

“(2) DEPARTMENT OF HOMELAND SECURITY; FEDERAL EMERGENCY MANAGEMENT AGENCY.—

“(A) PROGRAM RESPONSIBILITIES.—The Under Secretary of Homeland Security for Emergency Preparedness and Response (the Director of the Federal Emergency Management Agency)—

“(i) shall work closely with national standards and model building code organizations, in conjunction with the National Institute of Standards and Technology, to promote the implementation of research results;

“(ii) shall promote better building practices within the building design and construction industry including architects, engineers, contractors, builders, and inspectors;

“(iii) shall operate a program of grants and assistance to enable States to develop mitigation, preparedness, and response plans, prepare inventories and conduct seismic safety inspections of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes;

“(iv) shall support the implementation of a comprehensive earthquake education and public awareness program, including development of materials and their wide dissemination to all appropriate audiences and support public access to locality-specific information that may assist the public in preparing for, mitigating against, responding to and recovering from earthquakes and related disasters;

“(v) shall assist the National Institute of Standards and Technology, other Federal agencies, and private sector groups, in the preparation, maintenance, and wide dissemination of seismic resistant design guidance and related information on building codes, standards, and practices for new and existing buildings, structures, and lifelines, and aid in the development of performance-based design guidelines and methodologies supporting model codes for buildings, structures, and lifelines that are cost effective and affordable;

“(vi) shall develop, coordinate, and execute the National Response Plan when required following an earthquake, and support the development of specific State and local plans for each high risk area to ensure the availability of adequate emergency medical resources, search and rescue personnel and equipment, and emergency broadcast capability;

“(vii) shall develop approaches to combine measures for earthquake hazards reduction with measures for reduction of other natural and technological hazards including performance-based design approaches;

“(viii) shall provide preparedness, response, and mitigation recommendations to communities after an earthquake prediction has been made under paragraph (3)(D); and

“(ix) may enter into cooperative agreements or contracts with States and local jurisdictions and other Federal agencies to establish demonstration projects on earthquake hazard mitigation, to link earthquake research and mitigation efforts with emergency management programs, or to prepare educational materials for national distribution.”;

(C) in paragraph (3)—

(i) by inserting “and other activities” after “shall conduct research”;

(ii) in subparagraph (C), by striking “the Agency” and inserting “the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology”;

(iii) in subparagraph (D), by striking “the Director of the Agency” and inserting “the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology”;

(iv) in subparagraph (E), by striking “establish, using existing facilities, a Center for the International Exchange of Earthquake Information” and inserting “operate, using the National Earthquake Information Center, a forum for the international exchange of earthquake information”;

(v) in subparagraph (F), by striking “Network” and inserting “System”; and

(vi) by inserting after subparagraph (H) the following new subparagraphs:

“(I) work with other Program agencies to coordinate Program activities with similar earthquake hazards reduction efforts in other countries, to ensure that the Program benefits from relevant information and advances in those countries; and

“(J) maintain suitable seismic hazard maps in support of building codes for structures and lifelines, including additional maps needed for performance-based design approaches.”;

(D) in paragraph (4)—

(i) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (E), (F), and (H), respectively;

(ii) by inserting after subparagraph (C) the following:

“(D) support research that improves the safety and performance of buildings, structures, and lifeline systems using large-scale experimental and computational facilities of the George E. Brown Jr. Network for Earthquake Engineering Simulation and other institutions engaged in research and the implementation of the National Earthquake Hazards Reduction Program;”;

(iii) in subparagraph (F) (as so redesignated), by striking “; and” and inserting a semicolon; and

(iv) by inserting after subparagraph (F) (as so redesignated) the following:

“(G) include to the maximum extent practicable diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Hispanics, Native Americans, Asian-Pacific Americans, and other underrepresented populations; and”;

(E) in paragraph (5), by striking “The National” and inserting “In addition to the lead agency responsibilities described under paragraph (1), the National”; and

(F) in paragraph (5)—

(i) by striking “and” after the semicolon in subparagraph (C);

(ii) by redesignating subparagraph (D) as subparagraph (E); and

(iii) by inserting after subparagraph (C) the following:

“(D) support the development and commercial application of cost effective and affordable performance-based seismic engineering by providing technical support for seismic engineering practices and related building code, standards, and practices development; and”;

(3) in subsection (c)(1), by striking “Agency” and inserting “Interagency Coordinating Committee”.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 12 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706) is amended—

(1) by adding at the end of subsection (a) the following:

“(8) There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this title—

“(A) \$21,000,000 for fiscal year 2005,

“(B) \$21,630,000 for fiscal year 2006,

“(C) \$22,280,000 for fiscal year 2007,

“(D) \$22,950,000 for fiscal year 2008, and

“(E) \$23,640,000 for fiscal year 2009,

of which not less than 10 percent of available program funds actually appropriated shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable design guidelines and methodologies in codes for buildings, structures, and lifelines.”;

(2) by inserting “(1)” before “There” in subsection (b);

(3) by striking “subsection” in the last sentence and inserting “paragraph”;

(4) by redesignating paragraphs (1) through (5) of subsection (b) as subparagraphs (A) through (E), respectively;

(5) by adding at the end of subsection (b) the following:

“(2) There are authorized to be appropriated to the United States Geological Survey for carrying out this title—

“(A) \$77,000,000 for fiscal year 2005, of which not less than \$30,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

“(B) \$84,410,000 for fiscal year 2006, of which not less than \$36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

“(C) \$85,860,000 for fiscal year 2007, of which not less than \$36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

“(D) \$87,360,000 for fiscal year 2008, of which not less than \$36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13; and

“(E) \$88,900,000 for fiscal year 2009, of which not less than \$36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13.”;

(6) by inserting “(1)” before “To” in subsection (c);

(7) by adding at the end of subsection (c) the following:
“(2) There are authorized to be appropriated to the National Science Foundation for carrying out this title—
“(A) \$38,000,000 for fiscal year 2005;
“(B) \$39,140,000 for fiscal year 2006;
“(C) \$40,310,000 for fiscal year 2007;
“(D) \$41,520,000 for fiscal year 2008; and
“(E) \$42,770,000 for fiscal year 2009.”;
(8) by inserting “(1)” before “To” in subsection (d); and
(9) by adding at the end of subsection (d) the following:
“(2) There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this title—
“(A) \$10,000,000 for fiscal year 2005,
“(B) \$11,000,000 for fiscal year 2006,
“(C) \$12,100,000 for fiscal year 2007,
“(D) \$13,310,000 for fiscal year 2008, and
“(E) \$14,640,000 for fiscal year 2009,

of which \$2,000,000 shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable codes for buildings, structures, and lifelines.”.

(b) SEPARATE AUTHORIZATION FOR THE ADVANCED NATIONAL SEISMIC RESEARCH AND MONITORING SYSTEM.—Section 13 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7707) is amended by striking subsection (c).

(c) SEPARATE AUTHORIZATION FOR THE NETWORK FOR EARTHQUAKE ENGINEERING SIMULATION.—Section 14(b) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7708(b)) is amended—

- (1) by striking “and” after the semicolon in paragraph (3);
- (2) by striking “2004.” in paragraph (4) and inserting “2004.”;
- (3) by adding at the end the following:
 - “(5) \$20,000,000 for fiscal year 2005, all of which shall be available for operations and maintenance;
 - “(6) \$20,400,000 for fiscal year 2006, all of which shall be available for operations and maintenance;
 - “(7) \$20,870,000 for fiscal year 2007, all of which shall be available for operations and maintenance;
 - “(8) \$21,390,000 for fiscal year 2008, all of which shall be available for operations and maintenance; and
 - “(9) \$21,930,000 for fiscal year 2009, all of which shall be available for operations and maintenance.”.

TITLE II—WINDSTORM IMPACT REDUCTION

SEC. 201. SHORT TITLE.

This Act may be cited as the “National Windstorm Impact Reduction Act of 2004”.

SEC. 202. FINDINGS.

The Congress finds the following:

- (1) Hurricanes, tropical storms, tornadoes, and thunderstorms can cause significant loss of life, injury, destruction of property, and economic and social disruption. All States and regions are vulnerable to these hazards.

National
Windstorm
Impact Reduction
Act of 2004.

42 USC 15701
note.

42 USC 15701.

(2) The United States currently sustains several billion dollars in economic damages each year due to these windstorms. In recent decades, rapid development and population growth in high-risk areas has greatly increased overall vulnerability to windstorms.

(3) Improved windstorm impact reduction measures have the potential to reduce these losses through—

(A) cost-effective and affordable design and construction methods and practices;

(B) effective mitigation programs at the local, State, and national level;

(C) improved data collection and analysis and impact prediction methodologies;

(D) engineering research on improving new structures and retrofitting existing ones to better withstand windstorms, atmospheric-related research to better understand the behavior and impact of windstorms on the built environment, and subsequent application of those research results; and

(E) public education and outreach.

(4) There is an appropriate role for the Federal Government in supporting windstorm impact reduction. An effective Federal program in windstorm impact reduction will require inter-agency coordination, and input from individuals, academia, the private sector, and other interested non-Federal entities.

42 USC 15702.

SEC. 203. DEFINITIONS.

In this title:

(1) **DIRECTOR.**—The term “Director” means the Director of the Office of Science and Technology Policy.

(2) **PROGRAM.**—The term “Program” means the National Windstorm Impact Reduction Program established by section 204(a).

(3) **STATE.**—The term “State” means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(4) **WINDSTORM.**—The term “windstorm” means any storm with a damaging or destructive wind component, such as a hurricane, tropical storm, tornado, or thunderstorm.

42 USC 15703.

SEC. 204. NATIONAL WINDSTORM IMPACT REDUCTION PROGRAM.

(a) **ESTABLISHMENT.**—There is established the National Windstorm Impact Reduction Program.

(b) **OBJECTIVE.**—The objective of the Program is the achievement of major measurable reductions in losses of life and property from windstorms. The objective is to be achieved through a coordinated Federal effort, in cooperation with other levels of government, academia, and the private sector, aimed at improving the understanding of windstorms and their impacts and developing and encouraging implementation of cost-effective mitigation measures to reduce those impacts.

Deadline.
Establishment.

(c) **INTERAGENCY WORKING GROUP.**—Not later than 90 days after the date of enactment of this Act, the Director shall establish an Interagency Working Group consisting of representatives of the National Science Foundation, the National Oceanic and

Atmospheric Administration, the National Institute of Standards and Technology, the Federal Emergency Management Agency, and other Federal agencies as appropriate. The Director shall designate an agency to serve as Chair of the Working Group and be responsible for the planning, management, and coordination of the Program, including budget coordination. Specific agency roles and responsibilities under the Program shall be defined in the implementation plan required under subsection (e). General agency responsibilities shall include the following:

(1) The National Institute of Standards and Technology shall support research and development to improve building codes and standards and practices for design and construction of buildings, structures, and lifelines.

(2) The National Science Foundation shall support research in engineering and the atmospheric sciences to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

(3) The National Oceanic and Atmospheric Administration shall support atmospheric sciences research to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

(4) The Federal Emergency Management Agency shall support the development of risk assessment tools and effective mitigation techniques, windstorm-related data collection and analysis, public outreach, information dissemination, and implementation of mitigation measures consistent with the Agency's all-hazards approach.

(d) PROGRAM COMPONENTS.—

(1) IN GENERAL.—The Program shall consist of three primary mitigation components: improved understanding of windstorms, windstorm impact assessment, and windstorm impact reduction. The components shall be implemented through activities such as data collection and analysis, risk assessment, outreach, technology transfer, and research and development. To the extent practicable, research activities authorized under this title shall be peer-reviewed, and the components shall be designed to be complementary to, and avoid duplication of, other public and private hazard reduction efforts.

(2) UNDERSTANDING OF WINDSTORMS.—Activities to enhance the understanding of windstorms shall include research to improve knowledge of and data collection on the impact of severe wind on buildings, structures, and infrastructure.

(3) WINDSTORM IMPACT ASSESSMENT.—Activities to improve windstorm impact assessment shall include—

(A) development of mechanisms for collecting and inventorying information on the performance of buildings, structures, and infrastructure in windstorms and improved collection of pertinent information from sources, including the design and construction industry, insurance companies, and building officials;

(B) research, development, and technology transfer to improve loss estimation and risk assessment systems; and

(C) research, development, and technology transfer to improve simulation and computational modeling of windstorm impacts.

(4) WINDSTORM IMPACT REDUCTION.—Activities to reduce windstorm impacts shall include—

(A) development of improved outreach and implementation mechanisms to translate existing information and research findings into cost-effective and affordable practices for design and construction professionals, and State and local officials;

(B) development of cost-effective and affordable windstorm-resistant systems, structures, and materials for use in new construction and retrofit of existing construction; and

(C) outreach and information dissemination related to cost-effective and affordable construction techniques, loss estimation and risk assessment methodologies, and other pertinent information regarding windstorm phenomena to Federal, State, and local officials, the construction industry, and the general public.

Deadline.

(e) **IMPLEMENTATION PLAN.**—Not later than 1 year after date of enactment of this title, the Interagency Working Group shall develop and transmit to the Congress an implementation plan for achieving the objectives of the Program. The plan shall include—

(1) an assessment of past and current public and private efforts to reduce windstorm impacts, including a comprehensive review and analysis of windstorm mitigation activities supported by the Federal Government;

(2) a description of plans for technology transfer and coordination with natural hazard mitigation activities supported by the Federal Government;

(3) a statement of strategic goals and priorities for each Program component area;

(4) a description of how the Program will achieve such goals, including detailed responsibilities for each agency; and

(5) a description of plans for cooperation and coordination with interested public and private sector entities in each program component area.

(f) **BIENNIAL REPORT.**—The Interagency Working Group shall, on a biennial basis, and not later than 180 days after the end of the preceding 2 fiscal years, transmit a report to the Congress describing the status of the windstorm impact reduction program, including progress achieved during the preceding two fiscal years. Each such report shall include any recommendations for legislative and other action the Interagency Working Group considers necessary and appropriate. In developing the biennial report, the Interagency Working Group shall consider the recommendations of the Advisory Committee established under section 205.

42 USC 15704.

SEC. 205. NATIONAL ADVISORY COMMITTEE ON WINDSTORM IMPACT REDUCTION.

(a) **ESTABLISHMENT.**—The Director shall establish a National Advisory Committee on Windstorm Impact Reduction, consisting of not less than 11 and not more than 15 non-Federal members representing a broad cross section of interests such as the research, technology transfer, design and construction, and financial communities; materials and systems suppliers; State, county, and local governments; the insurance industry; and other representatives as designated by the Director.

(b) **ASSESSMENT.**—The Advisory Committee shall assess—

(1) trends and developments in the science and engineering of windstorm impact reduction;

(2) the effectiveness of the Program in carrying out the activities under section 204(d);

(3) the need to revise the Program; and

(4) the management, coordination, implementation, and activities of the Program.

(c) BIENNIAL REPORT.—At least once every two years, the Advisory Committee shall report to Congress and the Interagency Working Group on the assessment carried out under subsection (b).

(d) SUNSET EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee established under this section.

SEC. 206. SAVINGS CLAUSE.

42 USC 15705.

Nothing in this title supersedes any provision of the National Manufactured Housing Construction and Safety Standards Act of 1974. No design, construction method, practice, technology, material, mitigation methodology, or hazard reduction measure of any kind developed under this title shall be required for a home certified under section 616 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5415), pursuant to standards issued under such Act, without being subject to the consensus development process and rulemaking procedures of that Act.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

42 USC 15706.

(a) FEDERAL EMERGENCY MANAGEMENT AGENCY.—There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this title—

(1) \$8,700,000 for fiscal year 2006;

(2) \$9,400,000 for fiscal year 2007; and

(3) \$9,400,000 for fiscal year 2008.

(b) NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for carrying out this title—

(1) \$8,700,000 for fiscal year 2006;

(2) \$9,400,000 for fiscal year 2007; and

(3) \$9,400,000 for fiscal year 2008.

(c) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this title—

(1) \$3,000,000 for fiscal year 2006;

(2) \$4,000,000 for fiscal year 2007; and

(3) \$4,000,000 for fiscal year 2008.

(d) NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—There are authorized to be appropriated to the National Oceanic and Atmospheric Administration for carrying out this title—

(1) \$2,100,000 for fiscal year 2006;

(2) \$2,200,000 for fiscal year 2007; and

(3) \$2,200,000 for fiscal year 2008.

SEC. 208. BIENNIAL REPORT.

Section 37(a) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885d(a)) is amended by striking “By January 30, 1982, and biennially thereafter” and inserting “By January 30 of each odd-numbered year”.

42 USC 15707.

SEC. 209. COORDINATION.

The Secretary of Commerce, the Director of the National Institute of Standards and Technology, the Director of the Office of Science and Technology Policy and the heads of other Federal departments and agencies carrying out activities under this title and the statutes amended by this title shall work together to ensure that research, technologies, and response techniques are shared among the programs authorized in this title in order to coordinate the Nation's efforts to reduce vulnerability to the hazards described in this title.

TITLE III—COMMERCIAL SPACE TRANSPORTATION

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 70119 of title 49, United States Code, is amended by striking paragraphs (1) and (2) and inserting the following:

- “(1) \$11,941,000 for fiscal year 2005;
- “(2) \$12,299,000 for fiscal year 2006;
- “(3) \$12,668,000 for fiscal year 2007;
- “(4) \$13,048,000 for fiscal year 2008; and
- “(5) \$13,440,000 for fiscal year 2009.”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 2608:

HOUSE REPORTS: No. 108–246, Pt. 1 (Comm. on Science).

SENATE REPORTS: No. 108–385 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 1, considered and passed House.

Vol. 150 (2004): Oct. 6, considered and passed Senate, amended.

Oct. 8, House concurred in Senate amendment.



Public Law 108–361
108th Congress

An Act

To authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

Oct. 25, 2004
[H.R. 2828]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Water Supply, Reliability, and Environmental Improvement Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—CALIFORNIA WATER SECURITY AND ENVIRONMENTAL
ENHANCEMENT**

- Sec. 101. Short title.
- Sec. 102. Definitions.
- Sec. 103. Bay Delta program.
- Sec. 104. Management.
- Sec. 105. Reporting requirements.
- Sec. 106. Crosscut budget.
- Sec. 107. Federal share of costs.
- Sec. 108. Compliance with State and Federal law.
- Sec. 109. Authorization of appropriation.

TITLE II—MISCELLANEOUS

- Sec. 201. Salton Sea study program.
- Sec. 202. Alder Creek water storage and conservation project feasibility study and report.
- Sec. 203. Folsom Reservoir temperature control device authorization.

**TITLE I—CALIFORNIA WATER SECURITY
AND ENVIRONMENTAL ENHANCEMENT**

Water Supply,
Reliability, and
Environmental
Improvement
Act.
California.

Calfed Bay-Delta
Authorization
Act.

SEC. 101. SHORT TITLE.

This title may be cited as the “Calfed Bay-Delta Authorization Act”.

SEC. 102. DEFINITIONS.

In this title:

(1) **CALFED BAY-DELTA PROGRAM.**—The terms “Calfed Bay-Delta Program” and “Program” mean the programs, projects, complementary actions, and activities undertaken through coordinated planning, implementation, and assessment activities of the State agencies and Federal agencies as set forth in the Record of Decision.

(2) CALIFORNIA BAY-DELTA AUTHORITY.—The terms “California Bay-Delta Authority” and “Authority” mean the California Bay-Delta Authority, as set forth in the California Bay-Delta Authority Act (Cal. Water Code § 79400 et seq.).

(3) DELTA.—The term “Delta” has the meaning given the term in the Record of Decision.

(4) ENVIRONMENTAL WATER ACCOUNT.—The term “Environmental Water Account” means the Cooperative Management Program established under the Record of Decision.

(5) FEDERAL AGENCIES.—The term “Federal agencies” means—

(A) the Department of the Interior, including—

- (i) the Bureau of Reclamation;
- (ii) the United States Fish and Wildlife Service;
- (iii) the Bureau of Land Management; and
- (iv) the United States Geological Survey;

(B) the Environmental Protection Agency;

(C) the Army Corps of Engineers;

(D) the Department of Commerce, including the National Marine Fisheries Service (also known as “NOAA Fisheries”);

(E) the Department of Agriculture, including—

- (i) the Natural Resources Conservation Service;

and

- (ii) the Forest Service; and

(F) the Western Area Power Administration.

(6) FIRM YIELD.—The term “firm yield” means a quantity of water from a project or program that is projected to be available on a reliable basis, given a specified level of risk, during a critically dry period.

(7) GOVERNOR.—The term “Governor” means the Governor of the State of California.

(8) RECORD OF DECISION.—The term “Record of Decision” means the Calfed Bay-Delta Program Record of Decision, dated August 28, 2000.

(9) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(10) STATE.—The term “State” means the State of California.

(11) STATE AGENCIES.—The term “State agencies” means—

(A) the Resources Agency of California, including—

- (i) the Department of Water Resources;
- (ii) the Department of Fish and Game;
- (iii) the Reclamation Board;
- (iv) the Delta Protection Commission;
- (v) the Department of Conservation;
- (vi) the San Francisco Bay Conservation and Development Commission;

(vii) the Department of Parks and Recreation; and

(viii) the California Bay-Delta Authority;

(B) the California Environmental Protection Agency, including the State Water Resources Control Board;

(C) the California Department of Food and Agriculture; and

(D) the Department of Health Services.

SEC. 103. BAY DELTA PROGRAM.**(a) IN GENERAL.—**

(1) **RECORD OF DECISION AS GENERAL FRAMEWORK.**—The Record of Decision is approved as a general framework for addressing the Calfed Bay-Delta Program, including its components relating to water storage, ecosystem restoration, water supply reliability (including new firm yield), conveyance, water use efficiency, water quality, water transfers, watersheds, the Environmental Water Account, levee stability, governance, and science.

(2) REQUIREMENTS.—

(A) **IN GENERAL.**—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) consistent with—

(i) the Record of Decision;

(ii) the requirement that Program activities consisting of protecting drinking water quality, restoring ecological health, improving water supply reliability (including additional storage, conveyance, and new firm yield), and protecting Delta levees will progress in a balanced manner; and

(iii) this title.

(B) **MULTIPLE BENEFITS.**—In selecting activities and projects, the Secretary and the heads of the Federal agencies shall consider whether the activities and projects have multiple benefits.

(b) **AUTHORIZED ACTIVITIES.**—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in subsections (c) through (f) in furtherance of the Calfed Bay-Delta Program as set forth in the Record of Decision, subject to the cost-share and other provisions of this title, if the activity has been—

(1) subject to environmental review and approval, as required under applicable Federal and State law; and

(2) approved and certified by the relevant Federal agency, following consultation and coordination with the Governor, to be consistent with the Record of Decision.

(c) **AUTHORIZATIONS FOR FEDERAL AGENCIES UNDER APPLICABLE LAW.—**

(1) **SECRETARY OF THE INTERIOR.**—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1) through (10) of subsection (d), to the extent authorized under the reclamation laws, the Central Valley Project Improvement Act (title XXXIV of Public Law 102-575; 106 Stat. 4706), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(2) **ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.**—The Administrator of the Environmental Protection Agency is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable law.

(3) **SECRETARY OF THE ARMY.**—The Secretary of the Army is authorized to carry out the activities described in paragraphs (1), (2), (6), (7), (8), and (9) of subsection (d), to the extent

authorized under flood control, water resource development, and other applicable law.

(4) SECRETARY OF COMMERCE.—The Secretary of Commerce is authorized to carry out the activities described in paragraphs (2), (6), (7), and (9) of subsection (d), to the extent authorized under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable law.

(5) SECRETARY OF AGRICULTURE.—The Secretary of Agriculture is authorized to carry out the activities described in paragraphs (3), (5), (6), (7), (8), and (9) of subsection (d), to the extent authorized under title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.), the Farm Security and Rural Investment Act of 2002 (Public Law 107-171; 116 Stat. 134) (including amendments made by that Act), and other applicable law.

(d) DESCRIPTION OF ACTIVITIES UNDER APPLICABLE LAW.—

(1) WATER STORAGE.—

(A) IN GENERAL.—Activities under this paragraph consist of—

(i) planning and feasibility studies for projects to be pursued with project-specific study for enlargement of—

(I) the Shasta Dam in Shasta County; and

(II) the Los Vaqueros Reservoir in Contra Costa County;

(ii) planning and feasibility studies for the following projects requiring further consideration—

(I) the Sites Reservoir in Colusa County; and

(II) the Upper San Joaquin River storage in Fresno and Madera Counties;

(iii) developing and implementing groundwater management and groundwater storage projects; and

(iv) comprehensive water management planning.

(B) STORAGE PROJECT AUTHORIZATION AND BALANCED CALFED IMPLEMENTATION.—

(i) IN GENERAL.—If on completion of the feasibility study for a project described in clause (i) or (ii) of subparagraph (A), the Secretary, in consultation with the Governor, determines that the project should be constructed in whole or in part with Federal funds, the Secretary shall submit the feasibility study to Congress.

(ii) FINDING OF IMBALANCE.—If Congress fails to authorize construction of the project by the end of the next full session following the submission of the feasibility study, the Secretary, in consultation with the Governor, shall prepare a written determination making a finding of imbalance for the Calfed Bay-Delta Program.

(iii) REPORT ON REBALANCING.—

(I) IN GENERAL.—If the Secretary makes a finding of imbalance for the Program under clause (ii), the Secretary, in consultation with the Governor, shall, not later than 180 days after the end of the full session described in clause (ii),

prepare and submit to Congress a report on the measures necessary to rebalance the Program.

(II) SCHEDULES AND ALTERNATIVES.—The report shall include preparation of revised schedules and identification of alternatives to rebalance the Program, including resubmission of the project to Congress with or without modification, construction of other projects, and construction of other projects that provide equivalent water supply and other benefits at equal or lesser cost.

(C) WATER SUPPLY AND YIELD STUDY.—

(i) IN GENERAL.—The Secretary, acting through the Bureau of Reclamation and in coordination with the State, shall conduct a study of available water supplies and existing and future needs for water—

(I) within the units of the Central Valley Project;

(II) within the area served by Central Valley Project agricultural, municipal, and industrial water service contractors; and

(III) within the Calfed Delta solution area.

(ii) RELATIONSHIP TO PRIOR STUDY.—In conducting the study, the Secretary shall incorporate and revise, as necessary, the results of the study required by section 3408(j) of the Central Valley Project Improvement Act of 1992 (Public Law 102-575; 106 Stat. 4730).

(iii) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study, including—

(I) new firm yield and water supply improvements, if any, for Central Valley Project agricultural water service contractors and municipal and industrial water service contractors, including those identified in Bulletin 160;

(II) all water management actions or projects, including those identified in Bulletin 160, that would—

(aa) improve firm yield or water supply; and

(bb) if taken or constructed, balance available water supplies and existing demand with due recognition of water right priorities and environmental needs;

(III) the financial costs of the actions and projects described under subclause (II); and

(IV) the beneficiaries of those actions and projects and an assessment of the willingness of the beneficiaries to pay the capital costs and operation and maintenance costs of the actions and projects.

(D) MANAGEMENT.—The Secretary shall conduct activities related to developing groundwater storage projects to the extent authorized under law.

(E) COMPREHENSIVE WATER PLANNING.—The Secretary shall conduct activities related to comprehensive water management planning to the extent authorized under law.

(2) CONVEYANCE.—

(A) SOUTH DELTA ACTIONS.—

(i) IN GENERAL.—In the case of the South Delta, activities under this subparagraph consist of—

(I) the South Delta Improvements Program through actions to—

(aa) increase the State Water Project export limit to 8,500 cfs;

(bb) install permanent, operable barriers in the South Delta, under which Federal agencies shall cooperate with the State to accelerate installation of the permanent, operable barriers in the South Delta, with an intent to complete that installation not later than September 30, 2007;

(cc) evaluate, consistent with the Record of Decision, fish screens and intake facilities at the Tracy Pumping Plant facilities; and

(dd) increase the State Water Project export to the maximum capability of 10,300 cfs;

(II) reduction of agricultural drainage in South Delta channels, and other actions necessary to minimize the impact of drainage on drinking water quality;

(III) evaluation of lower San Joaquin River floodway improvements;

(IV) installation and operation of temporary barriers in the South Delta until fully operable barriers are constructed; and

(V) actions to protect navigation and local diversions not adequately protected by temporary barriers.

(ii) ACTIONS TO INCREASE PUMPING.—Actions to increase pumping shall be accomplished in a manner consistent with the Record of Decision requirement to avoid redirected impacts and adverse impacts to fishery protection and with any applicable Federal or State law that protects—

(I) water diversions and use (including avoidance of increased costs of diversion) by in-Delta water users (including in-Delta agricultural users that have historically relied on water diverted for use in the Delta);

(II) water quality for municipal, industrial, agricultural, and other uses; and

(III) water supplies for areas of origin.

(B) NORTH DELTA ACTIONS.—In the case of the North Delta, activities under this subparagraph consist of—

(i) evaluation and implementation of improved operational procedures for the Delta Cross Channel to address fishery and water quality concerns;

(ii) evaluation of a screened through-Delta facility on the Sacramento River; and

(iii) evaluation of lower Mokelumne River floodway improvements.

(C) INTERTIES.—Activities under this subparagraph consist of—

(i) evaluation and construction of an intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal, near the City of Tracy, as an operation and maintenance activity, except that the Secretary shall design and construct the intertie in a manner consistent with a possible future expansion of the intertie capacity (as described in subsection (f)(1)(B)); and

(ii) assessment of a connection of the Central Valley Project to the Clifton Court Forebay of the State Water Project, with a corresponding increase in the screened intake of the Forebay.

(D) PROGRAM TO MEET STANDARDS.—

(i) IN GENERAL.—Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, the Secretary shall, not later than 1 year after the date of enactment of this Act, in consultation with the Governor, develop and initiate implementation of a program to meet all existing water quality standards and objectives for which the Central Valley Project has responsibility.

Deadline.

(ii) MEASURES.—In developing and implementing the program, the Secretary shall include, to the maximum extent feasible, the measures described in clauses (iii) through (vii).

(iii) RECIRCULATION PROGRAM.—The Secretary shall incorporate into the program a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.

(iv) BEST MANAGEMENT PRACTICES PLAN.—

(I) IN GENERAL.—The Secretary shall develop and implement, in coordination with the State's programs to improve water quality in the San Joaquin River, a best management practices plan to reduce the water quality impacts of the discharges from wildlife refuges that receive water from the Federal Government and discharge salt or other constituents into the San Joaquin River.

(II) COORDINATION WITH INTERESTED PARTIES.—The plan shall be developed in coordination with interested parties in the San Joaquin Valley and the Delta.

(III) COORDINATION WITH ENTITIES THAT DISCHARGE WATER.—The Secretary shall also coordinate activities under this clause with other entities that discharge water into the San Joaquin River to reduce salinity concentrations discharged into

the River, including the timing of discharges to optimize their assimilation.

(v) ACQUISITION OF WATER.—The Secretary shall incorporate into the program the acquisition from willing sellers of water from streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges of salt or other constituents, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin Rivers, and to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives.

(vi) PURPOSE.—The purpose of the authority and direction provided to the Secretary under this subparagraph is to provide greater flexibility in meeting the existing water quality standards and objectives for which the Central Valley Project has responsibility so as to reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to Central Valley Project contractors from the New Melones Project.

(vii) UPDATING OF NEW MELONES OPERATING PLAN.—The Secretary shall update the New Melones operating plan to take into account, among other things, the actions described in this title that are designed to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives, and to ensure that actions to enhance fisheries in the Stanislaus River are based on the best available science.

(3) WATER USE EFFICIENCY.—

(A) WATER CONSERVATION PROJECTS.—Activities under this paragraph include water conservation projects that provide water supply reliability, water quality, and ecosystem benefits to the California Bay-Delta system.

(B) TECHNICAL ASSISTANCE.—Activities under this paragraph include technical assistance for urban and agricultural water conservation projects.

(C) WATER RECYCLING AND DESALINATION PROJECTS.—Activities under this paragraph include water recycling and desalination projects, including groundwater remediation projects and projects identified in the Bay Area Water Plan and the Southern California Comprehensive Water Reclamation and Reuse Study and other projects, giving priority to projects that include regional solutions to benefit regional water supply and reliability needs.

(D) WATER MEASUREMENT AND TRANSFER ACTIONS.—Activities under this paragraph include water measurement and transfer actions.

(E) URBAN WATER CONSERVATION.—Activities under this paragraph include implementation of best management practices for urban water conservation.

(F) RECLAMATION AND RECYCLING PROJECTS.—

(i) PROJECTS.—This subparagraph applies to—

(I) projects identified in the Southern California Comprehensive Water Reclamation and Reuse Study, dated April 2001 and authorized by

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section 1606 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–4); and

(II) projects identified in the San Francisco Bay Area Regional Water Recycling Program described in the San Francisco Bay Area Regional Water Recycling Program Recycled Water Master Plan, dated December 1999 and authorized by section 1611 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–9).

(ii) DEADLINE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(I) complete the review of the existing studies of the projects described in clause (i); and

(II) make the feasibility determinations described in clause (iii).

(iii) FEASIBILITY DETERMINATIONS.—A project described in clause (i) is presumed to be feasible if the Secretary determines for the project—

(I) in consultation with the affected local sponsoring agency and the State, that the existing planning and environmental studies for the project (together with supporting materials and documentation) have been prepared consistent with Bureau of Reclamation procedures for projects under consideration for financial assistance under the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.); and

(II) that the planning and environmental studies for the project (together with supporting materials and documentation) demonstrate that the project will contribute to the goals of improving water supply reliability in the Calfed solution area or the Colorado River Basin within the State and otherwise meets the requirements of section 1604 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–2).

(iv) REPORT.—Not later than 90 days after the date of completion of a feasibility study or the review of a feasibility study under this subparagraph, the Secretary shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report describing the results of the study or review.

(4) WATER TRANSFERS.—Activities under this paragraph consist of—

(A) increasing the availability of existing facilities for water transfers;

(B) lowering transaction costs through permit streamlining; and

(C) maintaining a water transfer information clearinghouse.

(5) INTEGRATED REGIONAL WATER MANAGEMENT PLANS.—Activities under this paragraph consist of assisting local and

regional communities in the State in developing and implementing integrated regional water management plans to carry out projects and programs that improve water supply reliability, water quality, ecosystem restoration, and flood protection, or meet other local and regional needs, in a manner that is consistent with, and makes a significant contribution to, the Calfed Bay-Delta Program.

(6) ECOSYSTEM RESTORATION.—

(A) IN GENERAL.—Activities under this paragraph consist of—

(i) implementation of large-scale restoration projects in San Francisco Bay and the Delta and its tributaries;

(ii) restoration of habitat in the Delta, San Pablo Bay, and Suisun Bay and Marsh, including tidal wetland and riparian habitat;

(iii) fish screen and fish passage improvement projects, including the Sacramento River Small Diversion Fish Screen Program;

(iv) implementation of an invasive species program, including prevention, control, and eradication;

(v) development and integration of Federal and State agricultural programs that benefit wildlife into the Ecosystem Restoration Program;

(vi) financial and technical support for locally-based collaborative programs to restore habitat while addressing the concerns of local communities;

(vii) water quality improvement projects to manage or reduce concentrations of salinity, selenium, mercury, pesticides, trace metals, dissolved oxygen, turbidity, sediment, and other pollutants;

(viii) land and water acquisitions to improve habitat and fish spawning and survival in the Delta and its tributaries;

(ix) integrated flood management, ecosystem restoration, and levee protection projects;

(x) scientific evaluations and targeted research on Program activities; and

(xi) strategic planning and tracking of Program performance.

(B) REPORTING REQUIREMENTS.—The Secretary or the head of the relevant Federal agency (as appropriate under clause (ii)) shall provide to the appropriate authorizing committees of the Senate and the House of Representatives and other appropriate parties in accordance with this subparagraph—

(i) an annual ecosystem program plan report in accordance with subparagraph (C); and

(ii) detailed project reports in accordance with subparagraph (D).

(C) ANNUAL ECOSYSTEM PROGRAM PLAN.—

(i) IN GENERAL.—Not later than October 1 of each year, with respect to each ecosystem restoration action carried out using Federal funds under this title, the Secretary, in consultation with the Governor, shall submit to the appropriate authorizing committees of

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Deadlines.

the Senate and the House of Representatives an annual ecosystem program plan report.

(ii) PURPOSES.—The purposes of the report are—

(I) to describe the projects and programs to implement this subsection in the following fiscal year; and

(II) to establish priorities for funding the projects and programs for subsequent fiscal years.

(iii) CONTENTS.—The report shall describe—

(I) the goals and objectives of the programs and projects;

(II) program accomplishments;

(III) major activities of the programs;

(IV) the Federal agencies involved in each project or program identified in the plan and the cost-share arrangements with cooperating agencies;

(V) the resource data and ecological monitoring data to be collected for the restoration projects and how the data are to be integrated, streamlined, and designed to measure the effectiveness and overall trend of ecosystem health in the Bay-Delta watershed;

(VI) implementation schedules and budgets;

(VII) existing monitoring programs and performance measures;

(VIII) the status and effectiveness of measures to minimize the impacts of the program on agricultural land; and

(IX) a description of expected benefits of the restoration program relative to the cost.

(iv) SPECIAL RULE FOR LAND ACQUISITION USING FEDERAL FUNDS.—For each ecosystem restoration project involving land acquisition using Federal funds under this title, the Secretary shall—

(I) identify the specific parcels to be acquired in the annual ecosystem program plan report under this subparagraph; or

(II) not later than 150 days before the project is approved, provide to the appropriate authorizing committees of the Senate and the House of Representatives, the United States Senators from the State, and the United States Representative whose district would be affected, notice of any such proposed land acquisition using Federal funds under this title submitted to the Federal or State agency.

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(D) DETAILED PROJECT REPORTS.—

(i) IN GENERAL.—In the case of each ecosystem restoration program or project funded under this title that is not specifically identified in an annual ecosystem program plan under subparagraph (C), not later than 45 days prior to approval, the Secretary, in coordination with the State, shall submit to the appropriate authorizing committees of the Senate and the House of Representatives recommendations on the proposed program or project.

(ii) CONTENTS.—The recommendations shall—

(I) describe the selection of the program or project, including the level of public involvement and independent science review;

(II) describe the goals, objectives, and implementation schedule of the program or project, and the extent to which the program or project addresses regional and programmatic goals and priorities;

(III) describe the monitoring plans and performance measures that will be used for evaluating the performance of the proposed program or project;

(IV) identify any cost-sharing arrangements with cooperating entities;

(V) identify how the proposed program or project will comply with all applicable Federal and State laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(VI) in the case of any program or project involving the acquisition of private land using Federal funds under this title—

(aa) describe the process and timing of notification of interested members of the public and local governments;

(bb) describe the measures taken to minimize impacts on agricultural land pursuant to the Record of Decision; and

(cc) include preliminary management plans for all properties to be acquired with Federal funds, including an overview of existing conditions (including habitat types in the affected project area), the expected ecological benefits, preliminary cost estimates, and implementation schedules.

(7) WATERSHEDS.—Activities under this paragraph consist of—

(A) building local capacity to assess and manage watersheds affecting the Delta system;

(B) technical assistance for watershed assessments and management plans; and

(C) developing and implementing locally-based watershed conservation, maintenance, and restoration actions.

(8) WATER QUALITY.—Activities under this paragraph consist of—

(A) addressing drainage problems in the San Joaquin Valley to improve downstream water quality (including habitat restoration projects that improve water quality) if—

(i) a plan is in place for monitoring downstream water quality improvements; and

(ii) State and local agencies are consulted on the activities to be funded; except that no right, benefit, or privilege is created as a result of this subparagraph;

(B) implementation of source control programs in the Delta and its tributaries;

(C) developing recommendations through scientific panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in Delta water quality for all uses;

(D) investing in treatment technology demonstration projects;

(E) controlling runoff into the California aqueduct, the Delta-Mendota Canal, and other similar conveyances;

(F) addressing water quality problems at the North Bay Aqueduct;

(G) supporting and participating in the development of projects to enable San Francisco Bay Area water districts, and water entities in San Joaquin and Sacramento Counties, to work cooperatively to address their water quality and supply reliability issues, including—

(i) connections between aqueducts, water transfers, water conservation measures, institutional arrangements, and infrastructure improvements that encourage regional approaches; and

(ii) investigations and studies of available capacity in a project to deliver water to the East Bay Municipal Utility District under its contract with the Bureau of Reclamation, dated July 20, 2001, in order to determine if such capacity can be utilized to meet the objectives of this subparagraph;

(H) development of water quality exchanges and other programs to make high quality water available for urban and other users;

(I) development and implementation of a plan to meet all Delta water quality standards for which the Federal and State water projects have responsibility;

(J) development of recommendations through science panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in water quality for all uses; and

(K) projects that are consistent with the framework of the water quality component of the Calfed Bay-Delta Program.

(9) SCIENCE.—Activities under this paragraph consist of—

(A) supporting establishment and maintenance of an independent science board, technical panels, and standing boards to provide oversight and peer review of the Program;

(B) conducting expert evaluations and scientific assessments of all Program elements;

(C) coordinating existing monitoring and scientific research programs;

(D) developing and implementing adaptive management experiments to test, refine, and improve scientific understandings;

(E) establishing performance measures, and monitoring and evaluating the performance of all Program elements; and

(F) preparing an annual science report.

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(10) DIVERSIFICATION OF WATER SUPPLIES.—Activities under this paragraph consist of actions to diversify sources of level 2 refuge supplies and modes of delivery to refuges while maintaining the diversity of level 4 supplies pursuant to section

3406(d)(2) of the Central Valley Project Improvement Act (Public Law 102-575; 106 Stat. 4723).

(e) NEW AND EXPANDED AUTHORIZATIONS FOR FEDERAL AGENCIES.—

(1) IN GENERAL.—The heads of the Federal agencies described in this subsection are authorized to carry out the activities described in subsection (f) during each of fiscal years 2005 through 2010, in coordination with the Governor.

(2) SECRETARY OF THE INTERIOR.—The Secretary of the Interior is authorized to carry out the activities described in paragraphs (1), (2), and (4) of subsection (f).

(3) ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND THE SECRETARIES OF AGRICULTURE AND COMMERCE.—The Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the Secretary of Commerce are authorized to carry out the activities described in subsection (f)(4).

(4) SECRETARY OF THE ARMY.—The Secretary of the Army is authorized to carry out the activities described in paragraphs (3) and (4) of subsection (f).

(f) DESCRIPTION OF ACTIVITIES UNDER NEW AND EXPANDED AUTHORIZATIONS.—

(1) CONVEYANCE.—Of the amounts authorized to be appropriated under section 109, not more than \$184,000,000 may be expended for the following:

(A) SAN LUIS RESERVOIR.—Funds may be expended for feasibility studies, evaluation, and implementation of the San Luis Reservoir lowpoint improvement project, except that Federal participation in any construction of an expanded Pacheco Reservoir shall be subject to future congressional authorization.

(B) INTERTIE.—Funds may be expended for feasibility studies and evaluation of increased capacity of the intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal.

(C) FRANKS TRACT.—Funds may be expended for feasibility studies and actions at Franks Tract to improve water quality in the Delta.

(D) CLIFTON COURT FOREBAY AND THE TRACY PUMPING PLANT.—Funds may be expended for feasibility studies and design of fish screen and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities.

(E) DRINKING WATER INTAKE FACILITIES.—

(i) IN GENERAL.—Funds may be expended for design and construction of the relocation of drinking water intake facilities to in-Delta water users.

(ii) DRINKING WATER QUALITY.—The Secretary shall coordinate actions for relocating intake facilities on a time schedule consistent with subsection (d)(2)(A)(i)(I)(bb) or take other actions necessary to offset the degradation of drinking water quality in the Delta due to the South Delta Improvement Program.

(F) NEW MELONES RESERVOIR.—

(i) IN GENERAL.—In addition to the other authorizations granted to the Secretary by this title, the Secretary shall acquire water from willing sellers

and undertake other actions designed to decrease releases from the New Melones Reservoir for meeting water quality standards and flow objectives for which the Central Valley Project has responsibility to assist in meeting allocations to Central Valley Project contractors from the New Melones Project.

(ii) PURPOSE.—The authorization under this subparagraph is solely meant to add flexibility for the Secretary to meet any obligations of the Secretary to the Central Valley Project contractors from the New Melones Project by reducing demand for water dedicated to meeting water quality standards in the San Joaquin River.

(iii) FUNDING.—Of the amounts authorized to be appropriated under section 109, not more than \$30,000,000 may be expended to carry out clause (i).

(G) RECIRCULATION OF EXPORT WATER.—Funds may be used to conduct feasibility studies, evaluate, and, if feasible, implement the recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River.

(2) ENVIRONMENTAL WATER ACCOUNT.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated under section 109, not more than \$90,000,000 may be expended for implementation of the Environmental Water Account.

(B) NONREIMBURSABLE FEDERAL EXPENDITURE.—Expenditures under subparagraph (A) shall be considered a nonreimbursable Federal expenditure in recognition of the payments of the contractors of the Central Valley Project to the Restoration Fund created by the Central Valley Project Improvement Act (Title XXXIV of Public Law 102-575; 106 Stat. 4706).

(C) USE OF RESTORATION FUND.—

(i) IN GENERAL.—Of the amounts appropriated for the Restoration Fund for each fiscal year, an amount not to exceed \$10,000,000 for any fiscal year may be used to implement the Environmental Water Account to the extent those actions are consistent with the fish and wildlife habitat restoration and improvement purposes of the Central Valley Project Improvement Act.

(ii) ACCOUNTING.—Any such use of the Restoration Fund shall count toward the 33 percent of funds made available to the Restoration Fund that, pursuant to section 3407(a) of the Central Valley Project Improvement Act, are otherwise authorized to be appropriated to the Secretary to carry out paragraphs (4) through (6), (10) through (18), and (20) through (22) of section 3406(b) of that Act.

(iii) FEDERAL FUNDING.—The \$10,000,000 limitation on the use of the Restoration Fund for the Environmental Water Account under clause (i) does not limit the appropriate amount of Federal funding for the Environmental Water Account.

(3) LEVEE STABILITY.—

(A) IN GENERAL.—For purposes of implementing the CalFed Bay-Delta Program within the Delta (as defined in Cal. Water Code § 12220)), the Secretary of the Army is authorized to undertake the construction and implementation of levee stability programs or projects for such purposes as flood control, ecosystem restoration, water supply, water conveyance, and water quality objectives.

(B) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Army shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that describes the levee stability reconstruction projects and priorities that will be carried out under this title during each of fiscal years 2005 through 2010.

Applicability.

(C) SMALL FLOOD CONTROL PROJECTS.—Notwithstanding the project purpose, the authority granted under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) shall apply to each project authorized under this paragraph.

(D) PROJECTS.—Of the amounts authorized to be appropriated under section 109, not more than \$90,000,000 may be expended to—

(i) reconstruct Delta levees to a base level of protection (also known as the “Public Law 84-99 standard”);

(ii) enhance the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects Program;

(iii) develop best management practices to control and reverse land subsidence on Delta islands;

(iv) develop a Delta Levee Emergency Management and Response Plan that will enhance the ability of Federal, State, and local agencies to rapidly respond to levee emergencies;

(v) develop a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) reconstruct Delta levees using, to the maximum extent practicable, dredged materials from the Sacramento River, the San Joaquin River, and the San Francisco Bay in reconstructing Delta levees;

(vii) coordinate Delta levee projects with flood management, ecosystem restoration, and levee protection projects of the lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study; and

(viii) evaluate and, if appropriate, rehabilitate the Suisun Marsh levees.

(4) PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.—

(A) IN GENERAL.—Of the amounts authorized to be appropriated under section 109, not more than \$25,000,000 may be expended by the Secretary or the other heads of Federal agencies, either directly or through grants, contracts, or cooperative agreements with agencies of the State, for—

(i) Program support;

(ii) Program-wide tracking of schedules, finances, and performance;

(iii) multiagency oversight and coordination of Program activities to ensure Program balance and integration;

(iv) development of interagency cross-cut budgets and a comprehensive finance plan to allocate costs in accordance with the beneficiary pays provisions of the Record of Decision;

(v) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities in accordance with the Federal Advisory Committee Act (5 U.S.C. App.); and

(vi) development of Annual Reports.

(B) PROGRAM-WIDE ACTIVITIES.—Of the amount referred to in subparagraph (A), not less than 50 percent of the appropriated amount shall be provided to the California Bay-Delta Authority to carry out Program-wide management, oversight, and coordination activities.

SEC. 104. MANAGEMENT.

(a) COORDINATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall coordinate their activities with the State agencies.

(b) PUBLIC PARTICIPATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall cooperate with local and tribal governments and the public through an advisory committee established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and other appropriate means, to seek input on Program planning and design, technical assistance, and development of peer review science programs.

(c) SCIENCE.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall seek to ensure, to the maximum extent practicable, that—

(1) all major aspects of implementing the Program are subjected to credible and objective scientific review; and

(2) major decisions are based upon the best available scientific information.

(d) GOVERNANCE.—

(1) IN GENERAL.—In carrying out the Calfed Bay-Delta Program, the Secretary and the Federal agency heads are authorized to participate as nonvoting members of the California Bay-Delta Authority, as established in the California Bay-Delta Authority Act (Cal. Water Code §79400 et seq.), to the extent consistent with Federal law, for the full duration of the period the Authority continues to be authorized by State law.

(2) RELATIONSHIP TO FEDERAL LAW AND AGENCIES.—Nothing in this subsection shall preempt or otherwise affect any Federal law or limit the statutory authority of any Federal agency.

(3) CALIFORNIA BAY-DELTA AUTHORITY.—

(A) ADVISORY COMMITTEE.—The California Bay-Delta Authority shall not be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

(B) **FINANCIAL INTEREST.**—The financial interests of the California Bay-Delta Authority shall not be imputed to any Federal official participating in the Authority.

(C) **ETHICS REQUIREMENTS.**—A Federal official participating in the California Bay-Delta Authority shall remain subject to Federal financial disclosure and conflict of interest laws and shall not be subject to State financial disclosure and conflict of interest laws.

(e) **ENVIRONMENTAL JUSTICE.**—The Federal agencies, consistent with Executive Order 12898 (59 Fed. Reg. 7629), should continue to collaborate with State agencies to—

(1) develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program; and

(2) fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan, dated December 13, 2000.

(f) **LAND ACQUISITION.**—Federal funds appropriated by Congress specifically for implementation of the Calfed Bay-Delta Program may be used to acquire fee title to land only where consistent with the Record of Decision.

SEC. 105. REPORTING REQUIREMENTS.

(a) **REPORT.**—

(1) **IN GENERAL.**—Not later than February 15 of each year, the Secretary, in cooperation with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a report that—

(A) describes the status of implementation of all components of the Calfed Bay-Delta Program;

(B) sets forth any written determination resulting from the review required under subsection (b) or section 103(d)(1)(B); and

(C) includes any revised schedule prepared under subsection (b) or section 103(d)(1)(B)(iii)(II).

(2) **CONTENTS.**—The report required under paragraph (1) shall describe—

(A) the progress of the Calfed Bay-Delta Program in meeting the implementation schedule for the Program in a manner consistent with the Record of Decision;

(B) the status of implementation of all components of the Program;

(C) expenditures in the past fiscal year for implementing the Program;

(D) accomplishments during the past fiscal year in achieving the objectives of additional and improved—

(i) water storage;

(ii) water quality, including—

(I) the water quality targets described in section 2.2.9 of the Record of Decision; and

(II) any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets and requirements;

(iii) water use efficiency;

(iv) ecosystem restoration;

(v) watershed management;

(vi) levee system integrity;

(vii) water transfers;

- (viii) water conveyance;
- (ix) water supply reliability (including new firm yield), including progress in achieving the water supply targets described in section 2.2.4 of the Record of Decision and any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets; and

- (x) the uses and assets of the environmental water account described in section 2.2.7 of the Record of Decision;

(E) Program goals, current schedules, and relevant financing agreements, including funding levels necessary to achieve completion of the feasibility studies and environmental documentation for the surface storage projects identified in section 103 by not later than September 30, 2008;

(F) progress on—

- (i) storage projects;
- (ii) conveyance improvements;
- (iii) levee improvements;
- (iv) water quality projects; and
- (v) water use efficiency programs;

(G) completion of key projects and milestones identified in the Ecosystem Restoration Program, including progress on project effectiveness, monitoring, and accomplishments;

(H) development and implementation of local programs for watershed conservation and restoration;

(I) progress in improving water supply reliability and implementing the Environmental Water Account;

(J) achievement of commitments under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and endangered species law of the State;

(K) implementation of a comprehensive science program;

(L) progress toward acquisition of the Federal and State permits (including permits under section 404(a) of the Federal Water Pollution Control Act (33 U.S.C. 1344(a))) for implementation of projects in all identified Program areas;

(M) progress in achieving benefits in all geographic regions covered by the Program;

(N) legislative action on—

- (i) water transfer;
- (ii) groundwater management;
- (iii) water use efficiency; and
- (iv) governance;

(O) the status of complementary actions;

(P) the status of mitigation measures; and

(Q) revisions to funding commitments and Program responsibilities.

(b) ANNUAL REVIEW OF PROGRESS AND BALANCE.—

(1) IN GENERAL.—Not later than November 15 of each year, the Secretary, in cooperation with the Governor, shall review progress in implementing the Calfed Bay-Delta Program based on—

Deadline.

(A) consistency with the Record of Decision; and

(B) balance in achieving the goals and objectives of the Calfed Bay-Delta Program.

(2) REVISED SCHEDULE.—If, at the conclusion of each such annual review or if a timely annual review is not undertaken, the Secretary or the Governor determines in writing that either the Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the Program is not occurring, the Secretary and the Governor, in coordination with the Bay-Delta Public Advisory Committee, shall prepare a revised schedule to achieve balanced progress in all Calfed Bay-Delta Program elements consistent with the intent of the Record of Decision.

(c) FEASIBILITY STUDIES.—Any feasibility studies completed as a result of this title shall include identification of project benefits and a cost allocation plan consistent with the beneficiaries pay provisions of the Record of Decision.

SEC. 106. CROSSCUT BUDGET.

(a) IN GENERAL.—The President's budget shall include such requests as the President considers necessary and appropriate for the appropriate level of funding for each of the Federal agencies to carry out its responsibilities under the Calfed Bay-Delta Program.

(b) REQUESTS BY FEDERAL AGENCIES.—The funds shall be requested for the Federal agency with authority and programmatic responsibility for the obligation of the funds, in accordance with subsections (b) through (f) of section 103.

(c) REPORT.—Not later than 30 days after submission of the budget of the President to Congress, the Director of the Office of Management and Budget, in coordination with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report certified by the Secretary containing—

(1) an interagency budget crosscut report that—

(A) displays the budget proposed, including any interagency or intra-agency transfer, for each of the Federal agencies to carry out the Calfed Bay-Delta Program for the upcoming fiscal year, separately showing funding requested under both pre-existing authorities and under the new authorities granted by this title; and

(B) identifies all expenditures since 1998 by the Federal and State governments to achieve the objectives of the Calfed Bay-Delta Program;

(2) a detailed accounting of all funds received and obligated by all Federal agencies and State agencies responsible for implementing the Calfed Bay-Delta Program during the previous fiscal year;

(3) a budget for the proposed projects (including a description of the project, authorization level, and project status) to be carried out in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103; and

(4) a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds for activities under subsections (b) through (f) of section 103.

SEC. 107. FEDERAL SHARE OF COSTS.

(a) IN GENERAL.—The Federal share of the cost of implementing the Calfed Bay-Delta Program for fiscal years 2005 through 2010

in the aggregate, as set forth in the Record of Decision, shall not exceed 33.3 percent.

(b) **PAYMENT FOR BENEFITS.**—The Secretary shall ensure that all beneficiaries, including beneficiaries of environmental restoration and other Calfed program elements, shall pay for the benefit received from all projects or activities carried out under the Calfed Bay-Delta Program.

(c) **INTEGRATED RESOURCE PLANNING.**—Federal expenditures for the Calfed Bay-Delta Program shall be implemented in a manner that encourages integrated resource planning.

SEC. 108. COMPLIANCE WITH STATE AND FEDERAL LAW.

Nothing in this title—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water;

(3) preempts or modifies any State or Federal law or interstate compact governing water quality or disposal;

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource; or

(5) alters or modifies any provision of existing Federal law, except as specifically provided in this title.

SEC. 109. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated to the Secretary and the heads of the Federal agencies to pay the Federal share of the cost of carrying out the new and expanded authorities described in subsections (e) and (f) of section 103 \$389,000,000 for the period of fiscal years 2005 through 2010, to remain available until expended.

TITLE II—MISCELLANEOUS

SEC. 201. SALTON SEA STUDY PROGRAM.

Deadline.

Not later than December 31, 2006, the Secretary of the Interior, in coordination with the State of California and the Salton Sea Authority, shall complete a feasibility study on a preferred alternative for Salton Sea restoration.

SEC. 202. ALDER CREEK WATER STORAGE AND CONSERVATION PROJECT FEASIBILITY STUDY AND REPORT.

(a) **STUDY.**—Pursuant to Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)), the Secretary of the Interior (referred to in this section as the “Secretary”), through the Bureau of Reclamation, and in consultation and cooperation with the El Dorado Irrigation District, is authorized to conduct a study to determine the feasibility of constructing a project on Alder Creek in El Dorado County, California, to store water and provide water supplies during dry and critically dry years for consumptive use, recreation, in-stream flows, irrigation, and power production.

(b) **REPORT.**—

(1) **TRANSMISSION.**—On completion of the study authorized by subsection (a), the Secretary shall transmit to the Committee

on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report containing the results of the study.

(2) CONTENTS OF REPORT.—The report shall contain appropriate cost sharing options for the implementation of the project based on the use and possible allocation of any stored water.

(3) USE OF AVAILABLE MATERIALS.—In developing the report under this section, the Secretary shall use reports and any other relevant information supplied by the El Dorado Irrigation District.

(c) COST SHARE.—

(1) FEDERAL SHARE.—The Federal share of the costs of the feasibility study authorized by this section shall not exceed 50 percent of the total cost of the study.

(2) IN-KIND CONTRIBUTION FOR NON-FEDERAL SHARE.—The Secretary may accept as part of the non-Federal cost share the contribution such in-kind services by the El Dorado Irrigation District as the Secretary determines will contribute to the conduct and completion of the study.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$3,000,000.

SEC. 203. FOLSOM RESERVOIR TEMPERATURE CONTROL DEVICE AUTHORIZATION.

Section 1(c) of Public Law 105-295 (112 Stat. 2820) (as amended by section 219(b) of Public Law 108-137 (117 Stat. 1853)) is amended in the second sentence by striking “\$3,500,000” and inserting “\$6,250,000”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 2828:

HOUSE REPORTS: No. 108-573, Pt. 1 (Comm. on Resources).
CONGRESSIONAL RECORD, Vol. 150 (2004):

July 9, considered and passed House.

Sept. 15, considered and passed Senate, amended.

Oct. 6, House concurred in Senate amendment.



Public Law 108–362
108th Congress

An Act

To amend the Public Health Service Act to increase the supply of pancreatic islet cells for research, and to provide for better coordination of Federal efforts and information on islet cell transplantation.

Oct. 25, 2004
[H.R. 3858]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pancreatic Islet Cell Transplantation Act of 2004”.

Pancreatic
Islet Cell
Transplantation
Act of 2004.
42 USC 201 note.

SEC. 2. ORGAN PROCUREMENT ORGANIZATION CERTIFICATION.

Section 371 of the Public Health Service Act (42 U.S.C. 273) is amended by adding at the end the following:

“(c) Pancreata procured by an organ procurement organization and used for islet cell transplantation or research shall be counted for purposes of certification or recertification under subsection (b).”.

SEC. 3. ANNUAL ASSESSMENT ON PANCREATIC ISLET CELL TRANSPLANTATION.

Section 429 of the Public Health Service Act (42 U.S.C. 285c–3) is amended by adding at the end the following:

“(d) In each annual report prepared by the Diabetes Mellitus Interagency Coordinating Committee pursuant to subsection (c), the Committee shall include an assessment of the Federal activities and programs related to pancreatic islet cell transplantation. Such assessment shall, at a minimum, address the following:

Reports.

“(1) The adequacy of Federal funding for taking advantage of scientific opportunities relating to pancreatic islet cell transplantation.

“(2) Current policies and regulations affecting the supply of pancreata for islet cell transplantation.

“(3) The effect of xenotransplantation on advancing pancreatic islet cell transplantation.

“(4) The effect of United Network for Organ Sharing policies regarding pancreas retrieval and islet cell transplantation.

“(5) The existing mechanisms to collect and coordinate outcomes data from existing islet cell transplantation trials.

“(6) Implementation of multiagency clinical investigations of pancreatic islet cell transplantation.

“(7) Recommendations for such legislation and administrative actions as the Committee considers appropriate to increase the supply of pancreata available for islet cell transplantation.”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 3858 (S. 518):

HOUSE REPORTS: No. 108–726 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 108–387 accompanying S. 518 (Comm. on Health, Education, Labor, and Pensions).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed House.

Oct. 8, considered and passed Senate.



Public Law 108–363
108th Congress

An Act

To increase, effective as of December 1, 2004, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

Oct. 25, 2004
[H.R. 4175]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans’ Compensation Cost-of-Living Adjustment Act of 2004”.

Veterans’
Compensation
Cost-of-Living
Adjustment Act
of 2004.
38 USC 101 note.

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION

38 USC 1114
note.

(a) **RATE ADJUSTMENT.**—The Secretary of Veterans Affairs shall, effective on December 1, 2004, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

Effective date.

(b) **AMOUNTS TO BE INCREASED.**—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) **COMPENSATION.**—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) **ADDITIONAL COMPENSATION FOR DEPENDENTS.**—Each of the dollar amounts in effect under sections 1115(1) of such title.

(3) **CLOTHING ALLOWANCE.**—The dollar amount in effect under section 1162 of such title.

(4) **NEW DIC RATES.**—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) **OLD DIC RATES.**—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) **ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.**—The dollar amount in effect under section 1311(b) of such title.

(7) **ADDITIONAL DIC FOR DISABILITY.**—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) **DIC FOR DEPENDENT CHILDREN.**—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) **DETERMINATION OF INCREASE.**—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2004.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security

Effective date.

Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2004, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

Federal Register,
publication.
38 USC 1114
note.

SEC. 3. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2005, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section 2, as increased pursuant to that section.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 4175 (S. 2483):

HOUSE REPORTS: No. 108–524 (Comm. on Veterans' Affairs).

SENATE REPORTS: No. 108–351 accompanying S. 2483 (Comm. on Veterans' Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 20, 22, considered and passed House.

Oct. 5, considered and passed Senate, amended, in lieu of S. 2483.

Oct. 8, House concurred in Senate amendment.



Public Law 108–364
108th Congress

An Act

To amend the Assistive Technology Act of 1998 to support programs of grants to States to address the assistive technology needs of individuals with disabilities, and for other purposes.

Oct. 25, 2004
[H.R. 4278]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Assistive
Technology Act of
2004.
29 USC 3001
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Assistive Technology Act of 2004”.

SEC. 2. AMENDMENT TO THE ASSISTIVE TECHNOLOGY ACT OF 1998.

The Assistive Technology Act of 1998 (29 U.S.C. 3001 et seq.) is amended to read as follows:

“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

29 USC 3001
note.

“(a) **SHORT TITLE.**—This Act may be cited as the ‘Assistive Technology Act of 1998’.

“(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

“Sec. 1. Short title; table of contents.

“Sec. 2. Findings and purposes.

“Sec. 3. Definitions.

“Sec. 4. State grants for assistive technology.

“Sec. 5. State grants for protection and advocacy services related to assistive technology.

“Sec. 6. National activities.

“Sec. 7. Administrative provisions.

“Sec. 8. Authorization of appropriations.

“SEC. 2. FINDINGS AND PURPOSES.

29 USC 3001.

“(a) **FINDINGS.**—Congress finds the following:

“(1) Over 54,000,000 individuals in the United States have disabilities, with almost half experiencing severe disabilities that affect their ability to see, hear, communicate, reason, walk, or perform other basic life functions.

“(2) Disability is a natural part of the human experience and in no way diminishes the right of individuals to—

“(A) live independently;

“(B) enjoy self-determination and make choices;

“(C) benefit from an education;

“(D) pursue meaningful careers; and

“(E) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of society in the United States.

“(3) Technology is one of the primary engines for economic activity, education, and innovation in the Nation, and throughout the world. The commitment of the United States to the development and utilization of technology is one of the main factors underlying the strength and vibrancy of the economy of the United States.

“(4) As technology has come to play an increasingly important role in the lives of all persons in the United States, in the conduct of business, in the functioning of government, in the fostering of communication, in the conduct of commerce, and in the provision of education, its impact upon the lives of individuals with disabilities in the United States has been comparable to its impact upon the remainder of the citizens of the United States. Any development in mainstream technology will have profound implications for individuals with disabilities in the United States.

“(5) Substantial progress has been made in the development of assistive technology devices, including adaptations to existing devices that facilitate activities of daily living that significantly benefit individuals with disabilities of all ages. These devices, including adaptations, increase involvement in, and reduce expenditures associated with, programs and activities that facilitate communication, ensure independent functioning, enable early childhood development, support educational achievement, provide and enhance employment options, and enable full participation in community living for individuals with disabilities. Access to such devices can also reduce expenditures associated with early childhood intervention, education, rehabilitation and training, health care, employment, residential living, independent living, recreation opportunities, and other aspects of daily living.

“(6) Over the last 15 years, the Federal Government has invested in the development of comprehensive statewide programs of technology-related assistance, which have proven effective in assisting individuals with disabilities in accessing assistive technology devices and assistive technology services. This partnership between the Federal Government and the States provided an important service to individuals with disabilities by strengthening the capacity of each State to assist individuals with disabilities of all ages meet their assistive technology needs.

“(7) Despite the success of the Federal-State partnership in providing access to assistive technology devices and assistive technology services, there is a continued need to provide information about the availability of assistive technology, advances in improving accessibility and functionality of assistive technology, and appropriate methods to secure and utilize assistive technology in order to maximize the independence and participation of individuals with disabilities in society.

“(8) The combination of significant recent changes in Federal policy (including changes to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), accessibility provisions of the Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.), and the amendments made to the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) by the No Child Left Behind Act of 2001) and the rapid and unending evolution of technology require a Federal-State investment in

State assistive technology systems to continue to ensure that individuals with disabilities reap the benefits of the technological revolution and participate fully in life in their communities.

“(b) PURPOSES.—The purposes of this Act are—

“(1) to support State efforts to improve the provision of assistive technology to individuals with disabilities through comprehensive statewide programs of technology-related assistance, for individuals with disabilities of all ages, that are designed to—

“(A) increase the availability of, funding for, access to, provision of, and training about assistive technology devices and assistive technology services;

“(B) increase the ability of individuals with disabilities of all ages to secure and maintain possession of assistive technology devices as such individuals make the transition between services offered by educational or human service agencies or between settings of daily living (for example, between home and work);

“(C) increase the capacity of public agencies and private entities to provide and pay for assistive technology devices and assistive technology services on a statewide basis for individuals with disabilities of all ages;

“(D) increase the involvement of individuals with disabilities and, if appropriate, their family members, guardians, advocates, and authorized representatives, in decisions related to the provision of assistive technology devices and assistive technology services;

“(E) increase and promote coordination among State agencies, between State and local agencies, among local agencies, and between State and local agencies and private entities (such as managed care providers), that are involved or are eligible to be involved in carrying out activities under this Act;

“(F) increase the awareness and facilitate the change of laws, regulations, policies, practices, procedures, and organizational structures, that facilitate the availability or provision of assistive technology devices and assistive technology services; and

“(G) increase awareness and knowledge of the benefits of assistive technology devices and assistive technology services among targeted individuals and entities and the general population; and

“(2) to provide States with financial assistance that supports programs designed to maximize the ability of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to obtain assistive technology devices and assistive technology services.

“SEC. 3. DEFINITIONS.

29 USC 3002.

“In this Act:

“(1) ADULT SERVICE PROGRAM.—The term ‘adult service program’ means a program that provides services to, or is otherwise substantially involved with the major life functions of, individuals with disabilities. Such term includes—

“(A) a program providing residential, supportive, or employment services, or employment-related services, to individuals with disabilities;

“(B) a program carried out by a center for independent living, such as a center described in part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.);

“(C) a program carried out by an employment support agency connected to adult vocational rehabilitation, such as a one-stop partner, as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801); and

“(D) a program carried out by another organization or vender licensed or registered by the designated State agency, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705).

“(2) AMERICAN INDIAN CONSORTIUM.—The term ‘American Indian consortium’ means an entity that is an American Indian Consortium (as defined in section 102 of Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), and that is established to provide protection and advocacy services for purposes of receiving funding under sub-title C of title I of such Act (42 U.S.C. 15041 et seq.).

“(3) ASSISTIVE TECHNOLOGY.—The term ‘assistive technology’ means technology designed to be utilized in an assistive technology device or assistive technology service.

“(4) ASSISTIVE TECHNOLOGY DEVICE.—The term ‘assistive technology device’ means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

“(5) ASSISTIVE TECHNOLOGY SERVICE.—The term ‘assistive technology service’ means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

“(A) the evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;

“(B) a service consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

“(C) a service consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices;

“(D) coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;

“(E) training or technical assistance for an individual with a disability or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual;

“(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, providers of employment and training services, or other individuals who provide

services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

“(G) a service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

“(6) CAPACITY BUILDING AND ADVOCACY ACTIVITIES.—The term ‘capacity building and advocacy activities’ means efforts that—

“(A) result in laws, regulations, policies, practices, procedures, or organizational structures that promote consumer-responsive programs or entities; and

“(B) facilitate and increase access to, provision of, and funding for, assistive technology devices and assistive technology services, in order to empower individuals with disabilities to achieve greater independence, productivity, and integration and inclusion within the community and the workforce.

“(7) COMPREHENSIVE STATEWIDE PROGRAM OF TECHNOLOGY-RELATED ASSISTANCE.—The term ‘comprehensive statewide program of technology-related assistance’ means a consumer-responsive program of technology-related assistance for individuals with disabilities, implemented by a State, and equally available to all individuals with disabilities residing in the State, regardless of their type of disability, age, income level, or location of residence in the State, or the type of assistive technology device or assistive technology service required.

“(8) CONSUMER-RESPONSIVE.—The term ‘consumer-responsive’—

“(A) with regard to policies, means that the policies are consistent with the principles of—

“(i) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

“(ii) respect for the privacy, rights, and equal access (including the use of accessible formats) of such individuals;

“(iii) inclusion, integration, and full participation of such individuals in society;

“(iv) support for the involvement in decisions of a family member, a guardian, an advocate, or an authorized representative, if an individual with a disability requests, desires, or needs such involvement; and

“(v) support for individual and systems advocacy and community involvement; and

“(B) with respect to an entity, program, or activity, means that the entity, program, or activity—

“(i) is easily accessible to, and usable by, individuals with disabilities and, when appropriate, their family members, guardians, advocates, or authorized representatives;

“(ii) responds to the needs of individuals with disabilities in a timely and appropriate manner; and

“(iii) facilitates the full and meaningful participation of individuals with disabilities (including individuals from underrepresented populations and rural populations) and their family members, guardians, advocates, and authorized representatives, in—

“(I) decisions relating to the provision of assistive technology devices and assistive technology services to such individuals; and

“(II) decisions related to the maintenance, improvement, and evaluation of the comprehensive statewide program of technology-related assistance, including decisions that affect capacity building and advocacy activities.

“(9) **DISABILITY.**—The term ‘disability’ means a condition of an individual that is considered to be a disability or handicap for the purposes of any Federal law other than this Act or for the purposes of the law of the State in which the individual resides.

“(10) **INDIVIDUAL WITH A DISABILITY; INDIVIDUALS WITH DISABILITIES.**—

“(A) **INDIVIDUAL WITH A DISABILITY.**—The term ‘individual with a disability’ means any individual of any age, race, or ethnicity—

“(i) who has a disability; and

“(ii) who is or would be enabled by an assistive technology device or an assistive technology service to minimize deterioration in functioning, to maintain a level of functioning, or to achieve a greater level of functioning in any major life activity.

“(B) **INDIVIDUALS WITH DISABILITIES.**—The term ‘individuals with disabilities’ means more than 1 individual with a disability.

“(11) **INSTITUTION OF HIGHER EDUCATION.**—The term ‘institution of higher education’ has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), and includes a community college receiving funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.).

“(12) **PROTECTION AND ADVOCACY SERVICES.**—The term ‘protection and advocacy services’ means services that—

“(A) are described in subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.), the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), or section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e); and

“(B) assist individuals with disabilities with respect to assistive technology devices and assistive technology services.

“(13) **SECRETARY.**—The term ‘Secretary’ means the Secretary of Education.

“(14) **STATE.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term ‘State’ means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam,

American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(B) OUTLYING AREAS.—In section 4(b):

“(i) OUTLYING AREA.—The term ‘outlying area’ means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(ii) STATE.—The term ‘State’ does not include the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(15) STATE ASSISTIVE TECHNOLOGY PROGRAM.—The term ‘State assistive technology program’ means a program authorized under section 4.

“(16) TARGETED INDIVIDUALS AND ENTITIES.—The term ‘targeted individuals and entities’ means—

“(A) individuals with disabilities of all ages and their family members, guardians, advocates, and authorized representatives;

“(B) underrepresented populations, including the aging workforce;

“(C) individuals who work for public or private entities (including centers for independent living described in part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.), insurers, or managed care providers) that have contact, or provide services to, with individuals with disabilities;

“(D) educators at all levels (including providers of early intervention services, elementary schools, secondary schools, community colleges, and vocational and other institutions of higher education) and related services personnel;

“(E) technology experts (including web designers and procurement officials);

“(F) health, allied health, and rehabilitation professionals and hospital employees (including discharge planners);

“(G) employers, especially small business employers, and providers of employment and training services;

“(H) entities that manufacture or sell assistive technology devices;

“(I) entities that carry out community programs designed to develop essential community services in rural and urban areas; and

“(J) other appropriate individuals and entities, as determined for a State by the State.

“(17) TECHNOLOGY-RELATED ASSISTANCE.—The term ‘technology-related assistance’ means assistance provided through capacity building and advocacy activities that accomplish the purposes described in section 2(b).

“(18) UNDERREPRESENTED POPULATION.—The term ‘underrepresented population’ means a population that is typically underrepresented in service provision, and includes populations such as persons who have low-incidence disabilities, persons who are minorities, poor persons, persons with limited English proficiency, older individuals, or persons from rural areas.

“(19) UNIVERSAL DESIGN.—The term ‘universal design’ means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

29 USC 3003.

“SEC. 4. STATE GRANTS FOR ASSISTIVE TECHNOLOGY.

“(a) GRANTS TO STATES.—The Secretary shall award grants under subsection (b) to States to maintain comprehensive statewide programs of technology-related assistance to support programs that are designed to maximize the ability of individuals with disabilities across the human lifespan and across the wide array of disabilities, and their family members, guardians, advocates, and authorized representatives, to obtain assistive technology, and that are designed to increase access to assistive technology.

“(b) AMOUNT OF FINANCIAL ASSISTANCE.—

“(1) IN GENERAL.—From funds made available to carry out this section, the Secretary shall award a grant to each eligible State and eligible outlying area from an allotment determined in accordance with paragraph (2).

“(2) CALCULATION OF STATE GRANTS.—

“(A) BASE YEAR.—Except as provided in subparagraphs (B) and (C), the Secretary shall allot to each State and outlying area for a fiscal year an amount that is not less than the amount the State or outlying area received under the grants provided under section 101 of this Act (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004) for fiscal year 2004.

“(B) RATABLE REDUCTION.—

“(i) IN GENERAL.—If funds made available to carry out this section for any fiscal year are insufficient to make the allotments required for each State and outlying area under subparagraph (A) for such fiscal year, the Secretary shall ratably reduce the allotments for such fiscal year.

“(ii) ADDITIONAL FUNDS.—If, after the Secretary makes the reductions described in clause (i), additional funds become available to carry out this section for the fiscal year, the Secretary shall ratably increase the allotments, until the Secretary has allotted the entire base year amount.

“(C) HIGHER APPROPRIATION YEARS.—Except as provided in subparagraph (D), for a fiscal year for which the amount of funds made available to carry out this section is greater than the base year amount, the Secretary shall—

“(i) make the allotments described in subparagraph (A);

“(ii) from a portion of the remainder of the funds after the Secretary makes the allotments described in clause (i), the Secretary shall—

“(I) from 50 percent of the portion, allot to each State or outlying area an equal amount; and

“(II) from 50 percent of the portion, allot to each State or outlying area an amount that bears the same relationship to such 50 percent as the

population of the State or outlying area bears to the population of all States and outlying areas, until each State has received an allotment of not less than \$410,000 and each outlying area has received an allotment of \$125,000 under clause (i) and this clause;

“(iii) from the remainder of the funds after the Secretary makes the allotments described in clause (ii), the Secretary shall—

“(I) from 80 percent of the remainder allot to each State an amount that bears the same relationship to such 80 percent as the population of the State bears to the population of all States; and

“(II) from 20 percent of the remainder, allot to each State an equal amount.

“(D) SPECIAL RULE FOR FISCAL YEAR 2005.—Notwithstanding subparagraph (C), if the amount of funds made available to carry out this section for fiscal year 2005 is greater than the base year amount, the Secretary may award grants on a competitive basis for periods of 1 year to States or outlying areas in accordance with the requirements of title III of this Act (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004) to develop, support, expand, or administer an alternative financing program.

“(E) BASE YEAR AMOUNT.—In this paragraph, the term ‘base year amount’ means the total amount received by all States and outlying areas under the grants described in subparagraph (A) for fiscal year 2004.

“(c) LEAD AGENCY, IMPLEMENTING ENTITY, AND ADVISORY COUNCIL.—

“(1) LEAD AGENCY AND IMPLEMENTING ENTITY.—

“(A) LEAD AGENCY.—

“(i) IN GENERAL.—The Governor of a State shall designate a public agency as a lead agency—

“(I) to control and administer the funds made available through the grant awarded to the State under this section; and

“(II) to submit the application described in subsection (d) on behalf of the State, to ensure conformance with Federal and State accounting requirements.

“(ii) DUTIES.—The duties of the lead agency shall include—

“(I) preparing the application described in subsection (d) and carrying out State activities described in that application, including making programmatic and resource allocation decisions necessary to implement the comprehensive statewide program of technology-related assistance;

“(II) coordinating the activities of the comprehensive statewide program of technology-related assistance among public and private entities, including coordinating efforts related to entering into interagency agreements, and maintaining and evaluating the program; and

“(III) coordinating efforts related to the active, timely, and meaningful participation by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals, with respect to activities carried out through the grant.

“(B) IMPLEMENTING ENTITY.—The Governor may designate an agency, office, or other entity to carry out State activities under this section (referred to in this section as the ‘implementing entity’), if such implementing entity is different from the lead agency. The implementing agency shall carry out responsibilities under this Act through a subcontract or another administrative agreement with the lead agency.

“(C) CHANGE IN AGENCY OR ENTITY.—

“(i) IN GENERAL.—On obtaining the approval of the Secretary, the Governor may redesignate the lead agency, or the implementing entity, if the Governor shows to the Secretary good cause why the entity designated as the lead agency, or the implementing entity, respectively, should not serve as that agency or entity, respectively. The Governor shall make the showing in the application described in subsection (d).

“(ii) CONSTRUCTION.—Nothing in this paragraph shall be construed to require the Governor of a State to change the lead agency or implementing entity of the State to an agency other than the lead agency or implementing entity of such State as of the date of enactment of the Assistive Technology Act of 2004.

Establishment.

“(2) ADVISORY COUNCIL.—

“(A) IN GENERAL.—There shall be established an advisory council to provide consumer-responsive, consumer-driven advice to the State for, planning of, implementation of, and evaluation of the activities carried out through the grant, including setting the measurable goals described in subsection (d)(3).

“(B) COMPOSITION AND REPRESENTATION.—

“(i) COMPOSITION.—The advisory council shall be composed of—

“(I) individuals with disabilities that use assistive technology or the family members or guardians of the individuals;

“(II) a representative of the designated State agency, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) and the State agency for individuals who are blind (within the meaning of section 101 of that Act (29 U.S.C. 721)), if such agency is separate;

“(III) a representative of a State center for independent living described in part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.);

“(IV) a representative of the State workforce investment board established under section 111 of the Workforce Investment Act of 1998 (29 U.S.C. 2821);

“(V) a representative of the State educational agency, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801); and

“(VI) representatives of other State agencies, public agencies, or private organizations, as determined by the State.

“(ii) MAJORITY.—

“(I) IN GENERAL.—A majority, not less than 51 percent, of the members of the advisory council, shall be members appointed under clause (i)(I).

“(II) REPRESENTATIVES OF AGENCIES.—Members appointed under subclauses (II) through (VI) of clause (i) shall not count toward the majority membership requirement established in subclause (I).

“(iii) REPRESENTATION.—The advisory council shall be geographically representative of the State and reflect the diversity of the State with respect to race, ethnicity, types of disabilities across the age span, and users of types of services that an individual with a disability may receive.

“(C) EXPENSES.—The members of the advisory council shall receive no compensation for their service on the advisory council, but shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties for the advisory council.

“(D) PERIOD.—The members of the State advisory council shall be appointed not later than 120 days after the date of enactment of the Assistive Technology Act of 2004.

Deadline.

“(E) IMPACT ON EXISTING STATUTES, RULES, OR POLICIES.—Nothing in this paragraph shall be construed to affect State statutes, rules, or official policies relating to advisory bodies for State assistive technology programs or require changes to governing bodies of incorporated agencies who carry out State assistive technology programs.

“(d) APPLICATION.—

“(1) IN GENERAL.—Any State that desires to receive a grant under this section shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require.

“(2) LEAD AGENCY AND IMPLEMENTING ENTITY.—The application shall contain information identifying and describing the lead agency referred to in subsection (c)(1)(A). The application shall contain information identifying and describing the implementing entity referred to in subsection (c)(1)(B), if the Governor of the State designates such an entity.

“(3) MEASURABLE GOALS.—The application shall include—

“(A) measurable goals, and a timeline for meeting the goals, that the State has set for addressing the assistive technology needs of individuals with disabilities in the State related to—

“(i) education, including goals involving the provision of assistive technology to individuals with disabilities who receive services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

“(ii) employment, including goals involving the State vocational rehabilitation program carried out under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

“(iii) telecommunication and information technology; and

“(iv) community living; and

“(B) information describing how the State will quantifiably measure the goals to determine whether the goals have been achieved.

“(4) INVOLVEMENT OF PUBLIC AND PRIVATE ENTITIES.—The application shall describe how various public and private entities were involved in the development of the application and will be involved in the implementation of the activities to be carried out through the grant, including—

“(A) in cases determined to be appropriate by the State, a description of the nature and extent of resources that will be committed by public and private collaborators to assist in accomplishing identified goals; and

“(B) a description of the mechanisms established to ensure coordination of activities and collaboration between the implementing entity, if any, and the State.

“(5) IMPLEMENTATION.—The application shall include a description of—

“(A) how the State will implement each of the required activities described in subsection (e), except as provided in subsection (e)(6)(A); and

“(B) how the State will allocate and utilize grant funds to implement the activities, including describing proposed budget allocations and planned procedures for tracking expenditures for activities described in paragraphs (2) and (3) of subsection (e).

“(6) ASSURANCES.—The application shall include assurances that—

“(A) the State will annually collect data related to the required activities implemented by the State under this section in order to prepare the progress reports required under subsection (f);

“(B) funds received through the grant—

“(i) will be expended in accordance with this section; and

“(ii) will be used to supplement, and not supplant, funds available from other sources for technology-related assistance, including the provision of assistive technology devices and assistive technology services;

“(C) the lead agency will control and administer the funds received through the grant;

“(D) the State will adopt such fiscal control and accounting procedures as may be necessary to ensure proper disbursement of and accounting for the funds received through the grant;

“(E) the physical facility of the lead agency and implementing entity, if any, meets the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) regarding accessibility for individuals with disabilities;

“(F) a public agency or an individual with a disability holds title to any property purchased with funds received under the grant and administers that property;

“(G) activities carried out in the State that are authorized under this Act, and supported by Federal funds received under this Act, will comply with the standards established by the Architectural and Transportation Barriers Compliance Board under section 508 of the Rehabilitation Act of 1973 (20 U.S.C. 794d); and

“(H) the State will—

“(i) prepare reports to the Secretary in such form and containing such information as the Secretary may require to carry out the Secretary’s functions under this Act; and

“(ii) keep such records and allow access to such records as the Secretary may require to ensure the correctness and verification of information provided to the Secretary under this subparagraph.

“(7) STATE SUPPORT.—The application shall include a description of the activities described in paragraphs (2) and (3) of subsection (e) that the State will support with State funds.

“(e) USE OF FUNDS.—

“(1) IN GENERAL.—

“(A) REQUIRED ACTIVITIES.—Except as provided in subparagraph (B) and paragraph (6), any State that receives a grant under this section shall use a portion of the funds made available through the grant to carry out activities described in paragraphs (2) and (3).

“(B) STATE OR NON-FEDERAL FINANCIAL SUPPORT.—A State shall not be required to use a portion of the funds made available through the grant to carry out the category of activities described in subparagraph (A), (B), (C), or (D) of paragraph (2) if, in that State—

“(i) financial support is provided from State or other non-Federal resources or entities for that category of activities; and

“(ii) the amount of the financial support is comparable to, or greater than, the amount of the portion of the funds made available through the grant that the State would have expended for that category of activities, in the absence of this subparagraph.

“(2) STATE-LEVEL ACTIVITIES.—

“(A) STATE FINANCING ACTIVITIES.—The State shall support State financing activities to increase access to, and funding for, assistive technology devices and assistive technology services (which shall not include direct payment for such a device or service for an individual with a disability but may include support and administration of a program to provide such payment), including development of systems to provide and pay for such devices and services, for targeted individuals and entities described in section 3(16)(A), including—

“(i) support for the development of systems for the purchase, lease, or other acquisition of, or payment for, assistive technology devices and assistive technology services; or

Reports.
Records.

“(ii) support for the development of State-financed or privately financed alternative financing systems of subsidies (which may include conducting an initial 1-year feasibility study of, improving, administering, operating, providing capital for, or collaborating with an entity with respect to, such a system) for the provision of assistive technology devices, such as—

“(I) a low-interest loan fund;

“(II) an interest buy-down program;

“(III) a revolving loan fund;

“(IV) a loan guarantee or insurance program;

“(V) a program providing for the purchase, lease, or other acquisition of assistive technology devices or assistive technology services; or

“(VI) another mechanism that is approved by the Secretary.

“(B) DEVICE REUTILIZATION PROGRAMS.—The State shall directly, or in collaboration with public or private entities, carry out assistive technology device reutilization programs that provide for the exchange, repair, recycling, or other reutilization of assistive technology devices, which may include redistribution through device sales, loans, rentals, or donations.

“(C) DEVICE LOAN PROGRAMS.—The State shall directly, or in collaboration with public or private entities, carry out device loan programs that provide short-term loans of assistive technology devices to individuals, employers, public agencies, or others seeking to meet the needs of targeted individuals and entities, including others seeking to comply with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

“(D) DEVICE DEMONSTRATIONS.—

“(i) IN GENERAL.—The State shall directly, or in collaboration with public and private entities, such as one-stop partners, as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801), demonstrate a variety of assistive technology devices and assistive technology services (including assisting individuals in making informed choices regarding, and providing experiences with, the devices and services), using personnel who are familiar with such devices and services and their applications.

“(ii) COMPREHENSIVE INFORMATION.—The State shall directly, or through referrals, provide to individuals, to the extent practicable, comprehensive information about State and local assistive technology vendors, providers, and repair services.

“(3) STATE LEADERSHIP ACTIVITIES.—

“(A) IN GENERAL.—A State that receives a grant under this section shall use a portion of not more than 40 percent of the funds made available through the grant to carry out the activities described in subparagraph (B). From that portion, the State shall use at least 5 percent of the portion for activities described in subparagraph (B)(i)(III).

“(B) REQUIRED ACTIVITIES.—

“(i) TRAINING AND TECHNICAL ASSISTANCE.—

“(I) IN GENERAL.—The State shall directly, or provide support to public or private entities with demonstrated expertise in collaborating with public or private agencies that serve individuals with disabilities, to develop and disseminate training materials, conduct training, and provide technical assistance, for individuals from local settings statewide, including representatives of State and local educational agencies, other State and local agencies, early intervention programs, adult service programs, hospitals and other health care facilities, institutions of higher education, and businesses.

“(II) AUTHORIZED ACTIVITIES.—In carrying out activities under subclause (I), the State shall carry out activities that enhance the knowledge, skills, and competencies of individuals from local settings described in subclause (I), which may include—

“(aa) general awareness training on the benefits of assistive technology and the Federal, State, and private funding sources available to assist targeted individuals and entities in acquiring assistive technology;

“(bb) skills-development training in assessing the need for assistive technology devices and assistive technology services;

“(cc) training to ensure the appropriate application and use of assistive technology devices, assistive technology services, and accessible technology for e-government functions;

“(dd) training in the importance of multiple approaches to assessment and implementation necessary to meet the individualized needs of individuals with disabilities; and

“(ee) technical training on integrating assistive technology into the development and implementation of service plans, including any education, health, discharge, Olmstead, employment, or other plan required under Federal or State law.

“(III) TRANSITION ASSISTANCE TO INDIVIDUALS WITH DISABILITIES.—The State shall directly, or provide support to public or private entities to, develop and disseminate training materials, conduct training, facilitate access to assistive technology, and provide technical assistance, to assist—

“(aa) students with disabilities, within the meaning of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), that receive transition services; and

“(bb) adults who are individuals with disabilities maintaining or transitioning to community living.

“(ii) PUBLIC-AWARENESS ACTIVITIES.—

“(I) IN GENERAL.—The State shall conduct public-awareness activities designed to provide information to targeted individuals and entities relating to the availability, benefits, appropriateness, and costs of assistive technology devices and assistive technology services, including—

“(aa) the development of procedures for providing direct communication between providers of assistive technology and targeted individuals and entities, which may include partnerships with entities in the statewide and local workforce investment systems established under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), State vocational rehabilitation centers, public and private employers, or elementary and secondary public schools;

“(bb) the development and dissemination, to targeted individuals and entities, of information about State efforts related to assistive technology; and

“(cc) the distribution of materials to appropriate public and private agencies that provide social, medical, educational, employment, and transportation services to individuals with disabilities.

“(II) COLLABORATION.—The State shall collaborate with entities that receive awards under paragraphs (1) and (3) of section 6(b) to carry out public-awareness activities focusing on infants, toddlers, children, transition-age youth, employment-age adults, seniors, and employers.

“(III) STATEWIDE INFORMATION AND REFERRAL SYSTEM.—

“(aa) IN GENERAL.—The State shall directly, or in collaboration with public or private (such as nonprofit) entities, provide for the continuation and enhancement of a statewide information and referral system designed to meet the needs of targeted individuals and entities.

“(bb) CONTENT.—The system shall deliver information on assistive technology devices, assistive technology services (with specific data regarding provider availability within the State), and the availability of resources, including funding through public and private sources, to obtain assistive technology devices and assistive technology services. The system shall also deliver information on the benefits of assistive technology devices and assistive technology services with respect to enhancing the capacity of individuals with disabilities of all ages to perform activities of daily living.

“(iii) COORDINATION AND COLLABORATION.—The State shall coordinate activities described in paragraph

(2) and this paragraph, among public and private entities that are responsible for policies, procedures, or funding for the provision of assistive technology devices and assistive technology services to individuals with disabilities, service providers, and others to improve access to assistive technology devices and assistive technology services for individuals with disabilities of all ages in the State.

“(4) INDIRECT COSTS.—Not more than 10 percent of the funds made available through a grant to a State under this section may be used for indirect costs.

“(5) PROHIBITION.—Funds made available through a grant to a State under this section shall not be used for direct payment for an assistive technology device for an individual with a disability.

“(6) STATE FLEXIBILITY.—

“(A) IN GENERAL.—Notwithstanding paragraph (1)(A) and subject to subparagraph (B), a State may use funds that the State receives under a grant awarded under this section to carry out any 2 or more of the activities described in paragraph (2).

“(B) SPECIAL RULE.—Notwithstanding paragraph (3)(A), any State that exercises its authority under subparagraph (A)—

“(i) shall carry out each of the required activities described in paragraph (3)(B); and

“(ii) shall use not more than 30 percent of the funds made available through the grant to carry out the activities described in paragraph (3)(B).

“(f) ANNUAL PROGRESS REPORTS.—

“(1) DATA COLLECTION.—States shall participate in data collection as required by law, including data collection required for preparation of the reports described in paragraph (2).

“(2) REPORTS.—

“(A) IN GENERAL.—Each State shall prepare and submit to the Secretary an annual progress report on the activities funded under this Act, at such time, and in such manner, as the Secretary may require.

“(B) CONTENTS.—The report shall include data collected pursuant to this section. The report shall document, with respect to activities carried out under this section in the State—

“(i) the type of State financing activities described in subsection (e)(2)(A) used by the State;

“(ii) the amount and type of assistance given to consumers of the State financing activities described in subsection (e)(2)(A) (who shall be classified by type of assistive technology device or assistive technology service financed through the State financing activities, and geographic distribution within the State), including—

“(I) the number of applications for assistance received;

“(II) the number of applications approved and rejected;

“(III) the default rate for the financing activities;

“(IV) the range and average interest rate for the financing activities;

“(V) the range and average income of approved applicants for the financing activities; and

“(VI) the types and dollar amounts of assistive technology financed;

“(iii) the number, type, and length of time of loans of assistive technology devices provided to individuals with disabilities, employers, public agencies, or public accommodations through the device loan program described in subsection (e)(2)(C), and an analysis of the individuals with disabilities who have benefited from the device loan program;

“(iv) the number, type, estimated value, and scope of assistive technology devices exchanged, repaired, recycled, or reutilized (including redistributed through device sales, loans, rentals, or donations) through the device reutilization program described in subsection (e)(2)(B), and an analysis of the individuals with disabilities that have benefited from the device reutilization program;

“(v) the number and type of device demonstrations and referrals provided under subsection (e)(2)(D), and an analysis of individuals with disabilities who have benefited from the demonstrations and referrals;

“(vi)(I) the number and general characteristics of individuals who participated in training under subsection (e)(3)(B)(i) (such as individuals with disabilities, parents, educators, employers, providers of employment services, health care workers, counselors, other service providers, or vendors) and the topics of such training; and

“(II) to the extent practicable, the geographic distribution of individuals who participated in the training;

“(vii) the frequency of provision and nature of technical assistance provided to State and local agencies and other entities;

“(viii) the number of individuals assisted through the public-awareness activities and statewide information and referral system described in subsection (e)(3)(B)(ii);

“(ix) the outcomes of any improvement initiatives carried out by the State as a result of activities funded under this section, including a description of any written policies, practices, and procedures that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices, and assistive technology services, in the contexts of education, health care, employment, community living, and information technology and telecommunications, including e-government;

“(x) the source of leveraged funding or other contributed resources, including resources provided through subcontracts or other collaborative resource-sharing agreements, from and with public and private

entities to carry out State activities described in subsection (e)(3)(B)(iii), the number of individuals served with the contributed resources for which information is not reported under clauses (i) through (ix) or clause (xi) or (xii), and other outcomes accomplished as a result of such activities carried out with the contributed resources; and

“(xi) the level of customer satisfaction with the services provided.

“SEC. 5. STATE GRANTS FOR PROTECTION AND ADVOCACY SERVICES 29 USC 3004.
RELATED TO ASSISTIVE TECHNOLOGY.

“(a) GRANTS.—

“(1) IN GENERAL.—The Secretary shall make grants under subsection (b) to protection and advocacy systems in each State for the purpose of enabling such systems to assist in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services for individuals with disabilities.

“(2) GENERAL AUTHORITIES.—In providing such assistance, protection and advocacy systems shall have the same general authorities as the systems are afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.), as determined by the Secretary.

“(b) GRANTS.—

“(1) RESERVATION.—For each fiscal year, the Secretary shall reserve such sums as may be necessary to carry out paragraph (4).

“(2) POPULATION BASIS.—From the funds appropriated under section 8(b) for a fiscal year and remaining after the reservation required by paragraph (1) has been made, the Secretary shall make a grant to a protection and advocacy system within each State in an amount bearing the same ratio to the remaining funds as the population of the State bears to the population of all States.

“(3) MINIMUMS.—Subject to the availability of appropriations, the amount of a grant to a protection and advocacy system under paragraph (2) for a fiscal year shall—

“(A) in the case of a protection and advocacy system located in American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, not be less than \$30,000; and

“(B) in the case of a protection and advocacy system located in a State not described in subparagraph (A), not be less than \$50,000.

“(4) PAYMENT TO THE SYSTEM SERVING THE AMERICAN INDIAN CONSORTIUM.—

“(A) IN GENERAL.—The Secretary shall make grants to the protection and advocacy system serving the American Indian Consortium to provide services in accordance with this section.

“(B) AMOUNT OF GRANTS.—The amount of such grants shall be the same as the amount provided under paragraph (3)(A).

“(c) DIRECT PAYMENT.—Notwithstanding any other provision of law, the Secretary shall pay directly to any protection and advocacy system that complies with this section, the total amount

of the grant made for such system under this section, unless the system provides otherwise for payment of the grant amount.

“(d) CERTAIN STATES.—

“(1) GRANT TO LEAD AGENCY.—Notwithstanding any other provision of this section, with respect to a State that, on November 12, 1998, was described in section 102(f)(1) of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, the Secretary shall pay the amount of the grant described in subsection (a), and made under subsection (b), to the lead agency designated under section 4(c)(1) for the State.

“(2) DISTRIBUTION OF FUNDS.—A lead agency to which a grant amount is paid under paragraph (1) shall determine the manner in which funds made available through the grant will be allocated among the entities that were providing protection and advocacy services in that State on the date described in such paragraph, and shall distribute funds to such entities. In distributing such funds, the lead agency shall not establish any additional eligibility or procedural requirements for an entity in the State that supports protection and advocacy services through a protection and advocacy system. Such an entity shall comply with the same requirements (including reporting and enforcement requirements) as any other entity that receives funding under this section.

“(3) APPLICATION OF PROVISIONS.—Except as provided in this subsection, the provisions of this section shall apply to the grant in the same manner, and to the same extent, as the provisions apply to a grant to a system.

“(e) CARRYOVER.—Any amount paid to an eligible system for a fiscal year under this section that remains unobligated at the end of such fiscal year shall remain available to such system for obligation during the subsequent fiscal year. Program income generated from such amount shall remain available for 2 additional fiscal years after the year in which such amount was paid to an eligible system and may only be used to improve the awareness of individuals with disabilities about the accessibility of assistive technology and assist such individuals in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services.

“(f) REPORT TO SECRETARY.—An entity that receives a grant under this section shall annually prepare and submit to the Secretary a report that contains such information as the Secretary may require, including documentation of the progress of the entity in—

“(1) conducting consumer-responsive activities, including activities that will lead to increased access, for individuals with disabilities, to funding for assistive technology devices and assistive technology services;

“(2) engaging in informal advocacy to assist in securing assistive technology devices and assistive technology services for individuals with disabilities;

“(3) engaging in formal representation for individuals with disabilities to secure systems change, and in advocacy activities to secure assistive technology devices and assistive technology services for individuals with disabilities;

“(4) developing and implementing strategies to enhance the long-term abilities of individuals with disabilities and their

family members, guardians, advocates, and authorized representatives to advocate the provision of assistive technology devices and assistive technology services to which the individuals with disabilities are entitled under law other than this Act;

“(5) coordinating activities with protection and advocacy services funded through sources other than this Act, and coordinating activities with the capacity building and advocacy activities carried out by the lead agency; and

“(6) effectively allocating funds made available under this section to improve the awareness of individuals with disabilities about the accessibility of assistive technology and assist such individuals in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services.

“(g) REPORTS AND UPDATES TO STATE AGENCIES.—An entity that receives a grant under this section shall prepare and submit to the lead agency of the State designated under section 4(c)(1) the report described in subsection (f) and quarterly updates concerning the activities described in subsection (f).

“(h) COORDINATION.—On making a grant under this section to an entity in a State, the Secretary shall solicit and consider the opinions of the lead agency of the State with respect to efforts at coordination of activities, collaboration, and promoting outcomes between the lead agency and the entity that receives the grant under this section.

“SEC. 6. NATIONAL ACTIVITIES.

29 USC 3005.

“(a) IN GENERAL.—In order to support activities designed to improve the administration of this Act, the Secretary, under subsection (b)—

“(1) may award, on a competitive basis, grants, contracts, and cooperative agreements to entities to support activities described in paragraphs (1) and (2) of subsection (b); and

“(2) shall award, on a competitive basis, grants, contracts, and cooperative agreements to entities to support activities described in paragraphs (3), (4), and (5) of subsection (b).

“(b) AUTHORIZED ACTIVITIES.—

“(1) NATIONAL PUBLIC-AWARENESS TOOLKIT.—

“(A) NATIONAL PUBLIC-AWARENESS TOOLKIT.—The Secretary may award a 1-time grant, contract, or cooperative agreement to an eligible entity to support a training and technical assistance program that—

“(i) expands public-awareness efforts to reach targeted individuals and entities;

“(ii) contains appropriate accessible multimedia materials to reach targeted individuals and entities, for dissemination to State assistive technology programs; and

“(iii) in coordination with State assistive technology programs, provides meaningful and up-to-date information to targeted individuals and entities about the availability of assistive technology devices and assistive technology services.

“(B) ELIGIBLE ENTITY.—To be eligible to receive the grant, contract, or cooperative agreement, an entity shall develop a partnership that—

“(i) shall consist of—

“(I) a lead agency or implementing entity for a State assistive technology program or an organization or association that represents implementing entities for State assistive technology programs;

“(II) a private or public entity from the media industry;

“(III) a private entity from the assistive technology industry; and

“(IV) a private employer or an organization or association that represents private employers;

“(ii) may include other entities determined by the Secretary to be necessary; and

“(iii) may include other entities determined by the applicant to be appropriate.

“(2) RESEARCH AND DEVELOPMENT.—

“(A) IN GENERAL.—The Secretary may award grants, contracts, or cooperative agreements to eligible entities to carry out research and development of assistive technology that consists of—

“(i) developing standards for reliability and accessibility of assistive technology, and standards for interoperability (including open standards) of assistive technology with information technology, telecommunications products, and other assistive technology; or

“(ii) developing assistive technology that benefits individuals with disabilities or developing technologies or practices that result in the adaptation, maintenance, servicing, or improvement of assistive technology devices.

“(B) ELIGIBLE ENTITIES.—Entities eligible to receive a grant, contract, or cooperative agreement under this paragraph shall include—

“(i) providers of assistive technology services and assistive technology devices;

“(ii) institutions of higher education, including University Centers for Excellence in Developmental Disabilities Education, Research, and Service authorized under subtitle D of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15061 et seq.), or such institutions offering rehabilitation engineering programs, computer science programs, or information technology programs;

“(iii) manufacturers of assistive technology devices; and

“(iv) professionals, individuals, organizations, and agencies providing services or employment to individuals with disabilities.

“(C) COLLABORATION.—An entity that receives a grant, contract, or cooperative agreement under this paragraph shall, in developing and implementing the project carried out through the grant, contract, or cooperative agreement coordinate activities with the lead agency for the State assistive technology program (or a national organization that represents such programs) and the State advisory council described in section 4(c)(2) (or a national organization that represents such councils).

“(3) STATE TRAINING AND TECHNICAL ASSISTANCE.—

“(A) TRAINING AND TECHNICAL ASSISTANCE EFFORTS.—

Grant.
Contract.

The Secretary shall award a grant, contract, or cooperative agreement to an entity to support a training and technical assistance program that—

“(i) addresses State-specific information requests concerning assistive technology from entities funded under this Act and public entities not funded under this Act, including—

“(I) requests for information on effective approaches to Federal-State coordination of programs for individuals with disabilities, related to improving funding for or access to assistive technology devices and assistive technology services for individuals with disabilities of all ages;

“(II) requests for state-of-the-art, or model, Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, assistive technology devices and assistive technology services;

“(III) requests for information on effective approaches to developing, implementing, evaluating, and sustaining activities described in sections 4 and 5 and related to improving funding for or access to assistive technology devices and assistive technology services for individuals with disabilities of all ages, and requests for assistance in developing corrective action plans;

“(IV) requests for examples of policies, practices, procedures, regulations, or judicial decisions that have enhanced or may enhance access to funding for assistive technology devices and assistive technology services for individuals with disabilities;

“(V) requests for information on effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of, assistive technology devices and assistive technology services; and

“(VI) other requests for training and technical assistance from entities funded under this Act and public and private entities not funded under this Act;

“(ii) assists targeted individuals and entities by disseminating information about—

“(I) Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, assistive technology devices and assistive technology services, to promote fuller independence, productivity, and inclusion in society for individuals with disabilities of all ages; and

“(II) technical assistance activities undertaken under clause (i);

“(iii) provides State-specific, regional, and national training and technical assistance concerning assistive technology to entities funded under this Act, other entities funded under this Act, and public and private entities not funded under this Act, including—

“(I) annually providing a forum for exchanging information concerning, and promoting program and policy improvements in, required activities of the State assistive technology programs;

“(II) facilitating onsite and electronic information sharing using state-of-the-art Internet technologies such as real-time online discussions, multipoint video conferencing, and web-based audio/video broadcasts, on emerging topics that affect State assistive technology programs;

“(III) convening experts from State assistive technology programs to discuss and make recommendations with regard to national emerging issues of importance to individuals with assistive technology needs;

“(IV) sharing best practice and evidence-based practices among State assistive technology programs;

“(V) maintaining an accessible website that includes a link to State assistive technology programs, appropriate Federal departments and agencies, and private associations and developing a national toll-free number that links callers from a State with the State assistive technology program in their State;

“(VI) developing or utilizing existing (as of the date of the award involved) model cooperative volume-purchasing mechanisms designed to reduce the financial costs of purchasing assistive technology for required and discretionary activities identified in section 4, and reducing duplication of activities among State assistive technology programs; and

“(VII) providing access to experts in the areas of banking, microlending, and finance, for entities funded under this Act, through site visits, teleconferences, and other means, to ensure access to information for entities that are carrying out new programs or programs that are not making progress in achieving the objectives of the programs; and

“(iv) includes such other activities as the Secretary may require.

“(B) ELIGIBLE ENTITIES.—To be eligible to receive a grant, contract, or cooperative agreement under this paragraph, an entity shall have (directly or through grant or contract)—

“(i) experience and expertise in administering programs, including developing, implementing, and administering the required and discretionary activities described in sections 4 and 5, and providing technical assistance; and

“(ii) documented experience in and knowledge about banking, finance, and microlending.

“(C) COLLABORATION.—In developing and providing training and technical assistance under this paragraph, including activities identified as priorities, a recipient of a grant, contract, or cooperative agreement under this paragraph shall collaborate with other organizations, in particular—

“(i) organizations representing individuals with disabilities;

“(ii) national organizations representing State assistive technology programs;

“(iii) organizations representing State officials and agencies engaged in the delivery of assistive technology;

“(iv) the data-collection and reporting providers described in paragraph (5); and

“(v) other providers of national programs or programs of national significance funded under this Act.

“(4) NATIONAL INFORMATION INTERNET SYSTEM.—

“(A) IN GENERAL.—The Secretary shall award a grant, contract, or cooperative agreement to an entity to renovate, update, and maintain the National Public Internet Site established under this Act (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004).

Grant.
Contract.

“(B) FEATURES OF INTERNET SITE.—The National Public Internet Site shall contain the following features:

“(i) AVAILABILITY OF INFORMATION AT ANY TIME.—

The site shall be designed so that any member of the public may obtain information posted on the site at any time.

“(ii) INNOVATIVE AUTOMATED INTELLIGENT AGENT.—The site shall be constructed with an innovative automated intelligent agent that is a diagnostic tool for assisting users in problem definition and the selection of appropriate assistive technology devices and assistive technology services resources.

“(iii) RESOURCES.—

“(I) LIBRARY ON ASSISTIVE TECHNOLOGY.—The site shall include access to a comprehensive working library on assistive technology for all environments, including home, workplace, transportation, and other environments.

“(II) INFORMATION ON ACCOMMODATING INDIVIDUALS WITH DISABILITIES.—The site shall include access to evidence-based research and best practices concerning how assistive technology can be used to accommodate individuals with disabilities in the areas of education, employment, health care, community living, and telecommunications and information technology.

“(III) RESOURCES FOR A NUMBER OF DISABILITIES.—The site shall include resources relating to the largest possible number of disabilities, including resources relating to low-level reading skills.

“(iv) LINKS TO PRIVATE-SECTOR RESOURCES AND INFORMATION.—To the extent feasible, the site shall be linked to relevant private-sector resources and information, under agreements developed between the recipient of the grant, contract, or cooperative agreement and cooperating private-sector entities.

“(v) LINKS TO PUBLIC-SECTOR RESOURCES AND INFORMATION.—To the extent feasible, the site shall be linked to relevant public-sector resources and information, such as the Internet sites of the Office of Special Education and Rehabilitation Services of the Department of Education, the Office of Disability Employment Policy of the Department of Labor, the Small Business Administration, the Architectural and Transportation Barriers Compliance Board, the Technology Administration of the Department of Commerce, the Jobs Accommodation Network funded by the Office of Disability Employment Policy of the Department of Labor, and other relevant sites.

“(vi) MINIMUM LIBRARY COMPONENTS.—At a minimum, the site shall maintain updated information on—

“(I) State assistive technology program demonstration sites where individuals may try out assistive technology devices;

“(II) State assistive technology program device loan program sites where individuals may borrow assistive technology devices;

“(III) State assistive technology program device reutilization program sites;

“(IV) alternative financing programs or State financing systems operated through, or independently of, State assistive technology programs, and other sources of funding for assistive technology devices; and

“(V) various programs, including programs with tax credits, available to employers for hiring or accommodating employees who are individuals with disabilities.

“(C) ELIGIBLE ENTITY.—To be eligible to receive a grant, contract, or cooperative agreement under this paragraph, an entity shall be a nonprofit organization, for-profit organization, or institution of higher education, that—

“(i) emphasizes research and engineering;

“(ii) has a multidisciplinary research center; and

“(iii) has demonstrated expertise in—

“(I) working with assistive technology and intelligent agent interactive information dissemination systems;

“(II) managing libraries of assistive technology and disability-related resources;

“(III) delivering to individuals with disabilities education, information, and referral services, including technology-based curriculum-development services for adults with low-level reading skills;

“(IV) developing cooperative partnerships with the private sector, particularly with private-sector computer software, hardware, and Internet services entities; and

“(V) developing and designing advanced Internet sites.

“(5) DATA-COLLECTION AND REPORTING ASSISTANCE.—

“(A) IN GENERAL.—The Secretary shall award grants, contracts, and cooperative agreements to entities to assist the entities in carrying out State assistive technology programs in developing and implementing effective data-collection and reporting systems that—

Grants.
Contracts.

“(i) focus on quantitative and qualitative data elements;

“(ii) measure the outcomes of the required activities described in section 4 that are implemented by the States and the progress of the States toward achieving the measurable goals described in section 4(d)(3);

“(iii) provide States with the necessary information required under this Act or by the Secretary for reports described in section 4(f)(2); and

“(iv) help measure the accrued benefits of the activities to individuals who need assistive technology.

“(B) ELIGIBLE ENTITIES.—To be eligible to receive a grant, contract, or cooperative agreement under this paragraph, an entity shall have personnel with—

“(i) documented experience and expertise in administering State assistive technology programs;

“(ii) experience in collecting and analyzing data associated with implementing required and discretionary activities;

“(iii) expertise necessary to identify additional data elements needed to provide comprehensive reporting of State activities and outcomes; and

“(iv) experience in utilizing data to provide annual reports to State policymakers.

“(c) APPLICATION.—To be eligible to receive a grant, contract, or cooperative agreement under this section, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(d) INPUT.—With respect to the activities described in subsection (b) to be funded under this section, including the national and regionally based training and technical assistance efforts carried out through the activities, in designing the activities the Secretary shall consider, and in providing the activities providers shall include, input of the directors of comprehensive statewide programs of technology-related assistance, directors of alternative financing programs, and other individuals the Secretary determines to be appropriate, especially—

“(1) individuals with disabilities who use assistive technology and understand the barriers to the acquisition of such technology and assistive technology services;

“(2) family members, guardians, advocates, and authorized representatives of such individuals;

“(3) individuals employed by protection and advocacy systems funded under section 5;

“(4) relevant employees from Federal departments and agencies, other than the Department of Education;

“(5) representatives of businesses; and

“(6) vendors and public and private researchers and developers.

29 USC 3006.

“SEC. 7. ADMINISTRATIVE PROVISIONS.

“(a) GENERAL ADMINISTRATION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Assistant Secretary for Special Education and Rehabilitative Services of the Department of Education, acting through the Rehabilitation Services Administration, shall be responsible for the administration of this Act.

“(2) COLLABORATION.—The Assistant Secretary for Special Education and Rehabilitative Services shall consult with the Office of Special Education Programs, the Rehabilitation Services Administration, and the National Institute on Disability and Rehabilitation Research in the Office of Special Education and Rehabilitative Services, and appropriate Federal entities in the administration of this Act.

“(3) ADMINISTRATION.—In administering this Act, the Rehabilitation Services Administration shall ensure that programs funded under this Act will address the needs of individuals with disabilities of all ages, whether the individuals will use the assistive technology to obtain or maintain employment, to obtain education, or for other reasons.

“(4) ORDERLY TRANSITION.—

“(A) IN GENERAL.—The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to, and implementation of, programs authorized by this Act, from programs authorized by the Assistive Technology Act of 1998, as in effect on the day before the date of enactment of the Assistive Technology Act of 2004.

Termination
date.

“(B) CESSATION OF EFFECTIVENESS.—Subparagraph (A) ceases to be effective on the date that is 6 months after the date of enactment of the Assistive Technology Act of 2004.

“(b) REVIEW OF PARTICIPATING ENTITIES.—

“(1) IN GENERAL.—The Secretary shall assess the extent to which entities that receive grants under this Act are complying with the applicable requirements of this Act and achieving measurable goals that are consistent with the requirements of the grant programs under which the entities received the grants.

“(2) PROVISION OF INFORMATION.—To assist the Secretary in carrying out the responsibilities of the Secretary under this section, the Secretary may require States to provide relevant information, including the information required under subsection (d).

“(c) CORRECTIVE ACTION AND SANCTIONS.—

“(1) CORRECTIVE ACTION.—If the Secretary determines that an entity that receives a grant under this Act fails to substantially comply with the applicable requirements of this Act, or to make substantial progress toward achieving the measurable goals described in subsection (b)(1) with respect to the grant program, the Secretary shall assist the entity, through

technical assistance funded under section 6 or other means, within 90 days after such determination, to develop a corrective action plan.

“(2) SANCTIONS.—If the entity fails to develop and comply with a corrective action plan described in paragraph (1) during a fiscal year, the entity shall be subject to 1 of the following corrective actions selected by the Secretary:

“(A) Partial or complete termination of funding under the grant program, until the entity develops and complies with such a plan.

“(B) Ineligibility to participate in the grant program in the following year.

“(C) Reduction in the amount of funding that may be used for indirect costs under section 4 for the following year.

“(D) Required redesignation of the lead agency designated under section 4(c)(1) or an entity responsible for administering the grant program.

“(3) APPEALS PROCEDURES.—The Secretary shall establish appeals procedures for entities that are determined to be in noncompliance with the applicable requirements of this Act, or have not made substantial progress toward achieving the measurable goals described in subsection (b)(1).

“(4) SECRETARIAL ACTION.—As part of the annual report required under subsection (d), the Secretary shall describe each such action taken under paragraph (1) or (2) and the outcomes of each such action.

“(5) PUBLIC NOTIFICATION.—The Secretary shall notify the public, by posting on the Internet website of the Department of Education, of each action taken by the Secretary under paragraph (1) or (2). As a part of such notification, the Secretary shall describe each such action taken under paragraph (1) or (2) and the outcomes of each such action.

“(d) ANNUAL REPORT TO CONGRESS.—

“(1) IN GENERAL.—Not later than December 31 of each year, the Secretary shall prepare, and submit to the President and to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, a report on the activities funded under this Act to improve the access of individuals with disabilities to assistive technology devices and assistive technology services.

“(2) CONTENTS.—Such report shall include—

“(A) a compilation and summary of the information provided by the States in annual progress reports submitted under section 4(f); and

“(B) a summary of the State applications described in section 4(d) and an analysis of the progress of the States in meeting the measurable goals established in State applications under section 4(d)(3).

“(e) CONSTRUCTION.—Nothing in this section shall be construed to affect the enforcement authority of the Secretary, another Federal officer, or a court under part D of the General Education Provisions Act (20 U.S.C. 1234 et seq.) or other applicable law.

“(f) EFFECT ON OTHER ASSISTANCE.—This Act may not be construed as authorizing a Federal or State agency to reduce medical

or other assistance available, or to alter eligibility for a benefit or service, under any other Federal law.

Applicability.

“(g) RULE.—The Assistive Technology Act of 1998 (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004) shall apply to funds appropriated under the Assistive Technology Act of 1998 for fiscal year 2004.

29 USC 3007.

“SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

“(a) STATE GRANTS FOR ASSISTIVE TECHNOLOGY AND NATIONAL ACTIVITIES.—

“(1) IN GENERAL.—There are authorized to be appropriated to carry out sections 4 and 6 such sums as may be necessary for each of fiscal years 2005 through 2010.

“(2) RESERVATION.—

“(A) DEFINITION.—In this paragraph, the term ‘higher appropriation year’ means a fiscal year for which the amount appropriated under paragraph (1) and made available to carry out section 4 is at least \$665,000 greater than the amount that—

“(i) was appropriated under section 105 of this Act (as in effect on October 1, 2003) for fiscal year 2004; and

“(ii) was not reserved for grants under section 102 or 104 of this Act (as in effect on such date) for fiscal year 2004.

“(B) AMOUNT RESERVED FOR NATIONAL ACTIVITIES.—Of the amount appropriated under paragraph (1) for a fiscal year—

“(i) not more than \$1,235,000 may be reserved to carry out section 6, except as provided in clause (ii); and

“(ii) for a higher appropriation year—

“(I) not more than \$1,900,000 may be reserved to carry out section 6; and

“(II) of the amount so reserved, the portion exceeding \$1,235,000 shall be used to carry out paragraphs (1) and (2) of section 6(b).

“(b) STATE GRANTS FOR PROTECTION AND ADVOCACY SERVICES RELATED TO ASSISTIVE TECHNOLOGY.—There are authorized to be appropriated to carry out section 5 \$4,419,000 for fiscal year 2005 and such sums as may be necessary for each of fiscal years 2006 through 2010.”.

SEC. 3. CONFORMING AMENDMENTS.

(a) DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000.—The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.) is amended—

42 USC 15024.

(1) in section 124(c)(3)(B), by striking “section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012)” and inserting “section 4 or 5 of the Assistive Technology Act of 1998”;

42 USC 15025.

(2) in section 125(c)(5)(G)(i), by striking “section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012)” and inserting “section 4 or 5 of the Assistive Technology Act of 1998”;

42 USC 15043.

(3) in section 143(a)(2)(D)(ii), by striking “section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011,

3012)” and inserting “section 4 or 5 of the Assistive Technology Act of 1998”; and

(4) in section 154(a)(3)(E)(ii)(VI), by striking “section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012)” and inserting “section 4 or 5 of the Assistive Technology Act of 1998”. 42 USC 15064.

(b) REHABILITATION ACT OF 1973.—The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) is amended—

(1) in section 203, by striking subsection (e) and inserting the following: 29 USC 763.

“(e) In this section—

“(1) the terms ‘assistive technology’ and ‘universal design’ have the meanings given the terms in section 3 of the Assistive Technology Act of 1998; and

“(2) the term ‘targeted individuals’ has the meaning given the term ‘targeted individuals and entities’ in section 3 of the Assistive Technology Act of 1998.”;

(2) in section 401(c)(2), by striking “targeted individuals” and inserting “targeted individuals and entities”; and 29 USC 781.

(3) in section 502(d), by striking “targeted individuals” and inserting “targeted individuals and entities”. 29 USC 792.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 4278:

HOUSE REPORTS: No. 108–514 (Comm. on Education and the Workforce).
CONGRESSIONAL RECORD, Vol. 150 (2004):

June 14, considered and passed House.

Sept. 30, considered and passed Senate, amended.

Oct. 8, House concurred in Senate amendment.



Public Law 108–365
108th Congress

An Act

Oct. 25, 2004
[H.R. 4555]

To amend the Public Health Service Act to revise and extend provisions relating to mammography quality standards.

Mammography
Quality
Standards
Reauthorization
Act of 2004.
42 USC 201 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mammography Quality Standards Reauthorization Act of 2004”.

SEC. 2. TEMPORARY RENEWAL AND LIMITED PROVISIONAL CERTIFICATE.

Section 354 of the Public Health Service Act (42 U.S.C. 263b) is amended—

(1) in subsection (b)(1)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by inserting “or a temporary renewal certificate” after “certificate”; and

(ii) in clause (i), by striking “subsection (c)(1)” and inserting “paragraphs (1) or (2) of subsection (c)”;

(B) in subparagraph (B)—

(i) in the matter preceding clause (i), by inserting “or a limited provisional certificate” after “certificate”; and

(ii) in clause (i), by striking “subsection (c)(2)” and inserting “paragraphs (3) and (4) of subsection (c)”;

(C) in the flush matter at the end, by striking “provisional certificate” and inserting “temporary renewal certificate, provisional certificate, or a limited provisional certificate”; and

(2) in subsection (c)—

(A) by redesignating paragraph (2) as paragraph (4); and

(B) by inserting after paragraph (1) the following:

“(2) TEMPORARY RENEWAL CERTIFICATE.—The Secretary may issue a temporary renewal certificate, for a period of not to exceed 45 days, to a facility seeking reaccreditation if the accreditation body has issued an accreditation extension, for a period of not to exceed 45 days, for any of the following:

“(A) The facility has submitted the required materials to the accreditation body within the established time

frames for the submission of such materials but the accreditation body is unable to complete the reaccreditation process before the certification expires.

“(B) The facility has acquired additional or replacement equipment, or has had significant personnel changes or other unforeseen situations that have caused the facility to be unable to meet reaccreditation timeframes, but in the opinion of the accreditation body have not compromised the quality of mammography.

“(3) LIMITED PROVISIONAL CERTIFICATE.—The Secretary may, upon the request of an accreditation body, issue a limited provisional certificate to an entity to enable the entity to conduct examinations for educational purposes while an onsite visit from an accreditation body is in progress. Such certificate shall be valid only during the time the site visit team from the accreditation body is physically in the facility, and in no case shall be valid for longer than 72 hours. The issuance of a certificate under this paragraph, shall not preclude the entity from qualifying for a provisional certificate under paragraph (4).”.

SEC. 3. NATIONAL ADVISORY COMMITTEE.

Section 354(n) of the Public Health Service Act (42 U.S.C. 263b(n)) is amended—

(1) in paragraph (2), by striking subparagraph (C) and all that follows and inserting the following:

“(C) other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography. The Secretary shall appoint at least 4 individuals from among national breast cancer or consumer health organizations with expertise in mammography, at least 2 industry representatives with expertise in mammography equipment, and at least 2 practicing physicians who provide mammography services.”; and

(2) in paragraph (4), by striking “biannually” and inserting “annually”.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

Subparagraphs (A) and (B) of section 354(r)(2) of the Public Health Service Act (42 U.S.C. 263b(r)(2)(A) and (B)) are amended by striking “2002” each place it appears and inserting “2007”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 4555 (S. 1879):

HOUSE REPORTS: No. 108–694 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 108–220 accompanying S. 1879 (Comm. on Health, Education, Labor, and Pensions).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed House.

Oct. 9, considered and passed Senate.



Public Law 108–366
108th Congress

An Act

To temporarily extend the programs under the Higher Education Act of 1965.

Oct. 25, 2004

[H.R. 5185]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Higher Education Extension Act of 2004”.

Higher Education
Extension Act of
2004.
20 USC 1001
note.

SEC. 2. EXTENSION OF PROGRAMS.

(a) **EXTENSION OF DURATION TO INCLUDE FISCAL YEAR 2005.**—The authorization of appropriations for, and the duration of, each program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) shall be extended through fiscal year 2005.

Appropriations
authorization.

(b) **PERFORMANCE OF REQUIRED AND AUTHORIZED FUNCTIONS.**—If the Secretary of Education, a State, an institution of higher education, a guaranty agency, a lender, or another person or entity—

(1) is required, in or for fiscal year 2004, to carry out certain acts or make certain determinations or payments under a program under the Higher Education Act of 1965, such acts, determinations, or payments shall be required to be carried out, made, or continued during the period of the extension under this section; or

(2) is permitted or authorized, in or for fiscal year 2004, to carry out certain acts or make certain determinations or payments under a program under the Higher Education Act of 1965, such acts, determinations, or payments are permitted or authorized to be carried out, made, or continued during the period of the extension under this section.

(c) **EXTENSION AT CURRENT LEVELS.**—The amount authorized to be appropriated for a program described in subsection (a) during the period of extension under this section shall be the amount authorized to be appropriated for such program for fiscal year 2004, or the amount appropriated for such program for such fiscal year, whichever is greater. Except as provided in any amendment to the Higher Education Act of 1965 enacted during fiscal year 2005, the amount of any payment required or authorized under subsection (b) in or for fiscal year 2005 shall be determined in the same manner as the amount of the corresponding payment required or authorized in or for fiscal year 2004.

(d) **ADVISORY COMMITTEES AND OTHER ENTITIES CONTINUED.**—Any advisory committee, interagency organization, or other entity that was, during fiscal year 2004, authorized or required to perform any function under the Higher Education Act of 1965 (20 U.S.C.

1001 et seq.), or in relation to programs under that Act, shall continue to exist and is authorized or required, respectively, to perform such function during fiscal year 2005.

(e) **ADDITIONAL EXTENSION NOT PERMITTED.**—Section 422 of the General Education Provisions Act (20 U.S.C. 1226a) shall not apply to further extend the authorization of appropriations for any program described in subsection (a) on the basis of the extension of such program under this section.

Applicability.

(f) **EXCEPTION.**—The programs described in subsection (a) for which the authorization of appropriations, or the duration of which, is extended by this section include provisions applicable to institutions in, and students in or from, the Freely Associated States, except that those provisions shall be applicable with respect to institutions in, and students in or from, the Federated States of Micronesia and the Republic of the Marshall Islands only to the extent specified in Public Law 188.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 5185:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Oct. 9, considered and passed Senate.



Public Law 108–367
108th Congress

An Act

To expand the boundaries of the Fort Donelson National Battlefield to authorize the acquisition and interpretation of lands associated with the campaign that resulted in the capture of the fort in 1862, and for other purposes.

Oct. 25, 2004

[S. 524]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fort Donelson National Battlefield Expansion Act of 2004”.

SEC. 2. FORT DONELSON NATIONAL BATTLEFIELD.

(a) DESIGNATION; PURPOSE.—There exists as a unit of the National Park System the Fort Donelson National Battlefield to commemorate—

- (1) the Battle of Fort Donelson in February 1862; and
- (2) the campaign conducted by General Ulysses S. Grant and Admiral Andrew H. Foote that resulted in the capture of Fort Donelson by Union forces.

(b) BOUNDARIES.—The boundary of the Fort Donelson National Battlefield is revised to include the site of Fort Donelson and associated land that has been acquired by the Secretary of the Interior for administration by the National Park Service, including Fort Donelson National Cemetery, in Stewart County, Tennessee and the site of Fort Heiman and associated land in Calloway County, Kentucky, as generally depicted on the map entitled “Fort Donelson National Battlefield Boundary Adjustment” numbered 328/80024, and dated September 2003. The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(c) EXPANSION OF BOUNDARIES.—The Fort Donelson National Battlefield shall also include any land acquired pursuant to section 3.

SEC. 3. LAND ACQUISITION RELATED TO FORT DONELSON NATIONAL BATTLEFIELD.

16 USC 428p–1.

(a) ACQUISITION AUTHORITY.—Subject to subsections (b) and (c), the Secretary of the Interior may acquire land, interests in land, and improvements thereon for inclusion in the Fort Donelson National Battlefield. Such land, interests in land, and improvements may be acquired by the Secretary only by purchase from willing sellers with appropriated or donated funds, by donation, or by exchange with willing owners.

Fort Donelson
National
Battlefield
Expansion Act of
2004.
Tennessee.
16 USC 428 note.
16 USC 428p.

(b) **LAND ELIGIBLE FOR ACQUISITION.**—The Secretary of the Interior may acquire land, interests in land, and improvements thereon under subsection (a)—

(1) within the boundaries of the Fort Donelson National Battlefield described in section 2(b); and

(2) outside such boundaries if the land has been identified by the American Battlefield Protection Program as part of the battlefield associated with Fort Donelson or if the Secretary otherwise determines that acquisition under subsection (a) will protect critical resources associated with the Battle of Fort Donelson in 1862 and the Union campaign that resulted in the capture of Fort Donelson.

(c) **BOUNDARY REVISION.**—Upon acquisition of land or interests in land described in subsection (b)(2), the Secretary of the Interior shall revise the boundaries of the Fort Donelson National Battlefield to include the acquired property.

(d) **LIMITATION ON TOTAL ACREAGE OF PARK.**—The total area encompassed by the Fort Donelson National Battlefield may not exceed 2,000 acres.

16 USC 428p-2.

SEC. 4. ADMINISTRATION OF FORT DONELSON NATIONAL BATTLEFIELD.

The Secretary of the Interior shall administer the Fort Donelson National Battlefield in accordance with this Act and the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (commonly known as the Historic Sites, Buildings, and Antiquities Act; 16 U.S.C. 461 et seq.).

Contracts.

SEC. 5. RELATION TO LAND BETWEEN THE LAKES NATIONAL RECREATION AREA.

The Secretary of Agriculture and the Secretary of the Interior shall enter into a memorandum of understanding to facilitate cooperatively protecting and interpreting the remaining vestige of Fort Henry and other remaining Civil War resources in the Land Between the Lakes National Recreation Area affiliated with the Fort Donelson campaign.

SEC. 6. CONFORMING AMENDMENT.

The first section of Public Law 86–738 (16 U.S.C. 428k) is amended by striking “Tennessee” and all that follows through the period at the end and inserting “Tennessee.”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—S. 524:

SENATE REPORTS: No. 108–230 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 19, considered and passed Senate.

Oct. 8, considered and passed House.



Public Law 108–368
108th Congress

An Act

Oct. 25, 2004
[S. 1368]

To authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

31 USC 5111
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) Reverend Doctor Martin Luther King, Jr. and his widow Coretta Scott King, as the first family of the civil rights movement, have distinguished records of public service to the American people and the international community;

(2) Dr. King preached a doctrine of nonviolent civil disobedience to combat segregation, discrimination, and racial injustice;

(3) Dr. King led the Montgomery bus boycott for 381 days to protest the arrest of Mrs. Rosa Parks and the segregation of the bus system of Montgomery, Alabama;

(4) in 1963, Dr. King led the march on Washington, D.C., that was followed by his famous address, the “I Have a Dream” speech;

(5) through his work and reliance on nonviolent protest, Dr. King was instrumental in the passage of the Civil Rights Act of 1964, and the Voting Rights Act of 1965;

(6) despite efforts to derail his mission, Dr. King acted on his dream of America and succeeded in making the United States a better place;

(7) Dr. King was assassinated for his beliefs on April 4, 1968, in Memphis, Tennessee;

(8) Mrs. King stepped into the civil rights movement in 1955 during the Montgomery bus boycott, and played an important role as a leading participant in the American civil rights movement;

(9) while raising 4 children, Mrs. King devoted herself to working alongside her husband for nonviolent social change and full civil rights for African Americans;

(10) with a strong educational background in music, Mrs. King established and performed several Freedom Concerts, which were well received, and which combined prose and poetry narration with musical selections to increase awareness and understanding of the Southern Christian Leadership Conference (of which Dr. King served as the first president);

(11) Mrs. King demonstrated composure in deep sorrow, as she led the Nation in mourning her husband after his brutal assassination;

(12) after the assassination, Mrs. King devoted all of her time and energy to developing and building the Atlanta-based Martin Luther King Jr. Center for Nonviolent Social Change (hereafter referred to as the “Center”) as an enduring memorial to her husband’s life and his dream of nonviolent social change and full civil rights for all Americans;

(13) under Mrs. King’s guidance and direction, the Center has flourished;

(14) the Center was the first institution built in honor of an African American leader;

(15) the Center provides local, national, and international programs that have trained tens of thousands of people in Dr. King’s philosophy and methods, and claims the largest archive of the civil rights movement; and

(16) Mrs. King led the massive campaign to establish Dr. King’s birthday as a national holiday, and the holiday is now celebrated in more than 100 countries.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) **PRESENTATION AUTHORIZED.**—The President is authorized to present, on behalf of the Congress, a gold medal of appropriate design to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King, in recognition of their service to the Nation. President.

(b) **DESIGN AND STRIKING.**—For the purpose of the presentations referred to in subsection (a), the Secretary of the Treasury shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

The Secretary of the Treasury shall strike and sell duplicates in bronze of the gold medal struck pursuant to section 2, under such regulations as the Secretary may prescribe, at a price sufficient to cover the costs of the duplicate medals and the gold medal (including labor, materials, dies, use of machinery, and overhead expenses).

SEC. 4. NATIONAL MEDALS.

The medals struck under this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 5. FUNDING AND PROCEEDS OF SALE.

(a) **AUTHORIZATION.**—There is authorized to be charged against the United States Mint Public Enterprise Fund an amount not to exceed \$30,000 to pay for the cost of the medals authorized by this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

Approved October 25, 2004.

LEGISLATIVE HISTORY—S. 1368:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 9, considered and passed Senate.

Oct. 8, considered and passed House.



Public Law 108–369
108th Congress

An Act

To extend for eighteen months the period for which chapter 12 of title 11, United States Code, is reenacted.

Oct. 25, 2004
[S. 2864]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Family Farmer Bankruptcy Relief Act of 2004”.

Family Farmer
Bankruptcy
Relief Act of
2004.
11 USC 101 note.

**SEC. 2. EIGHTEEN-MONTH EXTENSION OF PERIOD FOR WHICH
CHAPTER 12 OF TITLE 11, UNITED STATES CODE, IS
REENACTED.**

(a) AMENDMENTS.—Section 149 of title I of division C of Public Law 105–277 (11 U.S.C. 1201 note) is amended—

11 USC 1201–
1208, 1221–1231.

(1) by striking “January 1, 2004” each place that term appears and inserting “July 1, 2005”; and

(2) in subsection (a)—

(A) by striking “June 30, 2003” and inserting “December 31, 2003”; and

(B) by striking “July 1, 2003” and inserting “January 1, 2004”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) are deemed to have taken effect on January 1, 2004.

11 USC 1201
note.

Approved October 25, 2004.

LEGISLATIVE HISTORY—S. 2864:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed Senate.

Oct. 8, considered and passed House.



Public Law 108–370
108th Congress

An Act

Oct. 25, 2004
[S. 2883]

Prevention of
Child Abduction
Partnership Act.
42 USC 11601
note.

To amend the International Child Abduction Remedies Act to limit the tort liability of private entities or organizations that carry out responsibilities of the United States Central Authority under that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Prevention of Child Abduction Partnership Act”.

SEC. 2. LIMITATION ON LIABILITY.

Section 7 of the International Child Abduction Remedies Act (42 U.S.C. 11606) is amended by adding at the end the following new subsection:

“(f) LIMITED LIABILITY OF PRIVATE ENTITIES ACTING UNDER THE DIRECTION OF THE UNITED STATES CENTRAL AUTHORITY.—

“(1) LIMITATION ON LIABILITY.—Except as provided in paragraphs (2) and (3), a private entity or organization that receives a grant from or enters into a contract or agreement with the United States Central Authority under subsection (e) of this section for purposes of assisting the United States Central Authority in carrying out its responsibilities and functions under the Convention and this Act, including any director, officer, employee, or agent of such entity or organization, shall not be liable in any civil action sounding in tort for damages directly related to the performance of such responsibilities and functions as defined by the regulations issued under subsection (c) of this section that are in effect on October 1, 2004.

“(2) EXCEPTION FOR INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—The limitation on liability under paragraph (1) shall not apply in any action in which the plaintiff proves that the private entity, organization, officer, employee, or agent described in paragraph (1), as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this Act.

“(3) EXCEPTION FOR ORDINARY BUSINESS ACTIVITIES.—The limitation on liability under paragraph (1) shall not apply to any alleged act or omission related to an ordinary business activity, such as an activity involving general administration

or operations, the use of motor vehicles, or personnel management.”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—S. 2883:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 1, considered and passed Senate.

Oct. 8, considered and passed House.



Public Law 108–371
108th Congress

An Act

Oct. 25, 2004
[S. 2896]

To modify and extend certain privatization requirements of the Communications Satellite Act of 1962.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PRIVATIZATION REQUIREMENTS MODIFIED AND EXTENDED.

Section 621(5) of the Communications Satellite Act of 1962 (47 U.S.C. 763) is amended—

(1) in subparagraph (A)(ii), by striking “June 30, 2004” and inserting “June 30, 2005”; and

(2) by adding at the end the following new subparagraph:

“(F) Notwithstanding subparagraphs (A) and (B), a successor entity may be deemed a national corporation and may forgo an initial public offering and public securities listing and still achieve the purposes of this section if—

“(i) the successor entity certifies to the Commission that—

“(I) the successor entity has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in such entity;

“(II) any signatories and former signatories that retain a financial interest in such successor entity do not possess, together or individually, effective control of such successor entity; and

“(III) no intergovernmental organization has any ownership interest in a successor entity of INTELSAT or more than a minimal ownership interest in a successor entity of Inmarsat;

“(ii) the successor entity provides such financial and other information to the Commission as the Commission may require to verify such certification; and

“(iii) the Commission determines, after notice and comment, that the successor entity is in compliance with such certification.

“(G) For purposes of subparagraph (F), the term ‘substantial dilution’ means that a majority of the financial

interests in the successor entity is no longer held or controlled, directly or indirectly, by signatories or former signatories.”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—S. 2896:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed Senate.

Oct. 8, considered and passed House.



Public Law 108–372
108th Congress

An Act

Oct. 25, 2004

[H.R. 2714]

State Justice
Institute
Reauthorization
Act of 2004.
42 USC 10701
note.

To reauthorize the State Justice Institute.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “State Justice Institute Reauthor-
ization Act of 2004”.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 215 of the State Justice Institute Act of 1984 (42
U.S.C. 10713) is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 215. There are authorized to be appropriated to carry
out the purposes of this title, \$7,000,000 for each of fiscal years
2005, 2006, 2007, and 2008. Amounts appropriated for each such
year are to remain available until expended.”.

SEC. 3. TECHNICAL AMENDMENTS.

(a) STATUS OF INSTITUTE.—Section 205(c) of the State Justice
Institute Act of 1984 (42 U.S.C. 10704(c)) is amended by adding
at the end the following new paragraph:

“(3) The Institute may purchase goods and services from the
General Services Administration in order to carry out its functions.”.

(b) STATUS AS OFFICERS AND EMPLOYEES OF THE UNITED
STATES.—Section 205(d)(2) of the State Justice Institute Act of
1984 (42 U.S.C. 10704(d)(2)) is amended by inserting “, notwith-
standing section 8914 of such title” after “(relating to health insur-
ance)”.

(c) MEETINGS.—Section 204(j) of the State Justice Institute
Act of 1984 (42 U.S.C. 10703(j)) is amended by inserting “(on
any occasion on which that committee has been delegated the
authority to act on behalf of the Board)” after “executive committee
of the Board”.

SEC. 4. LAW ENFORCEMENT ARMOR VESTS.

Section 1001(a)(23) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(23)) is amended by striking “2004” and inserting “2007”.

Approved October 25, 2004.

LEGISLATIVE HISTORY—H.R. 2714:

HOUSE REPORTS: No. 108–285 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 10, considered and passed House.

Sept. 30, considered and passed Senate, amended.

Oct. 8, House concurred in Senate amendment.



Public Law 108–373
108th Congress

An Act

Oct. 27, 2004
[S. 1134]

To reauthorize and improve the program authorized by the Public Works and Economic Development Act of 1965.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Economic
Development
Administration
Reauthorization
Act of 2004.
Rural and urban
areas.
42 USC 3121
note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Economic Development Administration Reauthorization Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings and declarations.

Sec. 102. Definitions.

Sec. 103. Establishment of Economic Development partnerships.

Sec. 104. Coordination.

TITLE II—GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT

Sec. 201. Grants for planning.

Sec. 202. Cost sharing.

Sec. 203. Supplementary grants.

Sec. 204. Regulations on relative needs and allocations.

Sec. 205. Grants for training, research, and technical assistance.

Sec. 206. Prevention of unfair competition.

Sec. 207. Grants for economic adjustment.

Sec. 208. Use of funds in projects constructed under projected cost.

Sec. 209. Special impact areas.

Sec. 210. Performance awards.

Sec. 211. Planning performance awards.

Sec. 212. Direct expenditure or redistribution by recipient.

Sec. 213. Brightfields demonstration program.

TITLE III—COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

Sec. 301. Eligibility of areas.

Sec. 302. Comprehensive Economic Development strategies.

TITLE IV—ECONOMIC DEVELOPMENT DISTRICTS

Sec. 401. Incentives.

Sec. 402. Provision of comprehensive Economic Development strategies to Regional Commissions.

TITLE V—ADMINISTRATION

Sec. 501. Economic Development information clearinghouse.

Sec. 502. Businesses desiring Federal contracts.

Sec. 503. Performance evaluations of grant recipients.

Sec. 504. Conforming amendments.

TITLE VI—MISCELLANEOUS

Sec. 601. Annual report to Congress.

Sec. 602. Relationship to assistance under other law.

Sec. 603. Brownfields redevelopment report.

Sec. 604. Savings clause.

Sec. 605. Sense of Congress regarding Economic Development Representatives.

TITLE VII—FUNDING

Sec. 701. Authorization of appropriations.

Sec. 702. Funding for grants for planning and grants for administrative expenses.

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS AND DECLARATIONS.

Section 2 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121) is amended to read as follows:

“SEC. 2. FINDINGS AND DECLARATIONS.

“(a) FINDINGS.—Congress finds that—

“(1) there continue to be areas of the United States experiencing chronic high unemployment, underemployment, outmigration, and low per capita incomes, as well as areas facing sudden and severe economic dislocations because of structural economic changes, changing trade patterns, certain Federal actions (including environmental requirements that result in the removal of economic activities from a locality), and natural disasters;

“(2) economic growth in the States, cities, and rural areas of the United States is produced by expanding economic opportunities, expanding free enterprise through trade, developing and strengthening public infrastructure, and creating a climate for job creation and business development;

“(3) the goal of Federal economic development programs is to raise the standard of living for all citizens and increase the wealth and overall rate of growth of the economy by encouraging communities to develop a more competitive and diversified economic base by—

“(A) creating an environment that promotes economic activity by improving and expanding public infrastructure;

“(B) promoting job creation through increased innovation, productivity, and entrepreneurship; and

“(C) empowering local and regional communities experiencing chronic high unemployment and low per capita income to develop private sector business and attract increased private sector capital investment;

“(4) while economic development is an inherently local process, the Federal Government should work in partnership with public and private State, regional, tribal, and local organizations to maximize the impact of existing resources and enable regions, communities, and citizens to participate more fully in the American dream and national prosperity;

“(5) in order to avoid duplication of effort and achieve meaningful, long-lasting results, Federal, State, tribal, and local economic development activities should have a clear focus, improved coordination, a comprehensive approach, and simplified and consistent requirements; and

“(6) Federal economic development efforts will be more effective if the efforts are coordinated with, and build upon, the trade, workforce investment, transportation, and technology programs of the United States.

“(b) **DECLARATIONS.**—In order to promote a strong and growing economy throughout the United States, Congress declares that—

“(1) assistance under this Act should be made available to both rural- and urban-distressed communities;

“(2) local communities should work in partnership with neighboring communities, the States, Indian tribes, and the Federal Government to increase the capacity of the local communities to develop and implement comprehensive economic development strategies to alleviate economic distress and enhance competitiveness in the global economy;

“(3) whether suffering from long-term distress or a sudden dislocation, distressed communities should be encouraged to support entrepreneurship to take advantage of the development opportunities afforded by technological innovation and expanding newly opened global markets; and

“(4) assistance under this Act should be made available to promote the productive reuse of abandoned industrial facilities and the redevelopment of brownfields.”.

SEC. 102. DEFINITIONS.

(a) **ELIGIBLE RECIPIENT.**—Section 3(4)(A) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3122(4)(A)) is amended—

(1) by striking clause (i) and redesignating clauses (ii) through (vii) as clauses (i) through (vi), respectively; and

(2) in clause (iv) (as redesignated by paragraph (1)) by inserting “, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities,” after “State”.

(b) **REGIONAL COMMISSIONS; UNIVERSITY CENTER.**—Section 3 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3122) is amended—

(1) by redesignating paragraphs (8), (9), and (10) as paragraphs (9), (10), and (11), respectively;

(2) by inserting after paragraph (7) the following:

“(8) **REGIONAL COMMISSIONS.**—The term ‘Regional Commissions’ means—

“(A) the Appalachian Regional Commission established under chapter 143 of title 40, United States Code;

“(B) the Delta Regional Authority established under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa et seq.);

“(C) the Denali Commission established under the Denali Commission Act of 1998 (42 U.S.C. 3121 note; 112 Stat. 2681–637 et seq.); and

“(D) the Northern Great Plains Regional Authority established under subtitle G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb et seq.).”; and

(3) by adding at the end the following:

“(12) **UNIVERSITY CENTER.**—The term ‘university center’ means an institution of higher education or a consortium of institutions of higher education established as a University Center for Economic Development under section 207(a)(2)(D).”.

SEC. 103. ESTABLISHMENT OF ECONOMIC DEVELOPMENT PARTNERSHIPS.

Section 101 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3131) is amended—

(1) in subsection (b), by striking “and multi-State regional organizations” and inserting “multi-State regional organizations, and nonprofit organizations”; and

(2) in subsection (d)(1), by striking “adjoining” each place it appears.

SEC. 104. COORDINATION.

Section 103 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3132) is amended—

(1) by inserting “(a) IN GENERAL.—” before “The Secretary”; 42 USC 3133.

(2) in subsection (a) (as designated by paragraph (1)), by inserting “Indian tribes,” after “districts,”; and

(3) by adding at the end the following:

“(b) MEETINGS.—To carry out subsection (a), or for any other purpose relating to economic development activities, the Secretary may convene meetings with Federal agencies, State and local governments, economic development districts, Indian tribes, and other appropriate planning and development organizations.”.

TITLE II—GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT

SEC. 201. GRANTS FOR PLANNING.

Section 203(d) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3143(d)) is amended—

(1) in paragraph (1), by inserting “, to the maximum extent practicable,” after “developed” the second place it appears;

(2) by striking paragraph (3) and inserting the following:

“(3) COORDINATION.—Before providing assistance for a State plan under this section, the Secretary shall consider the extent to which the State will consider local and economic development district plans.”; and

(3) in paragraph (4)—

(A) by striking “and” at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by adding after subparagraph (C) the following:

“(D) assist in carrying out the workforce investment strategy of a State;

“(E) promote the use of technology in economic development, including access to high-speed telecommunications; and”.

SEC. 202. COST SHARING.

(a) FEDERAL SHARE.—Section 204 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144) is amended by striking subsection (a) and inserting the following:

“(a) FEDERAL SHARE.—Except as provided in subsection (c), the Federal share of the cost of any project carried out under this title shall not exceed—

“(1) 50 percent; plus

“(2) an additional percent that—

“(A) shall not exceed 30 percent; and

“(B) is based on the relative needs of the area in which the project will be located, as determined in accordance with regulations promulgated by the Secretary.”.

(b) NON-FEDERAL SHARE.—Section 204(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144(b)) is amended by inserting “assumptions of debt,” after “equipment,”.

(c) INCREASE IN FEDERAL SHARE.—Section 204 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3144) is amended by adding at the end the following:

“(c) INCREASE IN FEDERAL SHARE.—

“(1) INDIAN TRIBES.—In the case of a grant to an Indian tribe for a project under this title, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

“(2) CERTAIN STATES, POLITICAL SUBDIVISIONS, AND NON-PROFIT ORGANIZATIONS.—In the case of a grant to a State, or a political subdivision of a State, that the Secretary determines has exhausted the effective taxing and borrowing capacity of the State or political subdivision, or in the case of a grant to a nonprofit organization that the Secretary determines has exhausted the effective borrowing capacity of the nonprofit organization, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project.

“(3) TRAINING, RESEARCH, AND TECHNICAL ASSISTANCE.—In the case of a grant provided under section 207, the Secretary may increase the Federal share above the percentage specified in subsection (a) up to 100 percent of the cost of the project if the Secretary determines that the project funded by the grant merits, and is not feasible without, such an increase.”.

SEC. 203. SUPPLEMENTARY GRANTS.

(a) IN GENERAL.—Section 205 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3145) is amended by striking subsection (b) and inserting the following:

“(b) SUPPLEMENTARY GRANTS.—Subject to subsection (c), in order to assist eligible recipients in taking advantage of designated Federal grant programs, on the application of an eligible recipient, the Secretary may make a supplementary grant for a project for which the recipient is eligible but for which the recipient cannot provide the required non-Federal share because of the economic situation of the recipient.”.

(b) REQUIREMENTS APPLICABLE TO SUPPLEMENTARY GRANTS.—Section 205(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3145(c)) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

“(1) AMOUNT OF SUPPLEMENTARY GRANTS.—The share of the project cost supported by a supplementary grant under this section may not exceed the applicable Federal share under section 204.

“(2) FORM OF SUPPLEMENTARY GRANTS.—The Secretary shall make supplementary grants by—

“(A) the payment of funds made available under this Act to the heads of the Federal agencies responsible for carrying out the applicable Federal programs; or

“(B) the award of funds under this Act, which will be combined with funds transferred from other Federal agencies in projects administered by the Secretary.”; and (2) by striking paragraph (4).

SEC. 204. REGULATIONS ON RELATIVE NEEDS AND ALLOCATIONS.

Section 206 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3146) is amended—

- (1) in paragraph (1)(C), by striking “and” at the end;
- (2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(3)(A) rural and urban economically distressed areas are not harmed by the establishment or implementation by the Secretary of a private sector leveraging goal for a project under this title;

“(B) any private sector leveraging goal established by the Secretary does not prohibit or discourage grant applicants under this title from public works in, or economic development of, rural or urban economically distressed areas; and

“(C) the relevant Committees of Congress are notified prior to making any changes to any private sector leveraging goal; and

“(4) grants made under this title promote job creation and will have a high probability of meeting or exceeding applicable performance requirements established in connection with the grants.”.

SEC. 205. GRANTS FOR TRAINING, RESEARCH, AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 207(a)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147(a)(2)) is amended—

- (1) by striking “and” at the end of subparagraph (F);
- (2) by redesignating subparagraph (G) as subparagraph (I); and
- (3) by inserting after subparagraph (F) the following:

“(G) studies that evaluate the effectiveness of coordinating projects funded under this Act with projects funded under other Acts;

“(H) assessment, marketing, and establishment of business clusters; and”.

(b) COOPERATION REQUIREMENT.—Section 207(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3147(a)) is amended by striking paragraph (3) and inserting the following:

“(3) COOPERATION REQUIREMENT.—In the case of a project assisted under this section that is national or regional in scope, the Secretary may waive the provision in section 3(4)(A)(vi) requiring a nonprofit organization or association to act in cooperation with officials of a political subdivision of a State.”.

SEC. 206. PREVENTION OF UNFAIR COMPETITION.

(a) IN GENERAL.—Section 208 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3148) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 208.

SEC. 207. GRANTS FOR ECONOMIC ADJUSTMENT.

(a) **ASSISTANCE TO MANUFACTURING COMMUNITIES.**—Section 209(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149(c)) is amended—

- (1) in paragraph (3), by striking “or”;
- (2) in paragraph (4), by striking the period at the end and inserting “; or”; and
- (3) by adding at the end the following:
“(5) the loss of manufacturing jobs, for reinvesting in and diversifying the economies of the communities.”.

(b) **DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT; SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.**—Section 209 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149) is amended by striking subsection (d) and inserting the following:

“(d) **SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.**—

Regulations.

“(1) **IN GENERAL.**—The Secretary shall promulgate regulations to maintain the proper operation and financial integrity of revolving loan funds established by recipients with assistance under this section.

“(2) **EFFICIENT ADMINISTRATION.**—The Secretary may—

“(A) at the request of a grantee, amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria;

“(B) assign or transfer assets of a revolving loan fund to third party for the purpose of liquidation, and the third party may retain assets of the fund to defray costs related to liquidation; and

“(C) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions may not include issuance of a Federal guaranty by the Secretary).

“(3) **TREATMENT OF ACTIONS.**—An action taken by the Secretary under this subsection with respect to a revolving loan fund shall not constitute a new obligation if all grant funds associated with the original grant award have been disbursed to the recipient.

“(4) **PRESERVATION OF SECURITIES LAWS.**—

“(A) **NOT TREATED AS EXEMPTED SECURITIES.**—No securities issued pursuant to paragraph (2)(C) shall be treated as exempted securities for purposes of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless exempted by rule or regulation of the Securities and Exchange Commission.

“(B) **PRESERVATION.**—Except as provided in subparagraph (A), no provision of this subsection or any regulation promulgated by the Secretary under this subsection supersedes or otherwise affects the application of the securities laws (as the term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) or the rules, regulations, or orders of the Securities and Exchange Commission or a self-regulatory organization under that Commission.”.

SEC. 208. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

Section 211 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3151) is amended to read as follows:

“SEC. 211. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

“(a) IN GENERAL.—In the case of a grant to a recipient for a construction project under section 201 or 209, if the Secretary determines, before closeout of the project, that the cost of the project, based on the designs and specifications that were the basis of the grant, has decreased because of decreases in costs, the Secretary may approve, without further appropriation, the use of the excess funds (or a portion of the excess funds) by the recipient—

“(1) to increase the Federal share of the cost of a project under this title to the maximum percentage allowable under section 204; or

“(2) to improve the project.

“(b) OTHER USES OF EXCESS FUNDS.—Any amount of excess funds remaining after application of subsection (a) may be used by the Secretary for providing assistance under this Act.

“(c) TRANSFERRED FUNDS.—In the case of excess funds described in subsection (a) in projects using funds transferred from other Federal agencies pursuant to section 604, the Secretary shall—

“(1) use the funds in accordance with subsection (a), with the approval of the originating agency; or

“(2) return the funds to the originating agency.

“(d) REVIEW BY COMPTROLLER GENERAL.—

“(1) REVIEW.—The Comptroller General of the United States shall regularly review the implementation of this section.

“(2) REPORT.—Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the findings of the Comptroller General on implementation of this subsection.”.

SEC. 209. SPECIAL IMPACT AREAS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) is amended by adding at the end the following:

“SEC. 214. SPECIAL IMPACT AREAS.

42 USC 3154.

“(a) IN GENERAL.—On the application of an eligible recipient that is determined by the Secretary to be unable to comply with the requirements of section 302, the Secretary may waive, in whole or in part, the requirements of section 302 and designate the area represented by the recipient as a special impact area.

“(b) CONDITIONS.—The Secretary may make a designation under subsection (a) only after determining that—

“(1) the project will fulfill a pressing need of the area;

and

“(2) the project will—

“(A) be useful in alleviating or preventing conditions of excessive unemployment or underemployment; or

“(B) assist in providing useful employment opportunities for the unemployed or underemployed residents in the area.

“(c) NOTIFICATION.—At the time of the designation under subsection (a), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a written notice of the designation, including a justification for the designation.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 213 the following:

“Sec. 214. Special impact areas.”.

SEC. 210. PERFORMANCE AWARDS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 209) is amended by adding at the end the following:

42 USC 3154a.

“SEC. 215. PERFORMANCE AWARDS.

“(a) IN GENERAL.—The Secretary may make a performance award in connection with a grant made, on or after the date of enactment of this section, to an eligible recipient for a project under section 201 or 209.

“(b) PERFORMANCE MEASURES.—

“(1) REGULATIONS.—The Secretary shall promulgate regulations to establish performance measures for making performance awards under subsection (a).

“(2) CONSIDERATIONS.—In promulgating regulations under paragraph (1), the Secretary shall consider the inclusion of performance measures that assess—

“(A) whether the recipient meets or exceeds scheduling goals;

“(B) whether the recipient meets or exceeds job creation goals;

“(C) amounts of private sector capital investments leveraged; and

“(D) such other factors as the Secretary determines to be appropriate.

“(c) AMOUNT OF AWARDS.—

“(1) IN GENERAL.—The Secretary shall base the amount of a performance award made under subsection (a) in connection with a grant on the extent to which a recipient meets or exceeds performance measures established in connection with the grant.

“(2) MAXIMUM AMOUNT.—The amount of a performance award may not exceed 10 percent of the amount of the grant.

“(d) USE OF AWARDS.—A recipient of a performance award under subsection (a) may use the award for any eligible purpose under this Act, in accordance with section 602 and such regulations as the Secretary may promulgate.

“(e) FEDERAL SHARE.—Notwithstanding section 204, the funds of a performance award may be used to pay up to 100 percent of the cost of an eligible project or activity.

“(f) TREATMENT IN MEETING NON-FEDERAL SHARE REQUIREMENTS.—For the purposes of meeting the non-Federal share requirements under this, or any other, Act the funds of a performance award shall be treated as funds from a non-Federal source.

“(g) TERMS AND CONDITIONS.—In making performance awards under subsection (a), the Secretary shall establish such terms and conditions as the Secretary considers to be appropriate.

“(h) FUNDING.—The Secretary shall use any amounts made available for economic development assistance programs to carry out this section.

“(i) REPORTING REQUIREMENT.—The Secretary shall include information regarding performance awards made under this section in the annual report required under section 603.

“(j) REVIEW BY COMPTROLLER GENERAL.—

“(1) REVIEW.—The Comptroller General shall regularly review the implementation of this section.

“(2) REPORT.—Not later than 1 year after the date of enactment of this section, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the findings of the Comptroller on implementation of this subsection.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 214 the following:

“Sec. 215. Performance awards.”.

SEC. 211. PLANNING PERFORMANCE AWARDS.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 210) is amended by adding at the end the following:

“SEC. 216. PLANNING PERFORMANCE AWARDS.

42 USC 3154b.

“(a) IN GENERAL.—The Secretary may make a planning performance award in connection with a grant made, on or after the date of enactment of this section, to an eligible recipient for a project under this title located in an economic development district.

“(b) ELIGIBILITY.—The Secretary may make a planning performance award to an eligible recipient under subsection (a) in connection with a grant for a project if the Secretary determines before closeout of the project that—

“(1) the recipient actively participated in the economic development activities of the economic development district in which the project is located;

“(2) the project is consistent with the comprehensive economic development strategy of the district;

“(3) the recipient worked with Federal, State, and local economic development entities throughout the development of the project; and

“(4) the project was completed in accordance with the comprehensive economic development strategy of the district.

“(c) MAXIMUM AMOUNT.—The amount of a planning performance award made under subsection (a) in connection with a grant may not exceed 5 percent of the amount of the grant.

“(d) USE OF AWARDS.—A recipient of a planning performance award under subsection (a) shall use the award to increase the Federal share of the cost of a project under this title.

“(e) FEDERAL SHARE.—Notwithstanding section 204, the funds of a planning performance award may be used to pay up to 100 percent of the cost of a project under this title.

“(f) FUNDING.—The Secretary shall use any amounts made available for economic development assistance programs to carry out this section.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 215 the following:

“Sec. 216. Planning performance awards.”.

SEC. 212. DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 211) is amended by adding at the end the following:

42 USC 3154c.

“SEC. 217. DIRECT EXPENDITURE OR REDISTRIBUTION BY RECIPIENT.

“(a) IN GENERAL.—Subject to subsection (b), a recipient of a grant under section 201, 203, or 207 may directly expend the grant funds or may redistribute the funds in the form of a subgrant to other eligible recipients to fund required components of the scope of work approved for the project.

“(b) LIMITATION.—A recipient may not redistribute grant funds received under section 201 or 203 to a for-profit entity.

“(c) ECONOMIC ADJUSTMENT.—Subject to subsection (d), a recipient of a grant under section 209 may directly expend the grant funds or may redistribute the funds to public and private entities in the form of a grant, loan, loan guarantee, payment to reduce interest on a loan guarantee, or other appropriate assistance.

“(d) LIMITATION.—Under subsection (c), a recipient may not provide any grant to a private for-profit entity.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 216 the following:

“Sec. 217. Direct expenditure or redistribution by recipient.”.

SEC. 213. BRIGHTFIELDS DEMONSTRATION PROGRAM.

(a) IN GENERAL.—Title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.) (as amended by section 212) is amended by adding at the end the following:

42 USC 3154d.

“SEC. 218. BRIGHTFIELDS DEMONSTRATION PROGRAM.

“(a) DEFINITION OF BRIGHTFIELD SITE.—In this section, the term ‘brightfield site’ means a brownfield site that is redeveloped through the incorporation of 1 or more solar energy technologies.

“(b) DEMONSTRATION PROGRAM.—On the application of an eligible recipient, the Secretary may make a grant for a project for the development of a brightfield site if the Secretary determines that the project will—

“(1) use 1 or more solar energy technologies to develop abandoned or contaminated sites for commercial use; and

“(2) improve the commercial and economic opportunities in the area in which the project is located.

“(c) SAVINGS CLAUSE.—To the extent that any portion of a grant awarded under subsection (b) involves remediation, the remediation shall be subject to section 612.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2004 through 2008, to remain available until expended.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 217 (as added by section 212(b)) the following:

“Sec. 218. Brightfields demonstration program.”.

TITLE III—COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

SEC. 301. ELIGIBILITY OF AREAS.

Section 301(c)(1) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161(c)(1)) is amended by inserting after “most recent Federal data available” the following: “(including data available from the Bureau of Economic Analysis, the Bureau of Labor Statistics, the Census Bureau, the Bureau of Indian Affairs, or any other Federal source determined by the Secretary to be appropriate)”.

SEC. 302. COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES.

(a) IN GENERAL.—Section 302(a)(3)(A) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3162(a)(3)(A)) is amended by inserting “maximizes effective development and use of the workforce consistent with any applicable State or local workforce investment strategy, promotes the use of technology in economic development (including access to high-speed telecommunications),” after “access,”.

(b) APPROVAL OF OTHER PLAN.—Section 302(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3162(c)) is amended—

(1) by striking “The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”; and

(2) by adding at the end the following:

“(2) EXISTING STRATEGY.—To the maximum extent practicable, a plan submitted under this paragraph shall be consistent and coordinated with any existing comprehensive economic development strategy for the area.”.

TITLE IV—ECONOMIC DEVELOPMENT DISTRICTS

SEC. 401. INCENTIVES.

(a) IN GENERAL.—Section 403 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3173) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 403.

SEC. 402. PROVISION OF COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES TO REGIONAL COMMISSIONS.

(a) IN GENERAL.—Section 404 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3174) is amended to read as follows:

“SEC. 404. PROVISION OF COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES TO REGIONAL COMMISSIONS.

“If any part of an economic development district is in a region covered by 1 or more of the Regional Commissions, the economic development district shall ensure that a copy of the comprehensive economic development strategy of the district is provided to the affected Regional Commission.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by striking the item relating to section 404 and inserting the following:

“Sec. 404. Provision of comprehensive economic development strategies to Regional Commissions.”.

TITLE V—ADMINISTRATION

SEC. 501. ECONOMIC DEVELOPMENT INFORMATION CLEARINGHOUSE.

Section 502 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3192) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) maintain a central information clearinghouse on the Internet with—

“(A) information on economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal Government;

“(B) links to State economic development organizations; and

“(C) links to other appropriate economic development resources;”;

(2) by striking paragraph (2) and inserting the following:

“(2) assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal and State laws in locating and applying for the assistance;”;

(3) by striking the period at the end of paragraph (3) and inserting “; and”; and

(4) by adding at the end the following:

“(4) obtain appropriate information from other Federal agencies needed to carry out the duties under this Act.”.

SEC. 502. BUSINESSES DESIRING FEDERAL CONTRACTS.

(a) IN GENERAL.—Section 505 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3195) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Public Works and Economic Development Act of 1965

(42 U.S.C. 3121 note) is amended by striking the item relating to section 505.

SEC. 503. PERFORMANCE EVALUATIONS OF GRANT RECIPIENTS.

(a) **IN GENERAL.**—Section 506(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3196(c)) is amended by striking “after the effective date of the Economic Development Administration Reform Act of 1998”.

(b) **EVALUATION CRITERIA.**—Section 506(d)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3196(d)(2)) is amended by inserting “program performance,” after “applied research,”.

SEC. 504. CONFORMING AMENDMENTS.

Section 602 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3212) is amended—

(1) in the first sentence, by striking “in accordance with” and all that follows before the period at the end and inserting “in accordance with subchapter IV of chapter 31 of title 40, United States Code”; and

(2) in the third sentence, by striking “section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)” and inserting “section 3145 of title 40, United States Code”.

TITLE VI—MISCELLANEOUS

SEC. 601. ANNUAL REPORT TO CONGRESS.

Section 603 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3213) is amended—

(1) by striking “Not later” and inserting the following:

“(a) **IN GENERAL.**—Not later”; and

(2) by adding at the end the following:

“(b) **INCLUSIONS.**—Each report required under subsection (a) shall—

“(1) include a list of all grant recipients by State, including the projected private sector dollar to Federal dollar investment ratio for each grant recipient;

Records.

“(2) include a discussion of any private sector leveraging goal with respect to grants awarded to—

“(A) rural and urban economically distressed areas; and

“(B) highly distressed areas; and

“(3) after the completion of a project, include the realized private sector dollar to Federal dollar investment ratio for the project.”.

SEC. 602. RELATIONSHIP TO ASSISTANCE UNDER OTHER LAW.

Section 609 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3219) is amended—

(1) by striking subsection (a); and

(2) by striking “(b) **ASSISTANCE UNDER OTHER ACTS.**—”.

SEC. 603. BROWNFIELDS REDEVELOPMENT REPORT.

(a) **IN GENERAL.**—Title VI of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3171 et seq.) is amended by adding at the end the following:

42 USC 3221.

“SEC. 611. BROWNFIELDS REDEVELOPMENT REPORT.

“(a) **DEFINITION OF BROWNFIELD SITE.**—In this section, the term ‘brownfield site’ has the meaning given the term in section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39)).

“(b) **REPORT.**—

“(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this section, the Comptroller General shall prepare a report that evaluates the grants made by the Economic Development Administration for the economic development of brownfield sites.

“(2) **CONTENTS.**—The report shall—

“(A) identify each project conducted during the previous 10-year period in which grant funds have been used for brownfield sites redevelopment activities; and

“(B) include for each project a description of—

“(i) the type of economic development activities conducted;

“(ii) if remediation activities were conducted—

“(I) the type of remediation activities; and

“(II) the amount of grant money used for those activities in dollars and as a percentage of the total grant award;

“(iii) the economic development and environmental standards applied, if applicable;

“(iv) the economic development impact of the project;

“(v) the role of Federal, State, or local environmental agencies, if any; and

“(vi) public participation in the project.

“(3) **SUBMISSION OF REPORT.**—The Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a copy of the report.”.

(b) **CONFORMING AMENDMENT.**—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 610 the following:

“Sec. 611. Brownfields redevelopment report.”.

SEC. 604. SAVINGS CLAUSE.

(a) **IN GENERAL.**—Title VI of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3171 et seq.) (as amended by section 603(a)) is amended by adding at the end the following:

42 USC 3222.

“SEC. 612. SAVINGS CLAUSE.

“To the extent that any portion of grants made under this Act are used for an economic development project that involves remediation, the remediation shall be conducted in compliance with all applicable Federal, State, and local laws and standards.”.

(b) **CONFORMING AMENDMENT.**—The table of contents contained in section 1(b) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 611 (as added by section 603(b)) the following:

“Sec. 612. Savings clause.”.

SEC. 605. SENSE OF CONGRESS REGARDING ECONOMIC DEVELOPMENT REPRESENTATIVES.

(a) FINDINGS.—Congress finds that—

(1) planning and coordination among Federal agencies, State and local governments, Indian tribes, and economic development districts is vital to the success of an economic development program;

(2) economic development representatives of the Economic Development Administration provide distressed communities with the technical assistance necessary to foster this planning and coordination; and

(3) in the 5 years preceding the date of enactment of this Act, the number of economic development representatives has declined by almost 25 percent.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should maintain a sufficient number of economic development representatives to ensure that the Economic Development Administration is able to provide effective assistance to distressed communities and foster economic growth and development among the States.

TITLE VII—FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 701 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3231) is amended to read as follows:

“SEC. 701. GENERAL AUTHORIZATION OF APPROPRIATIONS.

“(a) ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS.—There are authorized to be appropriated for economic development assistance programs to carry out this Act, to remain available until expended—

“(1) \$400,000,000 for fiscal year 2004;

“(2) \$425,000,000 for fiscal year 2005;

“(3) \$450,000,000 for fiscal year 2006;

“(4) \$475,000,000 for fiscal year 2007; and

“(5) \$500,000,000 for fiscal year 2008.”

“(b) SALARIES AND EXPENSES.—There are authorized to be appropriated for salaries and expenses of administering this Act, to remain available until expended—

“(1) \$33,377,000 for fiscal year 2004; and

“(2) such sums as are necessary for each fiscal year thereafter.”.

SEC. 702. FUNDING FOR GRANTS FOR PLANNING AND GRANTS FOR ADMINISTRATIVE EXPENSES.

(a) IN GENERAL.—Title VII of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3231 et seq.) is amended by adding at the end the following:

“SEC. 704. FUNDING FOR GRANTS FOR PLANNING AND GRANTS FOR ADMINISTRATIVE EXPENSES. 42 USC 3234.

“Of the amounts made available under section 701 for each fiscal year, not less than \$27,000,000 shall be made available for grants provided under section 203.”.

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1(b) of the Public Works and Economic Development

Act of 1965 (42 U.S.C. 3121 note) is amended by inserting after the item relating to section 703 the following:

“Sec. 704. Funding for grants for planning and grants for administrative expenses.”.

Approved October 27, 2004.

LEGISLATIVE HISTORY—S. 1134 (H.R. 2535):

HOUSE REPORTS: No. 108–242, Pt. 1 accompanying H.R. 2535 (Comm. on Transportation and Infrastructure).

SENATE REPORTS: No. 108–382 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed Senate.

Oct. 7, considered and passed House.



Public Law 108–374
108th Congress

An Act

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

Oct. 27, 2004
[S. 1721]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Indian Probate Reform Act of 2004”.

American Indian
Probate Reform
Act of 2004.
15 USC 2201
note.

SEC. 2. FINDINGS.

15 USC 2201
note.

Congress finds that—

(1) the Act of February 8, 1887 (commonly known as the “Indian General Allotment Act”) (25 U.S.C. 331 et seq.), which authorized the allotment of Indian reservations, did not permit Indian allotment owners to provide for the testamentary disposition of the land that was allotted to them;

(2) that Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment;

(3) the reliance of the Federal Government on the State law of intestate succession with respect to the descent of allotments has resulted in numerous problems affecting Indian tribes, members of Indian tribes, and the Federal Government, including—

(A) the increasingly fractionated ownership of trust and restricted land as that land is inherited by successive generations of owners as tenants in common;

(B) the application of different rules of intestate succession to each interest of a decedent in or to trust or restricted land if that land is located within the boundaries of more than 1 State, which application—

(i) makes probate planning unnecessarily difficult; and

(ii) impedes efforts to provide probate planning assistance or advice;

(C) the absence of a uniform general probate code for trust and restricted land, which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which—

(i) is unfair to the owners of trust and restricted land (and heirs and devisees of owners); and

- (ii) makes probate planning more difficult;
- (4) a uniform Federal probate code would likely—
 - (A) reduce the number of fractionated interests in trust or restricted land;
 - (B) facilitate efforts to provide probate planning assistance and advice and create incentives for owners of trust and restricted land to engage in estate planning;
 - (C) facilitate intertribal efforts to produce tribal probate codes in accordance with section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205); and
 - (D) provide essential elements of general probate law that are not applicable on the date of enactment of this Act to interests in trust or restricted land; and
- (5) the provisions of a uniform Federal probate code and other forth in this Act should operate to further the policy of the United States as stated in the Indian Land Consolidated Act Amendments of 2000, Public Law 106-462, 102, November 7, 2000, 114 Stat. 1992.

SEC. 3. INDIAN PROBATE REFORM.

(a) NONTESTAMENTARY DISPOSITION.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking subsection (a) and inserting the following:

“(a) NONTESTAMENTARY DISPOSITION.—

“(1) RULES OF DESCENT.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, any trust or restricted interest in land or interest in trust personalty that is not disposed of by a valid will—

“(A) shall descend according to an applicable tribal probate code approved in accordance with section 206; or

“(B) in the case of a trust or restricted interest in land or interest in trust personalty to which a tribal probate code does not apply, shall descend in accordance with—

“(i) paragraphs (2) through (5); and

“(ii) other applicable Federal law.

“(2) RULES GOVERNING DESCENT OF ESTATE.—

“(A) SURVIVING SPOUSE.—If there is a surviving spouse of the decedent, such spouse shall receive trust and restricted land and trust personalty in the estate as follows:

“(i) If the decedent is survived by 1 or more eligible heirs described in subparagraph (B) (i), (ii), (iii), or (iv), the surviving spouse shall receive $\frac{1}{3}$ of the trust personalty of the decedent and a life estate without regard to waste in the interests in trust or restricted lands of the decedent.

“(ii) If there are no eligible heirs described in subparagraph (B) (i), (ii), (iii), or (iv), the surviving spouse shall receive all of the trust personalty of the decedent and a life estate without regard to waste in the trust or restricted lands of the decedent.

“(iii) The remainder shall pass as set forth in subparagraph (B).

“(iv) Trust personalty passing to a surviving spouse under the provisions of this subparagraph shall be maintained by the Secretary in an account as trust personalty, but only if such spouse is Indian.

“(B) INDIVIDUAL AND TRIBAL HEIRS.—Where there is no surviving spouse of the decedent, or there is a remainder interest pursuant to subparagraph (A), the trust or restricted estate or such remainder shall, subject to subparagraphs (A) and (D), pass as follows:

“(i) To those of the decedent’s children who are eligible heirs (or if 1 or more of such children do not survive the decedent, the children of any such deceased child who are eligible heirs, by right of representation, but only if such children of the deceased child survive the decedent) in equal shares.

“(ii) If the property does not pass under clause (i), to those of the decedent’s surviving great-grandchildren who are eligible heirs, in equal shares.

“(iii) If the property does not pass under clause (i) or (ii), to the decedent’s surviving parent who is an eligible heir, and if both parents survive the decedent and are both eligible heirs, to both parents in equal shares.

“(iv) If the property does not pass under clause (i), (ii), or (iii), to those of the decedent’s surviving siblings who are eligible heirs, in equal shares.

“(v) If the property does not pass under clause (i), (ii), (iii), or (iv), to the Indian tribe with jurisdiction over the interests in trust or restricted lands; except that notwithstanding clause (v), an Indian co-owner (including the Indian tribe referred to in clause (v)) of a parcel of trust or restricted land may acquire an interest that would otherwise descend under that clause by paying into the estate of the decedent, before the close of the probate of the estate, the fair market value of the interest in the land; if more than 1 Indian co-owner offers to pay for such interest, the highest bidder shall acquire the interest.

“(C) NO INDIAN TRIBE.—

“(i) IN GENERAL.—If there is no Indian tribe with jurisdiction over the interests in trust or restricted lands that would otherwise descend under subparagraph (B)(v), then such interests shall be divided equally among co-owners of trust or restricted interests in the parcel; if there are no such co-owners, then to the United States, provided that any such interests in land passing to the United States under this subparagraph shall be sold by the Secretary and the proceeds from such sale deposited into the land acquisition fund established under section 216 (25 U.S.C. 2215) and used for the purposes described in subsection (b) of that section.

“(ii) CONTIGUOUS PARCEL.—If the interests passing to the United States under this subparagraph are in a parcel of land that is contiguous to another parcel of trust or restricted land, the Secretary shall give the owner or owners of the trust or restricted interest in the contiguous parcel the first opportunity to purchase the interest at not less than fair market value determined in accordance with this Act. If more than

1 such owner in the contiguous parcel request to purchase the parcel, the Secretary shall sell the parcel by public auction or sealed bid (as determined by the Secretary) at not less than fair market value to the owner of a trust or restricted interest in the contiguous parcel submitting the highest bid.

“(D) **INTESTATE DESCENT OF SMALL FRACTIONAL INTERESTS IN LAND.**—

“(i) **GENERAL RULE.**—Notwithstanding subparagraphs (A) and (B), and subject to any applicable Federal law, any trust or restricted interest in land in the decedent’s estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent’s estate inventory at the time of the heirship determination, shall descend in accordance with clauses (ii) through (iv).

“(ii) **SURVIVING SPOUSE.**—If there is a surviving spouse, and such spouse was residing on a parcel of land described in clause (i) at the time of the decedent’s death, the spouse shall receive a life estate without regard to waste in the decedent’s trust or restricted interest in only such parcel, and the remainder interest in that parcel shall pass in accordance with clause (iii).

“(iii) **SINGLE HEIR RULE.**—Where there is no life estate created under clause (ii) or there is a remainder interest under that clause, the trust or restricted interest or remainder interest that is subject to this subparagraph shall descend, in trust or restricted status, to—

“(I) the decedent’s surviving child, but only if such child is an eligible heir; and if 2 or more surviving children are eligible heirs, then to the oldest of such children;

“(II) if the interest does not pass under subclause (I), the decedent’s surviving grandchild, but only if such grandchild is an eligible heir; and if 2 or more surviving grandchildren are eligible heirs, then to the oldest of such grandchildren;

“(III) if the interest does not pass under subclause (I) or (II), the decedent’s surviving great grandchild, but only if such great grandchild is an eligible heir; and if 2 or more surviving great grandchildren are eligible heirs, then to the oldest of such great grandchildren;

“(IV) if the interest does not pass under subclause (I), (II), or (III), the Indian tribe with jurisdiction over the interest; or

“(V) if the interest does not pass under subclause (I), (II), or (III), and there is no such Indian tribe to inherit the property under subclause (IV), the interest shall be divided equally among co-owners of trust or restricted interests in the parcel; and if there are no such co-owners, then to the United States, to be sold, and the proceeds from

sale used, in the same manner provided in subparagraph (C).

The determination of which person is the oldest eligible heir for inheritance purposes under this clause shall be made by the Secretary in the decedent's probate proceeding and shall be consistent with the provisions of this Act.

“(iv) EXCEPTIONS.—Notwithstanding clause (iii)—

“(I)(aa) the heir of an interest under clause (iii), unless the heir is a minor or incompetent person, may agree in writing entered into the record of the decedent's probate proceeding to renounce such interest, in trust or restricted status, in favor of—

“(AA) any other eligible heir or Indian person related to the heir by blood, but in any case never in favor of more than 1 such heir or person;

“(BB) any co-owner of another trust or restricted interest in such parcel of land; or

“(CC) the Indian tribe with jurisdiction over the interest, if any; and

“(bb) the Secretary shall give effect to such agreement in the distribution of the interest in the probate proceeding; and

“(II) the governing body of the Indian tribe with jurisdiction over an interest in trust or restricted land that is subject to the provisions of this subparagraph may adopt a rule of intestate descent applicable to such interest that differs from the order of decedent set forth in clause (iii). The Secretary shall apply such rule to the interest in distributing the decedent's estate, but only if—

Applicability.

“(aa) a copy of the tribal rule is delivered to the official designated by the Secretary to receive copies of tribal rules for the purposes of this clause;

“(bb) the tribal rule provides for the intestate inheritance of such interest by no more than 1 heir, so that the interest does not further fractionate;

“(cc) the tribal rule does not apply to any interest disposed of by a valid will;

“(dd) the decedent died on or after the date described in subsection (b) of section 8 of the American Indian Probate Act of 2004, or on or after the date on which a copy of the tribal rule was delivered to the Secretary pursuant to item (aa), whichever is later; and

Deadline.

“(ee) the Secretary does not make a determination within 90 days after a copy of the tribal rule is delivered pursuant to item (aa) that the rule would be unreasonably difficult to administer or does not conform with the requirements in item (bb) or (cc).

“(v) RULE OF CONSTRUCTION.—This subparagraph shall not be construed to limit a person's right to

devise any trust or restricted interest by way of a valid will in accordance with subsection (b).

“(3) RIGHT OF REPRESENTATION.—If, under this subsection, all or any part of the estate of a decedent is to pass to children of a deceased child by right of representation, that part is to be divided into as many equal shares as there are living children of the decedent and pre-deceased children who left issue who survive the decedent. Each living child of the decedent, if any, shall receive 1 share, and the share of each pre-deceased child shall be divided equally among the pre-deceased child’s children.

“(4) SPECIAL RULE RELATING TO SURVIVAL.—In the case of intestate succession under this subsection, if an individual fails to survive the decedent by at least 120 hours, as established by clear and convincing evidence—

“(A) the individual shall be deemed to have predeceased the decedent for the purpose of intestate succession; and

“(B) the heirs of the decedent shall be determined in accordance with this section.

“(5) STATUS OF INHERITED INTERESTS.—Except as provided in paragraphs (2) (A) and (D) regarding the life estate of a surviving spouse, a trust or restricted interest in land or trust personalty that descends under the provisions of this subsection shall vest in the heir in the same trust or restricted status as such interest was held immediately prior to the decedent’s death.”.

(b) TESTAMENTARY DISPOSITION.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking subsection (b) and inserting the following:

“(b) TESTAMENTARY DISPOSITION.—

“(1) GENERAL DEVISE OF AN INTEREST IN TRUST OR RESTRICTED LAND.—

“(A) IN GENERAL.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, or a tribal probate code approved by the Secretary in accordance with section 206, the owner of a trust or restricted interest in land may devise such interest to—

“(i) any lineal descendant of the testator;

“(ii) any person who owns a preexisting undivided trust or restricted interest in the same parcel of land;

“(iii) the Indian tribe with jurisdiction over the interest in land; or

“(iv) any Indian;

in trust or restricted status.

“(B) RULES OF INTERPRETATION.—Any devise of a trust or restricted interest in land pursuant to subparagraph (A) to an Indian or the Indian tribe with jurisdiction over the interest shall be deemed to be a devise of the interest in trust or restricted status. Any devise of a trust or restricted interest in land to a person who is only eligible to be a devisee under clause (i) or (ii) of subparagraph (A) shall be presumed to be a devise of the interest in trust or restricted status unless language in such devise clearly evidences an intent on the part of the testator that the interest is to pass as a life estate or fee interest in accordance with paragraph (2)(A).

“(2) DEVISE OF TRUST OR RESTRICTED LAND AS A LIFE ESTATE OR IN FEE.—

“(A) IN GENERAL.—Except as provided under any applicable Federal law, any trust or restricted interest in land that is not devised in accordance with paragraph (1)(A) may be devised only—

“(i) as a life estate to any person, with the remainder being devised only in accordance with subparagraph (B) or paragraph (1); or

“(ii) except as provided in subparagraph (B), as a fee interest without Federal restrictions against alienation to any person who is not eligible to be a devisee under clause (iv) of paragraph (1)(A).

“(B) INDIAN REORGANIZATION ACT LANDS.—Any interest in trust or restricted land that is subject to section 4 of the Act of June 18, 1934 (25 U.S.C. 464), may be devised only in accordance with—

“(i) that section;

“(ii) subparagraph (A)(i); or

“(iii) paragraph (1)(A);

provided that nothing in this section or in section 4 of the Act of June 18, 1934 (25 U.S.C. 464), shall be construed to authorize the devise of any interest in trust or restricted land that is subject to section 4 of that Act to any person as a fee interest under subparagraph (A)(ii).

“(3) GENERAL DEVISE OF AN INTEREST IN TRUST PERSONALTY.—

“(A) TRUST PERSONALITY DEFINED.—The term ‘trust personality’ as used in this section includes all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.

“(B) IN GENERAL.—Subject to any applicable Federal law relating to the devise or descent of such trust personality, or a tribal probate code approved by the Secretary in accordance with section 206, the owner of an interest in trust personality may devise such an interest to any person or entity.

“(C) MAINTENANCE AS TRUST PERSONALTY.—In the case of a devise of an interest in trust personality to a person or Indian tribe eligible to be a devisee under paragraph (1)(A), the Secretary shall maintain and continue to manage such interests as trust personality.

“(D) DIRECT DISBURSEMENT AND DISTRIBUTION.—In the case of a devise of an interest in trust personality to a person or Indian tribe not eligible to be a devisee under paragraph (1)(A), the Secretary shall directly disburse and distribute such personality to the devisee.

“(4) INVALID DEVISES AND WILLS.—

“(A) LAND.—Any trust or restricted interest in land that is not devised in accordance with paragraph (1) or (2) or that is not disposed of by a valid will shall descend in accordance with the applicable law of intestate succession as provided for in subsection (a).

“(B) PERSONALTY.—Any trust personality that is not disposed of by a valid will shall descend in accordance

with the applicable law of intestate succession as provided for in subsection (a).”

(c) JOINT TENANCY; RIGHT OF SURVIVORSHIP.—Section 207(c) of the Indian Land Consolidation Act (25 U.S.C. 2206(c)) is amended by striking all that follows the heading, “Joint Tenancy; Right of Survivorship”, and inserting the following:

“(1) PRESUMPTION OF JOINT TENANCY.—If a testator devises trust or restricted interests in the same parcel of land to more than 1 person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

“(2) EXCEPTION.—Paragraph (1) shall not apply to any devise of an interest in trust or restricted land where the will in which such devise is made was executed prior to the date that is 1 year after the date on which the Secretary publishes the certification required by section 8(a)(4) of the American Indian Probate Reform Act of 2004.”

(d) RULE OF CONSTRUCTION.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

“(h) APPLICABLE FEDERAL LAW.—

“(1) IN GENERAL.—Any references in subsections (a) and (b) to applicable Federal law include—

“(A) Public Law 91-627 (84 Stat. 1874);

“(B) Public Law 92-377 (86 Stat. 530);

“(C) Public Law 92-443 (86 Stat. 744);

“(D) Public Law 96-274 (94 Stat. 537); and

“(E) Public Law 98-513 (98 Stat. 2411).

“(2) NO EFFECT ON LAWS.—Nothing in this Act amends or otherwise affects the application of any law described in paragraph (1), or any other Federal law that pertains to—

“(A) trust or restricted land located on 1 or more specific Indian reservations that are expressly identified in such law; or

“(B) the allotted lands of 1 or more specific Indian tribes that are expressly identified in such law.

“(i) RULES OF INTERPRETATION.—In the absence of a contrary intent, and except as otherwise provided under this Act, applicable Federal law, or a tribal probate code approved by the Secretary pursuant to section 206, wills shall be construed as to trust and restricted land and trust personalty in accordance with the following rules:

“(1) CONSTRUCTION THAT WILL PASSES ALL PROPERTY.—A will shall be construed to apply to all trust and restricted land and trust personalty which the testator owned at his death, including any such land or personalty acquired after the execution of his will.

“(2) CLASS GIFTS.—

“(A) NO DIFFERENTIATION BETWEEN RELATIONSHIP BY BLOOD AND RELATIONSHIP BY AFFINITY.—Terms of relationship that do not differentiate relationships by blood from those by affinity, such as ‘uncles’, ‘aunts’, ‘nieces’, or ‘nephews’, are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such

Applicability.

as ‘brothers’, ‘sisters’, ‘nieces’, or ‘nephews’, are construed to include both types of relationships.

“(B) MEANING OF ‘HEIRS’ AND ‘NEXT OF KIN’, ETC.; TIME OF ASCERTAINING CLASS.—A devise of trust or restricted interest in land or an interest in trust personalty to the testator’s or another designated person’s ‘heirs’, ‘next of kin’, ‘relatives’, or ‘family’ shall mean those persons, including the spouse, who would be entitled to take under the provisions of this Act for nontestamentary disposition. The class is to be ascertained as of the date of the testator’s death.

“(C) TIME FOR ASCERTAINING CLASS.—In construing a devise to a class other than a class described in subparagraph (B), the class shall be ascertained as of the time the devise is to take effect in enjoyment. The surviving issue of any member of the class who is then dead shall take by right of representation the share which their deceased ancestor would have taken.

“(3) MEANING OF ‘DIE WITHOUT ISSUE’ AND SIMILAR PHRASES.—In any devise under this chapter, the words ‘die without issue’, ‘die without leaving issue’, ‘have no issue’, or words of a similar import shall be construed to mean that an individual had no lineal descendants in his lifetime or at his death, and not that there will be no lineal descendants at some future time.

“(4) PERSONS BORN OUT OF WEDLOCK.—In construing provisions of this chapter relating to lapsed and void devises, and in construing a devise to a person or persons described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father.

“(5) LAPSED DEVISES.—Subject to the provisions of subsection (b), where the testator devises or bequeaths a trust or restricted interest in land or trust personalty to the testator’s grandparents or to the lineal descendent of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendants, such descendants shall take the interest so devised or bequeathed per stirpes.

“(6) VOID DEVISES.—Except as provided in paragraph (5), and if the disposition shall not be otherwise expressly provided for by a tribal probate code approved under section 206 (25 U.S.C. 2205), if a devise other than a residuary devise of a trust or restricted interest in land or trust personalty fails for any reason, such interest shall become part of the residue and pass, subject to the provisions of subsection (b), to the other residuary devisees, if any, in proportion to their respective shares or interests in the residue.

“(7) FAMILY CEMETERY PLOT.—If a family cemetery plot owned by the testator at his decease is not mentioned in the decedent’s will, the ownership of the plot shall descend to his heirs as if he had died intestate.

“(j) HEIRSHIP BY KILLING.—

“(1) HEIR BY KILLING DEFINED.—As used in this subsection, ‘heir by killing’ means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.

“(2) NO ACQUISITION OF PROPERTY BY KILLING.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted land, no heir by killing shall in any way acquire any trust or restricted interests in land or interests in trust personalty as the result of the death of the decedent, but such property shall pass in accordance with this subsection.

“(3) DESCENT, DISTRIBUTION, AND RIGHT OF SURVIVORSHIP.—The heir by killing shall be deemed to have predeceased the decedent as to decedent’s trust or restricted interests in land or trust personalty which would have passed from the decedent or his estate to such heir—

“(A) under intestate succession under this section;

“(B) under a tribal probate code, unless otherwise provided for;

“(C) as the surviving spouse;

“(D) by devise;

“(E) as a reversion or a vested remainder;

“(F) as a survivorship interest; and

“(G) as a contingent remainder or executory or other future interest.

“(4) JOINT TENANTS, JOINT OWNERS, AND JOINT OBLIGEEES.—

“(A) Any trust or restricted land or trust personalty held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.

“(B) As to trust or restricted land or trust personalty held jointly by 3 or more persons, including both the heir by killing and the decedent, any income which would have accrued to the heir by killing as a result of the death of the decedent shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants.

“(C) Notwithstanding any other provision of this subsection, the decedent’s trust or restricted interest land or trust personalty that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent’s interest shall pass to his estate; the remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

“(5) LIFE ESTATE FOR THE LIFE OF ANOTHER.—If the estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person’s hands for the period of time following the decedent’s death equal to the life expectancy of the decedent but for the killing.

“(6) PREADJUDICATION RULE.—

“(A) IN GENERAL.—If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any State, with voluntary manslaughter or homicide in connection with a decedent’s death, then any and all trust or restricted land or trust personalty that would otherwise pass to that person from the decedent’s estate shall not pass or be distributed by

the Secretary until the charges have been resolved in accordance with the provisions of this paragraph.

“(B) DISMISSAL OR WITHDRAWAL.—Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such land and personalty shall pass as if no charge had been filed or made.

“(C) CONVICTION.—Upon conviction of such person, and the exhaustion of all appeals, if any, the trust and restricted land and trust personalty in the estate shall pass in accordance with this subsection.

“(7) BROAD CONSTRUCTION; POLICY OF SUBSECTION.—This subsection shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his own wrong, wherever committed.

“(k) GENERAL RULES GOVERNING PROBATE.—

“(1) SCOPE.—Except as provided under applicable Federal law or a tribal probate code approved under section 206, the provisions of this subsection shall govern the probate of estates containing trust and restricted interests in land or trust personalty.

“(2) PRETERMITTED SPOUSES AND CHILDREN.—

“(A) SPOUSES.—

“(i) IN GENERAL.—Except as provided in clause (ii), if the surviving spouse of a testator married the testator after the testator executed the will of the testator, the surviving spouse shall receive the intestate share in the decedent’s trust or restricted land and trust personalty that the spouse would have received if the testator had died intestate.

“(ii) EXCEPTION.—Clause (i) shall not apply to a trust or restricted interest land where—

“(I) the will of a testator is executed before the date of enactment of this subparagraph;

“(II)(aa) the spouse of a testator is a non-Indian; and

“(bb) the testator devised the interests in trust or restricted land of the testator to 1 or more Indians;

“(III) it appears, based on an examination of the will or other evidence, that the will was made in contemplation of the marriage of the testator to the surviving spouse;

“(IV) the will expresses the intention that the will is to be effective notwithstanding any subsequent marriage; or

“(V)(aa) the testator provided for the spouse by a transfer of funds or property outside the will; and

“(bb) an intent that the transfer be in lieu of a testamentary provision is demonstrated by statements of the testator or through a reasonable inference based on the amount of the transfer or other evidence.

“(iii) SPOUSES MARRIED AT THE TIME OF THE WILL.—Should the surviving spouse of the testator be omitted from the will of the testator, the surviving spouse

shall be treated, for purposes of trust or restricted land or trust personalty in the testator's estate, in accordance with the provisions of section 207(a)(2)(A), as though there was no will but only if—

“(I) the testator and surviving spouse were continuously married without legal separation for the 5-year period preceding the decedent's death;

“(II) the testator and surviving spouse have a surviving child who is the child of the testator;

“(III) the surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust or restricted land in such estate; or

“(IV) the surviving spouse is under a binding obligation to continue making loan payments for the trust or restricted land for a substantial period of time;

except that, if there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of funds or property outside of the will, this clause shall not apply.

“(B) CHILDREN.—

“(i) IN GENERAL.—If a testator executed the will of the testator before the birth or adoption of 1 or more children of the testator, and the omission of the children from the will is a product of inadvertence rather than an intentional omission, the children shall share in the trust or restricted interests in land and trust personalty as if the decedent had died intestate.

“(ii) ADOPTED HEIRS.—Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (25 U.S.C. 372a), shall be treated as the child of a decedent under this subsection.

“(iii) ADOPTED-OUT CHILDREN.—

“(I) IN GENERAL.—For purposes of this Act, an adopted person shall not be considered the child or issue of his natural parents, except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of such natural parent.

“(II) ELIGIBLE HEIR PURSUANT TO OTHER FEDERAL LAW OR TRIBAL LAW.—Notwithstanding the provisions of subparagraph (B)(iii)(I), other Federal laws and laws of the Indian tribe with jurisdiction over the trust or restricted interest in land may otherwise define the inheritance rights of adopted-out children.

“(3) DIVORCE.—

“(A) SURVIVING SPOUSE.—

“(i) IN GENERAL.—An individual who is divorced from a decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent

marriage, the individual is married to the decedent at the time of death of the decedent.

“(ii) SEPARATION.—A decree of separation that does not dissolve a marriage, and terminate the status of husband and wife, shall not be considered a divorce for the purpose of this subsection.

“(iii) NO EFFECT ON ADJUDICATIONS.—Nothing in clause (i) shall prevent the Secretary from giving effect to a property right settlement relating to a trust or restricted interest in land or an interest in trust personalty if 1 of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

“(B) EFFECT OF SUBSEQUENT DIVORCE ON A WILL OR DEVISE.—

“(i) IN GENERAL.—If, after executing a will, a testator is divorced or the marriage of the testator is annulled, as of the effective date of the divorce or annulment, any disposition of trust or restricted interests in land or of trust personalty made by the will to the former spouse of the testator shall be considered to be revoked unless the will expressly provides otherwise.

“(ii) PROPERTY.—Property that is prevented from passing to a former spouse of a decedent under clause (i) shall pass as if the former spouse failed to survive the decedent.

“(iii) PROVISIONS OF WILLS.—Any provision of a will that is considered to be revoked solely by operation of this subparagraph shall be revived by the remarriage of a testator to the former spouse of the testator.

“(4) AFTER-BORN HEIRS.—A child in gestation at the time of decedent's death will be treated as having survived the decedent if the child lives at least 120 hours after its birth.

“(5) ADVANCEMENTS OF TRUST PERSONALTY DURING LIFE-TIME; EFFECT ON DISTRIBUTION OF ESTATE.—

“(A) The trust personalty of a decedent who dies intestate as to all or a portion of his or her estate, given during the decedent's lifetime to a person eligible to be an heir of the decedent under subsection (b)(2)(B), shall be treated as an advancement against the heir's inheritance, but only if the decedent declared in a contemporaneous writing, or the heir acknowledged in writing, that the gift is an advancement or is to be taken into account in computing the division and distribution of the decedent's intestate estate.

“(B) For the purposes of this section, trust personalty advanced during the decedent's lifetime is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever occurs first.

“(C) If the recipient of the trust personalty predeceases the decedent, the property shall not be treated as an advancement or taken into account in computing the division and distribution of the decedent's intestate estate unless the decedent's contemporaneous writing provides otherwise.

“(6) HEIRS RELATED TO DECEDENT THROUGH 2 LINES; SINGLE SHARE.—A person who is related to the decedent through 2 lines of relationship is entitled to only a single share of the trust or restricted land or trust personalty in the decedent’s estate based on the relationship that would entitle such person to the larger share.

“(7) NOTICE.—

“(A) IN GENERAL.—To the maximum extent practicable, the Secretary shall notify each owner of trust and restricted land of the provisions of this Act.

“(B) COMBINED NOTICES.—The notice under subparagraph (A) may, at the discretion of the Secretary, be provided with the notice required under subsection (a) of section 8 of the American Indian Probate Reform Act of 2004.

“(8) RENUNCIATION OR DISCLAIMER OF INTERESTS.—

“(A) IN GENERAL.—Any person 18 years of age or older may renounce or disclaim an inheritance of a trust or restricted interest in land or in trust personalty through intestate succession or devise, either in full or subject to the reservation of a life estate (where the interest is an interest in land), in accordance with subparagraph (B), by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir or devisee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.

“(B) ELIGIBLE RECIPIENTS OF RENOUNCED OR DISCLAIMED INTERESTS; NOTICE TO RECIPIENTS.—

“(i) INTERESTS IN LAND.—A trust or restricted interest in land may be renounced or disclaimed only in favor of—

“(I) an eligible heir;

“(II) any person who would have been eligible to be a devisee of the interest in question pursuant to subsection (b)(1)(A) (but only in cases where the renouncing person is a devisee of the interest under a valid will); or

“(III) the Indian tribe with jurisdiction over the interest in question;

and the interest so renounced shall pass to its recipient in trust or restricted status.

“(ii) TRUST PERSONALTY.—An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a devisee of such an interest under subsection (b)(3) and shall pass to the recipient in accordance with the provisions of that subsection.

“(iii) UNAUTHORIZED RENUNCIATIONS AND DISCLAIMERS.—Unless renounced or disclaimed in favor of a person or Indian tribe eligible to receive the interest in accordance with the provisions of this subparagraph, a renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.

“(C) ACCEPTANCE OF INTEREST.—A renunciation or disclaimer of an interest filed in accordance with this paragraph shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest. All disclaimers and renunciations filed and implemented in probate orders made effective prior to the date of enactment of the American Indian Probate Reform Act of 2004 are hereby ratified.

“(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to allow the renunciation of an interest that is subject to the provisions of section 207(a)(2)(D) (25 U.S.C. 2206(a)(2)(D)) in favor of more than 1 person.

“(9) CONSOLIDATION AGREEMENTS.—

“(A) IN GENERAL.—During the pendency of probate, the decisionmaker is authorized to approve written consolidation agreements effecting exchanges or gifts voluntarily entered into between the decedent’s eligible heirs or devisees, to consolidate interests in any tract of land included in the decedent’s trust inventory. Such agreements may provide for the conveyance of interests already owned by such heirs or devisees in such tracts, without having to comply with the Secretary’s rules and requirements otherwise applicable to conveyances by deed of trust or restricted interests in land.

“(B) EFFECTIVE.—An agreement approved under subparagraph (A) shall be considered final when implemented in an order by a decisionmaker. The final probate order shall direct any changes necessary to the Secretary’s land records, to reflect and implement the terms of the approved agreement.

“(C) EFFECT ON PURCHASE OPTION AT PROBATE.—Any interest in trust or restricted land that is subject to a consolidation agreement under this paragraph or section 207(e) (25 U.S.C. 2206(e)) shall not be available for purchase under section 207(p) (25 U.S.C. 2206(p)) unless the decisionmaker determines that the agreement should not be approved.”.

SEC. 4. PARTITION OF HIGHLY FRACTIONATED INDIAN LANDS.

Section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) (as amended by section 6(a)(2)) is amended by adding at the end the following:

“(d) PARTITION OF HIGHLY FRACTIONATED INDIAN LANDS.—

“(1) APPLICABILITY.—This subsection shall be applicable only to parcels of land (including surface and subsurface interests, except with respect to a subsurface interest that has been severed from the surface interest, in which case this subsection shall apply only to the surface interest) which the Secretary has determined, pursuant to paragraph (2)(B), to be parcels of highly fractionated Indian land.

“(2) REQUIREMENTS.—Each partition action under this subsection shall be conducted by the Secretary in accordance with the following requirements:

“(A) APPLICATION.—Upon receipt of any payment or bond required under subparagraph (B), the Secretary shall commence a process for partitioning a parcel of land by sale in accordance with the provisions of this subsection upon receipt of an application by—

“(i) the Indian tribe with jurisdiction over the subject land that owns an undivided interest in the parcel of land; or

“(ii) any person owning an undivided interest in the parcel of land who is eligible to bid at the sale of the parcel pursuant to subclause (II), (III), or (IV) of subparagraph (I)(i);

provided that no such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

“(B) COSTS OF SERVING NOTICE AND PUBLICATION.—The costs of serving and publishing notice under subparagraph (F) shall be borne by the applicant. Upon receiving written notice from the Secretary, the applicant must pay to the Secretary an amount determined by the Secretary to be the estimated costs of such service of notice and publication, or furnish a sufficient bond for such estimated costs within the time stated in the notice, failing which, unless an extension is granted by the Secretary, the Secretary shall not be required to commence the partition process under subparagraph (A) and may deny the application. The Secretary shall have the discretion and authority in any case to waive either the payment or the bond (or any portion of such payment or bond) otherwise required by this subparagraph, upon making a determination that such waiver will further the policies of this Act.

“(C) DETERMINATION.—Upon receipt of an application pursuant to subparagraph (A), the Secretary shall determine whether the subject parcel meets the requirements set forth in section 202(6) (25 U.S.C. 2201(6)) to be classified as a parcel of highly fractionated Indian land.

“(D) CONSENT REQUIREMENTS.—

“(i) IN GENERAL.—A parcel of land may be partitioned under this subsection only if the applicant obtains the written consent of—

“(I) the Indian tribe with jurisdiction over the subject land if such Indian tribe owns an undivided interest in the parcel;

“(II) any owner who, for the 3-year period immediately preceding the date on which the Secretary receives the application, has

“(aa) continuously maintained a bona fide residence on the parcel; or

“(bb) operated a bona fide farm, ranch, or other business on the parcel; and

“(III) the owners (including parents of minor owners and legal guardians of incompetent owners)

of at least 50 percent of the undivided interests in the parcel, but only in cases where the Secretary determines that, based on the final appraisal prepared pursuant to subparagraph (F), any 1 owner's total undivided interest in the parcel (not including the interest of an Indian tribe or that of the owner requesting the partition) has a value in excess of \$1,500.

Any consent required by this clause must be in writing and acknowledged before a notary public (or other official authorized to make acknowledgments), and shall be approved by Secretary unless the Secretary has reason to believe that the consent was obtained as a result of fraud or undue influence.

“(ii) CONSENT BY THE SECRETARY ON BEHALF OF CERTAIN INDIVIDUALS.—For the purposes of clause (i)(III), the Secretary may consent on behalf of—

“(I) undetermined heirs of trust or restricted interests and owners of such interests who are minors and legal incompetents having no parents or legal guardian; and

“(II) missing owners or owners of trust or restricted interests whose whereabouts are unknown, but only after a search for such owners has been completed in accordance with the provisions of this subsection.

“(E) APPRAISAL.—After the Secretary has determined that the subject parcel is a parcel of highly fractionated Indian land pursuant to subparagraph (C), the Secretary shall cause to be made, in accordance with the provisions of this Act for establishing fair market value, an appraisal of the fair market value of the subject parcel.

“(F) NOTICE TO OWNERS ON COMPLETION OF APPRAISAL.—Upon completion of the appraisal, the Secretary shall give notice of the requested partition and appraisal to all owners of undivided interests in the parcel, in accordance with principles of due process. Such notice shall include the following requirements:

“(i) WRITTEN NOTICE.—The Secretary shall attempt to give each owner written notice of the partition action stating the following:

“(I) That a proceeding to partition the parcel of land by sale has been commenced.

“(II) The legal description of the subject parcel.

“(III) The owner's ownership interest in the subject parcel as evidenced by the Secretary's records as of the date that owners are determined in accordance with clause (ii).

“(IV) The results of the appraisal.

“(V) The owner's right to receive a copy of the appraisal upon written request.

“(VI) The owner's right to comment on or object to the proposed partition and the appraisal.

“(VII) That the owner must timely comment on or object in writing to the proposed partition or the appraisal, in order to receive notice of approval of the appraisal and right to appeal.

Deadline.

“(VIII) The date by which the owner’s written comments or objections must be received, which shall not be less than 90 days after the date that the notice is mailed under this clause or last published under clause (ii)(II).

“(IX) The address for requesting copies of the appraisal and for submitting written comments or objections.

“(X) The name and telephone number of the official to be contacted for purposes of obtaining information regarding the proceeding, including the time and date of the auction of the land or the date for submitting sealed bids.

“(XI) Any other information the Secretary deems to be appropriate.

“(ii) MANNER OF SERVICE.—

“(I) SERVICE BY CERTIFIED MAIL.—The Secretary shall use due diligence to provide all owners of interests in the subject parcel, as evidenced by the Secretary’s records at the time of the determination under subparagraph (C), with actual notice of the partition proceedings by mailing a copy of the written notice described in clause (i) by certified mail, restricted delivery, to each such owner at the owner’s last known address. For purposes of this subsection, owners shall be determined from the Secretary’s land title records as of the date of the determination under subparagraph (C) or a date that is not more than 90 days prior to the date of mailing under this clause, whichever is later. In the event the written notice to an owner is returned undelivered, the Secretary shall attempt to obtain a current address for such owner by conducting a reasonable search (including a reasonable search of records maintained by local, State, Federal and tribal governments and agencies) and by inquiring with the Indian tribe with jurisdiction over the subject parcel, and, if different from that tribe, the Indian tribe of which the owner is a member, and, if successful in locating any such owner, send written notice by certified mail in accordance with this subclause.

“(II) NOTICE BY PUBLICATION.—The Secretary shall give notice by publication of the partition proceedings to all owners that the Secretary was unable to serve pursuant to subclause (I), and to unknown heirs and assigns by—

“(aa) publishing the notice described in clause (i) at least 2 times in a newspaper of general circulation in the county or counties where the subject parcel of land is located or, if there is an Indian tribe with jurisdiction over the parcel of land and that tribe publishes a tribal newspaper or newsletter at least once every month, 1 time in such newspaper of

Newspaper.

general circulation and 1 time in such tribal newspaper or newsletter;

“(bb) posting such notice in a conspicuous place in the tribal headquarters or administration building (or such other tribal building determined by the Secretary to be most appropriate for giving public notice) of the Indian tribe with jurisdiction over the parcel of land, if any; and

“(cc) in addition to the foregoing, in the Secretary’s discretion, publishing notice in any other place or means that the Secretary determines to be appropriate.

“(G) REVIEW OF COMMENTS ON APPRAISAL.—

“(i) IN GENERAL.—After reviewing and considering comments or information timely submitted by any owner of an interest in the parcel in response to the notice required under subparagraph (F), the Secretary may, consistent with the provisions of this Act for establishing fair market value—

“(I) order a new appraisal; or

“(II) approve the appraisal;

provided that if the Secretary orders a new appraisal under subclause (I), notice of the new appraisal shall be given as specified in clause (ii).

“(ii) NOTICE.—Notice shall be given—

“(I) in accordance with subparagraph (H), where the new appraisal results in a higher valuation of the land; or

“(II) in accordance with subparagraph (F)(ii), where the new appraisal results in a lower valuation of the land.

“(H) NOTICE TO OWNERS OF APPROVAL OF APPRAISAL AND RIGHT TO APPEAL.—Upon making the determination under subparagraph (G), the Secretary shall provide to the Indian tribe with jurisdiction over the subject land and to all persons who submitted written comments on or objections to the proposed partition or appraisal, a written notice to be served on such tribe and persons by certified mail. Such notice shall state—

“(i) the results of the appraisal;

“(ii) that the owner has the right to review a copy of the appraisal upon request;

“(iii) that the land will be sold for not less than the appraised value, subject to the consent requirements under paragraph (2)(D);

“(iv) the time of the sale or for submitting bids under subparagraph (I);

“(v) that the owner has the right, under the Secretary’s regulations governing administrative appeals, to pursue an administrative appeal from—

“(I) the determination that the land may be partitioned by sale under the provisions of this section; and

“(II) the Secretary’s order approving the appraisal;

“(vi) the date by which an administrative appeal must be taken, a citation to the provisions of the Secretary’s regulations that will govern the owner’s appeal, and any other information required by such regulations to be given to parties affected by adverse decisions of the Secretary;

“(vii) in cases where the Secretary determines that any person’s undivided trust or restricted interest in the parcel exceeds \$1,500 pursuant to paragraph (2)(D)(iii), that the Secretary has authority to consent to the partition on behalf of undetermined heirs of trust or restricted interests in the parcel and owners of such interests whose whereabouts are unknown; and

“(viii) any other information the Secretary deems to be appropriate.

“(I) SALE TO ELIGIBLE PURCHASER.—

“(i) IN GENERAL.—Subject to clauses (ii) and (iii) and the consent requirements of paragraph (2)(D), the Secretary shall, after providing notice to owners under subparagraph (H), including the time and place of sale or for receiving sealed bids, at public auction or by sealed bid (whichever of such methods of sale the Secretary determines to be more appropriate under the circumstances) sell the parcel of land by competitive bid for not less than the final appraised fair market value to the highest bidder from among the following eligible bidders:

“(I) The Indian tribe, if any, with jurisdiction over the trust or restricted interests in the parcel being sold.

“(II) Any person who is a member, or is eligible to be a member, of the Indian tribe described in subclause (I).

“(III) Any person who is a member, or is eligible to be a member, of an Indian tribe but not of the tribe described in subclause (I), but only if such person already owns an undivided interest in the parcel at the time of sale.

“(IV) Any lineal descendent of the original allottee of the parcel who is a member or is eligible to be a member of an Indian tribe or, with respect to a parcel located in the State of California that is not within an Indian tribe’s reservation or not otherwise subject to the jurisdiction of an Indian tribe, who is a member, or eligible to be a member, of an Indian tribe or owns a trust or restricted interest in the parcel.

“(ii) RIGHT TO MATCH HIGHEST BID.—If the highest bidder is a person who is only eligible to bid under clause (i)(III), the Indian tribe that has jurisdiction over the parcel, if any, shall have the right to match the highest bid and acquire the parcel, but only if—

“(I) prior to the date of the sale, the governing body of such tribe has adopted a tribal law or resolution reserving its right to match the bids of such nonmember bidders in partition sales

under this subsection and delivered a copy of such law or resolution to the Secretary; and

“(II) the parcel is not acquired under clause (iii).

“(iii) RIGHT TO PURCHASE.—Any person who is a member, or eligible to be a member, of the Indian tribe with jurisdiction over the trust or restricted interests in the parcel being sold and is, as of the time of sale under this subparagraph, the owner of the largest undivided interest in the parcel shall have a right to purchase the parcel by tendering to the Secretary an amount equal to the highest sufficient bid submitted at the sale, less that amount of the bid attributable to such owner’s share, but only if—

“(I) the owner submitted a sufficient bid at the sale;

“(II) the owner’s total undivided interest in the parcel immediately prior to the sale was—

“(aa) greater than the undivided interest held by any other co-owners, except where there are 2 or more co-owners whose interests are of equal size but larger than the interests of all other co-owners and such owners of the largest interests have agreed in writing that 1 of them may exercise the right of purchase under this clause; and

“(bb) equal to or greater than 20 percent of the entire undivided ownership of the parcel;

“(III) within 3 days following the date of the auction or for receiving sealed bids, and in accordance with the regulations adopted to implement this section, the owner delivers to the Secretary a written notice of intent to exercise the owner’s rights under this clause; and

Deadline.
Notice.

“(IV) such owner tenders the amount of the purchase price required under this clause—

“(aa) not less than 30 days after the date of the auction or time for receiving sealed bids; and

Deadline.

“(bb) in accordance with any requirements of the regulations promulgated to implement this section.

“(iv) INTEREST ACQUIRED.—A purchaser of a parcel of land under this subparagraph shall acquire title to the parcel in trust or restricted status, free and clear of any and all claims of title or ownership of all persons or entities (not including the United States) owning or claiming to own an interest in such parcel prior to the time of sale.

“(J) PROCEEDS OF SALE.—

“(i) Subject to clauses (ii) and (iii), the Secretary shall distribute the proceeds of sale of a parcel of land under the provisions of this section to the owners of interests in such parcel in proportion to their respective ownership interests.

“(ii) Proceeds attributable to the sale of trust or restricted interests shall be maintained in accounts as trust personalty.

“(iii) Proceeds attributable to the sale of interests of owners whose whereabouts are unknown, of undetermined heirs, and of other persons whose ownership interests have not been recorded shall be held by the Secretary until such owners, heirs, or other persons have been determined, at which time such proceeds shall be distributed in accordance with clauses (i) and (ii).

“(K) LACK OF BIDS OR CONSENT.—

“(i) LACK OF BIDS.—If no bidder described in subparagraph (I) presents a bid that equals or exceeds the final appraised value, the Secretary may either—

“(I) purchase the parcel of land for its appraised fair market value on behalf of the Indian tribe with jurisdiction over the land, subject to the lien and procedures provided under section 214(b) (25 U.S.C. 2213(b)); or

“(II) terminate the partition process.

“(ii) LACK OF CONSENT.—If an applicant fails to obtain any applicable consent required under the provisions of subparagraph (D) by the date established by the Secretary prior to the proposed sale, the Secretary may either extend the time for obtaining any such consent or deny the request for partition.

“(3) ENFORCEMENT.—

“(A) IN GENERAL.—If a partition is approved under this subsection and an owner of an interest in the parcel of land refuses to surrender possession in accordance with the partition decision, or refuses to execute any conveyance necessary to implement the partition, then any affected owner or the United States may—

“(i) commence a civil action in the United States district court for the district in which the parcel of land is located; and

“(ii) request that the court issue an order for ejectment or any other appropriate remedy necessary for the partition of the land by sale.

“(B) FEDERAL ROLE.—With respect to any civil action brought under subparagraph (A)—

“(i) the United States—

“(I) shall receive notice of the civil action; and

“(II) may be a party to the civil action; and

“(ii) the civil action shall not be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is a necessary and indispensable party.

“(4) GRANTS AND LOANS.—The Secretary may provide grants and low interest loans to successful bidders at sales authorized by this subsection, provided that—

“(A) the total amount of such assistance in any such sale shall not exceed 20 percent of the appraised value of the parcel of land sold; and

Notice.

“(B) the grant or loan funds provided shall only be applied toward the purchase price of the parcel of land sold.

“(5) REGULATIONS.—The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this subsection. Such regulations shall include provisions for giving notice of sales to prospective purchasers eligible to submit bids at sales conducted under paragraph (2)(I).”.

SEC. 5. OWNER-MANAGED INTERESTS.

The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended by adding at the end the following:

“SEC. 221. OWNER-MANAGED INTERESTS.

25 USC 2220.

“(a) PURPOSE.—The purpose of this section is to provide a means for the co-owners of trust or restricted interests in a parcel of land to enter into surface leases of such parcel for certain purposes without approval of the Secretary.

“(b) MINERAL INTERESTS.—Nothing in this section shall be construed to limit or otherwise affect the application of any Federal law requiring the Secretary to approve mineral leases or other agreements for the development of the mineral interest in trust or restricted land.

“(c) OWNER MANAGEMENT.—

“(1) IN GENERAL.—Notwithstanding any provision of Federal law requiring the Secretary to approve individual Indian leases of individual Indian trust or restricted land, where the owners of all of the undivided trust or restricted interests in a parcel of land have submitted applications to the Secretary pursuant to subsection (a), and the Secretary has approved such applications under subsection (d), such owners may, without further approval by the Secretary, enter into a lease of the parcel for agricultural purposes for a term not to exceed 10 years.

“(2) RULE OF CONSTRUCTION.—No such lease shall be effective until it has been executed by the owners of all undivided trust or restricted interests in the parcel.

“(d) APPROVAL OF APPLICATIONS FOR OWNER MANAGEMENT.—

“(1) IN GENERAL.—Subject to the provisions of paragraph (2), the Secretary shall approve an application for owner management submitted by a qualified applicant pursuant to this section unless the Secretary has reason to believe that the applicant is submitting the application as the result of fraud or undue influence. No such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

“(2) COMMENCEMENT OF OWNER-MANAGED STATUS.—Notwithstanding the approval of 1 or more applications pursuant to paragraph (1), no trust or restricted interest in a parcel of land shall acquire owner-managed status until applications for all of the trust or restricted interests in such parcel of land have been submitted to and approved by the Secretary pursuant to this section.

“(e) VALIDITY OF LEASES.—No lease of trust or restricted interests in a parcel of land that is owner-managed under this section shall be valid or enforceable against the owners of such

interests, or against the land, the interest or the United States, unless such lease—

“(1) is consistent with, and entered into in accordance with, the requirements of this section; or

“(2) has been approved by the Secretary in accordance with other Federal laws applicable to the leasing of trust or restricted land.

“(f) LEASE REVENUES.—The Secretary shall not be responsible for the collection of, or accounting for, any lease revenues accruing to any interests under a lease authorized by subsection (e), so long as such interest is in owner-managed status under the provisions of this section.

“(g) JURISDICTION.—

“(1) JURISDICTION UNAFFECTED BY STATUS.—The Indian tribe with jurisdiction over an interest in trust or restricted land that becomes owner-managed pursuant to this section shall continue to have jurisdiction over the interest to the same extent and in all respects that such tribe had prior to the interest acquiring owner-managed status.

“(2) PERSONS USING LAND.—Any person holding, leasing, or otherwise using such interest in land shall be considered to consent to the jurisdiction of the Indian tribe referred to in paragraph (1), including such tribe’s laws and regulations, if any, relating to the use, and any effects associated with the use, of the interest.

“(h) CONTINUATION OF OWNER-MANAGED STATUS; REVOCATION.—

“(1) IN GENERAL.—Subject to the provisions of paragraph (2), after the applications of the owners of all of the trust or restricted interests in a parcel of land have been approved by the Secretary pursuant to subsection (d), each such interest shall continue in owner-managed status under this section notwithstanding any subsequent conveyance of the interest in trust or restricted status to another person or the subsequent descent of the interest in trust or restricted status by testate or intestate succession to 1 or more heirs.

“(2) REVOCATION.—Owner-managed status of an interest may be revoked upon written request of the owners (including the parents or legal guardians of minors or incompetent owners) of all trust or restricted interests in the parcel, submitted to the Secretary in accordance with regulations adopted under subsection (l). The revocation shall become effective as of the date on which the last of all such requests has been delivered to the Secretary.

“(3) EFFECT OF REVOCATION.—Revocation of owner-managed status under paragraph (2) shall not affect the validity of any lease made in accordance with the provisions of this section prior to the effective date of the revocation, provided that, after such revocation becomes effective, the Secretary shall be responsible for the collection of, and accounting for, all future lease revenues accruing to the trust or restricted interests in the parcel from and after such effective date.

“(i) DEFINED TERMS.—

“(1) For purposes of subsection (d)(1), the term ‘qualified applicant’ means—

“(A) a person over the age of 18 who owns a trust or restricted interest in a parcel of land; and

“(B) the parent or legal guardian of a minor or incompetent person who owns a trust or restricted interest in a parcel of land.

“(2) For purposes of this section, the term ‘owner-managed status’ means, with respect to a trust or restricted interest, that—

“(A) the interest is a trust or restricted interest in a parcel of land for which applications covering all trust or restricted interests in such parcel have been submitted to and approved by the Secretary pursuant to subsection (d);

“(B) the interest may be leased without approval of the Secretary pursuant to, and in a manner that is consistent with, the requirements of this section; and

“(C) no revocation has occurred under subsection (h)(2).

“(j) SECRETARIAL APPROVAL OF OTHER TRANSACTIONS.—Except with respect to the specific lease transaction described in paragraph (1) of subsection (c), interests that acquire owner-managed status under the provisions of this section shall continue to be subject to all Federal laws requiring the Secretary to approve transactions involving trust or restricted land (including leases with terms of a duration in excess of 10 years) that would otherwise apply to such interests if the interests had not acquired owner-managed status under this section.

“(k) EFFECT OF SECTION.—Subject to subsections (c), (f), and (h), nothing in this section diminishes or otherwise affects any authority or responsibility of the Secretary with respect to an interest in trust or restricted land.”.

SEC. 6. ADDITIONAL AMENDMENTS.

(a) IN GENERAL.—The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended—

(1) in the second sentence of section 205(a) (25 U.S.C. 2204(a)), by striking “over 50 per centum of the undivided interests” and inserting “undivided interests equal to at least 50 percent of the undivided interest”;

(2) in section 207 (25 U.S.C. 2206), by adding a subsection at the end as follows:

“(p) PURCHASE OPTION AT PROBATE.—

“(1) IN GENERAL.—The trust or restricted interests in a parcel of land in the decedent’s estate may be purchased at probate in accordance with the provisions of this subsection.

“(2) SALE OF INTEREST AT FAIR MARKET VALUE.—Subject to paragraph (3), the Secretary is authorized to sell trust or restricted interests in land subject to this subsection, including the interest that a surviving spouse would otherwise receive under section 207(a)(2) (A) or (D), at no less than fair market value, as determined in accordance with the provisions of this Act, to any of the following eligible purchasers:

“(A) Any other eligible heir taking an interest in the same parcel of land by intestate succession or the decedent’s other devisees of interests in the same parcel who are eligible to receive a devise under section 207(b)(1)(A).

“(B) All persons who own undivided trust or restricted interests in the same parcel of land involved in the probate proceeding.

“(C) The Indian tribe with jurisdiction over the interest, or the Secretary on behalf of such Indian tribe.

“(3) REQUEST TO PURCHASE; AUCTION; CONSENT REQUIREMENTS.—No sale of an interest in probate shall occur under this subsection unless—

“(A) an eligible purchaser described in paragraph (2) submits a written request to purchase prior to the distribution of the interest to heirs or devisees of the decedent and in accordance with any regulations of the Secretary; and

“(B) except as provided in paragraph (5), the heirs or devisees of such interest, and the decedent’s surviving spouse, if any, receiving a life estate under section 207(a)(2) (A) or (D) consent to the sale.

If the Secretary receives more than 1 request to purchase the same interest, the Secretary shall sell the interest by public auction or sealed bid (as determined by the Secretary) at not less than the appraised fair market value to the eligible purchaser submitting the highest bid.

“(4) APPRAISAL AND NOTICE.—Prior to the sale of an interest pursuant to this subsection, the Secretary shall—

“(A) appraise the interest at its fair market value in accordance with this Act;

“(B) provide eligible heirs, other devisees, and the Indian tribe with jurisdiction over the interest with written notice, sent by first class mail, that the interest is available for purchase in accordance with this subsection; and

“(C) if the Secretary receives more than 1 request to purchase the interest by a person described in subparagraph (B), provide notice of the manner (auction or sealed bid), time and place of the sale, a description, and the appraised fair market value, of the interest to be sold—

“(i) to the heirs or other devisees and the Indian tribe with jurisdiction over the interest, by first class mail; and

“(ii) to all other eligible purchasers, by posting written notice in at least 5 conspicuous places in the vicinity of the place of hearing.

“(5) SMALL UNDIVIDED INTERESTS IN INDIAN LANDS.—

“(A) IN GENERAL.—Subject to subparagraph (B), the consent of a person who is an heir otherwise required under paragraph (3)(B) shall not be required for the auction and sale of an interest at probate under this subsection if—

“(i) the interest is passing by intestate succession; and

“(ii) prior to the auction the Secretary determines in the probate proceeding that the interest passing to such heir represents less than 5 percent of the entire undivided ownership of the parcel of land as evidenced by the Secretary’s records as of the time the determination is made.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), the consent of such heir shall be required for the sale at probate of the heir’s interest if, at the time of the decedent’s death, the heir was residing on the parcel of land of which the interest to be sold was a part.

“(6) DISTRIBUTION OF PROCEEDS.—Proceeds from the sale of interests under this subsection shall be distributed to the heirs, devisees, or spouse whose interest was sold in accordance with the values of their respective interests. The proceeds attributable to an heir or devisee shall be held in an account as trust personalty if the interest sold would have otherwise passed to the heir or devisee in trust or restricted status.”;

(3) in section 206 (25 U.S.C. 2205)—

(A) in subsection (a), by striking paragraph (3) and inserting the following:

“(3) TRIBAL PROBATE CODES.—Except as provided in any applicable Federal law, the Secretary shall not approve a tribal probate code, or an amendment to such a code, that prohibits the devise of an interest in trust or restricted land to—

“(A) an Indian lineal descendant of the original allottee;

or

“(B) an Indian who is not a member of the Indian tribe with jurisdiction over such an interest;

unless the code provides for—

“(i) the renouncing of interests to eligible devisees in accordance with the code;

“(ii) the opportunity for a devisee who is the spouse or lineal descendant of a testator to reserve a life estate without regard to waste; and

“(iii) payment of fair market value in the manner prescribed under subsection (c)(2).”; and

(B) in subsection (c)—

(i) in paragraph (1)—

(I) by striking the paragraph heading and inserting the following:

“(1) AUTHORITY.—

“(A) IN GENERAL.—”;

(II) in the first sentence of subparagraph (A) (as redesignated by clause (i)), by striking “section 207(a)(6)(A) of this title” and inserting “section 207(b)(2)(A)(ii) of this title”; and

(III) by striking the last sentence and inserting the following:

“(B) TRANSFER.—The Secretary shall transfer payments received under subparagraph (A) to any person or persons who would have received an interest in land if the interest had not been acquired by the Indian tribe in accordance with this paragraph.”; and

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) by striking the subparagraph heading and all that follows through “Paragraph (1) shall not apply” and inserting the following:

“(A) INAPPLICABILITY TO CERTAIN INTERESTS.—

“(i) IN GENERAL.—Paragraph (1) shall not apply”;

(bb) in clause (i) (as redesignated by item (aa)), by striking “if, while” and inserting the following: “if—

“(I) while”;

(cc) by striking the period at the end and inserting “; or”; and

(dd) by adding at the end the following:

“(II)(aa) the interest is part of a family farm that is devised to a member of the family of the decedent; and

“(bb) the devisee agrees that the Indian tribe with jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to a person or entity that is not a member of the family of the owner of the land.

“(ii) RECORDING OF INTEREST.—On request by the Indian tribe described in clause (i)(II)(bb), a restriction relating to the acquisition by the Indian tribe of an interest in a family farm involved shall be recorded as part of the deed relating to the interest involved.

“(iii) MORTGAGE AND FORECLOSURE.—Nothing in clause (i)(II) limits—

“(I) the ability of an owner of land to which that clause applies to mortgage the land; or

“(II) the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement in accordance with applicable law.

“(iv) DEFINITION OF ‘MEMBER OF THE FAMILY’.—In this paragraph, the term ‘member of the family’, with respect to a decedent or landowner, means—

“(I) a lineal descendant of a decedent or landowner;

“(II) a lineal descendant of the grandparent of a decedent or landowner;

“(III) the spouse of a descendant or landowner described in subclause (I) or (II); and

“(IV) the spouse of a decedent or landowner.”; and

(II) in subparagraph (B), by striking “subparagraph (A)” and all that follows through “207(a)(6)(B) of this title” and inserting “paragraph (1)”;

(4) in section 207 (25 U.S.C. 2206), by striking subsection (g);

(5) in section 213 (25 U.S.C. 2212)—

(A) by striking the section heading and inserting the following:

“SEC. 2212. FRACTIONAL INTEREST ACQUISITION PROGRAM.”;

(B) in subsection (a), by—

(i) adding in paragraph (1) “or from an heir during probate in accordance with section 207(p) (25 U.S.C. 2206(p))” after “owner,”; and

(ii) striking “(2) AUTHORITY OF SECRETARY.—” and all that follows through “the Secretary shall submit” and inserting the following:

“(2) AUTHORITY OF SECRETARY.—The Secretary shall submit”; and

(iii) by striking “whether the program to acquire fractional interests should be extended or altered to make resources” and inserting “how the fractional

interest acquisition program should be enhanced to increase the resources made”;

(C) in subsection (b), by striking paragraph (4) and inserting the following:

“(4) shall minimize the administrative costs associated with the land acquisition program through the use of policies and procedures designed to accommodate the voluntary sale of interests under this section, notwithstanding the existence of any otherwise applicable policy, procedure, or regulation, through the elimination of duplicate—

“(A) conveyance documents;

“(B) administrative proceedings; and

“(C) transactions.”;

(D) in subsection (c)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking “at least 5 percent of the” and inserting in its place “an”;

(II) in subparagraph (A), by inserting “in such parcel” following “the Secretary shall convey an interest”;

(III) in subparagraph (A), by striking “landowner upon payment” and all that follows and inserting the following: “landowner—

“(i) on payment by the Indian landowner of the amount paid for the interest by the Secretary; or

“(ii) if—

“(I) the Indian referred to in this subparagraph provides assurances that the purchase price will be paid by pledging revenue from any source, including trust resources; and

“(II) the Secretary determines that the purchase price will be paid in a timely and efficient manner.”; and

(IV) in subparagraph (B), by inserting before the period at the end the following: “unless the interest is subject to a foreclosure of a mortgage in accordance with the Act of March 29, 1956 (25 U.S.C. 483a)”;

(ii) in paragraph (3), by striking “10 percent or more of the undivided interests” and inserting “an undivided interest”; and

(E) by adding at the end of the section:

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$75,000,000 for fiscal year 2005, \$95,000,000 for fiscal year 2006, and \$145,000,000 for each of fiscal years 2007 through 2010.”;

(6) in section 214 (25 U.S.C. 2213), by striking subsection

(b) and inserting the following:

“(b) APPLICATION OF REVENUE FROM ACQUIRED INTERESTS TO LAND CONSOLIDATION PROGRAM.—

“(1) IN GENERAL.—The Secretary shall have a lien on any revenue accruing to an interest described in subsection (a) until the Secretary provides for the removal of the lien under paragraph (3), (4), or (5).

“(2) REQUIREMENTS.—

“(A) IN GENERAL.—Until the Secretary removes a lien from an interest in land under paragraph (1)—

“(i) any lease, resource sale contract, right-of-way, or other document evidencing a transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary; and

“(ii) any revenue derived from any interest acquired by the Secretary in accordance with section 213 shall be deposited in the fund created under section 216.

“(B) APPROVAL OF TRANSACTIONS.—Notwithstanding section 16 of the Act of June 18, 1934 (commonly known as the ‘Indian Reorganization Act’) (25 U.S.C. 476), or any other provision of law, until the Secretary removes a lien from an interest in land under paragraph (1), the Secretary may approve a transaction covered under this section on behalf of an Indian tribe.

“(3) REMOVAL OF LIENS AFTER FINDINGS.—The Secretary may remove a lien referred to in paragraph (1) if the Secretary makes a finding that—

“(A) the costs of administering the interest from which revenue accrues under the lien will equal or exceed the projected revenues for the parcel of land involved;

“(B) in the discretion of the Secretary, it will take an unreasonable period of time for the parcel of land to generate revenue that equals the purchase price paid for the interest; or

“(C) a subsequent decrease in the value of land or commodities associated with the parcel of land make it likely that the interest will be unable to generate revenue that equals the purchase price paid for the interest in a reasonable time.

“(4) REMOVAL OF LIENS UPON PAYMENT INTO THE ACQUISITION FUND.—The Secretary shall remove a lien referred to in paragraph (1) upon payment of an amount equal to the purchase price of that interest in land into the Acquisition Fund created under section 2215 of this title, except where the tribe with jurisdiction over such interest in land authorizes the Secretary to continue the lien in order to generate additional acquisition funds.

“(5) OTHER REMOVAL OF LIENS.—The Secretary may, in consultation with tribal governments and other entities described in section 213(b)(3), periodically remove liens referred to in paragraph (1) from interests in land acquired by the Secretary.”;

(7) in section 215 (25 U.S.C. 2214), in the last sentence, by striking “section 2212 of this title” and inserting “this Act”;

(8) in section 216 (25 U.S.C. 2215)—

(A) in subsection (a), by striking paragraph (2) and inserting the following:

“(2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 213 or paid by Indian landowners under section 213.”; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking “Subject to paragraph (2), all” and inserting “All”;

(II) in subparagraph (A), by striking “and” at the end;

(III) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(IV) by adding at the end the following:

“(C) be used to acquire undivided interests on the reservation from which the income was derived.”; and

(ii) by striking paragraph (2) and inserting the following:

“(2) USE OF FUNDS.—The Secretary may use the revenue deposited in the Acquisition Fund under paragraph (1) to acquire some or all of the undivided interests in any parcels of land in accordance with section 205.”;

(9) in section 217 (25 U.S.C. 2216)—

(A) in subsection (b)(1), by striking subparagraph (B) and inserting a new subparagraph (B) as follows:

“(B) WAIVER OF REQUIREMENT.—The requirement for an estimate of value under subparagraph (A) may be waived in writing by an owner of a trust or restricted interest in land either selling, exchanging, or conveying by gift deed for no or nominal consideration such interest—

“(i) to an Indian person who is the owner’s spouse, brother, sister, lineal ancestor, lineal descendant, or collateral heir; or

“(ii) to an Indian co-owner or to the tribe with jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents 5 percent or less of the parcel.”;

(B) in subsection (e), by striking the matter preceding paragraph (1), and inserting “Notwithstanding any other provision of law, the names and mailing addresses of the owners of any interest in trust or restricted lands, and information on the location of the parcel and the percentage of undivided interest owned by each individual shall, upon written request, be made available to”;

(C) in subsection (e)(1), by striking “Indian”;

(D) in subsection (e)(3), by striking “prospective applicants for the leasing, use, or consolidation of” and inserting “any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate,”; and

(E) by striking subsection (f) and inserting the following:

“(f) PURCHASE OF LAND BY INDIAN TRIBE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), before the Secretary approves an application to terminate the trust status or remove the restrictions on alienation from a parcel of, or interest in, trust or restricted land, the Indian tribe with jurisdiction over the parcel shall have the opportunity—

“(A) to match any offer contained in the application;

or

“(B) in a case in which there is no purchase price offered, to acquire the interest in the parcel by paying the fair market value of the interest.

“(2) EXCEPTION FOR FAMILY FARMS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to a parcel of, or interest in, trust or restricted land that

is part of a family farm that is conveyed to a member of the family of a landowner (as defined in section 206(c)(2)(A)(iv)) if the conveyance requires that in the event that the parcel or interest is offered for sale to an entity or person that is not a member of the family of the landowner, the Indian tribe with jurisdiction over the land shall be afforded the opportunity to purchase the interest pursuant to paragraph (1).

“(B) APPLICABILITY OF OTHER PROVISION.—Section 206(c)(2)(A) shall apply with respect to the recording and mortgaging of any trust or restricted land referred to in subparagraph (A).”;

(10) in section 219(b)(1)(A) (25 U.S.C. 2218(b)(1)(A)), by striking “100” and inserting “90”; and

(11) in section 219, by adding at the end of the section:

“(g) OTHER LAWS.—Nothing in this Act shall be construed to supersede, repeal, or modify any general or specific statute authorizing the grant or approval of any type of land use transaction involving fractional interests in trust or restricted land.”.

(b) DEFINITIONS.—Section 202 of the Indian Land Consolidation Act (25 U.S.C. 2201) is amended—

(1) by striking paragraph (2) and inserting the following:

“(2) ‘Indian’ means—

“(A) any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of the date of enactment of the American Indian Probate Reform Act of 2004) of a trust or restricted interest in land;

“(B) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and

“(C) with respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to section 207, any person described in subparagraph (A) or (B) or any person who owns a trust or restricted interest in a parcel of such land in that State.”;

(2) by striking paragraph (4) and inserting the following:

“(4) ‘trust or restricted lands’ means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and ‘trust or restricted interest in land’ or ‘trust or restricted interest in a parcel of land’ means an interest in land, title to which is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.”; and

(3) by adding at the end the following:

“(6) ‘parcel of highly fractionated Indian land’ means a parcel of land that the Secretary, pursuant to authority under a provision of this Act, determines to have, as evidenced by the Secretary’s records at the time of the determination—

“(A) 50 or more but less than 100 co-owners of undivided trust or restricted interests, and no 1 of such co-owners holds a total undivided trust or restricted interest in the parcel that is greater than 10 percent of the entire undivided ownership of the parcel; or

“(B) 100 or more co-owners of undivided trust or restricted interests;

“(7) ‘land’ means any real property, and includes within its meaning for purposes of this Act improvements permanently affixed to real property;

“(8) ‘person’ or ‘individual’ means a natural person;

“(9) ‘eligible heirs’ means, for purposes of section 207 (25 U.S.C. 2206), any of a decedent’s children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are—

“(A) Indian; or

“(B) lineal descendants within 2 degrees of consanguinity of an Indian; or

“(C) owners of a trust or restricted interest in a parcel of land for purposes of inheriting by descent, renunciation, or consolidation agreement under section 207 (25 U.S.C. 2206), another trust or restricted interest in such parcel from the decedent; and

“(10) ‘without regard to waste’ means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.”.

(c) ISSUANCE OF PATENTS.—Section 5 of the Act of February 8, 1887 (25 U.S.C. 348), is amended by striking the second proviso and inserting the following: “*Provided*, That the rules of intestate succession under the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply to that land for which patents have been executed and delivered:”.

Applicability.

(d) TRANSFERS OF RESTRICTED INDIAN LAND.—Section 4 of the Act of June 18, 1934 (25 U.S.C. 464), is amended in the first proviso by—

(1) striking “, in accordance with” and all that follows through “or in which the subject matter of the corporation is located,”;

(2) striking “, except as provided by the Indian Land Consolidation Act” and all that follows through the colon; and

(3) inserting “in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act):”.

(e) ESTATE PLANNING.—

(1) CONDUCT OF ACTIVITIES.—Section 207(f)(1) of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—

“(A) The activities conducted under this subsection shall be conducted in accordance with any applicable—

“(i) tribal probate code; or

“(ii) tribal land consolidation plan.

“(B) The Secretary shall provide estate planning assistance in accordance with this subsection, to the extent amounts are appropriated for such purpose.”.

(2) REQUIREMENTS.—Section 207(f)(2) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(2)) is amended by striking

“and” at the end of subparagraph (A), redesignating subparagraph (B) as subparagraph (D), and adding the following:

“(B) dramatically increase the use of wills and other methods of devise among Indian landowners;

“(C) substantially reduce the quantity and complexity of Indian estates that pass intestate through the probate process, while protecting the rights and interests of Indian landowners; and”.

(3) PROBATE CODE DEVELOPMENT AND LEGAL ASSISTANCE GRANTS.—Section 207(f)(3) of the Indian Land Consolidation Act (25 U.S.C. 2206(f)(3)) is amended by striking paragraph (3) and inserting the following:

“(3) PROBATE CODE DEVELOPMENT AND LEGAL ASSISTANCE GRANTS.—In carrying out this section, the Secretary may award grants to—

“(A) Indian tribes, for purposes of tribal probate code development and estate planning services to tribal members;

“(B) organizations that provide legal assistance services for Indian tribes, Indian organizations, and individual owners of interests in trust or restricted lands that are qualified as nonprofit organizations under section 501(c)(3) of the Internal Revenue Code of 1986 and provide such services pursuant to Federal poverty guidelines, for purposes of providing civil legal assistance to such Indian tribes, individual owners, and Indian organizations for the development of tribal probate codes, for estate planning services or for other purposes consistent with the services they provide to Indians and Indian tribes; and

“(C) in specific areas and reservations where qualified nonprofit organizations referred to in subparagraph (B) do not provide such legal assistance to Indian tribes, Indian organizations, or individual owners of trust or restricted land, to other providers of such legal assistance;

that submit an application to the Secretary, in such form and manner as the Secretary may prescribe.

“(4) AUTHORIZATION FOR APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of paragraph (3).”.

(4) NOTIFICATION TO LANDOWNERS.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

“(1) NOTIFICATION TO LANDOWNERS.—After receiving written request by any owner of a trust or restricted interest in land, the Secretary shall provide to such landowner the following information with respect to each tract of trust or restricted land in which the landowner has an interest:

“(1) The location of the tract of land involved.

“(2) The identity of each other co-owner of interests in the parcel of land.

“(3) The percentage of ownership of each owner of an interest in the tract.

“(m) PILOT PROJECT FOR THE MANAGEMENT OF TRUST ASSETS OF INDIAN FAMILIES AND RELATIVES.—

“(1) DEVELOPMENT PILOT PROJECT.—The Secretary shall consult with tribes, individual landowner organizations, Indian advocacy organizations, and other interested parties to—

“(A) develop a pilot project for the creation of legal entities such as private or family trusts, partnerships corporations, or other organizations to improve, facilitate, and assist in the efficient management of interests in trust or restricted lands or funds owned by Indian family members and relatives; and

“(B) develop proposed rules, regulations, and guidelines to implement the pilot project, including—

“(i) the criteria for establishing such legal entities;

“(ii) reporting and other requirements that the Secretary determines to be appropriate for administering such entities; and

“(iii) provisions for suspending or revoking the authority of an entity to engage in activities relating to the management of trust or restricted assets under the pilot project in order to protect the interests of the beneficial owners of such assets.

“(2) PRIMARY PURPOSES; LIMITATION; APPROVAL OF TRANSACTIONS; PAYMENTS BY SECRETARY.—

“(A) PURPOSES.—The primary purpose of any entity organized under the pilot project shall be to improve, facilitate, and assist in the management of interests in trust or restricted land, held by 1 or more persons, in furtherance of the purposes of this Act.

“(B) LIMITATION.—The organization or activities of any entity under the pilot project shall not be construed to impair, impede, replace, abrogate, or modify in any respect the trust duties or responsibilities of the Secretary, nor shall anything in this subsection or in any rules, regulations, or guidelines developed under this subsection enable any private or family trustee of trust or restricted interests in land to exercise any powers over such interests greater than that held by the Secretary with respect to such interests.

“(C) SECRETARIAL APPROVAL OF TRANSACTIONS.—Any transaction involving the lease, use, mortgage or other disposition of trust or restricted land or other trust assets administered by or through an entity under the pilot project shall be subject to approval by the Secretary in accordance with applicable Federal law.

“(D) PAYMENTS.—The Secretary shall have the authority to make payments of income and revenues derived from trust or restricted land or other trust assets administered by or through an entity participating in the pilot project directly to the entity, in accordance with requirements of the regulations adopted pursuant to this subsection.

“(3) LIMITATIONS ON PILOT PROJECT.—

“(A) NUMBER OF ORGANIZATIONS.—The number of entities established under the pilot project authorized by this subsection shall not exceed 30.

“(B) REGULATIONS REQUIRED.—No entity shall commence activities under the pilot project authorized by this subsection until the Secretary has adopted final rules and regulations under paragraph (1)(B).

“(4) REPORT TO CONGRESS.—Prior to the expiration of the pilot project provided for under this subsection, the Secretary shall submit a report to Congress stating—

“(A) a description of the Secretary’s consultation with Indian tribes, individual landowner associations, Indian advocacy organizations, and other parties consulted with regarding the development of rules and regulations for the creation and management of interests in trust and restricted lands under the pilot project;

“(B) the feasibility of accurately monitoring the performance of legal entities such as those involved in the pilot project, and the effectiveness of such entities as mechanisms to manage and protect trust assets;

“(C) the impact that the use of entities such as those in the pilot project may have with respect to the accomplishment of the goals of the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.); and

“(D) any recommendations that the Secretary may have regarding whether to adopt a permanent program as a management and consolidation measure for interests in trust or restricted lands.

“(n) NOTICE TO HEIRS.—Prior to holding a hearing to determine the heirs to trust or restricted property, or making a decision determining such heirs, the Secretary shall seek to provide actual written notice of the proceedings to all heirs. Such efforts shall include—

“(1) a search of publicly available records and Federal records, including telephone and address directories and including electronic search services or directories;

“(2) an inquiry with family members and co-heirs of the property;

“(3) an inquiry with the tribal government of which the owner is a member, and the tribal government with jurisdiction over the property, if any; and

“(4) if the property is of a value greater than \$2,000, engaging the services of an independent firm to conduct a missing persons search.

“(o) MISSING HEIRS.—

“(1) For purposes of this subsection and subsection (m), an heir may be presumed missing if—

“(A) such heir’s whereabouts remain unknown 60 days after completion of notice efforts under subsection (m); and

“(B) in the proceeding to determine a decedent’s heirs, the Secretary finds that the heir has had no contact with other heirs of the decedent, if any, or with the Department relating to trust or restricted land or other trust assets at any time during the 6-year period preceding the hearing to determine heirs.

“(2) Before the date for declaring an heir missing, any person may request an extension of time to locate such heir. The Secretary shall grant a reasonable extension of time for good cause.

“(3) An heir shall be declared missing only after a review of the efforts made in the heirship proceeding and a finding has been made that this subsection has been complied with.

“(4) An heir determined to be missing pursuant to this subsection shall be deemed to have predeceased the decedent for purposes of descent and devise of trust or restricted land and trust personalty within that decedent’s estate.”.

SEC. 7. ANNUAL NOTICE AND FILING REQUIREMENT FOR OWNERS OF INTERESTS IN TRUST OR RESTRICTED LANDS.

The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended by adding at the end the following:

“SEC. 222. ANNUAL NOTICE AND FILING; CURRENT WHEREABOUTS OF INTEREST OWNERS. 25 USC 2221.

“On at least an annual basis, the Secretary shall include along with other regular reports to owners of trust or restricted interests in land and individual Indian money account owners a change of name and address form by means of which the owner may confirm or update the owner’s name and address. The change of name and address form shall include a section in which the owner may confirm and update the owner’s name and address.”.

SEC. 8. NOTICE; EFFECTIVE DATE.

25 USC 2201
note.

(a) NOTICE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall notify Indian tribes and owners of trust or restricted lands of the amendments made by this Act.

Deadline.

(2) SPECIFICATIONS.—The notice required under paragraph (1) shall be designed to inform Indian owners of trust or restricted land of—

(A) the effect of this Act and the amendments made by this Act, with emphasis on the effect of the provisions of this Act and the amendments made by this Act, on the testate disposition and intestate descent of their interests in trust or restricted land;

(B) estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice;

(C) the use of negotiated sales, gift deeds, land exchanges, and other transactions for consolidating the ownership of land; and

(D) a toll-free telephone number to be used for obtaining information regarding the provisions of this Act and any trust assets of such owners.

(3) REQUIREMENTS.—The Secretary shall provide the notice required under paragraph (1)—

(A) by direct mail for those Indians with interests in trust and restricted lands for which the Secretary has an address for the interest holder;

(B) through the Federal Register;

(C) through local newspapers in areas with significant Indian populations, reservation newspapers, and newspapers that are directed at an Indian audience; and

(D) through any other means determined appropriate by the Secretary.

(4) CERTIFICATION.—After providing notice under this subsection, the Secretary shall—

(A) certify that the requirements of this subsection have been met; and

Federal Register,
publication.

(B) publish notice of that certification in the Federal Register.

(b) **EFFECTIVE DATE.**—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206), except subsections (e) and (f) of that section, shall not apply to the estate of an individual who dies before the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4).

25 USC 2201
note.

SEC. 9. SEVERABILITY.

If any provision of this Act or of any amendment made by this Act, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this Act and of amendments made by this Act, and the application of the provisions and of the amendments made by this Act to any other person or circumstance shall not be affected by such holding, except that each of subclauses (II), (III), and (IV) of section 205(d)(2)(I)(i) is deemed to be inseverable from the other 2, such that if any 1 of those 3 subclauses is held to be invalid for any reason, neither of the other 2 of such subclauses shall be given effect.

25 USC 2201
note.

SEC. 10. REGULATIONS.

The Secretary is authorized to adopt such regulations as may be necessary to implement the provisions of this Act.

Approved October 27, 2004.

LEGISLATIVE HISTORY—S. 1721:

HOUSE REPORTS: No. 108–656 (Comm. on Resources).

SENATE REPORTS: No. 108–264 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 2, considered and passed Senate.

Oct. 6, considered and passed House.



Public Law 108–375
108th Congress

An Act

To authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Oct. 28, 2004
[H.R. 4200]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005”.

Ronald W.
Reagan National
Defense
Authorization
Act for Fiscal
Year 2005.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into three divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.
Sec. 3. Congressional defense committees defined.

**DIVISION A—DEPARTMENT OF DEFENSE
AUTHORIZATIONS**

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

- Sec. 101. Army.
Sec. 102. Navy and Marine Corps.
Sec. 103. Air Force.
Sec. 104. Defense-wide activities.

Subtitle B—Army Programs

- Sec. 111. Multiyear procurement authority for the light weight 155-millimeter howitzer program.
Sec. 112. Light utility helicopter program.

Subtitle C—Navy Programs

- Sec. 121. DDG–51 modernization program.
Sec. 122. Repeal of authority for pilot program for flexible funding of cruiser conversions and overhauls.
Sec. 123. LHA(R) amphibious assault ship program.

Subtitle D—Air Force Programs

- Sec. 131. Prohibition of retirement of KC–135E aircraft.

- Sec. 132. Prohibition of retirement of F–117 aircraft.
- Sec. 133. Aerial refueling aircraft acquisition program.

Subtitle E—Other Matters

- Sec. 141. Development of deployable systems to include consideration of force protection in asymmetric threat environments.
- Sec. 142. Allocation of equipment authorized by this title to units deployed, or to be deployed, to Operation Iraqi Freedom or Operation Enduring Freedom.
- Sec. 143. Report on options for acquisition of precision-guided munitions.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

- Sec. 201. Authorization of appropriations.
- Sec. 202. Amount for defense science and technology.

Subtitle B—Program Requirements, Restrictions, and Limitations

- Sec. 211. Future Combat Systems program strategy.
- Sec. 212. Collaborative program for research and development of vacuum electronics technologies.
- Sec. 213. Annual Comptroller General report on Joint Strike Fighter program.
- Sec. 214. Amounts for United States Joint Forces Command to be derived only from Defense-wide amounts.
- Sec. 215. Global Positioning System III satellite.
- Sec. 216. Initiation of concept demonstration of Global Hawk high altitude endurance unmanned aerial vehicle.
- Sec. 217. Joint Unmanned Combat Air Systems program.

Subtitle C—Missile Defense Programs

- Sec. 231. Fielding of ballistic missile defense capabilities.
- Sec. 232. Integration of Patriot Advanced Capability-3 and Medium Extended Air Defense System into ballistic missile defense system.
- Sec. 233. Comptroller General assessments of ballistic missile defense programs.
- Sec. 234. Baselines and operational test and evaluation for ballistic missile defense system.

Subtitle D—Other Matters

- Sec. 241. Annual report on submarine technology insertion.
- Sec. 242. Sense of Congress regarding funding of the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

- Sec. 301. Operation and maintenance funding.
- Sec. 302. Working capital funds.
- Sec. 303. Other Department of Defense programs.

Subtitle B—Environmental Provisions

- Sec. 311. Satisfaction of Superfund audit requirements by Inspector General of the Department of Defense.
- Sec. 312. Reimbursement of Environmental Protection Agency for certain costs in connection with Moses Lake Wellfield Superfund Site, Moses Lake, Washington.
- Sec. 313. Increase in authorized amount of environmental remediation, Front Royal, Virginia.
- Sec. 314. Small boat harbor, Unalaska, Alaska.
- Sec. 315. Report regarding encroachment issues affecting Utah Test and Training Range, Utah.
- Sec. 316. Comptroller General study and report on alternative technologies to decontaminate groundwater at Department of Defense installations.
- Sec. 317. Comptroller General study and report on drinking water contamination and related health effects at Camp Lejeune, North Carolina.
- Sec. 318. Sense of Congress regarding perchlorate contamination of ground and surface water from Department of Defense activities.

Subtitle C—Workplace and Depot Issues

- Sec. 321. Simplification of annual reporting requirements concerning funds expended for depot maintenance and repair workloads.

- Sec. 322. Repeal of annual reporting requirement concerning management of depot employees.
- Sec. 323. Extension of special treatment for certain expenditures incurred in operation of Centers of Industrial and Technical Excellence.
- Sec. 324. Temporary authority for contractor performance of security-guard functions.
- Sec. 325. Pilot program for purchase of certain municipal services for Army installations.
- Sec. 326. Bid protests by Federal employees in actions under Office of Management and Budget Circular A–76.
- Sec. 327. Limitations on conversion of work performed by Department of Defense civilian employees to contractor performance.
- Sec. 328. Competitive sourcing reporting requirement.

Subtitle D—Information Technology

- Sec. 331. Preparation of Department of Defense plan for transition to Internet Protocol version 6.
- Sec. 332. Defense business enterprise architecture, system accountability, and conditions for obligation of funds for defense business system modernization.
- Sec. 333. Report on maturity and effectiveness of the Global Information Grid Bandwidth Expansion (GIG–BE).

Subtitle E—Extensions of Program Authorities

- Sec. 341. Two-year extension of Department of Defense telecommunications benefit.
- Sec. 342. Extension of Arsenal Support Program Initiative.
- Sec. 343. Two-year extension of warranty claims recovery pilot program.

Subtitle F—Other Matters

- Sec. 351. Reimbursement for certain protective, safety, or health equipment purchased by or for members of the Armed Forces deployed in contingency operations.
- Sec. 352. Limitation on preparation or implementation of Mid-Range Financial Improvement Plan pending report.
- Sec. 353. Pilot program to authorize Army working-capital funded facilities to engage in cooperative activities with non-Army entities.
- Sec. 354. Transfer of excess Department of Defense personal property to assist fire-fighting agencies.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

- Sec. 401. End strengths for active forces.
- Sec. 402. Revision in permanent active duty end strength minimum levels.
- Sec. 403. Additional authority for increases of Army and Marine Corps active duty personnel end strengths for fiscal years 2005 through 2009.
- Sec. 404. Exclusion of service academy permanent and career professors from a limitation on certain officer grade strengths.

Subtitle B—Reserve Forces

- Sec. 411. End strengths for Selected Reserve.
- Sec. 412. End strengths for Reserves on active duty in support of the reserves.
- Sec. 413. End strengths for military technicians (dual status).
- Sec. 414. Fiscal year 2005 limitation on number of non-dual status technicians.
- Sec. 415. Maximum number of Reserve personnel authorized to be on active duty for operational support.
- Sec. 416. Accounting and management of reserve component personnel performing active duty or full-time National Guard duty for operational support.

Subtitle C—Authorizations of Appropriations

- Sec. 421. Military personnel.
- Sec. 422. Armed Forces Retirement Home.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

- Sec. 501. Transition of active-duty list officer force to a force of all regular officers.
- Sec. 502. Repeal of requirement that Deputy Chiefs and Assistant Chiefs of Naval Operations be selected from officers in the line of the Navy.
- Sec. 503. Limitation on number of officers frocked to major general and rear admiral.

- Sec. 504. Distribution in grade of Marine Corps reserve officers in an active status in grades below brigadier general.
- Sec. 505. Authority for Federal recognition of National Guard commissioned officers appointed from former Coast Guard personnel.
- Sec. 506. Study regarding promotion eligibility of retired officers recalled to active duty.
- Sec. 507. Succession for office of Chief, National Guard Bureau.
- Sec. 508. Redesignation of Vice Chief of the National Guard Bureau as Director of the Joint Staff of the National Guard Bureau.

Subtitle B—Reserve Component Policy Matters

- Sec. 511. Modification of stated purpose of the reserve components.
- Sec. 512. Homeland defense activities conducted by the National Guard under authority of title 32.
- Sec. 513. Commission on the National Guard and Reserves.
- Sec. 514. Repeal of exclusion of active duty for training from authority to order Reserves to active duty.
- Sec. 515. Army program for assignment of active component advisers to units of the Selected Reserve.
- Sec. 516. Authority to accept certain voluntary services.
- Sec. 517. Authority to redesignate the Naval Reserve as the Navy Reserve.
- Sec. 518. Comptroller General assessment of integration of active and reserve components of the Navy.
- Sec. 519. Limitation on number of Starbase academies in a State.
- Sec. 520. Recognition items for certain reserve component personnel.

Subtitle C—Reserve Component Personnel Matters

- Sec. 521. Status under disability retirement system for reserve members released from active duty due to inability to perform within 30 days of call to active duty.
- Sec. 522. Requirement for retention of Reserves on active duty to qualify for retired pay not applicable to nonregular service retirement system.
- Sec. 523. Federal civil service military leave for Reserve and National Guard civilian technicians.
- Sec. 524. Expanded educational assistance authority for officers commissioned through ROTC program at military junior colleges.
- Sec. 525. Repeal of sunset provision for financial assistance program for students not eligible for advanced training.
- Sec. 526. Effect of appointment or commission as officer on eligibility for Selected Reserve education loan repayment program for enlisted members.
- Sec. 527. Educational assistance for certain reserve component members who perform active service.
- Sec. 528. Sense of Congress on guidance concerning treatment of employer-provided compensation and other benefits voluntarily provided to employees who are activated Reservists.

Subtitle D—Joint Officer Management and Professional Military Education

- Sec. 531. Strategic plan to link joint officer development to overall missions and goals of Department of Defense.
- Sec. 532. Improvement to professional military education in the Department of Defense.
- Sec. 533. Joint requirements for promotion to flag or general officer grade.
- Sec. 534. Clarification of tours of duty qualifying as a joint duty assignment.
- Sec. 535. Two-year extension of temporary standard for promotion policy objectives for joint officers.
- Sec. 536. Two-year extension of authority to waive requirement that Reserve Chiefs and National Guard Directors have significant joint duty experience.

Subtitle E—Military Service Academies

- Sec. 541. Revision to conditions on service of officers as service academy superintendents.
- Sec. 542. Academic qualifications of the dean of the faculty of United States Air Force Academy.
- Sec. 543. Board of Visitors of United States Air Force Academy.
- Sec. 544. Appropriated funds for service academy athletic and recreational extracurricular programs to be treated in same manner as for military morale, welfare, and recreation programs.
- Sec. 545. Codification of prohibition on imposition of certain charges and fees at the service academies.

Subtitle F—Other Education and Training Matters

- Sec. 551. College First delayed enlistment program.

- Sec. 552. Senior Reserve Officers' Training Corps and recruiter access at institutions of higher education.
- Sec. 553. Tuition assistance for officers.
- Sec. 554. Increased maximum period for leave of absence for pursuit of a program of education in a health care profession.
- Sec. 555. Eligibility of cadets and midshipmen for medical and dental care and disability benefits.
- Sec. 556. Transfer of authority to confer degrees upon graduates of the Community College of the Air Force.
- Sec. 557. Change in titles of leadership positions at the Naval Postgraduate School.

Subtitle G—Assistance to Local Educational Agencies for Defense Dependents Education

- Sec. 558. Continuation of impact aid assistance on behalf of dependents of certain members despite change in status of member.
- Sec. 559. Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.
- Sec. 560. Impact aid for children with severe disabilities.

Subtitle H—Medals and Decorations and Special Promotions and Appointments

- Sec. 561. Award of medal of honor to individual interred in the Tomb of the Unknowns as representative of casualties of a war.
- Sec. 562. Plan for revised criteria and eligibility requirements for award of Combat Infantryman Badge and Combat Medical Badge for service in Korea after July 28, 1953.
- Sec. 563. Authority to appoint Brigadier General Charles E. Yeager, United States Air Force (retired), to the grade of major general on the retired list.
- Sec. 564. Posthumous commission of William Mitchell in the grade of major general in the Army.

Subtitle I—Military Voting

- Sec. 566. Federal write-in ballots for absentee military voters located in the United States.
- Sec. 567. Repeal of requirement to conduct electronic voting demonstration project for the Federal election to be held in November 2004.
- Sec. 568. Reports on operation of Federal voting assistance program and military postal system.

Subtitle J—Military Justice Matters

- Sec. 571. Review on how sexual offenses are covered by Uniform Code of Military Justice.
- Sec. 572. Waiver of recoupment of time lost for confinement in connection with a trial.
- Sec. 573. Processing of forensic evidence collection kits and acquisition of sufficient stocks of such kits.
- Sec. 574. Authorities of the Judge Advocates General.

Subtitle K—Sexual Assault in the Armed Forces

- Sec. 576. Examination of sexual assault in the Armed Forces by the Defense Task Force established to examine sexual harassment and violence at the military service academies.
- Sec. 577. Department of Defense policy and procedures on prevention and response to sexual assaults involving members of the Armed Forces.

Subtitle L—Management and Administrative Matters

- Sec. 581. Three-year extension of limitation on reductions of personnel of agencies responsible for review and correction of military records.
- Sec. 582. Staffing for Defense Prisoner of War/Missing Personnel Office (DPMO).
- Sec. 583. Permanent ID cards for retiree dependents age 75 and older.
- Sec. 584. Authority to provide civilian clothing to members traveling in connection with medical evacuation.
- Sec. 585. Authority to accept donation of frequent traveler miles, credits, and tickets to facilitate rest and recuperation travel of deployed members of the Armed Forces and their families.
- Sec. 586. Annual report identifying reasons for discharges from the Armed Forces during preceding fiscal year.
- Sec. 587. Study of blended wing concept for the Air Force.
- Sec. 588. Sense of Congress regarding return of members to active duty service upon rehabilitation from service-related injuries.

Subtitle M—Other Matters

- Sec. 591. Protection of Armed Forces personnel from retaliatory actions for communications made through the chain of command.
- Sec. 592. Implementation plan for accession of persons with specialized skills.
- Sec. 593. Enhanced screening methods and process improvements for recruitment of home schooled and National Guard Challenge program GED recipients.
- Sec. 594. Redesignation of National Guard Challenge Program as National Guard Youth Challenge Program.
- Sec. 595. Reports on certain milestones relating to Department of Defense transformation.
- Sec. 596. Report on issues relating to removal of remains of persons interred in United States military cemeteries overseas.
- Sec. 597. Comptroller General reports on closure of Department of Defense dependent elementary and secondary schools and commissary stores.
- Sec. 598. Comptroller General report on transition assistance programs for members separating from the Armed Forces.
- Sec. 599. Study on coordination of job training standards with certification standards for military occupational specialties.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS**Subtitle A—Pay and Allowances**

- Sec. 601. Increase in basic pay for fiscal year 2005.
- Sec. 602. Relationship between eligibility to receive supplemental subsistence allowance and eligibility to receive imminent danger pay, family separation allowance, and certain Federal assistance.
- Sec. 603. Authority to provide family separation basic allowance for housing.
- Sec. 604. Geographic basis for housing allowance during short-assignment permanent changes of station for education or training.
- Sec. 605. Immediate lump-sum reimbursement for unusual nonrecurring expenses incurred for duty outside the continental United States.
- Sec. 606. Authority for certain members deployed in combat zones to receive limited advances on future basic pay.
- Sec. 607. Repeal of requirement that members entitled to basic allowance for subsistence pay subsistence charges while hospitalized.

Subtitle B—Bonuses and Special and Incentive Pays

- Sec. 611. One-year extension of certain bonus and special pay authorities for reserve forces.
- Sec. 612. One-year extension of certain bonus and special pay authorities for certain health care professionals.
- Sec. 613. One-year extension of special pay and bonus authorities for nuclear officers.
- Sec. 614. One-year extension of other bonus and special pay authorities.
- Sec. 615. Authority to provide hazardous duty incentive pay to military firefighters.
- Sec. 616. Reduced service obligation for nurses receiving nurse accession bonus.
- Sec. 617. Assignment incentive pay.
- Sec. 618. Modification of active and reserve component reenlistment and enlistment bonus authorities.
- Sec. 619. Bonus for certain initial service of officers in the Selected Reserve.
- Sec. 620. Revision of authority to provide foreign language proficiency pay.
- Sec. 621. Eligibility of enlisted members to qualify for critical skills retention bonus while serving on indefinite reenlistment.
- Sec. 622. Eligibility of reserve component members for incentive bonus for conversion to military occupational specialty to ease personnel shortage.
- Sec. 623. Permanent increase in authorized amounts for imminent danger special pay and family separation allowance.

Subtitle C—Travel and Transportation Allowances

- Sec. 631. Travel and transportation allowances for family members to attend burial ceremony or memorial service of member who dies on duty.
- Sec. 632. Transportation of family members incident to serious illness or injury of members of the uniformed services.
- Sec. 633. Reimbursement for certain lodging costs incurred in connection with dependent student travel.

Subtitle D—Retired Pay and Survivor Benefits

- Sec. 641. Computation of high-36 month average for reserve component members retired for disability while on active duty or dying while on active duty.

- Sec. 642. Repeal of phase-in of concurrent receipt of retired pay and veterans' disability compensation for military retirees with service-connected disabilities rated as 100 percent.
- Sec. 643. Death benefits enhancement.
- Sec. 644. Phased elimination of two-tier annuity computation for surviving spouses under Survivor Benefit Plan.
- Sec. 645. One-year open enrollment period for Survivor Benefit Plan commencing October 1, 2005.

Subtitle E—Commissary and Nonappropriated Fund Instrumentality Benefits

- Sec. 651. Consolidation and reorganization of legislative provisions regarding defense commissary system and exchanges and other morale, welfare, and recreation activities.
- Sec. 652. Consistent State treatment of Department of Defense Nonappropriated Fund Health Benefits Program.

Subtitle F—Other Matters

- Sec. 661. Eligibility of members for reimbursement of expenses incurred for adoption placements made by foreign governments.
- Sec. 662. Clarification of education loans qualifying for education loan repayment program for reserve component health professions officers.
- Sec. 663. Receipt of pay by reservists from civilian employers while on active duty in connection with a contingency operation.
- Sec. 664. Relief for mobilized reservists from certain Federal agricultural loan obligations.
- Sec. 665. Survey and analysis of effect of extended and frequent mobilization of reservists for active duty service on reservist income.
- Sec. 666. Study of disability benefits for veterans of service in the Armed Forces with service-connected disabilities.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Enhanced Benefits for Reserves

- Sec. 701. TRICARE coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty.
- Sec. 702. Comptroller General report on the cost and feasibility of providing private health insurance stipends for members of the Ready Reserves.
- Sec. 703. Permanent earlier eligibility date for TRICARE benefits for members of reserve components and their dependents.
- Sec. 704. Waiver of certain deductibles under TRICARE program for members on active duty for a period of more than 30 days.
- Sec. 705. Authority for payment by United States of additional amounts billed by health care providers to activated Reserves.
- Sec. 706. Permanent extension of transitional health care benefits and addition of requirement for preseparation physical examination.

Subtitle B—Other Benefits Improvements

- Sec. 711. Opportunity for young child dependent of deceased member to become eligible for enrollment in a TRICARE dental plan.
- Sec. 712. Comptroller General report on provision of health, education, and support services for Exceptional Family Member Program enrollees.
- Sec. 713. Continuation of sub-acute care for transition period.
- Sec. 714. Improvements to pharmacy benefits program.
- Sec. 715. Professional accreditation of military dentists.
- Sec. 716. Temporary authority for waiver of collection of payments due for CHAMPUS benefits received by disabled persons unaware of loss of CHAMPUS eligibility.
- Sec. 717. Services of marriage and family therapists.
- Sec. 718. Chiropractic health care benefits advisory committee.

Subtitle C—Planning, Programming, and Management

- Sec. 721. Pilot program for health care delivery.
- Sec. 722. Study of provision of travel reimbursement to hospitals for certain military disability retirees.
- Sec. 723. Study of mental health services.
- Sec. 724. Policy for timely notification of next of kin of members seriously ill or injured in combat zones.
- Sec. 725. Revised funding methodology for military retiree health care benefits.
- Sec. 726. Grounds for presidential waiver of requirement for informed consent or option to refuse regarding administration of drugs not approved for general use.

Sec. 727. TRICARE program regional directors.

Subtitle D—Medical Readiness Tracking and Health Surveillance

- Sec. 731. Medical readiness plan and Joint Medical Readiness Oversight Committee.
- Sec. 732. Medical readiness of Reserves.
- Sec. 733. Baseline Health Data Collection Program.
- Sec. 734. Medical care and tracking and health surveillance in the theater of operations.
- Sec. 735. Declassification of information on exposures to environmental hazards.
- Sec. 736. Report on training on environmental hazards.
- Sec. 737. Uniform policy for meeting mobilization-related medical care needs at military installations.
- Sec. 738. Full implementation of Medical Readiness Tracking and Health Surveillance Program and Force Health Protection and Readiness Program.
- Sec. 739. Reports and Internet accessibility relating to health matters.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

- Sec. 801. Software-related program costs under major defense acquisition programs.
- Sec. 802. Internal controls for Department of Defense procurements through GSA Client Support Centers.
- Sec. 803. Defense commercial communications satellite services procurement process.
- Sec. 804. Contractor performance of acquisition functions closely associated with inherently governmental functions.
- Sec. 805. Sustainment plans for existing systems while replacement systems are under development.
- Sec. 806. Applicability of competition exceptions to eligibility of National Guard for financial assistance for performance of additional duties.
- Sec. 807. Inflation adjustment of acquisition-related dollar thresholds.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

- Sec. 811. Rapid acquisition authority to respond to combat emergencies.
- Sec. 812. Defense acquisition workforce improvements.
- Sec. 813. Period for multiyear task and delivery order contracts.
- Sec. 814. Funding for contract ceilings for certain multiyear procurement contracts.
- Sec. 815. Increased threshold for senior procurement executive approval of use of procedures other than competitive procedures.
- Sec. 816. Increased threshold for applicability of requirement for defense contractors to provide information on subcontracting authority of contractor personnel to cooperative agreement holders.
- Sec. 817. Extension of authority for use of simplified acquisition procedures.
- Sec. 818. Submission of cost or pricing data on noncommercial modifications of commercial items.
- Sec. 819. Delegations of authority to make determinations relating to payment of defense contractors for business restructuring costs.
- Sec. 820. Availability of Federal supply schedule supplies and services to United Service Organizations, Incorporated.
- Sec. 821. Addition of landscaping and pest control services to list of designated industry groups participating in the Small Business Competitiveness Demonstration Program.
- Sec. 822. Increased thresholds under special emergency procurement authority.

Subtitle C—United States Defense Industrial Base Provisions

- Sec. 831. Defense trade reciprocity.
- Sec. 832. Assessment and report on the acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources.

Subtitle D—Extensions of Temporary Program Authorities

- Sec. 841. Extension of mentor-protege program.
- Sec. 842. Amendment to mentor-protege program.
- Sec. 843. Extension of test program for negotiation of comprehensive small business subcontracting plans.
- Sec. 844. Extension of pilot program on sales of manufactured articles and services of certain Army industrial facilities.

Subtitle E—Other Acquisition Matters

- Sec. 851. Review and demonstration project relating to contractor employees.
- Sec. 852. Inapplicability of certain fiscal laws to settlements under special temporary contract closeout authority.
- Sec. 853. Contracting with employers of persons with disabilities.
- Sec. 854. Defense procurements made through contracts of other agencies.
- Sec. 855. Requirements relating to source selection for integrated support of aerial refueling aircraft fleet for the Air Force.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT**Subtitle A—Duties and Functions of Department of Defense**

- Sec. 901. Study of roles and authorities of the Director of Defense Research and Engineering.
- Sec. 902. Change of membership of specified council.

Subtitle B—Space Activities

- Sec. 911. Space posture review.
- Sec. 912. Panel on the future of national security space launch.
- Sec. 913. Operationally responsive national security satellites.
- Sec. 914. Nondisclosure of certain products of commercial satellite operations.

Subtitle C—Intelligence-Related Matters

- Sec. 921. Two-year extension of authority of the Secretary of Defense to engage in commercial activities as security for intelligence collection activities abroad.
- Sec. 922. Pilot program on cryptologic service training.

Subtitle D—Other Matters

- Sec. 931. Strategic plan for destruction of lethal chemical agents and munitions stockpile.
- Sec. 932. Secretary of Defense criteria for and guidance on identification and internal transmission of critical information.

TITLE X—GENERAL PROVISIONS**Subtitle A—Financial Matters**

- Sec. 1001. Transfer authority.
- Sec. 1002. United States contribution to NATO common-funded budgets in fiscal year 2005.
- Sec. 1003. Budget justification documents for operation and maintenance.
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- Sec. 3501. Authorization of appropriations for Maritime Administration.
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TITLE XXXVI—ASSISTANCE TO FIREFIGHTERS

- Sec. 3601. Short title.
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SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES.

For purposes of this Act, the term “congressional defense committees” has the meaning given that term in section 101(a)(16) of title 10, United States Code.

**DIVISION A—DEPARTMENT OF
DEFENSE AUTHORIZATIONS****TITLE I—PROCUREMENT****Subtitle A—Authorization of Appropriations**

- Sec. 101. Army.
- Sec. 102. Navy and Marine Corps.
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- Sec. 111. Multiyear procurement authority for the light weight 155-millimeter howitzer program.

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Sec. 131. Prohibition of retirement of KC–135E aircraft.

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Sec. 141. Development of deployable systems to include consideration of force protection in asymmetric threat environments.

Sec. 142. Allocation of equipment authorized by this title to units deployed, or to be deployed, to Operation Iraqi Freedom or Operation Enduring Freedom.

Sec. 143. Report on options for acquisition of precision-guided munitions.

Subtitle A—Authorization of Appropriations

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Army as follows:

- (1) For aircraft, \$2,611,540,000.
- (2) For missiles, \$1,307,000,000.
- (3) For weapons and tracked combat vehicles, \$1,702,695,000.
- (4) For ammunition, \$1,545,702,000.
- (5) For other procurement, \$4,345,246,000.

SEC. 102. NAVY AND MARINE CORPS.

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Navy as follows:

- (1) For aircraft, \$8,814,442,000.
- (2) For weapons, including missiles and torpedoes, \$2,067,520,000.
- (3) For shipbuilding and conversion, \$10,116,827,000.
- (4) For other procurement, \$4,633,886,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Marine Corps in the amount of \$1,268,453,000.

(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement of ammunition for the Navy and the Marine Corps in the amount of \$878,140,000.

SEC. 103. AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Air Force as follows:

- (1) For aircraft, \$13,228,124,000.
- (2) For ammunition, \$1,318,959,000.
- (3) For missiles, \$4,548,513,000.
- (4) For other procurement, \$12,949,327,000.

SEC. 104. DEFENSE-WIDE ACTIVITIES.

Funds are hereby authorized to be appropriated for fiscal year 2005 for Defense-wide procurement in the amount of \$2,846,583,000.

Subtitle B—Army Programs

SEC. 111. MULTIYEAR PROCUREMENT AUTHORITY FOR THE LIGHT WEIGHT 155-MILLIMETER HOWITZER PROGRAM.

The Secretary of the Army and the Secretary of the Navy may, in accordance with section 2306b of title 10, United States Code, jointly enter into a multiyear contract, beginning with the fiscal year 2005 program year, for procurement of the light weight 155-millimeter howitzer.

SEC. 112. LIGHT UTILITY HELICOPTER PROGRAM.

(a) **LIMITATION.**—None of the funds authorized to be appropriated under section 101(1) for the procurement of light utility helicopters may be obligated or expended until 30 days after the date on which the Secretary of the Army submits to the congressional defense committees a report that contains—

(1) the Secretary's certification that all required documentation for the acquisition of light utility helicopters has been completed and approved; and

(2) an Army aviation modernization plan described in subsection (b).

(b) **ARMY AVIATION MODERNIZATION PLAN.**—The Army aviation modernization plan referred to in subsection (a)(2) is an updated modernization plan for Army aviation that contains, at a minimum, the following:

(1) The analysis on which the plan is based.

(2) A discussion of the Secretary's decision to terminate the Comanche helicopter program and to restructure the aviation force of the Army.

(3) The actions taken or to be taken to accelerate the procurement and development of aircraft survivability equipment for Army aircraft, together with a detailed list of aircraft survivability equipment that specifies such equipment by platform and by the related programmatic funding for procurement.

(4) A discussion of the conversion of Apache helicopters to block III configuration, including (A) the rationale for converting only 501 Apache helicopters to that configuration, and (B) the costs associated with a conversion of all Apache helicopters to the block III configuration.

(5) A discussion of the procurement of light armed reconnaissance helicopters, including (A) the rationale for the requirement for light armed reconnaissance helicopters, and (B) a discussion of the costs associated with upgrading the light armed reconnaissance helicopter to meet Army requirements.

(6) The rationale for the Army's requirement for light utility helicopters, together with a summary and copy of the analysis of the alternative means for meeting such requirement that the Secretary considered in the determination to procure light utility helicopters, including, at a minimum, the analysis of the alternative of using light armed reconnaissance helicopters

and UH–60 Black Hawk helicopters instead of light utility helicopters to meet such requirement.

(7) The rationale for the procurement of cargo fixed-wing aircraft.

(8) The rationale for the initiation of a joint multi-role helicopter program.

(9) A description of the operational employment of the Army’s restructured aviation force.

Subtitle C—Navy Programs

SEC. 121. DDG–51 MODERNIZATION PROGRAM.

(a) ACCELERATION OF MODERNIZATION PROGRAM.—The Secretary of the Navy shall accelerate the program for in-service modernization of the DDG–51 class of destroyers (in this section referred to as the “modernization program”).

(b) REPORT.—Not later than March 31, 2005, the Secretary of the Navy shall submit to the congressional defense committees a report on the steps taken as of that date to carry out subsection (a). The report shall—

(1) describe the elements of the modernization program; and

(2) specify those elements of the modernization program that are expected to contribute to the goal of reducing the crew size of the DDG–51 class of destroyers by one-third and explain the basis for those expectations.

SEC. 122. REPEAL OF AUTHORITY FOR PILOT PROGRAM FOR FLEXIBLE FUNDING OF CRUISER CONVERSIONS AND OVERHAULS.

Section 126 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1410; 10 U.S.C. 7291 note) is repealed.

SEC. 123. LHA(R) AMPHIBIOUS ASSAULT SHIP PROGRAM.

(a) AUTHORIZATION OF SHIP.—The Secretary of the Navy is authorized to procure the first amphibious assault ship of the LHA(R) class, subject to the availability of appropriations for that purpose.

(b) AUTHORIZED AMOUNT.—Of the amount authorized to be appropriated under section 102(a)(3) for fiscal year 2005, \$150,000,000 shall be available for the advance procurement and advance construction of components for the first amphibious assault ship of the LHA(R) class. The Secretary of the Navy may enter into a contract or contracts with the shipbuilder and other entities for the advance procurement and advance construction of those components.

Subtitle D—Air Force Programs

SEC. 131. PROHIBITION OF RETIREMENT OF KC–135E AIRCRAFT.

The Secretary of the Air Force may not retire any KC–135E aircraft of the Air Force in fiscal year 2005.

SEC. 132. PROHIBITION OF RETIREMENT OF F–117 AIRCRAFT.

No F–117 aircraft in use by the Air Force during fiscal year 2004 may be retired during fiscal year 2005.

SEC. 133. AERIAL REFUELING AIRCRAFT ACQUISITION PROGRAM.

(a) **TERMINATION OF LEASING AUTHORITY.**—Subsection (a) of section 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1413; 10 U.S.C. 2401a note) is amended by striking “may lease no more than 20 tanker aircraft” and inserting “shall lease no tanker aircraft”.

(b) **MULTIYEAR PROCUREMENT AUTHORITY.**—Subsection (b) of such section is amended—

(1) in paragraph (1)—

(A) by striking “Beginning with the fiscal year 2004 program year, the Secretary” and inserting “The Secretary”; and

(B) by striking “necessary to meet” and all that follows through “is insufficient”;

(2) in paragraph (2), by striking “80” and inserting “100”;

and

(3) by striking paragraph (4).

(c) **STUDY.**—Subsection (c)(1) of such section is amended by striking “leased under the multiyear aircraft lease pilot program or” in subparagraphs (A) and (B).

(d) **RELATIONSHIP TO PREVIOUS LAW.**—Such section is further amended by adding at the end the following new subsection:

“(f) **RELATIONSHIP TO PREVIOUS LAW.**—The multiyear procurement authority in subsection (b) may not be executed under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117).”.

Subtitle E—Other Matters

SEC. 141. DEVELOPMENT OF DEPLOYABLE SYSTEMS TO INCLUDE CONSIDERATION OF FORCE PROTECTION IN ASYMMETRIC THREAT ENVIRONMENTS.

10 USC 2302
note.

(a) **REQUIREMENT FOR SYSTEMS DEVELOPMENT.**—The Secretary of Defense shall require that the Department of Defense regulations, directives, and guidance governing the acquisition of covered systems be revised to require that—

Regulations.

(1) an assessment of warfighter survivability and of system suitability against asymmetric threats shall be performed as part of the development of system requirements for any such system; and

(2) requirements for key performance parameters for force protection and survivability shall be included as part of the documentation of system requirements for any such system.

(b) **COVERED SYSTEMS.**—In this section, the term “covered system” means any of the following systems that is expected to be deployed in an asymmetric threat environment:

(1) Any manned system.

(2) Any equipment intended to enhance personnel survivability.

(c) **INAPPLICABILITY OF DEVELOPMENT REQUIREMENT TO SYSTEMS ALREADY THROUGH DEVELOPMENT.**—The revisions pursuant subsection (a) to Department of Defense regulations, directives, and guidance shall not apply to a system that entered low-rate initial production before the date of the enactment of this Act.

(d) **DEADLINE FOR POLICY REVISIONS.**—The revisions required by subsection (a) to Department of Defense regulations, directives,

and guidance shall be made not later than 120 days after the date of the enactment of this Act.

SEC. 142. ALLOCATION OF EQUIPMENT AUTHORIZED BY THIS TITLE TO UNITS DEPLOYED, OR TO BE DEPLOYED, TO OPERATION IRAQI FREEDOM OR OPERATION ENDURING FREEDOM.

In allocating equipment acquired using funds authorized to be appropriated by this title to operational units deployed, or scheduled to be deployed, to Operation Iraqi Freedom or Operation Enduring Freedom, the Secretary of Defense shall ensure that the allocation is made without regard to the status of the units as active, Guard, or reserve component units.

SEC. 143. REPORT ON OPTIONS FOR ACQUISITION OF PRECISION-GUIDED MUNITIONS.

(a) **REQUIREMENT FOR REPORT.**—Not later than March 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report on options for the acquisition of precision-guided munitions.

(b) **CONTENT OF REPORT.**—The report shall include the following:

(1) A list of the precision-guided munitions in the inventory of the Department of Defense.

(2) For each such munition—

(A) the inventory level as of the most recent date that it is feasible to specify when the report is prepared;

(B) the inventory objective that is necessary to execute the current National Military Strategy prescribed by the Chairman of the Joint Chiefs of Staff;

(C) the year in which that inventory objective would be expected to be achieved—

(i) if the munition were procured at the minimum sustained production rate;

(ii) if the munition were procured at the most economic production rate; and

(iii) if the munition were procured at the maximum production rate; and

(D) the procurement cost for each munition (in constant fiscal year 2004 dollars) at each of the production rates specified in subparagraph (C) for each year in the future-years defense program.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Sec. 201. Authorization of appropriations.

Sec. 202. Amount for defense science and technology.

Subtitle B—Program Requirements, Restrictions, and Limitations

Sec. 211. Future Combat Systems program strategy.

Sec. 212. Collaborative program for research and development of vacuum electronics technologies.

Sec. 213. Annual Comptroller General report on Joint Strike Fighter program.

Sec. 214. Amounts for United States Joint Forces Command to be derived only from Defense-wide amounts.

Sec. 215. Global Positioning System III satellite.

- Sec. 216. Initiation of concept demonstration of Global Hawk high altitude endurance unmanned aerial vehicle.
Sec. 217. Joint Unmanned Combat Air Systems program.

Subtitle C—Missile Defense Programs

- Sec. 231. Fielding of ballistic missile defense capabilities.
Sec. 232. Integration of Patriot Advanced Capability-3 and Medium Extended Air Defense System into ballistic missile defense system.
Sec. 233. Comptroller General assessments of ballistic missile defense programs.
Sec. 234. Baselines and operational test and evaluation for ballistic missile defense system.

Subtitle D—Other Matters

- Sec. 241. Annual report on submarine technology insertion.
Sec. 242. Sense of Congress regarding funding of the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

Subtitle A—Authorization of Appropriations

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Department of Defense for research, development, test, and evaluation as follows:

- (1) For the Army, \$9,307,248,000.
- (2) For the Navy, \$16,200,591,000.
- (3) For the Air Force, \$20,432,933,000.
- (4) For Defense-wide activities, \$20,556,986,000, of which \$304,135,000 is authorized for the Director of Operational Test and Evaluation.

SEC. 202. AMOUNT FOR DEFENSE SCIENCE AND TECHNOLOGY.

(a) FISCAL YEAR 2005.—Of the amounts authorized to be appropriated by section 201, \$11,191,600,000 shall be available for the Defense Science and Technology Program, including basic research, applied research, and advanced technology development projects.

(b) BASIC RESEARCH, APPLIED RESEARCH, AND ADVANCED TECHNOLOGY DEVELOPMENT DEFINED.—For purposes of this section, the term “basic research, applied research, and advanced technology development” means work funded in program elements for defense research and development under Department of Defense category 6.1, 6.2, or 6.3.

Subtitle B—Program Requirements, Restrictions, and Limitations

SEC. 211. FUTURE COMBAT SYSTEMS PROGRAM STRATEGY.

(a) PROGRAM STRATEGY REQUIRED.—The Secretary of the Army shall establish and implement a program strategy for the Future Combat Systems acquisition program of the Army. The purpose of the program strategy shall be to provide an effective, affordable, producible, and supportable military capability with a realistic schedule and a robust cost estimate.

(b) ELEMENTS OF PROGRAM STRATEGY.—The program strategy shall—

- (1) require the release, at the design readiness review, of not less than 90 percent of engineering drawings for the building of prototypes;

(2) require, before facilitating production or contracting for items with long lead times, that an acceptable demonstration be carried out of the performance of the information network, including the performance of the Joint Tactical Radio System and the Warfighter Information Network-Tactical; and

(3) require, before the initial production decision, that an acceptable demonstration be carried out of the collective capability of each system to meet system-of-systems requirements when integrated with the information network.

(c) **REQUIRED SUBMISSIONS TO CONGRESS.**—Before convening the Milestone B update for the Future Combat Systems acquisition program required by the Future Combat Systems acquisition decision memorandum, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to Congress each of the following documents:

(1) The cost estimate of the Army with respect to the Future Combat Systems program.

Reports.

(2) A report, prepared by an independent panel, on the maturity levels of the critical technologies with respect to the program, including an assessment of those technologies that are likely to require a decision to use an alternative approach.

Reports.

(3) A report, prepared by the chief information officer of the Army, describing—

(A) the status of the development and integration of the network and the command, control, computers, communications, intelligence, surveillance, and reconnaissance components; and

(B) the progress made toward meeting the requirements for network-centric capabilities as set forth by such officer.

Reports.

(4) A report identifying the key performance parameters with respect to the program, with all objectives and thresholds quantified, together with the supporting analytical rationale.

Deadline.

(d) **INDEPENDENT COST ESTIMATE.**—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to Congress not later than March 1, 2005, an independent cost estimate, prepared by the cost analysis improvement group of the Office of the Secretary of Defense, with respect to the Future Combat Systems program.

(e) **LIMITATION ON FUNDING.**—(1) Except as provided in paragraph (2), the Secretary of the Army may not obligate, from amounts made available for fiscal year 2005, more than \$2,200,000,000 for the Future Combat Systems acquisition program.

(2) The limitation in paragraph (1) shall not apply after the Secretary of the Army submits to Congress—

(A) the Secretary's certification that the Secretary has established and implemented the program strategy required by subsection (a); and

(B) each of the documents specified in subsection (c).

10 USC 2358
note.

SEC. 212. COLLABORATIVE PROGRAM FOR RESEARCH AND DEVELOPMENT OF VACUUM ELECTRONICS TECHNOLOGIES.

(a) **PROGRAM REQUIRED.**—The Secretary of Defense shall establish a program for research and development in advanced vacuum electronics to meet the requirements of Department of Defense systems.

(b) **DESCRIPTION OF PROGRAM.**—The program under subsection (a) shall be carried out collaboratively by the Director of Defense Research and Engineering, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of the Army, and other appropriate elements of the Department of Defense. The program shall include the following activities:

(1) Activities needed for development and maturation of advanced vacuum electronics technologies needed to meet the requirements of the Department of Defense.

(2) Identification of legacy and developmental Department of Defense systems which may make use of advanced vacuum electronics under the program.

(c) **REPORT.**—Not later than January 31, 2005, the Director of Defense Research and Engineering shall submit to the congressional defense committees a report on the implementation of the program under subsection (a). The report shall include the following:

(1) Identification of the organization to have lead responsibility for carrying out the program.

(2) Assessment of the role of investing in vacuum electronics technologies as part of the overall strategy of the Department of Defense for investing in electronics technologies to meet the requirements of the Department.

(3) The management plan and schedule for the program and any agreements relating to that plan.

(4) Identification of the funding required for fiscal year 2006 and for the future-years defense program to carry out the program.

(5) A list of program capability goals and objectives.

(6) An outline of the role of basic and applied research in support of the development and maturation of advanced vacuum electronics technologies needed to meet the requirements of the Department of Defense.

(7) Assessment of global capabilities in vacuum electronics technologies and the effect of those capabilities on the national security and economic competitiveness of the United States.

SEC. 213. ANNUAL COMPTROLLER GENERAL REPORT ON JOINT STRIKE FIGHTER PROGRAM.

(a) **ANNUAL GAO REVIEW.**—The Comptroller General shall conduct an annual review of the Joint Strike Fighter aircraft program and shall, not later than March 15 of each year, submit to the congressional defense committees a report on the results of the most recent review. With each such report, the Comptroller General shall submit a certification as to whether the Comptroller General has had access to sufficient information to enable the Comptroller General to make informed judgments on the matters covered by the report.

(b) **MATTERS TO BE INCLUDED.**—Each report on the Joint Strike Fighter aircraft program under subsection (a) shall include the following with respect to system development and demonstration under the program:

(1) The extent to which such system development and demonstration is meeting established goals, including the goals established for performance, cost, and schedule.

(2) The plan for such system development and demonstration (leading to production) for the fiscal year that begins in the year in which the report is submitted.

(3) The Comptroller General’s conclusion regarding whether such system development and demonstration (leading to production) is likely to be completed at a total cost not in excess of the amount specified (or to be specified) for such purpose in the Selected Acquisition report for the Joint Strike Fighter aircraft program under section 2432 of title 10, United States Code, for the first quarter of the fiscal year during which the report of the Comptroller General is submitted.

(c) REQUIREMENT TO SUPPORT ANNUAL GAO REVIEW.—The Secretary of Defense and the prime contractor for the Joint Strike Fighter aircraft program shall provide to the Comptroller General such information on that program as the Comptroller General considers necessary to carry out the responsibilities of the Comptroller General under this section, including such information as is necessary for the purposes of subsection (b)(3).

(d) TERMINATION.—No report is required under this section after the report that, under subsection (a), is required to be submitted not later than March 15, 2009.

SEC. 214. AMOUNTS FOR UNITED STATES JOINT FORCES COMMAND TO BE DERIVED ONLY FROM DEFENSE-WIDE AMOUNTS.

(a) IN GENERAL.—Chapter 9 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 232. United States Joint Forces Command: amounts for research, development, test, and evaluation to be derived only from Defense-wide amounts

“(a) REQUIREMENT.—Amounts for research, development, test, and evaluation for the United States Joint Forces Command shall be derived only from amounts made available to the Department of Defense for Defense-wide research, development, test, and evaluation.

“(b) SEPARATE DISPLAY IN BUDGET.—Any amount in the budget submitted to Congress under section 1105 of title 31 for any fiscal year for research, development, test, and evaluation for the United States Joint Forces Command shall be set forth under the account of the Department of Defense for Defense-wide research, development, test, and evaluation.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“232. United States Joint Forces Command: amounts for research, development, test, and evaluation to be derived only from Defense-wide amounts.”.

10 USC 232 note.

(c) APPLICABILITY.—Section 232 of title 10, United States Code (as added by subsection (a)) applies to fiscal years beginning with fiscal year 2007.

SEC. 215. GLOBAL POSITIONING SYSTEM III SATELLITE.

Not more than 80 percent of the amount authorized to be appropriated by section 201(4) and available for the purpose of research, development, test, and evaluation on the Global Positioning System III satellite may be obligated or expended for that purpose until the Secretary of Defense—

(1) completes an analysis of alternatives for the satellite and ground architectures, satellite technologies, and tactics, techniques, and procedures for the next generation global positioning system (GPS); and

(2) submits to the congressional defense committees a report on the results of the analysis, including an assessment of the results of the analysis.

SEC. 216. INITIATION OF CONCEPT DEMONSTRATION OF GLOBAL HAWK HIGH ALTITUDE ENDURANCE UNMANNED AERIAL VEHICLE.

Section 221(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–40) is amended by striking “March 1, 2001” and inserting “March 1, 2005”.

SEC. 217. JOINT UNMANNED COMBAT AIR SYSTEMS PROGRAM.

(a) EXECUTIVE COMMITTEE.—(1) The Secretary of Defense shall, subject to subsection (b), establish an executive committee and require that executive committee to provide guidance and recommendations for the management of the Joint Unmanned Combat Air Systems program to the Director of the Defense Advanced Research Projects Agency and the personnel who are managing the program for such agency.

(2) The executive committee established under paragraph (1) shall be composed of the following members:

(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall chair the executive committee.

(B) The Assistant Secretary of the Navy for Research, Development, and Acquisition.

(C) The Assistant Secretary of the Air Force for Acquisition.

(D) The Deputy Chief of Naval Operations for Warfare Requirements and Programs.

(E) The Deputy Chief of Staff of the Air Force for Air and Space Operations.

(F) Any additional personnel of the Department of Defense whom the Secretary determines appropriate for membership on the executive committee.

(b) APPLICABILITY ONLY TO DARPA-MANAGED PROGRAM.—The requirements of subsection (a) apply with respect to the Joint Unmanned Combat Air Systems program only while the program is managed by the Defense Advanced Research Projects Agency.

Subtitle C—Missile Defense Programs

SEC. 231. FIELDING OF BALLISTIC MISSILE DEFENSE CAPABILITIES.

(a) AUTHORITY.—Funds described in subsection (b) may, upon approval by the Secretary of Defense, be used for the development and fielding of ballistic missile defense capabilities.

(b) COVERED FUNDS.—Subsection (a) applies to funds appropriated for fiscal year 2005 or fiscal year 2006 for research, development, test, and evaluation for the Missile Defense Agency.

SEC. 232. INTEGRATION OF PATRIOT ADVANCED CAPABILITY-3 AND MEDIUM EXTENDED AIR DEFENSE SYSTEM INTO BALLISTIC MISSILE DEFENSE SYSTEM.

10 USC 2431
note.

(a) RELATIONSHIP TO BALLISTIC MISSILE DEFENSE SYSTEM.—The combined program of the Department of the Army known as the Patriot Advanced Capability-3/Medium Extended Air Defense System air and missile defense program (hereinafter in this section

referred to as the “PAC-3/MEADS program”) is an element of the Ballistic Missile Defense System.

(b) **MANAGEMENT OF CONFIGURATION CHANGES.**—The Director of the Missile Defense Agency, in consultation with the Secretary of the Army (acting through the Assistant Secretary of the Army for Acquisition, Logistics and Technology) shall ensure that any configuration change for the PAC-3/MEADS program is subject to the configuration control board processes of the Missile Defense Agency so as to ensure integration of the PAC-3/MEADS element with appropriate elements of the Ballistic Missile Defense System.

(c) **REQUIRED PROCEDURES.**—(1) Except as otherwise directed by the Secretary of Defense, the Secretary of the Army (acting through the Assistant Secretary of the Army for Acquisition, Logistics and Technology) may make a significant change to the baseline technical specifications or the baseline schedule for the PAC-3/MEADS program only with the concurrence of the Director of the Missile Defense Agency.

(2) With respect to a proposal by the Secretary of the Army to make a significant change to the procurement quantity (including any quantity in any future block procurement) that, as of the date of such proposal, is planned for the PAC-3/MEADS program, the Secretary of Defense shall establish—

(A) procedures for a determination of the effect of such change on Ballistic Missile Defense System capabilities and on the cost of the PAC-3/MEADS program; and

(B) procedures for review of the proposed change by all relevant commands and agencies of the Department of Defense, including determination of the concurrence or nonconcurrence of each such command and agency with respect to such proposed change.

(d) **REPORT.**—Not later than February 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report describing the procedures developed pursuant to subsection (c)(2).

(e) **DEFINITIONS.**—For purpose of this section:

(1) The term “significant change” means, with respect to the PAC-3/MEADS program, a change that would substantially alter the role or contribution of that program in the Ballistic Missile Defense System.

(2) The term “baseline technical specifications” means, with respect to the PAC-3/MEADS program, those technical specifications for that program that have been approved by the configuration control board of the Missile Defense Agency and are in effect as of the date of the review.

(3) The term “baseline schedule” means, with respect to the PAC-3/MEADS program, the development and production schedule for the PAC-3/MEADS program in effect at the time of a review of such program conducted pursuant to subsection (b) or (c)(2)(B).

SEC. 233. COMPTROLLER GENERAL ASSESSMENTS OF BALLISTIC MISSILE DEFENSE PROGRAMS.

Section 232(g) of the National Defense Authorization Act for Fiscal Year 2002 (10 U.S.C. 2431 note) is amended to read as follows:

“(g) **COMPTROLLER GENERAL ASSESSMENT.**—(1) At the conclusion of each of fiscal years 2002 through 2006, the Comptroller

General of the United States shall carry out an assessment of the extent to which the Missile Defense Agency achieved the goals established under subsection (c) for that fiscal year for each ballistic missile defense program of the Department of Defense.

“(2) Not later than February 15 of each of 2003 through 2007, the Comptroller General shall submit to the congressional defense committees a report on the Comptroller General’s assessment under paragraph (1) with respect to the preceding fiscal year.”. Deadline.

SEC. 234. BASELINES AND OPERATIONAL TEST AND EVALUATION FOR BALLISTIC MISSILE DEFENSE SYSTEM. 10 USC 2431 note.

(a) **TESTING CRITERIA.**—Not later than February 1, 2005, the Secretary of Defense, in consultation with the Director of Operational Test and Evaluation, shall prescribe appropriate criteria for operationally realistic testing of fieldable prototypes developed under the ballistic missile defense spiral development program. The Secretary shall submit a copy of the prescribed criteria to the congressional defense committees. Deadline.

(b) **USE OF CRITERIA.**—(1) The Secretary of Defense shall ensure that, not later than October 1, 2005, a test of the ballistic missile defense system is conducted consistent with the criteria prescribed under subsection (a). Deadline.

(2) The Secretary of Defense shall ensure that each block configuration of the ballistic missile defense system is tested consistent with the criteria prescribed under subsection (a).

(c) **RELATIONSHIP TO OTHER LAW.**—Nothing in this section shall be construed to exempt any spiral development program of the Department of Defense, after completion of the spiral development, from the applicability of any provision of chapter 144 of title 10, United States Code, or section 139, 181, 2366, 2399, or 2400 of such title in accordance with the terms and conditions of such provision.

(d) **EVALUATION.**—(1) The Director of Operational Test and Evaluation shall evaluate the results of each test conducted under subsection (a) as soon as practicable after the completion of such test.

(2) The Director shall submit to the Secretary of Defense and the congressional defense committees a report on the evaluation of each test conducted under subsection (a) upon completion of the evaluation of such test under paragraph (1). Reports.

(e) **COST, SCHEDULE, AND PERFORMANCE BASELINES.**—(1) The Director of the Missile Defense Agency shall establish cost, schedule, and performance baselines for each block configuration of the Ballistic Missile Defense System being fielded. The cost baseline for a block configuration shall include full life cycle costs for the block configuration.

(2) The Director shall include the baselines established under paragraph (1) in the first Selected Acquisition Report for the Ballistic Missile Defense System that is submitted to Congress under section 2432 of title 10, United States Code, after the establishment of such baselines.

(3) The Director shall also include in the Selected Acquisition Report submitted to Congress under paragraph (2) the significant assumptions used in determining the performance baseline under paragraph (1), including any assumptions regarding threat missile countermeasures and decoys.

(f) **VARIATIONS AGAINST BASELINES.**—In the event the cost, schedule, or performance of any block configuration of the Ballistic Missile Defense System varies significantly (as determined by the Director of the Ballistic Missile Defense Agency) from the applicable baseline established under subsection (d), the Director shall include such variation, and the reasons for such variation, in the Selected Acquisition Report submitted to Congress under section 2432 of title 10, United States Code.

(g) **MODIFICATIONS OF BASELINES.**—In the event the Director of the Missile Defense Agency elects to undertake any modification of a baseline established under subsection (d), the Director shall submit to the congressional defense committees a report setting forth the reasons for such modification.

Subtitle D—Other Matters

SEC. 241. ANNUAL REPORT ON SUBMARINE TECHNOLOGY INSERTION.

(a) **REPORT REQUIRED.**—(1) For each of fiscal years 2006, 2007, 2008, and 2009, the Secretary of Defense shall submit to the congressional defense committees a report on the submarine technologies that are available or potentially available for insertion in submarines of the Navy to reduce the production and operating costs of the submarines while maintaining or improving the effectiveness of the submarines.

(2) The annual report for a fiscal year under paragraph (1) shall be submitted at the same time that the President submits to Congress the budget for that fiscal year under section 1105(a) of title 31, United States Code.

(b) **CONTENT.**—The report on submarine technologies under subsection (a) shall include, for each class of submarines of the Navy, the following matters:

(1) A list of the technologies that have been demonstrated, together with—

(A) a plan for the insertion of any such technologies that have been determined appropriate for such submarines; and

(B) the estimated cost of such technology insertions.

(2) A list of the technologies that have not been demonstrated, together with a plan for the demonstration of any such technologies that have the potential for being appropriate for such submarines.

SEC. 242. SENSE OF CONGRESS REGARDING FUNDING OF THE ADVANCED SHIPBUILDING ENTERPRISE UNDER THE NATIONAL SHIPBUILDING RESEARCH PROGRAM OF THE NAVY.

(a) **FINDINGS.**—Congress makes the following findings:

(1) The budget for fiscal year 2005, as submitted to Congress by the President, provides \$10,300,000 for the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency in the national technology and industrial base.

(3) The leaders of the United States shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a

method for exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all components of the industry.

(b) SENSE OF CONGRESS.—It is the sense of Congress—

(1) that Congress—

(A) strongly supports the innovative Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program as an enterprise between the Navy and industry that has yielded new processes and techniques that reduce the cost of building and repairing ships in the United States; and

(B) is concerned that the future-years defense program of the Department of Defense that was submitted to Congress for fiscal year 2005 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2005; and

(2) that the Secretary of Defense should continue to provide in the future-years defense program for funding the Advanced Shipbuilding Enterprise at a sustaining level in order to support additional research to further reduce the cost of designing, building, and repairing ships.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

- Sec. 301. Operation and maintenance funding.
- Sec. 302. Working capital funds.
- Sec. 303. Other Department of Defense programs.

Subtitle B—Environmental Provisions

- Sec. 311. Satisfaction of Superfund audit requirements by Inspector General of the Department of Defense.
- Sec. 312. Reimbursement of Environmental Protection Agency for certain costs in connection with Moses Lake Wellfield Superfund Site, Moses Lake, Washington.
- Sec. 313. Increase in authorized amount of environmental remediation, Front Royal, Virginia.
- Sec. 314. Small boat harbor, Unalaska, Alaska.
- Sec. 315. Report regarding encroachment issues affecting Utah Test and Training Range, Utah.
- Sec. 316. Comptroller General study and report on alternative technologies to decontaminate groundwater at Department of Defense installations.
- Sec. 317. Comptroller General study and report on drinking water contamination and related health effects at Camp Lejeune, North Carolina.
- Sec. 318. Sense of Congress regarding perchlorate contamination of ground and surface water from Department of Defense activities.

Subtitle C—Workplace and Depot Issues

- Sec. 321. Simplification of annual reporting requirements concerning funds expended for depot maintenance and repair workloads.
- Sec. 322. Repeal of annual reporting requirement concerning management of depot employees.
- Sec. 323. Extension of special treatment for certain expenditures incurred in operation of Centers of Industrial and Technical Excellence.
- Sec. 324. Temporary authority for contractor performance of security-guard functions.
- Sec. 325. Pilot program for purchase of certain municipal services for Army installations.
- Sec. 326. Bid protests by Federal employees in actions under Office of Management and Budget Circular A-76.
- Sec. 327. Limitations on conversion of work performed by Department of Defense civilian employees to contractor performance.

Sec. 328. Competitive sourcing reporting requirement.

Subtitle D—Information Technology

Sec. 331. Preparation of Department of Defense plan for transition to Internet Protocol version 6.

Sec. 332. Defense business enterprise architecture, system accountability, and conditions for obligation of funds for defense business system modernization.

Sec. 333. Report on maturity and effectiveness of the Global Information Grid Bandwidth Expansion (GIG–BE).

Subtitle E—Extensions of Program Authorities

Sec. 341. Two-year extension of Department of Defense telecommunications benefit.

Sec. 342. Extension of Arsenal Support Program Initiative.

Sec. 343. Two-year extension of warranty claims recovery pilot program.

Subtitle F—Other Matters

Sec. 351. Reimbursement for certain protective, safety, or health equipment purchased by or for members of the Armed Forces deployed in contingency operations.

Sec. 352. Limitation on preparation or implementation of Mid-Range Financial Improvement Plan pending report.

Sec. 353. Pilot program to authorize Army working-capital funded facilities to engage in cooperative activities with non-Army entities.

Sec. 354. Transfer of excess Department of Defense personal property to assist firefighting agencies.

Subtitle A—Authorization of Appropriations

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

- (1) For the Army, \$26,098,411,000.
- (2) For the Navy, \$29,682,590,000.
- (3) For the Marine Corps, \$3,648,115,000.
- (4) For the Air Force, \$28,298,660,000.
- (5) For Defense-wide activities, \$17,325,276,000.
- (6) For the Army Reserve, \$2,008,128,000.
- (7) For the Naval Reserve, \$1,240,038,000.
- (8) For the Marine Corps Reserve, \$188,696,000.
- (9) For the Air Force Reserve, \$2,239,790,000.
- (10) For the Army National Guard, \$4,452,786,000.
- (11) For the Air National Guard, \$4,503,338,000.
- (12) For the United States Court of Appeals for the Armed Forces, \$10,825,000.
- (13) For Environmental Restoration, Army, \$400,948,000.
- (14) For Environmental Restoration, Navy, \$266,820,000.
- (15) For Environmental Restoration, Air Force, \$397,368,000.
- (16) For Environmental Restoration, Defense-wide, \$23,684,000.
- (17) For Environmental Restoration, Formerly Used Defense Sites, \$256,516,000.
- (18) For Overseas Humanitarian, Disaster, and Civic Aid programs, \$59,000,000.
- (19) For Cooperative Threat Reduction programs, \$409,200,000.

(20) For the Overseas Contingency Operations Transfer Fund, \$10,000,000.

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

- (1) For the Defense Working Capital Funds, \$451,886,000.
- (2) For the National Defense Sealift Fund, \$1,269,252,000.
- (3) For the Defense Working Capital Fund, Defense Commissary, \$1,175,000,000.

SEC. 303. OTHER DEPARTMENT OF DEFENSE PROGRAMS.

(a) **DEFENSE HEALTH PROGRAM.**—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for the Defense Health Program, in the amount of \$17,657,386,000, of which—

- (1) \$17,219,844,000 is for Operation and Maintenance;
- (2) \$72,907,000 is for Research, Development, Test, and Evaluation; and
- (3) \$364,635,000 is for Procurement.

(b) **CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, DEFENSE.**—(1) Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for Chemical Agents and Munitions Destruction, Defense, in the amount of \$1,371,990,000, of which—

- (A) \$1,088,801,000 is for Operation and Maintenance;
- (B) \$204,209,000 is for Research, Development, Test, and Evaluation; and
- (C) \$78,980,000 is for Procurement.

(2) Amounts authorized to be appropriated under paragraph (1) are authorized for—

(A) the destruction of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521); and

(B) the destruction of chemical warfare materiel of the United States that is not covered by section 1412 of such Act.

(c) **DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE-WIDE.**—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for Drug Interdiction and Counter-Drug Activities, Defense-wide, in the amount of \$852,947,000.

(d) **DEFENSE INSPECTOR GENERAL.**—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for the Office of the Inspector General of the Department of Defense, in the amount of \$204,562,000, of which—

- (1) \$202,362,000 is for Operation and Maintenance;
- (2) \$2,100,000 is for Procurement; and
- (3) \$100,000 is for Research, Development, Test, and Evaluation.

Subtitle B—Environmental Provisions

42 USC 9611
note.

SEC. 311. SATISFACTION OF SUPERFUND AUDIT REQUIREMENTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE.

(a) **SATISFACTION OF REQUIREMENTS.**—The Inspector General of the Department of Defense shall be deemed to be in compliance with the requirements of section 111(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(k)) if the Inspector General conducts periodic audits of the payments, obligations, reimbursements, and other uses of the Hazardous Substance Superfund by the Department of Defense, even if such audits do not occur on an annual basis.

(b) **REPORTS TO CONGRESS ON AUDITS.**—The Inspector General shall submit to Congress a report on each audit conducted by the Inspector General as described in subsection (a).

SEC. 312. REIMBURSEMENT OF ENVIRONMENTAL PROTECTION AGENCY FOR CERTAIN COSTS IN CONNECTION WITH MOSES LAKE WELLFIELD SUPERFUND SITE, MOSES LAKE, WASHINGTON.

(a) **AUTHORITY TO REIMBURSE.**—(1) Using funds described in subsection (b), the Secretary of Defense may transfer not more than \$524,926.54 to the Moses Lake Wellfield Superfund Site 10–6J Special Account.

(2) The payment under paragraph (1) is to reimburse the Environmental Protection Agency for its costs, including interest, incurred in overseeing a remedial investigation/feasibility study performed by the Department of the Army under the Defense Environmental Restoration Program at the former Larson Air Force Base, Moses Lake Superfund Site, Moses Lake, Washington.

(3) The reimbursement described in paragraph (2) is provided for in the interagency agreement entered into by the Department of the Army and the Environmental Protection Agency for the Moses Lake Wellfield Superfund Site in March 1999.

(b) **SOURCE OF FUNDS.**—Any payment under subsection (a) shall be made using funds authorized to be appropriated by section 301(17) for operation and maintenance for Environmental Restoration, Formerly Used Defense Sites.

(c) **USE OF FUNDS.**—The Environmental Protection Agency shall use the amount transferred under subsection (a) to pay costs incurred by the Agency at the Moses Lake Wellfield Superfund Site.

SEC. 313. INCREASE IN AUTHORIZED AMOUNT OF ENVIRONMENTAL REMEDIATION, FRONT ROYAL, VIRGINIA.

Section 591(a)(2) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 378) is amended by striking “\$12,000,000” and inserting “\$22,000,000”.

SEC. 314. SMALL BOAT HARBOR, UNALASKA, ALASKA.

Deadline.

The Secretary of the Army shall carry out the small boat harbor project in Unalaska, Alaska, at a total estimated cost of \$23,200,000, with an estimated Federal cost of \$11,500,000 and an estimated non-Federal cost of \$11,700,000, substantially in accordance with the plans, and subject to the conditions, recommended in a final report of the Chief of Engineers if a favorable

final report of the Chief for the project is completed not later than December 31, 2004.

SEC. 315. REPORT REGARDING ENCROACHMENT ISSUES AFFECTING UTAH TEST AND TRAINING RANGE, UTAH.

(a) **REPORT REQUIRED.**—The Secretary of the Air Force shall prepare a report that outlines current and anticipated encroachments on the use and utility of the special use airspace of the Utah Test and Training Range in the State of Utah, including encroachments brought about through actions of other Federal agencies. The Secretary shall include in the report such recommendations as the Secretary considers appropriate regarding any legislative initiatives necessary to address encroachment problems identified by the Secretary in the report.

(b) **SUBMISSION OF REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary shall submit the report to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate. It is the sense of Congress that the recommendations contained in the report should be carefully considered for future legislative action.

(c) **PROHIBITION ON GROUND MILITARY OPERATIONS.**—Nothing in this section shall be construed to permit a military operation to be conducted on the ground in a covered wilderness study area in the Utah Test and Training Range.

(d) **COMMUNICATIONS AND TRACKING SYSTEMS.**—Nothing in this section shall be construed to prevent any required maintenance of existing communications, instrumentation, or electronic tracking systems (or the infrastructure supporting such systems) necessary for effective testing and training to meet military requirements in the Utah Test and Training Range.

SEC. 316. COMPTROLLER GENERAL STUDY AND REPORT ON ALTERNATIVE TECHNOLOGIES TO DECONTAMINATE GROUNDWATER AT DEPARTMENT OF DEFENSE INSTALLATIONS.

(a) **COMPTROLLER GENERAL STUDY.**—The Comptroller General shall conduct a study to determine whether cost-effective technologies are available to the Department of Defense for the cleanup of groundwater contamination at Department installations in lieu of traditional methods, such as pump and treat, used to respond to groundwater contamination.

(b) **ELEMENTS OF STUDY.**—In conducting the study under subsection (a), the Comptroller General shall—

(1) identify current technologies being used or field tested by the Department of Defense to treat groundwater at Department installations;

(2) identify cost-effective technologies for the cleanup of groundwater contamination that—

(A) are being researched, are under development by commercial vendors, or are available commercially and being used outside the Department; and

(B) have potential for use by the Department to address groundwater contamination;

(3) evaluate the potential benefits and limitations of using the technologies identified under paragraphs (1) and (2); and

(4) consider the barriers, such as cost, capability, or legal restrictions, to using the technologies identified under paragraph (2).

(c) **REPORT REQUIRED.**—Not later than April 1, 2005, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the study, including information regarding the matters specified in subsection (b) and any recommendations, including recommendations for administrative or legislative action, that the Comptroller General considers appropriate.

SEC. 317. COMPTROLLER GENERAL STUDY AND REPORT ON DRINKING WATER CONTAMINATION AND RELATED HEALTH EFFECTS AT CAMP LEJEUNE, NORTH CAROLINA.

(a) **STUDY.**—The Comptroller General shall conduct a study on drinking water contamination and related health effects at Camp Lejeune, North Carolina. The study shall consist of the following:

(1) A study of the history of drinking water contamination at Camp Lejeune to determine, to the extent practical—

(A) what contamination has been found in the drinking water;

(B) the source of such contamination and when it may have begun; and

(C) what actions have been taken to address such contamination.

(2) An assessment of the study on the possible health effects associated with the drinking of contaminated drinking water at Camp Lejeune as proposed by the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services, including whether the proposed study—

(A) will address the appropriate at-risk populations;

(B) will encompass an appropriate timeframe;

(C) will consider all relevant health effects; and

(D) can be completed on an expedited basis without compromising its quality.

(b) **AUTHORITY TO USE EXPERTS.**—The Comptroller General may use experts in conducting the study required by subsection (a). Any such experts shall be independent, highly qualified, and knowledgeable in the matters covered by the study.

(c) **PARTICIPATION BY OTHER INTERESTED PARTIES.**—In conducting the study required by subsection (a), the Comptroller General shall ensure that interested parties, including individuals who lived or worked at Camp Lejeune during the period when the drinking water may have been contaminated, have the opportunity to submit information and views on the matters covered by the study.

(d) **CONSTRUCTION WITH ATSDR STUDY.**—The requirement under subsection (a)(2) that the Comptroller General conduct an assessment of the study proposed by the Agency for Toxic Substances and Disease Registry, as described in such subsection, may not be construed as a basis for the delay of that study. The assessment is intended to provide an independent review of the appropriateness and credibility of the study proposed by the Agency and to identify possible improvements in the plan or implementation of the study proposed by the Agency.

(e) **REPORT.**—(1) Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the congressional defense committees a report on the study required by subsection (a), including such recommendations as the

Comptroller General considers appropriate for further study or for legislative or other action.

(2) Recommendations under paragraph (1) may include recommendations for modifications or additions to the study proposed by the Agency for Toxic Substances and Disease Registry, as described in subsection (a)(2), in order to improve the study.

SEC. 318. SENSE OF CONGRESS REGARDING PERCHLORATE CONTAMINATION OF GROUND AND SURFACE WATER FROM DEPARTMENT OF DEFENSE ACTIVITIES.

It is the sense of Congress that the Secretary of Defense should—

(1) develop a plan for the remediation of perchlorate contamination resulting from the activities of the Department of Defense to ensure that the Department is prepared to respond quickly and appropriately once the United States establishes a drinking water standard for perchlorate;

(2) continue remediation activities for perchlorate contamination at those sites where perchlorate contamination poses an imminent and substantial endangerment to public health and welfare and where the Department is undertaking site-specific remedial action as of the date of the enactment of this Act;

(3) develop a plan for the remediation of perchlorate contamination resulting from the activities of the Department of Defense in cases in which, notwithstanding the lack of a drinking water standard for perchlorate, such contamination is present in ground or surface water at levels that the Secretary of Defense determines pose a hazard to human health; and

(4) continue the process of evaluating and prioritizing perchlorate contamination sites without waiting for the establishment of the Federal drinking water standard for perchlorate.

Subtitle C—Workplace and Depot Issues

SEC. 321. SIMPLIFICATION OF ANNUAL REPORTING REQUIREMENTS CONCERNING FUNDS EXPENDED FOR DEPOT MAINTENANCE AND REPAIR WORKLOADS.

Subsection (d) of section 2466 of title 10, United States Code, is amended to read as follows:

“(d) ANNUAL REPORT AND REVIEW.—(1) Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that was expended during the preceding fiscal year, and are projected to be expended during the current fiscal year and the ensuing fiscal year, for performance of depot-level maintenance and repair workloads by the public and private sectors.

“(2) Not later than 90 days after the date on which the Secretary submits a report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General’s views on whether—

“(A) the Department of Defense complied with the requirements of subsection (a) during the preceding fiscal year covered by the report; and

“(B) the expenditure projections for the current fiscal year and the ensuing fiscal year are reasonable.”.

SEC. 322. REPEAL OF ANNUAL REPORTING REQUIREMENT CONCERNING MANAGEMENT OF DEPOT EMPLOYEES.

(a) REPEAL.—Section 2472 of title 10, United States Code, is amended—

(1) by striking “(a) PROHIBITION ON MANAGEMENT BY END STRENGTH.—”; and

(2) by striking subsection (b).

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

“§ 2472. Prohibition on management of depot employees by end strength”.

(2) The table of sections at the beginning of chapter 146 of such title is amended by striking the item relating to section 2472 and inserting the following new item:

“2472. Prohibition on management of depot employees by end strength.”.

SEC. 323. EXTENSION OF SPECIAL TREATMENT FOR CERTAIN EXPENDITURES INCURRED IN OPERATION OF CENTERS OF INDUSTRIAL AND TECHNICAL EXCELLENCE.

Section 2474(f)(1) of title 10, United States Code, is amended by striking “through 2006” and inserting “through 2009”.

SEC. 324. TEMPORARY AUTHORITY FOR CONTRACTOR PERFORMANCE OF SECURITY-GUARD FUNCTIONS.

(a) CONDITIONAL EXTENSION OF AUTHORITY.—Subsection (c) of section 332 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 116 Stat. 2513) is amended—

(1) by inserting “(1)” after “AUTHORITY.—”; and

(2) by striking “at the end of the three-year period” and all that follows through the period at the end of the subsection and inserting the following: “at the end of September 30, 2006, except that such authority shall not be in effect after December 1, 2005, if the Secretary fails to submit to Congress the plan required by subsection (d)(4), until the date on which the Secretary submits the plan.

“(2) No security-guard functions may be performed under any contract entered into using the authority provided under this section during any period in which the authority for contractor performance of security-guard functions under this section is not in effect under paragraph (1). The term of any contract entered into using such authority may not extend beyond September 30, 2006.”.

(b) REAFFIRMATION AND REVISION OF REPORTING REQUIREMENT.—Subsection (d) of such section is amended to read as follows:

“(d) REPORT AND PLAN REQUIRED.—Not later than December 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report that—

“(1) identifies each contract for the performance of security-guard functions entered into on or before September 30, 2004,

pursuant to the authority provided by subsection (a), including information regarding—

“(A) each installation at which such security-guard functions are performed or are to be performed;

“(B) the period and amount of such contract;

“(C) the number of security guards employed or to be employed under such contract;

“(D) whether the contract was awarded pursuant to full and open competition; and

“(E) the actions taken or to be taken within the Department of Defense to ensure that the conditions applicable under paragraph (1) of subsection (a) or determined under paragraph (2) of such subsection are satisfied;

“(2) identifies, for each military installation at which such authority was used or is expected to be used, any requirements for the performance of security-guard functions described in subsection (a) that are expected to continue after the date on which such authority expires;

“(3) identifies any limitation or constraint on the end strength of the civilian workforce of the Department of Defense that makes it difficult to meet requirements identified under paragraph (2) by hiring personnel as civilian employees of the Department of Defense; and

“(4) includes a plan for meeting such requirements, in a manner consistent with applicable law, on a long-term basis.”.

SEC. 325. PILOT PROGRAM FOR PURCHASE OF CERTAIN MUNICIPAL SERVICES FOR ARMY INSTALLATIONS.

10 USC 2461
note.

(a) **PILOT PROGRAM AUTHORIZED.**—The Secretary of Army may carry out a pilot program to procure one or more of the municipal services specified in subsection (b) for an Army installation from a county or municipality in which the installation is located for the purpose of evaluating the efficacy of procuring such services rather than providing them directly.

(b) **SERVICES AUTHORIZED FOR PROCUREMENT.**—Only the following services may be procured for a military installation participating in the pilot program:

- (1) Refuse collection.
- (2) Refuse disposal.
- (3) Library services.
- (4) Recreation services.
- (5) Facility maintenance and repair.
- (6) Utilities.

(c) **PARTICIPATING INSTALLATIONS.**—Not more than two Army installations may be selected to participate in the pilot program, and only installations located in the United States are eligible for selection.

(d) **CONGRESSIONAL NOTIFICATION.**—The Secretary may not enter into a contract under the pilot program for the procurement of municipal services until the Secretary notifies the congressional defense committees of the proposed contract and a period of 14 days elapses from the date the notification is received by the committees.

(e) **IMPLEMENTATION REPORT.**—(1) Not later than February 1, 2007, the Secretary shall submit to the congressional defense committees and the Comptroller General a report describing the implementation of the pilot program, evaluating the efficacy of

procuring municipal services for participating installations from local counties or municipalities, and containing any recommendations that the Secretary considers appropriate regarding expansion or alteration of the program.

(2) The Comptroller General shall submit to the congressional defense committees an assessment of the findings and recommendations contained in the report submitted under paragraph (1).

(f) **TERMINATION OF PILOT PROGRAM.**—The pilot program shall terminate on September 30, 2010. Any contract entered into under the pilot program shall terminate not later than that date.

SEC. 326. BID PROTESTS BY FEDERAL EMPLOYEES IN ACTIONS UNDER OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-76.

(a) **TREATMENT OF AGENCY TENDER OFFICIAL AS INTERESTED PARTY.**—Section 3551(2) of title 31, United States Code, is amended—

(1) by inserting “(A)” after “(2)”; and

(2) by adding at the end the following new subparagraph:

“(B) The term includes the official responsible for submitting the Federal agency tender in a public-private competition conducted under Office of Management and Budget Circular A-76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent employees of the Federal agency.”

(b) **FILING OF PROTEST ON BEHALF OF FEDERAL EMPLOYEES.**—Section 3552 of such title is amended—

(1) by inserting “(a)” before “A protest”; and

(2) by adding at the end the following new subsection:

“(b)(1) In the case of an agency tender official who is an interested party under section 3551(2)(B) of this title, the official may file a protest in connection with the public-private competition for which the official is an interested party. At the request of a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to such public-private competition, the official shall file a protest in connection with such public-private competition unless the official determines that there is no reasonable basis for the protest.

“(2) The determination of an agency tender official under paragraph (1) whether or not to file a protest is not subject to administrative or judicial review. An agency tender official shall provide written notification to Congress whenever the official makes a determination under paragraph (1) that there is no reasonable basis for a protest.”

(c) **INTERVENTION IN PROTEST.**—Section 3553 of such title is amended by adding at the end the following new subsection:

“(g) If an interested party files a protest in connection with a public-private competition described in section 3551(2)(B) of this title, a person representing a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to the public-private competition may intervene in protest.”

(d) **APPLICABILITY.**—The amendments made by this section shall apply to protests filed under subchapter V of chapter 35 of title 31, United States Code, that relate to studies initiated under Office of Management and Budget Circular A-76 on or after the end of the 90-day period beginning on the date of the enactment of this Act.

(e) **RULE OF CONSTRUCTION.**—The amendments made by this section shall not be construed to authorize the use of a protest under subchapter V of chapter 35 of title 31, United States Code, with regard to a decision made by an agency tender official.

31 USC 3551
note.

SEC. 327. LIMITATIONS ON CONVERSION OF WORK PERFORMED BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES TO CONTRACTOR PERFORMANCE.

10 USC 2461
note.

(a) **REQUIRED COST-SAVINGS THRESHOLD FOR CONVERSION.**—If a public-private competition conducted under the Office of Management and Budget Circular A–76 dated May 29, 2003 (68 Fed. Reg. 32134), regarding an activity or function performed by civilian employees of the Department of Defense is required to include a formal comparison of the cost of civilian employee performance of the activity or function with the cost of contractor performance, the Secretary of Defense shall maintain the continued performance of the activity or function by civilian employees unless the competitive sourcing official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of the following:

(1) \$10,000,000.

(2) 10 percent of the most efficient organization’s personnel-related costs for performance of the activity or function by civilian employees.

(b) **PROHIBITION ON MODIFICATION OF FUNCTIONS TO PERMIT STREAMLINED A–76 STUDY.**—The Secretary of Defense shall ensure that no organization, function, or activity of the Department of Defense is consolidated, restructured, reengineered, or otherwise modified in any way for the purpose of exempting any public-private competition conducted under the Office of Management and Budget Circular A–76 dated May 29, 2003 (68 Fed. Reg. 32134), regarding a commercial or industrial type function of the Department of Defense from the requirement to formally compare, in accordance with such Circular, the cost of civilian employee performance of the function with the cost of contractor performance.

(c) **EXCEPTION.**—Subsection (a) does not apply in the case of a public-private competition conducted as part of the best-value source selection pilot program authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 2461 note).

SEC. 328. COMPETITIVE SOURCING REPORTING REQUIREMENT.

Not later than February 1, 2005, the Inspector General of the Department of Defense shall submit to Congress a report addressing whether the Department of Defense—

(1) employs a sufficient number of adequately trained civilian employees—

(A) to conduct satisfactorily, taking into account equity, efficiency and expeditiousness, all of the public-private competitions that are scheduled to be undertaken by the Department of Defense during the next fiscal year (including a sufficient number of employees to formulate satisfactorily the performance work statements and most efficient organization plans for the purposes of such competitions); and

(B) to administer any resulting contracts; and
(2) has implemented a comprehensive and reliable system to track and assess the cost and quality of the performance of functions of the Department of Defense by service contractors.

Subtitle D—Information Technology

SEC. 331. PREPARATION OF DEPARTMENT OF DEFENSE PLAN FOR TRANSITION TO INTERNET PROTOCOL VERSION 6.

(a) **TRANSITION PLAN REQUIRED.**—The Secretary of Defense shall prepare a plan detailing the Department of Defense strategy to provide for the transition of the Department's information technology systems to Internet Protocol version 6 from the present use of Internet Protocol version 4 and other network protocols. In preparing the transition plan, the Secretary shall compare private industry plans for the transition to Internet Protocol version 6.

(b) **ELEMENTS OF PLAN.**—The transition plan required by subsection (a) shall include the following:

(1) An outline of the networking and security system equipment that will need to be replaced in the transition, including the timing and costs of such replacement.

(2) An assessment of how the current and new networks and security systems will be managed.

(3) An assessment of the potential impact of the transition, including an overall cost estimate for the transition and an estimate of the costs to be incurred by each of the military departments and the Defense Agencies.

(4) Any measures proposed to alleviate any adverse effects of the transition.

(c) **TESTING AND EVALUATION FOR INTERNET PROTOCOL.**—To determine whether a change to the use of Internet Protocol version 6 will support Department of Defense requirements, the Secretary of Defense shall provide for rigorous, real-world, end-to-end testing of Internet Protocol version 6, as proposed for use by the Department, to evaluate the following:

(1) The ability of Internet Protocol version 6, with its “best effort” quality of service, to satisfactorily support the Department's multiple applications and other information technology systems, including the use of Internet Protocol version 6 over bandwidth-constrained tactical circuits.

(2) The ability of the Department's networks using Internet Protocol version 6 to respond to, and perform under, heavy loading of the core networks.

(d) **REPORTS ON PLAN AND TEST RESULTS.**—(1) Not later than March 31, 2005, the Secretary of Defense shall submit to the congressional defense committees a report containing the transition plan prepared under subsection (a).

(2) Not later than September 30, 2005, the Director of Operational Test and Evaluation shall submit to the congressional defense committees a report containing an update on the continuing test program and any test results.

SEC. 332. DEFENSE BUSINESS ENTERPRISE ARCHITECTURE, SYSTEM ACCOUNTABILITY, AND CONDITIONS FOR OBLIGATION OF FUNDS FOR DEFENSE BUSINESS SYSTEM MODERNIZATION.

(a) IN GENERAL.—(1) Chapter 131 of title 10, United States Code, is amended by inserting before section 2223 the following new section:

“§ 2222. Defense business systems: architecture, accountability, and modernization

“(a) CONDITIONS FOR OBLIGATION OF FUNDS FOR DEFENSE BUSINESS SYSTEM MODERNIZATION.—Effective October 1, 2005, funds appropriated to the Department of Defense may not be obligated for a defense business system modernization that will have a total cost in excess of \$1,000,000 unless—

Effective date.

“(1) the approval authority designated for the defense business system certifies to the Defense Business Systems Management Committee established by section 186 of this title that the defense business system modernization—

“(A) is in compliance with the enterprise architecture developed under subsection (c);

“(B) is necessary to achieve a critical national security capability or address a critical requirement in an area such as safety or security; or

“(C) is necessary to prevent a significant adverse effect on a project that is needed to achieve an essential capability, taking into consideration the alternative solutions for preventing such adverse effect; and

“(2) the certification by the approval authority is approved by the Defense Business Systems Management Committee.

“(b) OBLIGATION OF FUNDS IN VIOLATION OF REQUIREMENTS.—The obligation of Department of Defense funds for a business system modernization in excess of the amount specified in subsection (a) that has not been certified and approved in accordance with such subsection is a violation of section 1341(a)(1)(A) of title 31.

“(c) ENTERPRISE ARCHITECTURE FOR DEFENSE BUSINESS SYSTEMS.—Not later than September 30, 2005, the Secretary of Defense, acting through the Defense Business Systems Management Committee, shall develop—

Deadline.

“(1) an enterprise architecture to cover all defense business systems, and the functions and activities supported by defense business systems, which shall be sufficiently defined to effectively guide, constrain, and permit implementation of interoperable defense business system solutions and consistent with the policies and procedures established by the Director of the Office of Management and Budget, and

“(2) a transition plan for implementing the enterprise architecture for defense business systems.

“(d) COMPOSITION OF ENTERPRISE ARCHITECTURE.—The defense business enterprise architecture developed under subsection (c)(1) shall include the following:

“(1) An information infrastructure that, at a minimum, would enable the Department of Defense to—

“(A) comply with all Federal accounting, financial management, and reporting requirements;

“(B) routinely produce timely, accurate, and reliable financial information for management purposes;

“(C) integrate budget, accounting, and program information and systems; and

“(D) provide for the systematic measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

“(2) Policies, procedures, data standards, and system interface requirements that are to apply uniformly throughout the Department of Defense.

“(e) COMPOSITION OF TRANSITION PLAN.—(1) The transition plan developed under subsection (c)(2) shall include the following:

“(A) The acquisition strategy for new systems that are expected to be needed to complete the defense business enterprise architecture.

“(B) A listing of the defense business systems as of December 2, 2002 (known as ‘legacy systems’), that will not be part of the objective defense business enterprise architecture, together with the schedule for terminating those legacy systems that provides for reducing the use of those legacy systems in phases.

“(C) A listing of the legacy systems (referred to in subparagraph (B)) that will be a part of the objective defense business system, together with a strategy for making the modifications to those systems that will be needed to ensure that such systems comply with the defense business enterprise architecture.

“(2) Each of the strategies under paragraph (1) shall include specific time-phased milestones, performance metrics, and a statement of the financial and nonfinancial resource needs.

“(f) APPROVAL AUTHORITIES AND ACCOUNTABILITY FOR DEFENSE BUSINESS SYSTEMS.—The Secretary of Defense shall delegate responsibility for review, approval, and oversight of the planning, design, acquisition, deployment, operation, maintenance, and modernization of defense business systems as follows:

“(1) The Under Secretary of Defense for Acquisition, Technology and Logistics shall be responsible and accountable for any defense business system the primary purpose of which is to support acquisition activities, logistics activities, or installations and environment activities of the Department of Defense.

“(2) The Under Secretary of Defense (Comptroller) shall be responsible and accountable for any defense business system the primary purpose of which is to support financial management activities or strategic planning and budgeting activities of the Department of Defense.

“(3) The Under Secretary of Defense for Personnel and Readiness shall be responsible and accountable for any defense business system the primary purpose of which is to support human resource management activities of the Department of Defense.

“(4) The Assistant Secretary of Defense for Networks and Information Integration and the Chief Information Officer of the Department of Defense shall be responsible and accountable for any defense business system the primary purpose of which is to support information technology infrastructure or information assurance activities of the Department of Defense.

“(5) The Deputy Secretary of Defense or an Under Secretary of Defense, as designated by the Secretary of Defense, shall be responsible for any defense business system the primary

purpose of which is to support any activity of the Department of Defense not covered by paragraphs (1) through (4).

“(g) DEFENSE BUSINESS SYSTEM INVESTMENT REVIEW.—(1) The Secretary of Defense shall require each approval authority designated under subsection (f) to establish, not later than March 15, 2005, an investment review process, consistent with section 11312 of title 40, to review the planning, design, acquisition, development, deployment, operation, maintenance, modernization, and project cost benefits and risks of all defense business systems for which the approval authority is responsible. The investment review process so established shall specifically address the responsibilities of approval authorities under subsection (a).

“(2) The review of defense business systems under the investment review process shall include the following:

“(A) Review and approval by an investment review board of each defense business system as an investment before the obligation of funds on the system.

“(B) Periodic review, but not less than annually, of every defense business system investment.

“(C) Representation on each investment review board by appropriate officials from among the armed forces, combatant commands, the Joint Chiefs of Staff, and Defense Agencies.

“(D) Use of threshold criteria to ensure an appropriate level of review within the Department of Defense of, and accountability for, defense business system investments depending on scope, complexity, and cost.

“(E) Use of procedures for making certifications in accordance with the requirements of subsection (a).

“(F) Use of procedures for ensuring consistency with the guidance issued by the Secretary of Defense and the Defense Business Systems Management Committee, as required by section 186(c) of this title, and incorporation of common decision criteria, including standards, requirements, and priorities that result in the integration of defense business systems.

“(h) BUDGET INFORMATION.—In the materials that the Secretary submits to Congress in support of the budget submitted to Congress under section 1105 of title 31 for fiscal year 2006 and fiscal years thereafter, the Secretary of Defense shall include the following information:

“(1) Identification of each defense business system for which funding is proposed in that budget.

“(2) Identification of all funds, by appropriation, proposed in that budget for each such system, including—

“(A) funds for current services (to operate and maintain the system); and

“(B) funds for business systems modernization, identified for each specific appropriation.

“(3) For each such system, identification of the official to whom authority for such system is delegated under subsection (f).

“(4) For each such system, a description of each certification made under subsection (d) with regard to such system.

“(i) CONGRESSIONAL REPORTS.—Not later than March 15 of each year from 2005 through 2009, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense compliance with the requirements of this section. The first report shall define plans and commitments for meeting

the requirements of subsection (a), including specific milestones and performance measures. Subsequent reports shall—

“(1) describe actions taken and planned for meeting the requirements of subsection (a), including—

“(A) specific milestones and actual performance against specified performance measures, and any revision of such milestones and performance measures; and

“(B) specific actions on the defense business system modernizations submitted for certification under such subsection;

“(2) identify the number of defense business system modernizations so certified;

“(3) identify any defense business system modernization with an obligation in excess of \$1,000,000 during the preceding fiscal year that was not certified under subsection (a), and the reasons for the waiver; and

“(4) discuss specific improvements in business operations and cost savings resulting from successful defense business systems modernization efforts.

“(j) DEFINITIONS.—In this section:

“(1) The term ‘approval authority’, with respect to a defense business system, means the Department of Defense official responsible for the defense business system, as designated by subsection (f).

“(2) The term ‘defense business system’ means an information system, other than a national security system, operated by, for, or on behalf of the Department of Defense, including financial systems, mixed systems, financial data feeder systems, and information technology and information assurance infrastructure, used to support business activities, such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.

“(3) The term ‘defense business system modernization’ means—

“(A) the acquisition or development of a new defense business system; or

“(B) any significant modification or enhancement of an existing defense business system (other than necessary to maintain current services).

“(4) The term ‘enterprise architecture’ has the meaning given that term in section 3601(4) of title 44.

“(5) The terms ‘information system’ and ‘information technology’ have the meanings given those terms in section 11101 of title 40.

“(6) The term ‘national security system’ has the meaning given that term in section 2315 of this title.”.

(2) The table of sections at the beginning of such chapter is amended by inserting before the item relating to section 2223 the following new item:

“2222. Defense business systems: architecture, accountability, and modernization.”.

(b) DEFENSE BUSINESS SYSTEM MANAGEMENT COMMITTEE.—

(1) Chapter 7 of such title is amended by adding at the end the following new section:

“§ 186. Defense Business System Management Committee

“(a) **ESTABLISHMENT.**—The Secretary of Defense shall establish a Defense Business Systems Management Committee, to be composed of the following persons:

“(1) The Deputy Secretary of Defense.

“(2) The Under Secretary of Defense for Acquisition, Logistics, and Technology.

“(3) The Under Secretary of Defense for Personnel and Readiness.

“(4) The Under Secretary of Defense (Comptroller).

“(5) The Assistant Secretary of Defense for Networks and Information Integration.

“(6) The Secretaries of the military departments and the heads of the Defense Agencies.

“(7) Such additional personnel of the Department of Defense (including personnel assigned to the Joint Chiefs of Staff and combatant commands) as are designated by the Secretary of Defense.

“(b) **CHAIRMAN AND VICE CHAIRMAN.**—The Deputy Secretary of Defense shall serve as the chairman of the Committee. The Secretary of Defense shall designate one of the officials specified in paragraphs (2) through (5) of subsection (a) as the vice chairman of the Committee, who shall act as chairman in the absence of the Deputy Secretary of Defense.

“(c) **DUTIES.**—(1) In addition to any other matters assigned to the Committee by the Secretary of Defense, the Committee shall—

“(A) recommend to the Secretary of Defense policies and procedures necessary to effectively integrate the requirements of section 2222 of this title into all business activities and any transformation, reform, reorganization, or process improvement initiatives undertaken within the Department of Defense;

“(B) review and approve any major update of the defense business enterprise architecture developed under subsection (b) of section 2222 of this title, including evolving the architecture, and of defense business systems modernization plans; and

“(C) manage cross-domain integration consistent with such enterprise architecture.

“(2) The Committee shall be responsible for coordinating defense business system modernization initiatives to maximize benefits and minimize costs for the Department of Defense and periodically report to the Secretary on the status of defense business system modernization efforts.

“(3) The Committee shall ensure that funds are obligated for defense business system modernization in a manner consistent with section 2222 of this title.

“(c) **DEFINITIONS.**—In this section, the terms ‘defense business system’ and ‘defense business system modernization’ have the meanings given such terms in section 2222 of this title.”

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“186. Defense Business System Management Committee.”

(c) **IMPLEMENTATION REQUIREMENTS.**—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall—

Deadline.
10 USC 186 note.

(1) complete the delegation of responsibility for the review, approval, and oversight of the planning, design, acquisition, deployment, operation, maintenance, and modernization of defense business systems required by subsection (f) of section 2222 of title 10, United States Code, as added by subsection (a)(1); and

(2) designate a vice chairman of the Defense Business System Management Committee, as required by subsection (b) of section 186 of such title, as added by subsection (b)(1).

(d) **COMPTROLLER GENERAL ASSESSMENT.**—Not later than 60 days after the date on which the Secretary of Defense approves the defense business enterprise architecture and transition plan developed under section 2222 of title 10, United States Code, as added by subsection (a)(1), and again each year not later than 60 days after the submission of the annual report required under subsection (i), the Comptroller General shall submit to the congressional defense committees an assessment of the extent to which the actions taken by the Department comply with the requirements of such section.

(e) **RELATION TO ANNUAL REGISTRATION REQUIREMENTS.**—Nothing in sections 186 and 2222 of title 10, United States Code, as added by this section, shall be construed to alter the requirements of section 8083 of the Department of Defense Appropriations Act, 2005 (Public Law 108-287; 118 Stat. 989), with regard to information technology systems (as defined in subsection (d) of such section).

(f) **REPEAL OF OBSOLETE FINANCIAL MANAGEMENT ENTERPRISE ARCHITECTURE REQUIREMENTS.**—Section 1004 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 10 U.S.C. 113 note) is repealed.

SEC. 333. REPORT ON MATURITY AND EFFECTIVENESS OF THE GLOBAL INFORMATION GRID BANDWIDTH EXPANSION (GIG-BE).

(a) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on a test program to demonstrate the maturity and effectiveness of the Global Information Grid-Bandwidth Expansion (hereinafter in this section referred to as “GIG-BE”).

(b) **CONTENT OF REPORT.**—In the report under subsection (a), the Secretary of Defense shall include the following:

(1) The Secretary’s determination as to whether the results of the test program described in subsection (a) demonstrate compliance of the GIG-BE architecture with the overall goals of the GIG-BE program.

(2) Identification of—

(A) the extent to which the GIG-BE architecture does not meet the overall goals of the GIG-BE program; and

(B) the components of that architecture that are not yet sufficiently developed to achieve the overall goals of that program.

(3) A plan for achieving compliance referred to in paragraph (1), together with cost estimates for carrying out that plan.

(4) Documentation of the equipment and network configuration used in the test program to demonstrate real-world scenarios for the operation of the GIG-BE within the continental United States.

Subtitle E—Extensions of Program Authorities

SEC. 341. TWO-YEAR EXTENSION OF DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT.

Section 344(c) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1448) is amended by striking “September 30, 2004” and inserting “September 30, 2006”.

SEC. 342. EXTENSION OF ARSENAL SUPPORT PROGRAM INITIATIVE.

(a) DURATION OF PROGRAM.—Subsection (a) of section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 10 U.S.C. 4551 note) is amended by striking “2004” and inserting “2008”.

(b) ADDITIONAL REPORT REQUIRED.—Subsection (g) of such section is amended—

(1) in paragraph (1), by striking “2004” and inserting “2008”; and

(2) in paragraph (2), by striking “2003” and inserting “2007”.

SEC. 343. TWO-YEAR EXTENSION OF WARRANTY CLAIMS RECOVERY PILOT PROGRAM.

Section 391 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 2304 note) is amended—

(1) in subsection (f), by striking “September 30, 2004” and inserting “September 30, 2006”; and

(2) by adding at the end the following new subsection:

“(g) REPORTING REQUIREMENT.—Not later than February 1, 2006, the Secretary of Defense shall submit to Congress a report on the pilot program, including—

“(1) a description of the extent to which commercial firms have been used to provide the services specified in subsection (b) and the type of services procured;

“(2) a description of any problems that have limited the ability of the Secretary to utilize the pilot program to procure such services; and

“(3) the recommendation of the Secretary regarding whether the pilot program should be made permanent or extended beyond September 30, 2006.”.

Subtitle F—Other Matters

SEC. 351. REIMBURSEMENT FOR CERTAIN PROTECTIVE, SAFETY, OR HEALTH EQUIPMENT PURCHASED BY OR FOR MEMBERS OF THE ARMED FORCES DEPLOYED IN CONTINGENCY OPERATIONS.

(a) REIMBURSEMENT REQUIRED.—The Secretary of Defense shall reimburse a member of the Armed Forces for the cost (including any shipping cost) of any protective, safety, or health equipment that was purchased by the member or by another person on behalf of the member for the personal use of the member in anticipation of, or during, the deployment of the member in connection with

Operation Noble Eagle, Operation Enduring Freedom, or Operation Iraqi Freedom, but only if—

(1) the Secretary of Defense certifies that the protective, safety, or health equipment was critical to the protection, safety, or health of the member;

(2) the member was not issued the protective, safety, or health equipment before the member became engaged in operations in areas or situations described in section 310(a)(2) of title 37, United States Code; and

(3) the protective, safety, or health equipment was purchased by the member during the period beginning on September 11, 2001, and ending on July 31, 2004.

(b) AMOUNT OF REIMBURSEMENT.—The amount of reimbursement provided under subsection (a) per item of protective, safety, or health equipment purchased by a member of the Armed Forces may not exceed \$1,100.

(c) SUBMISSION OF REIMBURSEMENT CLAIMS.—Claims for reimbursement for the cost of protective, safety, or health equipment purchased by a member of the Armed Forces shall be submitted to the Secretary of Defense under this section not later than one year after the date on which the implementing rules required by subsection (d) take effect.

Deadline.

(d) RULEMAKING.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall issue rules to expedite the provision of reimbursement under subsection (a). In conducting such rulemaking, the Secretary shall address the circumstances under which the United States will assume title or ownership of any protective, safety, or health equipment for which reimbursement is made.

SEC. 352. LIMITATION ON PREPARATION OR IMPLEMENTATION OF MID-RANGE FINANCIAL IMPROVEMENT PLAN PENDING REPORT.

Amounts authorized to be appropriated to the Department of Defense for fiscal year 2005 for operation and maintenance may not be obligated for the purpose of preparing or implementing the Mid-Range Financial Improvement Plan until the Secretary of Defense submits to the congressional defense committees a report containing the following:

(1) A determination that the enterprise architecture for defense business systems and the transition plan for implementing the enterprise architecture have been developed, as required by subsection (c) of section 2222 of title 10, United States Code, as added by section 332(a).

(2) An explanation of the manner in which the operation and maintenance funds will be used for each of the military departments and the Defense Agencies to prepare or implement the Mid-Range Financial Improvement Plan during that fiscal year.

(3) An estimate of the costs for future fiscal years for each of the military departments and the Defense Agencies to prepare and implement the Mid-Range Financial Improvement Plan.

SEC. 353. PILOT PROGRAM TO AUTHORIZE ARMY WORKING-CAPITAL FUNDED FACILITIES TO ENGAGE IN COOPERATIVE ACTIVITIES WITH NON-ARMY ENTITIES.

(a) COOPERATIVE ARRANGEMENTS AUTHORIZED.—Chapter 433 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 4544. Army industrial facilities: cooperative activities with non-Army entities

“(a) COOPERATIVE ARRANGEMENTS AUTHORIZED.—A working-capital funded Army industrial facility may enter into a contract or other cooperative arrangement with a non-Army entity to carry out with the non-Army entity a military or commercial project described in subsection (b), subject to the conditions prescribed in subsection (c).

“(b) AUTHORIZED ACTIVITIES.—A cooperative arrangement entered into by an Army industrial facility under subsection (a) may provide for any of the following activities:

“(1) The sale of articles manufactured by the facility or services performed by the facility to persons outside the Department of the Army.

“(2) The performance of work by a non-Army entity at the facility.

“(3) The performance of work by the facility for a non-Army entity.

“(4) The sharing of work by the facility and a non-Army entity.

“(5) The leasing, or use under a facilities use contract or otherwise, of the facility (including excess capacity) or equipment (including excess equipment) of the facility by a non-Army entity.

“(6) The preparation and submission of joint offers by the facility and a non-Army entity for competitive procurements entered into with Federal agency.

“(c) CONDITIONS.—An activity authorized by subsection (b) may be carried out at an Army industrial facility under a cooperative arrangement entered into under subsection (a) only under the following conditions:

“(1) In the case of an article to be manufactured or services to be performed by the facility, the articles can be substantially manufactured, or the services can be substantially performed, by the facility without subcontracting for more than incidental performance.

“(2) The activity does not interfere with performance of—

“(A) work by the facility for the Department of Defense;

or

“(B) a military mission of the facility.

“(3) The activity meets one of the following objectives:

“(A) Maximized utilization of the capacity of the facility.

“(B) Reduction or elimination of the cost of ownership of the facility.

“(C) Reduction in the cost of manufacturing or maintaining Department of Defense products at the facility.

“(D) Preservation of skills or equipment related to a core competency of the facility.

“(4) The non-Army entity agrees to hold harmless and indemnify the United States from any liability or claim for damages or injury to any person or property arising out of the activity, including any damages or injury arising out of a decision by the Secretary of the Army or the Secretary of Defense to suspend or terminate an activity, or any portion thereof, during a war or national emergency or to require the facility to perform other work or provide other services on a priority basis, except—

“(A) in any case of willful misconduct or gross negligence; and

“(B) in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the United States to comply with quality, schedule, or cost performance requirements in the contract to carry out the activity.

“(d) **ARRANGEMENT METHODS AND AUTHORITIES.**—To establish a cooperative arrangement under subsection (a) with a non-Army entity, the approval authority described in subsection (e) for an Army industrial facility may—

“(1) enter into a firm, fixed-price contract (or, if agreed to by the non-Army entity, a cost reimbursement contract) for a sale of articles or services or use of equipment or facilities;

“(2) enter into a multiyear contract for a period not to exceed five years, unless a longer period is specifically authorized by law;

“(3) charge the non-Army entity the amounts necessary to recover the full costs of the articles or services provided, including capital improvement costs, and equipment depreciation costs associated with providing the articles, services, equipment, or facilities;

“(4) authorize the non-Army entity to use incremental funding to pay for the articles, services, or use of equipment or facilities; and

“(5) accept payment-in-kind.

“(e) **APPROVAL AUTHORITY.**—The authority of an Army industrial facility to enter into a cooperative arrangement under subsection (a) shall be exercised at the level of the commander of the major subordinate command of the Army that has responsibility for the facility. The commander may approve such an arrangement on a case-by-case basis or a class basis.

“(f) **COMMERCIAL SALES.**—Except in the case of work performed for the Department of Defense, for a contract of the Department of Defense, for foreign military sales, or for authorized foreign direct commercial sales (defense articles or defense services sold to a foreign government or international organization under export controls), a sale of articles or services may be made under this section only if the approval authority described in subsection (e) determines that the articles or services are not available from a commercial source located in the United States in the required quantity or quality, or within the time required.

“(g) **EXCLUSION FROM DEPOT-LEVEL MAINTENANCE AND REPAIR PERCENTAGE LIMITATION.**—Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at an Army industrial facility shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by a

non-Army entity pursuant to a cooperative arrangement entered into under subsection (a).

“(h) RELATIONSHIP TO OTHER LAWS.—Nothing in this section shall be construed to affect the application of—

“(1) foreign military sales and the export controls provided for in sections 30 and 38 of the Arms Export Control Act (22 U.S.C. 2770 and 2778) to activities of a cooperative arrangement entered into under subsection (a); and

“(2) section 2667 of this title to leases of non-excess property in the administration of such an arrangement.

“(i) DEFINITIONS.—In this section:

“(1) The term ‘Army industrial facility’ includes an ammunition plant, an arsenal, a depot, and a manufacturing plant.

“(2) The term ‘non-Army entity’ includes the following:

“(A) A Federal agency (other than the Department of the Army).

“(B) An entity in industry or commercial sales.

“(C) A State or political subdivision of a State.

“(D) An institution of higher education or vocational training institution.

“(3) The term ‘incremental funding’ means a series of partial payments that—

“(A) are made as the work on manufacture or articles is being performed or services are being performed or equipment or facilities are used, as the case may be; and

“(B) result in full payment being completed as the required work is being completed.

“(4) The term ‘full costs’, with respect to articles or services provided under a cooperative arrangement entered into under subsection (a), means the variable costs and the fixed costs that are directly related to the production of the articles or the provision of the services.

“(5) The term ‘variable costs’ means the costs that are expected to fluctuate directly with the volume of sales or services provided or the use of equipment or facilities.

“(j) EXPIRATION OF AUTHORITY.—The authority to enter into a cooperative arrangement under subsection (a) expires September 30, 2009, and arrangements entered into under such subsection shall terminate not later than that date.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“4544. Army industrial facilities: cooperative activities with non-Army entities.”.

SEC. 354. TRANSFER OF EXCESS DEPARTMENT OF DEFENSE PERSONAL PROPERTY TO ASSIST FIREFIGHTING AGENCIES.

Section 2576b of title 10, United States Code, is amended—

(1) in subsection (a), by striking “may” and inserting “shall”; and

(2) in subsection (b), by striking “may” and inserting “shall”.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

- Sec. 401. End strengths for active forces.
- Sec. 402. Revision in permanent active duty end strength minimum levels.
- Sec. 403. Additional authority for increases of Army and Marine Corps active duty personnel end strengths for fiscal years 2005 through 2009.
- Sec. 404. Exclusion of service academy permanent and career professors from a limitation on certain officer grade strengths.

Subtitle B—Reserve Forces

- Sec. 411. End strengths for Selected Reserve.
- Sec. 412. End strengths for Reserves on active duty in support of the reserves.
- Sec. 413. End strengths for military technicians (dual status).
- Sec. 414. Fiscal year 2005 limitation on number of non-dual status technicians.
- Sec. 415. Maximum number of Reserve personnel authorized to be on active duty for operational support.
- Sec. 416. Accounting and management of reserve component personnel performing active duty or full-time National Guard duty for operational support.

Subtitle C—Authorizations of Appropriations

- Sec. 421. Military personnel.
- Sec. 422. Armed Forces Retirement Home.

Subtitle A—Active Forces

10 USC 115 note. **SEC. 401. END STRENGTHS FOR ACTIVE FORCES.**

(a) IN GENERAL.—The Armed Forces are authorized strengths for active duty personnel as of September 30, 2005, as follows:

- (1) The Army, 502,400.
- (2) The Navy, 365,900.
- (3) The Marine Corps, 178,000.
- (4) The Air Force, 359,700.

(b) LIMITATION.—(1) The authorized strength for the Army provided in paragraph (1) of subsection (a) for active duty personnel for fiscal year 2005 is subject to the condition that costs of active duty personnel of the Army for that fiscal year in excess of 482,400 shall be paid out of funds authorized to be appropriated for that fiscal year for a contingent emergency reserve fund or as an emergency supplemental appropriation.

(2) The authorized strength for the Marine Corps provided in paragraph (3) of subsection (a) for active duty personnel for fiscal year 2005 is subject to the condition that costs of active duty personnel of the Marine Corps for that fiscal year in excess of 175,000 shall be paid out of funds authorized to be appropriated for that fiscal year for a contingent emergency reserve fund or as an emergency supplemental appropriation.

**SEC. 402. REVISION IN PERMANENT ACTIVE DUTY END STRENGTH
MINIMUM LEVELS.**

Section 691(b) of title 10, United States Code, is amended by striking paragraphs (1) through (4) and inserting the following:

- “(1) For the Army, 502,400.
- “(2) For the Navy, 365,900.
- “(3) For the Marine Corps, 178,000.
- “(4) For the Air Force, 359,700.”.

SEC. 403. ADDITIONAL AUTHORITY FOR INCREASES OF ARMY ACTIVE DUTY PERSONNEL END STRENGTHS FOR FISCAL YEARS 2005 THROUGH 2009. 10 USC 115 note.

(a) **AUTHORITY.**—During fiscal years 2005 through 2009, the Secretary of Defense is authorized to increase by up to 30,000 the end strength authorized for the Army, and by up to 9,000 the end strength authorized for the Marine Corps, above the levels authorized for those services in the National Defense Authorization Act for Fiscal Year 2004, as necessary—

(1) to support the operational mission of the Army and Marine Corps in Iraq and Afghanistan; and

(2) with respect to end strengths for the Army, to achieve transformational reorganization objectives of the Army, including objectives for increased numbers of combat brigades, unit manning, force stabilization and shaping, and rebalancing of the active and reserve component forces of the Army.

(b) **RELATIONSHIP TO PRESIDENTIAL WAIVER AUTHORITY.**—Nothing in this section shall be construed to limit the President's authority under section 123a of title 10, United States Code, to waive any statutory end strength in a time of war or national emergency.

(c) **RELATIONSHIP TO OTHER VARIANCE AUTHORITY.**—The authority under subsection (a) is in addition to the authority to vary authorized end strengths that is provided in subsections (e) and (f) of section 115 of title 10, United States Code.

(d) **BUDGET TREATMENT.**—(1) If the Secretary of Defense plans to increase the Army or Marine Corps active duty end strength for a fiscal year under subsection (a) of this section or pursuant to a suspension of end-strength limitation under section 123a of title 10, United States Code, then the budget for the Department of Defense for such fiscal year as submitted to Congress shall specify the amounts necessary for funding the active duty end strength of the Army in excess of 482,400 and the Marine Corps in excess of 175,000 (the end strengths authorized for active duty personnel of the Army and Marine Corps, respectively, for fiscal year 2004 in paragraphs (1) and (3) of section 401 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1450)).

(2) If the amount proposed for the Department of Defense for fiscal year 2006 within budget function 050 (National Defense) includes amounts necessary for funding an active duty end strength of the Army in excess of 482,400, or an active duty end strength of the Marine Corps in excess of 175,000, for that fiscal year, the specification of amounts necessary for funding such end strength (as required under paragraph (1)) shall include the following additional information:

(A) A display of the following amounts:

(i) The amount that is to be funded out of the amounts proposed for the Department of Defense within budget function 050 (National Defense) other than out of amounts for the Army and Marine Corps.

(ii) The amount that is to be funded out of the amounts proposed for the Army and Marine Corps within budget function 050 (National Defense).

(iii) The estimated amounts that are to be funded out of emergency reserve funds and supplemental appropriations for fiscal year 2006.

(B) A detailed justification for reliance on each funding source described in subparagraph (A).

(C) A detailed discussion of which programs and plans of the Army and Marine Corps funded in the proposed budget for fiscal year 2006 must be modified if the funding sources relied on, as presented under subparagraph (A), must be changed.

(D) The projected Army and Marine Corps active duty end strengths for each of fiscal years 2006 through 2010, together with a detailed enumeration of the component costs of the projected end strengths for each such fiscal year.

SEC. 404. EXCLUSION OF SERVICE ACADEMY PERMANENT AND CAREER PROFESSORS FROM A LIMITATION ON CERTAIN OFFICER GRADE STRENGTHS.

Section 523(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(8) Permanent professors of the United States Military Academy and the United States Air Force Academy and professors of the United States Naval Academy who are career military professors (as defined in regulations prescribed by the Secretary of the Navy), but not to exceed 50 from any such academy.”.

Subtitle B—Reserve Forces

10 USC 12001
note.

SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2005, as follows:

- (1) The Army National Guard of the United States, 350,000.
- (2) The Army Reserve, 205,000.
- (3) The Naval Reserve, 83,400.
- (4) The Marine Corps Reserve, 39,600.
- (5) The Air National Guard of the United States, 106,800.
- (6) The Air Force Reserve, 76,100.
- (7) The Coast Guard Reserve, 10,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be increased proportionately by the total authorized

strengths of such units and by the total number of such individual members.

SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2005, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

- (1) The Army National Guard of the United States, 26,602.
- (2) The Army Reserve, 14,970.
- (3) The Naval Reserve, 14,152.
- (4) The Marine Corps Reserve, 2,261.
- (5) The Air National Guard of the United States, 12,253.
- (6) The Air Force Reserve, 1,900.

SEC. 413. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS). 10 USC 115 note.

The minimum number of military technicians (dual status) as of the last day of fiscal year 2005 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

- (1) For the Army Reserve, 7,299.
- (2) For the Army National Guard of the United States, 25,076.
- (3) For the Air Force Reserve, 9,954.
- (4) For the Air National Guard of the United States, 22,956.

SEC. 414. FISCAL YEAR 2005 LIMITATION ON NUMBER OF NON-DUAL STATUS TECHNICIANS.

(a) LIMITATIONS.—(1) Within the limitation provided in section 10217(c)(2) of title 10, United States Code, the number of non-dual status technicians employed by the National Guard as of September 30, 2005, may not exceed the following:

- (A) For the Army National Guard of the United States, 1,600.
- (B) For the Air National Guard of the United States, 350.
- (2) The number of non-dual status technicians employed by the Army Reserve as of September 30, 2005, may not exceed 795.
- (3) The number of non-dual status technicians employed by the Air Force Reserve as of September 30, 2005, may not exceed 90.

(b) NON-DUAL STATUS TECHNICIANS DEFINED.—In this section, the term “non-dual status technician” has the meaning given that term in section 10217(a) of title 10, United States Code.

SEC. 415. MAXIMUM NUMBER OF RESERVE PERSONNEL AUTHORIZED TO BE ON ACTIVE DUTY FOR OPERATIONAL SUPPORT.

During fiscal year 2005, the maximum number of members of the reserve components of the Armed Forces who may be serving at any time on full-time operational support duty under section 115(b) of title 10, United States Code, is the following:

- (1) The Army National Guard of the United States, 10,300.
- (2) The Army Reserve, 5,000.
- (3) The Naval Reserve, 6,200.
- (4) The Marine Corps Reserve, 2,500.

- (5) The Air National Guard of the United States, 10,100.
- (6) The Air Force Reserve, 3,600.

SEC. 416. ACCOUNTING AND MANAGEMENT OF RESERVE COMPONENT PERSONNEL PERFORMING ACTIVE DUTY OR FULL-TIME NATIONAL GUARD DUTY FOR OPERATIONAL SUPPORT.

(a) **STRENGTH AUTHORIZATIONS.**—Section 115 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(A), by inserting “unless on active duty pursuant to subsection (b)” after “active-duty personnel”;

(2) in subsection (a)(1)(B), by inserting “unless on active duty or full-time National Guard duty pursuant to subsection (b)” after “reserve personnel”;

(3) by redesignating subsections (b), (c), (d), (e), (f), (g) and (h) as subsections (c), (d), (e), (f), (g), (h) and (i), respectively; and

(4) by inserting after subsection (a) the following new subsection (b):

“(b) **CERTAIN RESERVES ON ACTIVE DUTY TO BE AUTHORIZED BY LAW.**—(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to—

“(A) active duty under section 12301(d) of this title for the purpose of providing operational support, as prescribed in regulation issued by the Secretary of Defense;

“(B) full-time National Guard duty under section 502(f)(2) of title 32 for the purpose of providing operational support when authorized by the Secretary of Defense;

“(C) active duty under section 12301(d) of this title or full-time National Guard duty under section 502(f)(2) of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;

“(D) active duty or retained on active duty under sections 12301(g) of this title while in a captive status; or

“(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment.

“(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):

“(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.

“(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.

“(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:

“(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.

“(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under paragraphs (1) through (8) of subsection (i).”.

(b) LIMITATION ON APPROPRIATIONS.—Subsection (c) of such section (as redesignated by subsection (a)(3)) is amended—

(1) by striking “or” at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting “; or”; and

(3) by inserting after paragraph (2) the following new paragraph:

“(3) the use of reserve component personnel to perform active duty or full-time National Guard duty under subsection (b) unless the strength for such personnel for that reserve component for that fiscal year has been authorized by law.”.

(c) AUTHORITY FOR SECRETARY OF DEFENSE VARIANCES IN MAXIMUM STRENGTHS.—Subsection (f) of such section (as redesignated by subsection (a)(3)) is amended—

(1) by striking “END” in the heading;

(2) by striking “and” at the end of paragraph (2);

(3) by striking the period at the end of paragraph (3) and inserting “; and”; and

(4) by adding at the end the following new paragraph:

“(4) increase the maximum strength authorized pursuant to subsection (b)(1) for a fiscal year for certain reserves on active duty for any of the reserve components by a number equal to not more than 10 percent of that strength.”.

(d) CONFORMING AMENDMENTS TO SECTION 115.—Such section is further amended as follows:

(1) Subsection (e) (as redesignated by subsection (a)(3)) is amended—

(A) in paragraph (1), by striking “subsection (a) or (c)” and inserting “subsection (a) or (d)”; and

(B) in paragraph (2)—

(i) by striking “subsections (a) and (c)”; and inserting “subsections (a) and (d)”; and

(ii) by striking “pursuant to subsection (e)) and subsection (c)” and inserting “pursuant to subsection (f) and subsection (d)” each place it appears.

(2) Subsection (g) (as redesignated by subsection (a)(3)) is amended by striking “subsection (e)(1)” in paragraph (2) and inserting “subsection (f)(1)”.

(3) Subsection (i) (as redesignated by subsection (a)(3)) is amended to read as follows:

“(i) CERTAIN PERSONNEL EXCLUDED FROM COUNTING FOR ACTIVE-DUTY END STRENGTHS.—In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

“(1) Members of a reserve component ordered to active duty under section 12301(a) of this title.

“(2) Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.

“(3) Members of the Ready Reserve ordered to active duty under section 12302 of this title.

“(4) Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.

“(5) Members of the National Guard called into Federal service under section 12406 of this title.

“(6) Members of the militia called into Federal service under chapter 15 of this title.

“(7) Members of the National Guard on full-time National Guard duty under section 502(f)(1) of title 32.

“(8) Members of reserve components on active duty for training or full-time National Guard duty for training.

“(9) Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1203(b) of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952(b)).

“(10) Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.

“(11) Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

“(12) Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by section 509 of title 32.”.

(e) MILITARY TO MILITARY CONTACT STRENGTH ACCOUNTING.—Subsection (f) of section 168 of such title is amended to read as follows:

“(f) ACTIVE DUTY END STRENGTHS.—A member of a reserve component who is engaged in activities authorized under this section shall not be counted for purposes of the following personnel strength limitations:

“(1) The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to under this section.

“(2) The authorized daily average for members in pay grades E-8 and E-9 under section 517 of this title for the calendar year in which the member carries out such activities.

“(3) The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.”.

(f) E-8 AND E-9 STRENGTH ACCOUNTING.—Subsection (a) of section 517 of such title is amended by striking “(other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force.” and inserting “as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.”.

(g) FIELD GRADE OFFICER STRENGTH ACCOUNTING.—(1) Paragraph (1) of section 523(b) of such title is amended to read as follows:

(1) Reserve officers—

“(A) on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

“(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32; or

“(C) on full-time National Guard duty.”.

(2) Paragraph (7) of such section is amended by striking “Reserve or retired officers” and inserting “Retired officers”.

(h) ACTIVE GUARD AND RESERVE FIELD GRADE OFFICER STRENGTH ACCOUNTING.—Paragraph (2) of section 12011(e) of such title is amended to read as follows:

“(2) Full-time National Guard duty (other than for training) under section 502(f) of title 32, except for duty under section 115(b)(1)(B) and (C) of this title and section 115(i)(9) of this title.”.

(i) WARRANT OFFICER ACTIVE-DUTY LIST EXCLUSION.—Paragraph (1) of section 582 of such title is amended to read as follows:

“(1) Reserve warrant officers—

“(A) on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title; or

“(B) on full-time National Guard duty.”.

(j) OFFICER ACTIVE-DUTY LIST, APPLICABILITY OF CHAPTER.—Paragraph (1) of section 641 of such title is amended to read as follows:

“(1) Reserve officers—

“(A) on active duty authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

“(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32; or

“(C) on full-time National Guard duty.”.

(k) STRENGTH ACCOUNTING FOR MEMBERS PERFORMING DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES.—Section 112 of title 32, United States Code, is amended—

(1) by striking subsection (e);

(2) by redesignating subsections (f), (g), (h) and (i) as subsections (e), (f), (g) and (h) respectively; and

(3) in paragraph (1) of subsection (e), as redesignated by paragraph (2), by striking “for a period of more than 180 days” each place it appears.

(l) REPORT.—Not later than June 1, 2005, the Secretary of Defense shall report to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the Secretary’s recommendations regarding the exemptions provided in paragraphs (8) through (11) by section 115(i) of title 10, United States Code, as amended by this section. The recommendations shall address the manner in personnel covered by those exemptions shall be accounted for in authorizations provided by section 115 of such title. The objective of the analysis should be to terminate the need for such exemptions after September 30, 2006.

(m) REGULATIONS.—The Secretary of Defense shall prescribe by regulation the meaning of the term “operational support” for purposes of paragraph (1) of subsection (b) of section 115 of title 10, United States Code, as added by subsection (a).

10 USC 115 note.

Subtitle C—Authorizations of Appropriations

SEC. 421. MILITARY PERSONNEL.

There is hereby authorized to be appropriated to the Department of Defense for military personnel for fiscal year 2005 a total of \$106,542,982,000. The authorization in the preceding sentence supersedes any other authorization of appropriations (definite or indefinite) for such purpose for fiscal year 2005.

SEC. 422. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2005 from the Armed Forces Retirement Home Trust Fund the sum of \$61,195,000 for the operation of the Armed Forces Retirement Home.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

- Sec. 501. Transition of active-duty list officer force to a force of all regular officers.
- Sec. 502. Repeal of requirement that Deputy Chiefs and Assistant Chiefs of Naval Operations be selected from officers in the line of the Navy.
- Sec. 503. Limitation on number of officers frocked to major general and rear admiral.
- Sec. 504. Distribution in grade of Marine Corps reserve officers in an active status in grades below brigadier general.
- Sec. 505. Authority for Federal recognition of National Guard commissioned officers appointed from former Coast Guard personnel.
- Sec. 506. Study regarding promotion eligibility of retired officers recalled to active duty.
- Sec. 507. Succession for office of Chief, National Guard Bureau.
- Sec. 508. Redesignation of Vice Chief of the National Guard Bureau as Director of the Joint Staff of the National Guard Bureau.

Subtitle B—Reserve Component Policy Matters

- Sec. 511. Modification of stated purpose of the reserve components.
- Sec. 512. Homeland defense activities conducted by the National Guard under authority of title 32.
- Sec. 513. Commission on the National Guard and Reserves.
- Sec. 514. Repeal of exclusion of active duty for training from authority to order Reserves to active duty.
- Sec. 515. Army program for assignment of active component advisers to units of the Selected Reserve.
- Sec. 516. Authority to accept certain voluntary services.
- Sec. 517. Authority to redesignate the Naval Reserve as the Navy Reserve.
- Sec. 518. Comptroller General assessment of integration of active and reserve components of the Navy.
- Sec. 519. Limitation on number of Starbase academies in a State.
- Sec. 520. Recognition items for certain reserve component personnel.

Subtitle C—Reserve Component Personnel Matters

- Sec. 521. Status under disability retirement system for reserve members released from active duty due to inability to perform within 30 days of call to active duty.
- Sec. 522. Requirement for retention of Reserves on active duty to qualify for retired pay not applicable to nonregular service retirement system.
- Sec. 523. Federal civil service military leave for Reserve and National Guard civilian technicians.
- Sec. 524. Expanded educational assistance authority for officers commissioned through ROTC program at military junior colleges.
- Sec. 525. Repeal of sunset provision for financial assistance program for students not eligible for advanced training.

- Sec. 526. Effect of appointment or commission as officer on eligibility for Selected Reserve education loan repayment program for enlisted members.
- Sec. 527. Educational assistance for certain reserve component members who perform active service.
- Sec. 528. Sense of Congress on guidance concerning treatment of employer-provided compensation and other benefits voluntarily provided to employees who are activated Reservists.

Subtitle D—Joint Officer Management and Professional Military Education

- Sec. 531. Strategic plan to link joint officer development to overall missions and goals of Department of Defense.
- Sec. 532. Improvement to professional military education in the Department of Defense.
- Sec. 533. Joint requirements for promotion to flag or general officer grade.
- Sec. 534. Clarification of tours of duty qualifying as a joint duty assignment.
- Sec. 535. Two-year extension of temporary standard for promotion policy objectives for joint officers.
- Sec. 536. Two-year extension of authority to waive requirement that Reserve Chiefs and National Guard Directors have significant joint duty experience.

Subtitle E—Military Service Academies

- Sec. 541. Revision to conditions on service of officers as service academy superintendents.
- Sec. 542. Academic qualifications of the dean of the faculty of United States Air Force Academy.
- Sec. 543. Board of Visitors of United States Air Force Academy.
- Sec. 544. Appropriated funds for service academy athletic and recreational extracurricular programs to be treated in same manner as for military morale, welfare, and recreation programs.
- Sec. 545. Codification of prohibition on imposition of certain charges and fees at the service academies.

Subtitle F—Other Education and Training Matters

- Sec. 551. College First delayed enlistment program.
- Sec. 552. Senior Reserve Officers' Training Corps and recruiter access at institutions of higher education.
- Sec. 553. Tuition assistance for officers.
- Sec. 554. Increased maximum period for leave of absence for pursuit of a program of education in a health care profession.
- Sec. 555. Eligibility of cadets and midshipmen for medical and dental care and disability benefits.
- Sec. 556. Transfer of authority to confer degrees upon graduates of the Community College of the Air Force.
- Sec. 557. Change in titles of leadership positions at the Naval Postgraduate School.

Subtitle G—Assistance to Local Educational Agencies for Defense Dependents Education

- Sec. 558. Continuation of impact aid assistance on behalf of dependents of certain members despite change in status of member.
- Sec. 559. Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.
- Sec. 560. Impact aid for children with severe disabilities.

Subtitle H—Medals and Decorations and Special Promotions and Appointments

- Sec. 561. Award of medal of honor to individual interred in the Tomb of the Unknowns as representative of casualties of a war.
- Sec. 562. Plan for revised criteria and eligibility requirements for award of Combat Infantryman Badge and Combat Medical Badge for service in Korea after July 28, 1953.
- Sec. 563. Authority to appoint Brigadier General Charles E. Yeager, United States Air Force (retired), to the grade of major general on the retired list.
- Sec. 564. Posthumous commission of William Mitchell in the grade of major general in the Army.

Subtitle I—Military Voting

- Sec. 566. Federal write-in ballots for absentee military voters located in the United States.
- Sec. 567. Repeal of requirement to conduct electronic voting demonstration project for the Federal election to be held in November 2004.

- Sec. 568. Reports on operation of Federal voting assistance program and military postal system.

Subtitle J—Military Justice Matters

- Sec. 571. Review on how sexual offenses are covered by Uniform Code of Military Justice.
- Sec. 572. Waiver of recoupment of time lost for confinement in connection with a trial.
- Sec. 573. Processing of forensic evidence collection kits and acquisition of sufficient stocks of such kits.
- Sec. 574. Authorities of the Judge Advocates General.

Subtitle K—Sexual Assault in the Armed Forces

- Sec. 576. Examination of sexual assault in the Armed Forces by the Defense Task Force established to examine sexual harassment and violence at the military service academies.
- Sec. 577. Department of Defense policy and procedures on prevention and response to sexual assaults involving members of the Armed Forces.

Subtitle L—Management and Administrative Matters

- Sec. 581. Three-year extension of limitation on reductions of personnel of agencies responsible for review and correction of military records.
- Sec. 582. Staffing for Defense Prisoner of War/Missing Personnel Office (DPMO).
- Sec. 583. Permanent ID cards for retiree dependents age 75 and older.
- Sec. 584. Authority to provide civilian clothing to members traveling in connection with medical evacuation.
- Sec. 585. Authority to accept donation of frequent traveler miles, credits, and tickets to facilitate rest and recuperation travel of deployed members of the Armed Forces and their families.
- Sec. 586. Annual report identifying reasons for discharges from the Armed Forces during preceding fiscal year.
- Sec. 587. Study of blended wing concept for the Air Force.
- Sec. 588. Sense of Congress regarding return of members to active duty service upon rehabilitation from service-related injuries.

Subtitle M—Other Matters

- Sec. 591. Protection of Armed Forces personnel from retaliatory actions for communications made through the chain of command.
- Sec. 592. Implementation plan for accession of persons with specialized skills.
- Sec. 593. Enhanced screening methods and process improvements for recruitment of home schooled and National Guard Challenge program GED recipients.
- Sec. 594. Redesignation of National Guard Challenge Program as National Guard Youth Challenge Program.
- Sec. 595. Reports on certain milestones relating to Department of Defense transformation.
- Sec. 596. Report on issues relating to removal of remains of persons interred in United States military cemeteries overseas.
- Sec. 597. Comptroller General reports on closure of Department of Defense dependent elementary and secondary schools and commissary stores.
- Sec. 598. Comptroller General report on transition assistance programs for members separating from the Armed Forces.
- Sec. 599. Study on coordination of job training standards with certification standards for military occupational specialties.

Subtitle A—Officer Personnel Policy

SEC. 501. TRANSITION OF ACTIVE-DUTY LIST OFFICER FORCE TO A FORCE OF ALL REGULAR OFFICERS.

(a) ORIGINAL APPOINTMENTS AS COMMISSIONED OFFICERS.—(1) Section 532 of title 10, United States Code, is amended by striking subsection (e).

(2) Subsection (a)(2) of such section is amended by striking “fifty-fifth birthday” and inserting “sixty-second birthday”.

(3)(A) Such section is further amended by adding at the end the following new subsection:

“(f) The Secretary of Defense may waive the requirement of paragraph (1) of subsection (a) with respect to a person who has been lawfully admitted to the United States for permanent residence when the Secretary determines that the national security so requires, but only for an original appointment in a grade below the grade of major or lieutenant commander.”.

(B) Section 619(d) of such title is amended by adding at the end the following new paragraph:

“(5) An officer in the grade of captain or, in the case of the Navy, lieutenant who is not a citizen of the United States.”.

(4) Section 531(a) of such title is amended to read as follows:

“(a)(1) Original appointments in the grades of second lieutenant, first lieutenant, and captain in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy shall be made by the President alone.

“(2) Original appointments in the grades of major, lieutenant colonel, and colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of lieutenant commander, commander, and captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.”.

(b) REPEAL OF TOTAL STRENGTH LIMITATIONS FOR ACTIVE-DUTY REGULAR COMMISSIONED OFFICERS.—(1) Section 522 of such title is repealed.

(2) The table of sections at the beginning of chapter 32 of such title is amended by striking the item relating to section 522.

(c) FORCE SHAPING AUTHORITY.—(1)(A) Subchapter V of chapter 36 of such title is amended by adding at the end the following new section:

“§ 647. Force shaping authority

“(a) AUTHORITY.—The Secretary concerned may, solely for the purpose of restructuring an armed force under the jurisdiction of that Secretary—

“(1) discharge an officer described in subsection (b); or

“(2) transfer such an officer from the active-duty list of that armed force to the reserve active-status list of a reserve component of that armed force.

“(b) COVERED OFFICERS.—(1) The authority under this section may be exercised in the case of an officer who—

“(A) has completed not more than 5 years of service as a commissioned officer in the armed forces; or

“(B) has completed more than 5 years of service as a commissioned officer in the armed forces, but has not completed a minimum service obligation applicable to that member.

“(2) In this subsection, the term ‘minimum service obligation’ means the initial period of required active duty service together with any additional period of required active duty service incurred during the initial period of required active duty service.

“(c) APPOINTMENT OF TRANSFERRED OFFICERS.—An officer of the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps who is transferred to a reserve active-status list under this section shall be discharged from the regular component concerned and appointed as a reserve commissioned officer under section 12203 of this title.

“(d) REGULATIONS.—The Secretary concerned shall prescribe regulations for the exercise of the Secretary’s authority under this section.”.

(B) The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“647. Force shaping authority.”.

(2) Section 1174(e)(2)(B) of such title is amended by inserting after “obligated service” the following: “, unless the member is an officer discharged or released under the authority of section 647 of this title”.

(3) Section 12201(a) of such title is amended—

(A) by inserting “(1)” after “(a)”;

(B) in the first sentence, by inserting “, except as provided in paragraph (2),” after “the armed force concerned and”; and

(C) by adding at the end the following new paragraph:

“(2) An officer transferred from the active-duty list of an armed force to a reserve active-status list of an armed force under section 647 of this title is not required to subscribe to the oath referred to in paragraph (1) in order to qualify for an appointment under that paragraph.”.

(4) Section 12203 of such title is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following new subsection (b):

“(b) Subject to the authority, direction, and control of the President, the Secretary concerned may appoint as a reserve commissioned officer any regular officer transferred from the active-duty list of an armed force to the reserve active-status list of a reserve component under section 647 of this title, notwithstanding the requirements of subsection (a).”.

(5) Section 531 of such title is amended by adding at the end the following new subsection:

“(c) Subject to the authority, direction, and control of the President, an original appointment as a commissioned officer in the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps may be made by the Secretary concerned in the case of a reserve commissioned officer upon the transfer of such officer from the reserve active-status list of a reserve component of the armed forces to the active-duty list of an armed force, notwithstanding the requirements of subsection (a).”.

(d) ACTIVE-DUTY READY RESERVE OFFICERS NOT ON ACTIVE-DUTY LIST.—Section 641(1)(F) of such title is amended by striking “section 12304” and inserting “sections 12302 and 12304”.

(e) ALL REGULAR OFFICER APPOINTMENTS FOR STUDENTS OF THE UNIVERSITY OF HEALTH SCIENCES.—Section 2114(b) of such title is amended by striking “Notwithstanding any other provision of law, they shall serve” in the second sentence and all that follows through “if qualified,” in the third sentence and inserting “They shall be appointed as regular officers in the grade of second lieutenant or ensign and shall serve on active duty in that grade. Upon graduation they shall be required to serve on active duty”.

(f) TERMINATION OF REQUIREMENT OF 6 YEARS SERVICE IN A RESERVE COMPONENT FOR NONREGULAR SERVICE RETIREMENT ELIGIBILITY.—Section 12731(a)(3) of such title is amended by inserting after “(3)” the following: “in the case of a person who completed the service requirements of paragraph (2) before the

end of the 180-day period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005.”.

(g) **EFFECTIVE DATE.**—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act. 10 USC 531 note.

(2) The amendment made by subsection (a)(1) shall take effect on May 1, 2005.

SEC. 502. REPEAL OF REQUIREMENT THAT DEPUTY CHIEFS AND ASSISTANT CHIEFS OF NAVAL OPERATIONS BE SELECTED FROM OFFICERS IN THE LINE OF THE NAVY.

(a) **DEPUTY CHIEFS OF NAVAL OPERATIONS.**—Section 5036(a) of title 10, United States Code, is amended by striking “in the line”.

(b) **ASSISTANT CHIEFS OF NAVAL OPERATIONS.**—Section 5037(a) of such title is amended by striking “in the line”.

SEC. 503. LIMITATION ON NUMBER OF OFFICERS FROCKED TO MAJOR GENERAL AND REAR ADMIRAL.

Section 777(d) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by striking “(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—” and inserting the following:

“(d) **LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.**—(1) The total number of brigadier generals and Navy rear admirals (lower half) on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the grade of major general or rear admiral, as the case may be, may not exceed 30.”.

SEC. 504. DISTRIBUTION IN GRADE OF MARINE CORPS RESERVE OFFICERS IN AN ACTIVE STATUS IN GRADES BELOW BRIGADIER GENERAL.

The table in section 12005(c)(1) of title 10, United States Code, is amended to read as follows:

“Colonel	2 percent
Lieutenant colonel	8 percent
Major	16 percent
Captain	39 percent
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	35 percent.”.

SEC. 505. AUTHORITY FOR FEDERAL RECOGNITION OF NATIONAL GUARD COMMISSIONED OFFICERS APPOINTED FROM FORMER COAST GUARD PERSONNEL.

Section 305(a) of title 32, United States Code, is amended—

(1) by striking “Army, Navy, Air Force, or Marine Corps” in paragraphs (2), (3), and (4) and inserting “armed forces”; and

(2) by striking “or the United States Air Force Academy” in paragraph (5) and inserting “the United States Air Force Academy, or the United States Coast Guard Academy”.

SEC. 506. STUDY REGARDING PROMOTION ELIGIBILITY OF RETIRED OFFICERS RECALLED TO ACTIVE DUTY.

(a) **REQUIREMENT FOR STUDY.**—The Secretary of Defense shall carry out a study to determine whether it would be equitable for retired officers on active duty, but not on the active-duty list by reason of section 582(2) or 641(4) of title 10, United States Code, to be eligible for consideration for promotion under chapter 33A of such title, in the case of warrant officers, or chapter 36 of such title, in the case of officers other than warrant officers.

(b) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study under subsection (a). The report shall include a discussion of the Secretary's determination regarding the issue covered by the study, the rationale for the Secretary's determination, and any recommended legislation that the Secretary considers appropriate regarding that issue.

SEC. 507. SUCCESSION FOR OFFICE OF CHIEF, NATIONAL GUARD BUREAU.

(a) **DESIGNATION OF SENIOR OFFICER IN NATIONAL GUARD BUREAU.**—Section 10502 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) **SUCCESSION.**—(1) Unless otherwise directed by the President or the Secretary of Defense, the senior of the two officers specified in paragraph (2) shall serve as the acting Chief of the National Guard Bureau during any period that—

“(A) there is a vacancy in the position of Chief of the National Guard Bureau; or

“(B) the Chief is unable to perform the duties of that office.

“(2) The officers specified in this paragraph are the following:

“(A) The senior officer of the Army National Guard of the United States on duty with the National Guard Bureau.

“(B) The senior officer of the Air National Guard of the United States on duty with the National Guard Bureau.”.

(b) **CLERICAL AMENDMENTS.**—(1) The heading of such section is amended to read as follows:

“§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession”.

(2) The item relating to such section in the table of sections at the beginning of chapter 1011 of such title is amended to read as follows:

“10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession.”.

(c) **CONFORMING REPEAL.**—Subsections (d) and (e) of section 10505 of such title are repealed.

SEC. 508. REDESIGNATION OF VICE CHIEF OF THE NATIONAL GUARD BUREAU AS DIRECTOR OF THE JOINT STAFF OF THE NATIONAL GUARD BUREAU.

(a) **REDESIGNATION OF POSITION.**—Subsection (a)(1) of section 10505 of title 10, United States Code, is amended by striking “Vice Chief of the National Guard Bureau” and inserting “Director of the Joint Staff of the National Guard Bureau”.

(b) CONFORMING AMENDMENTS.—(1) Subsections (a)(3)(A), (a)(3)(B), (b), and (c) of section 10505 of title 10, United States Code, are amended by striking “Vice Chief of the National Guard Bureau” and inserting “Director of the Joint Staff of the National Guard Bureau”.

(2) Subsection (a)(3)(B) of such section, as amended by paragraph (1), is further amended by striking “as the Vice Chief” and inserting “as the Director”.

(3) Paragraphs (2) and (4) of subsection (a) of such section are amended by striking “Chief and Vice Chief of the National Guard Bureau” and inserting “Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau”.

(4) Section 10506(a)(1) of such title is amended by striking “Chief and Vice Chief of the National Guard Bureau” and inserting “Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau”.

(c) CLERICAL AMENDMENTS.—(1) The heading for section 10505 of such title is amended to read as follows:

“§ 10505. Director of the Joint Staff of the National Guard Bureau”.

(2) The item relating to such section in the table of sections at the beginning of chapter 1011 of such title is amended to read as follows:

“10505. Director of the Joint Staff of the National Guard Bureau.”.

(d) OTHER REFERENCES.—Any reference in any law, regulation, document, paper, or other record of the United States to the Vice Chief of the National Guard Bureau shall be deemed to be a reference to the Director of the Joint Staff of the National Guard Bureau.

10 USC 10505
note.

Subtitle B—Reserve Component Policy Matters

SEC. 511. MODIFICATION OF STATED PURPOSE OF THE RESERVE COMPONENTS.

Section 10102 of title 10, United States Code, is amended by striking “, during” and all that follows through “planned mobilization,”.

SEC. 512. HOMELAND DEFENSE ACTIVITIES CONDUCTED BY THE NATIONAL GUARD UNDER AUTHORITY OF TITLE 32.

(a) IN GENERAL.—(1) Title 32, United States Code, is amended by adding at the end the following new chapter:

“CHAPTER 9—HOMELAND DEFENSE ACTIVITIES

“Sec.

“901. Definitions.

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“907. Relationship to State duty.

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“§ 901. Definitions

“In this chapter:

“(1) The term ‘homeland defense activity’ means an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.

“(2) The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

“§ 902. Homeland defense activities: funds

“(a) The Secretary of Defense may provide funds to a Governor to employ National Guard units or members to conduct homeland defense activities that the Secretary, determines to be necessary and appropriate for participation by the National Guard units or members, as the case may be.

“§ 903. Regulations

“The Secretary of Defense shall prescribe regulations to implement this chapter.

“§ 904. Homeland defense duty

“(a) **FULL-TIME NATIONAL GUARD DUTY.**—All duty performed under this chapter shall be considered to be full-time National Guard duty under section 502(f) of this title. Members of the National Guard performing full-time National Guard duty in the Active Guard and Reserve Program may support or execute homeland defense activities performed by the National Guard under this chapter.

“(b) **DURATION.**—The period for which a member of the National Guard performs duty under this chapter shall be limited to 180 days. The Governor of the State may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.

“(c) **RELATIONSHIP TO REQUIRED TRAINING.**—A member of the National Guard performing duty under this chapter shall, in addition to performing such duty, participate in the training required under section 502(a) of this title. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing the duty under this chapter. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

“(d) **READINESS.**—To ensure that the use of units and personnel of the National Guard of a State for homeland defense activities does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the homeland defense activities that units and personnel of the National Guard of a State may perform:

“(1) The performance of the activities is not to affect adversely the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

“(2) The performance of the activities is not to degrade the military skills of the members of the National Guard performing those activities.

“§ 905. Funding assistance

“In the case of any homeland defense activity for which the Secretary of Defense determines under section 902 of this title that participation of units or members of the National Guard of a State is necessary and appropriate, the Secretary may provide funds to that State in an amount that the Secretary determines is appropriate for the following costs of the participation in that activity from funds available to the Department for related purposes:

“(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses of personnel of the National Guard of that State.

“(2) The operation and maintenance of the equipment and facilities of the National Guard of that State.

“(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State.

“§ 906. Requests for funding assistance

“A Governor of a State may request funding assistance for the homeland defense activities of the National Guard of that State from the Secretary of Defense. Any such request shall include the following:

“(1) The specific intended homeland defense activities of the National Guard of that State.

“(2) An explanation of why participation of National Guard units or members, as the case may be, in the homeland defense activities is necessary and appropriate.

“(3) A certification that homeland defense activities are to be conducted at a time when the personnel involved are not in Federal service.

“§ 907. Relationship to State duty

“Nothing in this chapter shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform functions authorized to be performed by the National Guard by the laws of the State concerned.

“§ 908. Annual report

“(a) REQUIREMENT FOR REPORT.—After the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report regarding any assistance provided and activities carried out under this chapter during that fiscal year. The report for a fiscal year shall be submitted not later than March 31 of the year following the year in which such fiscal year ended.

“(b) CONTENT.—The report for a fiscal year shall include the following matters:

“(1) The numbers of members of the National Guard excluded under subsection (i) of section 115 of title 10 from being counted for the purpose of end-strengths authorized pursuant to subsection (a)(1) of such section.

“(2) A description of the homeland defense activities conducted with funds provided under this chapter.

“(3) An accounting of the amount of the funds provided to each State.

“(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform homeland defense activities under this chapter.”.

(2) The table of chapters at the beginning of such title is amended by adding at the end the following new item:

“9. Homeland Defense Activities 901”.

(b) CONFORMING AMENDMENT.—Section 115 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(i) CERTAIN FULL-TIME NATIONAL GUARD DUTY PERSONNEL EXCLUDED FROM COUNTING FOR FULL-TIME NATIONAL GUARD DUTY END STRENGTHS.—In counting full-time National Guard duty personnel for the purpose of end-strengths authorized pursuant to subsection (a)(1), persons involuntarily performing homeland defense activities under chapter 9 of title 32 shall be excluded.”.

SEC. 513. COMMISSION ON THE NATIONAL GUARD AND RESERVES.

(a) ESTABLISHMENT.—There is established a commission to be known as the “Commission on the National Guard and Reserves”.

(b) COMPOSITION.—(1) The Commission shall be composed of 13 members appointed as follows:

(A) Three members appointed by the chairman of the Committee on Armed Services of the Senate.

(B) Three members appointed by the chairman of the Committee on Armed Services of the House of Representatives.

(C) Two members appointed by the ranking minority member of the Committee on Armed Services of the Senate.

(D) Two members appointed by the ranking minority member of the Committee on Armed Service of the House of Representatives.

(E) Three members appointed by the Secretary of Defense.

(2) The members of the Commission shall be appointed from among persons who have knowledge and expertise in the following areas:

(A) National security.

(B) Roles and missions of any of the Armed Forces.

(C) The mission, operations, and organization of the National Guard of the United States.

(D) The mission, operations, and organization of the other reserve components of the Armed Forces.

(E) Military readiness of the Armed Forces.

(F) Personnel pay and other forms of compensation.

(G) Other personnel benefits, including health care.

(3) Members of the Commission shall be appointed for the life of the Commission. A vacancy in the membership of the Commission shall not affect the powers of the Commission, but shall be filled in the same manner as the original appointment.

(4) The Secretary of Defense shall designate a member of the Commission to be chairman of the Commission.

(c) DUTIES.—(1) The Commission shall carry out a study of the following matters:

(A) The roles and missions of the National Guard and the other reserve components of the Armed Forces.

(B) The compensation and other benefits, including health care benefits, that are provided for members of the reserve components under the laws of the United States.

(2) In carrying out the study under paragraph (1), the Commission shall do the following:

(A) Assess the current roles and missions of the reserve components and identify appropriate potential future roles and missions for the reserve components.

(B) Assess the capabilities of the reserve components and determine how the units and personnel of the reserve components may be best used to support the military operations of the Armed Forces and the achievement of national security objectives, including homeland defense, of the United States.

(C) Assess the Department of Defense plan for implementation of section 115(b) of title 10, United States Code, as added by section 404(a)(4).

(D) Assess—

(i) the current organization and structure of the National Guard and the other reserve components; and

(ii) the plans of the Department of Defense and the Armed Forces for future organization and structure of the National Guard and the other reserve components.

(E) Assess the manner in which the National Guard and the other reserve components are currently organized and funded for training and identify an organizational and funding structure for training that best supports the achievement of training objectives and operational readiness.

(F) Assess the effectiveness of the policies and programs of the National Guard and the other reserve components for achieving operational readiness and personnel readiness, including medical and personal readiness.

(G) Assess—

(i) the adequacy and appropriateness of the compensation and benefits currently provided for the members of the National Guard and the other reserve components, including the availability of health care benefits and health insurance; and

(ii) the effects of proposed changes in compensation and benefits on military careers in both the regular and the reserve components of the Armed Forces.

(H) Identify various feasible options for improving the compensation and other benefits available to the members of the National Guard and the members of the other reserve components and assess—

(i) the cost-effectiveness of such options; and

(ii) the foreseeable effects of such options on readiness, recruitment, and retention of personnel for careers in the regular and reserve components the Armed Forces.

(I) Assess the traditional military career paths for members of the National Guard and the other reserve components and identify alternative career paths that could enhance professional development.

(J) Assess the adequacy of the funding provided for the National Guard and the other reserve components for several previous fiscal years, including the funding provided for National Guard and reserve component equipment and the

Deadline.

funding provided for National Guard and other reserve component personnel in active duty military personnel accounts and reserve military personnel accounts.

(d) **FIRST MEETING.**—The Commission shall hold its first meeting not later than 30 days after the date on which all members of the Commission have been appointed.

(e) **ADMINISTRATIVE AND PROCEDURAL AUTHORITIES.**—(1) Sections 955, 956, 957 (other than subsection (f)), 958, and 959 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 111 note) shall apply to the Commission, except that in applying section 957(a) of such Act to the Commission, “level IV of the Executive Schedule” shall be substituted for “level V of the Executive Schedule”.

(2) The following provisions of law do not apply to the Commission:

(A) Section 3161 of title 5, United States Code.

(B) The Federal Advisory Committee Act (5 U.S.C. App.).

(f) **REPORTS.**—(1) Not later than three months after the first meeting of the Commission, the Commission shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth—

(A) a strategic plan for the work of the Commission;

(B) a discussion of the activities of the Commission; and

(C) any initial findings of the Commission.

(2) Not later than one year after the first meeting of the Commission, the Commission shall submit a final report to the committees of Congress referred to in paragraph (1) and to the Secretary of Defense. The final report shall include any recommendations that the Commission determines appropriate, including any recommended legislation, policies, regulations, directives, and practices.

(g) **TERMINATION.**—The Commission shall terminate 90 days after the date on which the final report is submitted under subsection (f)(2).

10 USC 10101
note.

(h) **ANNUAL REVIEW.**—(1) The Secretary of Defense shall annually review the reserve components of the Armed Forces with regard to—

(A) the roles and missions of the reserve components; and

(B) the compensation and other benefits, including health care benefits, that are provided for members of the reserve components under the laws of the United States.

(2) The Secretary shall submit a report of the annual review, together with any comments and recommendations that the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(3) The first review under paragraph (1) shall take place during fiscal year 2006.

SEC. 514. REPEAL OF EXCLUSION OF ACTIVE DUTY FOR TRAINING FROM AUTHORITY TO ORDER RESERVES TO ACTIVE DUTY.

(a) **GENERAL AUTHORITY TO ORDER RESERVES TO ACTIVE DUTY.**—Section 12301 of title 10, United States Code, is amended—

(1) in the first sentence of subsection (a), by striking “(other than for training)”;

(2) in subsection (c)—

(A) in the first sentence, by striking “(other than for training)” and inserting “as provided in subsection (a)”; and

(B) in the second sentence, by striking “ordered to active duty (other than for training)” and inserting “so ordered to active duty”; and

(3) in subsection (e), by striking “(other than for training)” and inserting “as provided in subsection (a)”.

(b) READY RESERVE 24-MONTH CALLUP AUTHORITY.—Section 12302 of such title is amended by striking “(other than for training)” in subsections (a) and (c).

(c) SELECTED RESERVE AND INDIVIDUAL READY RESERVE 270-DAY CALLUP AUTHORITY.—Section 12304(a) of such title is amended by striking “(other than for training)”.

(d) STANDBY RESERVE CALLUP AUTHORITY.—Section 12306 of such title is amended—

(1) in subsection (a), by striking “active duty (other than for training) only as provided in section 12301 of this title” and inserting “active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b)”; and

(2) in subsection (b)—

(A) in paragraph (1), by striking “(other than for training)” and inserting “under section 12301(a) of this title”; and

(B) in paragraph (2), by striking “no other member” and all that follows through “without his consent” and inserting “notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent”.

SEC. 515. ARMY PROGRAM FOR ASSIGNMENT OF ACTIVE COMPONENT ADVISERS TO UNITS OF THE SELECTED RESERVE.

(a) CHANGE IN MINIMUM NUMBER REQUIRED TO BE ASSIGNED.—Section 414(c)(1) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 12001 note) is amended by striking “5,000” and inserting “3,500”.

(b) LIMITATION ON REDUCTIONS.—Notwithstanding the amendment made by subsection (a), the Secretary of the Army may not reduce the number of active component Reserve support personnel below the number of such personnel as of the date of the enactment of this Act until the report required by subsection (c) has been submitted.

(c) REPORT.—Not later than March 31, 2005, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the support by active components of the Army for training and readiness of the Army National Guard and Army Reserve. The report shall include an evaluation and determination of each of the following:

(1) The effect on the ability of the Army to improve such training and readiness resulting from the reduction under the amendment made by subsection (a) in the minimum number of active component Reserve support personnel.

(2) The adequacy of having 3,500 members of the Army (the minimum number required under the law as so amended) assigned as active component Reserve support personnel in

10 USC 12001
note.

order to meet emerging training requirements in the Army reserve components in connection with unit and force structure conversions and preparations for wartime deployment.

(3) The nature and effectiveness of efforts by the Army to reallocate the 3,500 personnel assigned as active component Reserve support personnel to higher priority requirements and to expand the use of reservists on active duty to meet reserve component training needs.

(4) Whether the Army is planning further reductions in the number of active component Reserve support personnel and, if so, the scope and rationale for those reductions.

(5) Whether an increase in Army reserve component full-time support personnel will be required to replace the loss of active component Reserve support personnel.

(d) **DEFINITION.**—In this section, the term “active component Reserve support personnel” means the active component Army personnel assigned as advisers to units of the Selected Reserve of the Ready Reserve of the Army pursuant to section 414 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 12001 note).

SEC. 516. AUTHORITY TO ACCEPT CERTAIN VOLUNTARY SERVICES.

Section 1588 of title 10, United States Code, is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

“(8) Voluntary services to support programs of a committee of the Employer Support of the Guard and Reserve as authorized by the Secretary of Defense.”; and

(2) in subsection (f)(1), by striking “subsection (a)(3)” and inserting “paragraph (3) or (8) of subsection (a)”.

10 USC 10101
note.

SEC. 517. AUTHORITY TO REDESIGNATE THE NAVAL RESERVE AS THE NAVY RESERVE.

Effective date.

Federal Register,
publication.

(a) **AUTHORITY OF SECRETARY OF THE NAVY.**—The Secretary of the Navy may, with the approval of the President, redesignate the reserve component known as the Naval Reserve as the “Navy Reserve”. Any such redesignation shall be effective on a date specified by the Secretary, which date may not be earlier than the date that is 180 days after the date on which the Secretary submits recommended legislation under subsection (c).

(b) **PUBLICATION OF REDESIGNATION.**—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), the Secretary shall promptly publish in the Federal Register and submit to the Congress notice of the redesignation, including the effective date of the redesignation.

(c) **CONFORMING LEGISLATION.**—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), the Secretary shall submit to the Congress recommended legislation that identifies each specific provision of law that refers to the Naval Reserve and sets forth an amendment to that specific provision of law to conform the reference to the new designation.

(d) **REFERENCES.**—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), then on and after the effective date of the redesignation, any reference in any law, map, regulation, document, paper, or other record of the United States to the Naval Reserve shall be deemed to be a reference to the Navy Reserve.

SEC. 518. COMPTROLLER GENERAL ASSESSMENT OF INTEGRATION OF ACTIVE AND RESERVE COMPONENTS OF THE NAVY.

(a) **ASSESSMENT.**—The Comptroller General shall review the plan of the Secretary of the Navy for, and implementation by the Secretary of, initiatives undertaken within the Navy to improve the integration of the active and reserve components of the Navy in peacetime and wartime operations resulting from—

(1) the Naval Reserve Redesign Study carried out by the Navy; and

(2) the zero-based review of reserve component force structure undertaken by the commander of the Fleet Forces Command of the Navy during fiscal year 2004.

(b) **REPORT.**—No later than March 31, 2005, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the review under subsection (a). The Comptroller General shall include in the report recommendations for improved active and reserve component integration in the Navy.

(c) **MATTERS TO BE EXAMINED.**—In conducting the review under subsection (a), the Comptroller General shall examine the following:

(1) The criteria the Navy used to determine the following with respect to integration of the active and reserve components of the Navy:

(A) The future mix of active and reserve component force structure.

(B) Organization of command and control elements.

(C) Manpower levels.

(D) Basing changes.

(2) The extent to which the plans of the Navy for improving the integration of the active and reserve components of the Navy considered each of the following:

(A) The new Fleet Response Plan of the Navy.

(B) The flexible deployment concept.

(C) Global operations.

(D) Emerging mission requirements.

(E) Other evolving initiatives.

(3) The manner in which the timing of the execution of planned active and reserve integration initiatives will correlate with the funding of those initiatives, including consideration of an evaluation of the adequacy of the funding allocated to those integration initiatives.

(4) For naval aviation forces, the extent to which the active and reserve component integration plans of the Navy will affect factors such as—

(A) common training and readiness standards for active and reserve forces;

(B) reserve component access to the same equipment as the active component;

(C) relationships between command and headquarters elements of active and reserve forces;

(D) trends in the use by the Navy of units referred to as “associate” units or “blended” units;

(E) Basing criteria of future aviation forces; and

(F) Employment of Naval Reserve aviation forces and personnel in peacetime and wartime operations.

SEC. 519. LIMITATION ON NUMBER OF STARBASE ACADEMIES IN A STATE.

Paragraph (3) of section 2193b(c) of title 10, United States Code, is amended to read as follows:

“(3)(A) Except as otherwise provided under subparagraph (B), the Secretary may not support the establishment in any State of more than two academies under the program.

“(B) The Secretary may support the establishment and operation of an academy in a State in excess of two academies in that State if the Secretary expressly waives, in writing, the limitation in subparagraph (A) with respect to that State. In the case of any such waiver, appropriated funds may be used for the establishment and operation of an academy in excess of two in that State only to the extent that appropriated funds are expressly available for that purpose. Any such waiver shall be made under criteria to be prescribed by the Secretary.”.

SEC. 520. RECOGNITION ITEMS FOR CERTAIN RESERVE COMPONENT PERSONNEL.

(a) ARMY RESERVE.—(1) Chapter 1805 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 18506. Recruitment and retention: availability of funds for recognition items for Army Reserve personnel

“(a) AVAILABILITY OF FUNDS.—(1) Under regulations prescribed by the Secretary of the Army, funds authorized to be appropriated to the Army Reserve and available for recruitment and retention of military personnel may be obligated and expended for recognition items that are distributed to members of the Army Reserve and to members of their families and other individuals recognized as providing support that substantially facilitates service in the Army Reserve.

“(2) The purpose of the distribution of such items shall be to enhance the recruitment and retention of members of the Army Reserve.

“(b) PROVISION OF MEALS AND REFRESHMENTS.—For purposes of section 520c of this title and any regulation prescribed to implement that section, functions conducted for the purpose of presenting recognition items described in subsection (a) shall be treated as recruiting functions and recipients of such items shall be treated as persons who are the objects of recruiting efforts.

“(c) LIMITATION ON VALUE.—The value of items referred to in subsection (a) that are distributed to any single member of the Army Reserve at any one time may not exceed \$50.

“(d) TERMINATION OF AUTHORITY.—The authority under this section shall expire December 31, 2005.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“18506. Recruitment and retention: availability of funds for recognition items for Army Reserve personnel.”.

(b) USE OF FUNDS TO PROMOTE RETENTION IN THE NATIONAL GUARD.—(1) Chapter 7 of title 32, United States Code, is amended by adding at the end the following new section:

“§ 717. Presentation of recognition items for retention purposes

“(a) EXPENDITURES FOR RECOGNITION ITEMS.—Under regulations prescribed by the Secretary of the Army and the Secretary of the Air Force, funds appropriated for the Army National Guard or Air National Guard for the purpose of recruitment and retention of military personnel may be expended to procure recognition items of nominal or modest value for retention purposes and to present such items to members of the National Guard and to members of their families and other individuals recognized as providing support that substantially facilitates service in the National Guard.

Regulations.

“(b) PROVISION OF MEALS AND REFRESHMENTS.—For purposes of section 520c of title 10 and any regulation prescribed to implement that section, functions conducted for the purpose of presenting recognition items described in subsection (a) shall be treated as recruiting functions and recipients of such items shall be treated as persons who are the objects of recruiting efforts.

“(c) RELATION TO OTHER LAW.—The authority provided in this section is in addition to other provision of law authorizing the use of appropriations for recruitment and retention purposes.

“(d) DEFINITION.—The term ‘recognition items of nominal or modest value’ means commemorative coins, medals, trophies, badges, flags, posters, paintings, or other similar items that are valued at less than \$50 per item and are designed to recognize or commemorate service in the armed forces or National Guard.

“(e) TERMINATION OF AUTHORITY.—The authority under this section shall expire December 31, 2005.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“717. Presentation of recognition items for retention purposes.”.

(c) EFFECTIVE DATE.—Section 18506 of title 10, United States Code, as added by subsection (a), and section 717 of title 32, United States Code, as added by subsection (b), shall take effect as of November 24, 2003, and as if included in the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

10 USC 18506
note.**Subtitle C—Reserve Component Personnel Matters****SEC. 521. STATUS UNDER DISABILITY RETIREMENT SYSTEM FOR RESERVE MEMBERS RELEASED FROM ACTIVE DUTY DUE TO INABILITY TO PERFORM WITHIN 30 DAYS OF CALL TO ACTIVE DUTY.**

(a) IN GENERAL.—Chapter 61 of title 10, United States Code, is amended by inserting after section 1206 the following new section:

“§ 1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing

“(a) MEMBERS RELEASED FROM ACTIVE DUTY WITHIN 30 DAYS.—A member of a reserve component who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for a reason stated in subsection (b) shall be considered for all

purposes under this chapter to have been serving under an order to active duty for a period of 30 days or less.

“(b) APPLICABLE REASONS FOR RELEASE.—Subsection (a) applies in the case of a member released from active duty because of a failure to meet—

“(1) physical standards for retention due to a preexisting condition not aggravated during the period of active duty; or

“(2) medical or dental standards for deployment due to a preexisting condition not aggravated during the period of active duty.

“(c) SAVINGS PROVISION FOR MEDICAL CARE PROVIDED WHILE ON ACTIVE DUTY.—Notwithstanding subsection (a), any benefit under chapter 55 of this title received by a member described in subsection (a) or a dependent of such member before or during the period of active duty shall not be subject to recoupment or otherwise affected.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1206 the following new item:

“1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing.”.

SEC. 522. REQUIREMENT FOR RETENTION OF RESERVES ON ACTIVE DUTY TO QUALIFY FOR RETIRED PAY NOT APPLICABLE TO NONREGULAR SERVICE RETIREMENT SYSTEM.

Section 12686(a) of title 10, United States Code, is amended by inserting “(other than the retirement system under chapter 1223 of this title)” after “retirement system”.

SEC. 523. FEDERAL CIVIL SERVICE MILITARY LEAVE FOR RESERVE AND NATIONAL GUARD CIVILIAN TECHNICIANS.

Section 6323(d)(1) of title 5, United States Code is amended by striking “(other than active duty during a war or national emergency declared by the President or Congress)”.

SEC. 524. EXPANDED EDUCATIONAL ASSISTANCE AUTHORITY FOR OFFICERS COMMISSIONED THROUGH ROTC PROGRAM AT MILITARY JUNIOR COLLEGES.

(a) FINANCIAL ASSISTANCE PROGRAM FOR SERVICE ON ACTIVE DUTY.—Section 2107(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

Regulations.

“(5)(A) The Secretary of the Army, under regulations and criteria established by the Secretary, may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.

“(B) Such assistance is in addition to any financial assistance provided under paragraph (1), (3), or (4).

“(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.

“(D) An officer receiving financial assistance under this paragraph shall be attached to a unit of the Army as determined by the Secretary and shall be considered to be a member of the Senior Reserve Officers’ Training Corps on inactive duty for training, as defined in section 101(23) of title 38.

“(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.

“(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.

“(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.”.

(b) FINANCIAL ASSISTANCE PROGRAM FOR SERVICE IN TROOP PROGRAM UNITS.—Section 2107a(c) of such title is amended by adding at the end the following new paragraph:

“(4)(A) The Secretary of the Army may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.

“(B) Such assistance is in addition to any provided under paragraph (1) or (2).

“(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.

“(D) An officer receiving financial assistance under this paragraph shall be attached to a unit of the Army as determined by the Secretary and shall be considered to be a member of the Senior Reserve Officers’ Training Corps on inactive duty for training, as defined in section 101(23) of title 38.

“(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.

“(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.

“(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.”.

(c) IMPLEMENTATION REPORT.—Not later than March 31, 2007, the Secretary of the Army shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing information on the experience of the Department of the Army under paragraph (5) of section 2107(c) of title 10, United States Code, as added by subsection (a), and under paragraph (4) of section 2107a(c) of title 10, United States Code, as added by subsection (b). The report shall include any recommendations the Secretary considers necessary for the improvement of the programs under those paragraphs.

SEC. 525. REPEAL OF SUNSET PROVISION FOR FINANCIAL ASSISTANCE PROGRAM FOR STUDENTS NOT ELIGIBLE FOR ADVANCED TRAINING.

Section 2103a of title 10, United States Code, is amended by striking subsection (d).

**SEC. 526. EFFECT OF APPOINTMENT OR COMMISSION AS OFFICER
ON ELIGIBILITY FOR SELECTED RESERVE EDUCATION
LOAN REPAYMENT PROGRAM FOR ENLISTED MEMBERS.**

Section 16301(a) of title 10, United States Code, is amended—

(1) in paragraph (2), by striking “The Secretary” in the first sentence and inserting “Except as provided in paragraph (3), the Secretary of Defense”; and

(2) by adding at the end the following new paragraph:

“(3) In the case of a commitment made by the Secretary of Defense after the date of the enactment of this paragraph to repay a loan under paragraph (1) conditioned upon the performance by the borrower of service as an enlisted member under paragraph (2), the Secretary may repay the loan for service performed by the borrower as an officer (rather than as an enlisted member) in the case of a borrower who, after such commitment is entered into and while performing service as an enlisted member, accepts an appointment or commission as a warrant officer or commissioned officer of the Selected Reserve.”.

SEC. 527. EDUCATIONAL ASSISTANCE FOR CERTAIN RESERVE COMPONENT MEMBERS WHO PERFORM ACTIVE SERVICE.

(a) **ESTABLISHMENT OF PROGRAM.**—Part IV of subtitle E of title 10, United States Code, is amended by inserting after chapter 1606 the following new chapter:

“CHAPTER 1607—EDUCATIONAL ASSISTANCE FOR RESERVE COMPONENT MEMBERS SUPPORTING CONTINGENCY OPERATIONS AND CERTAIN OTHER OPERATIONS

“Sec.

“16161. Purpose.

“16162. Educational assistance program.

“16163. Eligibility for educational assistance.

“16164. Time limitation for use of entitlement.

“16165. Termination of assistance.

“16166. Administration of program.

“§ 16161. Purpose

“The purpose of this chapter is to provide educational assistance to members of the reserve components called or ordered to active service in response to a war or national emergency declared by the President or the Congress, in recognition of the sacrifices that those members make in answering the call to duty.

“§ 16162. Educational assistance program

“(a) **PROGRAM ESTABLISHMENT.**—The Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program as prescribed in this chapter to provide educational assistance to members of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned.

“(b) **AUTHORIZED EDUCATION PROGRAMS.**—Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

Regulations.

“(c) **BENEFIT AMOUNT.**—(1) The educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, an educational assistance allowance to each member entitled to educational assistance under this chapter who is pursuing a program of education authorized under subsection (b).

“(2) The educational assistance allowance provided under this chapter shall be based on the applicable percent under paragraph (4) to the applicable rate provided under section 3015 of title 38 for a member whose entitlement is based on completion of an obligated period of active duty of three years.

“(3) The educational assistance allowance provided under this section for a person who is undertaking a program for which a reduced rate is specified in chapter 30 of title 38, that rate shall be further adjusted by the applicable percent specified in paragraph (4).

“(4) The adjusted educational assistance allowance under paragraph (2) or (3), as applicable, shall be—

“(A) 40 percent in the case of a member of a reserve component who performed active service for 90 consecutive days but less than one continuous year;

“(B) 60 percent in the case of a member of a reserve component who performed active service for one continuous year but less than two continuous years; or

“(C) 80 percent in the case of a member of a reserve component who performed active service for two continuous years or more.

“(d) **MAXIMUM MONTHS OF ASSISTANCE.**—(1) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any member under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

“(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) shall not—

“(i) be charged against the entitlement of any individual under this chapter; or

“(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual’s receipt of assistance.

“(B) The payment of the educational assistance allowance referred to in subparagraph (A) is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

“(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title; and

“(ii) failed to receive credit or training time toward completion of the individual’s approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual’s course pursuit.

“(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to

receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

“§ 16163. Eligibility for educational assistance

“(a) ELIGIBILITY.—On or after September 11, 2001, a member of a reserve component is entitled to educational assistance under this chapter if the member—

“(1) served on active duty in support of a contingency operation for 90 consecutive days or more; or

“(2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full time National Guard duty under section 502(f) of title 32 for 90 consecutive days or more when authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

“(b) DISABLED MEMBERS.—Notwithstanding the eligibility requirements in subsection (a), a member who was ordered to active service as prescribed under subsection (a)(1) or (a)(2) but is released from duty before completing 90 consecutive days because of an injury, illness or disease incurred or aggravated in the line of duty shall be entitled to educational assistance under this chapter at the rate prescribed in section 16162(c)(4)(A) of this title.

“(c) WRITTEN NOTIFICATION.—(1) Each member who becomes entitled to educational assistance under subsection (a) shall be given a statement in writing prior to release from active service that summarizes the provisions of this chapter and stating clearly and prominently the substance of section 16165 of this title as such section may apply to the member.

“(2) At the request of the Secretary of Veterans Affairs, the Secretary concerned shall transmit a notice of entitlement for each such member to that Secretary.

“(d) BAR FROM DUAL ELIGIBILITY.—A member who qualifies for educational assistance under this chapter may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall make an irrevocable election (in such form and manner as the Secretary of Veterans Affairs may prescribe) as to the program to which such service is to be credited.

“(e) BAR FROM DUPLICATION OF EDUCATIONAL ASSISTANCE ALLOWANCE.—(1) Except as provided in paragraph (2), an individual entitled to educational assistance under this chapter who is also eligible for educational assistance under chapter 1606 of this title, chapter 30, 31, 32, or 35 of title 38, or under the Hostage Relief Act of 1980 (Public Law 96-449; 5 U.S.C. 5561 note) may not receive assistance under more than one such programs and shall elect (in such form and manner as the Secretary concerned may prescribe) under which program the member elects to receive educational assistance.

“(2) The restriction on duplication of educational assistance under paragraph (1) does not apply to the entitlement of educational assistance under section 16131(i) of this title.

“§ 16164. Time limitation for use of entitlement

“(a) DURATION OF ENTITLEMENT.—Except as provided in subsection (b), a member remains entitled to educational assistance under this chapter while serving—

“(1) in the Selected Reserve of the Ready Reserve, in the case of a member called or ordered to active service while serving in the Selected Reserve; or

“(2) in the Ready Reserve, in the case of a member ordered to active duty while serving in the Ready Reserve (other than the Selected Reserve).

“(b) DURATION OF ENTITLEMENT FOR DISABLED MEMBERS.—

(1) In the case of a person who is separated from the Ready Reserve because of a disability which was not the result of the individual’s own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter, such person’s entitlement to educational assistance expires at the end of the 10-year period beginning on the date on which such person became entitled to such assistance.

“(2) The provisions of subsections (d) and (f) of section 3031 of title 38 shall apply to the period of entitlement prescribed by paragraph (1).

Applicability.

“§ 16165. Termination of assistance

“Educational assistance may not be provided under this chapter, or if being provided under this chapter, shall be terminated—

“(1) if the member is receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers’ Training Corps program; or

“(2) when the member separates from the Ready Reserve, as provided for under section 16164(a)(1) or section 16164(a)(2), as applicable, of this title.

“§ 16166. Administration of program

“(a) ADMINISTRATION.—Educational assistance under this chapter shall be provided through the Department of Veterans Affairs, under agreements to be entered into by the Secretary of Defense, and by the Secretary of Homeland Security, with the Secretary of Veterans Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Department of Veterans Affairs for the making of payments under this chapter.

“(b) PROGRAM MANAGEMENT.—Except as otherwise provided in this chapter, the provisions of sections 503, 511, 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall be applicable to the provision of educational assistance under this chapter. The term ‘eligible veteran’ and the term ‘person’, as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

“(c) FLIGHT TRAINING.—The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of title 38) by an individual entitled to educational assistance under this chapter if—

“(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

“(2) the individual possesses a valid private pilot certificate and meets, on the day the member begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and

“(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

“(d) TRUST FUND.—Amounts for payments for benefits under this chapter shall be derived from the Department of Defense Education Benefits Fund under section 2006 of this title.”.

(b) CONFORMING AMENDMENTS.—(1) Section 2006(b) of such title is amended—

(A) in paragraph (1), by striking “chapter 1606” and inserting “chapters 1606 and 1607, including funds provided by the Secretary of Homeland Security for education liabilities for the Coast Guard when it is not operating as a service in the Department of the Navy”; and

(B) in paragraph (2)(C), by striking “for educational assistance under chapter 1606” and inserting “(including funds from the Department in which the Coast Guard is operating) for educational assistance under chapters 1606 and 1607”.

(2) Section 3695(a)(5) of title 38, United States Code, is amended by inserting “1607,” after “1606,”.

(c) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle E of title 10, United States Code, and at the beginning of part IV of such subtitle, are amended by inserting after the item relating to chapter 1606 the following new item:

“1607. Educational Assistance for Reserve Component Members Supporting Contingency Operations and Certain Other Operations16161”.

SEC. 528. SENSE OF CONGRESS ON GUIDANCE CONCERNING TREATMENT OF EMPLOYER-PROVIDED COMPENSATION AND OTHER BENEFITS VOLUNTARILY PROVIDED TO EMPLOYEES WHO ARE ACTIVATED RESERVISTS.

(a) SENSE OF CONGRESS.—It is the sense of Congress—

(1) that the Secretary of the Treasury should provide guidance with respect to treatment under the internal revenue laws of payments made by employers to activated Reservist employees under voluntary Reserve-employee differential pay arrangements, benefits provided by employers to such employees, and contributions by employers to employer-provided retirement savings plans related thereto; and

(2) that the guidance provided under paragraph (1) should, to the extent possible within the Secretary's authority, be consistent with the goal of promoting and ensuring the validity of voluntary differential pay arrangements, benefits, and contributions referred to in that paragraph.

(b) DEFINITIONS.—For purposes of this section:

(1) VOLUNTARY RESERVE-EMPLOYEE DIFFERENTIAL PAY ARRANGEMENT.—The term “voluntary Reserve-employee differential pay arrangement” means an arrangement by which an employer of an activated Reservist employee voluntarily agrees to pay, and pays, to that employee, while on active duty, amounts equivalent to the difference (or some portion of the difference) between (A) the compensation of that employee paid by the employer at the time of the employee's

activation for such active duty, and (B) that employee's military compensation.

(2) **ACTIVATED RESERVIST EMPLOYEE.**—The term “activated Reservist employee” means a member of a reserve component of the Armed Forces who is on active duty under a call or order to active duty (other than for training) and who at the time of such call or order is employed in a position subject to chapter 43 of title 38, United States Code (referred to as the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)).

Subtitle D—Joint Officer Management and Professional Military Education

SEC. 531. STRATEGIC PLAN TO LINK JOINT OFFICER DEVELOPMENT TO OVERALL MISSIONS AND GOALS OF DEPARTMENT OF DEFENSE.

(a) **PLAN REQUIRED.**—(1) The Secretary of Defense shall develop a strategic plan for joint officer management and joint professional military education that links joint officer development to the accomplishment of the overall missions and goals of the Department of Defense, as set forth in the most recent national military strategy under section 153(d) of title 10, United States Code. Such plan shall be developed for the purpose of ensuring that sufficient numbers of officers fully qualified in occupational specialties involving combat operations are available as necessary to meet the needs of the Department for qualified officers who are operationally effective in the joint environment.

(2) The Secretary shall develop the strategic plan with the advice of the Chairman of the Joint Chiefs of Staff.

(b) **MATTERS TO BE INCLUDED.**—As part of the strategic plan under subsection (a), the Secretary shall include the following:

(1) A statement of the levels of joint officer resources needed to be available to properly support the overall missions of the Department of Defense, with such resources to be specified by the number of officers with the joint specialty, the number of officers required for service in joint duty assignment positions, and the training and education resources required.

(2) An assessment of the available and projected joint officer development resources (including officers, educational and training resources, and availability of joint duty assignment positions and tours of duty) necessary to achieve the levels specified under paragraph (1).

(3) Identification of any problems or issues arising from linking resources for joint officer development to accomplishment of the objective of meeting the levels specified under paragraph (1) to resolve those problems and issues and plans.

(4) A description of the process for identification of the present and future requirements for joint specialty officers.

(5) A description of the career development and management of joint specialty officers and of any changes to be made to facilitate achievement of the levels of resources specified in paragraph (1), including additional education requirements, promotion opportunities, and assignments to fill joint assignments.

(6) An assessment of any problems or issues (and proposed solutions for any such problems and issues) arising from linking promotion eligibility to completion of joint professional military education.

(7) An assessment of any problems or issues (and proposed solutions for any such problems and issues) arising from linking prescribed lengths of joint duty assignments to qualification as joint specialty officers.

(8) An assessment of any problems or issues (and proposed solutions for any such problems and issues) arising from current law regarding expected rates of promotion for joint specialty officers and officers who are serving in, or have served in, joint duty assignments (other than those serving in, or who have served in, the Joint Staff and joint specialty officers).

(9) An assessment of any problems or issues (and proposed solutions for any such problems and issues) arising from current applicability of scientific and technical qualification waivers for designation as joint specialty officers.

(10) An assessment of the viability of the use of incentives (such as awarding ribbons) to any person who successfully completes a joint professional military education program of instruction.

(11) An assessment of the feasibility and utility of a comprehensive written examination as part of the evaluation criteria for selection of officers for full-time attendance at an intermediate or senior level service school.

(12) An assessment of the effects on the overall educational experience at the National Defense University of a small increase in the number of private-sector civilians eligible to enroll in instruction at the National Defense University.

(13) An assessment of the propriety and implications in providing joint specialty officer qualification to all qualifying reserve officers who have achieved the statutory prerequisites.

(c) **INCLUSION OF RESERVE COMPONENT OFFICERS.**—In developing the strategic plan required by subsection (a), the Secretary shall include joint officer development for officers on the reserve active-status list in the plan.

(d) **REPORT.**—The Secretary shall submit the plan developed under this section to the Committees on Armed Services of the Senate and House of Representatives not later than January 15, 2006.

Deadline.

(e) **ADDITIONAL ASSESSMENT.**—Not later than January 15, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives, as a follow-on to the report under subsection (d), a report providing an assessment of, and initiatives to improve, the performance in joint matters of the following:

(1) Senior civilian officers and employees in the Office of the Secretary of Defense, the Defense Agencies, and the military departments.

(2) Senior noncommissioned officers.

(3) Senior leadership in the reserve components.

SEC. 532. IMPROVEMENT TO PROFESSIONAL MILITARY EDUCATION IN THE DEPARTMENT OF DEFENSE.

(a) **IN GENERAL.**—Part III of subtitle A of title 10, United States Code, is amended—

- (1) by redesignating chapter 107 as chapter 106A; and
- (2) by inserting before chapter 108 the following new chapter:

“CHAPTER 107—PROFESSIONAL MILITARY EDUCATION

“Sec.

“2151. Definitions.

“2152. Professional military education: general requirements.

“2153. Capstone course: newly selected general and flag officers.

“2154. Joint professional military education: three-phase approach.

“2155. Joint professional military education phase II program of instruction.

“2156. Joint Forces Staff College: duration of principal course of instruction.

“2157. Annual report to Congress.

“§ 2151. Definitions

“(a) JOINT PROFESSIONAL MILITARY EDUCATION.—Joint professional military education consists of the rigorous and thorough instruction and examination of officers of the armed forces in an environment designed to promote a theoretical and practical in-depth understanding of joint matters and, specifically, of the subject matter covered. The subject matter to be covered by joint professional military education shall include at least the following:

“(1) National Military Strategy.

“(2) Joint planning at all levels of war.

“(3) Joint doctrine.

“(4) Joint command and control.

“(5) Joint force and joint requirements development.

“(b) OTHER DEFINITIONS.—In this chapter:

“(1) The term ‘senior level service school’ means any of the following:

“(A) The Army War College.

“(B) The College of Naval Warfare.

“(C) The Air War College.

“(D) The Marine Corps War College.

“(2) The term ‘intermediate level service school’ means any of the following:

“(A) The United States Army Command and General Staff College.

“(B) The College of Naval Command and Staff.

“(C) The Air Command and Staff College.

“(D) The Marine Corps Command and Staff College.

“§ 2152. Joint professional military education: general requirements

“(a) IN GENERAL.—The Secretary of Defense shall implement a comprehensive framework for the joint professional military education of officers, including officers nominated under section 661 of this title for the joint specialty.

“§ 2153. Capstone course: newly selected general and flag officers

“(a) REQUIREMENT.—Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new general and flag officers to work with the other armed forces.

“(b) WAIVER AUTHORITY.—(1) Subject to paragraph (2), the Secretary of Defense may waive subsection (a)—

“(A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;

“(B) when necessary for the good of the service;

“(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and

“(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.

“(2) The authority of the Secretary of Defense to grant a waiver under paragraph (1) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

“§ 2154. Joint professional military education: three-phase approach

“(a) THREE-PHASE APPROACH.—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

“(1) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase I instruction, consisting of all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school.

“(2) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase II instruction, consisting of a joint professional military education curriculum taught in residence at—

“(A) the Joint Forces Staff College; or

“(B) a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution.

“(3) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as the Capstone course, for officers selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) and offered in accordance with section 2153 of this title.

“(b) SEQUENCED APPROACH.—The Secretary shall require the sequencing of joint professional military education so that the standard sequence of assignments for such education requires an officer to complete Phase I instruction before proceeding to Phase II instruction, as provided in section 2155(a) of this title.

“§ 2155. Joint professional military education phase II program of instruction

“(a) PREREQUISITE OF COMPLETION OF JOINT PROFESSIONAL MILITARY EDUCATION I PROGRAM OF INSTRUCTION.—(1) After September 30, 2009, an officer of the armed forces may not be accepted

for, or assigned to, a program of instruction designated by the Secretary of Defense as joint professional military education Phase II unless the officer has successfully completed a program of instruction designated by the Secretary of Defense as joint professional military education Phase I.

“(2) The Chairman of the Joint Chiefs of Staff may grant exceptions to the requirement under paragraph (1). Such an exception may be granted only on a case-by-case basis under exceptional circumstances, as determined by the Chairman. An officer selected to receive such an exception shall have knowledge of joint matters and other aspects of the Phase I curriculum that, to the satisfaction of the Chairman, qualifies the officer to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Joint Forces Staff College or a senior level service school designated by the Secretary of Defense as a joint professional military education institution who have not completed Phase I instruction should comprise no more than 10 percent of the total number of officers selected.

“(b) PHASE II REQUIREMENTS.—The Secretary shall require that the curriculum for Phase II joint professional military education at any school—

“(1) focus on developing joint operational expertise and perspectives and honing joint warfighting skills; and

“(2) be structured —

“(A) so as to adequately prepare students to perform effectively in an assignment to a joint, multiservice organization; and

“(B) so that students progress from a basic knowledge of joint matters learned in Phase I instruction to the level of expertise necessary for successful performance in the joint arena.

“(c) CURRICULUM CONTENT.—In addition to the subjects specified in section 2151(a) of this title, the curriculum for Phase II joint professional military education shall include the following:

“(1) National security strategy.

“(2) Theater strategy and campaigning.

“(3) Joint planning processes and systems.

“(4) Joint, interagency, and multinational capabilities and the integration of those capabilities.

“(d) STUDENT RATIO; FACULTY RATIO.—Not later than September 30, 2009, for courses of instruction in a Phase II program of instruction that is offered at senior level service school that has been designated by the Secretary of Defense as a joint professional military education institution—

Deadline.

“(1) the percentage of students enrolled in any such course who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented; and

“(2) of the faculty at the school who are active-duty officers who provide instruction in such courses, the percentage who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented.

“§ 2156. Joint Forces Staff College: duration of principal course of instruction

“(a) DURATION.—The duration of the principal course of instruction offered at the Joint Forces Staff College may not be less than 10 weeks of resident instruction.

“(b) DEFINITION.—In this section, the term ‘principal course of instruction’ means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.

“§ 2157. Annual report to Congress

“The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title, for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps and each reserve component):

“(1) The number of officers who successfully completed a joint professional military education phase II course and were not selected for promotion.

“(2) The number of officer students and faculty members assigned by each service to the professional military schools of the other services and to the joint schools.”

(b) TRANSFER OF OTHER PROVISIONS.—Subsections (b) and (c) of section 663 of title 10, United States Code, are transferred to section 2152 of such title, as added by subsection (a), and added at the end thereof.

(c) CONFORMING AMENDMENTS.—(1) Section 663 of such title, as amended by subsection (b), is further amended—

(A) by striking subsections (a) and (e); and

(B) by striking “(d) POST-EDUCATION JOINT DUTY ASSIGNMENTS.—(1) The” and inserting “(a) JOINT SPECIALTY OFFICERS.—The”;

(C) by striking “(2)(A) The Secretary” and inserting “(b) OTHER OFFICERS.—(1) The Secretary”;

(D) by striking “in subparagraph (B)” and inserting “in paragraph (2)”;

(E) by striking “(B) The Secretary” and inserting “(2) The Secretary”; and

(F) by striking “in subparagraph (A)” and inserting “in paragraph (1)”.

(2)(A) The heading of such section is amended to read as follows:

“§ 663. Joint duty assignments after completion of joint professional military education”.

(B) The item relating to that section in the table of sections at the beginning of chapter 38 of such title is amended to read as follows:

“663. Joint duty assignments after completion of joint professional military education.”

(d) CONFORMING REPEAL.—Section 1123(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1556) is repealed.

(e) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle A, and at the beginning of part III of subtitle

A, of title 10, United States Code, are amended by striking the item relating to chapter 107 and inserting the following:

“106A. Educational Assistance for Persons Enlisting for Active Duty 2141
 “107. Professional Military Education 2151”.

SEC. 533. JOINT REQUIREMENTS FOR PROMOTION TO FLAG OR GENERAL OFFICER GRADE.

(a) **EFFECTIVE DATE FOR JOINT SPECIALTY OFFICER REQUIREMENT.**—Subsection (a)(2) of section 619a of title 10, United States Code, is amended by striking “September 30, 2007” and inserting “September 30, 2008”.

(b) **EXCEPTION TO JOINT DUTY REQUIREMENT FOR OFFICERS SERVING IN JOINT DUTY ASSIGNMENT WHEN CONSIDERED FOR PROMOTION.**—Subsection (b)(4) of such section is amended by striking “if—” and all that follows through “(B) the officer’s” and inserting “if the officer’s”.

SEC. 534. CLARIFICATION OF TOURS OF DUTY QUALIFYING AS A JOINT DUTY ASSIGNMENT.

(a) **JOINT DUTY ASSIGNMENT LIST.**—Subsection (b)(2) of section 668 of title 10, United States Code, is amended by striking “a list” in the matter preceding subparagraph (A) and inserting “a joint duty assignment list”.

(b) **CONSECUTIVE TOURS OF DUTY IN JOINT DUTY ASSIGNMENTS.**—Subsection (c) of such section is amended by striking “within the same organization”.

(c) **EFFECTIVE DATE.**—The amendment made by subsection (b) shall not apply in the case of a joint duty assignment completed by an officer before the date of the enactment of this Act, except in the case of an officer who has continued in joint duty assignments, without a break in service in such assignments, between the end of such assignment and the date of the enactment of this Act.

10 USC 668 note.

SEC. 535. TWO-YEAR EXTENSION OF TEMPORARY STANDARD FOR PROMOTION POLICY OBJECTIVES FOR JOINT OFFICERS.

Section 662(a)(2) of title 10, United States Code, is amended by striking “December 27, 2004” in subparagraphs (A) and (B) and inserting “December 27, 2006”.

SEC. 536. TWO-YEAR EXTENSION OF AUTHORITY TO WAIVE REQUIREMENT THAT RESERVE CHIEFS AND NATIONAL GUARD DIRECTORS HAVE SIGNIFICANT JOINT DUTY EXPERIENCE.

(a) **EXTENSION.**—Sections 3038(b)(4), 5143(b)(4), 5144(b)(4), 8038(b)(4), and 10506(a)(3)(D) of title 10, United States Code, are amended by striking “December 31, 2004,” and inserting “December 31, 2006,”.

(b) **FUTURE COMPLIANCE.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a plan for ensuring that all officers selected after December 31, 2006, for recommendation for appointment as a Reserve chief or National Guard director have significant joint duty experience, as required by law, and may be so recommended without requirement for a waiver of such requirement. Such plan shall be developed in coordination with the Chairman of the Joint Chiefs of Staff.

Deadline.

Subtitle E—Military Service Academies

SEC. 541. REVISION TO CONDITIONS ON SERVICE OF OFFICERS AS SERVICE ACADEMY SUPERINTENDENTS.

(a) AUTHORITY TO WAIVE REQUIREMENT THAT OFFICERS RETIRE AFTER SERVICE AS SUPERINTENDENT.—Title 10, United States Code, is amended as follows:

(1) MILITARY ACADEMY.—Section 3921 is amended—

(A) by inserting “(a) MANDATORY RETIREMENT.—” before “Upon the”; and

(B) by adding at the end the following:

“(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer not retire, and a written notification of the intent of the President to nominate the officer for reassignment.”.

(2) NAVAL ACADEMY.—Section 6371 is amended—

(A) by inserting “(a) MANDATORY RETIREMENT.—” before “Upon the”; and

(B) by adding at the end the following:

“(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer not retire, and a written notification of the intent of the President to nominate the officer for reassignment.”.

(3) AIR FORCE ACADEMY.—Section 8921 is amended—

(A) by inserting “(a) MANDATORY RETIREMENT.—” before “Upon the”; and

(B) by adding at the end the following:

“(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer not retire, and a written notification of the intent of the President to nominate the officer for reassignment.”.

(b) MINIMUM THREE-YEAR TOUR OF DUTY AS SUPERINTENDENT.—Title 10, United States Code, is amended as follows:

(1) MILITARY ACADEMY.—Section 4333a is amended—

(A) by inserting “(a) RETIREMENT.—” before “As a”;

(B) by inserting before the period at the end the following: “pursuant to section 3921(a) of this title, unless such retirement is waived under section 3921(b) of this title”; and

(C) by adding at the end the following:

“(b) MINIMUM TOUR OF DUTY.—An officer who is detailed to the position of Superintendent of the Academy shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before

having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Army shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.”.

(2) NAVAL ACADEMY.—Section 6951a is amended—

(A) by inserting before the period at the end of subsection (b) the following: “pursuant to section 6371(a) of this title, unless such retirement is waived under section 6371(b) of this title”; and

(B) by adding at the end the following new subsection:

“(c) An officer who is detailed to the position of Superintendent shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Navy shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.”.

(3) AIR FORCE ACADEMY.—Section 9333a is amended—

(A) by inserting “(a) RETIREMENT.—” before “As a”;

(B) by inserting before the period at the end the following: “pursuant to section 8921(a) of this title, unless such retirement is waived under section 8921(b) of this title”; and

(C) by adding at the end the following:

“(b) MINIMUM TOUR OF DUTY.—An officer who is detailed to the position of Superintendent of the Academy shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Air Force shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.”.

(c) CLERICAL AMENDMENTS.—Title 10, United States Code, is amended as follows:

(1)(A) The heading for section 3921 is amended to read as follows:

“§ 3921. Mandatory retirement: Superintendent of the United States Military Academy; waiver authority”.

(B) The item relating to that section in the table of sections at the beginning of chapter 367 is amended to read as follows:

“3921. Mandatory retirement: Superintendent of the United States Military Academy; waiver authority.”.

(2)(A) The heading for section 6371 is amended to read as follows:

“§ 6371. Mandatory retirement: Superintendent of the United States Naval Academy; waiver authority”.

(B) The item relating to that section in the table of sections at the beginning of chapter 573 is amended to read as follows:

“6371. Mandatory retirement: Superintendent of the United States Naval Academy; waiver authority.”.

(3)(A) The heading for section 8921 is amended to read as follows:

“§ 8921. Mandatory retirement: Superintendent of the United States Air Force Academy; waiver authority”.

(B) The item relating to that section in the table of sections at the beginning of chapter 867 is amended to read as follows:

“8921. Mandatory retirement: Superintendent of the United States Air Force Academy; waiver authority.”.

SEC. 542. ACADEMIC QUALIFICATIONS OF THE DEAN OF THE FACULTY OF UNITED STATES AIR FORCE ACADEMY.

Section 9335(a) of title 10, United States Code, is amended by inserting before the period at the end of the second sentence the following: “, except that a person may not be appointed or assigned as Dean unless that person holds the highest academic degree in that person’s academic field”.

SEC. 543. BOARD OF VISITORS OF UNITED STATES AIR FORCE ACADEMY.

Section 9355 of title 10, United States Code, is amended to read as follows:

“§ 9355. Board of Visitors

“(a) A Board of Visitors to the Academy is constituted annually. The Board consists of the following members:

“(1) Six persons designated by the President.

“(2) The chairman of the Committee on Armed Services of the House of Representatives, or his designee.

“(3) Four persons designated by the Speaker of the House of Representatives, three of whom shall be members of the House of Representatives and the fourth of whom may not be a member of the House of Representatives.

“(4) The chairman of the Committee on Armed Services of the Senate, or his designee.

“(5) Three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate.

“(b)(1) The persons designated by the President serve for three years each except that any member whose term of office has expired

shall continue to serve until his successor is designated. The President shall designate persons each year to succeed the members designated by the President whose terms expire that year.

“(2) At least two of the members designated by the President shall be graduates of the Academy.

“(c)(1) If a member of the Board dies or resigns or is terminated as a member of the board under paragraph (2), a successor shall be designated for the unexpired portion of the term by the official who designated the member.

“(2)(A) If a member of the Board fails to attend two successive Board meetings, except in a case in which an absence is approved in advance, for good cause, by the Board chairman, such failure shall be grounds for termination from membership on the Board. A person designated for membership on the Board shall be provided notice of the provisions of this paragraph at the time of such designation.

“(B) Termination of membership on the Board under subparagraph (A)—

“(i) in the case of a member of the Board who is not a member of Congress, may be made by the Board chairman; and

“(ii) in the case of a member of the Board who is a member of Congress, may be made only by the official who designated the member.

“(C) When a member of the Board is subject to termination from membership on the Board under subparagraph (A), the Board chairman shall notify the official who designated the member. Upon receipt of such a notification with respect to a member of the Board who is a member of Congress, the official who designated the member shall take such action as that official considers appropriate.

“(d) The Board should meet at least four times a year, with at least two of those meetings at the Academy. The Board or its members may make other visits to the Academy in connection with the duties of the Board. Board meetings should last at least one full day. Board members shall have access to the Academy grounds and the cadets, faculty, staff, and other personnel of the Academy for the purposes of the duties of the Board.

“(e)(1) The Board shall inquire into the morale, discipline, and social climate, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

“(2) The Secretary of the Air Force and the Superintendent of the Academy shall provide the Board candid and complete disclosure, consistent with applicable laws concerning disclosure of information, with respect to institutional problems.

“(3) The Board shall recommend appropriate action.

“(f) The Board shall prepare a semiannual report containing its views and recommendations pertaining to the Academy, based on its meeting since the last such report and any other considerations it determines relevant. Each such report shall be submitted concurrently to the Secretary of Defense, through the Secretary of the Air Force, and to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

“(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

“(h) While performing duties as a member of the Board, each member of the Board and each adviser shall be reimbursed under Government travel regulations for travel expenses.”.

SEC. 544. APPROPRIATED FUNDS FOR SERVICE ACADEMY ATHLETIC AND RECREATIONAL EXTRACURRICULAR PROGRAMS TO BE TREATED IN SAME MANNER AS FOR MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS.

(a) UNITED STATES MILITARY ACADEMY.—(1) Chapter 403 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 4359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as non-appropriated funds

“(a) AUTHORITY.—In the case of an Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Army may designate funds appropriated to the Department of the Army and available for that program to be treated as non-appropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds. Appropriated funds so designated shall be considered to be non-appropriated funds for all purposes and shall remain available until expended.

“(b) COVERED PROGRAMS.—In this section, the term ‘Academy mixed-funded athletic or recreational extracurricular program’ means an athletic or recreational extracurricular program of the Academy to which each of the following applies:

“(1) The program is not considered a morale, welfare, or recreation program.

“(2) The program is supported through appropriated funds.

“(3) The program is supported by a nonappropriated fund instrumentality.

“(4) The program is not a private organization and is not operated by a private organization.”.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

“4359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds.”.

(b) UNITED STATES NAVAL ACADEMY.—(1) Chapter 603 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 6978. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as non-appropriated funds

“(a) AUTHORITY.—In the case of a Naval Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Navy may designate funds appropriated to the Department of the Navy and available for that program to be treated as non-appropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds.

Appropriated funds so designated shall be considered to be non-appropriated funds for all purposes and shall remain available until expended.

“(b) COVERED PROGRAMS.—In this section, the term ‘Naval Academy mixed-funded athletic or recreational extracurricular program’ means an athletic or recreational extracurricular program of the Naval Academy to which each of the following applies:

“(1) The program is not considered a morale, welfare, or recreation program.

“(2) The program is supported through appropriated funds.

“(3) The program is supported by a nonappropriated fund instrumentality.

“(4) The program is not a private organization and is not operated by a private organization.”.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

“6978. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds.”.

(c) UNITED STATES AIR FORCE ACADEMY.—(1) Chapter 903 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 9359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as non-appropriated funds

“(a) AUTHORITY.—In the case of an Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Air Force may designate funds appropriated to the Department of the Air Force and available for that program to be treated as nonappropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds. Appropriated funds so designated shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

“(b) COVERED PROGRAMS.—In this section, the term ‘Academy mixed-funded athletic or recreational extracurricular program’ means an athletic or recreational extracurricular program of the Academy to which each of the following applies:

“(1) The program is not considered a morale, welfare, or recreation program.

“(2) The program is supported through appropriated funds.

“(3) The program is supported by a nonappropriated fund instrumentality.

“(4) The program is not a private organization and is not operated by a private organization.”.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

“9359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds.”.

(d) EFFECTIVE DATE AND APPLICABILITY.—Sections 4359, 6978, and 9359 of title 10, United States Code, shall apply only with respect to funds appropriated for fiscal years after fiscal year 2004.

10 USC 4359
note.

SEC. 545. CODIFICATION OF PROHIBITION ON IMPOSITION OF CERTAIN CHARGES AND FEES AT THE SERVICE ACADEMIES.

(a) UNITED STATES MILITARY ACADEMY.—(1) Chapter 403 of title 10, United States Code, as amended by 544(a)(1), is further amended by adding at the end the following new section:

“§ 4360. Cadets: charges and fees for attendance; limitation

“(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

Notification.

“(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.”.

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 544(a)(2) the following new item:

“4360. Cadets: charges and fees for attendance; limitation.”.

(b) UNITED STATES NAVAL ACADEMY.—(1) Chapter 603 of title 10, United States Code, as amended by 544(b)(1), is further amended by adding at the end the following new section:

“§ 6979. Midshipmen: charges and fees for attendance; limitation

“(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Naval Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

Notification.

“(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to midshipmen for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Naval Academy in the amount of a charge or fee authorized under this subsection.”.

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 544(b)(2) the following new item:

“6979. Midshipmen: charges and fees for attendance; limitation.”.

(c) UNITED STATES AIR FORCE ACADEMY.—(1) Chapter 903 title 10, United States Code, as amended by 544(c)(1), is further amended by adding at the end the following new section:

“§ 9360. Cadets: charges and fees for attendance; limitation

“(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

Notification.

“(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made

by the Academy in the amount of a charge or fee authorized under this subsection.”.

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 544(c)(2) the following new item:

“9360. Cadets: charges and fees for attendance; limitation.”.

(d) UNITED STATES COAST GUARD ACADEMY.—(1) Chapter 9 of title 14, United States Code, is amended by adding at the end the following new section:

“§ 197. Cadets: charges and fees for attendance; limitation

“(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

“(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Homeland Security shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.”.

Notification.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“197. Cadets: charges and fees for attendance; limitation.”.

(e) UNITED STATES MERCHANT MARINE ACADEMY.—Section 1303 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295b), is amended by adding at the end the following new subsection:

“(j) LIMITATION ON CHARGES AND FEES FOR ATTENDANCE.—

“(1) Except as provided in paragraph (2), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

“(2) The prohibition specified in paragraph (1) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this paragraph.”.

Notification.

(f) REPEAL OF CODIFIED PROVISION.—Section 553 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 4331 note) is repealed.

Subtitle F—Other Education and Training Matters

SEC. 551. COLLEGE FIRST DELAYED ENLISTMENT PROGRAM.

(a) CODIFICATION AND EXTENSION OF ARMY PROGRAM.—(1) Chapter 31 of title 10, United States Code, is amended by inserting after section 510 the following new section:

“§ 511. College First Program

“(a) PROGRAM AUTHORITY.—The Secretary of each military department may establish a program to increase the number of, and the level of the qualifications of, persons entering the armed

forces as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service.

“(b) DELAYED ENTRY WITH ALLOWANCE FOR HIGHER EDUCATION.—The Secretary concerned may—

“(1) exercise the authority under section 513 of this title—

“(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of a reserve component, notwithstanding the scope of the authority under subsection (a) of that section, in the case of the Army National Guard of the United States or Air National Guard of the United States; and

“(B) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within the maximum period of delay determined for that person under subsection (c); and

“(2) subject to paragraph (2) of subsection (d) and except as provided in paragraph (3) of that subsection, pay an allowance to a person accepted for enlistment under paragraph (1)(A) for each month of the period during which that person is enrolled in and pursuing a program described in paragraph (1)(B).

“(c) MAXIMUM PERIOD OF DELAY.—The period of delay authorized a person under paragraph (1)(B) of subsection (b) may not exceed the 30-month period beginning on the date of the person’s enlistment accepted under paragraph (1)(A) of such subsection.

“(d) ALLOWANCE.—(1) The monthly allowance paid under subsection (b)(2) shall be equal to the amount of the subsistence allowance provided for certain members of the Senior Reserve Officers’ Training Corps with the corresponding number of years of participation under section 209(a) of title 37. The Secretary concerned may supplement that stipend by an amount not to exceed \$225 per month.

“(2) An allowance may not be paid to a person under this section for more than 24 months.

“(3) A member of the Selected Reserve of a reserve component may be paid an allowance under this section only for months during which the member performs satisfactorily as a member of a unit of the reserve component that trains as prescribed in section 10147(a)(1) of this title or section 502(a) of title 32. Satisfactory performance shall be determined under regulations prescribed by the Secretary concerned.

“(4) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

“(e) RECOUPMENT OF ALLOWANCE.—(1) A person who, after receiving an allowance under this section, fails to complete the total period of service required of that person in connection with delayed entry authorized for the person under section 513 shall repay the United States the amount which bears the same ratio to the total amount of that allowance paid to the person as the

unserved part of the total required period of service bears to the total period.

“(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

“(3) A discharge of a person in bankruptcy under title 11 that is entered less than five years after the date on which the person was, or was to be, enlisted in the regular Army pursuant to the delayed entry authority under section 513 does not discharge that person from a debt arising under paragraph (1).

“(4) The Secretary concerned may waive, in whole or in part, a debt arising under paragraph (1) in any case for which the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

“(f) SPECIAL PAY AND BONUSES.—Upon enlisting in the regular component of the member’s armed force, a person who initially enlisted as a Reserve under this section may, at the discretion of the Secretary concerned, be eligible for all regular special pays, bonuses, education benefits, and loan repayment programs.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 510 the following new item:

“511. College First Program.”.

(b) CONTINUATION FOR ARMY OF PRIOR ARMY COLLEGE FIRST PROGRAM.—The Secretary of the Army shall treat the program under section 511 of title 10, United States Code, as added by subsection (a), as a continuation of the program under section 573 of the National Defense Authorization Act for Fiscal Year 2000 (10 U.S.C. 513 note), and for such purpose the Secretary may treat such section 511 as having been enacted on October 1, 2004.

10 USC 511 note.

SEC. 552. SENIOR RESERVE OFFICERS’ TRAINING CORPS AND RECRUITER ACCESS AT INSTITUTIONS OF HIGHER EDUCATION.

(a) EQUAL TREATMENT OF MILITARY RECRUITERS WITH OTHER RECRUITERS.—Subsection (b)(1) of section 983 of title 10, United States Code, is amended—

(1) by striking “entry to campuses” and inserting “access to campuses”; and

(2) by inserting before the semicolon at the end the following: “in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer”.

(b) PROHIBITION OF FUNDING FOR POST-SECONDARY SCHOOLS THAT PREVENT ROTC ACCESS OR MILITARY RECRUITING.—(1) Subsection (d) of such section is amended—

(A) in paragraph (1)—

(i) by striking “limitation established in subsection (a) applies” and inserting “limitations established in subsections (a) and (b) apply”;

(ii) in subparagraph (B), by inserting “for any department or agency for which regular appropriations are made” after “made available”; and

(iii) by adding at the end the following new subparagraphs:

“(C) Any funds made available for the Department of Homeland Security.

“(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

“(E) Any funds made available for the Department of Transportation.

“(F) Any funds made available for the Central Intelligence Agency.”; and

(B) by striking paragraph (2).

(2)(A) Subsection (b) of such section is amended by striking “subsection (d)(2)” and inserting “subsection (d)(1)”.

(B) Subsection (e) of such section is amended by inserting “, to the head of each other department and agency the funds of which are subject to the determination,” after “Secretary of Education”.

(c) CODIFICATION AND EXTENSION OF EXCLUSION OF AMOUNTS TO COVER INDIVIDUAL PAYMENTS.—Subsection (d) of such section, as amended by subsection (b)(1), is further amended—

(1) by striking “The” after “(1)” and inserting “Except as provided in paragraph (2), the”; and

(2) by adding at the end the following new paragraph:

“(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.”.

(d) CONFORMING AMENDMENTS.—Subsections (a) and (b) of such section are amended by striking “(including a grant of funds to be available for student aid)”.

(e) CONFORMING REPEAL OF CODIFIED PROVISION.—Section 8120 of the Department of Defense Appropriations Act, 2000 (Public Law 106-79; 10 U.S.C. 983 note), is repealed.

10 USC 983 note.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to funds appropriated for fiscal year 2005 and thereafter.

SEC. 553. TUITION ASSISTANCE FOR OFFICERS.

(a) AUTHORITY TO REDUCE OR WAIVE ACTIVE DUTY SERVICE OBLIGATION.—Subsection (b) of section 2007 of title 10, United States Code, is amended—

(1) by inserting “(1)” after “(b)”;

(2) by inserting “or full-time National Guard duty” after “active duty” each place it appears; and

(2) by adding at the end the following new paragraph:

“(2) Notwithstanding paragraph (1), the Secretary of the military department may reduce or waive the active duty service obligation—

“(A) in the case of a commissioned officer who is subject to mandatory separation;

“(B) in the case of a commissioned officer who has completed the period of active duty service in support of a contingency operation; or

“(C) in other exigent circumstances as determined by the Secretary.”.

(b) INCREASE IN TUITION ASSISTANCE AUTHORIZED FOR ARMY OFFICERS IN THE SELECTED RESERVE.—Paragraph (1) of section

2007(c) of title 10, United States Code, is amended to read as follows:

“(1) Subject to paragraphs (2) and (3), the Secretary of the Army may pay the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer.”.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) may, at the discretion of the Secretary concerned, be applied to a service obligation incurred by an officer serving on active duty as of the date of the enactment of this Act.

10 USC 2007
note.

SEC. 554. INCREASED MAXIMUM PERIOD FOR LEAVE OF ABSENCE FOR PURSUIT OF A PROGRAM OF EDUCATION IN A HEALTH CARE PROFESSION.

Section 708(a) of title 10, United States Code, is amended—

(1) by striking “for a period not to exceed two years”; and

(2) by adding at the end the following: “The period of a leave of absence granted under this section may not exceed two years, except that the period may exceed two years but may not exceed three years in the case of an eligible member pursuing a program of education in a health care profession.”.

SEC. 555. ELIGIBILITY OF CADETS AND MIDSHIPMEN FOR MEDICAL AND DENTAL CARE AND DISABILITY BENEFITS.

(a) MEDICAL AND DENTAL CARE.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1074a the following new section:

“§ 1074b. Medical and dental care: Academy cadets and midshipmen; members of, and designated applicants for membership in, Senior ROTC

“(a) ELIGIBILITY.—Under joint regulations prescribed by the administering Secretaries, the following persons are, except as provided in subsection (c), entitled to the benefits described in subsection (b):

“(1) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, and a midshipman at the United States Naval Academy, who incurs or aggravates an injury, illness, or disease in the line of duty.

“(2) A member of, and a designated applicant for membership in, the Senior Reserve Officers’ Training Corps who incurs or aggravates an injury, illness, or disease—

“(A) in the line of duty while performing duties under section 2109 of this title;

“(B) while traveling directly to or from the place at which that member or applicant is to perform or has performed duties pursuant to section 2109 of this title; or

“(C) in the line of duty while remaining overnight immediately before the commencement of duties performed pursuant to section 2109 of this title or, while remaining overnight, between successive periods of performing duties pursuant to section 2109 of this title, at or in the vicinity of the site of the duties performed pursuant to section

2109 of this title, if the site is outside reasonable commuting distance from the residence of the member or designated applicant.

“(b) **BENEFITS.**—A person eligible for benefits under subsection (a) for an injury, illness, or disease is entitled to—

“(1) the medical and dental care under this chapter that is appropriate for the treatment of the injury, illness, or disease until the injury, illness, disease, or any resulting disability cannot be materially improved by further hospitalization or treatment; and

“(2) meals during hospitalization.

“(c) **EXCEPTION FOR GROSS NEGLIGENCE OR MISCONDUCT.**—A person is not entitled to benefits under subsection (b) for an injury, illness, or disease, or the aggravation of an injury, illness, or disease that is a result of the gross negligence or the misconduct of that person.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1074a the following new item:

“1074b. Medical and dental care: Academy cadets and midshipmen; members of, and designated applicants for membership in, Senior ROTC.”.

(b) **ELIGIBILITY OF ACADEMY CADETS AND MIDSHIPMEN FOR DISABILITY RETIRED PAY.**—(1) Section 1217 of title 10, United States Code, is amended to read as follows:

“§ 1217. Academy cadets and midshipmen: applicability of chapter

“(a) This chapter applies to cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy and midshipmen of the United States Naval Academy, but only with respect to physical disabilities incurred after the date of the enactment of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

“(b) Monthly cadet pay and monthly midshipman pay under section 203(c) of title 37 shall be considered to be basic pay for purposes of this chapter and the computation of retired pay and severance and separation pay to which entitlement is established under this chapter.”.

(2) The item related to section 1217 in the table of sections at the beginning of chapter 61 of such title is amended to read as follows:

“1217. Academy cadets and midshipmen: applicability of chapter.”.

SEC. 556. TRANSFER OF AUTHORITY TO CONFER DEGREES UPON GRADUATES OF THE COMMUNITY COLLEGE OF THE AIR FORCE.

(a) **TRANSFER TO COMMANDER OF AIR UNIVERSITY.**—Subsection (a) of section 9317 of title 10, United States Code, is amended—

(1) by striking “may confer—” and inserting “may confer academic degrees as follows:”;

(2) by striking “the” in paragraphs (1), (2), and (3) after the paragraph designation and inserting “The”;

(3) by striking the semicolon at the end of paragraph (1) and inserting a period;

(4) by striking “; and” at the end of paragraph (2) and inserting a period; and

(5) by adding at the end the following new paragraph:

“(4) An academic degree at the level of associate upon graduates of the Community College of the Air Force who fulfill the requirements for that degree.”.

(b) CONFORMING AMENDMENT.—Subsection (c) of section 9315 of such title is amended to read as follows:

“(c) ASSOCIATE DEGREES.—(1) Subject to paragraph (2), an academic degree at the level of associate may be conferred under section 9317 of this title upon any enlisted member who has completed a program prescribed by the Community College of the Air Force.

“(2) No degree may be conferred upon any enlisted member under this section unless the Secretary of Education determines that the standards for the award of academic degrees in agencies of the United States have been met.”.

(c) CLERICAL AMENDMENTS.—(1) The heading of section 9317 of such title is amended to read as follows:

“§ 9317. Air University: conferral of degrees”.

(2) The item relating to such section in the table of sections at the beginning of chapter 901 of such title is amended to read as follows:

“9317. Air University: conferral of degrees.”.

SEC. 557. CHANGE IN TITLES OF LEADERSHIP POSITIONS AT THE NAVAL POSTGRADUATE SCHOOL.

(a) DESIGNATION OF PRESIDENT.—(1) The position of Superintendent of the Naval Postgraduate School is redesignated as President of the Naval Postgraduate School.

10 USC 7042
note.

(2) Any reference to the Superintendent of the Naval Postgraduate School in any law, rule, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the President of the Naval Postgraduate School.

10 USC 7042
note; 37 USC
414.

(3)(A) Section 7042 of title 10, United States Code, is amended by striking “Superintendent” each place it appears in the text and inserting “President”.

(B) The heading of such section is amended to read as follows:

“§ 7042. President; assistants”.

(4)(A) Section 7044 of such title is amended by striking “Superintendent” and inserting “President of the school”.

(B) Sections 7048(a) and 7049(e) of such title are amended by striking “Superintendent” and inserting “President”.

(b) DESIGNATION OF PROVOST AND ACADEMIC DEAN.—(1) The position of Academic Dean of the Naval Postgraduate School is redesignated as Provost and Academic Dean of the Naval Postgraduate School.

(2) Any reference to the Academic Dean of the Naval Postgraduate School in any law, rule, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the Provost and Academic Dean of the Naval Postgraduate School.

(3)(A) Subsection (a) of section 7043 of title 10, United States Code, is amended to read as follows:

“(a) There is at the Naval Postgraduate School the civilian position of Provost and Academic Dean. The Provost and Academic Dean shall be appointed, to serve for periods of not more than

five years, by the Secretary of the Navy. Before making an appointment to the position of Provost and Academic Dean, the Secretary shall consult with the Board of Advisors for the Naval Postgraduate School and shall consider any recommendation of the leadership and faculty of the Naval Postgraduate School regarding an appointment to that position.”.

(B) The heading of such section is amended to read as follows:

“§ 7043. Provost and Academic Dean”.

(4) Sections 7043(b) and 7081(a) of title 10, United States Code, are amended by striking “Academic Dean” and inserting “Provost and Academic Dean”.

(5)(A) Section 5102(c)(10) of title 5, United States Code, is amended by striking “Academic Dean of the Postgraduate School of the Naval Academy” and inserting “Provost and Academic Dean of the Naval Postgraduate School”.

(B) Subsection (b) of such section is amended by striking “Academic Dean” and inserting “Provost and Academic Dean”.

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 605 of such title 10, United States Code, is amended by striking the items related to sections 7042 and 7043 and inserting the following new items:

“7042. President; assistants.

“7043. Provost and Academic Dean.”.

Subtitle G—Assistance to Local Educational Agencies for Defense Dependents Education

SEC. 558. CONTINUATION OF IMPACT AID ASSISTANCE ON BEHALF OF DEPENDENTS OF CERTAIN MEMBERS DESPITE CHANGE IN STATUS OF MEMBER.

(a) SPECIAL RULE.—For purposes of computing the amount of a payment for an eligible local educational agency under subsection (a) of section 8003 of the Elementary and Secondary Education Act (20 U.S.C. 7703) for school year 2004–2005, the Secretary of Education shall continue to count as a child enrolled in a school of such agency under such subsection any child who—

(1) would be counted under paragraph (1)(B) of such subsection to determine the number of children who were in average daily attendance in the school; but

(2) due to the deployment of both parents or legal guardians of the child, the deployment of a parent or legal guardian having sole custody of the child, or the death of a military parent or legal guardian while on active duty (so long as the child resides on Federal property (as defined in section 8013(5) of such Act (20 U.S.C. 7713(5))), is not eligible to be so counted.

(b) TERMINATION.—The special rule provided under subsection (a) applies only so long as the children covered by such subsection remain in average daily attendance at a school in the same local educational agency they attended before their change in eligibility status.

SEC. 559. ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) CONTINUATION OF DEPARTMENT OF DEFENSE PROGRAM FOR FISCAL YEAR 2005.—Of the amount authorized to be appropriated pursuant to section 301(5) for operation and maintenance for Defense-wide activities, \$30,000,000 shall be available only for the purpose of providing educational agencies assistance to local educational agencies.

(b) NOTIFICATION.—Not later than June 30, 2005, the Secretary of Defense shall notify each local educational agency that is eligible for educational agencies assistance for fiscal year 2005 of—

Deadline.

(1) that agency's eligibility for the assistance; and

(2) the amount of the assistance for which that agency is eligible.

(c) DISBURSEMENT OF FUNDS.—The Secretary of Defense shall disburse funds made available under subsection (a) not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to subsection (b).

(d) DEFINITIONS.—In this section:

(1) The term “educational agencies assistance” means assistance authorized under section 386(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 20 U.S.C. 7703 note).

(2) The term “local educational agency” has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

(3) The term “basic support payment” means a payment authorized under section 8003(b)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(1)).

SEC. 560. IMPACT AID FOR CHILDREN WITH SEVERE DISABILITIES.

Of the amount authorized to be appropriated pursuant to section 301(5) for operation and maintenance for Defense-wide activities, \$5,000,000 shall be available for payments under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–77; 20 U.S.C. 7703a).

Subtitle H—Medals and Decorations and Special Promotions and Appointments

SEC. 561. AWARD OF MEDAL OF HONOR TO INDIVIDUAL INTERRED IN THE TOMB OF THE UNKNOWN AS REPRESENTATIVE OF CASUALTIES OF A WAR.

(a) AWARD TO INDIVIDUAL AS REPRESENTATIVE.—Chapter 57 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war

“The medal of honor awarded posthumously to a deceased member of the armed forces who, as an unidentified casualty of a particular war or other armed conflict, is interred in the Tomb of the Unknowns at Arlington National Cemetery, Virginia, is

awarded to the member as the representative of the members of the armed forces who died in such war or other armed conflict and whose remains have not been identified, and not to the individual personally.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war.”.

SEC. 562. PLAN FOR REVISED CRITERIA AND ELIGIBILITY REQUIREMENTS FOR AWARD OF COMBAT INFANTRYMAN BADGE AND COMBAT MEDICAL BADGE FOR SERVICE IN KOREA AFTER JULY 28, 1953.

Deadline.

(a) REQUIREMENT FOR PLAN.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan for revising the Army’s criteria and eligibility requirements for award of the Combat Infantryman Badge and the Combat Medical Badge for service in the Republic of Korea after July 28, 1953, to fulfill the purpose stated in subsection (b).

(b) PURPOSE OF REVISED CRITERIA AND ELIGIBILITY REQUIREMENTS.—The purpose for revising the criteria and eligibility requirements for award of the Combat Infantryman Badge and the Combat Medical Badge for service in the Republic of Korea after July 28, 1953, is to ensure fairness in the standards applied to Army personnel in the awarding of such badges for Army service in the Republic of Korea in comparison to the standards applied to Army personnel in the awarding of such badges for Army service in other areas of operations.

SEC. 563. AUTHORITY TO APPOINT BRIGADIER GENERAL CHARLES E. YEAGER, UNITED STATES AIR FORCE (RETIRED), TO THE GRADE OF MAJOR GENERAL ON THE RETIRED LIST.

President.

The President is authorized to appoint, by and with the advice and consent of the Senate, Brigadier General Charles E. Yeager, United States Air Force (retired), to the grade of major general on the retired list of the Air Force. Any such appointment shall not affect the retired pay or other benefits of Charles E. Yeager or any benefits to which any other person is or may become entitled based upon his service.

SEC. 564. POSTHUMOUS COMMISSION OF WILLIAM MITCHELL IN THE GRADE OF MAJOR GENERAL IN THE ARMY.

President.

(a) AUTHORITY.—The President, by and with the advice and consent of the Senate, may issue posthumously a commission as major general, United States Army, in the name of the late William Mitchell, formerly a colonel, United States Army, who resigned his commission on February 1, 1926.

(b) DATE OF COMMISSION.—A commission issued under subsection (a) shall issue as of the date of the death of William Mitchell on February 19, 1936.

(c) PROHIBITION OF BENEFITS.—No person is entitled to receive any bonus, gratuity, pay, allowance, or other financial benefit by reason of the enactment of this section.

Subtitle I—Military Voting

SEC. 566. FEDERAL WRITE-IN BALLOTS FOR ABSENTEE MILITARY VOTERS LOCATED IN THE UNITED STATES.

(a) DUTIES OF PRESIDENTIAL DESIGNEE.—Section 101(b)(3) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(3)) is amended by striking “overseas voters” and inserting “absent uniformed services voters and overseas voters”.

(b) STATE RESPONSIBILITIES.—Section 102(a)(3) of such Act (42 U.S.C. 1973ff–1(a)(3)) is amended by striking “overseas voters” and inserting “absent uniformed services voters and overseas voters”.

(c) FEDERAL WRITE-IN ABSENTEE BALLOT.—Section 103 of such Act (42 U.S.C. 1973ff–2) is amended—

(1) in subsection (a), by striking “overseas voters” and inserting “absent uniformed services voters and overseas voters”;

(2) in subsection (b), by striking the second sentence and inserting the following new sentence: “A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall not be counted—

“(1) in the case of a ballot submitted by an overseas voter who is not an absent uniformed services voter, if the ballot is submitted from any location in the United States;

“(2) if the application of the absent uniformed services voter or overseas voter for a State absentee ballot is received by the appropriate State election official after the later of—

“(A) the deadline of the State for receipt of such application; or

“(B) the date that is 30 days before the general election;

or

“(3) if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.”;

(3) in subsection (c)(1), by striking “overseas voter” and inserting “absent uniformed services voter or overseas voter”;

(4) in subsection (d), by striking “overseas voter” both places it appears and inserting “absent uniformed services voter or overseas voter”; and

(5) in subsection (e)(2), by striking “overseas voters” and inserting “absent uniformed services voters and overseas voters”.

(d) CONFORMING AMENDMENTS.—(1) The heading of section 103 of such Act is amended to read as follows:

“SEC. 103. FEDERAL WRITE-IN ABSENTEE BALLOT IN GENERAL ELECTIONS FOR FEDERAL OFFICE FOR ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.”.

(2) The subsection caption for subsection (d) of such section is amended by striking “OVERSEAS VOTER” and inserting “ABSENT UNIFORMED SERVICES VOTER OR OVERSEAS VOTER”.

SEC. 567. REPEAL OF REQUIREMENT TO CONDUCT ELECTRONIC VOTING DEMONSTRATION PROJECT FOR THE FEDERAL ELECTION TO BE HELD IN NOVEMBER 2004.

The first sentence of section 1604(a)(2) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115

Stat. 1277; 42 U.S.C. 1977ff note) is amended by striking “until the regularly scheduled general election for Federal office for November 2004” and inserting the following: “until the first regularly scheduled general election for Federal office which occurs after the Election Assistance Commission notifies the Secretary that the Commission has established electronic absentee voting guidelines and certifies that it will assist the Secretary in carrying out the project”.

SEC. 568. REPORTS ON OPERATION OF FEDERAL VOTING ASSISTANCE PROGRAM AND MILITARY POSTAL SYSTEM.

(a) **REPORTS ON PROGRAM AND SYSTEM.**—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the actions that the Secretary has taken to ensure that the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) functions effectively to support absentee voting by members of the Armed Forces deployed outside the United States in support of Operation Iraqi Freedom, Operation Enduring Freedom, and all other contingency operations.

(2) Not later than 60 days after the date of the submission of the report required by paragraph (1), the Secretary of Defense shall submit to Congress a report on the actions that the Secretary has taken to ensure that the military postal system functions effectively to support the morale of members referred to in such paragraph and their ability to vote by absentee ballot.

(b) **REPORT ON IMPLEMENTATION OF POSTAL SYSTEM IMPROVEMENTS.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report specifying—

(1) the actions taken to implement the recommendations of the Military Postal Service Agency Task Force, dated 28 August 2000; and

(2) in the case of each recommendation not implemented or not fully implemented as of the date of the submission of the report, the reasons for not implementing or not fully implementing the recommendation, as the case may be.

Subtitle J—Military Justice Matters

SEC. 571. REVIEW ON HOW SEXUAL OFFENSES ARE COVERED BY UNIFORM CODE OF MILITARY JUSTICE.

(a) **REVIEW REQUIRED.**—The Secretary of Defense shall review the Uniform Code of Military Justice and the Manual for Courts-Martial with the objective of determining what changes are required to improve the ability of the military justice system to address issues relating to sexual assault and to conform the Uniform Code of Military Justice and the Manual for Courts-Martial more closely to other Federal laws and regulations that address such issues.

(b) **REPORT.**—Not later than March 1, 2005, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the review carried out under subsection (a). The report shall include the recommendations of the Secretary for revisions

to the Uniform Code of Military Justice and, for each such revision, the rationale behind that revision.

SEC. 572. WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT IN CONNECTION WITH A TRIAL.

Section 972 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c) **WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT.**—The Secretary concerned shall waive liability for a period of confinement in connection with a trial under subsection (a)(3), or exclusion of a period of confinement in connection with a trial under subsection (b)(3), in a case upon the occurrence of any of the following events:

“(1) For each charge—

“(A) the charge is dismissed before or during trial in a final disposition of the charge; or

“(B) the trial results in an acquittal of the charge.

“(2) For each charge resulting in a conviction in such trial—

“(A) the conviction is set aside in a final disposition of such charge, other than in a grant of clemency; or

“(B) a judgment of acquittal or a dismissal is entered upon a reversal of the conviction on appeal.”.

SEC. 573. PROCESSING OF FORENSIC EVIDENCE COLLECTION KITS AND ACQUISITION OF SUFFICIENT STOCKS OF SUCH KITS.

10 USC 113 note.

(a) **ELIMINATION OF BACKLOG, ETC.**—The Secretary of Defense shall take such steps as may be necessary to ensure that—

(1) the United States Army Criminal Investigation Laboratory has the personnel and resources to effectively process forensic evidence used by the Department of Defense within 60 days of receipt by the laboratory of such evidence;

(2) consistent policies are established among the Armed Forces to reduce the time period between the collection of forensic evidence and the receipt and processing of such evidence by United States Army Criminal Investigation Laboratory; and

(3) there is an adequate supply of forensic evidence collection kits—

(A) for all United States military installations, including the military service academies; and

(B) for units of the Armed Forces deployed in theaters of operation.

(b) **TRAINING.**—The Secretary shall take such measures as the Secretary considers appropriate to ensure that personnel are appropriately trained—

(1) in the use of forensic evidence collection kits; and

(2) in the prescribed procedures to ensure protection of the chain of custody of such kits once used.

SEC. 574. AUTHORITIES OF THE JUDGE ADVOCATES GENERAL.

(a) **DEPARTMENT OF THE ARMY.**—Section 3037 of title 10, United States Code, is amended—

(1) in subsection (a), by striking the second and third sentences and inserting “The term of office of the Judge Advocate General and the Assistant Judge Advocate General is four years.”; and

(2) by adding at the end the following new subsection:

“(e) No officer or employee of the Department of Defense may interfere with—

“(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Army or the Chief of Staff of the Army; or

“(2) the ability of judge advocates of the Army assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.”.

(b) DEPARTMENT OF THE NAVY.—(1) Section 5148 of such title is amended by adding at the end the following new subsection:

“(e) No officer or employee of the Department of Defense may interfere with—

“(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Navy or the Chief of Naval Operations; or

“(2) the ability of judge advocates of the Navy assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.”.

(2) Section 5046 of such title is amended by adding at the end the following new subsection:

“(c) No officer or employee of the Department of Defense may interfere with—

“(1) the ability of the Staff Judge Advocate to the Commandant of the Marine Corps to give independent legal advice to the Commandant of the Marine Corps; or

“(2) the ability of judge advocates of the Marine Corps assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.”.

(c) DEPARTMENT OF THE AIR FORCE.—Section 8037 of title 10, United States Code, is amended—

(1) in subsection (a), by striking “, but may be” in the second sentence and all that follows in that sentence through “President”;

(2) in subsection (c)—

(A) by striking “shall” in the matter preceding paragraph (1);

(B) by striking paragraph (2);

(C) by redesignating paragraph (1) as paragraph (3) and in that paragraph—

(i) inserting “shall” before “receive,”; and

(ii) by striking “; and” at the end and inserting a period; and

(D) by inserting before paragraph (3), as so redesignated, the following new paragraphs:

“(1) is the legal adviser of the Secretary of the Air Force and of all officers and agencies of the Department of the Air Force;

“(2) shall direct the officers of the Air Force designated as judge advocates in the performance of their duties; and”;

(3) in subsection (d)(1), by striking “, but may be” in the second sentence and all that follows in that sentence through “President”; and

(4) by adding at the end the following new subsection:

“(f) No officer or employee of the Department of Defense may interfere with—

“(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Air Force or the Chief of Staff of the Air Force; or

“(2) the ability of officers of the Air Force who are designated as judge advocates who are assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.”.

(d) INDEPENDENT REVIEW.—(1) The Secretary of Defense shall establish an independent panel of outside experts to conduct a study and review of the relationships between the legal elements of each of the military departments and to prepare a report setting forth the panel’s recommendations as to statutory, regulatory, and policy changes that the panel considers to be desirable to improve the effectiveness of those relationships and to enhance the legal support provided to the leadership of each military department and each of the Armed Forces. Establishment.

(2) The panel shall be composed of seven members, appointed by the Secretary of Defense from among private United States citizens who have substantial expertise in military law and the organization and functioning of the military departments. No more than one member of the panel may have served as the Judge Advocate General of an Armed Force, and no more than one member of the panel may have served as the General Counsel of a military department.

(3) The Secretary of Defense shall designate the chairman of the panel from among the members of the panel other than a member who has served as a Judge Advocate General or as a military department General Counsel.

(4) Members shall be appointed for the life of the panel. Any vacancy in the panel shall be filled in the same manner as the original appointment.

(5) The panel shall meet at the call of the chairman.

(6) All original appointments to the panel shall be made by January 15, 2005. The chairman shall convene the first meeting of the panel not later than February 1, 2005.

(7) In carrying out the study and review required by paragraph (1), the panel shall—

(A) review the history of relationships between the uniformed and civilian legal elements of each of the Armed Forces;

(B) analyze the division of duties and responsibilities between those elements in each of the Armed Forces;

(C) review the situation with respect to civilian attorneys outside the offices of the service general counsels and their relationships to the Judge Advocates General and the General Counsels;

(D) consider whether the ability of judge advocates to give independent, professional legal advice to their service staffs and to commanders at all levels in the field is adequately provided for by policy and law; and

(E) consider whether the Judge Advocates General and General Counsels possess the necessary authority to exercise professional supervision over judge advocates, civilian attorneys, and other legal personnel practicing under their cognizance in the performance of their duties.

(8) Not later than April 15, 2005, the panel shall submit a report on the study and review required by paragraph (1) to the Secretary of Defense. The report shall include the findings and Deadline. Reports.

conclusions of the panel as a result of the study and review, together with any recommendations for legislative or administrative action that the panel considers appropriate. The Secretary of Defense shall transmit the report, together with any comments the Secretary wishes to provide, to the Committees on Armed Services of the Senate and House of Representatives not later than May 1, 2005.

(9) In this section, the term “Armed Forces” does not include the Coast Guard.

Subtitle K—Sexual Assault in the Armed Forces

10 USC 4331
note.

SEC. 576. EXAMINATION OF SEXUAL ASSAULT IN THE ARMED FORCES BY THE DEFENSE TASK FORCE ESTABLISHED TO EXAMINE SEXUAL HARASSMENT AND VIOLENCE AT THE MILITARY SERVICE ACADEMIES.

(a) **EXTENSION OF TASK FORCE.**—(1) The task force in the Department of Defense established by the Secretary of Defense pursuant to section 526 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1466) to examine matters relating to sexual harassment and violence at the United States Military Academy and United States Naval Academy shall continue in existence for a period of at least 18 months after the date as of which the task force would otherwise be terminated pursuant to subsection (i) of that section.

(2) Upon the completion of the functions of the task force referred to in paragraph (1) pursuant to section 526 of the National Defense Authorization Act for Fiscal Year 2004, the name of the task force shall be changed to the Defense Task Force on Sexual Assault in the Military Services, and the task force shall then carry out the functions specified in this section. The task force shall not begin to carry out the functions specified in this section until it has completed its functions under such section 526.

(3) Before the task force extended under this subsection begins to carry out the functions specified in this section, the Secretary of Defense may, consistent with the qualifications required by section 526(f) of Public Law 108–136, change the composition of the task force as the Secretary considers appropriate for the effective performance of such functions, except that—

(A) any change initiated by the Secretary in the membership of the task force under this paragraph may not take effect before the task force has completed its functions under section 526 of Public Law 108–136; and

(B) the total number of members of the task force may not exceed 14.

(b) **EXAMINATION OF MATTERS RELATING TO SEXUAL ASSAULT IN THE ARMED FORCES.**—The task force shall conduct an examination of matters relating to sexual assault in cases in which members of the Armed Forces are either victims or commit acts of sexual assault.

(c) **RECOMMENDATIONS.**—The Task Force shall include in its report under subsection (e) recommendations of ways by which civilian officials within the Department of Defense and leadership within the Armed Forces may more effectively address matters relating to sexual assault. That report shall include an assessment of, and recommendations (including any recommendations for

changes in law) for measures to improve, with respect to sexual assault, the following:

- (1) Victim care and advocacy programs.
- (2) Effective prevention.
- (3) Collaboration among military investigative organizations with responsibility or jurisdiction.
- (4) Coordination and resource sharing between military and civilian communities, including local support organizations.
- (5) Reporting procedures, data collection, tracking of cases, and use of data on sexual assault by senior military and civilian leaders.
- (6) Oversight of sexual assault programs, including development of measures of the effectiveness of those programs in responding to victim needs.
- (7) Military justice issues.
- (8) Progress in developing means to investigate and prosecute assailants who are foreign nationals.
- (9) Adequacy of resources supporting sexual assault prevention and victim advocacy programs, particularly for deployed units and personnel.
- (10) Training of military and civilian personnel responsible for implementation of sexual assault policies.
- (11) Programs and policies, including those related to confidentiality, designed to encourage victims to seek services and report offenses.
- (12) Other issues identified by the task force relating to sexual assault.

(d) **METHODOLOGY.**—In carrying out its examination under subsection (b) and in formulating its recommendations under subsection (c), the task force shall consider the findings and recommendations of previous reviews and investigations of sexual assault conducted by the Department of Defense and the Armed Forces.

(e) **REPORT.**—(1) Not later than one year after the initiation of its examination under subsection (b), the task force shall submit to the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force a report on the activities of the task force and on the activities of the Department of Defense and the Armed Forces to respond to sexual assault.

(2) The report shall include the following:

- (A) A description of any barrier to implementation of improvements as a result of previous efforts to address sexual assault.
- (B) Other areas of concern not previously addressed in prior reports.
- (C) The findings and conclusions of the task force.
- (D) Any recommendations for changes to policy and law that the task force considers appropriate.

(3) Within 90 days after receipt of the report under paragraph (1), the Secretary of Defense shall submit the report, together with the Secretary's evaluation of the report, to the Committees on Armed Services of the Senate and House of Representatives.

(f) **TERMINATION.**—The task force shall terminate 90 days after the date on which the report of the task force is submitted to the Committees on Armed Services of the Senate and House of Representatives pursuant to subsection (e)(3).

10 USC 113 note. **SEC. 577. DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES.**

(a) **COMPREHENSIVE POLICY ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS.**—(1) Not later than January 1, 2005, the Secretary of Defense shall develop a comprehensive policy for the Department of Defense on the prevention of and response to sexual assaults involving members of the Armed Forces.

(2) The policy shall be based on the recommendations of the Department of Defense Task Force on Care for Victims of Sexual Assaults and on such other matters as the Secretary considers appropriate.

(3) Before developing the comprehensive policy required by paragraph (1), the Secretary of Defense shall develop a definition of sexual assault. The definition so developed shall be used in the comprehensive policy under paragraph (1) and otherwise within the Department of Defense and Coast Guard in matters involving members of the Armed Forces. The definition shall be uniform for all the Armed Forces and shall be developed in consultation with the Secretaries of the military departments and the Secretary of Homeland Security with respect to the Coast Guard.

(b) **ELEMENTS OF COMPREHENSIVE POLICY.**—The comprehensive policy developed under subsection (a) shall, at a minimum, address the following matters:

- (1) Prevention measures.
- (2) Education and training on prevention and response.
- (3) Investigation of complaints by command and law enforcement personnel.
- (4) Medical treatment of victims.
- (5) Confidential reporting of incidents.
- (6) Victim advocacy and intervention.
- (7) Oversight by commanders of administrative and disciplinary actions in response to substantiated incidents of sexual assault.
- (8) Disposition of victims of sexual assault, including review by appropriate authority of administrative separation actions involving victims of sexual assault.
- (9) Disposition of members of the Armed Forces accused of sexual assault.
- (10) Liaison and collaboration with civilian agencies on the provision of services to victims of sexual assault.
- (11) Uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

(c) **REPORT ON IMPROVEMENT OF CAPABILITY TO RESPOND TO SEXUAL ASSAULTS.**—Not later than March 1, 2005, the Secretary of Defense shall submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the capability of the Department of Defense to address matters relating to sexual assaults involving members of the Armed Forces.

(d) **APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.**—The Secretary of Defense shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

(e) **POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.**—(1) Not later than March 1, 2005, the Secretaries of the military

Deadline.
Regulations.

departments shall prescribe regulations, or modify current regulations, on the policies and procedures of the military departments on the prevention of and response to sexual assaults involving members of the Armed Forces in order—

(A) to conform such policies and procedures to the policy developed under subsection (a); and

(B) to ensure that such policies and procedures include the elements specified in paragraph (2).

(2) The elements specified in this paragraph are as follows:

(A) A program to promote awareness of the incidence of sexual assaults involving members of the Armed Forces.

(B) A program to provide victim advocacy and intervention for members of the Armed Force concerned who are victims of sexual assault, which program shall make available, at home stations and in deployed locations, trained advocates who are readily available to intervene on behalf of such victims.

(C) Procedures for members of the Armed Force concerned to follow in the case of an incident of sexual assault involving a member of such Armed Force, including—

(i) specification of the person or persons to whom the alleged offense should be reported;

(ii) specification of any other person whom the victim should contact;

(iii) procedures for the preservation of evidence; and

(iv) procedures for confidential reporting and for contacting victim advocates.

(D) Procedures for disciplinary action in cases of sexual assault by members of the Armed Force concerned.

(E) Other sanctions authorized to be imposed in substantiated cases of sexual assault, whether forcible or nonforcible, by members of the Armed Force concerned.

(F) Training on the policies and procedures for all members of the Armed Force concerned, including specific training for members of the Armed Force concerned who process allegations of sexual assault against members of such Armed Force.

(G) Any other matters that the Secretary of Defense considers appropriate.

(f) ANNUAL REPORT ON SEXUAL ASSAULTS.—(1) Not later than January 15 of each year, the Secretary of each military department shall submit to the Secretary of Defense a report on the sexual assaults involving members of the Armed Forces under the jurisdiction of that Secretary during the preceding year. In the case of the Secretary of the Navy, separate reports shall be prepared for the Navy and for the Marine Corps.

(2) Each report on an Armed Force under paragraph (1) shall contain the following:

(A) The number of sexual assaults against members of the Armed Force, and the number of sexual assaults by members of the Armed Force, that were reported to military officials during the year covered by such report, and the number of the cases so reported that were substantiated.

(B) A synopsis of, and the disciplinary action taken in, each substantiated case.

(C) The policies, procedures, and processes implemented by the Secretary concerned during the year covered by such report in response to incidents of sexual assault involving members of the Armed Force concerned.

(D) A plan for the actions that are to be taken in the year following the year covered by such report on the prevention of and response to sexual assault involving members of the Armed Forces concerned.

(3) Each report under paragraph (1) for any year after 2005 shall include an assessment by the Secretary of the military department submitting the report of the implementation during the preceding fiscal year of the policies and procedures of such department on the prevention of and response to sexual assaults involving members of the Armed Forces in order to determine the effectiveness of such policies and procedures during such fiscal year in providing an appropriate response to such sexual assaults.

(4) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives each report submitted to the Secretary under this subsection, together with the comments of the Secretary on the report. The Secretary shall submit each such report not later than March 15 of the year following the year covered by the report.

(5) For the report under this subsection covering 2004, the applicable date under paragraph (1) is April 1, 2005, and the applicable date under paragraph (4) is May 1, 2005.

Subtitle L—Management and Administrative Matters

SEC. 581. THREE-YEAR EXTENSION OF LIMITATION ON REDUCTIONS OF PERSONNEL OF AGENCIES RESPONSIBLE FOR REVIEW AND CORRECTION OF MILITARY RECORDS.

Section 1559(a) of title 10, United States Code, is amended by striking “During fiscal years 2003, 2004, and 2005,” and inserting “Before October 1, 2008.”

SEC. 582. STAFFING FOR DEFENSE PRISONER OF WAR/MISSING PER- SONNEL OFFICE (DPMO).

(a) REPORT WHEN STAFFING IS BELOW PRESCRIBED LEVEL.—Subparagraph (B) of section 1501(a)(5) of title 10, United States Code, is amended—

(1) by inserting “(i)” after “(B)”;

(2) by inserting “, whether temporary or permanent,” after “civilian personnel”; and

(3) by adding at the end the following:

Notice.

“(ii) If for any reason the number of military and civilian personnel assigned or detailed to the office should fall below the required level under clause (i), the Secretary of Defense shall promptly notify the Committees on Armed Services of the Senate and House of Representatives of the number of personnel so assigned or detailed and of the Secretary’s plan to restore the staffing level of the office to at least the required minimum number under clause (i). The Secretary shall publish such notice and plan in the Federal Register.”

Federal Register,
publication.

Deadline.
Reports.

(b) GAO STUDY.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing an assessment of staffing and funding levels for the

Defense Prisoner of War/Missing Personnel Office. The report shall include—

(1) a description of changes, over the period from the inception of the office to the time of the submission of the report, in the missions and mission requirements of the office, together with a comparison of personnel and funding requirements of the office over that period with actual manning and funding levels over that period; and

(2) the Comptroller General’s assessment of the adequacy of current manning and funding levels for that office in light of current mission requirements.

SEC. 583. PERMANENT ID CARDS FOR RETIREE DEPENDENTS AGE 75 AND OLDER.

(a) IN GENERAL.—(1) Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 1060b. Military ID cards: dependents and survivors of retirees; issuance of permanent ID card after attaining 75 years of age

“(a) PERMANENT ID CARD AFTER AGE 75.—In issuing military ID cards to retiree dependents, the Secretary concerned shall issue a permanent ID card (not subject to renewal) to any such retiree dependent who has attained 75 years of age. Such a permanent ID card shall be issued upon the expiration, after the retiree dependent attains 75 years of age, of any earlier, renewable military ID card or, if earlier, upon the request of such a retiree dependent after attaining age 75.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘military ID card’ means a card or other form of identification used for purposes of demonstrating eligibility for any benefit from the Department of Defense.

“(2) The term ‘retiree dependent’ means a person who is a dependent of a retired member of the uniformed services, or a survivor of a deceased retired member of the uniformed services, who is eligible for any benefit from the Department of Defense.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“1060b. Military ID cards: dependents and survivors of retirees; issuance of permanent ID card after attaining 75 years of age.”.

(b) EFFECTIVE DATE.—Section 1060b of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2004.

10 USC 1060b
note.

SEC. 584. AUTHORITY TO FURNISH CIVILIAN CLOTHING TO MEMBERS TRAVELING IN CONNECTION WITH MEDICAL EVACUATION.

(a) AUTHORITY.—Section 1047 of title 10, United States Code, is amended—

(1) by inserting “(b) CERTAIN ENLISTED MEMBERS.—” before “The Secretary”; and

(2) by inserting after the section heading the following:

“(a) MEMBERS TRAVELING IN CONNECTION WITH MEDICAL EVACUATION.—The Secretary of the military department concerned may furnish civilian clothing to a member at a cost not to exceed

\$250, or reimburse a member for the purchase of civilian clothing in an amount not to exceed \$250, in the case of a member who—

“(1) is medically evacuated for treatment in a medical facility by reason of an illness or injury incurred or aggravated while on active duty; or

“(2) after being medically evacuated as described in paragraph (1), is in an authorized travel status from a medical facility to another location approved by the Secretary.”.

10 USC 1047
note.

(b) **EFFECTIVE DATE.**—Subsection (a) of section 1047 of title 10, United States Code, as added by subsection (a), shall take effect as of October 1, 2004, and (subject to subsection (c)) shall apply with respect to clothing furnished, and reimbursement for clothing purchased, on or after that date.

(c) **RETROACTIVE APPLICATION.**—With respect to the period beginning on October 1, 2004, and ending on the date of the enactment of this Act, the Secretary of Defense shall provide for subsection (a) of section 1047 of title 10, United States Code, as added by subsection (a), to be applied as a continuation of the authority provided in section 1319 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 571), as continued in effect during fiscal year 2004 by section 1103 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1214).

SEC. 585. AUTHORITY TO ACCEPT DONATION OF FREQUENT TRAVELER MILES, CREDITS, AND TICKETS TO FACILITATE REST AND RECUPERATION TRAVEL OF DEPLOYED MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES.

(a) **OPERATION HERO MILES.**—(1) Chapter 155 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2613. Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families

“(a) **AUTHORITY TO ACCEPT DONATION OF TRAVEL BENEFITS.**—Subject to subsection (c), the Secretary of Defense may accept from any person or government agency the donation of travel benefits for the purposes of use under subsection (d).

“(b) **TRAVEL BENEFIT DEFINED.**—In the section, the term ‘travel benefit’ means frequent traveler miles, credits for tickets, or tickets for air or surface transportation issued by an air carrier or a surface carrier, respectively, that serves the public.

“(c) **CONDITION ON AUTHORITY TO ACCEPT DONATION.**—The Secretary may accept a donation of a travel benefit under this section only if the air or surface carrier that is the source of the benefit consents to such donation. Any such donation shall be under such terms and conditions as the surface carrier may specify, and the travel benefit so donated may be used only in accordance with the rules established by the carrier.

“(d) **USE OF DONATED TRAVEL BENEFITS.**—A travel benefit accepted under this section may be used only for the purpose of—

“(1) facilitating the travel of a member of the armed forces who—

“(A) is deployed on active duty outside the United States away from the permanent duty station of the member in support of a contingency operation; and

“(B) is granted, during such deployment, rest and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member; or

“(2) in the case of a member of the armed forces recuperating from an injury or illness incurred or aggravated in the line of duty during such a deployment, facilitating the travel of family members of the member in order to be reunited with the member.

“(e) ADMINISTRATION.—(1) The Secretary shall designate a single office in the Department of Defense to carry out this section. That office shall develop rules and procedures to facilitate the acceptance and distribution of travel benefits under this section.

“(2) For the use of travel benefits under subsection (d)(2) by family members of a member of the armed forces, the Secretary may, as the Secretary determines appropriate, limit—

“(A) eligibility to family members who, by reason of affinity, degree of consanguinity, or otherwise, are sufficiently close in relationship to the member of the armed forces to justify the travel assistance;

“(B) the number of family members who may travel; and

“(C) the number of trips that family members may take.

“(3) The Secretary of Defense may, in an exceptional case, authorize a person not described in subsection (d)(2) to use a travel benefit accepted under this subsection to visit a member of the armed forces described in subsection (d)(1) if that person has a notably close relationship with the member. The travel benefit may be used by such person only in accordance with such conditions and restrictions as the Secretary determines appropriate and the rules established by the air carrier or surface carrier that is the source of the travel benefit.

“(f) SERVICES OF NONPROFIT ORGANIZATION.—The Secretary of Defense may enter into an agreement with a nonprofit organization to use the services of the organization—

“(1) to promote the donation of travel benefits under this section, except that amounts appropriated to the Department of Defense may not be expended for this purpose; and

“(2) to assist in administering the collection, distribution, and use of travel benefits under this section.

“(g) FAMILY MEMBER DEFINED.—In this section, the term ‘family member’ has the meaning given that term in section 411h(b)(1) of title 37.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2613. Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families.”.

(b) TAX TREATMENT OF TRAVEL BENEFITS DONATED FOR OPERATION HERO MILES.—

(1) EXCLUSION FROM GROSS INCOME.—Subsection (b) of section 134 of the Internal Revenue Code of 1986 (defining qualified military benefit) is amended by adding at the end the following new paragraph:

“(5) TRAVEL BENEFITS UNDER OPERATION HERO MILES.—The term ‘qualified military benefit’ includes a travel benefit

provided under section 2613 of title 10, United States Code (as in effect on the date of the enactment of this paragraph).”.

(2) CONFORMING AMENDMENTS.—

(A) Section 134(b)(3)(A) of such Code is amended by striking “paragraph (4)” and inserting “paragraphs (4) and (5)”.

(B) Section 3121(a)(18) of such Code is amended by striking “or 134(b)(4)” and inserting “134(b)(4), or 134(b)(5)”.

(C) Section 3306(b)(13) of such Code is amended by striking “or 134(b)(4)” and inserting “134(b)(4), or 134(b)(5)”.

(D) Section 3401(a)(18) of such Code is amended by striking “or 134(b)(4)” and inserting “134(b)(4), or 134(b)(5)”.

26 USC 134 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to travel benefits provided after the date of the enactment of this Act.

SEC. 586. ANNUAL REPORT IDENTIFYING REASONS FOR DISCHARGES FROM THE ARMED FORCES DURING PRECEDING FISCAL YEAR.

(a) REPORT REQUIRED.—Not later than March 1 each year through 2011, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on discharges from the Army, Navy, Air Force, and Marine Corps during the preceding fiscal year.

(b) MATTERS TO BE INCLUDED.—Each such report shall show, in the aggregate and for each of those Armed Forces, the following:

(1) The total number of persons discharged during the preceding fiscal year.

(2) For each separation code, and for each reenlistment eligibility code, used by the Armed Forces, the number of those discharged persons assigned that code.

(3) For the persons assigned each such separation code, classification of discharges by age, by sex, by race, by military rank or grade, by time in service, by unit (shown at the small unit level), by military occupational specialty (or the equivalent), and by reenlistment eligibility code.

(c) USE OF GENERIC SEPARATION CODES.—In preparing the reports under this section, the Secretary shall use a generic inter-service separation code that provides similar, and consistent, data across the services.

SEC. 587. STUDY OF BLENDED WING CONCEPT FOR THE AIR FORCE.

Deadline.
Reports.

(a) STUDY REQUIRED.—Not later than March 1, 2005, the Secretary of the Air Force shall submit to Congress a report on the blended wing concept for the Air Force. The report shall include the Secretary’s findings as to the characteristics and locations that are considered favorable for a blended wing, a description of the manner in which current blended wings are functioning, and a statement of the current and future plans of the Air Force to implement the blended wing concept.

(b) SELECTION CRITERIA.—The report shall include a description of the criteria and attributes that the Secretary requires when choosing units to become blended wings.

**SEC. 588. SENSE OF CONGRESS REGARDING RETURN OF MEMBERS
TO ACTIVE DUTY SERVICE UPON REHABILITATION FROM
SERVICE-RELATED INJURIES.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) The generation of young people currently serving on active duty in the Armed Forces, which history will record as being among the greatest, has shown in remarkable numbers an individual resolve to recover from injuries incurred in such service and to return to active service in the Armed Forces.

(2) Since September 11, 2001, numerous brave soldiers, sailors, airmen, and Marines have incurred serious combat injuries, including (as of June 2004) approximately 100 members of the Armed Forces who have been fitted with artificial limbs as a result of devastating injuries sustained in combat overseas.

(3) In cases involving combat-related injuries and other service-related injuries, it is possible, as a result of advances in technology and extensive rehabilitative services, to restore to members of the Armed Forces sustaining such injuries the capability to resume the performance of active military service, including, in a few cases, the capability to participate directly in the performance of combat missions.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) a member of the Armed Forces who on the member's own initiative is highly motivated to return to active duty service following rehabilitation from injuries incurred in service in the Armed Forces should, after appropriate medical review and physical disability evaluation, be given the opportunity to present the member's case for continuing to serve on active duty in varied military capacities;

(2) other than appropriate medical review and physical disability evaluation, there should be no barrier in policy or law to such a member having the option to return to military service on active duty; and

(3) the Secretary of Defense should develop specific protocols that include options for such members to return to active duty service and to be retrained to perform military missions for which they are fully capable.

Subtitle M—Other Matters

**SEC. 591. PROTECTION OF ARMED FORCES PERSONNEL FROM
RETALIATORY ACTIONS FOR COMMUNICATIONS MADE
THROUGH THE CHAIN OF COMMAND.**

(a) **PROTECTED COMMUNICATIONS.**—Section 1034(b)(1)(B) of title 10, United States Code, is amended—

(1) by striking “or” at the end of clause (iii); and

(2) by striking clause (iv) and inserting the following:

“(iv) any person or organization in the chain of command; or

“(v) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section apply with respect to any unfavorable personnel action taken or threatened, and any withholding of or threat to withhold a favorable

10 USC 1034
note.

personnel action, on or after the date of the enactment of this Act.

SEC. 592. IMPLEMENTATION PLAN FOR ACCESSION OF PERSONS WITH SPECIALIZED SKILLS.

Reports.

(a) **PLAN FOR ACCESSION OF PERSONS WITH SPECIALIZED SKILLS.**—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a plan for implementation of authority, if subsequently provided by law, to allow for accession into the Armed Forces, on a special or lateral-entry basis, of persons with specialized skills, for duty involving the use of such skills.

(2) The plan under paragraph (1) shall address matters such as projected numbers of enlistments and appointments, initial rank or grade, projected enlistment and re-enlistment bonuses and pays, projected length of service obligation (if any), minimum time of active duty requirements, the potential effect the use of such authority would have on other special or lateral-entry programs (such as those applicable to physicians), and such other matters as the Secretary considers appropriate.

(3) The Secretary shall include with the plan submitted under paragraph (1) a comparison of that plan with an alternative for meeting the specialized skills required by the Armed Forces through the use of civilian contractor personnel.

(b) **CIVILIAN SKILLS CORPS FEASIBILITY STUDY.**—(1) The Secretary of Defense shall conduct a feasibility study of how to implement a system that would make civilian volunteers, with skills determined by the Secretary to be critical, rapidly available for use in, or in support of, units of the Armed Force on a temporary basis to meet no-notice, or short-notice, operational requirements. In conducting the study, the Secretary shall examine a range of options, including—

(A) a system that would embed on short notice in military units civilian volunteers who were not part of the military, but who possessed highly required skills that were in short supply in the Armed Forces; and

(B) a system to provide for the accession into the active or reserve components of persons with critical skills required by the Armed Forces for whom the Secretary could prescribe varying lengths of service and training requirements.

Reports.
Deadline.

(2) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the results of the study under paragraph (1) not later than March 31, 2005.

10 USC 503 note.

SEC. 593. ENHANCED SCREENING METHODS AND PROCESS IMPROVEMENTS FOR RECRUITMENT OF HOME SCHOOLED AND NATIONAL GUARD CHALLENGE PROGRAM GED RECIPIENTS.

(a) **ENHANCED SCREENING METHODS AND PROCESS IMPROVEMENTS.**—(1) The Secretary of the Army shall carry out an initiative—

(A) to develop screening methods and process improvements for recruiting specified GED recipients so as to achieve attrition patterns, among the GED recipients so recruited, that match attrition patterns for Army recruits who are high school diploma graduates; and

(B) subject to subsection (b), to implement such screening methods and process improvements on a test basis.

(2) For purposes of this section, the term “specified GED recipients” means persons who receive a General Educational Development (GED) certificate as a result of home schooling or the completion of a program under the National Guard Challenge program.

(b) SECRETARY OF DEFENSE REVIEW.—Before the screening methods and process improvements developed under subsection (a)(1) are put into effect under subsection (a)(2), the Secretary of Defense shall review the proposed screening methods and process improvements. Based on such review, the Secretary of Defense either shall approve the use of such screening methods and process improvements for testing (with such modifications as the Secretary may direct) or shall disapprove the use of such methods and process improvements on a test basis.

(c) SECRETARY OF DEFENSE DECISION.—If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should be implemented on a test basis, then upon completion of the test period, the Secretary of Defense shall, after reviewing the results of the test program, determine whether the new screening methods and process improvements developed by the Army should be extended throughout the Department for recruit candidates identified by the new procedures to be considered tier 1 recruits.

(d) REPORTS.—(1) If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should not be implemented on a test basis, the Secretary of Defense shall, not later than 90 days thereafter, notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of such determination, together with the reasons of the Secretary for such determination.

(2) If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should be implemented on a test basis, the Secretary of the Army shall submit to the committees specified in paragraph (1) a report on the results of the testing. The report shall be submitted not later than March 31, 2009, except that if the Secretary of Defense directs an earlier termination of the testing initiative, the Secretary of the Army shall submit the report under this paragraph not later than 180 days after such termination. Such report shall include the determination of the Secretary of Defense under subsection (c). If that determination is that the methods and processes tested should not be extended to the other services, the report shall include the Secretary’s rationale for not recommending such extension.

SEC. 594. REDESIGNATION OF NATIONAL GUARD CHALLENGE PROGRAM AS NATIONAL GUARD YOUTH CHALLENGE PROGRAM.

(a) REDESIGNATION.—Section 509 of title 32, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “National Guard Challenge Program” the first place it appears and inserting “National Guard Youth Challenge Program”; and

(B) by striking “National Guard Challenge Program” the second place it appears and inserting “Program”;

(2) by striking “National Guard Challenge Program” each place it appears in subsections (b) through (k) and subsection (m) and inserting “Program”;

(3) by striking “program” each place it appears in subsections (b), (g), (i)(2)(A), (j), (k), and (m) and inserting “Program”; and

(4) in subsection (l), by adding at the end the following new paragraph:

“(3) The term ‘Program’ means the National Guard Youth Challenge Program carried out pursuant to this section.”.

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

“§ 509. National Guard Youth Challenge Program of opportunities for civilian youth”.

(2) The table of sections at the beginning of chapter 5 of such title is amended by striking the item relating to section 509 and inserting the following new item:

“509. National Guard Youth Challenge Program of opportunities for civilian youth.”.

SEC. 595. REPORTS ON CERTAIN MILESTONES RELATING TO DEPARTMENT OF DEFENSE TRANSFORMATION.

(a) MILITARY-TO-CIVILIAN CONVERSIONS.—Not later than January 31, 2005, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing information as to the number of positions in the Department of Defense that were converted during fiscal year 2004 from performance by military personnel to performance by civilian personnel of the Department of Defense or contractor personnel. The report shall include the following:

(1) A description of the skill sets of the military positions converted.

(2) Specification of the total cost of the conversions and how that cost is being met.

(3) The number of positions in the Department of Defense projected for such conversion during the period from March 1, 2005, through January 31, 2006.

(b) MILITARY-TO-MILITARY CONVERSIONS.—Not later than March 31 of each of 2005, 2006, and 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on—

(1) the number of units, by type, converted from one primary military capability to another during the previous fiscal year and, for each such unit, what the new unit designation and new military capabilities are;

(2) the number of military personnel, by military skill, who have converted during the previous fiscal year from one primary military skill to another, with a listing of the military skills to which the individuals converted;

(3) a description of the military unit and military personnel conversions planned for the upcoming fiscal year; and

(4) a statement of whether the overall unit and military personnel conversions planned for the previous fiscal year were

met, and for each such planned conversion, the reasons why the planned conversion was or was not met.

(c) **ARMY TRANSFORMATION TO BRIGADE STRUCTURE.**—The Secretary of the Army shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives an annual report on the status of the internal transformation of the Army from a division-orientated force to a brigade-orientated force. Such report shall be submitted not later than March 31 of each year, except that the requirement to submit such annual report shall terminate when the Secretary of the Army submits to those committees the Secretary's certification that the transformation of the Army to a brigade-orientated force has been completed. Upon the submission of such certification, the Secretary shall publish in the Federal Register notice of that certification and that the statutory requirement to submit an annual report under this subsection has terminated.

10 USC 3013
note.

Federal Register,
publication.

SEC. 596. REPORT ON ISSUES RELATING TO REMOVAL OF REMAINS OF PERSONS INTERRED IN UNITED STATES MILITARY CEMETERIES OVERSEAS.

(a) **STUDY.**—The Secretary of the Army shall examine the issues relating to requests for disinterment of remains of persons buried in United States overseas military cemeteries. The examination shall include the following:

(1) A review of the historical facts involved in establishing the United States overseas military cemeteries and in determining the criteria for interment in those cemeteries.

(2) An examination of the processes for ensuring that the initial disposition decision with respect to the remains of any decedent was carried out, together with a review and explanation of the existing policy and procedures regarding request for disinterment and any exceptions that have been made.

(3) An analysis of the potential reasons for justifying disinterment of remains from those cemeteries, including error, misunderstanding, and change of decision by the original responsible next of kin or other family member or group of family members.

(4) An analysis of the potential impact on the operation of United States overseas military cemeteries of permitting disinterment of remains from those cemeteries.

(b) **REPORT.**—Not later than September 30, 2005, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the results of the examination under subsection (a). The report shall include the following:

(1) The matters specified in paragraphs (1), (2), (3), and (4) of subsection (a).

(2) A description of the changes to policy criteria and procedures that would be necessary to support a system for requesting and authorizing disinterment of such remains.

(3) The recommendations of the Secretary of the Army and the American Battle Monuments Commission for changing current policy and procedures with respect to such disinterments.

(c) **CONSULTATION WITH ABMC.**—The Secretary shall carry out the examination under subsection (a) and prepare the report

under subsection (b) in consultation with the American Battle Monuments Commission.

(d) ABMC ASSISTANCE.—The American Battle Monuments Commission shall provide the Secretary of the Army such assistance as the Secretary may require in carrying out this section.

(e) DEFINITIONS.—For purposes of this section:

(1) The term “United States overseas military cemetery” means a cemetery located in a foreign country that is administered by the Secretary of a military department or the American Battle Monuments Commission.

(2) The term “initial disposition decision”, with respect to the remains of a person who died outside the United States and was interred in a United States overseas military cemetery, means a decision by a family member (or other designated person) as to the disposition (in accordance with laws and regulations in effect at the time) of the remains of the deceased person, such decision being to have the remains interred in a United States overseas military cemetery (rather than to have those remains transported to the United States for interment or other disposition in the United States).

SEC. 597. COMPTROLLER GENERAL REPORTS ON CLOSURE OF DEPARTMENT OF DEFENSE DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS AND COMMISSARY STORES.

(a) REPORT ON DEFENSE DEPENDENT SCHOOLS.—The Comptroller General shall prepare a report containing—

(1) an assessment by the Comptroller General of the policy of the Department of Defense, and the criteria utilized by the Department, regarding the closure of Department of Defense dependent elementary and secondary schools, including whether or not such policy and criteria are consistent with Department policies and procedures on the preservation of the quality of life of members of the Armed Forces and their dependents; and

(2) an assessment by the Comptroller General of any current or on-going studies or assessments of the Department with respect to any of the schools.

(b) REPORT ON COMMISSARY STORES.—The Comptroller General shall prepare a report containing—

(1) an assessment by the Comptroller General of the policy of the Department of Defense, and the criteria utilized by the Department, regarding the closure of commissary stores, including whether or not such policy and criteria are consistent with Department policies and procedures on the preservation of the quality of life of members of the Armed Forces and their dependents; and

(2) an assessment by the Comptroller General of any current or on-going studies or assessments of the Department with respect to any of the commissary stores.

(c) SUBMISSION OF REPORTS.—The Comptroller General shall submit the reports required by this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 180 days after the date of the enactment of this Act.

SEC. 598. COMPTROLLER GENERAL REPORT ON TRANSITION ASSISTANCE PROGRAMS FOR MEMBERS SEPARATING FROM THE ARMED FORCES.

(a) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report evaluating the programs of the Department of Defense and other Federal agencies under which transition assistance is provided to members of the Armed Forces who are separating from active duty service.

(b) **ELEMENTS OF REPORT.**—(1) With regard to the transition assistance programs under section 1142 and 1144 of title 10, United States Code, the report required by subsection (a) shall include—

(A) an analysis of the extent to which such programs are meeting the current needs of members of the Armed Forces as they are discharged or released from active duty;

(B) a discussion of the original purposes of the programs;

(C) a discussion of how the programs are currently being administered in relationship to those purposes;

(D) an assessment of whether the programs are adequate to meet the current needs of members of the reserve components; and

(E) such recommendations as the Comptroller General considers appropriate for improving such programs, including any recommendation regarding whether participation by members of the Armed Forces in such programs should be required.

(2) The report shall include an analysis of any differences among the Armed Forces and among the commands of military installations of the Armed Forces regarding how transition assistance is being provided under the transition assistance programs and such recommendations as the Comptroller General considers appropriate—

(A) to achieve uniformity in the provision of assistance under such programs; and

(B) to ensure that the transition assistance is provided under such programs to members of the Armed Forces who are being separated at medical facilities of the uniformed services or Department of Veterans Affairs medical centers and to Armed Forces personnel on a temporary disability retired list under section 1202 or 1205 of title 10, United States Code.

(3) The report shall include—

(A) an analysis of the relationship between the Department of Defense transition assistance programs and the transition assistance programs of the Department of Veterans Affairs and the Department of Labor, including the relationship between the benefits delivery at discharge program carried out jointly by the Department of Defense and the Department of Veterans Affairs and the other transition assistance programs; and

(B) an assessment of the quality and thoroughness of information being provided during preseparation briefings under such transition assistance programs regarding the full range of benefits available to qualified members of the Armed Forces under programs operated by the Department of Veterans Affairs and the requirements for qualifying for those benefits.

(4) The report shall specify the rates of participation of members of the Armed Forces in the transition assistance programs and include such recommendations as the Comptroller General considers

appropriate to increase such participation rates, including any recommendations regarding revisions of such programs that could result in increased participation by members.

(5) The report shall include—

(A) an assessment of whether the transition assistance information provided to members of the Armed Forces omits any transition information that would be beneficial to members;

(B) an assessment of the extent to which information is provided under the transition assistance programs regarding participation in Federal procurement opportunities available at prime contract and subcontract levels to veterans with service-connected disabilities and other veterans; and

(C) such recommendations as the Comptroller General considers appropriate regarding additional information that should be provided and any other recommendations that the Comptroller General considers appropriate for enhancing the provision of counseling on such procurement opportunities.

(6) The report shall include—

(A) an assessment of the extent to which representatives of military service organizations and veterans' service organizations are afforded opportunities to participate, and do participate, in preseparation briefings under transition assistance programs;

(B) an assessment of the effectiveness and usefulness of the role that military service organizations and veterans' service organizations are playing in the preseparation briefing process; and

(C) such recommendations as the Comptroller General considers appropriate regarding whether such organizations should be given a more formal role in the preseparation briefing process and how representatives of such organizations could better be used to disseminate transition assistance information and provide preseparation counseling to members of the Armed Forces, including members who are being released from active duty for continuation of service in a reserve component.

(7) The report shall include an analysis of the use of post-deployment and predischARGE health screenings and such recommendations as the Comptroller General considers appropriate regarding whether and how to integrate the health screening process and the transition assistance programs into a single, coordinated preseparation program for members of the Armed Forces being discharged or released from active duty.

(8) The report shall include an analysis of the processes of the Armed Forces for conducting physical examinations of members of the Armed Forces in connection with discharge and release from active duty, including—

(A) how post-deployment questionnaires are used;

(B) the extent to which members of the Armed Forces waive the physical examinations; and

(C) how, and the extent to which, members of the Armed Forces are referred for follow-up health care.

(9) The report shall include a discussion of the current process by which mental health screenings are conducted, follow-up mental health care is provided for, and services are provided in cases of post-traumatic stress disorder and related conditions for members of the Armed Forces in connection with discharge and release from active duty, together with—

(A) for each of the Armed Forces, the programs that are in place to identify and treat cases of post-traumatic stress disorder and related conditions; and

(B) for persons returning from deployments in connection with Operation Enduring Freedom and Operation Iraqi Freedom—

(i) the number of persons treated as a result of such screenings; and

(ii) the types of interventions.

(c) ACQUISITION OF SUPPORTING INFORMATION.—In preparing the report under subsection (a), the Comptroller General shall seek to obtain views from the following persons:

(1) The Secretary of Defense and the Secretaries of the military departments.

(2) The Secretary of Veterans Affairs.

(3) The Secretary of Labor.

(4) Members of the Armed Forces who have received transition assistance under the programs covered by the report and members of the Armed Forces who have declined to accept transition assistance offered under such programs.

(5) Representatives of military service organizations and representatives of veterans' service organizations.

(6) Persons having expertise in health care (including mental health care) provided under the Defense Health Program, including Department of Defense personnel, Department of Veterans Affairs personnel, and persons in the private sector.

SEC. 599. STUDY ON COORDINATION OF JOB TRAINING STANDARDS WITH CERTIFICATION STANDARDS FOR MILITARY OCCUPATIONAL SPECIALTIES.

(a) STUDY REQUIRED.—The Secretary of Defense and the Secretary of Labor shall jointly carry out a study to determine ways to coordinate the standards applied by the Armed Forces for the training and certification of members of the Armed Forces in military occupational specialties with the standards that are applied to corresponding civilian occupations by occupational licensing or certification agencies of governments and occupational certification agencies in the private sector.

(b) SUBMISSION OF REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall submit to Congress a report containing the results of the study under subsection (a).

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Sec. 601. Increase in basic pay for fiscal year 2005.

Sec. 602. Relationship between eligibility to receive supplemental subsistence allowance and eligibility to receive imminent danger pay, family separation allowance, and certain Federal assistance.

Sec. 603. Authority to provide family separation basic allowance for housing.

Sec. 604. Geographic basis for housing allowance during short-assignment permanent changes of station for education or training.

Sec. 605. Immediate lump-sum reimbursement for unusual nonrecurring expenses incurred for duty outside the continental United States.

Sec. 606. Authority for certain members deployed in combat zones to receive limited advances on future basic pay.

- Sec. 607. Repeal of requirement that members entitled to basic allowance for subsistence pay subsistence charges while hospitalized.

Subtitle B—Bonuses and Special and Incentive Pays

- Sec. 611. One-year extension of certain bonus and special pay authorities for reserve forces.
- Sec. 612. One-year extension of certain bonus and special pay authorities for certain health care professionals.
- Sec. 613. One-year extension of special pay and bonus authorities for nuclear officers.
- Sec. 614. One-year extension of other bonus and special pay authorities.
- Sec. 615. Authority to provide hazardous duty incentive pay to military firefighters.
- Sec. 616. Reduced service obligation for nurses receiving nurse accession bonus.
- Sec. 617. Assignment incentive pay.
- Sec. 618. Modification of active and reserve component reenlistment and enlistment bonus authorities.
- Sec. 619. Bonus for certain initial service of officers in the Selected Reserve.
- Sec. 620. Revision of authority to provide foreign language proficiency pay.
- Sec. 621. Eligibility of enlisted members to qualify for critical skills retention bonus while serving on indefinite reenlistment.
- Sec. 622. Eligibility of reserve component members for incentive bonus for conversion to military occupational specialty to ease personnel shortage.
- Sec. 623. Permanent increase in authorized amounts for imminent danger special pay and family separation allowance.

Subtitle C—Travel and Transportation Allowances

- Sec. 631. Travel and transportation allowances for family members to attend burial ceremony or memorial service of member who dies on duty.
- Sec. 632. Transportation of family members incident to serious illness or injury of members of the uniformed services.
- Sec. 633. Reimbursement for certain lodging costs incurred in connection with dependent student travel.

Subtitle D—Retired Pay and Survivor Benefits

- Sec. 641. Computation of high-36 month average for reserve component members retired for disability while on active duty or dying while on active duty.
- Sec. 642. Repeal of phase-in of concurrent receipt of retired pay and veterans' disability compensation for military retirees with service-connected disabilities rated as 100 percent.
- Sec. 643. Death benefits enhancement.
- Sec. 644. Phased elimination of two-tier annuity computation for surviving spouses under Survivor Benefit Plan.
- Sec. 645. One-year open enrollment period for Survivor Benefit Plan commencing October 1, 2005.

Subtitle E—Commissary and Nonappropriated Fund Instrumentality Benefits

- Sec. 651. Consolidation and reorganization of legislative provisions regarding defense commissary system and exchanges and other morale, welfare, and recreation activities.
- Sec. 652. Consistent State treatment of Department of Defense Nonappropriated Fund Health Benefits Program.

Subtitle F—Other Matters

- Sec. 661. Eligibility of members for reimbursement of expenses incurred for adoption placements made by foreign governments.
- Sec. 662. Clarification of education loans qualifying for education loan repayment program for reserve component health professions officers.
- Sec. 663. Receipt of pay by reservists from civilian employers while on active duty in connection with a contingency operation.
- Sec. 664. Relief for mobilized reservists from certain Federal agricultural loan obligations.
- Sec. 665. Survey and analysis of effect of extended and frequent mobilization of reservists for active duty service on reservist income.
- Sec. 666. Study of disability benefits for veterans of service in the Armed Forces with service-connected disabilities.

Subtitle A—Pay and Allowances

SEC. 601. INCREASE IN BASIC PAY FOR FISCAL YEAR 2005.

(a) **WAIVER OF SECTION 1009 ADJUSTMENT.**—The adjustment to become effective during fiscal year 2005 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.

37 USC 1009
note.

(b) **INCREASE IN BASIC PAY.**—Effective on January 1, 2005, the rates of monthly basic pay for members of the uniformed services are increased by 3.5 percent.

SEC. 602. RELATIONSHIP BETWEEN ELIGIBILITY TO RECEIVE SUPPLEMENTAL SUBSISTENCE ALLOWANCE AND ELIGIBILITY TO RECEIVE IMMINENT DANGER PAY, FAMILY SEPARATION ALLOWANCE, AND CERTAIN FEDERAL ASSISTANCE.

(a) **ENTITLEMENT NOT AFFECTED BY RECEIPT OF IMMINENT DANGER PAY AND FAMILY SEPARATION ALLOWANCE.**—Subsection (b) of section 402a of title 37, United States Code, is amended—

(1) in paragraph (2), by striking “the Secretary—” and all that follows through “shall take into consideration” and inserting “the Secretary concerned shall take into consideration”; and

(2) by adding at the end the following new paragraph:

“(3) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall not take into consideration—

“(A) the amount of the supplemental subsistence allowance that is payable under this section;

“(B) the amount of any special pay that is payable to the member under section 310 of this section, relating to duty subject to hostile fire or imminent danger; or

“(C) the amount of any family separation allowance that is payable to the member under section 427 of this title.”.

(b) **RELATION TO OTHER FEDERAL ASSISTANCE.**—Such section is further amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following new subsection (g):

“(g) **ELIGIBILITY FOR OTHER FEDERAL ASSISTANCE.**—(1) A child or spouse of a member of the armed forces receiving the supplemental subsistence allowance under this section who, except on account of the receipt of such allowance, would be eligible to receive a benefit described in paragraph (2) shall be considered to be eligible for that benefit notwithstanding the receipt of such allowance.

“(2) The benefits referred to in paragraph (1) are as follows:

“(A) Assistance provided under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

“(B) Assistance provided under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(C) A service provided under the Head Start Act (42 U.S.C. 9831 et seq.).

“(D) Assistance under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

“(3) A household that includes a member of the armed forces receiving the supplemental subsistence allowance under this section and that, except on account of the receipt of such allowance, would be eligible to receive a benefit under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) shall be considered to be eligible for that benefit notwithstanding the receipt of such allowance.”.

37 USC 402a
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply in determining, on or after the date of the enactment of this Act, the eligibility of a person for a supplemental subsistence allowance under section 402a of title 37, United States Code, or for Federal assistance under a law specified in subsection (g) of such section, as so amended.

SEC. 603. AUTHORITY TO PROVIDE FAMILY SEPARATION BASIC ALLOWANCE FOR HOUSING.

Section 403(d) of title 37, United States Code, is amended—

(1) in paragraph (1), by striking “is entitled to” and inserting “may be paid”; and

(2) in paragraph (4), by striking the first sentence and inserting the following new sentence: “A family separation basic allowance for housing paid to a member under this subsection is in addition to any other allowance or per diem that the member receives under this title.”.

SEC. 604. GEOGRAPHIC BASIS FOR HOUSING ALLOWANCE DURING SHORT-ASSIGNMENT PERMANENT CHANGES OF STATION FOR EDUCATION OR TRAINING.

Section 403(d) of title 37, United States Code, as amended by section 603, is further amended—

(1) in the subsection heading, by striking “ARE UNABLE To” and inserting “Do Not”; and

(2) in paragraph (3), by adding at the end the following new subparagraph:

“(C) If the member is reassigned for a permanent change of station or permanent change of assignment from a duty station in the United States to another duty station in the United States for a period of not more than one year for the purpose of participating in professional military education or training classes, the amount of the basic allowance for housing for the member may be based on whichever of the following areas the Secretary concerned determines will provide the more equitable basis for the allowance:

“(i) The area of the duty station to which the member is reassigned.

“(ii) The area in which the dependents reside, but only if the dependents reside in that area when the member departs for the duty station to which the member is reassigned and only for the period during which the dependents reside in that area.

“(iii) The area of the former duty station of the member, if different than the area in which the dependents reside.”.

**SEC. 605. IMMEDIATE LUMP-SUM REIMBURSEMENT FOR UNUSUAL
NONRECURRING EXPENSES INCURRED FOR DUTY OUT-
SIDE THE CONTINENTAL UNITED STATES.**

(a) **ELIGIBILITY FOR REIMBURSEMENT.**—Section 405 of title 37, United States Code, is amended by adding at the end the following new subsection:

“(d) **NONRECURRING EXPENSES.**—(1) The Secretary concerned may reimburse a member of the uniformed services on duty as described in subsection (a) for a nonrecurring expense incurred by the member incident to such duty that—

“(A) is directly related to the conditions or location of the duty;

“(B) is of a nature or a magnitude not normally incurred by members of the uniformed services on duty inside the continental United States; and

“(C) is not included in the per diem determined under subsection (b) as payable to the member under subsection (a).

“(2) Any reimbursement provided to a member under paragraph (1) is in addition to a per diem payable to that member under subsection (a).”.

(b) **USE OF DEFINED TERM CONTINENTAL UNITED STATES.**—(1) Subsection (a) of such section is amended by striking “outside of the United States or in Hawaii or Alaska” and inserting “outside of the continental United States”.

(2) The heading of such section is amended to read as follows:

“§ 405. Travel and transportation allowances: per diem while on duty outside the continental United States”.

(3) The table of sections at the beginning of chapter 7 of such title is amended by striking the item relating to section 405 and inserting the following new item:

“405. Travel and transportation allowances: per diem while on duty outside the continental United States.”.

**SEC. 606. AUTHORITY FOR CERTAIN MEMBERS DEPLOYED IN COMBAT
ZONES TO RECEIVE LIMITED ADVANCES ON FUTURE
BASIC PAY.**

(a) **ADVANCEMENT OF BASIC PAY.**—Chapter 3 of title 37, United States Code, is amended by adding at the end the following new section:

“§ 212. Advancement of basic pay: members deployed in combat zone for more than one year

“(a) **ELIGIBILITY; AMOUNT ADVANCED.**—If a member of the armed forces is assigned to duty in an area for which special pay under section 310 of this title is available and the assignment is pursuant to orders specifying an assignment of one year or more (or the assignment is extended beyond one year), the member may request, during the period of the assignment, the advanced payment of not more than three months of the basic pay of the member.

“(b) **CONSIDERATION OF REQUEST.**—A request by a member described in subsection (a) for the advanced payment of a single month of basic pay shall be granted. The Secretary concerned may grant a member’s request for a second or third month of advanced basic pay during the assignment upon a showing of financial hardship.

“(c) RECOUPMENT OF ADVANCED PAY.—The Secretary concerned shall recoup an advance made on the basic pay of a member under this section in equal installments over a one-year period beginning as provided in subsection (d). If the member is serving on active duty for any month during the recoupment period, the amount of the installment for the month shall be deducted from the basic pay of the member for that month. The estate of a deceased member shall not be required to repay any portion of the advanced pay paid to the member and not repaid before the death of the member.

“(d) COMMENCEMENT OF RECOUPMENT.—The recoupment period for an advancement of basic pay to a member under this section shall commence on the first day of the first month beginning on or after the date on which the member receives the advanced pay.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“212. Advancement of basic pay: members deployed in combat zone for more than one year.”.

SEC. 607. REPEAL OF REQUIREMENT THAT MEMBERS ENTITLED TO BASIC ALLOWANCE FOR SUBSISTENCE PAY SUBSISTENCE CHARGES WHILE HOSPITALIZED.

(a) REPEAL.—(1) Section 1075 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 55 of such title is amended by striking the item relating to section 1075.

(b) CONFORMING AMENDMENT REGARDING MILITARY-CIVILIAN HEALTH SERVICES PARTNERSHIP PROGRAM.—Section 1096(c) of such title is amended—

(1) by inserting “who is a dependent” after “covered beneficiary”; and

(2) by striking “shall pay” and all that follows through the period at the end of paragraph (2) and inserting “shall pay the charges prescribed by section 1078 of this title.”.

Subtitle B—Bonuses and Special and Incentive Pays

SEC. 611. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR RESERVE FORCES.

(a) SELECTED RESERVE REENLISTMENT BONUS.—Section 308b(g) of title 37, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(b) SELECTED RESERVE ENLISTMENT BONUS.—Section 308c(e) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(c) SPECIAL PAY FOR ENLISTED MEMBERS ASSIGNED TO CERTAIN HIGH PRIORITY UNITS.—Section 308d(c) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(d) SELECTED RESERVE AFFILIATION BONUS.—Section 308e(e) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(e) **READY RESERVE ENLISTMENT AND REENLISTMENT BONUS.**—Section 308h(g) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(f) **PRIOR SERVICE ENLISTMENT BONUS.**—Section 308i(f) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

SEC. 612. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS.

(a) **NURSE OFFICER CANDIDATE ACCESSION PROGRAM.**—Section 2130a(a)(1) of title 10, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(b) **REPAYMENT OF EDUCATION LOANS FOR CERTAIN HEALTH PROFESSIONALS WHO SERVE IN THE SELECTED RESERVE.**—Section 16302(d) of such title is amended by striking “January 1, 2005” and inserting “January 1, 2006”.

(c) **ACCESSION BONUS FOR REGISTERED NURSES.**—Section 302d(a)(1) of title 37, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(d) **INCENTIVE SPECIAL PAY FOR NURSE ANESTHETISTS.**—Section 302e(a)(1) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(e) **SPECIAL PAY FOR SELECTED RESERVE HEALTH PROFESSIONALS IN CRITICALLY SHORT WARTIME SPECIALTIES.**—Section 302g(f) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(f) **ACCESSION BONUS FOR DENTAL OFFICERS.**—Section 302h(a)(1) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(g) **ACCESSION BONUS FOR PHARMACY OFFICERS.**—Section 302j(a) of such title is amended by striking “the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and ending on September 30, 2004” and inserting “October 30, 2000, and ending on December 31, 2005”.

SEC. 613. ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS.

(a) **SPECIAL PAY FOR NUCLEAR-QUALIFIED OFFICERS EXTENDING PERIOD OF ACTIVE SERVICE.**—Section 312(e) of title 37, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(b) **NUCLEAR CAREER ACCESSION BONUS.**—Section 312b(c) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(c) **NUCLEAR CAREER ANNUAL INCENTIVE BONUS.**—Section 312c(d) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

SEC. 614. ONE-YEAR EXTENSION OF OTHER BONUS AND SPECIAL PAY AUTHORITIES.

(a) **AVIATION OFFICER RETENTION BONUS.**—Section 301b(a) of title 37, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(b) **ASSIGNMENT INCENTIVE PAY.**—Section 307a(f) of such title is amended by striking “December 31, 2005” and inserting “December 31, 2006”.

(c) REENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 308(g) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(d) ENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 309(e) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(e) RETENTION BONUS FOR MEMBERS WITH CRITICAL MILITARY SKILLS.—Section 323(i) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(f) ACCESSION BONUS FOR NEW OFFICERS IN CRITICAL SKILLS.—Section 324(g) of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

SEC. 615. AUTHORITY TO PROVIDE HAZARDOUS DUTY INCENTIVE PAY TO MILITARY FIREFIGHTERS.

Section 301 of title 37, United States Code, is amended—

(1) in subsection (d), by inserting “(1)” after “(d)”;

(2) by redesignating subsection (e) as paragraph (2) of subsection (d); and

(3) by inserting after subsection (d) the following new subsection (e):

“(e) A member of a uniformed service who is entitled to basic pay may be paid incentive pay under this subsection, at a monthly rate not to exceed \$150, for any month during which the member performs duty involving regular participation as a firefighting crew member, as determined by the Secretary concerned.”.

SEC. 616. REDUCED SERVICE OBLIGATION FOR NURSES RECEIVING NURSE ACCESSION BONUS.

(a) PERIOD OF OBLIGATED SERVICE.—Section 302d(a)(1) of title 37, United States Code, is amended by striking “four years” and inserting “three years”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to agreements entered into under section 302d of title 37, United States Code, on or after the date of the enactment of this Act.

37 USC 302d
note.

SEC. 617. ASSIGNMENT INCENTIVE PAY.

(a) DISCRETIONARY WRITTEN AGREEMENTS.—Subsection (b) of section 307a of title 37, United States Code, is amended to read as follows:

“(b) WRITTEN AGREEMENT.—The Secretary concerned may require a member performing service in an assignment designated under subsection (a) to enter into a written agreement with the Secretary in order to qualify for incentive pay under this section. The written agreement shall specify the period for which the incentive pay will be paid to the member and, subject to subsection (c), the monthly rate of the incentive pay.”.

(b) DISCONTINUATION UPON COMMENCEMENT OF TERMINAL LEAVE.—Subsection (e) of such section is amended by striking “by reason of” and all that follows through the period at the end and inserting “by reason of—

“(1) temporary duty performed by the member pursuant to orders; or

“(2) absence of the member for authorized leave, other than leave authorized for a period ending upon the discharge of the member or the release of the member from active duty.”.

(c) **EFFECTIVE DATE.**—Paragraph (2) of section 307a(e) of title 37, United States Code, as added by subsection (b), shall apply with respect to authorized leave occurring on or after the date of the enactment of this Act. 37 USC 307a note.

SEC. 618. MODIFICATION OF ACTIVE AND RESERVE COMPONENT REENLISTMENT AND ENLISTMENT BONUS AUTHORITIES.

(a) **ACTIVE-DUTY REENLISTMENT BONUS.**—(1) Paragraph (1) of subsection (a) of section 308 of title 37, United States Code, is amended—

(A) in the matter preceding subparagraph (A), by striking “A member” and inserting “The Secretary concerned may pay a bonus under paragraph (2) to a member”;

(B) in subparagraph (A), by striking “fourteen years” and inserting “16 years”;

(C) in subparagraph (D), by striking the semicolon at the end and inserting a period; and

(D) by striking “may be paid a bonus as provided in paragraph (2).”.

(2) Paragraph (3) of such subsection is amended by striking “16 years” and inserting “18 years”.

(b) **SELECTED RESERVE REENLISTMENT BONUS.**—(1) Subsection (a) of section 308b of title 37, United States Code, is amended—

(A) in the matter preceding paragraph (1), by striking “An enlisted member” and inserting “The Secretary concerned may pay a bonus under subsection (b) to an enlisted member”;

(B) in paragraph (1), by striking “less than 14 years” and inserting “not more than 16 years”;

(C) in paragraph (2), by striking the semicolon at the end and inserting a period; and

(D) by striking “may be paid a bonus as provided in subsection (b).”.

(2) Subsection (b)(1) of such section is amended—

(A) in subparagraph (A), by striking “\$5,000” and inserting “\$15,000”;

(B) in subparagraph (B), by striking “\$2,500” and inserting “\$7,500”; and

(C) in subparagraph (C), by striking “\$2,000” and inserting “\$6,000”.

(3) Paragraph (2) of subsection (b) of such section is amended to read as follows:

“(2) Bonus payments authorized under this section may be paid in either a lump sum or in installments. If the bonus is paid in installments, the initial payment shall be not less than 50 percent of the total bonus amount. The Secretary concerned shall prescribe the amount of each subsequent installment payment and the schedule for making the installment payments.”.

(4) Subsection (c) of such section is amended—

(A) in the subsection heading, by striking “; LIMITATION ON NUMBER OF BONOSES”; and

(B) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(c) **SELECTED RESERVE ENLISTMENT BONUS.**—(1) Subsection (b) of section 308c of title 37, United States Code, is amended by striking “\$8,000” and inserting “\$10,000”.

(2) Subsection (f) of such section is amended to read as follows:

“(f) A member entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.”.

(d) **READY RESERVE ENLISTMENT BONUS FOR PERSONS WITHOUT PRIOR SERVICE.**—Section 308g(b) of title 37, United States Code, is amended—

(1) by striking “\$1,000” and inserting “\$3,000”; and

(2) by adding at the end the following new sentence: “A person entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.”.

(e) **PRIOR SERVICE READY RESERVE BONUS.**—Section 308h(b) of title 37, United States Code, is amended—

(1) in paragraph (2)(A), by striking “\$1,500” and inserting “\$3,000”; and

(2) in paragraph (2)(B), by striking “\$750” and inserting “\$1,500”; and

(3) by adding at the end the following new paragraph:

“(4) A person entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.”.

(f) **PRIOR SERVICE ENLISTMENT BONUS FOR SELECTED RESERVE.**—(1) Subsection (a)(2)(A) of section 308i of title 37, United States Code, is amended by striking “less than 14 years” and inserting “not more than 16 years”.

(2) Paragraph (1) of subsection (b) of such section is amended—

(A) in subparagraph (A), by striking “\$8,000” and inserting “\$15,000”; and

(B) in subparagraph (B), by striking “\$4,000” and inserting “\$7,500”; and

(C) in subparagraph (C), by striking “\$3,500” and inserting “\$6,000”.

(3) Such subsection is further amended by adding at the end the following new paragraph:

“(3) A person entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.”.

37 USC 308 note.

(g) **EFFECTIVE DATE.**—The amendment made by subsection (a)(2) shall apply only with respect to the computation of a bonus under section 308(a)(2)(A) of title 37, United States Code, made on or after the date of the enactment of this Act.

SEC. 619. BONUS FOR CERTAIN INITIAL SERVICE OF OFFICERS IN THE SELECTED RESERVE.

(a) **AUTHORITY.**—Chapter 5 of title 37, United States Code, is amended by inserting after section 308i the following new section:

“§ 308j. Special pay: bonus for certain initial service of officers in the Selected Reserve

“(a) **AFFILIATION BONUS.**—(1) The Secretary concerned may pay an affiliation bonus under this section to an eligible officer in any of the armed forces who enters into an agreement with the Secretary to serve, for the period specified in the agreement, in

the Selected Reserve of the Ready Reserve of an armed force under the Secretary's jurisdiction—

“(A) in a critical officer skill designated under paragraph (3); or

“(B) to meet a manpower shortage in—

“(i) a unit of that Selected Reserve; or

“(ii) a particular pay grade in that armed force.

“(2) An officer is eligible for an affiliation bonus under this section if the officer—

“(A) either—

“(i) is serving on active duty for a period of more than 30 days; or

“(ii) is a member of a reserve component not on active duty and, if the member formerly served on active duty, was released from active duty under honorable conditions;

“(B) has not previously served in the Selected Reserve of the Ready Reserve; and

“(C) is not entitled to receive retired or retainer pay.

“(3)(A) The Secretary concerned shall designate for an armed force under the Secretary's jurisdiction the critical officer skills to which the bonus authority under this subsection is to be applied.

“(B) A skill may be designated as a critical officer skill for an armed force under subparagraph (A) if, to meet requirements of that armed force, it is critical for that armed force to have a sufficient number of officers who are qualified in that skill.

“(4) An affiliation bonus payable pursuant to an agreement under this section to an eligible officer accrues on the date on which the person is assigned to a unit or position in the Selected Reserve pursuant to such agreement.

“(b) ACCESSION BONUS.—(1) The Secretary concerned may pay an accession bonus under this section to an eligible person who enters into an agreement with the Secretary—

“(A) to accept an appointment as an officer in the armed forces; and

“(B) to serve in the Selected Reserve of the Ready Reserve in a skill designated under paragraph (2) for a period specified in the agreement.

“(2)(A) The Secretary concerned shall designate for an armed force under the Secretary's jurisdiction the officer skills to which the authority under this subsection is to be applied.

“(B) A skill may be designated for an armed force under subparagraph (A) if, to mitigate a current or projected significant shortage of personnel in that armed force who are qualified in that skill, it is critical to increase the number of persons accessed into that armed force who are qualified in that skill or are to be trained in that skill.

“(3) An accession bonus payable to a person pursuant to an agreement under this section accrues on the date on which that agreement is accepted by the Secretary concerned.

“(c) PERIOD OF OBLIGATED SERVICE.—An agreement entered into with the Secretary concerned under this section shall require the person entering into that agreement to serve in the Selected Reserve for a specified period. The period specified in the agreement shall be any period not less than three years that the Secretary concerned determines appropriate to meet the needs of the reserve component in which the service is to be performed.

“(d) AMOUNT.—The amount of a bonus under this section may be any amount not in excess of \$6,000 that the Secretary concerned determines appropriate.

“(e) PAYMENT.—(1) Upon acceptance of a written agreement by the Secretary concerned under this section, the total amount of the bonus payable under the agreement becomes fixed. The agreement shall specify whether the bonus is to be paid in one lump sum or in installments.

“(2) A person entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.

“(f) RELATION TO OTHER ACCESSION BONUS AUTHORITY.—A person may not receive an affiliation bonus or accession bonus under this section and financial assistance under chapter 1608, 1609, or 1611 of title 10, or under section 302g of this title, for the same period of service.

“(g) REPAYMENT FOR FAILURE TO COMMENCE OR COMPLETE OBLIGATED SERVICE.—(1) A person who, after receiving all or part of the bonus under an agreement entered into by that person under this section, does not accept a commission or an appointment as an officer or does not commence to participate or does not satisfactorily participate in the Selected Reserve for the total period of service specified in the agreement shall repay to the United States such compensation or benefit, except under conditions prescribed by the Secretary concerned.

“(2) The Secretary concerned shall include in each agreement entered into by the Secretary under this section the requirements that apply for any repayment under this subsection, including the method for computing the amount of the repayment and any exceptions.

“(3) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States. A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement entered into under this section does not discharge a person from a debt arising under an agreement entered into under this subsection or a debt arising under paragraph (1).”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 308i the following new item:

“308j. Special pay: bonus for certain initial service of officers in the Selected Reserve.”.

SEC. 620. REVISION OF AUTHORITY TO PROVIDE FOREIGN LANGUAGE PROFICIENCY PAY.

(a) IN GENERAL.—(1) Section 316 of title 37, United States Code, is amended to read as follows:

“§ 316. Special pay and bonus for members with foreign language proficiency

“(a) AVAILABILITY OF SPECIAL PAY.—Subject to subsection (c), the Secretary concerned may pay monthly special pay under this section to a member of the uniformed services who is entitled to basic pay under section 204 of this title and who—

“(1) is qualified in a uniformed services specialty requiring proficiency in a foreign language identified by the Secretary

concerned as a foreign language in which it is necessary to have personnel proficient because of national defense or public health considerations;

“(2) received training, under regulations prescribed by the Secretary concerned, designed to develop a proficiency in such a foreign language;

“(3) is assigned to duties requiring a proficiency in such a foreign language; or

“(4) is proficient in a foreign language for which the uniformed service may have a critical need, as determined by the Secretary concerned.

“(b) AVAILABILITY OF BONUS.—Subject to subsection (c), the Secretary concerned may pay an annual bonus under this section to a member of a reserve component who satisfies the eligibility requirements specified in paragraph (1), (2), (3), or (4) of subsection (a).

“(c) CERTIFICATION OF PROFICIENCY.—To be eligible to receive special pay or a bonus under this section, a member described in subsection (a) or (b) must be certified by the Secretary concerned as being proficient in the foreign language for which the special pay or bonus is offered. The certification of the member shall expire at the end of the one-year period beginning on the first day of the first month beginning on or after the certification date.

“(d) SPECIAL PAY AND BONUS AMOUNTS.—(1) The monthly rate for special pay paid under subsection (a) may not exceed \$1,000.

“(2) The maximum amount of the bonus paid to a member under subsection (b) may not exceed \$6,000 for the one-year period covered by the certification of the member. The Secretary concerned may pay the bonus in a single lump sum at the beginning of the certification period or in installments during the certification period.

“(e) RELATIONSHIP TO OTHER PAY OR ALLOWANCE.—(1) Except as provided in paragraph (2), special pay or a bonus paid under this section is in addition to any other pay or allowance payable to a member under any other provision of law.

“(2) If a member of a reserve component serving on active duty receives special pay under subsection (a) for any month occurring during a certification period in which the member received, or is receiving, a bonus under subsection (b), the amount of the special pay paid to the member for the month shall be reduced by an amount equal to $\frac{1}{12}$ of the bonus amount.

“(f) CERTIFICATION INTERRUPTED BY CONTINGENCY OPERATION.—(1) Notwithstanding subsection (c), the Secretary concerned may waive the certification requirement under such subsection and pay monthly special pay or a bonus under this section to a member who—

“(A) is assigned to duty in connection with a contingency operation;

“(B) is unable to schedule or complete the certification required by subsection (c) because of that assignment; and

“(C) except for the lack of such certification, satisfies the eligibility requirements for receipt of special pay under subsection (a) or a bonus under subsection (b), whichever applies to the member.

“(2) For purposes of providing an annual bonus to a member under the authority of this subsection, the Secretary concerned may treat the date on which the member was assigned to duty

in connection with the contingency operation as equivalent to a certification date. In the case of a member whose certification will expire during such a duty assignment, the Secretary shall commence the next one-year certification period on the date on which the prior certification period expires.

“(3) A member who is paid special pay or a bonus under the authority of this subsection shall complete the certification required by subsection (c) for the foreign language for which the special pay or bonus was paid not later than the end of the 180-day period beginning on the date on which the member is released from the assignment in connection with the contingency operation. The Secretary concerned may extend that period for a member in accordance with regulations prescribed under subsection (h).

“(4) If a member fails to obtain the required certification under subsection (c) before the end of the period provided under paragraph (3), the Secretary concerned may require the member to repay all or a portion of the bonus in the manner provided in subsection (g).

“(g) REPAYMENT OF BONUS.—(1) The Secretary concerned may require a member who receives a bonus under this section, but who does not satisfy an eligibility requirement specified in paragraph (1), (2), (3), or (4) of subsection (a) for the entire certification period, to repay to the United States an amount which bears the same ratio to the total amount of the bonus paid to the member as the unsatisfied portion of the certification period bears to the entire certification period.

“(2) An obligation to repay the United States imposed under paragraph (1) or subsection (f)(4) is for all purposes a debt owed to the United States. A discharge in bankruptcy under title 11 that is entered for the member less than five years after the expiration of the certification period does not discharge the member from a debt arising under this paragraph. This paragraph applies to any case commenced under title 11 after the date of the enactment of this section.

“(h) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary, by the Secretary of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy, by the Secretary of Health and Human Services for the Commissioned Corps of the Public Health Service, and by the Secretary of Commerce for the National Oceanic and Atmospheric Administration.”

(2) The table of sections at the beginning of chapter 5 of such title is amended by striking the item relating to section 316 and inserting the following new item:

“316. Special pay and bonus for members with foreign language proficiency.”.

(b) CONFORMING AMENDMENTS.—(1) Section 316a of title 37, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 5 of such title is amended by striking the item relating to section 316a.

SEC. 621. ELIGIBILITY OF ENLISTED MEMBERS TO QUALIFY FOR CRITICAL SKILLS RETENTION BONUS WHILE SERVING ON INDEFINITE REENLISTMENT.

Section 323(a) of title 37, United States Code, is amended—
(1) by striking “or” at the end of paragraph (1);

(2) in paragraph (2)—

(A) by inserting “other than an enlisted member referred to in paragraph (3),” after “enlisted member,”; and

(B) by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new paragraph:

“(3) in the case of an enlisted member serving pursuant to an indefinite reenlistment, the member executes a written agreement to remain on active duty for a period of at least one year.”.

SEC. 622. ELIGIBILITY OF RESERVE COMPONENT MEMBERS FOR INCENTIVE BONUS FOR CONVERSION TO MILITARY OCCUPATIONAL SPECIALTY TO EASE PERSONNEL SHORTAGE.

(a) **ELIGIBILITY.**—Section 326 of title 37, United States Code, is amended—

(1) in subsection (a), by inserting “of a regular or reserve component” after “an eligible member”;

(2) in subsection (b)—

(A) by striking “if—” and all that follows through “at the time” and inserting “if, at the time”; and

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(3) in subsection (c)(2), by inserting “regular or reserve component of the” after “chief personnel officer of the”.

(b) **AMOUNT OF BONUS.**—Subsection (c)(1) of such section is amended by inserting before the period at the end the following: “, in the case of a member of a regular component of the armed forces, and \$2,000, in the case of a member of a reserve component of the armed forces”.

SEC. 623. PERMANENT INCREASE IN AUTHORIZED AMOUNTS FOR IMMINENT DANGER SPECIAL PAY AND FAMILY SEPARATION ALLOWANCE.

(a) **IMMINENT DANGER PAY.**—(1) Subsection (e) of section 310 of title 37, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

Effective dates.

(2) Effective January 1, 2006, such section is further amended—

(A) in subsection (a), by striking “\$150” and inserting “\$225”; and

(B) by striking subsection (e).

(b) **FAMILY SEPARATION ALLOWANCE.**—(1) Subsection (e) of section 427 of such title is amended by striking “December 31, 2004” and inserting “December 31, 2005”.

(2) Effective January 1, 2006, such section is further amended—

(A) in subsection (a)(1), by striking “\$100” and inserting “\$250”; and

(B) by striking subsection (e).

Subtitle C—Travel and Transportation Allowances

SEC. 631. TRAVEL AND TRANSPORTATION ALLOWANCES FOR FAMILY MEMBERS TO ATTEND BURIAL CEREMONY OR MEMORIAL SERVICE OF MEMBER WHO DIES ON DUTY.

(a) **AUTHORIZED TRAVEL DESTINATIONS.**—Subsection (a)(1) of section 411f of title 37, United States Code, is amended by inserting before the period at the end the following: “at the location determined under subsection (a)(8) of section 1482 of title 10 or attend a memorial service for the deceased member, under circumstances covered by subsection (d) of such section”.

(b) **LIMITATION ON AMOUNT.**—Subsection (b) of such section is amended to read as follows:

“(b) **LIMITATION ON AMOUNT.**—Allowances for travel under subsection (a) may not exceed the rates for two days and the time necessary for such travel.”.

(c) **UNCONDITIONAL ELIGIBILITY OF DECEASED’S PARENTS.**—Subsection (c)(1)(C) of such section is amended by striking “If no person described in subparagraph (A) or (B) is provided travel and transportation allowances under subsection (a)(1), the” and inserting “The”.

SEC. 632. TRANSPORTATION OF FAMILY MEMBERS INCIDENT TO SERIOUS ILLNESS OR INJURY OF MEMBERS OF THE UNIFORMED SERVICES.

(a) **REMOVAL OF LIMITATION ON NUMBER OF FAMILY MEMBERS.**—Subsection (a)(1) of section 411h of title 37, United States Code, is amended—

(1) by striking “two family members” and inserting “three family members”; and

(2) by adding at the end the following new sentence: “In circumstances determined to be appropriate by the Secretary concerned, the Secretary may waive the limitation on the number of family members provided travel and transportation under this section.”.

(b) **AVAILABILITY OF PER DIEM.**—Such section is further amended—

(1) in subsection (a)(1), by inserting “travel and” before “transportation”; and

(2) in subsection (c)—

(A) by inserting “(1)” after “(c)”; and

(B) by adding at the end the following new paragraph:

“(2) In addition to the transportation authorized by subsection (a), the Secretary concerned may provide a per diem allowance or reimbursement for the actual and necessary expenses of the travel, or a combination thereof, but not to exceed the rates established under section 404(d) of this title.”.

(c) **EFFECTIVE DATE.**—Section 411h of title 37, United States Code, as amended by this section, shall apply to travel and transportation authorized under such section that is provided on or after October 1, 2004, to family members of a member of the Armed Forces who is ill or injured as described in such section.

**SEC. 633. REIMBURSEMENT FOR CERTAIN LODGING COSTS INCURRED
IN CONNECTION WITH DEPENDENT STUDENT TRAVEL.**

Section 430(b) of title 37, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph (2):

“(2) The allowance authorized under paragraph (1) for the travel of an eligible dependent may include reimbursement for costs incurred by or on behalf of the dependent for lodging of the dependent that is necessitated by an interruption in the travel caused by extraordinary circumstances prescribed in the regulations under subsection (a). The amount of the reimbursement shall be determined using the rate applicable to such circumstances.”.

Subtitle D—Retired Pay and Survivor Benefits

**SEC. 641. COMPUTATION OF HIGH-36 MONTH AVERAGE FOR RESERVE
COMPONENT MEMBERS RETIRED FOR DISABILITY WHILE
ON ACTIVE DUTY OR DYING WHILE ON ACTIVE DUTY.**

(a) COMPUTATION OF HIGH-36 MONTH AVERAGE.—Subsection (c) of section 1407 of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(3) SPECIAL RULE FOR RESERVE COMPONENT MEMBERS.—In the case of a member of a reserve component who is entitled to retired pay under section 1201 or 1202 of this title, the member’s high-three average (notwithstanding paragraphs (1) and (2)) is computed in the same manner as prescribed in paragraphs (2) and (3) of subsection (d) for a member entitled to retired pay under section 1204 or 1205 of this title.”.

(b) EFFECTIVE DATE.—Paragraph (3) of section 1407(c) of title 10, United States Code, as added by subsection (a), shall take effect—

10 USC 1407
note.

(1) for purposes of determining an annuity under subchapter II or III of chapter 73 of that title, with respect to deaths on active duty on or after September 10, 2001; and

(2) for purposes of determining the amount of retired pay of a member of a reserve component entitled to retired pay under section 1201 or 1202 of such title, with respect to such entitlement that becomes effective on or after the date of the enactment of this Act.

**SEC. 642. REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF
RETIRED PAY AND VETERANS’ DISABILITY COMPENSA-
TION FOR MILITARY RETIREES WITH SERVICE-CON-
NECTED DISABILITIES RATED AS 100 PERCENT.**

(a) TERMINATION OF PHASE-IN AT END OF 2004.—Subsection (a)(1) of section 1414 of title 10, United States Code, is amended by inserting before the period at the end the following: “, except that in the case of a qualified retiree receiving veterans’ disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004”.

(b) CONFORMING AMENDMENT.—Subsection (c) of such section is amended in the matter preceding paragraph (1) by inserting “that pursuant to the second sentence of subsection (a)(1) is subject to this subsection” after “a qualified retiree”.

SEC. 643. DEATH BENEFITS ENHANCEMENT.

(a) ACTIONS ON FISCAL YEAR 2004 DEATH BENEFITS STUDY.—
(1) The Secretary of Defense shall expedite the completion and submission of the report, which was due on March 1, 2004, of the results of the study of the Federal death benefits for survivors of deceased members of the Armed Forces required by section 647(b) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1520).

President.

(2) The President should promptly transmit to Congress any recommendation for legislation, together with a request for appropriations, that the President determines necessary to implement any death benefits enhancements that are recommended in the report referred to in paragraph (1).

(b) INCREASES OF DEATH GRATUITY CONSISTENT WITH INCREASES OF RATES OF BASIC PAY.—Section 1478 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting “(as adjusted under subsection (c))” before the period at the end of the first sentence; and

(2) by adding at the end the following new subsection:
“(c) Effective on the date on which rates of basic pay under section 204 of title 37 are increased under section 1009 of that title or any other provision of law, the amount of the death gratuity in effect under subsection (a) shall be increased by the same overall average percentage of the increase in the rates of basic pay taking effect on that date.”.

(c) FISCAL YEAR 2005 ACTIONS.—At the same time that the President transmits to Congress the budget for fiscal year 2006 under section 1105(a) of title 31, United States Code, the President shall transmit to Congress assessments and recommendations regarding legislation on proposals that would provide enhanced death benefits for survivors of deceased members of the uniformed services. Those assessments and recommendations regarding legislation shall include provisions for the following:

(1) Revision of the Servicemembers’ Group Life Insurance program under chapter 19 of title 38, United States Code, to provide for—

(A) an increase in the maximum benefit amount provided under that program from \$250,000 to \$350,000;

(B) an increase, each fiscal year, in that maximum benefit amount by the same overall average percentage increase that takes effect during such fiscal year in the rates of basic pay under section 204 of title 37, United States Code; and

(C) a minimum benefit amount of \$100,000 at no cost to the insured members of the uniformed services who elect the maximum coverage, together with an increase in such minimum benefit each fiscal year by the same percentage increase as is described in subparagraph (B).

(2) An additional set of death benefits for each member of the uniformed services who dies in the line of duty while

on active duty that includes, at a minimum, an additional death gratuity in the amount that—

(A) in the case of a member not described in subparagraph (B), is equal to the sum of—

(i) the total amount of the basic pay to which the deceased member would have been entitled under section 204 of title 37, United States Code, if the member had not died and had continued to serve on active duty for an additional year; and

(ii) the total amount of all allowances and special pays that the member would have been entitled to receive under title 37, United States Code, over the one-year period beginning on the member's date of death as if the member had not died and had continued to serve on active duty for an additional year with the unit to which the member was assigned or detailed on such date; and

(B) in the case of a member who dies as a result of an injury caused by or incurred while exposed to hostile action (including any hostile fire or explosion and any hostile action from a terrorist source), is equal to twice the amount calculated under subparagraph (A).

(3) Any other new death benefits or enhancement of existing death benefits that the President recommends.

(4) Retroactive applicability of the benefits referred to in paragraph (2) and, as appropriate, the benefits recommended under paragraph (3) so as to provide the benefits—

(A) for members of the uniformed services who die in line of duty on or after October 7, 2001, of a cause incurred or aggravated while deployed in support of Operation Enduring Freedom; and

(B) for members of the uniformed services who die in line of duty on or after March 19, 2003, of a cause incurred or aggravated while deployed in support of Operation Iraqi Freedom.

(d) CONSULTATION.—The President shall consult with the Secretary of Defense and the Secretary of Veterans Affairs in developing the assessments and recommendations required under subsection (c). President.

(e) FISCAL YEAR 2006 BUDGET SUBMISSION.—The budget for fiscal year 2006 that is transmitted to Congress under section 1105(a) of title 31, United States Code, shall include assessments and recommendations on legislation (other than draft appropriations) that includes provisions that, on the basis of the assumption that any draft legislation transmitted under subsection (c) would be enacted and would take effect in fiscal year 2006—

(1) would offset fully the increased outlays that would result from enactment of the provisions of any draft legislation transmitted under subsection (c), for fiscal year 2006 and each of the succeeding nine fiscal years;

(2) expressly state that they are proposed for the purpose of the offset described in paragraph (1); and

(3) are included in full in the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control

Act of 1985 (2 U.S.C. 902(d)) with respect to the fiscal years referred to in paragraph (1).

(f) **EARLY SUBMISSION OF PROPOSAL FOR ADDITIONAL DEATH BENEFITS.**—Congress urges the President to transmit any draft of legislation for the additional set of death benefits under paragraph (2) of subsection (c) before the time for submission required under that subsection and as soon as is practicable after the date of the enactment of this Act.

SEC. 644. PHASED ELIMINATION OF TWO-TIER ANNUITY COMPUTATION FOR SURVIVING SPOUSES UNDER SURVIVOR BENEFIT PLAN.

(a) **PHASED INCREASE IN BASIC ANNUITY.**—

(1) **STANDARD ANNUITY.**—

(A) **INCREASE TO 55 PERCENT.**—Clause (i) of subsection (a)(1)(B) of section 1451 of title 10, United States Code, is amended by striking “35 percent of the base amount.” and inserting “the product of the base amount and the percent applicable to the month, as follows:

“(I) For a month before October 2005, the applicable percent is 35 percent.

“(II) For months after September 2005 and before April 2006, the applicable percent is 40 percent.

“(III) For months after March 2006 and before April 2007, the applicable percent is 45 percent.

“(IV) For months after March 2007 and before April 2008, the applicable percent is 50 percent.

“(V) For months after March 2008, the applicable percent is 55 percent.”.

(B) **COORDINATION WITH SAVINGS PROVISION UNDER PRIOR LAW.**—Clause (ii) of such subsection is amended by striking “, at the time the beneficiary becomes entitled to the annuity,”.

(2) **RESERVE-COMPONENT ANNUITY.**—Subsection (a)(2)(B)(i)(I) of such section is amended by striking “35 percent” and inserting “the percent specified under subsection (a)(1)(B)(i) as being applicable for the month”.

(3) **SURVIVORS OF ELIGIBLE PERSONS DYING ON ACTIVE DUTY, ETC.**—

(A) **INCREASE TO 55 PERCENT.**—Clause (i) of subsection (c)(1)(B) of such section is amended—

(i) by striking “35 percent” and inserting “the applicable percent”; and

(ii) by adding at the end the following: “The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.”.

(B) **COORDINATION WITH SAVINGS PROVISION UNDER PRIOR LAW.**—Clause (ii) of such subsection is amended by striking “, at the time the beneficiary becomes entitled to the annuity,”.

(4) **CLERICAL AMENDMENT.**—The heading for subsection (d)(2)(A) of such section is amended to read as follows: “COMPUTATION OF ANNUITY.”.

(b) **CORRESPONDING PHASED ELIMINATION OF SUPPLEMENTAL ANNUITY.**—

(1) PHASED REDUCTION OF SUPPLEMENTAL ANNUITY.—Section 1457(b) of title 10, United States Code, is amended—

(A) by striking “5, 10, 15, or 20 percent” and inserting “the applicable percent”; and

(B) by inserting after the first sentence the following: “The percent used for the computation shall be an even multiple of 5 percent and, whatever the percent specified in the election, may not exceed 20 percent for months before October 2005, 15 percent for months after September 2005 and before April 2006, 10 percent for months after March 2006 and before April 2007, and 5 percent for months after March 2007 and before April 2008.”.

(2) REPEAL UPON IMPLEMENTATION OF 55 PERCENT SBP ANNUITY.—Effective on April 1, 2008, chapter 73 of such title is amended—

(A) by striking subchapter III; and

(B) by striking the item relating to subchapter III in the table of subchapters at the beginning of that chapter.

(c) RECOMPUTATION OF ANNUITIES.—

(1) PERIODIC RECOMPUTATION REQUIRED.—Effective on the first day of each month specified in paragraph (2)—

(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

(B) each supplemental survivor annuity under section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

(2) TIME FOR RECOMPUTATION.—The requirement under paragraph (1) for recomputation of certain annuities applies with respect to the following months:

(A) October 2005.

(B) April 2006.

(C) April 2007.

(D) April 2008.

(d) TERMINATION OF RETIRED PAY REDUCTIONS FOR SUPPLEMENTAL SURVIVOR ANNUITIES.—(1) Except as provided in paragraph (2), there shall be no reduction in retired pay under section 1460 of title 10, United States Code, for any month beginning after the date of the enactment of this Act.

(2) Reductions in retired pay under section 1460 of title 10, United States Code, shall be made for months after September 2005 in the case of coverage under subchapter III of chapter 73 of title 10, United States Code, that is provided (for new coverage or increased coverage) through an election under the open season provided by section 645. The Secretary of Defense shall take such actions as are necessitated by the amendments made by subsection (b) and the requirements of subsection (c)(1)(B) to ensure that reductions in retired pay under section 1460 of title 10, United

Effective date.

10 USC 1456–
1460, 1460a,
1460b.

10 USC 1450
note.
Effective date.

10 USC 1460
note.

States Code, pursuant to the preceding sentence are adjusted to achieve the objectives set forth in subsection (b) of that section.

10 USC 1448
note.

SEC. 645. ONE-YEAR OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005.

(a) **PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.**—

(1) **ELECTION OF SBP COVERAGE.**—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (f).

(2) **ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.**—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

(3) **ELIGIBLE RETIRED OR FORMER MEMBER.**—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

(A) is entitled to retired pay; or

(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

(4) **STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.**—

(A) **STANDARD ANNUITY.**—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

(B) **RESERVE-COMPONENT ANNUITY.**—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

(b) **ELECTION TO INCREASE COVERAGE UNDER SBP.**—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

(c) **ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.**—

(1) **ELECTION.**—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

(2) **PERSONS ELIGIBLE.**—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the

maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—

A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

(d) MANNER OF MAKING ELECTIONS.—An election under this section shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(f) OPEN ENROLLMENT PERIOD.—The open enrollment period under this section is the one-year period beginning on October 1, 2005.

(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

(h) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

(i) PREMIUM FOR OPEN ENROLLMENT ELECTION.—

(1) PREMIUMS TO BE CHARGED.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

(A) the total amount by which the retired pay of the person would have been reduced before the effective date

of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

(B) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

(C) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(2) **PREMIUMS TO BE CREDITED TO RETIREMENT FUND.**—Premiums paid under the regulations under paragraph (1) shall be credited to the Department of Defense Military Retirement Fund.

(h) **DEFINITIONS.**—In this section:

(1) The term “Survivor Benefit Plan” means the program established under subchapter II of chapter 73 of title 10, United States Code.

(2) The term “Supplemental Survivor Benefit Plan” means the program established under subchapter III of chapter 73 of title 10, United States Code.

(3) The term “retired pay” includes retainer pay paid under section 6330 of title 10, United States Code.

(4) The terms “uniformed services” and “Secretary concerned” have the meanings given those terms in section 101 of title 37, United States Code.

(5) The term “Department of Defense Military Retirement Fund” means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.

Subtitle E—Commissary and Non-appropriated Fund Instrumentality Benefits

SEC. 651. CONSOLIDATION AND REORGANIZATION OF LEGISLATIVE PROVISIONS REGARDING DEFENSE COMMISSARY SYSTEM AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES.

(a) **PROVISIONS RELATED TO COMMISSARY STORES.**—Chapter 147 of title 10, United States Code, is amended—

(1) by striking the table of sections at the beginning of the chapter and sections 2481, 2483, 2485, and 2487;

(2) by redesignating sections 2482, 2484, and 2486 as sections 2485, 2483 and 2484, respectively;

(3) by inserting after the chapter heading the following:

“Subchapter	Sec.
“I. Defense Commissary and Exchange Systems	2481

“II. Relationship, Continuation, and Common Policies of Defense Commissary and Exchange Systems	2487
“III. Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities	2491

“SUBCHAPTER I—DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

“Sec.

“2481. Defense commissary and exchange systems: existence and purpose

“2482. Commissary stores: criteria for establishment or closure; store size.

“2483. Commissary stores: use of appropriated funds to cover operating expenses.

“2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing.

“2485. Commissary stores: operation.

“§ 2481. Defense commissary and exchange systems: existence and purpose

“(a) SEPARATE SYSTEMS.—The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title.

“(b) PURPOSE OF SYSTEMS.—The defense commissary system and the exchange system are intended to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

“(c) OVERSIGHT.—(1) The Secretary of Defense shall designate a senior official of the Department of Defense to oversee the operation of both the defense commissary system and the exchange system.

“(2) The Secretary of Defense shall establish an executive governing body to provide advice to the senior official designated under paragraph (1) regarding the operation of the defense commissary and exchange systems and to ensure the complementary operation of the systems.

“(d) REDUCED PRICES DEFINED.—In this section, the term ‘reduced prices’ means prices for food and other merchandise determined using the price setting process specified in section 2484 of this title.

“§ 2482. Commissary stores: criteria for establishment or closure; store size

“(a) PRIMARY CONSIDERATION FOR ESTABLISHMENT.—The needs of members of the armed forces on active duty and the needs of dependents of such members shall be the primary consideration whenever the Secretary of Defense—

“(1) assesses the need to establish a commissary store; and

“(2) selects the actual location for the store.

“(b) STORE SIZE.—In determining the size of a commissary store, the Secretary of Defense shall take into consideration the number of all authorized patrons of the defense commissary system who are likely to use the store.

“(c) CLOSURE CONSIDERATIONS.—(1) Whenever assessing whether to close a commissary store, the effect of the closure on the quality of life of members and dependents referred to in subsection (a) who use the store and on the welfare and security of the military community in which the commissary is located shall be a primary consideration.

“(2) Whenever assessing whether to close a commissary store, the Secretary of Defense shall also consider the effect of the closure on the quality of life of members of the reserve components of the armed forces.

“(d) CONGRESSIONAL NOTIFICATION.—(1) The closure of a commissary store shall not take effect until the end of the 90-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the reasons supporting the closure. The written notice shall include an assessment of the impact closure will have on the quality of life for military patrons and the welfare and security of the military community in which the commissary is located.

“(2) Paragraph (1) shall not apply in the case of the closure of a commissary store as part of the closure of a military installation under a base closure law.”;

(4) by inserting sections 2483 and 2484, as redesignated by paragraph (2), after section 2482, as added by paragraph (3);

(5) in section 2484, as redesignated by paragraph (2)—
(A) by striking subsections (a), (b), (c), and (g);

(B) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(C) by inserting before subsection (f), as so redesignated, the following new subsections:

“(a) IN GENERAL.—As provided in section 2481(a) of this title, commissary stores are intended to be similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

“(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items in the following categories:

“(1) Meat, poultry, seafood, and fresh-water fish.

“(2) Nonalcoholic beverages.

“(3) Produce.

“(4) Grocery food, whether stored chilled, frozen, or at room temperature.

“(5) Dairy products.

“(6) Bakery and delicatessen items.

“(7) Nonfood grocery items.

“(8) Tobacco products.

“(9) Health and beauty aids.

“(10) Magazines and periodicals.

“(c) INCLUSION OF OTHER MERCHANDISE ITEMS.—(1) The Secretary of Defense may authorize the sale in, at, or by commissary stores of merchandise not covered by a category specified in subsection (b). The Secretary shall notify Congress of all merchandise authorized for sale pursuant to this paragraph, as well as the removal of any such authorization.

“(2) Notwithstanding paragraph (1), the Department of Defense military resale system shall continue to maintain the exclusive

Notification.

right to operate convenience stores, shopettes, and troop stores, including such stores established to support contingency operations.

“(3) A military exchange shall be the vendor for the sale of tobacco products in commissary stores and may be the vendor for such merchandise as may be authorized for sale in commissary stores under paragraph (1). Subsections (d) and (e) shall not apply to the pricing of such an item when a military exchange serves as the vendor of the item. Commissary store and exchange prices shall be comparable for such an item.

“(d) UNIFORM SALES PRICE SURCHARGE.—The Secretary of Defense shall apply a uniform surcharge equal to five percent on the sales prices established under subsection (e) for each item of merchandise sold in, at, or by commissary stores.”;

(D) in subsection (e), as so redesignated, by striking “(consistent with this section and section 2685 of this title)” in paragraph (1);

(E) in subsection (g), as so redesignated, by striking “Subsections (c) and (d)” and inserting “Subsections (d) and (e)”; and

(F) by adding at the end the following new subsection:

“(h) USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1)(A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) only—

“(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

“(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

“(B) In subparagraph (A), the term ‘physical infrastructure’ includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

“(2)(A) The Secretary of Defense may authorize a non-appropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges under subsection (d) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

“(B) In subparagraph (A), the term ‘construction’, with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

“(3) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (d) for any use specified in paragraph (1) or (2), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

“(4) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall

be available for the purposes set forth in paragraphs (1), (2), and (3):

“(A) Sale of recyclable materials.

“(B) Sale of excess and surplus property.

“(C) License fees.

“(D) Royalties.

“(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.”;

(6) by inserting section 2485, as redesignated by paragraph (2), after section 2484, as amended by paragraph (5); and

(7) in section 2485, as redesignated by paragraph (2)—

(A) in subsection (b)(2), by striking “section 2484” and inserting “section 2483”;

(B) in subsection (c)(2), by adding at the end the following new sentences: “The chairman of the governing board shall be a commissioned officer or member of the senior executive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to logistics, military personnel, military entitlements or other experiences of value of management of commissaries.”; and

(C) by adding at the end the following new subsections:

“(d) ASSIGNMENT OF ACTIVE DUTY MEMBERS.—(1) Except as provided in paragraph (2), members of the armed forces on active duty may not be assigned to the operation of a commissary store.

“(2)(A) The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

“(B) Not more than 18 members (in addition to the officer referred to in subparagraph (A)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subparagraph to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisers in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

“(e) REIMBURSEMENT FOR USE OF COMMISSARY FACILITIES BY MILITARY DEPARTMENTS.—(1) The Secretary of a military department shall pay the Defense Commissary Agency the amount determined under paragraph (2) for any use of a commissary facility by the military department for a purpose other than commissary sales or operations in support of commissary sales.

“(2) The amount payable under paragraph (1) for use of a commissary facility by a military department shall be equal to the share of depreciation of the facility that is attributable to that use, as determined under regulations prescribed by the Secretary of Defense.

“(3) The Director of the Defense Commissary Agency shall credit amounts paid under paragraph (1) for use of a facility to an appropriate account to which proceeds of a surcharge applied under section 2484(d) of this title are credited.

“(4) This subsection applies with respect to a commissary facility that is acquired, constructed, converted, expanded, installed, or otherwise improved (in whole or in part) with the proceeds of a surcharge applied under section 2484(d) of this title.

“(f) DONATION OF UNUSABLE FOOD.—(1) The Secretary of Defense may donate food described in paragraph (2) to any of the following entities:

“(A) A charitable nonprofit food bank that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

“(B) A State or local agency that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

“(C) A chapter or other local unit of a recognized national veterans organization that provides services to persons without adequate shelter and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

“(D) A not-for-profit organization that provides care for homeless veterans and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

“(2) Food that may be donated under this subsection is commissary store food, mess food, meals ready-to-eat (MREs), rations known as humanitarian daily rations (HDRs), and other food available to the Secretary of Defense that—

“(A) is certified as edible by appropriate food inspection technicians;

“(B) would otherwise be destroyed as unusable; and

“(C) in the case of commissary store food, is unmarketable and unsaleable.

“(3) In the case of commissary store food, a donation under this subsection shall take place at the site of the commissary store that is donating the food.

“(4) This subsection does not authorize any service (including transportation) to be provided in connection with a donation under this subsection.

“(g) COLLECTION OF DISHONORED CHECKS.—(1) The Secretary of Defense may impose a charge for the collection of a check accepted at a commissary store that is not honored by the financial institution on which the check is drawn. The imposition and amounts of charges shall be consistent with practices of commercial grocery stores regarding dishonored checks.

“(2)(A) The following persons are liable to the United States for the amount of a check referred to in paragraph (1) that is returned unpaid to the United States, together with any charge imposed under that paragraph:

“(i) The person who presented the check.

“(ii) Any person whose status and relationship to the person who presented the check provide the basis for that person’s eligibility to make purchases at a commissary store.

“(B) Any amount for which a person is liable under subparagraph (A) may be collected by deducting and withholding such amount from any amounts payable to that person by the United States.

“(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund.

“(4) Appropriated funds may be used to pay any costs incurred in the collection of checks and charges referred to in paragraph (1). An appropriation account charged a cost under the preceding sentence shall be reimbursed the amount of that cost out of funds in the commissary trust revolving fund.

“(5) In this subsection, the term ‘commissary trust revolving fund’ means the trust revolving fund maintained by the Department of Defense for surcharge collections and proceeds of sales of commissary stores.

“(h) RELEASE OF CERTAIN COMMERCIALLY VALUABLE INFORMATION TO PUBLIC.—(1) The Secretary of Defense may limit the release to the public of any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with paragraph (3).

“(2) Paragraph (1) applies to the following:

“(A) Information contained in the computerized business systems of commissary stores or the Defense Commissary Agency that is collected through or in connection with the use of electronic scanners in commissary stores, including the following information:

“(i) Data relating to sales of goods or services.

“(ii) Demographic information on customers.

“(iii) Any other information pertaining to commissary transactions and operations.

“(B) Business programs, systems, and applications (including software) relating to commissary operations that were developed with funding derived from commissary surcharges.

“(3)(A) The Secretary of Defense may, using competitive procedures, enter into a contract to sell information described in paragraph (2).

“(B) The Secretary of Defense may release, without charge, information on an item sold in commissary stores to the manufacturer or producer of that item or an agent of the manufacturer or producer.

“(C) The Secretary of Defense shall establish performance benchmarks and shall submit information on customer satisfaction and performance data to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

“(D) The Secretary of Defense may, by contract entered into with a business, grant to the business a license to use business programs referred to in paragraph (2)(B), including software used in or comprising any such program. The fee charged for the license shall be based on the costs of similar programs developed and marketed by businesses in the private sector, determined by means of surveys.

“(E) Each contract entered into under this paragraph shall specify the amount to be paid for information released or a license granted under the contract, as the case may be.

“(4) Information described in paragraph (2) may not be released, under paragraph (3) or otherwise, in a form that identifies any customer or that provides information making it possible to identify any customer.

“(5) Amounts received by the Secretary under this section shall be credited to funds derived from commissary surcharges applied under section 2484(e) of this title, shall be merged with those funds, and shall be available for the same purposes as the funds with which merged.”

(b) RELATION BETWEEN DEFENSE COMMISSARY AND EXCHANGE SYSTEMS.—Chapter 147 of title 10, United States Code, is further amended—

(1) by inserting after section 2485, as amended by subsection (a)(7), the following:

“SUBCHAPTER II—RELATIONSHIP, CONTINUATION, AND COMMON POLICIES OF DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

“Sec.

“2487. Relationship between defense commissary system and exchange stores system.

“2488. Combined exchange and commissary stores.

“2489. Overseas commissary and exchange stores: access and purchase restrictions.

“§ 2487. Relationship between defense commissary system and exchange stores system

“(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

“(2) Paragraph (1) does not apply to the following:

“(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.

“(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.

“(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.

“(2) In this subsection, the term ‘defense retail systems’ means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.”;

(2) by redesignating sections 2488, 2489, 2489a as sections 2495, 2495a, and 2495b, respectively; and

(3) by redesignating sections 2490a and 2492 as sections 2488 and 2489, respectively, and inserting such sections after section 2487, as added by paragraph (1).

(c) MWR PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES.—Chapter 147 of title 10, United States Code, is further amended—

(1) by inserting after section 2489, as redesignated and moved by subsection (b)(3), the following:

“SUBCHAPTER III—MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES

“Sec.

“2491. Uniform funding and management of morale, welfare, and recreation programs.

“2491a. Department of Defense golf courses: limitation on use of appropriated funds.

“2491b. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.

“2491c. Retention of morale, welfare, and recreation funds by military installations: limitation.

“2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services.

“2493. Fisher Houses: administration as nonappropriated fund instrumentality.

“2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes.

“2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.

“2495a. Overseas package stores: treatment of United States wines.

“2495b. Sale or rental of sexually explicit material prohibited.”;

(2) by redesignating section 2494 as section 2491 and inserting such section after the table of sections at the beginning of subchapter III, as added by paragraph (1);

(3) by redesignating section 2482a as section 2492 and inserting such section before section 2493;

(4) by inserting after section 2493 the following new section:

“§ 2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes

“Appropriations for the Department of Defense may be used to provide utility services for—

“(1) buildings on military installations authorized by regulation to be used for morale, welfare, and recreation purposes; and

“(2) other morale, welfare, and recreation activities for members of the armed forces.”; and

(5) by inserting sections 2495, 2495a, and 2495b, as redesignated by subsection (b)(2), after section 2494, as added by paragraph (4).

(d) INCLUSION OF OTHER TITLE 10 PROVISIONS.—Sections 2246, 2247, and 2219 of title 10, United States Code, are—

(1) transferred to chapter 147 of such title;

(2) inserted after section 2491, as redesignated and moved by subsection (c)(2); and

(3) redesignated as sections 2491a, 2491b, and 2491c, respectively.

(e) CONFORMING AMENDMENTS.—(1) Section 977 of title 10, United States Code, is repealed.

(2) Section 2868 of such title is amended by striking “for—” and all that follows through the period at the end and inserting “for buildings constructed at private cost, as authorized by law.”.

(3) Section 367 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 1987; 10 U.S.C. 2482 note) is repealed.

(f) CLERICAL AMENDMENTS.—(1) The table of sections at the beginning of chapter 49 of title 10, United States Code, is amended by striking the item relating to section 977.

(2) The table of sections at the beginning of chapter 131 of such title is amended by striking the item relating to section 2219.

(3) The table of sections at the beginning of subchapter I of chapter 134 of such title is amended by striking the items relating to sections 2246 and 2247.

(g) TEST PROGRAM OF SALE OF CERTAIN ITEMS IN COMMISSARY STORES.—(1) The Secretary of Defense may conduct a test program involving the sale of telephone cards, film, and one-time use cameras in not less than 10 commissary stores for a period selected by the Secretary, but not less than six months.

(2) Within 90 days after the completion of the first year of the test program or within 90 days after the completion of the test program, whichever occurs first, the Secretary shall submit

10 USC 2484
note.

Deadlines.
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to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the test program. The report shall include an analysis of the impact of the sale of such items on the exchange dividend and such recommendations as the Secretary considers appropriate regarding legislative changes necessary to expand the sale of such items in commissary stores.

(h) COMPTROLLER GENERAL STUDY.—(1) The Comptroller General shall conduct a study evaluating the impact that the expansion of the categories of merchandise authorized for sale in commissary stores has on the exchange dividend. The Comptroller General shall determine the amounts derived from exchange sales and allocated as exchange dividends during the five-year period ending on September 30, 2004, and the morale, welfare, and recreation programs supported using such dividends.

(2) The Secretary shall submit the results of the study to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than March 31, 2006.

Deadline.

SEC. 652. CONSISTENT STATE TREATMENT OF DEPARTMENT OF DEFENSE NONAPPROPRIATED FUND HEALTH BENEFITS PROGRAM.

Section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note) is amended by adding at the end the following new subsection:

“(c) TREATMENT OF PROGRAM AS FEDERAL HEALTH BENEFIT PROGRAM.—(1) No State tax, fee, other monetary payment, or State health plan requirement, may be imposed, directly or indirectly, on the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or on a carrier or an underwriting or plan administration contractor of the Program, to the same extent as such prohibition applies to the health insurance program authorized by chapter 89 of title 5, United States Code, under section 8909(f) of such title.

“(2) Paragraph (1) shall not be construed to exempt the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or any carrier or underwriting or plan administration contractor of the Program from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to, or realized by, the Program or by such carrier or contractor from business conducted under the Program, so long as the tax, fee, or payment is applicable to a broad range of business activity.

“(3) In this subsection, the term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any political subdivision or other non-Federal authority thereof.”.

Subtitle F—Other Matters

SEC. 661. ELIGIBILITY OF MEMBERS FOR REIMBURSEMENT OF EXPENSES INCURRED FOR ADOPTION PLACEMENTS MADE BY FOREIGN GOVERNMENTS.

Section 1052(g)(3) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

“(D) A foreign government or an agency authorized by a foreign government to place children for adoption, in any case in which—

“(i) the adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act (8 U.S.C. 1431); or

“(ii) a certificate of citizenship has been issued for such child under section 322 of that Act (8 U.S.C. 1433).”.

SEC. 662. CLARIFICATION OF EDUCATION LOANS QUALIFYING FOR EDUCATION LOAN REPAYMENT PROGRAM FOR RESERVE COMPONENT HEALTH PROFESSIONS OFFICERS.

Section 16302(a)(5) of title 10, United States Code, is amended by inserting “a basic professional qualifying degree (as determined under regulations prescribed by the Secretary of Defense) or graduate education in” after “regarding”.

SEC. 663. RECEIPT OF PAY BY RESERVISTS FROM CIVILIAN EMPLOYERS WHILE ON ACTIVE DUTY IN CONNECTION WITH A CONTINGENCY OPERATION.

Section 209 of title 18, United States Code, is amended by adding at the end the following new subsection:

“(h) This section does not prohibit a member of the reserve components of the armed forces on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10 from receiving from any person that employed such member before the call or order to active duty any payment of any part of the salary or wages that such person would have paid the member if the member’s employment had not been interrupted by such call or order to active duty.”.

SEC. 664. RELIEF FOR MOBILIZED RESERVISTS FROM CERTAIN FEDERAL AGRICULTURAL LOAN OBLIGATIONS.

The Consolidated Farm and Rural Development Act is amended by inserting after section 331F (7 U.S.C. 1981f) the following new section:

7 USC 1982.

“SEC. 332. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN AGRICULTURAL LOAN OBLIGATIONS.

“(a) DEFINITION OF MOBILIZED MILITARY RESERVIST.—In this section, the term ‘mobilized military reservist’ means an individual who—

“(1) is on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress, regardless of the location at which the active duty service is performed; or

“(2) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.

“(b) FORGIVENESS OF INTEREST PAYMENTS DUE WHILE BORROWER IS A MOBILIZED MILITARY RESERVIST.—Any requirement that a borrower of a direct loan made under this title make any interest payment on the loan that would otherwise be required to be made while the borrower is a mobilized military reservist is rescinded.

“(c) DEFERRAL OF PRINCIPAL PAYMENTS DUE WHILE OR AFTER BORROWER IS A MOBILIZED MILITARY RESERVIST.—The due date of any payment of principal on a direct loan made to a borrower under this title that would otherwise be required to be made while or after the borrower is a mobilized military reservist is deferred for a period equal in length to the period for which the borrower is a mobilized military reservist.

“(d) NONACCRUAL OF INTEREST.—Interest on a direct loan made to a borrower described in this section shall not accrue during the period the borrower is a mobilized military reservist.

“(e) BORROWER NOT CONSIDERED TO BE DELINQUENT OR RECEIVING DEBT FORGIVENESS.—Notwithstanding section 373 or any other provision of this title, a borrower who receives assistance under this section shall not, as a result of the assistance, be considered to be delinquent or receiving debt forgiveness for purposes of receiving a direct or guaranteed loan under this title.”.

SEC. 665. SURVEY AND ANALYSIS OF EFFECT OF EXTENDED AND FREQUENT MOBILIZATION OF RESERVISTS FOR ACTIVE DUTY SERVICE ON RESERVIST INCOME.

(a) SURVEY OF MOBILIZED RESERVISTS TO DETERMINE DIFFERENTIAL BETWEEN PRIVATE SECTOR INCOME AND MILITARY COMPENSATION.—(1) The Secretary of Defense shall conduct a survey involving members of the reserve components who serve, or have served, on active duty in support of a contingency operation at any time during the period beginning on September 11, 2001, and ending on September 30, 2005, to determine the extent to which such members sustained a reduction in monthly income during their period of active duty service compared to their average monthly civilian income during the 12 months preceding their mobilization.

(2) To the extent practicable, at least 50 percent of the total number of members of the reserve components who have served on active duty in support of a contingency operation at any time during the period specified in paragraph (1) should be included in the survey. To participate in the survey, a member shall agree to make available to the Secretary such information as the Secretary may require to accurately calculate the average monthly civilian income of the member.

(b) CALCULATION OF INCOME DIFFERENTIAL.—In the case of each member participating in the survey under subsection (a) whose total monthly military compensation during the active duty service of the member was less, or appeared to be less, than the average monthly civilian income of the member, the Secretary of Defense,

in cooperation with the member, shall calculate the monthly active-duty income differential for the member.

(c) COLLECTION OF DEMOGRAPHIC DATA.—The Secretary of Defense shall collect demographic data regarding each member of a reserve component who participates in the survey under subsection (a), including, at a minimum, data on the following:

- (1) Reserve component.
- (2) Unit of assignment.
- (3) Grade.
- (4) Age.
- (5) Years of service.
- (6) Sex.
- (7) Marital status.
- (8) Number of dependents.
- (9) General category of private-sector employment, as determined by the Secretary, but to include an employment category to cover members who are self-employed.
- (10) Military occupational specialty, including specifying all surveyed members who are serving in a critical wartime specialty.
- (11) Length of service on active duty during the most recent mobilization.
- (12) Number of times mobilized since September 11, 2001.

(d) CONSIDERATION OF AVERAGE MONTHLY RESERVE SERVICE INCOME.—The Secretary of Defense shall collect data to calculate the average monthly reserve service income of members of the reserve components before their mobilization, and consider such data by grade, general category of military occupational specialty, and years of service. The Secretary shall also consider the effect that the receipt of average monthly reserve service income by reserve component members before mobilization should have on any obligation of the United States to eliminate or at least reduce the monthly active-duty income differential suffered by members serving on active duty in support of a contingency operation.

(e) EFFECT OF INCOME LOSS ON RETENTION.—The Secretary of Defense shall include in the survey under subsection (a) a question intended to solicit information from members of the reserve components participating in the survey regarding the likely effect that a reoccurring monthly active-duty income differential while serving on active duty would have on their decision to remain in Armed Forces.

(f) ANALYSIS OF SURVEY DATA.—(1) At a minimum, the Secretary of Defense shall determine, for each variable listed in paragraphs (2) through (12) of subsection (c), the number of members of the reserve components surveyed under subsection (a) who sustained a monthly active-duty income differential for any month during their active duty service and compare and contrast that number with the number of members who did not experience a monthly active-duty income differential.

(2) The Secretary shall also determine the average amount of the active-duty income differential by reserve component for each variable within the characteristics listed in paragraphs (2) through (12) of subsection (c).

(g) SUBMISSION OF SURVEY RESULTS AND RECOMMENDATIONS.—(1) Not later than January 31, 2006, the Secretary of Defense shall submit to Congress and the Comptroller General a report containing the results of the surveys conducted under subsection

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(a), including the results of the analysis of survey data required by subsection (f). The Secretary shall include such recommendations as the Secretary considers appropriate regarding alternatives for restoring income lost by members of the reserve components who sustained a monthly active-duty income differential during their active duty service.

(2) Not later than 90 days after receiving the report of the Secretary of Defense submitted under paragraph (1), the Comptroller General shall submit to Congress an assessment of the findings and recommendations of the Secretary contained in the report.

(h) DEFINITIONS USED IN CONDUCTING SURVEY AND CALCULATIONS.—In this section:

(1) The term “monthly active-duty income differential”, with respect to a member of a reserve component who participates in the survey under subsection (a), means the difference between—

(A) the average monthly civilian income of the member; and

(B) the total monthly military compensation of the member during the active duty service of the member.

(2) The term “total monthly military compensation”, with respect to a member of a reserve component who participates in the survey, means the amount, computed on a monthly basis, of the sum of—

(A) the amount of the regular military compensation (RMC), as defined in section 101(25) of title 37, United States Code, of the member during the period specified in subsection (a)(1); and

(B) any amount of special pay or incentive pay and any allowance (other than an allowance included in regular military compensation) that is paid to the member on a monthly basis during the period specified in subsection (a)(1).

(3) The term “average monthly civilian income”, with respect to a member of a reserve component who participates in the survey, means the amount, determined by the Secretary of Defense, of the earned income of the member for the 12 months preceding the first mobilization of the member for active duty service in support of a contingency operation during the period specified in subsection (a)(1), divided by 12.

(4) The term “average monthly reserve service income”, with respect to a member of a reserve component who participates in the survey, means the amount, determined by the Secretary of Defense, of the regular military compensation, compensation under section 206 of title 37, United States Code, and any special pays and allowances referred to in paragraph (3)(B) received by the member during the 12 months preceding the first mobilization of the member for active duty service in support of a contingency operation during the period specified in subsection (a)(1), divided by 12.

SEC. 666. STUDY OF DISABILITY BENEFITS FOR VETERANS OF SERVICE IN THE ARMED FORCES WITH SERVICE-CONNECTED DISABILITIES.

(a) REQUIREMENT FOR STUDY.—(1) The Secretary of Defense shall conduct a study of the totality of all current and projected

disability benefits that are available to disabled members and former members of the Armed Forces for service-connected disabilities and, on the basis of the results of such study, determine the adequacy of those benefits.

(2) In carrying out the study, the Secretary shall—

(A) compare the disability benefits for members of the Armed Forces with commercial and other private-sector disability benefits plans that are provided for other persons in the United States who are disabled by causes other than service in the Armed Forces; and

(B) identify and assess the changes to Department of Defense personnel policies needed to enhance the financial and nonfinancial benefits that are provided to members and former members of the Armed Forces for service-connected disabilities.

(b) COORDINATION.—In carrying out the study under subsection (a) and preparing the report under subsection (c), the Secretary of Defense shall—

(1) consult with the Secretary of Veterans Affairs and take into consideration the veterans disability benefits programs that are administered by the Secretary of Veterans Affairs; and

(2) consult with, and obtain the assistance of, the Veterans' Disability Benefits Commission established under title XV of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1676).

(c) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Secretary of Defense shall submit a report on the results of the study under this section to the committees of Congress specified in subsection (e). The report shall include the following:

(1) The Secretary's assessments, analyses, and conclusions resulting from the study.

(2) Recommended legislation to address the deficiencies in the system of Federal Government disability benefits for disabled members and former members of the Armed Forces that are identified in the course of the study.

(3) An estimate of the costs of improvements in the system of disability benefits that are provided for in the recommended legislation.

(d) GAO STUDY.—(1) The Comptroller General shall conduct a study to identify the disability benefits that are payable under Federal, State, and local laws for employees of the Federal Government, State governments, and local governments. In carrying out the study, the Comptroller General shall, to the extent feasible, pay particular attention to the disability benefits that are provided for disabilities incurred in the performance of jobs in which employees perform tasks with risks that are analogous to the risks associated with the performance of military tasks by members of the Armed Forces.

Deadline.

(2) Not later than November 1, 2005, the Comptroller General shall submit a report on the results of the study under paragraph (1) to the committees of Congress specified in subsection (e).

(e) RECIPIENTS OF REPORT.—The committees of Congress to which the reports under subsections (d) and (e) are to be submitted are as follows:

(1) The Committee on Armed Services and the Committee on Veterans' Affairs of the Senate.

(2) The Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Enhanced Benefits for Reserves

- Sec. 701. TRICARE coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty.
- Sec. 702. Comptroller General report on the cost and feasibility of providing private health insurance stipends for members of the Ready Reserves.
- Sec. 703. Permanent earlier eligibility date for TRICARE benefits for members of reserve components and their dependents.
- Sec. 704. Waiver of certain deductibles under TRICARE program for members on active duty for a period of more than 30 days.
- Sec. 705. Authority for payment by United States of additional amounts billed by health care providers to activated Reserves.
- Sec. 706. Permanent extension of transitional health care benefits and addition of requirement for preseparation physical examination.

Subtitle B—Other Benefits Improvements

- Sec. 711. Opportunity for young child dependent of deceased member to become eligible for enrollment in a TRICARE dental plan.
- Sec. 712. Comptroller General report on provision of health, education, and support services for Exceptional Family Member Program enrollees.
- Sec. 713. Continuation of sub-acute care for transition period.
- Sec. 714. Improvements to pharmacy benefits program
- Sec. 715. Professional accreditation of military dentists.
- Sec. 716. Temporary authority for waiver of collection of payments due for CHAMPUS benefits received by disabled persons unaware of loss of CHAMPUS eligibility.
- Sec. 717. Services of marriage and family therapists.
- Sec. 718. Chiropractic health care benefits advisory committee.

Subtitle C—Planning, Programming, and Management

- Sec. 721. Pilot program for health care delivery.
- Sec. 722. Study of provision of travel reimbursement to hospitals for certain military disability retirees.
- Sec. 723. Study of mental health services.
- Sec. 724. Policy for timely notification of next of kin of members seriously ill or injured in combat zones.
- Sec. 725. Revised funding methodology for military retiree health care benefits.
- Sec. 726. Grounds for presidential waiver of requirement for informed consent or option to refuse regarding administration of drugs not approved for general use.
- Sec. 727. TRICARE program regional directors.

Subtitle D—Medical Readiness Tracking and Health Surveillance

- Sec. 731. Medical readiness plan and Joint Medical Readiness Oversight Committee.
- Sec. 732. Medical readiness of Reserves.
- Sec. 733. Baseline Health Data Collection Program.
- Sec. 734. Medical care and tracking and health surveillance in the theater of operations.
- Sec. 735. Declassification of information on exposures to environmental hazards.
- Sec. 736. Report on training on environmental hazards.
- Sec. 737. Uniform policy for meeting mobilization-related medical care needs at military installations.
- Sec. 738. Full implementation of Medical Readiness Tracking and Health Surveillance Program and Force Health Protection and Readiness Program.
- Sec. 739. Reports and Internet accessibility relating to health matters.

Subtitle A—Enhanced Benefits for Reserves

SEC. 701. TRICARE COVERAGE FOR MEMBERS OF RESERVE COMPONENTS WHO COMMIT TO CONTINUED SERVICE IN THE SELECTED RESERVE AFTER RELEASE FROM ACTIVE DUTY.

(a) ELIGIBILITY.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1076c the following new section:

“§ 1076d. TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty

“(a) ELIGIBILITY.—A member of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces is eligible for health benefits under TRICARE Standard as provided in this section after the member completes service on active duty to which the member was called or ordered for a period of more than 30 days on or after September 11, 2001, under a provision of law referred to in section 101(a)(13)(B), if the member—

“(1) served continuously on active duty for 90 or more days pursuant to such call or order; and

“(2) on or before the date of the release from such active-duty service, entered into an agreement with the Secretary concerned to serve continuously in the Selected Reserve for a period of one or more whole years following such date.

“(b) PERIOD OF COVERAGE.—(1) TRICARE Standard coverage of a member under this section, on the basis of active-duty service performed as described in subsection (a), begins upon the expiration of the member’s entitlement to care and benefits under section 1145(a) of this title that is based on the same active-duty service.

“(2) Unless earlier terminated under paragraph (3), the period for TRICARE Standard coverage of a member under this section shall be equal to the lesser of—

“(A) one year, in the case of a member who is otherwise eligible but does not serve continuously on active duty for 90 days as described in subsection (a) because of an injury, illness, or disease incurred or aggravated while deployed;

“(B) one year for each consecutive period of 90 days of continuous active-duty service described in subsection (a); or

“(C) the number of whole years for which the member agrees under paragraph (2) of such subsection to continue to serve in the Selected Reserve after the coverage begins.

“(3) Eligibility for TRICARE Standard coverage of a member under this section shall terminate upon the termination of the member’s service in the Selected Reserve.

“(c) FAMILY MEMBERS.—While a member of a reserve component is covered by TRICARE Standard under the section, the members of the immediate family of such member are eligible for TRICARE Standard coverage as dependents of the member.

“(d) PREMIUMS.—(1) A member of a reserve component covered by TRICARE Standard under this section shall pay a premium for that coverage.

“(2) The Secretary of Defense shall prescribe for the purposes of this section one premium for TRICARE Standard coverage of members without dependents and one premium for TRICARE Standard coverage of members with dependents referred to in subsection (f)(1). The premium prescribed for a coverage shall apply uniformly to all covered members of the reserve components.

“(3) The monthly amount of the premium in effect for a month for TRICARE Standard coverage under this section shall be the amount equal to 28 percent of the total monthly amount that the Secretary determines on an appropriate actuarial basis as being reasonable for that coverage.

“(4) The premiums payable by a member of a reserve component under this subsection may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums.

“(5) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

“(e) RELATIONSHIP OF SERVICE AGREEMENT TO OTHER SERVICE COMMITMENTS.—The service agreement required of a member of a reserve component under subsection (a)(2) is separate from any other form of commitment of the member to a period of obligated service in that reserve component and may cover any part or all of the same period that is covered by another commitment of the member to a period of obligated service in that reserve component.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘immediate family’, with respect to a member of a reserve component, means all of the member’s dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

“(2) The term ‘TRICARE Standard’ means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.

“(g) REGULATIONS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.”

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1076c the following new item:

“1076d. TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty.”

(b) IMPLEMENTATION.—(1) The Secretary of Defense shall implement section 1076d of title 10, United States Code, not later than 180 days after the date of the enactment of this Act.

(2)(A) A member of a reserve component of the Armed Forces who performed active-duty service described in subsection (a) of section 1076d of title 10, United States Code, for a period beginning on or after September 11, 2001, and was released from that active-duty service before the date of the enactment of this Act, or is released from that active-duty service on or within 180 days after

Deadline.
10 USC 1076d
note.

the date of the enactment of this Act, may, for the purpose of paragraph (2) of such subsection, enter into an agreement described in such paragraph not later than one year after the date of the enactment of this Act. TRICARE Standard coverage (under such section 1076d) of a member who enters into such an agreement under this paragraph shall begin on the later of—

- (i) the date applicable to the member under subsection (b) of such section; or
- (ii) the date of the agreement.

(B) The Secretary of Defense shall take such action as is necessary to ensure, to the maximum extent practicable, that members of the reserve components eligible to enter into an agreement as provided in subparagraph (A) actually receive information on the opportunity and procedures for entering into such an agreement together with a clear explanation of the benefits that the members are eligible to receive as a result of entering into such an agreement under section 1076d of title 10, United States Code.

SEC. 702. COMPTROLLER GENERAL REPORT ON THE COST AND FEASIBILITY OF PROVIDING PRIVATE HEALTH INSURANCE STIPENDS FOR MEMBERS OF THE READY RESERVES.

(a) **STUDY REQUIRED.**—The Comptroller General shall conduct a study on the cost and feasibility of providing a stipend to members of the Ready Reserves to offset the cost of continuing private health insurance coverage for the members' dependents when the members are on active duty for periods of more than 30 days, with the dependents being ineligible to enroll in the TRICARE program and payment of the stipend ending when the members are no longer on active duty.

(b) **MATTERS COVERED.**—The study shall include the following matters:

- (1) Recommendation for a benefit amount and cost to the Department of Defense.
- (2) Potential effects on medical readiness, recruitment, and retention.
- (3) The extent to which the Reserves and members of their families might participate under the stipend program.
- (4) Administrative and management considerations for the Department of Defense.
- (5) Impact of pre-existing conditions on continuity of care for dependents.
- (6) Possible implications for employers.

(c) **REPORT.**—Not later than March 31, 2005, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the study under this section.

SEC. 703. PERMANENT EARLIER ELIGIBILITY DATE FOR TRICARE BENEFITS FOR MEMBERS OF RESERVE COMPONENTS AND THEIR DEPENDENTS.

Section 1074(d) of title 10, United States Code, is amended by striking paragraph (3).

SEC. 704. WAIVER OF CERTAIN DEDUCTIBLES UNDER TRICARE PROGRAM FOR MEMBERS ON ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.

Section 1095d(a) of title 10, United States Code, is amended by striking “less than one year” both places it appears and inserting “more than 30 days”.

SEC. 705. AUTHORITY FOR PAYMENT BY UNITED STATES OF ADDITIONAL AMOUNTS BILLED BY HEALTH CARE PROVIDERS TO ACTIVATED RESERVES.

Section 1079(h) of title 10, United States Code, is amended by adding at the end of paragraph (4) the following new subparagraph:

“(C)(i) In the case of a dependent described in clause (ii), the regulations shall provide that, in addition to amounts otherwise payable by the United States, the Secretary may pay the amount referred to in subparagraph (B)(i).

“(ii) This subparagraph applies to a dependent referred to in subsection (a) of a member of a reserve component serving on active duty pursuant to a call or order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title.”.

SEC. 706. PERMANENT EXTENSION OF TRANSITIONAL HEALTH CARE BENEFITS AND ADDITION OF REQUIREMENT FOR PRESEPARATION PHYSICAL EXAMINATION.

(a) PERMANENT REQUIREMENT.—(1) Paragraph (3) of section 1145(a) of title 10, United States Code, is amended to read as follows:

“(3) Transitional health care for a member under subsection (a) shall be available for 180 days beginning on the date on which the member is separated from active duty.”.

(2) The following provisions of law are repealed:

(A) Section 704 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1527; 10 U.S.C. 1145 note).

(B) Section 1117 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1218; 10 U.S.C. 1145 note).

(3) Paragraph (1) of such section 1145(a) is amended by striking “applicable”.

(b) REQUIREMENT FOR PHYSICAL EXAMINATION.—Such section 1145(a), as amended by subsection (a), is further amended by adding at the end the following new paragraph:

“(4)(A) The Secretary concerned shall require a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) to undergo a physical examination immediately before that separation. The physical examination shall be conducted in accordance with regulations prescribed by the Secretary of Defense.

Regulations.

“(B) Notwithstanding subparagraph (A), if a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) has otherwise undergone a physical examination within 12 months before the scheduled date of separation from active duty, the requirement for a physical examination

under subparagraph (A) may be waived in accordance with regulations prescribed under this paragraph. Such regulations shall require that such a waiver may be granted only with the consent of the member and with the concurrence of the member's unit commander.”.

Subtitle B—Other Benefits Improvements

SEC. 711. OPPORTUNITY FOR YOUNG CHILD DEPENDENT OF DECEASED MEMBER TO BECOME ELIGIBLE FOR ENROLLMENT IN A TRICARE DENTAL PLAN.

Section 1076a(k)(2) of title 10, United States Code, is amended—

(1) by striking “under subsection (a) or” and inserting “under subsection (a),”; and

(2) by inserting after “under subsection (f),” the following: “or is not enrolled because the dependent is a child under the minimum age for enrollment,”.

SEC. 712. COMPTROLLER GENERAL REPORT ON PROVISION OF HEALTH, EDUCATION, AND SUPPORT SERVICES FOR EXCEPTIONAL FAMILY MEMBER PROGRAM ENROLLEES.

(a) **EVALUATION REQUIREMENT.**—The Comptroller General shall evaluate the effect of the Exceptional Family Member Program (in this section referred to as “EFMP”) on health, education, and support services in selected civilian communities near military installations with a high concentration of EFMP enrollees.

(b) **MATTERS COVERED.**—The evaluation under subsection (a) shall include a discussion of the following:

(1) Communities that have high concentrations of EFMP enrollees that use State and local health, education, and support services.

(2) Needs of EFMP enrollees, if any, that are not met by State and local health, education, and support services.

(3) The burdens, financial and otherwise, placed on State and local health, education, and support services by EFMP enrollees and their families.

(4) The ability of the TRICARE program to meet the needs of EFMP enrollees and their families.

(5) Reasons for any limitations of the TRICARE program, the EFMP, and State and local health, education, and support services in providing assistance to EFMP enrollees and their families.

(6) Recommendations for more effectively meeting the needs of EFMP enrollees and their families.

(c) **COMMUNITIES COVERED.**—The evaluation under subsection (a) shall examine no fewer than four civilian communities, as determined by the Comptroller General, that have high concentrations of EFMP enrollees and that are near several military installations, including at least two military installations with tenants from more than one of the Armed Forces.

(d) **DEFINITIONS.**—In this section:

(1) The term “health, education, and support services” means services provided to children and other dependents with special needs, including specialized day care, mental health

day treatment services, respite services, counseling, early childhood intervention, special education, and other such services provided for children and other dependents with special needs.

(2) The term “TRICARE program” has the meaning given that term in section 1072(7) of title 10, United States Code.

(e) REPORT.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the evaluation required under subsection (a), including findings and recommendations.

SEC. 713. CONTINUATION OF SUB-ACUTE CARE FOR TRANSITION PERIOD.

Section 1074j(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4) The Secretary of Defense may take such actions as are necessary to ensure that there is an effective transition in the furnishing of part-time or intermittent home health care benefits for covered beneficiaries who were receiving such benefits before the establishment of the program under this section. The actions taken under this paragraph may include the continuation of such benefits on an extended basis for such time as the Secretary determines appropriate.”.

SEC. 714. IMPROVEMENTS TO PHARMACY BENEFITS PROGRAM.

(a) REQUIREMENT RELATING TO PRESCRIPTION DRUG BENEFITS FOR MEDICARE-ELIGIBLE ENROLLEES.—Section 1074g(a)(6) of title 10, United States Code, is amended—

(1) by inserting “(A)” after “(6)”; and

(2) by adding at the end the following:

“(B) For a medicare-eligible beneficiary, the cost-sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by section 1086 of this title. For purposes of the preceding sentence, a medicare-eligible beneficiary is a beneficiary eligible for health benefits under section 1086 of this title pursuant to subsection (d)(2) of such section.”.

(b) IMPROVEMENT TO UNIFORM FORMULARY PROCESS.—Section 1074g(a)(2)(E)(i) of such title is amended by inserting before the semicolon the following: “and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents”.

SEC. 715. PROFESSIONAL ACCREDITATION OF MILITARY DENTISTS.

Section 1077(c) of title 10, United States Code, is amended—

(1) by striking “A” and inserting “(1) Except as specified in paragraph (2), a”; and

(2) by adding at the end the following new paragraph:

“(2)(A) Dependents who are 12 years of age or younger and are covered by a dental plan established under section 1076a of this title may be treated by postgraduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association if—

“(i) treatment of pediatric dental patients is necessary in order to satisfy an accreditation standard of the American Dental Association that is applicable to such program, or training in pediatric dental care is necessary for the residents

to be professionally qualified to provide dental care for dependent children accompanying members of the uniformed services outside the United States; and

“(ii) the number of pediatric patients at such facility is insufficient to support satisfaction of the accreditation or professional requirements in pediatric dental care that apply to such program or students.

“(B) The total number of dependents treated in all facilities of the uniformed services under subparagraph (A) in a fiscal year may not exceed 2,000.”.

10 USC 1086
note.

SEC. 716. TEMPORARY AUTHORITY FOR WAIVER OF COLLECTION OF PAYMENTS DUE FOR CHAMPUS BENEFITS RECEIVED BY DISABLED PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY.

(a) **AUTHORITY TO WAIVE DEBT.**—(1) The Secretary of Defense, in consultation with the other administering Secretaries, may waive (in whole or in part) the collection of payments otherwise due from a person described in subsection (b) for health benefits received by such person under section 1086 of title 10, United States Code, after the termination of that person’s eligibility for such benefits.

(2) If the Secretary of Defense waives collection of payments from a person under paragraph (1), the Secretary may also authorize a continuation of benefits for such person under such section 1086 for a period ending not later than the end of the period specified in subsection (c) of this section.

(b) **ELIGIBLE PERSONS.**—A person is eligible for relief under subsection (a)(1) if—

(1) the person is described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

(2) except for such paragraph, the person would have been eligible for the health benefits under such section; and

(3) at the time of the receipt of such benefits—

(A) the person satisfied the criteria specified in paragraph (2)(B) of such subsection (d); and

(B) the person was unaware of the loss of eligibility to receive the health benefits.

(c) **PERIOD OF APPLICABILITY.**—The authority provided under this section to waive collection of payments and to continue benefits shall apply, under terms and conditions prescribed by the Secretary of Defense, to health benefits provided under section 1086 of title 10, United States Code, during the period beginning on July 1, 1999, and ending at the end of December 31, 2004.

(d) **ADMINISTERING SECRETARIES.**—In this subsection, the term “administering Secretaries” has the meaning given such term in section 1072(3) of title 10, United States Code.

SEC. 717. SERVICES OF MARRIAGE AND FAMILY THERAPISTS.

(a) **AUTHORITY TO ENTER INTO PERSONAL SERVICES CONTRACTS.**—Section 704(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2799; 10 U.S.C. 1091 note) is amended by inserting “marriage and family therapists certified as such by a certification recognized by the Secretary of Defense,” after “psychologists,”.

(b) **APPLICABILITY OF LICENSURE REQUIREMENT FOR HEALTH-CARE PROFESSIONALS.**—Section 1094(e)(2) of title 10, United States

Code, is amended by inserting “marriage and family therapist certified as such by a certification recognized by the Secretary of Defense,” after “psychologist,”.

SEC. 718. CHIROPRACTIC HEALTH CARE BENEFITS ADVISORY COMMITTEE.

10 USC 1092
note.

(a) **ESTABLISHMENT.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall establish an oversight advisory committee to provide the Secretary with advice and recommendations regarding the continued development and implementation of an effective program of chiropractic health care benefits for members of the uniformed services on active duty.

Deadline.

(b) **MEMBERSHIP.**—The advisory committee shall be composed of members selected from among persons who, by reason of education, training, and experience, are experts in chiropractic health care, as follows:

(1) Members appointed by the Secretary of Defense in such number as the Secretary determines appropriate for carrying out the duties of the advisory committee effectively, including not fewer than three practicing representatives of the chiropractic health care profession.

(2) A representative of each of the uniformed services, as designated by the administering Secretary concerned.

(c) **CHAIRMAN.**—The Secretary of Defense shall designate one member of the advisory committee to serve as the Chairman of the advisory committee.

(d) **MEETINGS.**—The advisory committee shall meet at the call of the Chairman, but not fewer than three times each fiscal year, beginning in fiscal year 2005.

(e) **DUTIES.**—The advisory committee shall have the following duties:

(1) Review and evaluate the program of chiropractic health care benefits provided to members of the uniformed services on active duty under chapter 55 of title 10, United States Code.

(2) Provide the Secretary of Defense with advice and recommendations as described in subsection (a).

(3) Upon the Secretary's determination that the program of chiropractic health care benefits referred to in paragraph (1) has been fully implemented, prepare and submit to the Secretary a report containing the advisory committee's evaluation of the implementation of such program.

(f) **REPORT.**—The Secretary of Defense, following receipt of the report by the advisory committee under subsection (e)(3), shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a report containing the following:

(1) A copy of the advisory committee report, together with the Secretary's comments on the report.

(2) An explanation of the criteria and rationale that the Secretary used to determine that the program of chiropractic health care benefits was fully implemented.

(3) The Secretary's views with regard to the future implementation of the program of chiropractic health care benefits.

(g) **APPLICABILITY OF TEMPORARY ORGANIZATIONS LAW.**—(1) Section 3161 of title 5, United States Code, shall apply to the advisory committee under this section.

(2) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oversight advisory committee under this section.

(h) TERMINATION.—The advisory committee shall terminate 90 days after the date on which the Secretary submits the report under subsection (f).

Subtitle C—Planning, Programming, and Management

10 USC 1092
note.

SEC. 721. PILOT PROGRAM FOR HEALTH CARE DELIVERY.

(a) PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program at two or more military installations for purposes of testing initiatives that build cooperative health care arrangements and agreements between military installations and local and regional non-military health care systems.

(b) REQUIREMENTS OF PILOT PROGRAM.—In conducting the pilot program, the Secretary of Defense shall—

(1) identify and analyze health care delivery options involving the private sector and health care services in military facilities located on the installation;

(2) determine the cost avoidance or savings resulting from innovative partnerships between the Department of Defense and the private sector;

(3) study the potential, viability, cost efficiency, and health care effectiveness of Department of Defense health care providers delivering health care in civilian community hospitals; and

(4) determine the opportunities for and barriers to coordinating and leveraging the use of existing health care resources, including Federal, State, local, and contractor assets.

(c) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall develop the pilot program in consultation with the Secretaries of the military departments, representatives from the military installation selected for the pilot program, Federal, State, and local entities, and the TRICARE managed care support contractor with responsibility for that installation.

(d) SELECTION OF MILITARY INSTALLATION.—The pilot program may be implemented at two or more military installations selected by the Secretary of Defense. At least one of the selected military installations shall meet the following criteria:

(1) The military installation has members of the Armed Forces on active duty and members of reserve components of the Armed Forces that use the installation as a training and operational base, with members routinely deploying in support of the global war on terrorism.

(2) The number of members of the Armed Forces on active duty permanently assigned to the military installation is expected to increase over the next five years.

(3) One or more cooperative arrangements exist at the military installation with civilian health care entities in the form of specialty care services in the military medical treatment facility on the installation.

(4) There is a military treatment facility on the installation that does not have inpatient or trauma center care capabilities.

(5) There is a civilian community hospital near the military installation with—

(A) limited capability to expand inpatient care beds, intensive care, and specialty services; and

(B) limited or no capability to provide trauma care.

(e) DURATION OF PILOT PROGRAM.—Implementation of the pilot program developed under this section shall begin not later than May 1, 2005, and shall be conducted during fiscal years 2005, 2006, and 2007.

(f) REPORTS.—With respect to any pilot program conducted under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and of the House of Representatives—

(1) an interim report on the program, not later than 60 days after commencement of the program; and

(2) a final report describing the results of the program with recommendations for a model health care delivery system for other military installations, not later than July 1, 2007.

SEC. 722. STUDY OF PROVISION OF TRAVEL REIMBURSEMENT TO HOSPITALS FOR CERTAIN MILITARY DISABILITY RETIREES.

(a) STUDY.—The Secretary of Defense shall conduct a study of the feasibility, and of the desirability, of providing that a member of the uniformed services retired under chapter 61 of title 10, United States Code, shall be provided reimbursement for the travel expenses of such member for travel, during the two-year period beginning on the date of the retirement of the member, to a military treatment facility for medical care. The Secretary shall include in that study consideration of whether reimbursement under such a plan should, as nearly as practicable, be under the same terms and conditions, and at the same rate, as apply to beneficiary travel reimbursement provided by the Secretary of Veterans Affairs under section 111 of title 38, United States Code.

(b) REPORT.—The Secretary of Defense shall submit to the congressional defense committees a report providing the results of the study under subsection (a). Such report shall be submitted not later than March 1, 2005.

SEC. 723. STUDY OF MENTAL HEALTH SERVICES.

(a) STUDY REQUIRED.—The Comptroller General shall conduct a study of mental health services available to members of the Armed Forces.

(b) PERSONS COVERED.—The study shall evaluate the availability and effectiveness of existing mental health treatment and screening resources—

(1) for members of the Armed Forces during a deployment to a combat theater;

(2) for members of the Armed Forces returning from a deployment to a combat theater, both—

(A) in the short-term, post-deployment period; and

(B) in the long-term, following the post-deployment period;

(3) for the families of members of the Armed Forces who have been deployed to a combat theater during the time of the deployment;

(4) for the families of members of the Armed Forces who have been deployed to a combat theater after the member has returned from the deployment; and

(5) for members of the Armed Forces and their families described in this subsection who are members of reserve components.

(c) **ASSESSMENT OF OBSTACLES.**—The study shall provide an assessment of existing obstacles that prevent members of the Armed Forces and military families in need of mental health services from obtaining these services, including—

(1) the extent to which existing confidentiality regulations, or lack thereof, inhibit members of the Armed Forces from seeking mental health treatment;

(2) the implications that a decision to seek mental health services can have on a military career;

(3) the extent to which a social stigma exists within the Armed Forces that prevents members of the Armed Forces and military families from seeking mental health treatment within the Department of Defense and the individual Armed Forces;

(4) the extent to which logistical obstacles, particularly with respect to members of the Armed Forces and families residing in rural areas, deter members in need of mental health services from obtaining them; and

(5) the extent to which members of the Armed Forces and their families are prevented or hampered from obtaining mental health treatment due to the cost of such services.

(d) **IDENTIFICATION OF PROBLEMS UNIQUE TO RESERVES.**—The study shall identify potential problems in obtaining mental health treatment that are unique to members of Reserve components.

(e) **REPORT.**—The Comptroller General shall submit to Congress a report on the study conducted under this section not later than March 31, 2005. The report shall contain the results of the study and make specific recommendations—

(1) for improving the effectiveness and accessibility of mental health services provided by Department of Defense to the persons listed in subsection (b), including recommendations to ensure appropriate referrals and a seamless transition to the care of the Department of Veterans Affairs following separation from the Armed Forces; and

(2) for removing or mitigating any obstacles identified under subsection (c) and problems identified under subsection (d).

10 USC 113 note. **SEC. 724. POLICY FOR TIMELY NOTIFICATION OF NEXT OF KIN OF MEMBERS SERIOUSLY ILL OR INJURED IN COMBAT ZONES.**

(a) **POLICY REQUIRED.**—The Secretary of Defense shall prescribe the policy of the Department of Defense for providing, in the case of the serious illness or injury of a member of the Armed Forces in a combat zone, timely notification to the next of kin of the member regarding the illness or injury, including information on the condition of the member and the location at which the member is receiving treatment. In prescribing the policy, the Secretary shall ensure respect for the expressed desires of individual members of the Armed Forces regarding the notification of next of kin and shall include standards of timeliness for both the initial notification of next of kin under the policy and subsequent updates regarding the condition and location of the member.

(b) SUBMISSION OF POLICY.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a copy of the policy. Deadline.

SEC. 725. REVISED FUNDING METHODOLOGY FOR MILITARY RETIREE HEALTH CARE BENEFITS.

(a) REVISION.—Section 1116 of title 10, United States Code, is amended to read as follows:

“§ 1116. Payments into the Fund

“(a) At the beginning of each fiscal year after September 30, 2005, the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury—

“(1) the amount certified to the Secretary by the Secretary of Defense under subsection (c), which shall be the contribution to the Fund for that fiscal year required by section 1115; and

“(2) the amount determined by each administering Secretary under section 1111(c) as the contribution to the Fund on behalf of the members of the uniformed services under the jurisdiction of that Secretary.

“(b) At the beginning of each fiscal year, the Secretary of Defense shall determine the sum of the following:

“(1) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.

“(2) The amount (including any negative amount) of the Department of Defense contribution for that year as determined by the Secretary of Defense under section 1115(b) of this title.

“(3) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

“(4) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.

“(5) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.

“(c) The Secretary of Defense shall promptly certify the amount determined under subsection (b) each year to the Secretary of the Treasury.

“(d) At the same time as the Secretary of Defense makes the certification under subsection (c), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the information provided to the Secretary of the Treasury under that subsection.”.

(b) SENSE OF CONGRESS.—It is the sense of Congress that any unsubscribed discretionary budget authority that accrues within the national defense budget function as a result of the

amendments made by this section shall be applied to cover the unbudgeted costs of—

- (1) increases in Army end strengths and modularization;
- (2) increases in Marine Corps end strengths and necessary equipment; and
- (3) Navy shipbuilding requirements.

(c) CONFORMING AMENDMENTS.—(1) Section 1111(c) of title 10, United States Code, is amended in the last sentence by striking “1116” and all that follows through the end of the sentence and inserting “1115(b) of this title, and such contributions shall be paid into the Fund as provided in section 1116(a).”.

(2) Section 1115(a) of such title is amended by striking “1116(c)” and inserting “1116”.

(3) Section 1115(b) of such title is amended—

(A) by striking “(1) The Secretary of Defense” and all that follows through “of this title.” and inserting “The Secretary of Defense shall determine, before the beginning of each fiscal year after September 30, 2005, the total amount of the Department of Defense contribution to be made to the Fund for that fiscal year for purposes of section 1116(b)(2).”;

(B) by striking paragraph (2);

(C) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(D) in each of paragraphs (1) and (2), as so redesignated, by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(E) in paragraph (2)(B), as so redesignated, by striking “subparagraph (A)(ii)” and inserting “paragraph (1)(B)”.

(4) Section 1115(c)(1) of such title is amended by striking “and section 1116(a) of this title”.

(5) Section 1115(c)(5) of such title is amended by striking “1116(c)” and inserting “1116”.

10 USC 1111
note.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2005.

SEC. 726. GROUNDS FOR PRESIDENTIAL WAIVER OF REQUIREMENT FOR INFORMED CONSENT OR OPTION TO REFUSE REGARDING ADMINISTRATION OF DRUGS NOT APPROVED FOR GENERAL USE.

(a) INVESTIGATIONAL NEW DRUGS.—Section 1107(f) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking “obtaining consent—” and all that follows through “(C) is” and inserting “obtaining consent is”; and

(2) by striking paragraph (2) and inserting the following new paragraph:

“(2) The waiver authority provided in paragraph (1) shall not be construed to apply to any case other than a case in which prior consent for administration of a particular drug is required by reason of a determination by the Secretary of Health and Human Services that such drug is subject to the investigational new drug requirements of section 505(i) of the Federal Food, Drug, and Cosmetic Act.”.

(b) EMERGENCY USE DRUGS.—Section 1107a(a) of such title is amended—

(1) by inserting “(A)” after “PRESIDENT.—(1)”;

(2) by striking “is not feasible,” and all that follows through “members affected, or”; and

(3) by adding at the end the following new subparagraph:

“(B) The waiver authority provided in subparagraph (A) shall not be construed to apply to any case other than a case in which an individual is required to be informed of an option to accept or refuse administration of a particular product by reason of a determination by the Secretary of Health and Human Services that emergency use of such product is authorized under section 564 of the Federal Food, Drug, and Cosmetic Act.”.

SEC. 727. TRICARE PROGRAM REGIONAL DIRECTORS.

(a) RECOMMENDATIONS FOR SELECTION PROCESS FOR TRICARE PROGRAM REGIONAL DIRECTORS.—(1) The Secretary of Defense shall develop recommendations for a process for the selection of regional directors for TRICARE program administrative regions from among nominees and applicants for the position in accordance with this section.

(2) The recommendations developed under paragraph (1) shall provide for a process for—

(A) the Secretary of each military department to nominate, for each regional director position, one commissioned officer in a grade above colonel, or, in the case of the Navy, captain, or member of the Senior Executive Service under the jurisdiction of that Secretary; and

(B) the Secretary of Defense to accept applications for assignment or appointment to each such position from any other qualified person.

(3) The recommendations developed under paragraph (1) shall also include recommendations with respect to—

(A) the qualifications for regional directors;

(B) the period of assignment of a commissioned officer as a regional director;

(C) procedures for ensuring that fair consideration is given to each nominee and each applicant; and

(D) such other requirements as considered appropriate by the Secretary.

(b) REPORT.—Not later than March 1, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the recommendations developed by the Secretary under subsection (a).

Subtitle D—Medical Readiness Tracking and Health Surveillance

SEC. 731. MEDICAL READINESS PLAN AND JOINT MEDICAL READINESS OVERSIGHT COMMITTEE.

10 USC 1074
note.

(a) REQUIREMENT FOR PLAN.—The Secretary of Defense shall develop a comprehensive plan to improve medical readiness, and Department of Defense tracking of the health status, of members of the Armed Forces throughout their service in the Armed Forces, and to strengthen medical readiness and tracking before, during, and after deployment of members of the Armed Forces overseas. The matters covered by the comprehensive plan shall include all elements that are described in this title and the amendments made by this title and shall comply with requirements in law.

(b) JOINT MEDICAL READINESS OVERSIGHT COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary of Defense shall establish a Joint Medical Readiness Oversight Committee.

(2) COMPOSITION.—The members of the Committee are as follows:

(A) The Under Secretary of Defense for Personnel and Readiness, who shall chair the Committee.

(B) The Vice Chief of Staff of the Army, the Vice Chief of Naval Operations, the Vice Chief of Staff of the Air Force, and the Assistant Commandant of the Marine Corp.

(C) The Assistant Secretary of Defense for Health Affairs.

(D) The Assistant Secretary of Defense for Reserve Affairs.

(E) The Surgeon General of each of the Army, the Navy, and the Air Force.

(F) The Assistant Secretary of the Army for Manpower and Reserve Affairs.

(G) The Assistant Secretary of the Navy for Manpower and Reserve Affairs.

(H) The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment.

(I) The Chief of the National Guard Bureau.

(J) The Chief of Army Reserve.

(K) The Chief of Naval Reserve.

(L) The Chief of Air Force Reserve.

(M) The Commander, Marine Corps Reserve.

(N) The Director of the Defense Manpower Data Center.

(O) A representative of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs.

(3) DUTIES.—The duties of the Committee are as follows:

(A) To advise the Secretary of Defense on the medical readiness and health status of the members of the active and reserve components of the Armed Forces.

(B) To advise the Secretary of Defense on the compliance of the Armed Forces with the medical readiness tracking and health surveillance policies of the Department of Defense.

(C) To oversee the development and implementation of the comprehensive plan required by subsection (a) and the actions required by this title and the amendments made by this title, including with respect to matters relating to—

(i) the health status of the members of the reserve components of the Armed Forces;

(ii) accountability for medical readiness;

(iii) medical tracking and health surveillance;

(iv) declassification of information on environmental hazards;

(v) postdeployment health care for members of the Armed Forces; and

(vi) compliance with Department of Defense and other applicable policies on blood serum repositories.

(D) To ensure unity and integration of efforts across functional and organizational lines within the Department

of Defense with regard to medical readiness tracking and health surveillance of members of the Armed Forces.

(E) To establish and monitor compliance with the medical readiness standards that are applicable to members and those that are applicable to units.

(F) To improve continuity of care in coordination with the Secretary of Veterans Affairs, for members of the Armed Forces separating from active service with service-connected medical conditions.

(4) FIRST MEETING.—The first meeting of the Committee shall be held not later than 120 days after the date of the enactment of this Act. Deadline.

(c) ANNUAL REPORT.—

(1) IN GENERAL.—In addition to the duties described in subsection (b)(3), the Committee shall prepare and submit to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives, not later than February 1 of each year, a report on—

(A) the health status and medical readiness of the members of the Armed Forces, including the members of reserve components, based on the comprehensive plan required under subsection (a) and the actions required by this title and the amendments made by this title; and

(B) compliance with Department of Defense policies on medical readiness tracking and health surveillance.

(2) OPPORTUNITY FOR COMMENT.—Each year, before the Committee submits to Congress the report required under paragraph (1), the Secretary of Defense shall provide an opportunity for representatives of veterans and military health advocacy organizations, and others the Secretary of Defense considers appropriate, to comment on the report. The report submitted to Congress shall include a summary of the comments received and the Secretary's response to them.

SEC. 732. MEDICAL READINESS OF RESERVES.

(a) COMPTROLLER GENERAL STUDY OF HEALTH OF RESERVES ORDERED TO ACTIVE DUTY FOR OPERATIONS ENDURING FREEDOM AND IRAQI FREEDOM.—

(1) REQUIREMENT FOR STUDY.—The Comptroller General shall carry out a study of the health of the members of the reserve components of the Armed Forces who have been called or ordered to active duty for a period of more than 30 days in support of Operation Enduring Freedom and Operation Iraqi Freedom. The Comptroller General shall commence the study not later than 180 days after the date of the enactment of this Act. Deadline.

(2) PURPOSES.—The purposes of the study under this subsection are as follows:

(A) To review the health status and medical fitness of the activated Reserves when they were called or ordered to active duty.

(B) To review the effects, if any, on logistics planning and the deployment schedules for the operations referred to in paragraph (1) that resulted from deficiencies in the health or medical fitness of activated Reserves.

(C) To review compliance of military personnel with Department of Defense policies on medical and physical

fitness examinations and assessments that are applicable to the reserve components of the Armed Forces.

(3) REPORT.—The Comptroller General shall, not later than one year after the date of the enactment of this Act, submit a report on the results of the study under this subsection to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

(A) With respect to the matters reviewed under subparagraph (A) of paragraph (2)—

(i) the percentage of activated Reserves who were determined to be medically unfit for deployment, together with an analysis of the reasons why the member was unfit, including medical illnesses or conditions most commonly found among the activated Reserves that were grounds for determinations of medical unfitness for deployment; and

(ii) the percentage of the activated Reserves who, before being deployed, needed medical care for health conditions identified when called or ordered to active duty, together with an analysis of the types of care that were provided for such conditions and the reasons why such care was necessary.

(B) With respect to the matters reviewed under subparagraph (B) of paragraph (2)—

(i) the delays and other disruptions in deployment schedules that resulted from deficiencies in the health status or medical fitness of activated Reserves; and

(ii) an analysis of the extent to which it was necessary to merge units or otherwise alter the composition of units, and the extent to which it was necessary to merge or otherwise alter objectives, in order to compensate for limitations on the deployability of activated Reserves resulting from deficiencies in the health status or medical fitness of activated Reserves.

(C) With respect to the matters reviewed under subparagraph (C) of paragraph (2), an assessment of the extent of the compliance of reserve component personnel with Department of Defense policies on routine medical and physical fitness examinations that are applicable to the reserve components of the Armed Forces.

(D) An analysis of the extent to which the medical care, if any, provided to activated Reserves in each theater of operations referred to in paragraph (1) related to pre-existing conditions that were not adequately addressed before the deployment of such personnel to the theater.

(4) DEFINITIONS.—In this subsection:

(A) The term “activated Reserves” means the members of the Armed Forces referred to in paragraph (1).

(B) The term “active duty for a period of more than 30 days” has the meaning given such term in section 101(d) of title 10, United States Code.

(C) The term “health condition” includes a mental health condition and a dental condition.

(D) The term “reserve components of the Armed Forces” means the reserve components listed in section 10101 of title 10, United States Code.

(b) ACCOUNTABILITY FOR MEDICAL READINESS OF INDIVIDUALS AND UNITS OF THE RESERVE COMPONENTS.— 10 USC 1074 note.

(1) POLICY.—The Secretary of Defense shall take measures, in addition to those required by section 1074f of title 10, United States Code, to ensure that individual members and commanders of reserve component units fulfill their responsibilities and meet the requirements for medical and dental readiness of members of the units. Such measures may include—

(A) requiring more frequent health assessments of members than is required by section 1074f(b) of title 10, United States Code, with an objective of having every member of the Selected Reserve receive a health assessment as specified in section 1074f of such title not less frequently than once every two years; and

(B) providing additional support and information to commanders to assist them in improving the health status of members of their units.

(2) REVIEW AND FOLLOWUP CARE.—The measures under this subsection shall provide for review of the health assessments under paragraph (1) by a medical professional and for any followup care and treatment that is otherwise authorized for medical or dental readiness.

(3) MODIFICATION OF PREDEPLOYMENT HEALTH ASSESSMENT SURVEY.—In carrying out paragraph (1), the Secretary shall—

(A) to the extent practicable, modify the predeployment health assessment survey to bring such survey into conformity with the detailed postdeployment health assessment survey in use as of October 1, 2004; and

(B) ensure the use of the predeployment health assessment survey, as so modified, for predeployment health assessments after that date.

(c) UNIFORM POLICY ON DEFERRAL OF MEDICAL TREATMENT PENDING DEPLOYMENT TO THEATERS OF OPERATIONS.— 10 USC 1074 note.

(1) REQUIREMENT FOR POLICY.—The Secretary of Defense shall prescribe, for uniform applicability throughout the Armed Forces, a policy on deferral of medical treatment of members pending deployment.

(2) CONTENT.—The policy prescribed under paragraph (1) may specify the following matters:

(A) The circumstances under which treatment for medical conditions may be deferred to be provided within a theater of operations in order to prevent delay or other disruption of a deployment to that theater.

(B) The circumstances under which medical conditions are to be treated before deployment to that theater.

SEC. 733. BASELINE HEALTH DATA COLLECTION PROGRAM.

(a) REQUIREMENT FOR PROGRAM.—

(1) IN GENERAL.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1092 the following new section:

“§ 1092a. Persons entering the armed forces: baseline health data

“(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program—

“(1) to collect baseline health data from each person entering the armed forces, at the time of entry into the armed forces; and

“(2) to provide for computerized compilation and maintenance of the baseline health data.

“(b) PURPOSES.—The program under this section shall be designed to achieve the following purposes:

“(1) To facilitate understanding of how subsequent exposures related to service in the armed forces affect health.

“(2) To facilitate development of early intervention and prevention programs to protect health and readiness.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1092 the following new item:

“1092a. Persons entering the armed forces: baseline health data.”.

10 USC 1092a
note.

(3) TIME FOR IMPLEMENTATION.—The Secretary of Defense shall implement the program required under section 1092a of title 10, United States Code (as added by paragraph (1)), not later than two years after the date of the enactment of this Act.

10 USC 1074f
note.

(b) INTERIM STANDARDS FOR BLOOD SAMPLING.—

(1) TIME REQUIREMENTS.—Subject to paragraph (2), the Secretary of Defense shall require that—

(A) the blood samples necessary for the predeployment medical examination of a member of the Armed Forces required under section 1074f(b) of title 10, United States Code, be drawn not earlier than 120 days before the date of the deployment; and

(B) the blood samples necessary for the postdeployment medical examination of a member of the Armed Forces required under such section 1074f(b) of such title be drawn not later than 30 days after the date on which the deployment ends.

(2) CONTINGENT APPLICABILITY.—The standards under paragraph (1) shall apply unless the Joint Medical Readiness Oversight Committee established by section 1301 recommends, and the Secretary approves, different standards for blood sampling.

10 USC 1074
note.

SEC. 734. MEDICAL CARE AND TRACKING AND HEALTH SURVEILLANCE IN THE THEATER OF OPERATIONS.

(a) RECORDKEEPING POLICY.—The Secretary of Defense shall prescribe a policy that requires the records of all medical care provided to a member of the Armed Forces in a theater of operations to be maintained as part of a complete health record for the member.

(b) IN-THEATER MEDICAL TRACKING AND HEALTH SURVEILLANCE.—

(1) REQUIREMENT FOR EVALUATION.—The Secretary of Defense shall evaluate the system for the medical tracking and health surveillance of members of the Armed Forces in theaters of operations and take such actions as may be necessary to improve the medical tracking and health surveillance.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit a report on the actions taken under paragraph (1) to the Committees on Armed Services of the Senate and the House

of Representatives. The report shall include the following matters:

(A) An analysis of the strengths and weaknesses of the medical tracking system administered under section 1074f of title 10, United States Code.

(B) An analysis of the efficacy of health surveillance systems as a means of detecting—

(i) any health problems (including mental health conditions) of members of the Armed Forces contemporaneous with the performance of the assessment under the system; and

(ii) exposures of the assessed members to environmental hazards that potentially lead to future health problems.

(C) An analysis of the strengths and weaknesses of such medical tracking and surveillance systems as a means for supporting future research on health issues.

(D) Recommended changes to such medical tracking and health surveillance systems.

(E) A summary of scientific literature on blood sampling procedures used for detecting and identifying exposures to environmental hazards.

(F) An assessment of whether there is a need for changes to regulations and standards for drawing blood samples for effective tracking and health surveillance of the medical conditions of personnel before deployment, upon the end of a deployment, and for a followup period of appropriate length.

(c) **PLAN TO OBTAIN HEALTH CARE RECORDS FROM ALLIES.**—The Secretary of Defense shall develop a plan for obtaining all records of medical treatment provided to members of the Armed Forces by allies of the United States in Operation Enduring Freedom and Operation Iraqi Freedom. The plan shall specify the actions that are to be taken to obtain all such records.

(d) **POLICY ON IN-THEATER PERSONNEL LOCATOR DATA.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall prescribe a Department of Defense policy on the collection and dissemination of in-theater individual personnel location data.

Deadline.

SEC. 735. DECLASSIFICATION OF INFORMATION ON EXPOSURES TO ENVIRONMENTAL HAZARDS.

10 USC 1074 note.

(a) **REQUIREMENT FOR REVIEW.**—The Secretary of Defense shall review and, as determined appropriate, revise the classification policies of the Department of Defense with a view to facilitating the declassification of data that is potentially useful for the monitoring and assessment of the health of members of the Armed Forces who have been exposed to environmental hazards during deployments overseas, including the following data:

(1) In-theater injury rates.

(2) Data derived from environmental surveillance.

(3) Health tracking and surveillance data.

(b) **CONSULTATION WITH COMMANDERS OF THEATER COMBATANT COMMANDS.**—The Secretary shall, to the extent that the Secretary considers appropriate, consult with the senior commanders of the in-theater forces of the combatant commands in carrying out the review and revising policies under subsection (a).

SEC. 736. REPORT ON TRAINING ON ENVIRONMENTAL HAZARDS.

(a) **REQUIREMENT FOR REPORT ON TRAINING OF FIELD MEDICAL PERSONNEL.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the training on environmental hazards that is provided by the Armed Forces to medical personnel of the Armed Forces who are deployable to the field in direct support of combat personnel.

(b) **CONTENT.**—The report under subsection (a) shall include the following:

(1) An assessment of the adequacy of the training regarding—

(A) the identification of common environmental hazards and exposures to such hazards; and

(B) the prevention and treatment of adverse health effects of such exposures.

(2) A discussion of the actions taken and to be taken to improve such training.

10 USC 1074
note.

SEC. 737. UNIFORM POLICY FOR MEETING MOBILIZATION-RELATED MEDICAL CARE NEEDS AT MILITARY INSTALLATIONS.

(a) **HEALTH CARE AT MOBILIZATION INSTALLATIONS.**—The Secretary of Defense shall take such steps as necessary, including through the uniform policy established under subsection (c), to ensure that anticipated health care needs of members of the Armed Forces at mobilization installations can be met at those installations. Such steps may, within authority otherwise available to the Secretary, include the following with respect to any such installation:

(1) Arrangements for health care to be provided by the Secretary of Veterans Affairs.

(2) Procurement of services from local health care providers.

(3) Temporary employment of health care personnel to provide services at such installation.

(b) **MOBILIZATION INSTALLATIONS.**—For purposes of this section, the term “mobilization installation” means a military installation at which members of the Armed Forces, in connection with a contingency operation or during a national emergency—

(1) are mobilized;

(2) are deployed; or

(3) are redeployed from a deployment location.

(c) **REQUIREMENT FOR REGULATIONS.**—

(1) **POLICY ON IMPLEMENTATION.**—The Secretary of Defense shall by regulation establish a policy for the implementation of subsection (a) throughout the Department of Defense.

(2) **IDENTIFICATION AND ANALYSIS OF NEEDS.**—As part of the policy prescribed under paragraph (1), the Secretary shall require the Secretary of each military department, with respect to each mobilization installation under the jurisdiction of that Secretary, to identify and analyze the anticipated health care needs at that installation with respect to members of the Armed Forces who may be expected to mobilize or deploy or redeploy at that installation as described in subsection (b)(1). Such identification and analysis shall be carried out so as to be completed before the arrival of such members at the installation.

(3) **RESPONSE TO NEEDS.**—The policy established by the Secretary of Defense under paragraph (1) shall require that, based on the results of the identification and analysis under paragraph (2), the Secretary of the military department concerned shall determine how to expeditiously and effectively respond to those anticipated health care needs that cannot be met within the resources otherwise available at that installation, in accordance with subsection (a).

(4) **IMPLEMENTATION OF AUTHORITY.**—In implementing the policy established under paragraph (1) at any installation, the Secretary of the military department concerned shall ensure that the commander of the installation, and the officers and other personnel superior to that commander in that commander's chain of command, have appropriate authority and responsibility for such implementation.

(d) **POLICY.**—The Secretary of Defense shall ensure—

(1) that the policy prescribed under subsection (c) is carried out with respect to any mobilization installation with the involvement of all agencies of the Department of Defense that have responsibility for management of the installation and all organizations of the Department that have command authority over any activity at the installation; and

(2) that such policy is implemented on a uniform basis throughout the Department of Defense.

SEC. 738. FULL IMPLEMENTATION OF MEDICAL READINESS TRACKING AND HEALTH SURVEILLANCE PROGRAM AND FORCE HEALTH PROTECTION AND READINESS PROGRAM.

10 USC 1074
note.

(a) **IMPLEMENTATION AT ALL LEVELS.**—The Secretary of Defense, in conjunction with the Secretaries of the military departments, shall take such actions as are necessary to ensure that the Army, Navy, Air Force, and Marine Corps fully implement at all levels—

(1) the Medical Readiness Tracking and Health Surveillance Program under this title and the amendments made by this title; and

(2) the Force Health Protection and Readiness Program of the Department of Defense (relating to the prevention of injury and illness and the reduction of disease and noncombat injury threats).

(b) **ACTION OFFICIAL.**—The Secretary of Defense may act through the Under Secretary of Defense for Personnel and Readiness in carrying out subsection (a).

SEC. 739. REPORTS AND INTERNET ACCESSIBILITY RELATING TO HEALTH MATTERS.

(a) **ANNUAL REPORTS.**—

(1) **REQUIREMENT FOR REPORTS.**—Chapter 55 of title 10, United States Code, is amended by inserting after section 1073a the following new section:

“§ 1073b. Recurring reports

“(a) **ANNUAL REPORT ON HEALTH PROTECTION QUALITY.**—(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives each year a report on the Force Health Protection Quality Assurance Program of the Department of Defense. The report shall cover

the calendar year preceding the year in which the report is submitted and include the following matters:

“(A) The results of an audit conducted during the calendar year covered by the report of the extent to which the blood samples required to be obtained as described in section 733(b) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 from members of the armed forces before and after a deployment are stored in the blood serum repository of the Department of Defense.

“(B) The results of an audit conducted during the calendar year covered by the report of the extent to which the records of the health assessments required under section 1074f of this title for members of the armed forces before and after a deployment are being maintained in the electronic database of the Defense Medical Surveillance System.

“(C) An analysis of the actions taken by Department of Defense personnel to respond to health concerns expressed by members of the armed forces upon return from a deployment.

“(D) An analysis of the actions taken by Department of Defense personnel to evaluate or treat members of the armed forces who are confirmed to have been exposed to occupational or environmental hazards deleterious to their health during a deployment.

“(2) The Secretary of Defense shall act through the Assistant Secretary of Defense for Health Affairs in carrying out this subsection.

“(b) ANNUAL REPORT ON RECORDING OF HEALTH ASSESSMENT DATA IN MILITARY HEALTH RECORDS.—The Secretary of Defense shall issue each year a report on the compliance by the military departments with applicable law and policies on the recording of health assessment data in military health records, including compliance with section 1074f(c) of this title. The report shall cover the calendar year preceding the year in which the report is submitted and include a discussion of the extent to which immunization status and predeployment and postdeployment health care data are being recorded in such records.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1073a the following new item:

“1073b. Recurring reports.”.

10 USC 1073b
note.

(3) INITIAL REPORTS.—The first reports under section 1073b of title 10, United States Code (as added by paragraph (1)), shall be completed not later than 180 days after the date of the enactment of this Act.

10 USC 1074
note.

(b) INTERNET ACCESSIBILITY OF HEALTH ASSESSMENT INFORMATION FOR MEMBERS OF THE ARMED FORCES.—Not later than one year after the date of the enactment of this Act, the Chief Information Officer of each military department shall ensure that the online portal website of that military department includes the following information relating to health assessments:

(1) Information on the policies of the Department of Defense and the military department concerned regarding predeployment and postdeployment health assessments, including policies on the following matters:

(A) Health surveys.

(B) Physical examinations.

- (C) Collection of blood samples and other tissue samples.
- (2) Procedural information on compliance with such policies, including the following information:
 - (A) Information for determining whether a member is in compliance.
 - (B) Information on how to comply.
- (3) Health assessment surveys that are either—
 - (A) web-based; or
 - (B) accessible (with instructions) in printer-ready form by download.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

- Sec. 801. Software-related program costs under major defense acquisition programs.
- Sec. 802. Internal controls for Department of Defense procurements through GSA Client Support Centers.
- Sec. 803. Defense commercial communications satellite services procurement process.
- Sec. 804. Contractor performance of acquisition functions closely associated with inherently governmental functions.
- Sec. 805. Sustainment plans for existing systems while replacement systems are under development.
- Sec. 806. Applicability of competition exceptions to eligibility of National Guard for financial assistance for performance of additional duties.
- Sec. 807. Inflation adjustment of acquisition-related dollar thresholds.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

- Sec. 811. Rapid acquisition authority to respond to combat emergencies.
- Sec. 812. Defense acquisition workforce improvements.
- Sec. 813. Period for multiyear task and delivery order contracts.
- Sec. 814. Funding for contract ceilings for certain multiyear procurement contracts.
- Sec. 815. Increased threshold for senior procurement executive approval of use of procedures other than competitive procedures.
- Sec. 816. Increased threshold for applicability of requirement for defense contractors to provide information on subcontracting authority of contractor personnel to cooperative agreement holders.
- Sec. 817. Extension of authority for use of simplified acquisition procedures.
- Sec. 818. Submission of cost or pricing data on noncommercial modifications of commercial items.
- Sec. 819. Delegations of authority to make determinations relating to payment of defense contractors for business restructuring costs.
- Sec. 820. Availability of Federal supply schedule supplies and services to United Service Organizations, Incorporated.
- Sec. 821. Addition of landscaping and pest control services to list of designated industry groups participating in the Small Business Competitiveness Demonstration Program.
- Sec. 822. Increased thresholds under special emergency procurement authority.

Subtitle C—United States Defense Industrial Base Provisions

- Sec. 831. Defense trade reciprocity.
- Sec. 832. Assessment and report on the acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources.

Subtitle D—Extensions of Temporary Program Authorities

- Sec. 841. Extension of mentor-protege program.
- Sec. 842. Amendment to mentor-protege program.
- Sec. 843. Extension of test program for negotiation of comprehensive small business subcontracting plans.

Sec. 844. Extension of pilot program on sales of manufactured articles and services of certain Army industrial facilities.

Subtitle E—Other Acquisition Matters

Sec. 851. Review and demonstration project relating to contractor employees.
 Sec. 852. Inapplicability of certain fiscal laws to settlements under special temporary contract closeout authority.
 Sec. 853. Contracting with employers of persons with disabilities.
 Sec. 854. Defense procurements made through contracts of other agencies.
 Sec. 855. Requirements relating to source selection for integrated support of aerial refueling aircraft fleet for the Air Force.

Subtitle A—Acquisition Policy and Management

SEC. 801. SOFTWARE-RELATED PROGRAM COSTS UNDER MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) CONTENT OF QUARTERLY UNIT COST REPORT.—Subsection (b) of section 2433 of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(5) Any significant changes in the total program cost for development and procurement of the software component of the program, schedule milestones for the software component of the program, or expected performance for the software component of the program that are known, expected, or anticipated by the program manager.”.

(b) CONTENT OF SELECTED ACQUISITION REPORT.—(1) Subsection (g)(1) of such section is amended by adding at the end the following new subparagraph:

“(Q) In any case in which one or more problems with the software component of the program significantly contributed to the increase in program unit costs, the action taken and proposed to be taken to solve such problems.”.

(2) Section 2432(e) of title 10, United States Code, is amended—
 (A) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively; and

(B) by inserting after paragraph (6) the following new paragraph (7):

“(7) The reasons for any significant changes (from the previous Selected Acquisition Report) in the total program cost for development and procurement of the software component of the program, schedule milestones for the software component of the program, or expected performance for the software component of the program that are known, expected, or anticipated by the program manager.”.

10 USC 2432
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date occurring 60 days after the date of the enactment of this Act, and shall apply with respect to reports due to be submitted to Congress on or after such date.

10 USC 2302
note.

SEC. 802. INTERNAL CONTROLS FOR DEPARTMENT OF DEFENSE PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.

Deadline.

(a) INITIAL INSPECTOR GENERAL REVIEW AND DETERMINATION.—
 (1) Not later than March 15, 2005, the Inspector General of the Department of Defense and the Inspector General of the General Services Administration shall jointly—

(A) review—

(i) the policies, procedures, and internal controls of each GSA Client Support Center; and

(ii) the administration of those policies, procedures, and internal controls; and

(B) for each such Center, determine in writing whether—

(i) the Center is compliant with defense procurement requirements;

(ii) the Center is not compliant with defense procurement requirements, but the Center made significant progress during 2004 toward becoming compliant with defense procurement requirements; or

(iii) neither of the conclusions stated in clauses (i) and (ii) is correct.

(2) If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of such paragraph is correct in the case of a GSA Client Support Center, those Inspectors General shall, not later than March 15, 2006, jointly—

Deadline.

(A) conduct a second review regarding that GSA Client Support Center as described in paragraph (1)(A); and

(B) determine in writing whether that GSA Client Support Center is or is not compliant with defense procurement requirements.

(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a GSA Client Support Center is compliant with defense procurement requirements if the GSA Client Support Center's policies, procedures, and internal controls, and the manner in which they are administered, are adequate to ensure compliance of that Center with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

(c) LIMITATIONS ON PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.—(1) After March 15, 2005, and before March 16, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of \$100,000 through any GSA Client Support Center for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

(2) After March 15, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of \$100,000 through any GSA Client Support Center that has not been determined under this section as being compliant with defense procurement requirements.

(d) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—(1) No limitation applies under subsection (c) with respect to the procurement of property and services from a particular GSA Client Support Center during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through that GSA Client Support Center.

(2) A written determination with respect to a GSA Client Support Center under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary of Defense for Acquisition, Technology, and Logistics shall specify in the written

determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

(e) **TERMINATION OF APPLICABILITY OF LIMITATIONS.**—Subsection (c) shall cease to apply to a GSA Client Support Center on the date on which the Inspector General of the Department of Defense and the Inspector General of the General Services Administration jointly determine that such Center is compliant with defense procurement requirements and notify the Secretary of Defense of that determination.

(f) **GSA CLIENT SUPPORT CENTER DEFINED.**—In this section, the term “GSA Client Support Center” means a Client Support Center of the Federal Technology Service of the General Services Administration.

SEC. 803. DEFENSE COMMERCIAL COMMUNICATIONS SATELLITE SERVICES PROCUREMENT PROCESS.

(a) **REQUIREMENT FOR DETERMINATION.**—The Secretary of Defense shall review all potential mechanisms for procuring commercial communications satellite services and provide guidance to the Director of the Defense Information Systems Agency and the Secretaries of the military departments on how such procurements should be conducted. The alternative procurement mechanisms reviewed by the Secretary of Defense shall, at a minimum, include the following:

(1) Procurement under indefinite delivery, indefinite quantity contracts of other departments and agencies of the Federal Government, including the Federal Technology Service of the General Services Administration.

(2) Procurement directly from commercial sources that are qualified as described in subsection (b), using full and open competition (as defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))).

(3) Procurement by any other means that has been used by the Director of the Defense Information Systems Agency or the Secretary of a military department to enter into a contract for the procurement of commercial communications satellite services that is in force on the date of the enactment of this Act, including through commercial communications satellite service integrators and resellers.

(4) Procurement under the method used as of the date of the enactment of this Act, modified with streamlined processes to ensure increased efficiency and cost effectiveness.

(b) **QUALIFIED SOURCES.**—A source of commercial communications satellite services referred to in paragraph (2) of subsection (a) is a qualified source if the source is incorporated under the laws of a State of the United States and is either—

(1) a source of commercial communications satellite services under a Federal Technology Service contract for the procurement of commercial communications satellite services described in paragraph (1) of such subsection that is in force on the date of the enactment of this Act; or

(2) a source of commercial communications satellite services that meets qualification requirements (as defined in section 2319 of title 10, United States Code, and established in accordance with that section) to enter into a Federal Technology

Service contract for the procurement of commercial communications satellite services.

(c) REPORT.—Not later than April 30, 2005, the Secretary of Defense shall submit to Congress a report setting forth the conclusions resulting from the Secretary's review under subsection (a). The report shall include—

(1) the guidance provided under such subsection; and

(2) a discussion of the rationale for that guidance and how the guidance will address each recommendation made in the December 2003 report of the General Accounting Office titled "Satellite Communications: Strategic Approach Needed for DOD's Procurement of Commercial Satellite BandWidth" (GAO-04-206).

(d) EFFECTIVE DATE.—(1) The Secretary may not enter into a contract for commercial communications satellite services (using any mechanism reviewed under subsection (a) or otherwise) until the expiration of 30 days after the date on which the report described in subsection (c) has been received by Congress, unless the Secretary determines that such a contract is required to meet urgent national security requirements.

(2) Notwithstanding paragraph (1), the Secretary may issue a task order or delivery order under a contract for commercial communications satellite services that was awarded before the date of the enactment of this Act.

SEC. 804. CONTRACTOR PERFORMANCE OF ACQUISITION FUNCTIONS CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL FUNCTIONS.

(a) LIMITATION.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2382 the following new section:

"§ 2383. Contractor performance of acquisition functions closely associated with inherently governmental functions

"(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

"(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

"(2) appropriate military or civilian personnel of the Department of Defense are—

"(A) to supervise contractor performance of the contract; and

"(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

"(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

"(b) DEFINITIONS.—In this section:

"(1) The term 'head of an agency' has the meaning given such term in section 2302(1) of this title, except that such

term does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

“(2) The term ‘inherently governmental functions’ has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

“(3) The term ‘functions closely associated with inherently governmental functions’ means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

“(4) The term ‘organizational conflict of interest’ has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.”

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2382 the following new item:

“2383. Contractor performance of acquisition functions closely associated with inherently governmental functions.”

10 USC 2383
note.

(b) **EFFECTIVE DATE.**—Section 2383 of title 10, United States Code (as added by subsection (a)), shall apply to contracts entered into on or after the date of the enactment of this Act.

SEC. 805. SUSTAINMENT PLANS FOR EXISTING SYSTEMS WHILE REPLACEMENT SYSTEMS ARE UNDER DEVELOPMENT.

(a) **EXISTING SYSTEMS TO BE MAINTAINED WHILE REPLACEMENT SYSTEMS ARE UNDER DEVELOPMENT.**—(1) Chapter 144 of title 10, United States Code, is amended by inserting after section 2436 the following new section:

“§ 2437. Development of major defense acquisition programs: sustainment of system to be replaced

“(a) **REQUIREMENT FOR SUSTAINING EXISTING FORCES.**—(1) The Secretary of Defense shall require that, whenever a new major defense acquisition program begins development, the defense acquisition authority responsible for that program shall develop a plan (to be known as a ‘sustainment plan’) for the existing system that the system under development is intended to replace. Any such sustainment plan shall provide for an appropriate level of budgeting for sustaining the existing system until the replacement system to be developed under the major defense acquisition program is fielded and assumes the majority of responsibility for the mission of the existing system. This section does not apply to a major defense acquisition that reaches initial operational capability before October 1, 2008.

“(2) In this section, the term ‘defense acquisition authority’ means the Secretary of a military department or the commander of the United States Special Operations Command.

“(b) **SUSTAINMENT PLAN.**—The Secretary of Defense shall require that each sustainment plan under this section include, at a minimum, the following:

“(1) The milestone schedule for the development of the major defense acquisition program, including the scheduled dates for low-rate initial production, initial operational capability, full-rate production, and full operational capability and the date as of when the replacement system is scheduled to assume the majority of responsibility for the mission of the existing system.

“(2) An analysis of the existing system to assess the following:

“(A) Anticipated funding levels necessary to—

“(i) ensure acceptable reliability and availability rates for the existing system; and

“(ii) maintain mission capability of the existing system against the relevant threats.

“(B) The extent to which it is necessary and appropriate to—

“(i) transfer mature technologies from the new system or other systems to enhance the mission capability of the existing system against relevant threats; and

“(ii) provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.

“(c) EXCEPTIONS.—Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that—

“(1) the existing system is no longer relevant to the mission;

“(2) the mission has been eliminated;

“(3) the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or

“(4) the duration of time until the new system assumes the majority of responsibility for the existing system’s mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.

“(d) WAIVER.—The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary’s determination and the reasons therefor in writing to the congressional defense committees.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2436 the following new item:

“2437. Development of major defense acquisition programs: sustainment of system to be replaced.”.

(b) APPLICATION TO EXISTING PROGRAMS IN DEVELOPMENT.—Section 2437 of title 10, United States Code, as added by subsection (a), shall apply with respect to a major defense acquisition program for a system that is under development as of the date of the enactment of this Act and is not expected to reach initial operational capability before October 1, 2008. The Secretary of Defense shall require that a sustainment plan under that section be developed not later than one year after the date of the enactment of this Act for the existing system that the system under development is intended to replace.

10 USC 2437
note.

Deadline.

SEC. 806. APPLICABILITY OF COMPETITION EXCEPTIONS TO ELIGIBILITY OF NATIONAL GUARD FOR FINANCIAL ASSISTANCE FOR PERFORMANCE OF ADDITIONAL DUTIES.

Section 113(b)(1)(B) of title 32, United States Code, is amended by inserting before the period at the end the following: “, subject to the exceptions provided in section 2304(c) of title 10”.

SEC. 807. INFLATION ADJUSTMENT OF ACQUISITION-RELATED DOLLAR THRESHOLDS.

(a) INFLATION ADJUSTMENT AUTHORITY.—(1) The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by inserting after section 35 the following new section:

41 USC 431a.

“SEC. 35A. INFLATION ADJUSTMENT OF ACQUISITION-RELATED DOLLAR THRESHOLDS.

“(a) REQUIREMENT FOR PERIODIC ADJUSTMENT.—(1) On October 1 of each year that is evenly divisible by five, the Federal Acquisition Regulatory Council shall adjust each acquisition-related dollar threshold provided by law, as described in subsection (c), to the baseline constant dollar value of that threshold.

“(2) For the purposes of paragraph (1), the baseline constant dollar value—

“(A) for a dollar threshold in effect on October 1, 2000, that was first specified in a law that took effect on or before such date shall be the October 1, 2000, constant dollar value of that dollar threshold; and

“(B) for a dollar threshold specified in a law that takes effect after October 1, 2000, shall be the constant dollar value of that threshold as of the effective date of that dollar threshold pursuant to such law.

Federal Register,
publication.

“(b) ADJUSTMENTS EFFECTIVE UPON PUBLICATION.—The Federal Acquisition Regulatory Council shall publish a notice of the adjusted dollar thresholds under this section in the Federal Register. The adjusted dollar thresholds shall take effect on the date of publication.

“(c) ACQUISITION-RELATED DOLLAR THRESHOLDS.—Except as provided in subsection (d), the requirement for adjustment under subsection (a) applies to a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as determined by the Federal Acquisition Regulatory Council.

“(d) EXCLUDED THRESHOLDS.—Subsection (a) does not apply to—

“(1) dollar thresholds in sections 3141 through 3144, 3146, and 3147 of title 40, United States Code;

“(2) dollar thresholds in the Service Contract Act of 1965 (41 U.S.C. 351, et seq.); or

“(3) dollar thresholds established by the United States Trade Representative pursuant to title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.).

“(e) CALCULATION OF ADJUSTMENTS.—An adjustment under this section shall—

“(1) be calculated on the basis of changes in the Consumer Price Index for all-urban consumers published monthly by the Department of Labor; and

“(2) be rounded—

“(A) in the case of a dollar threshold that (as in effect on the day before the adjustment) is less than \$10,000, to the nearest \$500;

“(B) in the case of a dollar threshold that (as in effect on the day before the adjustment) is not less than \$10,000, but is less than \$100,000, to the nearest \$5,000;

“(C) in the case of a dollar threshold that (as in effect on the day before the adjustment) is not less than \$100,000, but is less than \$1,000,000, to the nearest \$50,000; and

“(D) in the case of a dollar threshold that (as in effect on the day before the adjustment) is \$1,000,000 or more, to the nearest \$500,000.

“(f) PETITION FOR INCLUSION OF OMITTED THRESHOLD.—(1) If a dollar threshold adjustable under this section is not included in a notice of adjustment published under subsection (b), any person may request adjustment of that dollar threshold by submitting a petition for adjustment to the Administrator for Federal Procurement Policy.

“(2) Upon receipt of a petition for adjustment of a dollar threshold under paragraph (1), the Administrator shall—

“(A) determine, in writing, whether that dollar threshold is required to be adjusted under this section; and

“(B) if so, shall publish in the Federal Register a revised notice of the adjusted dollar thresholds under this section that includes the adjustment of the dollar threshold covered by the petition.

“(3) The adjustment of a dollar threshold pursuant to a petition under this subsection shall take effect on the date of the publication of the revised notice adding the adjustment of that dollar threshold under paragraph (2)(B).”.

(2) The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 35 the following new item:

“Sec. 35A. Inflation adjustment of acquisition-related dollar thresholds.”.

(b) DEFINITION OF FEDERAL ACQUISITION REGULATORY COUNCIL.—Section 4 of such Act is amended by adding at the end the following new paragraph: 41 USC 403.

“(17) The term ‘Federal Acquisition Regulatory Council’ means the Federal Acquisition Regulatory Council established under section 25.”.

(c) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORITIES.—(1) Section 35A of the Office of Federal Procurement Policy Act, as added by subsection (a), supersedes the applicability of any other provision of law that provides for the adjustment of a dollar threshold that is adjustable under such section. 41 USC 431a note.

(2) After the date of the enactment of this Act, a dollar threshold adjustable under section 35A of the Office of Federal Procurement Policy Act, as added by subsection (a), shall be adjusted only as provided under that section.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

SEC. 811. RAPID ACQUISITION AUTHORITY TO RESPOND TO COMBAT EMERGENCIES.

Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (10 U.S.C. 2302 note) is amended—

(1) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (b) the following new subsections (c) and (d):

“(c) RESPONSE TO COMBAT EMERGENCIES.—(1) In the case of any equipment that, as determined in writing by the Secretary of Defense without delegation, is urgently needed to eliminate a combat capability deficiency that has resulted in combat fatalities, the Secretary shall use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed equipment.

“(2)(A) Whenever the Secretary makes a determination under paragraph (1) that certain equipment is urgently needed to eliminate a combat capability deficiency that has resulted in combat fatalities, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed equipment is acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the equipment within 15 days.

“(B) Upon designation of a senior official under subparagraph (A), the Secretary shall authorize that official to waive any provision of law, policy, directive, or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid acquisition and deployment of the needed equipment. In a case in which the needed equipment cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize the combat capability deficiency and combat fatalities.

“(3) The authority of this section may not be used to acquire equipment in an amount aggregating more than \$100,000,000 during any fiscal year. For acquisitions of equipment under this section during the fiscal year in which the Secretary makes the determination described in paragraph (1) with respect to such equipment, the Secretary may use any funds available to the Department of Defense for that fiscal year.

“(4) The Secretary of Defense shall notify the congressional defense committees within 15 days after each determination made under paragraph (1). Each such notice shall identify—

“(A) the equipment to be acquired;

“(B) the amount anticipated to be expended for the acquisition; and

“(C) the source of funds for the acquisition.

“(5) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to that equipment.

Notification.
Deadline.

“(d) WAIVER OF CERTAIN STATUTES AND REGULATIONS.—(1) Upon a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation is authorized to waive any provision of law, policy, directive or regulation addressing—

“(A) the establishment of the requirement for the equipment;

“(B) the research, development, test, and evaluation of the equipment; or

“(C) the solicitation and selection of sources, and the award of the contract, for procurement of the equipment.

“(2) Nothing in this subsection authorizes the waiver of—

“(A) the requirements of this section or the regulations implementing this section; or

“(B) any provision of law imposing civil or criminal penalties.”.

SEC. 812. DEFENSE ACQUISITION WORKFORCE IMPROVEMENTS.

(a) SELECTION CRITERIA FOR ACQUISITION CORPS AND FOR CRITICAL ACQUISITION POSITIONS.—(1) Section 1732(b) of title 10, United States Code, is amended by striking paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2) Section 1733(b)(1) of title 10, United States Code, is amended in subparagraph (A) by striking “in a position within grade GS-14 or above of the General Schedule,” and inserting “in a senior position in the National Security Personnel System, as determined in accordance with guidelines prescribed by the Secretary,”.

(b) SCHOLARSHIP PROGRAM REQUIREMENTS.—Section 1742 of such title is amended—

(1) by inserting “(a) PROGRAMS.—” at the beginning of the text; and

(2) by adding at the end the following new subsection:

“(b) SCHOLARSHIP PROGRAM REQUIREMENTS.—Each recipient of a scholarship under a program conducted under subsection (a)(3) shall be required to sign a written agreement that sets forth the terms and conditions of the scholarship. The agreement shall be in a form prescribed by the Secretary and shall include terms and conditions, including terms and conditions addressing reimbursement in the event that a recipient fails to fulfill the requirements of the agreement, that are comparable to those set forth as a condition for providing advanced education assistance under section 2005. The obligation to reimburse the United States under an agreement under this subsection is, for all purposes, a debt owing the United States.”.

(c) AUTHORITY TO ESTABLISH MINIMUM REQUIREMENTS.—(1) Section 1764(b) of such title is amended—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph (5):

“(5) Deputy program manager.”.

(2) Paragraph (1) of such section is amended by striking “in paragraph (5)” and inserting “in paragraph (6)”.

SEC. 813. PERIOD FOR MULTIYEAR TASK AND DELIVERY ORDER CONTRACTS.

(a) **REVISED MAXIMUM PERIOD.**—Section 2304a(f) of title 10, United States Code, is amended by striking “a total period of not more than five years.” and inserting “any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.”

(b) **ANNUAL REPORT.**—Not later than 60 days after the end of each of fiscal years 2005 through 2009, the Secretary of Defense shall submit to Congress a report setting forth each extension of a contract period to a total of more than 10 years that was granted for task and delivery order contracts of the Department of Defense during such fiscal year under section 2304a(f) of title 10, United States Code. The report shall include, with respect to each such contract period extension—

- (1) a discussion of the exceptional circumstances on which the extension was based; and
- (2) the justification for the determination of exceptional circumstances.

SEC. 814. FUNDING FOR CONTRACT CEILINGS FOR CERTAIN MULTIYEAR PROCUREMENT CONTRACTS.

(a) **MULTIYEAR CONTRACTS RELATING TO PROPERTY.**—Section 2306b(g) of title 10, United States Code, is amended—

- (1) by inserting “(1)” before “Before any”;
- (2) by striking “Committee” through “House of Representatives” and inserting “congressional defense committees”; and
- (3) by adding at the end the following new paragraph:
“(2) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by subsection (i)(1)(A), give written notification to the congressional defense committees of—

“(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

“(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

“(C) a financial risk assessment of not including budgeting for costs of contract cancellation.”

(b) **MULTIYEAR CONTRACTS RELATING TO SERVICES.**—Section 2306c(d) of title 10, United States Code, is amended—

- (1) in paragraphs (1), (3), and (4), by striking “committees of Congress named in paragraph (5)” and inserting “congressional defense committees” each place it appears; and

- (2) by amending paragraph (5) to read as follows:

“(5) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (4), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established

in the contract, the head of the agency concerned shall give written notification to the congressional defense committees of—

“(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

“(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

“(C) a financial risk assessment of not including budgeting for costs of contract cancellation.”.

SEC. 815. INCREASED THRESHOLD FOR SENIOR PROCUREMENT EXECUTIVE APPROVAL OF USE OF PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.

Section 2304(f)(1)(B) of title 10, United States Code, is amended by striking “\$50,000,000” both places it appears and inserting “\$75,000,000”.

SEC. 816. INCREASED THRESHOLD FOR APPLICABILITY OF REQUIREMENT FOR DEFENSE CONTRACTORS TO PROVIDE INFORMATION ON SUBCONTRACTING AUTHORITY OF CONTRACTOR PERSONNEL TO COOPERATIVE AGREEMENT HOLDERS.

Section 2416(d) of title 10, United States Code, is amended by striking “\$500,000” and inserting “\$1,000,000”.

SEC. 817. EXTENSION OF AUTHORITY FOR USE OF SIMPLIFIED ACQUISITION PROCEDURES.

Section 4202(e) of the Clinger-Cohen Act (division D of Public Law 104–106; 110 Stat. 652; 10 U.S.C. 2304 note) is amended by striking “January 1, 2006” and inserting “January 1, 2008”.

SEC. 818. SUBMISSION OF COST OR PRICING DATA ON NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL ITEMS.

(a) INAPPLICABILITY OF COMMERCIAL ITEMS EXCEPTION TO NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL ITEMS.—Subsection (b) of section 2306a of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(3) NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL ITEMS.—(A) The exception in paragraph (1)(B) does not apply to cost or pricing data on noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than \$500,000 or 5 percent of the total price of the contract, whichever is greater.

“(B) In this paragraph, the term ‘noncommercial modification’, with respect to a commercial item, means a modification of such item that is not a modification described in section 4(12)(C)(i) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(C)(i)).

“(C) Nothing in subparagraph (A) shall be construed—

“(i) to limit the applicability of the exception in subparagraph (A) or (C) of paragraph (1) to cost or pricing data on a noncommercial modification of a commercial item; or

“(ii) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial item other than the cost and pricing of noncommercial modifications of such item.”.

10 USC 2306a
note.

(b) **EFFECTIVE DATE AND APPLICABILITY.**—Paragraph (3) of section 2306a of title 10, United States Code (as added by subsection (a)), shall take effect on June 1, 2005, and shall apply with respect to offers submitted, and to modifications of contracts or subcontracts made, on or after that date.

SEC. 819. DELEGATIONS OF AUTHORITY TO MAKE DETERMINATIONS RELATING TO PAYMENT OF DEFENSE CONTRACTORS FOR BUSINESS RESTRUCTURING COSTS.

Section 2325(a)(2) of title 10, United States Code, is amended—

(1) by striking “paragraph (1) to an official” and all that follows and inserting “paragraph (1), with respect to a business combination, to an official of the Department of Defense—”; and

(2) by adding at the end the following:

“(A) below the level of an Assistant Secretary of Defense for cases in which the amount of restructuring costs is expected to exceed \$25,000,000 over a 5-year period; or

“(B) below the level of the Director of the Defense Contract Management Agency for all other cases.”.

SEC. 820. AVAILABILITY OF FEDERAL SUPPLY SCHEDULE SUPPLIES AND SERVICES TO UNITED SERVICE ORGANIZATIONS, INCORPORATED.

Section 220107 of title 36, United States Code, is amended by inserting after “Department of Defense” the following: “, including access to General Services Administration supplies and services through the Federal Supply Schedule of the General Services Administration,”.

SEC. 821. ADDITION OF LANDSCAPING AND PEST CONTROL SERVICES TO LIST OF DESIGNATED INDUSTRY GROUPS PARTICIPATING IN THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) **IN GENERAL.**—Subsection (a) of section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended—

(1) in paragraph (3), by striking “and” at the end;

(2) in paragraph (4), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new paragraph: “(5) landscaping and pest control services.”.

(b) **LANDSCAPING AND PEST CONTROL SERVICES.**—Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended—

(1) by redesignating subsection (e) as subsection (f), and

(2) by inserting after subsection (d) the following new subsection:

“(e) **LANDSCAPING AND PEST CONTROL SERVICES.**—Landscaping and pest control services shall include contract awards assigned to North American Industrial Classification Code 561710 (relating to exterminating and pest control services) or 561730 (relating to landscaping services).”.

SEC. 822. INCREASED THRESHOLDS UNDER SPECIAL EMERGENCY PROCUREMENT AUTHORITY.

Section 32A(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 428a(b)) is amended—

- (1) by striking paragraph (1) and inserting the following:
“(1) the amount specified in subsections (c), (d), and (f) of section 32 shall be deemed to be—
“(A) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and
“(B) \$25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States; and”; and
(2) in paragraph (2)(B), by striking “\$500,000” and inserting “\$1,000,000”.

Subtitle C—United States Defense Industrial Base Provisions

SEC. 831. DEFENSE TRADE RECIPROCITY.

10 USC 2531
note.

(a) **POLICY.**—It is the policy of Congress that procurement regulations used in the conduct of trade in defense articles and defense services should be based on the principle of fair trade and reciprocity consistent with United States national security, including the need to ensure comprehensive manufacturing capability in the United States defense industrial base.

(b) **REQUIREMENT.**—The Secretary of Defense shall make every effort to ensure that the policies and practices of the Department of Defense reflect the goal of establishing an equitable trading relationship between the United States and its foreign defense trade partners, including ensuring that United States firms and United States employment in the defense sector are not disadvantaged by unilateral procurement practices by foreign governments, such as the imposition of offset agreements in a manner that undermines the United States defense industrial base. In pursuing this goal, the Secretary shall—

(1) develop a comprehensive defense acquisition trade policy that provides the necessary guidance and incentives for the elimination of any adverse effects of offset agreements in defense trade; and

(2) review and make necessary modifications to existing acquisition policies and strategies, and review and seek to make necessary modifications to existing memoranda of understanding, cooperative project agreements, or related agreements with foreign defense trade partners, to reflect this goal.

(c) **REGULATIONS.**—The Secretary shall prescribe regulations to implement this section in the Department of Defense supplement to the Federal Acquisition Regulation.

(d) **DEFINITIONS.**—In this section:

(1) The term “foreign defense trade partner” means a foreign country with respect to which there is—

(A) a memorandum of understanding or related agreement described in section 2531(a) of title 10, United States Code; or

(B) a cooperative project agreement described in section 27 of the Arms Export Control Act (22 U.S.C. 2767).

(2) The term “offset agreement” has the meaning provided that term by section 36(e) of the Arms Export Control Act (22 U.S.C. 2776(e)).

(3) The terms “defense article” and “defense service” have the meanings provided those terms by section 47(7) of the Arms Export Control Act (22 U.S.C. 2794(7)).

SEC. 832. ASSESSMENT AND REPORT ON THE ACQUISITION OF POLYACRYLONITRILE (PAN) CARBON FIBER FROM FOREIGN SOURCES.

(a) **REQUIREMENT.**—The Secretary of Defense shall delay the phase-out of the restriction on acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources (described in subpart 225.7103 of the Department of Defense supplement to the Federal Acquisition Regulation) until an assessment of PAN carbon fiber industry is completed and 30 days have passed after submission of the report required under subsection (c).

(b) **ASSESSMENT.**—The Secretary of Defense shall perform a assessment of the domestic and international industrial structure that produces PAN carbon fibers, current and anticipated market trends for the product, and how the trends compare to the assessment as reported by the Secretary of Defense in January 2001.

(c) **REPORT REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the assessment performed under subsection (b) and on any decision made to maintain or discontinue the phase-out of procurement restrictions on foreign acquisition of PAN carbon fibers in the Department of Defense supplement to the Federal Acquisition Regulation.

Subtitle D—Extensions of Temporary Program Authorities

SEC. 841. EXTENSION OF MENTOR-PROTEGE PROGRAM.

(a) **EXTENSION OF PROGRAM.**—Subsection (j) of section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) is amended—

(1) in paragraph (1), by striking “September 30, 2005” and inserting “September 30, 2010”; and

(2) in paragraph (2), by striking “September 30, 2008” and inserting “September 30, 2013”.

(b) **EXTENSION OF REQUIREMENT FOR ANNUAL REPORT.**—Subsection (l)(3) of such section is amended by striking “2007” and inserting “2010”.

(c) **ADDITIONAL FEASIBILITY REVIEW OF TRANSITION TO OTHER FINANCING METHODS.**—(1) The Secretary of Defense shall conduct an additional review of the Mentor-Protege Program under section 811(d)(2) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 708).

Deadline.

(2) Not later than September 30, 2005, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives—

Reports.

(A) a report on the results of the review conducted under paragraph (1); and

(B) any recommendations of the Secretary for legislative action.

(d) **ADDITIONAL STUDY OF PROGRAM IMPLEMENTATION.**—(1) The Comptroller General shall conduct an additional study of the

Mentor-Protege Program under section 811(d)(3) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 709).

(2) Not later than September 30, 2006, the Comptroller General shall submit a report on the results of the study conducted under paragraph (1) to the Committees on Armed Services of the Senate and the House of Representatives.

Deadline.
Reports.

SEC. 842. AMENDMENT TO MENTOR-PROTEGE PROGRAM.

Section 831(m)(2) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) is amended—

- (1) in subparagraph (D), by striking “or” at the end;
- (2) in subparagraph (E), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:
 - “(F) a small business concern owned and controlled by service-disabled veterans (as defined in section 8(d)(3) of the Small Business Act); and
 - “(G) a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).”.

SEC. 843. EXTENSION OF TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS.

Section 834(e) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 15 U.S.C. 637 note) is amended by striking “September 30, 2005” and inserting “September 30, 2010”.

SEC. 844. EXTENSION OF PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES.

Section 141(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 4543 note) is amended by striking “through 2004” in the first sentence and inserting “through 2009”.

Subtitle E—Other Acquisition Matters

SEC. 851. REVIEW AND DEMONSTRATION PROJECT RELATING TO CONTRACTOR EMPLOYEES.

10 USC 2304
note.

(a) GENERAL REVIEW.—(1) The Secretary of Defense shall conduct a review of policies, procedures, practices, and penalties of the Department of Defense relating to employees of defense contractors for purposes of ensuring that the Department of Defense is in compliance with Executive Order No. 12989 (relating to a prohibition on entering into contracts with contractors that are not in compliance with the Immigration and Nationality Act).

(2) In conducting the review, the Secretary shall—

- (A) identify potential weaknesses and areas for improvement in existing policies, procedures, practices, and penalties;
- (B) develop and implement reforms to strengthen, upgrade, and improve policies, procedures, practices, and penalties of the Department of Defense and its contractors; and

Deadline.

(C) review and analyze reforms developed pursuant to this paragraph to identify for purposes of national implementation those which are most efficient and effective.

(3) The review under this subsection shall be completed not later than 180 days after the date of the enactment of this Act.

(b) DEMONSTRATION PROJECT.—The Secretary of Defense shall conduct a demonstration project in accordance with this section, in one or more regions selected by the Secretary, for purposes of promoting greater contracting opportunities for contractors offering effective, reliable staffing plans to perform defense contracts that ensure all contract personnel employed for such projects, including management employees, professional employees, craft labor personnel, and administrative personnel, are lawful residents or persons properly authorized to be employed in the United States and properly qualified to perform services required under the contract. The demonstration project shall focus on contracts for construction, renovation, maintenance, and repair services for military installations.

(c) DEMONSTRATION PROJECT PROCUREMENT PROCEDURES.—As part of the demonstration project under subsection (b), the Secretary of Defense may conduct a competition in which there is a provision in contract solicitations and request for proposal documents to require significant weight or credit be allocated to—

(1) reliable, effective workforce programs offered by prospective contractors that provide background checks and other measures to ensure the contractor is in compliance with the Immigration and Nationality Act; and

(2) reliable, effective project staffing plans offered by prospective contractors that specify for all contract employees (including management employees, professionals, and craft labor personnel) the skills, training, and qualifications of such persons and the labor supply sources and hiring plans or procedures used for employing such persons.

(d) IMPLEMENTATION OF DEMONSTRATION PROJECT.—The Secretary of Defense shall begin operation of the demonstration project required under this section after completion of the review under subsection (a), but in no event later than 270 days after the date of the enactment of this Act.

(e) REPORT ON DEMONSTRATION PROJECT.—Not later than six months after award of a contract under the demonstration project, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report setting forth a review of the demonstration project and recommendations on the actions, if any, that can be implemented to ensure compliance by the Department of Defense with Executive Order No. 12989.

(f) DEFINITION.—In this section, the term “military installation” means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

SEC. 852. INAPPLICABILITY OF CERTAIN FISCAL LAWS TO SETTLEMENTS UNDER SPECIAL TEMPORARY CONTRACT CLOSE-OUT AUTHORITY.

Section 804(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1541) is amended—

(1) by inserting “(1)” after “(a) AUTHORITY.—”; and

(2) by adding at the end the following new paragraph:

“(2) Under regulations which the Secretary of Defense may prescribe, a settlement of a financial account for a contract for the procurement of property or services under paragraph (1) may be made without regard to—

“(A) section 1301 of title 31, United States Code; and

“(B) any other provision of law that would preclude the Secretary from charging payments under the contract—

“(i) to an unobligated balance in an appropriation available for funding that contract; or

“(ii) if and to the extent that the unobligated balance (if any) in such appropriation is insufficient for funding such payments, to any current appropriation that is available to the Department of Defense for funding contracts for the procurement of the same or similar property or services.”.

SEC. 853. CONTRACTING WITH EMPLOYERS OF PERSONS WITH DISABILITIES.

(a) INAPPLICABILITY OF RANDOLPH-SHEPPARD ACT TO MESS HALL SERVICES UNDER EXISTING JAVITS-WAGNER-O'DAY ACT CONTRACTS.—(1) The Randolph-Sheppard Act (20 U.S.C. 107 et seq.) does not apply to any contract described in paragraph (2) for so long as the contract is in effect, including for any period for which the contract is extended pursuant to an option provided in the contract.

(2) Paragraph (1) applies to any contract for the operation of all or any part of a military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces that—

(A) was entered into before September 30, 2005, with a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely handicapped in compliance with section 3 of the Javits-Wagner-O'Day Act (41 U.S.C. 48); and

(B) either—

(i) is in effect on such date; or

(ii) was in effect on November 24, 2003.

(b) INAPPLICABILITY OF JAVITS-WAGNER-O'DAY ACT TO MESS HALL SERVICES UNDER EXISTING RANDOLPH-SHEPPARD ACT CONTRACTS.—(1) The Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.) does not apply to any contract described in paragraph (2) for so long as the contract is in effect, including for any period for which the contract is extended pursuant to an option provided in the contract.

(2) Paragraph (1) applies to any contract for the operation of all or any part of a military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces that—

(A) was entered into before September 30, 2005, with a State licensing agency under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.); and

(B) either—

(i) is in effect on such date; or

(ii) was in effect on November 24, 2003.

(3) In this subsection, the term “State licensing agency” means an agency designated under section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)).

(c) REPEAL OF SUPERSEDED LAW.—Subsections (a) and (b) of section 852 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1556) are repealed.

10 USC 2304
note.

SEC. 854. DEFENSE PROCUREMENTS MADE THROUGH CONTRACTS OF OTHER AGENCIES.

(a) LIMITATION.—The head of an agency may not procure goods or services (under section 1535 of title 31, United States Code, pursuant to a designation under section 11302(e) of title 40, United States Code, or otherwise) through a contract entered into by an agency outside the Department of Defense for an amount greater than the simplified acquisition threshold referred to in section 2304(g) of title 10, United States Code, unless the procurement is done in accordance with procedures prescribed by that head of an agency for reviewing and approving the use of such contracts.

(b) EFFECTIVE DATE.—The limitation in subsection (a) shall apply only with respect to orders for goods or services that are issued by the head of an agency to an agency outside the Department of Defense on or after the date that is 180 days after the date of the enactment of this Act.

(c) INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.—This section does not apply to procurements of the following services:

(1) Printing, binding, or blank-book work to which section 502 of title 44, United States Code, applies.

(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 114 Stat. 2187; 2 U.S.C. 182c).

(d) ANNUAL REPORT.—(1) For each of fiscal years 2005 and 2006, each head of an agency shall submit to the Secretary of Defense a report on the service charges imposed on purchases made for an amount greater than the simplified acquisition threshold during such fiscal year through a contract entered into by an agency outside the Department of Defense.

(2) In the case of procurements made on orders issued by the head of a Defense Agency, Department of Defense Field Activity, or any other organization within the Department of Defense (other than a military department) under the authority of the Secretary of Defense as the head of an agency, the report under paragraph (1) shall be submitted by the head of that Defense Agency, Department of Defense Field Activity, or other organization, respectively.

(3) The report for a fiscal year under this subsection shall be submitted not later than December 31 of the calendar year in which such fiscal year ends.

(e) DEFINITIONS.—In this section:

(1) The term “head of an agency” means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force.

(2) The term “Defense Agency” has the meaning given such term in section 101(a)(11) of title 10, United States Code.

(3) The term “Department of Defense Field Activity” has the meaning given such term in section 101(a)(12) of such title.

SEC. 855. REQUIREMENTS RELATING TO SOURCE SELECTION FOR INTEGRATED SUPPORT OF AERIAL REFUELING AIRCRAFT FLEET FOR THE AIR FORCE.

For the selection of a provider of integrated support for the aerial refueling aircraft fleet in any acquisition of aerial refueling aircraft for the Air Force, the Secretary of the Air Force shall—

- (1) before selecting the provider, perform all analyses required by law of—
 - (A) the costs and benefits of—
 - (i) the alternative of using Federal Government personnel to provide such support; and
 - (ii) the alternative of using contractor personnel to provide such support;
 - (B) the core logistics requirements;
 - (C) use of performance-based logistics; and
 - (D) the length of contract period; and
- (2) select the provider in accordance with the procedures under the provisions of law referred to as the Competition in Contracting Act.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Duties and Functions of Department of Defense

- Sec. 901. Study of roles and authorities of the Director of Defense Research and Engineering.
- Sec. 902. Change of membership of specified council.

Subtitle B—Space Activities

- Sec. 911. Space posture review.
- Sec. 912. Panel on the future of national security space launch.
- Sec. 913. Operationally responsive national security satellites.
- Sec. 914. Nondisclosure of certain products of commercial satellite operations.

Subtitle C—Intelligence-Related Matters

- Sec. 921. Two-year extension of authority of the Secretary of Defense to engage in commercial activities as security for intelligence collection activities abroad.
- Sec. 922. Pilot program on cryptologic service training.

Subtitle D—Other Matters

- Sec. 931. Strategic plan for destruction of lethal chemical agents and munitions stockpile.
- Sec. 932. Secretary of Defense criteria for and guidance on identification and internal transmission of critical information.

Subtitle A—Duties and Functions of Department of Defense

SEC. 901. STUDY OF ROLES AND AUTHORITIES OF THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.

(a) **STUDY REQUIRED.**—The Secretary of Defense shall carry out a study of the roles and authorities of the Director of Defense Research and Engineering.

(b) **CONTENT OF STUDY.**—The study under subsection (a) shall include the following:

(1) An examination of the past and current roles and authorities of the Director of Defense Research and Engineering.

(2) An analysis to determine appropriate future roles and authorities for the Director, including an analysis of the following matters:

(A) The relationship of the Director to other senior science and technology and acquisition officials of the military departments and the Defense Agencies

(B) The relationship of the Director to the performance of the following functions:

(i) The planning, programming, and budgeting of the science and technology programs of the Department of Defense, including those of the military departments and the Defense Agencies.

(ii) The management of Department of Defense laboratories and technical centers, including the management of the Federal Government scientific and technical workforce for such laboratories and centers.

(iii) The promotion of the rapid transition of technologies to acquisition programs within the Department of Defense.

(iv) The promotion of the transfer of technologies into and from the commercial sector.

(v) The coordination of Department of Defense science and technology activities with organizations outside the Department of Defense, including other Federal Government agencies, international research organizations, industry, and academia.

(vi) The technical review of Department of Defense acquisition programs and policies.

(vii) The training and educational activities for the national scientific and technical workforce.

(viii) The development of science and technology policies and programs relating to the maintenance of the national technology and industrial base.

(ix) The development of new technologies in support of the transformation of the Armed Forces.

(3) An examination of the duties of the Director as the Chief Technology Officer of the Department of Defense as prescribed by Department of Defense Directive 5134.3, dated November 3, 2003, especially in comparison to the duties of similar positions in the Federal Government and industry.

(4) An examination of any other matter that the Secretary considers appropriate for the study.

(c) REPORT.—(1) Not later than February 1, 2006, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the results of the study under this section.

(2) The report shall include recommendations regarding the appropriate roles and authorities that should be assigned and resources that should be provided to the Director of Defense Research and Engineering.

(d) ROLE OF DEFENSE SCIENCE BOARD IN STUDY AND REPORT.—The Secretary shall act through the Defense Science Board in carrying out the study under subsection (a) and in preparing the report under subsection (c).

SEC. 902. CHANGE OF MEMBERSHIP OF SPECIFIED COUNCIL.

(a) **MEMBERSHIP OF COUNCIL UNDER SECTION 179.**—Subsection (a) of section 179 of title 10, United States Code, is amended by adding at the end the following new paragraph:

“(4) The Under Secretary of Defense for Policy.”.

(b) **CONFORMING AND CLARIFYING AMENDMENTS.**—Such subsection is further amended in the matter preceding paragraph (1)—

(1) by striking “Joint”; and

(2) by striking “composed of three members as follows:” and inserting “operated as a joint activity of the Department of Defense and the Department of Energy. The membership of the Council is comprised of the following officers of those departments:”.

(c) **OTHER TECHNICAL AND CLARIFYING AMENDMENTS.**—Such section is further amended as follows:

(1) Subsection (c)(3)(B) is amended by striking “appointed” and inserting “designated”.

(2) Subsection (e) is amended by striking “In addition” and all that follows through “also” and inserting “The Council shall”.

(3) Subsection (f) is amended by striking “Committee on” the first place it appears and all that follows through “Representatives” and inserting “congressional defense committees”.

(d) **STYLISTIC AMENDMENTS.**—Such section is further amended as follows:

(1) Subsection (a) is amended by inserting “ESTABLISHMENT; MEMBERSHIP.—” after “(a)”.

(2) Subsection (b) is amended by inserting “CHAIRMAN; MEETINGS.—” after “(b)”.

(3) Subsection (c) is amended by inserting “STAFF AND ADMINISTRATIVE SERVICES; STAFF DIRECTOR.—” after “(c)”.

(4) Subsection (d) is amended by inserting “RESPONSIBILITIES.—” after “(d)”.

(5) Subsection (e) is amended by inserting “REPORT ON DIFFICULTIES RELATING TO SAFETY OR RELIABILITY.—” after “(e)”.

(6) Subsection (f) is amended by inserting “ANNUAL REPORT.—” after “(f)”.

(e) **FURTHER CONFORMING AMENDMENTS.**—Section 3212(e) of the National Nuclear Security Administration Act (50 U.S.C. 2402(e)) is amended—

(1) by striking “JOINT” in the subsection heading; and

(2) by striking “Joint”.

Subtitle B—Space Activities**SEC. 911. SPACE POSTURE REVIEW.**

(a) **REQUIREMENT FOR COMPREHENSIVE REVIEW.**—In order to clarify the national security space policy and strategy of the United States for the near term, the Secretary of Defense shall conduct a comprehensive review of the space posture of the United States over the posture review period.

(b) **ELEMENTS OF REVIEW.**—The review conducted under subsection (a) shall include, for the posture review period, the following:

(1) The definition, policy, requirements, and objectives for each of the following:

(A) Space situational awareness.

(B) Space control.

(C) Space superiority, including defensive and offensive counterspace.

(D) Force enhancement and force application.

(E) Space-based intelligence, surveillance, and reconnaissance from space.

(F) Any other matter the Secretary considers relevant to understanding the United States space posture.

(2) Current and planned space acquisition programs that are in acquisition categories 1 and 2, including how each such program will address the policy, requirements, and objectives described under each of subparagraphs (A) through (F) of paragraph (1).

(3) Future space systems and technology development (other than those in development as of the date of the enactment of this Act) necessary to address the policy, requirements, and objectives described under each of subparagraphs (A) through (F) of paragraph (1).

(4) The relationship among—

(A) United States military space policy;

(B) national security space policy;

(C) national security space objectives; and

(D) arms control policy.

(5) Effect of United States military and national security space policy on the proliferation of weapons capable of targeting objects in space or objects on Earth from space.

(c) **REPORTS.**—(1) Not later than March 15, 2005, the Secretary of Defense shall submit to the congressional committees specified in paragraph (4) an interim report on the review conducted under subsection (a).

(2) Not later than December 31, 2005, the Secretary shall submit to those committees a final report on that review.

(3) Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

(4) The reports under this subsection shall be submitted to the Committee on Armed Services and the Select Committee on Intelligence of the Senate and the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) **JOINT UNDERTAKING WITH THE DIRECTOR OF CENTRAL INTELLIGENCE (OR SUCCESSOR).**—The Secretary of Defense shall conduct the review under this section, and shall submit the reports under subsection (c), jointly with the Director of Central Intelligence (or any successor official who has responsibility for management of the intelligence community).

(e) **POSTURE REVIEW PERIOD.**—In this section, the term “posture review period” means the 10-year period beginning on the first day of the first month beginning more than one year after the date of the enactment of this Act.

SEC. 912. PANEL ON THE FUTURE OF NATIONAL SECURITY SPACE LAUNCH.

Contracts.

(a) **IN GENERAL.**—(1) The Secretary of Defense shall enter into a contract with a federally funded research and development center to establish a panel on the future national security space launch requirements of the United States, including means of meeting those requirements.

(2) The Secretary shall enter into the contract not later than 60 days after the date of the enactment of this Act. Deadline.

(b) MEMBERSHIP AND ADMINISTRATION OF PANEL.—(1) The panel shall consist of individuals selected by the federally funded research and development center from among private citizens of the United States with knowledge and expertise in one or more of the following areas:

- (A) Space launch operations.
- (B) Space launch technologies.
- (C) Satellite and satellite payloads.
- (D) State and national launch complexes.
- (E) Space launch economics.

(2) The federally funded research and development center shall establish appropriate procedures for the administration of the panel, including designation of the chairman of the panel from among its members.

(3) All panel members shall hold security clearances appropriate for the work of the panel.

(4) The panel shall convene its first meeting not later than 30 days after the date on which all members of the panel have been selected.

(c) DUTIES.—(1) The panel shall conduct a review and assessment of the future national security space launch requirements of the United States, including the means of meeting those requirements.

(2) The review and assessment shall take into account the following matters:

- (A) Launch economics.
- (B) Operational concepts and architectures.
- (C) Launch technologies, including—
 - (i) reusable launch vehicles;
 - (ii) expendable launch vehicles;
 - (iii) low cost options; and
 - (iv) revolutionary approaches.
- (D) Payloads, including the implications of payloads for launch requirements.
- (E) Launch infrastructure.
- (F) Launch industrial base.
- (G) Relationships among military, civilian, and commercial launch requirements.

(3) The review and assessment shall address national security space launch requirements over each of the 5-year, 10-year, and 15-year periods beginning with 2005.

(d) INFORMATION FROM FEDERAL AND STATE AGENCIES.—(1) The panel may secure directly from the Department of Defense, from any other department or agency of the Federal Government, and any State government any information that the panel considers necessary to carry out its duties.

(2) The Secretary of Defense shall designate at least one senior civilian employee of the Department of Defense and at least one general or flag officer of an Armed Force to serve as liaison between the Department, the Armed Forces, and the panel.

(e) REPORT.—Not later than one year after the date of the first meeting of the panel under subsection (b)(4), the panel shall submit to the Secretary of Defense, the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House

of Representatives a report on the results of the review and assessment under subsection (c). The report shall include—

(1) the findings and conclusions of the panel on the future national security space launch requirements of the United States, including means of meeting such requirements;

(2) the assessment of panel, and any recommendations of the panel, on—

(A) launch operational concepts and architectures;

(B) launch technologies;

(C) launch enabling technologies; and

(D) priorities for funding; and

(3) the assessment of the panel as to the best means of meeting the future national security space launch requirements of the United States.

(f) TERMINATION.—The panel shall terminate 16 months after the date of the first meeting of the panel under subsection (b)(4).

(g) FUNDING.—Amounts authorized to be appropriated to the Department of Defense shall be available to the Secretary of Defense for purposes of the contract required by subsection (a).

SEC. 913. OPERATIONALLY RESPONSIVE NATIONAL SECURITY SATELLITES.

(a) PLANNING, PROGRAMMING, AND MANAGEMENT.—(1) Chapter 135 of title 10, United States Code, is amended by inserting after section 2273 the following new section:

“§ 2273a. Operationally responsive national security payloads and buses: separate program element required

“(a) REQUIREMENT FOR PROGRAM ELEMENT.—The Secretary of Defense shall ensure that, within budget program elements for space programs of the Department of Defense, there is a separate, dedicated program element for operationally responsive national security payloads and buses of the Department of Defense for space satellites and that programs and activities for such payloads and buses are planned, programmed, and budgeted for through that program element.

“(b) MANAGEMENT AUTHORITY.—The Secretary of Defense shall assign management authority for the program element required under subsection (a) to the Director of the Office of Force Transformation of the Department of Defense.

“(c) DEFINITION OF OPERATIONALLY RESPONSIVE.—In this section, the term ‘operationally responsive’, with respect to a national security payload and bus for a space satellite, means an experimental or operational payload and bus with a weight not in excess of 5,000 pounds that—

“(1) can be developed and acquired within 18 months after authority to proceed with development is granted; and

“(2) is responsive to requirements for capabilities at the operational and tactical levels of warfare.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2273 the following new item:

“2273a. Operationally responsive national security payloads and buses: separate program element required.”.

(b) TIME FOR IMPLEMENTATION.—Subsection (a) of section 2273a of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 2005.

10 USC 2273a
note.

SEC. 914. NONDISCLOSURE OF CERTAIN PRODUCTS OF COMMERCIAL SATELLITE OPERATIONS. 5 USC 552 note.

(a) **MANDATORY DISCLOSURE REQUIREMENTS INAPPLICABLE.**—The requirements to make information available under section 552 of title 5, United States Code, shall not apply to land remote sensing information.

(b) **LAND REMOTE SENSING INFORMATION DEFINED.**—In this section, the term “land remote sensing information”—

(1) means any data that—

(A) are collected by land remote sensing; and

(B) are prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license issued pursuant to the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 et seq.); and

(2) includes any imagery and other product that is derived from such data and which is prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license described in paragraph (1)(B).

(c) **STATE OR LOCAL GOVERNMENT DISCLOSURES.**—Land remote sensing information provided by the head of a department or agency of the United States to a State, local, or tribal government may not be made available to the general public under any State, local, or tribal law relating to the disclosure of information or records.

(d) **SAFEGUARDING INFORMATION.**—The head of each department or agency of the United States having land remote sensing information within that department or agency or providing such information to a State, local, or tribal government shall take such actions, commensurate with the sensitivity of that information, as are necessary to protect that information from disclosure other than in accordance with this section and other applicable law.

(e) **ADDITIONAL DEFINITION.**—In this section, the term “land remote sensing” has the meaning given such term in section 3 of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5602).

(f) **DISCLOSURE TO CONGRESS.**—Nothing in this section shall be construed to authorize the withholding of information from the appropriate committees of Congress.

Subtitle C—Intelligence-Related Matters

SEC. 921. TWO-YEAR EXTENSION OF AUTHORITY OF THE SECRETARY OF DEFENSE TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES ABROAD.

Section 431(a) of title 10, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2006”.

SEC. 922. PILOT PROGRAM ON CRYPTOLOGIC SERVICE TRAINING.

50 USC 402 note.

(a) **PROGRAM AUTHORIZED.**—The Director of the National Security Agency may carry out a pilot program on cryptologic service training for the intelligence community.

(b) **OBJECTIVE OF PROGRAM.**—The objective of the pilot program is to increase the number of qualified entry-level language analysts

and intelligence analysts available to the National Security Agency and the other elements of the intelligence community through the directed preparation and recruitment of qualified entry-level language analysts and intelligence analysts who commit to a period of service or a career in the intelligence community.

(c) PROGRAM SCOPE.—The pilot program shall be national in scope.

(d) PROGRAM PARTICIPANTS.—(1) Subject to the provisions of this subsection, the Director shall select the participants in the pilot program from among individuals qualified to participate in the pilot program utilizing such procedures as the Director considers appropriate for purposes of the pilot program.

(2) Each individual who receives financial assistance under the pilot program shall perform one year of obligated service with the National Security Agency, or another element of the intelligence community approved by the Director, for each academic year for which such individual receives such financial assistance upon such individual's completion of post-secondary education.

(3) Each individual selected to participate in the pilot program shall be qualified for a security clearance appropriate for the individual under the pilot program.

(4) The total number of participants in the pilot program at any one time may not exceed 400 individuals.

(e) PROGRAM MANAGEMENT.—In carrying out the pilot program, the Director shall—

(1) identify individuals interested in working in the intelligence community, and committed to taking college-level courses that will better prepare them for a career in the intelligence community as a language analyst or intelligence analyst;

(2) provide each individual selected for participation in the pilot program—

(A) financial assistance for the pursuit of courses at institutions of higher education selected by the Director in fields of study that will qualify such individual for employment by an element of the intelligence community as a language analyst or intelligence analyst; and

(B) educational counseling on the selection of courses to be so pursued; and

(3) provide each individual so selected information on the opportunities available for employment in the intelligence community.

(f) DURATION OF PROGRAM.—(1) The Director shall terminate the pilot program not later than six years after the date of the enactment of this Act.

(2) The termination of the pilot program under paragraph (1) shall not prevent the Director from continuing to provide assistance, counseling, and information under subsection (e) to individuals who are participating in the pilot program on the date of termination of the pilot program throughout the academic year in progress as of that date.

Subtitle D—Other Matters**SEC. 931. STRATEGIC PLAN FOR DESTRUCTION OF LETHAL CHEMICAL AGENTS AND MUNITIONS STOCKPILE.**

Subsection (d) of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), is amended to read as follows:

“(d) **REQUIREMENT FOR STRATEGIC PLAN.**—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of the Army shall jointly prepare, and from time to time shall update as appropriate, a strategic plan for future activities for destruction of the United States’ stockpile of lethal chemical agents and munitions.

“(2) The plan shall include, at a minimum, the following considerations:

“(A) Realistic budgeting for stockpile destruction and related support programs.

“(B) Contingency planning for foreseeable or anticipated problems.

“(C) A management approach and associated actions that address compliance with the obligations of the United States under the Chemical Weapons Convention treaty and that take full advantage of opportunities to accelerate destruction of the stockpile.

“(3) The Secretary of Defense shall each year submit to the Committee on the Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the strategic plan as most recently prepared and updated under paragraph (1). Such submission shall be made each year at the time of the submission to the Congress that year of the President’s budget for the next fiscal year.”.

SEC. 932. SECRETARY OF DEFENSE CRITERIA FOR AND GUIDANCE ON IDENTIFICATION AND INTERNAL TRANSMISSION OF CRITICAL INFORMATION.

10 USC 113 note.

(a) **CRITERIA FOR CRITICAL INFORMATION.**—(1) The Secretary of Defense shall establish criteria for determining categories of critical information that should be made known expeditiously to senior civilian and military officials in the Department of Defense. Those categories should be limited to matters of extraordinary significance and strategic impact to which rapid access by those officials is essential to the successful accomplishment of the national security strategy or a major military mission. The Secretary may from time to time modify the list to suit the current strategic situation.

(2) The Secretary shall provide the criteria established under paragraph (1) to the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, the commanders of the unified and specified commands, the commanders of deployed forces, and such other elements of the Department of Defense as the Secretary considers necessary.

(b) **MATTERS TO BE INCLUDED.**—The criteria established under subsection (a) shall include, at a minimum, requirement for identification of the following:

(1) Any incident that may result in a contingency operation, based on the incident’s nature, gravity, or potential for significant adverse consequences to United States citizens, military

personnel, interests, or assets, including an incident that could result in significant adverse publicity having a major strategic impact.

(2) Any event, development, or situation that could be reasonably assumed to escalate into an incident described in paragraph (1).

(3) Any deficiency or error in policy, standards, or training that could be reasonably assumed to have the effects described in paragraph (1).

(c) **REQUIREMENTS FOR TRANSMISSION OF CRITICAL INFORMATION.**—The criteria under subsection (a) shall include such requirements for transmission of such critical information to such senior civilian and military officials of the Department of Defense as the Secretary of Defense considers appropriate.

(d) **TIME FOR ISSUANCE OF CRITERIA.**—The Secretary of Defense shall establish the criteria required by subsection (a) not later than 120 days after the date of the enactment of this Act.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

- Sec. 1001. Transfer authority.
- Sec. 1002. United States contribution to NATO common-funded budgets in fiscal year 2005.
- Sec. 1003. Budget justification documents for operation and maintenance.
- Sec. 1004. Licensing of intellectual property.
- Sec. 1005. Repeal of funding restrictions concerning development of medical countermeasures against biological warfare threats.
- Sec. 1006. Report on budgeting for exchange rates for foreign currency fluctuations.
- Sec. 1007. Fiscal year 2004 transfer authority.
- Sec. 1008. Clarification of fiscal year 2004 funding level for a National Institute of Standards and Technology account.
- Sec. 1009. Notification of fund transfers from working-capital funds.
- Sec. 1010. Charges for Defense Logistics Information Services materials.

Subtitle B—Naval Vessels and Shipyards

- Sec. 1011. Authority for award of contracts for ship dismantling on net-cost basis.
- Sec. 1012. Use of proceeds from exchange and sale of obsolete navy service craft and boats.
- Sec. 1013. Transfer of naval vessels to certain foreign recipients.
- Sec. 1014. Independent study to assess cost effectiveness of the Navy ship construction program.
- Sec. 1015. Limitation on disposal of obsolete naval vessel.

Subtitle C—Counterdrug Matters

- Sec. 1021. Use of funds for unified counterdrug and counterterrorism campaign in Colombia.
- Sec. 1022. Sense of Congress and report regarding counter-drug efforts in Afghanistan.

Subtitle D—Matters Relating to Museums and Commemorations

- Sec. 1031. Recognition of the Liberty Memorial Museum, Kansas City, Missouri, as America's National World War I Museum.
- Sec. 1032. Program to commemorate 60th anniversary of World War II.
- Sec. 1033. Annual report on Department of Defense operation and financial support for military museums.

Subtitle E—Reports

- Sec. 1041. Quarterly detailed accounting for operations conducted as part of the Global War on Terrorism.
- Sec. 1042. Report on post-major combat operations phase of Operation Iraqi Freedom.
- Sec. 1043. Report on training provided to members of the Armed Forces to prepare for post-conflict operations.

- Sec. 1044. Report on establishing National Centers of Excellence for unmanned aerial and ground vehicles.
- Sec. 1045. Study of continued requirement for two-crew manning for ballistic missile submarines.
- Sec. 1046. Report on Department of Defense programs for prepositioning of materiel and equipment.
- Sec. 1047. Report on al Qaeda and associated groups in Latin America and the Caribbean.

Subtitle F—Defense Against Terrorism and Other Domestic Security Matters

- Sec. 1051. Acceptance of communications equipment provided by local public safety agencies.
- Sec. 1052. Determination and report on full-time airlift support for homeland defense operations.
- Sec. 1053. Survivability of critical systems exposed to chemical or biological contamination.

Subtitle G—Personnel Security Matters

- Sec. 1061. Use of National Driver Register for personnel security investigations and determinations.
- Sec. 1062. Standards for disqualification from eligibility for Department of Defense security clearance.

Subtitle H—Transportation-Related Matters

- Sec. 1071. Use of military aircraft to transport mail to and from overseas locations.
- Sec. 1072. Reorganization and clarification of certain provisions relating to control and supervision of transportation within the Department of Defense.
- Sec. 1073. Evaluation of procurement practices relating to transportation of security-sensitive cargo.

Subtitle I—Other Matters

- Sec. 1081. Liability protection for Department of Defense volunteers working in maritime environment.
- Sec. 1082. Sense of Congress concerning media coverage of the return to the United States of the remains of deceased members of the Armed Forces from overseas.
- Sec. 1083. Transfer of historic F3A–1 Brewster Corsair aircraft.
- Sec. 1084. Technical and clerical amendments.
- Sec. 1085. Preservation of search and rescue capabilities of the Federal Government.
- Sec. 1086. Acquisition of aerial firefighting equipment for National Interagency Fire Center.
- Sec. 1087. Revision to requirements for recognition of institutions of higher education as Hispanic-serving institutions for purposes of certain grants and contracts.
- Sec. 1088. Military extraterritorial jurisdiction over contractors supporting defense missions overseas.
- Sec. 1089. Definition of United States for purposes of Federal crime of torture.
- Sec. 1090. Energy savings performance contracts.
- Sec. 1091. Sense of Congress and policy concerning persons detained by the United States.
- Sec. 1092. Actions to prevent the abuse of detainees.
- Sec. 1093. Reporting requirements.
- Sec. 1094. Findings and sense of Congress concerning Army Specialist Joseph Darby.

Subtitle A—Financial Matters

SEC. 1001. TRANSFER AUTHORITY.

(a) **AUTHORITY TO TRANSFER AUTHORIZATIONS.**—(1) Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division for fiscal year 2005 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed \$3,500,000,000.

(b) LIMITATIONS.—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(2) may not be used to provide authority for an item that has been denied authorization by Congress.

(c) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) NOTICE TO CONGRESS.—The Secretary shall promptly notify Congress of each transfer made under subsection (a).

SEC. 1002. UNITED STATES CONTRIBUTION TO NATO COMMON-FUNDED BUDGETS IN FISCAL YEAR 2005.

(a) FISCAL YEAR 2005 LIMITATION.—The total amount contributed by the Secretary of Defense in fiscal year 2005 for the common-funded budgets of NATO may be any amount up to, but not in excess of, the amount specified in subsection (b) (rather than the maximum amount that would otherwise be applicable to those contributions under the fiscal year 1998 baseline limitation).

(b) TOTAL AMOUNT.—The amount of the limitation applicable under subsection (a) is the sum of the following:

(1) The amounts of unexpended balances, as of the end of fiscal year 2004, of funds appropriated for fiscal years before fiscal year 2005 for payments for those budgets.

(2) The amount specified in subsection (c)(1).

(3) The amount specified in subsection (c)(2).

(4) The total amount of the contributions authorized to be made under section 2501.

(c) AUTHORIZED AMOUNTS.—Amounts authorized to be appropriated by titles II and III of this Act are available for contributions for the common-funded budgets of NATO as follows:

(1) Of the amount provided in section 201(1), \$756,000 for the Civil Budget.

(2) Of the amount provided in section 301(1), \$222,492,000 for the Military Budget.

(d) DEFINITIONS.—For purposes of this section:

(1) COMMON-FUNDED BUDGETS OF NATO.—The term “common-funded budgets of NATO” means the Military Budget, the Security Investment Program, and the Civil Budget of the North Atlantic Treaty Organization (and any successor or additional account or program of NATO).

(2) FISCAL YEAR 1998 BASELINE LIMITATION.—The term “fiscal year 1998 baseline limitation” means the maximum annual amount of Department of Defense contributions for common-funded budgets of NATO that is set forth as the annual limitation in section 3(2)(C)(ii) of the resolution of the Senate giving the advice and consent of the Senate to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic (as

defined in section 4(7) of that resolution), approved by the Senate on April 30, 1998.

SEC. 1003. BUDGET JUSTIFICATION DOCUMENTS FOR OPERATION AND MAINTENANCE.

(a) **IN GENERAL.**—(1) Chapter 9 of title 10, United States Code, is amended by adding after section 232, as added by section 214(a), the following new section:

“§ 233. Operation and maintenance budget presentation

“(a) **IDENTIFICATION OF BASELINE AMOUNTS IN O&M JUSTIFICATION DOCUMENTS.**—In any case in which the amount requested in the President’s budget for a fiscal year for a Department of Defense operation and maintenance program, project, or activity is different from the amount appropriated for that program, project, or activity for the current year, the O&M justification documents supporting that budget shall identify that appropriated amount and the difference between that amount and the amount requested in the budget, stated as an amount and as a percentage.

“(b) **NAVY FOR SHIP DEPOT MAINTENANCE AND FOR INTERMEDIATE SHIP MAINTENANCE.**—In the O&M justification documents for the Navy for any fiscal year, amounts requested for ship depot maintenance and amounts requested for intermediate ship maintenance shall be identified and distinguished.

“(c) **DEFINITIONS.**—In this section:

“(1) The term ‘O&M justification documents’ means Department of Defense budget justification documents with respect to accounts for operation and maintenance submitted to the congressional defense committees in support of the Department of Defense component of the President’s budget for any fiscal year.

“(2) The term ‘President’s budget’ means the budget of the President submitted to Congress under section 1105 of title 31 for any fiscal year.

“(3) The term ‘current year’ means the fiscal year during which the President’s budget is submitted in any year.”.

(2) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 232, as added by section 214(b), the following new item:

“233. Operation and maintenance budget presentation.”.

(b) **COMPONENTS OF LINE ITEMS FOR OTHER COSTS AND OTHER CONTRACTS.**—Not later than March 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report setting forth the component elements of the line items identified as “Other Costs” and “Other Contracts” in the exhibit identified as “Summary of Price and Program Changes” in the budget justification materials submitted to those committees in support of the budget for fiscal year 2006.

Deadline.
Reports.

SEC. 1004. LICENSING OF INTELLECTUAL PROPERTY.

(a) **AUTHORITY.**—Subchapter II of chapter 134 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2260. Licensing of intellectual property: retention of fees

“(a) **AUTHORITY.**—Under regulations prescribed by the Secretary of Defense, the Secretary concerned may license trademarks, service

Regulations.

marks, certification marks, and collective marks owned or controlled by the Secretary concerned and may retain and expend fees received from such licensing in accordance with this section.

“(b) DESIGNATED MARKS.—The Secretary concerned shall designate the trademarks, service marks, certification marks, and collective marks regarding which the Secretary will exercise the authority to retain licensing fees under this section.

“(c) USE OF FEES.—The Secretary concerned shall use fees retained under this section for the following purposes:

“(1) For payment of the following costs incurred by the Secretary:

“(A) Costs of securing trademark registrations.

“(B) Costs of operating the licensing program under this section.

“(2) For morale, welfare, and recreation activities under the jurisdiction of the Secretary, to the extent (if any) that the total amount of the licensing fees available under this section for a fiscal year exceed the total amount needed for such fiscal year under paragraph (1).

“(d) AVAILABILITY.—Fees received in a fiscal year and retained under this section shall be available for obligation in such fiscal year and the following two fiscal years.

“(e) DEFINITIONS.—In this section, the terms ‘trademark’, ‘service mark’, ‘certification mark’, and ‘collective mark’ have the meanings given such terms in section 45 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946; 15 U.S.C. 1127).”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“2260. Licensing of intellectual property: retention of fees.”.

SEC. 1005. REPEAL OF FUNDING RESTRICTIONS CONCERNING DEVELOPMENT OF MEDICAL COUNTERMEASURES AGAINST BIOLOGICAL WARFARE THREATS.

(a) REPEAL.—Section 2370a of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking the item relating to that section.

SEC. 1006. REPORT ON BUDGETING FOR EXCHANGE RATES FOR FOREIGN CURRENCY FLUCTUATIONS.

(a) SECRETARY OF DEFENSE REPORT.—(1) Not later than December 1, 2004, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the foreign currency exchange rate projection used in annual Department of Defense budget presentations.

(2) In the report under paragraph (1), the Secretary shall—

(A) identify alternative approaches for selecting foreign currency exchange rates that would produce more realistic estimates of amounts required to be appropriated or otherwise made available for the Department of Defense to accommodate foreign currency exchange rate fluctuations;

(B) discuss the advantages and disadvantages of each approach identified pursuant to subparagraph (A); and

(C) identify the Secretary's preferred approach among the alternatives identified pursuant to subparagraph (A) and provide the Secretary's rationale for preferring that approach.

(3) In identifying alternative approaches pursuant to paragraph (2)(A), the Secretary shall examine—

(A) approaches used by other Federal departments and agencies; and

(B) the feasibility of using private economic forecasting.

(b) COMPTROLLER GENERAL REVIEW AND REPORT.—The Comptroller General shall review the report under subsection (a), including the basis for the Secretary's conclusions stated in the report, and shall submit, not later than January 15, 2005, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of that review.

SEC. 1007. FISCAL YEAR 2004 TRANSFER AUTHORITY.

Section 1001(a)(2) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1582) is amended by striking “\$2,500,000,000” and inserting “\$2,800,000,000”.

SEC. 1008. CLARIFICATION OF FISCAL YEAR 2004 FUNDING LEVEL FOR A NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACCOUNT.

For the purposes of applying sections 204 and 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (division B of Public Law 108–199) to matters in title II of such Act under the heading “NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY” (118 Stat. 69), in the account under the heading “INDUSTRIAL TECHNOLOGY SERVICES”, the Secretary of Commerce shall make all determinations based on the Industrial Technology Services funding level of \$218,782,000 for reprogramming and transferring of funds for the Manufacturing Extension Partnership program and may submit such a reprogramming or transfer, as the case may be, to the appropriate committees within 30 days after the date of the enactment of this Act.

SEC. 1009. NOTIFICATION OF FUND TRANSFERS FROM WORKING-CAPITAL FUNDS.

Section 2208 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(r) NOTIFICATION OF TRANSFERS.—(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

“(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.”.

SEC. 1010. CHARGES FOR DEFENSE LOGISTICS INFORMATION SERVICES MATERIALS.

(a) **AUTHORITY.**—Subchapter I of chapter 8 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 197. Defense Logistics Agency: fees charged for logistics information

“(a) **AUTHORITY.**—The Secretary of Defense may charge fees for providing information in the Federal Logistics Information System through Defense Logistics Information Services to a department or agency of the executive branch outside the Department of Defense, or to a State, a political subdivision of a State, or any person.

“(b) **AMOUNT.**—The fee or fees prescribed under subsection (a) shall be such amount or amounts as the Secretary of Defense determines appropriate for recovering the costs of providing information as described in such subsection.

“(c) **RETENTION OF FEES.**—Fees collected under this section shall be credited to the appropriation available for Defense Logistics Information Services for the fiscal year in which collected, shall be merged with other sums in such appropriation, and shall be available for the same purposes and period as the appropriation with which merged.

“(d) **DEFENSE LOGISTICS INFORMATION SERVICES DEFINED.**—In this section, the term ‘Defense Logistics Information Services’ means the organization within the Defense Logistics Agency that is known as Defense Logistics Information Services.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

“197. Defense Logistics Agency: fees charged for logistics information.”.

Subtitle B—Naval Vessels and Shipyards**SEC. 1011. AUTHORITY FOR AWARD OF CONTRACTS FOR SHIP DISMANTLING ON NET-COST BASIS.**

(a) **IN GENERAL.**—Chapter 633 of title 10, United States Code, is amended by inserting after section 7305 the following new section:

“§ 7305a. Vessels stricken from Naval Vessel Register: contracts for dismantling on net-cost basis

“(a) **AUTHORITY FOR NET-COST BASIS CONTRACTS.**—When the Secretary of the Navy awards a contract for the dismantling of a vessel stricken from the Naval Vessel Register, the Secretary may award the contract on a net-cost basis.

“(b) **RETENTION BY CONTRACTOR OF PROCEEDS OF SALE OF SCRAP AND REUSABLE ITEMS.**—When the Secretary awards a contract on a net-cost basis under subsection (a), the Secretary shall provide in the contract that the contractor may retain the proceeds from the sale of scrap and reusable items removed from the vessel dismantled under the contract.

“(c) **DEFINITIONS.**—In this section:

“(1) The term ‘net-cost basis’, with respect to a contract for the dismantling of a vessel, means that the amount to be paid to the contractor under the contract for dismantling

and for removal and disposal of hazardous waste material is discounted by the offeror's estimate of the value of scrap and reusable items that the contractor will remove from the vessel during performance of the contract.

“(2) The term ‘scrap’ means personal property that has no value except for its basic material content.

“(3) The term ‘reusable item’ means a demilitarized component or a removable portion of a vessel or equipment that the Secretary of the Navy has identified as excess to the needs of the Navy but which has potential resale value on the open market.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7305 the following new item:

“7305a. Vessels stricken from Naval Vessel Register: contracts for dismantling on net-cost basis.”.

SEC. 1012. USE OF PROCEEDS FROM EXCHANGE AND SALE OF OBSOLETE NAVY SERVICE CRAFT AND BOATS.

(a) COSTS OF PREPARATION FOR DISPOSAL.—(1) Chapter 633 of title 10, United States Code, is amended by inserting after section 7311 the following new section:

“§ 7312. Service craft stricken from Naval Vessel Register; obsolete boats: use of proceeds from exchange or sale

“(a) EXCHANGE OR SALE OF SIMILAR ITEMS.—When the Secretary of the Navy sells an obsolete service craft or an obsolete boat, or exchanges such a craft or boat in a transaction for which a similar craft or boat is acquired, the Secretary may retain the proceeds of the sale or the exchange allowance from the exchange, as the case may be, and apply the proceeds of sale or the exchange allowance for any of the following purposes:

“(1) For payment, in whole or in part, for a similar service craft or boat acquired as a replacement, as authorized by section 503 of title 40.

“(2) For reimbursement, to the extent practicable, of the appropriate accounts of the Navy for the full costs of preparation of such obsolete craft or boat for such sale or exchange.

“(3) For deposit to the special account established under subsection (b), to be available in accordance with that subsection.

“(b) SPECIAL ACCOUNT.—Amounts retained under subsection (a) that are not applied as provided in paragraph (1) or (2) of that subsection shall be deposited into a special account. Amounts in the account shall be available under subsection (c) without regard to fiscal year limitation. Amounts in the account that the Secretary of the Navy determines are not needed for the purpose stated in subsection (c) shall be transferred at least annually to the General Fund of the Treasury.

“(c) COSTS OF PREPARATION OF OBSOLETE SERVICE CRAFT AND BOATS FOR FUTURE SALE OR EXCHANGE.—The Secretary may use amounts in the account under subsection (b) for payment, in whole or in part, for the full costs of preparation of obsolete service craft and obsolete boats for future sale or exchange.

“(d) COSTS OF PREPARATION FOR SALE OR EXCHANGE.—In this section, the term ‘full costs of preparation’ means the full costs

(direct and indirect) incurred by the Navy in preparing an obsolete service craft or an obsolete boat for exchange or sale, including the cost of the following:

“(1) Towing.

“(2) Storage.

“(3) Defueling.

“(4) Removal and disposal of hazardous wastes.

“(5) Environmental surveys to determine the presence of regulated materials containing polychlorinated biphenyl (PCB) and, if such materials are found, the removal and disposal of such materials.

“(6) Other costs related to such preparation.

“(e) OBSOLETE SERVICE CRAFT.—For purposes of this section, an obsolete service craft is a service craft that has been stricken from the Naval Vessel Register.

“(f) INAPPLICABILITY OF ADVERTISING REQUIREMENT.—Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply to sales of service craft and boats described in subsection (a).

“(g) REGULATIONS.—The Secretary of the Navy shall prescribe regulations for the purposes of this section.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7311 the following new item:

“7312. Service craft stricken from Naval Vessel Register; obsolete boats: use of proceeds from exchange or sale.”.

10 USC 7312
note.

(b) APPLICABILITY.—Section 7312 of title 10, United States Code, as added by subsection (a), shall apply with respect to amounts received on or after the date of the enactment of this Act and to amounts received before the date of the enactment of this Act and not obligated as of that date.

SEC. 1013. TRANSFER OF NAVAL VESSELS TO CERTAIN FOREIGN RECIPIENTS.

President.

(a) TRANSFERS BY GRANT.—The President is authorized to transfer vessels to foreign recipients on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), as follows:

(1) CHILE.—To the Government of Chile, the SPRUANCE class destroyer USS O'BANNON (DD-987).

(2) PORTUGAL.—To the Government of Portugal, the OLIVER HAZARD PERRY class guided missile frigates GEORGE PHILIP (FFG-12) and SIDES (FFG-14).

(b) TRANSFERS BY SALE.—The President is authorized to transfer vessels to foreign recipients on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761), as follows:

(1) CHILE.—To the Government of Chile, the SPRUANCE class destroyer FLETCHER (DD-992).

(2) TAIWAN.—To the Taipei Economic and Cultural Representative Office of the United States (which is the Taiwan instrumentality designated pursuant to section 10(a) of the Taiwan Relations Act (22 U.S.C. 3309(a))), the ANCHORAGE class dock landing ship ANCHORAGE (LSD-36).

(c) GRANTS NOT COUNTED IN ANNUAL TOTAL OF TRANSFERRED EXCESS DEFENSE ARTICLES.—The value of a vessel transferred to another country on a grant basis pursuant to authority provided by subsection (a) shall not be counted against the aggregate value of excess defense articles transferred to countries in any fiscal

year under section 516(g) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(g)).

(d) **COSTS OF TRANSFERS.**—Any expense incurred by the United States in connection with a transfer authorized under subsection (a) or (b) shall be charged to the recipient.

(e) **REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.**—To the maximum extent practicable, the President shall require, as a condition of the transfer of a vessel under this section, that the country to which the vessel is transferred have such repair or refurbishment of the vessel as is needed, before the vessel joins the naval forces of that country, performed at a shipyard located in the United States, including a United States Navy shipyard.

President.

(f) **EXPIRATION OF AUTHORITY.**—The authority to transfer a vessel under this section shall expire at the end of the two-year period beginning on the date of the enactment of this Act.

SEC. 1014. INDEPENDENT STUDY TO ASSESS COST EFFECTIVENESS OF THE NAVY SHIP CONSTRUCTION PROGRAM.

(a) **STUDY.**—The Secretary of Defense shall provide for a study of the cost effectiveness of the ship construction program of the Navy. The study shall be conducted by a group of industrial experts independent of the Department of Defense. The study shall examine both—

(1) a variety of approaches by which the Navy ship construction program could be made more efficient in the near term; and

(2) a variety of approaches by which, with a nationally integrated effort over the next decade, the United States shipbuilding industry might enhance its health and viability.

(b) **NEAR-TERM IMPROVEMENTS IN EFFICIENCY.**—With respect to the examination under subsection (a)(1) of approaches by which the Navy ship construction program could be made more efficient in the near term, the Secretary shall provide for the persons conducting the study to—

(1) determine the potential cost savings on an annual basis, with an estimate of return on investment, from implementation of each approach examined; and

(2) establish priorities for potential implementation of the approaches examined.

(c) **UNITED STATES SHIPBUILDING INFRASTRUCTURE MODERNIZATION PLAN.**—With respect to the examination under subsection (a)(2) of approaches by which the United States shipbuilding industry might enhance its health and viability through a nationally integrated effort over the next decade, the Secretary shall provide for the persons conducting the study to—

(1) propose a plan incorporating a variety of approaches that would modernize the United States shipbuilding infrastructure within the next decade, resulting in a healthier and more viable shipbuilding industrial base;

(2) establish priorities for potential implementation of the approaches examined; and

(3) estimate the resources required to implement each of the approaches examined.

(d) **REPORT.**—Not later than October 1, 2005, the Secretary of Defense shall submit a report to the congressional defense committees providing the results of the study under subsection

- (a). The report shall include the matters specified in subsections (b) and (c).

SEC. 1015. LIMITATION ON DISPOSAL OF OBSOLETE NAVAL VESSEL.

The Secretary of the Navy may not dispose of the decommissioned destroyer ex-Edson (DD–946) before October 1, 2007, to an entity that is not a nonprofit organization unless the Secretary first determines that there is no nonprofit organization that meets the criteria for donation of that vessel under section 7306(a)(3) of title 10, United States Code.

Subtitle C—Counterdrug Matters

SEC. 1021. USE OF FUNDS FOR UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.

(a) **AUTHORITY.**—(1) In fiscal years 2005 and 2006, funds available to the Department of Defense to provide assistance to the Government of Colombia may be used by the Secretary of Defense to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations, such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC).

(2) The authority to provide assistance for a campaign under this subsection includes authority to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations.

(b) **APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.**—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8076 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 988).

(c) **NUMERICAL LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL.**—Notwithstanding section 3204(b) of the Emergency Supplemental Act, 2000 (Division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2131), the number of United States personnel assigned to conduct activities in Colombia in connection with support of Plan Colombia under subsection (a) in fiscal years 2005 and 2006 shall be subject to the following limitations:

(1) The number of United States military personnel assigned for temporary or permanent duty in Colombia in connection with support of Plan Colombia may not exceed 800.

(2) The number of United States individual citizens retained as contractors in Colombia in connection with support of Plan Colombia who are funded by Federal funds may not exceed 600.

(d) **LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.**—No United States Armed Forces personnel, United States civilian employees, or United States civilian contractor personnel employed by the United States may participate in any combat operation in connection with assistance using funds pursuant to

the authority in subsection (a), except for the purpose of acting in self defense or of rescuing any United States citizen, including any United States Armed Forces personnel, United States civilian employee, or civilian contractor employed by the United States.

(e) **RELATION TO OTHER AUTHORITY.**—The authority provided by subsection (a) is in addition to any other authority in law to provide assistance to the Government of Colombia.

(f) **REPORT ON RELATIONSHIPS BETWEEN TERRORIST ORGANIZATIONS IN COLOMBIA AND FOREIGN GOVERNMENTS AND ORGANIZATIONS.**—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that describes—

(A) any relationships between foreign governments or organizations and organizations based in Colombia that have been designated as foreign terrorist organizations under United States law, including the provision of any direct or indirect assistance to such organizations; and

(B) United States policies that are designed to address such relationships.

(2) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

SEC. 1022. SENSE OF CONGRESS AND REPORT REGARDING COUNTER-DRUG EFFORTS IN AFGHANISTAN.

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the President should make the substantial reduction of illegal drug trafficking in Afghanistan a priority in the Global War on Terrorism;

(2) the Secretary of Defense, in coordination with the Secretary of State and the heads of other appropriate Federal agencies, should expand cooperation with the Government of Afghanistan and international organizations involved in counter-drug activities to assist in providing a secure environment for counter-drug personnel in Afghanistan; and

(3) the United States, in conjunction with the Government of Afghanistan and coalition partners, should undertake additional efforts to reduce illegal drug trafficking and related activities that provide financial support for terrorist organizations in Afghanistan and neighboring countries.

(b) **REPORT REQUIRED.**—(1) The Secretary of Defense and the Secretary of State shall jointly prepare a report that describes—

(A) the progress made towards substantially reducing poppy cultivation and heroin production capabilities in Afghanistan; and

(B) the extent to which profits from illegal drug activity in Afghanistan are used to financially support terrorist organizations and groups seeking to undermine the Government of Afghanistan.

(2) The report required by this subsection shall be submitted to Congress not later than 120 days after the date of the enactment of this Act.

Subtitle D—Matters Relating to Museums and Commemorations

SEC. 1031. RECOGNITION OF THE LIBERTY MEMORIAL MUSEUM, KANSAS CITY, MISSOURI, AS AMERICA'S NATIONAL WORLD WAR I MUSEUM.

(a) FINDINGS.—Congress makes the following findings:

(1) The Liberty Memorial Museum in Kansas City, Missouri, was built in honor of those individuals who served in World War I in defense of liberty and the United States.

(2) The Liberty Memorial Association, the nonprofit organization that originally built the Liberty Memorial Museum, is responsible for the finances, operations, and collections management of the Liberty Memorial Museum.

(3) The Liberty Memorial Museum is the only public museum in the United States that exists for the exclusive purpose of interpreting the experiences of the United States and its allies in the World War I years (1914–1918), both on the battlefield and on the home front.

(4) The Liberty Memorial Museum project began after the 1918 Armistice through the efforts of a large-scale, grass-roots civic and fundraising effort by the citizens of the Kansas City metropolitan area, including veterans of World War I. After the conclusion of a national architectural design competition, ground was broken in 1921, construction began in 1923, and the Liberty Memorial Museum was opened to the public in 1926.

(5) In 1994, the Liberty Memorial Museum closed for a massive restoration and expansion project. The restored museum reopened to the public on Memorial Day in 2002 during a gala rededication ceremony.

(6) Exhibits prepared for the original museum buildings presaged the dramatic, underground expansion of core exhibition gallery space, with over 30,000 square feet of new interpretive and educational exhibits currently in development. The new exhibits, along with an expanded research library and archives, will more fully utilize the many thousands of historical objects, books, maps, posters, photographs, diaries, letters, and reminiscences of World War I participants that are preserved for posterity in the collections of the Liberty Memorial Museum. The new core exhibition is scheduled to open on Veterans Day in 2006.

(7) The City of Kansas City, the State of Missouri, and thousands of private donors and philanthropic foundations have contributed millions of dollars to first build and later restore the Liberty Memorial Museum. The Liberty Memorial Museum continues to receive the strong support of residents from the States of Missouri and Kansas and across the United States.

(8) Since its restoration and rededication in 2002, the Liberty Memorial Museum has attracted thousands of visitors from across the United States and many foreign countries.

(9) There remains a need to preserve in a museum setting evidence of the honor, courage, patriotism, and sacrifice of those Americans who offered their services and who gave their lives in defense of liberty during World War I, evidence of

the roles of women and African Americans during World War I, and evidence of other relevant subjects.

(10) The Liberty Memorial Museum seeks to educate a diverse group of audiences through its comprehensive collection of historical materials, emphasizing eyewitness accounts of the participants on the battlefield and the home front and the impact of World War I on individuals, then and now. The Liberty Memorial Museum continues to actively acquire and preserve such materials.

(11) A great opportunity exists to use the invaluable resources of the Liberty Memorial Museum to teach the “Lessons of Liberty” to schoolchildren in the United States through on-site visits, classroom curriculum development, distance-learning activities, and other educational initiatives.

(12) The Liberty Memorial Museum should remain the foremost museum in the United States regarding the national experience in the World War I years, which people can visit to learn about World War I and where the history of this monumental struggle will be preserved so that current and future generations may understand the role played by the United States in the preservation and advancement of democracy, freedom, and liberty in the early 20th century.

(13) The work of the Liberty Memorial Museum to recognize and preserve the history of the Nation’s sacrifices in World War I will take on added significance as the centennial observance of the war approaches.

(14) It is fitting and proper to refer to the Liberty Memorial Museum as “America’s National World War I Museum”.

(b) CONGRESSIONAL RECOGNITION.—Congress—

(1) recognizes the Liberty Memorial Museum in Kansas City, Missouri, including the museum’s future and expanded exhibits, collections, library, archives, and educational programs, as “America’s National World War I Museum”;

(2) recognizes that the continuing collection, preservation, and interpretation of the historical objects and other historical materials held by the Liberty Memorial Museum will enhance the knowledge and understanding of the experiences of the United States and its allies in the World War I years (1914–1918), both on the battlefield and on the home front;

(3) commends the ongoing development and visibility of the “Lessons of Liberty” educational outreach programs prepared by the Liberty Memorial Museum for teachers and students throughout the United States; and

(4) encourages present generations of Americans to understand the magnitude of World War I, how it shaped the United States, other countries, and later world events, and how the sacrifices made by Americans then helped preserve liberty, democracy, and other founding principles of the United States for generations to come.

SEC. 1032. PROGRAM TO COMMEMORATE 60TH ANNIVERSARY OF WORLD WAR II. 10 USC 113 note.

(a) IN GENERAL.—For fiscal year 2005, the Secretary of Defense may conduct a program—

(1) to commemorate the 60th anniversary of World War II; and

(2) to coordinate, support, and facilitate other such commemoration programs and activities of the Federal Government, State and local governments, and other persons.

(b) PROGRAM ACTIVITIES.—The program referred to in subsection (a) may include activities and ceremonies—

(1) to provide the people of the United States with a clear understanding and appreciation of the lessons and history of World War II;

(2) to thank and honor veterans of World War II and their families;

(3) to pay tribute to the sacrifices and contributions made on the home front by the people of the United States;

(4) to foster an awareness in the people of the United States that World War II was the central event of the 20th century that defined the postwar world;

(5) to highlight advances in technology, science, and medicine related to military research conducted during World War II;

(6) to inform wartime and postwar generations of the contributions of the Armed Forces of the United States to the United States;

(7) to recognize the contributions and sacrifices made by World War II allies of the United States; and

(8) to highlight the role of the Armed Forces of the United States, then and now, in maintaining world peace through strength.

(c) ESTABLISHMENT OF ACCOUNT.—(1) There is established in the Treasury of the United States an account to be known as the “Department of Defense 60th Anniversary of World War II Commemoration Account” which shall be administered by the Secretary as a single account.

(2) There shall be deposited in the account, from amounts appropriated to the Department of Defense for operation and maintenance of Defense Agencies, such amounts as the Secretary considers appropriate to conduct the program referred to in subsection (a).

(3) The Secretary may use the funds in the account established in paragraph (1) only for the purpose of conducting the program referred to in subsection (a).

(4) Not later than 60 days after the termination of the authority of the Secretary to conduct the program referred to in subsection (a), the Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing an accounting of all the funds deposited into and expended from the account or otherwise expended under this section, and of any amount remaining in the account. Unobligated funds which remain in the account after termination of the authority of the Secretary under this section shall be held in the account until transferred by law after the Committees receive the report.

(d) ACCEPTANCE OF VOLUNTARY SERVICES.—(1) Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept from any person voluntary services to be provided in furtherance of the program referred to in subsection (a).

(2) A person providing voluntary services under this subsection shall be considered to be an employee for the purposes of chapter 81 of title 5, United States Code, relating to compensation for

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work-related injuries. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purposes by reason of the provision of such service.

(3) The Secretary may reimburse a person providing voluntary services under this subsection for incidental expenses incurred by such person in providing such services. The Secretary shall determine which expenses are eligible for reimbursement under this paragraph.

SEC. 1033. ANNUAL REPORT ON DEPARTMENT OF DEFENSE OPERATION AND FINANCIAL SUPPORT FOR MILITARY MUSEUMS.

(a) **REPORT REQUIRED.**—Chapter 23 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 489. Annual report on Department of Defense operation and financial support for military museums

“(a) **REPORT REQUIRED.**—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report identifying all military museums that, during the most recently completed fiscal year—

“(1) were operated by the Secretary of Defense or the Secretary of a military department;

“(2) were otherwise supported using funds appropriated to the Department of Defense; or

“(3) were located on property under the jurisdiction of the Department of Defense, although neither operated by the Department of Defense nor supported using funds appropriated to the Department of Defense.

“(b) **INFORMATION ON INDIVIDUAL MUSEUMS.**—For each museum identified in a report under this section, the Secretary of Defense shall include in the report the following:

“(1) The purpose and functions of the museum and the justification for the museum.

“(2) A description of the facilities dedicated to the museum, including the location, size, and type of facilities and whether the facilities are included or eligible for inclusion on the National Register of Historic Places.

“(3) An itemized listing of the funds appropriated to the Department of Defense that were obligated to support the museum during the fiscal year covered by the report and a description of the process used to determine the annual allocation of Department of Defense funds for the museum.

“(4) An itemized listing of any other Federal funds, funds from a nonappropriated fund instrumentality account of the Department of Defense, and non-Federal funds obligated to support the museum.

“(5) The management structure of the museum, including identification of the persons responsible for preparing the budget for the museum and for making acquisition and management decisions for the museum.

“(6) The number of civilian employees of the Department of Defense and members of the armed forces who served full-

time or part-time at the museum and their role in the management structure of the museum.

“(c) INFORMATION ON SUPPORT PRIORITIES.—Each report under this section shall also include a separate description of the procedures used by the Secretary of Defense, in the case of museums identified in the report that are operated or supported by the Secretary of Defense, and the Secretary of a military department, in the case of museums identified in the report that are operated or supported by that Secretary, to prioritize funding and personnel support to the museums. The Secretary of Defense shall include a description of any such procedures applicable to the entire Department of Defense.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“489. Annual report on Department of Defense operation and financial support for military museums.”.

Subtitle E—Reports

10 USC 229 note. **SEC. 1041. QUARTERLY DETAILED ACCOUNTING FOR OPERATIONS CONDUCTED AS PART OF THE GLOBAL WAR ON TERRORISM.**

(a) QUARTERLY ACCOUNTING.—Not later than 45 days after the end of each quarter of a year, the Secretary of Defense shall submit to the congressional defense committees, for each operation specified in subsection (b)—

(1) a full accounting of all costs incurred for such operation during such quarter and all amounts expended during such quarter for such operation; and

(2) a description of the purposes for which those costs were incurred and those amounts were expended.

(b) OPERATIONS COVERED.—The operations referred to in subsection (a) are the following:

(1) Operation Iraqi Freedom.

(2) Operation Enduring Freedom.

(3) Operation Noble Eagle.

(4) Any other operation that the President designates as being an operation of the Global War on Terrorism.

(c) REQUIREMENT FOR COMPREHENSIVENESS.—For the purpose of providing a full and complete accounting of the costs and expenditures under subsection (a) for an operation specified in subsection (b), the Secretary shall account in the quarterly submission under subsection (a) for all costs and expenditures that are reasonably attributable to that operation, including personnel costs.

SEC. 1042. REPORT ON POST-MAJOR COMBAT OPERATIONS PHASE OF OPERATION IRAQI FREEDOM.

(a) REPORT REQUIRED.—(1) Not later than June 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report on the conduct of military operations during the post-major combat operations phase of Operation Iraqi Freedom.

(2) The report shall be prepared in consultation with the Chairman of the Joint Chiefs of Staff, the commander of the United States Central Command, and such other officials as the Secretary considers appropriate.

(b) CONTENT.—(1) The report shall include a discussion of the matters described in paragraph (2), with a particular emphasis on accomplishments and shortcomings and on near-term and long-term corrective actions to address such shortcomings.

(2) The matters to be discussed in the report are as follows:

(A) The military and political objectives of the international coalition conducting the post-major combat operations phase of Operation Iraqi Freedom, and the military strategy selected to achieve such objectives, together with an assessment of the execution of the military strategy.

(B) The mobilization process for the reserve components of the Armed Forces, including the timeliness of notification, training and certification, and subsequent demobilization.

(C) The use and performance of major items of United States military equipment, weapon systems, and munitions (including non-lethal weapons and munitions, items classified under special access procedures, and items drawn from prepositioned stocks) and any expected effects of the experience with the use and performance of such items on the doctrinal and tactical employment of such items and on plans for continuing the acquisition of such items.

(D) Any additional requirements for military equipment, weapon systems, munitions, force structure, or other capability identified during the post-major combat operations phase of Operation Iraqi Freedom, including changes in type or quantity for future operations.

(E) The effectiveness of joint air operations, together with an assessment of the effectiveness of—

(i) the employment of close air support; and

(ii) attack helicopter operations.

(F) The use of special operations forces, including operational and intelligence uses.

(G) The scope of logistics support, including support to and from other nations and from international organizations and organizations and individuals from the private sector in Iraq.

(H) The incidents of accidental fratricide, including a discussion of the effectiveness of the tracking of friendly forces and the use of the combat identification systems in mitigating friendly fire incidents.

(I) The adequacy of spectrum and bandwidth to transmit information to operational forces and assets, including unmanned aerial vehicles, ground vehicles, and individual soldiers.

(J) The effectiveness of strategic, operational, and tactical information operations, including psychological operations and assets, organization, and doctrine related to civil affairs, in achieving established objectives, together with a description of technological and other restrictions on the use of information operations capabilities.

(K) The readiness of the reserve component forces used in the post-major combat operations phase of Operation Iraqi Freedom, including an assessment of the success of the reserve component forces in accomplishing their missions.

(L) The adequacy of intelligence support during the post-major combat operations phase of Operation Iraqi Freedom,

including the adequacy of such support in searches for weapons of mass destruction.

(M) The rapid insertion and integration, if any, of developmental but mission-essential equipment, organizations, or procedures during the post-major combat operations phase of Operation Iraqi Freedom.

(N) A description of the coordination, communication, and unity of effort between the Armed Forces, the Coalition Provisional Authority, other United States government agencies and organizations, nongovernmental organizations, and political, security, and nongovernmental organizations of Iraq, including an assessment of the effectiveness of such efforts.

(O) The adequacy of training for military units once deployed to the area of operations of the United States Central Command, including training for changes in unit mission and continuation training for high-intensity conflict missions.

(P) An estimate of the funding required to return or replace equipment used through the period covered by the report in Operation Iraqi Freedom, including equipment in prepositioned stocks, to mission-ready condition.

(Q) A description of military civil affairs and reconstruction efforts, including efforts through the Commanders Emergency Response Program, and an assessment of the effectiveness of such efforts and programs.

(R) The adequacy of the requirements determination and acquisition processes, acquisition, and distribution of force protection equipment, including personal gear, vehicles, helicopters, and defense devices.

(S) The most critical lessons learned that could lead to long-term doctrinal, organizational, and technological changes, and the probable effects that an implementation of those changes would have on current visions, goals, and plans for transformation of the Armed Forces or the Department of Defense.

(T) The planning for and implementation of morale, welfare, and recreation programs for deployed forces and support to dependents, including rest and recuperation programs and personal communication benefits such as telephone, mail, and email services, including an assessment of the effectiveness of such programs.

(U) An analysis of force rotation plans, including individual personnel and unit rotations, differing deployment lengths, and in-theater equipment repair and leave behinds.

(V) The organization of United States Central Command to conduct post-conflict operations and lessons for other combatant commands to conduct other such operations in the future.

(c) FORM OF REPORT.—The report shall be submitted in unclassified form, but may include a classified annex.

(d) POST-MAJOR COMBAT OPERATIONS PHASE OF OPERATION IRAQI FREEDOM DEFINED.—In this section, the term “post-major combat operations phase of Operation Iraqi Freedom” means the period of Operation Iraqi Freedom beginning on May 2, 2003, and ending on December 31, 2004.

SEC. 1043. REPORT ON TRAINING PROVIDED TO MEMBERS OF THE ARMED FORCES TO PREPARE FOR POST-CONFLICT OPERATIONS.

(a) **STUDY ON TRAINING.**—The Secretary of Defense shall conduct a study to determine the extent to which members of the Armed Forces assigned to duty in support of contingency operations receive training in preparation for post-conflict operations and to evaluate the quality of such training.

(b) **MATTERS TO BE INCLUDED IN STUDY.**—As part of the study under subsection (a), the Secretary shall specifically evaluate the following:

(1) The doctrine, training, and leader-development system necessary to enable members of the Armed Forces to successfully operate in post-conflict operations.

(2) The adequacy of the curricula at military educational facilities to ensure that the Armed Forces has a cadre of members skilled in post-conflict duties, including a familiarity with applicable foreign languages and foreign cultures.

(3) The training time and resources available to members and units of the Armed Forces to develop awareness about ethnic backgrounds, religious beliefs, and political structures of the people living in areas in which the Armed Forces operate and areas in which post-conflict operations are likely to occur.

(4) The adequacy of training transformation to emphasize post-conflict operations, including interagency coordination in support of commanders of combatant commands.

(c) **REPORT ON STUDY.**—Not later than May 1, 2005, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the result of the study conducted under this section.

SEC. 1044. REPORT ON ESTABLISHING NATIONAL CENTERS OF EXCELLENCE FOR UNMANNED AERIAL AND GROUND VEHICLES.

(a) **REPORT REQUIRED.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the need for one or more national centers of excellence for unmanned aerial and ground vehicles.

(b) **GOAL OF CENTERS.**—The goal of the centers covered by the report is to promote interservice cooperation and coordination in the following areas:

(1) Development of joint doctrine for the organization, training, and use of unmanned aerial and ground vehicles.

(2) Joint research, development, test, and evaluation, and joint procurement of unmanned aerial and ground vehicles.

(3) Identification and coordination, in conjunction with the private sector and academia, of the future development of unmanned aerial and ground vehicles.

(4) Monitoring of the development and utilization of unmanned aerial and ground vehicles in other nations for both military and non-military purposes.

(5) The providing of joint training and professional development opportunities in the use and operation of unmanned aerial and ground vehicles to military personnel of all ranks and levels of responsibility.

(c) **REPORT REQUIREMENTS.**—The report shall include, at a minimum, the following:

(1) A list of facilities at which the Department of Defense currently conducts or plans to conduct research, development, and testing activities on unmanned aerial and ground vehicles.

(2) A list of facilities at which the Department of Defense currently deploys or has committed to deploying unmanned aerial or ground vehicles.

(3) The extent to which existing facilities described in paragraphs (1) and (2) have sufficient unused capacity and expertise to research, develop, test, and deploy the current and next generations of unmanned aerial and ground vehicles and to provide for the development of doctrine on the use and training of operators of such vehicles.

(4) The extent to which efficiencies with respect to research, development, testing, and deployment of existing or future unmanned aerial and ground vehicles can be achieved through consolidation at one or more national centers of excellence for unmanned aerial and ground vehicles.

(5) A list of potential locations for the national centers of excellence under this section.

(d) **CONSIDERATIONS.**—In determining the potential locations for the national centers of excellence under this section, the Secretary of Defense shall take into consideration existing military facilities that have—

(1) a workforce of skilled personnel;

(2) existing capacity of runways and other facilities to accommodate the research, development, testing, and deployment of current and future unmanned aerial vehicles; and

(3) minimal restrictions on the research, development, testing, and deployment of unmanned aerial vehicles resulting from proximity to large population centers or airspace heavily utilized by commercial flights.

SEC. 1045. STUDY OF CONTINUED REQUIREMENT FOR TWO-CREW MANNING FOR BALLISTIC MISSILE SUBMARINES.

(a) **STUDY AND DETERMINATION.**—The Secretary of Defense shall conduct a study of whether the practice of using two alternating crews (referred to as the “Gold Crew” and the “Blue Crew”) for manning of ballistic missile submarines (SSBNs) continues to be justified under the changed circumstances since the end of the Cold War and, based on that study, shall make a determination of whether that two-crew manning practice should be continued or should be modified or terminated.

(b) **REPORT.**—Not later than six months after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report providing notice of the Secretary’s determination under subsection (a) and the reasons for that determination.

SEC. 1046. REPORT ON DEPARTMENT OF DEFENSE PROGRAMS FOR PREPOSITIONING OF MATERIEL AND EQUIPMENT.

(a) **SECRETARY OF DEFENSE ASSESSMENT AND REPORT.**—(1) The Secretary of Defense shall conduct an assessment of the programs of the Armed Forces for the prepositioning of materiel and equipment. Such assessment shall focus on how those programs will support the goal of the Secretary to have the capability, from the onset of a contingency situation, to—

- (A) deploy forces to a distant theater within 10 days;
- (B) defeat an enemy within 30 days; and
- (C) be ready for an additional conflict within another 30 days.

(2) The Secretary shall submit to Congress a report on such assessment not later than October 1, 2005.

(b) MATTERS TO BE INCLUDED.—The assessment under subsection (a) shall include the following:

(1) A review of the prepositioning of materiel and equipment used in Operation Iraqi Freedom and Operation Enduring Freedom, including identification of challenges and potential solutions.

(2) A description of changes to doctrine, strategy, and transportation plans that could be necessary to support the goal of the Secretary described in subsection (a).

(3) A description of modifications to prepositioning programs that could be required in order to incorporate modularity concepts, future force structure changes, and sea-basing concepts.

(4) A discussion of joint operations and training that support force projection requirements, including—

- (A) theater opening requirements at potential aerial and sea ports of debarkation;
- (B) joint force reception capabilities;
- (C) joint theater distribution operations; and
- (D) use of joint prepositioned stocks, materiel, and systems.

SEC. 1047 REPORT ON AL QAEDA AND ASSOCIATED GROUPS IN LATIN AMERICA AND THE CARIBBEAN.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the Committees on Armed Services of the Senate and House of Representatives a report on the activities of al Qaeda and associated groups in Latin America and the Caribbean, including—

(1) an assessment of the extent to which such groups have established a presence in the area;

(2) a description of the activities of such groups in the area, including fundraising, money laundering, narcotrafficking, and associations with criminal groups;

(3) an assessment of the threat posed by such groups to the peace and stability of the nations in the area and to United States interests; and

(4) a description of United States policies intended to deal with such a threat.

(b) FORM OF REPORT.—The report shall be submitted in unclassified form, but may include a classified annex.

Subtitle F—Defense Against Terrorism and Other Domestic Security Matters

SEC. 1051. ACCEPTANCE OF COMMUNICATIONS EQUIPMENT PROVIDED BY LOCAL PUBLIC SAFETY AGENCIES.

(a) AUTHORITY.—Chapter 155 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2613. Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters

“(a) **AUTHORITY TO ACCEPT EQUIPMENT.**—(1) Subject to subsection (c), the Secretary concerned—

“(1) may accept communications equipment for use in coordinating joint response and recovery operations with public safety agencies in the event of a disaster; and

“(2) may accept services related to the operation and maintenance of such equipment.

“(b) **REGULATIONS.**—The authority under subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

“(c) **LIMITATIONS.**—(1) Equipment may be accepted under subsection (a)(1) only to the extent that communications equipment under the control of the Secretary concerned at the potential disaster response site is inadequate to meet military requirements for communicating with public safety agencies during the period of response to the disaster.

“(2) Services may be accepted under subsection (a)(2) related to the operation and maintenance of communications equipment only to the extent that the necessary capabilities are not available to the military commander having custody of the equipment.

“(c) **LIABILITY.**—A person providing services accepted under this section may not be considered, by reason of the provision of such services, to be an officer, employee, or agent of the United States for any purpose.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2613. Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters.”.

SEC. 1052. DETERMINATION AND REPORT ON FULL-TIME AIRLIFT SUPPORT FOR HOMELAND DEFENSE OPERATIONS.

(a) **DETERMINATION REQUIRED.**—(1) The Secretary of Defense shall determine the feasibility and advisability of dedicating an airlift capability of the Armed Forces to the support of homeland defense operations, including operations in support of contingent requirements for transportation of any of the following in response to a disaster:

(A) Weapons of Mass Destruction Civil Support Teams.

(B) National Guard Chemical, Biological, Radiological, Nuclear, High Explosive Enhanced Response Force Packages.

(C) Air Force expeditionary medical teams.

(D) Department of Energy emergency response teams.

(2) In making the determination under paragraph (1), the Secretary shall take into consideration the results of the study required under subsection (b).

(b) **REQUIREMENT FOR STUDY AND PLAN.**—(1) The Secretary of Defense shall conduct a study of the plans and capabilities of the Department of Defense for meeting contingent requirements for transporting teams and packages specified in subsection (a)(1) in response to disasters.

(2) The Secretary shall prepare a plan for resolving any deficiencies in the plans and capabilities for meeting the transportation requirements described in paragraph (1).

(3) The Secretary of Defense shall require the commander of the United States Northern Command and the commander of the United States Transportation Command to carry out jointly the study required under paragraph (1) and to prepare jointly the plan required under paragraph (2).

(c) REPORT.—Not later than April 1, 2005, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study under subsection (b). The report shall include the following matters:

(1) The Secretary's determination under subsection (a).

(2) An assessment and discussion of the adequacy of existing plans and capabilities of the Department of Defense for meeting the transportation requirements described in subsection (b)(1).

(3) The plan required under subsection (b)(2).

(d) DEFINITION.—In this section, the term “Weapons of Mass Destruction Civil Support Team” has the meaning given that term in section 305b(e) of title 37, United States Code.

SEC. 1053. SURVIVABILITY OF CRITICAL SYSTEMS EXPOSED TO CHEMICAL OR BIOLOGICAL CONTAMINATION.

(a) REQUIREMENT FOR IMPLEMENTATION PLAN.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan, for implementation by the Department of Defense, that sets forth a systematic approach for ensuring the survivability of defense critical systems upon contamination of any such system by chemical or biological agents.

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(b) CONTENT.—At a minimum, the plan under subsection (a) shall include the following:

(1) Policies for ensuring that the survivability of defense critical systems in the event of contamination by chemical or biological agents is adequately addressed throughout the Department of Defense.

(2) A systematic process for identifying those systems which are defense critical systems.

(3) Specific testing procedures to be used during the design and development of new defense critical systems.

(4) A centralized database that—

(A) contains comprehensive information on the effects of chemical and biological agents and decontaminants on materials used in defense critical systems; and

(B) is easily accessible to personnel who have duties to ensure the survivability of defense critical systems upon contamination of such systems by chemical and biological agents.

(c) DEFENSE CRITICAL SYSTEM DEFINED.—In this section, the term “defense critical system” means a Department of Defense system that, as determined by the Secretary of Defense, is vital to an essential defense mission.

Subtitle G—Personnel Security Matters

SEC. 1061. USE OF NATIONAL DRIVER REGISTER FOR PERSONNEL SECURITY INVESTIGATIONS AND DETERMINATIONS.

Section 30305(b) of title 49, United States Code, is amended—

(1) by redesignating paragraphs (9) through (11) as paragraphs (10) through (12), respectively; and

(2) by inserting after paragraph (8) the following new paragraph:

“(9) An individual who has or is seeking access to national security information for purposes of Executive Order No. 12968, or any successor Executive order, or an individual who is being investigated for Federal employment under authority of Executive Order No. 10450, or any successor Executive order, may request the chief driver licensing official of a State to provide information about the individual pursuant to subsection (a) of this section to a Federal department or agency that is authorized to investigate the individual for the purpose of assisting in the determination of the eligibility of the individual for access to national security information or for Federal employment in a position requiring access to national security information. A Federal department or agency that receives information about an individual under the preceding sentence may use such information only for purposes of the authorized investigation and only in accordance with applicable law.”.

SEC. 1062. STANDARDS FOR DISQUALIFICATION FROM ELIGIBILITY FOR DEPARTMENT OF DEFENSE SECURITY CLEARANCE.

(a) **DISQUALIFIED PERSONS.**—Subsection (c)(1) of section 986 of title 10, United States Code, is amended—

(1) by striking “and” and inserting “, was”; and

(2) by inserting before the period at the end the following: “, and was incarcerated as a result of that sentence for not less than one year”.

(b) **WAIVER AUTHORITY.**—Subsection (d) of such section is amended to read as follows:

“(d) **WAIVER AUTHORITY.**—In a meritorious case, an exception to the prohibition in subsection (a) may be authorized for a person described in paragraph (1) or (4) of subsection (c) if there are mitigating factors. Any such waiver may be authorized only in accordance with standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President.”.

Subtitle H—Transportation-Related Matters

SEC. 1071. USE OF MILITARY AIRCRAFT TO TRANSPORT MAIL TO AND FROM OVERSEAS LOCATIONS.

(a) **AUTHORITY FOR USE OF MILITARY AIRCRAFT.**—Section 3401 of title 39, United States Code, is amended—

(1) in subsection (b)—

(A) in the matter preceding paragraph (1)(A), by striking “title 49,” and inserting “title 49, or on military aircraft at rates not to exceed those so fixed and determined for scheduled United States air carriers,”; and

(B) in the sentence following paragraph (3), by striking “carriers” each place it appears and inserting “carriers and military aircraft”; and

(2) in subsection (c)—

(A) in the first sentence, by striking “title 49,” and inserting “title 49, or on military aircraft at rates not to exceed those so fixed and determined for scheduled United States air carriers,”; and

(B) in the second sentence—

(i) by inserting “and military aircraft” after “carriers” the first place it appears; and

(ii) by striking “by air carriers other than scheduled United States air carriers” and inserting “by other than scheduled United States air carriers and military aircraft”.

(b) DEFINITION.—Such section is further amended by adding at the end the following new subsection:

“(g) In this section:

“(1) The term ‘military aircraft’ means an aircraft owned, operated, or chartered by the Department of Defense.

“(2) The term ‘United States air carrier’ has the meaning given the term ‘air carrier’ in section 40102 of title 49.”.

SEC. 1072. REORGANIZATION AND CLARIFICATION OF CERTAIN PROVISIONS RELATING TO CONTROL AND SUPERVISION OF TRANSPORTATION WITHIN THE DEPARTMENT OF DEFENSE.

(a) TRANSFER OF CERTAIN TRANSPORTATION AUTHORITIES.—Sections 4744, 4745, 4746, and 4747 of title 10, United States Code, are transferred to chapter 157 of such title, inserted (in that order) at the end of such chapter, and redesignated as sections 2648, 2649, 2650, and 2651, respectively.

(b) CLARIFICATION OF APPLICABILITY OF TRANSFERRED AUTHORITIES THROUGHOUT THE DEPARTMENT OF DEFENSE.—(1) Section 2648 of such title, as transferred and redesignated by subsection (a), is amended—

(A) by striking “Secretary of the Army” in the matter preceding paragraph (1) and inserting “Secretary of Defense”;

(B) by striking “Army transport agencies” in the matter preceding paragraph (1) and all that follows through “military transport agency of”;

(C) by striking paragraphs (1), (2), and (3);

(D) by redesignating paragraph (4), (5), (6), and (7) as paragraphs (1), (2), (3), and (4), respectively;

(E) by redesignating paragraph (8) as paragraph (5) and in that paragraph striking “persons described in clauses (1), (2), (4), (5), and (7)” and inserting “members of the armed forces, officers and employees of the Department of Defense or the Coast Guard, and persons described in paragraphs (1), (2), and (4)”;

(F) by striking “clause (7) or (8)” in the last sentence and inserting “paragraph (4) or (5)”.

(2) Section 2649 of such title, as transferred and redesignated by subsection (a), is amended—

(A) by striking the section heading and inserting the following:

“§ 2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels”;

(B) by striking “(1) on vessels” and all that follows through “Department of the Army”;

(C) by striking “any transport agency of”; and

(D) by striking “Secretary of the Army” and all that follows through “be transported” and inserting “Secretary of Defense, be transported”.

(3) Section 2650 of such title, as transferred and redesignated by subsection (a), is amended—

(A) in the matter preceding paragraph (1), by striking “Army transport agencies” and all that follows through “military transport agency of”;

(B) in paragraph (1), by striking “Secretary of the Army” and inserting “Secretary of Defense”; and

(C) in paragraph (4), by striking “by air—” and all that follows through “the transportation cannot” and inserting “by air, the transportation cannot”.

(4) Section 2651 of such title, as transferred and redesignated by subsection (a), is amended by striking “Army transport agencies” and all that follows and inserting “the Department of Defense, under regulations and at rates to be prescribed by the Secretary of Defense.”.

(c) REPEAL OF SUPERSEDED AND OBSOLETE PROVISIONS.—The following sections of such title are repealed: sections 4741, 4743, 9741, 9743, and 9746.

(d) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 157 of such title is amended by adding at the end the following new items:

“2648. Persons and supplies: sea transportation.

“2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels.

“2650. Civilian personnel in Alaska.

“2651. Passengers and merchandise to Guam: sea transport.”.

(2) The table of sections at the beginning of chapter 447 of such title is amended by striking the items relating to sections 4741, 4743, 4744, 4745, 4746, and 4747.

(3) The table of sections at the beginning of chapter 947 of such title is amended by striking the items relating to sections 9741, 9743, and 9746.

SEC. 1073. EVALUATION OF PROCUREMENT PRACTICES RELATING TO TRANSPORTATION OF SECURITY-SENSITIVE CARGO.

(a) EVALUATION REQUIREMENT.—The Secretary of Defense shall evaluate the procurement practices of the Department of Defense in the award of service contracts for domestic freight transportation for security-sensitive cargo (such as arms, ammunitions, explosives, and classified material) to determine whether such practices are in the best interests of the Department of Defense.

(b) REPORT.—Not later than January 1, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the results of the evaluation conducted under subsection (a).

Subtitle I—Other Matters

SEC. 1081. LIABILITY PROTECTION FOR DEPARTMENT OF DEFENSE VOLUNTEERS WORKING IN MARITIME ENVIRONMENT.

Section 1588(d)(1)(B) of title 10, United States Code, is amended by inserting before the period at the end the following: “and the Act of March 9, 1920, commonly known as the ‘Suits in Admiralty Act’ (41 Stat. 525; 46 U.S.C. App. 741 et seq.) and the Act of March 3, 1925, commonly known as the ‘Public Vessels Act’ (43 Stat. 1112; 46 U.S.C. App. 781 et seq.) (relating to claims for damages or loss on navigable waters)”.

SEC. 1082. SENSE OF CONGRESS CONCERNING MEDIA COVERAGE OF THE RETURN TO THE UNITED STATES OF THE REMAINS OF DECEASED MEMBERS OF THE ARMED FORCES FROM OVERSEAS.

(a) FINDINGS.—Congress makes the following findings:

(1) The Department of Defense, since 1991, has relied on a policy of no media coverage of the transfers of the remains of deceased members of the Armed Forces—

(A) at Ramstein Air Force Base, Germany;

(B) at Dover Air Force Base, Delaware, and the Port Mortuary Facility at Dover Air Force Base; and

(C) at interim stops en route to the point of final destination in the transfer of the remains.

(2) The principal focus and purpose of the policy is to protect the wishes and the privacy of families of deceased members of the Armed Forces during their time of great loss and grief and to give families and friends of the dead the privilege to decide whether to allow media coverage at the member’s duty or home station, at the interment site, or at or in connection with funeral and memorial services.

(3) In a 1991 legal challenge to the Department of Defense policy, as applied during Operation Desert Storm, the policy was upheld by the United States District Court for the District of Columbia, and on appeal, by the United States Court of Appeals for the District of Columbia in the case of *JB Pictures, Inc. v. Department of Defense and Donald B. Rice*, Secretary of the Air Force on the basis that denying the media the right to view the return of remains at Dover Air Force Base does not violate the first amendment guarantees of freedom of speech and of the press.

(4) The United States Court of Appeals for the District of Columbia in that case cited the following two key Government interests that are served by the Department of Defense policy:

(A) Reducing the hardship on the families and friends of the war dead, who may feel obligated to travel great distances to attend arrival ceremonies at Dover Air Force Base if such ceremonies were held.

(B) Protecting the privacy of families and friends of the dead, who may not want media coverage of the unloading of caskets at Dover Air Force Base.

(5) The Court also noted, in that case, that the bereaved may be upset at the public display of the caskets of their loved ones and that the policy gives the family the right to

grant or deny access to the media at memorial or funeral services at the home base and that the policy is consistent in its concern for families.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Department of Defense policy regarding no media coverage of the transfer of the remains of deceased members of the Armed Forces—

(1) appropriately protects the privacy of the families and friends of the deceased; and

(2) is consistent with United States constitutional guarantees of freedom of speech and freedom of the press.

SEC. 1083. TRANSFER OF HISTORIC F3A-1 BREWSTER CORSAIR AIRCRAFT.

(a) AUTHORITY TO CONVEY.—The Secretary of the Navy may convey, without consideration, to Lex Cralley of Princeton Minnesota (in this section referred to as “transferee”), all right, title, and interest of the United States in and to a F3A-1 Brewster Corsair aircraft (Bureau Number 04634). The conveyance shall be made by means of a deed of gift.

(b) CONDITION OF AIRCRAFT.—The aircraft shall be conveyed under subsection (a) in its current unflyable, “as is” condition. The Secretary is not required to repair or alter the condition of the aircraft before conveying ownership of the aircraft.

(c) CONVEYANCE AT NO COST TO THE UNITED STATES.—The conveyance of the aircraft under subsection (a) shall be made at no cost to the United States. Any costs associated with the conveyance and costs of operation and maintenance of the aircraft conveyed shall be borne by the transferee.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a conveyance under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 1084. TECHNICAL AND CLERICAL AMENDMENTS.

(a) CLARIFICATION OF DEFINITION OF “OPERATIONAL RANGE”.—Section 101(e)(3) of title 10, United States Code, is amended by striking “Secretary of Defense” and inserting “Secretary of a military department”.

(b) AMENDMENTS RELATING TO DEFINITION OF CONGRESSIONAL DEFENSE COMMITTEES.—Title 10, United States Code, is amended as follows:

(1) Section 2215 is amended—

(A) by striking “(a) CERTIFICATION REQUIRED.—”;

(B) by striking “congressional committees specified in subsection (b)” and inserting “congressional defense committees”; and

(C) by striking subsection (b).

(2) Section 2306b(g) is amended by striking “Committee on” the first place it appears and all that follows through “House of Representatives” and inserting “congressional defense committees”.

(3) Section 2515(d) is amended—

(A) by striking “(1)” before “The Secretary”;

(B) by striking “congressional committees specified in paragraph (2)” and inserting “congressional defense committees”; and

(C) by striking paragraph (2).

(4) Section 2676(d) is amended by striking “appropriate committees of Congress” at the end of the first sentence and inserting “congressional defense committees”.

(c) AMENDMENTS RELATING TO CHANGE OF NAME OF GAO.—Title 10, United States Code, is amended as follows:

(1) Section 1084 is amended by striking “General Accounting Office” and inserting “Comptroller General”.

(2) Section 1102(d)(2) is amended by striking “General Accounting Office” and inserting “Comptroller General”.

(3) Section 2014(g) is amended by striking “General Accounting Office” and inserting “Government Accountability Office”.

(d) MISCELLANEOUS AMENDMENTS TO TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:

(1) The tables of chapters at the beginning of subtitle A, and at the beginning of part I of subtitle A, are amended by striking “481” in the item relating to chapter 23 and inserting “480”.

(2) Section 130a is amended—

(A) by striking “Effective October 1, 2002, the” in subsection (a) and inserting “The”;

(B) by striking “baseline number” in subsection (a) and all that follows through “means the” in subsection (c);

(C) by transferring subsection (e) so as to appear before subsection (d) and redesignating that subsection as subsection (b);

(D) by redesignating subsections (d) and (f) as subsection (c) and (d), respectively; and

(E) by striking subsection (g).

(3) Section 437(c) is amended by inserting “(50 U.S.C. 415b)” after “National Security Act of 1947”.

(4) Section 487(d) is amended by striking “OTHER DEFINITIONS” and inserting “INAPPLICABILITY TO COAST GUARD”.

(5) Section 503(c)(1)(B) is amended by striking “education” in the second sentence and inserting “educational”.

(6) Section 632(c)(1) is amended—

(A) by striking “paragraph (2)” and inserting “paragraph (3)”; and

(B) by striking “under that paragraph” and inserting “under that subsection”.

(7) The item relating to section 1076b in the table of sections at the beginning of chapter 55 is amended to read as follows:

“1076b. TRICARE program: coverage for members of the Ready Reserve.”.

(8) Section 1108(e) is amended by striking “heath” and inserting “health”.

(9) Section 1406(g) is amended—

(A) by striking “section 305” and inserting “section 245”; and

(B) by striking “Officers Act of 2002” and inserting “Officer Corps Act of 2002 (33 U.S.C. 3045)”.

(10) Sections 1448(b)(1)(F), 1448(d)(2)(B), 1448(d)(6)(A), and 1458(j) are amended by striking “on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004” and inserting “after November 23, 2003,”.

(11) Sections 1463(a)(1), 1465(c)(1)(A), 1465(c)(1)(B), 1465(c)(4)(A), 1465(c)(4)(B), and 1466(b)(2)(D) are amended by striking “1413, 1413a,” and inserting “1413a”.

(12) Section 1557(b) is amended by striking “Effective October 1, 2002, final” and inserting “Final”.

(13) Section 1566 is amended—

(A) in subsection (g)(2), by striking “the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002” in the last sentence and inserting “April 29, 2003”; and

(B) in subsections (h), (i)(1), and (i)(3), by striking “Armed Forces” and inserting “armed forces”.

(14) Sections 1724(d) and 1732(d)(1) are amended by striking “its decision” in the second sentence and inserting “the decision of the Secretary”.

(15) Section 1761(b) is amended—

(A) in the matter preceding paragraph (1), by striking “provide for—” and inserting “provide for the following.”;

(B) in paragraphs (1), (2), and (3), by capitalizing the first letter of the first word;

(C) at the end of paragraphs (1) and (2), by striking the semicolon and inserting a period;

(D) at the end of paragraph (3), by striking “; and” and inserting a period; and

(E) by striking paragraph (4).

(16) Section 2193b(c)(2) is amended by striking “the date of the enactment of this section” and inserting “October 5, 1999”.

(17) Section 2224(c) is amended in the matter preceding paragraph (1) by striking “subtitle II of chapter 35” and inserting “subchapter II of chapter 35”.

(18) Section 2349(d) is amended by striking “section 2350a(i)(3)” and inserting “section 2350a(i)(2)”.

(19) Section 2350b(g) is amended—

(A) in the matter preceding paragraph (1), by inserting “the Secretary of Defense” after “authorizing”; and

(B) in paragraph (1), by striking “the Secretary of Defense”.

(20) Section 2474(f)(2) is amended by striking “section 2466(e)” and inserting “section 2466(d)”.

(21) Section 2540(b)(2) is amended by inserting “, as in effect on that date” before the period at the end.

(22) Section 2662(a)(2) is amended—

(A) in the first sentence, by striking “must include a summarization” and inserting “shall include a summary”; and

(B) in the second sentence, by inserting “of paragraph (1)” after “in subparagraph (E)”.

(23) Section 2672a(a) is amended—

(A) in the matter preceding paragraph (1), by inserting “in any case in which the Secretary determines” after “in land”;

(B) in paragraph (1), by striking “the Secretary determines” and inserting “the acquisition”; and

(C) in paragraph (2), by inserting “the acquisition” after “(2)”.

(24) Section 2701 is amended—

(A) in subsection (a)(2), by inserting “(42 U.S.C. 9620)” before the period at the end;

(B) in subsection (c)(2), by striking “of CERCLA (relating to settlements)” and inserting “(relating to settlements) of CERCLA (42 U.S.C. 9622)”;

(C) in subsection (e), by inserting “(42 U.S.C. 9619)” after “CERCLA”; and

(D) in subsection (j)(2), by striking “the Comprehensive” and all the follows through “of 1980” and inserting “CERCLA”.

(25) Section 2702 is amended by inserting “(42 U.S.C. 9660(a)(5))” in the second sentence of subsection (a) before the period at the end.

(26) Section 2703(b) is amended by striking “The terms” at the beginning of the second sentence and inserting “For purposes of the preceding sentence, the terms”.

(27) Section 2704 is amended by inserting “(42 U.S.C. 9604(i))” in subsections (c), (e), and (f) after “CERCLA”.

(28) The second section 3755, added by section 543(b)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2549), is redesignated as section 3756, and the item relating to that section in the table of sections at the beginning of chapter 357 is revised to reflect such redesignation.

(29) Section 4689 is amended by striking “Building” after “Capitol”.

(30) The second section 6257, added by section 543(c)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2549), is redesignated as section 6258, and the item relating to that section in the table of sections at the beginning of chapter 567 is revised to reflect such redesignation.

(31) Section 7102 is amended—

(A) by striking “AUTHORITY” at the beginning of subsection (a) and inserting “MASTER OF MILITARY STUDIES”;

(B) by striking “MARINE CORPS WAR COLLEGE” at the beginning of subsection (b) and inserting “MASTER OF STRATEGIC STUDIES”;

(C) by striking “COMMAND AND STAFF COLLEGE OF THE MARINE CORPS UNIVERSITY” at the beginning of subsection (c) and inserting “MASTER OF OPERATIONAL STUDIES”; and

(D) by striking “subsections (a) and (b)” in subsection (d) and inserting “subsections (a), (b), and (c)”.

(32) Section 8084 is amended by striking “capabilty” and inserting “capability”.

(33) The second section 8755, added by section 543(d)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2550), is redesignated as section 8756, and the item relating to that section in the table of sections at the beginning of chapter 857 is revised to reflect such redesignation.

(34) The table in section 12012(a) is amended by inserting a colon after “Air National Guard”.

(e) TITLE 37, UNITED STATES CODE.—Title 37, United States Code, is amended as follows:

(1) Section 301a(b)(4) is amended by striking “section 301(a)(11)” and inserting “section 301(a)(13)”.

(2) Section 323(h) is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security”.

(f) PUBLIC LAW 108–136.—Effective as of November 24, 2003, and as if included therein as enacted, the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) is amended as follows:

(1) Sections 832(a) and 834(a) (117 Stat. 1550) are each amended by striking “such title” and inserting “title 10, United States Code,”.

(2) Section 931(a)(1) (117 Stat. 1580) is amended by striking “and donations” in the first quoted matter and inserting “or donations”.

(3) Section 2204(b) (117 Stat. 1706) is amended by striking “section 2101(a)” each place it appears and inserting “section 2201(a)”.

(g) PUBLIC LAW 107–314.—Effective as of December 2, 2002, and as if included therein as enacted, section 1064(a)(2) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2654) is amended by inserting “the item relating to” after “is amended by inserting after”.

(h) PUBLIC LAW 107–107.—Effective as of December 28, 2001, and as if included therein as enacted, the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) is amended as follows:

(1) Section 824(a)(1)(C) (115 Stat. 1183) is amended by striking “(3)(A)” and inserting “(3)(B)”.

(2) Section 1048(e)(4) (115 Stat. 1227) is amended by striking “Subsection” and inserting “Section”.

(3) Section 1111(c) (115 Stat. 1238) is amended by striking “This provision” and inserting “Section 5949 of title 5, United States Code, as added by subsection (a),”.

(i) PUBLIC LAW 101–510.—Section 2902(e)(2)(B) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended—

(1) in clause (i), by striking “Subcommittee on Readiness, Sustainability, and Support” and inserting “Subcommittee on Readiness and Management Support”; and

(2) in clause (ii), by striking “Subcommittee on Military Installations and Facilities” and inserting “Subcommittee on Readiness”.

(j) NATIONAL SECURITY ACT OF 1947.—Sections 702(a)(6)(B)(iv)(I), 703(a)(6)(B)(iv)(I), and 704(f)(2)(D)(i) of the National Security Act of 1947 are amended by striking “responsible records” and inserting “responsive records”.

(k) CODIFICATION RELATING TO LEAVE FOR ATTENDANCE AT CERTAIN HEARINGS.—Subsection (b) of section 363 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (10 U.S.C. 704 note) is—

(1) transferred to section 704 of title 10, United States Code;

(2) inserted at the end of that section;

(3) redesignated as subsection (c); and

(4) amended—

10 USC 1725,
1742.

10 USC 2611.

10 USC 1724.

10 USC 1732.

5 USC 5949 note.

10 USC 2687
note.

50 USC 432,
432a, 432b.

(A) by striking “Armed Forces” each place it appears and inserting “armed forces”;

(B) in paragraph (1)—

(i) by striking “Secretary of each” and all that follows through “in the Navy,” and inserting “Secretary concerned”; and

(ii) by striking “(as defined in section 101 of title 10, United States Code)”; and

(C) in paragraph (3)—

(i) by striking “For purposes of this subsection—” and inserting “In this subsection.”;

(ii) in subparagraph (A), by striking “title 10, United States Code” and inserting “this title”; and

(iii) in subparagraph (B), by striking “such term” and inserting “that term”.

SEC. 1085. PRESERVATION OF SEARCH AND RESCUE CAPABILITIES OF THE FEDERAL GOVERNMENT.

10 USC 113 note.

The Secretary of Defense may not reduce or eliminate search and rescue capabilities at any military installation in the United States unless the Secretary first certifies to the Committees on Armed Services of the Senate and the House of Representatives that equivalent search and rescue capabilities will be provided, without interruption and consistent with the policies and objectives set forth in the United States National Search and Rescue Plan entered into force on January 1, 1999, by—

(1) the Department of Interior, the Department of Commerce, the Department of Homeland Security, the Department of Transportation, the Federal Communications Commission, or the National Aeronautics and Space Administration; or

(2) the Department of Defense, either directly or through a Department of Defense contract with an emergency medical service provider or other private entity to provide such capabilities.

SEC. 1086. ACQUISITION OF AERIAL FIREFIGHTING EQUIPMENT FOR NATIONAL INTERAGENCY FIRE CENTER.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Interagency Fire Center does not possess an adequate number of aircraft for use in aerial firefighting, and personnel at the Center rely on military aircraft to provide such firefighting services.

(2) It is in the national security interest of the United States for the National Interagency Fire Center to acquire aircraft for use in aerial firefighting so that the military aircraft made available for aerial firefighting will instead be available for use by the Armed Forces.

(b) AUTHORITY TO PURCHASE AERIAL FIREFIGHTING EQUIPMENT.—(1) The Secretary of Agriculture is authorized to purchase 10 aircraft, as described in paragraph (2), for the National Interagency Fire Center for use in aerial firefighting.

(2) The aircraft referred to in paragraph (1) shall be aircraft that are—

(A) specifically designed and built for aerial firefighting;

(B) certified by the Chief of the Forest Service as suited for conditions commonly experienced in aerial firefighting operations carried out in the United States, including Alaska; and

(C) manufactured in a manner that is consistent with the recommendations for aircraft used in aerial firefighting contained in—

(i) the Blue Ribbon Panel Report to the Chief of the Forest Service and the Director of the Bureau of Land Management dated December 2002; and

(ii) the Safety Recommendation of the Chairman of the National Transportation Safety Board related to aircraft used in aerial firefighting dated April 23, 2004.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Agriculture for fiscal year 2005 such funds as may be necessary to purchase the 10 aircraft described in subsection (b).

SEC. 1087. REVISION TO REQUIREMENTS FOR RECOGNITION OF INSTITUTIONS OF HIGHER EDUCATION AS HISPANIC-SERVING INSTITUTIONS FOR PURPOSES OF CERTAIN GRANTS AND CONTRACTS.

Section 502(a)(5)(C) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)(C)) is amended by inserting before the period the following: “, which assurances—

“(i) may employ statistical extrapolation using appropriate data from the Bureau of the Census or other appropriate Federal or State sources; and

“(ii) the Secretary shall consider as meeting the requirements of this subparagraph, unless the Secretary determines, based on a preponderance of the evidence, that the assurances do not meet the requirements”.

SEC. 1088. MILITARY EXTRATERRITORIAL JURISDICTION OVER CONTRACTORS SUPPORTING DEFENSE MISSIONS OVERSEAS.

Section 3267(1)(A) of title 18, United States Code, is amended to read as follows:

“(A) employed as—

“(i) a civilian employee of—

“(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

“(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;

“(ii) a contractor (including a subcontractor at any tier) of—

“(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

“(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

“(iii) an employee of a contractor (or subcontractor at any tier) of—

“(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

“(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;”.

SEC. 1089. DEFINITION OF UNITED STATES FOR PURPOSES OF FEDERAL CRIME OF TORTURE.

Section 2340(3) of title 18, United States Code, is amended to read as follows:

“(3) ‘United States’ means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.”.

SEC. 1090. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) IN GENERAL.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is amended by striking “2003” and inserting “2006”.

(b) PAYMENT OF COSTS.—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by inserting “, water, or wastewater treatment” after “payment of energy”.

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

“(2) The term ‘energy savings’ means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

“(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

“(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

“(C) the increased efficient use of existing water sources in either interior or exterior applications.”.

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

“(3) The terms ‘energy savings contract’ and ‘energy savings performance contract’ mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.”.

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

“(4) The term ‘energy or water conservation measure’ means—

“(A) an energy conservation measure, as defined in section 551; or

“(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.”.

Deadline.
42 USC 8287
note.

(f) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

42 USC 8287
note.

(g) EXTENSION OF AUTHORITY.—Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act, shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.

10 USC 801 note.

SEC. 1091. SENSE OF CONGRESS AND POLICY CONCERNING PERSONS DETAINED BY THE UNITED STATES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the abuses inflicted upon detainees at the Abu Ghraib prison in Baghdad, Iraq, are inconsistent with the professionalism, dedication, standards, and training required of individuals who serve in the United States Armed Forces;

(2) the vast majority of members of the Armed Forces have upheld the highest possible standards of professionalism and morality in the face of illegal tactics and terrorist attacks and attempts on their lives;

(3) the abuse of persons in United States custody in Iraq is appropriately condemned and deplored by the American people;

(4) the Armed Forces are moving swiftly and decisively to identify, try, and, if found guilty, punish persons who perpetrated such abuse;

(5) the Department of Defense and appropriate military authorities must continue to undertake corrective action, as appropriate, to address chain-of-command deficiencies and the systemic deficiencies identified in the incidents in question;

(6) the Constitution, laws, and treaties of the United States and the applicable guidance and regulations of the United States Government prohibit the torture or cruel, inhuman, or degrading treatment of foreign prisoners held in custody by the United States;

(7) the alleged crimes of a handful of individuals should not detract from the commendable sacrifices of over 300,000 members of the Armed Forces who have served, or who are serving, in Operation Iraqi Freedom; and

(8) no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of United States.

(b) **POLICY.**—It is the policy of the United States to—

(1) ensure that no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States;

(2) investigate and prosecute, as appropriate, all alleged instances of unlawful treatment of detainees in a manner consistent with the international obligations, laws, or policies of the United States;

(3) ensure that all personnel of the United States Government understand their obligations in both wartime and peacetime to comply with the legal prohibitions against torture, cruel, inhuman, or degrading treatment of detainees in the custody of the United States;

(4) ensure that, in a case in which there is doubt as to whether a detainee is entitled to prisoner of war status under the Geneva Conventions, such detainee receives the protections accorded to prisoners of war until the detainee's status is determined by a competent tribunal; and

(5) expeditiously process and, if appropriate, prosecute detainees in the custody of the United States, including those in the custody of the United States Armed Forces at Guantanamo Bay, Cuba.

(c) **DETAINEES.**—For purposes of this section, the term “detainee” means a person in the custody or under the physical control of the United States as a result of armed conflict.

SEC. 1092. ACTIONS TO PREVENT THE ABUSE OF DETAINEES.

10 USC 801 note.

(a) **POLICIES REQUIRED.**—The Secretary of Defense shall ensure that policies are prescribed not later than 150 days after the date of the enactment of this Act regarding procedures for Department of Defense personnel and contractor personnel of the Department of Defense intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, treat persons detained by the United States Government in a humane manner consistent with the international obligations and laws of the United States and the policies set forth in section 1091(b).

(b) **MATTERS TO BE INCLUDED.**—In order to achieve the objective stated in subsection (a), the policies under that subsection shall specify, at a minimum, procedures for the following:

(1) Ensuring that each commander of a Department of Defense detention facility or interrogation facility—

(A) provides all assigned personnel with training, and documented acknowledgment of receiving training, regarding the law of war, including the Geneva Conventions; and

(B) establishes standard operating procedures for the treatment of detainees.

(2) Ensuring that each Department of Defense contract in which contract personnel in the course of their duties interact with individuals detained by the Department of Defense on behalf of the United States Government include a requirement that such contract personnel have received training, and documented acknowledgment of receiving training, regarding the international obligations and laws of the United States applicable to the detention of personnel.

(3) Providing all detainees with information, in their own language, of the applicable protections afforded under the Geneva Conventions.

(4) Conducting periodic unannounced and announced inspections of detention facilities in order to provide continued oversight of interrogation and detention operations.

(5) Ensuring that, to the maximum extent practicable, detainees and detention facility personnel of a different gender are not alone together.

(c) SECRETARY OF DEFENSE CERTIFICATION.—The Secretary of Defense shall certify that all Federal employees and civilian contractors engaged in the handling or interrogation of individuals detained by the Department of Defense on behalf of the United States Government have fulfilled an annual training requirement on the law of war, the Geneva Conventions, and the obligations of the United States under international law.

SEC. 1093. REPORTING REQUIREMENTS.

(a) TRANSMISSION OF REGULATIONS, ETC.—Not later than 30 days after the date on which regulations, policies, and orders are first prescribed under section 1092(a), the Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement section 1092.

(b) ONE-YEAR IMPLEMENTATION REPORT.—Not later than one year after the date on which regulations, policies, and orders are first prescribed under section 1092(a), the Secretary shall submit to such committees a report on further steps taken to implement section 1092 to the date of such report.

(c) ANNUAL REPORT.—Nine months after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report for the preceding 12-months containing the following:

(1) Notice of any investigation into any violation of international obligations or laws of the United States regarding the treatment of individuals detained by the United States Armed Forces or by a person providing services to the Department of Defense on a contractual basis, if the notice will not compromise any ongoing criminal or administrative investigation or prosecution.

(2) General information on the foreign national detainees in the custody of the Department of Defense during the 12-month period covered by the report, including the following:

(A) The best estimate of the Secretary of Defense of the total number of detainees in the custody of the Department as of the date of the report.

(B) The best estimate of the Secretary of Defense of the total number of detainees released from the custody of the Department during the period covered by the report.

(C) An aggregate summary of the number of persons detained as enemy prisoners of war, civilian internees, and unlawful combatants, including information regarding the average length of detention for persons in each category.

(D) An aggregate summary of the nationality of persons detained.

(E) Aggregate information as to the transfer of detainees to the jurisdiction of other countries, and the countries to which transferred.

(d) CLASSIFICATION OF REPORTS.—Reports submitted under this section shall be submitted, to the extent practicable, in unclassified form, but may include a classified annex as necessary to protect the national security of the United States.

(e) TERMINATION.—The requirements of this section shall cease to be in effect on December 31, 2007.

SEC. 1094. FINDINGS AND SENSE OF CONGRESS CONCERNING ARMY SPECIALIST JOSEPH DARBY.

(a) FINDINGS.—Congress makes the following findings:

(1) The need to act in accord with one's conscience, risking one's career and even the esteem of one's colleagues by pursuing what is right is especially important today.

(2) While the Department of Defense investigates the horrific abuses in American detention facilities in Iraq, the Nation should bear in mind that the abuses were only brought to light because of the courage of an American soldier.

(3) By alerting his superiors to abuses at Abu Ghraib prison in Iraq, Army Specialist Joseph Darby demonstrated the courage to speak out and do what is right for his country.

(4) Such an action is especially important in light of the many challenges facing the country.

(5) Specialist Darby deserves the Nation's thanks for speaking up and for standing up for what is right.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Secretary of Defense should make every protection available to Army Specialist Joseph Darby and others who demonstrate such courage; and

(2) Specialist Darby should be commended appropriately by the Secretary of the Army.

**TITLE XI—CIVILIAN PERSONNEL
MATTERS**

Sec. 1101. Payment of Federal employee health benefit premiums for mobilized Federal employees.

Sec. 1102. Foreign language proficiency pay.

Sec. 1103. Pay and performance appraisal parity for civilian intelligence personnel.

Sec. 1104. Pay parity for senior executives in defense nonappropriated fund instrumentalities.

Sec. 1105. Science, mathematics, and research for transformation (SMART) defense scholarship pilot program.

Sec. 1106. Report on how to recruit and retain individuals with foreign language skills.

Sec. 1107. Plan on implementation and utilization of flexible personnel management authorities in Department of Defense laboratories.

SEC. 1101. PAYMENT OF FEDERAL EMPLOYEE HEALTH BENEFIT PREMIUMS FOR MOBILIZED FEDERAL EMPLOYEES.

(a) **AUTHORITY TO CONTINUE BENEFIT COVERAGE.**—Section 8905a of title 5, United States Code is amended—

(1) in subsection (a), by striking “paragraph (1) or (2) of”;

(2) in subsection (b)—

(A) in paragraph (1)(B), by striking “and” at the end;

(B) in paragraph (2)(C), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(3) any employee who—

“(A) is enrolled in a health benefits plan under this chapter;

“(B) is a member of a reserve component of the armed forces;

“(C) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

“(D) is placed on leave without pay or separated from service to perform active duty; and

“(E) serves on active duty for a period of more than 30 consecutive days.”; and

(4) in subsection (e)(1)—

(A) in subparagraph (A), by striking “or” at the end;

(B) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following new subparagraph:

“(C) in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty.”.

(b) **AUTHORITY FOR AGENCIES TO PAY PREMIUMS.**—Subparagraph (C) of section 8906(e)(3) of such title is amended by striking “18 months” and inserting “24 months”.

5 USC 8905a
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to Federal employees called or ordered to active duty on or after September 14, 2001.

SEC. 1102. FOREIGN LANGUAGE PROFICIENCY PAY.

(a) **ELIGIBILITY FOR SERVICE NOT RELATED TO CONTINGENCY OPERATIONS.**—Section 1596a(a)(2) of title 10, United States Code, is amended by striking “during a contingency operation supported by the armed forces”.

10 USC 1596a
note.

(b) **EFFECTIVE DATE.**—The amendment by this section shall take effect on the first day of the first month that begins after the date of the enactment of this Act.

SEC. 1103. PAY AND PERFORMANCE APPRAISAL PARITY FOR CIVILIAN INTELLIGENCE PERSONNEL.

(a) **PAY RATES.**—Section 1602 of title 10, United States Code, is amended—

(1) in subsection (a), by striking “in relation to the rates of pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities” and inserting “in relation to the

rates of pay provided for comparable positions in the Department of Defense and subject to the same limitations on maximum rates of pay established for employees of the Department of Defense by law or regulation”;

(2) by striking subsection (b); and

(3) by redesignating subsection (c) as subsection (b).

(b) PERFORMANCE APPRAISAL SYSTEM.—Section 1606 of such title is amended by adding at the end the following new subsection:

“(d) PERFORMANCE APPRAISALS.—(1) The Defense Intelligence Senior Executive Service shall be subject to a performance appraisal system which, as designed and applied, is certified by the Secretary of Defense under section 5307 of title 5 as making meaningful distinctions based on relative performance.

“(2) The performance appraisal system applicable to the Defense Intelligence Senior Executive Service under paragraph (1) may be the same performance appraisal system that is established and implemented within the Department of Defense for members of the Senior Executive Service.”.

SEC. 1104. PAY PARITY FOR SENIOR EXECUTIVES IN DEFENSE NON-APPROPRIATED FUND INSTRUMENTALITIES.

(a) AUTHORITY.—Chapter 81 of title 10, United States Code, is amended by inserting after section 1587 the following new section:

“§ 1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels

“(a) AUTHORITY.—To achieve the objective stated in subsection (b), the Secretary of Defense may regulate the amount of total compensation that is provided for senior executives of nonappropriated fund instrumentalities who, for the fixing of pay by administrative action, are under the jurisdiction of the Secretary of Defense or the Secretary of a military department.

“(b) PAY PARITY.—The objective of an action taken with respect to the compensation of senior executives under subsection (a) is to provide for parity between the total compensation provided for such senior executives and total compensation that is provided for Department of Defense employees in Senior Executive Service positions or other senior executive positions.

“(c) STANDARDS OF COMPARABILITY.—Subject to subsection (d), the Secretary of Defense shall prescribe the standards of comparison that are to apply in the making of the determinations necessary to achieve the objective stated in subsection (b).

“(d) ESTABLISHMENT OF PAY RATES.—The Secretary of Defense shall apply subsections (a) and (b) of section 5382 of title 5 in the regulation of compensation under this section.

“(e) RELATIONSHIP TO PAY LIMITATION.—The Secretary of Defense may exercise the authority provided in subsection (a) without regard to section 5373 of title 5.

“(f) DEFINITIONS.—In this section:

“(1) The term ‘compensation’ includes rate of basic pay.

“(2) The term ‘Senior Executive Service position’ has the meaning given such term in section 3132 of title 5.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1587 the following new item:

“1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels.”.

10 USC 2192
note.

SEC. 1105. SCIENCE, MATHEMATICS, AND RESEARCH FOR TRANSFORMATION (SMART) DEFENSE SCHOLARSHIP PILOT PROGRAM.

(a) REQUIREMENT FOR PROGRAM.—(1) The Secretary of Defense shall carry out a pilot program to provide financial assistance for education in science, mathematics, engineering, and technology skills and disciplines that, as determined by the Secretary, are critical to the national security functions of the Department of Defense and are needed in the Department of Defense workforce.

(2) The pilot program under this section shall be carried out for three years beginning on the date of the enactment of this Act.

(b) SCHOLARSHIPS.—(1) Under the pilot program, the Secretary of Defense may award a scholarship in accordance with this section to a person who—

(A) is a citizen of the United States;

(B) is pursuing an undergraduate or advanced degree in a critical skill or discipline described in subsection (a) at an institution of higher education; and

(C) enters into a service agreement with the Secretary of Defense as described in subsection (c).

(2) The amount of the financial assistance provided under a scholarship awarded to a person under this subsection shall be the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, and expenses of room and board. The expenses paid, however, shall be limited to those educational expenses normally incurred by students at the institution of higher education involved.

(c) SERVICE AGREEMENT FOR RECIPIENTS OF ASSISTANCE.—(1) To receive financial assistance under this section—

(A) in the case of an employee of the Department of Defense, the employee shall enter into a written agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(B) in the case of a person not an employee of the Department of Defense, the person shall enter into a written agreement to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of a scholarship under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for the financial assistance provided under the scholarship. In no event may the period of service required of a recipient be less than the total period of pursuit of a degree that is covered by the scholarship. The period of obligated service is in addition to any other period for which the recipient is obligated to serve in the civil service of the United States.

(3) An agreement entered into under this subsection by a person pursuing an academic degree shall include any terms and conditions that the Secretary of Defense determines necessary to protect the interests of the United States or otherwise appropriate for carrying out this section.

(d) REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—

(1) A person who voluntarily terminates service before the end of the period of obligated service required under an agreement entered into under subsection (c) shall refund to the United States an amount determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for financial assistance.

(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) The Secretary of Defense may waive, in whole or in part, a refund required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) A discharge in bankruptcy under title 11, United States Code, that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under this subsection.

(e) RELATIONSHIP TO OTHER PROGRAMS.—The pilot program under this section is in addition to the authorities provided in chapter 111 of title 10, United States Code. The Secretary of Defense shall coordinate the provision of financial assistance under the authority of this section with the provision of financial assistance under the authorities provided in such chapter in order to maximize the benefits derived by the Department of Defense from the exercise of all such authorities.

(f) RECOMMENDATION ON PILOT PROGRAM.—Not later than February 1, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives a plan for expanding and improving the national defense science and engineering workforce educational assistance pilot program carried out under this section as appropriate to improve recruitment and retention to meet the requirements of the Department of Defense for its science and engineering workforce on a short-term basis and on a long-term basis.

Deadline.

(g) CRITICAL HIRING NEED.—Section 3304(a)(3) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

“(B)(i) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need; or

“(ii) the candidate is a participant in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program under section 1105 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.”.

(h) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term “institution of higher education” has the meaning given such term in section 101 of the Higher Education Act of 1965 (21 U.S.C. 1001).

SEC. 1106. REPORT ON HOW TO RECRUIT AND RETAIN INDIVIDUALS WITH FOREIGN LANGUAGE SKILLS.

Not later than March 31, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives and the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, a plan for expanding and improving the national security foreign language workforce of the Department of Defense as appropriate to improve recruitment and retention to meet the requirements of the Department for its foreign language workforce on a short-term basis and on a long-term basis.

SEC. 1107. PLAN ON IMPLEMENTATION AND UTILIZATION OF FLEXIBLE PERSONNEL MANAGEMENT AUTHORITIES IN DEPARTMENT OF DEFENSE LABORATORIES.

(a) **PLAN REQUIRED.**—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Personnel and Readiness shall jointly develop a plan for the effective utilization of the personnel management authorities referred to in subsection (b) in order to increase the mission responsiveness, efficiency, and effectiveness of Department of Defense laboratories.

(b) **COVERED AUTHORITIES.**—The personnel management authorities referred to in this subsection are the personnel management authorities granted to the Secretary of Defense by the provisions of law as follows:

(1) Section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398 (114 Stat. 1654A-315)).

(2) Section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 5 U.S.C. 3104 note).

(3) Section 9902(c) of title 5, United States Code.

(4) Such other provisions of law as the Under Secretaries jointly consider appropriate for purposes of this section.

(c) **PLAN ELEMENTS.**—The plan under subsection (a) shall—

(1) include such elements as the Under Secretaries jointly consider appropriate to provide for the effective utilization of the personnel management authorities referred to in subsection (b) as described in subsection (a), including the recommendations of the Under Secretaries for such additional authorities, including authorities for demonstration programs or projects, as are necessary to achieve the effective utilization of such personnel management authorities; and

(2) include procedures, including a schedule for review and decisions, on proposals to modify current demonstration programs or projects, or to initiate new demonstration programs or projects, on flexible personnel management at Department laboratories

Deadline.

(d) **SUBMITTAL TO CONGRESS.**—The Under Secretaries shall jointly submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the plan under subsection (a) not later than December 1, 2005.

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—Matters Relating to Iraq, Afghanistan, and Global War on Terrorism

- Sec. 1201. Commanders' Emergency Response Program.
- Sec. 1202. Assistance to Iraq and Afghanistan military and security forces.
- Sec. 1203. Redesignation and modification of authorities relating to Inspector General of the Coalition Provisional Authority.
- Sec. 1204. Presidential report on strategy for stabilization of Iraq.
- Sec. 1205. Guidance on contractors supporting deployed forces in Iraq.
- Sec. 1206. Report on contractors supporting deployed forces and reconstruction efforts in Iraq.
- Sec. 1207. United Nations Oil-for-Food Program.
- Sec. 1208. Support of military operations to combat terrorism.

Subtitle B—Counterproliferation Matters

- Sec. 1211. Defense international counterproliferation programs.
- Sec. 1212. Policy and sense of Congress on nonproliferation of ballistic missiles.
- Sec. 1213. Sense of Congress on the global partnership against the spread of weapons of mass destruction.
- Sec. 1214. Report on collaborative measures to reduce the risks of a launch of Russian nuclear weapons.

Subtitle C—Other Matters

- Sec. 1221. Authority for humanitarian assistance for the detection and clearance of landmines extended to include other explosive remnants of war.
- Sec. 1222. Expansion of entities of the People's Republic of China subject to certain presidential authorities when operating in the United States.
- Sec. 1223. Assignment of NATO naval personnel to submarine safety programs.
- Sec. 1224. Availability of Warsaw Initiative Funds for new NATO members.
- Sec. 1225. Bilateral exchanges and trade in defense articles and defense services between the United States and the United Kingdom and Australia.
- Sec. 1226. Study on missile defense cooperation.

Subtitle A—Matters Relating to Iraq, Afghanistan, and Global War on Terrorism

SEC. 1201. COMMANDERS' EMERGENCY RESPONSE PROGRAM.

(a) FISCAL YEAR 2005 AUTHORITY.—During fiscal year 2005, from funds made available to the Department of Defense for operation and maintenance pursuant to title XV, not to exceed \$300,000,000 may be used to provide funds—

(1) for the Commanders' Emergency Response Program, established by the Administrator of the Coalition Provisional Authority for the purpose of enabling United States military commanders in Iraq to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the Iraqi people; and

(2) for a similar program to assist the people of Afghanistan.

(b) QUARTERLY REPORTS.—Not later than 15 days after the end of each fiscal-year quarter (beginning with the first quarter of fiscal year 2005), the Secretary of Defense shall submit to the congressional defense committees a report regarding the source of funds and the allocation and use of funds during that quarter that were made available pursuant to the authority provided in this section or under any other provision of law for the purposes stated in subsection (a).

(c) **WAIVER AUTHORITY.**—For purposes of the exercise of the authority provided by this section or any other provision of law making funding available for the Commanders' Emergency Response Program referred to in subsection (a) (including a program referred to in paragraph (2) of that subsection), the Secretary may waive any provision of law not contained in this section that would (but for the waiver) prohibit, restrict, limit, or otherwise constrain the exercise of that authority.

Deadline.

(d) **REVIEW OF LAWS.**—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report identifying all provisions of law that (if not waived) would prohibit, restrict, limit, or otherwise constrain the exercise of the authority provided in this section or any other provision of law using funds available for the purposes stated in subsection (a).

SEC. 1202. ASSISTANCE TO IRAQ AND AFGHANISTAN MILITARY AND SECURITY FORCES.

(a) **AUTHORITY.**—The Secretary of Defense may provide assistance under this section to Iraq and Afghanistan military and security forces. Such assistance shall be provided, subject to the provisions of this section, solely to enhance the ability of such forces to combat terrorism and support United States or coalition military operations in Iraq and Afghanistan, respectively.

(b) **TYPE OF ASSISTANCE.**—Assistance provided under subsection (a) may include equipment, supplies, services, and training.

(c) **LIMITATIONS.**—Assistance under this section or under any other provision of law for the purpose described in subsection (a) may be provided only from funds available to the Department of Defense for fiscal year 2005 for operation and maintenance under title XV. The total amount of such assistance may not exceed \$500,000,000.

(d) **CONGRESSIONAL NOTIFICATION.**—Before any provision of assistance under this section or any other provision of law for the purpose described in subsection (a), the Secretary of Defense shall submit to the congressional defense committees a notification of the assistance proposed to be provided. Any such notification shall be submitted not less than 15 days before the provision of such assistance.

(e) **MILITARY AND SECURITY FORCES DEFINED.**—For purposes of this section, the term “military and security forces” means national armies, national guard forces, border security forces, civil defense forces, infrastructure protection forces, and police.

SEC. 1203. REDESIGNATION AND MODIFICATION OF AUTHORITIES RELATING TO INSPECTOR GENERAL OF THE COALITION PROVISIONAL AUTHORITY.

(a) **REDESIGNATION.**—(1) Subsections (b) and (c)(1) of section 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106; 117 Stat. 1234; 5 U.S.C. App. 3 section 8G note) are each amended by striking “Office of the Inspector General of the Coalition Provisional Authority” and inserting “Office of the Special Inspector General for Iraq Reconstruction”.

(2) Subsection (c)(1) of such section is further amended by striking “Inspector General of the Coalition Provisional Authority”

and inserting “Special Inspector General for Iraq Reconstruction (in this section referred to as the ‘Inspector General’)”.

(3)(A) The heading of such section is amended to read as follows:

“SEC. 3001. SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION.”

(B) The heading of title III of such Act is amended to read as follows:

“TITLE III—SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION”.

(b) CONTINUATION IN OFFICE.—The individual serving as the Inspector General of the Coalition Provisional Authority as of the date of the enactment of this Act may continue to serve in that position after that date without reappointment under paragraph (1) of section 3001(c) of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, but remaining subject to removal as specified in paragraph (4) of that section.

5 USC app. 8G note.

(c) PURPOSES.—Subsection (a) of such section is amended—

5 USC app. 8G note.

(1) in paragraph (1), by striking “of the Coalition Provisional Authority (CPA)” and inserting “funded with amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund”;

(2) in paragraph (2)(B), by striking “fraud” and inserting “waste, fraud,”; and

(3) in paragraph (3), by striking “the head of the Coalition Provisional Authority” and inserting “the Secretary of State and the Secretary of Defense”.

(d) RESPONSIBILITIES OF ASSISTANT INSPECTOR GENERAL FOR AUDITING.—Subsection (d)(1) of such section is amended by striking “of the Coalition Provisional Authority” and inserting “supported by the Iraq Relief and Reconstruction Fund”.

(e) SUPERVISION.—Such section is further amended—

(1) in subsection (e)—

(A) in paragraph (1), by striking “the head of the Coalition Provisional Authority” and inserting “the Secretary of State and the Secretary of Defense”; and

(B) in paragraph (2)—

(i) by striking “Neither the head of the Coalition Provisional Authority,” and all that follows through “nor any other officer” and inserting “No officer”; and

(ii) by striking “investigation,” and all that follows through “course of any” and inserting “investigation related to the Iraq Relief and Reconstruction Fund or from issuing any subpoena during the course of any such”;

(2) in subsection (h)—

(A) in paragraphs (4)(B) and (5), by striking “head of the Coalition Provisional Authority” and inserting “Secretary of State or Secretary of Defense, as appropriate,”; and

(B) in paragraph (5), by striking “at the central and field locations of the Coalition Provisional Authority” and

inserting “within the Department of Defense or at appropriate locations of the Department of State in Iraq”;

(3) in subsection (j)—

(A) in paragraph (1), by striking “the head of the Coalition Provisional Authority” and inserting “the Secretary of State and the Secretary of Defense”; and

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking “the head of the Coalition Provisional Authority” the first place it appears and inserting “the Secretary of State or the Secretary of Defense”; and

(II) by striking “the head of the Coalition Provisional Authority” the second place it appears and inserting “the Secretary of State or the Secretary of Defense, as the case may be,”; and

(ii) in subparagraph (B), by striking “the head of the Coalition Provisional Authority” and inserting “the Secretary of State or the Secretary of Defense, as the case may be,”; and

(4) in subsection (k), by striking “the head of the Coalition Provisional Authority shall” both places it appears and inserting “the Secretary of State and the Secretary of Defense shall jointly”.

(f) DUTIES.—Subsection (f)(1) of such section is amended—

(1) in the matter preceding subparagraph (A), by striking “appropriated funds by the Coalition Provisional Authority in Iraq” and inserting “amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund”; and

(2) in subparagraph (D), by striking “the Coalition Provisional Authority,” and all that follows through “Government, and” and inserting “departments, agencies, and entities of the United States and”.

(g) INTERAGENCY COORDINATION.—Subsection (f) of such section is further amended by striking paragraphs (4) and (5) and inserting the following new paragraph (4):

“(4) In carrying out the duties, responsibilities, and authorities of the Inspector General under this section, the Inspector General shall coordinate with, and receive the cooperation of, each of the following:

“(A) The Inspector General of the Department of State.

“(B) The Inspector General of the Department of Defense.

“(C) The Inspector General of the United States Agency for International Development.”.

(h) POWERS AND AUTHORITIES.—Subsection (g)(1) of such section is amended by inserting before the period the following: “, including the authorities under subsection (e) of such section”.

(i) REPORTS.—Subsection (i) of such section is amended—

(1) in paragraph (1)—

(A) by striking the first sentence and inserting the following: “Not later than 30 days after the end of each fiscal-year quarter, the Inspector General shall submit to the appropriate committees of Congress a report summarizing, for the period of that quarter and, to the extent possible, the period from the end of such quarter to the time of the submission of the report, the activities during such period of the Inspector General and the activities

under programs and operations funded with amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund.”;

(B) in subparagraph (B), by striking “the Coalition Provisional Authority” and inserting “the Department of Defense, the Department of State, and the United States Agency for International Development, as applicable,”;

(C) in subparagraph (E)—

(i) by striking “the Coalition Provisional Authority and of any other”; and

(ii) by striking “appropriated funds” and inserting “amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund”; and

(D) in subparagraph (F)(iii), by striking “the Coalition Provisional Authority” and inserting “the contracting department or agency”;

(2) in paragraph (2), by striking “by the Coalition Provisional Authority” and inserting “by any department or agency of the United States Government that involves the use of amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund”;

(3) in paragraph (3)—

(A) by striking “Not later than June 30, 2004, and semiannually thereafter, the” and inserting “The”;

(B) by striking “a report” and inserting “semiannual reports”; and

(C) and by adding at the end the following new sentence: “The first such report for a year, covering the first six months of the year, shall be submitted not later than July 31 of that year, and the second such report, covering the second six months of the year, shall be submitted not later than January 31 of the following year.”; and

(4) in paragraph (4), by striking “of the Coalition Provisional Authority” and inserting “of the Department of State and of the Department of Defense”.

(j) TERMINATION.—Subsection (o) of such section is amended to read as follows:

“(o) TERMINATION.—The Office of the Inspector General shall terminate on the date that is 10 months after the date, as determined by the Secretary of State and the Secretary of Defense, on which 80 percent of the amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund by chapter 2 of title II of this Act have been obligated.”.

SEC. 1204. PRESIDENTIAL REPORT ON STRATEGY FOR STABILIZATION OF IRAQ.

(a) STABILIZATION STRATEGY.—Not later than 120 days after the date of the enactment of this Act, the President shall submit to Congress an unclassified report (with classified annex, if necessary) on the strategy of the United States and coalition forces for stabilizing Iraq. The report shall contain a detailed explanation of the strategy, together with the following:

(1) A description of the efforts of the President to work with the United Nations to provide support for, and assistance to, the transitional government in Iraq and, in particular, the efforts of the President to negotiate and secure adoption by the United Nations Security Council of Resolution 1546.

(2) A description of the efforts of the President to continue to work with North Atlantic Treaty Organization (NATO) member states and non-NATO member states to provide support for and augment coalition forces, including—

(A) the current military forces of coalition countries deployed to Iraq;

(B) the current police forces of coalition countries deployed to Iraq;

(C) the current financial resources of coalition countries pledged and provided for the stabilization and reconstruction of Iraq; and

(D) a list of countries that have pledged to deploy military or police forces, including the schedule and level of such deployments.

(3) The strategic plan referred to in subsection (b) relating to Iraqi security forces.

(4) A description of the efforts of the United States and coalition forces to assist in the reconstruction of essential infrastructure of Iraq, including the oil industry, electricity generation, roads, schools, and hospitals.

(5) A description of the efforts of the United States, coalition partners, and relevant international agencies to assist in the development of political institutions and prepare for democratic elections in Iraq.

(6) A description of the obstacles, including financial, technical, logistic, personnel, political, and other obstacles, faced by NATO in generating and deploying military forces out of theater to locations such as Iraq.

(b) IRAQI SECURITY FORCES.—The President shall include in the report under subsection (a) a strategic plan setting forth the manner in which the coalition will achieve the goal of establishing viable and professional Iraqi security forces able to provide for the long-term security of the Iraqi people. That strategic plan shall include at least the following:

(1) Recruiting and retention goals, shown for each service of the Iraqi security forces.

(2) Training plans for each service of the Iraqi security forces.

(3) A description of metrics by which progress toward the goal of Iraqi provision for its own security can be measured.

(4) A description of equipment needs, shown for each service of the Iraqi security forces.

(5) A resourcing plan for achieving the goals of the strategic plan.

(6) Personnel plans in terms of United States military and contractor personnel to be used in training each such service.

(7) A description of challenges faced and opportunities presented in particular regions of Iraq and a plan for addressing those challenges.

(8) A discussion of training and deployment successes and failures to the date of the report and how lessons from those successes and failures will be incorporated into the strategic plan.

(c) QUARTERLY REPORTS.—Not later than 30 days after the end of each quarter of calendar year 2005, the Secretary of Defense shall submit to the Congress a report on the actions taken under

the strategic plan set forth pursuant to subsection (b) since the date of the enactment of this Act. Each such report shall be prepared in conjunction with the Secretary of State.

SEC. 1205. GUIDANCE ON CONTRACTORS SUPPORTING DEPLOYED FORCES IN IRAQ.

(a) **GUIDANCE.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance on how the Department of Defense shall manage contractor personnel who support deployed forces and shall direct the Secretaries of the military departments to develop procedures to ensure implementation of that guidance. The guidance shall—

Deadline.

(1) establish policies for the use of contractors to support deployed forces;

(2) delineate the roles and responsibilities of commanders regarding the management and oversight of contractor personnel who support deployed forces; and

(3) integrate into a single document other guidance and doctrine that may affect Department of Defense responsibilities to contractors in locations where members of the Armed Forces are deployed.

(b) **ISSUES TO BE ADDRESSED.**—The guidance issued under subsection (a) shall address at least the following matters:

(1) Warning contractor security personnel of potentially hazardous situations.

(2) Coordinating the movement of contractor security personnel, especially through areas of increased risk or planned or ongoing military operations.

(3) Rapidly identifying contractor security personnel by members of the Armed Forces.

(4) Sharing relevant threat information with contractor security personnel and receiving information gathered by contractor security personnel for use by United States and coalition forces.

(5) Providing appropriate assistance to contractor personnel who become engaged in hostile situations.

(6) Providing medical assistance for, and evacuation of, contractor personnel who become casualties as a result of enemy actions.

(7) Investigating background and qualifications of contractor security personnel and organizations.

(8) Establishing rules of engagement for armed contractor security personnel, and ensuring proper training and compliance with the rules of engagement.

(9) Establishing categories of security, intelligence, law enforcement, and criminal justice functions that are—

(A) inherently governmental functions under Subpart 7.5 of the Federal Acquisition Regulation; or

(B) although not inherently governmental functions, should not ordinarily be performed by contractors in areas of operations.

(10) Establishing procedures for making and documenting determinations about which security, intelligence, law enforcement, and criminal justice functions will be performed by military personnel and which will be performed by private companies.

(c) **REPORT.**—Not later than 30 days after issuing the guidance required under subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the guidance issued under subsection (a).

SEC. 1206. REPORT ON CONTRACTORS SUPPORTING DEPLOYED FORCES AND RECONSTRUCTION EFFORTS IN IRAQ.

(a) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on contractors supporting deployed forces and reconstruction efforts in Iraq.

(b) **MATTERS TO BE INCLUDED.**—The report required by subsection (a) shall include, at a minimum, the following matters with respect to contractors, and employees of contractors, described in subsection (a):

(1) A description of the overall chain of command and oversight mechanisms that are in place to ensure adequate command and supervision of such contractor employees in critical security roles.

(2) A description of sanctions that are available to be imposed on such a contractor employee who—

(A) fails to comply with a requirement of law or regulation that applies to such employee; or

(B) engages in other misconduct.

(3) A description of disciplinary and criminal actions brought against contractor employees during the period beginning on May 1, 2003, and ending on the date of the enactment of this Act.

(4) An explanation of the legal status of contractor employees engaged in the performance of security functions in Iraq after the transfer of sovereign power to Iraq on June 28, 2004.

(5) A specification of casualty and fatality figures for contractor employees supporting deployed forces and reconstruction efforts in Iraq, shown, to the extent practicable, in the following categories:

(A) Total casualties and total fatalities.

(B) Casualties and fatalities among—

(i) nationals of the United States;

(ii) nationals of Iraq; and

(iii) nationals of states other than the United States and Iraq.

(6) A description, to the maximum extent practicable, of incidents in which contractor employees supporting deployed forces and reconstruction efforts in Iraq have been engaged in hostile fire or other incidents of note during the period beginning on May 1, 2003, and ending on the date of the enactment of this Act.

(c) **PLANS.**—The Secretary shall include with the report under subsection (a) the following plans:

(1) A plan for establishing and implementing a process for collecting data on individual contractors, the value of the contracts, the number of casualties incurred, and the number

of personnel in Iraq performing the following services for the Department of Defense and other Federal agencies:

- (A) Personal security details.
- (B) Nonmilitary site security.
- (C) Nonmilitary convoy security.
- (D) Interrogation services at interrogation centers operated by the Department of Defense.

(2) A plan for ensuring that military commanders in the theater of operations have accurate information on the number, types, and sources of weapons and other critical equipment (such as body armor, armored vehicles, secure communications and friend-foe identification) that contractor personnel performing services specified in paragraph (1) are authorized to possess.

(d) COORDINATION.—In the preparation of the report under this section (including the plans under subsection (c)), the Secretary of Defense shall coordinate, as appropriate, with the head of any Federal agency that is involved in the procurement of services from contractors supporting deployed forces and reconstruction efforts in Iraq. The head of any such agency shall provide to the Secretary of Defense such information as the Secretary may require about such contractors to complete the report.

SEC. 1207. UNITED NATIONS OIL-FOR-FOOD PROGRAM.

(a) ACCESS TO DOCUMENTS.—It is the sense of Congress that the Secretary of State should seek to conclude a memorandum of understanding with the Interim Government of Iraq to ensure that the United States will have access to all documents in the possession of that Government related to the United Nations Oil-for-Food Program.

(b) INFORMATION FROM THE UNITED NATIONS.—(1) The Secretary of State shall use the voice and vote of the United States in the United Nations to urge the Secretary General of the United Nations to provide to the United States copies of all audits and core documents related to the United Nations Oil-for-Food Program, including all audits, examinations, studies, reviews, or similar documents prepared by the United Nations Office of Internal Oversight Services and all responses to such documents.

(2) It is the sense of Congress that, pursuant to section 941(b)(6) of the United Nations Reform Act of 1999 (title IX of division A of H.R. 3427 of the 106th Congress, as enacted into law by section 1000(a)(7) of Public Law 106-113; 113 Stat. 1501A-483), the Comptroller General should have full and complete access to financial information relating to the United Nations, including information related to the financial transactions, organization, and activities of the United Nations Oil-for-Food Program.

(3) The Secretary of State shall facilitate access by the Comptroller General to the financial information described in paragraph (2).

(c) COOPERATION IN INVESTIGATIONS.—The head of any Executive agency (including the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, and the Director of the Central Intelligence Agency) shall, upon a request in connection with an investigation of the United Nations Oil-for-Food Program made by a committee of jurisdiction of the Senate or House of Representatives, promptly provide to the chairman of that committee—

(1) access to any information or document described in subsection (a) or (b) that is under the control of such agency and responsive to the request; and

(2) cooperation in gaining access to information and documents described in subsections (a) and (b) that are not under the control of such agency, as appropriate.

(d) REVIEW OF OIL-FOR-FOOD PROGRAM BY COMPTROLLER GENERAL.—(1) The Comptroller General shall conduct a review of the United Nations Oil-for-Food Program, including the role of the United States in that program. The review—

(A) in accordance with generally accepted government auditing standards, should not interfere with any ongoing criminal investigation or inquiry related to that program; and

(B) may take into account the results of any investigation or inquiry related to that program.

(2) The head of each Executive agency shall fully cooperate with the review of the Comptroller General under paragraph (1).

(e) EXECUTIVE AGENCY DEFINED.—In this section, the term “Executive agency” has the meaning given that term in section 105 of title 5, United States Code.

SEC. 1208 SUPPORT OF MILITARY OPERATIONS TO COMBAT TERRORISM.

(a) AUTHORITY.—The Secretary of Defense may expend up to \$25,000,000 during any fiscal year during which this subsection is in effect to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States special operations forces to combat terrorism.

(b) PROCEDURES.—The Secretary of Defense shall establish procedures for the exercise of the authority under subsection (a). The Secretary shall notify the congressional defense committees of those procedures before any exercise of that authority.

(c) NOTIFICATION.—Upon using the authority provided in subsection (a) to make funds available for support of an approved military operation, the Secretary of Defense shall notify the congressional defense committees expeditiously, and in any event in not less than 48 hours, of the use of such authority with respect to that operation. Such a notification need be provided only once with respect to any such operation. Any such notification shall be in writing.

(d) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense to make funds available under subsection (a) for support of a military operation may not be delegated.

(e) INTELLIGENCE ACTIVITIES.—This section does not constitute authority to conduct a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 413b(e)).

(f) ANNUAL REPORT.—Not later than 30 days after the close of each fiscal year during which subsection (a) is in effect, the Secretary of Defense shall submit to the congressional defense committees a report on support provided under that subsection during that fiscal year. Each such report shall describe the support provided, including a statement of the recipient of the support and the amount obligated to provide the support.

(g) FISCAL YEAR 2005 LIMITATION.—Support may be provided under subsection (a) during fiscal year 2005 only from funds made

available for operations and maintenance pursuant to title XV of this Act.

(h) PERIOD OF AUTHORITY.—The authority under subsection (a) is in effect during each of fiscal years 2005 through 2007.

Subtitle B—Counterproliferation Matters

SEC. 1211. DEFENSE INTERNATIONAL COUNTERPROLIFERATION PROGRAMS.

(a) INTERNATIONAL SECURITY PROGRAM TO PREVENT UNAUTHORIZED TRANSFER AND TRANSPORTATION OF WMDs.—Subsection (b) of section 1424 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2333) is amended to read as follows:

“(b) OTHER COUNTRIES.—The Secretary of Defense may carry out programs under subsection (a) in a country other than a country specified in that subsection if the Secretary determines that there exists in that country a significant threat of the unauthorized transfer and transportation of nuclear, biological, or chemical weapons or related materials.”.

(b) INTERNATIONAL TRAINING PROGRAM TO DETER WMD PROLIFERATION.—Section 1504(e)(3)(A) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2918) is amended—

(1) by striking “The training program referred to in paragraph (1)(B) is a” and inserting “The Secretary of Defense may participate in a”;

(2) by inserting “of” after “acquisition”;

(3) by striking “and” after “countries,”; and

(4) by inserting before the period at the end the following: “, and in other countries in which, as determined by the Secretary of Defense, there exists a significant threat of such proliferation and acquisition”.

SEC. 1212. POLICY AND SENSE OF CONGRESS ON NONPROLIFERATION OF BALLISTIC MISSILES.

22 USC 2797
note.

(a) FINDINGS.—Congress makes the following findings:

(1) Certain countries are seeking to acquire ballistic missiles and related technologies that could be used to attack the United States or place at risk United States interests, deployed members of the Armed Forces, and allies of the United States and other friendly foreign countries.

(2) Certain countries continue to actively transfer or sell ballistic missile technologies in contravention of standards of behavior established by the United States and allies of the United States and other friendly foreign countries.

(3) The spread of ballistic missiles and related technologies worldwide has been slowed by a combination of national and international export controls, forward-looking diplomacy, and multilateral interdiction activities to restrict the development and transfer of such missiles and technologies.

(b) POLICY.—It is the policy of the United States to develop, support, and strengthen international accords and other cooperative efforts to curtail the proliferation of ballistic missiles and related technologies which could threaten the territory of the United States, allies of the United States and other friendly foreign countries,

and deployed members of the Armed Forces of the United States with weapons of mass destruction.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should vigorously pursue foreign policy initiatives aimed at eliminating, reducing, or retarding the proliferation of ballistic missiles and related technologies; and

(2) the United States and the international community should continue to support and strengthen established international accords and other cooperative efforts, including United Nations Security Council Resolution 1540 (April 28, 2004) and the Missile Technology Control Regime, that are designed to eliminate, reduce, or retard the proliferation of ballistic missiles and related technologies.

SEC. 1213. SENSE OF CONGRESS ON THE GLOBAL PARTNERSHIP AGAINST THE SPREAD OF WEAPONS OF MASS DESTRUCTION.

(a) COMMENDATION OF PRESIDENT.—Congress commends the President for the steps taken at the G-8 summit at Sea Island, Georgia, on June 8–10, 2004—

(1) to demonstrate continued support for the Global Partnership against the Spread of Nuclear Weapons and Materials of Mass Destruction; and

(2) to expand the Partnership (A) by welcoming new members, and (B) by using the Partnership to coordinate non-proliferation projects in Libya, Iraq, and other countries.

(b) FUTURE ACTIONS.—It is the sense of Congress that the President should seek to—

(1) expand the membership of donor nations to the Global Partnership against the Spread of Nuclear Weapons and Materials of Mass Destruction;

(2) ensure that the Russian Federation remains the primary focus of the Partnership, but also seek to fund, through the Partnership, efforts in other countries that need assistance to secure or dismantle their own potentially vulnerable weapons or materials;

(3) develop for the Partnership clear program goals;

(4) develop for the Partnership transparent project prioritization and planning;

(5) develop for the Partnership project implementation milestones under periodic review;

(6) develop under the Partnership agreements between partners for project implementation; and

(7) give high priority and senior-level attention to resolving disagreements on site access and worker liability under the Partnership.

SEC. 1214. REPORT ON COLLABORATIVE MEASURES TO REDUCE THE RISKS OF A LAUNCH OF RUSSIAN NUCLEAR WEAPONS.

Not later than November 1, 2005, the Secretary of Defense shall submit to Congress a report on collaborative measures between the United States and the Russian Federation to reduce the risks of a launch of a nuclear-armed ballistic missile as a result of accident, misinformation, miscalculation, or unauthorized use. The report shall provide—

(1) a description and assessment of the collaborative measures that are currently in effect;

(2) a description and assessment of other collaborative measures that could be pursued in the future;

(3) an assessment of the potential contributions of such collaborative measures to the national security of the United States;

(4) an assessment of the effect of such collaborative measures on relations between the United States and the Russian Federation;

(5) a description of the obstacles and opportunities associated with pursuing such collaborative measures; and

(6) an assessment of the future of the Joint Data Exchange Center.

Subtitle C—Other Matters

SEC. 1221. AUTHORITY FOR HUMANITARIAN ASSISTANCE FOR THE DETECTION AND CLEARANCE OF LANDMINES EXTENDED TO INCLUDE OTHER EXPLOSIVE REMNANTS OF WAR.

(a) **EXTENSION OF AUTHORITY.**—Subsection (e)(5) of section 401 of title 10, United States Code, is amended by inserting “and other explosive remnants of war” after “landmines” both places it appears.

(b) **CONFORMING AMENDMENTS.**—Such section is further amended—

(1) in subsection (a)(4)(A), by inserting “or other explosive remnants of war” after “landmines”; and

(2) in subsection (c)(2)(B), by striking “landmine clearing equipment or supplies” and inserting “equipment or supplies for clearing landmines or other explosive remnants of war”.

SEC. 1222. EXPANSION OF ENTITIES OF THE PEOPLE’S REPUBLIC OF CHINA SUBJECT TO CERTAIN PRESIDENTIAL AUTHORITIES WHEN OPERATING IN THE UNITED STATES.

Section 1237(b)(4)(B)(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 1701 note) is amended—

(1) by inserting “, or affiliated with,” after “or controlled by”; and

(2) by inserting after “the People’s Liberation Army” the following: “or a ministry of the government of the People’s Republic of China or that is owned or controlled by an entity affiliated with the defense industrial base of the People’s Republic of China”.

SEC. 1223. ASSIGNMENT OF NATO NAVAL PERSONNEL TO SUBMARINE SAFETY PROGRAMS.

(a) **IN GENERAL.**—Chapter 631 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 7234. Submarine safety programs: participation of NATO naval personnel

“(a) **ACCEPTANCE OF ASSIGNMENT OF FOREIGN NAVAL PERSONNEL.**—In order to facilitate the development, standardization, and interoperability of submarine vessel safety and rescue systems and procedures, the Secretary of the Navy may conduct a program under which members of the naval service of any of the member nations of the North Atlantic Treaty Organization may be assigned

to United States commands to work on such systems and procedures.

“(b) RECIPROCITY NOT REQUIRED.—The authority under subsection (a) is not an exchange program. Reciprocal assignments of members of the Navy to the naval service of a foreign country is not a condition for the exercise of such authority.

“(c) COSTS FOR FOREIGN PERSONNEL.—(1) The United States may not pay the following costs for a member of a foreign naval service sent to the United States under the program authorized by this section:

“(A) Salary.

“(B) Per diem.

“(C) Cost of living.

“(D) Travel costs.

“(E) Cost of language or other training.

“(F) Other costs.

“(2) Paragraph (1) does not apply to the following costs, which may be paid by the United States:

“(A) The cost of temporary duty directed by the Secretary of the Navy or an officer of the Navy authorized to do so.

“(B) The cost of training programs conducted to familiarize, orient, or certify members of foreign naval services regarding unique aspects of their assignments.

“(C) Costs incident to the use of the facilities of the Navy in the performance of assigned duties.

“(d) RELATIONSHIP TO OTHER AUTHORITY.—The provisions of this section shall apply in the exercise of any authority of the Secretary of the Navy to enter into an agreement with the government of a foreign country, subject to the concurrence of the Secretary of State, to provide for the assignment of members of the naval service of the foreign country to a Navy submarine safety program. The Secretary of the Navy may prescribe regulations for the application of this section in the exercise of such authority.

“(e) TERMINATION OF AUTHORITY.—The Secretary of the Navy may not accept the assignment of a member of the naval service of a foreign country under this section after September 30, 2008.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“7234. Submarine safety programs: participation of NATO naval personnel.”.

SEC. 1224. AVAILABILITY OF WARSAW INITIATIVE FUNDS FOR NEW NATO MEMBERS.

(a) AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated by section 301(5) for operation and maintenance, defense-wide activities, and available for the Defense Security Cooperation Agency for the Warsaw Initiative Funds (WIF), \$4,000,000 may be available only in fiscal year 2005 for the participation of the North Atlantic Treaty Organization (NATO) members set forth in subsection (b) in the exercises and programs of the Partnership for Peace program of the North Atlantic Treaty Organization.

(b) NATO MEMBERS.—The North Atlantic Treaty Organization members set forth in this subsection are as follows:

(1) Bulgaria.

(2) Estonia.

(3) Latvia.

- (4) Lithuania.
- (5) Romania.
- (6) Slovakia.
- (7) Slovenia.

**SEC. 1225. BILATERAL EXCHANGES AND TRADE IN DEFENSE ARTICLES
AND DEFENSE SERVICES BETWEEN THE UNITED STATES
AND THE UNITED KINGDOM AND AUSTRALIA.**

22 USC 2751
note.

(a) **POLICY.**—It is the policy of Congress that bilateral exchanges and trade in defense articles and defense services between the United States and the United Kingdom and Australia are in the national security interest of the United States and that such exchanges and trade should be subjected to accelerated review and processing consistent with national security and the requirements of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(b) **REQUIREMENT.**—The Secretary of State shall ensure that any license application submitted for the export of defense articles or defense services to Australia or the United Kingdom is expeditiously processed by the Department of State, in consultation with the Department of Defense, without referral to any other Federal department or agency, except where the item is classified or exceptional circumstances apply.

(c) **REGULATIONS.**—The President shall ensure that regulations are prescribed to implement this section.

President.

SEC. 1226. STUDY ON MISSILE DEFENSE COOPERATION.

(a) **REQUIREMENT FOR STUDY.**—The Secretary of Defense, in consultation with the Secretary of State, shall carry out a study to determine the advisability of authorizing or requiring—

(1) the Secretary of State to establish procedures for considering technical assistance agreements and related amendments and munitions license applications for the export of defense items related to missile defense not later than 30 days after receiving such agreements, amendments, and munitions license applications, except in cases in which the Secretary of State determines that additional time is required to complete a review of a technical assistance agreement or related amendment or a munitions license application for foreign policy or national security reasons, including concerns regarding the proliferation of ballistic missile technology; and

(2) the Secretary of Defense to establish procedures to increase the efficiency and transparency of the practices used by the Department of Defense to review technical assistance agreements and related amendments and munitions license applications related to international cooperation on missile defense that are referred to the Department.

(b) **FEASIBILITY OF REQUIRING COMPREHENSIVE AUTHORIZATIONS FOR MISSILE DEFENSE.**—In carrying out the study under subsection (a), the Secretary of Defense, in consultation with the Secretary of State, shall examine the feasibility of providing major project authorizations for programs related to missile defense similar to the comprehensive export authorization specified in section 126.14 of the International Traffic in Arms Regulations (section 126.14 of title 22, Code of Federal Regulations).

(c) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate

and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report on the results of the study under subsection (a). The report shall include—

(1) the determinations resulting from the study, including a determination on the feasibility of providing the major project authorization for projects related to missile defense described in subsection (b); and

(2) a discussion of the justification for each such determination.

(d) DEFINITION OF DEFENSE ITEMS.—In this section, the term “defense items” has the meaning given that term in section 38(j)(4)(A) of the Arms Export Control Act (22 U.S.C. 2778(j)(4)(A)).

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

Sec. 1301. Specification of Cooperative Threat Reduction programs and funds.

Sec. 1302. Funding allocations.

Sec. 1303. Temporary authority to waive limitation on funding for chemical weapons destruction facility in Russia.

Sec. 1304. Inclusion of descriptive summaries in annual Cooperative Threat Reduction reports and budget justification materials.

SEC. 1301. SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF CTR PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note).

(b) FISCAL YEAR 2005 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term “fiscal year 2005 Cooperative Threat Reduction funds” means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for three fiscal years.

SEC. 1302. FUNDING ALLOCATIONS.

(a) FUNDING FOR SPECIFIC PURPOSES.—Of the \$409,200,000 authorized to be appropriated to the Department of Defense for fiscal year 2005 in section 301(19) for Cooperative Threat Reduction programs, the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination in Russia, \$58,522,000.

(2) For nuclear weapons storage security in Russia, \$48,672,000.

(3) For nuclear weapons transportation security in Russia, \$26,300,000.

(4) For weapons of mass destruction proliferation prevention in the states of the former Soviet Union, \$40,030,000.

(5) For chemical weapons destruction in Russia, \$158,400,000.

(6) For biological weapons proliferation prevention in the former Soviet Union, \$54,959,000.

(7) For defense and military contacts, \$8,000,000.

(8) For activities designated as Other Assessments/Administrative Support, \$14,317,000.

(b) REPORT ON OBLIGATION OR EXPENDITURE OF FUNDS FOR OTHER PURPOSES.—No fiscal year 2005 Cooperative Threat Reduction funds may be obligated or expended for a purpose other than a purpose listed in paragraphs (1) through (8) of subsection (a) until 30 days after the date that the Secretary of Defense submits to Congress a report on the purpose for which the funds will be obligated or expended and the amount of funds to be obligated or expended. Nothing in the preceding sentence shall be construed as authorizing the obligation or expenditure of fiscal year 2005 Cooperative Threat Reduction funds for a purpose for which the obligation or expenditure of such funds is specifically prohibited under this title or any other provision of law.

(c) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—(1) Subject to paragraphs (2) and (3), in any case in which the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may obligate amounts appropriated for fiscal year 2005 for a purpose listed in any of the paragraphs in subsection (a) in excess of the specific amount authorized for that purpose.

(2) An obligation of funds for a purpose stated in any of the paragraphs in subsection (a) in excess of the specific amount authorized for such purpose may be made using the authority provided in paragraph (1) only after—

(A) the Secretary submits to Congress notification of the intent to do so together with a complete discussion of the justification for doing so; and

(B) 15 days have elapsed following the date of the notification.

(3) The Secretary may not, under the authority provided in paragraph (1), obligate amounts for a purpose stated in any of paragraphs (5) through (8) of subsection (a) in excess of 125 percent of the specific amount authorized for such purpose.

SEC. 1303. TEMPORARY AUTHORITY TO WAIVE LIMITATION ON FUNDING FOR CHEMICAL WEAPONS DESTRUCTION FACILITY IN RUSSIA.

22 USC 5952
note.

(a) TEMPORARY AUTHORITY.—Section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65; 22 U.S.C. 5952 note) shall not apply for a calendar year for which the President submits to Congress a written certification that includes—

(1) a statement as to why a waiver of the conditions described in such section 1305 is important to the national security interests of the United States;

(2) a full and complete justification for the waiver of the conditions; and

(3) a plan to promote a full and accurate disclosure by Russia regarding the size, content, status, and location of its chemical weapons stockpile.

(b) EXPIRATION.—The authority in subsection (a) shall expire on December 31, 2006, and no waiver shall remain in effect after that date.

SEC. 1304. INCLUSION OF DESCRIPTIVE SUMMARIES IN ANNUAL COOPERATIVE THREAT REDUCTION REPORTS AND BUDGET JUSTIFICATION MATERIALS.

Section 1307 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2165; 22 U.S.C. 5952 note) is amended—

(1) in subsection (a), by striking “as part of the Secretary’s annual budget request to Congress” in the matter preceding paragraph (1) and inserting “in the materials and manner specified in subsection (c)”; and

(2) by adding at the end the following new subsection:

“(c) INCLUSION IN CERTAIN MATERIALS SUBMITTED TO CONGRESS.—The summary required to be submitted to Congress in a fiscal year under subsection (a) shall be set forth by project category, and by amounts specified in paragraphs (1) and (2) of that subsection in connection with such project category, in each of the following:

“(1) The annual report on activities and assistance under Cooperative Threat Reduction programs required in such fiscal year under section 1308 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398).

“(2) The budget justification materials submitted to Congress in support of the Department of Defense budget for the fiscal year succeeding such fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code).”.

TITLE XIV—SUNKEN MILITARY CRAFT

Sec. 1401. Preservation of title to sunken military craft and associated contents.

Sec. 1402. Prohibitions.

Sec. 1403. Permits.

Sec. 1404. Penalties.

Sec. 1405. Liability for damages.

Sec. 1406. Relationship to other laws.

Sec. 1407. Encouragement of agreements with foreign countries.

Sec. 1408. Definitions.

10 USC 113 note. **SEC. 1401. PRESERVATION OF TITLE TO SUNKEN MILITARY CRAFT AND ASSOCIATED CONTENTS.**

Right, title, and interest of the United States in and to any United States sunken military craft—

(1) shall not be extinguished except by an express divestiture of title by the United States; and

(2) shall not be extinguished by the passage of time, regardless of when the sunken military craft sank.

10 USC 113 note. **SEC. 1402. PROHIBITIONS.**

(a) UNAUTHORIZED ACTIVITIES DIRECTED AT SUNKEN MILITARY CRAFT.—No person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except—

(1) as authorized by a permit under this title;

(2) as authorized by regulations issued under this title;

or

(3) as otherwise authorized by law.

(b) **POSSESSION OF SUNKEN MILITARY CRAFT.**—No person may possess, disturb, remove, or injure any sunken military craft in violation of—

(1) this section; or

(2) any prohibition, rule, regulation, ordinance, or permit that applies under any other applicable law.

(c) **LIMITATIONS ON APPLICATION.**—

(1) **ACTIONS BY UNITED STATES.**—This section shall not apply to actions taken by, or at the direction of, the United States.

(2) **FOREIGN PERSONS.**—This section shall not apply to any action by a person who is not a citizen, national, or resident alien of the United States, except in accordance with—

(A) generally recognized principles of international law;

(B) an agreement between the United States and the foreign country of which the person is a citizen; or

(C) in the case of an individual who is a crew member or other individual on a foreign vessel or foreign aircraft, an agreement between the United States and the flag State of the foreign vessel or aircraft that applies to the individual.

(3) **LOAN OF SUNKEN MILITARY CRAFT.**—This section does not prohibit the loan of United States sunken military craft in accordance with regulations issued by the Secretary concerned.

SEC. 1403. PERMITS.

10 USC 113 note.

(a) **IN GENERAL.**—The Secretary concerned may issue a permit authorizing a person to engage in an activity otherwise prohibited by section 1402 with respect to a United States sunken military craft, for archaeological, historical, or educational purposes, in accordance with regulations issued by such Secretary that implement this section.

(b) **CONSISTENCY WITH OTHER LAWS.**—The Secretary concerned shall require that any activity carried out under a permit issued by such Secretary under this section must be consistent with all requirements and restrictions that apply under any other provision of Federal law.

(c) **CONSULTATION.**—In carrying out this section (including the issuance after the date of the enactment of this Act of regulations implementing this section), the Secretary concerned shall consult with the head of each Federal agency having authority under Federal law with respect to activities directed at sunken military craft or the locations of such craft.

(d) **APPLICATION TO FOREIGN CRAFT.**—At the request of any foreign State, the Secretary of the Navy, in consultation with the Secretary of State, may carry out this section (including regulations promulgated pursuant to this section) with respect to any foreign sunken military craft of that foreign State located in United States waters.

SEC. 1404. PENALTIES.

10 USC 113 note.

(a) **IN GENERAL.**—Any person who violates this title, or any regulation or permit issued under this title, shall be liable to the United States for a civil penalty under this section.

(b) **ASSESSMENT AND AMOUNT.**—The Secretary concerned may assess a civil penalty under this section, after notice and an opportunity for a hearing, of not more than \$100,000 for each violation.

(c) **CONTINUING VIOLATIONS.**—Each day of a continued violation of this title or a regulation or permit issued under this title shall constitute a separate violation for purposes of this section.

(d) **IN REM LIABILITY.**—A vessel used to violate this title shall be liable in rem for a penalty under this section for such violation.

(e) **OTHER RELIEF.**—If the Secretary concerned determines that there is an imminent risk of disturbance of, removal of, or injury to any sunken military craft, or that there has been actual disturbance of, removal of, or injury to a sunken military craft, the Attorney General, upon request of the Secretary concerned, may seek such relief as may be necessary to abate such risk or actual disturbance, removal, or injury and to return or restore the sunken military craft. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

(f) **LIMITATIONS.**—An action to enforce a violation of section 1402 or any regulation or permit issued under this title may not be brought more than 8 years after the date on which—

(1) all facts material to the right of action are known or should have been known by the Secretary concerned; and

(2) the defendant is subject to the jurisdiction of the appropriate district court of the United States or administrative forum.

10 USC 113 note. **SEC. 1405. LIABILITY FOR DAMAGES.**

(a) **IN GENERAL.**—Any person who engages in an activity in violation of section 1402 or any regulation or permit issued under this title that disturbs, removes, or injures any United States sunken military craft shall pay the United States enforcement costs and damages resulting from such disturbance, removal, or injury.

(b) **INCLUDED DAMAGES.**—Damages referred to in subsection (a) may include—

(1) the reasonable costs incurred in storage, restoration, care, maintenance, conservation, and curation of any sunken military craft that is disturbed, removed, or injured in violation of section 1402 or any regulation or permit issued under this title; and

(2) the cost of retrieving, from the site where the sunken military craft was disturbed, removed, or injured, any information of an archaeological, historical, or cultural nature.

10 USC 113 note. **SEC. 1406. RELATIONSHIP TO OTHER LAWS.**

(a) **IN GENERAL.**—Except to the extent that an activity is undertaken as a subterfuge for activities prohibited by this title, nothing in this title is intended to affect—

(1) any activity that is not directed at a sunken military craft; or

(2) the traditional high seas freedoms of navigation, including—

(A) the laying of submarine cables and pipelines;

(B) operation of vessels;

(C) fishing; or

(D) other internationally lawful uses of the sea related to such freedoms.

(b) **INTERNATIONAL LAW.**—This title and any regulations implementing this title shall be applied in accordance with generally recognized principles of international law and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

(c) **LAW OF FINDS.**—The law of finds shall not apply to—

(1) any United States sunken military craft, wherever located; or

(2) any foreign sunken military craft located in United States waters.

(d) **LAW OF SALVAGE.**—No salvage rights or awards shall be granted with respect to—

(1) any United States sunken military craft without the express permission of the United States; or

(2) any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state.

(e) **LAW OF CAPTURE OR PRIZE.**—Nothing in this title is intended to alter the international law of capture or prize with respect to sunken military craft.

(f) **LIMITATION OF LIABILITY.**—Nothing in sections 4281 through 4287 and 4289 of the Revised Statutes (46 U.S.C. App. 181 et seq.) or section 3 of the Act of February 13, 1893 (chapter 105; 27 Stat. 445; 46 U.S.C. App. 192), shall limit the liability of any person under this section.

(g) **AUTHORITIES OF THE COMMANDANT OF THE COAST GUARD.**—Nothing in this title is intended to preclude or limit the application of any other law enforcement authorities of the Commandant of the Coast Guard.

(h) **PRIOR DELEGATIONS, AUTHORIZATIONS, AND RELATED REGULATIONS.**—Nothing in this title shall invalidate any prior delegation, authorization, or related regulation that is consistent with this title.

(i) **CRIMINAL LAW.**—Nothing in this title is intended to prevent the United States from pursuing criminal sanctions for plundering of wrecks, larceny of Government property, or violation of any applicable criminal law.

SEC. 1407. ENCOURAGEMENT OF AGREEMENTS WITH FOREIGN COUNTRIES. 10 USC 113 note.

The Secretary of State, in consultation with the Secretary of Defense, is encouraged to negotiate and conclude bilateral and multilateral agreements with foreign countries with regard to sunken military craft consistent with this title.

SEC. 1408. DEFINITIONS. 10 USC 113 note.

In this title:

(1) **ASSOCIATED CONTENTS.**—The term “associated contents” means—

(A) the equipment, cargo, and contents of a sunken military craft that are within its debris field; and

(B) the remains and personal effects of the crew and passengers of a sunken military craft that are within its debris field.

(2) **SECRETARY CONCERNED.**—The term “Secretary concerned” means—

(A) subject to subparagraph (B), the Secretary of a military department; and

(B) in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating.

(3) **SUNKEN MILITARY CRAFT.**—The term “sunken military craft” means all or any portion of—

(A) any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank;

(B) any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank; and

(C) the associated contents of a craft referred to in subparagraph (A) or (B), if title thereto has not been abandoned or transferred by the government concerned.

(4) **UNITED STATES CONTIGUOUS ZONE.**—The term “United States contiguous zone” means the contiguous zone of the United States under Presidential Proclamation 7219, dated September 2, 1999.

(5) **UNITED STATES INTERNAL WATERS.**—The term “United States internal waters” means all waters of the United States on the landward side of the baseline from which the breadth of the United States territorial sea is measured.

(6) **UNITED STATES TERRITORIAL SEA.**—The term “United States territorial sea” means the waters of the United States territorial sea under Presidential Proclamation 5928, dated December 27, 1988.

(7) **UNITED STATES WATERS.**—The term “United States waters” means United States internal waters, the United States territorial sea, and the United States contiguous zone.

TITLE XV—AUTHORIZATION FOR INCREASED COSTS DUE TO OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM

- Sec. 1501. Purpose.
- Sec. 1502. Army procurement.
- Sec. 1503. Navy and Marine Corps procurement.
- Sec. 1504. Defense-wide activities procurement.
- Sec. 1505. Operation and maintenance.
- Sec. 1506. Defense working capital funds.
- Sec. 1507. Iraq Freedom Fund.
- Sec. 1508. Defense health program.
- Sec. 1509. Military personnel.
- Sec. 1510. Treatment as additional authorizations.
- Sec. 1511. Transfer authority.

SEC. 1501. PURPOSE.

The purpose of this title is to authorize emergency appropriations for the Department of Defense for fiscal year 2005 to provide funds for additional costs due to Operation Iraqi Freedom and Operation Enduring Freedom. Funds in this title are available upon the enactment of this Act.

SEC. 1502. ARMY PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement accounts of the Army in amounts as follows:

- (1) For weapons and tracked combat vehicles, \$50,000,000.
- (2) For ammunition, \$110,000,000.
- (3) For other procurement, \$755,000,000.
- (4) For National Guard and Reserve equipment, \$50,000,000.

SEC. 1503. NAVY AND MARINE CORPS PROCUREMENT.

(a) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2005 for the procurement account for the Marine Corps in the amount of \$150,000,000.

(b) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2005 for the procurement account for ammunition for the Navy and the Marine Corps in the amount of \$30,000,000.

SEC. 1504. DEFENSE-WIDE ACTIVITIES PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the procurement account for Defense-wide procurement in the amount of \$50,000,000.

SEC. 1505. OPERATION AND MAINTENANCE.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces for expenses, not otherwise provided for, operation and maintenance, in amounts as follows:

- (1) For the Army, \$13,550,000,000.
- (2) For the Navy, \$367,000,000.
- (3) For the Marine Corps, \$1,665,000,000.
- (4) For the Air Force, \$419,000,000.
- (5) For Defense-wide, \$404,000,000.

SEC. 1506. DEFENSE WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for Defense Working Capital Program in the amount of \$1,478,000,000.

SEC. 1507. IRAQ FREEDOM FUND.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal year 2005 for the account of the Iraq Freedom Fund in amount of \$3,892,000,000, to remain available for transfer to other accounts in this title until September 30, 2006. Amounts of authorization so transferred shall be merged with and be made available for the same purposes as the authorization to which transferred. Of the amounts provided in this section \$1,800,000,000 shall only be used for classified programs.

(b) NOTICE TO CONGRESS.—A transfer may be made from the Iraq Freedom Fund only after the Secretary of Defense notifies the congressional defense committees with respect to the proposed transfer in writing not less than five days before the transfer is made.

SEC. 1508. DEFENSE HEALTH PROGRAM.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, the Defense Health Program, in the amount of \$780,000,000, for Operation and Maintenance.

SEC. 1509. MILITARY PERSONNEL.

There is hereby authorized to be appropriated to the Department of Defense for military personnel accounts for fiscal year 2005 a total of \$1,250,000,000.

SEC. 1510. TREATMENT AS ADDITIONAL AUTHORIZATIONS.

The amounts authorized to be appropriated by this title are in addition to amounts otherwise authorized to be appropriated by this Act.

SEC. 1511. TRANSFER AUTHORITY.

(a) **AUTHORITY TO TRANSFER AUTHORIZATIONS.**—(1) Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this title for fiscal year 2005 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed \$1,500,000,000. The transfer authority provided in this section is in addition to any other transfer authority available to the Secretary of Defense.

(b) **LIMITATIONS.**—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred;

(2) may not be used to provide authority for an item that has been denied authorization by Congress; and

(3) may not be combined with the authority under section 1001.

(c) **EFFECT ON AUTHORIZATION AMOUNTS.**—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) **NOTICE TO CONGRESS.**—A transfer may be made under the authority of this section only after the Secretary of Defense—

(1) consults with the chairmen and ranking members of the congressional defense committees with respect to the proposed transfer; and

(2) after such consultation, notifies those committees in writing of the proposed transfer not less than five days before the transfer is made.

Military
Construction
Authorization
Act for Fiscal
Year 2005.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the “Military Construction Authorization Act for Fiscal Year 2005”.

TITLE XXI—ARMY

Sec. 2101. Authorized Army construction and land acquisition projects.

Sec. 2102. Family housing.

Sec. 2103. Improvements to military family housing units.

Sec. 2104. Authorization of appropriations, Army.

Sec. 2105. Modification of authority to carry out certain fiscal year 2004 projects.

Sec. 2106. Modification of authority to carry out certain fiscal year 2003 project.

SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or Location	Amount
Alabama	Anniston Army Depot	\$23,690,000
	Fort Rucker	\$16,000,000
Alaska	Fort Richardson	\$24,300,000
	Fort Wainwright	\$92,459,000
Arizona	Fort Huachuca	\$18,000,000
California	Fort Irwin	\$38,100,000
	Sierra Army Depot	\$12,600,000
Colorado	Fort Carson	\$59,508,000
Florida	Camp Rudder	\$1,850,000
Georgia	Fort Benning	\$71,777,000
	Fort Gillem	\$5,800,000
	Fort McPherson	\$4,900,000
	Fort Stewart/Hunter Army Air Field	\$65,495,000
Hawaii	Helemano Military Reservation	\$75,300,000
	Hickam Air Force Base	\$11,200,000
	Schofield Barracks	\$249,792,000
Kansas	Fort Riley	\$59,550,000
Kentucky	Fort Campbell	\$89,600,000
	Fort Knox	\$75,750,000
Louisiana	Fort Polk	\$70,953,000
Maryland	Aberdeen Proving Ground	\$13,000,000
	Fort Detrick	\$4,000,000
Missouri	Fort Leonard Wood	\$31,850,000
New Jersey	Picatinny Arsenal	\$9,900,000
New Mexico	White Sands Missile Range	\$33,000,000
New York	Fort Drum	\$13,650,000
	Fort Hamilton	\$7,600,000
	Hancock Field	\$6,000,000
	Military Entrance Processing Station, Buffalo	\$6,200,000
	United States Military Academy, West Point	\$60,000,000
North Carolina	Fort Bragg	\$111,687,000
Oklahoma	Fort Sill	\$17,800,000
Pennsylvania	Letterkenny Depot	\$5,400,000
Texas	Fort Bliss	\$19,400,000
	Fort Hood	\$85,188,000
	Fort Sam Houston	\$11,400,000
Virginia	Fort A.P. Hill	\$10,775,000
	Fort Lee	\$4,250,000
	Fort Myer	\$49,526,000
Washington	Fort Lewis	\$56,200,000
	Total	\$1,623,450,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(2), the Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Army: Outside the United States

Country	Installation or Location	Amount
Germany	Grafenwoehr	\$77,200,000
Italy	Livorno	\$26,000,000
Korea	Camp Humphreys	\$12,000,000
	Total	\$115,200,000

SEC. 2102. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, for the purposes, and in the amounts set forth in the following table:

Army: Family Housing

State	Installation or Location	Purpose	Amount
Alaska	Fort Richardson	92 Units	\$42,000,000
	Fort Wainwright	246 Units	\$124,000,000
Arizona	Fort Huachuca	205 Units	\$41,000,000
	Yuma Proving Ground ...	55 Units	\$14,900,000
Kansas	Fort Riley	126 Units	\$33,000,000
New Mexico	White Sands Missile Range	156 Units	\$31,000,000
Oklahoma	Fort Sill	247 Units	\$47,000,000
Virginia	Fort Lee	218 Units	\$46,000,000
	Fort Monroe	68 Units	\$16,000,000
	Total	\$394,900,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed \$29,209,000.

SEC. 2103. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may improve existing military family housing units in an amount not to exceed \$211,990,000.

SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and

military family housing functions of the Department of the Army in the total amount of \$3,537,141,000, as follows:

(1) For military construction projects inside the United States authorized by section 2101(a), \$1,453,950,000.

(2) For military construction projects outside the United States authorized by section 2101(b), \$115,200,000.

(3) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, \$20,000,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, \$151,335,000.

(5) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, \$636,099,000.

(B) For support of military family housing (including the functions described in section 2833 of title 10, United States Code), \$926,507,000.

(6) For the construction of phase 2 of a barracks complex, 5th & 16th Street, at Fort Stewart/Hunter Army Air Field, Georgia, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), \$32,950,000.

(7) For the construction of phase 3 of a barracks complex renewal, Capron Road, at Schofield Barracks, Hawaii, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1283), as amended by section 2105 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), \$48,000,000.

(8) For the construction of phase 2 of the Lewis & Clark instructional facility at Fort Leavenworth, Kansas, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), \$44,000,000.

(9) For the construction of phase 2 of a barracks complex at Wheeler Sack Army Air Field at Fort Drum, New York, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), \$48,000,000.

(10) For the construction of phase 2 of a barracks complex, Bastogne Drive, Fort Bragg, North Carolina, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), \$48,000,000.

(11) For the construction of phase 3 of a maintenance complex at Fort Sill, Oklahoma, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), \$13,100,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed the sum of the following:

(1) The total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a).

(2) \$41,000,000 (the balance of the amount authorized under section 2101(a) to upgrade Drum Road, Helemano Military Reservation, Hawaii).

(3) \$25,000,000 (the balance of the amount authorized under section 2101(a) for construction of a vehicle maintenance facility, Schofield Barracks, Hawaii).

(4) \$25,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Fort Campbell, Kentucky).

(5) \$22,000,000 (the balance of the amount authorized under section 2101(a) for construction of trainee barracks, Basic Training Complex 1, Fort Knox, Kentucky).

(6) \$25,500,000 (the balance of the amount authorized under section 2101(a) for construction of a library and learning facility, United States Military Academy, West Point, New York).

(7) \$31,000,000 (the balance of the amount authorized under section 2101(a) for a barracks complex renewal project, Fort Bragg, North Carolina).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (11) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by \$5,550,000, which represents prior year savings.

SEC. 2105. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2004 PROJECTS.

(a) MODIFICATION OF INSIDE THE UNITED STATES PROJECTS.—The table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697) is amended—

(1) in the item relating to Fort Stewart/Hunter Army Air Field, Georgia, by striking “\$113,500,000” in the amount column and inserting “\$114,450,000”;

(2) in the item relating to Fort Drum, New York, by striking “\$130,700,000” in the amount column and inserting “\$135,700,000”; and

(3) by striking the amount identified as the total in the amount column and inserting “\$1,043,150,000”.

(b) CONFORMING AMENDMENTS.—Section 2104(b) of that Act (117 Stat. 1700) is amended—

(1) in paragraph (2), by striking “\$32,000,000” and inserting “\$32,950,000”; and

(2) in paragraph (4), by striking “\$43,000,000” and inserting “\$48,000,000”.

SEC. 2106. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2003 PROJECT.

(a) MODIFICATION OF INSIDE THE UNITED STATES PROJECT.—The table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), as amended by section 2105(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1700), is further amended—

(1) in the item relating to Fort Sill, Oklahoma, by striking “\$39,652,000” in the amount column and inserting “\$40,752,000”; and

(2) by striking the amount identified as the total in the amount column and inserting “\$1,157,267,000”.

(b) CONFORMING AMENDMENT.—Section 2104(b)(6) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2684) is amended by striking “\$25,000,000” and inserting “\$26,100,000”.

TITLE XXII—NAVY

Sec. 2201. Authorized Navy construction and land acquisition projects.

Sec. 2202. Family housing.

Sec. 2203. Improvements to military family housing units.

Sec. 2204. Authorization of appropriations, Navy.

SEC. 2201. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(1), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Navy: Inside the United States

State	Installation or Location	Amount
Arizona	Marine Corps Air Station, Yuma	\$26,670,000
California	Marine Corps Air-Ground Task Force Training Center, Twentynine Palms	\$15,700,000
	Marine Corps Air Station, Camp Pendleton	\$11,540,000
	Marine Corps Base, Camp Pendleton	\$26,915,000
	Marine Corps Logistics Base, Barstow	\$4,930,000
	Naval Air Facility, El Centro	\$54,331,000
	Naval Air Station, North Island	\$10,180,000
	Naval Surface Warfare Center, Division Corona	\$9,850,000
	Recruit Depot San Diego	\$8,110,000
Connecticut	Naval Submarine Base, New London	\$50,302,000
District of Columbia	Naval Observatory, Washington	\$3,239,000
Florida	Eglin Air Force Base	\$2,060,000
	Naval Station, Mayport	\$6,200,000
Georgia	Strategic Weapons Facility Atlantic, Kings Bay	\$16,000,000
Hawaii	Naval Shipyard, Pearl Harbor	\$5,100,000
Illinois	Naval Training Center, Great Lakes	\$74,781,000
Indiana	Naval Surface Warfare Center, Crane	\$12,600,000
Maine	Naval Air Station, Brunswick	\$6,220,000
Maryland	Naval Surface Warfare Center, Indian Head	\$23,000,000
	Marine Corps Air Station, New River	\$35,140,000
North Carolina	Marine Corps Base, Camp Lejeune ...	\$11,030,000
	Navy Outlying Landing Field, Washington County	\$136,900,000
Nevada	Naval Air Station, Fallon	\$4,980,000
Rhode Island	Naval Air Station, Newport	\$5,490,000
South Carolina	Marine Corps Air Station, Beaufort ..	\$5,480,000
	Naval Weapons Station, Charleston ..	\$12,209,000

Navy: Inside the United States—Continued

State	Installation or Location	Amount
Virginia	Camp Elmore Marine Corps Detachment	\$13,500,000
	Marine Corps Air Facility, Quantico	\$73,838,000
	Marine Corps Combat Development Command, Quantico	\$25,090,000
	Naval Air Station, Oceana	\$2,770,000
	Naval Amphibious Base, Little Creek	\$9,220,000
	Naval Station, Norfolk	\$4,330,000
	Naval Weapons Station, Yorktown	\$9,870,000
Washington	Naval Air Station, Whidbey Island	\$1,990,000
	Naval Shipyard, Puget Sound	\$20,305,000
	Naval Station, Bremerton	\$74,125,000
	Strategic Weapons Facility Pacific, Bangor	\$138,060,000
	Total	\$952,055,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(2), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Navy: Outside the United States

Country	Installation or Location	Amount
Diego Garcia	Naval Support Facility, Diego Garcia	\$17,500,000
Guam	Naval Public Works Center, Guam	\$20,700,000
	Naval Station, Guam	\$12,500,000
Italy	Sigonella	\$22,550,000
Spain	Naval Station, Rota	\$32,700,000
	Total	\$105,950,000

(c) UNSPECIFIED WORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(3), the Secretary of the Navy may acquire real property and carry out military construction projects for unspecified installations or locations in the amount set forth in the following table:

Navy: Unspecified Worldwide

Location	Installation or Location	Amount
	Unspecified Worldwide	\$105,982,000
	Total	\$105,982,000

SEC. 2202. FAMILY HOUSING.

Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(6)(A), the Secretary of the Navy may construct or acquire family housing units (including land acquisition and supporting facilities) at the installation, for the purpose, and in the amount set forth in the following table:

Navy: Family Housing

State	Installation	Purpose	Amount
North Carolina ..	Marine Corps Air Station, Cherry Point	198 Units	\$27,002,000
	Total	\$27,002,000

SEC. 2203. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(6)(A), the Secretary of the Navy may improve existing military family housing units in an amount not to exceed \$112,105,000.

SEC. 2204. AUTHORIZATION OF APPROPRIATIONS, NAVY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of \$1,897,245,000, as follows:

(1) For military construction projects inside the United States authorized by section 2201(a), \$712,927,000.

(2) For military construction projects outside the United States authorized by section 2201(b), \$94,950,000.

(3) For the military construction projects at unspecified worldwide locations authorized by section 2201(c), \$40,000,000.

(4) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, \$12,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, \$87,067,000.

(6) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, \$139,107,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), \$696,304,000.

(7) For the construction of increment 2 of the tertiary sewage treatment plant at Marine Corps Base, Camp Pendleton, California, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1703), \$25,690,000.

(8) For the construction of increment 2 of the general purpose berthing pier at Naval Weapons Station, Earle, New Jersey, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1704), \$49,200,000.

(9) For the construction of increment 2 of pier 11 replacement at Naval Station, Norfolk, Virginia, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1704), \$40,000,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853

of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2201 of this Act may not exceed the sum of the following:

(1) The total amount authorized to be appropriated under paragraphs (1), (2), and (3) of subsection (a).

(2) \$21,000,000 (the balance of the amount authorized under section 2201(a) for apron and hangar recapitalization, Naval Air Facility, El Centro, California).

(3) \$116,750,000 (the balance of the amount authorized under section 2201(a) for land acquisition for an outlying landing field in Washington County, North Carolina).

(4) \$34,098,000 (the balance of the amount authorized under section 2201(a) for construction of a White Side complex, Marine Corps Air Facility, Quantico, Virginia).

(5) \$40,000,000 (the balance of the amount authorized under section 2201(a) for construction of bachelor enlisted quarters, Naval Station, Bremerton, Washington).

(6) \$95,320,000 (the balance of the amount authorized under section 2201(a) for construction of a limited area processing and storage complex, Strategic Weapons Facility Pacific, Bangor, Washington).

(7) \$65,982,000 (the balance of the amount authorized under section 2201(c) for construction of a presidential helicopter programs support facility at an unspecified location).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (9) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by \$5,549,000, which represents prior year savings.

TITLE XXIII—AIR FORCE

Sec. 2301. Authorized Air Force construction and land acquisition projects.

Sec. 2302. Family housing.

Sec. 2303. Improvements to military family housing units.

Sec. 2304. Authorization of appropriations, Air Force.

SEC. 2301. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(1), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Air Force: Inside the United States

State	Installation or Location	Amount
Alaska	Elmendorf Air Force Base	\$52,057,000
Arizona	Davis-Monthan Air Force Base	\$17,029,000
	Luke Air Force Base	\$17,900,000
Arkansas	Little Rock Air Force Base	\$8,931,000
California	Beale Air Force Base	\$10,186,000
	Edwards Air Force Base	\$9,965,000
	Travis Air Force Base	\$18,894,000
Colorado	Buckley Air Force Base	\$12,247,000
Delaware	Dover Air Force Base	\$9,500,000
Florida	Tyndall Air Force Base	\$27,614,000

Air Force: Inside the United States—Continued

State	Installation or Location	Amount
Georgia	Patrick Air Force Base	\$8,800,000
	Moody Air Force Base	\$9,600,000
	Robins Air Force Base	\$21,900,000
Hawaii	Hickam Air Force Base	\$30,900,000
	Maui Site	\$7,500,000
Louisiana	Barksdale Air Force Base	\$13,800,000
Maryland	Andrews Air Force Base	\$17,100,000
Mississippi	Columbus Air Force Base	\$7,700,000
Missouri	Whiteman Air Force Base	\$7,600,000
Montana	Malmstrom Air Force Base	\$5,600,000
Nebraska	Offutt Air Force Base	\$6,221,000
New Mexico	Cannon Air Force Base	\$9,500,000
	Kirtland Air Force Base	\$9,200,000
North Carolina	Pope Air Force Base	\$15,150,000
North Dakota	Minot Air Force Base	\$8,900,000
Ohio	Wright-Patterson Air Force Base	\$9,904,000
Oklahoma	Altus Air Force Base	\$7,000,000
	Tinker Air Force Base	\$8,000,000
South Carolina	Shaw Air Force Base	\$7,000,000
South Dakota	Ellsworth Air Force Base	\$9,867,000
Tennessee	Arnold Air Force Base	\$24,500,000
Texas	Dyess Air Force Base	\$14,300,000
	Lackland Air Force Base	\$2,596,000
	Laughlin Air Force Base	\$6,900,000
	Sheppard Air Force Base	\$50,284,000
	Hill Air Force Base	\$25,713,000
Utah	F.E. Warren Air Force Base	\$5,500,000
Wyoming		
	Total	\$535,358,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(2), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Air Force: Outside the United States

Country	Installation or Location	Amount
Germany	Ramstein Air Base	\$25,404,000
Greenland	Thule Air Base	\$19,800,000
Guam	Andersen Air Force Base	\$19,593,000
Italy	Aviano Air Base	\$6,760,000
Korea	Kunsan Air Base	\$37,100,000
	Osan Air Base	\$18,600,000
Portugal	Lajes Field, Azores	\$5,689,000
Spain	Naval Station, Rota	\$14,153,000
United Kingdom	Royal Air Force Lakenheath	\$5,500,000
	Total	\$152,599,000

(c) UNSPECIFIED WORLDWIDE.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(3), the Secretary of the Air Force may acquire real property and carry out military construction projects for the unspecified installations or locations, and in the amounts, set forth in the following table:

Air Force: Unspecified Worldwide

Location	Installation or Location	Amount
	Classified Locations	\$26,121,000
	Unspecified Worldwide	\$28,090,000
	Total	\$54,211,000

SEC. 2302. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, for the purposes, and in the amounts set forth in the following table:

Air Force: Family Housing

State	Installation or Location	Purpose	Amount
Arizona	Davis-Monthan Air Force Base	250 Units	\$48,500,000
California	Edwards Air Force Base	218 Units	\$41,202,000
	Vandenberg Air Force Base	120 Units	\$30,906,000
Florida	MacDill Air Force Base ..	61 Units	\$21,723,000
	MacDill Air Force Base ..	Housing Maintenance Facility	\$1,250,000
Idaho	Mountain Home Air Force Base	147 Units	\$39,333,000
Mississippi	Columbus Air Force Base	Housing Management Facility	\$711,000
Missouri	Whiteman Air Force Base	160 Units	\$37,087,000
Montana	Malmstrom Air Force Base	115 Units	\$29,910,000
North Carolina ..	Seymour Johnson Air Force Base	167 Units	\$32,693,000
North Dakota	Grand Forks Air Force Base	90 Units	\$26,169,000
	Minot Air Force Base	142 Units	\$37,087,000
South Carolina ..	Charleston Air Force Base	Fire Station	\$1,976,000
South Dakota	Ellsworth Air Force Base	75 Units	\$21,482,000
Texas	Dyess Air Force Base	127 Units	\$28,664,000
	Goodfellow Air Force Base	127 Units	\$20,604,000
Germany	Ramstein Air Base	144 Units	\$57,691,000
Italy	Aviano Air Base	Housing Office ..	\$2,542,000
Korea	Osan Air Base	117 Units	\$46,834,000
United Kingdom	Royal Air Force Lakenheath	154 Units	\$43,976,000
	Total	\$570,340,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of military family housing units in an amount not to exceed \$38,266,000.

SEC. 2303. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may improve existing military family housing units in an amount not to exceed \$238,353,000.

SEC. 2304. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of \$2,559,768,000, as follows:

(1) For military construction projects inside the United States authorized by section 2301(a), \$525,358,000.

(2) For military construction projects outside the United States authorized by section 2301(b), \$142,771,000.

(3) For military construction projects at unspecified worldwide locations authorized by section 2301(c), \$54,211,000.

(4) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, \$13,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, \$124,085,000.

(6) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, \$846,959,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), \$853,384,000.

(b) **LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.**—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2301 of this Act may not exceed the sum of the following:

(1) The total amount authorized to be appropriated under paragraphs (1), (2), and (3) of subsection (a).

(2) \$10,000,000 (the balance of the amount authorized under section 2301(a) for construction of a hanger for an aircraft maintenance unit, Tyndall Air Force Base, Florida).

(c) **ADJUSTMENT.**—The total amount authorized to be appropriated pursuant to paragraphs (1) through (6) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by \$5,550,000, which represents prior year savings.

TITLE XXIV—DEFENSE AGENCIES

Sec. 2401. Authorized Defense Agencies construction and land acquisition projects.

Sec. 2402. Improvements to military family housing units.

Sec. 2403. Energy conservation projects.

Sec. 2404. Authorization of appropriations, Defense Agencies.

SEC. 2401. AUTHORIZED DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) **INSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(1), the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Inside the United States

Agency	Installation or Location	Amount
Defense Intelligence Agency	Bolling Air Force Base, District of Columbia	\$6,000,000
Defense Logistics Agency	Defense Distribution Depot, New Cumberland, Pennsylvania	\$22,300,000
	Defense Distribution Depot, Richmond, Virginia	\$10,100,000
	Defense Fuel Support Point, Naval Air Station, Oceana, Virginia	\$3,589,000
	Marina Corps Air Station, Cherry Point, North Carolina	\$22,700,000
	Naval Air Station, Kingsville, Texas	\$3,900,000
	Naval Station, Pearl Harbor, Hawaii	\$3,500,000
	Tinker Air Force Base, Oklahoma	\$5,400,000
	Travis Air Force Base, California	\$15,100,000
Missile Defense Agency ..	Redstone Arsenal, Alabama	\$19,560,000
National Security Agency	Fort Meade, Maryland	\$15,007,000
Special Operations Command	Corona, California	\$13,600,000
	Fleet Combat Training Center, Dam Neck, Virginia	\$5,700,000
	Fort A.P. Hill, Virginia	\$1,500,000
	Fort Bragg, North Carolina	\$42,888,000
	Fort Campbell, Kentucky	\$3,500,000
	Fort Stewart/Hunter Army Air Field, Georgia	\$17,600,000
	Hurlburt Field, Florida	\$2,500,000
	Naval Amphibious Base, Little Creek, Virginia	\$33,200,000
	Niland, California	\$1,000,000
TRICARE Management Activity	Buckley Air Force Base, Colorado	\$2,100,000
	Defense Language Institute, Presidio, Monterey	\$6,700,000
	Fort Belvoir, Virginia	\$100,000,000
	Fort Benning, Georgia	\$7,100,000
	Langley Air Force Base, Virginia	\$50,800,000
	Marine Corps Recruit Depot, Parris Island, South Carolina	\$25,000,000
	Naval Air Station, Jacksonville, Florida	\$28,438,000
	Total	\$468,782,000

(b) **OUTSIDE THE UNITED STATES.**—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(2), the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Outside the United States

Agency	Installation or Location	Amount
Defense Education Activity	Grafenwoehr, Germany	\$36,247,000
	Naval Station, Guam	\$26,964,000
	Vilseck, Germany	\$9,011,000
Defense Logistics Agency	Defense Fuel Support Point, Lajes Field, Portugal	\$19,113,000
Special Operations Command	Naval Station, Guam, Mariana Islands	\$2,200,000
TRICARE Management Activity	Diego Garcia	\$3,800,000
	Grafenwoehr, Germany	\$13,000,000
	Total	\$110,335,000

(c) UNSPECIFIED WORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(3), the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations, and in the amounts, set forth in the following table:

Defense Agencies: Unspecified Worldwide

Location	Installation or Location	Amount
Special Operations Command	Classified Locations	\$7,400,000
	Unspecified Worldwide	\$2,900,000
	Total	\$10,300,000

SEC. 2402. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(9)(A), the Secretary of Defense may improve existing military family housing units in an amount not to exceed \$49,000.

SEC. 2403. ENERGY CONSERVATION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(7), the Secretary of Defense may carry out energy conservation projects under section 2865 of title 10, United States Code, in the amount of \$50,000,000.

SEC. 2404. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments) in the total amount of \$1,055,663,000, as follows:

(1) For military construction projects inside the United States authorized by section 2401(a), \$411,782,000.

(2) For military construction projects outside the United States authorized by section 2401(b), \$110,335,000.

(3) For the military construction projects at unspecified worldwide locations authorized by section 2401(c), \$10,300,000.

(4) For unspecified minor military construction projects under section 2805 of title 10, United States Code, \$20,938,000.

(5) For contingency construction projects of the Secretary of Defense under section 2804 of title 10, United States Code, \$10,000,000.

(6) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, \$62,182,000.

(7) For energy conservation projects authorized by section 2403 of this Act, \$50,000,000.

(8) For base closure and realignment activities as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), \$246,116,000.

(9) For military family housing functions:

(A) For improvement of military family housing and facilities, \$49,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), \$49,575,000.

(C) For credit to the Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of title 10, United States Code, \$2,500,000.

(10) For the construction of phase 6 of an ammunition demilitarization facility at Pueblo Depot Activity, Colorado, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104-201; 110 Stat. 2775), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106-65; 113 Stat. 839) and section 2407 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2698), \$44,792,000.

(11) For the construction of phase 5 of an ammunition demilitarization facility at Blue Grass Army Depot, Kentucky, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106-65; 113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act of 2002 (division B of Public Law 107-107; 115 Stat. 1298) and section 2405 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2698), \$37,094,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2401 of this Act may not exceed the sum of the following:

(1) The total amount authorized to be appropriated under paragraphs (1), (2) and (3) of subsection (a).

(2) \$57,000,000 (the balance of the amount authorized under section 2401(a) for hospital replacement, Fort Belvoir, Virginia).

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVEST- MENT PROGRAM

Sec. 2501. Authorized NATO construction and land acquisition projects.

Sec. 2502. Authorization of appropriations, NATO.

SEC. 2501. AUTHORIZED NATO CONSTRUCTION AND LAND ACQUISITION PROJECTS.

The Secretary of Defense may make contributions for the North Atlantic Treaty Organization Security Investment program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2502 and the amount collected from the North Atlantic Treaty Organization as a result of construction previously financed by the United States.

SEC. 2502. AUTHORIZATION OF APPROPRIATIONS, NATO.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Security Investment program authorized by section 2501, in the amount of \$160,800,000.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

Sec. 2601. Authorized Guard and Reserve construction and land acquisition projects.

SEC. 2601. AUTHORIZED GUARD AND RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 1803 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, \$434,363,000; and

(B) for the Army Reserve, \$90,310,000.

(2) For the Department of the Navy, for the Naval and Marine Corps Reserve, \$48,185,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, \$233,518,000; and

(B) for the Air Force Reserve, \$122,756,000.

TITLE XXVII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

Sec. 2701. Expiration of authorizations and amounts required to be specified by law.

Sec. 2702. Extension of authorizations of certain fiscal year 2002 projects.

Sec. 2703. Extension and renewal of authorizations of certain fiscal year 2001 projects.

SEC. 2701. EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW.

(a) EXPIRATION OF AUTHORIZATIONS AFTER THREE YEARS.—Except as provided in subsection (b), all authorizations contained in titles XXI through XXVI for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor) shall expire on the later of—

(1) October 1, 2007; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2008.

(b) EXCEPTION.—Subsection (a) shall not apply to authorizations for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor), for which appropriated funds have been obligated before the later of—

(1) October 1, 2007; or

(2) the date of the enactment of an Act authorizing funds for fiscal year 2008 for military construction projects, land acquisition, family housing projects and facilities, or contributions to the North Atlantic Treaty Organization Security Investment program.

SEC. 2702. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2002 PROJECTS.

(a) EXTENSION.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1301), authorizations set forth in the tables in subsection (b), as provided in section 2101, 2302, or 2601 of that Act, shall remain in effect until October 1, 2005, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2006, whichever is later.

(b) TABLES.—The tables referred to in subsection (a) are as follows:

Army: Extension of 2002 Project Authorizations

State	Installation or Location	Project	Amount
Alaska	Fort Wainwright	Power plant cooling tower	\$23,000,000
Hawaii	Pohakuloa Training Facility	Parker Ranch land acquisition	\$1,500,000

Air Force: Extension of 2002 Project Authorizations

State	Installation or Location	Project	Amount
Colorado	Buckley Air Force Base	Family housing (55 Units)	\$11,400,000
Louisiana	Barksdale Air Force Base	Family housing (56 Units)	\$7,300,000

Army National Guard: Extension of 2002 Project Authorization

State	Installation or Location	Project	Amount
California	Lancaster	Readiness Center ...	\$4,530,000

SEC. 2703. EXTENSION AND RENEWAL OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2001 PROJECTS.

(a) EXTENSION AND RENEWAL.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 2001 (division B of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–407)), authorizations set forth in the tables in subsection (b), as provided in section 2102 or 2401 of that Act and, in the case of the authorization set forth in the first table in subsection (b), extended by section 2702 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1716), shall remain in effect until October 1, 2005, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2006, whichever is later.

(b) TABLES.—The tables referred to in subsection (a) are as follows:

Army: Extension of 2001 Project Authorization

State	Installation or Location	Project	Amount
South Carolina	Fort Jackson	Family housing (1 unit)	\$250,000

Defense Agencies: Renewal of 2001 Project Authorization

Agency	Installation or Location	Project	Amount
Defense Education Activity	Osan Air Base, Korea	Osan Elementary School addition ...	\$843,000

TITLE XXVIII—GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

- Sec. 2801. Modification of approval and notice requirements for facility repair projects.
- Sec. 2802. Reporting requirements regarding military family housing requirements for general officers and flag officers.
- Sec. 2803. Congressional notification of deviations from authorized cost variations for military construction projects and military family housing projects.
- Sec. 2804. Assessment of vulnerability of military installations to terrorist attack and annual report on military construction requirements related to antiterrorism and force protection.
- Sec. 2805. Repeal of limitations on use of alternative authority for acquisition and improvement of military housing.
- Sec. 2806. Additional reporting requirements relating to alternative authority for acquisition and improvement of military housing.
- Sec. 2807. Temporary authority to accelerate design efforts for military construction projects carried out using design-build selection procedures.
- Sec. 2808. Notification thresholds and requirements for expenditures or contributions for acquisition of facilities for reserve components.
- Sec. 2809. Authority to exchange reserve component facilities to acquire replacement facilities.
- Sec. 2810. One-year extension of temporary, limited authority to use operation and maintenance funds for construction projects outside the United States.
- Sec. 2811. Consideration of combination of military medical treatment facilities and health care facilities of Department of Veterans Affairs.

Subtitle B—Real Property and Facilities Administration

- Sec. 2821. Reorganization of existing administrative provisions relating to real property transactions.
- Sec. 2822. Development of Heritage Center for the National Museum of the United States Army.
- Sec. 2823. Elimination of reversionary interests clouding United States title to property used as Navy homeports.

Subtitle C—Base Closure and Realignment

- Sec. 2831. Establishment of specific deadline for submission of revisions to force-structure plan and infrastructure inventory.
- Sec. 2832. Specification of final selection criteria for 2005 base closure round.
- Sec. 2833. Repeal of authority of Secretary of Defense to recommend that installations be placed in inactive status.
- Sec. 2834. Voting requirements for Defense Base Closure and Realignment Commission to add to or otherwise expand closure and realignment recommendations made by Secretary of Defense.

Subtitle D—Land Conveyances

PART I—ARMY CONVEYANCES

- Sec. 2841. Land conveyance, Sunflower Army Ammunition Plant, Kansas.
- Sec. 2842. Land exchange, Fort Campbell, Kentucky and Tennessee.
- Sec. 2843. Land conveyance, Louisiana Army Ammunition Plant, Doyline, Louisiana.
- Sec. 2844. Land conveyance, Fort Leonard Wood, Missouri.
- Sec. 2845. Transfer of administrative jurisdiction, Defense Supply Center, Columbus, Ohio.
- Sec. 2846. Jurisdiction and utilization of former public domain lands, Umatilla Chemical Depot, Oregon.
- Sec. 2847. Modification of authority for land conveyance, equipment and storage yard, Charleston, South Carolina.
- Sec. 2848. Land conveyance, Fort Hood, Texas.
- Sec. 2849. Land conveyance, local training area for Browning Army Reserve Center, Utah.
- Sec. 2850. Land conveyance, Army Reserve Center, Hampton, Virginia.
- Sec. 2851. Land conveyance, Army National Guard Facility, Seattle, Washington.
- Sec. 2852. Modification of land exchange and consolidation, Fort Lewis, Washington.

PART II—NAVY CONVEYANCES

- Sec. 2861. Land exchange, former Richmond Naval Air Station, Florida.

- Sec. 2862. Land conveyance, Honolulu, Hawaii.
- Sec. 2863. Land conveyance, Navy property, former Fort Sheridan, Illinois.
- Sec. 2864. Land exchange, Naval Air Station, Patuxent River, Maryland.
- Sec. 2865. Modification of land acquisition authority, Perquimans County, North Carolina.
- Sec. 2866. Land conveyance, Naval Weapons Station, Charleston, South Carolina.
- Sec. 2867. Land conveyance, Navy YMCA building, Portsmouth, Virginia.

PART III—AIR FORCE CONVEYANCES

- Sec. 2871. Land exchange, Maxwell Air Force Base, Alabama.
- Sec. 2872. Land conveyance, March Air Force Base, California.
- Sec. 2873. Land conveyance, former Griffiss Air Force Base, New York.

PART IV—OTHER CONVEYANCES

- Sec. 2881. Land exchange, Arlington County, Virginia.

Subtitle E—Other Matters

- Sec. 2891. One-year resumption of Department of Defense Laboratory Revitalization Demonstration Program.
- Sec. 2892. Designation of Airmen Leadership School at Luke Air Force Base, Arizona, in honor of John J. Rhodes, a former minority leader of the House of Representatives.
- Sec. 2893. Settlement of claim of Oakland Base Reuse Authority and Redevelopment Agency.
- Sec. 2894. Report on establishment of mobilization station at Camp Ripley National Guard Training Center, Little Falls, Minnesota.
- Sec. 2895. Report on feasibility of establishment of veterans memorial at Marine Corps Air Station, El Toro, California.
- Sec. 2896. Sense of Congress regarding effect of military housing policies and force structure and basing changes on local educational agencies.
- Sec. 2897. Sense of Congress and study regarding memorial honoring non-United States citizens killed in the line of duty while serving in the United States Armed Forces.

Subtitle A—Military Construction Program and Military Family Housing Changes

SEC. 2801. MODIFICATION OF APPROVAL AND NOTICE REQUIREMENTS FOR FACILITY REPAIR PROJECTS.

(a) INCREASE IN THRESHOLD FOR APPROVAL REQUIREMENT.—Subsection (b) of section 2811 of title 10, United States Code, is amended by striking “\$5,000,000” and inserting “\$7,500,000”.

(b) DECREASE IN THRESHOLD FOR CONGRESSIONAL NOTIFICATION.—Subsection (d) of such section is amended by striking “\$10,000,000” and inserting “\$7,500,000”.

(c) INFORMATION REQUIRED IN COST ESTIMATE FOR MULTI-YEAR PROJECTS.—Subsection (d)(1) of such section is amended by inserting before the semicolon the following: “, including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project”.

SEC. 2802. REPORTING REQUIREMENTS REGARDING MILITARY FAMILY HOUSING REQUIREMENTS FOR GENERAL OFFICERS AND FLAG OFFICERS.

(a) REPORTS ON COST OF GENERAL AND FLAG OFFICERS QUARTERS.—Section 2831 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(e) REPORTS ON COST OF GENERAL OFFICERS AND FLAG OFFICERS QUARTERS.—(1) As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall submit a report—

“(A) identifying each family housing unit used, or intended for use, as quarters for a general officer or flag officer for which the total operation, maintenance, and repair costs for the unit are anticipated to exceed \$35,000 in the next fiscal year; and

“(B) for each family housing unit so identified, specifying the total of such anticipated operation, maintenance, and repair costs for the unit.

“(2) Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report specifying, for each family housing unit used as quarters for a general officer or flag officer at any time during that fiscal year, the total expenditures for operation and maintenance, utilities, lease, and repairs of the unit during that fiscal year.”.

(b) NOTICE AND WAIT REQUIREMENT.—Such section is further amended by inserting after subsection (e), as added by subsection (a), the following new subsection:

“(f) NOTICE AND WAIT REQUIREMENT.—(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may not carry out a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project will or may result in the total operation, maintenance, and repair costs for the unit for the fiscal year to exceed \$35,000, until—

“(A) the Secretary concerned submits to the congressional defense committees, in writing, a justification of the need for the maintenance or repair project and an estimate of the cost of the project; and

“(B) a period of 21 days has expired following the date on which the justification and estimate are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and estimate are provided in an electronic medium pursuant to section 480 of this title.

“(2) The project justification and cost estimate required by paragraph (1)(A) may be submitted after the commencement of a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project is a necessary environmental remediation project for the unit or is necessary for occupant safety or security, and the need for the project arose after the submission of the most recent report under subsection (e).

“(3) Paragraph (1) shall not apply in the case of a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the unit was identified in the most recent report submitted under subsection (e) and the cost of the maintenance or repair project was included in the total of anticipated operation, maintenance, and repair costs for the unit specified in the report.”.

(c) REPORT ON NEED FOR GENERAL AND FLAG OFFICERS QUARTERS IN NATIONAL CAPITAL REGION.—Not later than March 30, 2005, the Secretary of Defense shall submit to the congressional defense committees a report containing an analysis of anticipated needs in the National Capital Region for family housing units for general officers and flag officers. In conducting the analysis, the Secretary shall consider the extent of available housing in

the National Capital Region and the necessity of providing housing for general officers and flag officers in secure locations.

(d) **REPORT ON CURRENT WORLD-WIDE INVENTORY OF GENERAL AND FLAG OFFICERS QUARTERS.**—Not later than March 30, 2005, the Secretary of Defense shall submit to the congressional defense committees a report—

(1) containing a worldwide inventory of family housing units used, or intended for use, for general officers and flag officers; and

(2) identifying annual expenditures for fiscal years 2002, 2003, and 2004 for operation and maintenance, utilities, leases, and repairs of each unit.

(e) **DEFINITIONS.**—In this section:

(1) The terms “general officer” and “flag officer” have the meanings given such terms in section 101(b) of title 10, United States Code.

(2) The term “National Capital Region” has the meaning given such term in section 2674(f) of such title.

SEC. 2803. CONGRESSIONAL NOTIFICATION OF DEVIATIONS FROM AUTHORIZED COST VARIATIONS FOR MILITARY CONSTRUCTION PROJECTS AND MILITARY FAMILY HOUSING PROJECTS.

Section 2853(c)(3) of title 10, United States Code, is amended by inserting before the period at the end the following: “or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title”.

SEC. 2804. ASSESSMENT OF VULNERABILITY OF MILITARY INSTALLATIONS TO TERRORIST ATTACK AND ANNUAL REPORT ON MILITARY CONSTRUCTION REQUIREMENTS RELATED TO ANTITERRORISM AND FORCE PROTECTION.

(a) **ANNUAL ASSESSMENT AND REPORT.**—(1) Chapter 169 of title 10, United States Code, is amended by inserting after section 2858 the following new section:

“§ 2859. Construction requirements related to antiterrorism and force protection

“(a) ANTITERRORISM AND FORCE PROTECTION GUIDANCE AND CRITERIA.—The Secretary of Defense shall develop common guidance and criteria to be used by each Secretary concerned—

“(1) to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;

“(2) to develop construction standards designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;

“(3) to prepare and carry out military construction projects, such as gate and fenceline construction, to improve the physical security of military installations; and

“(4) to assist in prioritizing such projects within the military construction budget of each of the armed forces.

“(b) VULNERABILITY ASSESSMENTS.—The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under subsection (a).

“(c) **MILITARY CONSTRUCTION REQUIREMENTS.**—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report, in both classified and unclassified form, describing—

“(1) the location and results of the vulnerability assessments conducted under subsection (b) during the most recently completed fiscal year;

“(2) the military construction requirements anticipated to be necessary during the period covered by the then-current future-years defense plan under section 221 of this title to improve the physical security of military installations; and

“(3) the extent to which funds to meet those requirements are not requested in the Department of Defense budget for the fiscal year for which the budget is submitted.”.

(2) The table of sections at the beginning of subchapter III of chapter 169 of such title is amended by inserting after the item relating to section 2858 the following new item:

“2859. Construction requirements related to antiterrorism and force protection.”.

10 USC 2859
note.

(b) **SPECIAL REQUIREMENT FOR 2006 REPORT.**—In the case of the report required to be submitted in 2006 under section 2859(c) of title 10, United States Code, as added by subsection (a), the Secretary of Defense shall include a certification by the Secretary that since September 11, 2001, assessments regarding the vulnerability of military installations to terrorist attack have been undertaken for all major military installations. The Secretary shall indicate the basis by which the Secretary differentiated between major and nonmajor military installations for purposes of making the certification.

SEC. 2805. REPEAL OF LIMITATIONS ON USE OF ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) **REPEAL OF BUDGET AUTHORITY LIMITATION ON USE OF AUTHORITY.**—Section 2883 of title 10, United States Code, is amended by striking subsection (g).

(b) **REPEAL OF TERMINATION DATE ON USE OF AUTHORITY.**—(1) Section 2885 of such title is repealed.

(2) The table of sections at the beginning of subchapter IV of chapter 169 of such title is amended by striking the item relating to section 2885.

SEC. 2806. ADDITIONAL REPORTING REQUIREMENTS RELATING TO ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) **PROJECT REPORTS.**—Paragraph (2) of subsection (a) of section 2884 of title 10, United States Code, is amended to read as follows:

“(2) For each proposed contract, conveyance, or lease described in paragraph (1), the report required by such paragraph shall include the following:

“(A) A description of the contract, conveyance, or lease, including a summary of the terms of the contract, conveyance, or lease.

“(B) A description of the authorities to be utilized in entering into the contract, conveyance, or lease and the

intended method of participation of the United States in the contract, conveyance, or lease, including a justification of the intended method of participation.

“(C) A statement of the scored cost of the contract, conveyance, or lease, as determined by the Office of Management and Budget.

“(D) A statement of the United States funds required for the contract, conveyance, or lease and a description of the source of such funds.

“(E) An economic assessment of the life cycle costs of the contract, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over the life of the contract, conveyance, or lease from amounts derived from payments of government allowances, including the basic allowance for housing under section 403 of title 37, if the housing affected by the project were fully occupied by military personnel over the life of the contract, conveyance, or lease.”.

(b) ANNUAL REPORTS.—Subsection (b) of such section is amended—

(1) by redesignating paragraph (5) as paragraph (6); and
(2) by inserting after paragraph (4) the following new paragraph (5):

“(5) A report setting forth, by armed force—

“(A) an estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter; and

“(B) the number of units of military family housing and military unaccompanied housing upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.”.

SEC. 2807. TEMPORARY AUTHORITY TO ACCELERATE DESIGN EFFORTS FOR MILITARY CONSTRUCTION PROJECTS CARRIED OUT USING DESIGN-BUILD SELECTION PROCEDURES.

Section 2305a of title 10, United States Code, is amended by adding at the end the following new subsection:

“(f) SPECIAL AUTHORITY FOR MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department may use funds available to the Secretary under section 2807(a) or 18233(e) of this title to accelerate the design effort in connection with a military construction project for which the two-phase selection procedures described in subsection (c) are used to select the contractor for both the design and construction portion of the project before the project is specifically authorized by law and before funds are appropriated for the construction portion of the project. Notwithstanding the limitations contained in such sections, use of such funds for the design portion of a military construction project may continue despite the subsequent authorization of the project. The advance notice requirement of section 2807(b) of this title shall continue to apply whenever the estimated cost of the design portion of the project exceeds the amount specified in such section.

“(2) Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the

United States in a termination for convenience may not exceed the actual costs incurred as of the termination date.

“(3) For each fiscal year during which the authority provided by this subsection is in effect, the Secretary of a military department may select not more than two military construction projects to include the accelerated design effort authorized by paragraph (1) for each armed force under the jurisdiction of the Secretary. To be eligible for selection under this subsection, a request for the authorization of the project, and for the authorization of appropriations for the project, must have been included in the annual budget of the President for a fiscal year submitted to Congress under section 1105(a) of title 31.

Deadline.
Reports.

“(4) Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees a report evaluating the usefulness of the authority provided by this subsection in expediting the design and construction of military construction projects. The authority provided by this subsection expires September 30, 2007, except that, if the report required by this paragraph is not submitted by March 1, 2007, the authority shall expire on that date.”.

SEC. 2808. NOTIFICATION THRESHOLDS AND REQUIREMENTS FOR EXPENDITURES OR CONTRIBUTIONS FOR ACQUISITION OF FACILITIES FOR RESERVE COMPONENTS.

(a) **AUTHORITY TO CARRY OUT SMALL PROJECTS.**—Section 18233a of title 10, United States Code, is amended to read as follows:

“§ 18233a. Notice and wait requirements for certain projects

“(a) **CONGRESSIONAL NOTIFICATION.**—Except as provided in subsection (b), an expenditure or contribution in an amount in excess of \$750,000 may not be made under section 18233 of this title for any facility until—

“(1) the Secretary of Defense has notified the congressional defense committees of the location, nature, and estimated cost of the facility; and

“(2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

“(b) **CERTAIN EXPENDITURES OR CONTRIBUTIONS EXEMPTED.**—Subsection (a) does not apply to expenditures or contributions for the following:

“(1) Facilities acquired by lease.

“(2) A project for a facility that has been authorized by Congress, if the location and purpose of the facility are the same as when authorized and if, based upon bids received—

“(A) the scope of work of the project, as approved by Congress, is not proposed to be reduced by more than 25 percent; and

“(B) the current working estimate of the cost of the project does not exceed the amount approved for the project by more than the lesser of the following:

“(i) 25 percent.

“(ii) 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project.

“(3) A repair project (as that term is defined in section 2811(e) of this title) that costs less than \$7,500,000.”.

(b) RECODIFICATION OF LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS.—Chapter 1803 of such title is amended by inserting after section 18233a the following new section:

“§ 18233b. Authority to carry out small projects with operation and maintenance funds

“Under such regulations as the Secretary of Defense may prescribe, the Secretary may expend, from appropriations available for operation and maintenance, amounts necessary to carry out any project authorized under section 18233(a) of this title that costs not more than—

“(1) the amount specified in section 2805(c)(1)(A) of this title, in the case of a project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

“(2) the amount specified in section 2805(c)(1)(B) of this title, in the case of any other project.”.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1803 of such title is amended by striking the item relating to section 18233a and inserting the following new items:

“18233a. Notice and wait requirements for certain projects.

“18233b. Authority to carry out small projects with operation and maintenance funds.”.

SEC. 2809. AUTHORITY TO EXCHANGE RESERVE COMPONENT FACILITIES TO ACQUIRE REPLACEMENT FACILITIES.

(a) EXCHANGE AUTHORITY.—(1) Chapter 1803 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 18240. Acquisition of facilities by exchange

“(a) EXCHANGE AUTHORITY.—In addition to the acquisition authority provided by section 18233 of this title, the Secretary of Defense may authorize the Secretary of a military department to acquire a facility, or addition to an existing facility, needed to satisfy military requirements for a reserve component by carrying out an exchange of an existing facility under the control of that Secretary through an agreement with a State, local government, local authority, or private entity.

“(b) FACILITIES ELIGIBLE FOR EXCHANGE.—Only a facility of a reserve component that is not excess property (as defined in section 102(3) of title 40) may be exchanged using the authority provided by this section.

“(c) EQUAL VALUE EXCHANGE.—In any exchange carried out using the authority provided by this section, the value of the replacement facility, or addition to an existing facility, acquired by the United States shall be at least equal to the fair market value of the facility conveyed by the United States under the agreement. If the values are unequal, the values may not be equalized by any payment of cash consideration by either party to the agreement.

“(d) REQUIREMENTS FOR REPLACEMENT FACILITIES.—The Secretary of a military department may not accept a replacement facility, or addition to an existing facility, to be acquired by the United States in an exchange carried out using the authority provided by this section until that Secretary determines that the facility or addition—

“(1) is complete and usable, fully functional, and ready for occupancy;

“(2) satisfies all operational requirements; and

“(3) meets all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.

“(e) CONSULTATION REQUIREMENTS.—The Secretary of a military department authorized to enter into an agreement under subsection (a) to convey an existing facility under the control of that Secretary by exchange shall consult with representatives of other reserve components to evaluate—

“(1) the value of using the facility to meet the military requirements of another reserve component, instead of conveying the facility under this section; and

“(2) the feasibility of using the conveyance of the facility to acquire a facility, or an addition to an existing facility, that would be jointly used by more than one reserve component or unit.

“(f) ADVANCE NOTICE OF PROPOSED EXCHANGE.—(1) When a decision is made to enter into an agreement under subsection (a) to exchange a facility using the authority provided by this section, the Secretary of the military department authorized to enter into the agreement shall submit to the congressional defense committees a report on the proposed agreement. The report shall include the following:

“(A) A description of the agreement, including the terms and conditions of the agreement, the parties to be involved in the agreement, the origin of the proposal that lead to the agreement, the intended use of the facility to be conveyed by the United States under the agreement, and any costs to be incurred by the United States to make the exchange under the agreement.

“(B) A description of the facility to be conveyed by the United States under the agreement, including the current condition and fair market value of the facility, and a description of the method by which the fair market value of the facility was determined.

“(C) Information on the facility, or addition to an existing facility, to be acquired by the United States under the agreement and the intended use of the facility or addition, which shall meet requirements for information provided to Congress for military construction projects to obtain a similar facility or addition to an existing facility.

“(D) A certification that the Secretary complied with the consultation requirements under subsection (e).

“(E) A certification that the conveyance of the facility under the agreement is in the best interests of the United States and that the Secretary used competitive procedures to the maximum extent practicable to protect the interests of the United States.

“(2) The agreement described in a report prepared under paragraph (1) may be entered into, and the exchange covered by the

agreement made, only after the end of the 30-day period beginning on the date the report is received by the congressional defense committees or, if earlier, the end of the 21-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

“(3) Section 2662 of this title shall not apply to an exchange carried out using the authority provided by this section.

“(g) RELATION TO OTHER MILITARY CONSTRUCTION REQUIREMENTS.—The acquisition of a facility, or an addition to an existing facility, using the authority provided by this section shall not be treated as a military construction project for which an authorization is required by section 2802 of this title.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“18240. Acquisition of facilities by exchange.”.

(b) CONFORMING AMENDMENT.—Section 18233(f)(2) of such title is amended by striking “gift, exchange of Government-owned land, or otherwise” and inserting “or gift”.

(c) TEMPORARY AUTHORITY TO INCLUDE CASH EQUALIZATION PAYMENTS IN EXCHANGE.—(1) Notwithstanding subsection (c) of section 18240 of title 10, United States Code, as added by subsection (a), the Secretary of Defense may authorize the Secretary of a military department, as part of an exchange agreement under such section, to make or accept a cash equalization payment if the value of the facility, or addition to an existing facility, to be acquired by the United States under the agreement is not equal to the fair market value of the facility to be conveyed by the United States under the agreement. All other requirements of such section shall continue to apply to the exchange.

(2) Cash equalization payments received by the Secretary of a military department under this subsection shall be deposited in a separate account in the Treasury. Amounts in the account shall be available to the Secretary of Defense, without further appropriation and until expended, for transfer to the Secretary of a military department—

(A) to make any cash equalization payments required to be made by the United States in connection with an exchange agreement covered by this subsection, and the account shall be the only source for such payments; and

(B) to cover costs associated with the maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of facilities, and additions to existing facilities, acquired using an exchange agreement covered by this subsection.

(3) Not more than 15 exchange agreements under section 18240 of title 10, United States Code, may include the exception for cash equalization payments authorized by this subsection. Of those 15 exchange agreements, not more than eight may be for the same reserve component.

(4) In this section, the term “facility” has the meaning given that term in section 18232(2) of title 10, United States Code.

(5) No cash equalization payment may be made or accepted under the authority of this subsection after September 30, 2007. Except as otherwise specifically authorized by law, the authority provided by this subsection to make or accept cash equalization payments in connection with the acquisition or disposal of facilities

Deadline.

of the reserve components is the sole authority available in law to the Secretary of Defense or the Secretary of a military department for that purpose.

(6) Not later than March 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report on the exercise of the authority provided by this subsection. The report shall include the following:

(A) A description of the exchange agreements under section 18240 of title 10, United States Code, that included the authority to make or accept cash equalization payments.

(B) A description of the analysis and criteria used to select such agreements for inclusion of the authority to make or accept cash equalization payments.

(C) An assessment of the utility to the Department of Defense of the authority, including recommendations for modifications of such authority in order to enhance the utility of such authority for the Department.

(D) An assessment of interest in the future use of the authority, in the event the authority is extended.

(E) An assessment of the advisability of making the authority, including any modifications of the authority recommended under subparagraph (C), permanent.

SEC. 2810. ONE-YEAR EXTENSION OF TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS OUTSIDE THE UNITED STATES.

Section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108-136; 117 Stat. 1723) is amended—

(1) in subsection (a), by inserting “and, subject to subsection (d)(2), fiscal year 2005” after “During fiscal year 2004”;

(2) in subsection (c)(1), by striking “in fiscal year 2004” and inserting “in a fiscal year”; and

(3) in subsection (d)—

(A) by inserting “(1)” before “Not later than”;

(B) by striking “fiscal year 2004,” and inserting “fiscal years 2004 and 2005,”; and

(C) by adding at the end the following new paragraph:
 “(2) The ability to use this section as authority during fiscal year 2005 to obligate appropriated funds available for operation and maintenance to carry out construction projects outside the United States shall commence only after the date on which the Secretary of Defense submits to the congressional committees specified in subsection (f) all of the quarterly reports that were required under paragraph (1) for fiscal year 2004.”.

38 USC 8111
note.

SEC. 2811. CONSIDERATION OF COMBINATION OF MILITARY MEDICAL TREATMENT FACILITIES AND HEALTH CARE FACILITIES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) DEPARTMENT OF DEFENSE CONSIDERATION OF JOINT CONSTRUCTION.—When considering any military construction project for the construction of a new military medical treatment facility in the United States or a territory or possession of the United States, the Secretary of Defense shall consult with the Secretary of Veterans Affairs regarding the feasibility of carrying out a joint project to construct a medical facility that—

(1) could serve as a facility for health-resources sharing between the Department of Defense and the Department of Veterans Affairs; and

(2) would be no more costly to each Department to construct and operate than separate facilities for each Department.

(b) DEPARTMENT OF VETERANS AFFAIRS CONSIDERATION OF JOINT CONSTRUCTION.—When considering the construction of a new or replacement medical facility for the Department of Veterans Affairs, the Secretary of Veterans Affairs shall consult with the Secretary of Defense regarding the feasibility of carrying out a joint project to construct a medical facility that—

(1) could serve as a facility for health-resources sharing between the Department of Veterans Affairs and the Department of Defense; and

(2) would be no more costly to each Department to construct and operate than separate facilities for each Department.

Subtitle B—Real Property and Facilities Administration

SEC. 2821. REORGANIZATION OF EXISTING ADMINISTRATIVE PROVISIONS RELATING TO REAL PROPERTY TRANSACTIONS.

(a) LIMITATION ON COMMISSIONS.—(1) Section 2661 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c) COMMISSIONS ON LAND PURCHASE CONTRACTS.—The maximum amount payable as a commission on a contract for the purchase of land from funds appropriated for the Department of Defense is two percent of the purchase price.”.

(2) Section 2666 of such title is repealed.

(b) REPEAL OF OBSOLETE AUTHORITY TO ACQUIRE LAND FOR TIMBER PRODUCTION.—Section 2664 of such title is repealed.

(c) CONSOLIDATION OF CERTAIN PROVISIONS ON USE OF FACILITIES.—(1) Section 2670 of such title is amended by adding at the end the following new subsection:

“(c) USE OF SPACE AND EQUIPMENT BY VETERANS SERVICE ORGANIZATIONS.—(1) Upon certification to the Secretary concerned by the Secretary of Veterans Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of the Secretary concerned that are on land and from which persons are discharged or released from active duty.

“(2) The commanding officer of a military installation allowing representatives to function on the installation under paragraph (1) shall allow the representatives to use available space and equipment at the installation.

“(3) This subsection does not authorize the violation of measures of military security.”.

(2) Section 2679 of such title is repealed.

(3) The regulations prescribed to carry out section 2679 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act, shall remain in effect with regard to section 2670(c) of such title, as added by paragraph (1), until changed by joint action of the Secretary concerned (as

10 USC 2670
note.

defined in section 101(9) of such title) and the Secretary of Veterans Affairs.

(d) AVAILABILITY OF FUNDS FOR ACQUISITION OF CERTAIN INTERESTS IN REAL PROPERTY.—(1) Section 2672 of such title is amended by adding at the end the following new subsection:

“(d) AVAILABILITY OF FUNDS.—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of land or interests in land under this section.”

(2) Section 2673 of such title is repealed.

(3) Section 2675 of such title is amended—

(A) by inserting “(a) LEASE AUTHORITY; DURATION.—” before “The Secretary”; and

(B) by adding at the end the following new subsection: “(b) AVAILABILITY OF FUNDS.—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of interests in land under this section.”

(e) STYLISTIC AND CLERICAL AMENDMENTS.—(1) Section 2661 of such title is further amended—

(A) in subsection (a), by inserting “AVAILABILITY OF OPERATION AND MAINTENANCE FUNDS.—” after “(a)”; and

(B) in subsection (b), by inserting “LEASING AND ROAD MAINTENANCE AUTHORITY.—” after “(b)”.

(2) The heading of section 2670 of such title is amended to read as follows:

“§ 2670. Use of facilities by private organizations; use as polling places”.

(3) The table of sections at the beginning of chapter 159 of such title is amended—

(A) by striking the items relating to sections 2664, 2666, 2673, and 2679; and

(B) by striking the item relating to section 2670 and inserting the following new item:

“2670. Use of facilities by private organizations; use as polling places.”.

SEC. 2822. DEVELOPMENT OF HERITAGE CENTER FOR THE NATIONAL MUSEUM OF THE UNITED STATES ARMY.

(a) AUTHORITY TO ENTER INTO AGREEMENT FOR DEVELOPMENT OF CENTER.—Chapter 449 of title 10, United States Code, is amended by inserting after section 4771 the following new section:

“§ 4772. Heritage Center for the National Museum of the United States Army: development and operation

“(a) AGREEMENT FOR DEVELOPMENT OF CENTER.—The Secretary of the Army may enter into an agreement with the Army Historical Foundation, a nonprofit organization, for the design, construction, and operation of a facility or group of facilities at Fort Belvoir, Virginia, for the National Museum of the United States Army. The facility or group of facilities constructed pursuant to the agreement shall be known as the Heritage Center for the National Museum of the United States Army (in this section referred to as the ‘Center’).

“(b) PURPOSE OF CENTER.—The Center shall be used for the identification, curation, storage, and public viewing of artifacts and artwork of significance to the United States Army, as agreed to

by the Secretary of the Army. The Center may also be used to support such education, training, research, and associated purposes as the Secretary considers appropriate.

“(c) DESIGN AND CONSTRUCTION.—(1) The design of the Center shall be subject to the approval of the Secretary of the Army.

“(2) For each phase of the development of the Center, the Secretary may—

“(A) accept funds from the Army Historical Foundation for the design and construction of such phase of the Center; or

“(B) permit the Army Historical Foundation to contract for the design and construction of such phase of the Center.

“(d) ACCEPTANCE BY SECRETARY.—Upon the satisfactory completion, as determined by the Secretary of the Army, of any phase of the Center, and upon the satisfaction of any financial obligations incident to such phase of the Center by the Army Historical Foundation, the Secretary shall accept such phase of the Center from the Army Historical Foundation, and all right, title, and interest in and to such phase of the Center shall vest in the United States. Upon becoming the property of the United States, the Secretary shall assume administrative jurisdiction over the Center.

“(e) USE OF CERTAIN GIFTS.—(1) Under regulations prescribed by the Secretary of the Army, the Commander of the United States Army Center of Military History may, without regard to section 2601 of this title, accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property of a value of \$250,000 or less made to the United States if such gift, devise, or bequest is for the benefit of the National Museum of the United States Army or the Center.

“(2) The Secretary may pay or authorize the payment of any reasonable and necessary expense in connection with the conveyance or transfer of a gift, devise, or bequest under this subsection.

“(f) LEASE OF FACILITY.—(1) Under such terms and conditions as the Secretary of the Army considers appropriate, the Secretary may lease portions of the Center to the Army Historical Foundation to be used by the Foundation, consistent with the purpose of the Center, for—

“(A) generating revenue for activities of the Center through rental use by the public, commercial and nonprofit entities, State and local governments, and other Federal agencies; and

“(B) such administrative purposes as may be necessary for the support of the Center.

“(2) The annual amount of consideration paid to the Secretary by the Army Historical Foundation for a lease under paragraph (1) may not exceed an amount equal to the actual cost, as determined by the Secretary, of the annual operations and maintenance of the Center.

“(3) Notwithstanding any other provision of law, the Secretary shall use amounts paid under paragraph (2) to cover the costs of operation of the Center.

“(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of the Army may require such additional terms and conditions in connection with the agreement authorized by subsection (a) as the Secretary considers appropriate to protect the interests of the United States.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4771 the following new item:

“4772. Heritage Center for the National Museum of the United States Army: development and operation.”.

10 USC 5013
note.

SEC. 2823. ELIMINATION OF REVERSIONARY INTERESTS CLOUDING UNITED STATES TITLE TO PROPERTY USED AS NAVY HOMEPORTS.

(a) AUTHORITY TO ACQUIRE COMPLETE TITLE.—If real property owned by the United States and used as a Navy homeport is subject to a reversionary interest of any kind, the Secretary of the Navy may enter into an agreement with the holder of the reversionary interest to acquire the reversionary interest and thereby secure for the United States all right, title, and interest in and to the property.

(b) AUTHORIZED CONSIDERATION.—(1) As consideration for the acquisition of a reversionary interest under subsection (a), the Secretary shall provide the holder of the reversionary interest with in-kind consideration, to be determined pursuant to negotiations between the Secretary and the holder of the reversionary interest.

(2) In determining the type and value of any in-kind consideration to be provided for the acquisition of a reversionary interest under subsection (a), the Secretary shall take into account the nature of the reversionary interest, including whether it would require the holder of the reversionary interest to pay for any improvements acquired by the holder as part of the reversion of the real property, and the long-term use and ultimate disposition of the real property if the United States were to acquire all right, title, and interest in and to the real property subject to the reversionary interest.

(c) PROHIBITED CONSIDERATION.—Cash payments are not authorized to be made as consideration for the acquisition of a reversionary interest under subsection (a).

Subtitle C—Base Closure and Realignment

SEC. 2831. ESTABLISHMENT OF SPECIFIC DEADLINE FOR SUBMISSION OF REVISIONS TO FORCE-STRUCTURE PLAN AND INFRA-STRUCTURE INVENTORY.

Section 2912(a)(4) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking “as part of the budget justification documents submitted to Congress for fiscal year 2006.” and inserting the following: “not later than March 15, 2005. For purposes of selecting military installations for closure or realignment under this part in 2005, no revision of the force-structure plan or infrastructure inventory is authorized after that date.”.

SEC. 2832. SPECIFICATION OF FINAL SELECTION CRITERIA FOR 2005 BASE CLOSURE ROUND.

Section 2913 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended to read as follows:

**“SEC. 2913. FINAL SELECTION CRITERIA FOR ADDITIONAL ROUND OF
BASE CLOSURES AND REALIGNMENTS.**

“(a) **FINAL SELECTION CRITERIA.**—The final criteria to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 shall be the military value and other criteria specified in subsections (b) and (c).

“(b) **MILITARY VALUE CRITERIA.**—The military value criteria are as follows:

“(1) The current and future mission capabilities and the impact on operational readiness of the total force of the Department of Defense, including the impact on joint warfighting, training, and readiness.

“(2) The availability and condition of land, facilities, and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.

“(3) The ability to accommodate contingency, mobilization, surge, and future total force requirements at both existing and potential receiving locations to support operations and training.

“(4) The cost of operations and the manpower implications.

“(c) **OTHER CRITERIA.**—The other criteria that the Secretary shall use in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 are as follows:

“(1) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

“(2) The economic impact on existing communities in the vicinity of military installations.

“(3) The ability of the infrastructure of both the existing and potential receiving communities to support forces, missions, and personnel.

“(4) The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

“(d) **PRIORITY GIVEN TO MILITARY VALUE.**—The Secretary shall give priority consideration to the military value criteria specified in subsection (b) in the making of recommendations for the closure or realignment of military installations.

“(e) **EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS.**—The selection criteria relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations.

“(f) **RELATION TO OTHER MATERIALS.**—The final selection criteria specified in this section shall be the only criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making recommendations for the

closure or realignment of military installations inside the United States under this part in 2005.

“(g) RELATION TO CRITERIA FOR EARLIER ROUNDS.—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.”.

(c) CONFORMING AMENDMENTS.—The Defense Base Closure and Realignment Act of 1990 is amended—

10 USC 2687
note.

(1) in section 2912(c)(1)(A), by striking “criteria prepared under section 2913” and inserting “criteria specified in section 2913”; and

10 USC 2687
note.

(2) in section 2914(a), by striking “criteria prepared by the Secretary under section 2913” and inserting “criteria specified in section 2913”.

SEC. 2833. REPEAL OF AUTHORITY OF SECRETARY OF DEFENSE TO RECOMMEND THAT INSTALLATIONS BE PLACED IN INACTIVE STATUS.

Section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended by striking subsection (c).

SEC. 2834. VOTING REQUIREMENTS FOR DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION TO ADD TO OR OTHERWISE EXPAND CLOSURE AND REALIGNMENT RECOMMENDATIONS MADE BY SECRETARY OF DEFENSE.

Subsection (d) of section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as added by section 3003 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1346) and amended by section 2854 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2728), is amended—

(1) in paragraph (3), by striking “TO ADD” and inserting “TO CONSIDER ADDITIONS”; and

(2) by striking paragraph (5) and inserting the following new paragraph:

“(5) REQUIREMENTS TO EXPAND CLOSURE OR REALIGNMENT RECOMMENDATIONS.—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless—

“(A) at least two members of the Commission visit the military installation before the date of the transmittal of the report; and

“(B) the decision of the Commission to make the change to recommend the closure of the military installation, the realignment of the installation, or the expanded realignment of the installation is supported by at least seven members of the Commission.”.

Subtitle D—Land Conveyances

PART I—ARMY CONVEYANCES

SEC. 2841. LAND CONVEYANCE, SUNFLOWER ARMY AMMUNITION PLANT, KANSAS.

(a) **CONVEYANCE AUTHORIZED.**—The Secretary of the Army, in consultation with the Administrator of General Services, may convey to an entity selected by the Board of Commissioners of Johnson County, Kansas (in this section referred to as the “entity” and the “Board”, respectively), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 9,065 acres and containing the Sunflower Army Ammunition Plant. The purpose of the conveyance is to facilitate the re-use of the property for economic development and revitalization.

(b) **CONSIDERATION.**—(1) As consideration for the conveyance under subsection (a), the entity shall provide the United States, whether by cash payment, in-kind consideration, or a combination thereof, an amount that is not less than the fair market value of the conveyed property, as determined by an appraisal of the property acceptable to the Administrator and the Secretary. As a form of in-kind consideration for the conveyance of the property, the Secretary may authorize the entity to carry out environmental remediation activities for the conveyed property.

(2) Cash consideration received under paragraph (1) shall be deposited in the special account in the Treasury established under subsection (b) of section 572 of title 40, United States Code, and shall be available in accordance with paragraph (5)(B)(i) of such subsection.

(c) **CONSTRUCTION WITH PREVIOUS LAND CONVEYANCE AUTHORITY.**—The conveyance authority provided by subsection (a) is in addition to the conveyance authority provided by section 2823 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107-314; 116 Stat. 2712) to convey a portion of the Sunflower Army Ammunition Plant to the Johnson County Park and Recreation District.

(d) **AGREEMENTS CONCERNING ENVIRONMENTAL REMEDIATION AND EXPLOSIVES CLEANUP.**—(1) The Secretary, in consultation with the Administrator, may enter into a multi-year cooperative agreement or contract with the entity for the environmental remediation and explosives cleanup of the conveyed property, and may utilize amounts authorized to be appropriated to the Secretary for purposes of environmental remediation and explosives cleanup under the agreement or contract.

(2) The cooperative agreement or contract may provide for advance payments on an annual basis or for payments on a performance basis. Payments may be made over a period of time agreed to by the Secretary and the entity or for such time as may be necessary to perform the environmental remediation and explosives cleanup of the property, including any long-term operation and maintenance requirements.

(e) **PAYMENT OF COSTS OF CONVEYANCE.**—(1) The Secretary may require the entity to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey

costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the entity in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the entity.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary and the Administrator.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary and the Administrator may require such additional terms and conditions in connection with the conveyance of real property under subsection (a), and the environmental remediation and explosives cleanup under subsection (d), as the Secretary and the Administrator jointly consider appropriate to protect the interests of the United States.

SEC. 2842. LAND EXCHANGE, FORT CAMPBELL, KENTUCKY AND TENNESSEE.

(a) LAND EXCHANGE AUTHORIZED.—In exchange for the real property described in subsection (b), the Secretary of the Army may convey to Bi-County Solid Waste Management System, a local government agency (in this section referred to as “Bi-County”), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 358 acres located at Fort Campbell in Montgomery County, Tennessee, for the purpose of permitting Bi-County to expand a landfill facility.

(b) CONSIDERATION.—As consideration for the conveyance under subsection (a), Bi-County shall convey to the United States all right, title, and interest of Bi-County in and to a parcel of real property consisting of approximately 670 acres located adjacent to Fort Campbell in Trigg County, Kentucky, and Stewart County, Tennessee. The Secretary shall have jurisdiction over the real property received under this subsection.

(c) CONDITION OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the condition that Bi-County construct a fence, acceptable to the Secretary, consisting of at least six-foot high, nine-gauge chain-link and three-strand barbed wire along the boundary between Fort Campbell and the real property conveyed under subsection (a).

(d) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require Bi-County to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under this section, including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from Bi-County in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually

incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to Bi-County.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under this section shall be determined by surveys satisfactory to the Secretary and Bi-County.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2843. LAND CONVEYANCE, LOUISIANA ARMY AMMUNITION PLANT, DOYLINE, LOUISIANA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the State of Louisiana (in this section referred to as the “State”) all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 14,949 acres located at the Louisiana Army Ammunition Plant, Doyline, Louisiana.

(b) CONDITIONS OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the following conditions:

(1) That at least 13,500 acres of the real property conveyed under such subsection is maintained by the State for the purpose of military training, unless the Secretary determines that fewer acres are required for such purpose.

(2) That the State ensure that any other uses made of the conveyed property do not adversely impact such military training.

(3) That the State accommodate the use of the conveyed property, at no cost or fee, for meeting the present and future training needs of units of the Armed Forces, including units of the Louisiana National Guard and the other active and reserve components of the Armed Forces.

(4) That the State assume the rights and responsibilities of the Department of the Army under the armaments retooling manufacturing support agreement between the Department of the Army and the facility use contractor with respect to the Louisiana Army Ammunition Plant, in accordance with the terms of such agreement in effect at the time of the conveyance.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the State.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2844. LAND CONVEYANCE, FORT LEONARD WOOD, MISSOURI.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the State of Missouri (in this section referred to as the “State”) all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 227.7 acres at Fort Leonard Wood, Missouri, for the purpose of permitting the State to establish on the property a State-operated cemetery for veterans of the Armed Forces.

(b) REVERSIONARY INTEREST.—If the Secretary determines at any time that the real property conveyed under subsection (a) is not being used in accordance with the purpose of the conveyance specified in such subsection, all right, title, and interest in and to the property shall revert, at the option of the Secretary, to the United States, and the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the State to carry out the conveyance, the Secretary shall refund the excess amount to the State. The authority of the Secretary to require the State to cover administrative costs related to the conveyance does not include costs related to any environmental remediation required for the property.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2845. TRANSFER OF ADMINISTRATIVE JURISDICTION, DEFENSE SUPPLY CENTER, COLUMBUS, OHIO.

(a) **TRANSFER AUTHORIZED.**—The Secretary of the Army may transfer, without reimbursement, to the administrative jurisdiction of the Secretary of Veterans Affairs a parcel of real property consisting of approximately 20 acres and comprising a portion of the Defense Supply Center in Columbus, Ohio.

(b) **USE OF PROPERTY.**—The Secretary of Veterans Affairs may only use the property transferred under subsection (a) as the site for the construction of a new outpatient clinic for the provision of medical services to veterans.

(c) **COSTS.**—Any administrative costs in connection with the transfer of property under subsection (a), including the costs of the survey required by subsection (e), shall be borne by the Secretary of Veterans Affairs.

(d) **RETURN OF JURISDICTION TO ARMY.**—If construction of the outpatient clinic described in subsection (b) has not commenced on the property transferred under subsection (a) by the end of the three-year period beginning on the date on which the property is transferred, the Secretary of Veterans Affairs shall return, at the request of the Secretary of the Army, administrative jurisdiction over the property to the Secretary of the Army.

(e) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the real property to be transferred under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Army.

SEC. 2846. JURISDICTION AND UTILIZATION OF FORMER PUBLIC DOMAIN LANDS, UMATILLA CHEMICAL DEPOT, OREGON.

(a) **RETENTION OF JURISDICTION.**—The various parcels of real property consisting of approximately 8,300 acres within the boundaries of Umatilla Chemical Depot, Oregon, that were previously withdrawn from the public domain are no longer suitable for return to the public domain and shall remain under the administrative jurisdiction of the Secretary of the Army.

(b) **UTILIZATION.**—The Secretary shall combine the real property described in subsection (a) with other real property comprising the Umatilla Chemical Depot for purposes of their management and disposal pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 100-526; 10 U.S.C. 2687 note) and other applicable law.

SEC. 2847. MODIFICATION OF AUTHORITY FOR LAND CONVEYANCE, EQUIPMENT AND STORAGE YARD, CHARLESTON, SOUTH CAROLINA.

Subsection (h) of section 563 of the Water Resources Development Act of 1999 (Public Law 106-53; 113 Stat. 360) is amended to read as follows:

“(h) **CHARLESTON, SOUTH CAROLINA.**—

“(1) **CONVEYANCE AUTHORIZED.**—The Secretary may convey to the City of Charleston, South Carolina (in this subsection referred to as the ‘City’), all right, title, and interest of the United States in and to a parcel of real property of the Corps

of Engineers, including any improvements thereon, that is known as the Equipment and Storage Yard and consists of approximately 1.06 acres located on Meeting Street in Charleston, South Carolina. The property shall be conveyed in as-is condition.

“(2) CONSIDERATION.—As consideration for the conveyance under this subsection, the City shall provide the United States, whether by cash payment, in-kind consideration, or a combination thereof, an amount that is not less than the fair market value of the property conveyed, as determined by the Secretary.

“(3) USE OF PROCEEDS.—(A) Notwithstanding any requirements associated with the Plant Replacement and Improvement Program, amounts received as consideration under paragraph (2) may be used by the Corps of Engineers, Charleston District—

“(i) to lease, purchase, or construct an office facility within the boundaries of Charleston, Berkeley, or Dorchester County, South Carolina;

“(ii) to cover costs associated with the design and furnishing of such facility; and

“(iii) to satisfy any Plant Replacement and Improvement Program balances.

“(B) Any amounts received as consideration under paragraph (2) that are in excess of the fair market value of the real property conveyed under this subsection may be used for any authorized activities of the Corps of Engineers, Charleston District.

“(4) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under this subsection and any property transferred to the United States as consideration under paragraph (2) shall be determined by surveys satisfactory to the Secretary.

“(5) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under this subsection as the Secretary considers appropriate to protect the interests of the United States.”.

SEC. 2848. LAND CONVEYANCE, FORT HOOD, TEXAS.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey to the Texas A&M University System of the State of Texas (in this section referred to as the “University System”) all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 662 acres at Fort Hood, Texas, for the sole purpose of permitting the University System to establish on the property an upper level (junior, senior, and graduate) university that will be State-supported, separate from other universities of the University System, and designated as Texas A&M University, Central Texas.

(b) CONSIDERATION.—(1) As consideration for the conveyance under subsection (a), the University System shall pay to the United States an amount equal to the fair market value of the conveyed property, as determined pursuant to an appraisal acceptable to the Secretary.

(2) In lieu of all or a portion of the cash consideration required by paragraph (1), the Secretary may accept in-kind consideration,

including the conveyance by the University System of real property acceptable to the Secretary.

(c) **CONDITION OF CONVEYANCE.**—The conveyance under subsection (a) shall be subject to the condition that the Secretary determine that the conveyance of the property and the establishment of a university on the property will not adversely impact the operation of Robert Grey Army Airfield, which is located on Fort Hood approximately one mile from the property authorized for conveyance.

(d) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the University System.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2849. LAND CONVEYANCE, LOCAL TRAINING AREA FOR BROWNING ARMY RESERVE CENTER, UTAH.

(a) **CONVEYANCE AUTHORIZED.**—The Secretary of the Army may convey, without consideration, to the State of Utah (in this section referred to as the “State”) all right, title, and interest of the United States in and to a parcel of unimproved real property consisting of approximately 10 acres of the Local Training Area for the Browning Army Reserve Center, Utah, for the purpose of facilitating the construction and operation of a nursing-care facility for veterans. The parcel to be conveyed under this subsection shall be selected by the Secretary in consultation with the State.

(b) **REVERSIONARY INTEREST.**—If the Secretary determines at any time that the real property conveyed under subsection (a) is not being used in accordance with the purpose of the conveyance specified in such subsection, all right, title, and interest in and to the property shall revert, at the option of the Secretary, to the United States, and the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(c) **PAYMENT OF COSTS OF CONVEYANCE.**—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts paid to the Secretary in advance exceed the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2850. LAND CONVEYANCE, ARMY RESERVE CENTER, HAMPTON, VIRGINIA.

(a) **CONVEYANCE AUTHORIZED.**—The Secretary of the Army may convey, without consideration, to the Hampton City School Board of Hampton, Virginia (in this section referred to as the “Board”), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, that consists of approximately 13.42 acres, is located on Downey Farm Road in Hampton, Virginia, and is known as the Butler Farm United States Army Reserve Center for the purpose of permitting the Board to use the property for public education purposes.

(b) **CONDITION OF CONVEYANCE.**—The conveyance under subsection (a) shall be subject to the condition that the Board accept the real property described in subsection (a) in its condition at the time of the conveyance, commonly known as conveyance “as is”.

(c) **PAYMENT OF COSTS OF CONVEYANCE.**—(1) The Secretary may require the Board to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the Board in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the Board.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2851. LAND CONVEYANCE, ARMY NATIONAL GUARD FACILITY, SEATTLE, WASHINGTON.

(a) **CONVEYANCE AUTHORIZED.**—The Secretary of the Army may convey, without consideration, to the State of Washington (in this section referred to as the “State”) all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 9.747 acres in Seattle, Washington, and comprising a portion of the National Guard Facility, Pier 91, for the purpose of permitting the State to convey the facility unencumbered for economic development purposes.

(b) **CONDITION OF CONVEYANCE.**—The conveyance under subsection (a) shall be subject to the condition that the State accept the real property in its condition at the time of the conveyance, commonly known as conveyance “as is”.

(c) **ADMINISTRATIVE EXPENSES.**—(1) The State shall reimburse the Secretary for the administrative expenses incurred by the Secretary in carrying out the conveyance under subsection (a), including expenses related to surveys and legal descriptions, boundary monumentation, environmental surveys, necessary documentation, travel, and deed preparation.

(2) Section 2695(c) of title 10, United States Code, shall apply to any amounts received by the Secretary as reimbursement under this subsection.

(d) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the United States, subject to the requirement for reimbursement under subsection (c).

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2852. MODIFICATION OF LAND EXCHANGE AND CONSOLIDATION, FORT LEWIS, WASHINGTON.

(a) **PROPERTY TO BE TRANSFERRED TO SECRETARY OF THE INTERIOR IN TRUST.**—Subsection (a)(1) of section 2837 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1315) is amended—

(1) by striking “may convey to” and inserting “may transfer to the Secretary of the Interior, in trust for”; and

(2) by striking “Washington, in” and all that follows through the period and inserting “Washington. The Secretary of the Army may make the transfer under the preceding sentence, and the Secretary of the Interior may accept the property transferred in trust for the Nisqually Tribe under the preceding sentence, only in conjunction with the conveyance described in subsection (b)(2).”.

(b) **INCREASE IN ACREAGE TO BE TRANSFERRED.**—Such subsection is further amended by striking “138 acres” and inserting “168 acres”.

(c) **QUALIFICATION ON PROPERTY TO BE TRANSFERRED.**—Subsection (a)(2) of such section is amended—

(1) by striking “conveyance” and inserting “transfer”; and

(2) by striking “or the right of way described in subsection (c)” and inserting “located on the real property transferred under that paragraph”.

(d) **CONSIDERATION.**—Subsection (b) of such section is amended—

(1) in the matter preceding paragraph (1), by striking “conveyance” and inserting “transfer”; and

(2) in paragraph (2), by striking “fee title over the acquired property to the Secretary” and inserting “to the United States fee title to the property acquired under paragraph (1), free from all liens, encumbrances or other interests other than those, if any, acceptable to the Secretary of the Army”.

(e) TREATMENT OF EXISTING PERMIT RIGHTS; GRANT OF EASEMENT.—Such section is further amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection:

“(d) TREATMENT OF EXISTING PERMIT RIGHTS; GRANT OF EASEMENT.—(1) The transfer under subsection (a) recognizes and preserves to the Bonneville Power Administration, in perpetuity and without the right of revocation except as provided in paragraph (2), rights in existence at the time of the conveyance under the permit dated February 4, 1949, as amended January 4, 1952, between the Department of the Army and the Bonneville Power Administration with respect to any portion of the property transferred under subsection (a) upon which the Bonneville Power Administration retains transmission facilities. The rights recognized and preserved include the right to upgrade those transmission facilities.

“(2) The permit rights recognized and preserved under paragraph (1) shall terminate only upon the Bonneville Power Administration’s relocation of the transmission facilities referred to in paragraph (1), and then only with respect to that portion of those transmission facilities that are relocated.

“(3) The Secretary of the Interior, as trustee for the Nisqually Tribe, shall grant to the Bonneville Power Administration, without consideration and subject to the same rights recognized and preserved in paragraph (1), such additional easements across the property transferred under subsection (a) as the Bonneville Power Administration considers necessary to accommodate the relocation or reconnection of Bonneville Power Administration transmission facilities from property owned by the Tribe and held by the Secretary of the Interior in trust for the Tribe.”.

(f) CONFORMING AMENDMENTS.—(1) Subsection (c) of such section is amended by inserting “of the Army” after “Secretary”.

(2) Subsection (e) of such section (as redesignated by subsection (e)(1)) is amended—

(A) by striking “conveyed” and inserting “transferred”;

(B) by inserting “of the Army” after “Secretary”; and

(C) by striking “the recipient of the property being surveyed” and inserting “the Tribe, in the case of the transfer under subsection (a), and the Secretary of the Army, in the case of the acquisition under subsection (b)”.

(3) Subsection (f) of such section (as redesignated by subsection (e)(1)) is amended—

(A) by inserting “of the Army” after “Secretary” both place it appears; and

(B) by striking “conveyances under this section” and inserting “transfer under subsection (a) and conveyances under subsections (b)(2) and (c)”.

PART II—NAVY CONVEYANCES

SEC. 2861. LAND EXCHANGE, FORMER RICHMOND NAVAL AIR STATION, FLORIDA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey to the University of Miami, Miami, Florida (in this section referred to as the “University”), all right, title, and interest of

the United States in and to certain parcels of real property, together with any improvements thereon, consisting of approximately 14 acres and located in the vicinity of the former Richmond Naval Air Station, Florida, in order to facilitate force protection and security needs of Department of Defense facilities located on the former Richmond Naval Air Station.

(b) RELEASE OF EASEMENTS.—As part of the conveyance of property authorized by subsection (a), the Secretary may also—

(1) release and extinguish any interest of the United States in a clearance easement on the western portion of the property of the University; and

(2) release and extinguish any interest of the United States in a certain easement for ingress and egress extending southwest and south from Southwest 127th Street along the western property line of a certain portion of United States property referred to as “IE2” in the Agreement in Principle referred to in subsection (e)(2).

(c) CONSIDERATION.—As consideration for the conveyance of property authorized by subsection (a) and the release and extinguishment of interests authorized by subsection (b), the University shall—

(1) convey to the United States all right, title, and interest of the University in and to certain parcels of real property, together with any improvements thereon, consisting of approximately 12 acres;

(2) grant to the United States such easement over a parcel of real property located along the western boundary of the property of the University as the Secretary considers appropriate to permit the United States to exercise dominion and control over the portion of the western boundary of the property of the University that has been, or may be, designated as Natural Forest Community habitat;

(3) construct and install a berm and fence security system along the entirety of the new property line between the United States and the University;

(4) relocate the existing security gate and guard building, or establish a new security gate and guard building similar in design and size to the existing security gate and guard building, at a point where the property of the United States and the University intersect on the existing ingress-egress road; and

(5) construct a new two-lane access road from Southwest 152nd Street at the western boundary of the property of the University to a point that connects with the existing road on the property of the United States (commonly referred to as the “FAA Road”).

(d) CONSTRUCTION WITH PREVIOUS CONVEYANCE.—Any restrictions on the use as an animal research facility of a certain parcel of real property, consisting of approximately 30 acres, conveyed by the Secretary of Health and Human Services to the University pursuant to section 647 of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104-208; 110 Stat. 3009-366) shall terminate upon the execution of the agreement of exchange required by subsection (e).

(e) TERMS OF EXCHANGE.—(1) The Secretary and the University shall carry out the conveyances and releases of interest authorized by this section pursuant to an agreement of exchange (to be known

as the “Exchange Agreement”) between the Secretary and the University.

(2) The agreement of exchange shall conform to, and develop with more particularity, the Agreement in Principle executed by the United States and the University on July 13 through 15, 2004.

(f) PAYMENT OF COSTS.—(1) The Secretary may require the University to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under this section and the release and grants of interests under this section, including survey costs, costs related to environmental documentation, and other administrative costs related to such activities. If amounts paid to the Secretary in advance exceed the costs actually incurred by the Secretary to carry out such activities, the Secretary shall refund the excess amount to the University.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(g) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under this section, and of the interests to be released or granted under this section, shall be determined by surveys satisfactory to the Secretary.

(h) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section, and the release and grants of interests under this section, as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2862. LAND CONVEYANCE, HONOLULU, HAWAII.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey, without consideration but subject to the conditions specified in subsection (b), to the City and County of Honolulu, Hawaii, all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 5.16 acres located at 890 Valkenberg Avenue, Honolulu, Hawaii, and currently used by the City and County of Honolulu as the site of a fire station and firefighting training facility. The purpose of the conveyance is to enhance the capability of the City and County of Honolulu to provide fire protection and firefighting services to the civilian and military properties in the area and to provide a location for firefighting training for civilian and military personnel.

(b) CONDITIONS OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the following conditions:

(1) That the City and County of Honolulu accept the real property in its condition at the time of the conveyance, commonly known as conveyance “as is”.

(2) That the City and County of Honolulu make the firefighting training facility available to the fire protection and firefighting units of the military departments for training not less than two days per week on terms satisfactory to the Secretary.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary shall require the City and County of Honolulu to cover costs to

be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the City and County of Honolulu in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount, without interest, to the City and County of Honolulu.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2863. LAND CONVEYANCE, NAVY PROPERTY, FORMER FORT SHERIDAN, ILLINOIS.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey, without consideration, to the State of Illinois, a political subdivision of the State, or a nonprofit land conservation organization (in this section referred to as the “grantee”) all right, title, and interest of the United States in and to certain parcels of real property consisting of a total of approximately 25 acres of environmentally sensitive land at the former Fort Sheridan, Illinois, for the purpose of ensuring the permanent protection of the land.

(b) REVERSIONARY INTEREST.—If the Secretary determines at any time that the real property conveyed under subsection (a) is not being used or maintained in accordance with the purpose of the conveyance specified in such subsection, all right, title, and interest in and to the property shall revert, at the option of the Secretary, to the United States, and the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(c) RECONVEYANCE AUTHORIZED.—The Secretary may permit the grantee to convey the real property conveyed under subsection (a) to another eligible entity described in such subsection, subject to the same covenants and terms and conditions as provided in the deed from the United States.

(d) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary shall require the grantee to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the grantee in advance of the Secretary incurring the actual costs, and the amount collected exceeds

the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the grantee.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(g) USE OF ALTERNATE CONVEYANCE AUTHORITY.—In lieu of using the authority provided by this section to convey the real property described in subsection (a), the Secretary may elect to include the property in a conveyance authorized by section 2878 of title 10, United States Code, subject to such terms, reservations, restrictions, and conditions as may be necessary to ensure the permanent protection of the property, if the Secretary determines that a conveyance under such section is advantageous to the interests of the United States.

SEC. 2864. LAND EXCHANGE, NAVAL AIR STATION, PATUXENT RIVER, MARYLAND.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the State of Maryland (in this section referred to as “State”) all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately five acres at Naval Air Station, Patuxent River, Maryland, and containing the Point Lookout Lighthouse, other structures related to the lighthouse, and an archaeological site pertaining to the military hospital that was located on the property during the Civil War. The conveyance shall include artifacts pertaining to the military hospital recovered by the Navy and held at the installation.

(b) PROPERTY RECEIVED IN EXCHANGE.—As consideration for the conveyance of the real property under subsection (a), the State shall convey to the United States a parcel of real property at Point Lookout State Park, Maryland, consisting of approximately five acres, or a smaller parcel that the Secretary considers sufficient and such related property interests as the Secretary and the State may agree to.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, relocation expenses incurred in connection with the acquisition of real property under subsection (b), and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out

the conveyance, the Secretary shall refund the excess amount to State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the properties to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2865. MODIFICATION OF LAND ACQUISITION AUTHORITY, PERQUIMANS COUNTY, NORTH CAROLINA.

Section 2846 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107-107; 115 Stat. 1320) is amended by striking “240 acres” and insert “840 acres”.

SEC. 2866. LAND CONVEYANCE, NAVAL WEAPONS STATION, CHARLESTON, SOUTH CAROLINA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the Berkeley County Sanitation Authority, South Carolina (in this section referred to as the “Authority”), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of not more than 38 acres and comprising a portion of the Naval Weapons Station, Charleston, South Carolina, for the purpose of allowing the Authority to expand an existing sewage treatment plant.

(b) CONSIDERATION.—(1) As consideration for the conveyance of the real property under subsection (a), the Authority shall provide the United States, whether by cash payment, in-kind services, or a combination thereof, an amount that is not less than the fair market value of the conveyed property.

(2) The fair market value of the real property conveyed under subsection (a) shall be determined by an appraisal acceptable to the Secretary.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the Authority to cover costs incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the Authority in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the Authority.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be made available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2867. LAND CONVEYANCE, NAVY YMCA BUILDING, PORTSMOUTH, VIRGINIA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the City of Portsmouth, Virginia (in this section referred to as the “City”), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 0.49 acres located at 517 King Street in Portsmouth, Virginia, and known as the “Navy YMCA Building”, for the purpose of permitting the City to use the property for economic revitalization purposes.

(b) CONSIDERATION.—As consideration for the conveyance under subsection (a), the City shall provide the United States, whether by cash payment, in-kind consideration, or a combination thereof, an amount equal to the costs related to the environmental remediation of the real property to be conveyed.

(c) PAYMENT OF OTHER COSTS OF CONVEYANCE.—(1) The Secretary may require the City to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts paid to the Secretary in advance exceed the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the City.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

PART III—AIR FORCE CONVEYANCES

SEC. 2871. LAND EXCHANGE, MAXWELL AIR FORCE BASE, ALABAMA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey to the City of Montgomery, Alabama (in this section referred to as the “City”), all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 28 acres and containing the Maxwell Heights Housing site at Maxwell Air Force Base, Alabama.

(b) CONSIDERATION.—(1) As consideration for the conveyance of the real property under subsection (a), the City shall convey

to the United States a parcel of real property, including any improvements thereon, located contiguous to Maxwell Air Force Base, consisting of approximately 35 acres, and designated as project AL 6-4, for the purpose of allowing the Secretary to incorporate the parcel into a project for the acquisition or improvement of military housing. The military housing project may consist of or include a project conducted under the authority of subchapter IV of chapter 169 of title 10, United States Code. The Secretary shall have jurisdiction over the real property received under this paragraph.

(2) If the fair market value of the real property received under paragraph (1) is less than the fair market value of the real property conveyed under subsection (a), the Secretary may require the City to make up the difference through the payment of cash, the provision of in-kind consideration, or a combination thereof, to be determined pursuant to negotiations between the Secretary and the City.

(3) The fair market values of the real property to be exchanged under this section shall be determined by appraisals acceptable to the Secretary and the City.

(c) **PAYMENT OF COSTS OF CONVEYANCE.**—(1) The Secretary may require the City to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the City in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyances, the Secretary shall refund the excess amount to the City.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the properties to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2872. LAND CONVEYANCE, MARCH AIR FORCE BASE, CALIFORNIA.

(a) **CONVEYANCE AUTHORIZED.**—The Secretary of the Air Force may convey to the March Joint Powers Authority (in this section referred to as the “Authority”) all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 15 acres located in Riverside County, California, and containing the former Defense Reutilization and Marketing Office facility for March Air Force Base, which is also known as Parcel A-6, for the purpose of permitting the Authority to use the property for economic development and revitalization.

(b) **CONSIDERATION.**—As consideration for the conveyance of the real property under subsection (a), the Authority shall pay the United States an amount equal to the fair market value of the conveyed property, as determined by the Secretary. The payment shall be deposited in the special account in the Treasury referred to in paragraph (5) of section 572(b) of title 40, United States Code, and shall be available as provided in subparagraph (B)(ii) of such paragraph.

(c) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the Authority.

(d) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2873. LAND CONVEYANCE, FORMER GRIFFISS AIR FORCE BASE, NEW YORK.

(a) **CONVEYANCE AUTHORIZED.**—(1) The Secretary of the Air Force may convey to the Oneida County Industrial Development Agency, New York, the local reuse authority for the former Griffiss Air Force Base (in this section referred to as the “Authority”), all right, title and interest of the United States in and to two parcels of real property consisting of 7.897 acres and 1.742 acres and containing the four buildings specified in paragraph (2), which were vacated by the Air Force in conjunction with its relocation to the Consolidated Intelligence and Reconnaissance Laboratory at Air Force Research Laboratory—Rome Research Site, Rome, New York.

(2) The buildings referred to in paragraph (1) are the following:

(A) Building 240 (117,323 square feet).

(B) Building 247 (13,199 square feet).

(C) Building 248 (4,000 square feet).

(D) Building 302 (20,577 square feet).

(3) The purpose of the conveyance under this subsection is to permit the Authority to develop the parcels and buildings for economic purposes in a manner consistent with section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(b) **CONDITION OF CONVEYANCE.**—The conveyance under subsection (a) shall be subject to the condition that the Authority accept the real property in its condition at the time of the conveyance, commonly known as conveyance “as is”.

(c) **CONSIDERATION.**—As consideration for the conveyance under subsection (a), the Authority shall provide the United States, whether by cash payment, in-kind contribution, or a combination thereof, an amount equal to the fair market of value of the conveyed real property, as determined by the Secretary.

(d) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the Authority.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

PART IV—OTHER CONVEYANCES**SEC. 2881. LAND EXCHANGE, ARLINGTON COUNTY, VIRGINIA.**

(a) **EXCHANGE AUTHORIZED.**—The Secretary of Defense may convey to Arlington County, Virginia (in this section referred to as the “County”), all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, that consists of not more than 4.5 acres and is located north of Columbia Pike on the Navy Annex property in Arlington County, Virginia, for the purpose of the construction of a freedmen heritage museum and an Arlington history museum.

(b) **CONSIDERATION.**—As consideration for the conveyance of the real property under subsection (a), the County shall convey to the United States all right, title, and interest of the County in and to a parcel of real property, together with any improvements thereon, that is of a size equivalent to the total acreage of the real property conveyed by the Secretary under subsection (a) and is located in the area known as the Southgate Road right-of-way between Arlington National Cemetery, Virginia, and the Navy Annex property.

(c) **SELECTION OF PROPERTY FOR CONVEYANCE.**—The Secretary, in consultation with the County, shall determine the acreage of the parcels of real property to be exchanged under this section, and such determination shall be final. In selecting the real property for conveyance to the County under subsection (a), the Secretary shall seek—

(1) to provide the County with sufficient property for museum construction that is compatible with, and honors, the history of the freedmen’s village that was located in the area and the heritage of the County;

(2) to preserve the appropriate traditions of Arlington National Cemetery; and

(3) to maintain the amount of acreage currently available for potential grave sites at Arlington National Cemetery.

(d) **PAYMENT OF COSTS OF CONVEYANCES.**—(1) The Secretary may require the County to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the County in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the County.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(e) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the real property to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(f) REVERSIONARY INTEREST.—(1) If at any time the Secretary determines that the property conveyed to the County under subsection (a) is not being used for the purposes stated in that subsection, then, at the option of the Secretary, all right, title, and interest in and to the property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry onto the property.

(2) If the Secretary exercises the reversionary interest provided for in paragraph (1), the Secretary shall pay the County, from amounts available to the Secretary for military construction for the Defense Agencies, an amount equal to the fair market value of the property that reverts to the United States, as determined by the Secretary.

(g) INCLUSION OF SOUTHGATE ROAD RIGHT-OF-WAY PROPERTY IN TRANSFER OF NAVY ANNEX PROPERTY FOR ARLINGTON NATIONAL CEMETERY.—Subsection (a) of section 2881 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 879) is amended by striking “three parcels of real property consisting of approximately 36 acres” and inserting “four parcels of real property consisting of approximately 40 acres”.

(h) TERMINATION OF RESERVATION OF CERTAIN NAVY ANNEX PROPERTY FOR MEMORIALS OR MUSEUMS.—(1) Subsection (b) of such section, as amended by section 2863(f) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1332) and section 2851(a)(1) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2726), is further amended—

(A) by striking “(1) Subject to paragraph (2), the Secretary” and inserting “The Secretary”; and

(B) by striking paragraph (2).

(2) Subsection (d)(2) of such section, as amended by section 2851(a)(2) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2726), is further amended—

(A) by striking “(A)”; and

(B) by striking “, and (B)” and all that follows through “Museum.” and inserting a period.

(3) Subsection (f) of such section is amended by striking “reserved under subsection (b)(2) and of the portion”.

(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

Subtitle E—Other Matters

SEC. 2891. ONE-YEAR RESUMPTION OF DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM.

Section 2892(g) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2805 note) is amended by striking “September 30, 2003” and inserting “September 30, 2005”.

SEC. 2892. DESIGNATION OF AIRMEN LEADERSHIP SCHOOL AT LUKE AIR FORCE BASE, ARIZONA, IN HONOR OF JOHN J. RHODES, A FORMER MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

The Airmen Leadership School at Luke Air Force Base, Arizona, building 156, shall be known and designated as the “John J. Rhodes Airmen Leadership School”. Any reference to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the John J. Rhodes Airmen Leadership School.

SEC. 2893. SETTLEMENT OF CLAIM OF OAKLAND BASE REUSE AUTHORITY AND REDEVELOPMENT AGENCY.

(a) **AUTHORITY TO SETTLE CLAIM.**—The Secretary of the Navy may make a payment in the amount of \$2,100,000 to the Oakland Base Reuse Authority and Redevelopment Agency of the City of Oakland, California, in settlement of Oakland Base Reuse Authority and Redevelopment Agency of the City of Oakland v. the United States, Case No. C02-4652 MHP, United States District Court, Northern District of California, including any appeal.

(b) **RELEASE OF CLAIM.**—The payment made under subsection (a) shall be in full satisfaction of all claims of the Oakland Base Reuse Authority and Redevelopment Agency against the United States related to the case referred to in subsection (a), and the Oakland Base Reuse Authority and Redevelopment Agency shall give to the Secretary a release of all claims to 18 officer housing units and related real property located at the former Naval Medical Center Oakland, California. The release shall be in a form that is satisfactory to the Secretary.

(c) **SOURCE OF FUNDS FOR SETTLEMENT.**—To make the payment authorized by subsection (a), the Secretary may use—

- (1) funds in the Department of Defense Base Closure Account 1990; or
- (2) the proceeds from the sale of the housing units and property described in subsection (b).

SEC. 2894. REPORT ON ESTABLISHMENT OF MOBILIZATION STATION AT CAMP RIPLEY NATIONAL GUARD TRAINING CENTER, LITTLE FALLS, MINNESOTA.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report regarding the feasibility of using Camp Ripley National Guard Training Center in Little Falls, Minnesota, as a mobilization station for members of a reserve component ordered to active duty under any provision of law specified in section 101(a)(13)(B) of title 10, United States Code. The report shall include a discussion of the actions necessary to establish the center as a mobilization station.

SEC. 2895. REPORT ON FEASIBILITY OF ESTABLISHMENT OF VETERANS MEMORIAL AT MARINE CORPS AIR STATION, EL TORO, CALIFORNIA.

Not later than 30 days after the date of the enactment of this Act, the Secretary of the Navy shall submit to Congress a report on whether the anticipated future uses of the former Marine Corps Air Station, El Toro, California, by the City of Irvine, California, would permit the establishment and maintenance, at no

cost to the United States, of a veterans memorial at the former installation.

SEC. 2896. SENSE OF CONGRESS REGARDING EFFECT OF MILITARY HOUSING POLICIES AND FORCE STRUCTURE AND BASING CHANGES ON LOCAL EDUCATIONAL AGENCIES.

(a) FINDINGS.—Congress finds the following:

(1) There are approximately 750,000 school-aged children of members of the active duty Armed Forces in the United States.

(2) Approximately 650,000 of those students are currently attending public elementary or secondary schools in the United States.

(3) Changes to the military family housing policies of the military departments affect both military housing requirements and the number of dependent children living on military installations in the United States.

(4) Proposed restationing of units of the Armed Forces worldwide, including the return of a significant number of members of the Armed Forces stationed overseas to the United States and the Army proposal to modify its force structure to establish so-called units of action, will increase military housing requirements at military installations in the United States and may result in the need for additional educational facilities at such installations and in the adjacent communities.

(5) To help provide sufficient housing for members of the Armed Forces and their families, the Secretaries of the military departments intend to continue to use the authorities provided in subchapter IV of chapter 169 of title 10, United States Code, to carry out privatization initiatives that will improve or replace an additional 120,000 military family housing units in the United States.

(6) The Secretaries of the military departments may include the construction of school facilities as one of the ancillary supporting facilities authorized as part of a privatization initiative carried out under such subchapter.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Department of Defense should—

(1) consider the effects that changes in force structure and overseas stationing arrangements will have on—

(A) military housing requirements at specific military installations in the United States;

(B) the number of school-aged military dependents at those installations; and

(C) the need for additional educational facilities to serve such dependents; and

(2) consult with local communities and local educational agencies about the best ways to address such changing housing requirements and satisfy the need for additional educational facilities, including using the authority of subchapter IV of chapter 169 of title 10, United States Code, to include the construction of educational facilities as one of the ancillary supporting facilities authorized as part of military privatization housing initiatives.

**SEC. 2897. SENSE OF CONGRESS AND STUDY REGARDING MEMORIAL
HONORING NON-UNITED STATES CITIZENS KILLED IN
THE LINE OF DUTY WHILE SERVING IN THE UNITED
STATES ARMED FORCES.**

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that a memorial marker or monument should be designed and placed in an appropriate location to honor the service and sacrifice of individuals who, although not United States citizens, served in the United States Armed Forces and were killed in the line of duty.

(b) **STUDY.**—The Secretary of the Army, in consultation with the Secretary of Veterans Affairs and the American Battle Monuments Commission, shall conduct a study examining the feasibility of placing in Arlington National Cemetery, or some other appropriate location, a memorial marker honoring the service and sacrifice of non-United States citizens killed in the line of duty while serving in the Armed Forces.

(c) **CONTENT OF STUDY.**—The study required by subsection (b) shall include the following:

(1) A discussion of the historical development of Arlington National Cemetery.

(2) Comprehensive information on the memorial markers presently located in Arlington National Cemetery.

(3) A description of any limitations affecting the ability to establish new monuments, markers, tributes, or plaques in Arlington National Cemetery.

(4) A discussion of alternative locations outside of Arlington National Cemetery that have been used for comparable memorial markers.

(5) Recommendations for appropriate locations for a memorial marker that may be considered.

(d) **REPORT AND RECOMMENDATIONS.**—Not later than April 1, 2005, the Secretary of the Army shall submit to the Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Veterans' Affairs of the Senate a report containing the results of the study required by subsection (b), together with any recommendations for an appropriate plan to honor the service of non-United States citizens killed in the line of duty while serving in the Armed Forces.

**DIVISION C—DEPARTMENT OF ENERGY
NATIONAL SECURITY AUTHORIZA-
TIONS AND OTHER AUTHORIZATIONS**

**TITLE XXXI—DEPARTMENT OF ENERGY
NATIONAL SECURITY PROGRAMS**

Subtitle A—National Security Programs Authorizations

Sec. 3101. National Nuclear Security Administration.

Sec. 3102. Defense environmental management.

Sec. 3103. Other defense activities.

Sec. 3104. Defense nuclear waste disposal.

Subtitle B—Program Authorizations, Restrictions, and Limitations

- Sec. 3111. Report on requirements for Modern Pit Facility.
- Sec. 3112. Two-year extension of authority for appointment of certain scientific, engineering, and technical personnel.
- Sec. 3113. Limited authority to carry out new projects under Facilities and Infrastructure Recapitalization Program after project selection deadline.
- Sec. 3114. Modification of milestone and report requirements for National Ignition Facility.
- Sec. 3115. Modification of submittal date of annual plan for stewardship, management, and certification of warheads in the nuclear weapons stockpile.
- Sec. 3116. Defense site acceleration completion.
- Sec. 3117. Treatment of waste material.
- Sec. 3118. Local stakeholder organizations for 2006 closure sites.
- Sec. 3119. Report to Congress on Advanced Nuclear Weapons Concepts Initiative.

Subtitle C—Proliferation Matters

- Sec. 3131. Modification of authority to use International Nuclear Materials Protection and Cooperation Program funds outside the former Soviet Union.
- Sec. 3132. Acceleration of removal or security of fissile materials, radiological materials, and related equipment at vulnerable sites worldwide.
- Sec. 3133. Silk Road Initiative.
- Sec. 3134. Nuclear nonproliferation fellowships for scientists employed by United States and Russian Federation.
- Sec. 3135. Utilization of international contributions to the elimination of weapons grade plutonium production program.

Subtitle D—Other Matters

- Sec. 3141. Indemnification of Department of Energy contractors.
- Sec. 3142. Report on maintenance of retirement benefits for certain workers at 2006 closure sites after closure of sites.
- Sec. 3143. Report on efforts of National Nuclear Security Administration to understand plutonium aging.
- Sec. 3144. Support for public education in the vicinity of Los Alamos National Laboratory, New Mexico.
- Sec. 3145. Review of Waste Isolation Pilot Plant, New Mexico, pursuant to competitive contract.
- Sec. 3146. National Academy of Sciences study on management by Department of Energy of certain radioactive waste streams.
- Sec. 3147. Compensation of Pajarito Plateau, New Mexico, homesteaders for acquisition of lands for Manhattan Project in World War II.
- Sec. 3148. Modification of requirements relating to conveyances and transfer of certain land at Los Alamos National Laboratory, New Mexico.

Subtitle E—Energy Employees Occupational Illness Compensation Program

- Sec. 3161. Contractor employee compensation.
- Sec. 3162. Conforming amendments.
- Sec. 3163. Technical amendments.
- Sec. 3164. Transfer of funds for fiscal year 2005.
- Sec. 3165. Use of Energy Employees Occupational Illness Compensation Fund for certain payments to covered uranium employees.
- Sec. 3166. Improvements to Subtitle B of Energy Employees Occupational Illness Compensation Program Act of 2000.
- Sec. 3167. Emergency Special Exposure Cohort meeting and report.
- Sec. 3168. Coverage of individuals employed at atomic weapons employer facilities during periods of residual contamination.
- Sec. 3169. Update of report on residual contamination of facilities.
- Sec. 3170. Sense of Congress on resource center for energy employees under Energy Employee Occupational Illness Compensation Program in western New York and western Pennsylvania region.

Subtitle A—National Security Programs Authorizations

SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for the activities of the National Nuclear Security

Administration in carrying out programs necessary for national security in the amount of \$9,082,300,000, to be allocated as follows:

(1) For weapons activities, \$6,592,053,000.

(2) For defense nuclear nonproliferation activities, \$1,348,647,000.

(3) For naval reactors, \$797,900,000.

(4) For the Office of the Administrator for Nuclear Security, \$343,700,000.

(b) **AUTHORIZATION OF NEW PLANT PROJECTS.**—From funds referred to in subsection (a) that are available for carrying out plant projects, the Secretary of Energy may carry out, for weapons activities, the following new plant projects:

Project 05-D-140, project engineering and design, various locations, \$11,600,000.

Project 05-D-160, facilities and infrastructure recapitalization program, project engineering and design, various locations, \$8,700,000.

Project 05-D-170, project engineering and design, safeguards and security, various locations, \$17,000,000.

Project 05-D-401, production bays upgrade, Pantex Plant, Amarillo, Texas, \$25,100,000.

Project 05-D-402, beryllium capability project, Y-12 national security complex, Oak Ridge, Tennessee, \$3,627,000.

Project 05-D-601, compressed air upgrades project, Y-12 national security complex, Oak Ridge, Tennessee, \$4,400,000.

Project 05-D-602, power grid infrastructure upgrade, Los Alamos National Laboratory, Los Alamos, New Mexico, \$10,000,000.

Project 05-D-603, new master substation, Sandia National Laboratories, Albuquerque, New Mexico, \$600,000.

Project 05-D-701, security perimeter, Los Alamos National Laboratory, Los Alamos, New Mexico, \$20,000,000.

SEC. 3102. DEFENSE ENVIRONMENTAL MANAGEMENT.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for defense environmental management activities in carrying out programs necessary for national security in the amount of \$6,957,307,000, to be allocated as follows:

(1) For defense site acceleration completion, \$5,970,837,000.

(2) For defense environmental services, \$986,470,000.

SEC. 3103. OTHER DEFENSE ACTIVITIES.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for other defense activities in carrying out programs necessary for national security in the amount of \$636,036,000.

SEC. 3104. DEFENSE NUCLEAR WASTE DISPOSAL.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for defense nuclear waste disposal for payment to the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) in the amount of \$120,000,000.

Subtitle B—Program Authorizations, Restrictions, and Limitations

SEC. 3111. REPORT ON REQUIREMENTS FOR MODERN PIT FACILITY.

(a) **REPORT.**—Not later than January 31, 2005, the Administrator for Nuclear Security shall submit to the congressional defense committees a report setting forth the validated pit production requirements for the Modern Pit Facility.

(b) **VALIDATED PIT PRODUCTION REQUIREMENTS.**—(1) The validated pit production requirements in the report under subsection (a) shall be established by the Administrator in conjunction with the Chairman of the Nuclear Weapons Council.

(2) The validated pit production requirements shall—

(A) include specifications regarding the total number of pits per year, and the number of pits to be produced per year for each weapon type, that will be required to be produced in order to support the weapons that will be retained in the nuclear weapons stockpile pursuant to the revised nuclear weapons stockpile plan submitted to the congressional defense committees as specified in the joint explanatory statement to accompany the report of the Committee on Conference on the bill H.R. 2754 of the 108th Congress;

(B) identify any surge capacity that may be included in the annual pit production requirements; and

(C) assume that the lifetime of any particular pit type is each of 40 years, 50 years, 60 years, and 70 years.

(c) **FORM OF REPORT.**—The report under subsection (a) shall be submitted in unclassified form and shall include a classified annex.

SEC. 3112. TWO-YEAR EXTENSION OF AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL.

Section 4601(c)(1) of the Atomic Energy Defense Act (50 U.S.C. 2701(c)(1)) is amended by striking “September 30, 2004” and inserting “September 30, 2006”.

SEC. 3113. LIMITED AUTHORITY TO CARRY OUT NEW PROJECTS UNDER FACILITIES AND INFRASTRUCTURE RECAPITALIZATION PROGRAM AFTER PROJECT SELECTION DEADLINE.

(a) **LIMITED AUTHORITY TO CARRY OUT NEW PROJECTS.**—Section 3114(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1744; 50 U.S.C. 2453 note) is amended—

(1) in the subsection caption, by striking “DEADLINE FOR”;

(2) in paragraph (2), by striking “No project” and inserting “Except as provided in paragraph (3), no project”; and

(3) by adding at the end the following new paragraph:

“(3)(A) Subject to the provisions of this paragraph, a project described in subparagraph (B) may be carried out under the Facilities and Infrastructure Recapitalization Program after December 31, 2004, if the Administrator approves the project. The Administrator may not delegate the authority to approve projects under the preceding sentence.

“(B) A project described in this subparagraph is a project that consists of a specific building, facility, or other improvement (including fences, roads, or similar improvements).

“(C) Funds may not be obligated or expended for a project under this paragraph until 60 days after the date on which the Administrator submits to the congressional defense committees a notice on the project, including a description of the project and the nature of the project, a statement explaining why the project was not included in the Facilities and Infrastructure Recapitalization Program under paragraph (1), and a statement explaining why the project was not included in any other program under the jurisdiction of the Administrator.

“(D) The total number of projects that may be carried out under this paragraph in any fiscal year may not exceed five projects.

“(E) The Administrator may not utilize the authority in this paragraph until 60 days after the later of—

“(i) the date of the submittal to the congressional defense committees of a list of the projects selected for inclusion in the Facilities and Infrastructure Recapitalization Program under paragraph (1); or

“(ii) the date of the submittal to the congressional defense committees of the report required by subsection (c).

“(F) A project may not be carried out under this paragraph unless the project will be completed by September 30, 2011.”.

(b) CONSTRUCTION OF AUTHORITY.—The amendments made by subsection (a) may not be construed to authorize any delay in either of the following:

50 USC 2453
note.

(1) The selection of projects for inclusion in the Facilities and Infrastructure Recapitalization Program under subsection (a) of section 3114 of the National Defense Authorization Act for Fiscal Year 2004.

(2) The submittal of the report required by subsection (c) of such section.

SEC. 3114. MODIFICATION OF MILESTONE AND REPORT REQUIREMENTS FOR NATIONAL IGNITION FACILITY.

(a) NOTIFICATION ON MILESTONES TO ACHIEVE IGNITION.—Subsection (a) of section 3137 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1369) is amended by striking “each Level I milestone and Level II milestone for the National Ignition Facility.” and inserting the following: “each milestone for the National Ignition Facility as follows:

“(1) Each Level I milestone.

“(2) Each Level II milestone.

“(3) Each milestone to achieve ignition.”.

(b) REPORT ON FAILURE OF TIMELY ACHIEVEMENT OF MILESTONES.—Subsection (b) of such section is amended by striking “a Level I milestone or Level II milestone for the National Ignition Facility” and inserting “a milestone for the National Ignition Facility referred to in subsection (a)”.

(c) MILESTONES TO ACHIEVE IGNITION.—Subsection (c) of such section is amended to read as follows:

“(c) MILESTONES.—For purposes of this section:

“(1) The Level I milestones and Level II milestones for the National Ignition Facility are as established in the August 2000 revised National Ignition Facility baseline document.

“(2) The milestones for the National Ignition Facility to achieve ignition are such milestones (other than the milestones referred to in paragraph (1)) as the Administrator shall establish on any activities at the National Ignition Facility that are required to enable the National Ignition Facility to achieve ignition and be a fully functioning user facility by December 31, 2011.”.

(d) SUBMITTAL TO CONGRESS OF MILESTONES TO ACHIEVE IGNITION.—Not later than January 31, 2005, the Administrator for Nuclear Security shall submit to the congressional defense committees a report setting forth the milestones of the National Ignition Facility to achieve ignition as established by the Administration under subsection (c)(2) of section 3137 of the National Defense Authorization Act for Fiscal Year 2002, as amended by subsection (c) of this section. The report shall include—

(1) a description of each milestone established; and

(2) a proposal for the funding to be required to meet each such milestone.

(e) EXTENSION OF SUNSET.—Subsection (d) of section 3137 of such Act is amended by striking “September 30, 2004” and inserting “December 31, 2011”.

SEC. 3115. MODIFICATION OF SUBMITTAL DATE OF ANNUAL PLAN FOR STEWARDSHIP, MANAGEMENT, AND CERTIFICATION OF WARHEADS IN THE NUCLEAR WEAPONS STOCKPILE.

Section 4203(c) of the Atomic Energy Defense Act (50 U.S.C. 2523(c)) is amended by striking “March 15 of each year thereafter” and inserting “May 1 of each year thereafter”.

50 USC 2601
note.

SEC. 3116. DEFENSE SITE ACCELERATION COMPLETION.

(a) IN GENERAL.—Notwithstanding the provisions of the Nuclear Waste Policy Act of 1982, the requirements of section 202 of the Energy Reorganization Act of 1974, and other laws that define classes of radioactive waste, with respect to material stored at a Department of Energy site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State, the term “high-level radioactive waste” does not include radioactive waste resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy (in this section referred to as the “Secretary”), in consultation with the Nuclear Regulatory Commission (in this section referred to as the “Commission”), determines—

(1) does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;

(2) has had highly radioactive radionuclides removed to the maximum extent practical; and

(3)(A) does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, and will be disposed of—

(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; and

(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; or

(B) exceeds concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, but will be disposed of—

(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations;

(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; and

(iii) pursuant to plans developed by the Secretary in consultation with the Commission.

(b) MONITORING BY NUCLEAR REGULATORY COMMISSION.—(1) The Commission shall, in coordination with the covered State, monitor disposal actions taken by the Department of Energy pursuant to subparagraphs (A) and (B) of subsection (a)(3) for the purpose of assessing compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations.

(2) If the Commission considers any disposal actions taken by the Department of Energy pursuant to those subparagraphs to be not in compliance with those performance objectives, the Commission shall, as soon as practicable after discovery of the noncompliant conditions, inform the Department of Energy, the covered State, and the following congressional committees:

(A) The Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Appropriations of the House of Representatives.

(B) The Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate.

(3) For fiscal year 2005, the Secretary shall, from amounts available for defense site acceleration completion, reimburse the Commission for all expenses, including salaries, that the Commission incurs as a result of performance under subsection (a) and this subsection for fiscal year 2005. The Department of Energy and the Commission may enter into an interagency agreement that specifies the method of reimbursement. Amounts received by the Commission for performance under subsection (a) and this subsection may be retained and used for salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, United States Code, and shall remain available until expended.

(4) For fiscal years after 2005, the Commission shall include in the budget justification materials submitted to Congress in support of the Commission budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) the amounts required, not offset by revenues, for performance under subsection (a) and this subsection.

(c) INAPPLICABILITY TO CERTAIN MATERIALS.—Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the covered State.

(d) COVERED STATES.—For purposes of this section, the following States are covered States:

(1) The State of South Carolina.

(2) The State of Idaho.

(e) CONSTRUCTION.—(1) Nothing in this section shall impair, alter, or modify the full implementation of any Federal Facility Agreement and Consent Order or other applicable consent decree for a Department of Energy site.

(2) Nothing in this section establishes any precedent or is binding on the State of Washington, the State of Oregon, or any other State not covered by subsection (d) for the management, storage, treatment, and disposition of radioactive and hazardous materials.

(3) Nothing in this section amends the definition of “transuranic waste” or regulations for repository disposal of transuranic waste pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act or part 191 of title 40, Code of Federal Regulations.

(4) Nothing in this section shall be construed to affect in any way the obligations of the Department of Energy to comply with section 4306A of the Atomic Energy Defense Act (50 U.S.C. 2567).

(5) Nothing in this section amends the West Valley Demonstration Act (42 U.S.C. 2121a note).

(f) JUDICIAL REVIEW.—Judicial review shall be available in accordance with chapter 7 of title 5, United States Code, for the following:

(1) Any determination made by the Secretary or any other agency action taken by the Secretary pursuant to this section.

(2) Any failure of the Commission to carry out its responsibilities under subsection (b).

SEC. 3117. TREATMENT OF WASTE MATERIAL.

Of the amounts made available pursuant to the authorization of appropriations in section 3102(1) for environmental management for defense site acceleration completion for the High-Level Waste Proposal, \$350,000,000 shall be available at specified sites for any defense site acceleration completion activities at those sites, as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho, \$97,300,000.

(2) The Savannah River Site, Aiken, South Carolina, \$188,600,000.

(3) The Hanford Site, Richland, Washington, \$64,100,000.

SEC. 3118. LOCAL STAKEHOLDER ORGANIZATIONS FOR 2006 CLOSURE SITES.

(a) ESTABLISHMENT.—(1) The Secretary of Energy shall establish for each Department of Energy 2006 closure site a local stakeholder organization having the responsibilities set forth in subsection (c).

(2) The local stakeholder organization shall be established in consultation with interested elected officials of local governments in the vicinity of the closure site concerned.

(b) COMPOSITION.—A local stakeholder organization for a Department of Energy 2006 closure site under subsection (a) shall be composed of such elected officials of local governments in the vicinity of the closure site concerned as the Secretary considers appropriate to carry out the responsibilities set forth in subsection (c) who agree to serve on the organization, or the designees of such officials.

(c) RESPONSIBILITIES.—A local stakeholder organization for a Department of Energy 2006 closure site under subsection (a) shall—

(1) solicit and encourage public participation in appropriate activities relating to the closure and post-closure operations of the site;

(2) disseminate information on the closure and post-closure operations of the site to the State government of the State in which the site is located, local and tribal governments in the vicinity of the site, and persons and entities having a stake in the closure or post-closure operations of the site;

(3) transmit to appropriate officers and employees of the Department of Energy questions and concerns of governments, persons, and entities referred to paragraph (2) on the closure and post-closure operations of the site; and

(4) perform such other duties as the Secretary and the local stakeholder organization jointly determine appropriate to assist the Secretary in meeting post-closure obligations of the Department at the site.

(d) **DEADLINE FOR ESTABLISHMENT.**—The local stakeholder organization for a Department of Energy 2006 closure site shall be established not later than six months before the closure of the site.

(e) **DEPARTMENT OF ENERGY 2006 CLOSURE SITE DEFINED.**—In this section, the term “Department of Energy 2006 closure site” means the following:

(1) The Rocky Flats Environmental Technology Site, Colorado.

(2) The Fernald Plant, Ohio.

(3) The Mound Plant, Ohio.

SEC. 3119. REPORT TO CONGRESS ON ADVANCED NUCLEAR WEAPONS CONCEPTS INITIATIVE.

(a) **REPORT REQUIRED.**—Not later than March 1, 2005, the Administrator for Nuclear Security shall submit to the congressional defense committees a detailed report on the planned activities for studies under the Advanced Nuclear Weapons Concepts Initiative for fiscal year 2005.

(b) **FORM OF REPORT.**—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

Subtitle C—Proliferation Matters

SEC. 3131. MODIFICATION OF AUTHORITY TO USE INTERNATIONAL NUCLEAR MATERIALS PROTECTION AND COOPERATION PROGRAM FUNDS OUTSIDE THE FORMER SOVIET UNION.

50 USC 2568.

(a) **APPLICABILITY OF AUTHORITY LIMITED TO PROJECTS NOT PREVIOUSLY AUTHORIZED.**—Subsection (a) of section 3124 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1747) is amended by inserting “that has not previously been authorized by Congress” after “states of the former Soviet Union”.

(b) **REPEAL OF LIMITATION ON TOTAL AMOUNT OF OBLIGATION.**—Such section is further amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(c) **APPLICABILITY BEYOND FISCAL YEAR 2004.**—Subsection (e) of such section (as redesignated by subsection (b)) is amended by striking “the funds appropriated pursuant to the authorization of appropriations in section 3101(a)(2) for such program” and inserting “the funds appropriated pursuant to an authorization of appropriations for the International Nuclear Materials Protection and Cooperation Program”.

50 USC 2569.

SEC. 3132. ACCELERATION OF REMOVAL OR SECURITY OF FISSILE MATERIALS, RADIOLOGICAL MATERIALS, AND RELATED EQUIPMENT AT VULNERABLE SITES WORLDWIDE.

(a) **SENSE OF CONGRESS.**—(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) **PROGRAM AUTHORIZED.**—The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) **PROGRAM ELEMENTS.**—(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials, radiological materials, and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(I) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(J) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, non-governmental organizations, and other international entities as the Secretary of Energy considers appropriate for the program.

(d) REPORTS.—(1) Not later than March 15, 2005, the Secretary of Energy shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report on the program under subsection (b) that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain proliferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment, organized by level of priority.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) FUNDING.—Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear nonproliferation activities shall be available for purposes of the program under this section.

(f) DEFINITIONS.—In this section:

(1) The term “fissile materials” means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated items containing such materials if the radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term “radiological materials” includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226, Strontium-90, Curium-244, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term “related equipment” includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term “highly-enriched uranium” means uranium enriched to or above 20 percent in the isotope 235.

(5) The term “low-enriched uranium” means uranium enriched below 20 percent in the isotope 235.

(6) The term “proliferation-attractive”, in the case of fissile materials and radiological materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

50 USC 2570.

SEC. 3133. SILK ROAD INITIATIVE.

(a) PROGRAM AUTHORIZED.—(1) The Secretary of Energy may carry out a program, to be known as the Silk Road Initiative, to promote non-weapons-related employment opportunities for scientists, engineers, and technicians formerly engaged in activities to develop and produce weapons of mass destruction in Silk Road nations. The program should—

(A) incorporate best practices under the Initiatives for Proliferation Prevention program; and

(B) facilitate commercial partnerships between private entities in the United States and scientists, engineers, and technicians in the Silk Road nations.

(2) Before implementing the program with respect to multiple Silk Road nations, the Secretary of Energy shall carry out a pilot program with respect to one Silk Road nation selected by the Secretary. It is the sense of Congress that the Secretary should select the Republic of Georgia.

(b) SILK ROAD NATIONS DEFINED.—In this section, the Silk Road nations are Armenia, Azerbaijan, the Republic of Georgia,

Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

(c) **FUNDING.**—Of the funds authorized to be appropriated to the Department of Energy for nonproliferation and international security for fiscal year 2005, up to \$10,000,000 may be used to carry out this section.

SEC. 3134. NUCLEAR NONPROLIFERATION FELLOWSHIPS FOR SCIENTISTS EMPLOYED BY UNITED STATES AND RUSSIAN FEDERATION.

50 USC 2571.

(a) **IN GENERAL.**—(1) From amounts made available to carry out this section, the Administrator for Nuclear Security may carry out a program under which the Administrator awards, to scientists employed at nonproliferation research laboratories of the Russian Federation and the United States, international exchange fellowships, to be known as Nuclear Nonproliferation Fellowships, in the nuclear nonproliferation sciences.

(2) The purpose of the program shall be to provide opportunities for advancement in the nuclear nonproliferation sciences to scientists who, as demonstrated by their academic or professional achievements, show particular promise of making significant contributions in those sciences.

(3) A fellowship awarded to a scientist under the program shall be for collaborative study and training or advanced research at—

(A) a nonproliferation research laboratory of the Russian Federation, in the case of a scientist employed at a nonproliferation research laboratory of the United States; and

(B) a nonproliferation research laboratory of the United States, in the case of a scientist employed at a nonproliferation research laboratory of the Russian Federation.

(4) The duration of a fellowship under the program may not exceed two years, except that the Administrator may provide for a longer duration in an individual case to the extent warranted by extraordinary circumstances, as determined by the Administrator.

(5) In a calendar year, the Administrator may not award more than—

(A) one fellowship to a scientist employed at a nonproliferation research laboratory of the Russian Federation; and

(B) one fellowship to a scientist employed at a nonproliferation research laboratory of the United States.

(6) A fellowship under the program shall include—

(A) travel expenses; and

(B) any other expenses that the Administrator considers appropriate, such as room and board.

(b) **DEFINITIONS.**—In this section:

(1) The term “nonproliferation research laboratory” means, with respect to a country, a national laboratory of that country at which research in the nuclear nonproliferation sciences is carried out.

(2) The term “nuclear nonproliferation sciences” means bodies of scientific knowledge relevant to developing or advancing the means to prevent or impede the proliferation of nuclear weaponry.

(3) The term “scientist” means an individual who has a degree from an institution of higher education in a science

that has practical application in the nuclear nonproliferation sciences.

(c) FUNDING.—Amounts available to the Department of Energy for defense nuclear nonproliferation activities shall be available for the fellowships authorized by subsection (a).

SEC. 3135. UTILIZATION OF INTERNATIONAL CONTRIBUTIONS TO THE ELIMINATION OF WEAPONS GRADE PLUTONIUM PRODUCTION PROGRAM.

Section 3151 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 116 Stat. 2736; 22 U.S.C. 5952 note) is amended by adding at the end the following new subsection:

“(e) INTERNATIONAL PARTICIPATION IN PROGRAM.—(1) In order to achieve international participation in the program referred to in subsection (a), the Secretary of Energy may, in consultation with the Secretary of State, enter into one or more agreements with any person, foreign government, or other international organization that the Secretary considers appropriate for the contribution of funds by such person, government, or organization for purposes of the program.

“(2) Notwithstanding section 3302 of title 31, United States Code, and subject to paragraphs (3) and (4), the Secretary may retain and utilize any amounts contributed by a person, government, or organization under an agreement under paragraph (1) for purposes of the program without further appropriation and without fiscal year limitation.

“(3) The Secretary may not utilize under paragraph (2) any amount contributed under an agreement under paragraph (1) until 30 days after the date on which the Secretary notifies the congressional defense committees of the intent to utilize such amount, including the source of such amount and the proposed purpose for which such amount will be utilized.

“(4) If any amount contributed under paragraph (1) has not been utilized within five years of receipt under that paragraph, the Secretary shall return such amount to the person, government, or organization contributing such amount under that paragraph.

Deadline.
Notice.

“(5) Not later than 30 days after the receipt of any amount contributed under paragraph (1), the Secretary shall submit to the congressional defense committees a notice of the receipt of such amount.

Deadline.
Reports.

“(6) Not later than October 31 each year, the Secretary shall submit to the congressional defense committees a report on the receipt and utilization of amounts under this subsection during the preceding fiscal year. Each report for a fiscal year shall set forth—

“(A) a statement of any amounts received under this subsection, including the source of each such amount; and

“(B) a statement of any amounts utilized under this subsection, including the purpose for which such amounts were utilized.

Expiration date.

“(7) The authority of the Secretary to accept and utilize amounts under this subsection shall expire on December 31, 2011.”.

Subtitle D—Other Matters

SEC. 3141. INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.

Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking “until December 31, 2004” and inserting “until December 31, 2006”.

SEC. 3142. REPORT ON MAINTENANCE OF RETIREMENT BENEFITS FOR CERTAIN WORKERS AT 2006 CLOSURE SITES AFTER CLOSURE OF SITES.

(a) **REPORT REQUIRED.**—Not later than 60 days after the date of the enactment of this Act, the Assistant Secretary of Energy for Environmental Management shall submit to the Secretary of Energy a report on the maintenance of retirement benefits for workers at Department of Energy 2006 closure sites after closure of such sites.

(b) **ELEMENTS.**—The report under subsection (a) shall include the following:

(1) The number of workers at Department of Energy 2006 closure sites who would be eligible for regular or early retirement benefits if such sites close on or after their target completion dates, but who would not be eligible for regular or early retirement benefits if such sites close before their target completion dates (by calendar quarter).

(2) The cost of providing regular or full retirement benefits, after the closure of Department of Energy 2006 closure sites, to workers at such sites who would fail to qualify for regular or early retirement benefits because of the early closure of such sites (by calendar quarter).

(3) The impact on collective-bargaining agreements and any applicable retirement benefit plan documents covering workers at Department of Energy 2006 closure sites of providing regular or early retirement benefits as set forth herein.

(c) **TRANSMITTAL TO CONGRESS.**—Not later than 30 days after receiving the report under subsection (a), the Secretary shall transmit the report to Congress, together with such recommendations, including recommendations for legislative action, as the Secretary considers appropriate.

(d) **DEFINITIONS.**—In this section:

(1) The term “Department of Energy 2006 closure site” means the following:

(A) The Rocky Flats Environmental Technology Site, Colorado.

(B) The Fernald Plant, Ohio.

(C) The Mound Plant, Ohio.

(2) The term “worker” means any employee who is employed by contract or first or second tier subcontract to perform cleanup, security, or administrative duties or responsibilities at a Department of Energy 2006 closure site.

(3) The term “retirement benefits” means pension, health, and other similar post-retirement benefits.

(4) The term “target completion date”, with respect to a Department of Energy 2006 closure site, means the physical completion date specified in the site contracts.

SEC. 3143. REPORT ON EFFORTS OF NATIONAL NUCLEAR SECURITY ADMINISTRATION TO UNDERSTAND PLUTONIUM AGING.

(a) **STUDY.**—(1) The Administrator for Nuclear Security shall enter into a contract with a Federally Funded Research and Development Center (FFRDC) providing for a study to assess the efforts of the National Nuclear Security Administration to understand the aging of plutonium in nuclear weapons.

(2) The Administrator shall make available to the FFRDC contractor under this subsection all information that is necessary for the contractor to successfully complete a meaningful study on a timely basis.

(b) **REPORT REQUIRED.**—(1) Not later than two years after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the findings of the study required by subsection (a)(1).

(2) The report shall include the recommendations of the study for improving the knowledge, understanding, and application of the fundamental and applied sciences related to the study of plutonium aging.

(3) The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 3144. SUPPORT FOR PUBLIC EDUCATION IN THE VICINITY OF LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.

The Secretary of Energy shall require that the primary management and operations contract for Los Alamos National Laboratory, New Mexico, that involves Laboratory operations after September 30, 2005, shall contain terms requiring the contractor under such contract to provide support to the Los Alamos Public School District, New Mexico, for the elementary and secondary education of students in the school district in the amount of \$8,000,000 in each fiscal year.

SEC. 3145. REVIEW OF WASTE ISOLATION PILOT PLANT, NEW MEXICO, PURSUANT TO COMPETITIVE CONTRACT.

(a) **CONTRACT REQUIREMENT.**—The Secretary of Energy shall use competitive procedures to enter into a contract to conduct independent reviews and evaluations of the design, construction, and operations of the Waste Isolation Pilot Plant in New Mexico (in this section referred to as the “WIPP”) as they relate to the protection of the public health and safety and the environment. The contract shall be for a period of one year, beginning on October 1, 2004, and shall be renewable for four additional one-year periods with the consent of the contractor and subject to the authorization and appropriation of funds for such purpose.

(b) **CONTENT OF CONTRACT.**—A contract entered into under subsection (a) shall require the following:

(1) The contractor shall appoint a Director and Deputy Director, who shall be scientists of national eminence in the field of nuclear waste disposal, shall be free from any biases related to the activities of the WIPP, and shall be widely known for their integrity and scientific expertise.

(2) The Director shall appoint staff. The professional staff shall consist of scientists and engineers of recognized integrity and scientific expertise who represent scientific and engineering disciplines needed for a thorough review of the WIPP, including

disciplines such as geology, hydrology, health physics, environmental engineering, probability risk analysis, mining engineering, and radiation chemistry. The disciplines represented in the staff shall change as may be necessary to meet changed needs in carrying out the contract for expertise in any certain scientific or engineering discipline. Scientists and engineers employed under the contract shall have qualifications and experience equivalent to the qualifications and experience required for scientists and engineers employed by the Federal Government in grades GS-13 through GS-15.

(3) Scientists and engineers employed under the contract shall have an appropriate support staff.

(4) The Director and Deputy Director shall each be appointed for a term of 5 years, subject to contract renewal, and may be removed only for misconduct or incompetence. The staff shall be appointed for such terms as the Director considers appropriate.

(5) The rates of pay of professional staff and the procedures for increasing the rates of pay of professional staff shall be equivalent to those rates and procedures provided for the General Schedule pay system under chapter 53 of title 5, United States Code.

(6) The results of reviews and evaluations carried out under the contract shall be published.

(c) ADMINISTRATION.—The contractor shall establish general policies and guidelines to be used by the Director in carrying out the work under the contract.

SEC. 3146. NATIONAL ACADEMY OF SCIENCES STUDY ON MANAGEMENT BY DEPARTMENT OF ENERGY OF CERTAIN RADIOACTIVE WASTE STREAMS.

(a) STUDY REQUIRED.—The Secretary of Energy shall, as soon as practicable, enter into an arrangement with the National Research Council of the National Academy of Sciences to carry out a study of the plans of the Department of Energy to manage those waste streams specified in subsection (b) that—

(1) exceed the concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations; and

(2) the Department plans to dispose of on the sites specified in subsection (b)(3) rather than in a repository for spent nuclear fuel and high-level waste.

(b) COVERED WASTE STREAMS.—The waste streams referred to in subsection (a) are the streams of waste, from reprocessed spent nuclear fuel, that—

(1) exceed the concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations;

(2) the Department does not plan for disposal in a repository for spent nuclear fuel and high-level waste; and

(3) are stored in tanks at the following sites:

(A) The Savannah River Site, South Carolina.

(B) The Idaho National Engineering Laboratory, Idaho.

(C) The Hanford Reservation, Washington.

(c) MATTERS INCLUDED.—The study required by subsection (a) shall evaluate—

(1) the state of the Department's understanding of the physical, chemical, and radiological characteristics of the waste referred to in subsection (b), including an assessment of data uncertainties;

(2) any actions additional to those contained in current plans that the Department should consider to ensure that the plans referred to in subsection (a) will comply with the performance objectives of part 61 of title 10, Code of Federal Regulations;

(3) the adequacy of the Department's plans for monitoring disposal sites and the surrounding environment to verify compliance with those performance objectives;

(4) existing technology alternatives to the plans referred to in subsection (a) and, for each such alternative, an assessment of the cost, consequences for worker safety, and long-term consequences for environmental and human health;

(5) any technology gaps that exist to effect improved efficiency in removal and treatment of waste from the tanks referred to in subsection (b)(3); and

(6) any other matters that the National Research Council considers appropriate and directly related to the subject matter of the study.

(d) RECOMMENDATIONS.—In carrying out the study required by subsection (a), the National Research Council may develop recommendations it considers appropriate and directly related to the subject matter of the study. It is the sense of Congress that the National Research Council should develop recommendations on—

(1) improvements to the scientific and technical basis for managing the waste covered by the study, including the identification of technology alternatives and mitigation of technology gaps; and

(2) the best means of monitoring any on-site disposal sites from the waste streams referred to in subsection (b), to include soil, groundwater, and surface water monitoring.

(e) REPORTS.—(1) The National Research Council shall submit to the Secretary of Energy and the congressional committees described in paragraph (2)—

(A) not later than six months after entering into the arrangement required by subsection (a), an interim report on the study that, with respect to the requirements of subsection (c)(2), specifically addresses any additional actions the Department should consider to ensure that the Department's plans for the Savannah River Site, including plans for grouting of tanks, will comply with the performance objectives referred to in that subsection in a more effective manner; and

(B) not later than one year after entering into the arrangement required by subsection (a), a final report on the study that includes all findings, conclusions, and recommendations.

(2) The congressional committees referred to in paragraph (1) are as follows:

(A) The Committee on Appropriations, Committee on Armed Services, and Committee on Energy and Commerce of the House of Representatives.

(B) The Committee on Appropriations, Committee on Armed Services, Committee on Energy and Natural Resources, and Committee on Environment and Public Works of the Senate.

(f) **PROVISION OF INFORMATION.**—The Secretary of Energy shall, in a timely manner, make available to the National Research Council all information that the National Research Council considers necessary to carry out its responsibilities under this section.

(g) **RULE OF CONSTRUCTION.**—This section shall not be construed to affect section 3116.

(h) **FUNDING.**—Of the amounts made available to the Department of Energy pursuant to the authorization of appropriations in section 3102, \$1,500,000 shall be available only for carrying out the study required by this section.

SEC. 3147. COMPENSATION OF PAJARITO PLATEAU, NEW MEXICO, HOMESTEADERS FOR ACQUISITION OF LANDS FOR MANHATTAN PROJECT IN WORLD WAR II.

(a) **ESTABLISHMENT OF COMPENSATION FUND.**—There is established in the Treasury of the United States a fund to be known as the Pajarito Plateau Homesteaders Compensation Fund (in this section referred to as the “Fund”). The Fund shall be dedicated to the settlement of the two lawsuits in the United States District Court for the District of New Mexico consolidated as Civ. No. 00–60.

(b) **ELEMENTS OF FUND.**—The Fund shall consist of the following:

(1) Amounts available for deposit in the Fund under subsection (j).

(2) Interest earned on amounts in the Fund under subsection (g).

(c) **USE OF FUND.**—The Fund shall be available for the settlement of the consolidated lawsuits in accordance with the following requirements:

(1) The settlement shall be subject to preliminary and final approval by the Court in accordance with rule 23(e) of the Federal Rules of Civil Procedure.

(2) The Court shall appoint a special master in accordance with rule 53 of the Federal Rules of Civil Procedure to—

(A) identify class members;

(B) receive claims from class members so identified;

(C) determine in accordance with subsection (d) eligible claimants from among class members so identified;

(D) resolve contests, if any, among claimants with respect to a particular eligible tract, regarding the disbursement of monies in the Fund with respect to that eligible tract; and

(E) address such other matters as the Court may order.

(3) Lead counsel for claimants shall provide evidence to the special master to assist the special master in the duties set forth in paragraph (2).

(4) If more than 10 percent of the class members object to the settlement, or the Court fails to approve the settlement—

(A) the Fund shall not serve as the basis for the settlement of the consolidated lawsuits and the provisions of this section shall have no further force or effect; and

(B) amounts in the Fund shall not be disbursed, but shall be retained in the Treasury as miscellaneous receipts.

(5) The Court may award compensation for the special master and attorney fees and expenses from the Fund pursuant to rule 23 of the Federal Rules of Civil Procedure, except

that the award of attorney fees may not exceed 20 percent of the Fund and the award of expenses may not exceed 2 percent of the Fund. Any compensation and attorney fees and expenses so paid shall be paid from the Fund by the Court before distribution of the amount in the Fund to eligible claimants entitled thereto.

(6) The Fund shall be available to pay settlement awards in accordance with the following:

(A) The balance of the amount of the Fund that is available for disbursement after any award of attorney fees and expenses under paragraph (5) shall be allocated proportionally by eligible tract according to its acreage as compared with all eligible tracts.

(B) The allocation for each eligible tract shall be allocated pro rata among all eligible claimants having an interest in such eligible tract according to the extent of their interest in such eligible tract, as determined under the laws of the State of New Mexico.

(7) The special master shall disburse the allocated amounts from the Fund after approval by the Court.

(8) Any amounts available for disbursement with respect to an eligible tract that are not awarded to eligible claimants with respect to that tract shall be retained in the Treasury as miscellaneous receipts.

(d) ELIGIBLE CLAIMANTS.—(1) For purposes of this section, an eligible claimant is any class member determined by the Court, by a preponderance of evidence, to be a person or entity who held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project, or the heir, successor in interest, assignee, or beneficiary of such a person or entity.

(2) The status of a person or entity as an heir, successor in interest, assignee, or beneficiary for purposes of this subsection shall be determined under the laws of the State of New Mexico, including the descent and distribution law of the State of New Mexico.

(e) FULL RESOLUTION OF CLAIMS AGAINST UNITED STATES.—

(1) The acceptance of a disbursement from the Fund by an eligible claimant under this section shall constitute a final and complete release of the defendants in the consolidated lawsuits with respect to such eligible claimant, and shall be in full satisfaction of any and all claims of such eligible claimant against the United States arising out of acts described in the consolidated lawsuits.

(2) Upon the disbursement of the amount in the Fund to eligible claimants entitled thereto under this section, the Court shall, subject to the provisions of rule 23(e) of the Federal Rules of Civil Procedure, enter a final judgment dismissing with prejudice the consolidated lawsuits and all claims and potential claims on matters covered by the consolidated lawsuits.

(f) COMPENSATION LIMITED TO AMOUNTS IN FUND.—(1) An eligible claimant may be paid under this section only from amounts in the Fund.

(2) Nothing in this section shall authorize the payment to a class member by the United States Government of any amount authorized by this section from any source other than the Fund.

(g) INVESTMENT OF FUND.—(1) The Secretary of the Treasury shall, in accordance with the requirements of section 9702 of title

31, United States Code, and the provisions of this subsection, direct the form and manner by which the Fund shall be safeguarded and invested so as to maximize its safety while earning a return comparable to other common funds in which the United States Treasury is the source of payment.

(2) Interest on the amount deposited in the Fund shall accrue from the date of the enactment of the Act appropriating amounts for deposit in the Fund until the date on which the Secretary of the Treasury disburses the amount in the Fund to eligible claimants who are entitled thereto under subsection (c).

(h) PRESERVATION OF RECORDS.—(1) All documents, personal testimony, and other records created or received by the Court in the consolidated lawsuits shall be kept and maintained by the Archivist of the United States, who shall preserve such documents, testimony, and records in the National Archives of the United States.

(2) The Archivist shall make available to the public the materials kept and maintained under paragraph (1).

(i) DEFINITIONS.—In this section:

(1) The term “Court” means the United States District Court for the District of New Mexico having jurisdiction over the consolidated lawsuits.

(2) The term “consolidated lawsuits” means the two lawsuits in the United States District Court for the District of New Mexico consolidated as Civ. No. 00–60.

(3)(A) The term “eligible tract” means private real property located on the Pajarito Plateau of what is now Los Alamos County, New Mexico, that was acquired by the United States during World War II for use in the Manhattan Project and which is the subject of the consolidated lawsuits.

(B) The term does not include lands of the Los Alamos Ranch School and of the A.M. Ross Estate (doing business as Anchor Ranch).

(4) The term “class member” means the following:

(A) Any person or entity who claims to have held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project.

(B) Any person or entity claiming to be the heir, successor in interest, assignee, or beneficiary of a person or entity who held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project.

(j) FUNDING.—Of the amount authorized to be appropriated by section 3101(a)(4) for the National Nuclear Security Administration for the Office of the Administrator for Nuclear Security, \$10,000,000 shall be available for deposit in the Fund under subsection (b)(1).

SEC. 3148. MODIFICATION OF REQUIREMENTS RELATING TO CONVEYANCES AND TRANSFER OF CERTAIN LAND AT LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.

Section 632(a) of Public Law 105-119 (111 Stat. 2523; 42 U.S.C. 2391 note) is amended—

(1) in paragraph (1)—

(A) by inserting “except as provided in paragraph (2),” before “convey”; and

(B) by striking “and” at the end;
 (2) by redesignating paragraph (2) as paragraph (3); and
 (3) by inserting after paragraph (1) the following new paragraph (2):

“(2) notwithstanding paragraph (1) and the agreement under subsection (e), convey, without consideration, to the Board of Education of the Los Alamos Public Schools, New Mexico, within the County, fee title to the parcels of land identified by the Department of Energy as Parcel A–8 and Parcel A–15–1 that are currently located in Technical Area–21 of Los Alamos National Laboratory upon the entry of Los Alamos Public Schools and the County into an agreement for the use of the parcel of land identified as Parcel A–8; and”.

Subtitle E—Energy Employees Occupational Illness Compensation Program

SEC. 3161. CONTRACTOR EMPLOYEE COMPENSATION.

The Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398)) is amended by adding after subtitle D (42 U.S.C. 7385o) the following new title:

“Subtitle E—Contractor Employee Compensation

42 USC 7385s.

“SEC. 3671. DEFINITIONS.

“In this subtitle:

“(1) The term ‘covered DOE contractor employee’ means any Department of Energy contractor employee determined under section 3675 to have contracted a covered illness through exposure at a Department of Energy facility.

“(2) The term ‘covered illness’ means an illness or death resulting from exposure to a toxic substance.

“(3) The term ‘Secretary’ means the Secretary of Labor.

42 USC 7385s–1.

“SEC. 3672. COMPENSATION TO BE PROVIDED.

“Subject to the other provisions of this subtitle:

“(1) **CONTRACTOR EMPLOYEES.**—A covered DOE contractor employee shall receive contractor employee compensation under this subtitle in accordance with section 3673.

“(2) **SURVIVORS.**—After the death of a covered DOE contractor employee, compensation referred to in paragraph (1) shall not be paid. Instead, the survivor of that employee shall receive compensation as follows:

“(A) Except as provided in subparagraph (B), the survivor of that employee shall receive contractor employee compensation under this subtitle in accordance with section 3674.

“(B) In a case in which the employee’s death occurred after the employee applied under this subtitle and before compensation was paid under paragraph (1), and the employee’s death occurred from a cause other than the

covered illness of the employee, the survivor of that employee may elect to receive, in lieu of compensation under subparagraph (A), the amount of contractor employee compensation that the employee would have received in accordance with section 3673 if the employee's death had not occurred before compensation was paid under paragraph (1).

“SEC. 3673. COMPENSATION SCHEDULE FOR CONTRACTOR EMPLOYEES. 42 USC 7385s-2.

“(a) COMPENSATION PROVIDED.—The amount of contractor employee compensation under this subtitle for a covered DOE contractor employee shall be the sum of the amounts determined under paragraphs (1) and (2), as follows:

“(1) IMPAIRMENT.—(A) The Secretary shall determine—

“(i) the minimum impairment rating of that employee, expressed as a number of percentage points; and

“(ii) the number of those points that are the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility.

“(B) The employee shall receive an amount under this paragraph equal to \$2,500 multiplied by the number referred to in clause (ii) of subparagraph (A).

“(2) WAGE LOSS.—(A) The Secretary shall determine—

“(i) the calendar month during which the employee first experienced wage loss as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility;

“(ii) the average annual wage of the employee for the 36-month period immediately preceding the calendar month referred to in clause (i), excluding any portions of that period during which the employee was unemployed; and

“(iii) beginning with the calendar year that includes the calendar month referred to in clause (i), through and including the calendar year during which the employee attained normal retirement age (for purposes of the Social Security Act)—

“(I) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage exceeded 50 percent of the average annual wage determined under clause (ii), but did not exceed 75 percent of the average annual wage determined under clause (ii); and

“(II) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage determined under clause (ii).

“(B) The employee shall receive an amount under this paragraph equal to the sum of—

“(i) \$10,000 multiplied by the number referred to in clause (iii)(I) of subparagraph (A); and

“(ii) \$15,000 multiplied by the number referred to in clause (iii)(II) of subparagraph (A).

“(b) DETERMINATION OF MINIMUM IMPAIRMENT RATING.—For purposes of subsection (a), a minimum impairment rating shall be determined in accordance with the American Medical Association’s Guides to the Evaluation of Permanent Impairment.

42 USC 7385s-3.

“SEC. 3674. COMPENSATION SCHEDULE FOR SURVIVORS.

“(a) CATEGORIES OF COMPENSATION.—The amount of contractor employee compensation under this subtitle for the survivor of a covered DOE contractor employee shall be determined as follows:

“(1) CATEGORY ONE.—The survivor shall receive the amount of \$125,000, if the Secretary determines that—

“(A) the employee would have been entitled to compensation under section 3675 for a covered illness; and

“(B) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the death of such employee.

“(2) CATEGORY TWO.—The survivor shall receive the amount of \$150,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 10 years, before the employee attained normal retirement age (for purposes of the Social Security Act), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee’s annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 3673(a)(2)(A)(ii).

“(3) CATEGORY THREE.—The survivor shall receive the amount of \$175,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 20 years, before the employee attained normal retirement age (for purposes of the Social Security Act), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee’s annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 3673(a)(2)(A)(ii).

“(b) ONE AMOUNT ONLY.—The survivor of a covered DOE contractor employee to whom more than one amount under subsection (a) applies shall receive only the highest such amount.

“(c) DETERMINATION AND ALLOCATION OF SHARES.—The amount under subsection (a) shall be paid only as follows:

“(1) If a covered spouse is alive at the time of payment, such payment shall be made to such surviving spouse.

“(2) If there is no covered spouse described in paragraph (1), such payment shall be made in equal shares to all covered children who are alive at the time of payment.

“(3) Notwithstanding the other provisions of this subsection, if there is—

“(A) a covered spouse described in paragraph (1); and

“(B) at least one covered child of the employee who is living at the time of payment and who is not a recognized natural child or adopted child of such covered spouse, then half of such payment shall be made to such covered spouse, and the other half of such payment shall be made

in equal shares to each covered child of the employee who is living at the time of payment.

“(d) DEFINITIONS.—In this section:

“(1) The term ‘covered spouse’ means a spouse of the employee who was married to the employee for at least one year immediately before the employee’s death.

“(2) The term ‘covered child’ means a child of the employee who, as of the employee’s death—

“(A) had not attained the age of 18 years;

“(B) had not attained the age of 23 years and was a full-time student who had been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18 years; or

“(C) had been incapable of self-support.

“(3) The term ‘child’ includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child.

“SEC. 3675. DETERMINATIONS REGARDING CONTRACTION OF COVERED ILLNESSES.

42 USC 7385s-4.

“(a) CASES DETERMINED UNDER SUBTITLE B.—A determination under subtitle B that a Department of Energy contractor employee is entitled to compensation under that subtitle for an occupational illness shall be treated for purposes of this subtitle as a determination that the employee contracted that illness through exposure at a Department of Energy facility.

“(b) CASES DETERMINED UNDER FORMER SUBTITLE D.—In the case of a covered illness of an employee with respect to which a panel has made a positive determination under section 3661(d) and the Secretary of Energy has accepted that determination under section 3661(e)(2), or with respect to which a panel has made a negative determination under section 3661(d) and the Secretary of Energy has found significant evidence to the contrary under section 3661(e)(2), that determination shall be treated for purposes of this subtitle as a determination that the employee contracted the covered illness through exposure at a Department of Energy facility.

“(c) OTHER CASES.—(1) In any other case, a Department of Energy contractor employee shall be determined for purposes of this subtitle to have contracted a covered illness through exposure at a Department of Energy facility if—

“(A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and

“(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

“(2) A determination under paragraph (1) shall be made by the Secretary.

“(d) APPLICATIONS BY SPOUSES AND CHILDREN.—If a spouse or child of a Department of Energy contractor employee applies for benefits under this subtitle, the Secretary shall make a determination under this section with respect to that employee without regard to whether the spouse is a ‘covered spouse’, or the child is a ‘covered child’, under this subtitle.

42 USC 7385s-5. **“SEC. 3676. APPLICABILITY TO CERTAIN URANIUM EMPLOYEES.**

“(a) IN GENERAL.—This subtitle shall apply to—

“(1) a section 5 payment recipient who contracted a section 5 illness through a section 5 exposure at a section 5 facility, or

“(2) a section 5 uranium worker determined under section 3675(c) to have contracted a covered illness through exposure to a toxic substance at a section 5 mine or mill,

(or to the survivor of that employee, as applicable) on the same basis as it applies to a Department of Energy contractor employee determined under section 3675 to have contracted a covered illness through exposure to a toxic substance at a Department of Energy facility (or to the survivor of that employee, as applicable).

“(b) DEFINITIONS.—In this section:

“(1) The term ‘section 5 payment recipient’ means an individual who receives, or has received, \$100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act.

“(2) The terms ‘section 5 exposure’, ‘section 5 facility’, and ‘section 5 illness’ mean the exposure, facility, and illness, respectively, to which an individual’s status as a section 5 payment recipient relates.

“(3) The term ‘section 5 uranium worker’ means an individual to whom subsection (a)(1)(A)(i) of section 5 of the Radiation Exposure Compensation Act applies (whether directly or by reason of subsection (a)(2)).

“(4) The term ‘section 5 mine or mill’ means the mine or mill to which an individual’s status as a section 5 uranium worker relates.

42 USC 7385s-6. **“SEC. 3677. ADMINISTRATIVE AND JUDICIAL REVIEW.**

“(a) JUDICIAL REVIEW.—A person adversely affected or aggrieved by a final decision of the Secretary under this subtitle may review that order in the United States district court in the district in which the injury was sustained, the employee lives, the survivor lives, or the District of Columbia, by filing in such court within 60 days after the date on which that final decision was issued a written petition praying that such decision be modified or set aside. The person shall also provide a copy of the petition to the Secretary. Upon such filing, the court shall have jurisdiction over the proceeding and shall have the power to affirm, modify, or set aside, in whole or in part, such decision. The court may modify or set aside such decision only if the court determines that such decision was arbitrary and capricious.

“(b) ADMINISTRATIVE REVIEW.—The Secretary shall ensure that recommended decisions of the Secretary with respect to a claim under this subtitle are subject to administrative review. The Secretary shall prescribe regulations for carrying out such review or shall apply to this subtitle the regulations applicable to recommended decisions under subtitle B.

42 USC 7385s-7. **“SEC. 3678. PHYSICIANS SERVICES.**

“(a) IN GENERAL.—The Secretary may utilize the services of physicians for purposes of making determinations under this subtitle.

“(b) PHYSICIANS.—Any physicians whose services are utilized under subsection (a) of this section shall possess appropriate expertise and experience in the evaluation and determination of the extent of permanent physical impairments or in the evaluation and diagnosis of illnesses or deaths aggravated, contributed to, or caused by exposure to toxic substances.

“(c) ARRANGEMENT.—The Secretary may secure the services of physicians utilized under subsection (a) of this section through the appointment of physicians or by contract.

“SEC. 3679. MEDICAL BENEFITS.

42 USC 7385s–8.

“A covered DOE contractor employee shall be furnished medical benefits specified in section 3629 for the covered illness to the same extent, and under the same conditions and limitations, as an individual eligible for medical benefits under that section is furnished medical benefits under that section.

“SEC. 3680. ATTORNEY FEES.

42 USC 7385s–9.

“Section 3648 shall apply to a payment under this subtitle to the same extent that it applies to a payment under subtitle B.

“SEC. 3681. ADMINISTRATIVE MATTERS.

42 USC
7385s–10.

“(a) IN GENERAL.—The Secretary shall administer this subtitle.

“(b) CONTRACT AUTHORITY.—The Secretary may enter into contracts with appropriate persons and entities to administer this subtitle.

“(c) RECORDS.—(1)(A) The Secretary of Energy shall provide to the Secretary all records, files, and other data, whether paper, electronic, imaged, or otherwise, developed by the Secretary of Energy that are applicable to the administration of this subtitle, including records, files, and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

“(B) In providing records, files, and other data under this paragraph, the Secretary of Energy shall preserve the current organization of such records, files, and other data, and shall provide such description and indexing of such records, files, and other data as the Secretary considers appropriate to facilitate their use by the Secretary.

“(2) The Secretary of Energy and the Secretary shall jointly undertake such actions as are appropriate to retrieve records applicable to the claims of Department of Energy contractor employees for contractor employee compensation under this subtitle, including employment records, records of exposure to beryllium, radiation, silica, or other toxic substances, and records regarding medical treatment.

“(d) INFORMATION.—At the request of the Secretary, the Secretary of Energy and any contractor who employed a Department of Energy contractor employee shall, within time periods specified by the Secretary, provide to the Secretary and to the employee information or documents in response to the request.

“(e) REGULATIONS.—The Secretary shall prescribe regulations necessary for the administration of this subtitle. The initial regulations shall be prescribed not later than 210 days after the date of the enactment of this subtitle. The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in this subtitle.

Deadline.

“(f) TRANSITION PROVISIONS.—(1) The Secretary shall commence the administration of the provisions of this subtitle not later than 210 days after the date of the enactment of this subtitle.

“(2) Until the commencement of the administration of this subtitle, the Department of Energy Physicians Panels appointed pursuant to subtitle D shall continue to consider and issue determinations concerning any cases pending before such Panels immediately before the date of the enactment of this subtitle.

“(3) The Secretary shall take such actions as are appropriate to identify other activities under subtitle D that will continue until the commencement of the administration of subtitle E.

“(g) PREVIOUS APPLICATIONS.—Upon the commencement of the administration of this subtitle, any application previously filed with the Secretary of Energy pursuant to subtitle D shall be considered to have been filed with the Secretary as a claim for benefits pursuant to this subtitle.

42 USC
7385s-11.

“SEC. 3682. COORDINATION OF BENEFITS WITH RESPECT TO STATE WORKERS COMPENSATION.

“(a) IN GENERAL.—An individual who has been awarded compensation under this subtitle, and who has also received benefits from a State workers compensation system by reason of the same covered illness, shall receive compensation specified in this subtitle reduced by the amount of any workers compensation benefits, other than medical benefits and benefits for vocational rehabilitation, that the individual has received under the State workers compensation system by reason of the covered illness, after deducting the reasonable costs, as determined by the Secretary, of obtaining those benefits under the State workers compensation system.

“(b) WAIVER.—The Secretary may waive the provisions of subsection (a) if the Secretary determines that the administrative costs and burdens of implementing subsection (a) with respect to a particular case or class of cases justifies such a waiver.

“(c) INFORMATION.—Notwithstanding any other provision of law, each State workers compensation authority shall, upon request of the Secretary, provide to the Secretary on a quarterly basis information concerning workers compensation benefits received by any covered DOE contractor employee entitled to compensation or benefits under this subtitle, which shall include the name, Social Security number, and nature and amount of workers compensation benefits for each such employee for which the request was made.

42 USC
7385s-12.

“SEC. 3683. MAXIMUM AGGREGATE COMPENSATION.

“For each individual whose illness or death serves as the basis for compensation or benefits under this subtitle, the total amount of compensation (other than medical benefits) paid under this subtitle, to all persons, in the aggregate, on the basis of that illness or death shall not exceed \$250,000.

42 USC
7385s-13.

“SEC. 3684. FUNDING OF ADMINISTRATIVE COSTS.

“There is authorized and hereby appropriated to the Secretary for fiscal year 2005 and thereafter such sums as may be necessary to carry out this subtitle.

“SEC. 3685. PAYMENT OF COMPENSATION AND BENEFITS FROM COMPENSATION FUND.42 USC
7385s-14.

“The compensation and benefits provided under this title, when authorized or approved by the President, shall be paid from the compensation fund established under section 3612.

“SEC. 3686. OFFICE OF OMBUDSMAN.42 USC
7385s-15.

“(a) ESTABLISHMENT.—There is established in the Department of Labor an office to be known as the ‘Office of the Ombudsman’ (in this section referred to as the ‘Office’).

“(b) HEAD.—The head of the Office shall be the Ombudsman. The individual serving as Ombudsman shall be either of the following:

“(1) An officer or employee of the Department of Labor designated by the Secretary for purposes of this section from among officers and employees of the Department who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

“(2) An individual employed by the Secretary from the private sector from among individuals in the private sector who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

“(c) DUTIES.—The duties of the Office shall be as follows:

“(1) To provide information on the benefits available under this subtitle and on the requirements and procedures applicable to the provision of such benefits.

“(2) To make recommendations to the Secretary regarding the location of centers (to be known as ‘resource centers’) for the acceptance and development of claims for benefits under this subtitle.

“(3) To carry out such other duties with respect to this subtitle as the Secretary shall specify for purposes of this section.

“(d) INDEPENDENT OFFICE.—The Secretary shall take appropriate actions to ensure the independence of the Office within the Department of Labor, including independence from other officers and employees of the Department engaged in activities relating to the administration of the provisions of this subtitle.

“(e) ANNUAL REPORT.—(1) Not later than February 15 each year, the Ombudsman shall submit to Congress a report on activities under this subtitle.

“(2) Each report under paragraph (1) shall set forth the following:

“(A) The number and types of complaints, grievances, and requests for assistance received by the Ombudsman under this subtitle during the preceding year.

“(B) An assessment of the most common difficulties encountered by claimants and potential claimants under this subtitle during the preceding year.

“(3) The first report under paragraph (1) shall be the report submitted in 2006.

“(f) OUTREACH.—The Secretary of Labor and the Secretary of Health and Human Services shall each undertake outreach to advise the public of the existence and duties of the Office.

“(g) SUNSET.—Effective on the date that is 3 years after the date of the enactment of this section, this section shall have no further force or effect.”.

SEC. 3162. CONFORMING AMENDMENTS.

(a) **OFFSET FOR CERTAIN PAYMENTS.**—Section 3641 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385) is amended—

(1) by striking “subtitle B” and inserting “this title”; and

(2) by striking “on account of” and all that follows through the period at the end and inserting “on account of the exposure for which compensation is payable under this title.”.

(b) **SUBROGATION OF THE UNITED STATES.**—Section 3642 of such Act (42 U.S.C. 7385a) is amended by striking “subtitle B” and inserting “this title”.

(c) **PAYMENT IN FULL SETTLEMENT OF CLAIMS.**—Section 3643 of such Act (42 U.S.C. 7385b) is amended by striking “The acceptance” and inserting “Except as provided in subtitle E, the acceptance”.

(d) **EXCLUSIVITY OF REMEDY.**—Section 3644 of such Act (42 U.S.C. 7385c(a)) is amended by adding at the end the following new subsection:

“(d) **APPLICABILITY TO SUBTITLE E.**—This section applies with respect to subtitle E to the covered medical condition or covered illness or death of a covered DOE contractor employee on the same basis as it applies with respect to subtitle B to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death of a covered employee.”.

(e) **CERTIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.**—Section 3646 of such Act (42 U.S.C. 7385e) is amended by striking “subtitle B” and inserting “this title”.

(f) **CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.**—Section 3647(a) of such Act (42 U.S.C. 7385f(a)) is amended by striking “subtitle B” and inserting “this title”.

(g) **CERTAIN CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES.**—Section 3649 of such Act (42 U.S.C. 7385h) is amended by striking “subtitle B” both places such term appears and inserting “this title”.

(h) **FORFEITURE OF BENEFITS BY CONVICTED FELONS.**—Section 3650 of such Act (42 U.S.C. 7385i) is amended by striking “subtitle B” each place such term appears and inserting “this title”.

(i) **REPEAL OF SUBTITLE D.**—Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398); 42 U.S.C. 7385o) is repealed.

SEC. 3163. TECHNICAL AMENDMENTS.

(a) **SUBPOENAS.**—Subtitle B of such Act is amended by adding after section 3631 (42 U.S.C. 7384v) the following new section:

42 USC 7384w.

“SEC. 3632. SUBPOENAS; OATHS; EXAMINATION OF WITNESSES.

“The Secretary of Labor, with respect to any matter under this subtitle, may—

“(1) issue subpoenas for and compel the attendance of witnesses;

“(2) administer oaths;

“(3) examine witnesses; and

“(4) require the production of books, papers, documents, and other evidence.”.

(b) **SOCIAL SECURITY EARNINGS INFORMATION.**—Subtitle C of such Act is amended by adding after section 3651 (42 U.S.C. 7385j) the following new section:

“SEC. 3652. SOCIAL SECURITY EARNINGS INFORMATION.

42 USC 7385j–1.

“Notwithstanding the provision of section 552a of title 5, United States Code, or any other provision of Federal or State law, the Social Security Administration shall make available to the Secretary of Labor, upon written request, the Social Security earnings information of living or deceased employees who may have sustained an illness that is the subject of a claim under this title, which the Secretary of Labor may require to carry out the provisions of this title.”.

(c) **RECOVERY OF OVERPAYMENT.**—Subtitle C of such Act is further amended by adding after section 3652 (as added by subsection (b)) the following new section:

“SEC. 3653. RECOVERY AND WAIVER OF OVERPAYMENTS.

42 USC 7385j–2.

“(a) **IN GENERAL.**—When an overpayment has been made to an individual under this title because of an error of fact or law, recovery shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the recovery is completed, recovery shall be made by decreasing later benefits payable under this title with respect to the individual’s death.

“(b) **WAIVER.**—Recovery by the United States under this section may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience.

“(c) **LIABILITY.**—A certifying or disbursing official is not liable for an amount certified or paid by him when recovery of the amount is waived under subsection (b) of this section, or when recovery under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.”.

SEC. 3164. TRANSFER OF FUNDS FOR FISCAL YEAR 2005.

Of the funds appropriated to the Secretary of Energy for fiscal year 2005 for the Energy Employees Occupational Illness Compensation Program, the Secretary of Energy shall transfer to the Secretary of Labor the amount of funds that the Secretary of Energy, in consultation with the Secretary of Labor, determine will be necessary for fiscal year 2005 to administer the provisions of subtitle E of the Energy Employees Occupational Illness Compensation Program Act of 2000, as added by this Act.

SEC. 3165. USE OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION FUND FOR CERTAIN PAYMENTS TO COVERED URANIUM EMPLOYEES.

(a) **IN GENERAL.**—Section 3630 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384u) is amended in subsection (d) by inserting after “The compensation provided under this section” the following: “and the compensation provided under section 5 of the Radiation Exposure Compensation Act”.

(b) **CONFORMING AMENDMENT.**—Section 6(c)(1) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended by

inserting after “Fund” the following: “(or, in the case of a payment under section 5, from the Energy Employees Occupational Illness Compensation Fund, pursuant to section 3630(d) of the Energy Employees Occupational Illness Compensation Program Act of 2000)”.

SEC. 3166. IMPROVEMENTS TO SUBTITLE B OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000.

(a) **ADVISORY BOARD.**—Section 3624 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384o) is amended by adding at the end the following new subsections:

Deadline.

“(e) **SECURITY CLEARANCES.**—(1) The Secretary of Energy shall ensure that the members and staff of the Board, and the contractors performing work in support of the Board, are afforded the opportunity to apply for a security clearance for any matter for which such a clearance is appropriate. The Secretary should, not later than 180 days after receiving a completed application, make a determination whether or not the individual concerned is eligible for the clearance.

“(2) For fiscal year 2007 and each fiscal year thereafter, the Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report specifying the number of applications for security clearances under this subsection, the number of such applications granted, and the number of such applications denied.

“(f) **INFORMATION.**—The Secretary of Energy shall, in accordance with law, provide to the Board and the contractors of the Board access to any information that the Board considers relevant to carry out its responsibilities under this title, including information such as Restricted Data (as defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))) and information covered by the Privacy Act.”.

(b) **DEADLINES FOR SPECIAL EXPOSURE COHORT ACTIONS.**—(1) Section 3626 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384q) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

“(c) **DEADLINES.**—(1) Not later than 180 days after the date on which the President receives a petition for designation as members of the Special Exposure Cohort, the Director of the National Institute for Occupational Safety and Health shall submit to the Advisory Board on Radiation and Worker Health a recommendation on that petition, including all supporting documentation.

“(2)(A) Upon receipt by the President of a recommendation of the Advisory Board on Radiation and Worker Health that the President should determine in the affirmative that paragraphs (1) and (2) of subsection (b) apply to a class, the President shall have a period of 30 days in which to determine whether such paragraphs apply to the class and to submit that determination (whether affirmative or negative) to Congress.

“(B) If the determination submitted by the President under subparagraph (A) is in the affirmative, the President shall also submit a report meeting the requirements of section 3621(14)(C)(ii).

“(C) If the President does not submit a determination required by subparagraph (A) within the period required by subparagraph (A), then upon the day following the expiration of that period, it shall be deemed for purposes of section 3621(14)(C)(ii) that the President submitted the report under that provision on that day.”.

(2) Section 3621(14)(C)(ii) of that Act (42 U.S.C. 7384l(14)(C)(ii)) is amended by striking “180 days” and inserting “30 days”.

(c) **SITE PROFILES.**—Subtitle B of that Act is amended by adding after section 3632 (as added by section 3163(a)) the following new section:

“SEC. 3633. COMPLETION OF SITE PROFILES.

42 USC 7384w-1.

“(a) **IN GENERAL.**—To the extent that the Secretary of Labor determines it useful and practicable, the Secretary of Labor shall direct the Director of the National Institute for Occupational Safety and Health to prepare site profiles for a Department of Energy facility based on the records, files, and other data provided by the Secretary of Energy and such other information as is available, including information available from the former worker medical screening programs of the Department of Energy.

“(b) **INFORMATION.**—The Secretary of Energy shall furnish to the Secretary of Labor any information that the Secretary of Labor finds necessary or useful for the production of such site profiles, including records from the Department of Energy former worker medical screening program.

“(c) **DEFINITION.**—In this section, the term ‘site profile’ means an exposure assessment of a facility that identifies the toxic substances or processes that were commonly used in each building or process of the facility, and the time frame during which the potential for exposure to toxic substances existed.

“(d) **TIME FRAMES.**—The Secretary of Health and Human Services shall establish time frames for completing site profiles for those Department of Energy facilities for which a site profile has not been completed. Not later than March 1, 2005, the Secretary of Health and Human Services shall submit to Congress a report setting forth those time frames.”.

Deadline.
Reports.

SEC. 3167. EMERGENCY SPECIAL EXPOSURE COHORT MEETING AND REPORT.

(a) **MEETING OF ADVISORY BOARD.**—(1) For purposes of carrying out section 3626 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384q), the President shall require the Advisory Board on Radiation and Worker Health to convene a meeting of the Board at which the Board considers each petition for designation as members of the Special Exposure Cohort—

(A) that was filed not later than October 1, 2004; and

Deadline.

(B) the evaluation of which (by the Director of the National Institute of Occupational Safety and Health) was completed more than 10 days before a previously scheduled meeting of the Board.

(2) Effective March 1, 2005, this subsection shall have no further force or effect.

Effective date.

(b) **REPORT TO CONGRESS.**—Not later than March 15, 2005, the President shall submit to Congress a report on the status

of the petitions referred to in subsection (a). The report shall include, for each petition, the estimated time to complete the consideration of that petition and any anticipated actions or circumstances that could preclude the Board from acting upon that petition before the end of fiscal year 2005.

SEC. 3168. COVERAGE OF INDIVIDUALS EMPLOYED AT ATOMIC WEAPONS EMPLOYER FACILITIES DURING PERIODS OF RESIDUAL CONTAMINATION.

(a) **COVERAGE.**—Paragraph (3) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398); 42 U.S.C. 7384l) is amended to read as follows:

“(3) The term ‘atomic weapons employee’ means any of the following:

“(A) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

“(B) An individual employed—

“(i) at a facility with respect to which the National Institute for Occupational Safety and Health, in its report dated October 2003 and titled ‘Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities’, or any update to that report, found that there is a potential for significant residual contamination outside of the period in which weapons-related production occurred;

“(ii) by an atomic weapons employer or subsequent owner or operators of a facility described in clause (i); and

“(iii) during a period, as specified in such report or any update to such report, of potential for significant residual radioactive contamination at such facility.”.

(b) **RADIATION DOSE FOR CERTAIN ATOMIC WEAPONS EMPLOYEES.**—Section 3623 of that Act (42 U.S.C. 7384n) is amended by adding at the end of subsection (c) the following new paragraph:

“(4) In the case of an atomic weapons employee described in section 3621(3)(B), the following doses of radiation shall be treated, for purposes of paragraph (3)(A) of this subsection, as part of the radiation dose received by the employee at such facility:

“(A) Any dose of ionizing radiation received by that employee from facilities, materials, devices, or byproducts used or generated in the research, development, production, dismantlement, transportation, or testing of nuclear weapons, or from any activities to research, produce, process, store, remediate, or dispose of radioactive materials by or on behalf of the Department of Energy (except for activities covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) pertaining to the Naval Nuclear Propulsion Program).

“(B) Any dose of ionizing radiation received by that employee from a source not covered by subparagraph (A) that

is not distinguishable through reliable documentation from a dose covered by subparagraph (A).”.

SEC. 3169. UPDATE OF REPORT ON RESIDUAL CONTAMINATION OF FACILITIES.

42 USC 7384
note.

(a) **UPDATE OF REPORT.**—Not later than December 31, 2006, the Director of the National Institute for Occupational Safety and Health shall submit to Congress an update to the report required by section 3151(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 42 U.S.C. 7384 note).

(b) **ELEMENTS.**—The update shall—

(1) for each facility for which such report found that insufficient information was available to determine whether significant residual contamination was present, determine whether significant residual contamination was present;

(2) for each facility for which such report found that significant residual contamination remained present as of the date of the report, determine the date on which such contamination ceased to be present;

(3) for each facility for which such report found that significant residual contamination was present but for which the Director has been unable to determine the extent to which such contamination is attributable to atomic weapons-related activities, identify the specific dates of coverage attributable to such activities and, in so identifying, presume that such contamination is attributable to such activities until there is evidence of decontamination of residual contamination identified with atomic weapons-related activities;

(4) for each facility for which such report found significant residual contamination, determine whether it is at least as likely as not that such contamination could have caused an employee who was employed at such facility only during the residual contamination period to contract a cancer or beryllium illness compensable under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000; and

(5) if new information that pertains to the report has been made available to the Director since that report was submitted, identify and describe such information.

(c) **PUBLICATION.**—The Director shall ensure that the report referred to in subsection (a) is published in the Federal Register not later than 15 days after being released.

Federal Register,
publication.

SEC. 3170. SENSE OF CONGRESS ON RESOURCE CENTER FOR ENERGY EMPLOYEES UNDER ENERGY EMPLOYEE OCCUPATIONAL ILLNESS COMPENSATION PROGRAM IN WESTERN NEW YORK AND WESTERN PENNSYLVANIA REGION.

(a) **FINDINGS.**—Congress makes the following findings:

(1) New York has 36 current or former Department of Energy facilities involved in nuclear weapons production-related activities statewide, mostly atomic weapons employer facilities, and 14 such facilities in western New York. Despite having one of the greatest concentrations of such facilities in the United States, western New York, and abutting areas of Pennsylvania, continue to be severely underserved by the Energy Employees Occupational Illness Compensation Program under the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense

Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398); 42 U.S.C. 7384 et seq.).

(2) The establishment of a permanent resource center in western New York would represent a substantial step toward improving services under the Energy Employees Occupational Illness Compensation Program for energy employees in this region.

(3) The number of claims submitted to the Department under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 from the western New York region, including western Pennsylvania, exceeds the number of such claims filed at resource centers in Hanford, Washington, Portsmouth, Ohio, Los Alamos, New Mexico, the Nevada Test Site, Nevada, the Rocky Flats Environmental Technology Site, Colorado, the Idaho National Engineering Laboratory, Idaho, and the Amchitka Test Site, Alaska.

(4) Energy employees in the western New York region, including western Pennsylvania, deserve assistance under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 commensurate with the assistance provided energy employees at other locations in the United States.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Labor should—

(1) review the availability of assistance under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 for energy employees in the western New York region, including western Pennsylvania; and

(2) recommend a location in that region for a resource center to provide such assistance to such energy employees.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sec. 3201. Authorization.

SEC. 3201. AUTHORIZATION.

There are authorized to be appropriated for fiscal year 2005, \$21,268,000 for the operation of the Defense Nuclear Facilities Safety Board under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Sec. 3301. Authorized uses of National Defense Stockpile funds.

Sec. 3302. Revision of earlier authority to dispose of certain materials in National Defense Stockpile.

Sec. 3303. Disposal of ferromanganese.

Sec. 3304. Prohibition on storage of mercury at certain facilities.

SEC. 3301. AUTHORIZED USES OF NATIONAL DEFENSE STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 2005, the National Defense Stockpile Manager may obligate up to

\$59,700,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section, including the disposal of hazardous materials that are environmentally sensitive.

(b) **ADDITIONAL OBLIGATIONS.**—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date on which Congress receives the notification.

(c) **LIMITATIONS.**—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

SEC. 3302. REVISION OF EARLIER AUTHORITY TO DISPOSE OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE. 50 USC 98d note.

Section 3303(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 50 U.S.C. 98d note) is amended by striking paragraphs (4) and (5) and inserting the following new paragraphs:

“(4) \$785,000,000 by the end of fiscal year 2005; and

“(5) \$870,000,000 by the end of fiscal year 2009.”.

SEC. 3303. DISPOSAL OF FERROMANGANESE. 50 USC 98d note.

(a) **DISPOSAL AUTHORIZED.**—The Secretary of Defense may dispose of up to 50,000 tons of ferromanganese from the National Defense Stockpile during fiscal year 2005.

(b) **CONTINGENT AUTHORITY FOR ADDITIONAL DISPOSAL.**—(1) If the Secretary of Defense completes the disposal of the total quantity of ferromanganese authorized for disposal by subsection (a) before September 30, 2005, the Secretary of Defense may dispose of up to an additional 25,000 tons of ferromanganese from the National Defense Stockpile before that date.

(2) If the Secretary completes the disposal of the total quantity of additional ferromanganese authorized for disposal by paragraph (1) before September 30, 2005, the Secretary may dispose of up to an additional 25,000 tons of ferromanganese from the National Defense Stockpile before that date.

(c) **CERTIFICATION.**—The Secretary of Defense may dispose of ferromanganese under the authority of paragraph (1) or (2) of subsection (b) only if the Secretary submits written certification to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, not later than 30 days before the commencement of disposal under the applicable paragraph, that—

(1) the disposal of the additional ferromanganese from the National Defense Stockpile is in the interest of national defense;

(2) the disposal of the additional ferromanganese will not cause undue disruption to the usual markets of producers and processors of ferromanganese in the United States; and

(3) the disposal of the additional ferromanganese is consistent with the requirements and purpose of the National Defense Stockpile.

(d) **DELEGATION OF RESPONSIBILITY.**—The Secretary of Defense may delegate the responsibility of the Secretary under subsection (c) to an appropriate official within the Department of Defense.

(e) **NATIONAL DEFENSE STOCKPILE DEFINED.**—In this section, the term “National Defense Stockpile” means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

SEC. 3304. PROHIBITION ON STORAGE OF MERCURY AT CERTAIN FACILITIES.

(a) **PROHIBITION.**—During fiscal year 2005, the Secretary of Defense may not store mercury from the National Defense Stockpile at any facility that is not owned or leased by the United States.

(b) **NATIONAL DEFENSE STOCKPILE DEFINED.**—In this section, the term “National Defense Stockpile” means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

TITLE XXXIV—NAVAL PETROLEUM RESERVES

Sec. 3401. Authorization of appropriations.

SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There are hereby authorized to be appropriated to the Secretary of Energy \$20,000,000 for fiscal year 2005 for the purpose of carrying out activities under chapter 641 of title 10, United States Code, relating to the naval petroleum reserves.

(b) **PERIOD OF AVAILABILITY.**—Funds appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

TITLE XXXV—MARITIME ADMINISTRATION

Sec. 3501. Authorization of appropriations for Maritime Administration.

Sec. 3502. Extension of authority to provide war risk insurance for merchant marine vessels.

Sec. 3503. Modification of priority afforded applications for national defense tank vessel construction assistance.

SEC. 3501. AUTHORIZATION OF APPROPRIATIONS FOR MARITIME ADMINISTRATION.

There are authorized to be appropriated to the Secretary of Transportation for the Maritime Administration for fiscal year 2005 (in lieu of amounts authorized for the same purposes by section 3511 of the National Defense Authorization Act for Fiscal Year 2004)—

(1) for expenses necessary for operations and training activities, \$109,300,000;

(2) for administrative expenses under the loan guarantee program authorized by title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), \$4,764,000; and

(3) for ship disposal, \$35,000,000, of which \$2,000,000 shall be for decommissioning, removal, and disposal of the nuclear

reactor and hazardous materials on board the vessel SAVANNAH.

SEC. 3502. EXTENSION OF AUTHORITY TO PROVIDE WAR RISK INSURANCE FOR MERCHANT MARINE VESSELS.

(a) **EXTENSION.**—Section 1214 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1294), is amended by striking “June 30, 2005” and inserting “December 31, 2010”.

(b) **INVESTMENT OF ASSETS IN INSURANCE FUND.**—Section 1208(a) of such Act (46 U.S.C. App. 1288), is amended by striking the third sentence and inserting the following: “The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.”.

SEC. 3503. MODIFICATION OF PRIORITY AFFORDED APPLICATIONS FOR NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE.

Section 3542(d)(2) of the Maritime Security Act of 2003 (title XXXV of Public Law 108–136; 117 Stat. 1821; 46 U.S.C. 53101 note) is amended—

- (1) in subparagraph (A), by striking “and” at the end;
- (2) in subparagraph (B) by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:

“(C) with respect to any proposal for financial assistance to be provided from amounts appropriated for a fiscal year after fiscal year 2005, acceptance of the vessel to be constructed with the assistance for participation in the Shipboard Technology Evaluation Program as outlined in Navigation and Vessel Inspection Circular 01–04, issued by the Commandant of the United States Coast Guard on January 2, 2004.”.

TITLE XXXVI—ASSISTANCE TO FIREFIGHTERS

Sec. 3601. Short title.

Sec. 3602. Amendments to Federal Fire Prevention and Control Act of 1974.

Sec. 3603. Report on assistance to firefighters.

SEC. 3601. SHORT TITLE.

This title may be cited as the “Assistance to Firefighters Grant Program Reauthorization Act of 2004”.

SEC. 3602. AMENDMENTS TO FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974.

Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

- (1) in subsection (b)(1)(A)—

(A) by inserting “throughout the Nation” after “personnel”; and

Assistance to
Firefighters
Grant Program
Reauthorization
Act of 2004.

15 USC 2201
note.

- (B) by striking “and” at the end;
- (2) in subsection (b)(1)(B)—
 - (A) by inserting “and firefighter safety research and development” after “fire prevention”; and
 - (B) by striking the period and inserting “; and”;
- (3) by adding at the end of subsection (b)(1) the following new subparagraph:
 - “(C) provide assistance for nonaffiliated EMS organizations for the purpose of paragraph (3)(F).”;
- (4) in subsection (b)(3)(F), by inserting “and nonaffiliated EMS organizations” after “fire departments”;
- (5) in subsection (b)(4)—
 - (A) by inserting “AND FIREFIGHTER SAFETY RESEARCH AND DEVELOPMENT” after “PREVENTION” in the paragraph heading;
 - (B) in subparagraph (A)(ii)—
 - (i) by inserting “that are not fire departments and” after “community organizations”;
 - (ii) by inserting “and firefighter research and development programs,” after “fire safety programs and activities,”; and
 - (iii) by inserting “and research to improve firefighter health and life safety” after “fire prevention programs”;
 - (C) in subparagraph (B), by striking “to children from fire” and inserting “to high risk groups from fire, as well as research programs that demonstrate the potential to improve firefighter safety”; and
 - (D) by adding at the end the following new subparagraph:
 - “(C) GRANT LIMITATION.—A grant under this paragraph shall not be greater than \$1,000,000 for a fiscal year.”;
- (6) in subsection (b)(5)(B)—
 - (A) by redesignating clause (iv) as clause (v); and
 - (B) by inserting after clause (iii) the following new clause:
 - “(iv) OTHER FEDERAL SUPPORT.—A list of other sources of Federal funding received by the applicant. The Director, in coordination with the Secretary of Homeland Security, shall use such list to prevent unnecessary duplication of grant funds.”.
- (7) in subsection (b)(6), by striking subparagraphs (A) and (B) and inserting the following:
 - “(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Director may provide assistance under this subsection only if the applicant for such assistance agrees to match 20 percent of such assistance for any fiscal year with an equal amount of non-Federal funds.
 - “(B) REQUIREMENT FOR SMALL COMMUNITY ORGANIZATIONS.—In the case of an applicant whose personnel—
 - “(i) serve jurisdictions of 50,000 or fewer residents, the percent applied under the matching requirement of subparagraph (A) shall be 10 percent; and
 - “(ii) serve jurisdictions of 20,000 or fewer residents, the percent applied under the matching requirement of subparagraph (A) shall be 5 percent.

“(C) FIRE PREVENTION AND FIREFIGHTER SAFETY GRANTS.—There shall be no matching requirement for a grant described in paragraph (4)(A)(ii).”;

(8) in subsection (b)(10)—

(A) by amending subparagraph (A) to read as follows:

“(A) RECIPIENT LIMITATIONS.—A grant recipient under subsection (b)(1)(A)—

“(i) that serves a jurisdiction with 500,000 people or less may not receive grants in excess of \$1,000,000 for any fiscal year;

“(ii) that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people may not receive grants in excess of \$1,750,000 for any fiscal year; and

“(iii) that serves a jurisdiction with more than 1,000,000 people may not receive grants in excess of \$2,750,000 for any fiscal year.

The Director may award grants in excess of the limitations provided in clause (i) and (ii) if the Director determines that extraordinary need for assistance by a jurisdiction warrants a waiver.”;

(B) by redesignating subparagraph (B) as subparagraph (C);

(C) by inserting after subparagraph (A) the following new subparagraph:

“(B) DISTRIBUTION.—Notwithstanding subparagraph (A), no single recipient may receive more than the lesser of \$2,750,000 or one half of one percent of the funds appropriated under this section for a single fiscal year.”; and

(D) by adding at the end the following new subparagraphs:

“(D) REQUIREMENTS FOR GRANTS FOR EMERGENCY MEDICAL SERVICES.—Subject to the restrictions in subparagraph (E), not less than 3.5 percent of the funds appropriated under this section for a fiscal year shall be awarded for purposes described in paragraph (3)(F).

“(E) NONAFFILIATED EMS LIMITATION.—Not more than 2 percent of the funds appropriated to provide grants under this section for a fiscal year shall be awarded to non-affiliated EMS organizations.

“(F) APPLICATION OF SELECTION CRITERIA TO GRANT APPLICATIONS FROM NONAFFILIATED EMS ORGANIZATIONS.—In reviewing applications submitted by nonaffiliated EMS organizations, the Director shall consider the extent to which other sources of Federal funding are available to provide assistance requested in such grant applications.”;

(9) in subsection (b), by adding at the end the following new paragraphs:

“(13) ANNUAL MEETING.—The Director shall convene an annual meeting of individuals who are members of national fire service organizations and are recognized for expertise in firefighting or emergency medical services provided by fire services, and who are not employees of the Federal Government, for the purpose of recommending criteria for awarding grants under this section for the next fiscal year and recommending any necessary administrative changes to the grant program.

Federal Register,
publication.

“(14) GUIDELINES.—(A) Each year, prior to making any grants under this section, the Director shall publish in the Federal Register—

“(i) guidelines that describe the process for applying for grants and the criteria for awarding grants; and

“(ii) an explanation of any differences between the guidelines and the recommendations made pursuant to paragraph (13).

“(B) The criteria for awarding grants under subsection (b)(1)(A) shall include the extent to which the grant would enhance the daily operations of the applicant and the impact of such a grant on the protection of lives and property.

“(15) PEER REVIEW.—The Director shall, after consultation with national fire service organizations, appoint fire service personnel to conduct peer review of applications received under paragraph (5). In making grants under this section, the Director shall consider the results of such peer review evaluations.

“(16) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to activities under paragraphs (13) and (15).

“(17) ACCOUNTING DETERMINATION.—Notwithstanding any other provision of law, rule, regulation, or guidance, for purposes of receiving assistance under this section, equipment costs shall include, but not be limited to, all costs attributable to any design, purchase of components, assembly, manufacture, and transportation of equipment not otherwise commercially available.”;

(10) by amending subsection (d) to read as follows:

“(d) DEFINITIONS.—In this section—

“(1) the term ‘Director’ means the Director, acting through the Administrator;

“(2) the term ‘nonaffiliated EMS organization’ means a public or private nonprofit emergency medical services organization that is not affiliated with a hospital and does not serve a geographic area in which the Director finds that emergency medical services are adequately provided by a fire department; and

“(3) the term ‘State’ includes the District of Columbia and the Commonwealth of Puerto Rico.”; and

(11) in subsection (e)(1), by striking the first sentence and inserting “There are authorized to be appropriated for the purposes of this section \$900,000,000 for fiscal year 2005, \$950,000,000 for fiscal year 2006, and \$1,000,000,000 for each of the fiscal years 2007 through 2009.”.

SEC. 3603. REPORT ON ASSISTANCE TO FIREFIGHTERS.

(a) STUDY AND REPORT ON ASSISTANCE TO FIREFIGHTERS.—

(1) STUDY.—The Administrator of the United States Fire Administration, in conjunction with the National Fire Protection Association, shall conduct a study to—

(A) define the current roles and activities associated with the fire services on a national, State, regional, and local level;

(B) identify the equipment, staffing, and training required to fulfill the roles and activities defined under subparagraph (A);

(C) conduct an assessment to identify gaps between what fire departments currently possess and what they require to meet the equipment, staffing, and training needs identified under subparagraph (B) on a national and State-by-State basis; and

(D) measure the impact of the Assistance to Firefighters Grant program under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) in meeting the needs of the fire services identified in the report submitted to Congress under section 1701(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and filling the gaps identified under subparagraph (C).

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives a report on the findings of the study described in paragraph (1).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the United States Fire Administration \$300,000 for fiscal year 2005 to carry out the study required by subsection (a).

Approved October 28, 2004.

LEGISLATIVE HISTORY—H.R. 4200 (S. 2400) (S. 2401):

HOUSE REPORTS: No. 108–491 and Pt. 2 (Comm. on Armed Services) and 108–767 (Comm. of Conference).

SENATE REPORTS: No. 108–260 accompanying S. 2400 (Comm. on Armed Services).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 19, 20, considered and passed House.

June 23, considered and passed Senate, amended, in lieu of S. 2400.

Oct. 8, House considered conference report.

Oct. 9, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Oct. 28, Presidential statement.



Public Law 108–376
108th Congress

An Act

Oct. 30, 2004
[H.R. 2010]

To protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the United States House of Representatives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

48 USC 1732
note.

SECTION 1. FINDINGS.

Congress finds the following:

(1) It is in the national interest that qualifying members of the Armed Forces on active duty and other overseas voters be allowed to vote in Federal elections.

(2) Since 1980, when the first election for the Congressional Delegate from American Samoa was held, general elections have been held in the first week of November in even-numbered years and runoff elections have been held 2 weeks later.

(3) This practice of holding a run-off election 2 weeks after a general election deprives members of the Armed Forces on active duty and other overseas voters of the opportunity to participate in the Federal election process in American Samoa.

(4) Prior to and since September 11, 2001, and due to limited air service, mail delays, and other considerations, it has been and remains impossible for absentee ballots to be prepared and returned within a 2-week period.

(5) American Samoa law requiring members of the Armed Forces on active duty and other overseas voters to register in person also prevents participation in the Federal election process and is contrary to the Uniformed and Overseas Citizens Absentee Voting Act.

(6) Given that 49 states elect their Representatives to the United States House of Representatives by plurality, it is in the national interest for American Samoa to do the same until such time as the American Samoa Legislature establishes primary elections and declares null and void the local practice of requiring members of the Armed Forces on active duty and other overseas voters to register in person which is contrary to the federal Uniformed and Overseas Citizens Absentee Voting Act.

48 USC 1732.

SEC. 2. PLURALITY OF VOTES REQUIRED FOR ELECTION OF DELEGATE.

Section 2 of the Act entitled “An Act to provide that the Territory of American Samoa be represented by a nonvoting Delegate

to the United States House of Representatives, and for other purposes”, approved October 31, 1978 (48 U.S.C. 1732; Public Law 95–556) is amended—

(1) in subsection (a)—

(A) by striking “majority” and inserting “plurality” the first place it appears; and

(B) by striking “If no candidate” and all that follows through “office of Delegate.”; and

(2) by adding at the end the following new subsections:

“(c) ESTABLISHMENT OF PRIMARY ELECTIONS.—The legislature of American Samoa may, but is not required to, provide for primary elections for the election of Delegate.

“(d) EFFECT OF ESTABLISHMENT OF PRIMARY ELECTIONS.—Notwithstanding subsection (a), if the legislature of American Samoa provides for primary elections for the election of Delegate, the Delegate shall be elected by a majority of votes cast in any subsequent general election for the office of Delegate for which such primary elections were held.”.

SEC. 3. EFFECTIVE DATES.

48 USC 1732
note.

The amendments made by paragraph (1) of section 2 shall take effect on January 1, 2006. The amendment made by paragraph (2) of section 2 shall take effect on January 1, 2005.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 2010:

HOUSE REPORTS: No. 108–515 (Comm. on Resources).

SENATE REPORTS: No. 108–377 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 14, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–377
108th Congress

An Act

Oct. 30, 2004
[H.R. 2023]

To give a preference regarding States that require schools to allow students to self-administer medication to treat that student's asthma or anaphylaxis, and for other purposes.

Asthmatic
Schoolchildren's
Treatment and
Health
Management Act
of 2004.
42 USC 201 note.
42 USC 280g
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Asthmatic Schoolchildren’s Treatment and Health Management Act of 2004”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Asthma is a chronic condition requiring lifetime, ongoing medical intervention.

(2) In 1980, 6,700,000 Americans had asthma.

(3) In 2001, 20,300,000 Americans had asthma; 6,300,000 children under age 18 had asthma.

(4) The prevalence of asthma among African-American children was 40 percent greater than among Caucasian children, and more than 26 percent of all asthma deaths are in the African-American population.

(5) In 2000, there were 1,800,000 asthma-related visits to emergency departments (more than 728,000 of these involved children under 18 years of age).

(6) In 2000, there were 465,000 asthma-related hospitalizations (214,000 of these involved children under 18 years of age).

(7) In 2000, 4,487 people died from asthma, and of these 223 were children.

(8) According to the Centers for Disease Control and Prevention, asthma is a common cause of missed school days, accounting for approximately 14,000,000 missed school days annually.

(9) According to the New England Journal of Medicine, working parents of children with asthma lose an estimated \$1,000,000,000 a year in productivity.

(10) At least 30 States have legislation protecting the rights of children to carry and self-administer asthma metered-dose inhalers, and at least 18 States expand this protection to epinephrine auto-injectors.

(11) Tragic refusals of schools to permit students to carry their inhalers and auto-injectable epinephrine have occurred, some resulting in death and spawning litigation.

(12) School district medication policies must be developed with the safety of all students in mind. The immediate and correct use of asthma inhalers and auto-injectable epinephrine are necessary to avoid serious respiratory complications and improve health care outcomes.

(13) No school should interfere with the patient-physician relationship.

(14) Anaphylaxis, or anaphylactic shock, is a systemic allergic reaction that can kill within minutes. Anaphylaxis occurs in some asthma patients. According to the American Academy of Allergy, Asthma, and Immunology, people who have experienced symptoms of anaphylaxis previously are at risk for subsequent reactions and should carry an epinephrine auto-injector with them at all times, if prescribed.

(15) An increasing number of students and school staff have life-threatening allergies. Exposure to the affecting allergen can trigger anaphylaxis. Anaphylaxis requires prompt medical intervention with an injection of epinephrine.

SEC. 3. PREFERENCE FOR STATES THAT ALLOW STUDENTS TO SELF-ADMINISTER MEDICATION TO TREAT ASTHMA AND ANAPHYLAXIS.

(a) **AMENDMENTS.**—Section 399L of the Public Health Service Act (42 U.S.C. 280g) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) **PREFERENCE FOR STATES THAT ALLOW STUDENTS TO SELF-ADMINISTER MEDICATION TO TREAT ASTHMA AND ANAPHYLAXIS.**—

“(1) **PREFERENCE.**—The Secretary, in making any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies the following:

“(A) **IN GENERAL.**—The State must require that each public elementary school and secondary school in that State will grant to any student in the school an authorization for the self-administration of medication to treat that student’s asthma or anaphylaxis, if—

“(i) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

“(ii) the student has demonstrated to the health care practitioner (or such practitioner’s designee) and the school nurse (if available) the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;

“(iii) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

“(iv) the student’s parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under clause (iii) and other documents related to liability.

“(B) SCOPE.—An authorization granted under subparagraph (A) must allow the student involved to possess and use his or her medication—

“(i) while in school;

“(ii) while at a school-sponsored activity, such as a sporting event; and

“(iii) in transit to or from school or school-sponsored activities.

“(C) DURATION OF AUTHORIZATION.—An authorization granted under subparagraph (A)—

“(i) must be effective only for the same school and school year for which it is granted; and

“(ii) must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

“(D) BACKUP MEDICATION.—The State must require that backup medication, if provided by a student’s parent or guardian, be kept at a student’s school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

“(E) MAINTENANCE OF INFORMATION.—The State must require that information described in subparagraphs (A)(iii) and (A)(iv) be kept on file at the student’s school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

“(2) RULE OF CONSTRUCTION.—Nothing in this subsection creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

“(3) DEFINITIONS.—For purposes of this subsection:

“(A) The terms ‘elementary school’ and ‘secondary school’ have the meaning given to those terms in section 9101 of the Elementary and Secondary Education Act of 1965.

“(B) The term ‘health care practitioner’ means a person authorized under law to prescribe drugs subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

“(C) The term ‘medication’ means a drug as that term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act and includes inhaled bronchodilators and auto-injectable epinephrine.

“(D) The term ‘self-administration’ means a student’s discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to a prescription or written direction from a health care practitioner.”.

(b) APPLICABILITY.—The amendments made by this section shall apply only with respect to grants made on or after the date that is 9 months after the date of the enactment of this Act.

42 USC 280g
note.

SEC. 4. SENSE OF CONGRESS COMMENDING CDC FOR ITS STRATEGIES FOR ADDRESSING ASTHMA WITHIN A COORDINATED SCHOOL HEALTH PROGRAM.

The Congress—

(1) commends the Centers for Disease Control and Prevention for identifying and creating “Strategies for Addressing Asthma Within a Coordinated School Program” for schools to address asthma; and

(2) encourages all schools to review these strategies and adopt policies that will best meet the needs of their student population.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 2023 (S. 2815):

HOUSE REPORTS: No. 108–606, Pt. 1 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 108–395 accompanying S. 2815 (Comm. on Health,
Education, Labor, and Pensions)

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–378
108th Congress

An Act

Oct. 30, 2004
[H.R. 2400]

To amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JUDICIAL STRUCTURE OF GUAM.

(a) JUDICIAL AUTHORITY; COURTS.—Section 22(a) of the Organic Act of Guam (48 U.S.C. 1424(a)) is amended to read as follows:

“(a)(1) The judicial authority of Guam shall be vested in a court established by Congress designated as the ‘District Court of Guam’, and a judicial branch of Guam which branch shall constitute a unified judicial system and include an appellate court designated as the ‘Supreme Court of Guam’, a trial court designated as the ‘Superior Court of Guam’, and such other lower local courts as may have been or shall hereafter be established by the laws of Guam.

“(2) The Supreme Court of Guam may, by rules of such court, create divisions of the Superior Court of Guam and other local courts of Guam.

“(3) The courts of record for Guam shall be the District Court of Guam, the Supreme Court of Guam, the Superior Court of Guam (except the Traffic and Small Claims divisions of the Superior Court of Guam) and any other local courts or divisions of local courts that the Supreme Court of Guam shall designate.”.

(b) JURISDICTION AND POWERS OF LOCAL COURTS.—Section 22A of the Organic Act of Guam (48 U.S.C. 1424–1) is amended to read as follows:

“SEC. 22A. (a) The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall—

“(1) have original jurisdiction over proceedings necessary to protect its appellate jurisdiction and supervisory authority and such other original jurisdiction as the laws of Guam may provide;

“(2) have jurisdiction to hear appeals over any cause in Guam decided by the Superior Court of Guam or other courts established under the laws of Guam;

“(3) have jurisdiction to issue all orders and writs in aid of its appellate, supervisory, and original jurisdiction, including those orders necessary for the supervision of the judicial branch of Guam;

“(4) have supervisory jurisdiction over the Superior Court of Guam and all other courts of the judicial branch of Guam;

“(5) hear and determine appeals by a panel of three of the justices of the Supreme Court of Guam and a concurrence of two such justices shall be necessary to a decision of the Supreme Court of Guam on the merits of an appeal;

“(6) make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the judicial branch of Guam, including procedures for the determination of an appeal en banc; and

“(7) govern attorney and judicial ethics and the practice of law in Guam, including admission to practice law and the conduct and discipline of persons admitted to practice law.

“(b) The Chief Justice of the Supreme Court of Guam—

“(1) shall preside over the Supreme Court unless disqualified or unable to act;

“(2) shall be the administrative head of, and have general supervisory power over, all departments, divisions, and other instrumentalities of the judicial branch of Guam; and

“(3) may issue such administrative orders on behalf of the Supreme Court of Guam as necessary for the efficient administration of the judicial branch of Guam.

“(c) The Chief Justice of the Supreme Court of Guam, or a justice sitting in place of such Chief Justice, may make any appropriate order with respect to—

“(1) an appeal prior to the hearing and determination of that appeal on the merits; or

“(2) dismissal of an appeal for lack of jurisdiction or failure to take or prosecute the appeal in accordance with applicable laws or rules of procedure.

“(d) Except as granted to the Supreme Court of Guam or otherwise provided by this Act or any other Act of Congress, the Superior Court of Guam and all other local courts established by the laws of Guam shall have such original and appellate jurisdiction over all causes in Guam as the laws of Guam provide, except that such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam under section 22 of this Act.

“(e) The qualifications and duties of the justices and judges of the Supreme Court of Guam, the Superior Court of Guam, and all other local courts established by the laws of Guam shall be governed by the laws of Guam and the rules of such courts.”.

(c) TECHNICAL AMENDMENTS.—(1) Section 22C(a) of the Organic Act of Guam (48 U.S.C. 1424-3(a)) is amended by inserting “which is known as the Supreme Court of Guam,” after “appellate court authorized by section 22A(a) of this Act.”.

(2) Section 22C(d) of the Organic Act of Guam (48 U.S.C. 1424-3(d)) is amended—

(A) by inserting “, which is known as the Supreme Court of Guam,” after “appellate court provided for in section 22A(a) of this Act”; and

(B) by striking “taken to the appellate court” and inserting “taken to such appellate court”.

SEC. 2. APPEALS TO UNITED STATES SUPREME COURT.

Section 22B of the Organic Act of Guam (48 U.S.C. 1424–2) is amended by striking “: *Provided*, That” and all that follows through the end and inserting a period.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 2400:

HOUSE REPORTS: No. 108–638 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 13, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–379
108th Congress

An Act

To amend the Agricultural Adjustment Act to remove the requirement that processors be members of an agency administering a marketing order applicable to pears.

Oct. 30, 2004
[H.R. 2984]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PEAR MARKETING ORDERS.

Section 8c(7)(C) of the Agricultural Adjustment Act (7 U.S.C. 608c(7)(C)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended in the last sentence—

- (1) by striking “or pears”; and
- (2) by striking “: *Provided,*” and all that follows through “be equal”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 2984:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–380
108th Congress

An Act

Oct. 30, 2004
[H.R. 3056]

To clarify the boundaries of the John H. Chafee Coast Barrier Resources System
Cedar Keys Unit P25 on Otherwise Protected Area P25P.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

16 USC 3503
note.

**SECTION 1. REPLACEMENT OF CERTAIN JOHN H. CHAFEE COASTAL
BARRIER RESOURCES SYSTEM MAP.**

(a) IN GENERAL.—Of the 2 maps subtitled “P25/P25P” that relate to the John H. Chafee Coastal Barrier Resources System unit designated as Coastal Barrier Resources System Cedar Keys Unit P25/P25P and are included in the set of maps entitled “Coastal Barrier Resources System” referred to in section 4(a) of the Coastal Barrier Resources Act (16 U.S.C. 3503(a)), the map depicting the northernmost area of that unit is hereby replaced by another map relating to that unit entitled “John H. Chafee Coastal Barrier Resources System Cedar Keys Unit P25/P25P” and dated February 9, 2004.

(b) AVAILABILITY.—The Secretary of the Interior shall keep the replacement map referred to in subsection (a) on file and available for inspection in accordance with section 4(b) of the Coastal Barrier Resources Act (16 U.S.C. 3503(b)).

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 3056:

HOUSE REPORTS: No. 108–641 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 13, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–381
108th Congress

An Act

To provide for the conveyance of several small parcels of National Forest System land in the Apalachicola National Forest, Florida, to resolve boundary discrepancies involving the Mt. Trial Primitive Baptist Church of Wakulla County, Florida, and for other purposes.

Oct. 30, 2004
[H.R. 3217]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LAND CONVEYANCE, APALACHICOLA NATIONAL FOREST, FLORIDA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of Agriculture may convey, without consideration, to the Mt. Trial Primitive Baptist Church of Wakulla County, Florida, all right, title, and interest of the United States in and to four parcels of real property in the Apalachicola National Forest, Florida, located in section 5 of township 5 south, range 2 west, Tallahassee meridian, and consisting of approximately 9.95 acres, 0.09 acres, 0.09 acres, and 0.096 acres, respectively, as depicted on a map, plat number 5–118, prepared as part of a 1983 Forest Service survey.

(b) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by the Secretary.

SEC. 2. ADDITIONAL TERMS AND CONDITIONS.

The Secretary may require such additional terms and conditions in connection with the conveyance under section 1 as the Secretary considers appropriate to protect the interests of the United States.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 3217:

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 17, considered and passed House.
Vol. 150 (2004): Oct. 11, considered and passed Senate.



Public Law 108–382
108th Congress

An Act

Oct. 30, 2004
[H.R. 3391]

To authorize the Secretary of the Interior to convey certain lands and facilities
of the Provo River Project.

Provo River
Project Transfer
Act.
Utah.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Provo River Project Transfer
Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **AGREEMENT.**—The term “Agreement” means the contract numbered 04–WC–40–8950 and entitled “Agreement Among the United States, the Provo River Water Users Association, and the Metropolitan Water District of Salt Lake & Sandy to Transfer Title to Certain Lands and Facilities of the Provo River Project” and shall include maps of the land and features to be conveyed under the Agreement.

(2) **ASSOCIATION.**—The term “Association” means the Provo River Water Users Association, a nonprofit corporation organized under the laws of the State.

(3) **DISTRICT.**—The term “District” means the Metropolitan Water District of Salt Lake & Sandy, a political subdivision of the State.

(4) **PLEASANT GROVE PROPERTY.**—

(A) **IN GENERAL.**—The term “Pleasant Grove Property” means the 3.79-acre parcel of land acquired by the United States for the Provo River Project, Deer Creek Division, located at approximately 285 West 1100 North, Pleasant Grove, Utah, as in existence on the date of enactment of this Act.

(B) **INCLUSIONS.**—The term “Pleasant Grove Property” includes the office building and shop complex constructed by the Association on the parcel of land described in subparagraph (A).

(5) **PROVO RESERVOIR CANAL.**—The term “Provo Reservoir Canal” means the canal, and any associated land, rights-of-way, and facilities acquired, constructed, or improved by the United States as part of the Provo River Project, Deer Creek Division, extending from, and including, the Murdock Diversion Dam at the mouth of Provo Canyon, Utah, to and including the Provo Reservoir Canal Siphon and Penstock, as in existence on the date of enactment of this Act.

(6) **SALT LAKE AQUEDUCT.**—The term “Salt Lake Aqueduct” means the aqueduct and associated land, rights-of-way, and facilities acquired, constructed or improved by the United States as part of the Provo River Project, Aqueduct Division, extending from, and including, the Salt Lake Aqueduct Intake at the base of Deer Creek Dam to and including the Terminal Reservoirs located at 3300 South St. and Interstate Route 215 in Salt Lake City, Utah, as in existence on the date of enactment of this Act.

(7) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior or a designee of the Secretary.

(8) **STATE.**—The term “State” means the State of Utah.

SEC. 3. CONVEYANCE OF LAND AND FACILITIES.

(a) CONVEYANCES TO ASSOCIATION.—

(1) PROVO RESERVOIR CANAL.—

(A) **IN GENERAL.**—In accordance with the terms and conditions of the Agreement and subject to subparagraph (B), the Secretary shall convey to the Association, all right, title, and interest of the United States in and to the Provo Reservoir Canal.

(B) **CONDITION.**—The conveyance under subparagraph (A) shall not be completed until the Secretary executes the Agreement and accepts future arrangements entered into by the Association, the District, the Central Utah Water Conservancy District, and the Jordan Valley Water Conservancy District providing for the operation, ownership, financing, and improvement of the Provo Reservoir Canal.

(2) **PLEASANT GROVE PROPERTY.**—In accordance with the terms and conditions of the Agreement, the Secretary shall convey to the Association, all right, title, and interest of the United States in and to the Pleasant Grove Property.

(b) CONVEYANCE TO DISTRICT.—

(1) **IN GENERAL.**—In accordance with the terms and conditions of the Agreement, and subject to the execution of the Agreement by the Secretary, the Secretary shall convey to the District, all right, title, and interest of the United States in and to Salt Lake Aqueduct.

(2) EASEMENTS.—

(A) **IN GENERAL.**—As part of the conveyance under paragraph (1), the Secretary shall grant to the District permanent easements to—

(i) the National Forest System land on which the Salt Lake Aqueduct is located; and

(ii) land of the Aqueduct Division of the Provo River Project that intersects the parcel of non-Federal land authorized to be conveyed to the United States under section 104(a) of Public Law 107-329 (116 Stat. 2816).

(B) **PURPOSE.**—The easements conveyed under subparagraph (A) shall be for the use, operation, maintenance, repair, improvement, or replacement of the Salt Lake Aqueduct by the District.

(C) **LIMITATION.**—The United States shall not carry out any activity on the land subject to the easements conveyed under subparagraph (A) that would materially

interfere with the use, operation, maintenance, repair, improvement, or replacement of the Salt Lake Aqueduct by the District.

(D) BOUNDARIES.—The boundaries of the easements conveyed under subparagraph (A) shall be determined by the Secretary, in consultation with the District and the Secretary of Agriculture.

(E) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(i) IN GENERAL.—On conveyance of the easement to the land described in subparagraph (A)(ii), the Secretary, subject to the easement, shall transfer to the Secretary of Agriculture administrative jurisdiction over the land.

(ii) ADMINISTRATIVE SITE.—The land transferred under clause (i) shall be administered by the Secretary of Agriculture as an administrative site.

(F) ADMINISTRATION.—The easements conveyed under subparagraph (A) shall be administered by the Secretary of Agriculture in accordance with section 501(b)(3) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(b)(3)).

(c) CONSIDERATION.—

(1) ASSOCIATION.—

(A) IN GENERAL.—In exchange for the conveyance under subsection (a)(1), the Association shall pay the Secretary an amount that is equal to the sum of—

(i) the net present value of any remaining debt obligation of the United States with respect to the Provo Reservoir Canal; and

(ii) the net present value of any revenues from the Provo Reservoir Canal that, based on past history—

(I) would be available to the United States but for the conveyance of the Provo Reservoir Canal under subsection (a)(1); and

(II) would be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391), and credited under the terms of Reclamation Manual/Directives and Standards PEC 03-01.

(B) DEDUCTION.—In determining the net present values under clauses (i) and (ii) of subparagraph (A), the Association may deduct from the net present value such sums as are required for the reimbursement described in the Agreement.

(2) DISTRICT.—

(A) IN GENERAL.—In exchange for the conveyance under subsection (b)(1), the District shall pay the Secretary an amount that is equal to the sum of—

(i) the net present value of any remaining debt obligation of the United States with respect to the Salt Lake Aqueduct; and

(ii) the net present value of any revenues from the Salt Lake Aqueduct that, based on past history—

(I) would have been available to the United States but for the conveyance of the Salt Lake Aqueduct under subsection (b)(1); and

(II) would be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391), and credited under the terms of Reclamation Manual/Directives and Standards PEC 03-01.

(B) DEDUCTION.—In determining the net present values under clauses (i) and (ii) of subparagraph (A), the District may deduct from the net present value such sums as are required for the reimbursement described in the Agreement.

(d) PAYMENT OF COSTS.—In addition to amounts paid to the Secretary under subsection (c), the Association and the District shall, in accordance with the Agreement, pay the Secretary—

(1) any necessary and reasonable administrative and real estate transfer costs incurred by the Secretary in carrying out the conveyance; and

(2) one-half of any necessary and reasonable costs associated with complying with—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C)(i) the National Historic Preservation Act (16 U.S.C. 470 et seq.); and

(ii) any other Federal cultural resource laws.

(e) COMPLIANCE WITH ENVIRONMENTAL LAWS.—

(1) IN GENERAL.—Before conveying land and facilities under subsections (a) and (b), the Secretary shall comply with all applicable requirements under—

Applicability.

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C) any other law applicable to the land and facilities.

(2) EFFECT.—Nothing in this Act modifies or alters any obligations under—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 4. EXISTING CONTRACTS.

(a) DEER CREEK DIVISION CONSTRUCTION CONTRACT.—Notwithstanding the conveyances under subsections (a) and (b)(1) of section 3, and subject to the terms of the Agreement, any portion of the Deer Creek Division, Provo River Project, Utah, that is not conveyed under that section shall continue to be operated and maintained by the Association, in accordance with the contract numbered 11r-874, dated June 27, 1936, and entitled the “Contract Between the United States and Provo River Water Users Association Providing for the Construction of the Deer Creek Division of the Provo River Project, Utah”.

(b) PROVO RIVER PROJECT AND JORDAN AQUEDUCT SYSTEM CONTRACTS.—Subject to the terms of the Agreement, any written contract of the United States in existence on the date of enactment of this Act relating to the operation and maintenance of any division or facility of the Provo River Project or the Jordan Aqueduct System

is confirmed and declared to be a valid contract of the United States that is enforceable in accordance with the express terms of the contract.

(c) **USE OF CENTRAL UTAH PROJECT WATER.**—

(1) **IN GENERAL.**—Subject to paragraph (2), any entity with contractual Provo Reservoir Canal or Salt Lake Aqueduct capacity rights in existence on the date of enactment of this Act may, in addition to the uses described in the existing contracts, use the capacity rights, without additional charge or further approval from the Secretary, to transport Central Utah Project water on behalf of the entity or others.

(2) **LIMITATIONS.**—An entity shall not use the capacity rights to transport Central Utah Project water under paragraph (1) unless—

(A) the transport of the water is expressly authorized by the Central Utah Water Conservancy District;

(B) the use of the water facility to transport the Central Utah Project water is expressly authorized by the entity responsible for operation and maintenance of the facility; and

(C) carrying Central Utah Project water through Provo River Project facilities would not—

(i) materially impair the ability of the Central Utah Water Conservancy District or the Secretary to meet existing express environmental commitments for the Bonneville Unit; or

(ii) require the release of additional Central Utah Project water to meet those environmental commitments.

(d) **AUTHORIZED MODIFICATIONS.**—The Agreement may provide for—

(1) the modification of the 1936 Repayment Contract for the Deer Creek Division of the Provo River Project to reflect the partial prepayment, the adjustment of the annual repayment amount, and the transfer of the Provo Reservoir Canal and the Pleasant Grove Property; and

(2) the modification or termination of the 1938 Repayment Contract for the Aqueduct Division of the Provo River Project to reflect the complete payout and transfer of all facilities of the Aqueduct Division.

(e) **EFFECT OF ACT.**—Nothing in this Act impairs any contract (including subscription contracts) in effect on the date of enactment of this Act that allows for or creates a right to convey water through the Provo Reservoir Canal.

SEC. 5. EFFECT OF CONVEYANCE.

On conveyance of any land or facility under subsection (a) or (b)(1) of section 3—

(1) the land and facilities shall no longer be part of a Federal reclamation project;

(2) the Association and the District shall not be entitled to receive any future reclamation benefits with respect to the land and facilities, except for benefits that would be available to other nonreclamation facilities; and

(3) the United States shall not be liable for damages arising out of any act, omission, or occurrence relating to the land and facilities, but shall continue to be liable for damages caused

by acts of negligence committed by the United States or by any employee or agent of the United States before the date of conveyance, consistent with chapter 171 of title 28, United States Code.

SEC. 6. REPORT.

If a conveyance required under subsection (a) or (b)(1) of section 3 is not completed by the date that is 18 months after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

- (1) describes the status of the conveyance;
- (2) describes any obstacles to completing the conveyance;
- and
- (3) specifies an anticipated date for completion of the conveyance.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 3391 (S. 1876):

HOUSE REPORTS: No. 108–719 (Comm. on Resources).

SENATE REPORTS: No. 108–365 accompanying S. 1876 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 4, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–383
108th Congress

An Act

Oct. 30, 2004
[H.R. 3478]

National
Archives and
Records
Administration
Efficiency Act of
2004.
44 USC 101 note.

To amend title 44, United States Code, to improve the efficiency of operations by the National Archives and Records Administration and to reauthorize the National Historical Publications and Records Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Archives and Records Administration Efficiency Act of 2004”.

SEC. 2. EXTENSION OF RECORDS RETENTION PERIODS.

(a) **EXTENSION OF RECORDS RETENTION PERIODS BY REGULATION.**—Section 2909 of title 44, United States Code, is amended—

(1) by striking “, upon the submission of evidence of need,”;

(2) by striking “; and, in accordance with regulations promulgated by him,” and inserting “, and”; and

(3) by adding at the end the following: “The Archivist shall promulgate regulations in accordance with section 2104(a) of this title to implement this section.”.

(b) **CONFORMING AMENDMENT.**—Subsection (d) of section 3303a of title 44, United States Code, is amended by striking the second sentence.

SEC. 3. AUTHORITY FOR RECORDS CENTER REVOLVING FUND TO BE USED FOR THE PURCHASE AND CARE OF UNIFORMS FOR RECORDS CENTERS EMPLOYEES.

Subsection (a) under the heading “RECORDS CENTER REVOLVING FUND” in title IV of the Independent Agencies Appropriations Act, 2000 (Public Law 106–58; 113 Stat. 460; 44 U.S.C. 2901 note), is amended by inserting after “expenses” in the first sentence the following: “(including expenses for uniforms or allowances for uniforms as authorized by subchapter I of chapter 59 of title 5)”.

SEC. 4. AUTHORITY TO CHARGE FEES FOR PUBLIC USE OF FACILITIES OF NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

(a) **PRESIDENTIAL ARCHIVAL DEPOSITORIES.**—Subsection (e) of section 2112 of title 44, United States Code, is amended by striking “space” and inserting “space, or for the occasional, non-official use of rooms and spaces (and services related to such use),”.

(b) **NATIONAL ARCHIVES BUILDING AND OTHER BUILDINGS USED FOR RECORD STORAGE.**—Section 2903 of title 44, United States Code, is amended—

(1) by inserting “(a)” before “The Archivist”; and

(2) by adding at the end the following new subsection:

“(b) When the Archivist considers it to be in the public interest, the Archivist may charge and collect reasonable fees from the public for the occasional, non-official use of rooms and spaces, and services related to such use, in the buildings subject to this section. Fees collected under this subsection shall be paid into an account in the National Archives Trust Fund and shall be held, administered, and expended for the benefit and in the interest of the national archival and records activities administered by the National Archives and Records Administration, including educational and public program purposes.”.

SEC. 5. AUTHORITY TO USE COOPERATIVE AGREEMENTS WITH STATE AND LOCAL GOVERNMENTS, EDUCATIONAL INSTITUTIONS, AND OTHER PUBLIC AND NONPROFIT ORGANIZATIONS TO FURTHER NARA PROGRAMS.

(a) **AUTHORITY.**—Chapter 21 of title 44, United States Code, is amended by adding at the end the following new section:

“§ 2119. Cooperative agreements

“(a) **AUTHORITY.**—The Archivist may enter into cooperative agreements pursuant to section 6305 of title 31 that involve the transfer of funds from the National Archives and Records Administration to State and local governments, other public entities, educational institutions, or private nonprofit organizations (including foundations or institutes organized to support the National Archives and Records Administration or the Presidential archival depositories operated by it) for the public purpose of carrying out programs of the National Archives and Records Administration.

“(b) **LIMITATIONS.**—Not more than \$25,000 may be transferred under a cooperative agreement entered into as authorized by subsection (a). Not more than a total of \$75,000 may be transferred under such agreements in any fiscal year.

“(c) **REPORT.**—Not later than December 31st of each year, the Archivist shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the provisions, amount, and duration of each cooperative agreement entered into as authorized by subsection (a) during the preceding fiscal year.”.

Deadline.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2119. Cooperative agreements.”.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS THROUGH FISCAL YEAR 2009 FOR NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION.

Section 2504(f)(1) of title 44, United States Code, is amended—

(1) in subparagraph (N), by striking “and”;

(2) in subparagraph (O), by striking the period and inserting a semicolon; and

(3) by adding at the end of the following new subparagraphs:

“(P) \$10,000,000 for fiscal year 2006;

“(Q) \$10,000,000 for fiscal year 2007;

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“(R) \$10,000,000 for fiscal year 2008; and
“(S) \$10,000,000 for fiscal year 2009.”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 3478:

HOUSE REPORTS: No. 108–403 (Comm. on Government Reform).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 13, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–384
108th Congress

An Act

To provide for the control and eradication of the brown tree snake on the island of Guam and the prevention of the introduction of the brown tree snake to other areas of the United States, and for other purposes.

Oct. 30, 2004
[H.R. 3479]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Brown Tree Snake Control and Eradication Act of 2004”.

Brown Tree
Snake Control
and Eradication
Act of 2004.
7 USC 8501 note.

SEC. 2. DEFINITIONS.

7 USC 8501.

In this Act:

(1) **BROWN TREE SNAKE.**—The term “brown tree snake” means the species of the snake *Boiga irregularis*.

(2) **COMPACT OF FREE ASSOCIATION.**—The term “Compact of Free Association” means the Compacts of Free Association entered into between the United States and the governments of the Federated States of Micronesia and the Republic of the Marshall Islands, as approved by and contained in Public Law 108–188 (117 Stat. 2720; 48 U.S.C. 1921 et seq.), and the Compact of Free Association entered into between the United States and the government of the Republic of Palau, as approved by and contained in Public Law 99–658 (100 Stat. 3673; 48 U.S.C. 1931 et seq.).

(3) **FREELY ASSOCIATED STATES.**—The term “Freely Associated States” means the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

(4) **INTRODUCTION.**—The terms “introduce” and “introduction” refer to the expansion of the brown tree snake outside of the range where this species is endemic.

(5) **SECRETARY.**—The term “Secretary concerned” means—

(A) the Secretary of the Interior, with respect to matters under the jurisdiction of the Department of the Interior; and

(B) the Secretary of Agriculture, with respect to matters under the jurisdiction of the Department of Agriculture.

(6) **SECRETARIES.**—The term “Secretaries” means both the Secretary of the Interior and the Secretary of Agriculture.

(7) **TECHNICAL WORKING GROUP.**—The term “Technical Working Group” means Brown Tree Snake Technical Working Group established under the authority of section 1209 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4728).

(8) TERRITORIAL.—The term “territorial”, when used to refer to a government, means the Government of Guam, the Government of American Samoa, and the Government of the Commonwealth of the Northern Mariana Islands, as well as autonomous agencies and instrumentalities of such a government.

(9) UNITED STATES.—The term “United States”, when used in the geographic sense, means the several States, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the United States Virgin Islands, any other possession of the United States, and any waters within the jurisdiction of the United States.

7 USC 8502.

SEC. 3. SENSE OF CONGRESS REGARDING NEED FOR IMPROVED AND BETTER COORDINATED FEDERAL POLICY FOR BROWN TREE SNAKE INTRODUCTION, CONTROL, AND ERADICATION.

It is the sense of Congress that there exists a need for improved and better coordinated control, interdiction, research, and eradication of the brown tree snake on the part of the United States and other interested parties.

7 USC 8503.

SEC. 4. BROWN TREE SNAKE CONTROL, INTERDICTION, RESEARCH AND ERADICATION.

(a) FUNDING AUTHORITY.—Subject to the availability of appropriations to carry out this section, the Secretaries shall provide funds to support brown tree snake control, interdiction, research, and eradication efforts carried out by the Department of the Interior and the Department of Agriculture, other Federal agencies, States, territorial governments, local governments, and private sector entities. Funds may be provided through grants, contracts, reimbursable agreements, or other legal mechanisms available to the Secretaries for the transfer of Federal funds.

(b) AUTHORIZED ACTIVITIES.—Brown tree snake control, interdiction, research, and eradication efforts authorized by this section shall include at a minimum the following:

(1) Expansion of science-based eradication and control programs in Guam to reduce the undesirable impact of the brown tree snake in Guam and reduce the risk of the introduction or spread of any brown tree snake to areas in the United States and the Freely Associated States in which the brown tree snake is not established.

(2) Expansion of interagency and intergovernmental rapid response teams in Guam, the Commonwealth of the Northern Mariana Islands, Hawaii, and the Freely Associated States to assist the governments of such areas with detecting the brown tree snake and incipient brown tree snake populations.

(3) Expansion of efforts to protect and restore native wildlife in Guam or elsewhere in the United States damaged by the brown tree snake.

(4) Establishment and sustained funding for an Animal Plant and Health Inspection Service, Wildlife Services, Operations Program State Office located in Hawaii dedicated to vertebrate pest management in Hawaii and United States Pacific territories and possessions. Concurrently, the Animal

Plant and Health Inspection Service, Wildlife Services Operations Program shall establish and sustain funding for a District Office in Guam dedicated to brown tree snake control and managed by the Hawaii State Office.

(5) Continuation, expansion, and provision of sustained research funding related to the brown tree snake, including research conducted at institutions located in areas affected by the brown tree snake.

(6) Continuation, expansion, and provision of sustained research funding for the Animal Plant and Health Inspection Service, Wildlife Services, National Wildlife Research Center of the Department of Agriculture related to the brown tree snake, including the establishment of a field station in Guam related to the control and eradication of the brown tree snake.

(7) Continuation, expansion, and provision of sustained research funding for the Fort Collins Science Center of the United States Geological Survey related to the brown tree snake, including the establishment of a field station in Guam related to the control and eradication of the brown tree snake.

(8) Expansion of long-term research into chemical, biological, and other control techniques that could lead to large-scale reduction of brown tree snake populations in Guam or other areas where the brown tree snake might become established.

(9) Expansion of short, medium, and long-term research, funded by all Federal agencies interested in or affected by the brown tree snake, into interdiction, detection, and early control of the brown tree snake.

(10) Provision of planning assistance for the construction or renovation of centralized multi-agency facilities in Guam to support Federal, State, and territorial brown tree snake control, interdiction, research and eradication efforts, including office space, laboratory space, animal holding facilities, and snake detector dog kennels.

(11) Provision of technical assistance to the Freely Associated States on matters related to the brown tree snake through the mechanisms contained within a Compact of Free Association dealing with environmental, quarantine, economic, and human health issues.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretaries to carry out this section (other than subsection (b)(10)) the following amounts:

(1) For activities conducted through the Animal and Plant Health Inspection Service, Wildlife Services, Operations, not more than \$2,600,000 for each of the fiscal years 2006 through 2010.

(2) For activities conducted through the Animal and Plant Health Inspection Service, Wildlife Services, National Wildlife Research Center, Methods Development, not more than \$1,500,000 for each of the fiscal years 2006 through 2010.

(3) For activities conducted through the Office of Insular Affairs, not more than \$3,000,000 for each of the fiscal years 2006 through 2010.

(4) For activities conducted through the Fish and Wildlife Service, not more than \$2,000,000 for each of the fiscal years 2006 through 2010.

(5) For activities conducted through the United States Geological Survey, Biological Resources, not more than \$1,500,000 for each of the fiscal years 2006 through 2010.

(d) PLANNING ASSISTANCE.—There is authorized to be appropriated to the Secretary of Agriculture and the Secretary of the Interior such amounts as may be required to carry out subsection (b)(10).

7 USC 8504.

SEC. 5. ESTABLISHMENT OF QUARANTINE PROTOCOLS TO CONTROL THE INTRODUCTION AND SPREAD OF THE BROWN TREE SNAKE.

Deadline.

(a) ESTABLISHMENT OF QUARANTINE PROTOCOLS.—Not later than two years after the date of the enactment of this Act, but subject to the memorandum of agreement required by subsection (b) with respect to Guam, the Secretaries shall establish and cause to be operated at Federal expense a system of pre-departure quarantine protocols for cargo and other items being shipped from Guam and any other United States location where the brown tree snake may become established to prevent the introduction or spread of the brown tree snake. The Secretaries shall establish the quarantine protocols system by regulation. Under the quarantine protocols system, Federal quarantine, natural resource, conservation, and law enforcement officers and inspectors may enforce State and territorial laws regarding the transportation, possession, or introduction of any brown tree snake.

Regulations.

Contracts.

(b) COOPERATION AND CONSULTATION.—The activities of the Secretaries under subsection (a) shall be carried out in cooperation with other Federal agencies and the appropriate State and territorial quarantine, natural resource, conservation, and law enforcement officers. In the case of Guam, as a precondition on the establishment of the system of pre-departure quarantine protocols under such subsection, the Secretaries shall enter into a memorandum of agreement with the Government of Guam to obtain the assistance and cooperation of the Government of Guam in establishing the system of pre-departure quarantine protocols.

(c) IMPLEMENTATION.—The system of pre-departure quarantine protocols to be established under subsection (a) shall not be implemented until funds are specifically appropriated for that purpose.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section the following amounts:

(1) To the Secretary of Agriculture, not more than \$3,000,000 for each of the fiscal years 2006 through 2010.

(2) To the Secretary of the Interior, not more than \$1,000,000 for each of the fiscal years 2006 through 2010.

7 USC 8505.

SEC. 6. TREATMENT OF BROWN TREE SNAKES AS NONMAILABLE MATTER.

A brown tree snake constitutes nonmailable matter under section 3015 of title 39, United States Code.

7 USC 8506.

SEC. 7. ROLE OF BROWN TREE SNAKE TECHNICAL WORKING GROUP.

(a) PURPOSE.—The Technical Working Group shall ensure that Federal, State, territorial, and local agency efforts concerning the brown tree snake are coordinated, effective, complementary, and cost-effective.

(b) SPECIFIC DUTIES AND ACTIVITIES.—The Technical Working Group shall be responsible for the following:

(1) The evaluation of Federal, State, and territorial activities, programs and policies that are likely to cause or promote the introduction or spread of the brown tree snake in the United States or the Freely Associated States and the preparation of recommendations for governmental actions to minimize the risk of introduction or further spread of the brown tree snake.

(2) The preparation of recommendations for activities, programs, and policies to reduce and eventually eradicate the brown tree snake in Guam or other areas within the United States where the snake may be established and the monitoring of the implementation of those activities, programs, and policies.

(3) Any revision of the Brown Tree Snake Control Plan, originally published in June 1996, which was prepared to coordinate Federal, State, territorial, and local government efforts to control, interdict, eradicate or conduct research on the brown tree snake.

(c) REPORTING REQUIREMENT.—

(1) REPORT.—Subject to the availability of appropriations for this purpose, the Technical Working Group shall prepare a report describing—

(A) the progress made toward a large-scale population reduction or eradication of the brown tree snake in Guam or other sites that are infested by the brown tree snake;

(B) the interdiction and other activities required to reduce the risk of introduction of the brown tree snake or other nonindigenous snake species in Guam, the Commonwealth of the Northern Mariana Islands, Hawaii, American Samoa, and the Freely Associated States;

(C) the applied and basic research activities that will lead to improved brown tree snake control, interdiction and eradication efforts conducted by Federal, State, territorial, and local governments; and

(D) the programs and activities for brown tree snake control, interdiction, research and eradication that have been funded, implemented, and planned by Federal, State, territorial, and local governments.

(2) PRIORITIES.—The Technical Working Group shall include in the report a list of priorities, ranked in high, medium, and low categories, of Federal, State, territorial, and local efforts and programs in the following areas:

(A) Control.

(B) Interdiction.

(C) Research.

(D) Eradication.

(3) ASSESSMENTS.—Technical Working Group shall include in the report the following assessments:

(A) An assessment of current funding shortfalls and future funding needs to support Federal, State, territorial, and local government efforts to control, interdict, eradicate, or conduct research on the brown tree snake.

(B) An assessment of regulatory limitations that hinder Federal, State, territorial, and local government efforts to control, interdict, eradicate or conduct research on the brown tree snake.

(4) SUBMISSION.—Subject to the availability of appropriations for this purpose, the Technical Working Group shall

submit the report to Congress not later than one year after the date of the enactment of this Act.

(d) MEETINGS.—The Technical Working Group shall meet at least annually.

(e) INCLUSION OF GUAM.—The Secretaries shall ensure that adequate representation is afforded to the government of Guam in the Technical Working Group.

(f) SUPPORT.—To the maximum extent practicable, the Secretaries shall make adequate resources available to the Technical Working Group to ensure its efficient and effective operation. The Secretaries may provide staff to assist the Technical Working Group in carrying out its duties and functions.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to each of the Secretaries not more than \$450,000 for each of the fiscal years 2006 through 2010 to carry out this section.

7 USC 8507.

SEC. 8. MISCELLANEOUS MATTERS.

(a) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated under this Act shall remain available until expended.

(b) ADMINISTRATIVE EXPENSES.—Of the amounts appropriated to carry out this Act for a fiscal year, the Secretaries may expend not more than five percent to cover the administrative expenses necessary to carry out this Act.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 3479:

HOUSE REPORTS: No. 108-687, Pt. 1 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–385
108th Congress

An Act

To adjust the boundary of the John Muir National Historic Site, and for other purposes.

Oct. 30, 2004
[H.R. 3706]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “John Muir National Historic Site Boundary Adjustment Act”.

John Muir
National Historic
Site Boundary
Adjustment Act.
16 USC 461 note.

SEC. 2. BOUNDARY ADJUSTMENT.

(a) **BOUNDARY.**—The boundary of the John Muir National Historic Site is adjusted to include the lands generally depicted on the map entitled “Boundary Map, John Muir National Historic Site” numbered PWR–OL 426–80,044a and dated August 2001.

(b) **LAND ACQUISITION.**—The Secretary of the Interior is authorized to acquire the lands and interests in lands identified as the “Boundary Adjustment Area” on the map referred to in subsection (a) by donation, purchase with donated or appropriated funds, exchange, or otherwise.

(c) **ADMINISTRATION.**—The lands and interests in lands described in subsection (b) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. 461 note).

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 3706:

HOUSE REPORTS: No. 108–555 (Comm. on Resources).

SENATE REPORTS: No. 108–378 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 21, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–386
108th Congress

An Act

Oct. 30, 2004
[H.R. 3797]

To authorize improvements in the operations of the government of the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2004 District of
Columbia
Omnibus
Authorization
Act.
12 USC 1811
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “2004 District of Columbia Omnibus Authorization Act”.

SEC. 2. REQUIRING SUBMISSION OF PLAN BY SCHOOL BOARD FOR ALLOCATION OF FUNDS UNDER MAYOR’S PROPOSED BUDGET.

Section 452 of the District of Columbia Home Rule Act (sec. 1–204.52, D.C. Official Code) is amended—

(1) in the first sentence, by striking “With respect to” and inserting “(a) ROLE OF MAYOR AND COUNCIL.—With respect to”;

(2) in the second sentence, by striking “This section” and inserting “This subsection”; and

(3) by adding at the end the following new subsection:

“(b) PLAN FOR ALLOCATION OF FUNDS UNDER PROPOSED BUDGET.—

Deadline.

“(1) SUBMISSION OF PLAN TO COUNCIL.—Not later than March 1 of each year or the date on which the Mayor makes the proposed annual budget for a year available under section 442 (whichever occurs later), the Board of Education shall submit to the Council a plan for the allocation of the Mayor’s proposed budget among various object classes and responsibility centers (as defined under regulations of the Board).

“(2) CONTENTS.—The plan submitted under this subsection shall include a detailed presentation of how much money will be allocated to each school, including—

“(A) a specific description of the amount of funds available to the school for which spending decisions are under the control of the school; and

“(B) a specific description of other responsibility center funds which will be spent in a manner directly benefiting the school, including funds which will be spent for personnel, equipment and supplies, property maintenance, and student services.”.

SEC. 3. MULTIYEAR CONTRACTING AUTHORITY AND LEASING AGREEMENTS FOR DISTRICT OF COLUMBIA COURTS.

(a) **AUTHORITY.**—Subchapter III of chapter 17 of title 11, District of Columbia Code, is amended by inserting after section 11–1742 the following new section:

“§ 11–1742a. Multiyear contracting authority and leasing agreements

“(a) **SEVERABLE SERVICES CONTRACTS FOR PERIODS CROSSING FISCAL YEARS.**—The Executive Officer may enter into a contract for procurement of severable services in the same manner and to the same extent as the head of an executive agency may enter into such a contract under section 303L of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253l).

“(b) **MULTIYEAR LEASING AGREEMENTS.**—

“(1) **AUTHORITY.**—The Executive Officer may enter into a lease agreement for the accommodation of the District of Columbia courts in a building which is in existence or being erected by the lessor to accommodate the District of Columbia courts.

“(2) **TERMS.**—A lease agreement under this subsection shall be on terms the Executive Officer considers to be in the interest of the Federal Government and the District of Columbia and necessary for the accommodation of the District of Columbia courts. However, the lease agreement may not bind the District of Columbia courts for more than 10 years and the obligation of amounts for a lease under this subsection is limited to the current fiscal year for which payments are due without regard to section 1341(a)(1)(B) of title 31, United States Code.

“(c) **MULTIYEAR CONTRACTS.**—

“(1) **AUTHORITY.**—The Executive Officer may enter into a multiyear contract for the acquisition of property or services in the same manner and to the same extent as an executive agency may enter into such a contract under section 304B of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c). In applying such authority—

“(A) in section 304B(a)(2)(B)—

“(i) ‘the best interests of the District of Columbia and the Federal Government’ shall be substituted for ‘the best interests of the United States’; and

“(ii) ‘the courts’ programs’ shall be substituted for ‘the agency’s programs’;

“(B) the second sentence of section 304B(b), and subsection (e), shall not apply; and

“(C) in section 304B(c), ‘\$5,000,000’ shall be substituted for ‘\$10,000,000’.

“(2) **CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING AFTER FIRST YEAR.**—In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

“(A) appropriations originally available for the performance of the contract concerned;

“(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

“(C) funds appropriated for those payments.”.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter III of chapter 17 of title 11, District of Columbia Code, is amended by inserting after the item relating to section 11–1742 the following new item:

“11–1742a. Multiyear contracting authority and leasing agreements.”.

SEC. 4. ESTABLISHMENT OF ACADEMIC YEAR AS FISCAL YEAR FOR DISTRICT OF COLUMBIA SCHOOLS.

Section 441 of the District of Columbia Home Rule Act (sec. 1–204.41, D.C. Official Code) is amended—

(1) in the first sentence, by striking “The fiscal year” and inserting “(a) IN GENERAL.—Except as provided in subsection (b), the fiscal year”;

(2) by striking the third sentence; and

(3) by adding at the end the following new subsection:

“(b) EXCEPTIONS.—

“(1) ARMORY BOARD.—The fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year.

“(2) SCHOOLS.—Effective with respect to fiscal year 2007 and each succeeding fiscal year, the fiscal year for the District of Columbia Public Schools (including public charter schools) and the University of the District of Columbia shall begin on the first day of July and end on the thirtieth day of June of each calendar year.”.

SEC. 5. EXTENSION OF DEADLINE FOR COUNCIL TO ADOPT BUDGET TO ACCOUNT FOR DAYS OF RECESS.

Section 446(a) of the District of Columbia Home Rule Act (sec. 1–204.46(a), D.C. Official Code), as amended by section 101(a), is amended by striking “50 calendar days” and inserting “56 calendar days”.

SEC. 6. EXEMPTION OF DISTRICT GOVERNMENT EMPLOYEES ON COMPRESSED SCHEDULE FROM FEDERAL OVERTIME REQUIREMENTS.

(a) IN GENERAL.—Section 7 of the Fair Labor Standards Act (29 U.S.C. 207) shall not apply to the hours of an employee of the District of Columbia government which constitute a compressed schedule.

(b) COMPRESSED SCHEDULE DEFINED.—In this section, the term “compressed schedule” means—

(1) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

(2) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays.

(c) EFFECTIVE DATE.—This section shall apply with respect to hours occurring on or after the date of the enactment of this Act.

SEC. 7. AVAILABILITY OF ENFORCED ANNUAL LEAVE OR ENFORCED LEAVE WITHOUT PAY AS DISCIPLINARY ACTION FOR CORPORATION COUNSEL ATTORNEYS.

(a) IN GENERAL.—Section 856(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1–

608.56(a), D.C. Official Code) is amended by striking “or reduction in grade,” and inserting “reduction in grade, or the placing of such attorney on enforced annual leave or enforced leave without pay,”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 8. REGULATION OF DISTRICT OF COLUMBIA BANKS BY FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) FEDERAL DEPOSIT INSURANCE ACT.—(1) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(A) in subsection (a)(1)(A), by striking “, State bank, and District bank” and inserting “and State bank”;

(B) in subsection (a), by striking paragraph (4);

(C) in subsection (q)(1), by striking “, any District bank,”;

(D) in subsection (q)(2)(A), by striking “(except a District bank),”;

(E) in subsection (q)(3), by striking “(except a District bank),”.

(2) Section 7(a)(1) of such Act (12 U.S.C. 1817(a)(1)) is amended by striking “(except a District bank)”.

(3) Section 10(b)(2)(A) of such Act (12 U.S.C. 1820(b)(2)(A)) is amended by striking “(except a District bank)”.

(4) Section 11 of such Act (12 U.S.C. 1821) is amended—

(A) in subsection (c)(2)(A)(i), by striking “or District bank”;

(B) in subsection (c)(2)(A)(ii)—

(i) by striking “or District bank”; and

(ii) by striking “or the code of law for the District of Columbia”; and

(C) in subsection (c)(3)(A), by striking “(other than a District depository institution)”.

(5) Section 18 of such Act (12 U.S.C. 1828) is amended—

(A) in section (c)(2)(A), by striking “or a District bank”;

(B) in subsection (c)(2)(B), by striking “(except a District bank),”;

(C) in subsection (c)(2)(C), by striking “a District Bank or”;

(D) in subsection (d)(1), by striking “(except a District bank)” each place such term appears;

(E) in subsection (f), by striking “or a District bank”;

(F) in subsection (i)(1), by striking “(except a District bank),”;

(G) in subsection (i)(2), by striking subparagraph (A) and by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively;

(H) in subsection (i)(2)(A) (as so redesignated by subparagraph (G)), by striking “(except a District bank);” and

(I) in subsection (i)(2)(B) (as so redesignated by subparagraph (G)), by striking “(except a District bank)”.

(b) NATIONAL HOUSING ACT.—Section 203(s)(5) of the National Housing Act (12 U.S.C. 1709(s)(5)) is amended by striking “or District bank”.

(c) BANK HOLDING COMPANY ACT.—The Bank Holding Company Act of 1956 is amended—

(1) in section 2(c) (12 U.S.C. 1841(c)), by striking paragraph (3); and

(2) in section 3(b)(1) (12 U.S.C. 1842(b)(1)), by striking “or a District bank”.

(d) BANK PROTECTION ACT OF 1968.—Section 2(1) of the Bank Protection Act of 1968 (12 U.S.C. 1881(1)) is amended by striking “and district banks”.

(e) DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.—The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) is amended—

12 USC 3206. (1) in section 207(1), by striking “and banks located in the District of Columbia”; and

12 USC 3207. (2) in section 209(1), by striking “and banks located in the District of Columbia”.

(f) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended—

(1) in section 3(a)(34) (15 U.S.C. 78c(34)), by striking “or a bank operating under the Code of Law for the District of Columbia” each place such term appears in clause (i) of subparagraphs (A), (B), (C), (D), and (F);

(2) in section 3(a)(34)(G)(i) (15 U.S.C. 78c(34)(G)(i)), by striking “, a bank in the District of Columbia examined by the Comptroller of the Currency,”;

(3) in section 3(a)(34)(H)(i) (15 U.S.C. 78c(34)(H)(i)), by striking “or a bank in the District of Columbia examined by the Comptroller of the Currency”;

(4) in section 12(i)(1) (15 U.S.C. 78l(i)(1)), by striking “and banks operating under the Code of Law for the District of Columbia”;

(5) in section 17(f)(4)(A) (15 U.S.C. 78q(f)(4)(A)), by striking “and banks operating under the Code of Law for the District of Columbia”; and

(6) in section 17(f)(4)(B) (15 U.S.C. 78q(f)(4)(B)), by striking “or a bank operating under the Code of Law for the District of Columbia”.

19 Stat. 64. (g) NATIONAL BANK RECEIVERSHIP ACT.—The National Bank Receivership Act is amended by striking section 6.

(h) FEDERAL RESERVE ACT.—The last sentence of the 3rd undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321) is amended by striking “(except within the District of Columbia)”.

12 USC 321 note. (i) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 9. EFFECTIVE DATE.

12 USC 321 note.

Except as otherwise provided, this Act and the amendments made by this Act shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 3797:

HOUSE REPORTS: No. 108–551, Pt. 1 (Comm. on Government Reform).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 21, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–387
108th Congress

An Act

Oct. 30, 2004
[H.R. 3819]

To redesignate Fort Clatsop National Memorial as the Lewis and Clark National Historical Park, to include in the park sites in the State of Washington as well as the State of Oregon, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Lewis and Clark
National
Historical Park
Designation Act.

**TITLE I—LEWIS AND CLARK NATIONAL
HISTORICAL PARK DESIGNATION ACT**

16 USC 410kkk
note.

SEC. 101. SHORT TITLE.

This title may be cited as the “Lewis and Clark National Historical Park Designation Act”.

16 USC 410kkk.

SEC. 102. DEFINITIONS.

As used in this title:

(1) **PARK.**—The term “park” means the Lewis and Clark National Historical Park designated in section 103.

(2) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

16 USC
410kkk–1.

SEC. 103. LEWIS AND CLARK NATIONAL HISTORICAL PARK.

(a) **DESIGNATION.**—In order to preserve for the benefit of the people of the United States the historic, cultural, scenic, and natural resources associated with the arrival of the Lewis and Clark Expedition in the lower Columbia River area, and for the purpose of commemorating the culmination and the winter encampment of the Lewis and Clark Expedition in the winter of 1805–1806 following its successful crossing of the North American Continent, there is designated as a unit of the National Park System the Lewis and Clark National Historical Park.

(b) **BOUNDARIES.**—The boundaries of the park are those generally depicted on the map entitled “Lewis and Clark National Historical Park, Boundary Map”, numbered 405/80027, and dated December 2003, and which includes—

(1) lands located in Clatsop County, Oregon, which are associated with the winter encampment of the Lewis and Clark Expedition, known as Fort Clatsop and designated as the Fort Clatsop National Memorial by Public Law 85–435, including the site of the salt cairn (specifically, lot number 18, block 1, Cartwright Park Addition of Seaside, Oregon) used by that expedition and adjacent portions of the old trail which led overland from the fort to the coast;

(2) lands identified as “Fort Clatsop 2002 Addition Lands” on the map referred to in this subsection; and

(3) lands located along the lower Columbia River in the State of Washington associated with the arrival of the Lewis and Clark Expedition at the Pacific Ocean in 1805, which are identified as “Station Camp”, “Clark’s Dismal Nitch”, and “Cape Disappointment” on the map referred to in this subsection.

(c) ACQUISITION OF LAND.—

(1) AUTHORIZATION.—The Secretary is authorized to acquire land, interests in land, and improvements therein within the boundaries of the park, as identified on the map referred to in subsection (b), by donation, purchase with donated or appropriated funds, exchange, transfer from any Federal agency, or by such other means as the Secretary deems to be in the public interest.

(2) CONSENT OF LANDOWNER REQUIRED.—The lands authorized to be acquired under paragraph (1) (other than corporately owned timberlands within the area identified as “Fort Clatsop 2002 Addition Lands” on the map referred to in subsection (b)) may be acquired only with the consent of the owner.

(3) ACQUISITION OF FORT CLATSOP 2002 ADDITION LANDS.—If the owner of corporately owned timberlands within the area identified as “Fort Clatsop 2002 Addition Lands” on the map referred to in subsection (b) agrees to enter into a sale of such lands as a result of actual condemnation proceedings or in lieu of condemnation proceedings, the Secretary shall enter into a memorandum of understanding with the owner regarding the manner in which such lands shall be managed after acquisition by the United States.

Contracts.

(d) CAPE DISAPPOINTMENT.—

(1) TRANSFER.—Subject to valid rights (including withdrawals), the Secretary shall transfer to the Director of the National Park Service management of any Federal land at Cape Disappointment, Washington, that is within the boundary of the park.

(2) WITHDRAWN LAND.—

(A) NOTICE.—The head of any Federal agency that has administrative jurisdiction over withdrawn land at Cape Disappointment, Washington, within the boundary of the park shall notify the Secretary in writing if the head of the Federal agency does not need the withdrawn land.

(B) TRANSFER.—On receipt of a notice under subparagraph (A), the withdrawn land shall be transferred to the administrative jurisdiction of the Secretary, to be administered as part of the park.

(3) MEMORIAL TO THOMAS JEFFERSON.—All withdrawals of the 20-acre parcel depicted as a “Memorial to Thomas Jefferson” on the map referred to in subsection (b) are revoked, and the Secretary shall establish a memorial to Thomas Jefferson on the parcel.

(4) MANAGEMENT OF CAPE DISAPPOINTMENT STATE PARK LAND.—The Secretary may enter into an agreement with the State of Washington providing for the administration by the State of the land within the boundary of the park known as “Cape Disappointment State Park”.

(e) MAP AVAILABILITY.—The map referred to in subsection (b) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

16 USC
410kkk-2.

SEC. 104. ADMINISTRATION.

(a) IN GENERAL.—The park shall be administered by the Secretary in accordance with this title and with laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.) and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

Deadline.

(b) MANAGEMENT PLAN.—Not later than 3 years after funds are made available for this purpose, the Secretary shall prepare an amendment to the General Management Plan for Fort Clatsop National Memorial to guide the management of the park.

(c) COOPERATIVE MANAGEMENT.—In order to facilitate the presentation of a comprehensive picture of the Lewis and Clark Expedition's experiences in the lower Columbia River area and to promote more efficient administration of the sites associated with those experiences, the Secretary may enter into cooperative management agreements with appropriate officials in the States of Washington and Oregon in accordance with the authority provided under section 3(l) of Public Law 91-383 (112 Stat. 3522; 16 U.S.C. 1a-2).

SEC. 105. REPEAL OF SUPERSEDED LAW.

16 USC
450mm—
450mm-3.
16 USC
410kkk-3.

(a) IN GENERAL.—Public Law 85-435 (72 Stat. 153; 16 U.S.C. 450mm et seq.), regarding the establishment and administration of Fort Clatsop National Memorial, is repealed.

(b) REFERENCES.—Any reference in any law (other than this title), regulation, document, record, map or other paper of the United States to “Fort Clatsop National Memorial” shall be considered a reference to the “Lewis and Clark National Historical Park”.

16 USC
410kkk-4.

SEC. 106. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this title shall be construed to—

(1) require any private property owner to permit public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private lands.

(b) LIABILITY.—Designation of the park shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this title shall be construed to modify any authority of Federal, State, or local governments to regulate the use of private land within the boundary of the park.

16 USC
410kkk-5.

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE II—LEWIS AND CLARK EASTERN LEGACY STUDY

SEC. 201. DESIGNATION OF ADDITIONAL SITES FOR STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of the Interior shall update, with an accompanying map, the 1958 Lewis and Clark National Historic Landmark theme study to determine the historical significance of the eastern sites of the Corps of Discovery expedition used by Meriwether Lewis and William Clark, whether independently or together, in the preparation phase starting at Monticello, Virginia, and traveling to Wood River, Illinois, and the return phase from Saint Louis, Missouri, to Washington, District of Columbia, including sites in Virginia, Washington, District of Columbia, Maryland, Delaware, Pennsylvania, West Virginia, Ohio, Kentucky, Tennessee, Indiana, and Illinois.

(2) FOCUS OF UPDATE; NOMINATION AND ADDITION OF PROPERTIES.—The focus of the study under paragraph (1) shall be on developing historic context information to assist in the evaluation and identification, including the use of plaques, of sites eligible for listing in the National Register of Historic Places or designation as a National Historic Landmark.

(b) REPORT.—Not later than 1 year after funds are made available for the study under this section, the Secretary shall submit to the Committee on Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate a report describing any findings, conclusions, and recommendations of the study.

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 3819 (S. 2167):

HOUSE REPORTS: No. 108–570 (Comm. on Resources).

SENATE REPORTS: No. 108–322 accompanying S. 2167 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 19, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–388
108th Congress

An Act

Oct. 30, 2004
[H.R. 4046]

To designate the facility of the United States Postal Service located at 555 West 180th Street in New York, New York, as the “Sergeant Riayan A. Tejada Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 555 West 180th Street in New York, New York, shall be known and designated as the “Sergeant Riayan A. Tejada Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Sergeant Riayan A. Tejada Post Office”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4046:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–389
108th Congress

An Act

To provide for the conveyance of certain land to the United States and to revise the boundary of Chickasaw National Recreation Area, Oklahoma, and for other purposes.

Oct. 30, 2004
[H.R. 4066]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Chickasaw National Recreation Area Land Exchange Act of 2004”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) By provision 64 of the agreement between the United States and the Choctaws and Chickasaws dated March 21, 1902 (32 Stat. 641, 655–56), approved July 1, 1902, 640 acres of property were ceded to the United States for the purpose of creating Sulphur Springs Reservation, later known as Platt National Park, to protect water and other resources and provide public access.

(2) In 1976, Platt National Park, the Arbuckle Recreation Area, and additional lands were combined to create Chickasaw National Recreation Area to protect and expand water and other resources as well as to memorialize the history and culture of the Chickasaw Nation.

(3) More recently, the Chickasaw Nation has expressed interest in establishing a cultural center inside or adjacent to the park.

(4) The Chickasaw National Recreation Area’s Final Amendment to the General Management Plan (1994) found that the best location for a proposed Chickasaw Nation Cultural Center is within the Recreation Area’s existing boundary and that the selected cultural center site should be conveyed to the Chickasaw Nation in exchange for land of equal value.

(5) The land selected to be conveyed to the Chickasaw Nation holds significant historical and cultural connections to the people of the Chickasaw Nation.

(6) The City of Sulphur, Oklahoma, is a key partner in this land exchange through its donation of land to the Chickasaw Nation for the purpose of exchange with the United States.

(7) The City of Sulphur, Oklahoma, has conveyed fee simple title to the non-Federal land described as Tract 102–26 to the Chickasaw Nation by Warranty Deed.

(8) The National Park Service, the Chickasaw Nation, and the City of Sulphur, Oklahoma, have signed a preliminary

Chickasaw
National
Recreation Area
Land Exchange
Act of 2004.
16 USC 460hh
note.

agreement to effect a land exchange for the purpose of the construction of a cultural center.

(b) PURPOSE.—The purpose of this Act is to authorize, direct, facilitate, and expedite the land conveyance in accordance with the terms and conditions of this Act.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) FEDERAL LAND.—The term “Federal land” means the Chickasaw National Recreational Area lands and interests therein, identified as Tract 102-25 on the Map.

(2) NON-FEDERAL LAND.—The term “non-Federal land” means the lands and interests therein, formerly owned by the City of Sulphur, Oklahoma, and currently owned by the Chickasaw Nation, located adjacent to the existing boundary of Chickasaw National Recreation Area and identified as Tract 102-26 on the Map.

(3) MAP.—The term “Map” means the map entitled “Proposed Land Exchange and Boundary Revision, Chickasaw National Recreation Area”, dated September 8, 2003, and numbered 107/800035a.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 4. CHICKASAW NATIONAL RECREATION AREA LAND CONVEYANCE.

Deadline.

(a) LAND CONVEYANCE.—Not later than 6 months after the Chickasaw Nation conveys all right, title, and interest in and to the non-Federal land to the United States, the Secretary shall convey all right, title, and interest in and to the Federal land to the Chickasaw Nation.

(b) VALUATION OF LAND TO BE CONVEYED.—The fair market values of the Federal land and non-Federal land shall be determined by an appraisal acceptable to the Secretary and the Chickasaw Nation. The appraisal shall conform with the Federal appraisal standards, as defined in the Uniform Appraisal Standards for Federal Land Acquisitions developed by the Interagency Land Acquisition Conference, 1992, and any amendments to these standards.

(c) EQUALIZATION OF VALUES.—If the fair market values of the Federal land and non-Federal land are not equal, the values may be equalized by the payment of a cash equalization payment by the Secretary or the Chickasaw Nation, as appropriate.

(d) CONDITIONS.—

(1) IN GENERAL.—Notwithstanding subsection (a), the conveyance of the non-Federal land authorized under subsection (a) shall not take place until the completion of all items included in the Preliminary Exchange Agreement among the City of Sulphur, the Chickasaw Nation, and the National Park Service, executed on July 16, 2002, except as provided in paragraph (2).

(2) EXCEPTION.—The item included in the Preliminary Exchange Agreement among the City of Sulphur, the Chickasaw Nation, and the National Park Service, executed on July 16, 2002, providing for the Federal land to be taken into trust for the benefit of the Chickasaw Nation shall not apply.

(e) ADMINISTRATION OF ACQUIRED LAND.—Upon completion of the land exchange authorized under subsection (a), the Secretary—

(1) shall revise the boundary of Chickasaw National Recreation Area to reflect that exchange; and

(2) shall administer the land acquired by the United States in accordance with applicable laws and regulations.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4066 (S. 2374):

HOUSE REPORTS: No. 108–702 (Comm. on Resources).

SENATE REPORTS: No. 108–369 accompanying S. 2374 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–390
108th Congress

An Act

Oct. 30, 2004
[H.R. 4306]

To amend section 274A of the Immigration and Nationality Act to improve the process for verifying an individual's eligibility for employment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. IMPROVEMENTS TO EMPLOYMENT VERIFICATION SYSTEM.

(a) IN GENERAL.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(1) in paragraph (1)(A), by inserting before “A person or entity has complied” the following: “Such attestation may be manifested by either a hand-written or an electronic signature.”;

(2) in paragraph (2), by adding at the end the following: “Such attestation may be manifested by either a hand-written or an electronic signature.”; and

(3) in paragraph (3), by inserting “a paper, microfiche, microfilm, or electronic version of” after “must retain”.

8 USC 1324a
note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the earlier of—

(1) the date on which final regulations implementing such amendments take effect; or

(2) 180 days after the date of the enactment of this Act.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4306:

HOUSE REPORTS: No. 108–731 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–391
108th Congress

Joint Resolution

Expressing the sense of the Congress in recognition of the contributions of the seven Columbia astronauts by supporting establishment of a Columbia Memorial Space Science Learning Center.

Oct. 30, 2004

[H.J. Res. 57]

Whereas the crew of the space shuttle Columbia was dedicated to scientific research and stimulating the interest of American children in space flight and science;

Whereas the Columbia crew carried out science projects of American schoolchildren;

Whereas the members of that crew gave their lives trying to benefit the education of American children;

Whereas a fitting tribute to that effort and to the sacrifice of the Columbia crew and their families is needed;

Whereas an appropriate form for such tribute would be to expand educational opportunities in science by the creation of a center and museum to offer children and teachers activities and information derived from American space research;

Whereas the former manufacturing site of the space shuttles (including the Columbia and the Challenger) in the City of Downey, California, is a fitting site for such a tribute;

Whereas residents of Downey are proud of their role in building the space shuttle fleet and in furthering the Nation's space program; and

Whereas city officials have been working with NASA representatives to develop the center in Downey: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that—

(1) the space science learning center in Downey, California, should be designated as the Columbia Memorial Space Science Learning Center as a living memorial to the seven Columbia astronauts who died serving their country in the name of science and research; and

California.

(2) the Federal Government, along with public and private organizations and persons, should continue to cooperate in the establishment of such a center.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.J. Res. 57:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–392
108th Congress

An Act

To designate the facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, as the “Harvey and Bernice Jones Post Office Building”.

Oct. 30, 2004
[H.R. 4381]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, shall be known and designated as the “Harvey and Bernice Jones Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Harvey and Bernice Jones Post Office Building”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4381:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 7, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–393
108th Congress

An Act

Oct. 30, 2004
[H.R. 4471]

To clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996.

Homeownership
Opportunities
for Native
Americans Act
of 2004.
25 USC 4101
note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Homeownership Opportunities for Native Americans Act of 2004”.

SEC. 2. FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES.

Section 601 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4191) is amended by adding at the end the following new subsection:

“(d) LIMITATION ON PERCENTAGE.—A guarantee made under this title shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4471 (S. 2571):

HOUSE REPORTS: No. 108–550 (Comm. on Financial Services).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 21, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–394
108th Congress

An Act

To amend Public Law 86–434 establishing Wilson’s Creek National Battlefield in the State of Missouri to expand the boundaries of the park, and for other purposes.

Oct. 30, 2004
[H.R. 4481]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Wilson’s Creek National Battlefield Boundary Adjustment Act of 2004”.

SEC. 2. EXPANSION OF BOUNDARIES, WILSON’S CREEK NATIONAL BATTLEFIELD, MISSOURI.

(a) BOUNDARY EXPANSION; PRIVATE PROPERTY PROTECTIONS.—The first section of Public Law 86–434 (16 U.S.C. 430kk) is amended—

(1) by striking “That the Secretary” and inserting the following:

“SECTION 1. WILSON’S CREEK NATIONAL BATTLEFIELD: ESTABLISHMENT AND ACQUISITION OF LANDS.

“(a) ESTABLISHMENT, INITIAL BOUNDARIES.—The Secretary”; and

(2) by adding at the end the following new subsections:

“(b) EXPANSION OF BOUNDARIES.—(1) The boundaries of the Wilson’s Creek National Battlefield are revised to include lands and interests therein consisting of six parcels totaling 615 acres and identified as parcels ‘1, 2, 3, 4, 5, and 6’ on the map entitled ‘Wilson’s Creek National Battlefield Proposed Boundary’, numbered 410/80,037 and dated January 27, 2004. The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

“(2) The Secretary is authorized to acquire the lands referred to in paragraph (1) by donation, by purchase from willing sellers with donated or appropriated funds, or by exchange. The Secretary may acquire by the same methods personal property associated with, and appropriate for, interpretation of the park.

“(c) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act shall be construed to—

“(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

“(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

“(d) LIABILITY.—The revision of the boundaries of the Wilson’s Creek National Battlefield by subsection (b) shall not be considered

Wilson’s Creek
National
Battlefield
Boundary
Adjustment Act
of 2004.
16 USC 430kk
note.

to create any liability for, or to have any effect on any liability under any other law of, any owner of private property with respect to any person injured on that private property.

“(e) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

“(f) PARTICIPATION OF PRIVATE PROPERTY OWNERS.—Nothing in this Act shall be construed to require the owner of any private property located within the boundaries of the Wilson’s Creek National Battlefield to participate in, or be associated with, the National Battlefield.

“(g) EFFECT OF EXPANSION.—The boundaries of the Wilson’s Creek National Battlefield, as revised by subsection (b), represent the area within which Federal funds appropriated for the purpose of this Act may be expended. The boundary revision shall not be construed to provide any nonexisting regulatory authority on land use within the National Battlefield or its viewshed by the Secretary or the National Park Service.”

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 3 of such Act (16 U.S.C. 430mm) is amended by adding at the end the following new sentence: “There are authorized to be appropriated such sums as may be necessary to carry out section 1(b).”

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4481 (S. 2432):

HOUSE REPORTS: No. 108-651 (Comm. on Resources).

SENATE REPORTS: No. 108-371 accompanying S. 2432 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 13, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–395
108th Congress

An Act

To designate the facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, as the “General William Carey Lee Post Office Building”.

Oct. 30, 2004
[H.R. 4556]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, shall be known and designated as the “General William Carey Lee Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “General William Carey Lee Post Office Building”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4556:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 7, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–396
108th Congress

An Act

Oct. 30, 2004
[H.R. 4579]

To modify the boundary of the Harry S Truman National Historic Site in the State of Missouri, and for other purposes.

Truman Farm
Home Expansion
Act.
16 USC 461 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Truman Farm Home Expansion Act”.

SEC. 2. HARRY S TRUMAN NATIONAL HISTORIC SITE BOUNDARY MODIFICATION.

The first section of Public Law 98–32 (16 U.S.C. 461 note) is amended—

- (1) by redesignating subsection (d) as subsection (e); and
- (2) by inserting after subsection (c) the following:

“(d) ACQUISITION OF ADDITIONAL LAND.—

“(1) IN GENERAL.—The Secretary may acquire, by donation, purchase with donated or appropriated funds, transfer from another Federal agency, or any other means, the land described in paragraph (2) for inclusion in the Harry S Truman National Historic Site.

“(2) DESCRIPTION OF LAND.—The land referred to in paragraph (1) consists of the approximately 5 acres of land (including the structure located south of the Truman Farm Home site), as generally depicted on the map entitled ‘Harry S Truman National Historic Site Proposed Boundary’, numbered 492/80,027, and dated April 17, 2003.

“(3) BOUNDARY MODIFICATION.—On acquisition of the land under this subsection, the Secretary shall modify the boundary of the Harry S Truman National Historic Site to reflect the acquisition of the land.”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4579:

HOUSE REPORTS: No. 108–703 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–397
108th Congress

An Act

To designate the facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York, as the “Anthony I. Lombardi Memorial Post Office Building”.

Oct. 30, 2004
[H.R. 4618]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York, shall be known and designated as the “Anthony I. Lombardi Memorial Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Anthony I. Lombardi Memorial Post Office Building”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4618:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 7, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–398
108th Congress

An Act

Oct. 30, 2004
[H.R. 4632]

To designate the facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, as the “Archie Spigner Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, shall be known and designated as the “Archie Spigner Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Archie Spigner Post Office Building”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4632:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Sept. 13, considered and passed House.
Oct. 10, considered and passed Senate.



Public Law 108–399
108th Congress

An Act

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program.

Oct. 30, 2004
[H.R. 4731]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION OF NATIONAL ESTUARY PROGRAM.

Section 320(i) of the Federal Water Pollution Control Act (33 U.S.C. 1330(i)) is amended by striking “2005” and inserting “2010”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4731:

HOUSE REPORTS: No. 108–678 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 29, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–400
108th Congress

An Act

Oct. 30, 2004
[H.R. 4827]

To amend the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MCINNIS CANYONS NATIONAL CONSERVATION AREA.

(a) **PURPOSE.**—The Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 (16 U.S.C. 460mm et seq.) is amended in section 2(b) by striking “Colorado Canyons” and inserting “McInnis Canyons”.

16 USC
460mm.

(b) **DEFINITIONS.**—Section 3 of such Act is amended—

(1) in paragraph (1), by striking “Colorado” and inserting “McInnis”; and

(2) in paragraph (2), by striking “Colorado” and inserting “McInnis”.

16 USC
460mm–2.

(c) **COLORADO CANYONS NATIONAL CONSERVATION AREA.**—Section 4 of such Act is amended—

(1) in the heading, by striking “COLORADO” and inserting “MCINNIS”; and

(2) in subsection (a), by striking “Colorado Canyons” and inserting “McInnis Canyons”.

16 USC
460mm–6.

(d) **ADVISORY COUNCIL.**—Section 8(a) of such Act is amended by striking “Colorado Canyons” and inserting “McInnis Canyons”.

16 USC 460mm
note.

(e) **SHORT TITLE.**—Section 1 of such Act is amended by striking “Colorado” and inserting “McInnis”.

16 USC 460mm
note.

(f) **REFERENCES.**—Any reference in a law, map, regulation, document, paper, or other record of the United States to the “Colorado Canyons National Conservation Area” shall be deemed to be a reference to the “McInnis Canyons National Conservation Area”.

16 USC 460mm
note.

(g) **EFFECTIVE DATE.**—This section and the amendments made by this section take effect on January 1, 2005.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4827:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–401
108th Congress

An Act

To amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States for fiscal years 2005, 2006, and 2007, and for other purposes.

Oct. 30, 2004
[H.R. 4917]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Regulatory Improvement Act of 2004”.

Federal
Regulatory
Improvement Act
of 2004.
5 USC 101 note.

SEC. 2. PURPOSES.

(a) PURPOSES.—Section 591 of title 5, United States Code, is amended to read as follows:

“§ 591. Purposes

“The purposes of this subchapter are—

“(1) to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest;

“(2) to promote more effective public participation and efficiency in the rulemaking process;

“(3) to reduce unnecessary litigation in the regulatory process;

“(4) to improve the use of science in the regulatory process; and

“(5) to improve the effectiveness of laws applicable to the regulatory process.”.

(b) CONFORMING AMENDMENTS.—Title 5 of the United States Code is amended—

(1) in section 594 by striking “purpose” and inserting “purposes”; and

(2) in the table of sections of chapter 5 of part I by amending the item relating to section 591 to read as follows:

“591. Purposes”.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 596 of title 5, United States Code, is amended to read as follows:

“§ 596. Authorization of appropriations

“There are authorized to be appropriated to carry out this subchapter not more than \$3,000,000 for fiscal year 2005, \$3,100,000 for fiscal year 2006, and \$3,200,000 for fiscal year 2007. Of any amounts appropriated under this section, not more than \$2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 4917 (S. 2979):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 8, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–402
108th Congress

An Act

To designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the “Specialist Eric Ramirez Post Office”.

Oct. 30, 2004
[H.R. 5027]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, shall be known and designated as the “Specialist Eric Ramirez Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Specialist Eric Ramirez Post Office”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5027:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Sept. 28, considered and passed House.
Oct. 10, considered and passed Senate.



Public Law 108–403
108th Congress

An Act

Oct. 30, 2004
[H.R. 5039]

To designate the facility of the United States Postal Service located at United States Route 1 in Ridgeway, North Carolina, as the “Eva Holtzman Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at United States Route 1 in Ridgeway, North Carolina, shall be known and designated as the “Eva Holtzman Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Eva Holtzman Post Office”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5039:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 22, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–404
108th Congress

An Act

To designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the “Leonard C. Burch Post Office Building”.

Oct. 30, 2004
[H.R. 5051]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, shall be known and designated as the “Leonard C. Burch Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Leonard C. Burch Post Office Building”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5051:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–405
108th Congress

An Act

Oct. 30, 2004
[H.R. 5107]

To protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

Justice for All
Act of 2004.

42 USC 13701
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Justice for All Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SCOTT CAMPBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT

Sec. 101. Short title.

Sec. 102. Crime victims' rights.

Sec. 103. Increased resources for enforcement of crime victims' rights.

Sec. 104. Reports.

TITLE II—DEBBIE SMITH ACT OF 2004

Sec. 201. Short title.

Sec. 202. Debbie Smith DNA Backlog Grant Program.

Sec. 203. Expansion of Combined DNA Index System.

Sec. 204. Tolling of statute of limitations.

Sec. 205. Legal assistance for victims of violence.

Sec. 206. Ensuring private laboratory assistance in eliminating DNA backlog.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

Sec. 301. Short title.

Sec. 302. Ensuring public crime laboratory compliance with Federal standards.

Sec. 303. DNA training and education for law enforcement, correctional personnel, and court officers.

Sec. 304. Sexual assault forensic exam program grants.

Sec. 305. DNA research and development.

Sec. 306. National Forensic Science Commission.

Sec. 307. FBI DNA programs.

Sec. 308. DNA identification of missing persons.

Sec. 309. Enhanced criminal penalties for unauthorized disclosure or use of DNA information.

Sec. 310. Tribal coalition grants.

Sec. 311. Expansion of Paul Coverdell Forensic Sciences Improvement Grant Program.

Sec. 312. Report to Congress.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

Sec. 401. Short title.

Subtitle A—Exonerating the innocent through DNA testing

- Sec. 411. Federal post-conviction DNA testing.
 Sec. 412. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.
 Sec. 413. Incentive grants to States to ensure consideration of claims of actual innocence.

Subtitle B—Improving the quality of representation in State capital cases

- Sec. 421. Capital representation improvement grants.
 Sec. 422. Capital prosecution improvement grants.
 Sec. 423. Applications.
 Sec. 424. State reports.
 Sec. 425. Evaluations by Inspector General and administrative remedies.
 Sec. 426. Authorization of appropriations.

Subtitle C—Compensation for the wrongfully convicted

- Sec. 431. Increased compensation in Federal cases for the wrongfully convicted.
 Sec. 432. Sense of Congress regarding compensation in State death penalty cases.

TITLE I—SCOTT CAMPBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT

Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act.

SEC. 101. SHORT TITLE.

This title may be cited as the “Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act”.

18 USC 3771 note.

SEC. 102. CRIME VICTIMS' RIGHTS.

(a) AMENDMENT TO TITLE 18.—Part II of title 18, United States Code, is amended by adding at the end the following:

“CHAPTER 237—CRIME VICTIMS' RIGHTS

“Sec.
 “3771. Crime victims' rights.

“§ 3771. Crime victims' rights

“(a) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

- “(1) The right to be reasonably protected from the accused.
- “(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- “(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- “(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- “(5) The reasonable right to confer with the attorney for the Government in the case.
- “(6) The right to full and timely restitution as provided in law.
- “(7) The right to proceedings free from unreasonable delay.
- “(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

“(b) RIGHTS AFFORDED.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

“(c) BEST EFFORTS TO ACCORD RIGHTS.—

Notification.

“(1) GOVERNMENT.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

“(2) ADVICE OF ATTORNEY.—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

“(3) NOTICE.—Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

“(d) ENFORCEMENT AND LIMITATIONS.—

“(1) RIGHTS.—The crime victim or the crime victim’s lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

“(2) MULTIPLE CRIME VICTIMS.—In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

“(3) MOTION FOR RELIEF AND WRIT OF MANDAMUS.—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim’s right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

Deadline.

“(4) ERROR.—In any appeal in a criminal case, the Government may assert as error the district court’s denial of any crime victim’s right in the proceeding to which the appeal relates.

“(5) LIMITATION ON RELIEF.—In no case shall a failure to afford a right under this chapter provide grounds for a

new trial. A victim may make a motion to re-open a plea or sentence only if—

“(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

“(B) the victim petitions the court of appeals for a writ of mandamus within 10 days; and

“(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim’s right to restitution as provided in title 18, United States Code.”.

“(6) NO CAUSE OF ACTION.—Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

“(e) DEFINITIONS.—For the purposes of this chapter, the term ‘crime victim’ means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim’s estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim’s rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

“(f) PROCEDURES TO PROMOTE COMPLIANCE.—

“(1) REGULATIONS.—Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

Deadline.

“(2) CONTENTS.—The regulations promulgated under paragraph (1) shall—

“(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

“(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

“(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

“(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.”.

(b) TABLE OF CHAPTERS.—The table of chapters for part II of title 18, United States Code, is amended by inserting at the end the following:

“237. Crime victims’ rights 3771”.

(c) REPEAL.—Section 502 of the Victims’ Rights and Restitution Act of 1990 (42 U.S.C. 10606) is repealed.

SEC. 103. INCREASED RESOURCES FOR ENFORCEMENT OF CRIME VICTIMS’ RIGHTS.

(a) CRIME VICTIMS LEGAL ASSISTANCE GRANTS.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404C the following:

42 USC 10603d. **“SEC. 1404D. CRIME VICTIMS LEGAL ASSISTANCE GRANTS.**

“(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors’ offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public and private entities, to develop, establish, and maintain programs for the enforcement of crime victims’ rights as provided in law.

“(b) PROHIBITION.—Grant amounts under this section may not be used to bring a cause of action for damages.

“(c) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the ‘False Claims Act’), may be used for grants under this section, subject to appropriation.”.

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d) of the Victims of Crime Act of 1984, there are authorized to be appropriated to carry out this title—

(1) \$2,000,000 for fiscal year 2005 and \$5,000,000 for each of fiscal years 2006, 2007, 2008, and 2009 to United States Attorneys Offices for Victim/Witnesses Assistance Programs;

(2) \$2,000,000 for fiscal year 2005 and \$5,000,000 in each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice for enhancement of the Victim Notification System;

(3) \$300,000 in fiscal year 2005 and \$500,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice for staff to administer the appropriation for the support of organizations as designated under paragraph (4);

(4) \$7,000,000 for fiscal year 2005 and \$11,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice, for the support of organizations that provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims’ rights in Federal jurisdictions, and in States and tribal governments that have laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code; and

(5) \$5,000,000 for fiscal year 2005 and \$7,000,000 for each of fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice, for the support of—

(A) training and technical assistance to States and tribal jurisdictions to craft state-of-the-art victims' rights laws; and

(B) training and technical assistance to States and tribal jurisdictions to design a variety of compliance systems, which shall include an evaluation component.

(c) INCREASED RESOURCES TO DEVELOP STATE-OF-THE-ART SYSTEMS FOR NOTIFYING CRIME VICTIMS OF IMPORTANT DATES AND DEVELOPMENTS.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404D the following:

“SEC. 1404E. CRIME VICTIMS NOTIFICATION GRANTS.

42 USC 10603e.

“(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public or private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue in a timely and efficient manner, provided that the jurisdiction has laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code.

“(b) INTEGRATION OF SYSTEMS.—Systems developed and implemented under this section may be integrated with existing case management systems operated by the recipient of the grant.

“(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d), there are authorized to be appropriated to carry out this section—

“(1) \$5,000,000 for fiscal year 2005; and

“(2) \$5,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009.

“(d) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the ‘False Claims Act’), may be used for grants under this section, subject to appropriation.”.

SEC. 104. REPORTS.

(a) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Administrative Office of the United States Courts, for each Federal court, shall report to Congress the number of times that a right established in chapter 237 of title 18, United States Code, is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to chapter 237 of title 18, and the result reached.

Deadline.
18 USC 3771
note.

(b) GOVERNMENT ACCOUNTABILITY OFFICE.—

(1) STUDY.—The Comptroller General shall conduct a study that evaluates the effect and efficacy of the implementation of the amendments made by this title on the treatment of crime victims in the Federal system.

(2) REPORT.—Not later than 4 years after the date of enactment of this Act, the Comptroller General shall prepare and submit to the appropriate committees a report containing the results of the study conducted under subsection (a).

Deadline.

Debbie Smith Act
of 2004.

42 USC 13701
note.

TITLE II—DEBBIE SMITH ACT OF 2004

SEC. 201. SHORT TITLE.

This title may be cited as the “Debbie Smith Act of 2004”.

SEC. 202. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.

(a) DESIGNATION OF PROGRAM; ELIGIBILITY OF LOCAL GOVERNMENTS AS GRANTEES.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) by amending the heading to read as follows:

“SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.”;

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting “or units of local government” after “eligible States”; and

(ii) by inserting “or unit of local government” after “State”;

(B) in paragraph (2), by inserting before the period at the end the following: “, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect”; and

(C) in paragraph (3), by striking “within the State”;

(3) in subsection (b)—

(A) in the matter preceding paragraph (1)—

(i) by inserting “or unit of local government” after “State” both places that term appears; and

(ii) by inserting “, as required by the Attorney General” after “application shall”;

(B) in paragraph (1), by inserting “or unit of local government” after “State”;

(C) in paragraph (3), by inserting “or unit of local government” after “State” the first place that term appears;

(D) in paragraph (4)—

(i) by inserting “or unit of local government” after “State”; and

(ii) by striking “and” at the end;

(E) in paragraph (5)—

(i) by inserting “or unit of local government” after “State”; and

(ii) by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

“(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and”;

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “The plan” and inserting “A plan pursuant to subsection (b)(1)”;

(ii) in subparagraph (A), by striking “within the State”; and

- (iii) in subparagraph (B), by striking “within the State”; and
 - (B) in paragraph (2)(A), by inserting “and units of local government” after “States”;
 - (5) in subsection (e)—
 - (A) in paragraph (1), by inserting “or local government” after “State” both places that term appears; and
 - (B) in paragraph (2), by inserting “or unit of local government” after “State”;
 - (6) in subsection (f), in the matter preceding paragraph (1), by inserting “or unit of local government” after “State”;
 - (7) in subsection (g)—
 - (A) in paragraph (1), by inserting “or unit of local government” after “State”; and
 - (B) in paragraph (2), by inserting “or units of local government” after “States”; and
 - (8) in subsection (h), by inserting “or unit of local government” after “State” both places that term appears.
- (b) REAUTHORIZATION AND EXPANSION OF PROGRAM.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—
- (1) in subsection (a)—
 - (A) in paragraph (3), by inserting “(1) or” before “(2)”;
 - and
 - (B) by inserting at the end the following:
 - “(4) To collect DNA samples specified in paragraph (1).
 - “(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.”;
 - (2) in subsection (b), as amended by this section, by inserting at the end the following:
 - “(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4).”;
 - (3) by amending subsection (c) to read as follows:

“(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

 - “(1) IN GENERAL.—The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—
 - “(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and
 - “(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—
 - “(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;
 - “(ii) the population in the jurisdiction; and
 - “(iii) the number of part 1 violent crimes in the jurisdiction.
 - “(2) MINIMUM AMOUNT.—The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

“(3) LIMITATION.—Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

“(A) For fiscal year 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

“(B) For fiscal year 2006, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

“(C) For fiscal year 2007, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

“(D) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

“(E) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).”;

(4) in subsection (g)—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.”;

(5) in subsection (j), by striking paragraphs (1) and (2) and inserting the following:

“(1) \$151,000,000 for fiscal year 2005;

“(2) \$151,000,000 for fiscal year 2006;

“(3) \$151,000,000 for fiscal year 2007;

“(4) \$151,000,000 for fiscal year 2008; and

“(5) \$151,000,000 for fiscal year 2009.”; and

“(6) by adding at the end the following:

“(k) USE OF FUNDS FOR ACCREDITATION AND AUDITS.—The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

“(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

“(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

“(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

“(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by States or units of local government under this Act; and

“(C) to support future capacity building efforts; and

“(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

“(1) USE OF FUNDS FOR OTHER FORENSIC SCIENCES.—The Attorney General may award a grant under this section to a State or unit of local government to alleviate a backlog of cases with respect to a forensic science other than DNA analysis if the State or unit of local government—

“(1) certifies to the Attorney General that in such State or unit—

“(A) all of the purposes set forth in subsection (a) have been met;

“(B) a significant backlog of casework is not waiting for DNA analysis; and

“(C) there is no need for significant laboratory equipment, supplies, or additional personnel for timely DNA processing of casework or offender samples; and

“(2) demonstrates to the Attorney General that such State or unit requires assistance in alleviating a backlog of cases involving a forensic science other than DNA analysis.

“(m) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—In the event that a laboratory operated by a State or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.”.

SEC. 203. EXPANSION OF COMBINED DNA INDEX SYSTEM.

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1), by striking “of persons convicted of crimes;” and inserting the following: “of—

“(A) persons convicted of crimes;

“(B) persons who have been charged in an indictment or information with a crime; and

“(C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA profiles from arrestees who have not been charged in an indictment or information with a crime, and DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the National DNA Index System;”;

(2) in subsection (d)(2)—

(A) by striking “if the responsible agency” and inserting “if—

“(i) the responsible agency”;

(B) by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(ii) the person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.”.

(b) **FELONS CONVICTED OF FEDERAL CRIMES.**—Section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)) is amended to read as follows:

“(d) **QUALIFYING FEDERAL OFFENSES.**—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

“(1) Any felony.

“(2) Any offense under chapter 109A of title 18, United States Code.

“(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

“(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).”.

(c) **MILITARY OFFENSES.**—Section 1565(d) of title 10, United States Code, is amended to read as follows:

“(d) **QUALIFYING MILITARY OFFENSES.**—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

“(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

“(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d))).”.

(d) **KEYBOARD SEARCHES.**—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132), as amended by subsection (a), is further amended by adding at the end the following new subsection:

“(e) **AUTHORITY FOR KEYBOARD SEARCHES.**—

“(1) **IN GENERAL.**—The Director shall ensure that any person who is authorized to access the index described in subsection (a) for purposes of including information on DNA identification records or DNA analyses in that index may also access that index for purposes of carrying out a one-time keyboard search on information obtained from any DNA sample lawfully collected for a criminal justice purpose except for a DNA sample voluntarily submitted solely for elimination purposes.

“(2) **DEFINITION.**—For purposes of paragraph (1), the term ‘keyboard search’ means a search under which information obtained from a DNA sample is compared with information in the index without resulting in the information obtained from a DNA sample being included in the index.

“(3) **NO PREEMPTION.**—This subsection shall not be construed to preempt State law.

(e) **INCREASED PENALTIES FOR MISUSE OF DNA ANALYSES.**—(1) Section 210305(c)(2) of the DNA Identification Act of 1994 (42 U.S.C. 14133(c)(2)) is amended by striking “\$100,000” and inserting “\$250,000, or imprisoned for a period of not more than one year, or both”.

(2) Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended by striking “\$100,000” and inserting “\$250,000, or imprisoned for a period of not more than one year, or both”.

(f) REPORT TO CONGRESS.—If the Department of Justice plans to modify or supplement the core genetic markers needed for compatibility with the CODIS system, it shall notify the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives in writing not later than 180 days before any change is made and explain the reasons for such change.

28 USC 531 note.

SEC. 204. TOLLING OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

“§ 3297. Cases involving DNA evidence

“In a case in which DNA testing implicates an identified person in the commission of a felony, except for a felony offense under chapter 109A, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.”

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

“3297. Cases involving DNA evidence.”

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section if the applicable limitation period has not yet expired.

18 USC 3297 note.

SEC. 205. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.

Section 1201 of the Violence Against Women Act of 2000 (42 U.S.C. 3796gg–6) is amended—

(1) in subsection (a), by inserting “dating violence,” after “domestic violence,”;

(2) in subsection (b)—

(A) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(B) by inserting before paragraph (2), as redesignated by subparagraph (A), the following:

“(1) DATING VIOLENCE.—The term ‘dating violence’ means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of—

“(A) the length of the relationship;

“(B) the type of relationship; and

“(C) the frequency of interaction between the persons involved in the relationship.”; and

(C) in paragraph (3), as redesignated by subparagraph (A), by inserting “dating violence,” after “domestic violence,”;

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting “, dating violence,” after “between domestic violence”; and

- (ii) by inserting “dating violence,” after “victims of domestic violence,”;
- (B) in paragraph (2), by inserting “dating violence,” after “domestic violence,”; and
- (C) in paragraph (3), by inserting “dating violence,” after “domestic violence,”;
- (4) in subsection (d)—
 - (A) in paragraph (1), by inserting “, dating violence,” after “domestic violence,”;
 - (B) in paragraph (2), by inserting “, dating violence,” after “domestic violence,”;
 - (C) in paragraph (3), by inserting “, dating violence,” after “domestic violence,”; and
 - (D) in paragraph (4), by inserting “dating violence,” after “domestic violence,”;
- (5) in subsection (e), by inserting “dating violence,” after “domestic violence,”; and
- (6) in subsection (f)(2)(A), by inserting “dating violence,” after “domestic violence,”.

SEC. 206. ENSURING PRIVATE LABORATORY ASSISTANCE IN ELIMINATING DNA BACKLOG.

Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended to read as follows:

“(3) USE OF VOUCHERS OR CONTRACTS FOR CERTAIN PURPOSES.—

“(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services, even if the laboratory makes a reasonable profit for the services.

“(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated on a nonprofit or for-profit basis, by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

“(C) PAYMENTS.—The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).”.

DNA Sexual
Assault Justice
Act of 2004.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

42 USC 13701
note.

SEC. 301. SHORT TITLE.

This title may be cited as the “DNA Sexual Assault Justice Act of 2004”.

SEC. 302. ENSURING PUBLIC CRIME LABORATORY COMPLIANCE WITH FEDERAL STANDARDS.

Section 210304(b)(2) of the DNA Identification Act of 1994 (42 U.S.C. 14132(b)(2)) is amended to read as follows:

“(2) prepared by laboratories that—

Deadline.

“(A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2004, have been accredited by a nonprofit professional association of persons

actively involved in forensic science that is nationally recognized within the forensic science community; and

“(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and”.

SEC. 303. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS. 42 USC 14136.

(a) **IN GENERAL.**—The Attorney General shall make grants to provide training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by— Grants.

(1) law enforcement personnel, including police officers and other first responders, evidence technicians, investigators, and others who collect or examine evidence of crime;

(2) court officers, including State and local prosecutors, defense lawyers, and judges;

(3) forensic science professionals; and

(4) corrections personnel, including prison and jail personnel, and probation, parole, and other officers involved in supervision.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$12,500,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 304. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS. 42 USC 14136a.

(a) **IN GENERAL.**—The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).

(b) **ELIGIBLE ENTITY.**—For purposes of this section, the term “eligible entity” includes— Definition.

(1) States;

(2) units of local government; and

(3) sexual assault examination programs, including—

(A) sexual assault nurse examiner (SANE) programs;

(B) sexual assault forensic examiner (SAFE) programs;

(C) sexual assault response team (SART) programs;

(D) State sexual assault coalitions;

(E) medical personnel, including doctors, medical examiners, coroners, and nurses, involved in treating victims of sexual assault; and

(F) victim service providers involved in treating victims of sexual assault.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$30,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 305. DNA RESEARCH AND DEVELOPMENT. 42 USC 14136b.

(a) **IMPROVING DNA TECHNOLOGY.**—The Attorney General shall make grants for research and development to improve forensic Grants.

DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability.

Grants.

(b) DEMONSTRATION PROJECTS.—The Attorney General shall make grants to appropriate entities under which research is carried out through demonstration projects involving coordinated training and commitment of resources to law enforcement agencies and key criminal justice participants to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects shall include scientific evaluation of the public safety benefits, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$15,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

42 USC 14136c.

SEC. 306. NATIONAL FORENSIC SCIENCE COMMISSION.

(a) APPOINTMENT.—The Attorney General shall appoint a National Forensic Science Commission (in this section referred to as the “Commission”), composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities, to carry out the responsibilities under subsection (b).

(b) RESPONSIBILITIES.—The Commission shall—

(1) assess the present and future resource needs of the forensic science community;

(2) make recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public;

(3) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;

(4) make recommendations to the Attorney General for programs that will increase the number of qualified forensic scientists available to work in public crime laboratories;

(5) disseminate, through the National Institute of Justice, best practices concerning the collection and analyses of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes and protect the public;

(6) examine additional issues pertaining to forensic science as requested by the Attorney General;

(7) examine Federal, State, and local privacy protection statutes, regulations, and practices relating to access to, or use of, stored DNA samples or DNA analyses, to determine whether such protections are sufficient;

(8) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in paragraph (7) to ensure—

(A) the appropriate use and dissemination of DNA information;

(B) the accuracy, security, and confidentiality of DNA information;

(C) the timely removal and destruction of obsolete, expunged, or inaccurate DNA information; and

(D) that any other necessary measures are taken to protect privacy; and

(9) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in paragraphs (1) through (8).

(c) PERSONNEL; PROCEDURES.—The Attorney General shall—

(1) designate the Chair of the Commission from among its members;

(2) designate any necessary staff to assist in carrying out the functions of the Commission; and

(3) establish procedures and guidelines for the operations of the Commission.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$500,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 307. FBI DNA PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Bureau of Investigation \$42,100,000 for each of fiscal years 2005 through 2009 to carry out the DNA programs and activities described under subsection (b).

(b) PROGRAMS AND ACTIVITIES.—The Federal Bureau of Investigation may use any amounts appropriated pursuant to subsection (a) for—

(1) nuclear DNA analysis;

(2) mitochondrial DNA analysis;

(3) regional mitochondrial DNA laboratories;

(4) the Combined DNA Index System;

(5) the Federal Convicted Offender DNA Program; and

(6) DNA research and development.

SEC. 308. DNA IDENTIFICATION OF MISSING PERSONS.

42 USC 14136d.

(a) IN GENERAL.—The Attorney General shall make grants to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

Grants.

(b) REQUIREMENT.—Each State or unit of local government that receives funding under this section shall be required to submit the DNA profiles of such missing persons and unidentified human remains to the National Missing Persons DNA Database of the Federal Bureau of Investigation.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$2,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 309. ENHANCED CRIMINAL PENALTIES FOR UNAUTHORIZED DISCLOSURE OR USE OF DNA INFORMATION.

Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended to read as follows:

“(c) CRIMINAL PENALTY.—A person who knowingly discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than \$250,000, or imprisoned for a period of not more than one year. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.”.

SEC. 310. TRIBAL COALITION GRANTS.

(a) **IN GENERAL.**—Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by adding at the end the following:

“(d) **TRIBAL COALITION GRANTS.**—

“(1) **PURPOSE.**—The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—

“(A) increasing awareness of domestic violence and sexual assault against American Indian and Alaska Native women;

“(B) enhancing the response to violence against American Indian and Alaska Native women at the tribal, Federal, and State levels; and

“(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to American Indian women victimized by domestic and sexual violence.

“(2) **GRANTS TO TRIBAL COALITIONS.**—The Attorney General shall award grants under paragraph (1) to—

“(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against American Indian and Alaska Native women; and

“(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against American Indian and Alaska Native women.

“(3) **ELIGIBILITY FOR OTHER GRANTS.**—Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b).”.

(b) **TECHNICAL AMENDMENT.**—Effective as of November 2, 2002, and as if included therein as enacted, Public Law 107-273 (116 Stat. 1789) is amended in section 402(2) by striking “sections 2006 through 2011” and inserting “sections 2007 through 2011”.

(c) **AMOUNTS.**—Section 2007 of the Omnibus Crime Control and Safe Streets Act of 1968 (as redesignated by section 402(2) of Public Law 107-273, as amended by subsection (b)) is amended by amending subsection (b)(4) (42 U.S.C. 3796gg-1(b)(4)) to read as follows:

“(4) $\frac{1}{54}$ shall be available for grants under section 2001(d);”.

SEC. 311. EXPANSION OF PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANT PROGRAM.

(a) **FORENSIC BACKLOG ELIMINATION GRANTS.**—Section 2804 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797m) is amended—

(1) in subsection (a)—

(A) by striking “shall use the grant to carry out” and inserting “shall use the grant to do any one or more of the following:

“(1) To carry out”; and

(B) by adding at the end the following:

“(2) To eliminate a backlog in the analysis of forensic science evidence, including firearms examination, latent prints,

42 USC
3796gg-1—
3796gg-5,
3796-1 note.

toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.

“(3) To train, assist, and employ forensic laboratory personnel, as needed, to eliminate such a backlog.”;

(2) in subsection (b), by striking “under this part” and inserting “for the purpose set forth in subsection (a)(1)”; and

(3) by adding at the end the following:

“(e) BACKLOG DEFINED.—For purposes of this section, a backlog in the analysis of forensic science evidence exists if such evidence—

“(1) has been stored in a laboratory, medical examiner’s office, coroner’s office, law enforcement storage facility, or medical facility; and

“(2) has not been subjected to all appropriate forensic testing because of a lack of resources or personnel.”.

(b) EXTERNAL AUDITS.—Section 2802 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797k) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(4) a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner’s office, coroner’s office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.”.

Certification.

(c) THREE-YEAR EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(24) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(24)) is amended—

(1) in subparagraph (E), by striking “and” at the end;

(2) in subparagraph (F), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(G) \$20,000,000 for fiscal year 2007;

“(H) \$20,000,000 for fiscal year 2008; and

“(I) \$20,000,000 for fiscal year 2009.”.

(d) TECHNICAL AMENDMENT.—Section 1001(a) of such Act, as amended by subsection (c), is further amended by realigning paragraphs (24) and (25) so as to be flush with the left margin.

SEC. 312. REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the implementation of this title and title II and the amendments made by this title and title II.

(b) CONTENTS.—The report submitted under subsection (a) shall include a description of—

(1) the progress made by Federal, State, and local entities in—

(A) collecting and entering DNA samples from offenders convicted of qualifying offenses for inclusion in the Combined DNA Index System (referred to in this subsection as “CODIS”);

(B) analyzing samples from crime scenes, including evidence collected from sexual assaults and other serious

violent crimes, and entering such DNA analyses in CODIS; and

(C) increasing the capacity of forensic laboratories to conduct DNA analyses;

(2) the priorities and plan for awarding grants among eligible States and units of local government to ensure that the purposes of this title and title II are carried out;

(3) the distribution of grant amounts under this title and title II among eligible States and local governments, and whether the distribution of such funds has served the purposes of the Debbie Smith DNA Backlog Grant Program;

(4) grants awarded and the use of such grants by eligible entities for DNA training and education programs for law enforcement, correctional personnel, court officers, medical personnel, victim service providers, and other personnel authorized under sections 303 and 304;

(5) grants awarded and the use of such grants by eligible entities to conduct DNA research and development programs to improve forensic DNA technology, and implement demonstration projects under section 305;

(6) the steps taken to establish the National Forensic Science Commission, and the activities of the Commission under section 306;

(7) the use of funds by the Federal Bureau of Investigation under section 307;

(8) grants awarded and the use of such grants by eligible entities to promote the use of forensic DNA technology to identify missing persons and unidentified human remains under section 308;

(9) grants awarded and the use of such grants by eligible entities to eliminate forensic science backlogs under the amendments made by section 311;

(10) State compliance with the requirements set forth in section 313; and

(11) any other matters considered relevant by the Attorney General.

Innocence
Protection Act of
2004.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

18 USC 3600
note.

SEC. 401. SHORT TITLE.

This title may be cited as the “Innocence Protection Act of 2004”.

Subtitle A—Exonerating the Innocent Through DNA Testing

SEC. 411. FEDERAL POST-CONVICTION DNA TESTING.

(a) **FEDERAL CRIMINAL PROCEDURE.**—

(1) **IN GENERAL.**—Part II of title 18, United States Code, is amended by inserting after chapter 228 the following:

“CHAPTER 228A—POST-CONVICTION DNA TESTING

“Sec.

“3600. DNA testing.

“3600A. Preservation of biological evidence.

“§ 3600. DNA testing

“(a) IN GENERAL.—Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the ‘applicant’), the court that entered the judgment of conviction shall order DNA testing of specific evidence if the court finds that all of the following apply: Applicability.

“(1) The applicant asserts, under penalty of perjury, that the applicant is actually innocent of—

“(A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or

“(B) another Federal or State offense, if—

“(i) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or new sentencing hearing; and

“(ii) in the case of a State offense—

“(I) the applicant demonstrates that there is no adequate remedy under State law to permit DNA testing of the specified evidence relating to the State offense; and

“(II) to the extent available, the applicant has exhausted all remedies available under State law for requesting DNA testing of specified evidence relating to the State offense.

“(2) The specific evidence to be tested was secured in relation to the investigation or prosecution of the Federal or State offense referenced in the applicant’s assertion under paragraph (1).

“(3) The specific evidence to be tested—

“(A) was not previously subjected to DNA testing and the applicant did not—

“(i) knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the Innocence Protection Act of 2004; or

“(ii) knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing; or

“(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing.

“(4) The specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing.

“(5) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices.

“(6) The applicant identifies a theory of defense that—
 “(A) is not inconsistent with an affirmative defense presented at trial; and

“(B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant’s assertion under paragraph (1).

“(7) If the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial.

“(8) The proposed DNA testing of the specific evidence may produce new material evidence that would—

“(A) support the theory of defense referenced in paragraph (6); and

“(B) raise a reasonable probability that the applicant did not commit the offense.

“(9) The applicant certifies that the applicant will provide a DNA sample for purposes of comparison.

“(10) The motion is made in a timely fashion, subject to the following conditions:

“(A) There shall be a rebuttable presumption of timeliness if the motion is made within 60 months of enactment of the Justice For All Act of 2004 or within 36 months of conviction, whichever comes later. Such presumption may be rebutted upon a showing—

“(i) that the applicant’s motion for a DNA test is based solely upon information used in a previously denied motion; or

“(ii) of clear and convincing evidence that the applicant’s filing is done solely to cause delay or harass.

“(B) There shall be a rebuttable presumption against timeliness for any motion not satisfying subparagraph (A) above. Such presumption may be rebutted upon the court’s finding—

“(i) that the applicant was or is incompetent and such incompetence substantially contributed to the delay in the applicant’s motion for a DNA test;

“(ii) the evidence to be tested is newly discovered DNA evidence;

“(iii) that the applicant’s motion is not based solely upon the applicant’s own assertion of innocence and, after considering all relevant facts and circumstances surrounding the motion, a denial would result in a manifest injustice; or

“(iv) upon good cause shown.

“(C) For purposes of this paragraph—

“(i) the term ‘incompetence’ has the meaning as defined in section 4241 of title 18, United States Code;

“(ii) the term ‘manifest’ means that which is unmistakable, clear, plain, or indisputable and requires that the opposite conclusion be clearly evident.

“(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

“(1) NOTICE.—Upon the receipt of a motion filed under subsection (a), the court shall—

“(A) notify the Government; and

“(B) allow the Government a reasonable time period to respond to the motion.

“(2) PRESERVATION ORDER.—To the extent necessary to carry out proceedings under this section, the court shall direct the Government to preserve the specific evidence relating to a motion under subsection (a).

“(3) APPOINTMENT OF COUNSEL.—The court may appoint counsel for an indigent applicant under this section in the same manner as in a proceeding under section 3006A(a)(2)(B).

“(c) TESTING PROCEDURES.—

“(1) IN GENERAL.—The court shall direct that any DNA testing ordered under this section be carried out by the Federal Bureau of Investigation.

“(2) EXCEPTION.—Notwithstanding paragraph (1), the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

“(3) COSTS.—The costs of any DNA testing ordered under this section shall be paid—

“(A) by the applicant; or

“(B) in the case of an applicant who is indigent, by the Government.

“(d) TIME LIMITATION IN CAPITAL CASES.—In any case in which the applicant is sentenced to death— Deadlines.

“(1) any DNA testing ordered under this section shall be completed not later than 60 days after the date on which the Government responds to the motion filed under subsection (a); and

“(2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the court shall order any post-testing procedures under subsection (f) or (g), as appropriate.

“(e) REPORTING OF TEST RESULTS.—

“(1) IN GENERAL.—The results of any DNA testing ordered under this section shall be simultaneously disclosed to the court, the applicant, and the Government.

“(2) NDIS.—The Government shall submit any test results relating to the DNA of the applicant to the National DNA Index System (referred to in this subsection as ‘NDIS’).

“(3) RETENTION OF DNA SAMPLE.—

“(A) ENTRY INTO NDIS.—If the DNA test results obtained under this section are inconclusive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.

“(B) MATCH WITH OTHER OFFENSE.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.

“(C) NO MATCH.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained

in NDIS if there is no other legal authority to retain the DNA sample of the applicant in NDIS.

“(f) POST-TESTING PROCEDURES; INCONCLUSIVE AND INCULPATORY RESULTS.—

“(1) INCONCLUSIVE RESULTS.—If DNA test results obtained under this section are inconclusive, the court may order further testing, if appropriate, or may deny the applicant relief.

“(2) INCULPATORY RESULTS.—If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the court shall—

“(A) deny the applicant relief; and

“(B) on motion of the Government—

“(i) make a determination whether the applicant’s assertion of actual innocence was false, and, if the court makes such a finding, the court may hold the applicant in contempt;

“(ii) assess against the applicant the cost of any DNA testing carried out under this section;

“(iii) forward the finding to the Director of the Bureau of Prisons, who, upon receipt of such a finding, may deny, wholly or in part, the good conduct credit authorized under section 3632 on the basis of that finding;

“(iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and

“(v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

“(3) SENTENCE.—In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.

“(g) POST-TESTING PROCEDURES; MOTION FOR NEW TRIAL OR RESENTENCING.—

“(1) IN GENERAL.—Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, the applicant may file a motion for a new trial or resentencing, as appropriate. The court shall establish a reasonable schedule for the applicant to file such a motion and for the Government to respond to the motion.

“(2) STANDARD FOR GRANTING MOTION FOR NEW TRIAL OR RESENTENCING.—The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of—

“(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

“(B) in the case of a motion for resentencing, another Federal or State offense, if evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

“(h) OTHER LAWS UNAFFECTED.—

“(1) POST-CONVICTION RELIEF.—Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

“(2) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

“(3) NOT A MOTION UNDER SECTION 2255.—A motion under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the motion or any other motion is a second or successive motion under section 2255.

“§ 3600A. Preservation of biological evidence

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall preserve biological evidence that was secured in the investigation or prosecution of a Federal offense, if a defendant is under a sentence of imprisonment for such offense.

“(b) DEFINED TERM.—For purposes of this section, the term ‘biological evidence’ means—

“(1) a sexual assault forensic examination kit; or

“(2) semen, blood, saliva, hair, skin tissue, or other identified biological material.

“(c) APPLICABILITY.—Subsection (a) shall not apply if—

“(1) a court has denied a request or motion for DNA testing of the biological evidence by the defendant under section 3600, and no appeal is pending;

“(2) the defendant knowingly and voluntarily waived the right to request DNA testing of the biological evidence in a court proceeding conducted after the date of enactment of the Innocence Protection Act of 2004;

“(3) after a conviction becomes final and the defendant has exhausted all opportunities for direct review of the conviction, the defendant is notified that the biological evidence may be destroyed and the defendant does not file a motion under section 3600 within 180 days of receipt of the notice;

“(4)(A) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

“(B) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing; or

“(5) the biological evidence has already been subjected to DNA testing under section 3600 and the results included the defendant as the source of such evidence.

“(d) OTHER PRESERVATION REQUIREMENT.—Nothing in this section shall preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

“(e) REGULATIONS.—Not later than 180 days after the date of enactment of the Innocence Protection Act of 2004, the Attorney General shall promulgate regulations to implement and enforce

Deadline.

this section, including appropriate disciplinary sanctions to ensure that employees comply with such regulations.

“(f) CRIMINAL PENALTY.—Whoever knowingly and intentionally destroys, alters, or tampers with biological evidence that is required to be preserved under this section with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding, shall be fined under this title, imprisoned for not more than 5 years, or both.

“(g) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.”.

(2) CLERICAL AMENDMENT.—The chapter analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 228 the following:

“228A. Post-conviction DNA testing 3600”.

(b) SYSTEM FOR REPORTING MOTIONS.—

(1) ESTABLISHMENT.—The Attorney General shall establish a system for reporting and tracking motions filed in accordance with section 3600 of title 18, United States Code.

(2) OPERATION.—In operating the system established under paragraph (1), the Federal courts shall provide to the Attorney General any requested assistance in operating such a system and in ensuring the accuracy and completeness of information included in that system.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report to Congress that contains—

(A) a list of motions filed under section 3600 of title 18, United States Code, as added by this title;

(B) whether DNA testing was ordered pursuant to such a motion;

(C) whether the applicant obtained relief on the basis of DNA test results; and

(D) whether further proceedings occurred following a granting of relief and the outcome of such proceedings.

(4) ADDITIONAL INFORMATION.—The report required to be submitted under paragraph (3) may include any other information the Attorney General determines to be relevant in assessing the operation, utility, or costs of section 3600 of title 18, United States Code, as added by this title, and any recommendations the Attorney General may have relating to future legislative action concerning that section.

(c) EFFECTIVE DATE; APPLICABILITY.—This section and the amendments made by this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.

18 USC 3600
note.

18 USC 3600
note.

42 USC 14136e.

SEC. 412. KIRK BLOODSWORTH POST-CONVICTION DNA TESTING GRANT PROGRAM.

(a) IN GENERAL.—The Attorney General shall establish the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program to award grants to States to help defray the costs of post-conviction DNA testing.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$5,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(c) **STATE DEFINED.**—For purposes of this section, the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

SEC. 413. INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE.

42 USC 14136
note.

For each of fiscal years 2005 through 2009, all funds appropriated to carry out sections 303, 305, 308, and 412 shall be reserved for grants to eligible entities that—

(1) meet the requirements under section 303, 305, 308, or 412, as appropriate; and

(2) demonstrate that the State in which the eligible entity operates—

(A) provides post-conviction DNA testing of specified evidence—

(i) under a State statute enacted before the date of enactment of this Act (or extended or renewed after such date), to persons convicted after trial and under a sentence of imprisonment or death for a State felony offense, in a manner that ensures a reasonable process for resolving claims of actual innocence; or

(ii) under a State statute enacted after the date of enactment of this Act, or under a State rule, regulation, or practice, to persons under a sentence of imprisonment or death for a State felony offense, in a manner comparable to section 3600(a) of title 18, United States Code (provided that the State statute, rule, regulation, or practice may make post-conviction DNA testing available in cases in which such testing is not required by such section), and if the results of such testing exclude the applicant, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar such application as untimely; and

(B) preserves biological evidence secured in relation to the investigation or prosecution of a State offense—

(i) under a State statute or a State or local rule, regulation, or practice, enacted or adopted before the date of enactment of this Act (or extended or renewed after such date), in a manner that ensures that reasonable measures are taken by all jurisdictions within the State to preserve such evidence; or

(ii) under a State statute or a State or local rule, regulation, or practice, enacted or adopted after the date of enactment of this Act, in a manner comparable to section 3600A of title 18, United States Code, if—

(I) all jurisdictions within the State comply with this requirement; and

(II) such jurisdictions may preserve such evidence for longer than the period of time that such evidence would be required to be preserved under such section 3600A.

Subtitle B—Improving the Quality of Representation in State Capital Cases

42 USC 14163.

SEC. 421. CAPITAL REPRESENTATION IMPROVEMENT GRANTS.

(a) **IN GENERAL.**—The Attorney General shall award grants to States for the purpose of improving the quality of legal representation provided to indigent defendants in State capital cases.

(b) **DEFINED TERM.**—In this section, the term “legal representation” means legal counsel and investigative, expert, and other services necessary for competent representation.

(c) **USE OF FUNDS.**—Grants awarded under subsection (a)—

(1) shall be used to establish, implement, or improve an effective system for providing competent legal representation to—

(A) indigents charged with an offense subject to capital punishment;

(B) indigents who have been sentenced to death and who seek appellate or collateral relief in State court; and

(C) indigents who have been sentenced to death and who seek review in the Supreme Court of the United States; and

(2) shall not be used to fund, directly or indirectly, representation in specific capital cases.

(d) **APPORTIONMENT OF FUNDS.**—

(1) **IN GENERAL.**—Of the funds awarded under subsection

(a)—

(A) not less than 75 percent shall be used to carry out the purpose described in subsection (c)(1)(A); and

(B) not more than 25 percent shall be used to carry out the purpose described in subsection (c)(1)(B).

(2) **WAIVER.**—The Attorney General may waive the requirement under this subsection for good cause shown.

(e) **EFFECTIVE SYSTEM.**—As used in subsection (c)(1), an effective system for providing competent legal representation is a system that—

(1) invests the responsibility for appointing qualified attorneys to represent indigents in capital cases—

(A) in a public defender program that relies on staff attorneys, members of the private bar, or both, to provide representation in capital cases;

(B) in an entity established by statute or by the highest State court with jurisdiction in criminal cases, which is composed of individuals with demonstrated knowledge and expertise in capital cases, except for individuals currently employed as prosecutors; or

(C) pursuant to a statutory procedure enacted before the date of the enactment of this Act under which the trial judge is required to appoint qualified attorneys from a roster maintained by a State or regional selection committee or similar entity; and

(2) requires the program described in paragraph (1)(A), the entity described in paragraph (1)(B), or an appropriate entity designated pursuant to the statutory procedure described in paragraph (1)(C), as applicable, to—

(A) establish qualifications for attorneys who may be appointed to represent indigents in capital cases;

(B) establish and maintain a roster of qualified attorneys;

(C) except in the case of a selection committee or similar entity described in paragraph (1)(C), assign 2 attorneys from the roster to represent an indigent in a capital case, or provide the trial judge a list of not more than 2 pairs of attorneys from the roster, from which 1 pair shall be assigned, provided that, in any case in which the State elects not to seek the death penalty, a court may find, subject to any requirement of State law, that a second attorney need not remain assigned to represent the indigent to ensure competent representation;

(D) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases;

(E)(i) monitor the performance of attorneys who are appointed and their attendance at training programs; and
“(ii) remove from the roster attorneys who—

“(I) fail to deliver effective representation or engage in unethical conduct;

“(II) fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs; or

“(III) during the past 5 years, have been sanctioned by a bar association or court for ethical misconduct relating to the attorney’s conduct as defense counsel in a criminal case in Federal or State court; and

(F) ensure funding for the cost of competent legal representation by the defense team and outside experts selected by counsel, who shall be compensated—

(i) in the case of a State that employs a statutory procedure described in paragraph (1)(C), in accordance with the requirements of that statutory procedure; and

(ii) in all other cases, as follows:

(I) Attorneys employed by a public defender program shall be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor’s office in the jurisdiction.

(II) Appointed attorneys shall be compensated for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases.

(III) Non-attorney members of the defense team, including investigators, mitigation specialists, and experts, shall be compensated at a rate that reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

(IV) Attorney and non-attorney members of the defense team shall be reimbursed for reasonable incidental expenses.

42 USC 14163a.

SEC. 422. CAPITAL PROSECUTION IMPROVEMENT GRANTS.

(a) **IN GENERAL.**—The Attorney General shall award grants to States for the purpose of enhancing the ability of prosecutors to effectively represent the public in State capital cases.

(b) **USE OF FUNDS.**—

(1) **PERMITTED USES.**—Grants awarded under subsection (a) shall be used for one or more of the following:

(A) To design and implement training programs for State and local prosecutors to ensure effective representation in State capital cases.

(B) To develop and implement appropriate standards and qualifications for State and local prosecutors who litigate State capital cases.

(C) To assess the performance of State and local prosecutors who litigate State capital cases, provided that such assessment shall not include participation by the assessor in the trial of any specific capital case.

(D) To identify and implement any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases.

(E) To establish a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate.

(F) To provide support and assistance to the families of murder victims.

(2) **PROHIBITED USE.**—Grants awarded under subsection (a) shall not be used to fund, directly or indirectly, the prosecution of specific capital cases.

42 USC 14163b.

SEC. 423. APPLICATIONS.

Procedures.

(a) **IN GENERAL.**—The Attorney General shall establish a process through which a State may apply for a grant under this subtitle.

(b) **APPLICATION.**—

(1) **IN GENERAL.**—A State desiring a grant under this subtitle shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may reasonably require.

(2) **CONTENTS.**—Each application submitted under paragraph (1) shall contain—

Certification.

(A) a certification by an appropriate officer of the State that the State authorizes capital punishment under its laws and conducts, or will conduct, prosecutions in which capital punishment is sought;

(B) a description of the communities to be served by the grant, including the nature of existing capital defender services and capital prosecution programs within such communities;

(C) a long-term statewide strategy and detailed implementation plan that—

(i) reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations; and

(ii) establishes as a priority improvement in the quality of trial-level representation of indigents

charged with capital crimes and trial-level prosecution of capital crimes;

(D) in the case of a State that employs a statutory procedure described in section 421(e)(1)(C), a certification by an appropriate officer of the State that the State is in substantial compliance with the requirements of the applicable State statute; and

(E) assurances that Federal funds received under this subtitle shall be—

(i) used to supplement and not supplant non-Federal funds that would otherwise be available for activities funded under this subtitle; and

(ii) allocated in accordance with section 426(b).

SEC. 424. STATE REPORTS.

42 USC 14163c.

(a) **IN GENERAL.**—Each State receiving funds under this subtitle shall submit an annual report to the Attorney General that—

(1) identifies the activities carried out with such funds;

and

(2) explains how each activity complies with the terms and conditions of the grant.

(b) **CAPITAL REPRESENTATION IMPROVEMENT GRANTS.**—With respect to the funds provided under section 421, a report under subsection (a) shall include—

(1) an accounting of all amounts expended;

(2) an explanation of the means by which the State—

(A) invests the responsibility for identifying and appointing qualified attorneys to represent indigents in capital cases in a program described in section 421(e)(1)(A), an entity described in section 421(e)(1)(B), or a selection committee or similar entity described in section 421(e)(1)(C); and

(B) requires such program, entity, or selection committee or similar entity, or other appropriate entity designated pursuant to the statutory procedure described in section 421(e)(1)(C), to—

(i) establish qualifications for attorneys who may be appointed to represent indigents in capital cases in accordance with section 421(e)(2)(A);

(ii) establish and maintain a roster of qualified attorneys in accordance with section 421(e)(2)(B);

(iii) assign attorneys from the roster in accordance with section 421(e)(2)(C);

(iv) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases in accordance with section 421(e)(2)(D);

(v) monitor the performance and training program attendance of appointed attorneys, and remove from the roster attorneys who fail to deliver effective representation or fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs, in accordance with section 421(e)(2)(E); and

(vi) ensure funding for the cost of competent legal representation by the defense team and outside experts

selected by counsel, in accordance with section 421(e)(2)(F), including a statement setting forth—

(I) if the State employs a public defender program under section 421(e)(1)(A), the salaries received by the attorneys employed by such program and the salaries received by attorneys in the prosecutor's office in the jurisdiction;

(II) if the State employs appointed attorneys under section 421(e)(1)(B), the hourly fees received by such attorneys for actual time and service and the basis on which the hourly rate was calculated;

(III) the amounts paid to non-attorney members of the defense team, and the basis on which such amounts were determined; and

(IV) the amounts for which attorney and non-attorney members of the defense team were reimbursed for reasonable incidental expenses;

(3) in the case of a State that employs a statutory procedure described in section 421(e)(1)(C), an assessment of the extent to which the State is in compliance with the requirements of the applicable State statute; and

(4) a statement confirming that the funds have not been used to fund representation in specific capital cases or to supplant non-Federal funds.

(c) CAPITAL PROSECUTION IMPROVEMENT GRANTS.—With respect to the funds provided under section 422, a report under subsection (a) shall include—

(1) an accounting of all amounts expended;

(2) a description of the means by which the State has—

(A) designed and established training programs for State and local prosecutors to ensure effective representation in State capital cases in accordance with section 422(b)(1)(A);

(B) developed and implemented appropriate standards and qualifications for State and local prosecutors who litigate State capital cases in accordance with section 422(b)(1)(B);

(C) assessed the performance of State and local prosecutors who litigate State capital cases in accordance with section 422(b)(1)(C);

(D) identified and implemented any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases in accordance with section 422(b)(1)(D);

(E) established a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate in accordance with section 422(b)(1)(E); and

(F) provided support and assistance to the families of murder victims; and

(3) a statement confirming that the funds have not been used to fund the prosecution of specific capital cases or to supplant non-Federal funds.

(d) PUBLIC DISCLOSURE OF ANNUAL STATE REPORTS.—The annual reports to the Attorney General submitted by any State under this section shall be made available to the public.

SEC. 425. EVALUATIONS BY INSPECTOR GENERAL AND ADMINISTRATIVE REMEDIES. 42 USC 14163d.**(a) EVALUATION BY INSPECTOR GENERAL.—**

(1) **IN GENERAL.**—As soon as practicable after the end of the first fiscal year for which a State receives funds under a grant made under this subtitle, the Inspector General of the Department of Justice (in this section referred to as the “Inspector General”) shall—

(A) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report evaluating the compliance by the State with the terms and conditions of the grant; and

Reports.

(B) if the Inspector General concludes that the State is not in compliance with the terms and conditions of the grant, specify any deficiencies and make recommendations to the Attorney General for corrective action.

(2) **PRIORITY.**—In conducting evaluations under this subsection, the Inspector General shall give priority to States that the Inspector General determines, based on information submitted by the State and other comments provided by any other person, to be at the highest risk of noncompliance.

(3) **DETERMINATION FOR STATUTORY PROCEDURE STATES.**—For each State that employs a statutory procedure described in section 421(e)(1)(C), the Inspector General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, not later than the end of the first fiscal year for which such State receives funds, a determination as to whether the State is in substantial compliance with the requirements of the applicable State statute.

Deadline.

(4) **COMMENTS FROM PUBLIC.**—The Inspector General shall receive and consider comments from any member of the public regarding any State’s compliance with the terms and conditions of a grant made under this subtitle. To facilitate the receipt of such comments, the Inspector General shall maintain on its website a form that any member of the public may submit, either electronically or otherwise, providing comments. The Inspector General shall give appropriate consideration to all such public comments in reviewing reports submitted under section 424 or in establishing the priority for conducting evaluations under this section.

(b) ADMINISTRATIVE REVIEW.—

(1) **COMMENT.**—Upon the submission of a report under subsection (a)(1) or a determination under subsection (a)(3), the Attorney General shall provide the State with an opportunity to comment regarding the findings and conclusions of the report or the determination.

(2) **CORRECTIVE ACTION PLAN.**—If the Attorney General, after reviewing a report under subsection (a)(1) or a determination under subsection (a)(3), determines that a State is not in compliance with the terms and conditions of the grant, the Attorney General shall consult with the appropriate State authorities to enter into a plan for corrective action. If the State does not agree to a plan for corrective action that has been approved by the Attorney General within 90 days after the submission of the report under subsection (a)(1) or the

Deadline.

determination under subsection (a)(3), the Attorney General shall, within 30 days, issue guidance to the State regarding corrective action to bring the State into compliance.

(3) REPORT TO CONGRESS.—Not later than 90 days after the earlier of the implementation of a corrective action plan or the issuance of guidance under paragraph (2), the Attorney General shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate as to whether the State has taken corrective action and is in compliance with the terms and conditions of the grant.

(c) PENALTIES FOR NONCOMPLIANCE.—If the State fails to take the prescribed corrective action under subsection (b) and is not in compliance with the terms and conditions of the grant, the Attorney General shall discontinue all further funding under sections 421 and 422 and require the State to return the funds granted under such sections for that fiscal year. Nothing in this paragraph shall prevent a State which has been subject to penalties for non-compliance from reapplying for a grant under this subtitle in another fiscal year.

(d) PERIODIC REPORTS.—During the grant period, the Inspector General shall periodically review the compliance of each State with the terms and conditions of the grant.

(e) ADMINISTRATIVE COSTS.—Not less than 2.5 percent of the funds appropriated to carry out this subtitle for each of fiscal years 2005 through 2009 shall be made available to the Inspector General for purposes of carrying out this section. Such sums shall remain available until expended.

(f) SPECIAL RULE FOR “STATUTORY PROCEDURE” STATES NOT IN SUBSTANTIAL COMPLIANCE WITH STATUTORY PROCEDURES.—

(1) IN GENERAL.—In the case of a State that employs a statutory procedure described in section 421(e)(1)(C), if the Inspector General submits a determination under subsection (a)(3) that the State is not in substantial compliance with the requirements of the applicable State statute, then for the period beginning with the date on which that determination was submitted and ending on the date on which the Inspector General determines that the State is in substantial compliance with the requirements of that statute, the funds awarded under this subtitle shall be allocated solely for the uses described in section 421.

(2) RULE OF CONSTRUCTION.—The requirements of this subsection apply in addition to, and not instead of, the other requirements of this section.

42 USC 14163e.

SEC. 426. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION FOR GRANTS.—There are authorized to be appropriated \$75,000,000 for each of fiscal years 2005 through 2009 to carry out this subtitle.

(b) RESTRICTION ON USE OF FUNDS TO ENSURE EQUAL ALLOCATION.—Each State receiving a grant under this subtitle shall allocate the funds equally between the uses described in section 421 and the uses described in section 422, except as provided in section 425(f).

Subtitle C—Compensation for the Wrongfully Convicted

SEC. 431. INCREASED COMPENSATION IN FEDERAL CASES FOR THE WRONGFULLY CONVICTED.

Section 2513(e) of title 28, United States Code, is amended by striking “exceed the sum of \$5,000” and inserting “exceed \$100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and \$50,000 for each 12-month period of incarceration for any other plaintiff”.

SEC. 432. SENSE OF CONGRESS REGARDING COMPENSATION IN STATE DEATH PENALTY CASES.

It is the sense of Congress that States should provide reasonable compensation to any person found to have been unjustly convicted of an offense against the State and sentenced to death.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5107 (H.R. 3214):

HOUSE REPORTS: No. 108–711 (Comm. on the Judiciary).

SENATE REPORTS: No. 108–321, Pt. 1 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Oct. 9, considered and passed Senate.



Public Law 108–406
108th Congress

An Act

Oct. 30, 2004
[H.R. 5131]

To provide assistance to Special Olympics to support expansion of Special Olympics and development of education programs and a Healthy Athletes Program, and for other purposes.

Special Olympics
Sport and
Empowerment
Act of 2004.
42 USC 15001
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Special Olympics Sport and Empowerment Act of 2004”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Special Olympics celebrates the possibilities of a world where everybody matters, everybody counts, every person has value, and every person has worth.

(2) The Government and the people of the United States recognize the dignity and value the giftedness of children and adults with an intellectual disability.

(3) The Government and the people of the United States are determined to end the isolation and stigmatization of people with an intellectual disability.

(4) For more than 36 years, Special Olympics has encouraged skill, sharing, courage, and joy through year-round sports training and athletic competition for children and adults with intellectual disabilities.

(5) Special Olympics provides year-round sports training and competitive opportunities to 1,500,000 athletes with intellectual disabilities in 26 sports and plans to expand the joy of participation through sport to hundreds of thousands of people with intellectual disabilities within the United States and worldwide over the next 5 years.

(6) Special Olympics has demonstrated its ability to provide a major positive effect on the quality of life of people with intellectual disabilities, improving their health and physical well-being, building their confidence and self-esteem, and giving them a voice to become active and productive members of their communities.

(7) In society as a whole, Special Olympics has become a vehicle and platform for breaking down artificial barriers, improving public health, changing negative attitudes in education, and helping athletes overcome the prejudice that people with intellectual disabilities face in too many places.

(8) The Government of the United States enthusiastically supports Special Olympics, recognizes its importance in

improving the lives of people with intellectual disabilities, and recognizes Special Olympics as a valued and important component of the global community.

(b) PURPOSE.—The purposes of this Act are to—

(1) provide support to Special Olympics to increase athlete participation in and public awareness about the Special Olympics movement;

(2) dispel negative stereotypes about people with intellectual disabilities;

(3) build athletic and family involvement through sport; and

(4) promote the extraordinary gifts of people with intellectual disabilities.

SEC. 3. ASSISTANCE FOR SPECIAL OLYMPICS.

(a) EDUCATION ACTIVITIES.—The Secretary of Education may award grants to, or enter into contracts or cooperative agreements with, Special Olympics to carry out the following:

(1) Activities to promote the expansion of Special Olympics, including activities to increase the participation of individuals with intellectual disabilities within the United States.

(2) The design and implementation of Special Olympics education programs, including character education and volunteer programs that support the purposes of this Act, that can be integrated into classroom instruction and are consistent with academic content standards.

(b) INTERNATIONAL ACTIVITIES.—The Secretary of State may award grants to, or enter into contracts or cooperative agreements with, Special Olympics to carry out the following:

(1) Activities to increase the participation of individuals with intellectual disabilities in Special Olympics outside of the United States.

(2) Activities to improve the awareness outside of the United States of the abilities and unique contributions that individuals with intellectual disabilities can make to society.

(c) HEALTHY ATHLETES.—

(1) IN GENERAL.—The Secretary of Health and Human Services may award grants to, or enter into contracts or cooperative agreements with, Special Olympics for the implementation of on-site health assessments, screening for health problems, health education, data collection, and referrals to direct health care services.

(2) COORDINATION.—Activities under paragraph (1) shall be coordinated with private health providers, existing authorized programs of State and local jurisdictions, or the Department of Health and Human Services, as applicable.

(d) LIMITATION.—Amounts appropriated to carry out this section shall not be used for direct treatment of diseases, medical conditions, or mental health conditions. Nothing in the preceding sentence shall be construed to limit the use of non-Federal funds by Special Olympics.

SEC. 4. APPLICATION AND ANNUAL REPORT.

(a) APPLICATION.—

(1) IN GENERAL.—To be eligible for a grant, contract, or cooperative agreement under subsection (a), (b), or (c) of section 3, Special Olympics shall submit an application at such time,

in such manner, and containing such information as the Secretary of Education, Secretary of State, or Secretary of Health and Human Services, as applicable, may require.

(2) **CONTENT.**—At a minimum, an application under this subsection shall contain the following:

(A) **ACTIVITIES.**—A description of activities to be carried out with the grant, contract, or cooperative agreement.

(B) **MEASURABLE GOALS.**—Information on specific measurable goals and objectives to be achieved through activities carried out with the grant, contract, or cooperative agreement.

(b) **ANNUAL REPORT.**—

(1) **IN GENERAL.**—As a condition on receipt of any funds under subsection (a), (b), or (c) of section 3, Special Olympics shall agree to submit an annual report at such time, in such manner, and containing such information as the Secretary of Education, Secretary of State, or Secretary of Health and Human Services, as applicable, may require.

(2) **CONTENT.**—At a minimum, each annual report under this subsection shall describe the degree to which progress has been made toward meeting the goals and objectives described in the applications submitted under subsection (a).

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) for grants, contracts, or cooperative agreements under section 3(a), \$5,500,000 for fiscal year 2005, and such sums as may be necessary for each of the 4 succeeding fiscal years;

(2) for grants, contracts, or cooperative agreements under section 3(b), \$3,500,000 for fiscal year 2005, and such sums as may be necessary for each of the 4 succeeding fiscal years; and

(3) for grants, contracts, or cooperative agreements under section 3(c), \$6,000,000 for each of fiscal years 2005 through 2009.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5131 (S. 2852):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–407
108th Congress

An Act

To designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the “Martha Pennino Post Office Building”.

Oct. 30, 2004
[H.R. 5133]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, shall be known and designated as the “Martha Pennino Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Martha Pennino Post Office Building”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5133:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Oct. 10, considered and passed Senate.



Public Law 108–408
108th Congress

An Act

Oct. 30, 2004
[H.R. 5147]

To designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the “Evan Asa Ashcraft Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, shall be known and designated as the “Evan Asa Ashcraft Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Evan Asa Ashcraft Post Office Building”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5147:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Sept. 28, considered and passed House.
Oct. 10, considered and passed Senate.



Public Law 108–409
108th Congress

An Act

To reduce certain special allowance payments and provide additional teacher loan forgiveness on Federal student loans.

Oct. 30, 2004
[H.R. 5186]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Taxpayer-Teacher Protection Act of 2004”.

Taxpayer-
Teacher
Protection Act
of 2004.
20 USC 1001
note.

SEC. 2. REDUCTION OF SPECIAL ALLOWANCE PAYMENTS FOR LOANS FROM THE PROCEEDS OF TAX EXEMPT ISSUES.

Section 438(b)(2)(B) (20 U.S.C. 1087–1(b)(2)(B)) is amended—

(1) in clause (i), by striking “this division” and inserting “this clause”;

(2) in clause (ii), by striking “division (i) of this subparagraph” and inserting “clause (i) of this subparagraph”;

(3) in clause (iv), by inserting “or refunded after September 30, 2004, and before January 1, 2006,” after “October 1, 1993,”; and

(4) by adding at the end the following new clause:

“(v) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance shall be the rate determined under subparagraph (A), (E), (F), (G), (H), or (I) of this paragraph, or paragraph (4), as the case may be, for a holder of loans that—

“(I) were made or purchased with funds—

“(aa) obtained from the issuance of obligations the income from which is excluded from gross income under the Internal Revenue Code of 1986 and which obligations were originally issued before October 1, 1993; or

“(bb) obtained from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in division (aa), or from income on the investment of such funds; and

“(II) are—

“(aa) financed by such an obligation that, after September 30, 2004, and before January 1, 2006, has matured or been retired or defeased;

“(bb) refinanced after September 30, 2004, and before January 1, 2006, with funds obtained from a source other than funds described in subclause (I) of this clause; or

“(cc) sold or transferred to any other holder after September 30, 2004, and before January 1, 2006.”.

SEC. 3. LOAN FORGIVENESS FOR TEACHERS.

(a) IMPLEMENTING HIGHLY QUALIFIED TEACHER REQUIREMENTS.—

(1) AMENDMENTS.—

(A) FFEL LOANS.—Section 428J(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078–10(b)(1)) is amended—

(i) in subparagraph (A), by inserting “and” after the semicolon; and

(ii) by striking subparagraphs (B) and (C) and inserting the following:

“(B) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 9101 of the Elementary Secondary Education Act of 1965; and”.

(B) DIRECT LOANS.—Section 460(b)(1)(A) of such Act (20 U.S.C. 1087j(b)(1)(A)) is amended—

(i) in clause (i), by inserting “and” after the semicolon; and

(ii) by striking clauses (ii) and (iii) and inserting the following:

“(ii) if employed as an elementary school or secondary school teacher, is highly qualified as defined in section 9101 of the Elementary and Secondary Education Act of 1965; and”.

(2) TRANSITION RULE.—

(A) RULE.—The amendments made by paragraph (1) of this subsection to sections 428J(b)(1) and 460(b)(1)(A) of the Higher Education Act of 1965 shall not be applied to disqualify any individual who, before the date of enactment of this Act, commenced service that met and continues to meet the requirements of such sections as such sections were in effect on the day before the date of enactment of this Act.

(B) RULE NOT APPLICABLE TO INCREASED QUALIFIED LOAN AMOUNTS.—Subparagraph (A) of this paragraph shall not apply for purposes of obtaining increased qualified loan amounts under sections 428J(c)(3) and 460(c)(3) of the Higher Education Act of 1965 as added by subsection (b) of this section.

(b) ADDITIONAL AMOUNTS ELIGIBLE TO BE REPAYED.—

(1) FFEL LOANS.—Section 428J(c) of the Higher Education Act of 1965 (20 U.S.C. 1078–10(c)) is amended by adding at the end the following:

“(3) ADDITIONAL AMOUNTS FOR TEACHERS IN MATHEMATICS, SCIENCE, OR SPECIAL EDUCATION.—Notwithstanding the amount specified in paragraph (1), the aggregate amount that the Secretary shall repay under this section shall be not more than \$17,500 in the case of—

“(A) a secondary school teacher—

“(i) who meets the requirements of subsection (b); and

“(ii) whose qualifying employment for purposes of such subsection is teaching mathematics or science on a full-time basis; and

“(B) an elementary school or secondary school teacher—

“(i) who meets the requirements of subsection (b);

“(ii) whose qualifying employment for purposes of such subsection is as a special education teacher whose primary responsibility is to provide special education to children with disabilities (as those terms are defined in section 602 of the Individuals with Disabilities Education Act); and

“(iii) who, as certified by the chief administrative officer of the public or non-profit private elementary school or secondary school in which the borrower is employed, is teaching children with disabilities that correspond with the borrower’s special education training and has demonstrated knowledge and teaching skills in the content areas of the elementary school or secondary school curriculum that the borrower is teaching.”.

(2) DIRECT LOANS.—Section 460(c) of the Higher Education Act of 1965 (20 U.S.C. 1087j(c)) is amended by adding at the end the following:

“(3) ADDITIONAL AMOUNTS FOR TEACHERS IN MATHEMATICS, SCIENCE, OR SPECIAL EDUCATION.—Notwithstanding the amount specified in paragraph (1), the aggregate amount that the Secretary shall cancel under this section shall be not more than \$17,500 in the case of—

“(A) a secondary school teacher—

“(i) who meets the requirements of subsection (b)(1); and

“(ii) whose qualifying employment for purposes of such subsection is teaching mathematics or science on a full-time basis; and

“(B) an elementary school or secondary school teacher—

“(i) who meets the requirements of subsection (b)(1);

“(ii) whose qualifying employment for purposes of such subsection is as a special education teacher whose primary responsibility is to provide special education to children with disabilities (as those terms are defined in section 602 of the Individuals with Disabilities Education Act); and

“(iii) who, as certified by the chief administrative officer of the public or non-profit private elementary school or secondary school in which the borrower is employed, is teaching children with disabilities that correspond with the borrower’s special education training and has demonstrated knowledge and teaching skills in the content areas of the elementary school or secondary school curriculum that the borrower is teaching.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply only with respect to eligible individuals who are new borrowers (as such term is defined in 103 of the Higher Education Act of 1965 (20 U.S.C. 1003)) on or after October 1, 1998, and before October 1, 2005.

Applicability.
20 USC 1078-10
note.

20 USC 1078–10
note.
Notification.

(c) INFORMATION ON BENEFITS TO RURAL SCHOOL DISTRICTS.—
The Secretary shall—

(1) notify local educational agencies eligible to participate in the Small Rural Achievement Program authorized under subpart 1 of part B of title VI of the Elementary and Secondary Education Act of 1965 of the benefits available under the amendments made by this section; and

(2) encourage such agencies to notify their teachers of such benefits.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5186:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 7, considered and passed House.

Oct. 9, considered and passed Senate.



Public Law 108–410
108th Congress

An Act

To amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts, and for other purposes.

Oct. 30, 2004
[H.R. 5294]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “John F. Kennedy Center Reauthorization Act of 2004”.

John F. Kennedy
Center
Reauthorization
Act of 2004.
20 USC 76h note.

SEC. 2. AUTHORIZATIONS OF APPROPRIATIONS.

Section 13 of the John F. Kennedy Center Act (20 U.S.C. 76r) is amended by striking subsections (a) and (b) and inserting the following:

“(a) MAINTENANCE, REPAIR, AND SECURITY.—There are authorized to be appropriated to the Board to carry out section 4(a)(1)(H)—

“(1) \$17,000,000 for fiscal year 2004; and

“(2) \$18,000,000 for each of fiscal years 2005, 2006, and 2007.

“(b) CAPITAL PROJECTS.—There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 4(a)(1)—

“(1) \$16,000,000 for fiscal year 2004; and

“(2) \$18,000,000 for each of fiscal years 2005, 2006, and 2007.”.

SEC. 3. JOHN F. KENNEDY CENTER PLAZA.

(a) RESPONSIBILITIES OF THE SECRETARY.—Section 12(b) of the John F. Kennedy Center Act (20 U.S.C. 76q–1(b)) is amended by adding at the end the following:

“(6) PROJECT TEAM.—

“(A) ESTABLISHMENT.—To further construction of the Project, the Secretary shall establish a Project Team.

“(B) MEMBERSHIP.—The Project Team shall be composed of the following members:

“(i) The Secretary (or the Secretary’s designee).

“(ii) The Administrator of General Services (or the Administrator’s designee).

“(iii) The Chairman of the Board (or the Chairman’s designee).

“(iv) Such other individuals as the Project Team considers appropriate.

“(C) PROJECT DIRECTOR.—The Project Team shall have a Project Director who shall be appointed by the Secretary, in consultation with the Administrator of General Services

and the Chairman of the Board. The Project Director shall report directly to the Project Team.”.

(b) RESPONSIBILITIES OF THE BOARD.—

(1) IN GENERAL.—Section 12(c)(1) of such Act (20 U.S.C. 76q-1(c)(1)) is amended by inserting “, in consultation with the Project Team,” after “The Board”.

(2) CONSTRUCTION OF BUILDINGS.—Section 12(c)(3) of such Act (20 U.S.C. 76q-1(c)(3)) is amended by inserting “, in consultation with the Project Team,” after “The Board”.

(3) APPROVAL BY PROJECT TEAM.—Section 12(c) of such Act (20 U.S.C. 76q-1(c)) is amended by adding at the end the following:

“(5) APPROVAL BY PROJECT TEAM.—Notwithstanding section 5(e), any decision by the Board that will significantly affect, as determined by the Project Team in consultation with the Board, the scope, cost, schedule, or engineering feasibility of any element of the Project, other than buildings to be constructed on the Plaza, shall be subject to the approval of the Project Team.”.

(c) GAO REVIEW.—Section 12 of such Act (20 U.S.C. 76q-1) is amended by adding at the end the following:

“(g) GAO REVIEW.—Until completion of the Project, the Comptroller General shall review the management and oversight of construction of the Project by the Board and report periodically on the results of the review to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.”.

Report.

Approved October 30, 2004.

LEGISLATIVE HISTORY—H.R. 5294:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 8, considered and passed House.

Oct. 11, considered and passed Senate.



Public Law 108–411
108th Congress

An Act

To provide for reform relating to Federal employment, and for other purposes.

Oct. 30, 2004

[S. 129]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Federal Workforce Flexibility Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Federal
Workforce
Flexibility Act of
2004.
5 USC 101 note.

Sec. 1. Short title; table of contents.

**TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL
MANAGEMENT**

Sec. 101. Recruitment, relocation, and retention bonuses.

Sec. 102. Streamlined critical pay authority.

**TITLE II—REFORMS RELATING TO FEDERAL EMPLOYEE CAREER
DEVELOPMENT AND BENEFITS**

Sec. 201. Agency training.

Sec. 202. Annual leave enhancements.

Sec. 203. Compensatory time off for travel.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

Sec. 301. Corrections relating to pay administration.

Sec. 302. Technical corrections.

**TITLE I—REFORMS RELATING TO FED-
ERAL HUMAN CAPITAL MANAGEMENT**

SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION BONUSES.

(a) **BONUSES.**—

(1) **IN GENERAL.**—Chapter 57 of title 5, United States Code, is amended by striking sections 5753 and 5754 and inserting the following:

“§ 5753. Recruitment and relocation bonuses

“(a)(1) This section may be applied to—

“(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

“(B) employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.

“(2) A bonus may not be paid under this section to an individual who is appointed to or who holds—

“(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

“(B) a position in the Senior Executive Service as a non-career appointee (as such term is defined under section 3132(a)); or

“(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

“(3) In this section, the term ‘employee’ has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

“(b) The Office of Personnel Management may authorize the head of an agency to pay a bonus under this section to an individual only if—

“(1) the position to which such individual is appointed (as described in paragraph (2)(A)) or to which such individual moves or must relocate (as described in paragraph (2)(B)) is likely to be difficult to fill in the absence of such a bonus; and

“(2) the individual—

“(A) is newly appointed as an employee of the Federal Government; or

“(B)(i) is currently employed by the Federal Government; and

“(ii)(I) moves to a new position in the same geographic area under circumstances described in regulations of the Office; or

“(II) must relocate to accept a position in a different geographic area.

Contracts.

“(c)(1) Payment of a bonus under this section shall be contingent upon the employee entering into a written service agreement to complete a period of employment with the agency, not longer than 4 years. The Office may, by regulation, prescribe a minimum service period for purposes of this section.

“(2)(A) The agreement shall include—

“(i) the commencement and termination dates of the required service period (or provisions for the determination thereof);

“(ii) the amount of the bonus;

“(iii) the method of payment; and

“(iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and regulations of the Office.

“(B) The terms and conditions for paying a bonus, as specified in the service agreement, shall include—

“(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

“(ii) the effect of the termination.

“(C) The required service period shall commence upon the commencement of service with the agency or movement to a new position or geographic area, as applicable, unless the service agreement provides for a later commencement date in circumstances and to the extent allowable under regulations of the Office, such as when there is an initial period of formal basic training.

“(d)(1) Except as provided in subsection (e), a bonus under this section shall not exceed 25 percent of the annual rate of

basic pay of the employee at the beginning of the service period multiplied by the number of years (including a fractional part of a year, as determined under regulations of the Office) in the required service period of the employee involved.

“(2) A bonus under this section may be paid as an initial lump sum, in installments, as a final lump sum upon the completion of the full period of service required by the agreement, or in a combination of these forms of payment.

“(3) A bonus under this section is not part of the basic pay of an employee for any purpose.

“(4) Under regulations of the Office, a recruitment bonus under this section may be paid to an eligible individual before that individual enters on duty.

“(e) The Office may authorize the head of an agency to waive the limitation under subsection (d)(1) based on a critical agency need, subject to regulations prescribed by the Office. Under such a waiver, the maximum bonus allowable shall—

“(1) be equal to the maximum that would be determined if subsection (d)(1) were applied by substituting ‘50’ for ‘25’; but

“(2) in no event exceed 100 percent of the annual rate of basic pay of the employee at the beginning of the service period.

Nothing in this subsection shall be considered to permit the waiver of any requirement under subsection (c).

“(f) The Office shall require that an agency establish a plan for the payment of recruitment bonuses before paying any such bonuses, and a plan for the payment of relocation bonuses before paying any such bonuses, subject to regulations prescribed by the Office.

“(g) The Office may prescribe regulations to carry out this section, including regulations relating to the repayment of a bonus under this section in appropriate circumstances when the agreed-upon service period has not been completed.

“§ 5754. Retention bonuses

“(a)(1) This section may be applied to—

“(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

“(B) employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.

“(2) A bonus may not be paid under this section to an individual who is appointed to or who holds—

“(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

“(B) a position in the Senior Executive Service as a non-career appointee (as such term is defined under section 3132(a)); or

“(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

“(3) In this section, the term ‘employee’ has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

“(b) The Office of Personnel Management may authorize the head of an agency to pay a retention bonus to an employee if—

“(1) the unusually high or unique qualifications of the employee or a special need of the agency for the employee’s services makes it essential to retain the employee; and

“(2) the agency determines that, in the absence of a retention bonus, the employee would be likely to leave—

“(A) the Federal service; or

“(B) for a different position in the Federal service under conditions described in regulations of the Office.

“(c) The Office may authorize the head of an agency to pay retention bonuses to a group of employees in 1 or more categories of positions in 1 or more geographic areas, subject to the requirements of subsection (b)(1) and regulations prescribed by the Office, if there is a high risk that a significant portion of employees in the group would be likely to leave in the absence of retention bonuses.

Contracts.

“(d)(1) Payment of a retention bonus is contingent upon the employee entering into a written service agreement with the agency to complete a period of employment with the agency.

“(2)(A) The agreement shall include—

“(i) the length of the required service period;

“(ii) the amount of the bonus;

“(iii) the method of payment; and

“(iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and regulations of the Office.

“(B) The terms and conditions for paying a bonus, as specified in the service agreement, shall include—

“(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

“(ii) the effect of the termination.

“(3)(A) Notwithstanding paragraph (1), a written service agreement is not required if the agency pays a retention bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred.

Notices.

“(B) If an agency pays a retention bonus in accordance with subparagraph (A) and makes a determination to terminate the payments, the agency shall provide written notice to the employee of that determination. Except as provided in regulations of the Office, the employee shall continue to be paid the retention bonus through the end of the pay period in which such written notice is provided.

“(4) A retention bonus for an employee may not be based on any period of such service which is the basis for a recruitment or relocation bonus under section 5753.

“(e)(1) Except as provided in subsection (f), a retention bonus, which shall be stated as a percentage of the employee’s basic pay for the service period associated with the bonus, may not exceed—

“(A) 25 percent of the employee’s basic pay if paid under subsection (b); or

“(B) 10 percent of an employee’s basic pay if paid under subsection (c).

“(2)(A) A retention bonus may be paid to an employee in installments after completion of specified periods of service or in a single

lump sum at the end of the full period of service required by the agreement.

“(B) An installment payment is derived by multiplying the amount of basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate established for the employee.

“(C) If the installment payment percentage established for the employee is less than the bonus percentage rate established for the employee, the accrued but unpaid portion of the bonus is payable as part of the final installment payment to the employee after completion of the full service period under the terms of the service agreement.

“(D) For purposes of this paragraph, the bonus percentage rate established for an employee means the bonus percentage rate established for such employee in accordance with paragraph (1) or subsection (f), as the case may be.

“(3) A retention bonus is not part of the basic pay of an employee for any purpose.

“(f) Upon the request of the head of an agency, the Office may waive the limit established under subsection (e)(1) and permit the agency head to pay an otherwise eligible employee or category of employees retention bonuses of up to 50 percent of basic pay, based on a critical agency need.

“(g) The Office shall require that, before paying any bonuses under this section, an agency shall establish a plan for the payment of any such bonuses, subject to regulations prescribed by the Office.

“(h) The Office may prescribe regulations to carry out this section.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 57 of title 5, United States Code, is amended by striking the item relating to section 5754 and inserting the following: “5754. Retention bonuses.”.

(3) SENSE OF CONGRESS.—It is the sense of the Congress that the Director of the Office of Personnel Management—

(A) should, each time a bonus is paid under the amendment made by paragraph (1) to recruit or relocate a Federal employee from one Government agency to another within the same geographic area or to retain a Federal employee who might otherwise leave one Government agency for another within the same geographic area, be notified of that payment within 60 days after the date on which such bonus is paid; and

(B) should monitor the payment of such bonuses (in the circumstances described in subparagraph (A)) to ensure that they are an effective use of the Federal Government’s funds and have not adversely affected the ability of those Government agencies that lost employees to other Government agencies (in such circumstances) to carry out their mission.

(b) RELOCATION PAYMENTS.—Section 407 of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note; 104 Stat. 1467) is repealed.

(c) REPORTS.—

(1) RECRUITMENT AND RELOCATION BONUSES.—

(A) IN GENERAL.—The Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform

of the House of Representatives annually, for each of the first 5 years during which section 5753 of title 5, United States Code (as amended by subsection (a)(1)) is in effect, a report on the operation of such section.

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency and each type of bonus under such section—

(i) the number and dollar-amount of bonuses paid—

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to individuals who moved between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

(ii) a determination of the extent to which such bonuses furthered the purposes of such section.

(2) RETENTION BONUSES.—

(A) IN GENERAL.—The Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives annually, for each of the first 5 years during which section 5754 of title 5, United States Code (as amended by subsection (a)(1)) is in effect, a report on the operation of such section.

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency—

(i) the number and dollar-amount of bonuses paid—

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to prevent individuals from moving between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

(ii) a determination of the extent to which such bonuses furthered the purposes of such section.

5 USC 5753 note.

(d) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—Except as provided under paragraphs (2) and (3), this section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) APPLICATION TO AGREEMENTS.—A recruitment or relocation bonus service agreement that was authorized under section 5753 of title 5, United States Code, before the effective date under paragraph (1) shall continue, until its expiration, to

be subject to such section as in effect on the day before such effective date.

(3) APPLICATION TO ALLOWANCES.—Payment of a retention allowance that was authorized under section 5754 of title 5, United States Code, before the effective date under paragraph (1) shall continue, subject to such section as in effect on the day before such effective date, until the retention allowance is reauthorized or terminated (but no longer than 1 year after such effective date).

SEC. 102. STREAMLINED CRITICAL PAY AUTHORITY.

Section 5377 of title 5, United States Code, is amended—

(1) by striking “Office of Personnel Management” each place it appears and inserting “Office of Management and Budget”;

(2) by striking “Office of Management and Budget” each place it appears and inserting “Office of Personnel Management”;

(3) in subsection (g), by striking “prescribing regulations under this section or”; and

(4) in subsection (h), by striking “Committee on Post Office and Civil Service” and inserting “Committee on Government Reform”.

TITLE II—REFORMS RELATING TO FEDERAL EMPLOYEE CAREER DEVELOPMENT AND BENEFITS

SEC. 201. AGENCY TRAINING.

(a) TRAINING TO ACCOMPLISH PERFORMANCE PLANS AND STRATEGIC GOALS.—Section 4103 of title 5, United States Code, is amended by adding at the end the following:

“(c) The head of each agency shall, on a regular basis—

“(1) evaluate each program or plan established, operated, or maintained under subsection (a) with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and

“(2) modify such program or plan as needed to accomplish such plans and goals.”.

(b) SPECIFIC TRAINING PROGRAMS.—

(1) IN GENERAL.—Chapter 41 of title 5, United States Code, is amended by adding after section 4120 the following:

“§ 4121. Specific training programs

“In consultation with the Office of Personnel Management, the head of each agency shall establish—

“(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

“(2) a program to provide training to managers on actions, options, and strategies a manager may use in—

“(A) relating to employees with unacceptable performance;

“(B) mentoring employees and improving employee performance and productivity; and

“(C) conducting employee performance appraisals.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by adding at the end the following:

“4121. Specific training programs.”.

SEC. 202. ANNUAL LEAVE ENHANCEMENTS.

(a) CREDITABILITY OF PRIOR NONGOVERNMENTAL SERVICE FOR PURPOSES OF DETERMINING RATE OF LEAVE ACCRUAL.—

(1) IN GENERAL.—Section 6303 of title 5, United States Code, is amended by adding at the end the following:

Deadline.
Regulations.

“(e)(1) Not later than 180 days after the date of the enactment of this subsection, the Office of Personnel Management shall prescribe regulations under which, for purposes of determining years of service under subsection (a), credit shall, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes, if—

“(A) such service—

“(i) was performed in a position the duties of which directly relate to the duties of the position to which such employee is so appointed; and

“(ii) meets such other requirements as the Office may prescribe; and

“(B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.

“(2) Service described in paragraph (1)—

“(A) shall be creditable, for the purposes described in paragraph (1), as of the effective date of the employee’s appointment; and

“(B) shall not thereafter cease to be so creditable, unless the employee fails to complete a full year of continuous service with the agency.

“(3) An employee shall not be eligible for the application of paragraph (1) on the basis of any appointment if, within 90 days before the effective date of such appointment, such employee has held any position in the civil service.”.

(2) CONFORMING AMENDMENT.—The second sentence of section 6303(a) of title 5, United States Code, is amended by striking the period and inserting “, and for all service which is creditable by virtue of subsection (e).”.

(b) OTHER ANNUAL LEAVE ENHANCEMENTS.—Section 6303 of title 5, United States Code, is amended by adding after subsection (e) (as added by subsection (a)) the following:

“(f) Notwithstanding any other provision of this section, the rate of accrual of annual leave under subsection (a) shall be 1 day for each full biweekly pay period in the case of any employee who holds a position which is subject to—

“(1) section 5376 or 5383; or

“(2) a pay system equivalent to either of the foregoing, as determined by the Office of Personnel Management.”.

5 USC 6303 note.

(c) APPLICABILITY.—None of the amendments made by subsection (a) shall apply in the case of any employee holding a position pursuant to an appointment made before the effective date of the regulations implementing such amendments.

SEC. 203. COMPENSATORY TIME OFF FOR TRAVEL.

(a) **IN GENERAL.**—Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

“§ 5550b. Compensatory time off for travel

“(a) Notwithstanding section 5542(b)(2), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.

“(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5550a the following:

“5550b. Compensatory time off for travel.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the earlier of—

5 USC 5550b
note.

- (1) the effective date of any regulations prescribed to carry out such amendments; or
- (2) the 90th day after the date of the enactment of this Act.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

SEC. 301. CORRECTIONS RELATING TO PAY ADMINISTRATION.

(a) **IN GENERAL.**—Chapter 53 of title 5, United States Code, is amended—

- (1) in section 5302, by striking paragraph (8) and inserting the following:

“(8) the term ‘rates of pay under the General Schedule’, ‘rates of pay for the General Schedule’, or ‘scheduled rates of basic pay’ means the rates of basic pay under the General Schedule as established by section 5332, excluding pay under section 5304 and any other additional pay of any kind; and”;

- (2) in section 5305—

(A) by striking subsection (a) and inserting the following:

“(a)(1) Whenever the Office of Personnel Management finds that the Government’s recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped due to any of the circumstances described in subsection (b), the Office may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by

more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

Notification. “(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.”;

Effective date.

(B) in subsection (b), by striking paragraph (4) and inserting the following:

“(4) any other circumstances which the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate.”;

(C) in subsection (d)—

(i) by striking “President” and inserting “Office of Personnel Management”; and

(ii) by striking “or by such agency as he may designate” and inserting “(or by such other agency as the President may designate under the last sentence of subsection (a)(1))”;

(D) in subsection (e), by striking “basic pay” and inserting “pay”;

(E) by striking subsection (f) and inserting the following:

“(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee’s special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).”;

(F) in subsection (g)(1)—

(i) by striking “basic pay” and inserting “pay”; and

(ii) by striking “President (or his designated agency)” and inserting “Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)”;

(G) by striking subsection (h) and inserting the following:

“(h) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term ‘basic pay’ includes any applicable locality-based comparability payment under section 5304 or similar provision of law.”; and

(H) by adding at the end the following:

“(i) If an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee’s new rate of pay shall be initially established under conversion rules prescribed by the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following:

“(1) First, determine the rate of pay to which such employee would be entitled at the new official duty station based on such employee’s position, grade, and step (or relative position in the rate range) before the move.

“(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

“(j) A rate determined under a schedule of special rates established under this section shall be considered to be part of basic pay for purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55, and section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.”;

(3) in section 5334—

(A) in subsection (b), by adding at the end the following: “If an employee’s rate after promotion or transfer is greater than the maximum rate of basic pay for the employee’s grade, that rate shall be treated as a retained rate under section 5363. The Office of Personnel Management shall prescribe by regulation the circumstances under which and the extent to which special rates under section 5305 (or similar provision of law) or locality-adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in applying this subsection.”; and

Regulations.

(B) by adding at the end the following:

“(g) In the case of an employee who—

“(1) moves to a new official duty station, and

“(2) by virtue of such move, becomes subject to a different pay schedule,

any rate adjustment under the preceding provisions of this section, with respect to such employee in connection with such move, shall be made—

“(A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee’s position, grade, and step (or relative position in the rate range) before the move, and

“(B) then, by applying the provisions of this section that would otherwise apply (if any), treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment.”;

(4) in section 5361—

(A) by amending paragraph (4) to read as follows:

“(4) ‘rate of basic pay’ means—

“(A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including—

“(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

“(ii) any applicable special pay under section 5305 or similar provision of law; and

“(iii) subject to such regulations as the Office of Personnel Management may prescribe, any applicable existing retained rate of pay established under section 5363 or similar provision of law; and

“(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343;”;

(B) in paragraph (6), by striking “and” at the end;

(C) in paragraph (7), by striking the period and inserting “; and”; and

(D) by adding at the end the following:

“(8) ‘retained rate’ means the rate of basic pay to which an employee is entitled under section 5363(b)(2).”;

(5) in section 5363—

(A) in subsection (a), by striking the matter following paragraph (4) and inserting the following:

“is entitled to a rate of basic pay in accordance with regulations prescribed by the Office of Personnel Management in conformity with the provisions of this section.”; and

(B) by striking subsections (b) and (c) and inserting the following:

“(b)(1)(A) If, as a result of any event described in subsection (a), the employee’s former rate of basic pay is less than or equal to the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved, the employee is entitled to basic pay at the lowest rate of basic pay payable for such grade that equals or exceeds such former rate of basic pay.

“(B) This section shall cease to apply to an employee to whom subparagraph (A) applies once the appropriate rate of basic pay has been determined for such employee under this paragraph.

“(2)(A) If, as a result of any event described in subsection (a), the employee’s former rate of basic pay is greater than the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved, the employee is entitled to basic pay at a rate equal to the lesser of—

“(i) the employee’s former rate of basic pay; or

“(ii) 150 percent of the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved,
as adjusted by subparagraph (B).

“(B) A rate to which an employee is entitled under this paragraph shall be increased at the time of any increase in the maximum rate of basic pay payable for the grade of the employee’s position by 50 percent of the dollar amount of each such increase.

“(3) For purposes of this subsection, the term ‘former rate of basic pay’, as used with respect to an employee in connection with an event described in subsection (a), means the rate of basic pay last received by such employee before the occurrence of such event.

“(c)(1) Notwithstanding any other provision of this section, in the case of an employee who—

“(A) moves to a new official duty station, and

“(B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the preceding provisions of this section, this section shall be applied—

“(i) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee’s position, grade, and step (or relative position in the pay range) before the move, and

“(ii) then, by applying the provisions of this section that would apply (if any), treating the rate determined under clause (i) as if it were the rate last received by the employee before the application of this section.

“(2) A reduction in an employee’s rate of basic pay resulting from a determination under paragraph (1)(ii) is not a basis for an entitlement under this section.

“(3) The rate of basic pay for an employee who is receiving a retained rate at the time of moving to a new official duty station at which different pay schedules apply shall be subject to regulations prescribed by the Office of Personnel Management consistent with the purposes of this section.

“(d) A retained rate shall be considered part of basic pay for purposes of this subchapter and for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55, section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe. The Office shall, for any purpose other than any of the purposes referred to in the preceding sentence, prescribe by regulation what constitutes basic pay for employees receiving a retained rate.

Regulations.

“(e) This section shall not apply, or shall cease to apply, to an employee who—

“(1) has a break in service of 1 workday or more;

“(2) is entitled, by operation of this subchapter, chapter 51 or 53, or any other provision of law, to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the retained rate to which the employee would otherwise be entitled; or

“(3) is demoted for personal cause or at the employee’s request.”; and

(6) in section 5365(b), by inserting after “provisions of this subchapter” the following: “(subject to any conditions or limitations the Office may establish)”.

(b) SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.—Section 403(c) of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note) is amended by striking all after “provision of law” and inserting “and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).”.

(c) REPEAL.—Section 4505a(a)(2) of title 5, United States Code, is amended—

(1) by striking “(2)(A)” and inserting “(2)”; and

(2) by striking subparagraph (B).

(d) EFFECTIVE DATE; CONVERSION RULES.—

5 USC 5363 note.

(1) **EFFECTIVE DATE.**—This section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) **CONVERSION RULES.**—

(A) **INDIVIDUALS RECEIVING A RETAINED RATE OR A RATE GREATER THAN THE MAXIMUM RATE FOR THE GRADE.**—Subject to any regulations the Office of Personnel Management may prescribe, an employee under a covered pay schedule who, on the day before the effective date of this section, is receiving a retained rate under section 5363 of title 5, United States Code, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee's position shall have that rate converted as of the effective date of this section, and the employee shall be considered to be receiving a retained rate under section 5363 of such title (as amended by this section). The newly applicable retained rate shall equal the formerly applicable retained rate as adjusted to include any applicable locality-based payment under section 5304 of title 5, United States Code, or similar provision of law.

(B) **DEFINITION.**—For purposes of this paragraph, the term “covered pay schedule” has the meaning given such term by section 5361 of title 5, United States Code.

SEC. 302. TECHNICAL CORRECTIONS.

(a)(1) Section 5304 of title 5, United States Code, as amended by section 1125 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), is amended—

(A) in subsection (g)(2)(A), by striking “(A)–(D)” and inserting “(A)–(C)”; and

(B) in subsection (h)(2)(B)(i), by striking “or (vii)” and inserting “or (vi)”.

Effective date.
5 USC 5304 note.

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

(b) Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Administrator of the Office of Electronic Government.”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—S. 129:

HOUSE REPORTS: No. 108–733 (Comm. on Government Reform).

SENATE REPORTS: No. 108–223 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 8, considered and passed Senate.

Oct. 6, considered and passed House, amended.

Oct. 11, Senate concurred in House amendment.



Public Law 108–412
108th Congress

An Act

Oct. 30, 2004
[S. 144]

To require the Secretary of Agriculture to establish a program to provide assistance to eligible weed management entities to control or eradicate noxious weeds on public and private land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NOXIOUS WEED CONTROL AND ERADICATION.

The Plant Protection Act (7 U.S.C. 7701 et seq.) is amended by adding at the end the following new subtitle:

Noxious Weed
Control and
Eradication Act
of 2004.

**“Subtitle E—Noxious Weed Control and
Eradication**

7 USC 7701 note.

“SEC. 451. SHORT TITLE.

“This subtitle may be cited as the ‘Noxious Weed Control and Eradication Act of 2004’.

7 USC 7781.

“SEC. 452. DEFINITIONS.

“In this subtitle:

“(1) INDIAN TRIBE.—The term ‘Indian Tribe’ has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(2) WEED MANAGEMENT ENTITY.—The term ‘weed management entity’ means an entity that—

“(A) is recognized by the State in which it is established;

“(B) is established for the purpose of or has demonstrable expertise and significant experience in controlling or eradicating noxious weeds and increasing public knowledge and education concerning the need to control or eradicate noxious weeds;

“(C) may be multijurisdictional and multidisciplinary in nature;

“(D) may include representatives from Federal, State, local, or, where applicable, Indian Tribe governments, private organizations, individuals, and State-recognized conservation districts or State-recognized weed management districts; and

“(E) has existing authority to perform land management activities on Federal land if the proposed project or activity is on Federal lands.

“(3) **FEDERAL LANDS.**—The term ‘Federal lands’ means those lands owned and managed by the United States Forest Service or the Bureau of Land Management.

“SEC. 453. ESTABLISHMENT OF PROGRAM.

7 USC 7782.

“(a) **IN GENERAL.**—The Secretary shall establish a program to provide financial and technical assistance to control or eradicate noxious weeds.

“(b) **GRANTS.**—Subject to the availability of appropriations under section 457(a), the Secretary shall make grants under section 454 to weed management entities for the control or eradication of noxious weeds.

“(c) **AGREEMENTS.**—Subject to the availability of appropriations under section 457(b), the Secretary shall enter into agreements under section 455 with weed management entities to provide financial and technical assistance for the control or eradication of noxious weeds.

“SEC. 454. GRANTS TO WEED MANAGEMENT ENTITIES.

7 USC 7783.

“(a) **CONSULTATION AND CONSENT.**—In carrying out a grant under this subtitle, the weed management entity and the Secretary shall—

“(1) if the activities funded under the grant will take place on Federal land, consult with the heads of the Federal agencies having jurisdiction over the land; or

“(2) obtain the written consent of the non-Federal landowner.

“(b) **GRANT CONSIDERATIONS.**—In determining the amount of a grant to a weed management entity, the Secretary shall consider—

“(1) the severity or potential severity of the noxious weed problem;

“(2) the extent to which the Federal funds will be used to leverage non-Federal funds to address the noxious weed problem;

“(3) the extent to which the weed management entity has made progress in addressing the noxious weeds problem; and

“(4) other factors that the Secretary determines to be relevant.

“(c) **USE OF GRANT FUNDS; COST SHARES.**—

“(1) **USE OF GRANTS.**—A weed management entity that receives a grant under subsection (a) shall use the grant funds to carry out a project authorized by subsection (d) for the control or eradication of a noxious weed.

“(2) **COST SHARES.**—

“(A) **FEDERAL COST SHARE.**—The Federal share of the cost of carrying out an authorized project under this section exclusively on non-Federal land shall not exceed 50 percent.

“(B) **FORM OF NON-FEDERAL COST SHARE.**—The non-Federal share of the cost of carrying out an authorized project under this section may be provided in cash or in kind.

“(d) **AUTHORIZED PROJECTS.**—Projects funded by grants under this section include the following:

“(1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.

Regulations.

“(2) Other activities to control or eradicate noxious weeds or promote control or eradication of noxious weeds.

“(e) APPLICATION.—To be eligible to receive assistance under this section, a weed management entity shall prepare and submit to the Secretary an application containing such information as the Secretary shall by regulation require.

“(f) SELECTION OF PROJECTS.—Projects funded under this section shall be selected by the Secretary on a competitive basis, taking into consideration the following:

“(1) The severity of the noxious weed problem or potential problem addressed by the project.

“(2) The likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems.

“(3) The extent to which the Federal funds will leverage non-Federal funds to address the noxious weed problem addressed by the project.

“(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.

“(5) The extent to which the weed management entity has made progress in addressing noxious weed problems.

“(6) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds.

“(7) The extent to which the project will reduce the total population of noxious weeds.

“(8) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.

“(9) Other factors that the Secretary determines to be relevant.

“(g) REGIONAL, STATE, AND LOCAL INVOLVEMENT.—In determining which projects receive funding under this section, the Secretary shall, to the maximum extent practicable—

“(1) rely on technical and merit reviews provided by regional, State, or local weed management experts; and

“(2) give priority to projects that maximize the involvement of State, local and, where applicable, Indian Tribe governments.

“(h) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to States with approved weed management entities established by Indian Tribes and may provide an additional allocation to a State to meet the particular needs and projects that the weed management entity plans to address.

7 USC 7784.

“SEC. 455. AGREEMENTS.

“(a) CONSULTATION AND CONSENT.—In carrying out an agreement under this section, the Secretary shall—

“(1) if the activities funded under the agreement will take place on Federal land, consult with the heads of the Federal agencies having jurisdiction over the land; or

“(2) obtain the written consent of the non-Federal landowner.

“(b) APPLICATION OF OTHER LAWS.—The Secretary may enter into agreements under this section with weed management entities notwithstanding sections 6301 through 6309 of title 31, United

States Code, and other laws relating to the procurement of goods and services for the Federal Government.

“(c) ELIGIBLE ACTIVITIES.—Activities carried out under an agreement under this section may include the following:

“(1) Education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds.

“(2) Other activities to control or eradicate noxious weeds.

“(d) SELECTION OF ACTIVITIES.—Activities funded under this section shall be selected by the Secretary taking into consideration the following:

“(1) The severity of the noxious weeds problem or potential problem addressed by the activities.

“(2) The likelihood that the activity will prevent or resolve the problem, or increase knowledge about resolving similar problems.

“(3) The extent to which the activity will provide a comprehensive approach to the control or eradication of noxious weeds.

“(4) The extent to which the program will improve the overall capacity of the United States to address noxious weed control and management.

“(5) The extent to which the project promotes cooperation and participation between States that have common interests in controlling and eradicating noxious weeds.

“(6) Other factors that the Secretary determines to be relevant.

“(e) REGIONAL, STATE, AND LOCAL INVOLVEMENT.—In determining which activities receive funding under this section, the Secretary shall, to the maximum extent practicable—

“(1) rely on technical and merit reviews provided by regional, State, or local weed management experts; and

“(2) give priority to activities that maximize the involvement of State, local, and, where applicable, representatives of Indian Tribe governments.

“(f) RAPID RESPONSE PROGRAM.—At the request of the Governor of a State, the Secretary may enter into a cooperative agreement with a weed management entity in that State to enable rapid response to outbreaks of noxious weeds at a stage which rapid eradication and control is possible and to ensure eradication or immediate control of the noxious weeds if—

“(1) there is a demonstrated need for the assistance;

“(2) the noxious weed is considered to be a significant threat to native fish, wildlife, or their habitats, as determined by the Secretary;

“(3) the economic impact of delaying action is considered by the Secretary to be substantial; and

“(4) the proposed response to such threat—

“(A) is technically feasible;

“(B) economically responsible; and

“(C) minimizes adverse impacts to the structure and function of an ecosystem and adverse effects on nontarget species and ecosystems.

7 USC 7785.

“SEC. 456. RELATIONSHIP TO OTHER PROGRAMS.

“Funds under this Act (other than those made available for section 455(f)) are intended to supplement, not replace, assistance available to weed management entities, areas, and districts for control or eradication of noxious weeds on Federal lands and non-Federal lands. The provision of funds to a weed management entity under this Act (other than those made available for section 455(f)) shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31, United States Code.

7 USC 7786.

“SEC. 457. AUTHORIZATION OF APPROPRIATIONS.

“(a) GRANTS.—To carry out section 454, there are authorized to be appropriated to the Secretary \$7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs.

“(b) AGREEMENTS.—To carry out section 455 of this subtitle, there are authorized to be appropriated to the Secretary \$7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.”.

SEC. 2. TECHNICAL AMENDMENT.

7 USC 1501 note.

The table of sections in section 1(b) of the Agricultural Risk Protection Act of 2000 is amended by inserting after the item relating to section 442 the following:

“Subtitle E—Noxious Weed Control and Eradication

“Sec. 451. Short title.

“Sec. 452. Definitions.

“Sec. 453. Establishment of program.

“Sec. 454. Grants to weed management entities.

“Sec. 455. Agreements.

“Sec. 456. Relationship to other programs.

“Sec. 457. Authorization of Appropriations.”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—S. 144:

HOUSE REPORTS: No. 108–517, Pt. 1 (Comm. on Resources).

SENATE REPORTS: No. 108–6 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Mar. 4, considered and passed Senate.

Vol. 150 (2004): Oct. 4, considered and passed House, amended.

Oct. 10, Senate concurred in House amendment.



Public Law 108–413
108th Congress

An Act

To authorize the Secretary of the Interior, in cooperation with the University of New Mexico, to construct and occupy a portion of the Hibben Center for Archaeological Research at the University of New Mexico, and for other purposes.

Oct. 30, 2004
[S. 643]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hibben Center Act”.

Hibben Center
Act.
16 USC 410ii
note.

SEC. 2. LEASE AGREEMENT.

(a) **AUTHORIZATION.**—The Secretary of the Interior may enter into an agreement with the University of New Mexico to lease space in the Hibben Center for Archaeological Research at the University of New Mexico for research on, and curation of, the archaeological research collections of the National Park Service relating to the Chaco Culture National Historical Park and Aztec Ruins National Monument.

(b) **TERM; RENT.**—The lease shall provide for a term not exceeding 40 years and a nominal annual lease payment.

(c) **IMPROVEMENTS.**—The lease shall permit the Secretary to make improvements and install furnishings and fixtures related to the use and curation of the collections.

SEC. 3. GRANT.

Upon execution of the lease, the Secretary may contribute to the University of New Mexico:

(1) up to 37 percent of the cost of construction of the Hibben Center, not to exceed \$1,750,000; and

(2) the cost of improvements, not to exceed \$2,488,000.

SEC. 4. COOPERATIVE AGREEMENT.

The Secretary may enter into cooperative agreements with the University of New Mexico, Federal agencies, and Indian tribes for the curation of and conduct of research on artifacts, and to encourage collaborative management of the Chacoan archaeological artifacts associated with northwestern New Mexico.

16 USC 410ii
note.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary for the purposes of this Act.

Approved October 30, 2004.

LEGISLATIVE HISTORY—S. 643 (H.R. 3258):

HOUSE REPORTS: No. 108–743 accompanying H.R. 3258 (Comm. on Resources).

SENATE REPORTS: No. 108–94 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): July 17, considered and passed Senate.

Vol. 150 (2004): Sept. 28, considered and passed House, amended.

Oct. 10, Senate concurred in House amendment.



Public Law 108–414
108th Congress

An Act

To foster local collaborations which will ensure that resources are effectively and efficiently used within the criminal and juvenile justice systems.

Oct. 30, 2004
[S. 1194]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mentally Ill Offender Treatment and Crime Reduction Act of 2004”.

Mentally Ill
Offender
Treatment and
Crime Reduction
Act of 2004.
42 USC 3711
note.
42 USC 3797aa
note.

SEC. 2. FINDINGS.

Congress finds the following:

(1) According to the Bureau of Justice Statistics, over 16 percent of adults incarcerated in United States jails and prisons have a mental illness.

(2) According to the Office of Juvenile Justice and Delinquency Prevention, approximately 20 percent of youth in the juvenile justice system have serious mental health problems, and a significant number have co-occurring mental health and substance abuse disorders.

(3) According to the National Alliance for the Mentally Ill, up to 40 percent of adults who suffer from a serious mental illness will come into contact with the American criminal justice system at some point in their lives.

(4) According to the Office of Juvenile Justice and Delinquency Prevention, over 150,000 juveniles who come into contact with the juvenile justice system each year meet the diagnostic criteria for at least 1 mental or emotional disorder.

(5) A significant proportion of adults with a serious mental illness who are involved with the criminal justice system are homeless or at imminent risk of homelessness, and many of these individuals are arrested and jailed for minor, nonviolent offenses.

(6) The majority of individuals with a mental illness or emotional disorder who are involved in the criminal or juvenile justice systems are responsive to medical and psychological interventions that integrate treatment, rehabilitation, and support services.

(7) Collaborative programs between mental health, substance abuse, and criminal or juvenile justice systems that ensure the provision of services for those with mental illness or co-occurring mental illness and substance abuse disorders can reduce the number of such individuals in adult and juvenile corrections facilities, while providing improved public safety.

42 USC 3797aa
note.

SEC. 3. PURPOSE.

The purpose of this Act is to increase public safety by facilitating collaboration among the criminal justice, juvenile justice, mental health treatment, and substance abuse systems. Such collaboration is needed to—

(1) protect public safety by intervening with adult and juvenile offenders with mental illness or co-occurring mental illness and substance abuse disorders;

(2) provide courts, including existing and new mental health courts, with appropriate mental health and substance abuse treatment options;

(3) maximize the use of alternatives to prosecution through graduated sanctions in appropriate cases involving nonviolent offenders with mental illness;

(4) promote adequate training for criminal justice system personnel about mental illness and substance abuse disorders and the appropriate responses to people with such illnesses;

(5) promote adequate training for mental health and substance abuse treatment personnel about criminal offenders with mental illness or co-occurring substance abuse disorders and the appropriate response to such offenders in the criminal justice system;

(6) promote communication among adult or juvenile justice personnel, mental health and co-occurring mental illness and substance abuse disorders treatment personnel, nonviolent offenders with mental illness or co-occurring mental illness and substance abuse disorders, and support services such as housing, job placement, community, faith-based, and crime victims organizations; and

(7) promote communication, collaboration, and intergovernmental partnerships among municipal, county, and State elected officials with respect to mentally ill offenders.

SEC. 4. DEPARTMENT OF JUSTICE MENTAL HEALTH AND CRIMINAL JUSTICE COLLABORATION PROGRAM.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

**“PART HH—ADULT AND JUVENILE
COLLABORATION PROGRAM GRANTS**

42 USC 3797aa.

“SEC. 2991. ADULT AND JUVENILE COLLABORATION PROGRAMS.

“(a) DEFINITIONS.—In this section, the following definitions shall apply:

“(1) APPLICANT.—The term ‘applicant’ means States, units of local government, Indian tribes, and tribal organizations that apply for a grant under this section.

“(2) COLLABORATION PROGRAM.—The term ‘collaboration program’ means a program to promote public safety by ensuring access to adequate mental health and other treatment services for mentally ill adults or juveniles that is overseen cooperatively by—

“(A) a criminal or juvenile justice agency or a mental health court; and

“(B) a mental health agency.

“(3) CRIMINAL OR JUVENILE JUSTICE AGENCY.—The term ‘criminal or juvenile justice agency’ means an agency of a State or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.

“(4) DIVERSION AND ALTERNATIVE PROSECUTION AND SENTENCING.—

“(A) IN GENERAL.—The terms ‘diversion’ and ‘alternative prosecution and sentencing’ mean the appropriate use of effective mental health treatment alternatives to juvenile justice or criminal justice system institutional placements for preliminarily qualified offenders.

“(B) APPROPRIATE USE.—In this paragraph, the term ‘appropriate use’ includes the discretion of the judge or supervising authority, the leveraging of graduated sanctions to encourage compliance with treatment, and law enforcement diversion, including crisis intervention teams.

“(C) GRADUATED SANCTIONS.—In this paragraph, the term ‘graduated sanctions’ means an accountability-based graduated series of sanctions (including incentives, treatments, and services) applicable to mentally ill offenders within both the juvenile and adult justice system to hold individuals accountable for their actions and to protect communities by providing appropriate sanctions for inducing law-abiding behavior and preventing subsequent involvement in the criminal justice system.

“(5) MENTAL HEALTH AGENCY.—The term ‘mental health agency’ means an agency of a State or local government or its contracted agency that is responsible for mental health services or co-occurring mental health and substance abuse services.

“(6) MENTAL HEALTH COURT.—The term ‘mental health court’ means a judicial program that meets the requirements of part V of this title.

“(7) MENTAL ILLNESS.—The term ‘mental illness’ means a diagnosable mental, behavioral, or emotional disorder—

“(A) of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and

“(B)(i) that, in the case of an adult, has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities; or

“(ii) that, in the case of a juvenile, has resulted in functional impairment that substantially interferes with or limits the juvenile’s role or functioning in family, school, or community activities.

“(8) NONVIOLENT OFFENSE.—The term ‘nonviolent offense’ means an offense that does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another or is not a felony that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

“(9) PRELIMINARILY QUALIFIED OFFENDER.—The term ‘preliminarily qualified offender’ means an adult or juvenile accused of a nonviolent offense who—

“(A)(i) previously or currently has been diagnosed by a qualified mental health professional as having a mental illness or co-occurring mental illness and substance abuse disorders; or

“(ii) manifests obvious signs of mental illness or co-occurring mental illness and substance abuse disorders during arrest or confinement or before any court; and

“(B) has faced, is facing, or could face criminal charges for a misdemeanor or nonviolent offense and is deemed eligible by a diversion process, designated pretrial screening process, or by a magistrate or judge, on the ground that the commission of the offense is the product of the person’s mental illness.

“(10) SECRETARY.—The term ‘Secretary’ means the Secretary of Health and Human Services.

“(11) UNIT OF LOCAL GOVERNMENT.—The term ‘unit of local government’ means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, including a State court, local court, or a governmental agency located within a city, county, township, town, borough, parish, or village.

“(b) PLANNING AND IMPLEMENTATION GRANTS.—

“(1) IN GENERAL.—The Attorney General, in consultation with the Secretary, may award nonrenewable grants to eligible applicants to prepare a comprehensive plan for and implement an adult or juvenile collaboration program, which targets preliminarily qualified offenders in order to promote public safety and public health.

“(2) PURPOSES.—Grants awarded under this section shall be used to create or expand—

“(A) mental health courts or other court-based programs for preliminarily qualified offenders;

“(B) programs that offer specialized training to the officers and employees of a criminal or juvenile justice agency and mental health personnel serving those with co-occurring mental illness and substance abuse problems in procedures for identifying the symptoms of preliminarily qualified offenders in order to respond appropriately to individuals with such illnesses;

“(C) programs that support cooperative efforts by criminal and juvenile justice agencies and mental health agencies to promote public safety by offering mental health treatment services and, where appropriate, substance abuse treatment services for—

“(i) preliminarily qualified offenders with mental illness or co-occurring mental illness and substance abuse disorders; or

“(ii) adult offenders with mental illness during periods of incarceration, while under the supervision of a criminal justice agency, or following release from correctional facilities; and

“(D) programs that support intergovernmental cooperation between State and local governments with respect to the mentally ill offender.

“(3) APPLICATIONS.—

“(A) IN GENERAL.—To receive a planning grant or an implementation grant, the joint applicants shall prepare and submit a single application to the Attorney General at such time, in such manner, and containing such information as the Attorney General and the Secretary shall reasonably require. An application under part V of this title may be made in conjunction with an application under this section.

“(B) COMBINED PLANNING AND IMPLEMENTATION GRANT APPLICATION.—The Attorney General and the Secretary shall develop a procedure under which applicants may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

Procedures.

“(4) PLANNING GRANTS.—

“(A) APPLICATION.—The joint applicants may apply to the Attorney General for a nonrenewable planning grant to develop a collaboration program.

“(B) CONTENTS.—The Attorney General and the Secretary may not approve a planning grant unless the application for the grant includes or provides, at a minimum, for a budget and a budget justification, a description of the outcome measures that will be used to measure the effectiveness of the program in promoting public safety and public health, the activities proposed (including the provision of substance abuse treatment services, where appropriate) and a schedule for completion of such activities, and the personnel necessary to complete such activities.

“(C) PERIOD OF GRANT.—A planning grant shall be effective for a period of 1 year, beginning on the first day of the month in which the planning grant is made. Applicants may not receive more than 1 such planning grant.

“(D) AMOUNT.—The amount of a planning grant may not exceed \$75,000, except that the Attorney General may, for good cause, approve a grant in a higher amount.

“(E) COLLABORATION SET ASIDE.—Up to 5 percent of all planning funds shall be used to foster collaboration between State and local governments in furtherance of the purposes set forth in the Mentally Ill Offender Treatment and Crime Reduction Act of 2004.

“(5) IMPLEMENTATION GRANTS.—

“(A) APPLICATION.—Joint applicants that have prepared a planning grant application may apply to the Attorney General for approval of a nonrenewable implementation grant to develop a collaboration program.

“(B) COLLABORATION.—To receive an implementation grant, the joint applicants shall—

“(i) document that at least 1 criminal or juvenile justice agency (which can include a mental health court) and 1 mental health agency will participate in the administration of the collaboration program;

“(ii) describe the responsibilities of each participating agency, including how each agency will use

grant resources to provide supervision of offenders and jointly ensure that the provision of mental health treatment services and substance abuse services for individuals with co-occurring mental health and substance abuse disorders are coordinated, which may range from consultation or collaboration to integration in a single setting or treatment model;

“(iii) in the case of an application from a unit of local government, document that a State mental health authority has provided comment and review; and

“(iv) involve, to the extent practicable, in developing the grant application—

“(I) preliminarily qualified offenders;

“(II) the families and advocates of such individuals under subclause (I); and

“(III) advocates for victims of crime.

“(C) CONTENT.—To be eligible for an implementation grant, joint applicants shall comply with the following:

“(i) DEFINITION OF TARGET POPULATION.—Applicants for an implementation grant shall—

“(I) describe the population with mental illness or co-occurring mental illness and substance abuse disorders that is targeted for the collaboration program; and

“(II) develop guidelines that can be used by personnel of an adult or juvenile justice agency to identify preliminarily qualified offenders.

“(ii) SERVICES.—Applicants for an implementation grant shall—

“(I) ensure that preliminarily qualified offenders who are to receive treatment services under the collaboration program will first receive individualized, validated, needs-based assessments to determine, plan, and coordinate the most appropriate services for such individuals;

“(II) specify plans for making mental health, or mental health and substance abuse, treatment services available and accessible to preliminarily qualified offenders at the time of their release from the criminal justice system, including outside of normal business hours;

“(III) ensure that there are substance abuse personnel available to respond appropriately to the treatment needs of preliminarily qualified offenders;

“(IV) determine eligibility for Federal benefits;

“(V) ensure that preliminarily qualified offenders served by the collaboration program will have adequate supervision and access to effective and appropriate community-based mental health services, including, in the case of individuals with co-occurring mental health and substance abuse disorders, coordinated services, which may range from consultation or collaboration to integration in a single setting treatment model;

“(VI) make available, to the extent practicable, other support services that will ensure the preliminarily qualified offender’s successful reintegration into the community (such as housing, education, job placement, mentoring, and health care and benefits, as well as the services of faith-based and community organizations for mentally ill individuals served by the collaboration program); and

“(VII) include strategies, to the extent practicable, to address developmental and learning disabilities and problems arising from a documented history of physical or sexual abuse.

“(D) HOUSING AND JOB PLACEMENT.—Recipients of an implementation grant may use grant funds to assist mentally ill offenders compliant with the program in seeking housing or employment assistance.

“(E) POLICIES AND PROCEDURES.—Applicants for an implementation grant shall strive to ensure prompt access to defense counsel by criminal defendants with mental illness who are facing charges that would trigger a constitutional right to counsel.

“(F) FINANCIAL.—Applicants for an implementation grant shall—

“(i) explain the applicant’s inability to fund the collaboration program adequately without Federal assistance;

“(ii) specify how the Federal support provided will be used to supplement, and not supplant, State, local, Indian tribe, or tribal organization sources of funding that would otherwise be available, including billing third-party resources for services already covered under programs (such as Medicaid, Medicare, and the State Children’s Insurance Program); and

“(iii) outline plans for obtaining necessary support and continuing the proposed collaboration program following the conclusion of Federal support.

“(G) OUTCOMES.—Applicants for an implementation grant shall—

“(i) identify methodology and outcome measures, as required by the Attorney General and the Secretary, to be used in evaluating the effectiveness of the collaboration program;

“(ii) ensure mechanisms are in place to capture data, consistent with the methodology and outcome measures under clause (i); and

“(iii) submit specific agreements from affected agencies to provide the data needed by the Attorney General and the Secretary to accomplish the evaluation under clause (i).

“(H) STATE PLANS.—Applicants for an implementation grant shall describe how the adult or juvenile collaboration program relates to existing State criminal or juvenile justice and mental health plans and programs.

“(I) USE OF FUNDS.—Applicants that receive an implementation grant may use funds for 1 or more of the following purposes:

“(i) MENTAL HEALTH COURTS AND DIVERSION/ALTERNATIVE PROSECUTION AND SENTENCING PROGRAMS.—Funds may be used to create or expand existing mental health courts that meet program requirements established by the Attorney General under part V of this title, other court-based programs, or diversion and alternative prosecution and sentencing programs (including crisis intervention teams and treatment accountability services for communities) that meet requirements established by the Attorney General and the Secretary.

“(ii) TRAINING.—Funds may be used to create or expand programs, such as crisis intervention training, which offer specialized training to—

“(I) criminal justice system personnel to identify and respond appropriately to the unique needs of preliminarily qualified offenders; or

“(II) mental health system personnel to respond appropriately to the treatment needs of preliminarily qualified offenders.

“(iii) SERVICE DELIVERY.—Funds may be used to create or expand programs that promote public safety by providing the services described in subparagraph (C)(ii) to preliminarily qualified offenders.

“(iv) IN-JAIL AND TRANSITIONAL SERVICES.—Funds may be used to promote and provide mental health treatment and transitional services for those incarcerated or for transitional re-entry programs for those released from any penal or correctional institution.

“(J) GEOGRAPHIC DISTRIBUTION OF GRANTS.—The Attorney General, in consultation with the Secretary, shall ensure that planning and implementation grants are equitably distributed among the geographical regions of the United States and between urban and rural populations.

“(c) PRIORITY.—The Attorney General, in awarding funds under this section, shall give priority to applications that—

“(1) demonstrate the strongest commitment to ensuring that such funds are used to promote both public health and public safety;

“(2) demonstrate the active participation of each co-applicant in the administration of the collaboration program;

“(3) document, in the case of an application for a grant to be used in whole or in part to fund treatment services for adults or juveniles during periods of incarceration or detention, that treatment programs will be available to provide transition and re-entry services for such individuals; and

“(4) have the support of both the Attorney General and the Secretary.

“(d) MATCHING REQUIREMENTS.—

“(1) FEDERAL SHARE.—The Federal share of the cost of a collaboration program carried out by a State, unit of local government, Indian tribe, or tribal organization under this section shall not exceed—

“(A) 80 percent of the total cost of the program during the first 2 years of the grant;

“(B) 60 percent of the total cost of the program in year 3; and

“(C) 25 percent of the total cost of the program in years 4 and 5.

“(2) NON-FEDERAL SHARE.—The non-Federal share of payments made under this section may be made in cash or in-kind fairly evaluated, including planned equipment or services.

“(e) FEDERAL USE OF FUNDS.—The Attorney General, in consultation with the Secretary, in administering grants under this section, may use up to 3 percent of funds appropriated to—

“(1) research the use of alternatives to prosecution through pretrial diversion in appropriate cases involving individuals with mental illness;

“(2) offer specialized training to personnel of criminal and juvenile justice agencies in appropriate diversion techniques;

“(3) provide technical assistance to local governments, mental health courts, and diversion programs, including technical assistance relating to program evaluation;

“(4) help localities build public understanding and support for community reintegration of individuals with mental illness;

“(5) develop a uniform program evaluation process; and

“(6) conduct a national evaluation of the collaboration program that will include an assessment of its cost-effectiveness.

“(f) INTERAGENCY TASK FORCE.—

Establishment.

“(1) IN GENERAL.—The Attorney General and the Secretary shall establish an interagency task force with the Secretaries of Housing and Urban Development, Labor, Education, and Veterans Affairs and the Commissioner of Social Security, or their designees.

“(2) RESPONSIBILITIES.—The task force established under paragraph (1) shall—

“(A) identify policies within their departments that hinder or facilitate local collaborative initiatives for preliminarily qualified offenders; and

“(B) submit, not later than 2 years after the date of enactment of this section, a report to Congress containing recommendations for improved interdepartmental collaboration regarding the provision of services to preliminarily qualified offenders.

Reports.
Deadline.

“(g) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a planning or implementation grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for planning or implementation grants pursuant to this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice to carry out this section—

“(1) \$50,000,000 for fiscal year 2005; and

“(2) such sums as may be necessary for fiscal years 2006 through 2009.”.

(b) LIST OF “BEST PRACTICES”.—The Attorney General, in consultation with the Secretary of Health and Human Services, shall

develop a list of “best practices” for appropriate diversion from incarceration of adult and juvenile offenders.

Approved October 30, 2004.

LEGISLATIVE HISTORY—S. 1194:

HOUSE REPORTS: No. 108–732 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 27, considered and passed Senate.

Vol. 150 (2004): Oct. 6, considered and passed House, amended.
Oct. 11, Senate concurred in House amendment.



Public Law 108–415
108th Congress

An Act

To amend title 31 of the United States Code to increase the public debt limit.

Nov. 19, 2004

[S. 2986]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code,
is amended by striking “\$7,384,000,000,000” and inserting
“\$8,184,000,000,000”.

Approved November 19, 2004.

LEGISLATIVE HISTORY—S. 2986:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 17, considered and passed Senate.

Nov. 18, considered and passed House.



Public Law 108–416
108th Congress

Joint Resolution

Nov. 21, 2004
[H.J. Res. 114]

Making further continuing appropriations for the fiscal year 2005, and for other purposes.

Ante, p. 1138.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 108–309 is amended by striking the date specified in section 107(c) and inserting the following: “December 3, 2004”.

Approved November 21, 2004.

LEGISLATIVE HISTORY—H.J. Res. 114:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 20, considered and passed House and Senate.



Public Law 108–417
108th Congress

An Act

To authorize an exchange of land at Fort Frederica National Monument, and for other purposes.

Nov. 30, 2004
[H.R. 1113]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCHANGE OF LANDS.

16 USC 433g
note.

(a) IN GENERAL.—Notwithstanding section 5(b) of Public Law 90–401 (16 U.S.C. 4601–22(b)), the Secretary of the Interior is authorized to convey to Christ Church of St. Simons Island, Georgia, the approximately 6.0 acres of land within the boundary of Fort Frederica National Monument adjacent to Christ Church and depicted as “NPS Lands for Exchange” on the map entitled “Fort Frederica National Monument 2003 Boundary Revision” numbered 369/80016, and dated April 2003, in exchange for approximately 8.7 acres of land to be acquired by Christ Church, which is depicted as “Private Lands for Addition” on the same map.

(b) MAP AVAILABILITY.—The map referred to in subsection (a) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 2. BOUNDARY ADJUSTMENT.

16 USC 433g
note.

Upon completion of the land exchange under subsection (a) of section 1, the Secretary of the Interior shall revise the boundary of Fort Frederica National Monument to reflect the exchange and shall administer the land acquired through the exchange as part of that monument.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 1113:

HOUSE REPORTS: No. 108–201 (Comm. on Resources).

SENATE REPORTS: No. 108–374 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Sept. 23, considered and passed House.

Vol. 150 (2004): Oct. 10, considered and passed Senate, amended.

Nov. 17, House concurred in Senate amendment.



Public Law 108–418
108th Congress

An Act

Nov. 30, 2004
[H.R. 1284]

To amend the Reclamation Projects Authorization and Adjustment Act of 1992 to increase the Federal share of the costs of the San Gabriel Basin demonstration project.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN FEDERAL SHARE OF SAN GABRIEL BASIN DEMONSTRATION PROJECT.

Section 1631(d)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. 390h–13) is amended—

(1) by striking “In the case” and inserting “(A) Subject to subparagraph (B), in the case”; and

(2) by adding at the end the following:

“(B) In the case of the San Gabriel Basin demonstration project authorized by section 1614, the Federal share of the cost of such project may not exceed the sum determined by adding—

“(i) the amount that applies to that project under subparagraph (A); and

“(ii) \$6,500,000.”.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 1284:

HOUSE REPORTS: No. 108–204 (Comm. on Resources).

SENATE REPORTS: No. 108–331 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Sept. 16, considered and passed House.

Vol. 150 (2004): Sept. 15, considered and passed Senate, amended.

Nov. 17, House concurred in Senate amendment.



Public Law 108–419
108th Congress

An Act

To amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.

Nov. 30, 2004
[H.R. 1417]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Copyright Royalty and Distribution Reform Act of 2004”.

Copyright
Royalty and
Distribution
Reform Act of
2004.
17 USC 101 note.

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.

(a) IN GENERAL.—Chapter 8 is amended to read as follows:

“CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

“Sec.

“801. Copyright Royalty Judges; appointment and functions.

“802. Copyright Royalty Judgeships; staff.

“803. Proceedings of Copyright Royalty Judges.

“804. Institution of proceedings.

“805. General rule for voluntarily negotiated agreements.

“§ 801. Copyright Royalty Judges; appointment and functions

“(a) APPOINTMENT.—The Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights.

“(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

“(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

“(A) To maximize the availability of creative works to the public.

“(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

“(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

“(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

“(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

“(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

“(i) national monetary inflation or deflation; or

“(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

except that—

“(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

“(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

“(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to ensure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

“(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

“(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

“(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

“(D) The gross receipts limitations established by section 111(d)(1) (C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

“(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

“(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

“(C) The Copyright Royalty Judges may make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—

“(i) agree to such partial distribution;

“(ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);

“(iii) file the agreement with the Copyright Royalty Judges; and

“(iv) agree that such funds are available for distribution.

“(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright

Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

“(4) To accept or reject royalty claims filed under sections 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim.

“(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b) (1) and (2).

“(6) To determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010.

“(7)(A) To adopt as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

“(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

“(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

“(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(3), 115(c)(3)(E)(i), 116(c), or 118(b)(2) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

“(C) Interested parties may negotiate and agree to, and the Copyright Royalty Judges may adopt, an agreement that specifies as terms notice and recordkeeping requirements that apply in lieu of those that would otherwise apply under regulations.

“(8) To perform other duties, as assigned by the Register of Copyrights within the Library of Congress, except as provided in section 802(g), at times when Copyright Royalty Judges are not engaged in performing the other duties set forth in this section.

“(c) **RULINGS.**—The Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judges.

“(d) **ADMINISTRATIVE SUPPORT.**—The Librarian of Congress shall provide the Copyright Royalty Judges with the necessary administrative services related to proceedings under this chapter.

“(e) LOCATION IN LIBRARY OF CONGRESS.—The offices of the Copyright Royalty Judges and staff shall be in the Library of Congress.

“§ 802. Copyright Royalty Judgeships; staff

“(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—

“(1) IN GENERAL.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other 2 Copyright Royalty Judges, 1 shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h).

“(2) DEFINITION.—In this subsection, the term ‘adjudication’ has the meaning given that term in section 551 of title 5, but does not include mediation.

“(b) STAFF.—The Chief Copyright Royalty Judge shall hire 3 full-time staff members to assist the Copyright Royalty Judges in performing their functions.

“(c) TERMS.—The individual first appointed as the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining individuals first appointed as Copyright Royalty Judges, 1 shall be appointed to a term of 4 years, and the other shall be appointed to a term of 2 years. Thereafter, the terms of succeeding Copyright Royalty Judges shall each be 6 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the predecessor of that Copyright Royalty Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

“(d) VACANCIES OR INCAPACITY.—

“(1) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

“(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

“(e) COMPENSATION.—

“(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL–1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL–2 for administrative law judges pursuant to such section. The compensation of the Copyright Royalty Judges shall not be subject to any regulations adopted by the Office

of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

“(2) STAFF MEMBERS.—Of the staff members appointed under subsection (b)—

“(A) the rate of pay of 1 staff member shall be not more than the basic rate of pay payable for level 10 of GS-15 of the General Schedule;

“(B) the rate of pay of 1 staff member shall be not less than the basic rate of pay payable for GS-13 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-14 of such Schedule; and

“(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS-8 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-11 of such Schedule.

“(3) LOCALITY PAY.—All rates of pay referred to under this subsection shall include locality pay.

“(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

“(1) IN MAKING DETERMINATIONS.—

“(A) IN GENERAL.—(i) Subject to clause (ii) of this subparagraph and subparagraph (B), the Copyright Royalty Judges shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact.

“(ii) A Copyright Royalty Judge or Judges, or, by motion to the Copyright Royalty Judge or Judges, any participant in a proceeding may request an interpretation by the Register of Copyrights concerning any material question of substantive law (not including questions of procedure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate) concerning an interpretation or construction of those provisions of this title that are the subject of the proceeding. Any such request for a written interpretation by the Register of Copyrights shall be on the record. Reasonable provision shall be made for comment by the participants in the proceeding on the material question of substantive law in such a way as to minimize duplication and delay. Except as provided in subparagraph (B), the Register of Copyrights shall deliver to the Copyright Royalty Judges a response within 14 days after the Register of Copyrights receives all of the briefs or comments of the participants. Such decision shall be in writing and shall be included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Copyright Royalty Judges, the Copyright Royalty Judges shall apply the legal interpretation embodied in the response of the Register of Copyrights in resolving material questions of substantive law.

Deadline.

Records.

“(B) NOVEL QUESTIONS.—(i) In any case in which a novel material question of substantive law concerning an interpretation of those provisions of this title that are the subject of the proceeding is presented, the Copyright Royalty Judges shall request a decision of the Register of Copyrights, in writing, to resolve such novel question. Reasonable provision shall be made for comment on such request by the participants in the proceeding, in such a way as to minimize duplication and delay. The Register of Copyrights shall transmit his or her decision to the Copyright Royalty Judges within 30 days after the Register of Copyrights receives all of the briefs or comments of the participants. Such decision shall be in writing and included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Copyright Royalty Judges, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

Deadline.

Records.

“(ii) In clause (i), a ‘novel question of law’ is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

“(C) CONSULTATION.—Notwithstanding the provisions of subparagraph (A), the Copyright Royalty Judges shall consult with the Register of Copyrights with respect to any determination or ruling that would require that any act be performed by the Copyright Office, and any such determination or ruling shall not be binding upon the Register of Copyrights.

“(D) REVIEW OF LEGAL CONCLUSIONS BY THE REGISTER OF COPYRIGHTS.—The Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the Copyright Royalty Judges was in material error, the Register of Copyrights shall issue a written decision correcting such legal error, which shall be made part of the record of the proceeding. The Register of Copyrights shall issue such written decision not later than 60 days after the date on which the final determination by the Copyright Royalty Judges is issued. Additionally, the Register of Copyrights shall cause to be published in the Federal Register such written decision, together with a specific identification of the legal conclusion of the Copyright Royalty Judges that is determined to be erroneous. As to conclusions of substantive law involving an interpretation of the statutory provisions of this title, the decision of the Register of Copyrights shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings under this chapter. When a decision has been rendered pursuant to this subparagraph, the Register of Copyrights may, on the basis of and in accordance with such decision, intervene as of right in any appeal of a final determination of the Copyright Royalty Judges

Records.

Deadline.

Federal Register,
publication.

pursuant to section 803(d) in the United States Court of Appeals for the District of Columbia Circuit. If, prior to intervening in such an appeal, the Register of Copyrights gives notification to, and undertakes to consult with the Attorney General with respect to such intervention, and the Attorney General fails, within a reasonable period after receiving such notification, to intervene in such appeal, the Register of Copyrights may intervene in such appeal in his or her own name by any attorney designated by the Register of Copyrights for such purpose. Intervention by the Register of Copyrights in his or her own name shall not preclude the Attorney General from intervening on behalf of the United States in such an appeal as may be otherwise provided or required by law.

“(E) EFFECT ON JUDICIAL REVIEW.—Nothing in this section shall be interpreted to alter the standard applied by a court in reviewing legal determinations involving an interpretation or construction of the provisions of this title or to affect the extent to which any construction or interpretation of the provisions of this title shall be accorded deference by a reviewing court.

“(2) PERFORMANCE APPRAISALS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

“(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

“(g) INCONSISTENT DUTIES BARRED.—No Copyright Royalty Judge may undertake duties that conflict with his or her duties and responsibilities as a Copyright Royalty Judge.

Regulations.

“(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judges and the proceedings under this chapter.

Notice.

“(i) REMOVAL OR SANCTION.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright Royalty Judge during the period of any such suspension.

“§ 803. Proceedings of Copyright Royalty Judges

“(a) PROCEEDINGS.—

Regulations.
Records.

“(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of

a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

“(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

“(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

“(b) PROCEDURES.—

“(1) INITIATION.—

“(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) The Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter, calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be—

“(I) promptly upon a determination made under section 804(a);

“(II) by no later than January 5 of a year specified in paragraph (2) of section 804(b) for the commencement of proceedings;

“(III) by no later than January 5 of a year specified in subparagraph (A) or (B) of paragraph (3) of section 804(b) for the commencement of proceedings, or as otherwise provided in subparagraph (A) or (C) of such paragraph for the commencement of proceedings;

“(IV) as provided under section 804(b)(8); or

“(V) by no later than January 5 of a year specified in any other provision of section 804(b) for the filing of petitions for the commencement of proceedings, if a petition has not been filed by that date.

“(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding under clause (i), except that the Copyright Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the

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publication.
Notices.
Deadlines.

date on which participants in the proceeding are to file their written direct statements. Notwithstanding the preceding sentence, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period under paragraph (3), and any objection filed by such a petitioner shall not be taken into account by the Copyright Royalty Judges.

“(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner’s interest in the subject matter of the proceeding. Parties with similar interests may file a single petition to participate.

“(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a proceeding under this chapter, including through the submission of briefs or other information, only if—

“(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of \$150;

“(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

“(C) the Copyright Royalty Judges have not determined, sua sponte or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

“(3) VOLUNTARY NEGOTIATION PERIOD.—

Records.

“(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a proceeding, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants and shall initiate a voluntary negotiation period among the participants.

“(B) LENGTH OF PROCEEDINGS.—The voluntary negotiation period initiated under subparagraph (A) shall be 3 months.

“(C) DETERMINATION OF SUBSEQUENT PROCEEDINGS.—At the close of the voluntary negotiation proceedings, the Copyright Royalty Judges shall, if further proceedings under this chapter are necessary, determine whether and to what extent paragraphs (4) and (5) will apply to the parties.

“(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—

“(A) IN GENERAL.—If, in a proceeding under this chapter to determine the distribution of royalties, the contested amount of a claim is \$10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and 1 additional response by each such party. The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).

“(B) BAD FAITH INFLATION OF CLAIM.—If the Copyright Royalty Judges determine that a participant asserts in

bad faith an amount in controversy in excess of \$10,000 for the purpose of avoiding a determination under the procedure set forth in subparagraph (A), the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

“(5) PAPER PROCEEDINGS.—The Copyright Royalty Judges in proceedings under this chapter may decide, sua sponte or upon motion of a participant, to determine issues on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and one additional response by each such participant. Prior to making such decision to proceed on such a paper record only, the Copyright Royalty Judges shall offer to all parties to the proceeding the opportunity to comment on the decision. The procedure under this paragraph—

“(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

Applicability.

“(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

“(6) REGULATIONS.—

“(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. All regulations issued by the Copyright Royalty Judges are subject to the approval of the Librarian of Congress. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall issue regulations to govern proceedings under this chapter.

Deadline.

“(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, to the extent such regulations are not inconsistent with this chapter, except that functions carried out under such regulations by the Librarian of Congress, the Register of Copyrights, or copyright arbitration royalty panels that, as of such date of enactment, are to be carried out by the Copyright Royalty Judges under this chapter, shall be carried out by the Copyright Royalty Judges under such regulations.

Applicability.

“(C) REQUIREMENTS.—Regulations issued under subparagraph (A) shall include the following:

“(i) The written direct statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which may be not earlier than 4 months, and not later than 5 months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, the Copyright Royalty Judges may allow a participant in a proceeding to file an amended written direct statement based on

Deadlines.
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new information received during the discovery process, within 15 days after the end of the discovery period specified in clause (iii).

“(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements by the participants in a proceeding under paragraph (2), the judges shall meet with the participants for the purpose of setting a schedule for conducting and completing discovery. Such schedule shall be determined by the Copyright Royalty Judges.

“(II) In this chapter, the term ‘written direct statements’ means witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.

“(iii) Hearsay may be admitted in proceedings under this chapter to the extent deemed appropriate by the Copyright Royalty Judges.

Deadline.

“(iv) Discovery in such proceedings shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders, and disputes pending at the end of such period.

“(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may request of an opposing participant nonprivileged documents directly related to the written direct statement or written rebuttal statement of that participant. Any objection to such a request shall be resolved by a motion or request to compel production made to the Copyright Royalty Judges in accordance with regulations adopted by the Copyright Royalty Judges. Each motion or request to compel discovery shall be determined by the Copyright Royalty Judges, or by a Copyright Royalty Judge when permitted under subsection (a)(2). Upon such motion, the Copyright Royalty Judges may order discovery pursuant to regulations established under this paragraph.

“(vi)(I) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, by means of written motion or on the record, request of an opposing participant or witness other relevant information and materials if, absent the discovery sought, the Copyright Royalty Judges’ resolution of the proceeding would be substantially impaired. In determining whether discovery will be granted under this clause, the Copyright Royalty Judges may consider—

“(aa) whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

“(bb) whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

“(cc) whether the participant seeking discovery has had ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

“(II) This clause shall not apply to any proceeding scheduled to commence after December 31, 2010.

“(vii) In a proceeding under this chapter to determine royalty rates, the participants entitled to receive royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories, and the participants obligated to pay royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories. The Copyright Royalty Judges shall resolve any disputes among similarly aligned participants to allocate the number of depositions or interrogatories permitted under this clause.

“(viii) The rules and practices in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, relating to discovery in proceedings under this chapter to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

Applicability.

“(ix) In proceedings to determine royalty rates, the Copyright Royalty Judges may issue a subpoena commanding a participant or witness to appear and give testimony, or to produce and permit inspection of documents or tangible things, if the Copyright Royalty Judges’ resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents or tangible things. Such subpoena shall specify with reasonable particularity the materials to be produced or the scope and nature of the required testimony. Nothing in this clause shall preclude the Copyright Royalty Judges from requesting the production by a nonparticipant of information or materials relevant to the resolution by the Copyright Royalty Judges of a material issue of fact.

“(x) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period and shall take place outside the presence of the Copyright Royalty Judges.

“(xi) No evidence, including exhibits, may be submitted in the written direct statement or written rebuttal statement of a participant without a sponsoring witness, except where the Copyright Royalty Judges have taken official notice, or in the case of

incorporation by reference of past records, or for good cause shown.

“(c) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

Deadlines.

“(1) TIMING.—The Copyright Royalty Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(6)(C)(x), but, in the case of a proceeding to determine successors to rates or terms that expire on a specified date, in no event later than 15 days before the expiration of the then current statutory rates and terms.

“(2) REHEARINGS.—

“(A) IN GENERAL.—The Copyright Royalty Judges may, in exceptional cases, upon motion of a participant in a proceeding under subsection (b)(2), order a rehearing, after the determination in the proceeding is issued under paragraph (1), on such matters as the Copyright Royalty Judges determine to be appropriate.

Deadline.

“(B) TIMING FOR FILING MOTION.—Any motion for a rehearing under subparagraph (A) may only be filed within 15 days after the date on which the Copyright Royalty Judges deliver to the participants in the proceeding their initial determination concerning rates and terms.

“(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered, any opposing party shall not be required to participate in the rehearing, except that nonparticipation may give rise to the limitations with respect to judicial review provided for in subsection (d)(1).

“(D) NO NEGATIVE INFERENCE.—No negative inference shall be drawn from lack of participation in a rehearing.

“(E) CONTINUITY OF RATES AND TERMS.—(i) If the decision of the Copyright Royalty Judges on any motion for a rehearing is not rendered before the expiration of the statutory rates and terms that were previously in effect, in the case of a proceeding to determine successors to rates and terms that expire on a specified date, then—

Effective date.

“(I) the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the rates and terms that were previously in effect expire; and

“(II) in the case of a proceeding under section 114(f)(1)(C) or 114(f)(2)(C), royalty rates and terms shall, for purposes of section 114(f)(4)(B), be deemed to have been set at those rates and terms contained in the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion, as of the date of that determination.

“(ii) The pendency of a motion for a rehearing under this paragraph shall not relieve persons obligated to make royalty payments who would be affected by the determination on that motion from providing the statements of account and any reports of use, to the extent required, and paying the royalties required under the relevant determination or regulations.

Deadlines.

“(iii) Notwithstanding clause (ii), whenever royalties described in clause (ii) are paid to a person other than

the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the motion for rehearing is resolved or, if the motion is granted, within 60 days after the rehearing is concluded, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates by the Copyright Royalty Judges. Any underpayment of royalties resulting from a rehearing shall be paid within the same period.

“(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be supported by the written record and shall set forth the findings of fact relied on by the Copyright Royalty Judges. Among other terms adopted in a determination, the Copyright Royalty Judges may specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.

Records.

“(4) CONTINUING JURISDICTION.—The Copyright Royalty Judges may, with the approval of the Register of Copyrights, issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the Federal Register.

Federal Register,
publication.

“(5) PROTECTIVE ORDER.—The Copyright Royalty Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded.

“(6) PUBLICATION OF DETERMINATION.—By no later than the end of the 60-day period provided in section 802(f)(1)(D), the Librarian of Congress shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Librarian of Congress shall also publicize the determination and corrections in such other manner as the Librarian considers appropriate, including, but not limited to, publication on the Internet. The Librarian of Congress shall also make the determination, corrections, and the accompanying record available for public inspection and copying.

Deadline.
Federal Register,
publication.

“(7) LATE PAYMENT.—A determination of Copyright Royalty Judges may include terms with respect to late payment, but in no way shall such terms prevent the copyright holder from asserting other rights or remedies provided under this title.

Records.

“(d) JUDICIAL REVIEW.—

“(1) APPEAL.—Any determination of the Copyright Royalty Judges under subsection (c) may, within 30 days after the publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit, by any aggrieved participant in the proceeding under subsection (b)(2) who fully participated in the proceeding and who would be bound by the determination.

Deadlines.

Any participant that did not participate in a rehearing may not raise any issue that was the subject of that rehearing at any stage of judicial review of the hearing determination. If no appeal is brought within that 30-day period, the determination of the Copyright Royalty Judges shall be final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in paragraph (2).

Effective dates.

“(2) EFFECT OF RATES.—

“(A) EXPIRATION ON SPECIFIED DATE.—When this title provides that the royalty rates and terms that were previously in effect are to expire on a specified date, any adjustment or determination by the Copyright Royalty Judges of successor rates and terms for an ensuing statutory license period shall be effective as of the day following the date of expiration of the rates and terms that were previously in effect, even if the determination of the Copyright Royalty Judges is rendered on a later date. A licensee shall be obligated to continue making payments under the rates and terms previously in effect until such time as rates and terms for the successor period are established. Whenever royalties pursuant to this section are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final determination of the Copyright Royalty Judges establishing rates and terms for a successor period or the exhaustion of all rehearings or appeals of such determination, if any, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates. Any underpayment of royalties by a copyright user shall be paid to the entity designated by the Copyright Royalty Judges within the same period.

Deadline.

“(B) OTHER CASES.—In cases where rates and terms have not, prior to the inception of an activity, been established for that particular activity under the relevant license, such rates and terms shall be retroactive to the inception of activity under the relevant license covered by such rates and terms. In other cases where rates and terms do not expire on a specified date, successor rates and terms shall take effect on the first day of the second month that begins after the publication of the determination of the Copyright Royalty Judges in the Federal Register, except as otherwise provided in this title, or by the Copyright Royalty Judges, or as agreed by the participants in a proceeding that would be bound by the rates and terms. Except as otherwise provided in this title, the rates and terms, to the extent applicable, shall remain in effect until such successor rates and terms become effective.

“(C) OBLIGATION TO MAKE PAYMENTS.—

“(i) The pendency of an appeal under this subsection shall not relieve persons obligated to make royalty payments under section 111, 112, 114, 115, 116, 118, 119, or 1003, who would be affected by the determination on appeal, from—

“(I) providing the statements of account and any report of use; and

“(II) paying the royalties required under the relevant determination or regulations.

“(ii) Notwithstanding clause (i), whenever royalties described in clause (i) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final resolution of the appeal, return any excess amounts previously paid (and interest thereon, if ordered pursuant to paragraph (3)) to the extent necessary to comply with the final determination of royalty rates on appeal. Any underpayment of royalties resulting from an appeal (and interest thereon, if ordered pursuant to paragraph (3)) shall be paid within the same period.

Deadline.

“(3) JURISDICTION OF COURT.—If the court, pursuant to section 706 of title 5, modifies or vacates a determination of the Copyright Royalty Judges, the court may enter its own determination with respect to the amount or distribution of royalty fees and costs, and order the repayment of any excess fees, the payment of any underpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court may also vacate the determination of the Copyright Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

“(e) ADMINISTRATIVE MATTERS.—

“(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

“(A) DEDUCTION FROM FILING FEES.—The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and the 3 staff members appointed under section 802(b).

“(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs incurred under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant to this subparagraph shall remain available until expended.

“(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

“§ 804. Institution of proceedings

“(a) FILING OF PETITION.—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, 119, and 1004, during the calendar

Notices.
Federal Register,
publication.

years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons for such determination, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

“(b) TIMING OF PROCEEDINGS.—

“(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2005 and in each subsequent fifth calendar year.

“(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2005, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(3) (B) or (C), as the case may be. A petition for adjustment of rates established by section 111(d)(1)(B) as a result of a change in the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

Effective date.

“(C) Any adjustment of royalty rates under section 111 shall take effect as of the first accounting period commencing after the publication of the determination of the Copyright Royalty Judges in the Federal Register, or on such other date as is specified in that determination.

Effective date.

“(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the

limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

“(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

Effective dates.
Termination
date.

“(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the effective date of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

“(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

Effective dates.
Termination
dates.

“(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to section 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

“(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service that is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

Deadline.
Notice.

“(iii) The proceeding shall follow the schedule set forth in such subsections (b), (c), and (d) of section 803, except that—

“(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

Deadline.

“(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(4)(B)(ii) and (C).

Effective date.

“(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

“(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3) (B) and (C).

Deadline.

“(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

Deadline.

“(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

“(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

“(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

Federal Register,
publication.
Notice.

“(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 119, or 1007, the Copyright Royalty Judges shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

“§ 805. General rule for voluntarily negotiated agreements

“Any rates or terms under this title that—

“(1) are agreed to by participants to a proceeding under section 803(b)(3),

“(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

“(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter, shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.”.

(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by striking the item relating to chapter 8 and inserting the following:

“8. Proceedings by Copyright Royalty Judges 801”.

SEC. 4. DEFINITION.

Section 101 is amended by inserting after the definition of “copies” the following:

“A ‘Copyright Royalty Judge’ is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.”.

SEC. 5. TECHNICAL AMENDMENTS.

(a) CABLE RATES.—Section 111(d) is amended—

(1) in paragraph (2), in the second sentence, by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judges.”; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”;

(B) in subparagraph (B)—

(i) in the first sentence, by striking “Librarian of Congress shall, upon the recommendation of the Register of Copyrights,” and inserting “Copyright Royalty Judges shall”;

(ii) in the second sentence, by striking “Librarian determines” and inserting “Copyright Royalty Judges determine”; and

(iii) in the third sentence—

(I) by striking “Librarian” each place it appears and inserting “Copyright Royalty Judges”; and

(II) by striking “convene a copyright arbitration royalty panel” and inserting “conduct a proceeding”; and

(C) in subparagraph (C), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”.

(b) EPHEMERAL RECORDINGS.—Section 112(e) is amended—

(1) in paragraph (3)—

(A) by amending the first sentence to read as follows: “Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by paragraph (1) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced, or such other period as the parties may agree.”;

(B) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(C) in the fourth sentence, by striking “negotiation”; (2) in paragraph (4)—

(A) by amending the first sentence to read as follows: “The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (5), be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree.”;

(B) by striking “copyright arbitration royalty panel” each subsequent place it appears and inserting “Copyright Royalty Judges”;

(C) in the fourth sentence, by striking “its decision” and inserting “their decision”;

(D) in the fifth sentence, by striking “negotiated as provided” and inserting “described”; and

(E) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”;

(3) in paragraph (5), by striking “determination by a copyright arbitration royalty panel or decision by the Librarian of Congress” and inserting “decision by the Librarian of Congress or determination by the Copyright Royalty Judges”;

(4) by striking paragraph (6) and redesignating paragraphs (7), (8), and (9), as paragraphs (6), (7), and (8), respectively; and

(5) in paragraph (6)(A), as so redesignated, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”.

(c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114(f) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by amending the first sentence to read as follows: “Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004 or such other period.”;

(ii) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(iii) in the fourth sentence, by striking “negotiation”;

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: “The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during

the 5-year period specified in subparagraph (A), a transitional period provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period as the parties may agree.”;

(ii) in the second sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”; and

(iii) in the second sentence, by striking “negotiated as provided” and inserting “described”; and

(C) by amending subparagraph (C) to read as follows:

“(C) The procedures under subparagraphs (A) and (B) also shall be initiated pursuant to a petition filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for subscription digital audio transmission services most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.”;

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by amending the first paragraph to read as follows: “Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by eligible nonsubscription transmission services and transmissions by new subscription services specified by subsection (d)(2) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period as the parties may agree.”;

(ii) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(iii) in the fourth sentence, by striking “negotiation”;

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: “The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), a transitional period provided under section 6(b)(3) of the Copyright Royalty and Distribution Act of 2004, or such other period as the parties may agree.”;

(ii) by striking “copyright arbitration royalty panel” each subsequent place it appears and inserting “Copyright Royalty Judges”; and

(iii) in the last sentence by striking “negotiated as provided” and inserting “described in”; and

(C) by amending subparagraph (C) to read as follows:

“(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.”;

(3) in paragraph (3), by striking “determination by a copyright arbitration royalty panel or decision by the Librarian of Congress” and inserting “decision by the Librarian of Congress or determination by the Copyright Royalty Judges”; and

(4) in paragraph (4)—

(A) by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”; and

(B) by adding after the first sentence of subparagraph (A) the following: “The notice and recordkeeping rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 shall remain in effect unless and until new regulations are promulgated by the Copyright Royalty Judges. If new regulations are promulgated under this subparagraph, the Copyright Royalty Judges shall take into account the substance and effect of the rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 and shall, to the extent practicable, avoid significant disruption of the functions of any designated agent authorized to collect and distribute royalty fees.”.

(d) PHONORECORDS OF NONDRAMATIC MUSICAL WORKS.—Section 115(c)(3) is amended—

(1) in subparagraph (A)(ii), by striking “(F)” and inserting “(E)”;

(2) in subparagraph (B)—

(A) by striking “under this paragraph” and inserting “under this section”;

(B) by inserting “on a nonexclusive basis” after “common agents”; and

(C) by striking “subparagraphs (C) through (F)” and inserting “this subparagraph and subparagraphs (C) through (E)”;

(3) in subparagraph (C)—

(A) by amending the first sentence to read as follows: “Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by this section during the period beginning with the effective date of such rates and terms, but not earlier than January 1 of the second year following the year in

which the petition requesting the proceeding is filed, and ending on the effective date of successor rates and terms, or such other period as the parties may agree.”;

(B) in the third sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(C) in the fourth sentence, by striking “negotiation”; (4) in subparagraph (D)—

(A) by amending the first sentence to read as follows: “The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to subparagraph (E), be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C), such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.”;

(B) in the third sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”;

(C) in the third sentence, by striking “negotiated as provided in subparagraphs (B) and (C)” and inserting “described”; and

(D) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”.

(5) in subparagraph (E)—

(A) in clause (i)—

(i) in the first sentence, by striking “Librarian of Congress” and inserting “Librarian of Congress and Copyright Royalty Judges”; and

(ii) in the second sentence, by striking “(C), (D) or (F) shall be given effect” and inserting “(C) or (D) shall be given effect as to digital phonorecord deliveries”; and

(B) in clause (ii)(I), by striking “(C), (D) or (F)” each place it appears and inserting “(C) or (D)”; and

(6) by striking subparagraph (F) and redesignating subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

(e) COIN-OPERATED PHONORECORD PLAYERS.—Section 116 is amended—

(1) in subsection (b), by amending paragraph (2) to read as follows:

“(2) CHAPTER 8 PROCEEDING.—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.”; and

(2) in subsection (c)—

(A) in the subsection heading, by striking “COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS” and inserting “DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES”; and

(B) by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judges”.

(f) USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING.—Section 118 is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

Deadline.

(i) in the first sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(ii) by striking the second and third sentences;

(B) in paragraph (2), by striking “Librarian of Congress:” and all that follows through the end of the sentence and inserting “Librarian of Congress or the Copyright Royalty Judges, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.”; and

(C) in paragraph (3)—

(i) in the second sentence—

(I) by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judges”; and

(II) by striking “paragraph (2).” and inserting “paragraph (2) or (3).”;

(ii) in the last sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(iii) by striking “(3) In” and all that follows through the end of the first sentence and inserting the following:

“(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to copyright owners in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

Federal Register, publication.

“(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges.”;

(2) by striking subsection (c) and redesignating subsections (d) through (g) as subsections (c) through (f), respectively;

(3) in subsection (c), as so redesignated, in the matter preceding paragraph (1)—

(A) by striking “(b)(2)” and inserting “(b)(2) or (3)”;

(B) by striking “(b)(3)” and inserting “(b)(4)”;

(C) by striking “a copyright arbitration royalty panel under subsection (b)(3)” and inserting “the Copyright Royalty Judges under subsection (b)(3), to the extent that they were accepted by the Librarian of Congress”;

(4) in subsection (d), as so redesignated—

(A) by striking “in the Copyright Office” and inserting “with the Copyright Royalty Judges”; and

(B) by striking “Register of Copyrights shall prescribe” and inserting “Copyright Royalty Judges shall prescribe as provided in section 803(b)(6)”;

(5) in subsection (f), as so redesignated, by striking “(d)” and inserting “(c)”.

(g) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—Section 119(b) is amended—

(1) in paragraph (3), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”; and

(B) by amending subparagraphs (B) and (C) to read as follows:

“(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

“(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have the discretion to proceed to distribute any amounts that are not in controversy.”.

(h) RATEMAKING FOR SATELLITE CARRIERS.—Section 119(c) of title 17, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(B) in subparagraph (C), by striking “Register of Copyrights shall prescribe” and inserting “Copyright Royalty Judges shall prescribe as provided in section 803(b)(6); and

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking “arbitration proceedings” and inserting “proceedings”; and

(ii) by striking “arbitration proceeding” and inserting “proceedings”;

(B) in subparagraph (B)—

(i) by striking “copyright arbitration royalty panel appointed under chapter 8” and inserting “Copyright Royalty Judges”; and

(ii) by striking “panel shall base its decision” and inserting “Copyright Royalty Judges shall base their determination”; and

(C) in subparagraph (C)—

(i) in the heading, by striking “DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN” and inserting “DETERMINATION UNDER CHAPTER 8”; and

(ii) by striking clauses (i) and (ii) and inserting the following:

“(i) is made by the Copyright Royalty Judges pursuant to this paragraph and becomes final, or

“(ii) is made by the court on appeal under section 803(d)(3).”.

(i) DIGITAL AUDIO RECORDING DEVICES.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is amended by striking “Librarian of Congress” each place it appears and inserting “Copyright Royalty Judges”.

(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) is amended by striking “Librarian of Congress shall convene a copyright arbitration royalty panel which” and inserting “Copyright Royalty Judges”.

(3) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 is amended—

(A) in subsection (a), by amending paragraph (1) to read as follows:

Regulations.

“(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.”; and

(B) by amending subsections (b) and (c) to read as follows:

“(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.

Deadline.

“(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.”.

(4) DETERMINATION OF CERTAIN DISPUTES.—(A) Section 1010 is amended to read as follows:

“§ 1010. Determination of certain disputes

“(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

“(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

Deadline.
Notice.
Federal Register,
publication.

“(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

“(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

“(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection (d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.”.

(B) The item relating to section 1010 in the table of sections for chapter 10 is amended to read as follows:

“1010. Determination of certain disputes.”.

SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.

17 USC 801 note.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 6 months after the date of enactment of this Act, except that the Librarian of Congress shall appoint 1 or more interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

(b) TRANSITION PROVISIONS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered

into before the effective date provided in subsection (a) under the provisions of title 17, United States Code, as amended by this Act, and pending on such effective date. Such proceedings shall continue, determinations made in such proceedings, and appeals taken therefrom, as if this Act had not been enacted, and shall continue in effect until modified under title 17, United States Code, as amended by this Act. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted. For purposes of this paragraph, the Librarian of Congress may determine whether a proceeding has commenced. The Librarian of Congress may terminate any proceeding commenced before the date of enactment of this Act pursuant to chapter 8 of title 17, United States Code, and any proceeding so terminated shall become null and void. In such cases, the Copyright Royalty Judges may initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.

(2) CERTAIN ROYALTY RATE PROCEEDINGS.—Notwithstanding paragraph (1), the amendments made by this Act shall not affect proceedings to determine royalty rates pursuant to section 119(c) of title 17, United States Code, that are commenced before January 31, 2006.

Termination
date.

(3) PENDING PROCEEDINGS.—Notwithstanding paragraph (1), any proceedings to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) or 112(e) of title 17, United States Code, for a statutory period commencing on or after January 1, 2005, shall be terminated upon the date of enactment of this Act and shall be null and void. The rates and terms in effect under section 114(f)(2) or 112(e) of title 17, United States Code, on December 31, 2004, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title, and the rates and terms published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107–321) (including the amendments made by that Act) for the years 2003 through 2004, as well as any notice and recordkeeping provisions adopted pursuant thereto, shall remain in effect until the later of the first applicable effective date for successor terms and rates specified in section 804(b) (2) or (3)(A) of title 17, United States Code, or such later date as the parties may agree or the Copyright Royalty Judges may establish. For the period commencing January 1, 2005, an eligible small webcaster or a noncommercial webcaster, as defined in the regulations published by the Register of Copyrights pursuant to the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107–321) (including the amendments made by that Act), may elect to be subject to the rates and terms published in those regulations by complying with the procedures governing the election process set forth in those regulations not later than the first date on which the webcaster would be obligated to make a royalty payment for such period. Until successor terms and rates have been established for the period commencing January 1, 2006, licensees shall continue to make royalty payments at the rates and on the terms previously

in effect, subject to retroactive adjustment when successor rates and terms for such services are established.

(4) INTERIM PROCEEDINGS.—Notwithstanding subsection (a), as soon as practicable after the date of enactment of this Act, the Copyright Royalty Judges or interim Copyright Royalty Judges shall publish the notice described in section 803(b)(1)(A) of title 17, United States Code, as amended by this Act, to initiate a proceeding to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services and eligible nonsubscription services for the period commencing January 1, 2006. The Copyright Royalty Judges or Interim Copyright Royalty Judges are authorized to cause that proceeding to take place as provided in subsection (b) of section 803 of that title within the time periods set forth in that subsection. Notwithstanding section 803(c)(1) of that title, the Copyright Royalty Judges shall not be required to issue their determination in that proceeding before the expiration of the statutory rates and terms in effect on December 31, 2004.

Publication.
Notice.

(c) EXISTING APPROPRIATIONS.—Any funds made available in an appropriations Act to carry out chapter 8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 1417:

HOUSE REPORTS: No. 108–408 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 150 (2004):

Mar. 3, considered and passed House.
Oct. 6, considered and passed Senate, amended.
Nov. 17, House concurred in Senate amendment.



Public Law 108–420
108th Congress

An Act

Nov. 30, 2004
[H.R. 1446]

To support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

California
Missions
Preservation Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “California Missions Preservation Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) CALIFORNIA MISSION.—The term “California mission” means each of the 21 historic Spanish missions and one *asistencia* that—

(A) are located in the State;

(B) were built between 1769 and 1798; and

(C) are designated as California Registered Historic Landmarks.

(2) FOUNDATION.—The term “Foundation” means the California Missions Foundation, a nonsectarian charitable corporation that—

(A) was established in the State in 1998 to fund the restoration and repair of the California missions; and

(B) is operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) STATE.—The term “State” means the State of California.

SEC. 3. COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may enter into a cooperative agreement with the Foundation to provide technical and financial assistance to the Foundation to restore and repair—

(1) the California missions; and

(2) the artwork and artifacts associated with the California missions.

(b) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The cooperative agreement may authorize the Secretary to make grants to the Foundation to carry out the purposes described in subsection (a).

(2) **ELIGIBILITY.**—To be eligible to receive a grant or other form of financial assistance under this Act, a California mission must be listed on the National Register of Historic Places.

(3) **APPLICATION.**—To receive a grant or other form of financial assistance under this Act, the Foundation shall submit to the Secretary an application that—

(A) includes a status report on the condition of the infrastructure and associated artifacts of each of the California missions for which the Foundation is seeking financial assistance; and

Reports.

(B) describes a comprehensive program for the restoration, repair, and preservation of the infrastructure and artifacts referred to in subparagraph (A), including—

(i) a description of the prioritized preservation activities to be conducted over a 5-year period; and

(ii) an estimate of the costs of the preservation activities.

(4) **APPLICABLE LAW.**—Consistent with section 101(e)(4) of the National Historic Preservation Act (16 U.S.C. 470a(e)(4)), the Secretary shall ensure that the purpose of any grant or other financial assistance provided by the Secretary to the Foundation under this Act—

(A) is secular;

(B) does not promote religion; and

(C) seeks to protect qualities that are historically significant.

(c) **REVIEW AND DETERMINATION.**—

Contracts.

(1) **IN GENERAL.**—The Secretary shall submit a proposed agreement to the Attorney General for review.

(2) **DETERMINATION.**—A cooperative agreement entered into under subsection (a) shall not take effect until the Attorney General issues a finding that the proposed agreement submitted under paragraph (1) does not violate the establishment clause of the first amendment of the Constitution.

(d) **REPORT.**—As a condition of receiving financial assistance under this Act, the Foundation shall annually submit to the Secretary and to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the status of the preservation activities carried out using amounts made available under this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There is authorized to be appropriated to carry out this Act \$10,000,000 for the period of fiscal years 2004 through 2009.

(b) **MATCHING REQUIREMENT.**—Any amounts made available to carry out this Act shall be matched on not less than a 1-to-1 basis by the Foundation.

(c) **OTHER AMOUNTS.**—Any amounts made available to carry out this Act shall be in addition to any amounts made available

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PUBLIC LAW 108–420—NOV. 30, 2004

for preservation activities in the State under the National Historic Preservation Act (16 U.S.C. 470 et seq.).

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 1446:

SENATE REPORTS: No. 108–375 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 20, considered and passed House.

Vol. 150 (2004): Oct. 10, considered and passed Senate, amended.

Nov. 17, House concurred in Senate amendment.



Public Law 108–421
108th Congress

An Act

To assist the States of Connecticut, New Jersey, New York, and Pennsylvania in conserving priority lands and natural resources in the Highlands region, and for other purposes.

Nov. 30, 2004
[H.R. 1964]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Highlands
Conservation
Act.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Highlands Conservation Act”.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to recognize the importance of the water, forest, agricultural, wildlife, recreational, and cultural resources of the Highlands region, and the national significance of the Highlands region to the United States;

(2) to authorize the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States to preserve and protect high priority conservation land in the Highlands region; and

(3) to continue the ongoing Forest Service programs in the Highlands region to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of land and natural resources in the Highlands region.

SEC. 3. DEFINITIONS.

In this Act:

(1) **HIGHLANDS REGION.**—The term “Highlands region” means the area depicted on the map entitled “The Highlands Region”, dated June 2004, including the list of municipalities included in the Highlands region, and maintained in the headquarters of the Forest Service in Washington, District of Columbia.

(2) **HIGHLANDS STATE.**—The term “Highlands State” means—

- (A) the State of Connecticut;
- (B) the State of New Jersey;
- (C) the State of New York; and
- (D) the State of Pennsylvania.

(3) **LAND CONSERVATION PARTNERSHIP PROJECT.**—The term “land conservation partnership project” means a land conservation project—

- (A) located in the Highlands region;

(B) identified by the Forest Service in the Study, the Update, or any subsequent Pennsylvania and Connecticut Update as having high conservation value; and

(C) in which a non-Federal entity acquires land or an interest in land from a willing seller to permanently protect, conserve, or preserve the land through a partnership with the Federal Government.

(4) NON-FEDERAL ENTITY.—The term “non-Federal entity” means—

(A) any Highlands State; or

(B) any agency or department of any Highlands State with authority to own and manage land for conservation purposes, including the Palisades Interstate Park Commission.

(5) STUDY.—The term “Study” means the New York-New Jersey Highlands Regional Study conducted by the Forest Service in 1990.

(6) UPDATE.—The term “Update” means the New York-New Jersey Highlands Regional Study: 2002 Update conducted by the Forest Service.

(7) PENNSYLVANIA AND CONNECTICUT UPDATE.—The term “Pennsylvania and Connecticut Update” means a report to be completed by the Forest Service that identifies areas having high conservation values in the States of Connecticut and Pennsylvania in a manner similar to that utilized in the Study and Update.

SEC. 4. LAND CONSERVATION PARTNERSHIP PROJECTS IN THE HIGHLANDS REGION.

(a) SUBMISSION OF PROPOSED PROJECTS.—Each year, the governors of the Highlands States, with input from pertinent units of local government and the public, may—

(1) jointly identify land conservation partnership projects in the Highlands region from land identified as having high conservation values in the Study, the Update, or the Pennsylvania and Connecticut Update that shall be proposed for Federal financial assistance; and

(2) submit a list of those projects to the Secretary of the Interior.

Reports.

(b) CONSIDERATION OF PROJECTS.—Each year, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall submit to Congress a list of the land conservation partnership projects submitted under subsection (a)(2) that are eligible to receive financial assistance under this section.

Contracts.

(c) ELIGIBILITY CONDITIONS.—To be eligible for financial assistance under this section for a land conservation partnership project, a non-Federal entity shall enter into an agreement with the Secretary of the Interior that—

(1) identifies the non-Federal entity that shall own or hold and manage the land or interest in land;

(2) identifies the source of funds to provide the non-Federal share under subsection (d);

(3) describes the management objectives for the land that will ensure permanent protection and use of the land for the purpose for which the assistance will be provided;

(4) provides that, if the non-Federal entity converts, uses, or disposes of the land conservation partnership project for

a purpose inconsistent with the purpose for which the assistance was provided, as determined by the Secretary of the Interior, the United States—

(A) may seek specific performance of the conditions of financial assistance in accordance with paragraph (3) in Federal court; and

(B) shall be entitled to reimbursement from the non-Federal entity in an amount that is, as determined at the time of conversion, use, or disposal, the greater of—

(i) the total amount of the financial assistance provided for the project by the Federal Government under this section; or

(ii) the amount by which the financial assistance increased the value of the land or interest in land; and

(5) provides that land conservation partnership projects will be consistent with areas identified as having high conservation value in—

(A) the Important Areas portion of the Study;

(B) the Conservation Focal Areas portion of the Update;

(C) the Conservation Priorities portion of the Update;

(D) land identified as having higher or highest resource value in the Conservation Values Assessment portion of the Update; and

(E) land identified as having high conservation value in the Pennsylvania and Connecticut Update.

(d) **NON-FEDERAL SHARE REQUIREMENT.**—The Federal share of the cost of carrying out a land conservation partnership project under this section shall not exceed 50 percent of the total cost of the land conservation partnership project.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of the Interior \$10,000,000 for each of fiscal years 2005 through 2014, to remain available until expended.

SEC. 5. FOREST SERVICE AND USDA PROGRAMS IN THE HIGHLANDS REGION.

(a) **IN GENERAL.**—To meet the land resource goals of, and the scientific and conservation challenges identified in, the Study, Update, and any future study that the Forest Service may undertake in the Highlands region, the Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with the Chief of the National Resources Conservation Service, shall continue to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of land and natural resources in the Highlands region.

(b) **DUTIES.**—The Forest Service shall—

(1) in consultation with the Highlands States, undertake other studies and research in the Highlands region consistent with the purposes of this Act, including a Pennsylvania and Connecticut Update;

(2) communicate the findings of the Study and Update and maintain a public dialogue regarding implementation of the Study and Update; and

(3) assist the Highland States, local units of government, individual landowners, and private organizations in identifying

and using Forest Service and other technical and financial assistance programs of the Department of Agriculture.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Agriculture to carry out this section \$1,000,000 for each of fiscal years 2005 through 2014.

SEC. 6. PRIVATE PROPERTY PROTECTION AND LACK OF REGULATORY EFFECT.

(a) **ACCESS TO PRIVATE PROPERTY.**—Nothing in this Act—

(1) requires a private property owner to permit public access (including Federal, State, or local government access) to private property; or

(2) modifies any provision of Federal, State, or local law with regard to public access to, or use of, private land.

(b) **LIABILITY.**—Nothing in this Act creates any liability, or has any effect on liability under any other law, of a private property owner with respect to any persons injured on the private property.

(c) **RECOGNITION OF AUTHORITY TO CONTROL LAND USE.**—Nothing in this Act modifies any authority of Federal, State, or local governments to regulate land use.

(d) **PARTICIPATION OF PRIVATE PROPERTY OWNERS.**—Nothing in this Act requires the owner of any private property located in the Highlands region to participate in the land conservation, financial, or technical assistance or any other programs established under this Act.

(e) **PURCHASE OF LAND OR INTERESTS IN LAND FROM WILLING SELLERS ONLY.**—Funds appropriated to carry out this Act shall be used to purchase land or interests in land only from willing sellers.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 1964:

HOUSE REPORTS: No. 108–373, Pt. 1 (Comm. on Resources).

SENATE REPORTS: No. 108–376 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 21, considered and passed House.

Vol. 150 (2004): Oct. 10, considered and passed Senate, amended.

Nov. 17, House concurred in Senate amendment.



Public Law 108–422
108th Congress

An Act

To amend title 38, United States Code, to increase the authorization of appropriations for grants to benefit homeless veterans, to improve programs for management and administration of veterans’ facilities and health care programs, and for other purposes.

Nov. 30, 2004
[H.R. 3936]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Veterans Health Programs Improvement Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
Sec. 2. Reference to title 38, United States Code.

TITLE I—ASSISTANCE TO HOMELESS VETERANS

- Sec. 101. Authorization of appropriations.

TITLE II—VETERANS LONG-TERM CARE PROGRAMS

- Sec. 201. Assistance for hiring and retention of nurses at State veterans’ homes.
Sec. 202. Treatment of Department of Veterans Affairs per diem payments to state homes for veterans.
Sec. 203. Extension of authority to provide care under long-term care pilot programs.
Sec. 204. Prohibition on collection of copayments for hospice care.

TITLE III—MEDICAL CARE

- Sec. 301. Sexual trauma counseling program.
Sec. 302. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries.
Sec. 303. Enhancement of medical preparedness of Department of Veterans Affairs.

TITLE IV—MEDICAL FACILITIES MANAGEMENT AND ADMINISTRATION

Subtitle A—Major Medical Facility Leases

- Sec. 401. Major medical facility leases.
Sec. 402. Authorization of appropriations.
Sec. 403. Authority for long-term lease of certain lands of University of Colorado.

Subtitle B—Facilities Management

- Sec. 411. Department of Veterans Affairs Capital Asset Fund.
Sec. 412. Annual report to Congress on inventory of Department of Veterans Affairs historic properties.
Sec. 413. Authority to acquire and transfer real property for use for homeless veterans.
Sec. 414. Limitation on implementation of mission changes for specified Veterans Health Administration facilities.
Sec. 415. Authority to use project funds to construct or relocate surface parking incidental to a construction or nonrecurring maintenance project.
Sec. 416. Inapplicability of limitation on use of advance planning funds to authorized major medical facility projects.

Veterans Health
Programs
Improvement Act
of 2004.
38 USC 101 note.

- Sec. 417. Improvements to enhanced-use lease authority.
- Sec. 418. First option for Commonwealth of Kentucky on Department of Veterans Affairs Medical Center, Louisville, Kentucky.
- Sec. 419. Transfer of jurisdiction, General Services Administration property, Boise, Idaho.

Subtitle C—Designation of Facilities

- Sec. 421. Thomas E. Creek Department of Veterans Affairs Medical Center.
- Sec. 422. James J. Peters Department of Veterans Affairs Medical Center.
- Sec. 423. Bob Michel Department of Veterans Affairs Outpatient Clinic.
- Sec. 424. Charles Wilson Department of Veterans Affairs Outpatient Clinic.
- Sec. 425. Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic.

TITLE V—PERSONNEL ADMINISTRATION

- Sec. 501. Pilot program to study innovative recruitment tools to address nursing shortages at Department of Veterans Affairs health care facilities.
- Sec. 502. Technical correction to listing of certain hybrid positions in Veterans Health Administration.
- Sec. 503. Under Secretary for Health.

TITLE VI—OTHER MATTERS

- Sec. 601. Extension and codification of authority for recovery audits.
- Sec. 602. Inventory of medical waste management activities at Department of Veterans Affairs health care facilities.
- Sec. 603. Inclusion of all enrolled veterans among persons eligible to use canteens operated by Veterans' Canteen Service.
- Sec. 604. Annual reports on waiting times for appointments for specialty care.
- Sec. 605. Technical clarification.

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—ASSISTANCE TO HOMELESS VETERANS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Section 2013 is amended in paragraph (4) by striking “\$75,000,000” and inserting “\$99,000,000”.

TITLE II—VETERANS LONG-TERM CARE PROGRAMS

SEC. 201. ASSISTANCE FOR HIRING AND RETENTION OF NURSES AT STATE VETERANS' HOMES.

(a) IN GENERAL.—(1) Chapter 17 is amended by inserting after section 1743 the following new section:

“§ 1744. Hiring and retention of nurses: payments to assist States

“(a) PAYMENT PROGRAM.—The Secretary shall make payments to States under this section for the purpose of assisting State homes in the hiring and retention of nurses and the reduction of nursing shortages at State homes.

“(b) ELIGIBLE RECIPIENTS.—Payments to a State for a fiscal year under this section shall, subject to submission of an application, be made to any State that during that fiscal year—

“(1) receives per diem payments under this subchapter for that fiscal year; and

“(2) has in effect an employee incentive scholarship program or other employee incentive program at a State home designed to promote the hiring and retention of nursing staff and to reduce nursing shortages at that home.

“(c) USE OF FUNDS RECEIVED.—A State may use an amount received under this section only to provide funds for a program described in subsection (b)(2). Any program shall meet such criteria as the Secretary may prescribe. In prescribing such criteria, the Secretary shall take into consideration the need for flexibility and innovation.

“(d) LIMITATIONS ON AMOUNT OF PAYMENT.—(1) A payment under this section may not be used to provide more than 50 percent of the costs for a fiscal year of the employee incentive scholarship or other employee incentive program for which the payment is made.

“(2) The amount of the payment to a State under this section for any fiscal year is, for each State home in that State with a program described in subsection (b)(2), the amount equal to 2 percent of the amount of payments estimated to be made to that State, for that State home, under section 1741 of this title for that fiscal year.

“(e) APPLICATIONS.—A payment under this section for any fiscal year with respect to any State home may only be made based upon an application submitted by the State seeking the payment with respect to that State home. Any such application shall describe the nursing shortage at the State home and the employee incentive scholarship program or other employee incentive program described in subsection (c) for which the payment is sought.

“(f) SOURCE OF FUNDS.—Payments under this section shall be made from funds available for other payments under this subchapter.

“(g) DISBURSEMENT.—Payments under this section to a State home shall be made as part of the disbursement of payments under section 1741 of this title with respect to that State home.

“(h) USE OF CERTAIN RECEIPTS.—The Secretary shall require as a condition of any payment under this section that, in any case in which the State home receives a refund payment made by an employee in breach of the terms of an agreement for employee assistance that used funds provided under this section, the payment shall be returned to the State home’s incentive program account and credited as a non-Federal funding source.

“(i) ANNUAL REPORT FROM PAYMENT RECIPIENTS.—Any State home receiving a payment under this section for any fiscal year, shall, as a condition of the payment, be required to agree to provide to the Secretary a report setting forth in detail the use of funds received through the payment, including a descriptive analysis of how effective the incentive program has been on nurse staffing in the State home during that fiscal year. The report for any fiscal year shall be provided to the Secretary within 60 days of the close of the fiscal year and shall be subject to audit by the Secretary. Eligibility for a payment under this section for any later fiscal year is contingent upon the receipt by the Secretary of the annual report under this subsection for the previous fiscal year in accordance with this subsection.

“(j) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. The regulations shall include the establishment of criteria for the award of payments under this section.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after section 1743 the following new item: “1744. Hiring and retention of nurses: payments to assist States.”.

38 USC 1744
note.

Procedures.
Deadline.

(b) IMPLEMENTATION.—The Secretary of Veterans Affairs shall implement section 1744 of title 38, United States Code, as added by subsection (a), as expeditiously as possible. The Secretary shall establish such interim procedures as necessary so as to ensure that payments are made to eligible States under that section commencing not later than June 1, 2005, notwithstanding that regulations under subsection (j) of that section may not have become final.

SEC. 202. TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS PER DIEM PAYMENTS TO STATE HOMES FOR VETERANS.

Section 1741 is amended by adding at the end the following new subsection:

“(e) Payments to States pursuant to this section shall not be considered a liability of a third party, or otherwise be used to offset or reduce any other payment made to assist veterans.”.

SEC. 203. EXTENSION OF AUTHORITY TO PROVIDE CARE UNDER LONG-TERM CARE PILOT PROGRAMS.

Subsection (h) of section 102 of the Veterans Millennium Health Care and Benefits Act (38 U.S.C. 1710B note) is amended—

(1) by inserting “(1)” before “The authority of”; and

(2) by adding at the end the following new paragraph:

“(2) In the case of a veteran who is participating in a pilot program under this section as of the end of the three-year period applicable to that pilot program under paragraph (1), the Secretary may continue to provide to that veteran any of the services that could be provided under the pilot program. The authority to provide services to any veteran under the preceding sentence applies during the period beginning on the date specified in paragraph (1) with respect to that pilot program and ending on December 31, 2005.”.

Applicability.

SEC. 204. PROHIBITION ON COLLECTION OF COPAYMENTS FOR HOSPICE CARE.

Section 1710B(c)(2) is amended—

(1) by striking “or” at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph (B):

“(B) to a veteran being furnished hospice care under this section; or”.

TITLE III—MEDICAL CARE

SEC. 301. SEXUAL TRAUMA COUNSELING PROGRAM.

(a) PERMANENT AUTHORITY FOR PROGRAM.—Section 1720D(a) is amended—

(1) in paragraph (1), by striking “During the period through December 31, 2004, the” and inserting “The”; and

(2) in paragraph (2), by striking “, during the period through December 31, 2004,”.

(b) EXTENSION TO COVER ACTIVE DUTY FOR TRAINING.—Such section is further amended by inserting “or active duty for training” in paragraph (1) before the period at the end.

SEC. 302. CENTERS FOR RESEARCH, EDUCATION, AND CLINICAL ACTIVITIES ON COMPLEX MULTI-TRAUMA ASSOCIATED WITH COMBAT INJURIES.

(a) IN GENERAL.—(1) Subchapter II of chapter 73 of title 38, United States Code, is amended by adding at the end the following new section:

“§ 7327. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries

“(a) PURPOSE.—The purpose of this section is to provide for the improvement of the provision of health care services and related rehabilitation and education services to eligible veterans suffering from complex multi-trauma associated with combat injuries through—

“(1) the development of improved models and systems for the furnishing by the Department of health care, rehabilitation, and education services to veterans;

“(2) the conduct of research to support the provision of such services in accordance with the most current evidence on multi-trauma injuries; and

“(3) the education and training of health care personnel of the Department with respect to the provision of such services.

“(b) DESIGNATION OF CENTERS.—(1) The Secretary shall designate an appropriate number of cooperative centers for clinical care, consultation, research, and education activities on combat injuries.

“(2) Each center designated under paragraph (1) shall function as a center for—

“(A) research on the long-term effects of injuries sustained as a result of combat in order to support the provision of services for such injuries in accordance with the most current evidence on complex multi-trauma;

“(B) the development of rehabilitation methodologies for treating individuals with complex multi-trauma; and

“(C) the continuous and consistent coordination of care from the point of referral throughout the rehabilitation process and ongoing follow-up after return to home and community.

“(3) The Secretary shall designate one of the centers designated under paragraph (1) as the lead center for activities referred to in that paragraph. As the lead center for such activities, such center shall—

“(A) develop and provide periodic review of research priorities, and implement protocols, to ensure that projects contribute to the activities of the centers designated under paragraph (1);

“(B) oversee the coordination of the professional and technical activities of such centers to ensure the quality and validity of the methodologies and statistical services for research project leaders;

“(C) develop and ensure the deployment of an efficient and cost-effective data management system for such centers;

“(D) develop and distribute educational materials and products to enhance the evaluation and care of individuals with combat injuries by medical care providers of the Department who are not specialized in the assessment and care of complex multi-trauma;

“(E) develop educational materials for individuals suffering from combat injuries and for their families; and

“(F) serve as a resource for the clinical and research infrastructure of such centers by disseminating clinical outcomes and research findings to improve clinical practice.

“(4) The Secretary shall designate centers under paragraph (1) upon the recommendation of the Under Secretary for Health.

“(5) The Secretary may designate a center under paragraph (1) only if the center meets the requirements of subsection (c).

“(c) REQUIREMENTS FOR CENTERS.—To be designated as a center under this section, a facility shall—

“(1) be a regional lead center for the care of traumatic brain injury;

“(2) be located at a tertiary care medical center and have on-site availability of primary and subspecialty medical services relating to complex multi-trauma;

“(3) have, or have the capacity to develop, the capability of managing impairments associated with combat injuries;

“(4) be affiliated with a school of medicine;

“(5) have, or have experience with, participation in clinical research trials;

“(6) provide amputation care and rehabilitation;

“(7) have pain management programs;

“(8) provide comprehensive brain injury rehabilitation; and

“(9) provide comprehensive general rehabilitation.

“(d) ADDITIONAL RESOURCES.—The Secretary shall provide each center designated under this section such resources as the Secretary determines to be required by such center to achieve adequate capability of managing individuals with complex multi-trauma, including—

“(1) the upgrading of blind rehabilitation services by employing or securing the services of blind rehabilitation specialists;

“(2) employing or securing the services of occupational therapists with blind rehabilitation training;

“(3) employing or securing the services of additional mental health services providers; and

“(4) employing or securing additional rehabilitation nursing staff to meet care needs.

“(e) COOPERATION WITH DEPARTMENT OF DEFENSE.—(1) The Secretary of Veterans Affairs may assist the Secretary of Defense in the care of members of the Armed Forces with complex multi-trauma at military treatment facilities by—

“(A) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, certified rehabilitation registered nurses of the Department of Veterans Affairs to such facilities to assess and coordinate the care of such members; and

“(B) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, blind rehabilitation

specialists of the Department of Veterans Affairs to such facilities to consult with the medical staff of such facilities on the special needs of such members who have visual impairment as a consequence of combat injury.

“(2) Assistance shall be provided under this subsection through agreements for the sharing of health-care resources under section 8111 of this title.

“(f) AWARD OF FUNDING.—Centers designated under this section may compete for the award of funding from amounts appropriated for the Department for medical and prosthetics research.

“(g) DISSEMINATION OF INFORMATION.—(1) The Under Secretary for Health shall ensure that information produced by the centers designated under this section that may be useful for other activities of the Veterans Health Administration is disseminated throughout the Administration.

“(2) Information shall be disseminated under this subsection through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means.

“(h) NATIONAL OVERSIGHT.—The Under Secretary for Health shall designate an appropriate officer to oversee the operation of the centers designated under this section and provide for periodic evaluation of the centers.

“(i) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Department of Veterans Affairs for the centers designated under this section amounts as follows:

“(A) \$7,000,000 for fiscal year 2005.

“(B) \$8,000,000 for each of fiscal years 2006 through 2008.

“(2) In addition to amounts authorized to be appropriated by paragraph (1) for a fiscal year, the Under Secretary for Health may allocate to each center designated under this section, from other funds authorized to be appropriated for such fiscal year for the Department generally for medical and for medical and prosthetic research, such amounts as the Under Secretary for Health determines appropriate to carry out the purposes of this section.”.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7326 the following new item:

“7327. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries.”.

(b) DESIGNATION OF CENTERS.—The Secretary of Veterans Affairs shall designate the centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries required by section 7327 of title 38, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act.

(c) ANNUAL REPORTS.—(1) Not later than eighteen months after the date of the designation of centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries required by section 7327 of title 38, United States Code (as so added), and annually thereafter through 2008, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the status and activities of such centers during the one-year period beginning on the date of such designation, for the first such report, and for successive one-year periods, for subsequent reports.

Deadline.
38 USC 7327
note.

(2) Each such report shall include, for the period covered by such report, the following:

(A) A description of the activities carried out at each center, and the funding provided for such activities.

(B) A description of any advances made in the participating programs of each center in research, education, training, and clinical activities on complex multi-trauma associated with combat injuries.

(C) A description of the actions taken by the Under Secretary for Health pursuant to subsection (g) of that section (as so added) to disseminate throughout the Veterans Health Administration information derived from such activities.

SEC. 303. ENHANCEMENT OF MEDICAL PREPAREDNESS OF DEPARTMENT OF VETERANS AFFAIRS.

Establishment.
38 USC 7328
note.

Deadline.

Deadlines.
38 USC 7328
note.

(a) **PEER REVIEW PANEL.**—In order to assist the Secretary of Veterans Affairs in selecting facilities of the Department of Veterans Affairs to serve as sites for centers under section 7328 of title 38, United States Code, as added by subsection (c), the Secretary shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the selection of such facilities. The panel shall be established not later than 90 days after the date of the enactment of this Act and shall include experts in the fields of toxicological research, infectious diseases, radiology, clinical care of veterans exposed to such hazards, and other persons as determined appropriate by the Secretary. Members of the panel shall serve as consultants to the Department of Veterans Affairs. Amounts available to the Secretary for Medical Care may be used for purposes of carrying out this subsection. The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(b) **PROPOSALS.**—The Secretary shall solicit proposals for designation of facilities as described in subsection (a). The announcement of the solicitation of such proposals shall be issued not later than 60 days after the date of the enactment of this Act, and the deadline for the submission of proposals in response to such solicitation shall be not later than 90 days after the date of such announcement. The peer review panel established under subsection (a) shall complete its review of the proposals and submit its recommendations to the Secretary not later than 60 days after the date of the deadline for the submission of proposals. The Secretary shall then select the four sites for the location of such centers not later than 45 days after the date on which the peer review panel submits its recommendations to the Secretary.

(c) **REVISED SECTION.**—(1) Subchapter II of chapter 73 is amended by inserting after section 7327, as added by section 302(a)(1) of this Act, a new section with—

(A) a heading as follows:

“§ 7328. Medical preparedness centers”; and

(B) a text consisting of the text of subsections (a) through (h) of section 7325 of title 38, United States Code, and a subsection (i) at the end as follows:

“(i) **FUNDING.**—(1) There are authorized to be appropriated for the centers under this section \$10,000,000 for each of fiscal years 2005 through 2007.

“(2) In addition to any amounts appropriated for a fiscal year specifically for the activities of the centers pursuant to paragraph (1), the Under Secretary for Health shall allocate to the centers from other funds appropriated for that fiscal year generally for the Department medical care account and the Department medical and prosthetic research account such amounts as the Under Secretary determines necessary in order to carry out the purposes of this section.”.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7327, as added by section 302(a)(2) of this Act, the following new item:

“7328. Medical preparedness centers.”.

TITLE IV—MEDICAL FACILITIES MANAGEMENT AND ADMINISTRATION

Subtitle A—Major Medical Facility Leases

SEC. 401. MAJOR MEDICAL FACILITY LEASES.

The Secretary of Veterans Affairs may enter into contracts for major medical facility leases at the following locations, in an amount for each facility lease not to exceed the amount shown for that location:

- (1) Wilmington, North Carolina, Outpatient Clinic, \$1,320,000.
- (2) Greenville, North Carolina, Outpatient Clinic, \$1,220,000.
- (3) Norfolk, Virginia, Outpatient Clinic, \$1,250,000.
- (4) Summerfield, Florida, Marion County Outpatient Clinic, \$1,230,000.
- (5) Knoxville, Tennessee, Outpatient Clinic, \$850,000.
- (6) Toledo, Ohio, Outpatient Clinic, \$1,200,000.
- (7) Crown Point, Indiana, Outpatient Clinic, \$850,000.
- (8) Fort Worth, Texas, Tarrant County Outpatient Clinic, \$3,900,000.
- (9) Plano, Texas, Collin County Outpatient Clinic, \$3,300,000.
- (10) San Antonio, Texas, Northeast Central Bexar County Outpatient Clinic, \$1,400,000.
- (11) Corpus Christi, Texas, Outpatient Clinic, \$1,200,000.
- (12) Harlingen, Texas, Outpatient Clinic, \$650,000.
- (13) Denver, Colorado, Health Administration Center, \$1,950,000.
- (14) Oakland, California, Outpatient Clinic, \$1,700,000.
- (15) San Diego, California, North County Outpatient Clinic, \$1,300,000.
- (16) San Diego, California, South County Outpatient Clinic, \$1,100,000.

SEC. 402. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 2005 for the Medical Care account, \$24,420,000 for the leases authorized in section 401.

SEC. 403. AUTHORITY FOR LONG-TERM LEASE OF CERTAIN LANDS OF UNIVERSITY OF COLORADO.

Notwithstanding section 8103 of title 38, United States Code, the Secretary of Veterans Affairs may enter into a lease for real property located at the Fitzsimmons Campus of the University of Colorado for purposes of a medical facility (as that term is defined in section 8101 of title 38, United States Code) for a period of up to 75 years.

Subtitle B—Facilities Management

SEC. 411. DEPARTMENT OF VETERANS AFFAIRS CAPITAL ASSET FUND.

(a) ESTABLISHMENT OF FUND.—(1) Subchapter I of chapter 81 is amended by adding at the end the following new section:

“§ 8118. Authority for transfer of real property; Department of Veterans Affairs Capital Asset Fund

“(a)(1) The Secretary may transfer real property under the jurisdiction or control of the Secretary (including structures and equipment associated therewith) to another department or agency of the United States, to a State (or a political subdivision of a State), or to any public or private entity, including an Indian tribe. Such a transfer may be made only if the Secretary receives compensation of not less than the fair market value of the property, except that no compensation is required, or compensation at less than fair market value may be accepted, in the case of a transfer to a grant and per diem provider (as defined in section 2002 of this title). When a transfer is made to a grant and per diem provider for less than fair market value, the Secretary shall require in the terms of the conveyance that if the property transferred is used for any purpose other than a purpose under chapter 20 of this title, all right, title, and interest to the property shall revert to the United States.

“(2) The Secretary may exercise the authority provided by this section notwithstanding sections 521, 522, and 541 through 545 of title 40. Any such transfer shall be in accordance with this section and section 8122 of this title.

“(3) The authority provided by this section may not be used in a case to which section 8164 of this title applies.

“(4) The Secretary may enter into partnerships or agreements with public or private entities dedicated to historic preservation to facilitate the transfer, leasing, or adaptive use of structures or properties specified in subsection (b)(3)(D).

“(5) The authority of the Secretary under paragraph (1) expires on the date that is seven years after the date of the enactment of this section.

“(b)(1) There is established in the Treasury of the United States a revolving fund to be known as the Department of Veterans Affairs Capital Asset Fund (hereinafter in this section referred to as the ‘Fund’). Amounts in the Fund shall remain available until expended.

“(2) Proceeds from the transfer of real property under this section shall be deposited into the Fund.

“(3) To the extent provided in advance in appropriations Acts, amounts in the Fund may be expended for the following purposes:

“(A) Costs associated with the transfer of real property under this section, including costs of demolition, environmental

Expiration date.

remediation, maintenance and repair, improvements to facilitate the transfer, and administrative expenses.

“(B) Costs, including costs specified in subparagraph (A), associated with future transfers of property under this section.

“(C) Costs associated with enhancing medical care services to veterans by improving, renovating, replacing, updating, or establishing patient care facilities through construction projects to be carried out for an amount less than the amount specified in 8104(a)(3)(A) for a major medical facility project.

“(D) Costs, including costs specified in subparagraph (A), associated with the transfer, lease, or adaptive use of a structure or other property under the jurisdiction of the Secretary that is listed on the National Register of Historic Places.

“(c) The Secretary shall include in the budget justification materials submitted to Congress for any fiscal year in support of the President’s budget for that fiscal year for the Department specification of the following:

“(1) The real property transfers to be undertaken in accordance with this section during that fiscal year.

“(2) All transfers completed under this section during the preceding fiscal year and completed and scheduled to be completed during the fiscal year during which the budget is submitted.

“(3) The deposits into, and expenditures from, the Fund that are incurred or projected for each of the preceding fiscal year, the current fiscal year, and the fiscal year covered by the budget.”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 8117 the following new item:

“8118. Authority for transfer of real property; Department of Veterans Affairs Capital Asset Fund.”.

(b) INITIAL AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Veterans Affairs Capital Asset Fund established under section 8118 of title 38, United States Code (as added by subsection (a)), the amount of \$10,000,000.

(c) TERMINATION OF NURSING HOME REVOLVING FUND.—(1) Section 8116 is repealed.

(2) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8116.

(d) TRANSFER OF UNOBLIGATED BALANCES TO CAPITAL ASSET FUND.—Any unobligated balances in the nursing home revolving fund under section 8116 of title 38, United States Code, as of the date of the enactment of this Act shall be deposited in the Department of Veterans Affairs Capital Asset Fund established under section 8118 of title 38, United States Code (as added by subsection (a)).

38 USC 8118
note.

(e) PROCEDURES APPLICABLE TO TRANSFERS.—(1) Paragraph (2) of section 8122(a) is amended to read as follows:

“(2) Except as provided in paragraph (3), the Secretary may not during any fiscal year transfer to any other department or agency of the United States or to any other entity real property that is owned by the United States and administered by the Secretary unless the proposed transfer is described in the budget submitted to Congress pursuant to section 1105 of title 31 for that fiscal year.”.

- Notices.
- Newspapers.
Federal Register,
publication.
- Certification.
Effective date.
38 USC 1710B
note.
- 38 USC 1710B
note.
- (2) Section 8122(d) is amended—
 (A) by inserting “(1)” before “Real property”; and
 (B) by adding at the end the following new paragraph:
 “(2) The Secretary may transfer real property under this section, or under section 8118 of this title, if the Secretary—
 “(A) places a notice in the real estate section of local newspapers and in the Federal Register of the Secretary’s intent to transfer that real property (including land, structures, and equipment associated with the property);
 “(B) holds a public hearing;
 “(C) provides notice to the Administrator of General Services of the Secretary’s intention to transfer that real property and waits for 30 days to elapse after providing that notice; and
 “(D) after such 30-day period has elapsed, notifies the congressional veterans’ affairs committees of the Secretary’s intention to dispose of the property and waits for 60 days to elapse from the date of that notice.”.
- (3) Section 8164(a) is amended by inserting “8118 or” after “rather than under section”.
- (4) Section 8165(a)(2) is amended by striking “nursing home revolving fund” and inserting “Department of Veterans Affairs Capital Asset Fund established under section 8118 of this title”.
- (f) CONTINGENT EFFECTIVENESS.—Subsection (d) and the amendments made by subsection (c) shall take effect at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with subsection (b) of section 1710B of title 38, United States Code.
- (g) ANNUAL UPDATE.—Following a certification under subsection (f), the Secretary shall submit to Congress an annual update on that certification.

SEC. 412. ANNUAL REPORT TO CONGRESS ON INVENTORY OF DEPARTMENT OF VETERANS AFFAIRS HISTORIC PROPERTIES.

(a) IN GENERAL.—Not later than December 15 of 2005, 2006, and 2007, the Secretary of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives a report on the historic properties administered or controlled by the Secretary.

(b) INITIAL REPORT.—In the initial report under subsection (a), the Secretary shall set forth a complete inventory of the historic structures and property under the jurisdiction of the Secretary. The report shall include a description and classification of each such property based upon historical nature, current physical condition, and potential for transfer, leasing, or adaptive use.

(c) SUBSEQUENT REPORTS.—In reports under subsection (a) after the initial report, the Secretary shall provide an update of the status of each property identified in the initial report, with the proposed and actual disposition, if any, of each property. Each such report shall include any recommendation of the Secretary for legislation to enhance the transfer, leasing, or adaptive use of such properties.

SEC. 413. AUTHORITY TO ACQUIRE AND TRANSFER REAL PROPERTY FOR USE FOR HOMELESS VETERANS.

(a) AUTHORITY.—Upon identification of a parcel of real property meeting the description in subsection (b), the Secretary of Veterans

Affairs may acquire that property (with the structures and improvements thereon) or, in the case of property owned by the United States and administered by another Federal department or agency, may accept administrative jurisdiction over that property, with the expectation of promptly transferring that property to a homeless assistance provider identified under paragraph (2) of subsection (b), subject to the condition that the primary purpose for which the property shall be used is to provide housing for homeless veterans.

(b) SPECIFIED PROPERTY.—A parcel of real property referred to in subsection (a) is a parcel in the District of Columbia—

(1) that the Secretary determines to be suitable for use for housing for homeless veterans; and

(2) for which there is an identified homeless assistance provider that is prepared to acquire the property for such purpose from the Secretary promptly upon the acquisition of the property by the Secretary.

(c) TRANSFER OF PROPERTY.—Upon acquiring real property under subsection (a), the Secretary shall immediately transfer all right, title, and interest of the United States (other than the reversionary interest retained under subsection (e)) to the homeless assistance provider identified under subsection (b)(2). Such transfer shall be for such consideration as the Secretary determines appropriate.

(d) TERMS AND CONDITIONS.—The acquisition and transfer of real property under this section shall be made upon such terms and conditions as the Secretary may specify not inconsistent with other applicable provisions of law.

(e) REVERTER.—The terms of the transfer shall provide that if the property is no longer used for the purpose for which conveyed by the Secretary, title to the property shall revert to the United States.

SEC. 414. LIMITATION ON IMPLEMENTATION OF MISSION CHANGES FOR SPECIFIED VETERANS HEALTH ADMINISTRATION FACILITIES.

(a) LIMITATION.—The Secretary of Veterans Affairs may not implement a mission change for a medical facility of the Department of Veterans Affairs specified in subsection (c) until—

(1) the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a written notice of the mission change; and

(2) the period prescribed by subsection (b) has elapsed.

(b) CONGRESSIONAL REVIEW PERIOD.—(1) The period referred to in subsection (a)(2) is the period beginning on the date of the receipt of the notice under subsection (a)(1) by the committees specified in that subsection and ending on the later of—

(A) the end of the 60-day period beginning on the date on which the notice is received by those committees; or

(B) the end of a period of 30 days of continuous session of Congress beginning on the date on which the notification is received by those committees or, if either House of Congress is not in session on such date, the first day after such date that both Houses of Congress are in session.

(2) For the purposes of paragraph (1)(B)—

(A) the continuity of a session of Congress is broken only by an adjournment of Congress sine die; and

Notice.

(B) any day on which either House is not in session because of an adjournment of more than three days to a day certain is excluded in the computation of any period of time in which Congress is in continuous session.

(c) SPECIFIED FACILITIES.—A facility referred to in subsection (a) as being specified in this subsection is any of the following facilities of the Department of Veterans Affairs:

(1) The Department of Veterans Affairs medical centers in Boston, Massachusetts.

(2) The Department of Veterans Affairs medical centers in New York City, New York.

(3) The Department of Veterans Affairs medical center in Big Spring, Texas.

(4) The Carl Vinson Department of Veterans Affairs Medical Center, Dublin, Georgia.

(5) The Department of Veterans Affairs medical center in Montgomery, Alabama.

(6) The Department of Veterans Affairs medical center in Louisville, Kentucky.

(7) The Department of Veterans Affairs medical center in Muskogee, Oklahoma, and the outpatient clinic in Tulsa, Oklahoma.

(8) The John J. Pershing Department of Veterans Affairs Medical Center, Poplar Bluff, Missouri.

(9) The Department of Veterans Affairs medical center in Ft. Wayne, Indiana.

(10) The Department of Veterans Affairs Medical Center in Waco, Texas.

(11) The Jonathan M. Wainwright Department of Veterans Affairs Medical Center, Walla Walla, Washington.

(d) COVERED MISSION CHANGES.—For purposes of this section, a mission change for a medical facility shall consist of any of the following:

(1) Closure of the facility.

(2) Consolidation of the facility.

(3) An administrative reorganization of the facility covered by section 510(b) of title 38, United States Code.

(e) REQUIRED CONTENT OF NOTICE OF MISSION CHANGE.—Written notice of a mission change for a medical facility under subsection (a) shall include the following:

(1) An assessment of the effect of the mission change on the population of veterans served by the facility.

(2) A description of the availability and quality of health care, including long-term care, mental health care, and substance abuse programs, available in the area served by the facility.

(3) An assessment of the effect of the mission change on the economy of the community in which the facility is located.

(4) An analysis of any alternatives to the mission change proposed by—

(A) the community in which the facility is located;

(B) organizations recognized by the Secretary under section 5902 of title 38, United States Code;

(C) organizations that represent Department employees in such community; or

(D) the Department.

(f) **MEDICAL FACILITY CONSOLIDATION.**—For the purposes of subsection (d)(2), the term “consolidation” means an action that closes one or more medical facilities within a geographic service area for the purpose of relocating those activities to another medical facility or facilities.

(g) **COORDINATION OF PROVISIONS.**—In the case of a mission change covered by subsection (a) that is also an administrative reorganization covered by section 510(b) of title 38, United States Code, both this section and such section 510(b) shall apply with respect to the implementation of that mission change. Applicability.

SEC. 415. AUTHORITY TO USE PROJECT FUNDS TO CONSTRUCT OR RELOCATE SURFACE PARKING INCIDENTAL TO A CONSTRUCTION OR NONRECURRING MAINTENANCE PROJECT.

Section 8109 is amended by adding at the end the following new subsection:

“(j) Funds in a construction account or capital account that are available for a construction project or a nonrecurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to that project.”.

SEC. 416. INAPPLICABILITY OF LIMITATION ON USE OF ADVANCE PLANNING FUNDS TO AUTHORIZED MAJOR MEDICAL FACILITY PROJECTS.

Section 8104 is amended by adding at the end the following new subsection:

“(g) The limitation in subsection (f) does not apply to a project for which funds have been authorized by law in accordance with subsection (a)(2).”.

SEC. 417. IMPROVEMENTS TO ENHANCED-USE LEASE AUTHORITY.

Section 8166(a) is amended by inserting “land use,” in the second sentence after “relating to”.

SEC. 418. FIRST OPTION FOR COMMONWEALTH OF KENTUCKY ON DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, LOUISVILLE, KENTUCKY.

(a) **REQUIREMENT.**—Upon determining to convey, lease, or otherwise dispose of the Department of Veterans Affairs Medical Center, Louisville, Kentucky, or any portion thereof, the Secretary of Veterans Affairs shall engage in negotiations for the conveyance, lease, or other disposal of the Medical Center or portion thereof solely with the Commonwealth of Kentucky.

(b) **DURATION OF REQUIREMENT.**—The requirement for negotiations under subsection (a) shall remain in effect for one year after the date of the determination referred to in that subsection.

(c) **SCOPE OF NEGOTIATIONS.**—The negotiations under subsection (a) shall address the use of the medical center referred to in subsection (a), or portion thereof, by the Commonwealth of Kentucky for the primary purpose of the provision of services for veterans and related activities, including use for a State veterans’ home.

SEC. 419. TRANSFER OF JURISDICTION, GENERAL SERVICES ADMINISTRATION PROPERTY, BOISE, IDAHO.

(a) **TRANSFER.**—The Administrator of General Services shall transfer to the Secretary of Veterans Affairs, under such terms

and conditions as the Administrator and the Secretary agree, jurisdiction, custody, and control over the parcel of real property, including any improvements thereon, consisting of approximately 2.3 acres located at the General Services Administration facility immediately north of the Army Reserve facility in Boise, Idaho.

(b) UTILIZATION.—The Secretary of Veterans Affairs shall utilize the property transferred under subsection (a) for purposes relating to the delivery of benefits to veterans.

Subtitle C—Designation of Facilities

Texas.

SEC. 421. THOMAS E. CREEK DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

(a) IN GENERAL.—The Department of Veterans Affairs medical center in Amarillo, Texas, shall after the date of the enactment of this Act be known and designated as the “Thomas E. Creek Department of Veterans Affairs Medical Center”.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the medical center referred to in subsection (a) shall be considered to be a reference to the Thomas E. Creek Department of Veterans Affairs Medical Center.

New York.

SEC. 422. JAMES J. PETERS DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

(a) IN GENERAL.—The Department of Veterans Affairs medical center in the Bronx, New York, shall after the date of the enactment of this Act be known and designated as the “James J. Peters Department of Veterans Affairs Medical Center”.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the medical center referred to in subsection (a) shall be considered to be a reference to the James J. Peters Department of Veterans Affairs Medical Center.

Illinois.

SEC. 423. BOB MICHEL DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC.

(a) IN GENERAL.—The Department of Veterans Affairs outpatient clinic located in Peoria, Illinois, shall after the date of the enactment of this Act be known and designated as the “Bob Michel Department of Veterans Affairs Outpatient Clinic”.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Bob Michel Department of Veterans Affairs Outpatient Clinic.

Texas.

SEC. 424. CHARLES WILSON DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC.

(a) IN GENERAL.—The Department of Veterans Affairs outpatient clinic located in Lufkin, Texas, shall after the date of the enactment of this Act be known and designated as the “Charles Wilson Department of Veterans Affairs Outpatient Clinic”.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to

be a reference to the Charles Wilson Department of Veterans Affairs Outpatient Clinic.

SEC. 425. THOMAS P. NOONAN, JR. DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC. New York.

(a) **IN GENERAL.**—The Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York, shall after the date of the enactment of this Act be known and designated as the “Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic”.

(b) **REFERENCES.**—Any reference in any law, map, regulation, document, paper, or other record of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic.

TITLE V—PERSONNEL ADMINISTRATION

SEC. 501. PILOT PROGRAM TO STUDY INNOVATIVE RECRUITMENT TOOLS TO ADDRESS NURSING SHORTAGES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES. 38 USC 7451 note.

(a) **PILOT PROGRAM.**—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall designate a health care service region, or a section within such a region, in which health care facilities of the Department of Veterans Affairs are adversely affected by a shortage of qualified nurses. Deadline.

(2) The Secretary shall conduct a pilot program in the region or section designated under paragraph (1) to determine the effectiveness of the use of innovative human capital tools and techniques in the recruitment of qualified nurses for positions at Department health care facilities in such region or section and for the retention of nurses at such facilities. In carrying out the pilot program, the Secretary shall enter into a contract with a private sector entity for services under the pilot program for recruitment of qualified nurses.

(b) **PRIVATE SECTOR RECRUITMENT PRACTICES.**—For purposes of the pilot program under this section, the Secretary shall identify and use recruitment practices that have proven effective for placing qualified individuals in positions that are difficult to fill due to shortages of qualified individuals or other factors. Recruitment practices to be reviewed by the Secretary for use in the pilot program shall include—

(1) employer branding and interactive advertising strategies;

(2) Internet technologies and automated staffing systems; and

(3) the use of recruitment, advertising, and communication agencies.

(c) **STREAMLINED HIRING PROCESS.**—In carrying out the pilot program under this section, the Secretary shall, at health care facilities of the Department in the region or section in which the pilot program is conducted, revise procedures and systems for selecting and hiring qualified nurses to reduce the length of the hiring process. If the Secretary identifies measures to streamline

and automate the hiring process that can only be implemented if authorized by law, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives recommendations for such changes in law as may be necessary to enable such measures to be implemented.

(d) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the extent to which the pilot program achieved the goal of improving the recruitment and retention of nurses in Department of Veterans Affairs health care facilities.

SEC. 502. TECHNICAL CORRECTION TO LISTING OF CERTAIN HYBRID POSITIONS IN VETERANS HEALTH ADMINISTRATION.

Section 7401(3) is amended—

(1) by striking “and dental technologists” and inserting “technologists, dental hygienists, dental assistants”; and

(2) by striking “technicians, therapeutic radiologic technicians, and social workers” and inserting “technologists, therapeutic radiologic technologists, social workers, blind rehabilitation specialists, and blind rehabilitation outpatient specialists”.

SEC. 503. UNDER SECRETARY FOR HEALTH.

Section 305(a)(2) is amended—

(1) in the matter preceding subparagraph (A), by striking “shall be a doctor of medicine and”; and

(2) in subparagraph (A), by striking “and in health-care” and inserting “or in health-care”.

TITLE VI—OTHER MATTERS

SEC. 601. EXTENSION AND CODIFICATION OF AUTHORITY FOR RECOVERY AUDITS.

Section 1703 is amended by adding at the end the following new subsection:

Contracts.

“(d)(1) The Secretary shall conduct a program of recovery audits for fee basis contracts and other medical services contracts for the care of veterans under this section, and for beneficiaries under sections 1781, 1782, and 1783 of this title, with respect to overpayments resulting from processing or billing errors or fraudulent charges in payments for non-Department care and services. The program shall be conducted by contract.

“(2) Amounts collected, by setoff or otherwise, as the result of an audit under the program conducted under this subsection shall be available for the purposes for which funds are currently available to the Secretary for medical care and for payment to a contractor of a percentage of the amount collected as a result of an audit carried out by the contractor.

“(3) The Secretary shall allocate all amounts collected under this subsection with respect to a designated geographic service area of the Veterans Health Administration, net of payments to the contractor, to that region.

Termination date.

“(4) The authority of the Secretary under this subsection terminates on September 30, 2008.”.

**SEC. 602. INVENTORY OF MEDICAL WASTE MANAGEMENT ACTIVITIES
AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE
FACILITIES.**

38 USC 8110
note.

(a) **INVENTORY.**—The Secretary of Veterans Affairs shall establish and maintain a national inventory of medical waste management activities in the health care facilities of the Department of Veterans Affairs. The inventory shall include the following:

(1) A statement of the current national policy of the Department on managing and disposing of medical waste, including regulated medical waste in all its forms.

(2) A description of the program of each geographic service area of the Department to manage and dispose of medical waste, including general medical waste and regulated medical waste, with a description of the primary methods used in those programs and the associated costs of those programs, with cost information shown separately for in-house costs (including full-time equivalent employees) and contract costs.

(b) **REPORT.**—Not later than June 30, 2005, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on medical waste management activities in the facilities of the Department of Veterans Affairs. The report shall include the following:

(1) The inventory established under subsection (a), including all the matters specified in that subsection.

(2) A listing of each violation of medical waste management and disposal regulations reported at any health care facility of the Department over the preceding five years by any Federal or State agency, along with an explanation of any remedial or other action taken by the Secretary in response to each such reported violation.

(3) A description of any plans to modernize, consolidate, or otherwise improve the management of medical waste and disposal programs at health care facilities of the Department, including the projected costs associated with such plans and any barriers to achieving goals associated with such plans.

(4) An assessment or evaluation of the available methods of disposing of medical waste and identification of which of those methods are more desirable from an environmental perspective in that they would be least likely to result in contamination of air or water or otherwise cause future cleanup problems.

**SEC. 603. INCLUSION OF ALL ENROLLED VETERANS AMONG PERSONS
ELIGIBLE TO USE CANTEENS OPERATED BY VETERANS'
CANTEEN SERVICE.**

The text of section 7803 is amended to read as follows:

“(a) **PRIMARY BENEFICIARIES.**—Canteens operated by the Service shall be primarily for the use and benefit of—

“(1) veterans hospitalized or domiciled at the facilities at which canteen services are provided; and

“(2) other veterans who are enrolled under section 1705 of this title.

“(b) **OTHER AUTHORIZED USERS.**—Service at such canteens may also be furnished to—

“(1) personnel of the Department and recognized veterans' organizations who are employed at a facility at which canteen services are provided and to other persons so employed;

“(2) the families of persons referred to in paragraph (1) who reside at the facility; and

“(3) relatives and other persons while visiting a person specified in this section.”.

SEC. 604. ANNUAL REPORTS ON WAITING TIMES FOR APPOINTMENTS FOR SPECIALTY CARE.

(a) **ANNUAL REPORTS.**—Not later than January 31 each year through 2007, the Secretary of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the Senate and the House of Representatives a report on waiting times for appointments for specialty health care from the Department of Veterans Affairs under chapter 17 of title 38, United States Code, during the preceding year.

(b) **REPORT ELEMENTS.**—Each report under subsection (a) shall specify, for the year covered by the report, the following:

(1) A tabulation of the number of veterans whose appointment for specialty health care furnished by the Department was more than three months after the date of the scheduling of such appointment, and the waiting times of such veterans for such appointments, for each category of specialty care furnished by the Department, broken out by Veterans Integrated Service Network.

(2) An identification of the categories of specialty care furnished by the Department for which there were delays of more than three months between the scheduling date of appointments and appointments in each Veterans Integrated Service Network.

(3) A discussion of the reasons for the delays identified under paragraph (2) for each category of care for each Veterans Integrated Service Network so identified, including lack of personnel, financial resources, or other resources.

(c) **CERTIFICATION ON REPORT INFORMATION.**—The Comptroller General of the United States shall certify to the committees of Congress referred to in subsection (a) whether or not each report under this section is accurate.

SEC. 605. TECHNICAL CLARIFICATION.

Section 8111(d)(2) is amended by inserting before the period at the end of the last sentence the following: “and shall be available for any purpose authorized by this section”.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 3936 (S. 2485):

HOUSE REPORTS: No. 108–574, Pt. 1 (Comm. on Veterans’ Affairs).

SENATE REPORTS: No. 108–358 accompanying S. 2485 (Comm. on Veterans’ Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 20, considered and passed House.

Oct. 9, considered and passed Senate, amended, in lieu of S. 2485.

Nov. 17, House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Dec. 1, Presidential statement.



Public Law 108–423
108th Congress

An Act

Nov. 30, 2004
[H.R. 4516]

To require the Secretary of Energy to carry out a program of research and development to advance high-end computing.

Department of
Energy High-End
Computing
Revitalization
Act of 2004.
15 USC 5501
note.
15 USC 5541.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Department of Energy High-End Computing Revitalization Act of 2004”.

SEC. 2. DEFINITIONS.

In this Act:

(1) **CENTER.**—The term “Center” means a High-End Software Development Center established under section 3(d).

(2) **HIGH-END COMPUTING SYSTEM.**—The term “high-end computing system” means a computing system with performance that substantially exceeds that of systems that are commonly available for advanced scientific and engineering applications.

(3) **LEADERSHIP SYSTEM.**—The term “Leadership System” means a high-end computing system that is among the most advanced in the world in terms of performance in solving scientific and engineering problems.

(4) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education” has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(5) **SECRETARY.**—The term “Secretary” means the Secretary of Energy, acting through the Director of the Office of Science of the Department of Energy.

15 USC 5542.

SEC. 3. DEPARTMENT OF ENERGY HIGH-END COMPUTING RESEARCH AND DEVELOPMENT PROGRAM.

(a) **IN GENERAL.**—The Secretary shall—

(1) carry out a program of research and development (including development of software and hardware) to advance high-end computing systems; and

(2) develop and deploy high-end computing systems for advanced scientific and engineering applications.

(b) **PROGRAM.**—The program shall—

(1) support both individual investigators and multidisciplinary teams of investigators;

(2) conduct research in multiple architectures, which may include vector, reconfigurable logic, streaming, processor-in-memory, and multithreading architectures;

(3) conduct research on software for high-end computing systems, including research on algorithms, programming environments, tools, languages, and operating systems for high-end computing systems, in collaboration with architecture development efforts;

(4) provide for sustained access by the research community in the United States to high-end computing systems and to Leadership Systems, including provision of technical support for users of such systems;

(5) support technology transfer to the private sector and others in accordance with applicable law; and

(6) ensure that the high-end computing activities of the Department of Energy are coordinated with relevant activities in industry and with other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, the National Nuclear Security Administration, the National Security Agency, the National Institutes of Health, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institutes of Standards and Technology, and the Environmental Protection Agency.

(c) LEADERSHIP SYSTEMS FACILITIES.—

Establishment.

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish and operate 1 or more Leadership Systems facilities to—

(A) conduct advanced scientific and engineering research and development using Leadership Systems; and

(B) develop potential advancements in high-end computing system hardware and software.

(2) ADMINISTRATION.—In carrying out this subsection, the Secretary shall provide to Leadership Systems, on a competitive, merit-reviewed basis, access to researchers in United States industry, institutions of higher education, national laboratories, and other Federal agencies.

(d) HIGH-END SOFTWARE DEVELOPMENT CENTER.—

Establishment.

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish at least 1 High-End Software Development Center.

(2) DUTIES.—A Center shall concentrate efforts to develop, test, maintain, and support optimal algorithms, programming environments, tools, languages, and operating systems for high-end computing systems.

(3) PROPOSALS.—In soliciting proposals for the Center, the Secretary shall encourage staffing arrangements that include both permanent staff and a rotating staff of researchers from other institutions and industry to assist in coordination of research efforts and promote technology transfer to the private sector.

(4) USE OF EXPERTISE.—The Secretary shall use the expertise of a Center to assess research and development in high-end computing system architecture.

(5) SELECTION.—The selection of a Center shall be determined by a competitive proposal process administered by the Secretary.

15 USC 5543.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts otherwise made available for high-end computing, there are authorized to be appropriated to the Secretary to carry out this Act—

- (1) \$50,000,000 for fiscal year 2005;
- (2) \$55,000,000 for fiscal year 2006; and
- (3) \$60,000,000 for fiscal year 2007.

SEC. 5. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) AMENDMENTS.—Section 23 of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–9) is amended—

(1) in subsection (a) and paragraphs (1) and (2) of subsection (b), by striking “and the National Aeronautics and Space Administration” and inserting “, the National Aeronautics and Space Administration, and the Department of Energy”;

(2) in subsection (b)(3), by striking “Administration, and” and inserting “Administration, the Secretary of Energy, ”;

(3) in subsection (c)—

(A) in paragraphs (1) and (2), by striking “5” and inserting “4”;

(B) in paragraph (2), by striking “and” at the end;

(C) by redesignating paragraph (3) as paragraph (4), and in that paragraph by striking “3” and inserting “2”; and

(D) by inserting after paragraph (2) the following:

“(3) 3 members selected by the Secretary of Energy; and

(4) in subsection (f), by striking “the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities” and inserting “other Federal advisory committees that advise Federal agencies that engage in related research activities”.

42 USC 1862–9
note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on March 15, 2005.

SEC. 6. REMOVAL OF SUNSET PROVISION FROM SAVINGS IN CONSTRUCTION ACT OF 1996.

Section 14 of the Metric Conversion Act of 1975 (15 U.S.C. 205~~l~~) is amended by striking subsection (e).

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 4516:

HOUSE REPORTS: No. 108–578 (Comm. on Science).

SENATE REPORTS: No. 108–379 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 7, considered and passed House.

Oct. 10, considered and passed Senate, amended.

Nov. 17, House concurred in Senate amendment.



Public Law 108–424
108th Congress

An Act

To establish wilderness areas, promote conservation, improve public land, and provide for the high quality development in Lincoln County, Nevada, and for other purposes.

Nov. 30, 2004
[H.R. 4593]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Lincoln County
Conservation,
Recreation, and
Development Act
of 2004.

SEC. 2. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Lincoln County Conservation, Recreation, and Development Act of 2004”.

16 USC 1241
note.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Authorization of appropriations.
- Sec. 2. Short title; table of contents.

TITLE I—LAND DISPOSAL

- Sec. 101. Definitions.
- Sec. 102. Conveyance of Lincoln County land.
- Sec. 103. Disposition of proceeds.

TITLE II—WILDERNESS AREAS

- Sec. 201. Findings.
- Sec. 202. Definitions.
- Sec. 203. Additions to National Wilderness Preservation System.
- Sec. 204. Administration.
- Sec. 205. Adjacent management.
- Sec. 206. Military overflights.
- Sec. 207. Native American cultural and religious uses.
- Sec. 208. Release of wilderness study areas.
- Sec. 209. Wildlife management.
- Sec. 210. Wildfire management.
- Sec. 211. Climatological data collection.

TITLE III—UTILITY CORRIDORS

- Sec. 301. Utility corridor and rights-of-way.
- Sec. 302. Relocation of right-of-way and utility corridors located in Clark and Lincoln counties in the State of Nevada.

TITLE IV—SILVER STATE OFF-HIGHWAY VEHICLE TRAIL

- Sec. 401. Silver State Off-Highway Vehicle Trail.

TITLE V—OPEN SPACE PARKS

- Sec. 501. Open space park conveyance to Lincoln County, Nevada.
- Sec. 502. Open space park conveyance to the State of Nevada.

TITLE VI—JURISDICTION TRANSFER

- Sec. 601. Transfer of administrative jurisdiction between the Fish and Wildlife Service and the Bureau of Land Management.

TITLE I—LAND DISPOSAL

SEC. 101. DEFINITIONS.

In this title:

(1) COUNTY.—The term “County” means Lincoln County, Nevada.

(2) MAP.—The term “map” means the map entitled “Lincoln County Conservation, Recreation, and Development Act Map” and dated October 1, 2004.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) SPECIAL ACCOUNT.—The term “special account” means the special account established under section 103(b)(3).

SEC. 102. CONVEYANCE OF LINCOLN COUNTY LAND.

(a) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712), the Secretary, in cooperation with the County, in accordance with that Act, this title, and other applicable law and subject to valid existing rights, shall conduct sales of—

(1) the land described in subsection (b)(1) to qualified bidders not later than 75 days after the date of the enactment of this Act; and

(2) the land described in subsection (b)(2) to qualified bidders as such land becomes available for disposal.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of—

(1) the land identified on the map as Tract A and Tract B totaling approximately 13,328 acres; and

(2) not more than 90,000 acres of Bureau of Land Management managed public land in Lincoln County that is not segregated or withdrawn on the date of enactment of this Act or thereafter, and that is identified for disposal by the BLM either through—

(A) the Ely Resource Management Plan (intended to be finalized in 2005); or

(B) a subsequent amendment to that land use plan undertaken with full public involvement.

(c) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(1) the Office of the Director of the Bureau of Land Management;

(2) the Office of the Nevada State Director of the Bureau of Land Management;

(3) the Ely Field Office of the Bureau of Land Management; and

(4) the Caliente Field Station of the Bureau of Land Management.

(d) JOINT SELECTION REQUIRED.—The Secretary and the County shall jointly select which parcels of land described in subsection (b)(2) to offer for sale under subsection (a).

(e) COMPLIANCE WITH LOCAL PLANNING AND ZONING LAWS.—Before a sale of land under subsection (a), the County shall submit to the Secretary a certification that qualified bidders have agreed to comply with—

(1) County and city zoning ordinances; and

Deadline.

Certification.

(2) any master plan for the area approved by the County.

(f) **METHOD OF SALE; CONSIDERATION.**—The sale of land under subsection (a) shall be—

(1) consistent with section 203(d) and 203(f) of the Federal Land Management Policy Act of 1976 (43 U.S.C. 1713(d) and (f));

(2) through a competitive bidding process unless otherwise determined by the Secretary; and

(3) for not less than fair market value.

(g) **WITHDRAWAL.**—

(1) **IN GENERAL.**—Subject to valid existing rights and except as provided in paragraph (2), the land described in subsection (b) is withdrawn from—

(A) all forms of entry and appropriation under the public land laws, including the mining laws;

(B) location, entry, and patent under the mining laws; and

(C) operation of the mineral leasing and geothermal leasing laws.

(2) **EXCEPTION.**—Paragraph (1)(A) shall not apply to a competitive sale or an election by the County to obtain the land described in subsection (b) for public purposes under the Act of June 14, 1926 (43 U.S.C. 869 et seq.; commonly known as the “Recreation and Public Purposes Act”).

(h) **DEADLINE FOR SALE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Secretary shall—

(A) notwithstanding the Lincoln County Land Act of 2000 (114 Stat. 1046), not later than 75 days after the date of the enactment of this Act, offer by sale the land described in subsection (b)(1) if there is a qualified bidder for such land; and

(B) offer for sale annually lands identified for sale in subsection (b)(2) until such lands are disposed of or unless the county requests a postponement under paragraph (2).

(2) **POSTPONEMENT; EXCLUSION FROM SALE.**—

(A) **REQUEST BY COUNTY FOR POSTPONEMENT OR EXCLUSION.**—At the request of the County, the Secretary shall postpone or exclude from the sale all or a portion of the land described in subsection (b)(2).

(B) **INDEFINITE POSTPONEMENT.**—Unless specifically requested by the County, a postponement under subparagraph (A) shall not be indefinite.

SEC. 103. DISPOSITION OF PROCEEDS.

(a) **INITIAL LAND SALE.**—Section 5 of the Lincoln County Land Act of 2000 (114 Stat. 1047) shall apply to the disposition of the gross proceeds from the sale of land described in section 102(b)(1).

Applicability.

(b) **DISPOSITION OF PROCEEDS.**—Proceeds from sales of lands described in section 102(b)(2) shall be disbursed as follows—

(1) 5 percent shall be paid directly to the state for use in the general education program of the State;

(2) 10 percent shall be paid to the County for use for fire protection, law enforcement, public safety, housing, social services, and transportation; and

(3) the remainder shall be deposited in a special account in the Treasury of the United States and shall be available without further appropriation to the Secretary until expended for—

(A) the reimbursement of costs incurred by the Nevada State office and the Ely Field Office of the Bureau of Land Management for preparing for the sale of land described in section 102(b) including surveys appraisals, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and compliance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712);

(B) the inventory, evaluation, protection, and management of unique archaeological resources (as defined in section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb)) of the County;

(C) the development and implementation of a multispecies habitat conservation plan for the County;

(D) processing of public land use authorizations and rights-of-way relating to the development of land conveyed under section 102(a) of this Act;

(E) processing the Silver State OHV trail and implementing the management plan required by section 151(c)(2) of this Act; and

(F) processing wilderness designation, including but not limited to, the costs of appropriate fencing, signage, public education, and enforcement for the wilderness areas designated.

(c) INVESTMENT OF SPECIAL ACCOUNT.—Any amounts deposited in the special account shall earn interest in an amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities, and may be expended according to the provisions of this section.

TITLE II—WILDERNESS AREAS

SEC. 201. FINDINGS.

Congress finds that—

(1) public land in the County contains unique and spectacular natural resources, including—

(A) priceless habitat for numerous species of plants and wildlife; and

(B) thousands of acres of land that remain in a natural state; and

(2) continued preservation of those areas would benefit the County and all of the United States by—

(A) ensuring the conservation of ecologically diverse habitat;

(B) protecting prehistoric cultural resources;

(C) conserving primitive recreational resources; and

(D) protecting air and water quality.

SEC. 202. DEFINITIONS.

In this title:

(1) COUNTY.—The term “County” means Lincoln County, Nevada.

(2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(3) STATE.—The term “State” means the State of Nevada.

SEC. 203. ADDITIONS TO NATIONAL WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following land in the State is designated as wilderness and as components of the National Wilderness Preservation System: 16 USC 1132 note.

(1) MORMON MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 157,938 acres, as generally depicted on the map entitled “Southern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Mormon Mountains Wilderness”.

(2) MEADOW VALLEY RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 123,488 acres, as generally depicted on the map entitled “Southern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Meadow Valley Range Wilderness”.

(3) DELAMAR MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 111,328 acres, as generally depicted on the map entitled “Southern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Delamar Mountains Wilderness”.

(4) CLOVER MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 85,748 acres, as generally depicted on the map entitled “Southern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Clover Mountains Wilderness”.

(5) SOUTH PAHROC RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 25,800 acres, as generally depicted on the map entitled “Western Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “South Pahroc Range Wilderness”.

(6) WORTHINGTON MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 30,664 acres, as generally depicted on the map entitled “Western Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Worthington Mountains Wilderness”.

(7) WEEPAH SPRING WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 51,480 acres, as generally depicted on the map entitled “Western Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Weepah Spring Wilderness”.

(8) PARSNIP PEAK WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 43,693 acres, as generally depicted on the map entitled

“Northern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Parsnip Peak Wilderness”.

(9) WHITE ROCK RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 24,413 acres, as generally depicted on the map entitled “Northern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “White Rock Range Wilderness”.

(10) FORTIFICATION RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 30,656 acres, as generally depicted on the map entitled “Northern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Fortification Range Wilderness”.

(11) FAR SOUTH EGANS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 36,384 acres, as generally depicted on the map entitled “Northern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Far South Egans Wilderness”.

(12) TUNNEL SPRING WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 5,371 acres, as generally depicted on the map entitled “Southern Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Tunnel Spring Wilderness”.

(13) BIG ROCKS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 12,997 acres, as generally depicted on the map entitled “Western Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Big Rocks Wilderness”.

(14) MT. IRISH WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 28,334 acres, as generally depicted on the map entitled “Western Lincoln County Wilderness Map”, dated October 1, 2004, which shall be known as the “Mt. Irish Wilderness”.

(b) BOUNDARY.—The boundary of any portion of a wilderness area designated by subsection (a) that is bordered by a road shall be at least 100 feet from the edge of the road to allow public access.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of each wilderness area designated by subsection (a) with the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) EFFECT.—Each map and legal description shall have the same force and effect as if included in this section, except that the Secretary may correct clerical and typographical errors in the map or legal description.

(3) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(A) the Office of the Director of the Bureau of Land Management;

(B) the Office of the Nevada State Director of the Bureau of Land Management;

(C) the Ely Field Office of the Bureau of Land Management; and

(D) the Caliente Field Station of the Bureau of Land Management.

(d) **WITHDRAWAL.**—Subject to valid existing rights, the wilderness areas designated by subsection (a) are withdrawn from—

(1) all forms of entry, appropriation, and disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing and geothermal leasing laws.

SEC. 204. ADMINISTRATION.

(a) **MANAGEMENT.**—Subject to valid existing rights, each area designated as wilderness by this title shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(1) any reference in that Act to the effective date shall be considered to be a reference to the date of the enactment of this Act; and

(2) any reference in that Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior.

(b) **LIVESTOCK.**—Within the wilderness areas designated under this title that are administered by the Bureau of Land Management, the grazing of livestock in areas in which grazing is established as of the date of enactment of this Act shall be allowed to continue, subject to such reasonable regulations, policies, and practices that the Secretary considers necessary, consistent with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), including the guidelines set forth in Appendix A of House Report 101-405.

(c) **INCORPORATION OF ACQUIRED LAND AND INTERESTS.**—Any land or interest in land within the boundaries of an area designated as wilderness by this title that is acquired by the United States after the date of the enactment of this Act shall be added to and administered as part of the wilderness area within which the acquired land or interest is located.

(d) **WATER RIGHTS.**—

(1) **FINDINGS.**—Congress finds that—

(A) the land designated as Wilderness by this title is within the Northern Mojave and Great Basin Deserts, is arid in nature, and includes ephemeral streams;

(B) the hydrology of the land designated as wilderness by this title is predominantly characterized by complex flow patterns and alluvial fans with impermanent channels;

(C) the subsurface hydrogeology of the region is characterized by ground water subject to local and regional flow gradients and unconfined and artesian conditions;

(D) the land designated as wilderness by this title is generally not suitable for use or development of new water resource facilities; and

(E) because of the unique nature and hydrology of the desert land designated as wilderness by this title, it is possible to provide for proper management and protection

of the wilderness and other values of lands in ways different from those used in other legislation.

(2) **STATUTORY CONSTRUCTION.**—Nothing in this title—

(A) shall constitute or be construed to constitute either an express or implied reservation by the United States of any water or water rights with respect to the land designated as wilderness by this title;

(B) shall affect any water rights in the State existing on the date of the enactment of this Act, including any water rights held by the United States;

(C) shall be construed as establishing a precedent with regard to any future wilderness designations;

(D) shall affect the interpretation of, or any designation made pursuant to, any other Act; or

(E) shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State and other States.

(3) **NEVADA WATER LAW.**—The Secretary shall follow the procedural and substantive requirements of the law of the State in order to obtain and hold any water rights not in existence on the date of enactment of this Act with respect to the wilderness areas designated by this title.

(4) **NEW PROJECTS.**—

(A) **WATER RESOURCE FACILITY.**—As used in this paragraph, the term “water resource facility”—

(i) means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures; and

(ii) does not include wildlife guzzlers.

(B) **RESTRICTION ON NEW WATER RESOURCE FACILITIES.**—Except as otherwise provided in this Act, on and after the date of the enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the wilderness areas designated by this Act.

SEC. 205. ADJACENT MANAGEMENT.

(a) **IN GENERAL.**—Congress does not intend for the designation of wilderness in the State pursuant to this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area.

(b) **NONWILDERNESS ACTIVITIES.**—The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness designated under this title shall not preclude the conduct of those activities or uses outside the boundary of the wilderness area.

SEC. 206. MILITARY OVERFLIGHTS.

Nothing in this title restricts or precludes—

(1) low-level overflights of military aircraft over the areas designated as wilderness by this title, including military overflights that can be seen or heard within the wilderness areas;

(2) flight testing and evaluation; or

(3) the designation or creation of new units of special use airspace, or the establishment of military flight training routes, over the wilderness areas.

SEC. 207. NATIVE AMERICAN CULTURAL AND RELIGIOUS USES.

Nothing in this title shall be construed to diminish the rights of any Indian tribe. Nothing in this title shall be construed to diminish tribal rights regarding access to Federal land for tribal activities, including spiritual, cultural, and traditional food-gathering activities.

SEC. 208. RELEASE OF WILDERNESS STUDY AREAS.

(a) **FINDING.**—Congress finds that, for the purposes of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), the public land in the County administered by the Bureau of Land Management in the following areas has been adequately studied for wilderness designation:

- (1) The Table Mountain Wilderness Study Area.
- (2) Evergreen A, B, and C Wilderness Study Areas.
- (3) Any portion of the wilderness study areas—
 - (A) not designated as wilderness by section 114(a); and
 - (B) depicted as released on—
 - (i) the map entitled “Northern Lincoln County Wilderness Map” and dated October 1, 2004;
 - (ii) the map entitled “Southern Lincoln County Wilderness Map” and dated October 1, 2004; or
 - (iii) the map entitled “Western Lincoln County Wilderness Map” and dated October 1, 2004.

(b) **RELEASE.**—Any public land described in subsection (a) that is not designated as wilderness by this title—

- (1) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c));
- (2) shall be managed in accordance with—
 - (A) land management plans adopted under section 202 of that Act (43 U.S.C. 1712); and
 - (B) existing cooperative conservation agreements; and
- (3) shall be subject to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 209. WILDLIFE MANAGEMENT.

(a) **IN GENERAL.**—In accordance with section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this title affects or diminishes the jurisdiction of the State with respect to fish and wildlife management, including the regulation of hunting, fishing, and trapping, in the wilderness areas designated by this title.

(b) **MANAGEMENT ACTIVITIES.**—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title where consistent with relevant wilderness management plans, in accordance with appropriate policies such as those set forth in Appendix B of House Report 101-405, including the occasional and temporary use of motorized vehicles, if such use, as determined by the Secretary, would promote healthy, viable, and more naturally distributed wildlife populations that would enhance wilderness values and accomplish those purposes

with the minimum impact necessary to reasonably accomplish the task.

(c) **EXISTING ACTIVITIES.**—Consistent with section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)) and in accordance with appropriate policies such as those set forth in Appendix B of House Report 101–405, the State may continue to use aircraft, including helicopters, to survey, capture, transplant, monitor, and provide water for wildlife populations, including bighorn sheep, and feral stock, horses, and burros.

(d) **WILDLIFE WATER DEVELOPMENT PROJECTS.**—Subject to subsection (f), the Secretary shall authorize structures and facilities, including existing structures and facilities, for wildlife water development projects, including guzzlers, in the wilderness areas designated by this Act if—

(1) the structures and facilities will, as determined by the Secretary, enhance wilderness values by promoting healthy, viable, and more naturally distributed wildlife populations; and

(2) the visual impacts of the structures and facilities on the wilderness areas can reasonably be minimized.

(e) **HUNTING, FISHING, AND TRAPPING.**—In consultation with the appropriate State agency (except in emergencies), the Secretary may designate by regulation areas in which, and establish periods during which, for reasons of public safety, administration, or compliance with applicable laws, no hunting, fishing, or trapping will be permitted in the wilderness areas designated by this Act.

(f) **COOPERATIVE AGREEMENT.**—The terms and conditions under which the State, including a designee of the State, may conduct wildlife management activities in the wilderness areas designated by this title are specified in the cooperative agreement between the Secretary and the State, entitled “Memorandum of Understanding between the Bureau of Land Management and the Nevada Department of Wildlife Supplement No. 9,” and signed November and December 2003, including any amendments to that document agreed upon by the Secretary and the State and subject to all applicable laws and regulations. Any references to Clark County in that document shall also be deemed to be referred to and shall apply to Lincoln County, Nevada.

Applicability.

SEC. 210. WILDFIRE MANAGEMENT.

Consistent with section 4 of the Wilderness Act (16 U.S.C. 1133), nothing in this title precludes a Federal, State, or local agency from conducting wildfire management operations (including operations using aircraft or mechanized equipment) to manage wildfires in the wilderness areas designated by this title.

SEC. 211. CLIMATOLOGICAL DATA COLLECTION.

Subject to such terms and conditions as the Secretary may prescribe, nothing in this title precludes the installation and maintenance of hydrologic, meteorologic, or climatological collection devices in the wilderness areas designated by this title if the facilities and access to the facilities are essential to flood warning, flood control, and water reservoir operation activities.

TITLE III—UTILITY CORRIDORS

SEC. 301. UTILITY CORRIDOR AND RIGHTS-OF-WAY.

(a) **UTILITY CORRIDOR.**—

(1) IN GENERAL.—Consistent with title II and notwithstanding sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1763), the Secretary of the Interior (referred to in this section as the “Secretary”) shall establish on public land a 2,640-foot wide corridor for utilities in Lincoln County and Clark County, Nevada, as generally depicted on the map entitled “Lincoln County Conservation, Recreation, and Development Act”, and dated October 1, 2004.

(2) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(A) the Office of the Director of the Bureau of Land Management;

(B) the Office of the Nevada State Director of the Bureau of Land Management;

(C) the Ely Field Office of the Bureau of Land Management; and

(D) the Caliente Field Station of the Bureau of Land Management.

(b) RIGHTS-OF-WAY.—

(1) IN GENERAL.—Notwithstanding sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1763), and subject to valid and existing rights, the Secretary shall grant to the Southern Nevada Water Authority and the Lincoln County Water District nonexclusive rights-of-way to Federal land in Lincoln County and Clark County, Nevada, for any roads, wells, well fields, pipes, pipelines, pump stations, storage facilities, or other facilities and systems that are necessary for the construction and operation of a water conveyance system, as depicted on the map.

(2) APPLICABLE LAW.—A right-of-way granted under paragraph (1) shall be granted in perpetuity and shall not require the payment of rental.

(3) COMPLIANCE WITH NEPA.—Before granting a right-of-way under paragraph (1), the Secretary shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including the identification and consideration of potential impacts to fish and wildlife resources and habitat.

(c) WITHDRAWAL.—Subject to valid existing rights, the utility corridors designated by subsection (a) are withdrawn from—

(1) all forms of entry, appropriation, and disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing and geothermal leasing laws.

(d) STATE WATER LAW.—Nothing in this title shall—

(1) prejudice the decisions or abrogate the jurisdiction of the Nevada or Utah State Engineers with respect to the appropriation, permitting, certification, or adjudication of water rights;

(2) preempt Nevada or Utah State water law; or

(3) limit or supersede existing water rights or interest in water rights under Nevada or Utah State law.

(e) WATER RESOURCES STUDY.—

(1) IN GENERAL.—The Secretary, acting through the United States Geological Survey, the Desert Research Institute, and a designee from the State of Utah shall conduct a study to investigate ground water quantity, quality, and flow characteristics in the deep carbonate and alluvial aquifers of White Pine County, Nevada, and any groundwater basins that are located in White Pine County, Nevada, or Lincoln County, Nevada, and adjacent areas in Utah. The study shall—

(A) focus on a review of existing data and may include new data;

(B) determine the approximate volume of water stored in aquifers in those areas;

(C) determine the discharge and recharge characteristics of each aquifer system;

(D) determine the hydrogeologic and other controls that govern the discharge and recharge of each aquifer system; and

(E) develop maps at a consistent scale depicting aquifer systems and the recharge and discharge areas of such systems.

Reports.
Deadlines.

Public
information.

(2) TIMING; AVAILABILITY.—The Secretary shall complete a draft of the water resources report required under paragraph (1) not later than 30 months after the date of the enactment of this Act. The Secretary shall then make the draft report available for public comment for a period of not less than 60 days. The final report shall be submitted to the Committee on Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate and made available to the public not later than 36 months after the date of the enactment of this Act.

Utah.

(3) AGREEMENT.—Prior to any transbasin diversion from ground-water basins located within both the State of Nevada and the State of Utah, the State of Nevada and the State of Utah shall reach an agreement regarding the division of water resources of those interstate ground-water flow system(s) from which water will be diverted and used by the project. The agreement shall allow for the maximum sustainable beneficial use of the water resources and protect existing water rights.

(4) FUNDING.—Section 4(e)(3)(A) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2346; 116 Stat. 2007; 117 Stat. 1317) is amended—

(A) in clauses (ii), (iv), and (v), by striking “County” each place it appears and inserting “and Lincoln Counties”;

(B) in clause (vi), by striking “and” at the end;

(C) by redesignating clause (vii) as clause (viii); and

(D) by inserting after clause (vi) the following:

“(vii) for development of a water study for Lincoln and White Pine Counties, Nevada, in an amount not to exceed \$6,000,000; and”.

SEC. 302. RELOCATION OF RIGHT-OF-WAY AND UTILITY CORRIDORS LOCATED IN CLARK AND LINCOLN COUNTIES IN THE STATE OF NEVADA.

(a) DEFINITIONS.—In this section:

(1) AGREEMENT.—The term “Agreement” means the land exchange agreement between Aerojet-General Corporation and the United States, dated July 14, 1988.

(2) CORRIDOR.—The term “corridor” means—

(A) the right-of-way corridor that is—

(i) identified in section 5(b)(1) of the Nevada-Florida Land Exchange Authorization Act of 1988 (102 Stat. 55); and

(ii) described in section 14(a) of the Agreement;

(B) such portion of the utility corridor identified in the 1988 Las Vegas Resource Management Plan located south of the boundary of the corridor described in subparagraph (A) as is necessary to relocate the right-of-way corridor to the area described in subsection (c)(2); and

(C) such portion of the utility corridor identified in the 2000 Caliente Management Framework Plan Amendment located north of the boundary of the corridor described in subparagraph (A) as is necessary to relocate the right-of-way corridor to the area described in subsection (c)(2).

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(b) RELINQUISHMENT AND FAIR MARKET VALUE.—

(1) IN GENERAL.—The Secretary shall, in accordance with this section, relinquish all right, title, and interest of the United States in and to the corridor on receipt of a payment in an amount equal to the fair market value of the corridor (plus any costs relating to the right-of-way relocation described in this title).

(2) FAIR MARKET VALUE.—

(A) The fair market value of the corridor shall be equal to the amount by which the value of the discount described in the 1988 appraisal of the corridor that was applied to the land underlying the corridor has increased, as determined by the Secretary using the multiplier determined under subparagraph (B).

(B) Not later than 60 days after the date of the enactment of this Act, the Appraisal Services Directorate of the Department of the Interior shall determine an appropriate multiplier to reflect the change in the value of the land underlying the corridor between—

(i) the date of which the corridor was transferred in accordance with the Agreement; and

(ii) the date of enactment of this Act.

(3) PROCEEDS.—Proceeds under this subsection shall be deposited in the account established under section 103(b)(3).

(c) RELOCATION.—

(1) IN GENERAL.—The Secretary shall relocate to the area described in paragraph (2), the portion of IDI-26446 and UTU-73363 identified as NVN-49781 that is located in the corridor relinquished under subsection (b)(1).

(2) DESCRIPTION OF AREA.—The area referred to in paragraph (1) is the area located on public land west of United States Route 93.

(3) REQUIREMENTS.—The relocation under paragraph (1) shall be conducted in a manner that—

(A) minimizes engineering design changes; and

Deadline.

(B) maintains a gradual and smooth interconnection of the corridor with the area described in paragraph (2).

(4) AUTHORIZED USES.—The Secretary may authorize the location of any above ground or underground utility facility, transmission lines, gas pipelines, natural gas pipelines, fiber optics, telecommunications, water lines, wells (including monitoring wells), cable television, and any related appurtenances in the area described in paragraph (1).

(d) EFFECT.—The relocation of the corridor under this section shall not require the Secretary to update the 1998 Las Vegas Valley Resource Management Plan or the 2000 Caliente Management Framework Plan Amendment.

(e) WAIVER OF CERTAIN REQUIREMENTS.—The Secretary shall waive the requirements of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) that would otherwise be applicable to the holders of the right-of-way corridor described in subsection (a)(2)(A) with respect to an amendment to the legal description of the right-of-way corridor.

TITLE IV—SILVER STATE OFF-HIGHWAY VEHICLE TRAIL

16 USC 1244
note.

SEC. 401. SILVER STATE OFF-HIGHWAY VEHICLE TRAIL.

(a) DEFINITIONS.—In this section:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) MAP.—The term “Map” means the map entitled “Lincoln County Conservation, Recreation and Development Act Map” and dated October 1, 2004.

(3) TRAIL.—The term “Trail” means the system of trails designated in subsection (b) as the Silver State Off-Highway Vehicle Trail.

(b) DESIGNATION.—The trails that are generally depicted on the Map are hereby designated as the “Silver State Off-Highway Vehicle Trail”.

(c) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Trail in a manner that—

(A) is consistent with motorized and mechanized use of the Trail that is authorized on the date of the enactment of this Act pursuant to applicable Federal and State laws and regulations;

(B) ensures the safety of the people who use the Trail; and

(C) does not damage sensitive habitat or cultural resources.

(2) MANAGEMENT PLAN.—

(A) IN GENERAL.—Not later than 3 years after the date of the enactment of this Act, the Secretary, in consultation with the State, the County, and any other interested persons, shall complete a management plan for the Trail.

(B) COMPONENTS.—The management plan shall—

(i) describe the appropriate uses and management of the Trail;

(ii) authorize the use of motorized and mechanized vehicles on the Trail; and

Deadline.

(iii) describe actions carried out to periodically evaluate and manage the appropriate levels of use and location of the Trail to minimize environmental impacts and prevent damage to cultural resources from the use of the Trail.

(3) MONITORING AND EVALUATION.—

(A) ANNUAL ASSESSMENT.—The Secretary shall annually assess the effects of the use of off-highway vehicles on the Trail and, in consultation with the Nevada Division of Wildlife, assess the effects of the Trail on wildlife and wildlife habitat to minimize environmental impacts and prevent damage to cultural resources from the use of the Trail.

(B) CLOSURE.—The Secretary, in consultation with the State and the County, may temporarily close or permanently reroute, subject to subparagraph (C), a portion of the Trail if the Secretary determines that—

- (i) the Trail is having an adverse impact on—
 - (I) natural resources; or
 - (II) cultural resources;
- (ii) the Trail threatens public safety;
- (iii) closure of the Trail is necessary to repair damage to the Trail; or
- (iv) closure of the Trail is necessary to repair resource damage.

(C) REROUTING.—Portions of the Trail that are temporarily closed may be permanently rerouted along existing roads and trails on public lands currently open to motorized use if the Secretary determines that such rerouting will not significantly increase or decrease the length of the Trail.

(D) NOTICE.—The Secretary shall provide information to the public regarding any routes on the Trail that are closed under subparagraph (B), including by providing appropriate signage along the Trail.

(4) NOTICE OF OPEN ROUTES.—The Secretary shall ensure that visitors to the Trail have access to adequate notice regarding the routes on the Trail that are open through use of appropriate signage along the Trail and through the distribution of maps, safety education materials, and other information considered appropriate by the Secretary.

(d) NO EFFECT ON NON-FEDERAL LAND AND INTERESTS IN LAND.—Nothing in this section shall be construed to affect ownership, management, or other rights related to non-Federal land or interests in land.

(e) MAP ON FILE.—The Map shall be kept on file at the appropriate offices of the Secretary.

TITLE V—OPEN SPACE PARKS

SEC. 501. OPEN SPACE PARK CONVEYANCE TO LINCOLN COUNTY, NEVADA.

(a) CONVEYANCE.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1171, 1712), not later than 1 year after lands are identified by the County, the Secretary shall convey to the County, subject to Deadline.

valid existing rights, for no consideration, all right, title, and interest of the United States in and to the parcels of land described in subsection (b).

(b) **DESCRIPTION OF LAND.**—Up to 15,000 acres of Bureau of Land Management-managed public land in Lincoln County identified by the county in consultation with the Bureau of Land Management.

(c) **COSTS.**—Any costs relating to any conveyance under subsection (a), including costs for surveys and other administrative costs, shall be paid by the County, or in accordance with section 103(b)(2) of this Act.

(d) **USE OF LAND.**—

(1) **IN GENERAL.**—Any parcel of land conveyed to the County under subsection (a) shall be used only for—

(A) the conservation of natural resources; or

(B) public parks.

(2) **FACILITIES.**—Any facility on a parcel of land conveyed under subsection (a) shall be constructed and managed in a manner consistent with the uses described in paragraph (1).

(e) **REVERSION.**—If a parcel of land conveyed under subsection (a) is used in a manner that is inconsistent with the uses specified in subsection (d), the parcel of land shall, at the discretion of the Secretary, revert to the United States.

SEC. 502. OPEN SPACE PARK CONVEYANCE TO THE STATE OF NEVADA.

(a) **CONVEYANCE.**—Notwithstanding section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), the Secretary shall convey to the State of Nevada, subject to valid existing rights, for no consideration, all right, title, and interest of the United States in and to the parcels of land described in subsection (b), if there is a written agreement between the State and Lincoln County, Nevada, supporting such a conveyance.

(b) **DESCRIPTION OF LAND.**—The parcels of land referred to in subsection (a) are the parcels of land depicted as “NV St. Park Expansion Proposal” on the map entitled “Lincoln County Conservation, Recreation, and Development Act Map” and dated October 1, 2004.

(c) **COSTS.**—Any costs relating to any conveyance under subsection (a), including costs for surveys and other administrative costs, shall be paid by the State.

(d) **USE OF LAND.**—

(1) **IN GENERAL.**—Any parcel of land conveyed to the State under subsection (a) shall be used only for—

(A) the conservation of natural resources; or

(B) public parks.

(2) **FACILITIES.**—Any facility on a parcel of land conveyed under subsection (a) shall be constructed and managed in a manner consistent with the uses described in paragraph (1).

(e) **REVERSION.**—If a parcel of land conveyed under subsection (a) is used in a manner that is inconsistent with the uses specified in subsection (d), the parcel of land shall, at the discretion of the Secretary, revert to the United States.

TITLE VI—JURISDICTION TRANSFER**SEC. 601. TRANSFER OF ADMINISTRATIVE JURISDICTION BETWEEN
THE FISH AND WILDLIFE SERVICE AND THE BUREAU OF
LAND MANAGEMENT.**16 USC 668dd
note.

(a) **IN GENERAL.**—Administrative jurisdiction over the land described in subsection (b) is transferred from the United States Bureau of Land Management to the United States Fish and Wildlife Service for inclusion in the Desert National Wildlife Range and the administrative jurisdiction over the land described in subsection (c) is transferred from the United States Fish and Wildlife Service to the United States Bureau of Land Management.

(b) **DESCRIPTION OF LAND.**—The parcel of land referred to in subsection (a) is the approximately 8,503 acres of land administered by the United States Bureau of Land Management as generally depicted on the map entitled “Lincoln County Conservation, Recreation, and Development Act Map” and identified as “Lands to be transferred to the Fish and Wildlife Service” and dated October 1, 2004.

(c) **DESCRIPTION OF LAND.**—The parcel of land referred to in subsection (a) is the approximately 8,382 acres of land administered by the United States Fish and Wildlife Service as generally depicted on the map entitled “Lincoln County Conservation, Recreation, and Development Act Map” and identified as “Lands to be transferred to the Bureau of Land Management” and dated October 1, 2004.

(d) **AVAILABILITY.**—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

- (1) the Office of the Director of the Bureau of Land Management;
- (2) the Office of the Nevada State Director of the Bureau of Land Management;
- (3) the Ely Field Station of the Bureau of Land Management;
- (4) the Caliente Field Office of the Bureau of Land Management;
- (5) the Office of the Director of the United States Fish and Wildlife Service; and
- (6) the Office of the Desert National Wildlife Complex.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 4593:

HOUSE REPORTS: No. 108–720 (Comm. on Resources).
CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 4, considered and passed House.
Nov. 10, considered and passed Senate, amended.
Nov. 17, House concurred in Senate amendment.



Public Law 108–425
108th Congress

An Act

Nov. 30, 2004
[H.R. 4794]

To amend the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 to extend the authorization of appropriations, and for other purposes.

Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACTIONS TO BE TAKEN.

(a) **SECONDARY TREATMENT.**—Section 804(a)(1) of the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 (22 U.S.C. 277d–44(a)(1); 114 Stat. 1978) is amended by striking “Subject to” and all that follows through “of this Act,” and inserting “Pursuant to Treaty Minute 311 to the Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, dated February 3, 1944,”.

(b) **CONTRACT.**—Section 804(c) of such Act is amended as follows:

(1) By striking paragraph (1) and inserting the following:

“(1) **IN GENERAL.**—Notwithstanding any provision of Federal procurement law, the Commission may enter into a multiyear fee-for-services contract with the owner of a Mexican facility in order to carry out the secondary treatment requirements of subsection (a) and make payments under such contract, subject to the availability of appropriations and subject to the terms of paragraph (2).”.

(2) In paragraph (2)(I) by striking “, with such annual payment” and all that follows through the period at the end and inserting “, including costs associated with the purchase of any insurance or other financial instrument under subparagraph (K). Costs associated with the purchase of such insurance or other financial instrument may be amortized over the term of the contract.”.

(3) In paragraph (2) by redesignating subparagraphs (J) through (P) as subparagraphs (L) through (R), respectively, and by inserting after subparagraph (I) the following:

“(J) Neither the Commission nor the United States Government shall be liable for payment of any cancellation fees if the Commission cancels the contract.

“(K) The owner of the Mexican facility may purchase insurance or other financial instrument to cover the risk of cancellation of the contract by the Commission. Any such insurance or other financial instrument shall not be provided or guaranteed by the United States Government, and the Government may reserve the right to validate independently the reasonableness of the premium when negotiating the annual service fee with the owner.”.

(4) By striking paragraphs (2)(L) and (2)(M) (as redesignated by paragraph (3) of this subsection) and inserting the following:

“(L) Transfer of ownership of the Mexican facility to an appropriate governmental entity, other than the United States, if the Commission cancels the contract.

“(M) Transfer of ownership of the Mexican facility to an appropriate governmental entity, other than the United States, if the owner of the Mexican facility fails to perform under the contract.”

(5) In paragraph (2)(N) (as redesignated by paragraph (3) of this subsection) by inserting after “competitive procedures” the following: “under applicable law”.

SEC. 2. IMPLEMENTATION OF NEW TREATY MINUTE.

Section 805 of the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 (22 U.S.C. 277d-45; 114 Stat. 1980) is amended—

(1) in the section heading striking “**NEGOTIATION OF**”; and

(2) by adding at the end the following:

“(c) **IMPLEMENTATION.**—In light of the continuing threat to the environment and to public health and safety within the United States as a result of the river and ocean pollution in the San Diego-Tijuana border region, the Commission is requested to give the highest priority to the implementation of Treaty Minute 311 to the Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, dated February 3, 1944, which establishes a framework for the siting of a treatment facility in Mexico to provide for the secondary treatment of effluent from the IWTP at the Mexican facility, to provide for additional capacity for advanced primary and secondary treatment of additional sewage emanating from the Tijuana River area, Mexico, and to meet the water quality standards of Mexico, the United States, and the State of California consistent with the provisions of this title, in order that the other provisions of this title to address such pollution may be implemented as soon as possible.”

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 806 of the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 (22 U.S.C. 277d-46; 114 Stat. 1981)

is amended by striking “a total of \$156,000,000 for fiscal years 2001 through 2005” and inserting “such sums as may be necessary”.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 4794:

HOUSE REPORTS: No. 108–688, Pt. 1 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Nov. 16, considered and passed Senate.



Public Law 108–426
108th Congress

An Act

To amend title 49, United States Code, to provide the Department of Transportation a more focused research organization with an emphasis on innovative technology, and for other purposes.

Nov. 30, 2004
[H.R. 5163]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Norman Y. Mineta Research and Special Programs Improvement Act”.

SEC. 2. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION.

(a) IN GENERAL.—Section 108 of title 49, United States Code, is amended to read as follows:

“§ 108. Pipeline and Hazardous Materials Safety Administration

“(a) IN GENERAL.—The Pipeline and Hazardous Materials Safety Administration shall be an administration in the Department of Transportation.

Establishment.

“(b) SAFETY AS HIGHEST PRIORITY.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in pipeline transportation and hazardous materials transportation.

“(c) ADMINISTRATOR.—The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in pipeline safety, hazardous materials safety, or other transportation safety. The Administrator shall report directly to the Secretary of Transportation.

President.
Congress.

“(d) DEPUTY ADMINISTRATOR.—The Administration shall have a Deputy Administrator who shall be appointed by the Secretary. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

“(e) CHIEF SAFETY OFFICER.—The Administration shall have an Assistant Administrator for Pipeline and Hazardous Materials Safety appointed in the competitive service by the Secretary. The Assistant Administrator shall be the Chief Safety Officer of the Administration. The Assistant Administrator shall carry out the duties and powers prescribed by the Administrator.

“(f) DUTIES AND POWERS OF THE ADMINISTRATOR.—The Administrator shall carry out—

Norman Y.
Mineta Research
and Special
Programs
Improvement
Act.
Government
organization.
49 USC 101 note.

“(1) duties and powers related to pipeline and hazardous materials transportation and safety vested in the Secretary by chapters 51, 57, 61, 601, and 603; and

“(2) other duties and powers prescribed by the Secretary.

“(g) LIMITATION.—A duty or power specified in subsection (f)(1) may be transferred to another part of the Department of Transportation or another government entity only if specifically provided by law.”.

49 USC 108 note.

(b) TRANSFER OF DUTIES AND POWERS OF RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION.—The authority of the Research and Special Programs Administration exercised under chapters 51, 57, 61, 601, and 603 of title 49, United States Code, is transferred to the Administrator of the Pipeline and Hazardous Materials Safety Administration.

(c) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for chapter 1 of title 49, United States Code, is amended by striking the item relating to section 108 and inserting the following:

“108. Pipeline and Hazardous Materials Safety Administration.”.

(2) DOT INSPECTORS.—Section 5118(b)(3)(A) of title 49, United States Code, is amended by striking “Research and Special Programs Administration” and inserting “Pipeline and Hazardous Materials Safety Administration”.

(3) NTSB SAFETY RECOMMENDATIONS.—Section 19(a) of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 1135 note; 116 Stat. 3009) is amended by striking “Research and Special Program Administration” and inserting “Pipeline and Hazardous Materials Safety Administration”.

(4) NATIONAL MARITIME ENHANCEMENTS INSTITUTES.—Section 8(f)(2) of Public Law 101–115 (46 U.S.C. App. 1121–2(f)(2)) is amended by striking “Research and Special Programs Administration” and inserting “Research and Innovative Technology Administration”.

(5) OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM.—Section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761) is amended—

(A) in subsection (a)(3) by striking “Research and Special Projects Administration” and inserting “Pipeline and Hazardous Materials Safety Administration”; and

(B) in subsection (c)(11) by striking “Research and Special Programs Administration” and inserting “Pipeline and Hazardous Materials Safety Administration”.

(6) PENALTIES.—Section 844(g)(2)(B) of title 18, United States Code, is amended by striking “Research and Special Projects Administration” and inserting “Pipeline and Hazardous Materials Safety Administration”.

(d) EXECUTIVE SCHEDULE PAY RATE.—Section 5314 of title 5, United States Code, is amended by adding at the end the following: “Administrator, Pipeline and Hazardous Materials Safety Administration.”.

SEC. 3. BUREAU OF TRANSPORTATION STATISTICS.

(a) ESTABLISHMENT.—Section 111(a) of title 49, United States Code, is amended by striking “in the Department of Transportation” and inserting “in the Research and Innovative Technology Administration”.

(b) APPOINTMENT OF DIRECTOR.—Section 111(b) of title 49, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) APPOINTMENT.—The Bureau shall be headed by a Director who shall be appointed in the competitive service by the Secretary.”; and

(2) by striking paragraphs (3) and (4).

(c) EXECUTIVE SCHEDULE PAY RATE.—Section 5316 of title 5, United States Code, is amended by striking the undesignated paragraph relating to the Director, Bureau of Transportation Statistics.

SEC. 4. RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION.

(a) IN GENERAL.—Section 112 of title 49, United States Code, is amended—

(1) by striking the section heading and inserting the following:

“§ 112. Research and Innovative Technology Administration”;

(2) by striking subsection (a) and inserting the following:

“(a) ESTABLISHMENT.—The Research and Innovative Technology Administration shall be an administration in the Department of Transportation.”;

(3) by striking subsection (d) and inserting the following:

“(d) POWERS AND DUTIES OF THE ADMINISTRATOR.—The Administrator shall carry out—

“(1) powers and duties prescribed by the Secretary for—

“(A) coordination, facilitation, and review of the Department’s research and development programs and activities;

“(B) advancement, and research and development, of innovative technologies, including intelligent transportation systems;

“(C) comprehensive transportation statistics research, analysis, and reporting;

“(D) education and training in transportation and transportation-related fields; and

“(E) activities of the Volpe National Transportation Center; and

“(2) other powers and duties prescribed by the Secretary.”;

and

(4) by striking subsection (e).

(b) CLARIFICATION.—

49 USC 112 note.

(1) IN GENERAL.—Nothing in this Act shall grant any authority to the Research and Innovative Technology Administration over research and other programs, activities, standards, or regulations administered by the Secretary of Transportation through the National Highway Traffic Safety Administration.

(2) APPLICABILITY.—Paragraph (1) shall not apply to the research and other programs, activities, standards, or regulations provided for in highway and traffic safety programs, administered by the Secretary through the National Highway Traffic Safety Administration, in title 23, United States Code, and chapter 303 of title 49, United States Code, as in effect on the date of enactment of this Act.

(c) OFFICE OF INTERMODALISM.—Section 5503(a) of title 49, United States Code, is amended to read as follows:

“(a) ESTABLISHMENT.—There is established in the Research and Innovative Technology Administration an Office of Intermodalism.”.

49 USC 112 note.

(d) **TRANSFER OF POWERS AND DUTIES OF RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION.**—The authority of the Research and Special Programs Administration, other than authority exercised under chapters 51, 57, 61, 601, and 603 of title 49, United States Code, is transferred to the Administrator of the Research and Innovative Technology Administration.

(e) **CONFORMING AMENDMENT.**—The analysis for chapter 1 of title 49, United States Code, is amended by striking the item relating to section 112 and inserting the following:

“112. Research and Innovative Technology Administration.”.

(f) **EXECUTIVE SCHEDULE PAY RATE.**—Section 5314 of title 5, United States Code, is amended by striking the undesignated paragraph relating to the Administrator, Research and Special Programs Administration and inserting the following:

“Administrator, Research and Innovative Technology Administration.”.

(g) **REPORT.**—

(1) **IN GENERAL.**—Not later than 120 days after the date of enactment of this Act, the Administrator of the Research and Innovative Technology Administration shall submit to the Committee on Transportation and Infrastructure and the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the research activities of the Department of Transportation.

(2) **CONTENTS.**—The report shall include—

(A) a summary of the mission and strategic goals of the Administration;

(B) a prioritized list of the research and development activities that the Department intends to pursue over the next 5 years;

(C) a description of the primary purposes for conducting such research and development activities, such as reducing traffic congestion, improving mobility, and promoting safety;

(D) an estimate of the funding levels needed to implement such research and development activities for the current fiscal year; and

(E) any additional information the Administrator considers appropriate.

(3) **DEVELOPMENT.**—In developing the report, the Administrator shall—

(A) solicit input from a wide range of stakeholders;

(B) take into account how the research and development activities of other Federal, State, private sector, and not-for-profit institutions contribute to the achievement of the purposes identified under paragraph (2)(C); and

(C) address methods to avoid unnecessary duplication of efforts in achieving such purposes.

49 USC 108 note.

SEC. 5. SAVINGS PROVISIONS.

(a) **TRANSFER OF ASSETS AND PERSONNEL.**—Personnel, property, and records employed, used, held, available, or to be made available in connection with functions transferred within the Department of Transportation by this Act shall be transferred for use in connection with the functions transferred, and unexpended balances of

appropriations, allocations, and other funds (including funds of any predecessor entity) shall also be transferred accordingly.

(b) **LEGAL DOCUMENTS.**—All orders, determinations, rules, regulations, permits, grants, loans, contracts, settlements, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by any officer or employee, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Department, any other authorized official, a court of competent jurisdiction, or operation of law.

(c) **PROCEEDINGS.**—The provisions of this Act shall not affect any proceedings, including administrative enforcement actions, pending before this Act takes effect, insofar as those functions are transferred by this Act; but such proceedings, to the extent that they relate to functions so transferred, shall proceed in accordance with applicable law and regulations. Nothing in this subsection shall be deemed to prohibit the conclusion or modification of any proceeding described in this subsection under the same terms and conditions and to the same extent that such proceeding could have been concluded or modified if this Act had not been enacted. The Secretary of Transportation is authorized to provide for the orderly transfer of pending proceedings.

(d) **SUITS.**—

(1) **IN GENERAL.**—This Act shall not affect suits commenced before the date of enactment of this Act, except as provided in paragraphs (2) and (3). In all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(2) **SUITS BY OR AGAINST DEPARTMENT.**—Any suit by or against the Department begun before the date of enactment of this Act, shall proceed in accordance with applicable law and regulations, insofar as it involves a function retained and transferred under this Act.

(3) **PROCEDURES FOR REMANDED CASES.**—If the court in a suit described in paragraph (1) remands a case, subsequent proceedings related to such case shall proceed under procedures that are in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

(e) **CONTINUANCE OF ACTIONS AGAINST OFFICERS.**—No suit, action, or other proceeding commenced by or against any officer in his or her official capacity shall abate by reason of the enactment of this Act.

(f) **EXERCISE OF AUTHORITIES.**—An officer or employee of the Department, for purposes of performing a function transferred by this Act, may exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function by this Act.

(g) REFERENCES.—A reference relating to an agency, officer, or employee affected by this Act in any Federal law, Executive order, rule, regulation, or delegation of authority, or in any document pertaining to an officer or employee, is deemed to refer, as appropriate, to the agency, officer, or employee who succeeds to the functions transferred by this Act.

(h) DEFINITION.—In this section, the term “this Act” includes the amendments made by this Act.

49 USC 108 note. **SEC. 6. REPORTS.**

(a) REPORTS BY THE INSPECTOR GENERAL.—Not later than 30 days after the date of enactment of this Act, the Inspector General of the Department of Transportation shall submit to the Secretary of Transportation and the Administrator of the Pipeline and Hazardous Materials Safety Administration a report containing the following:

(1) A list of each statutory mandate regarding pipeline safety or hazardous materials safety that has not been implemented.

(2) A list of each open safety recommendation made by the National Transportation Safety Board or the Inspector General regarding pipeline safety or hazardous materials safety.

(b) REPORTS BY THE SECRETARY.—

(1) STATUTORY MANDATES.—Not later than 90 days after the date of enactment of this Act, and every 180 days thereafter until each of the mandates referred to in subsection (a)(1) has been implemented, the Secretary shall transmit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the specific actions taken to implement such mandates.

(2) NTSB AND INSPECTOR GENERAL RECOMMENDATIONS.—Not later than January 1st of each year, the Secretary shall transmit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing each recommendation referred to in subsection (a)(2) and a copy of the Department of Transportation response to each such recommendation.

49 USC 108 note. **SEC. 7. DEADLINE FOR TRANSFERS.**

The Secretary shall provide for the orderly transfer of duties and powers under this Act, including the amendments made by

this Act, as soon as practicable but not later than 90 days after the date of enactment of this Act.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 5163:

HOUSE REPORTS: No. 108–749, Pt. 1 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Nov. 16, considered and passed Senate.



Public Law 108–427
108th Congress

An Act

Nov. 30, 2004
[H.R. 5213]

To expand research information regarding multidisciplinary research projects and epidemiological studies.

Research Review
Act of 2004.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Research Review Act of 2004”.

**SEC. 2. MULTI-DISCIPLINARY RESEARCH TEAM AND CONSORTIA
REPORT.**

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this Act as the “Secretary”), in coordination with the Director of the National Institutes of Health, shall prepare a report outlining the methods by which the Roadmap for Medical Research, an initiative of such Institutes, has advanced the use of multidisciplinary research teams and consortia of research institutions to advance treatments, develop new therapies, and collaborate on clinical trials, including with respect to spinal cord injury and paralysis research.

(b) REPORT.—Not later than February 1, 2005, the Secretary shall submit the report under subsection (a) to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 3. EPIDEMIOLOGICAL STUDY REPORT.

(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall prepare a report outlining the epidemiological studies currently under way at such Centers, future planned studies, the criteria involved in determining what epidemiological studies to conduct, defer, or suspend, and the scope of those studies, including with respect to the inflammatory bowel disease epidemiological study. The report shall include a description of the activities the Centers for Disease Control and Prevention undertakes to establish partnerships with research and patient advocacy communities to expand epidemiological studies.

(b) REPORT.—Not later than May 1, 2005, the Secretary shall submit the report under subsection (a) to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 4. STUDY BY GOVERNMENT ACCOUNTABILITY OFFICE ON MEDICARE AND MEDICAID COVERAGE STANDARDS.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study on the coverage standards that, under the programs under titles XVIII and XIX of the Social Security Act (commonly known as Medicare and Medicaid, respectively), apply to patients with inflammatory bowel disease for the following therapies:

- (1) Parenteral nutrition.
- (2) Enteral nutrition formula.
- (3) Medically necessary food products.
- (4) Ostomy supplies.
- (5) Therapies approved by the Food and Drug Administration for Crohn's disease and ulcerative colitis.

(b) **CONTENT.**—The study under subsection (a) shall take into account the appropriate outpatient or home health care delivery settings.

(c) **REPORT.**—Not later than six months after the date of the enactment of this Act, the Comptroller General shall submit to the Congress a report describing the findings of the study under subsection (a).

SEC. 5. STUDY BY GOVERNMENT ACCOUNTABILITY OFFICE INVOLVING DISABILITY INSURANCE.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the problems patients encounter when applying for disability insurance benefits under title II of the Social Security Act. The study shall include recommendations for improving the application process for patients with inflammatory bowel disease.

(b) **REPORT.**—Not later than six months after the date of the enactment of this Act, the Comptroller General shall submit to the Congress a report describing the findings of the study under subsection (a).

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 5213:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Oct. 6, 7, considered and passed House.
Nov. 16, considered and passed Senate.



Public Law 108–428
108th Congress

An Act

Nov. 30, 2004
[H.R. 5245]

To extend the liability indemnification regime for the commercial space transportation industry.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INDEMNIFICATION EXTENSION.

Section 70113(f) of title 49, United States Code, is amended by striking “December 31, 2004.” and inserting “December 31, 2009.”.

SEC. 2. STUDY.

Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall enter into an arrangement with a nonprofit entity for the conduct of an independent comprehensive study of the liability risk sharing regime in the United States for commercial space transportation under section 70113 of title 49, United States Code. To ensure that Congress has a full analysis of the liability risk sharing regime, the study shall assess methods by which the current system could be eliminated, including an estimate of the time required to implement each of the methods assessed. The study shall assess whether any alternative steps would be needed to maintain a viable and competitive United States space transportation industry if the current regime were eliminated. In conducting the assessment under this section, input from commercial space transportation insurance experts shall be sought. The study also shall examine liability risk sharing in other nations with commercial launch capability and evaluate the direct and indirect impact that ending this regime would have on the competitiveness of the United States commercial

space launch industry in relation to foreign commercial launch providers and on United States assured access to space.

Approved November 30, 2004.

LEGISLATIVE HISTORY—H.R. 5245:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 8, considered and passed House.

Nov. 16, considered and passed Senate.



Public Law 108–429
108th Congress

An Act

Dec. 3, 2004
[H.R. 1047]

Miscellaneous
Trade and
Technical
Corrections Act
of 2004.
19 USC 1654
note.

To amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This Act may be cited as the “Miscellaneous Trade and Technical Corrections Act of 2004”.

Sec. 1. Short title; table of contents.

TITLE I—TARIFF PROVISIONS

Sec. 1101. Reference; expired provisions.

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CHAPTER 1—NEW DUTY SUSPENSIONS AND REDUCTIONS

- Sec. 1111. Bitolyene diisocyanate (TODI).
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- Sec. 1123. Vat red 13.
- Sec. 1124. 5-methylpyridine-2,3-dicarboxylic acid.
- Sec. 1125. 5-methylpyridine-2,3-dicarboxylic acid diethylester.
- Sec. 1126. 5-ethylpyridine dicarboxylic acid.
- Sec. 1127. (e)-o-(2,5-dimethylphenoxy methyl)-2-methoxy-imino-n-methylphenylacetamide.
- Sec. 1128. 2-chloro-n-(4'-chlorobiphenyl-2-yl) nicotinamide.
- Sec. 1129. Vinclozolin.
- Sec. 1130. Dazomet.
- Sec. 1131. Pyraclostrobin.
- Sec. 1132. 1,3-benzenedicarboxylic acid, 5-sulfo-1,3-dimethyl ester sodium salt.
- Sec. 1133. Saccharose.
- Sec. 1134. (2-benzothiazolythio) butanedioic acid.
- Sec. 1135. 60–70 percent amine salt of 2-benzo-thiazolythio succinic acid in solvent.
- Sec. 1136. 4-methyl-g-oxo-benzenebutanoic acid compounded with 4-ethylmorpholine (2:1).
- Sec. 1137. Mixtures of rimsulfuron, nicosulfuron, and application adjuvants.
- Sec. 1138. Mixtures of thifensulfuron methyl, tribenuron methyl and application adjuvants.
- Sec. 1139. Mixtures of thifensulfuron methyl and application adjuvants.
- Sec. 1140. Mixtures of tribenuron methyl and application adjuvants.
- Sec. 1141. Mixtures of rimsulfuron, thifensulfuron methyl and application adjuvants.

- Sec. 1142. Vat black 25.
- Sec. 1143. Cyclohexanepropanoic acid, 2-propenyl ester.
- Sec. 1144. Neoheliopan hydro (2-phenylbenzimidazole-5-sulfonic acid).
- Sec. 1145. Sodium methylate powder (na methylate powder).
- Sec. 1146. Globanone (cyclohexadec-8-en-1-one).
- Sec. 1147. Methyl acetophenone-para (melilot).
- Sec. 1148. Majantol (2,2-dimethyl-3-(3-methylphenyl)propanol).
- Sec. 1149. Neoheliopan MA (menthyl anthranilate).
- Sec. 1150. Allyl isosulfocyanate.
- Sec. 1151. Frescolat.
- Sec. 1152. Thymol (alpha-cymophenol).
- Sec. 1153. Benzyl carbazate.
- Sec. 1154. Esfenvalerate technical.
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- Sec. 1156. Helium.
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- Sec. 1158. Deltamethrin.
- Sec. 1159. Asulam sodium salt.
- Sec. 1160. Tralomethrin.
- Sec. 1161. N-phenyl-n'-(1,2,3-thiadiazol-5-yl)-urea.
- Sec. 1162. Benzenepropanoic acid, alpha-2- dichloro-5-[4 (difluoromethyl)- 4,5-dihydro-3-methyl-5-oxo-1h-1,2,4-triazol-1-yl]-4-fluoro-ethyl ester.
- Sec. 1163. (z)-(1rs, 3rs)-3-(2-chloro-3,3,3 trifluoro-1-propenyl)-2,2-dimethyl-cyclopropane carboxylic acid.
- Sec. 1164. 2-chlorobenzyl chloride.
- Sec. 1165. (s)-alpha-hydroxy-3-phenoxybenzeneacetonitrile.
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- Sec. 1174. 2,4 disulfobenzaldehyde.
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- Sec. 1176. N-ethyl-n-(3-sulfobenzyl)aniline, benzenesulfonic acid, 3[(ethylphenylamino)methyl].
- Sec. 1177. Acrylic fiber tow.
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- Sec. 1179. Hexanedioic acid, polymer with 1,3-benzenedimethanamine.
- Sec. 1180. N1-[(6-chloro-3-pyridyl)methyl]-n2-cyano-n1-methylacetamidine.
- Sec. 1181. Aluminum tris (o-ethyl phosphonate).
- Sec. 1182. Mixture of disperse blue 77 and disperse blue 56.
- Sec. 1183. Acid black 194.
- Sec. 1184. Mixture of 9,10-anthracenedione, 1,5-dihydroxy-4-nitro-8-(phenylamino)- and disperse blue 77.
- Sec. 1185. Copper phthalocyanine substituted with 15 or 16 groups which comprise 8-15 thioaryl and 1-8 arylamino groups.
- Sec. 1186. Bags for certain toys.
- Sec. 1187. Certain children's products.
- Sec. 1188. Certain optical instruments used in children's products.
- Sec. 1189. Cases for certain children's products.
- Sec. 1190. 2,4-dichloroaniline.
- Sec. 1191. Ethoprop.
- Sec. 1192. Foramsulfuron.
- Sec. 1193. Certain epoxy molding compounds.
- Sec. 1194. Dimethyldicyane.
- Sec. 1195. Triacetone diamine.
- Sec. 1196. Triethylene glycol bis[3-(3-tert-butyl-4-hydroxy-5-methylphenyl) propionate.
- Sec. 1197. Certain power weaving textile machinery.
- Sec. 1198. Certain filament yarns.
- Sec. 1199. Certain other filament yarns.
- Sec. 1200. Certain ink-jet textile printing machinery.
- Sec. 1201. Certain other textile printing machinery.
- Sec. 1203. D-mannose.
- Sec. 1204. Benzamide, N-methyl-2-[[3-[(1E)-2-(2-pyridinyl)-ethenyl]-1H-indazol-6-yl]thio]-.
- Sec. 1205. 1(2h)-quinolinecarboxylic acid, 4-[[[3,5-bis-(trifluoromethyl)phenyl] methyl(methoxycarbonyl)amino]-2-ethyl- 3,4-dihydro-6-(trifluoromethyl)-, ethyl ester, (2R,4S)-(9CI).

- Sec. 1206. Disulfide,bis(3,5-dichlorophenyl)(9C1).
- Sec. 1207. Pyridine, 4-[[4-(1-methylethyl)-2-[(phenylmethoxy)methyl]-1H- midazol-1-yl] methyl]- ethanedioate (1:2).
- Sec. 1208. Paclobutrazole technical.
- Sec. 1209. Paclobutrazole 2SC.
- Sec. 1210. Methidathion technical.
- Sec. 1211. Vanguard 75 WDG.
- Sec. 1212. Wakil XL.
- Sec. 1213. Mucochloric acid.
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- Sec. 1217. Mixtures of lambda-cyhalothrin.
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- Sec. 1229. Certain sawing machines.
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- Sec. 1241. Ion-exchange resin crosslinked with ethenylbenzene, aminophosponic acid.
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- Sec. 1243. 3-[(4 amino-3-methoxyphenyl) azo]-benzene sulfonic acid.
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- Sec. 1247. 2,5 bis [(1,3 dioxobutyl) amino] benzene sulfonic acid.
- Sec. 1248. P-aminoazobenzene 4 sulfonic acid, monosodium salt.
- Sec. 1249. P-aminoazobenzene 4 sulfonic acid.
- Sec. 1250. 3-[(4 amino-3-methoxyphenyl) azo]-benzene sulfonic acid, monosodium salt.
- Sec. 1251. ET-743 (ecteinascidin).
- Sec. 1252. 2,7-naphthalenedisulfonic acid, 5-[[4-chloro-6-[[2-[[4-fluoro-6-[[5-hydroxy-6-[(4-methoxy-2-sulfophenyl)azo]-7-sulfo-2-naphthalenyl]amino]-1,3,5-triazin-2-yl] amino]-1-methylethyl]amino]-1,3,5-triazin-2-yl]amino]-3-[[4-(ethenylsulfonyl)phenyl]azo]-4-hydroxy-, sodium salt.
- Sec. 1253. 1,5-naphthalenedisulfonic acid, 3-[[2-(acetylamino)-4-[[4-[[2-(2-amino)-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo]-, disodium salt.
- Sec. 1254. 7,7'-[1,3-propanediyl]bis[imino(6-fluoro-1,3,5-triazine-4,2-diyl)imino[2-[(aminocarbonyl)amino]-4,1-phenylene]azo]]bis-, sodium salt.
- Sec. 1255. Cuprate(3-), [2-[[[3-[[4-[[2-(2- (ethenylsulfonyl)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-2-(hydroxy-.kappa.o)-5-sulfophenyl]azo-.kappa.n2]phenylmethyl]azo-.kappa.n1]-4-sulfobenzoato(5-)-.kappa.o], trisodium.
- Sec. 1256. 1,5-naphthalenedisulfonic acid, 2-[[8-[[4-[[3-[[2-(ethenylsulfonyl)ethyl]amino]carbonyl]phenyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-1-hydroxy-3,6-disulfo-2-naphthalenyl]azo]-, tetrasodium salt.
- Sec. 1257. PTFMBA.
- Sec. 1258. Benzoic acid, 2-amino-4-[[[(2,5-dichlorophenyl)amino]carbonyl]-, methyl ester.
- Sec. 1259. Imidacloprid pesticides.
- Sec. 1260. Beta-cyfluthrin.
- Sec. 1261. Imidacloprid technical.
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- Sec. 1263. Propoxur technical.
- Sec. 1264. MKH 6561 isocyanate.
- Sec. 1265. Propoxy methyl triazolone.
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- Sec. 1267. Methoxy methyl triazolone.
- Sec. 1268. Levafix golden yellow E-G.
- Sec. 1269. Levafix blue CA/remazol blue CA.
- Sec. 1270. Remazol yellow RR gran.
- Sec. 1271. Indanthren blue CLF.
- Sec. 1272. Indanthren yellow F3GC.
- Sec. 1273. Acetyl chloride.
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- Sec. 1275. 3-methoxy-thiophenol.
- Sec. 1276. Levafix brilliant red E-6BA.
- Sec. 1277. Remazol BR. Blue BB 133 percent.
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- Sec. 1279. Levafix royal blue E-FR.
- Sec. 1280. P-chloroaniline.
- Sec. 1281. Esters and sodium esters of parahydroxybenzoic acid.
- Sec. 1282. Santolink EP 560.
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- Sec. 1284. Phenodur PR 612.
- Sec. 1285. Phenodur PR 263.
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- Sec. 1290. RWJ 394720.
- Sec. 1291. 3,4-DCBN.
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- Sec. 1293. Asulam.
- Sec. 1294. Florasulam.
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- Sec. 1296. Halofenozide.
- Sec. 1297. Ortho-phthalaldehyde.
- Sec. 1298. Trans 1,3-dichloropentene.
- Sec. 1299. Methacrylamide.
- Sec. 1300. Cation exchange resin.
- Sec. 1301. Gallery.
- Sec. 1302. Necks used in cathode ray tubes.
- Sec. 1303. Polytetramethylene ether glycol.
- Sec. 1304. Leaf alcohol.
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- Sec. 1306. Certain carded cashmere yarn.
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- Sec. 1308. Reduced vat blue 43.
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- Sec. 1312. Direct black 184.
- Sec. 1313. Black 263 stage.
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- Sec. 1320. Mixtures of fluazinam.
- Sec. 1321. Prodiamine technical.
- Sec. 1322. Carbon dioxide cartridges.
- Sec. 1323. 12-hydroxyoctadecanoic acid, reaction product with *N,N*-dimethyl, 1,3-propanediamine, dimethyl sulfate, quaternized.
- Sec. 1324. 40 percent polymer acid salt/polymer amide, 60 percent butyl acetate.
- Sec. 1325. 12-hydroxyoctadecanoic acid, reaction product with *N,N*-dimethyl- 1,3-propanediamine, dimethyl sulfate, quaternized, 60 percent solution in toluene.
- Sec. 1326. Polymer acid salt/polymer amide.
- Sec. 1327. 50 percent amine neutralized phosphated polyester polymer, 50 percent solvesso 100.
- Sec. 1328. 1-octadecanaminium, *N,N*-di-methyl-*N*-octadecyl-, (SP-4-2)-[29H,31H-phtha-locyanine-2-sulfonato(3-)-.kappa.n29,.kappa.n30,. Kappa.n31,.kappa.n32]cuprate(1-).

- Sec. 1329. Chromate(1-)-bis[1-((5-chloro-2-hydroxyphenyl)azo)-2-naphthal enolato(2-))-hydrogen.
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- Sec. 1353. Luganil brown NGT powder.
- Sec. 1354. Thiophanate-methyl.
- Sec. 1355. Mixtures of thiophanate-methyl and application adjuvants.
- Sec. 1356. Hydrated hydroxypropyl methylcellulose.
- Sec. 1357. C 12-18 alkenes, polymers with 4-methyl-1-pentene.
- Sec. 1358. Certain 12-volt batteries.
- Sec. 1359. Certain prepared or preserved artichokes.
- Sec. 1360. Certain other prepared or preserved artichokes.
- Sec. 1361. Ethylene/tetrafluoroethylene copolymer (ETFE).
- Sec. 1362. Acetamiprid.
- Sec. 1363. Certain manufacturing equipment.
- Sec. 1364. Triticonazole.
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- Sec. 1366. 3-sulfinobenzoic acid.
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- Sec. 1368. Baysilone fluid.
- Sec. 1369. Ethanediarnide, N- (2-ethoxyphenyl)-N'- (4-isodecylphenyl)-.
- Sec. 1370. 1-acetyl-4-(3-dodecyl-2, 5-dioxo-1-pyrrolidinyl)-2,2,6,6-tetramethyl-piperidine.
- Sec. 1371. Aryl phosphonite.
- Sec. 1372. Mono octyl malionate.
- Sec. 1373. 9-trioxaundecanedioic acid.
- Sec. 1374. Crotonic acid.
- Sec. 1375. 1,3-benzenedicarboxamide, N, N'-bis-(2,2,6,6-tetramethyl-4-piperidinyl)-.
- Sec. 1376. 3-dodecyl-1-(2,2,6,6-tetramethyl-4-piperidinyl)-2,5-pyrrolidinedione.
- Sec. 1377. Oxalic anilide.
- Sec. 1378. N-methyl diisopropanolamine.
- Sec. 1379. 50 percent homopolymer, 3-(dimethylamino) propyl amide, dimethyl sulfate-quaternized 50 percent polyricinoleic acid.
- Sec. 1380. Black CPW stage.
- Sec. 1381. Fast black 287 NA paste.
- Sec. 1382. Fast black 287 NA liquid feed.
- Sec. 1383. Fast yellow 2 stage.
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- Sec. 1393. Triflusulfuron methyl formulated product.
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- Sec. 1395. Trimethyl cyclo hexanol (1-methyl-3,3-dimethylcyclohexanol-5).
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- Sec. 1400. Iprodione 3-(3-5, dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide.
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- Sec. 1406. Chloro-8-quinoline carboxylic acid.
- Sec. 1407. 3-(1-methylethyl)-1h-2,1,3-benzothiadiazin-4(3h)-one 2,2 dioxide, sodium salt.
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- Sec. 1558. Treatment of certain footwear under Caribbean Basin Economic Recovery Act.
- Sec. 1559. Designation of San Antonio International Airport for customs processing of certain private aircraft arriving in the United States.
- Sec. 1560. Authority for the establishment of integrated border inspection areas at the United States-Canada border.
- Sec. 1561. Designation of foreign law enforcement officers.
- Sec. 1562. Amendments to United States insular possession program.
- Sec. 1563. Modification of provisions relating to drawback claims.

Subtitle C—Effective Date

- Sec. 1571. Effective date.

TITLE II—OTHER TRADE PROVISIONS

Subtitle A—Miscellaneous Provisions

- Sec. 2001. Termination of application of title IV of the Trade Act of 1974 to Armenia.
Sec. 2002. Modification to cellar treatment of natural wine.
Sec. 2003. Articles eligible for preferential treatment under the Andean Trade Preference Act.
Sec. 2004. Technical amendments.
Sec. 2005. Extension of normal trade relations to Laos.
Sec. 2006. Repeal of antidumping provision of Revenue Act of 1916.

Subtitle B—Technical Amendments Relating to Entry and Protest

- Sec. 2101. Entry of merchandise.
Sec. 2102. Limitation on liquidations.
Sec. 2103. Protests.
Sec. 2104. Review of protests.
Sec. 2105. Refunds and errors.
Sec. 2106. Definitions and miscellaneous provisions.
Sec. 2107. Voluntary reliquidations.
Sec. 2108. Effective date.

Subtitle C—Protection of Intellectual Property Rights

- Sec. 2201. USTR determinations in TRIPS Agreement investigations.

TITLE III—IRAQI CULTURAL ANTIQUITIES

- Sec. 3001. Short title.
Sec. 3002. Emergency implementation of import restrictions.
Sec. 3003. Termination of authority.

TITLE IV—WOOL TRUST FUND

- Sec. 4001. Short title.
Sec. 4002. Extension and modification of duty suspension on wool products, wool research fund, wool duty refunds.

TITLE V—REFERENCE TO CUSTOMS SERVICE

- Sec. 5001. Reference to Customs Service.

TITLE I—TARIFF PROVISIONS**SEC. 1101. REFERENCE; EXPIRED PROVISIONS.**

(a) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a chapter, subchapter, note, additional U.S. note, heading, subheading, or other provision, the reference shall be considered to be made to a chapter, subchapter, note, additional U.S. note, heading, subheading, or other provision of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007).

(b) EXPIRED PROVISIONS.—(1) Subchapter II of chapter 99 is amended by striking the following headings:

9902.29.09	9902.30.64	9902.33.06
9902.29.11	9902.30.65	9902.33.07
9902.29.12	9902.30.91	9902.33.08
9902.29.15	9902.30.92	9902.33.09
9902.29.18	9902.31.12	9902.33.10
9902.29.19	9902.31.21	9902.33.11
9902.29.20	9902.32.01	9902.33.12
9902.29.21	9902.32.08	9902.33.16
9902.29.24	9902.32.11	9902.33.19
9902.29.28	9902.32.13	9902.33.66
9902.29.29	9902.32.29	9902.33.90
9902.29.32	9902.32.31	9902.34.02

9902.29.36	9902.32.33	9902.38.08
9902.29.43	9902.32.34	9902.38.11
9902.29.44	9902.32.35	9902.38.12
9902.29.45	9902.32.36	9902.38.25
9902.29.50	9902.32.37	9902.38.26
9902.29.51	9902.32.38	9902.38.28
9902.29.52	9902.32.39	9902.39.04
9902.29.53	9902.32.40	9902.39.12
9902.29.54	9902.32.41	9902.61.00
9902.29.57	9902.32.42	9902.64.05
9902.29.60	9902.32.43	9902.84.10
9902.29.65	9902.32.45	9902.84.12
9902.29.66	9902.32.51	9902.84.20
9902.29.67	9902.32.54	9902.84.43
9902.29.72	9902.32.56	9902.84.46
9902.29.74	9902.32.70	9902.84.77
9902.29.95	9902.32.94	9902.84.79
9902.30.04	9902.32.95	9902.84.87
9902.30.17	9902.33.01	9902.85.21
9902.30.18	9902.33.02	9902.98.03
9902.30.19	9902.33.03	9902.98.04
9902.30.58	9902.33.04	9902.98.05
9902.30.63	9902.33.05	9902.98.08

(2) Subchapter II of chapter 99 is amended by striking heading 9902.29.35 (relating to Gamma acid).

Subtitle A—Temporary Duty Suspensions and Reductions

Chapter 1—New Duty Suspensions and Reductions

SEC. 1111. BITOLYLENE DIISOCYANATE (TODI).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.01	Bitolylene diisocyanate (TODI) (CAS No. 91–97–4) (provided for in subheading 2929.10.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1112. 2-METHYLIMIDAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.02	2-Methylimidazole (CAS No. 693–98–1) (provided for in subheading 2933.29.90) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1113. HYDROXYLAMINE FREE BASE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.03	Hydroxyl-amine (CAS No. 7803–49–8) (provided for in subheading 2825.10.00) ...	0.6%	No change	No change	On or before 12/31/2006	”.
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SEC. 1114. PRENOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.04	3-Methyl-2-buten-1-ol (CAS No. 556–82–1) (provided for in subheading 2905.29.90) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1115. 1-METHYLIMADAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.05	1-Methylimidazole (CAS No. 616–47–7) (provided for in subheading 2933.29.90) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1116. FORMAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.06	Formamide (CAS No. 75–12–7) (provided for in subheading 2924.19.10) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1117. MICHLER'S ETHYL KETONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.07	4,4'-Bis-(diethylamino)-benzophenone (CAS No. 90–93–7) (provided for in subheading 2922.39.45) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1118. VINYL IMIDAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.08	1-Ethenyl-1H-imidazole (CAS No. 1072-63-5) (provided for in subheading 2933.29.90) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1119. DISPERSE BLUE 27.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.09	Disperse blue 27 (9,10-anthracenedione, 1,8-dihydroxy-4-[[4-(2-hydroxyethyl)phenyl]amino]-5-nitro-) (CAS No. 15791-78-3) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1120. ACID BLACK 244.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.10	Acid black 244 (chromate(2-), [3-(hydroxy-.kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N2]-1-naphthalenesulfonato(3-)] [1-[[2-(hydroxy-.kappa.O)-5-[4-methoxyphenyl]-azo]phenyl]azo-.kappa.N2]-2-naphthalenesulfonato(2-)-.kappa.O]-, disodium) (CAS No. 30785-74-1) (provided for in subheading 3204.12.45)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1121. REACTIVE ORANGE 132.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.11	Reactive orange 132 (benzenesulfonic acid, 2,2'-[(1-methyl-1,2-ethanediyl)-bis[imino(6-fluoro-1,3,5-triazine-4,2-diyl)imino[2-[(aminocarbonyl)-amino]-4,1-phenyl-ene]azo]]bis[5-[(4-sulfofenyl)azo]-, sodium salt) (CAS No. 149850-31-7) (provided for in subheading 3204.16.30) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1122. MIXTURES OF ACID RED 337, ACID RED 266, AND ACID RED 361.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.12	Mixtures of acid red 337 (2-naphthalenesulfonic acid, 6-amino-5-[[2-[(cyclohexylmethylamino)sulfonyl]phenyl]azo]-4-hydroxy-, monosodium salt) (CAS No. 32846–21–2), acid red 266 (2-naphthalenesulfonic acid, 6-amino-5-[[4-chloro-2-(trifluoromethyl)phenyl]azo]-4-hydroxy-, monosodium salt) (CAS No. 57741–47–6), and acid red 361 (2-naphthalenesulfonic acid, 6-amino-4-hydroxy-5-[[2-(trifluoromethyl)phenyl]azo]-, monosodium salt) (CAS No. 67786–14–5) (provided for in subheading 3204.12.45)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1123. VAT RED 13.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.13	Vat red 13 ([3,3'-bianthra[1,9-cd]pyrazole]-6,6'(1H,1'H)-dione, 1,1'-diethyl-) (CAS No. 4203–77–4) (provided for in subheading 3204.15.80) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1124. 5-METHYLPYRIDINE-2,3-DICARBOXYLIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.14	5-Methylpyridine-2,3-dicarboxylic acid (CAS No. 53636–65–0) (provided for in subheading 2933.39.61) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1125. 5-METHYLPYRIDINE-2,3-DICARBOXYLIC ACID DIETHYLESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.15	5-Methylpyridine-2,3-dicarboxylic acid, diethyl ester (CAS No. 112110-16-4) (provided for in subheading 2933.39.61) ...	1.8%	No change	No change	On or before 12/31/2006	”.
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SEC. 1126. 5-ETHYLPYRIDINE DICARBOXYLIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.16	5-Ethylpyridine-2,3-dicarboxylic acid (CAS No. 102268-15-5) (provided for in subheading 2933.39.61) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1127. (E)-O-(2,5-DIMETHYLPHENOXY METHYL)-2-METHOXY-IMINO-N-METHYLPHENYLACETAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.17	(E)-O-(2,5-Dimethylphenoxy- methyl)-2-methoxyimino-N-methylphenylacet-amide (dimoxystrobin) (CAS No. 145451-07-6) (provided for in subheading 2928.00.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1128. 2-CHLORO-N-(4'CHLOROBIPHENYL-2-YL) NICOTINAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.18	2-Chloro-N-(4'-chloro-[1,1'-biphenyl]-2-yl)-nicotinamide (nicobifen) (CAS No. 188425-85-6) (provided for in subheading 2933.39.21) ...	4.4%	No change	No change	On or before 12/31/2006	”.
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SEC. 1129. VINCLOZOLIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.19	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (vinclozolin) (CAS No. 50471–44–8) (provided for in subheading 2934.99.12) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1130. DAZOMET.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.20	Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione (CAS No. 533–74–4) (dazomet) (provided for in subheading 2934.99.90) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1131. PYRACLOSTROBIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.21	Methyl N-(2-[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxymethyl]-phenyl) N-methoxycarbanose (pyraclostrobin) (CAS No. 175013–18–0) (provided for in subheading 2933.19.23) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1132. 1,3-BENZENEDICARBOXYLIC ACID, 5-SULFO-1,3-DIMETHYL ESTER SODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.22	1,3-Benzenedicarboxylic acid, 5-sulfo-1,3-dimethyl ester, sodium salt (CAS No. 3965–55–7) (provided for in subheading 2917.39.30) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1133. SACCHAROSE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.23	Saccharose to be used other than in food for human consumption and not for nutritional purposes (provided for in subheading 1701.99.50) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1134. (2-BENZOTHAZOLYTHIO) BUTANEDIOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:heading:

“	9902.01.25	(Benzothiazol-2-ylthio)succinic acid (CAS No. 95154-01-1) (provided for in subheading 2934.20.40) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1135. 60-70 PERCENT AMINE SALT OF 2-BENZO-THIAZOLYTHIO SUCCINIC ACID IN SOLVENT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.26	(Benzothiazol-2-ylthio)succinic acid (60-70 percent) in solvent (provided for in subheading 3824.90.28) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1136. 4-METHYL-g-OXO-BENZENEBUTANOIC ACID COMPOUNDED WITH 4-ETHYLMORPHOLINE (2:1).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.27	4-Methyl-g-oxo-benzenebutanoic acid compounded with 4-ethylmorpholine (2:1) (CAS No. 171054-89-0) (provided for in subheading 2934.99.39) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1137. MIXTURES OF RIMSULFURON, NICOSULFURON, AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.28	Mixtures of rimsulfuron (N-[[[(4,6-dimethoxypyrimidin-2-yl)-amino]carbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide (CAS No. 122931–48–0), nicosulfuron (2-[[[(4,6-dimethoxypyrimidin-2-yl)-amino]carbonyl]-amino]sulfonyl)-N,N-dimethyl-3-pyridinecarboxamide (CAS No. 111991–09–4), and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1138. MIXTURES OF THIFENSULFURON METHYL, TRIBENURON METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.29	Mixtures of thifensulfuron methyl (methyl 3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-amino]carbonyl]-amino]sulfonyl]-2-thiophenecarboxylate (CAS No. 79277–27–3), tribenuron methyl (methyl 2-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-methylamino]-carbonyl]-amino]sulfonyl]-benzoate) (CAS No. 101200–48–0) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1139. MIXTURES OF THIFENSULFURON METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.30	Mixtures of thifensulfuron methyl (methyl 3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-amino]carbonyl]-amino]sulfonyl]-2-thiophenecarboxylate) (CAS No. 79277–27–3) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1140. MIXTURES OF TRIBENURON METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.31	Mixtures of tribenuron methyl (methyl 2-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino]-carbonyl]amino]sulfonyl]-benzoate) (CAS No. 101200–48–0) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1141. MIXTURES OF RIMSULFURON, THIFENSULFURON METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.32	Mixtures of rimsulfuron (N-[(4,6-dimethoxypyrimidin-2-yl)-aminocarbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide) (CAS No. 122931–48–0); thifensulfuron methyl (methyl 3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-amino]carbonyl]-amino]sulfonyl]-2-thiophenecarboxylate) (CAS No. 79277–27–3); and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1142. VAT BLACK 25.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.33	Anthra[2,1,9-mna]naphth[2,3-h]acridine-5,10,15(16H)-trione, 3-[(9,10-dihydro-9,10-dioxo-1-anthracenyl)-amino]- (Vat black 25) (CAS No. 4395–53–3) (provided for in subheading 3204.15.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1143. CYCLOHEXANEPROPANOIC ACID, 2-PROPENYL ESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.34	Cyclohexanepropanoic acid, 2-propenyl ester (CAS No. 2705–87–5) (provided for in subheading 2916.20.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1144. NEOHELIPAN HYDRO (2-PHENYLBENZIMIDAZOLE-5-SULFONIC ACID).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.35	2-Phenylbenzimidazole-5-sulfonic acid (CAS No. 27503–81–7) (provided for in subheading 2933.99.79) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1145. SODIUM METHYLATE POWDER (NA METHYLATE POWDER).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.36	Methanol, sodium salt (CAS No. 124–41–4) (provided for in subheading 2905.19.00) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1146. GLOBANONE (CYCLOHEXADEC-8-EN-1-ONE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.37	Cyclohexadec-8-en-1-one (CAS No. 3100–36–5) (provided for in subheading 2914.29.50) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1147. METHYL ACETOPHENONE-PARA (MELILOT).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.38	p-Methyl acetophenone (CAS No. 122-00-9) (provided for in subheading 2914.39.90) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1148. MAJANTOL (2,2-DIMETHYL-3-(3-METHYLPHENYL)PROPANOL).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.39	2,2-Dimethyl-3-(3-methylphenyl)-propanol (CAS No. 103694-68-4) (provided for in subheading 2906.29.20) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1149. NEOHELIOBAN MA (MENTHYL ANTHRANILATE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.40	Menthyl anthranilate (CAS No. 134-09-8) (provided for in subheading 2922.49.37) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1150. ALLYL ISOSULFOCYANATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.41	Allyl isothiocyanate (CAS No. 57-06-7) (provided for in subheading 2930.90.90) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1151. FRESCOLAT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.42	5-Methyl-2-(1-methylethyl)-cyclohexyl-2-hydroxypropionate (lactic acid, menthyl ester) (Frescolat) (CAS No. 59259–38–0) (provided for in subheading 2918.11.50) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1152. THYMOL (ALPHA-CYMOPHENOL).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.43	Thymol (CAS No. 89–83–8) (provided for in subheading 2907.19.40) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1153. BENZYL CARBAZATE.

Subchapter II of chapter 99 is amended by inserting in the numerical sequence the following new heading:

“	9902.01.44	Benzyl carbazate (Hydrazine-carboxylic acid, phenylmethyl ester) (CAS No. 5331–43–1) (provided for in subheading 2928.00.25) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1154. ESFENVALERATE TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in the numerical sequence the following new heading:

“	9902.01.45	(S)-Cyano(3-phenoxyphenyl)- methyl (S)-4-chloro- α -(1-methylethyl)-benzeneacetate (Esfenvalerate) (CAS No. 66230–04–4) (provided for in subheading 2926.90.30) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1155. AVAUNT AND STEWARD.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.46	Mixtures of indoxacarb ((S)-methyl 7-chloro-2,5-dihydro-2-[(methoxycarbonyl)(4-(trifluoromethoxy)-phenyl)amino]carbonyl]indeno- [1,2-e][1,3,4]- oxadiazine-4 α - (3H)carboxylate) (CAS No. 173584-44-6) and application adjuvants (provided for in subheading 3808.10.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1156. HELIUM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.47	Helium (provided for in subheading 2804.29.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1157. ETHYL PYRUVATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.48	Ethyl pyruvate (CAS No. 617-35-6) (provided for in subheading 2918.30.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1158. DELTAMETHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“		(S)- α -Cyano-3-phenoxybenzyl (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate (Deltamethrin) (CAS No. 52918-63-5) in bulk or unmixed in forms or packings for retail sale (provided for in subheading 2926.90.30 or 3808.10.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1159. ASULAM SODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.50	Mixtures of methyl sulfanilylcarbamate, sodium salt (Asulam sodium salt) (CAS No. 2302-17-2) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1160. TRALOMETHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.52	Tralomethrin (1R,3S)3[(1'RS)- (1',2',2',2'- tetrabromoethyl)]- 2,2- dimethylcyclopropan- ecarboxylic acid, (S)- alpha-cyano-3- phenoxybenzyl ester (CAS No. 66841–25– 6) in bulk or in forms or packages for retail sale (provided for in subheading 2926.90.30 or 3808.10.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1161. N-PHENYL-N'-(1,2,3-THIADIAZOL-5-YL)-UREA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.53	N-Phenyl-N'-1,2,3- thiadiazol-5-ylurea (thidiazuron) in bulk or in forms or pack- ages for retail sale (CAS No. 51707–55– 2) (provided for in subheading 2934.99.15 or 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1162. BENZENEPROPANOIC ACID, ALPHA-2- DICHLORO-5-[4 (DIFLUOROMETHYL)- 4,5-DIHYDRO-3-METHYL-5-OXO-1H-1,2,4-TRIAZOL-1-YL]-4-FLUORO-ETHYL ESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.54	alpha-2- Dichloro-5- [4- (difluoromethyl)- 4,5-dihydro-3-methyl- 5-oxo-1H-1,2,4- triazol-1-yl]-4- fluorobenzenepropan- oic acid, ethyl ester (carfentazone-ethyl) (CAS No. 128639– 02–1) (provided for in subheading 2933.99.22)	4.9%	No change	No change	On or before 12/31/2006	”.
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SEC. 1163. (Z)-(1RS, 3RS)-3-(2-CHLORO-3,3,3 TRIFLOURO-1-PROPENYL)-2,2-DIMETHYL-CYCLOPROPANE CARBOXYLIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.55	(Z)-(1RS,3RS)-3-(2-Chloro-3,3,3-trifluoro-1-pro-phenyl)-2,2-dimethyl-cyclopropanecarboxylic acid (CAS No. 68127-59-3) (provided for in subheading 2916.20.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1164. 2-CHLOROBENZYL CHLORIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.56	2-Chlorobenzyl chloride (CAS No. 611-19-8) (provided for in subheading 2903.69.70)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1165. (S)-ALPHA-HYDROXY-3-PHENOXYBENZENEACETONITRILE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.57	(S)-alpha-Hydroxy-3-phenoxybenzeneacetonitrile (CAS No. 61826-76-4) (provided for in subheading 2926.90.43)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1166. 4-PENTENOIC ACID, 3,3-DIMETHYL-, METHYL ESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.58	4-Pentenoic acid, 3,3-dimethyl-, methyl ester (CAS No. 63721-05-1) (provided for in subheading 2916.19.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1167. TERRAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.59	Etridiazole [5-ethoxy-3- (trichloromethyl)-1,2,4-thiadiazole] (CAS No. 2593-15-9) (provided for in subheading 2934.99.90) and any mixtures (preparations) containing Etridiazole as the active ingredient (provided for in subheading 3808.20.50)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1168. 2-MERCAPTOETHANOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.60	2-Mercaptoethanol (CAS No. 60–24–2) (provided for in sub- heading 2930.90.90)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1169. BIFENAZATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.61	Bifenazate (Hydrazinecarb- oxylic acid, 2-(4- methoxy-[1,1- biphenyl]-3-yl)-1- methylethyl ester (CAS No. 149877– 41–8) (provided for in subheading 2928.00.25)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1170. A CERTAIN POLYMER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.62	Fluoropolymers con- taining 95 percent or more by weight of the monomer units tetrafluoroethylene, hexafluoropropylene, and vinylidene fluo- ride (provided for in subheading 3904.69.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1171. PARA ETHYLPHENOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.63	p-Ethylphenol (CAS No. 123–07–9) (pro- vided for in sub- heading 2907.19.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1172. EZETIMIBE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.64	2-Azetidinone, 1-(4- fluorophenyl)- 3-[(3S)-3-(4- fluorophenyl)- 3- hydroxypropy- l]-4-(4- hydroxyphen- yl)-, (3R,4S)- (Ezetimibe) (CAS No. 163222–33–1) (provided for in subheading 2933.79.08)	Free	No change	No change	On or before 12/ 31/2006	”.
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SEC. 1173. P-CRESIDINESULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.65	p-Cresidinesulfonic acid (4-amino-5-methoxy-2-methylbenzene-sulfonic acid) (CAS No. 6471-78-9) (provided for in subheading 2922.29.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1174. 2,4 DISULFOBENZALDEHYDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.66	2,4-Disulfobenzaldehyde (CAS No. 88-39-1) (provided for in subheading 2913.00.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1175. M-HYDROXYBENZALDEHYDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.67	m-Hydroxybenzaldehyde (CAS No. 100-83-4) (provided for in subheading 2912.49.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1176. N-ETHYL-N-(3-SULFOBENZYL)ANILINE, BENZENESULFONIC ACID, 3[(ETHYLPHENYLAMINO)METHYL].

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.68	N-Ethyl-N-(3-sulfobenzyl)aniline (benzenesulfonic acid, 3-[(ethylphenylamino)-methyl]-) (CAS No. 101-11-1) (provided for in subheading 2921.42.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1177. ACRYLIC FIBER TOW.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.69	Acrylic fiber tow (polyacrylonitrile tow) consisting of 6 sub-bundles crimped together, each containing 45,000 filaments (plus or minus 0.06) and 2–8 percent water, such acrylic fiber containing by weight a minimum of 92 percent acrylonitrile, not more than 0.1 percent zinc and average filament denier of either 1.48 decitex (plus or minus 0.08) or 1.32 decitex (plus or minus 0.089) (provided for in sub-heading 5501.30.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1178. YTTRIUM OXIDES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.21	Yttrium oxides having a purity of at least 99.9 percent (CAS No. 1314–36–9) (provided for in sub-heading 2846.90.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1179. HEXANEDIOIC ACID, POLYMER WITH 1,3-BENZENEDIMETHANAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.71	Hexanedioic acid, polymer with 1,3-benzene-dimethanamine (CAS No. 25718–70–1) (provided for in sub-heading 3908.10.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1180. N1-[(6-CHLORO-3-PYRIDYL)METHYL]-N2-CYANO-N1-METHYLACETAMIDINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.72	(E)-N1-[(6-Chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamide (Acetamidiprid) (CAS No. 135410–20–7) whether or not mixed with application adjuvants (provided for in sub-heading 2933.39.27 or 3808.10.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1181. ALUMINUM TRIS (O-ETHYL PHOSPHONATE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.73	Aluminum tris- (O-ethylphosphon- ate) (CAS No. 39148-24-8) (provided for in subheading 2920.90.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1182. MIXTURE OF DISPERSE BLUE 77 AND DISPERSE BLUE 56.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.74	Mixtures of disperse blue 77 (9,10-anthracenedione, 1,8-dihydroxy-4-nitro-5-(phenylamino)-) (CAS No. 20241-76-3) and disperse blue 56 (9,10-anthracenedione, 1,5-diaminochloro-4,8-dihydroxy-) (CAS No. 12217-79-7) (provided for in subheading 3204.11.35)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1183. ACID BLACK 194.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.75	Acid black 194 (chromate(3-), bis[3-(hydroxy-.kappa.O)-4-[[2-(hydroxy.kappa.O)-1-naphthalenyl]azo-.kappa. N1]-7-nitro-1-naphthalenesulfonato(3-)]-, trisodium) (CAS No. 57693-14-8) (provided for in subheading 3204.12.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1184. MIXTURE OF 9,10-ANTHRACENEDIONE, 1,5-DIHYDROXY-4-NITRO-8-(PHENYLAMINO)-AND DISPERSE BLUE 77.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.76	Mixtures of 9,10-anthracenedione, 1,5-dihydroxy-4-nitro-8-(phenylamino)- (CAS No. 3065–87–0) and 9,10-anthracenedione, 1,8-dihydroxy-4-nitro-5-(phenylamino)- (Disperse blue 77) (CAS No. 20241–76–3) (provided for in subheading 3204.11.35)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1185. COPPER PHTHALOCYANINE SUBSTITUTED WITH 15 OR 16 GROUPS WHICH COMPRISE 8-15 THIOARYL AND 1-8 ARYLAMINO GROUPS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.77	A copper phthalocyanine substituted with 15 or 16 groups which comprise 8-15 thioaryl and 1-8 arylamino groups (provided for in subheading 3204.19.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1186. BAGS FOR CERTAIN TOYS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.78	Bags (provided for in subheading 4202.92.45) for transporting, storing, or protecting goods of headings 9502–9504, inclusive, imported and sold with such articles therein	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1187. CERTAIN CHILDREN’S PRODUCTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.79	Image projectors (provided for in subheading 9008.30.00) capable of projecting images from circular mounted sets of stereoscopic photographic transparencies, such mounts measuring approximately 8.99 cm in diameter	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1188. CERTAIN OPTICAL INSTRUMENTS USED IN CHILDREN’S PRODUCTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.80	Optical instruments (provided for in subheading 9013.80.90) designed for the viewing of circular mounted sets of stereoscopic photographic transparencies, such mounts measuring approximately 8.99 cm in diameter	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1189. CASES FOR CERTAIN CHILDREN'S PRODUCTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.81	Cases or containers (provided for in subheading 4202.92.90) specially shaped or fitted for circular mounts for sets of stereoscopic photographic transparencies, such mounts measuring approximately 8.99 cm in diameter	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1190. 2,4-DICHLOROANILINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.82	2,4-Dichloroaniline (CAS No. 554-00-7) (provided for in subheading 2921.42.18)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1191. ETHOPROP.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.83	O-Ethyl S,S-dipropylphosphorodithioate (Ethoprop) (CAS No. 13194-48-4) (provided for in subheading 2930.90.44)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1192. FORAMSULFURON.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.84	Mixtures of benzamide, 2-[[[(4,6-dimethoxy-2-pyrimidinyl)-amino]carbonyl]-amino]sulfonyl]-4-(formylamino)- N,N-methyl-(foramsulfuron) (CAS No. 173159–57–4) and application adjuvants (provided for in subheading 3808.30.15)	3%	No change	No change	On or before 12/31/2006	”.
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SEC. 1193. CERTAIN EPOXY MOLDING COMPOUNDS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.85	Epoxy molding compounds, of a kind used for encapsulating integrated circuits (provided for in subheading 3907.30.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1194. DIMETHYLDICYANE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.86	Dimethyldicyane (2,2'-dimethyl-4,4'-methylenebis- (cyclohexylamine)) (CAS No. 6864–37–5) (provided for in subheading 2921.30.30)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1195. TRIACETONE DIAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.87	2,2,6,6-Tetra-methyl-4-pip-eridinamine (Triacetone diamine) (CAS No. 36768–62–4) (provided for in subheading 2933.39.61)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1196. TRIETHYLENE GLYCOL BIS[3-(3-TERT-BUTYL-4-HYDROXY-5-METHYLPHENYL) PROPIONATE].

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

“	9902.01.88	Triethylene glycol bis[3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionate] (CAS No. 36443–68–2) (provided for in subheading 2918.90.43)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1197. CERTAIN POWER WEAVING TEXTILE MACHINERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.89	Power weaving machines (looms), shuttle type, for weaving fabrics of a width exceeding 30 cm but not exceeding 4.9 m, entered without off-loom or large loom take-ups, drop wires, heddles, reeds, harness frames, or beams (provided for in subheading 8446.21.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1198. CERTAIN FILAMENT YARNS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.90	Synthetic filament yarn (other than sewing thread) not put up for retail sale, single, of decitex sizes of 23 to 850, with between 4 and 68 filaments, with a twist of 100 to 300 turns/m, of nylon or other polyamides, containing 10 percent or more by weight of nylon 12 (provided for in subheading 5402.51.00)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1199. CERTAIN OTHER FILAMENT YARNS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.91	Synthetic filament yarn (other than sewing thread) not put up for retail sale, single, of decitex sizes of 23 to 850, with between 4 and 68 filaments, untwisted, of nylon or other polyamides, containing 10 percent or more by weight of nylon 12 (provided for in subheading 5402.41.90)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1200. CERTAIN INK-JET TEXTILE PRINTING MACHINERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.92	Ink-jet textile printing machinery (provided for in subheading 8443.51.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1201. CERTAIN OTHER TEXTILE PRINTING MACHINERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.93	Textile printing machinery (provided for in subheading 8443.59.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1203. D-MANNOSE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following heading:

“	9902.01.94	D-Mannose (CAS No. 3458–28–4) (provided for in subheading 2940.00.60)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1204. BENZAMIDE, N-METHYL-2-[[3-[(1E)-2-(2-PYRIDINYL)-ETHENYL]-1H-INDAZOL-6-YL)THIO]-.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.95	Benzamide, N-methyl-2-[[3-[(1E)-2-(2-pyridinyl)-ethenyl]-1H-indazol-6-yl]thio]- (CAS No. 319460–85–0) (provided for in subheading 2933.99.79)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1205. 1(2H)-QUINOLINECARBOXYLIC ACID, 4-[[[3,5-BIS-(TRIFLUOROMETHYL)PHENYL]METHYL](METHOXYCARBONYL)AMINO]-2-ETHYL-3,4-DIHYDRO-6-(TRIFLUOROMETHYL)-, ETHYL ESTER, (2R,4S)-(9CI).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.96	1(2H)-Quinolincarboxylic acid, 4-[[[3,5-bis-(trifluoromethyl)-phenyl]methyl](methoxycarbonyl)amino]-2-ethyl-3,4-dihydro-6-(trifluoromethyl)-ethyl ester, (2R,4S)- (CAS No. 262352–17–0) (provided for in subheading 2933.49.26)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1206. DISULFIDE, BIS(3,5-DICHLOROPHENYL)(9C1).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.97	Bis(3,5-dichlorophenyl) disulfide (CAS No. 137897-99-5) (provided for in subheading 2930.90.29)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1207. PYRIDINE, 4-[[4-(1-METHYLETHYL)-2-[(PHENYLMETHOXY)METHYL]-1H-MIDAZOL-1-YL]-ETHANEDIOATE (1:2).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.98	Pyridine, 4-[[4-(1-methylethyl)-2-[(phenylmethoxy)methyl]-1H-imidazol-1-yl]-methyl]-ethanedioate (1:2) (CAS No. 280129-82-0) (provided for in subheading 2933.39.61)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1208. PACLOBUTRAZOLE TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.99	(RS,3RS)-1-(4-Chlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pentan-3-ol (paclobutrazol) (CAS No. 76738-62-0) (provided for in subheading 2933.99.22)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1209. PACLOBUTRAZOLE 2SC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.01	Mixtures of (RS,3RS)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pentan-3-ol (paclobutrazol) (CAS No. 76738-62-0) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1210. METHIDATHION TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.02	S-[(5-Methoxy-2-oxo-1,3,4-thiadiazol-3(2H)-yl)methyl] O,O-dimethyl phosphorodithioate (CAS No. 950–37–8) (provided for in subheading 2934.99.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1211. VANGUARD 75 WDG.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.03	Mixtures of 2-pyrimidinamine, 4-cyclopropyl-6-methyl-N-phenyl- (cyprodinil) (CAS No. 121552–61–2) and application adjuvants (provided for in subheading 3808.20.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1212. WAKIL XL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.04	Mixtures of (R)-2-[(2,6-dimethylphenyl-methoxy)acetyl-amino]propionic acid, methyl ester (mefenoxam) (CAS No. 70630–17–0), 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile (fludioxonil) (CAS No. 131341–86–1), and 2-cyano-2-methoxyimino-N-(ethylcarbamo-oyl)acetamide (cymoxanil) (CAS No. 57966–95–7) with application adjuvants (the foregoing mixtures provided for in subheading 3808.20.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1213. MUCOCHLORIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.05	2-Butenoic acid, 2,3-dichloro-4-oxo- (mucochloric acid) (CAS No. 87–56–9) (provided for in subheading 2918.30.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1214. AZOXYSTROBIN TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.06	Benzeneacetic acid, (E)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]-alpha-(methoxymethyl-ene)-, methyl ester (pyroxystrobin) (CAS No. 131860-33-8) (provided for in sub-heading 2933.59.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1215. FLUMETRALIN TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.07	2-Chloro-N-[2,6-dinitro-4-(trifluoromethyl)-phenyl]-N-ethyl-6-fluorobenzene-methanamine (flumetralin) (CAS No. 62924-70-3) (provided for in sub-heading 2921.49.45)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1216. CYPRODINIL TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.08	2-Pyrimidinamine, 4-cyclopropyl-6-methyl-N-phenyl- (cyprodinil) (CAS No. 121552-61-2) (provided for in sub-heading 2933.59.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1217. MIXTURES OF LAMBDA-CYHALOTHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.09	Mixtures of cyhalothrin (cyclopropanecarboxylic acid, 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethyl-, cyano(3-phenoxyphenyl)-methyl ester, [1.alpha.(S*),3.alpha.(Z)]-(+.-) (CAS No. 91465-08-6) and application adjuvants (provided for in sub-heading 3808.10.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1218. PRIMISULFURON METHYL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.10	Benzoic acid, 2-[[[4,6-bis-(difluoromethoxy)-2-pyrimidinyl]-amino]carbonyl]-amino[sulfonyl]-, methyl ester (primisulfuron methyl) (CAS No. 86209–51–0) (provided for in subheading 2935.00.75)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1219. 1,2-CYCLOHEXANEDIONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.11	1,2-Cyclohexanedione (CAS No. 765–87–7) (provided for in subheading 2914.29.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1220. DIFENOCONAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.12	1H-1,2,4-Triazole, 1-[[2-[2-chloro-4-(4-chlorophenoxy)-phenyl]-4-methyl-1,3-dioxolan-2-yl]methyl]- (difenoconazole) (CAS No. 119446–68–3) (provided for in subheading 2934.99.12)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1221. CERTAIN REFRACTING AND REFLECTING TELESCOPES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.13	Refracting telescopes with 50 mm or smaller lenses and reflecting telescopes with 76 mm or smaller lenses (provided for in subheading 9005.80.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1222. PHENYLISOCYANATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.14	Phenylisocyanate (CAS No. 103–71–9) (provided for in subheading 2929.10.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1223. BAYOWET FT-248.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.15	Tetraethylammonium perfluorooctanesulfonate (CAS No. 56773-42-3) (provided for in subheading 2923.90.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1224. P-PHENYLPHENOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.16	p-Phenylphenol (CAS No. 92-69-3) (provided for in subheading 2907.19.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1225. CERTAIN RUBBER RIDING BOOTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.17	Horseback riding boots with soles and uppers of rubber, such boots extending above the ankle and below the knee, specifically designed for horseback riding, and having a spur rest on the heel counter (provided for in subheading 6401.92)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1226. CHEMICAL RH WATER-BASED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.18	Chemical RH water-based (iron toluene sulfonate) (comprising 75 percent water, 25 percent p-toluenesulfonic acid (CAS No. 6192-52-5) and 5 percent ferric oxide (CAS No. 1309-37-1)) (provided for in subheading 2904.10.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1227. CHEMICAL NR ETHANOL-BASED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.19	Chemical NR ethanol-based (iron toluene sulfonate) (comprising 60 percent ethanol (CAS No. 63–17–5), 33 percent p-toluenesulfonic acid (CAS No. 6192–52–5), and 7 percent ferric oxide (CAS No. 1309–37–1)) (provided for in subheading 2912.12.00 or 3824.90.28)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1228. TANTALUM CAPACITOR INK.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.20	Tantalum capacitor ink: graphite ink P7300 of 85 percent butyl acetate, 8 percent graphite, and the remaining balance of non-hazardous resins; and graphite paste P5900 of 92-96 percent water, 1-3 percent graphite (CAS No. 7782–42–5), 0.5-2 percent ammonia (CAS No. 7664–41–7), and less than 1 percent acrylic resin (CAS No. 9003–32–1) (provided for in subheading 3207.30.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1229. CERTAIN SAWING MACHINES.

Subchapter II of chapter 99 is amended by striking heading 9902.84.91 and inserting the following:

“	9902.84.91	Sawing machines certified for use in production of radial tires, designed for off-the-highway use, and for use on a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8465.91.00 or 8466.92.50) –	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1230. CERTAIN SECTOR MOLD PRESS MANUFACTURING EQUIPMENT.

Subchapter II of chapter 99 is amended by striking heading 9902.84.89 and inserting the following:

“	9902.84.89	Sector mold press machines to be used in production of radial tires designed for off-the highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8477.51.00 or 8477.90.85)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1231. CERTAIN MANUFACTURING EQUIPMENT USED FOR MOLDING.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.84.88	Machinery for molding, or otherwise forming uncured, unvulcanized rubber to be used in production of radial tires designed for off-the-highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8477.51.00 or 8477.90.85)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1232. CERTAIN EXTRUDERS.

Subchapter II of chapter 99 is amended by striking heading 9902.84.85 and inserting the following:

“	9902.84.85	Extruders to be used in production of radial tires designed for off-the-highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8477.20.00 or 8477.90.85)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1233. CERTAIN SHEARING MACHINES.

Subchapter II of chapter 99 is amended by striking heading 9902.84.81 and inserting the following:

“	9902.84.81	Shearing machines used to cut metallic tissue certified for use in production of radial tires designed for off-the highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8462.31.00 or 8466.94.85)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1234. THERMAL RELEASE PLASTIC FILM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.26	Thermal release plastic film (with a substrate of polyolefin-based PET/conductive acrylic polymer, release liner of polyethylene terephthalate PET/polysiloxane, pressure sensitive adhesive of acrylic ester-based copolymer, and core of acrylonitrile-butadiene-styrene copolymer) (provided for in subheading 3919.10.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1235. CERTAIN SILVER PAINTS AND PASTES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.27	Mixtures comprising 42 to 52 percent by weight of silver metal, 7.5 to 15 percent by weight of epoxy resin, and solvent (butyl 2-ethoxyethanol acetate); mixtures comprising 53 percent by weight of silver metal, 7 percent by weight of viton resin, and solvent (isoamyl acetate); and paste adhesive preparations comprising 62 percent by weight of silver metal, 8.4 percent by weight of viton resin, and solvent (composed of 1 part butyl 2-ethoxyethanol acetate and 9 parts isoamyl acetate); (all the foregoing provided for in subheading 7115.90.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1236. POLYMER MASKING MATERIAL FOR ALUMINUM CAPACITORS (UPICOAT).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.28	Dispersions (60 percent) of polyimide resins in 2,2'-oxydiethanol, dimethyl ether (provided for in subheading 3911.90.35 or 3911.90.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1237. OBPA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.29	10, 10'-Oxybisphenoxarsine (CAS No. 58-36-6) (provided for in subheading 2934.99.18) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1238. MACROPOROUS ION-EXCHANGE RESIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.30	Macroporous ion-exchange resin comprising a copolymer of styrene crosslinked with divinylbenzene, thiol functionalized (CAS No. 113834–91–6) (provided for in subheading 3914.00.60) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1239. COPPER 8-QUINOLINOLATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.31	Copper 8-quinolinolate (oxine-copper) (CAS No. 10380–28–6) (provided for in subheading 2933.49.30) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1240. ION-EXCHANGE RESIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.32	Ion-exchange resin comprising a copolymer of styrene crosslinked with divinylbenzene, iminodiacetic acid, sodium form (CAS No. 244203–30–3) (provided for in subheading 3914.00.60) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1241. ION-EXCHANGE RESIN CROSSLINKED WITH ETHENYLBENZENE, AMINOPHOSPHONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.33	Ion-exchange resin comprising a copolymer of styrene crosslinked with ethenylbenzene, aminophosphonic acid, sodium form (CAS No. 125935-42-4) (provided for in subheading 3914.00.60) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1242. ION-EXCHANGE RESIN CROSSLINKED WITH DIVINYLBENZENE, SULPHONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.34	Ion-exchange resin comprising a copolymer of styrene crosslinked with divinylbenzene, sulfonic acid, sodium form (CAS No. 63182-08-1) (provided for in subheading 3914.00.60) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1243. 3-[(4 AMINO-3-METHOXYPHENYL) AZO]-BENZENE SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.35	3-[(Amino-3-methoxyphenyl)-azo]-benzenesulfonic acid (CAS No. 138-28-3) (provided for in subheading 2927.00.50) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1244. 2-METHYL-5-NITROBENZENESULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.36	2-Methyl-5-nitrobenzenesulfonic acid (CAS No. 121-03-9) (provided for in subheading 2904.90.20) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1245. 2-AMINO-6-NITRO-PHENOL-4-SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.37	2-Amino-6-nitro-phenol-4-sulfonic acid (CAS No. 96–93–5) (provided for in subheading 2922.29.60) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1246. 2-AMINO-5-SULFOBENZOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.38	2-Amino-5-sulphobenzoic acid (CAS No. 3577–63–7) (provided for in subheading 2922.49.30) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1247. 2,5 BIS [(1,3 DIOXOBUTYL) AMINO] BENZENE SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.39	2,5-Bis[(1,3-dioxobutyl)-amino]benzene-sulfonic acid (CAS No. 70185–87–4) (provided for in subheading 2924.29.71) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1248. P-AMINOAZOBENZENE 4 SULFONIC ACID, MONOSODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.40	4-[(4-Amino-phenyl)azo]-benzenesulfonic acid, monosodium salt (CAS No. 2491–71–6) (provided for in subheading 2927.00.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1249. P-AMINOAZOBENZENE 4 SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.41	4-[(4-Amino-phenyl)azo]-benzenesulfonic acid (CAS No. 104–23–4) (provided for in subheading 2927.00.50) ...	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1250. 3-[(4 AMINO-3-METHOXYPHENYL) AZO]-BENZENE SULFONIC ACID, MONOSODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.42	3-[(4-Amino-3-methoxyphenyl)-azo]benzenesulfonic acid, monosodium salt (CAS No. 6300-07-8) (provided for in subheading 2927.00.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1251. ET-743 (ECTEINASCIDIN).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.43	[6R-(6a,6ab,7b,13b,14b,16a, 20R*)]-5-Acetyloxy-3',4',6,6a,7,13,14,16-octahydro-6',8,14-trihydroxy-7',9-dimethoxy-4,10,23-trimethylspiro[6,16-b][3]benzazocine-20,1'(2H)-isoquinolin-19-one (ecteinasidin) (CAS No. 114899-77-3) (provided for in subheading 2934.99.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1252. 2,7-NAPHTHALENEDISULFONIC ACID, 5-[[4-CHLORO-6-[[2-[[4-FLUORO-6-[[5-HYDROXY-6-[(4-METHOXY-2-SULFOPHENYL)AZO]-7-SULFO-2-NAPHTHALENYL]AMINO]-1,3,5-TRIAZIN-2-YL] AMINO]-1-METHYLETHYL]AMINO]-1,3,5-TRIAZIN-2-YL]AMINO]-3-[[4-(ETHENYLSULFONYL)PHENYL]AZO]-4-HYDROXY-, SODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.44	2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[[2-[[4-fluoro-6-[[5-hydroxy-6-[(4-methoxy-2-sulfophenyl)azo]-7-sulfo-2-naphthalenyl]-amino]-1,3,5-triazin-2-yl]- amino]-1-methylethyl]-amino]-1,3,5-triazin-2-yl]- amino]-3-[[4-(ethenylsulfonyl)-phenyl]azo]-4-hydroxy, sodium salt (CAS No. 168113-78-8) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1253. 1,5-NAPHTHALENEDISULFONIC ACID, 3-[[2-(ACETYLAMINO)-4-[[4-[[2-(ETHENYLSULFONYL)ETHOXY]ETHYL] AMINO]-6-FLUORO-1,3,5-TRIAZIN-2-YL]AMINO]PHENYL]AZO]-, DISODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.45	1,5-Naphthalenedisulfonic acid, 3-[[2-(acetylamino)-4-[[2-(ethenylsulfonyl)-ethoxy]-ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]- amino-phenyl]azo]-, disodium salt (CAS No. 98635–31–5) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1254. 7,7'-[1,3-PROPANEDIYLBIS[IMINO(6-FLUORO-1,3,5-TRIAZINE-4,2-DIYL)IMINO[2-[(AMINOCARBONYL)AMINO]-4,1-PHENYLENE]AZO]]BIS-, SODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.46	7,7'-[1,3-Propanediylbis-[imino(6-fluoro-1,3,5-triazine-4,2-diyl)imino[2-[(aminocarbonyl)-amino]-4,1-phenylene]azo]]bis-, sodium salt (CAS No. 143683–24–3) (provided for in subheading 3204.16.30) ..	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1255. CUPRATE(3-), [2-[[[[3-[[4-[[2-(ETHENYLSULFONYL)ETHOXY]ETHYL]AMINO]-6-FLUORO-1,3,5-TRIAZIN-2-YL]AMINO]-2-(HYDROXY-.KAPPA.O)-5-SULFOPHENYL]AZO-.KAPPA.N2]PHENYLMETHYL]AZO-.KAPPA.N1]-4-SULFOBENZOATO(5-)-.KAPPA.O], TRI-SODIUM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.47	Cuprate(3-), [2-[[[[3-[[4-[[2-(ethenylsulfonyl)-ethoxy]-ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]-amino]-2-(hydroxy-.kappa.O)-5-sulfophenyl]azo-.kappa.N2]-phenylmethyl]azo-.kappa.N1]-4-sulfobenzoato(5-)-.kappa.O], trisodium (CAS No. 106404–06–2) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1256. 1,5-NAPHTHALENEDISULFONIC ACID, 2-[[8-[[4-[[3-[[[2-(ETHENYLSULFONYL)ETHYL]AMINO]CARBONYL]PHENYL]AMINO]-6-FLUORO-1,3,5-TRIAZIN-2-YL]AMINO]-1-HYDROXY-3,6-DISULFO-2-NAPHTHALENYL]AZO]-, TETRASODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.48	1,5-Naphthalenedisulfonic acid, 2-[[8-[[4-[[3-[[[2-(ethenylsulfonyl)ethyl]amino]carbonyl]phenyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-1-hydroxy-3,6-disulfo-2-naphthalenyl]-azo]-, tetrasodium salt (CAS No. 116912-36-8) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1257. PTFMBA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.49	p-(Trifluoromethyl)benzaldehyde (CAS No. 455-19-6) (provided for in subheading 2913.00.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1258. BENZOIC ACID, 2-AMINO-4-[(2,5-DICHLOROPHENYL)AMINO]CARBONYL]-, METHYL ESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.51	Benzoic acid, 2-amino-4-[(2,5-dichlorophenyl)amino]carbonyl]-, methyl ester (CAS No. 59673-82-4) (provided for in subheading 2924.29.71)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1259. IMIDACLOPRID PESTICIDES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.52	Mixtures of imidacloprid (1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidin- mine) (CAS No. 138261-41-3) with application adjuvants (provided for in subheading 3808.10.25)	5.7%	No change	No change	On or before 12/31/2006	”.
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SEC. 1260. BETA-CYFLUTHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.54	beta-Cyfluthrin (CAS No. 68359–37–5) (provided for in subheading 2926.90.30)	4.3%	No change	No change	On or before 12/31/2006	”.
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SEC. 1261. IMIDACLOPRID TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.55	Imidacloprid (1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine) (CAS No. 138261–41–3) (provided for in subheading 2933.39.27)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1262. BAYLETON TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.56	Triadimefon (1-(4-chlorophenoxy)-3,3-dimethyl-1-(1 <i>H</i> -1,2,4-triazol-1-yl)-2-butanone) (CAS No. 43121–43–3) (provided for in subheading 2933.99.22)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1263. PROPOXUR TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.57	Propoxur (2-(1-methylethoxy)-phenol methyl-carbamate) (CAS No. 114–26–1) (provided for in subheading 2924.29.47)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1264. MKH 6561 ISOCYANATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.58	A mixture of 30 percent 2-(carbomethoxy)-benzenesulfonyl isocyanate (CAS No. 13330–20–7) and 70 percent xylenes (provided for in subheading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1265. PROPOXY METHYL TRIAZOLONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.59	A mixture of 20 percent propoxy-methyltriazolone (3H-1,2,4-triazol-3-one, 2,4- dihydro-4-methyl-5-propoxy-) (CAS No. 1330-20-7) and triazolone (3H-1,2,4-triazol-3-one, 2,4- dihydro-4-methyl-5-propoxy-) (CAS No. 1330-2-7) (provided for in sub-heading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1266. NEMACUR VL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.60	Fenamiphos (ethyl 4-(methylthio)-m-tolyl-isopropylphosphoramidate) (CAS No. 22224-92-6) (provided for in sub-heading 2930.90.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1267. METHOXY METHYL TRIAZOLONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.61	2,4-Dihydro-5-methoxy-4-methyl-3H-1,2,4-triazol-3-one (CAS No. 135302-13-5) (provided for in sub-heading 2933.99.97)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1268. LEVAFIX GOLDEN YELLOW E-G.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.62	Reactive yellow 27 (1H-Pyrazole-3-carboxylic acid, 4-[[4-[(2,3-dichloro-6-quinoxaliny]carbonyl)amino]-2-sulfo-phenyl]-azo]-4,5- dihydro-5-oxo-1-(4-sulfo-phenyl)-, tri-sodium salt) (CAS No. 75199-00-7) (provided for in sub-heading 3204.16.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1269. LEVAFIX BLUE CA/REMAZOL BLUE CA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.63	Cuprate(4-), [2-[[3-[[sub-stituted]-1,3,5-triazin-2-yl]amino]-2-hydroxy-5-sulphophenyl]- (sub-stituted)azo], sodium salt (CAS No. 156830–72–7) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1270. REMAZOL YELLOW RR GRAN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.64	Benzenesulfonic acid, 2-amino-4-(cyanoamino)-6-[(3-sulfo- phenyl)amino]-1,3,5-triazin-2-yl]amino]-5-[[4-[[2-(sulfoxy)-ethyl]sulfonyl]-phenyl]azo]-, lithium/sodium salt (CAS No. 189574–45–6) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1271. INDANTHREN BLUE CLF.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.65	Vat blue 66 (9,10-Anthra- cenedione, 1,1'-[(6-phenyl-1,3,5-triazine-2,4-diyl)diimino]- bis[3-acetyl-4- amino-] (CAS No. 32220–82–9) (provided for in subheading 3204.15.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1272. INDANTHREN YELLOW F3GC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.66	Vat yellow 33 ([1,1'-Biphenyl]- 4-carboxamide, 4',4'''-azobis[N- (9,10-dihydro- 9,10-dioxo-1- anthracenyl)-] (CAS No. 12227–50–8) (provided for in subheading 3204.15.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1273. ACETYL CHLORIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.67	Acetyl chloride (CAS No. 75–36–5) (provided for in subheading 2915.90.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1274. 4-METHOXY-PHENACYCHLORIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.68	4-Methoxyphenacyl chloride (CAS No. 2196–99–8) (provided for in subheading 2914.70.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1275. 3-METHOXY-THIOPHENOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.69	3-Methoxythiophenol (CAS No. 15570–12–4) (provided for in subheading 2930.90.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1276. LEVAFIX BRILLIANT RED E-6BA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.70	Reactive red 159 (2,7-naphthalenedisulfonic acid, 5-(benzoylamino)-3-[[[5-[[[5-chloro-2,6-difluoro-4-pyrimidinyl]-amino]methyl]-1-sulfo-2-naphthalenyl]-azo]-4-hydroxy-, lithium sodium salt) (CAS No. 83400–12–8) (provided for in subheading 3204.16.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1277. REMAZOL BR. BLUE BB 133 PERCENT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.71	Reactive blue 220 (cuprate(4-), [4,5-dihydro-4- [[8-hydroxy-7- [[2-hydroxy-5- methoxy-4-[[2-(sulfoxy)ethyl]-sulfonyl]-phenyl]azo]-6- sulfo-2-naphthal-enyl]azo]-5-oxo- 1-(4-sulfo-phenyl)-1H-pyrazole-3-carboxylato(6-)]-, sodium) (CAS No. 90341–71–2) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1278. FAST NAVY SALT RA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.72	Benzenediazonium, 4-[(2,6- dichloro-4-nitrophenyl)azo]- 2,5-dimethoxy-, (T-4)-tetra-chlorozincate(2-) (2:1) (CAS No. 63224–47–5) (provided for in subheading 2927.00.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1279. LEVAFIX ROYAL BLUE E-FR.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.73	Reactive blue 224 (ethanol, 2,2'-[[6,13-dichloro-3,10- bis[[2-sulfoxy)-ethyl]amino]-triphenodioxazinediyl]]bis(sulfonyl)]bis-, bis(hydrogen sulfate) ester, potassium sodium salt (CAS No. 108692–09–7) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1280. P-CHLOROANILINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.74	p-Chloroaniline (CAS No. 106–47–8) (provided for in subheading 2921.42.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1281. ESTERS AND SODIUM ESTERS OF PARAHYDROXYBENZOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.75	Methyl 4-hydroxybenzoate (CAS No. 99-76-3); propyl 4-hydroxybenzoate (CAS No. 94-13-3); ethyl 4-hydroxybenzoate (CAS No. 120-47-8); butyl 4-hydroxybenzoate (CAS No. 94-26-8); benzyl 4-hydroxybenzoate (CAS No. 94-18-8); methyl 4-hydroxybenzoate, sodium salt (CAS No. 5026-62-0); propyl 4-hydroxybenzoate, sodium salt (CAS No. 35285-69-9); ethyl 4-hydroxybenzoate, sodium salt (CAS No. 35285-68-8); and butyl 4-hydroxybenzoate, sodium salt (CAS No. 36457-20-2) (all the foregoing provided for in subheading 2918.29.65 or 2918.29.75)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1282. SANTOLINK EP 560.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.76	Phenol-formaldehyde polymer, butylated (CAS No. 96446-41-2) (provided for in subheading 3909.40.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1283. PHENODUR VPW 1942.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.77	Phenol, 4,4'-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane and phenol polymer with formaldehyde modified with chloroacetic acid (provided for in subheading 3909.40.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1284. PHENODUR PR 612.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.78	Formaldehyde, polymer with 2-methylphenol, butylated (CAS No. 118685-25-9) (provided for in subheading 3909.40.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1285. PHENODUR PR 263.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.79	Phenol, polymer with formaldehyde (CAS No. 126191–57–9) and urea, polymer with formaldehyde (CAS No. 68002–18–6) dissolved in a mixture of isobutanol and n-butanol (provided for in subheading 3909.40.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1286. MACRYNAL SM 510 AND 516.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.80	Neodecanoic acid, oxiranylmethyl ester, polymer with ethenylbenzene, 2-hydroxyethyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate and 2-propenoic acid (CAS No. 98613–27–5) (provided for in subheading 3906.90.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1287. ALFTALAT AN 725.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.81	1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid and 2,2-dimethyl-1,3-propanediol (CAS No. 25214–38–4) (provided for in subheading 3907.99.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1288. RWJ 241947.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.82	(+)–5-[[6-[(2-Fluorophenyl)-methoxy]-2-naphthalenyl]-methyl]-2,4-thiazolidinedione (CAS No. 161600–01–7) (provided for in subheading 2934.10.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1289. RWJ 394718.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.83	1-Propanone, 3-(5-benzofuranyl)-1-[2-hydroxy-6-[[6-O-(methoxycarbonyl-beta-D-glucopyranosyl)-oxy]-4-methylphenyl- (CAS No. 209746-59-8) (provided for in subheading 2932.99.61)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1290. RWJ 394720.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.84	3-(5-Benzofuranyl)-1-[2-β-D-glucopyranosyloxy- 6-hydroxy-4-methylphenyl]-1-propanone (CAS No. 209746-56-5) (provided for in subheading 2932.99.61)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1291. 3,4-DCBN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.85	3,4-Dichlorobenzonitrile (CAS No. 6574-99-8) (provided for in subheading 2926.90.12)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1292. CYHALOFOP.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.86	Propanoic acid, 2-[4-(cyano-2-fluorophenoxy)-phenoxy]butyl ester(2R) (CAS No. 122008-85-9) (provided for in subheading 2926.90.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1293. ASULAM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.87	Methyl sulfanilylcarbamate, sodium salt (asulam sodium salt) (CAS No. 2302–17–2) imported in bulk form (provided for in subheading 2935.00.75), or imported in forms or packings for retail sale or mixed with application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1294. FLORASULAM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.88	Mixtures of florasulam ([1,2,4]-triazolo[1,5-c]-pyrimidine-2-sulfonamide, N-(2,6-difluorophenyl)-8-fluoro-5-methoxy-) (CAS No. 145701–23–1) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1295. PROPANIL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.89	Propanamide, N-(3,4-dichlorophenyl)- (CAS No. 709–98–8) (provided for in subheading 2924.29.47)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1296. HALOFENOZIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.90	Benzoic acid, 4-chloro-2-benzoyl-2-(1,1-dimethylethyl)-hydrazide (halofenozide) (CAS No. 112226–61–6) (provided for in subheading 2928.00.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1297. ORTHO-PHTHALALDEHYDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.92	1,2-Benzenedicarboxaldehyde (CAS No. 643–79–8) (provided for in subheading 2912.29.60)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1298. TRANS 1,3-DICHLOROPENTENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

“	9902.02.93	Mixed cis and trans isomers of 1,3-dichloro-propene (CAS No. 10061-02-6) (provided for in subheading 2903.29.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1299. METHACRYLAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.94	Methacrylamide (CAS No. 79-39-0) (provided for in subheading 2924.19.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1300. CATION EXCHANGE RESIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.95	2-Propenoic acid, polymer with diethenylbenzene (CAS No. 9052-45-3) (provided for in subheading 3914.00.60)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1301. GALLERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.96	N-[3-(1-Ethyl-1-methylpropyl)-5-isoxazolyl]-2,6-dimethoxybenzamide (isoxaben) (CAS No. 82558-50-7) (provided for in subheading 2934.99.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1302. NECKS USED IN CATHODE RAY TUBES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.97	Necks of a kind used in cathode ray tubes (provided for in subheading 7011.20.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1303. POLYTETRAMETHYLENE ETHER GLYCOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

“	9902.02.98	Polytetramethylene ether glycol (tetrahydro-3-methylfuran, polymer with tetrahydrofuran) (CAS No. 38640–26–5) (provided for in subheading 3907.20.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1304. LEAF ALCOHOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

“	9902.02.99	cis-3-Hexen-1-ol (CAS No. 928–96–1) (provided for in subheading 2905.29.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1305. COMBED CASHMERE AND CAMEL HAIR YARN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.01	Yarn of combed cashmere or yarn of camel hair (provided for in subheading 5108.20.60)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1306. CERTAIN CARDED CASHMERE YARN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.02	Yarn of carded cashmere of 6 run or finer (equivalent to 19.35 metric yarn system) (provided for in subheading 5108.10.60)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1307. SULFUR BLACK 1.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.03	Sulfur black 1 (CAS No. 1326–82–5) (provided for in subheading 3204.19.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1308. REDUCED VAT BLUE 43.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.04	Reduced vat blue 43 (CAS No. 85737–02–6) (provided for in subheading 3204.15.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1309. FLUOROBENZENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.05	Fluorobenzene (CAS No. 462-06-6) (provided for in subheading 2903.69.70)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1310. CERTAIN RAYON FILAMENT YARN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.06	High tenacity multiple (folded) or cabled yarn of viscose rayon (provided for in subheading 5403.10.60)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1311. CERTAIN TIRE CORD FABRIC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.07	Tire cord fabric of high tenacity yarn of viscose rayon (provided for in subheading 5902.90.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1312. DIRECT BLACK 184.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.08	Direct black 184 (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1313. BLACK 263 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.09	5-[4-(7-Amino-1-hydroxy-3-sulfonaphthalen-2-ylazo)-2,5-bis(2-hydroxyethoxy)-phenylazo]isophthalic acid, lithium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1314. MAGENTA 364.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.10	5-[4-(4,5-Dimethyl-2-sulfo-phenylamino)-6-hydroxy-[1,3,5]triazin-2-ylamino]-4-hydroxy-3-(1-sulfonaphthalen-2-ylazo)naphthalene-2,7-disulfonic acid, sodium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1315. THIAMETHOXAM TECHNICAL.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.11	Thiamethoxam (3-[(2-chloro-5-thiazolyl)methyl]-tetrahydro-5-methyl-N-nitro-1,3,5-oxadiazin-4-imine) (CAS No. 153719–23–4) (provided for in subheading 2934.10.90)	2.6%	No change	No change	On or before 12/31/2004	”.
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(b) CALENDAR YEAR 2005.—

(1) IN GENERAL.—Heading 9902.03.11, as added by subsection (a), is amended—

(A) by striking “2.6%” and inserting “2.54%”; and

(B) by striking “On or before 12/31/2004” and inserting “On or before 12/31/2005”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2005.

(c) CALENDAR YEAR 2006.—

(1) IN GENERAL.—Heading 9902.03.11, as added by subsection (a) and amended by this section, is further amended—

(A) by striking “2.54%” and inserting “3.2%”; and

(B) by striking “On or before 12/31/2005” and inserting “On or before 12/31/2006”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2006.

SEC. 1316. CYAN 485 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.12	2-[(Hydroxyethyl-sulfamoyl)-sulfophthalocyaninato] copper (II), mixed isomers (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1317. DIRECT BLUE 307.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.14	Direct blue 307 (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1318. DIRECT VIOLET 107.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.16	Direct violet 107 (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1319. FAST BLACK 286 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.17	1,3-Benzenedicarboxylic acid, 5-[4-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)-azo]-6-sulfo-1-naphthalenyl]-azo]-, sodium salt (CAS No. 201932–24–3) (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1320. MIXTURES OF FLUAZINAM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.18	Mixtures of fluzazinam (3-chloro-N-(3-chloro-2,6-dinitro-4-(trifluoromethyl)-phenyl-5-(trifluoromethyl)-2-pyridinamine) (CAS No. 79622–59–6) and application adjuvants (provided for in subheading 3808.20.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1321. PRODIAMINE TECHNICAL.

(a) **CALENDAR YEAR 2004.**—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.19	Prodiamine (2,6-dinitro-N1,N1-dipropyl-4-(trifluoromethyl)-1,3-benzene-diamine (CAS No. 29091–21–2) (provided for in subheading 2921.59.80)	0.53%	No change	No change	On or before 12/31/2004	”.
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(b) **CALENDAR YEARS 2005 AND 2006.**—

(1) **IN GENERAL.**—Heading 9902.03.19, as added by subsection (a), is amended—

(A) by striking “0.53%” and inserting “Free”; and

(B) by striking “On or before 12/31/2004” and inserting “On or before 12/31/2006”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1322. CARBON DIOXIDE CARTRIDGES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.20	Carbon dioxide in threaded 12-, 16-, and 25-gram non-refillable cartridges (provided for in subheading 2811.21.00)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1323. 12-HYDROXYOCTADECANOIC ACID, REACTION PRODUCT WITH *N,N*-DIMETHYL-, 1,3-PROPANEDIAMINE, DIMETHYL SULFATE, QUATERNIZED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.21	12-Hydroxyoctadecanoic acid, reaction product with <i>N,N</i> -dimethyl-, 1,3-propanediamine, dimethyl sulfate, quaternized (CAS No. 70879–66–2) (provided for in subheading 3824.90.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1324. 40 PERCENT POLYMER ACID SALT/POLYMER AMIDE, 60 PERCENT BUTYL ACETATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.22	2-Oxepanone, polymer with aziridine and tetrahydro-2H-pyran-2-one, dodecanoate ester, 40 percent solution in <i>N</i> -butyl acetate (provided for in subheading 3208.90.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1325. 12-HYDROXYOCTADECANOIC ACID, REACTION PRODUCT WITH *N,N*-DIMETHYL-, 1,3-PROPANEDIAMINE, DIMETHYL SULFATE, QUATERNIZED, 60 PERCENT SOLUTION IN TOLUENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.23	12-Hydroxyoctadecanoic acid, reaction product with <i>N,N</i> -dimethyl-1,3-propanediamine, dimethyl sulfate, quaternized (CAS No. 70879-66-2), 60 percent solution in toluene (provided for in subheading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1326. POLYMER ACID SALT/POLYMER AMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.24	2-Oxepanone, polymer with aziridine and tetrahydro-2H-pyran-2-one, dodecanoate ester (provided for in subheading 3824.90.91)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1327. 50 PERCENT AMINE NEUTRALIZED PHOSPHATED POLYESTER POLYMER, 50 PERCENT SOLVESSO 100.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.25	50 percent amine neutralized phosphated polyester polymer, 50 percent solvezzo 100 (CAS Nos. P-99-1218, 64742-95-6, 95-63-6, 108-67-8, 98-82-8, and 1330-20-7) (provided for in subheading 3907.99.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1328. 1-OCTADECANAMINIUM, *N,N*-DI-METHYL-*N*-OCTADECYL-, (SP-4-2)-[29H,31H-PHTHA-LOCYANINE-2-SULFONATO(3-)-.KAPPA.N29,.KAPPA.N30,.KAPPA.N31,.KAPPA.N32]CUPRATE(1-).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.26	1-Octadecanaminium, <i>N,N</i> -dimethyl- <i>N</i> -octadecyl-, (Sp-4-2)-[29H,31H-phthalocyanine-2-sulfonato(3-)-.kappa.N29,.kappa.N30,.kappa.N31,.kappa.N32] cuprate(1-) (CAS No. 70750-63-9) (provided for in subheading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1329. CHROMATE(1-)-BIS[1-[(5-CHLORO-2-HYDROXYPHENYL)AZO]-2-NAPHTHAL ENOLATO(2-)-],HYDROGEN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.27	Chromate(1-)-bis[1-[(5-chloro-2-hydroxyphenyl)azo]-2-naphthalenolato- (2-)-], hydrogen (CAS No. 31714–55–3) (provided for in subheading 2942.00.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1330. BRONATE ADVANCED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.29	Mixtures of bromoxynil octanoate (3,5-dibromo-4-hydroxybenzo-nitrile octanoate (CAS No. 1689–99–2) with application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1331. N-CYCLOHEXYLTHIOPHTHALIMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.30	N-Cyclohexylthiophthalimide (CAS No. 17796–82–6) (provided for in subheading 2930.90.24)	3%	No change	No change	On or before 12/31/2006	”.
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SEC. 1332. CERTAIN HIGH-PERFORMANCE LOUDSPEAKERS.

Subchapter II of chapter 99 is amended by striking heading 9902.85.20 and inserting the following:

“	9902.85.20	Loudspeakers not mounted in their enclosures (provided for in subheading 8518.29.80), the foregoing which meet a performance standard of not more than 1.5 dB for the average level of 3 or more octave bands, when such loudspeakers are tested in a reverberant chamber	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1333. BIO-SET INJECTION RCC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following heading:

“	9902.03.33	Polymeric apparatus, comprising a removable cap, an injection port attached to an air vent filter and a fixed needle of plastics and a base for attaching the whole to a vial with a 13 mm or 20 mm flange, of a kind used for transferring diluent from a prefilled syringe (without needle) to a vial containing a powdered or lyophilized medicament and, after mixing, transferring the medicament back to the syringe for subsequent administration to the patient (provided for in subheading 3923.50.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1334. PENTA AMINO ACETO NITRATE COBALT III (COFLAKE 2).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.34	Mixtures of (acetato)pent-amine cobalt dinitrate (CAS No. 14854-63-8) with a polymeric or paraffinic carrier (provided for in subheading 3815.90.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1335. OXASULFURON TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.35	Benzoic acid, 2-[[[[(4,6-dimethyl-2-pyrimidinyl)-amino]carbonyl]-amino]sulfonyl]-, 3-oxetanyl ester (CAS No. 144651-06-9) (provided for in subheading 2935.00.75)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1336. CERTAIN MANUFACTURING EQUIPMENT.

Subchapter II of chapter 99 is amended by striking heading 9902.84.83 and inserting the following:

“	9902.84.83	Machine tools for working wire of iron or steel, certified for use in production of radial tires designed for off-the-highway use and for use on a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8463.30.00 or 8466.94.85)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1337. 4-AMINO BENZAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.37	4-Aminobenzamide (CAS No. 2835–68–9) (provided for in subheading 2924.29.76)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1338. FOE HYDROXY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.38	N-(4-Fluorophenyl)-2-hydroxy-N-(1-methylethyl)-acetamide (CAS No. 54041–17–7) (provided for in subheading 2924.29.71)	5.2%	No change	No change	On or before 12/31/2006	”.
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SEC. 1339. MAGENTA 364 LIQUID FEED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.39	5-[4-(4,5-Dimethyl-2-sulfo-phenylamino)-6-hydroxy-[1,3,5]triazin-2-ylamino]-4-hydroxy-3-(1-sulfonaphthalen-2-ylazo)naphthalene-2,7-disulfonic acid, sodium ammonium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1340. TETRAKIS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.40	Tetrakis ((2,4-di-tert-butylphenyl)-4,4-biphenylene diphosphonite) (CAS No. 38613-77-3) (provided for in subheading 2835.29.50)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1341. PALMITIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.41	Palmitic acid, with a purity of 90 percent or more (CAS No. 57-10-3) (provided for in subheading 2915.70.00)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1342. PHYTOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.42	3,7,11,15-Tetramethylhexadec-2-en-1-ol (CAS No. 7541-49-3) (provided for in subheading 2905.22.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1343. CHLORIDAZON.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.43	Chloridazon (5-Amino-4-chloro-2-phenyl-3(2H)-pyridazinone) (CAS No. 1698-60-8) put up in forms or packings for retail sale or mixed with application adjuvants (provided for in subheading 3808.30.15)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1344. DISPERSE ORANGE 30, DISPERSE BLUE 79:1, DISPERSE RED 167:1, DISPERSE YELLOW 64, DISPERSE RED 60, DISPERSE BLUE 60, DISPERSE BLUE 77, DISPERSE YELLOW 42, DISPERSE RED 86, AND DISPERSE RED 86:1.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.45	Propanenitrile, 3-[[[2-(acetyloxy)-ethyl]-[4-[(2,6-dichloro-4-nitrophenyl)azo]-phenyl]amino]- (disperse orange 30) (CAS No. 5261-31-4) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006	
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“	9902.03.46	Acetamide, N-[5-[bis[2-(acetyloxy)-ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)-azo]-4-methoxyphenyl]- (disperse blue 79:1) (CAS No. 3618–72–2) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006
“	9902.03.47	Acetamide, N-[5-[bis[2-(acetyloxy)-ethyl]amino]-2-[(2-chloro-4-nitrophenyl)-azo]phenyl]- (disperse red 167:1) (CAS No. 1533–78–4) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006
“	9902.03.48	1H-Indene-1,3(2H)-dione, 2-(4-bromo-3-hydroxy-2-quinolinyl)- (disperse yellow 64) (CAS No. 10319–14–9) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006
“	9902.03.49	9,10-Anthracenedione, 1-amino-4-hydroxy-2-phenoxy- (disperse red 60) (CAS No. 17418–58–5) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006
“	9902.03.50	1H-Naphth[2,3-f]isoindole-1,3,5,10(2H)-tetrone, 4,11-diamino-2-(3-methoxypropyl)- (disperse blue 60) (CAS No. 12217–80–0) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006
“	9902.03.51	9,10-Anthracenedione, 1,8-dihydroxy-4-nitro-5-(phenylamino)- (disperse blue 77) (CAS No. 20241–76–3) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006
“	9902.03.52	Benzenesulfonamide, 3-nitro-N-phenyl-4-(phenylamino)- (disperse yellow 42) (CAS No. 5124–25–4) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006
“	9902.03.53	Benzenesulfonamide, N-(4-amino-9,10-dihydro-3-methoxy-9,10-dioxo-1-anthracenyl)-4-methyl- (disperse red 86) (CAS No. 81–68–5) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006

“	9902.03.54	Benzenesulfonamide, N-(4-amino-9,10-dihydro-3-methoxy-9,10-dioxo-1-anthracenyl)- (disperse red 86:1) (CAS No. 69563-51-5) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1345. DISPERSE BLUE 321.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.55	1-Naphthalenamine, 4-[(2-bromo-4,6-dinitrophenyl)-azo]-N-(3-methoxypropyl)- (disperse blue 321) (CAS No. 70660-55-8) (provided for in subheading 3204.11.35)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1346. DIRECT BLACK 175.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.56	Cuprate(4-), [m-[5-[(4,5-dihydro-3-methyl-5-oxo-1-phenyl-1H-pyrazol-4-yl)azo]-3-[[4'-[[3,6-disulfo-2-hydroxy.kappa.O-1-naphthal-enyl]azo.kappa.N1]-3,3'-di(hydroxy.kappa.O)[1,1'-biphenyl]-4-yl]azo.kappa.N1]-4-(hydroxy.kappa.O)-2,7-naphthalenedisulfonato(8-)]di-, tetrasodium (direct black 175) (CAS No. 66256-76-6) (provided for in subheading 3204.12.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1347. DISPERSE RED 73 AND DISPERSE BLUE 56.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

“	9902.03.57	Benzonitrile, 2-[[4-[(2-cyanoethyl)-ethylamino]-phenyl]azo]-5-nitro- (disperse red 73) (CAS No. 16889-10-4) (provided for in subheading 3204.11.10)	Free	No change	No change	On or before 12/31/2006	”.
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“	9902.03.58	9,10-Anthracenedione, 1,5-diaminochloro-4,8-dihydroxy- (disperse blue 56) (CAS No. 12217–79–7) (provided for in subheading 3204.11.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1348. ACID BLACK 132.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.59	[3-(Hydroxy- .kappa.O)-4-[[2-(hydroxy- .kappa.O)-1-naphthaleny- l]azo- .kappa.N1]-1-naphthal- enesulfonato (3-)]-[1-[[2-(hydroxy- .kappa.O)-5-[(2-methoxyphenyl- l]-azophenyl)- azo-.kappa.N1]-2-naphthalenolato (2-).kappa.O]-, disodium (acid black 132) (CAS No. 27425–58–7) (provided for in subheading 3204.12.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1349. ACID BLACK 132 AND ACID BLACK 172.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

“	9902.03.36	[3-(Hydroxy- kO)-4-[[2-(hydroxy- .kappa.O)-1-naphthalenyl]azo- .kappa.N1]-1-naphthal- enesulfonato (3)]-[1-[[2-(hydroxy- .kappa.O)-5-[(2-methoxyphenyl)- azo]phenyl]-azo- .kappa.N1]-2-naphthalenolato (2-).kappa.O]-, disodium (acid black 132) (CAS No. 57693–14–8) (provided for in subheading 3204.12.45)	Free	No change	No change	On or before 12/31/2006	”.
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“	9902.03.60	Chromate(3-), bis[3-(hydroxy-.kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N1]-7-nitro-1-naphthalenesulfonato(3-)]-, trisodium (acid black 172) (CAS No. 57693-14-8) (provided for in subheading 3204.12.45)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1350. ACID BLACK 107.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.61	Chromate(2-), [1-[[2-(hydroxy-.kappa.O)-3,5-dinitrophenyl]azo-.kappa.N1]-2-naphthalenolato(2-)-.kappa.O][3-(hydroxy.kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N1]-7-nitro-1-naphthalenesulfonato(3-)]-, sodium hydrogen (acid black 107) (CAS No. 12218-96-1) (provided for in subheading 3204.12.45)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1351. ACID YELLOW 219, ACID ORANGE 152, ACID RED 278, ACID ORANGE 116, ACID ORANGE 156, AND ACID BLUE 113.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.62	Benzenesulfonic acid, 3-[[3-methoxy-4-[(4-methoxyphenyl)azo]phenyl]azo]-, sodium salt (acid yellow 219) (CAS No. 71819-57-3) (provided for in subheading 3204.12.50)	Free	No change	No change	On or before 12/31/2006	”.
“	9902.03.63	Benzenesulfonic acid, 3-[[4-[(2-hydroxybutoxy)phenyl]azo]-5-methoxy-2-methylphenyl]azo]-, monolithium salt (acid orange 152) (CAS No. 71838-37-4) (provided for in subheading 3204.12.50)	Free	No change	No change	On or before 12/31/2006	”.

“	9902.03.64	Chromate(1-), bis[3-[4-[[5-chloro-2-(hydroxy.kappa.O)-phenyl]azo-.kappa.N1]-4,5-dihydro-3-methyl-5-(oxo-.kappa.O)-1H-pyrazol-1-yl]benzenesulfonamidato(2-)]-, sodium (acid red 278) (CAS No. 71819–56–2) (provided for in subheading 3204.12.50)	Free	No change	No change	On or before 12/31/2006	”.
“	9902.03.65	Benzenesulfonic acid, 3-[[4-[(2-ethoxy-5-methylphenyl)- azo]-1-naphthalenyl]azo]-, sodium salt (acid orange 116) (CAS No. 12220–10–9) (provided for in subheading 3204.12.50)	Free	No change	No change	On or before 12/31/2006	”.
“	9902.03.66	Benzenesulfonic acid, 4-[[5-methoxy-4-[(4-methoxyphenyl)azo]-2-methylphenyl]azo]-, sodium salt (acid orange 156) (CAS No. 68555–86–2) (provided for in subheading 3204.12.50)	Free	No change	No change	On or before 12/31/2006	”.
“	9902.03.67	1-Naphthalene-sulfonic acid, 8-(phenylamino)-5-[[4-[(3-sulfophenyl)-azo]-1-naphthalenyl]-azo]-, disodium salt (acid blue 113) (CAS No. 3351–05–1) (provided for in subheading 3204.12.50)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1352. EUROPIUM OXIDES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.22	Europium oxides having a purity of at least 99.99 percent (CAS No. 1308–96–7) (provided for in subheading 2846.90.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1353. LUGANIL BROWN NGT POWDER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.76	Acid brown 290 (CAS No. 12234–74–1) (provided for in subheading 3204.12.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1354. THIOPHANATE-METHYL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.77	4,4'-o-Phenylenebis-(3-thioallophanic acid), dimethyl ester (thiophanate-methyl) (CAS No. 23564-05-8) (provided for in subheading 2930.90.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1355. MIXTURES OF THIOPHANATE-METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

“	9902.03.79	Mixtures of 4,4'-o-Phenylenebis-(3-thioallophanic acid), dimethyl ester (Thiophanate-methyl) (CAS No. 23564-05-8) and application adjuvants (provided for in subheading 3808.20.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1356. HYDRATED HYDROXYPROPYL METHYLCELLULOSE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.80	2-Hydroxypropyl methyl cellulose (CAS No. 9004-65-3)(provided for in subheading 3912.39.00)	0.4%	No change	No change	On or before 12/31/2006	”.
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SEC. 1357. C 12-18 ALKENES, POLYMERS WITH 4-METHYL-1-PENTENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.86	C 12-18 alkenes, polymers with 4-methyl-1-pentene (CAS No. 68413-03-6) (provided for in subheading 3902.90.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1358. CERTAIN 12-VOLT BATTERIES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.87	12V Lead-acid storage batteries, of a kind used for the auxiliary source of power for burglar or fire alarms and similar apparatus of subheading 8531.10.00 (provided for in subheading 8507.20.80)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1359. CERTAIN PREPARED OR PRESERVED ARTICHOKEs.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.89	Artichokes, prepared or preserved otherwise than by vinegar or acetic acid, not frozen (provided for in subheading 2005.90.80)	13.8%	No change	No change	On or before 12/31/2006	”.
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SEC. 1360. CERTAIN OTHER PREPARED OR PRESERVED ARTICHOKEs.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.90	Artichokes, prepared or preserved by vinegar or acetic acid (provided for in subheading 2001.90.25)	7.5%	No change	No change	On or before 12/31/2006	”.
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SEC. 1361. ETHYLENE/TETRAFLUOROETHYLENE COPOLYMER (ETFE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.91	Ethylene-tetrafluoroethylene copolymers (ETFE) (provided for in subheading 3904.69.50)	4.9%	No change	No change	On or before 12/31/2006	”.
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SEC. 1362. ACETAMIPRID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.92	N1-[(6-Chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine (CAS No. 135410–20–7) (provided for in subheading 2933.39.27)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1363. CERTAIN MANUFACTURING EQUIPMENT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

“	9902.84.94	Extruders, screw type, suitable for processing polyester thermoplastics in a cast film production line (provided for in subheading 8477.20.00)	Free	No change	No change	On or before 12/31/2006	”.
	9902.84.95	Casting machinery suitable for processing polyester thermoplastics into a sheet in a cast film production line (provided for in subheading 8477.80.00)	Free	No change	No change	On or before 12/31/2006	
	9902.84.96	Transverse direction orientation tenter machinery, suitable for processing polyester film in a cast film production line (provided for in subheading 8477.80.00)	Free	No change	No change	On or before 12/31/2006	
	9902.84.97	Winder machinery suitable for processing polyester film in a cast film production line (provided for in subheading 8477.80.00)	Free	No change	No change	On or before 12/31/2006	
	9902.84.98	Slitting machinery suitable for processing polyester film in a cast film production line (provided for in subheading 8477.80.00)	Free	No change	No change	On or before 12/31/2006	

SEC. 1364. TRITICONAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.99	E-5-(4-Chlorobenzylidene)-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol. (CAS No.131983–72–7) (provided for in subheading 2933.99.12)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1365. CERTAIN TEXTILE MACHINERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.88	Weaving machines (looms), shuttleless type, for weaving fabrics of a width exceeding 30 cm but not exceeding 4.9 m, entered without off-loom or large loom take-ups, drop wires, heddles, reeds, harness frames, or beams (provided for in subheading 8446.30.50)	2.7%	No change	No change	On or before 12/31/2006	”.
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SEC. 1366. 3-SULFINOBENZOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.01	3-Sulfinobenzoic acid (CAS No. 15451–00–0) (provided for in subheading 2930.90.29)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1367. POLYDIMETHYLSILOXANE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.02	Polydimethylsiloxane (CAS No. 63148–62–9) (provided for in subheading 3910.00.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1368. BAYSILONE FLUID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.03	An alkyl modified polydimethylsiloxane (CAS No. 102782–93–4) (provided for in subheading 3910.00.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1369. ETHANEDIAMIDE, N- (2-ETHOXYPHENYL)-N'- (4-ISODECYLPHENYL)-.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.05	Preparations based on ethanediamide, N-(2-ethoxyphenyl)-N'-(4-isodecylphenyl)- (CAS No. 82493–14–9) (provided for in subheading 3812.30.60)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1370. 1-ACETYL-4-(3-DODECYL-2, 5-DIOXO-1-PYRROLIDINYL)-2,2,6,6-TETRAMETHYL-PIPERIDINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.06	1-Acetyl-4-(3-dodecyl-2,5-dioxo-1-pyrrolidinyl)-2,2,6,6-tetramethylpiperidine (CAS No. 106917-31-1) (provided for in subheading 2933.39.61)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1371. ARYL PHOSPHONITE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.07	Reaction products of phosphorus trichloride with 1,1'-biphenyl and 2,4-bis(1,1-dimethylethyl)phenol (CAS No. 119345-01-6) (provided for in subheading 3812.30.60)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1372. MONO OCTYL MALIONATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.08	mono-2-Ethylhexyl maleate (CAS No. 7423-42-9) (provided for in subheading 2917.19.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1373. 3,6,9-TRIOXAUNDECANEDIOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.09	3,6,9-Trioxaundecanedioic acid (CAS No. 13887-98-4) (provided for in subheading 2918.90.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1374. CROTONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.10	(E)-2-Butenoic acid (Crotonic acid) (CAS No. 107-93-7) (provided for in subheading 2916.19.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1375. 1,3-BENZENEDICARBOXAMIDE, N, N'-BIS-(2,2,6,6-TETRAMETHYL-4-PIPERIDINYL)-.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.11	1,3-Benzenedicarboxamide, N,N'-bis-(2,2,6,6-tetramethyl-4-piperidinyl)- (CAS No. 42774-15-2) (provided for in subheading 2933.39.61)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1376. 3-DODECYL-1-(2,2,6,6-TETRAMETHYL-4-PIPERIDINYL)-2,5-PYRROLIDINEDIONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.12	3-Dodecyl-1-(2,2,6,6-tetramethyl-4-piperidinyl)-2,5-pyrrolidinedione (CAS No. 79720-19-7) (provided for in subheading 2933.39.61)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1377. OXALIC ANILIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.04.13	Ethanediamide, N-(2-ethoxyphenyl)-N'-(2-ethylphenyl)- (CAS No. 23949-66-8) (provided for in subheading 2924.29.76)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1378. N-METHYL DIISOPROPANOLAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.04.14	1,1'-(Methylamino)diprop-2-ol (CAS No. 4402-30-6) (provided for in subheading 2922.19.95)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1379. 50 PERCENT HOMOPOLYMER, 3-(DIMETHYLAMINO) PROPYL AMIDE, DIMETHYL SULFATE-QUATERNIZED 50 PERCENT POLYRICINOLEIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.04.15	Mixture (1:1) of polyricinoleic acid homopolymer, 3-(dimethylamino) propylamide, dimethyl sulfate, quaternized and polyricinoleic acid (provided for in subheading 3824.90.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1380. BLACK CPW STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.04.16	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4-[(2- or 4-amino-4 or 2-hydroxyphenyl)azo]phenyl]amino]-3-sulfo-phenyl]azo]-5-hydroxy-6-(phenylazo), trisodium salt) (CAS No. 85631-88-5) (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1381. FAST BLACK 287 NA PASTE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.04.17	1,3-Benzenedicarboxylic acid, 5-[[4-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-1-naphthalenyl]azo]-, trisodium salt, in paste form (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1382. FAST BLACK 287 NA LIQUID FEED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.18	1,3-Benzenedicarboxylic acid, 5-[[4-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-1-naphthalenyl]azo]-, trisodium salt, in liquid form (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1383. FAST YELLOW 2 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.19	1,3-Benzenedicarboxylic acid, 5,5'-[[6-(4-morpholinyl)-1,3,5-triazine-2,4-diyl]bis(imino-4,1-phenyleneazo)]bis-, ammonium/sodium/hydrogen salt (direct yellow 173) (provided for in either subheading 3204.14.30 or 3215.19.00.)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1384. CYAN 1 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.21	Copper [29H,31H-phthalocyaninato(2-)-N29,N30,N31,N32]-, aminosulfonylsulfo derivatives, tetramethylammonium salts (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1385. YELLOW 1 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.24	1,5-Naphthalenedisulfonic acid, 3,3'-[[6-[(2-hydroxyethyl)amino]-1,3,5-triazine-2,4-diyl]bis(imino(2-methyl-4,1-phenylene)azo)]bis-, tetrasodium salt (CAS No. 50925-42-3) (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1386. YELLOW 746 STAGE.

Subchapter II of chapter 99 of is amended by inserting in numerical sequence the following new heading:

“	9902.04.26	1,3-Bipyridirium, 3-carboxy-5'-[(2-carboxy-4-sulfo-phenyl)azo]-1',2'-dihydro-6'-hydroxy-4'-methyl-2'-oxo-, inner salt, lithium/sodium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1387. BLACK SCR STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.27	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[[4-[(2 or 4-amino-4 or 2-hydroxyphenyl)-azo]-phenyl]amino]-3-sulfo-phenyl]-azo]-5-hydroxy-6-(phenylazo)-, tri-sodium salt (CAS No. 85631–88–5) (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1388. MAGENTA 3B-OA STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.28	2-[[[4-Chloro-6-[[[8-hydroxy-3,6-disulfonate-7-[(1-sulfo-2-naphthalenyl)azo]-1-naphthalenyl]amino]-1,3,5-triazin-2-yl]amino]-5-sulfobenzoic acid, sodium/lithium salts (CAS No. 12237–00–2) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1389. YELLOW 577 STAGE.

(a) Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.29	5-[4-[4-[4-(4,8-Disulfonaphthalen-2-ylazo)-phenylamino]-6-(2-sulfoethylamino)-1,3,5-triazin-2-ylamino]-phenylazo]-isophthalic acid, sodium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1390. CYAN 485/4 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.30	Copper, [29H,31H-phthalocyaninato(2-)-xN29,xN30,xN31,xN32]-aminosulfonyl-[(2-hydroxyethyl)amino]-sulfonylsulfo derivatives, sodium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1391. LOW EXPANSION LABORATORY GLASS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.32	Laboratory, hygienic, or pharmaceutical glassware, whether or not graduated or calibrated, of low expansion borosilicate glass or alumino-borosilicate glass, having a linear coefficient of expansion not exceeding 3.3×10^{-7} per Kelvin within a temperature range of 0 to 300°C (provided for in subheadings 7017.20.00 and 7020.00.60).	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1392. STOPPERS, LIDS, AND OTHER CLOSURES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.33	Stoppers, lids, and other closures of low expansion borosilicate glass or alumino-borosilicate glass, having a linear coefficient of expansion not exceeding 3.3×10^{-7} per Kelvin within a temperature range of 0 to 300°C, produced by automatic machine (provided for in subheading 7010.20.20) or produced by hand (provided for in subheading 7010.20.30).	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1393. TRIFLUSULFURON METHYL FORMULATED PRODUCT.

(a) **CALENDAR YEARS 2004 AND 2005.**—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.01	Mixtures of methyl 2-[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]-amino]carbonyl]-amino[sulfonyl]-3-methylbenzoate (CAS No. 126535-15-7) and application adjuvants (provided for in subheading 3808.30.15)	1%	No change	No change	On or before 12/31/2005	”.
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(b) **CALENDAR YEAR 2006.**—

(1) **IN GENERAL.**—Heading 9902.05.01, as added by subsection (a), is amended—

(A) by striking “1%” and inserting “Free”; and

(B) by striking “On or before 12/31/2005” and inserting “On or before 12/31/2007”.

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall take effect on January 1, 2006.

SEC. 1394. AGRUMEX (O-T-BUTYL CYCLOHEXANOL).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.02	o-tert-Butyl-cyclohexanol (CAS No. 13491-79-7) (provided for in subheading 2915.39.45)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1395. TRIMETHYL CYCLO HEXANOL (1-METHYL-3,3-DIMETHYLCYCLOHEXANOL-5).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.03	3,3,5-Trimethylcyclohexan-1-ol (CAS No. 116–02–9) (provided for in subheading 2906.19.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1396. MYCLOBUTANIL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.91	alpha-Butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (myclobutanil) (CAS No. 88671–89–0) (provided for in subheading 2933.99.06)	1.9%	No change	No change	On or before 12/31/2006	”.
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SEC. 1397. METHYL CINNAMATE (METHYL-3-PHENYLPROPENOATE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.04	Methyl cinnamate (methyl-3-phenylpropenoate) (CAS No. 103–26–4) (provided for in subheading 2916.39.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1398. ACETANISOLE (ANISYL METHYL KETONE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.05	p-Acetanisole (CAS No. 100–06–1) (provided for in subheading 2914.50.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1399. ALKYLKETONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.53	1-(4-Chlorophenyl)-4,4-dimethyl-3-pentanone (CAS No. 66346–01–8) (provided for in subheading 2914.70.40)	3.5%	No change	No change	On or before 12/31/2006	”.
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SEC. 1400. IPRDIONE 3-(3-5, DICHOLOROPHENYL)-N-(1-METHYLETHYL)-2,4-DIOXO-1-IMIDAZOLIDINECARBOXAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.51	Iprodione (3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide) (CAS No. 36734-19-7) (provided for in subheading 2933.21.00)	4.1%	No change	No change	On or before 12/31/2006	”.
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SEC. 1401. DICHLOROBENZIDINE DIHYDROCHLORIDE.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.28	3,3'-Dichlorobenzidine dihydrochloride (CAS No. 612-83-9) (provided for in subheading 2921.59.80)	6.3% + 0.2 cents/kg	No change	No change	On or before 12/31/2004	”.
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(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.03.28, as added by subsection (a), is amended—

(A) by striking “6.3% + 0.2 cents/kg” and inserting “5.1%”; and

(B) by striking “On or before 12/31/2004” and inserting “On or before 12/31/2006”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1402. KRESOXIM-METHYL.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.78	Methyl (E)-methoxyimino-[alpha-(o-tolyloxy)-o-tolyl]-acetate (kresoxim methyl) (CAS No. 143390-89-0) (provided for in subheading 2925.20.60)	3.3%	No change	Free	On or before 12/31/2004	”.
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(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.03.78, as added by subsection (a), is amended—

(A) by striking “3.3%” and inserting “2.4%”; and

(B) by striking “On or before 12/31/2004” and inserting “On or before 12/31/2006”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1403. MKH 6562 ISOCYANATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.06	2-(Trifluoromethoxy)-benzenesulfonyl isocyanate (CAS No. 99722–81–3) (provided for in subheading 2930.90.29)	0.7%	No change	No change	On or before 12/31/2006	”.
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SEC. 1404. CERTAIN RAYON FILAMENT YARN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.07	High tenacity single yarn of viscose rayon (provided for in subheading 5403.10.30) with a decitex equal to or greater than 1,000	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1405. BENZENEPROPANAL, 4-(1,1-DIMETHYLETHYL)-ALPHA-METHYL.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.08	Benzenepropenal, 4-(1,1-dimethylethyl)-alpha-methyl- (CAS No. 80–54–6) (provided for in subheading 2912.29.60)	2.3%	No change	Free	On or before 12/31/2004	”.
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(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.05.08, as added by subsection (a), is amended—

(A) by striking “2.3%” and inserting “1.7%”; and

(B) by striking “On or before 12/31/2004” and inserting “On or before 12/31/2006”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2005.

SEC. 1406. 3,7-DICHLORO-8-QUINOLINE CARBOXYLIC ACID.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.09	3,7-Dichloro-8-quinolinecarb-oxylic acid (quinclorac) (CAS No. 84087–01–4) (provided for in subheading 2933.49.30)	3.9%	No change	Free	On or before 12/31/2004	”.
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(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.05.09, as added by subsection (a), is amended—

(A) by striking “3.9%” and inserting “3.3%”; and

(B) by striking “On or before 12/31/2004” and inserting “On or before 12/31/2006”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2005.

SEC. 1407. 3-(1-METHYLETHYL)-1H-2,1,3-BENZOTHIADIAZIN-4(3H)-ONE 2,2-DIOXIDE, SODIUM SALT.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.10	3-(1-Methyl- ethyl)- 1H-2,1,3- benzothiadiazin- 4(3H)-one-2,2-diox- ide, sodium salt (bentazon, sodium salt) (CAS No. 50723-80-3) (pro- vided for in sub- heading 2934.99.15)	1.8%	No change	Free	On or before 12/31/2004	”.
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(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.05.10, as added by sub-
section (a), is amended—

(A) by striking “1.8%” and inserting “2.6%”; and

(B) by striking “On or before 12/31/2004” and inserting
“On or before 12/31/2006”.

(2) EFFECTIVE DATE.—The amendments made by paragraph
(1) shall take effect on January 1, 2005.

SEC. 1408. 3,3',4'-BIPHENYLTETRACARBOXYLIC DIANHYDRIDE, ODA, ODPA, PMDA, AND 1,3-BIS(4-AMINOPHENOXY)BENZENE.

Subchapter II of chapter 99 is amended by inserting in numer-
ical sequence the following new headings:

“	9902.05.11	3,3',4,4'- Biphenyltetracarbox- ylic dianhydride (CAS No. 2420-87-3) (provided for in sub- heading 2917.39.30)	Free	No change	No change	On or before 12/31/2006	
“	9902.05.12	4,4'-Oxydianiline (CAS No. 101-80-4) (provided for in sub- heading 2922.29.80)	1.5%	No change	No change	On or before 12/31/2006	
“	9902.05.13	4,4'-Oxydiphthalic anhydride (CAS No. 1823-59-2) (provided for in subheading 2918.90.43)	Free	No change	No change	On or before 12/31/2006	
“	9902.05.14	Pyromellitic dianhydride (CAS No. 89-32-7) (pro- vided for in sub- heading 2917.39.70)	Free	No change	No change	On or before 12/31/2006	

“	9902.05.15	1,3-Bis(4-aminophenoxy)- benzene (CAS No. 2479–46–1) (provided for in subheading 2922.29.29 or 2922.29.60)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1409. ORYZALIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.16	Oryzalin (benzenesulfonamide, 4-(dipropylamino)-3,5-dinitro-) (CAS No. 19044–88–3) (provided for in subheading 2935.00.95)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1410. TEBUFENOZIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.17	N-tert-Butyl-N'-(4-ethylbenzoyl)-3,5-dimethylbenzoylhydrazide (tebufenozide) (CAS No. 112410–23–8) (provided for in subheading 2928.00.25)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1411. ENDOSULFAN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.18	6,7,8,9,10,10-Hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide (thiosulfan) (CAS No. 115–29–7) (provided for in subheading 2920.90.10)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1412. ETHOFUMESATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.19	2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl-methanesulfonate (ethofumesate) (CAS No. 26225–79–6) in bulk or mixed with application adjuvants (provided for in subheading 2932.99.08 or 3808.30.15)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1413. NIGHT VISION MONOCULARS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.21	Hand-held night vision monoculars, other than those containing a micro-channel plate to amplify electrons or having a photocathode containing gallium arsenide (provided for in subheading 9005.80.60)	Free	Free	No change	On or before 12/31/2006	”.
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SEC. 1414. SOLVENT YELLOW 163.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.27	Solvent yellow 163 (CAS No. 13676–91–0) (provided for in subheading 3204.19.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1415. RAILWAY CAR BODY SHELLS FOR EMU’S.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following heading:

“	9902.86.09	Railway car body shells for electric multiple unit (EMU) commuter coaches of stainless steel, the foregoing which are designed for passenger coaches each having an aggregate passenger seating capacity up to 156 (including flip-up seating and wheelchair spaces) on two levels (provided for in subheading 8607.99.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1416. CERTAIN EDUCATIONAL DEVICES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.85.43	Educational devices (provided for in subheading 8543.89.96)	1.67%	No change	No change	On or before 12/31/2006	”.
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SEC. 1417. RAILWAY ELECTRIC MULTIPLE UNIT (EMU) GALLERY COMMUTER COACHES OF STAINLESS STEEL.

Subchapter II of chapter 99 is amended by inserting in the numerical sequence the following new heading:

“	9902.86.11	Railway electric multiple unit (EMU) commuter coaches of stainless steel; the foregoing consisting of two finished EMU gallery-type coaches manufactured to contract specifications each, having an aggregate seating capacity of up to 156 seats (including flip-up seats and wheelchair spaces) on two levels. (provided for in subheading 8603.10.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1418. SNOWBOARD BOOTS.

Subchapter II of chapter 99 is amended by striking heading 9902.64.04 and inserting the following:

“	9902.64.04	Snowboard boots with uppers of textile materials (provided for in subheading 6404.11.90)	4%	No change	No change	On or before 12/31/2006	”.
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SEC. 1419. HAND-HELD RADIO SCANNERS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.23	Electrical radiobroadcast receivers, intended to be hand-held, valued over \$40 each, the foregoing designed to receive and monitor publicly transmitted radio communications (provided for in subheading 8527.19.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1420. MOBILE AND BASE RADIO SCANNERS THAT ARE COMBINED WITH A CLOCK.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.24	Electrical radiobroadcast receivers designed to receive and monitor publicly transmitted radio communications, valued at over \$40 each, that are combined with a clock, and that are either mounted on a base or designed for use in an automobile or boat (provided for in subheading 8527.32.50)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1421. MOBILE AND BASE RADIO SCANNERS THAT ARE NOT COMBINED WITH A CLOCK.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.25	Electrical radiobroadcast receivers designed to receive and monitor publicly transmitted radio communications, valued at over \$40 each, that are not combined with a clock, and that are either mounted on a base or designed for use in an automobile or boat (provided for in subheading 8527.39.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1422. CERTAIN FINE ANIMAL HAIR OF KASHMIR (CASHMERE) GOATS NOT PROCESSED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.51.15	Fine animal hair of Kashmir (cashmere) goats; not processed in any manner beyond the degreased or carbonized condition (provided for in subheading 5102.11.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1423. CERTAIN FINE ANIMAL HAIR OF KASHMIR (CASHMERE) GOATS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.51.16	Fine animal hair of Kashmir (cashmere) goats (provided for in subheading 5102.11.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1424. CERTAIN R-CORE TRANSFORMERS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.85.04	120 volt/60 Hz electrical transformers (the foregoing and parts thereof provided for in subheading 8504.31.40 or 8504.90.95), with dimensions not exceeding 88 mm by 88 mm by 72 mm but at least 82 mm by 69 mm by 43 mm and each containing a layered and uncut round core with two balanced bobbins, the foregoing rated as less than 40 VA but greater than 32.2 VA with a rating number of R25	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1425. DECORATIVE PLATES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.99	Decorative plates, whether or not with decorative rim or attached sculpture; decorative sculptures, each with plate or plaque attached; decorative plaques each not over 7.65 cm in thickness; architectural miniatures, whether or not put up in sets; all the foregoing of resin materials and containing agglomerated stone, put up for mail order retail sale, whether for wall or tabletop display and each weighing not over 1.36 kg together with their retail packaging (provided for in subheading 3926.40.00)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1426. BISPYRIBAC SODIUM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.20	Sodium 2,6-bis[(4,6-dimethoxypyrimidin-2-yl)oxy]benzoate (Bispyribac-sodium) (CAS No. 125401–92–5) (provided for in subheading 2933.59.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1427. FENPROPATHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.22	α -Cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate (fenpropathrin) (CAS No. 39515–41–8) (provided for in subheading 2926.90.30)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1428. PYRIPROXYFEN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.23	2-[1-Methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine (Pyriproxyfen) (CAS No. 95737–68–1) (provided for in subheading 2933.39.27)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1429. UNICONAZOLE-P.

Subchapter II is amended by inserting in numerical sequence the following new heading:

“	9902.05.24	(E)-(+)-(S)-1-(4-Chlorophenyl)-4,4-dimethyl-2-(1,2,4-triazol-1-yl)-pent-1-ene-3-ol (Uniconazole) (CAS No. 83657–22–1), mixed with application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1430. FLUMIOXAZIN.

Subchapter II is amended by inserting in numerical sequence the following new heading:

“	9902.05.25	2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2 <i>H</i> -1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1 <i>H</i> -isindole-1,3-(2 <i>H</i>)-dione (Flumioxazin) (CAS No. 103361-09-7) (provided for in subheading 2934.99.15)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1431. NIGHT VISION MONOCULARS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.26	Hand-held night vision monoculars, other than those containing a micro-channel plate to amplify electrons or having a photocathode containing gallium arsenide (provided for in subheading 9005.80.40)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1432. 2,4-XYLIDINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.28	2,4-Xylidine (CAS No. 95-68-1) (provided for in subheading 2921.49.10)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1433. R118118 SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.29	R118118 Salt - benzoic acid, 3-[2-chloro-4-(trifluoromethyl)phenoxy]-(CAS No. 63734-62-3) (provided in subheading 2918.90.20)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1434. NMSBA.

(a) **CALENDAR YEAR 2004.**—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.30	4-(Methylsulfonyl)-2-nitrobenzoic acid (CAS No. 110964-79-9) (provided for in subheading 2916.39.45)	0.28%	No change	No change	On or before 12/31/2004	”.
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(b) **CALENDAR YEAR 2005.**—

(1) **IN GENERAL.**—Heading 9902.29.82, as added by subsection (a), is amended—

(A) by striking “0.28%” and inserting “0.16%”; and

(B) by striking “On or before 12/31/2004” and inserting “On or before 12/31/2005”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2005.

(c) CALENDAR YEARS 2006 THROUGH 2008.—

(1) IN GENERAL.—Heading 9902.29.82, as added by subsection (a) and amended by subsection (b), is further amended—

(A) by striking “0.16%” and inserting “1.1%”; and

(B) by striking “On or before 12/31/2005” and inserting “On or before 12/31/2008”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2006.

SEC. 1435. CERTAIN SATELLITE RADIO BROADCASTING APPARATUS.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.35	Reception apparatus for satellite radio broadcasting, other than satellite radio broadcast receivers described in subheading 8527.21.40 (provided in subheading 8527.90.95)	5.2%	No change	No change	On or before 12/31/2004	”.
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(b) CALENDAR YEAR 2005.—

(1) IN GENERAL.—Heading 9902.04.35, as added by subsection (a), is amended—

(A) by striking “5.2%” and inserting “5.4%”; and

(B) by striking “On or before 12/31/2004” and inserting “On or before 12/31/2005”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2005.

(c) CALENDAR YEAR 2006.—

(1) IN GENERAL.—Heading 9902.04.35, as added by subsection (a) and amended by this section, is further amended—

(A) by striking “5.4%” and inserting “5.5%”; and

(B) by striking “On or before 12/31/2005” and inserting “On or before 12/31/2006”.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall take effect on January 1, 2006.

SEC. 1436. ACEPHATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.31	O,S-Dimethyl acetylphosphoramidothioate (Acephate) (CAS No. 30560-19-1) (provided for in subheading 2930.90.44)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1437. MAGNESIUM ALUMINUM HYDROXIDE CARBONATE HYDRATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

“	9902.05.32	Magnesium aluminum hydroxide carbonate hydrate (CAS No. 11097-59-9) (provided for in subheading 2842.90.00); magnesium aluminum hydroxide carbonate hydrate coated with an organic fatty acid (provided for in subheading 3812.30.90)	Free	No change	No change	On or before 12/31/2006	”.
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SEC. 1438. CERTAIN FOOTWEAR.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

“	9902.05.35	Footwear consisting of an outer sole affixed to an incomplete or unfinished upper to which additional upper parts or material must be affixed to permit the footwear to be held to the foot, such footwear having a bottom of vulcanized rubber and produced by the hand-laid assembly process or hand made, the foregoing footwear of a type that is not designed to be worn over other footwear (provided for in subheadings 6401.99.30 and 6401.99.60	Free	Free	No change	On or before 12/31/2006	”.
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CHAPTER 2—EXISTING DUTY SUSPENSIONS AND REDUCTIONS**SEC. 1451. EXTENSION OF CERTAIN EXISTING DUTY SUSPENSIONS.**

(a) EXISTING DUTY SUSPENSIONS.—Each of the following headings is amended by striking out the date in the effective period column and inserting “12/31/2006”:

(1) Heading 9902.30.90 (relating to 3-amino-2'-(sulfatoethyl sulfonyl) ethyl benzamide).

(2) Heading 9902.32.91 (relating to MUB 738 INT).

(3) Heading 9902.30.31 (relating to 5-amino-N-(2-hydroxyethyl)-2,3-xylenesulfonamide).

(4) Heading 9902.29.46 (relating to 2-amino-5-nitrothiazole).

(5) Heading 9902.32.14 (relating to 2-methyl-4,6-bis[(octylthio) methyl]phenol).

(6) Heading 9902.32.30 (relating to 4-[[4,6-bis(octylthio)-1,3,5-triazin-2-yl]amino]-2,6-bis(1,1-dimethylethyl)phenol).

- (7) Heading 9902.32.16 (relating to calcium bis[monoethyl(3,5-di-tert-butyl-4-hydroxybenzyl) phosphonate]).
- (8) Heading 9902.38.69 (relating to nicosulfuron formulated product (“Accent”)).
- (9) Heading 9902.33.63 (relating to DPX-E9260).
- (10) Heading 9902.33.59 (relating to DPX-E6758).
- (11) Heading 9902.33.61 (relating to carbamic acid (U-9069)).
- (12) Heading 9902.29.35 (relating to 1N-N5297).
- (13) Heading 9902.28.19 (relating to an ultraviolet dye).
- (14) Heading 9902.32.07 (relating to certain organic pigments and dyes).
- (15) Heading 9902.29.07 (relating to 4-hexylresorcinol).
- (16) Heading 9902.29.37 (relating to certain sensitizing dyes).
- (17) Heading 9902.85.42 (relating to certain cathode-ray tubes).
- (18) Heading 9902.30.14 (relating to a fluorinated compound).
- (19) Heading 9902.29.55 (relating to a certain light absorbing photo dye).
- (20) Heading 9902.32.55 (relating to methyl thioglycolate).
- (21) Heading 9902.29.62 (relating to chloro amino toluene).
- (22) Headings 9902.28.08, 9902.28.09, and 9902.28.10 (relating to bromine-containing compounds).
- (23) Heading 9902.32.62 (relating to filter blue green photo dye).
- (24) Heading 9902.32.99 (relating to 5-[(3,5-dichlorophenyl)thio]-4-(1-methylethyl-1)-(4-pyridin 1methyl)-1H-imidazole-2-methanol carbamate).
- (25) Heading 9902.32.97 (relating to (2E,4S)-4-(((2R,5S)-2-((4-fluorophenyl)-methyl)-6-methyl-5-((5-methyl-3-isoxazolyl)-carbonyl y)amino)-1,4-dioxoheptyl)-amino)-5-((3S)-2-oxo-3-pyrrolidinyl)-2-pentenoic acid, ethyl ester).
- (26) Heading 9902.29.87 (relating to Baytron M).
- (27) Heading 9902.39.15 (relating to Baytron P).
- (28) Heading 9902.39.30 (relating to certain ion-exchange resins).
- (29) Heading 9902.28.01 (relating to thionyl chloride).
- (30) Heading 9902.32.12 (relating to DEMT).
- (31) Heading 9902.29.03 (relating to p-hydroxybenzoic acid).
- (32) Headings 9902.29.83 and 9902.38.10 (relating to iminodisuccinate).
- (33) Heading 9902.38.14 (relating to mesamoll).
- (34) Heading 9902.38.15 (relating to Baytron C-R).
- (35) Heading 9902.29.25 (relating to ortho-phenylphenol (OPP)).
- (36) Heading 9902.38.31 (relating to Vulkalent E/C).
- (37) Heading 9902.31.14 (relating to desmedipham).
- (38) Heading 9902.31.13 (relating to phenmedipham).
- (39) Heading 9902.30.16 (relating to diclofop methyl).
- (40) Heading 9902.33.40 (relating to R115777).
- (41) Heading 9902.29.10 (relating to imazalil).
- (42) Heading 9902.29.22 (relating to Norbloc 7966).
- (43) Heading 9902.38.09 (relating to Fungaflor 500 EC).
- (44) Heading 9902.32.73 (relating to Solvent Blue 124).

- (45) Heading 9902.29.73 (relating to 4-amino-2,5-dimethoxy-N-phenylbenzene sulfonamide).
- (46) Heading 9902.32.72 (relating to Solvent Blue 104).
- (47) Heading 9902.34.01 (relating to sodium petroleum sulfonate).
- (48) Heading 9902.29.71 (relating to isobornyl acetate).
- (49) Heading 9902.29.70 (relating to certain TAED chemicals).
- (50) Heading 9902.29.58 (relating to diethyl phosphorochidothioate).
- (51) Heading 9902.29.17 (relating to 2,6-dichloroaniline).
- (52) Heading 9902.29.59 (relating to benfluralin).
- (53) Heading 9902.29.26 (relating to 1,3-diethyl-2-imidazolidinone).
- (54) Heading 9902.29.06 (relating to diphenyl sulfide).
- (55) Heading 9902.32.93 (relating to methoxyfenozide).
- (56) Heading 9902.32.89 (relating to triazamate).
- (57) Heading 9902.29.80 (relating to propiconazole).
- (58) Heading 9902.32.92 (relating to β -Bromo- β -nitrostyrene).
- (59) Heading 9902.29.61 (relating to quinoline).
- (60) Heading 9902.29.25 (relating to 2-phenylphenol).
- (61) Heading 9902.29.08 (relating to 3-amino-5-mercapto-1,2,4-triazole).
- (62) Heading 9902.29.16 (relating to 4,4-dimethoxy-2-butanone).
- (63) Heading 9902.32.87 (relating to fenbuconazole).
- (64) Heading 9902.32.90 (relating to diiodomethyl-*p*-tolylsulfone).
- (65) Heading 9902.28.16 (relating to propiophenone).
- (66) Heading 9902.28.17 (relating to meta-chlorobenzaldehyde).
- (67) Heading 9902.28.15 (relating to 4-bromo-2-fluoroacetanilide).
- (68) Heading 9902.32.82 (relating to 2,6, dichlorotoluene).
- (69) Heading 9902.80.05 (relating to cobalt boron).
- (70) Heading 9902.72.02 (relating to ferroboron).
- (71) Heading 9902.32.85 (relating to 4,4'-difluorobenzophenone).
- (72) Heading 9902.29.34 (relating to certain light absorbing photo dyes).
- (73) Heading 9902.29.38 (relating to certain imaging chemicals).
- (74) Heading 9902.28.18 (relating to 3,5-dibromo-4-hydroxybenzonitril).
- (75) Heading 9902.29.64 (relating to cyclanilide technical).
- (76) Heading 9902.29.98 (relating to fipronil technical).
- (77) Heading 9902.38.04 (relating to 3,5-dibromo-4-hydroxybenzonitril ester and inerts).
- (78) Heading 9902.29.23 (relating to P-nitro toluene-o-sulfonic acid).
- (79) Heading 9902.28.20 (relating to ammonium bifluoride).
- (80) Heading 9902.39.01 (relating to poly(vinyl chloride) (PVC) self-adhesive sheets).
- (81) Heading 9902.32.49 (relating to 11-aminoundecanoic acid).

(82) Heading 9902.69.01 (relating to certain high-end ceramic cutlery).

(b) OTHER MODIFICATIONS.—

(1) CERTAIN CATHODE-RAY TUBES.—Heading 9902.85.41 is amended—

(A) by striking “1%” and inserting “Free”; and

(B) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

(2) ETHALFLURALIN.—Heading 9902.30.49 is amended—

(A) by striking “3.5%” and inserting “Free”; and

(B) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

(3) DMDS.—Heading 9902.33.92 is amended—

(A) by striking “2933.59.80” and inserting “2933.59.95”; and

(B) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

(4) CERTAIN POLYAMIDES.—Heading 9902.39.08 is amended—

(A) by striking “forms of polyamide-6, polyamide-12, and polyamide-6,12 powders (CAS Nos. 25038-54-4, 25038-74-8, and 25191-04-1) (provided for in subheading 3908.10.00)” and inserting “ORGASOL® polyamide powders (provided for in subheading 3908.10.00 or 3908.90.70); and

(B) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

(5) BUTRALIN.—Heading 9902.38.00 is amended by striking “3808.31.15” and inserting “3808.30.15”.

(6) PRO-JET CYAN 1 RO FEED; PRO-JET FAST BLACK 287 NA PASTE/LIQUID FEED.—

(A) IN GENERAL.—Paragraph (2) in each of sections 1222(c) and 1223(c) of the Tariff Suspension and Trade Act of 2000 are amended by striking “January 1, 2001” and inserting “January 1, 2002”.

114 Stat. 2128,
2129.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if such amendments had been enacted immediately after the enactment of the Tariff Suspension and Trade Act of 2000.

(7) 2-METHYL-4-CHLOROPHOXYACETIC ACID.—Heading 9902.29.81 is amended—

(A) in the general rate of duty column, by striking “2.6%” and inserting “1.8%”; and

(B) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

(8) STARANE F.—Heading 9902.29.77 is amended—

(A) in the general rate of duty column, by striking “Free” and inserting “1.5%”; and

(B) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

(9) TRIFLURALIN.—Heading 9902.29.02 is amended—

(A) by striking “3.3%” and inserting “Free”; and

(B) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

(10) CERTAIN REDESIGNATIONS.—(A) The second heading 9902.29.02 (as added by section 1144 of the Tariff Suspension and Trade Act of 2000) is amended by redesignating such

heading as heading 9902.05.33 and placing such heading in numerical sequence.

(B) The second heading 9902.39.07 (as added by section 1248 of the Tariff Suspension and Trade Act of 2000) by redesignating such heading as heading 9902.05.34 and placing such heading in numerical sequence.

(11) CERTAIN RAILWAY CAR BODY SHELLS.—(A) Heading 9902.86.07 is amended—

(i) in the article description, by striking “138” and inserting “up to 150”; and

(ii) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

(B) Heading 9902.86.08 is amended—

(i) in the article description, by striking “148” and inserting “140”; and

(ii) in the effective period column, by striking the date contained therein and inserting “12/31/2006”.

SEC. 1452. PIGMENT YELLOW 154.

Heading 9902.32.18 of the Harmonized Tariff Schedule of the United States is amended by striking “12/31/2002” and inserting “12/31/2006”.

SEC. 1453. PIGMENT YELLOW 175.

Heading 9902.32.19 of the Harmonized Tariff Schedule of the United States is amended by striking “12/31/2002” and inserting “12/31/2006”.

SEC. 1454. PIGMENT RED 208.

Heading 9902.32.27 of the Harmonized Tariff Schedule of the United States is amended by striking “12/31/2002” and inserting “12/31/2006”.

SEC. 1455. PIGMENT RED 187.

Heading 9902.32.22 of the Harmonized Tariff Schedule of the United States is amended by striking “12/31/2002” and inserting “12/31/2006”.

SEC. 1456. PIGMENT RED 185.

Heading 9902.32.26 of the Harmonized Tariff Schedule of the United States is amended by striking “12/31/2002” and inserting “12/31/2006”.

SEC. 1457. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this chapter, the amendments made by this chapter apply to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

(b) RETROACTIVE APPLICATION.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Bureau of Customs and Border Protection before the 90th day after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of any good—

(1) that was made on or after January 1, 2004, and before the date of the enactment of this Act, and

(2) with respect to which there would have been no duty or a lower rate of duty if an amendment made by this chapter applied to such entry or withdrawal,

shall be liquidated or reliquidated as if such amendment applied to such entry or withdrawal.

Subtitle B—Other Tariff Provisions

CHAPTER 1—LIQUIDATION OR RELIQUIDATION OF CERTAIN ENTRIES

SEC. 1501. CERTAIN TRAMWAY CARS.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the United States Customs Service within 180 days after the date of the enactment of this Act, the Customs Service shall liquidate or reliquidate the entry described in subsection (c) as free of duty.

(b) **REFUND OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to a request for a liquidation or reliquidation of the entry under subsection (a) shall be refunded with interest within 180 days after the date on which request is made.

(c) **AFFECTED ENTRY.**—The entry referred to in subsection (a) is the entry on July 5, 2002, of 2 tramway cars (provided for in subheading 8603.10.00) manufactured in Plzen, Czech Republic, for the use of the city of Portland, Oregon (Entry number 529–0032191–1).

SEC. 1502. LIBERTY BELL REPLICA.

The Secretary of the Treasury shall admit free of duty a replica of the Liberty Bell imported from the Whitechapel Bell Foundry of London, England, by the Liberty Memorial Association of Green Bay and Brown County, Wisconsin, for use by the city of Green Bay, Wisconsin and Brown County, Wisconsin.

SEC. 1503. CERTAIN ENTRIES OF COTTON GLOVES.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the United States Customs Service within 180 days after the date of the enactment of this Act, the Customs Service—

(1) shall reliquidate each entry described in subsection (c) containing any merchandise which, at the time of original liquidation, had been classified under subheading 6116.92.64 or subheading 6116.92.74; and

(2) shall reliquidate such merchandise under subheading 6116.92.88 at the rate of duty then applicable under such subheading.

(b) **REFUND OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to a request for the reliquidation of an entry under subsection (a) shall be refunded with interest within 180 days after the date on which request is made.

(c) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
0397329–2	02/02/00
0395844–2	12/15/99
0394509–2	09/27/99
0393293–4	08/11/99

Entry number	Date of entry
0391942-8	06/21/99
0389842-4	04/01/99
0387094-4	12/21/98
0386845-0	12/16/98
0385488-0	10/28/98
0384053-3	09/01/98
0382090-7	06/04/98
0381125-5	04/11/98
0289673-4	01/26/98
0288778-2	12/10/97
0288085-2	11/07/97
0386624-0	08/02/97
0284468-4	04/29/97
0283060-0	03/10/97
0281394-5	11/27/96
0274823-2	01/10/96
0274523-8	12/22/95
0274113-8	11/30/95
0273038-8	10/13/95
0272524-8	09/14/95
0272128-8	08/23/95
0271540-5	07/27/95
0270995-2	07/03/95
0270695-8	06/09/95
0269959-1	05/09/95
0269276-0	04/04/95
0265832-4	11/02/94
0264841-6	09/08/94

Deadlines.

SEC. 1504. CERTAIN ENTRIES OF POSTERS.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 4911.91.20 at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 4911.91.40 on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (c) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
F1126496605	09/24/00
F1117735656	10/18/00
90100999235	02/14/01
90101010321	04/23/01
90101001700	02/28/01
28100674408	04/25/01

Entry number	Date of entry
28100671081	04/09/01
28100670398	04/06/01
F1126187352	06/19/00
F1126530833	10/05/00
28100678433	05/18/01
90100999235	04/14/01
90101001700	02/28/01

SEC. 1505. CERTAIN ENTRIES OF POSTERS ENTERED IN 1999 AND 2000.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall—

Deadlines.

(1) not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (c) containing any merchandise which, at the time of the original liquidation, was classified under subheading 4911.91.20 at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 4911.91.40 on the date of entry; and

(2) within 90 days after such liquidation or reliquidation—

(A) refund any excess duties paid with respect to such entries, including interest from the date of entry; or

(B) relieve the importer of record of any excess duties, penalties, or fines associated with the excess duties.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to any entry described in subsection (c) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act.

(c) ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
582–0002495–7	September 2, 1999.
582–00938479	November 19, 1999.
582–8905213–4	March 8, 1999.
582–2250697–3	February 21, 2000.
582–0197509–0	February 18, 2000.
582–1296965–2	February 20, 2000.
582–0212609–9	March 1, 2000.
582–0215607–0	March 3, 2000.
582–0242091–4	March 24, 2000.
582–0046610–9	October 12, 1999.
582–0251198–5	March 31, 2000.
582–0002495–7	September 2, 1999.
528–0088559–7	November 16, 1999.
582–0093847–9	November 19, 1999.
582–0068164–0	October 29, 1999.
582–0163876–3	January 20, 2000.
582–0136646–4	December 22, 1999.
582–0126598–9	December 15, 1999.
582–0111417–9	December 3, 1999.
445–2163068–9	November 14, 1999.
445–2161190–3	September 6, 1999.
445–2163176–0	November 18, 1999.
445–2164563–8	January 13, 2000.
445–2166869–7	April 12, 2000.
445–2162118–3	October 10, 1999.

Entry number	Date of entry
U16-0101858-7	May 2, 2000.
182-0167758-2	November 1, 2000.
445-21574465	April 8, 1999.
445-21576098	April 19, 1999.
445-21570216	March 22, 1999.
445-21612422	September 7, 1999.
445-21622611	October 17, 1999.
445-21637700	December 12, 1999.
445-21687804	June 22, 2000.
445-21596443	July 6, 1999.
ma704011174	February 21, 2001.
ma704011232	February 20, 2001.
ma704014616	March 13, 2001.
ma704025497	May 11, 2001.
445-03667865	June 23, 2000.
445-03668798	June 28, 2000.

Deadlines.

SEC. 1506. CERTAIN ENTRIES OF 13-INCH TELEVISIONS.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under the following subheadings with respect to which there would have been no duty or a lesser duty if the amendments made by section 1003 of the Miscellaneous Trade and Technical Corrections Act of 1999 had applied to such entry or withdrawal:

- (1) Subheading 8528.12.12.
- (2) Subheading 8528.12.20.
- (3) Subheading 8528.12.62.
- (4) Subheading 8528.12.68.
- (5) Subheading 8528.12.76.
- (6) Subheading 8528.12.84.
- (7) Subheading 8528.21.16.
- (8) Subheading 8528.21.24.
- (9) Subheading 8528.21.55.
- (10) Subheading 8528.21.65.
- (11) Subheading 8528.21.75.
- (12) Subheading 8528.21.85.
- (13) Subheading 8528.30.62.
- (14) Subheading 8528.30.66.
- (15) Subheading 8540.11.24.
- (16) Subheading 8540.11.44.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act, and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a), are as follows:

Entry number	Date of entry	Date of liquidation
110-17072538	11/03/98	09/17/99
110-17091314	11/23/98	10/08/99
110-17091322	11/23/98	10/08/99
110-17216804	12/31/98	11/12/99
110-20748215	04/20/99	03/03/00
110-20762802	04/28/99	03/10/00
110-20848544	05/12/99	03/31/00
110-20848569	05/18/99	03/31/00
110-20988456	06/22/99	05/04/00
110-20993563	06/22/99	05/15/00
110-20997705	06/22/99	05/05/00
110-63822017	06/09/97	05/05/00
110-63822041	06/09/97	
110-63822082	06/09/97	
110-68575370	07/11/97	05/22/98
110-68575610	07/11/97	05/22/98
110-15093163	10/05/98	08/20/99
110-15173551	11/02/98	09/17/99
110-17091132	11/07/98	09/24/99
110-17217265	12/05/98	10/15/99
110-20762364	04/12/99	02/18/00
110-63822025	06/09/97	
110-75485118	02/12/98	12/28/98
110-75492643	02/12/98	12/28/98
110-75793447	07/07/98	05/21/99
110-20993704	06/20/99	05/05/00
110-66600972	06/07/97	04/17/98
110-66603414	06/14/97	
110-66603448	06/07/97	04/17/98
110-66617810	06/21/97	05/01/98
110-66618099	06/23/97	05/08/98
110-68156429	07/12/97	05/22/98
110-68165818	07/19/97	05/29/98
110-68165826	07/19/97	05/29/98
110-68171576	07/26/97	06/05/98
110-68175767	08/02/97	06/12/98
110-68177029	08/02/97	06/12/98
110-68217833	08/16/97	06/26/98
110-68220167	08/16/97	07/06/98
110-68220183	08/19/97	07/06/98
110-68233418	08/24/97	07/10/98
110-68234424	08/25/97	07/10/98
110-70008550	09/20/97	07/31/98
110-70014707	09/20/97	07/31/98
110-70014723	09/20/97	07/31/98
110-70014731	09/30/97	07/31/98
110-70014756	09/20/97	07/31/98
110-70014798	09/20/97	07/31/98
110-70100464	10/11/97	08/21/98
110-70106651	10/19/97	09/04/98
110-70106669	10/19/97	09/04/98
110-70112584	10/25/97	09/04/98
110-70113970	10/25/97	09/04/98
110-70113996	10/25/97	09/04/98
110-70115199	10/25/97	09/04/98
110-70190978	11/08/97	09/18/98
110-70192990	11/08/97	09/18/98
110-70198906	11/15/97	09/25/98
110-70198914	11/15/97	09/25/98
110-70204233	11/29/97	10/09/98
110-70204266	11/22/97	10/02/98
110-75399046	12/19/97	10/30/98

Entry number	Date of entry	Date of liquidation
110-75399103	01/04/98	11/20/98
110-75481455	01/24/98	12/04/98
110-75485563	01/24/98	12/04/98
110-75494953	02/07/98	12/18/98
110-04901383	07/11/97	05/22/98
110-33326985	07/07/97	05/22/98
110-63019333	07/11/97	05/22/98
110-63821993	06/07/97	04/17/98
110-66600378	06/20/97	05/01/98
110-66601004	06/20/97	05/01/98
110-66603380	06/20/97	05/01/98
110-66625441	07/07/97	05/22/98
110-66626951	07/07/97	05/22/98
110-68175825	08/04/97	06/19/98
110-68182938	08/11/97	06/26/98
110-68184140	08/11/97	06/26/98
110-68184918	08/11/97	06/26/98
110-68184926	08/11/97	06/26/98
110-68184934	08/11/97	06/26/98
110-68184942	08/11/97	06/26/98
110-68229994	09/08/97	07/24/98
110-68230000	09/08/97	07/24/98
110-68230232	09/03/97	07/17/98
110-70009715	09/22/97	08/07/98
110-70024698	10/07/98	08/21/98
110-70028764	10/13/97	08/28/98
110-70028772	10/13/97	08/28/98
110-70103625	10/30/98	09/11/98
110-70186810	11/13/97	09/25/98
110-70190937	11/26/97	10/09/98
110-70192362	11/19/97	10/02/98
110-70199151	11/26/97	10/09/98
110-70204555	12/04/97	10/16/98
110-70204563	12/04/97	10/16/98
110-70206360	12/06/97	10/23/98
110-75399079	01/07/98	11/20/98
110-75492627	02/11/98	12/28/98
110-75492635	02/11/98	12/28/98
110-14975204	09/15/98	07/30/99
110-20848643	05/19/99	05/31/00
110-20988472	06/20/99	05/05/00
110-20993589	06/20/99	05/05/00
110-75485126	02/11/98	12/28/98
110-75793405	07/16/98	05/28/99
110-75793611	08/04/98	06/18/99
110-75931278	08/16/98	07/02/99
110-75938893	08/16/98	07/23/99

Deadlines.

SEC. 1507. NEOPRENE SYNCHRONOUS TIMING BELTS.

(a) IN GENERAL.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520), or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, liquidate or reliquidate the entries described in subsection (c).

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of the entries under subsection (a), with interest accrued from the date of entry, shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.

(c) **ENTRIES.**—The entries referred to in subsection (a) are the following:

Entry number	Date of entry	Date of liquidation
469/00133193	07/06/89	11/22/91
469/00136022	07/28/89	11/22/91
469/00143135	09/26/89	02/09/90
469/00148969	11/08/89	03/02/90
469/00152565	12/06/89	03/30/90
469/00154785	12/28/89	11/29/91
469/00159461	02/01/90	11/22/91
469/00161921	02/26/90	11/22/91
469/00170237	04/24/90	11/22/91
469/00173546	05/21/90	11/22/91
469/00176218	06/06/90	03/13/92
469/00137038	08/08/89	11/29/91
469/00152599	12/06/89	03/30/90
469/00152607	12/06/89	04/06/90
469/00159610	02/06/90	11/29/91
469/00169205	04/17/90	08/10/90

SEC. 1508. CERTAIN ENTRIES OF ROLLER CHAIN.

(a) **LIQUIDATION OR RELIQUIDATION OF ENTRIES.**—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520) or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of enactment of this Act, liquidate or reliquidate the entries listed in subsection (b) without assessment of antidumping duties or interest and shall refund any antidumping duties or interest which were previously paid. Deadline.

(b) **AFFECTED ENTRIES.**—The entries referred to in subsections (a) and (b) are the following:

Entry number	Date of entry	Port
12606577	05/04/89	Columbia-Snake River (Portland, Oregon)
12606593	05/08/89	Columbia-Snake River (Portland, Oregon)
12607492	05/30/89	Columbia-Snake River (Portland, Oregon)
12608680	06/09/89	Columbia-Snake River (Portland, Oregon)
00054863	07/28/89	Columbia-Snake River (Portland, Oregon)
00056181	08/21/89	Columbia-Snake River (Portland, Oregon)
00057973	09/25/89	Columbia-Snake River (Portland, Oregon)
25761120	11/20/89	Columbia-Snake River (Portland, Oregon)
25767150	03/12/90	Columbia-Snake River (Portland, Oregon)
25767762	03/22/90	Columbia-Snake River (Portland, Oregon)
85–4232312	04/09/85	Columbia-Snake River (Portland, Oregon)
85–4237582	07/18/85	Columbia-Snake River (Portland, Oregon)
85–4238086	07/25/85	Columbia-Snake River (Portland, Oregon)
85–4238976	08/19/85	Columbia-Snake River (Portland, Oregon)

85-4464818	09/11/85	Columbia-Snake land, Oregon)	River (Port-
85-4466722	09/27/85	Columbia-Snake land, Oregon)	River (Port-
86-4307787	10/30/85	Columbia-Snake land, Oregon)	River (Port-
86-4310389	11/21/85	Columbia-Snake land, Oregon)	River (Port-
86-4311715	12/31/85	Columbia-Snake land, Oregon)	River (Port-
86-4312109	01/10/86	Columbia-Snake land, Oregon)	River (Port-
86-4317078	02/28/86	Columbia-Snake land, Oregon)	River (Port-
86-4318349	03/17/86	Columbia-Snake land, Oregon)	River (Port-
85-4235937	06/15/85	Columbia-Snake land, Oregon)	River (Port-
36074057	09/12/96	Columbia-Snake land, Oregon)	River (Port-
36071137	05/08/96	Columbia-Snake land, Oregon)	River (Port-
36078074	03/26/97	Columbia-Snake land, Oregon)	River (Port-
85-4464177	08/26/85	Columbia-Snake land, Oregon)	River (Port-
36077688	03/11/97	Columbia-Snake land, Oregon)	River (Port-
36072788	07/18/96	Columbia-Snake land, Oregon)	River (Port-
36074990	11/06/96	Columbia-Snake land, Oregon)	River (Port-
81-4139170	06/30/81	Columbia-Snake land, Oregon)	River (Port-
81-4139992	07/23/81	Columbia-Snake land, Oregon)	River (Port-
81-4140868	08/06/81	Columbia-Snake land, Oregon)	River (Port-
81-4140871	08/07/81	Columbia-Snake land, Oregon)	River (Port-
81-4141469	08/28/81	Columbia-Snake land, Oregon)	River (Port-
81-4142219	09/23/81	Columbia-Snake land, Oregon)	River (Port-
82-4139364	11/03/81	Columbia-Snake land, Oregon)	River (Port-
82-4140939	12/02/81	Columbia-Snake land, Oregon)	River (Port-
82-4141598	12/15/81	Columbia-Snake land, Oregon)	River (Port-
82-4142571	01/14/82	Columbia-Snake land, Oregon)	River (Port-
82-4143499	03/02/82	Columbia-Snake land, Oregon)	River (Port-
82-4145390	04/01/82	Columbia-Snake land, Oregon)	River (Port-
82-4146179	04/22/82	Columbia-Snake land, Oregon)	River (Port-
82-4147932	06/02/82	Columbia-Snake land, Oregon)	River (Port-
82-4148601	06/22/82	Columbia-Snake land, Oregon)	River (Port-
82-4149626	07/29/82	Columbia-Snake land, Oregon)	River (Port-
82-4150291	08/10/82	Columbia-Snake land, Oregon)	River (Port-
82-4151203	09/14/82	Columbia-Snake land, Oregon)	River (Port-
83-4124149	10/07/82	Columbia-Snake land, Oregon)	River (Port-

83-4124547	10/14/82	Columbia-Snake land, Oregon)	River (Port-
83-4125342	11/08/82	Columbia-Snake land, Oregon)	River (Port-
83-4125407	11/15/82	Columbia-Snake land, Oregon)	River (Port-
83-4126011	12/08/82	Columbia-Snake land, Oregon)	River (Port-
83-4126448	12/21/82	Columbia-Snake land, Oregon)	River (Port-
83-4126927	12/29/82	Columbia-Snake land, Oregon)	River (Port-
83-4127191	01/10/83	Columbia-Snake land, Oregon)	River (Port-
83-4129050	02/28/83	Columbia-Snake land, Oregon)	River (Port-
83-4129678	03/17/83	Columbia-Snake land, Oregon)	River (Port-
83-4129937	03/30/83	Columbia-Snake land, Oregon)	River (Port-
83-4131491	04/29/83	Columbia-Snake land, Oregon)	River (Port-
83-4133460	06/15/83	Columbia-Snake land, Oregon)	River (Port-
84-4154743	11/29/83	Columbia-Snake land, Oregon)	River (Port-
84-4161972	04/18/84	Columbia-Snake land, Oregon)	River (Port-
84-4163543	05/22/84	Columbia-Snake land, Oregon)	River (Port-
84-4164568	06/13/84	Columbia-Snake land, Oregon)	River (Port-
84-4161972	06/18/84	Columbia-Snake land, Oregon)	River (Port-
84-4165758	07/06/84	Columbia-Snake land, Oregon)	River (Port-
84-4421214	07/30/84	Columbia-Snake land, Oregon)	River (Port-
84-4421366	08/06/84	Columbia-Snake land, Oregon)	River (Port-
84-4421418	08/22/84	Columbia-Snake land, Oregon)	River (Port-
84-4424389	09/21/84	Columbia-Snake land, Oregon)	River (Port-
85-4220094	10/03/84	Columbia-Snake land, Oregon)	River (Port-
85-4220816	10/11/84	Columbia-Snake land, Oregon)	River (Port-
85-4221527	10/25/84	Columbia-Snake land, Oregon)	River (Port-
85-4222199	11/07/84	Columbia-Snake land, Oregon)	River (Port-
85-4222856	11/15/84	Columbia-Snake land, Oregon)	River (Port-
85-4224126	12/10/84	Columbia-Snake land, Oregon)	River (Port-
85-4225413	01/15/85	Columbia-Snake land, Oregon)	River (Port-
85-4230071	02/28/85	Columbia-Snake land, Oregon)	River (Port-
85-4231070	03/18/85	Columbia-Snake land, Oregon)	River (Port-
85-4234828	05/21/85	Columbia-Snake land, Oregon)	River (Port-
85-4237524	07/15/85	Columbia-Snake land, Oregon)	River (Port-
12561053	05/13/87	Columbia-Snake land, Oregon)	River (Port-
12563349	06/20/87	Columbia-Snake land, Oregon)	River (Port-

12564826	07/19/87	Columbia-Snake land, Oregon)	River (Port-
12567126	08/20/87	Columbia-Snake land, Oregon)	River (Port-
12568835	09/18/87	Columbia-Snake land, Oregon)	River (Port-
12570963	10/21/87	Columbia-Snake land, Oregon)	River (Port-
12574346	12/15/87	Columbia-Snake land, Oregon)	River (Port-
12574619	12/23/87	Columbia-Snake land, Oregon)	River (Port-
12577752	02/03/88	Columbia-Snake land, Oregon)	River (Port-
25768422	04/09/90	Columbia-Snake land, Oregon)	River (Port-
25768752	04/16/90	Columbia-Snake land, Oregon)	River (Port-
25770750	05/15/90	Columbia-Snake land, Oregon)	River (Port-
25770758	05/22/90	Columbia-Snake land, Oregon)	River (Port-
25772333	06/26/90	Columbia-Snake land, Oregon)	River (Port-
25773828	07/25/90	Columbia-Snake land, Oregon)	River (Port-
20281783	08/22/90	Columbia-Snake land, Oregon)	River (Port-
20281809	08/24/90	Columbia-Snake land, Oregon)	River (Port-
20288762	10/08/90	Columbia-Snake land, Oregon)	River (Port-
20291360	11/01/90	Columbia-Snake land, Oregon)	River (Port-
20296245	11/29/90	Columbia-Snake land, Oregon)	River (Port-
20300369	01/04/91	Columbia-Snake land, Oregon)	River (Port-
20305772	02/19/91	Columbia-Snake land, Oregon)	River (Port-
83-4130751	04/18/83	Columbia-Snake land, Oregon)	River (Port-
83-4131365	05/04/83	Columbia-Snake land, Oregon)	River (Port-
83-4132649	06/02/83	Columbia-Snake land, Oregon)	River (Port-
83-4133486	06/23/83	Columbia-Snake land, Oregon)	River (Port-
83-4134935	07/27/83	Columbia-Snake land, Oregon)	River (Port-
83-4135617	08/15/83	Columbia-Snake land, Oregon)	River (Port-
83-4136056	08/30/83	Columbia-Snake land, Oregon)	River (Port-
83-4137178	09/23/83	Columbia-Snake land, Oregon)	River (Port-
84-4152253	10/12/83	Columbia-Snake land, Oregon)	River (Port-
84-4153689	11/04/83	Columbia-Snake land, Oregon)	River (Port-
84-4154662	11/29/83	Columbia-Snake land, Oregon)	River (Port-
84-4156110	12/29/83	Columbia-Snake land, Oregon)	River (Port-
84-4156709	01/13/84	Columbia-Snake land, Oregon)	River (Port-
84-4157245	01/25/84	Columbia-Snake land, Oregon)	River (Port-
84-4158419	02/13/84	Columbia-Snake land, Oregon)	River (Port-

84-4158956	02/27/84	Columbia-Snake River (Portland, Oregon)
84-4160672	03/29/84	Columbia-Snake River (Portland, Oregon)
85-4236596	06/28/85	Columbia-Snake River (Portland, Oregon)
12581978	04/06/88	Columbia-Snake River (Portland, Oregon)
12586944	06/22/88	Columbia-Snake River (Portland, Oregon)
12588411	07/14/88	Columbia-Snake River (Portland, Oregon)
12590052	08/10/88	Columbia-Snake River (Portland, Oregon)
12591464	08/31/88	Columbia-Snake River (Portland, Oregon)
12592843	09/21/88	Columbia-Snake River (Portland, Oregon)
12594153	10/06/88	Columbia-Snake River (Portland, Oregon)
12594526	10/12/88	Columbia-Snake River (Portland, Oregon)
12595051	10/21/88	Columbia-Snake River (Portland, Oregon)
12600166	01/11/89	Columbia-Snake River (Portland, Oregon)
12604259	03/25/89	Columbia-Snake River (Portland, Oregon)
85-4221705	10/29/84	Columbia-Snake River (Portland, Oregon)
85-4422876	05/25/85	Los Angeles, California
81-1328861	09/28/81	Honolulu, Hawaii
85-1340139	11/19/84	Honolulu, Hawaii
83-1310040	10/21/82	Honolulu, Hawaii
84-1326082	11/16/83	Honolulu, Hawaii
86-1129340	10/17/85	Honolulu, Hawaii
86-1135525	03/11/86	Honolulu, Hawaii
85-2326987	04/22/85	San Francisco, California
31585289	04/02/96	San Francisco, California
31594950	12/02/96	San Francisco, California
82-1627918	04/27/82	San Francisco, California
83-1668145	10/19/82	San Francisco, California
83-1671640	11/05/82	San Francisco, California
83-1689496	12/23/82	San Francisco, California
07202257	05/23/90	San Francisco, California
07204287	09/05/90	San Francisco, California
84-2390622	07/12/84	Seattle, Washington

SEC. 1509. DRAWBACK CLAIM RELATING TO JUICES ENTERED IN APRIL 1993. Deadlines.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, reliquidate the entry described in subsection (c) at the full amount claimed in such entry.

(b) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the reliquidation under subsection (a) shall be paid by the Customs Service within 90 days after such reliquidation.

(c) **AFFECTED ENTRY.**—The entry referred to in subsection (a) is as follows:

Entry Number	Date of Entry	Date of Liquidation
032-0001141-3	04/28/93	06/25/99

Deadlines.

SEC. 1510. DRAWBACK CLAIM RELATING TO JUICES ENTERED IN MARCH 1994.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, reliquidate the entry described in subsection (c) at the full amount claimed in such entry.

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the reliquidation under subsection (a) shall be paid by the Customs Service within 90 days after such reliquidation.

(c) AFFECTED ENTRY.—The entry referred to in subsection (a) is as follows:

Entry Number	Date of Entry	Date of Liquidation
032-0001138-9	03/30/94	06/25/99

Deadlines.

SEC. 1511. CERTAIN ENTRIES PREMATURELY LIQUIDATED IN ERROR.

(a) IN GENERAL.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520), or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, reliquidate those entries described in subsection (c), in accordance with the final decision of the International Trade Administration of the Department of Commerce, and the final results of the administrative reviews, for entries made on or after December 1, 1993, and before April 1, 2001.

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.

(c) ENTRY LIST.—The entries referred to in subsection (a), are as follows:

Entry number	Date of entry	Date of liquidation
669-26046013	02/09/94	07/12/96
112-62707166	02/12/94	05/14/99
669-26046716	03/05/94	07/12/96
669-26046997	03/16/94	07/12/96
669-26047094	03/22/94	07/12/96
669-26047508	04/03/94	07/12/96
225-41000430	04/11/94	07/29/94
669-26047862	04/19/94	07/12/96
669-26048027	04/22/94	07/12/96
669-26048050	04/22/94	07/12/96
669-26048068	04/22/94	07/12/96
669-26049199	06/05/94	07/12/96
051-01380045	06/14/94	06/21/96
225-21019541	07/02/94	Unknown
669-26050742	07/20/94	07/12/96
669-26051294	08/16/94	07/19/96
669-26051377	08/17/94	07/12/96
669-26051401	08/23/94	07/19/96
051-01378452	09/01/94	08/16/96
669-26051906	09/06/94	07/19/96
669-26052714	10/05/94	07/19/96
669-26054629	01/02/95	07/12/96
669-26054918	01/21/95	07/12/96
669-00985582	02/17/95	09/17/99

Entry number	Date of entry	Date of liquidation
225-41030148	05/01/95	01/20/95
112-85106669	06/07/95	02/25/00
112-80968196	08/03/95	11/17/95
669-26059347	09/02/95	07/12/96
112-79650961	09/27/95	12/29/95
669-28017335	10/06/95	06/14/96
112-05038720	05/01/96	08/02/96
112-17629326	01/06/97	04/18/97
112-17629326	03/12/97	04/18/97
669-01225053	06/12/97	10/15/99
669-01223637	06/25/97	10/08/99
669-01225418	06/25/97	10/08/99
669-01225913	06/27/97	10/08/99
669-01227380	07/03/97	10/08/99
669-01232166	07/07/97	10/08/99
669-01230533	07/09/97	10/08/99
669-01236357	07/30/97	10/08/99
100-47966294	08/08/97	08/26/99
669-01241811	08/13/97	10/08/99
669-01245838	08/27/97	10/08/99
669-01247933	09/04/97	10/15/99
669-01251448	09/21/97	10/08/99
669-01254020	09/24/97	10/08/99
669-01256801	10/01/97	10/08/99
669-01259466	10/15/97	10/08/99
669-01260753	10/15/97	10/08/99
669-01261363	10/16/97	10/08/99
669-01262650	10/22/97	10/08/99
669-01263856	10/24/97	10/08/99
669-01267337	11/06/97	10/08/99
669-01269200	11/12/97	10/08/99
669-01271784	11/20/97	10/08/99
669-01271800	11/23/97	10/08/99
669-01272907	11/30/97	10/08/99
669-01273673	11/30/97	10/08/99
669-01274119	11/30/97	10/08/99
669-01276585	12/04/97	10/08/99
669-01278763	12/14/97	10/15/99
669-01283441	12/30/97	10/08/99
669-01296948	01/09/98	10/08/99
669-01292186	01/22/98	10/08/99
669-04201964	01/23/98	10/08/99
112-14206987	01/23/98	02/22/99
669-01295130	02/01/98	10/08/99
669-01296955	02/05/98	10/08/99
669-01297649	02/12/98	10/08/99
669-01298530	02/12/98	10/08/99
669-01302126	02/21/98	10/08/99
669-01302134	02/21/98	10/08/99
669-01302530	02/21/98	10/08/99
669-01303546	02/21/98	10/08/99
669-01304569	02/27/98	10/08/99
669-01305947	03/05/98	10/08/99
669-01306978	03/07/98	10/08/99
669-01306986	03/07/98	10/08/99
669-01307554	03/12/98	10/08/99
669-01312711	03/14/98	10/08/99
669-28050047	03/20/98	04/02/99
669-01312703	03/21/98	10/08/99
669-01318072	04/07/98	10/08/99
669-01324781	04/24/98	10/08/99
669-01325218	04/25/98	10/08/99

Entry number	Date of entry	Date of liquidation
669-01327586	04/30/98	10/08/99
669-01330283	May-98	10/08/99
669-01332081	May-98	10/08/99
112-35098876	05/08/98	04/02/99
669-01332081	05/16/98	10/08/99
669-01335357	05/26/98	10/08/99
700-07050910	05/30/98	03/24/00
110-54366892	06/03/98	04/16/99
112-38590861	09/09/98	07/23/99
112-01742119	04/20/99	08/09/96
110-64694523	10/07/99	10/01/99

Deadlines.

SEC. 1512. CERTAIN POSTERS ENTERED DURING 2000 AND 2001.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 4911.91.20 of the Harmonized Tariff Schedule of the United States at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 4911.91.40 of the Harmonized Tariff Schedule of the United States on the date of entry.

(b) **REQUESTS.**—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
F1126496605	09-24-00
F1117735656	10-18-00
90100999235	02-14-01
90101010321	04-23-01
90101001700	02-28-01
28100674408	04-25-01
28100671081	04-09-01
28100670398	04-06-01
F1126187352	06-19-00
F1126530833	10-05-00
28100678433	05-18-01
90100999235	04-14-01
90101001700	02-28-01

SEC. 1513. CERTAIN OTHER ENTRIES.

Deadline.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, and subject to subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) by applying the column 1 general rate of duty of

the Harmonized Tariff Schedule of the United States to each entry that is liquidated or reliquidated, regardless of whether the entry was made under the column 1 special rate of duty of such schedule.

(b) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only upon a request therefor is filed with the Customs Service.

(c) PAYMENT OF AMOUNTS DUE.—Any amounts due to the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a), filed at the ports of Laredo, Texas (designated as port of entry 2304), Hidalgo, Texas (designated as port of entry 2305), and Wilmington, Delaware (designated as port of entry 1103), are as follows:

Deadline.

Texas.
Delaware.

Entry number	Port of Entry	Date of Entry
95300618568	2305	02/22/95
95300618576	2305	02/22/95
95300619236	2305	02/27/95
95300619277	2305	02/27/95
95300619806	2305	03/02/95
95300619871	2305	03/02/95
95300620142	2305	03/07/95
95300620176	2305	03/03/95
95300620184	2305	03/03/95
95300620911	2305	03/07/95
95300635133	2305	04/07/95
95300635141	2305	04/07/95
95300635950	2305	04/12/95
95300635968	2305	04/12/95
95300636370	2305	04/14/95
95300636388	2305	04/14/95
95300640554	2305	05/09/95
95300640653	2305	05/10/95
95300656592	2304	11/05/95
95300657665	2304	11/29/95
95300657756	2304	12/02/95
95300658358	2304	12/16/95
95300658408	2304	12/17/95
95300658572	2304	12/19/95
95300658648	2304	12/22/95
95300658754	2304	12/22/95
95300658945	2304	12/27/95
95300659018	2304	12/28/95
95300659117	2304	12/29/95
95300659208	2304	01/02/96
95300659398	2304	01/05/96
95300659513	2304	01/08/96
95300659547	2304	01/09/96
95300659679	2304	01/11/96
95300659737	2304	01/14/96
95300659794	2304	01/13/96
95300659810	2304	01/14/96
95300659844	2304	01/15/96
95300659851	2304	01/15/96
95300659901	2304	01/16/96
95300659919	2304	01/16/96
95300659935	2304	01/17/96
95300660065	2304	01/18/96
95300660107	2304	01/19/96
95300660172	2304	01/22/96

Entry number	Port of Entry	Date of Entry
95300660180	2304	01/22/96
95300660248	2304	01/22/96
95300660362	2304	01/23/96
95300660388	2304	01/24/96
95300660560	2304	01/25/96
95300660743	2304	01/27/96
95300660818	2304	01/29/96
95300660826	2304	01/29/96
95300704053	2305	05/16/95
95300704061	2305	05/16/95
95300704889	2305	05/22/95
95300704897	2305	05/22/95
95300705886	2305	05/31/95
95300705969	2305	05/30/95
95300706900	2305	06/09/95
95300706926	2305	06/09/95
95300752656	2305	02/02/96
95300752698	2305	02/04/96
95300752805	2305	02/05/96
95300752813	2305	02/05/96
95300752870	2305	02/06/96
95300752904	2305	02/06/96
95300753001	2305	02/07/96
95300753076	2305	02/09/96
R7410350736	1103	11/29/95
R7410350769	1103	11/29/95
R7410350801	1103	11/29/95
R7410350835	1103	11/29/95
T8500081575	2305	06/16/95
T8500081591	2305	06/16/95
T8500081716	2305	06/20/95
T8500081724	2305	06/20/95
T8500081815	2305	06/27/95
T8500081823	2305	06/28/95
T8500081922	2305	06/27/95
T8500081930	2305	06/27/95
T8500082052	2305	07/01/95
T8500082060	2305	07/01/95
T8500082326	2305	07/14/95
T8500082342	2305	07/14/95
T8500082458	2305	07/22/95
T8500082482	2305	07/22/95
T8500082508	2305	07/24/95
T8500082516	2305	07/24/95
T8500082581	2305	07/30/95
T8500082599	2305	07/30/95
T8500082656	2305	08/03/95
T8500082664	2305	08/03/95
T8500082748	2305	08/09/95
T8500082797	2305	08/10/95
T8500082839	2305	08/14/95
T8500082847	2305	08/14/95
T8500084462	2305	10/22/95

Deadlines.

SEC. 1514. CERTAIN RAILWAY PASSENGER COACHES.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the United States Customs Service within 180 days after the date of the enactment of this Act, the Customs Service shall liquidate or reliquidate the entry described in subsection (c) as free of duty.

(b) **REFUND OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to a request for a liquidation or reliquidation of the entry under subsection (a) shall be refunded with interest within 180 days after the date on which request is made.

(c) **AFFECTED ENTRY.**—The entry referred to in subsection (a) is the entry on July 12, 2002, of railway passenger coaches (provided for in subheading 8605.00.00) (Entry number 2210888343–4).

SEC. 1515. CERTAIN ENTRIES OF VANADIUM CARBIDES AND VANADIUM CARBONITRIDE. Deadlines.

(a) **IN GENERAL.**—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service, shall, not later than 180 days after receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of its entry or release from warehouse for consumption, was classified under subheading 2849.90.50 of the Harmonized Tariff Schedule of the United States, at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated at the Special rate of duty for such subheading 2849.90.50 on the date of entry without regard to the country of origin of such merchandise.

(b) **REQUESTS.**—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a), filed at the port of Baltimore, are as follows:

Entry date	Entry number	Estimated liquidation date
08/07/98	788–3827590–3	06/20/99
08/07/98	788–3827650–5	06/20/99
08/21/98	788–3830120–4	07/01/99
09/18/98	788–3838000–0	07/25/99
09/26/98	788–3842300–8	08/08/99
10/02/98	788–3842310–7	08/16/99
09/26/98	320–6	08/08/99
10/08/98	788–3844370–9	08/16/99
10/22/98	788–3850440–1	09/01/99
10/22/98	788–3850450–0	09/01/99
11/06/98	788–3853680–9	09/22/99
11/06/98	788–3853690–8	09/22/99
11/13/98	788–3853730–2	10/02/99
11/12/98	788–3855290–5	09/22/99
11/19/98	788–3855300–2	09/27/99
12/27/98	788–3868050–8	11/09/99
02/09/99	788–3877120–8	11/09/99
02/09/99	788–3877130–7	11/09/99

Entry date	Entry number	Estimated liquidation date
03/05/99	788-3883260-4	12/09/99
03/02/99	788-3883270-3	11/22/99
03/26/99	788-3888540-4	11/26/99
04/01/99	788-3888550-3	12/06/99
04/11/99	788-3889130-3	12/16/99
04/16/99	788-3896360-7	12/26/99
04/30/99	788-3897150-1	01/10/00
04/30/99	788-3897160-0	01/10/00
04/25/99	788-3897170-9	01/18/00
06/11/99	788-3913450-5	02/20/00
06/18/99	788-3915060-0	02/22/00
07/09/99	788-3921190-7	03/08/00
07/12/99	788-3923420-6	03/08/00
07/23/99	788-3925480-8	03/18/00
07/30/99	788-3929180-0	03/28/00
07/30/99	788-3929190-9	03/28/00
08/06/99	788-3929200-6	04/10/00
08/06/99	788-3929210-5	04/10/00
08/13/99	788-3931300-0	04/20/00
08/13/99	788-3931310-9	04/20/00
08/28/99	788-3936980-4	04/28/00
08/20/99	788-3936990-3	04/28/00
09/10/99	788-3938010-5	05/06/00
10/08/99	788-3948100-5	05/22/00
10/08/99	788-3948110-4	05/22/00
10/08/99	788-3948120-3	05/22/00
10/15/99	788-3951910-1	05/28/00
10/15/99	788-3951920-0	05/28/00
10/15/99	788-3951930-9	05/28/00
10/29/99	788-3957960-1	06/01/00
10/29/99	788-3957950-0	06/01/00
11/10/99	788-3959830-3	06/15/00
11/13/99	788-3961730-1	06/18/00
11/13/99	788-3961740-0	06/18/00
12/02/99	788-3966670-4	07/05/00
12/02/99	788-3966680-3	07/05/00
12/13/99	788-3971200-3	07/12/00
12/13/99	788-3971210-2	07/12/00

Deadlines.

SEC. 1516. STEEL WIRE ROPE ENTRIES.

(a) IN GENERAL.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520), or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, liquidate or reliquidate the entries made at various ports, which are listed in subsection (c) in accordance with the final results of the administrative reviews covering the period from March 1, 1996, through February 29, 1997, undertaken by the International Trade Administration of the Department of Commerce with respect to such entries (Case Number A-580-811).

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a), with interest provided for by law on the liquidation or reliquidation of the entries, shall be paid by the Customs Service not later than 90 days after such liquidation or reliquidation.

(c) **ENTRIES.**—The entries referred to in subsection (a) are the following:

Entry number	Date of entry
FB30161863-0	08/04/98
FB30162418-2	08/24/98
FB30163470-2	09/15/98
AK50021515-2	11/09/98
GL50600293-7	11/19/98
K800849688-8	09/18/98
AK50022148-1	01/25/99
AK50022311-5	02/08/99

SEC. 1517. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN APRIL 10, 1989, AND AUGUST 20, 1993. Deadlines.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) **REQUESTS.**—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
084-0520091-9	04-10-89
084-0520094-3	04-10-89
084-052031-2	11-27-89
084-0520681-7	05-25-89
084-0520983-7	06-12-89
084-0520984-5	06-12-89
084-0521156-9	07-04-89
084-0521157-7	07-04-89
084-0521401-9	07-31-89
084-0521935-6	09-29-89
084-0521937-2	09-12-89
084-0521938-0	10-05-89
084-0522166-7	10-17-89
084-0522167-5	10-17-89

Entry number	Date of entry
084-0522169-1	10-17-89
084-0522292-1	10-25-89
084-0522293-9	10-25-89
084-0522405-9	11-08-89
084-0522406-7	11-08-89
084-0522407-5	11-08-89
084-0522456-2	11-08-89
084-0522457-0	11-16-89
084-0522458-8	11-16-89
084-0522567-6	11-13-89
084-0522568-4	11-13-89
084-0522644-3	11-16-89
084-0523018-9	11-16-89
084-0523029-6	11-27-89
084-0523030-4	11-27-89
084-0523031-2	11-27-89
084-0522931-4	12-07-89
084-0522932-2	12-07-89
084-0522933-0	12-07-89
614-2718812-5	01-10-90
614-2718814-1	01-16-90
614-2119422-2	01-18-90
614-2718813-3	01-22-90
614-2718811-7	01-23-90
614-2719578-1	01-29-90
614-2719579-9	03-01-90
602-0147021-2	03-02-90
602-0147023-8	03-02-90
602-0147277-0	03-12-90
602-0147116-0	03-20-90
084-0524420-6	03-21-90
084-0524687-0	04-19-90
084-0524689-6	04-19-90
084-0524690-4	04-10-90
084-0528252-9	04-05-91
084-0521688-8	04-19-90
084-0532277-0	04-15-92
084-0532278-8	04-15-92
084-0532279-6	04-15-92
084-0532280-4	04-15-92
084-0532281-2	04-15-92
084-0528346-9	04-18-91
084-0537712-1	08-20-93
084-0537713-9	08-20-93
084-0537714-7	08-20-93

Deadlines.

SEC. 1518. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN APRIL 5, 1991, AND MAY 9, 1992.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) **REQUESTS.**—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
084–0528252–9	04–05–91
084–0528511–8	05–03–91
084–0528512–6	05–03–91
084–0528682–7	05–22–91
084–0528767–6	05–22–91
084–0528906–0	06–05–91
084–0529135–5	07–05–91
084–0529343–5	07–21–91
084–0529344–3	07–21–91
084–0529345–0	07–21–91
084–0529490–4	08–08–91
084–0529491–2	08–08–91
084–0529694–1	08–29–91
084–0529724–6	08–23–91
084–0529725–3	08–23–91
084–0529894–7	09–24–91
084–0529939–0	09–24–91
084–0529940–8	09–24–91
084–0530235–0	10–15–91
084–0530236–8	10–15–91
084–0530380–4	10–29–91
084–0530381–2	10–29–91
084–0530525–4	11–08–91
084–0530526–2	11–08–91
084–0530642–7	11–15–91
084–0530643–5	11–15–91
084–0531008–0	12–10–91
084–0531009–8	12–10–91
084–0531193–0	12–30–91
084–0531194–8	12–30–91
084–0531570–9	02–06–92
084–0531571–7	02–06–92
084–0531696–2	02–12–92
084–0531697–0	02–12–92
084–0531698–8	02–12–92
084–0531699–6	02–12–92
084–0531781–2	02–22–92
084–0531782–0	02–22–92
084–0531927–1	03–11–92
084–0531928–9	03–11–92
084–0531961–0	03–11–92
084–0531962–8	03–11–92
084–0532034–5	03–18–92
084–0532035–2	03–18–92

Entry number	Date of entry
084-0532036-0	03-18-92
084-0532037-8	03-18-92
084-0532211-9	04-04-92
084-0532212-7	04-04-92
084-0532213-5	04-04-92
084-0532215-0	04-04-92
084-0537004-3	06-18-93
084-0537413-6	07-17-93
084-0537414-4	07-17-93
084-0532432-1	05-02-92
084-0532433-9	05-02-92
084-0532434-7	05-02-92
084-0532435-4	05-02-92
084-0532436-2	05-02-92
084-0532526-0	05-09-92

Deadlines.

SEC. 1519. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN MAY 9, 1992, AND SEPTEMBER 18, 1993.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
084-0532527-8	05-09-92
084-0532938-7	06-13-92
084-0532939-5	06-13-92
084-0533381-9	07-29-92
084-0533382-7	07-29-92
084-0533383-5	07-29-92
084-0533384-3	07-29-92
084-0533732-3	09-01-92
084-0533823-0	09-01-92
084-0533824-8	09-01-92

Entry number	Date of entry
084-0534010-3	09-19-92
084-0534052-5	09-26-92
084-0534199-4	10-06-92
084-0534205-9	10-14-92
084-0534206-7	10-14-92
084-0534207-5	10-14-92
084-0534669-6	11-18-92
084-0534670-4	11-18-92
084-0534930-2	11-28-92
084-0535157-1	12-23-92
084-0535311-4	01-09-93
084-0535312-2	01-02-93
084-0535441-9	01-09-93
084-0535578-8	01-27-93
084-0535694-3	02-07-93
084-0535695-0	02-07-93
084-0535854-3	02-24-93
084-0535855-0	02-24-93
084-0535857-6	02-24-93
084-0535858-4	02-24-93
084-0535859-2	02-24-93
084-0536160-4	03-28-93
084-0536291-7	04-07-93
084-0536292-5	04-07-93
084-0536357-6	04-11-93
084-0536361-8	04-11-93
084-0536362-6	04-11-93
084-0536424-4	05-02-93
084-0536518-3	05-02-93
084-0536519-1	05-02-93
084-0536727-0	05-23-93
084-0536839-3	05-29-93
084-0536840-1	05-29-93
084-0536841-9	05-29-93
084-0536842-7	05-29-93
084-0537443-3	07-31-93
084-0537444-1	07-31-93
084-0538038-0	09-18-93
084-0538039-8	09-18-93
084-0538040-6	09-18-93

SEC. 1520. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN SEPTEMBER 18, 1993, AND JULY 25, 1994. Deadlines.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of enactment of this Act and the request contains

sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
084-0538041-4	09-18-93
084-0538311-1	10-17-93
084-0538312-9	10-17-93
084-0538314-5	10-17-93
084-0538345-9	10-23-93
084-0538346-7	10-23-93
084-0538347-5	10-23-93
084-0538628-8	11-06-93
084-0538797-1	11-27-93
084-0538798-9	11-27-93
084-0538800-3	12-05-93
084-0538801-1	11-27-93
084-0538818-5	12-05-93
084-0538979-5	12-11-93
084-0539185-8	01-02-94
084-0539310-2	01-16-94
084-0539554-5	02-06-94
084-0539555-2	02-06-94
084-0539556-0	02-06-94
084-0539557-8	02-06-94
084-0539599-0	02-11-94
084-0539600-6	02-11-94
084-0539664-2	02-22-94
084-0539665-9	02-22-94
084-0539666-7	02-22-94
084-0539791-3	03-06-94
084-0539793-9	03-06-94
084-0539794-7	03-06-94
084-0539876-2	03-13-94
084-0540033-7	03-27-94
084-0540034-5	03-28-94
084-0540142-6	04-11-94
084-0540143-4	04-11-94
084-0540144-2	04-11-94
084-0540145-9	04-11-94
084-0540224-2	04-17-94
084-0540368-7	05-01-94
084-0540369-5	05-01-94
084-0540370-3	05-01-94
084-0540372-9	05-01-94
084-0540737-3	06-05-94
084-0540966-8	06-26-94
084-0541257-1	07-25-94
084-0541258-9	07-25-94

Deadlines.

SEC. 1521. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN NOVEMBER 22, 1989, AND MARCH 7, 1990.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and

subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) **REQUESTS.**—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
01401-788-1003829-5	11/22/89
01401-788-1004108-3	02/01/90
01401-788-1004162-0	02/15/90
01401-788-1004246-1	03/07/90

SEC. 1522. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN MARCH 14, 1990, AND SEPTEMBER 29, 1990. Deadlines.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) **REQUESTS.**—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
01401-788-1004263-6	3/14/90
01401-788-1004300-6	3/19/90

Entry number	Date of entry
24601-237-0043486-5	9/04/90
24601-237-0043490-7	9/06/90
24601-237-0043489-9	9/06/90
24601-237-0043532-6	9/09/90
24601-237-0043533-4	9/09/90
24601-237-0043534-2	9/09/90
24601-237-0043535-9	9/09/90
24601-237-0043536-7	9/09/90
24601-237-0043537-5	9/09/90
24601-237-0043538-3	9/09/90
24601-237-0043539-1	9/09/90
24601-237-0043531-8	9/10/90
24601-237-0043557-3	9/13/90
24601-237-0043558-1	9/13/90
24601-237-0043559-9	9/13/90
24601-237-0043562-3	9/13/90
24601-237-0043563-1	9/13/90
24601-237-0043565-6	9/13/90
24601-237-0043566-4	9/13/90
24601-237-0043567-2	9/13/90
24601-237-0043564-9	9/13/90
24601-237-0043573-0	9/18/90
24601-237-0043581-3	9/18/90
24601-237-0043582-1	9/18/90
24601-237-0043583-9	9/18/90
24601-237-0043584-7	9/18/90
24601-237-0043585-4	9/18/90
24601-237-0043629-0	9/27/90
24601-237-0043630-8	9/27/90
24601-237-0043631-6	9/27/90
24601-237-0043632-4	9/27/90
24601-237-0043633-2	9/27/90
24601-237-0043634-0	9/27/90
24601-237-0043635-7	9/27/90
24601-237-0043636-5	9/27/90
24601-237-0043637-3	9/27/90
24601-237-0043638-1	9/29/90
24601-237-0043639-9	9/29/90
24601-237-0043640-7	9/29/90
24601-237-0043648-0	9/29/90
24601-237-0043641-5	9/29/90

Deadlines.

SEC. 1523. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN OCTOBER 6, 1990, AND NOVEMBER 1, 1990.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if

a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
24601-237-0043690-2	10/06/90
24601-237-0043691-0	10/06/90
24601-237-0043692-8	10/06/90
24601-237-0043693-6	10/06/90
24601-237-0043694-4	10/06/90
24601-237-0043695-1	10/06/90
24601-237-0043696-9	10/06/90
24601-237-0043698-5	10/06/90
72809-442-0321942-1	10/10/90
72809-442-0322201-1	10/12/90
24601-237-0043751-2	10/13/90
24601-237-0043756-1	10/13/90
24601-237-0043772-8	10/13/90
24601-237-0043754-6	10/13/90
24601-237-0043762-9	10/13/90
24601-237-0043755-3	10/13/90
24601-237-0043709-0	10/14/90
24601-237-0043710-8	10/14/90
24601-237-0043711-6	10/14/90
24601-237-0043712-4	10/14/90
24601-237-0043713-2	10/14/90
45201-815-0141984-0	10/18/90
24601-237-0043796-7	10/19/90
24601-237-0043798-3	10/19/90
24601-237-0043800-7	10/19/90
24601-237-0043801-5	10/19/90
24601-237-0043802-3	10/19/90
24601-237-0043797-5	10/19/90
24601-237-0043799-1	10/19/90
72704-442-1163101-3	10/22/90
24601-237-0043818-9	10/24/90
24601-237-0043834-6	10/25/90
24601-237-0043835-3	10/25/90
24601-237-0043836-1	10/25/90
24601-237-0043841-1	10/25/90
24601-237-0043842-9	10/25/90
24601-237-0043843-7	10/25/90
24601-237-0043838-7	10/25/90
24601-237-0043839-5	10/25/90
24601-237-0043837-9	10/25/90
24601-237-0043840-3	10/25/90
72704-442-1164274-7	11/01/90

SEC. 1524. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN NOVEMBER 3, 1990, AND DECEMBER 15, 1990. Deadlines.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise

which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
24601-237-0043907-0	11/03/90
24601-237-0043914-6	11/03/90
24601-237-0043916-1	11/03/90
24601-237-0043917-9	11/03/90
24601-237-0043918-7	11/03/90
24601-237-0043905-4	11/03/90
24601-237-0043906-2	11/03/90
24601-237-0043915-3	11/03/90
24601-237-0043950-0	11/11/90
24601-237-0043951-8	11/11/90
24601-237-0043957-5	11/11/90
24601-237-0043952-6	11/11/90
72704-442-1166912-0	11/11/90
72704-442-1166913-8	11/14/90
24601-237-0044003-7	11/17/90
24601-237-0044005-2	11/17/90
24601-237-0044007-8	11/17/90
24601-237-0044002-9	11/17/90
24601-237-0044006-0	11/17/90
24601-237-0043991-4	11/18/90
24601-237-0043993-0	11/18/90
24601-237-0043995-5	11/18/90
24601-237-0043994-8	11/18/90
72809-442-0322517-0	11/19/90
24601-237-0043992-2	11/27/90
24601-237-0044119-1	11/29/90
24601-237-0044145-6	12/02/90
24601-237-0044144-9	12/02/90
24601-237-0044146-4	12/02/90
24601-237-0044147-2	12/02/90
24601-237-0044170-4	12/04/90
24601-237-0044171-2	12/04/90
24601-237-0044172-0	12/04/90
24601-237-0044173-8	12/04/90
24601-237-0044169-6	12/04/90
24601-237-0044168-8	12/04/90
24601-237-0044221-5	12/08/90
24601-237-0044222-3	12/08/90
24601-237-0044223-1	12/08/90
24601-237-0044224-9	12/08/90
24601-237-0044220-7	12/08/90
24601-237-0044205-8	12/09/90

Entry number	Date of entry
24601-237-0044207-4	12/09/90
24601-237-0044206-6	12/09/90
41703-815-0044549-9	12/13/90
24601-237-0044256-1	12/15/90
24601-237-0044260-3	12/15/90
24601-237-0044261-1	12/15/90
24601-237-0044262-9	12/15/90
24601-237-0044257-9	12/15/90

SEC. 1525. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN DECEMBER 28, 1990, AND FEBRUARY 9, 1991. Deadlines.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
24601-237-0044368-4	12/28/90
24601-237-0044367-6	12/28/90
24601-237-0044369-2	12/29/90
24601-237-0044370-0	12/29/90
24601-237-0044371-8	12/29/90
24601-237-0044372-6	12/29/90
24601-237-0044373-4	12/29/90
24601-237-0044374-2	12/29/90
24601-237-0044375-9	12/29/90
24601-237-0044366-8	12/29/90
24601-237-0044411-2	01/03/91
24601-237-0044412-0	01/03/91
24601-237-0044414-6	01/03/91
24601-237-0044415-3	01/03/91
24601-237-0044416-1	01/03/91
24601-237-0044417-9	01/03/91
24601-237-0044413-8	01/03/91
24601-237-0044410-4	01/03/91
72704-442-1173199-5	01/15/91
24601-237-0044513-5	01/18/91
24601-237-0044512-7	01/18/91
24601-237-0044514-3	01/19/91
24601-237-0044515-0	01/19/91

Entry number	Date of entry
24601-237-0044518-4	01/19/91
24601-237-0044519-2	01/19/91
24601-237-0044524-2	01/19/91
24601-237-0044533-3	01/19/91
24601-237-0044523-4	01/19/91
24601-237-0044522-6	01/19/91
24601-237-0044516-8	01/19/91
24601-237-0044520-0	01/19/91
24601-237-0044521-8	01/19/91
24601-237-0044517-6	01/19/91
24601-237-0044525-9	01/19/91
24601-237-0044564-8	02/01/91
24601-237-0044665-3	02/08/91
24601-237-0044672-9	02/08/91
24601-237-0044673-7	02/08/91
24601-237-0044674-5	02/08/91
24601-237-0044677-8	02/08/91
24601-237-0044660-4	02/08/91
24601-237-0044682-8	02/08/91
24601-237-0044669-5	02/09/91
24601-237-0044676-0	02/09/91
24601-237-0044678-6	02/09/91
24601-237-0044681-0	02/09/91
24601-237-0044683-6	02/09/91
24601-237-0044668-7	02/09/91
24601-237-0044680-2	02/09/91

Deadlines.

SEC. 1526. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN FEBRUARY 14, 1991, AND APRIL 24, 1991.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
24601-237-0044710-7	02/14/91
24601-237-0044715-6	02/14/91
24601-237-0044780-0	02/25/91
24601-237-0044775-0	02/25/91
24601-237-0044776-8	02/25/91

Entry number	Date of entry
24601-237-0044778-4	02/25/91
24601-237-0044779-2	02/25/91
24601-237-0044777-6	02/25/91
24601-237-0044774-3	02/25/91
45201-815-1070377-0	02/27/91
72704-442-1177395-5	03/03/91
24601-237-0044818-8	03/08/91
24601-237-0044852-7	03/09/91
24601-237-0044853-5	03/09/91
24601-237-0044879-0	03/12/91
24601-237-0044880-8	03/12/91
72704-442-1178551-2	03/12/91
24601-237-0044892-3	03/12/91
24601-237-0044958-2	03/23/91
24601-237-0044993-9	03/23/91
24601-237-0044981-4	03/23/91
24601-237-0044982-2	03/23/91
24601-237-0044983-0	03/23/91
24601-237-0044957-4	03/23/91
24601-237-0044992-1	03/23/91
24601-237-0044959-0	03/23/91
24601-237-0045073-9	04/01/91
24601-237-0045095-2	04/03/91
24601-237-0045094-5	04/03/91
24601-237-0045108-3	04/06/91
24601-237-0045109-1	04/06/91
24601-237-0045111-7	04/06/91
24601-237-0045110-9	04/06/91
24601-237-0045107-5	04/06/91
45201-815-1070614-6	04/08/91
24601-237-0045176-0	04/16/91
24601-237-0045177-8	04/16/91
24601-237-0045175-2	04/16/91
24601-237-0045178-6	04/18/91
24601-237-0045181-0	04/18/91
24601-237-0045179-4	04/18/91
24601-237-0045180-2	04/18/91
24601-237-0045250-3	04/22/91
24601-237-0045252-9	04/22/91
24601-237-0045253-7	04/22/91
24601-237-0045255-2	04/22/91
24601-237-0045260-2	04/23/91
24601-237-0045285-9	04/24/91

SEC. 1527. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN APRIL 26, 1991, AND JUNE 16, 1991. Deadlines.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if

a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
24601-237-0045286-7	04/26/91
24601-237-0045340-2	05/02/91
24601-237-0045342-8	05/02/91
24601-237-0045344-4	05/02/91
24601-237-0045343-6	05/02/91
24601-237-0045345-1	05/02/91
24601-237-0045341-0	05/02/91
24601-237-0045305-5	05/02/91
24601-237-0045357-6	05/04/91
24601-237-0045358-4	05/04/91
24601-237-0045354-3	05/04/91
24601-237-0045356-8	05/04/91
24601-237-0045359-2	05/04/91
24601-237-0045353-5	05/04/91
24601-237-0045355-0	05/08/91
24601-237-0045352-7	05/09/91
24601-237-0045384-0	05/10/91
24601-237-0045385-7	05/10/91
72809-442-0326878-2	05/11/91
24601-237-0045462-4	05/18/91
24601-237-0045464-0	05/18/91
24601-237-0045465-7	05/18/91
24601-237-0045466-5	05/18/91
24601-237-0045467-3	05/18/91
24601-237-0045468-1	05/18/91
24601-237-0045469-9	05/18/91
24601-237-0045463-2	05/18/91
24601-237-0045459-0	05/22/91
24601-237-0045479-8	05/22/91
24601-237-0045480-6	05/22/91
24601-237-0045555-5	05/30/91
24601-237-0045556-3	05/30/91
24601-237-0045558-9	05/30/91
24601-237-0045559-7	05/30/91
24601-237-0045561-3	05/30/91
24601-237-0045557-1	05/30/91
24601-237-0045610-8	06/01/91
24601-237-0045611-6	06/01/91
24601-237-0045612-4	06/01/91
24601-237-0045613-2	06/01/91
24601-237-0045615-7	06/01/91
24601-237-0045616-5	06/01/91
24601-237-0045617-3	06/01/91
24601-237-0045618-1	06/01/91
24601-237-0045614-0	06/01/91
24601-237-0045562-1	06/04/91
24601-237-0045580-3	06/04/91
24601-237-0045581-1	06/04/91
24601-237-0045662-9	06/08/91
24601-237-0045675-1	06/08/91
45201-815-1071138-5	06/12/91
24601-237-0045703-1	06/15/91

Entry number	Date of entry
24601-237-0045702-3	06/15/91
24601-237-0045704-9	06/15/91
24601-237-0045705-6	06/15/91
24601-237-0045701-5	06/15/91
24601-237-0045706-4	06/16/91
24601-237-0045732-0	06/16/91

SEC. 1528. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN OCTOBER 7, 1991, AND NOVEMBER 24, 1991. Deadlines.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
10901-551-2400823-0	10/07/91
10901-551-2400824-8	10/07/91
10901-551-2400825-5	10/07/91
10901-551-2400827-1	10/07/91
10901-551-2401490-7	10/07/91
33802-551-1986406-8	10/08/91
33802-551-1986407-6	10/08/91
10901-551-2400867-7	10/10/91
10901-551-2400871-9	10/10/91
10901-551-2400875-0	10/10/91
10901-551-2401642-3	10/10/91
10901-551-2400869-3	10/10/91
10901-551-2400872-7	10/10/91
10901-551-2400873-5	10/10/91
10901-551-2400870-1	10/10/91
10901-551-2400874-3	10/10/91
10901-551-2401609-2	10/10/91
10901-551-2401623-3	10/10/91
10901-551-2401639-9	10/10/91
10901-551-2401640-7	10/10/91
10901-551-2401641-5	10/10/91
10901-551-2400896-6	10/15/91
10901-551-2400915-4	10/15/91
24601-237-0046718-8	10/16/91
24601-237-0046719-6	10/16/91

Entry number	Date of entry
24601-237-0046720-4	10/16/91
24601-237-0046722-0	10/16/91
24601-237-0046723-8	10/16/91
24601-237-0046724-6	10/16/91
24601-237-0046721-2	10/16/91
24601-237-0046752-7	10/18/91
24601-237-0046754-3	10/18/91
24601-237-0046755-0	10/18/91
24601-237-0046756-8	10/18/91
24601-237-0046757-6	10/18/91
24601-237-0046758-4	10/18/91
24601-237-0046759-2	10/18/91
24601-237-0046760-0	10/18/91
24601-237-0046775-8	10/22/91
24601-237-0046776-6	10/22/91
24601-237-0046745-1	10/22/91
10901-551-2400895-8	10/22/91
10901-551-2400958-4	10/22/91
10901-551-2400959-2	10/22/91
24601-237-0046791-5	10/23/91
24601-237-0046813-7	11/02/91
24601-237-0046814-5	11/02/91
24601-237-0046815-2	11/02/91
24601-237-0046817-8	11/02/91
24601-237-0046818-6	11/02/91
24601-237-0046819-4	11/02/91
24601-237-0046816-0	11/02/91
24601-237-0046860-8	11/04/91
24601-237-0046862-4	11/04/91
24601-237-0046922-6	11/11/91
24601-237-0046923-4	11/11/91
24601-237-0046924-2	11/11/91
24601-237-0046925-9	11/11/91
24601-237-0046960-6	11/16/91
24601-237-0046961-4	11/16/91
24601-237-0046962-2	11/16/91
24601-237-0046965-5	11/16/91
24601-237-0046966-3	11/16/91
24601-237-0046967-1	11/16/91
24601-237-0046968-9	11/16/91
24601-237-0046969-7	11/16/91
24601-237-0046970-5	11/16/91
41803-922-0022870-5	11/18/91
24601-237-0046964-8	11/19/91
24601-237-0047038-0	11/22/91
24601-237-0047039-8	11/22/91
24601-237-0047040-6	11/22/91
24601-237-0047013-3	11/24/91
24601-237-0047014-1	11/24/91
24601-237-0047015-8	11/24/91
24601-237-0047016-6	11/24/91
24601-237-0047017-4	11/24/91
24601-237-0047018-2	11/24/91
24601-237-0047020-8	11/24/91
24601-237-0047021-6	11/24/91
24601-237-0047022-4	11/24/91

Deadlines.

SEC. 1529. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN NOVEMBER 30, 1991, AND NOVEMBER 26, 1992.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and

subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
24601–237–0047081–0	11/30/91
24601–237–0047083–6	11/30/91
24601–237–0047084–4	11/30/91
24601–237–0047085–1	11/30/91
24601–237–0047086–9	11/30/91
24601–237–0047087–7	11/30/91
24601–237–0047088–5	11/30/91
24601–237–0047089–3	11/30/91
24601–237–0047090–1	11/30/91
24601–237–0047091–9	11/30/91
24601–237–0047092–7	11/30/91
24601–237–0047093–5	11/30/91
24601–237–0047094–3	11/30/91
24601–237–0047095–0	11/30/91
24601–237–0047082–8	11/30/91
24601–237–0047131–3	12/04/91
24601–237–0047133–9	12/04/91
24601–237–0047135–4	12/04/91
24601–237–0047143–8	12/05/91
24601–237–0047142–0	12/06/91
24601–237–0047198–2	12/11/91
24601–237–0047200–6	12/11/91
24601–237–0047201–4	12/11/91
24601–237–0047202–2	12/11/91
24601–237–0047199–0	12/11/91
24601–237–0047209–7	12/13/91
24601–237–0047210–5	12/13/91
24601–237–0047211–3	12/13/91
24601–237–0047213–9	12/13/91
24601–237–0047215–4	12/13/91
24601–237–0047216–2	12/13/91
24601–237–0047217–0	12/13/91
24601–237–0047218–8	12/13/91
24601–237–0047219–6	12/13/91
24601–237–0047220–4	12/13/91
24601–237–0047221–2	12/13/91
24601–237–0047222–0	12/13/91

Entry number	Date of entry
24601-237-0047224-6	12/13/91
24601-237-0047225-3	12/13/91
24601-237-0047226-1	12/13/91
24601-237-0047227-9	12/13/91
24601-237-0047228-7	12/13/91
24601-237-0047229-5	12/13/91
24601-237-0047214-7	12/13/91
24601-237-0047212-1	12/13/91
45201-57-0017369-2	12/26/91
24601-237-0047258-4	01/22/92
24601-237-0047259-2	01/22/92
24601-237-0047260-0	01/22/92
24601-237-0047261-8	01/22/92
24601-237-0047262-6	01/22/92
24601-237-0047263-4	01/22/92
24601-237-0047264-2	01/22/92
24601-237-0047265-9	01/22/92
24601-237-0047266-7	01/22/92
24601-237-0049136-0	08/14/92
24601-237-0049137-8	08/14/92
24601-237-0049226-9	08/22/92
24601-237-0049329-1	09/22/92
24601-237-0049330-9	09/22/92
24601-237-0049443-0	10/05/92
24601-938-0009748-2	10/26/92
24601-938-0009749-0	10/26/92
24601-938-0009750-8	10/26/92
24601-938-0009813-4	11/08/92
24601-938-0009815-9	11/08/92
24601-938-0009816-7	11/08/92
24601-938-0009838-1	11/14/92
24601-938-0009839-9	11/14/92
24601-938-0009868-8	11/21/92
24601-938-0009869-6	11/21/92
24601-938-0009870-4	11/21/92
24601-938-0009871-2	11/26/92
24601-938-0009872-0	11/26/92
24601-938-0009873-8	11/26/92
24601-938-0009874-6	11/26/92
24601-938-0009875-3	11/26/92

Deadlines.

SEC. 1530. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN DECEMBER 9, 1992, AND MAY 9, 1993.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
24601–938–0009935–5	12/09/92
24601–938–0009936–3	12/09/92
24601–938–0009937–1	12/09/92
24601–938–0009938–9	12/09/92
24601–938–0009939–7	12/09/92
24601–938–0009940–5	12/09/92
24601–938–0009989–2	12/20/92
24601–938–0009992–6	12/20/92
24601–938–0009995–9	12/20/92
24601–938–0009991–8	12/20/92
24601–938–0009993–4	12/20/92
24601–938–0009994–2	12/20/92
24601–938–0009990–0	12/20/92
24601–938–0010002–1	12/21/92
24601–938–0010003–9	12/21/92
24601–938–0010004–7	12/21/92
24601–938–0010005–4	12/21/92
24601–938–0010006–2	12/21/92
24601–938–0010007–0	12/21/92
24601–938–0010029–4	12/29/92
24601–938–0010030–2	12/29/92
24601–938–0010031–0	12/29/92
24601–938–0010098–9	01/22/93
24601–938–0010099–7	01/22/93
24601–938–0010100–3	01/22/93
24601–938–0010101–1	01/22/93
24601–938–0010102–9	01/22/93
24601–938–0010103–7	01/22/93
24601–938–0010105–2	01/24/93
24601–938–0010129–2	01/29/93
24601–938–0010130–0	01/29/93
24601–938–0010131–8	01/29/93
24601–938–0010132–6	01/29/93
24601–938–0010133–4	01/29/93
24601–938–0010134–2	01/29/93
24601–938–0010135–9	01/29/93
24601–938–0010136–7	01/29/93
24601–938–0010137–5	01/29/93
24601–938–0010138–3	01/29/93
24601–938–0010159–9	02/05/93
24601–938–0010160–7	02/05/93
24601–938–0010162–3	02/05/93
24601–938–0010163–1	02/05/93
24601–938–0010164–9	02/05/93
24601–938–0010165–6	02/05/93
24601–938–0010166–4	02/05/93
24601–938–0010167–2	02/05/93
24601–938–0010161–5	02/05/93
24601–938–0010179–7	02/06/93
24601–938–0010180–5	02/06/93
24601–938–0010181–3	02/06/93
24601–938–0010182–1	02/06/93
24601–938–0010183–9	02/06/93
24601–938–0010184–7	02/06/93

Entry number	Date of entry
24601-938-0010185-4	02/06/93
24601-938-0010186-2	02/06/93
24601-938-0010235-7	02/22/93
24601-938-0010236-5	02/22/93
24601-938-0010237-3	02/22/93
24601-938-0010238-1	02/22/93
24601-938-0010252-2	02/24/93
24601-938-0010253-0	02/24/93
24601-938-0010254-8	02/24/93
24601-938-0010255-5	02/24/93
24601-938-0010256-3	02/24/93
24601-938-0010257-1	02/24/93
24601-938-0010258-9	02/24/93
24601-938-0010260-5	02/24/93
24601-938-0010261-3	02/24/93
24601-938-0010262-1	02/24/93
24601-938-0010259-7	02/24/93
24601-938-0010316-5	03/05/93
24601-938-0010318-1	03/05/93
24601-938-0010316-5	03/05/93
24601-938-0010317-3	03/05/93
24601-938-0010317-3	03/05/93
24601-938-0010332-2	03/13/93
24601-938-0010333-0	03/13/93
24601-938-0010334-8	03/13/93
24601-938-0010373-6	03/20/93
24601-938-0010374-4	03/20/93
24601-938-0010375-1	03/20/93
24601-938-0010376-9	03/20/93
24601-938-0010377-7	03/20/93
24601-938-0010378-5	03/20/93
24601-938-0010422-1	03/30/93
24601-938-0010450-2	04/02/93
24601-938-0010451-0	04/02/93
24601-938-0010452-8	04/02/93
24601-938-0010453-6	04/02/93
24601-938-0010454-4	04/02/93
24601-938-0010455-1	04/02/93
24601-938-0010517-8	04/17/93
24601-938-0010518-6	04/17/93
24601-938-0010519-4	04/17/93
24601-938-0010520-2	04/17/93
24601-938-0010549-1	04/24/93
24601-938-0010550-9	04/24/93
24601-938-0010619-2	05/09/93

Deadlines.

SEC. 1531. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN MAY 14, 1993, AND OCTOBER 23, 1993.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) **REQUESTS.**—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
24601-938-0010645-7	05/14/93
24601-938-0010646-5	05/14/93
24601-938-0010647-3	05/14/93
24601-938-0010648-1	05/14/93
24601-938-0010649-9	05/14/93
24601-938-0010605-1	05/21/93
24601-938-0010604-4	05/24/93
24601-938-0010720-8	06/07/93
24601-938-0010735-6	06/11/93
24601-938-0010772-9	06/17/93
24601-938-0010800-8	06/25/93
24601-938-0010801-6	06/25/93
24601-938-0010802-4	06/25/93
45201-438-0919317-0	06/28/93
45201-438-0919412-9	09/05/93
24601-938-0011256-2	10/23/93

SEC. 1532. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN MAY 16, 1990, AND APRIL 20, 1996. Deadlines.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) **REQUESTS.**—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
4601-237-0042701-8	05/16/90
4601-237-0042702-6	05/16/90

Entry number	Date of entry
4601-237-0042730-7	05/17/90
4601-237-0042731-5	05/17/90
4601-237-0042863-6	06/01/90
4601-237-0042877-6	06/15/90
4601-237-0043039-2	06/20/90
4601-237-0043195-2	07/18/90
4601-237-0043253-9	07/27/90
4601-237-0045041-6	03/27/91
4601-237-0045288-3	04/30/91
4601-237-0045648-8	06/08/91
4601-237-0045814-6	06/29/91
4601-237-0045956-5	07/15/91
4601-241-3054400-0	10/22/92
4601-241-3063782-0	09/24/93
4601-241-3065196-1	11/10/93
4601-241-3066943-5	01/25/94
4601-241-3069703-0	04/20/94
4601-241-3073069-0	08/04/94
4601-241-3073130-0	08/05/94
4601-241-3073131-8	08/05/94
4601-241-3073478-3	08/17/94
4601-241-3074656-3	09/21/94
4601-241-3076657-9	11/21/94
4601-241-3076659-5	11/21/94
4601-241-3076660-3	11/21/94
4601-241-3076675-1	11/24/94
4601-241-3076736-1	11/25/94
4601-241-3078296-4	01/12/95
4601-241-3078297-2	01/12/95
0901-112-7829964-6	01/24/95
0901-112-7829965-3	01/25/95
0901-112-7831096-3	01/30/95
4601-241-3078964-7	02/07/95
4601-241-3079146-0	02/14/95
4601-241-3079621-2	03/04/95
4601-241-3080014-7	03/15/95
4601-241-3080151-7	03/23/95
4601-241-3080153-3	03/23/95
4601-241-3080310-9	03/23/95
4601-241-3080798-5	04/05/95
4601-241-3080937-9	04/07/95
4601-241-3080957-7	04/10/95
4601-241-3080963-5	04/10/95
4601-241-3080863-7	04/13/95
4601-241-3081214-2	04/18/95
4601-241-3081215-9	04/18/95
4601-241-3082436-0	05/30/95
4601-241-3082437-8	05/31/95
4601-241-3083317-1	06/27/95
4601-241-3083318-9	06/27/95
4601-241-3083320-5	06/27/95
4601-241-3083321-3	06/27/95
4601-241-3084427-7	07/29/95
4601-241-3084428-5	07/29/95
4601-241-3084429-3	07/29/95
4601-241-3084430-1	07/29/95
4601-241-3084431-9	07/29/95
4601-241-3084432-7	07/29/95
4601-241-3085734-5	09/08/95
4601-241-3085735-2	09/08/95
4601-241-3085736-0	09/08/95
4601-241-3085737-8	09/08/95

Entry number	Date of entry
4601-241-3085738-6	09/08/95
4601-241-3085739-4	09/08/95
4601-241-3085740-2	09/08/95
4601-241-3086662-7	10/05/95
4601-241-3086663-5	10/05/95
4601-241-3087492-8	11/02/95
4601-241-3087499-3	11/02/95
4601-241-3087500-8	11/02/95
4601-241-3087501-6	11/02/95
4601-241-3088399-4	12/01/95
4601-241-3088400-0	12/01/95
4601-241-3088398-6	12/02/95
4601-241-3088770-6	12/15/95
4601-241-3088771-4	12/15/95
4601-241-3088772-2	12/15/95
4601-241-3088773-0	12/15/95
4601-241-1189193-3	12/29/95
4601-241-1189194-1	12/29/95
4601-241-1189195-8	12/29/95
4601-241-1190103-9	01/31/96
4601-241-1190242-5	02/17/96
4601-241-1190741-6	03/07/96
4601-241-1191920-5	04/20/96
4601-241-1191921-3	04/20/96
4601-241-1191922-1	04/20/96
4601-241-1191923-9	04/20/96

SEC. 1533. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN AUGUST 28, 1991, AND JULY 8, 1996. Deadlines.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
4601-241-3043101-8	08/28/91
4601-237-0046898-8	11/12/91
4601-237-0046899-6	11/12/91
4601-237-0047037-2	11/22/91
4601-237-0047080-2	11/30/91

Entry number	Date of entry
4601-241-3045837-5	12/03/91
4601-241-3046070-2	12/11/91
4601-241-3046234-4	12/18/91
4601-241-3046903-4	01/17/92
4601-241-1192827-1	05/30/96
4601-241-1192828-9	05/30/96
4601-241-1192829-7	05/30/96
4601-241-1192826-3	05/30/96
4601-241-1193242-2	06/11/96
4601-241-1193243-0	06/11/96
4601-241-1193244-8	06/11/96
4601-241-1193245-5	06/11/96
4601-241-1193246-3	06/11/96
4601-241-1193939-3	07/08/96
4601-241-1193940-1	07/08/96
4601-241-1193942-7	07/08/96
4601-241-1193943-5	07/08/96

Deadlines.

SEC. 1534. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN APRIL 4, 1995, AND JULY 22, 1996.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) with respect to an entry described in subsection (c) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
4601-076-0264618-9	04/04/95
5201-406-0209309-4	04/04/95
4601-076-0143541-0	04/07/95
4601-076-0143550-1	04/10/95
5201-406-0210067-5	04/13/95
4601-076-0143671-5	04/24/95
4601-076-0143667-3	04/25/95
4601-076-0143668-1	04/25/95
4601-076-0143669-9	04/25/95
4601-076-0143670-7	04/25/95
4601-076-0143688-9	04/26/95
4601-076-0143689-7	04/26/95

Entry number	Date of entry
4601-076-0143737-4	05/01/95
4601-076-0143746-5	05/02/95
4601-076-0143747-3	05/02/95
4601-076-0143748-1	05/02/95
4601-076-0143751-5	05/02/95
4601-076-0143759-8	05/03/95
4601-076-0143791-1	05/08/95
4601-076-0143796-0	05/08/95
4601-076-0143815-8	05/10/95
4601-076-0143819-0	05/10/95
4601-076-0143821-6	05/10/95
4601-076-0143862-0	05/15/95
4601-076-0144059-2	06/06/95
4601-076-0144060-0	06/06/95
4601-076-0144061-8	06/06/95
4601-076-0143916-4	06/19/95
4601-076-0144194-7	06/21/95
4601-076-0144298-6	06/29/95
4601-076-0144366-1	07/07/95
4601-076-0144367-9	07/07/95
4601-076-0144612-8	07/31/95
4601-076-0144626-8	07/31/95
4601-076-0144628-4	07/31/95
4601-076-0144629-2	08/01/95
4601-076-0144681-3	08/04/95
3901-551-3493444-1	08/09/95
4601-076-0144968-4	09/06/95
4601-076-0144969-2	09/06/95
4601-076-0145018-7	09/11/95
4601-076-0145027-8	09/12/95
4601-076-0145023-7	09/13/95
4601-076-0145074-0	09/15/95
4601-076-0145075-7	09/15/95
5201-406-0215201-5	09/15/95
4601-076-0145113-6	09/21/95
4601-076-0145213-4	10/02/95
4601-076-0145215-9	10/03/95
4601-076-0145310-8	10/17/95
4601-076-0145336-3	10/19/95
4601-076-0145370-2	10/24/95
4601-076-0145403-1	10/27/95
4601-076-0145451-0	11/03/95
4601-076-0145487-4	11/07/95
4601-076-0145521-0	11/09/95
4601-076-0145612-7	11/21/95
4601-076-0145711-7	12/01/95
4601-076-0145734-9	12/06/95
4601-076-0145737-2	12/06/95
4601-076-0145763-8	12/07/95
4601-076-0145764-6	12/07/95
4601-076-0146032-7	01/10/96
4601-076-0146033-5	01/10/96
4601-076-0146217-4	02/05/96
4601-076-0146367-7	02/27/96
4601-076-0146464-2	03/11/96
4601-076-0146469-1	03/12/96
4601-076-0146520-1	03/20/96
4601-076-0146562-3	03/26/96
4601-076-0146612-6	04/04/96
4601-076-0146614-2	04/08/96
4601-076-0146683-7	04/15/96
4601-076-0146722-3	04/22/96

	Entry number	Date of entry
	4601-076-0146766-0	04/25/96
	4601-076-0147059-9	06/04/96
	4601-076-0147248-8	07/01/96
	4601-076-0147377-5	07/22/96
Deadlines.	SEC. 1535. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN OCTOBER 11, 1994, AND MAY 16, 1995.	

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) with respect to an entry described in subsection (c) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
0712-112-6947293-9	10/11/94
0712-112-6947294-7	10/14/94
0712-112-6947295-4	10/14/94
0712-112-7277897-5	10/14/94
0712-112-7278028-6	10/14/94
0712-112-7279272-9	11/07/94
0712-112-7292558-4	11/22/94
0712-112-7292647-5	11/22/94
0712-112-7292648-3	11/28/94
0712-112-7293042-8	11/28/94
0712-112-7293140-0	12/06/94
0712-112-7293435-4	12/07/94
0712-112-7293436-2	12/07/94
0712-112-7293515-3	12/07/94
0712-112-7293619-3	12/07/94
0712-112-7293620-1	12/07/94
0712-112-7293521-1	12/13/94
0712-112-7294412-2	12/21/94
0712-112-7294142-5	12/22/94
0712-112-7294143-3	12/22/94
0712-112-7294144-1	12/22/94
0712-112-7295546-6	01/18/95
0712-112-7295994-8	01/27/95
0712-112-7295998-9	01/27/95
0712-112-7296581-2	01/27/95

Entry number	Date of entry
0712-112-7296677-8	02/01/95
0712-112-7298503-4	03/06/95
0712-112-7324623-8	05/08/95
0712-112-7325069-3	05/16/95

SEC. 1536. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN JUNE 17, 1991, AND OCTOBER 3, 1991. Deadlines.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) **REQUESTS.**—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) **PAYMENT OF AMOUNTS OWED.**—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) **AFFECTED ENTRIES.**—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
72704-442-1186614-8	06/17/91
72704-442-1186615-5	06/17/91
24601-237-0045741-1	06/25/91
24601-237-0045787-4	06/25/91
24601-237-0045740-3	06/25/91
24601-237-0045791-6	06/29/91
24601-237-0045850-0	06/29/91
24601-237-0045852-6	06/29/91
24601-237-0045853-4	06/29/91
24601-237-0045855-9	06/29/91
24601-237-0045856-7	06/29/91
24601-237-0045857-5	06/29/91
24601-237-0045858-3	06/29/91
24601-237-0045851-8	07/01/91
24601-237-0045854-2	07/02/91
24601-237-0045888-0	07/05/91
24601-237-0045945-8	07/13/91
24601-237-0045955-7	07/13/91
24601-237-0045953-2	07/15/91
24601-237-0045954-0	07/15/91
24601-237-0045952-4	07/15/91
24601-237-0046033-2	07/27/91
24601-237-0046055-5	07/27/91
24601-237-0046056-3	07/27/91
24601-237-0046059-7	07/27/91
24601-237-0046061-3	07/27/91
24601-237-0046060-5	07/27/91

Entry number	Date of entry
24601-237-0046058-9	07/27/91
24601-237-0046054-8	07/27/91
24601-237-0046057-1	07/27/91
24601-237-0046062-1	07/27/91
24601-237-0046196-7	08/10/91
24601-237-0046197-5	08/10/91
24601-237-0046198-3	08/12/91
24601-237-0046194-2	08/12/91
24601-237-0046195-9	08/12/91
24601-237-0046369-0	08/27/91
24601-237-0046420-1	09/07/91
24601-237-0046421-9	09/07/91
24601-237-0046423-5	09/07/91
24601-237-0046424-3	09/07/91
24601-237-0046425-0	09/07/91
24601-237-0046426-8	09/07/91
24601-237-0046427-6	09/07/91
24601-237-0046429-2	09/07/91
10901-551-2401127-5	09/19/91
10901-551-2401128-3	09/19/91
24601-237-0046467-2	09/21/91
10901-551-2401210-9	09/25/91
10901-551-2401400-6	09/30/91
10901-551-2400795-0	10/02/91
10901-551-2400796-8	10/02/91
10901-551-2400797-6	10/02/91
10901-551-2400800-8	10/02/91
10901-551-2400809-9	10/02/91
10901-551-2400810-7	10/02/91
10901-551-2400811-5	10/02/91
10901-551-2401366-9	10/02/91
10901-551-2401364-4	10/02/91
10901-551-1819256-0	10/03/91

CHAPTER 2—MISCELLANEOUS PROVISIONS

SEC. 1551. HAIR CLIPPERS.

(a) IN GENERAL.—Heading 8510 of chapter 85 is amended—

(1) by striking subheading 8510.20.00 and inserting the following, with the article description for subheading 8510.20 having the same degree of indentation as the article description for subheading 8510.10.00, and with the article descriptions for subheadings 8510.20.10 and 8510.20.90 having the same degree of indentation as the article description for subheading 8510.90.55:

“	8510.20	Hair clippers:	0	0	0	0
	8510.20.10	Hair clippers to be used for agricultural or horticultural purposes	4%	Free (A, CA, E, IL, J, JO, MX)	45%	
	8510.20.90	Other	4%	Free (A, CA, E, IL, J, JO, MX)	45%	”;

and

(2) by striking subheading 8510.90.30 and inserting the following subheadings and superior text thereto, with such superior text having the same degree of indentation as the article description for subheading 8510.90.55:

“	8510.90.30	Parts of hair clippers: Parts of hair clippers to be used for agricultural or horticultural pur- poses	4%	Free (A,CA,E, IL,J,JO,MX)	45%	”.
	8510.90.40	Other parts of hair clippers	4%	Free (A,CA,E, IL,J,JO,MX)	45%	

(b) STAGED RATE REDUCTIONS.—Any staged reduction of a rate of duty proclaimed by the President before the date of the enactment of this Act, that—

Applicability.

(1) would take effect on or after such date of enactment, and

(2) would, but for the amendments made by subsection (a), apply to subheading 8510.20.00 or subheading 8510.90.30 of the Harmonized Tariff Schedule of the United States, applies to the corresponding rate of duty set forth in subheading 8510.20.10, 8510.20.90, or 8510.90.40 of such Schedule (as added by subsection (a)).

SEC. 1552. TRACTOR BODY PARTS.

(a) CERTAIN TRACTOR PARTS.—Heading 8708 is amended by striking subheading 8708.29.20 and inserting the following subheadings and superior text thereto, with such superior text having the same degree of indentation as the article description for subheading 8708.29.15:

“	8708.29.21	Body stampings: For tractors suitable for agricultural use	Free	Free (A, B, CA, E, IL, J, JO, MX)	Free	”.
	8708.29.25	Other	2.5%		25%	

(b) STAGED RATE REDUCTIONS.—Any staged reduction of a rate of duty proclaimed by the President before the date of the enactment of this Act, that—

Applicability.

(1) would take effect on or after such date of enactment, and

(2) would, but for the amendment made by subsection (a), apply to subheading 8708.29.20 of the Harmonized Tariff Schedule of the United States, applies to the corresponding rate of duty set forth in subheading 8708.29.25 of such Schedule (as added by subsection (a)).

SEC. 1553. FLEXIBLE MAGNETS AND COMPOSITE GOODS CONTAINING FLEXIBLE MAGNETS.

Heading 8505 is amended—

(1) by striking subheading 8505.19.00 and inserting the following new subheadings, with the article description for subheadings 8505.19.10, 8505.19.20, and 8505.19.30 having the same degree of indentation as the article description for subheading 8505.11.00:

“	8505.19.10	Flexible magnet	4.9%	Free (A, CA, E, IL, J, JO, MX)	45%	”
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8505.19.20	Composite goods containing flexible magnet	4.9%	Free (A, CA, E, IL, J, JO, MX)	45%	
8505.19.30	Other	4.9%	Free (A, CA, E, IL, J, MX)	45%	"

Applicability.

(b) **STAGED RATE REDUCTIONS.**—Any staged reduction of a rate of duty proclaimed by the President before the date of the enactment of this Act, that—

(1) would take effect on or after such date of enactment, and

(2) would, but for the amendment made by subsection (a), apply to subheading 8505.19.00 of the Harmonized Tariff Schedule of the United States, applies to the corresponding rate of duty set forth in subheadings 8505.19.10, 8505.19.20, and 8505.19.30 of such Schedule (as added by subsection (a)).

SEC. 1554. VESSEL REPAIR DUTIES.

(a) **EXEMPTION.**—Section 466(h) of the Tariff Act of 1930 (19 U.S.C. 1466(h)) is amended—

(1) in paragraph (1), by striking the comma at the end and inserting a semicolon;

(2) in paragraph (2), by striking “, or” at the end and inserting a semicolon;

(3) in paragraph (3), by striking the period at the end and inserting “; or”; and

(4) by adding at the end the following:

“(4) the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas.

Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).”

(b) **AMENDMENT TO HTS.**—Subchapter XVIII of chapter 98 of the Harmonized Tariff Schedule of the United States is amended by striking “U.S. Note” and inserting “U.S. Notes” and by adding after U.S. note 1 the following new note:

“2. Notwithstanding the provisions of subheadings 9818.00.03 through 9818.00.07, no duty shall apply to the cost of equipment, repair parts, and materials that are installed in a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, and declaration and entry shall not be required with respect to such installation, equipment, parts, and materials.”

(c) **EFFECTIVE DATE.**—The amendments made by this section apply to vessel equipment, repair parts, and materials installed on or after April 25, 2001.

SEC. 1555. DUTY-FREE TREATMENT FOR HAND-KNOTTED OR HAND-WOVEN CARPETS.

(a) **AMENDMENT OF THE TRADE ACT OF 1974.**—Section 503(b) of the Trade Act of 1974 (19 U.S.C. 2463(b)) is amended by adding at the end the following new paragraph:

“(4) **CERTAIN HAND-KNOTTED OR HAND-WOVEN CARPETS.**—Notwithstanding paragraph (1)(A), the President may designate

19 USC 1466
note.

as an eligible article or articles under subsection (a) carpets or rugs which are hand-loomed, hand-woven, hand-hooked, hand-tufted, or hand-knotted, and classifiable under subheading 5701.10.16, 5701.10.40, 5701.90.10, 5701.90.20, 5702.10.90, 5702.42.20, 5702.49.10, 5702.51.20, 5702.91.30, 5702.92.00, 5702.99.10, 5703.10.00, 5703.20.10, or 5703.30.00 of the Harmonized Tariff Schedule of the United States.”.

(b) CONFORMING AMENDMENT.—Section 503(b)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(A)) is amended by striking “Textile” and inserting “Except as provided in paragraph (4), textile”.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to any article entered, or withdrawn from warehouse for consumption, on or after the date on which the President makes a designation with respect to the article under section 503(b)(4) of the Trade Act of 1974, as added by subsection (a).

19 USC 2463
note.

SEC. 1556. DUTY DRAWBACK FOR CERTAIN ARTICLES.

Section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) is amended by adding at the end the following new subsection:

“(y) ARTICLES SHIPPED TO THE UNITED STATES INSULAR POSSESSIONS.—Articles described in subsection (j)(1) shall be eligible for drawback under this section if duty was paid on the merchandise upon importation into the United States and the person claiming the drawback demonstrates that the merchandise has entered the customs territory of the United States Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.”.

SEC. 1557. UNUSED MERCHANDISE DRAWBACK.

(a) IN GENERAL.—Section 313(j) of the Tariff Act of 1930 (19 U.S.C. 1313(j)) is amended—

(1) in paragraph (1), by striking “because of its” and inserting “upon entry or”; and

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking “because of its” and inserting “upon entry or”; and

(B) in the matter following subparagraph (C)(ii)(II)—

(i) by striking “then upon” and inserting “then, notwithstanding any other provision of law, upon”; and

(ii) by striking “shall be refunded as drawback” and inserting “shall be refunded as drawback under this subsection”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and shall apply to any drawback claim filed on or after that date and to any drawback entry filed before that date if the liquidation of the entry is not final on that date.

19 USC 1313
note.

SEC. 1558. TREATMENT OF CERTAIN FOOTWEAR UNDER CARIBBEAN BASIN ECONOMIC RECOVERY ACT.

Section 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)) is amended as follows:

(1) By amending paragraph (1)(B) to read as follows:

“(B) footwear provided for in any of subheadings 6401.10.00, 6401.91.00, 6401.92.90, 6401.99.30, 6401.99.60, 6401.99.90, 6402.30.50, 6402.30.70, 6402.30.80, 6402.91.50, 6402.91.80, 6402.91.90, 6402.99.20, 6402.99.80, 6402.99.90, 6403.59.60, 6403.91.30, 6403.99.60, 6403.99.90, 6404.11.90, and 6404.19.20 of the HTS that was not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;”.

(2) In paragraph (3)(A)—

(A) in clause (i), by striking “Subject to clause (ii)” and inserting “Subject to clauses (ii) and (iii)”; and

(B) by adding at the end the following:

“(iii) CERTAIN FOOTWEAR.—Notwithstanding paragraph (1)(B) and clause (i) of this subparagraph, footwear provided for in any of subheadings 6403.59.60, 6403.91.30, 6403.99.60, and 6403.99.90 of the HTS shall be eligible for the duty-free treatment provided for under this title if—

“(I) the article of footwear is the growth, product, or manufacture of a CBTPA beneficiary country; and

“(II) the article otherwise meets the requirements of subsection (a), except that in applying such subsection, ‘CBTPA beneficiary country’ shall be substituted for ‘beneficiary country’ each place it appears.”.

SEC. 1559. DESIGNATION OF SAN ANTONIO INTERNATIONAL AIRPORT FOR CUSTOMS PROCESSING OF CERTAIN PRIVATE AIRCRAFT ARRIVING IN THE UNITED STATES.

114 Stat. 2168.

(a) IN GENERAL.—Section 1453(a) of the Tariff Suspension and Trade Act of 2000 is amended by striking “2-year period” and inserting “6-year period”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as of November 9, 2002.

19 USC 1629
note.

SEC. 1560. AUTHORITY FOR THE ESTABLISHMENT OF INTEGRATED BORDER INSPECTION AREAS AT THE UNITED STATES-CANADA BORDER.

(a) FINDINGS.—Congress makes the following findings:

(1) The increased security and safety concerns that developed in the aftermath of the terrorist attacks in the United States on September 11, 2001, need to be addressed.

(2) One concern that has come to light is the vulnerability of the international bridges and tunnels along the United States borders.

(3) It is necessary to ensure that potentially dangerous vehicles are inspected prior to crossing these bridges and tunnels; however, currently these vehicles are not inspected until after they have crossed into the United States.

(4) Establishing Integrated Border Inspection Areas (IBIAs) would address these concerns by inspecting vehicles before they gained access to the infrastructure of international bridges and tunnels joining the United States and Canada.

(b) CREATION OF INTEGRATED BORDER INSPECTION AREAS.—

(1) **IN GENERAL.**—The Commissioner of the Customs Service, in consultation with the Canadian Customs and Revenue Agency (CCRA), shall seek to establish Integrated Border Inspection Areas (IBIAs), such as areas on either side of the United States-Canada border, in which United States Customs officers can inspect vehicles entering the United States from Canada before they enter the United States, or Canadian Customs officers can inspect vehicles entering Canada from the United States before they enter Canada. Such inspections may include, where appropriate, employment of reverse inspection techniques.

(2) **ADDITIONAL REQUIREMENT.**—The Commissioner of Customs, in consultation with the Administrator of the General Services Administration when appropriate, shall seek to carry out paragraph (1) in a manner that minimizes adverse impacts on the surrounding community.

(3) **ELEMENTS OF THE PROGRAM.**—Using the authority granted by this section and under section 629 of the Tariff Act of 1930, the Commissioner of Customs, in consultation with the Canadian Customs and Revenue Agency, shall seek to—

(A) locate Integrated Border Inspection Areas in areas with bridges or tunnels with high traffic volume, significant commercial activity, and that have experienced backups and delays since September 11, 2001;

(B) ensure that United States Customs officers stationed in any such IBIA on the Canadian side of the border are vested with the maximum authority to carry out their duties and enforce United States law;

(C) ensure that United States Customs officers stationed in any such IBIA on the Canadian side of the border shall possess the same immunity that they would possess if they were stationed in the United States; and

(D) encourage appropriate officials of the United States to enter into an agreement with Canada permitting Canadian Customs officers stationed in any such IBIA on the United States side of the border to enjoy such immunities as permitted in Canada.

SEC. 1561. DESIGNATION OF FOREIGN LAW ENFORCEMENT OFFICERS.

(a) **MISCELLANEOUS PROVISIONS.**—Section 401(i) of the Tariff Act of 1930 (19 U.S.C. 1401(i)) is amended by inserting “, including foreign law enforcement officers,” after “or other person”.

(b) **INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.**—Section 629 of the Tariff Act of 1930 (19 U.S.C. 1629) is amended—

(1) in subsection (a), by inserting “, or subsequent to their exit from,” after “prior to their arrival in”;

(2) in subsection (c)—

(A) by inserting “or exportation” after “relating to the importation”; and

(B) by inserting “or exit” after “port of entry”;

(3) by amending subsection (e) to read as follows:

“(e) **STATIONING OF FOREIGN CUSTOMS AND AGRICULTURE INSPECTION OFFICERS IN THE UNITED STATES.**—The Secretary of State, in coordination with the Secretary and the Secretary of Agriculture, may enter into agreements with any foreign country authorizing the stationing in the United States of customs and

agriculture inspection officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States, or that have gone directly from that country to the United States, comply with the customs and other laws of that country governing the importation or exportation of merchandise. Any foreign customs or agriculture inspection official stationed in the United States under this subsection may exercise such functions, perform such duties, and enjoy such privileges and immunities as United States officials may be authorized to perform or are afforded in that foreign country by treaty, agreement, or law.”; and

(4) by adding at the end the following:

“(g) PRIVILEGES AND IMMUNITIES.—Any person designated to perform the duties of an officer of the Customs Service pursuant to section 401(i) of this Act shall be entitled to the same privileges and immunities as an officer of the Customs Service with respect to any actions taken by the designated person in the performance of such duties.”.

(c) CONFORMING AMENDMENT.—Section 127 of the Treasury Department Appropriations Act, 2003, is hereby repealed.

(d) EFFECTIVE DATE.—This section, and the amendments made by this section, take effect on the date of the enactment of this Act.

19 USC 1401,
1629 and note.
19 USC 1401
note.

SEC. 1562. AMENDMENTS TO UNITED STATES INSULAR POSSESSION PROGRAM.

(a) PRODUCTION CERTIFICATES.—Additional U.S. Note 5(h) to chapter 91 is amended—

(1) by amending subparagraphs (i) and (ii) to read as follows:

“(i) In the case of each of calendar years 2003 through 2015, the Secretaries jointly, shall—

“(A) verify—

“(1) the wages paid by each producer to permanent residents of the insular possessions during the preceding calendar year (including the value of usual and customary health insurance, life insurance, and pension benefits); and
“(2) the total quantity and value of watches and watch movements produced in the insular possessions by that producer and imported free of duty into the customs territory of the United States; and

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“(B) issue to each producer (not later than 60 days after the end of the preceding calendar year) a certificate for the applicable amount.

“(ii) For purposes of subparagraph (i), except as provided in subparagraphs (iii) and (iv), the term ‘applicable amount’ means an amount equal to the sum of—

“(A) 90 percent of the producer’s creditable wages (including the value of usual and customary health insurance, life insurance, and pension benefits) on the assembly during the preceding calendar year of the first 300,000 units; plus

“(B) the applicable graduated declining percentage (determined each year by the Secretaries) of the producer’s creditable wages (including the value of usual and customary health insurance, life insurance, and pension benefits) on the assembly during

the preceding calendar year of units in excess of 300,000 but not in excess of 750,000; plus

“(C) the difference between the duties that would have been due on each producer’s watches and watch movements (excluding digital watches and excluding units in excess of the 750,000 limitation of this subparagraph) imported into the customs territory of the United States free of duty during the preceding calendar year if the watches and watch movements had been subject to duty at the rates set forth in column 1 under this chapter that were in effect on January 1, 2001, and the duties that would have been due on the watches and watch movements if the watches and watch movements had been subject to duty at the rates set forth in column 1 under this chapter that were in effect for such preceding calendar year.”; and

(2) by amending subparagraph (v) to read as follows:

“(v) Any certificate issued under subparagraph (i) shall entitle the certificate holder to secure a refund of duties equal to the face value of the certificate on any articles that are imported into the customs territory of the United States by the certificate holder. Such refunds shall be made under regulations issued by the Treasury Department. Not more than 5 percent of such refunds may be retained as a reimbursement to the Customs Service for the administrative costs of making the refunds.”.

(b) JEWELRY.—Additional U.S. Note 3 to chapter 71 is amended—

(1) by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively;

(2) by inserting after paragraph (a) the following new paragraph:

“(b) Notwithstanding additional U.S. Note 5(h)(ii)(B) to chapter 91, articles of jewelry subject to this note shall be subject to a limitation of 10,000,000 units.”; and

(3) by striking paragraph (f), as so redesignated, and inserting the following:

“(f) Notwithstanding any other provision of law, any article of jewelry provided for in heading 7113 that is assembled in the Virgin Islands, Guam, or American Samoa by a jewelry manufacturer or jewelry assembler that commenced jewelry manufacturing or jewelry assembly operations in the Virgin Islands, Guam, or American Samoa after August 9, 2001, shall be treated as a product of the Virgin Islands, Guam, or American Samoa for purposes of this note and General Note 3(a)(iv) of this Schedule if such article is entered no later than 18 months after such jewelry manufacturer or jewelry assembler commenced jewelry manufacturing or jewelry assembly operations in the Virgin Islands, Guam, or American Samoa.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to goods imported into the customs territory of the United States on or after January 1, 2003.

SEC. 1563. MODIFICATION OF PROVISIONS RELATING TO DRAWBACK CLAIMS.

(a) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Section 313(c) of the Tariff Act of 1930 (19 U.S.C. 1313(c)) is amended to read as follows:

“(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—

“(1) CONDITIONS FOR DRAWBACK.—Upon the exportation or destruction under the supervision of the Customs Service of articles or merchandise—

“(A) upon which the duties have been paid,

“(B) which has been entered or withdrawn for consumption,

“(C) which is—

“(i) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation, or

“(ii) ultimately sold at retail by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and

“(D) which, within 3 years after the date of importation or withdrawal, as applicable, has been exported or destroyed under the supervision of the Customs Service, the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

“(2) DESIGNATION OF IMPORT ENTRIES.—For purposes of paragraph (1)(C)(ii), drawback may be claimed by designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (1) (A) and (B) under the supervision of the Customs Service. The merchandise designated for drawback must be identified in the import documentation with the same eight-digit classification number and specific product identifier (such as part number, SKU, or product code) as the returned merchandise.

“(3) WHEN DRAWBACK CERTIFICATES NOT REQUIRED.—For purposes of this subsection, drawback certificates are not required if the drawback claimant and the importer are the same party, or if the drawback claimant is a drawback successor to the importer as defined in subsection (s)(3).”

(b) TIME LIMITATION ON EXPORTATION OR DESTRUCTION.—Section 313(i) of the Tariff Act of 1930 (19 U.S.C. 1313(i)), is amended—

(1) by striking “No” and inserting “Unless otherwise provided for in this section, no”; and

(2) by inserting “, or destroyed under the supervision of the Customs Service,” after “exported”.

(c) USE OF DOMESTIC MERCHANDISE ACQUIRED IN EXCHANGE FOR IMPORTED MERCHANDISE OF SAME KIND AND QUALITY.—Section 313(k) of the Tariff Act of 1930 (19 U.S.C. 1313(k)), is amended—

(1) by striking “(k)” and inserting “(k)(1)”; and

(2) by adding at the end the following new paragraph:

“(2) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for a drawback product of the same kind and quality shall be treated as the use of such drawback product if no certificate of delivery or certificate of manufacture and delivery pertaining to such drawback product is issued, other than that which documents the product’s manufacture and delivery. As used in this paragraph, the term ‘drawback product’

means any domestically produced product, manufactured with imported merchandise or any other merchandise (whether imported or domestic) of the same kind and quality, that is subject to drawback.”.

(d) PACKAGING MATERIAL.—Section 313(q) of the Tariff Act of 1930 (19 U.S.C. 1313(q)), is amended to read as follows:

“(q) PACKAGING MATERIAL.—

“(1) PACKAGING MATERIAL UNDER SUBSECTIONS (c) AND (j).—Packaging material, whether imported and duty paid, and claimed for drawback under either subsection (c) or (j)(1), or imported and duty paid, or substituted, and claimed for drawback under subsection (j)(2), shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on such imported material.

“(2) PACKAGING MATERIAL UNDER SUBSECTIONS (a) AND (b).—Packaging material that is manufactured or produced under subsection (a) or (b) shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on the imported or substituted merchandise used to manufacture or produce such material.

“(3) CONTENTS.—Packaging material described in paragraphs (1) and (2) shall be eligible for drawback whether or not they contain articles or merchandise, and whether or not any articles or merchandise they contain are eligible for drawback.

“(4) EMPLOYING PACKAGING MATERIAL FOR ITS INTENDED PURPOSE PRIOR TO EXPORTATION.—The use of any packaging material for its intended purpose prior to exportation shall not be treated as a use of such material prior to exportation for purposes of applying subsection (a), (b), or (c), or paragraph (1)(B) or (2)(C)(i) of subsection (j).”.

(e) LIMITATION ON LIQUIDATION.—Section 504 of the Tariff Act of 1930 (19 U.S.C. 1504) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

“(a) LIQUIDATION.—

“(1) ENTRIES FOR CONSUMPTION.—Unless an entry of merchandise for consumption is extended under subsection (b) of this section or suspended as required by statute or court order, except as provided in section 751(a)(3), an entry of merchandise for consumption not liquidated within 1 year from—

“(A) the date of entry of such merchandise,

“(B) the date of the final withdrawal of all such merchandise covered by a warehouse entry,

“(C) the date of withdrawal from warehouse of such merchandise for consumption if, pursuant to regulations issued under section 505(a), duties may be deposited after the filing of any entry or withdrawal from warehouse, or

“(D) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed,

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 500(e), notice of liquidation need not be given of an entry deemed liquidated.

“(2) ENTRIES OR CLAIMS FOR DRAWBACK.—

“(A) IN GENERAL.—Except as provided in subparagraph (B) or (C), unless an entry or claim for drawback is extended under subsection (b) or suspended as required by statute or court order, an entry or claim for drawback not liquidated within 1 year from the date of entry or claim shall be deemed liquidated at the drawback amount asserted by the claimant at the time of entry or claim. Notwithstanding section 500(e), notice of liquidation need not be given of an entry deemed liquidated.

“(B) UNLIQUIDATED IMPORTS.—An entry or claim for drawback whose designated or identified import entries have not been liquidated and become final within the 1-year period described in subparagraph (A), or within the 1-year period described in subparagraph (C), shall be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise, and upon the filing with the Customs Service of a written request for the liquidation of the drawback entry or claim. Such a request must include a waiver of any right to payment or refund under other provisions of law. The Secretary of the Treasury shall prescribe any necessary regulations for the purpose of administering this subparagraph.

“(C) EXCEPTION.—An entry or claim for drawback filed before the date of the enactment of this paragraph, the liquidation of which is not final as of the date of the enactment of this paragraph, shall be deemed liquidated on the date that is 1 year after the date of the enactment of this paragraph at the drawback amount asserted by the claimant at the time of the entry or claim.

“(3) PAYMENTS OR REFUNDS.—Payment or refund of duties owed pursuant to paragraph (1) or (2) shall be made to the importer of record or drawback claimant, as the case may be, not later than 90 days after liquidation.

“(b) EXTENSION.—The Secretary of the Treasury may extend the period in which to liquidate an entry if—

“(1) the information needed for the proper appraisement or classification of the imported or withdrawn merchandise, or for determining the correct drawback amount, or for ensuring compliance with applicable law, is not available to the Customs Service; or

“(2) the importer of record or drawback claimant, as the case may be, requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record or drawback claimant, as the case may be, and the surety of such importer of record or drawback claimant. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record, or the drawback amount asserted at the time of entry by the drawback claimant, at the expiration of 4 years from the applicable date specified in subsection (a).”;

(2) in subsection (c)—

(A) by inserting “or drawback claimant, as the case may be,” after “to the importer of record”; and

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Regulations.

Effective date.

(B) by inserting “or drawback claimant” after “of such importer of record”; and

(3) in subsection (d), by striking the period at the end and inserting “or (in the case of a drawback entry or claim) at the drawback amount asserted at the time of entry by the drawback claimant.”.

(f) PENALTIES FOR FALSE DRAWBACK CLAIMS.—Section 593A(h) of the Tariff Act of 1930 (19 U.S.C. 1593a(h)) is amended by striking “subsection (g)” and inserting “subsections (c) and (g)”.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), (d), and (f) shall take effect on the date of the enactment of this Act, and shall apply to—

19 USC 1313
note.

(A) any drawback entry filed on and after such date of enactment; and

(B) any drawback entry filed before such date of enactment if the liquidation of the entry is not final on such date of enactment.

(2) SUBSECTION (e).—The amendments made by subsection (e) shall take effect on the date of the enactment of this Act, and shall apply to—

19 USC 1504
note.

(A) any entry of merchandise for consumption or entry or claim for drawback filed on and after such date of enactment; and

(B) any entry or claim for drawback filed before such date of enactment if the liquidation of the entry or claim is not final on such date of enactment.

Subtitle C—Effective Date

SEC. 1571. EFFECTIVE DATE.

19 USC 1313
note.

Except as otherwise provided in this title, the amendments made by this title shall apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

TITLE II—OTHER TRADE PROVISIONS

Subtitle A—Miscellaneous Provisions

SEC. 2001. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ARMENIA.

19 USC 2434
note.

(a) FINDINGS.—Congress makes the following findings:

(1) Armenia has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Armenia acceded to the World Trade Organization on February 5, 2003.

(3) Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting free-market reforms.

(4) Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has concluded many bilateral treaties and agreements with the United States.

(5) Total United States-Armenia bilateral trade for 2002 amounted to more than \$134,200,000.

(b) **PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NON-DISCRIMINATORY TREATMENT.**—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Armenia; and

(2) after making a determination under paragraph (1) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(c) **TERMINATION OF APPLICATION OF TITLE IV.**—On and after the effective date of the extension under subsection (b)(2) of nondiscriminatory treatment to the products of Armenia, title IV of the Trade Act of 1974 shall cease to apply to that country.

SEC. 2002. MODIFICATION TO CELLAR TREATMENT OF NATURAL WINE.

26 USC 5382.

(a) **IN GENERAL.**—Subsection (a) of section 5382 of the Internal Revenue Code of 1986 (relating to cellar treatment of natural wine) is amended to read as follows:

“(a) **PROPER CELLAR TREATMENT.**—

“(1) **IN GENERAL.**—Proper cellar treatment of natural wine constitutes—

“(A) subject to paragraph (2), those practices and procedures in the United States, whether historical or newly developed, of using various methods and materials to stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice in accordance with regulations prescribed by the Secretary; and

“(B) subject to paragraph (3), in the case of wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under such agreement or treaty.

“(2) **RECOGNITION OF CONTINUING TREATMENT.**—For purposes of paragraph (1)(A), where a particular treatment has been used in customary commercial practice in the United States, it shall continue to be recognized as a proper cellar treatment in the absence of regulations prescribed by the Secretary finding such treatment not to be proper cellar treatment within the meaning of this subsection.

“(3) **CERTIFICATION OF PRACTICES AND PROCEDURES FOR IMPORTED WINE.**—

“(A) **IN GENERAL.**—In the case of imported wine produced after December 31, 2004, the Secretary shall accept the practices and procedures used to produce such wine, if, at the time of importation—

“(i) the Secretary has on file or is provided with a certification from the government of the producing country, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment under paragraph (1)(A),

“(ii) the Secretary has on file or is provided with such certification, if any, as may be required by an

international agreement or treaty under paragraph (1)(B), or

“(iii) in the case of an importer that owns or controls or that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary, the importer certifies that the practices and procedures used to produce the wine constitute proper cellar treatment under paragraph (1)(A).

“(B) **AFFILIATE DEFINED.**—For purposes of this paragraph, the term ‘affiliate’ has the meaning given such term by section 117(a)(4) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)(4)) and includes a winery’s parent or subsidiary or any other entity in which the winery’s parent or subsidiary has an ownership interest.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on January 1, 2005. 26 USC 5382 note.

SEC. 2003. ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE ANDEAN TRADE PREFERENCE ACT. 19 USC 3203 note.

(a) **IN GENERAL.**—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to subsection (c)—

(1) with respect to any article described in section 204(b)(1)(D) of the Andean Trade Preference Act (as amended by section 3103(a)(2) of the Trade Act of 2002) for which the President proclaims duty free treatment pursuant to section 204(b)(1) of the Andean Trade Preference Act, the entry of any such article on or after August 6, 2002, and before the date on which the President so proclaims duty free treatment for such article shall be subject to the rate of duty applicable on August 5, 2002; and

(2) such entries shall be liquidated or reliquidated as if the reduced duty preferential treatment applied, and the Secretary of the Treasury shall refund any excess duties paid with respect to such entry.

(b) **ENTRY.**—As used in this subsection, the term “entry” includes a withdrawal from warehouse for consumption.

(c) **REQUESTS.**—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, and such request contains sufficient information to enable the Customs Service—

(1) to locate the entry; or

(2) to reconstruct the entry if it cannot be located.

SEC. 2004. TECHNICAL AMENDMENTS.

(a) **TRADE ACT OF 2002.**—(1) Section 2(a)(4) of the Trade Act of 2002 is amended by striking “and Other Provisions”.

19 USC 3801 note.

(2) The table of contents of the Trade Act of 2002 is amended—

(A) in the item relating to section 342, by striking “customs service” and inserting “Customs Service”; and

(B) by amending the item relating to section 3107 to read as follows:

“3107. Trade benefits under the Caribbean Basin Economic Recovery Act.”.

(3) The amendment made by section 111(b) of the Trade Act of 2002 shall be deemed never to have been enacted. 19 USC 2346.

(4) Section 221(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2271(a)(2)(A)) is amended by striking “assistance, and appropriate” and inserting “assistance and appropriate”.

(5) Section 222(b) of the Trade Act of 1974 (19 U.S.C. 2272(b)) is amended—

(A) by striking the subsection heading and inserting the following: “ADVERSELY AFFECTED SECONDARY WORKERS”; and

(B) in the matter preceding paragraph (1), by inserting “pursuant to a petition filed under section 221” after “under this chapter”.

19 USC 2298. (6) Section 238(b)(1) of the Trade Act of 1974 is amended by striking “Secretary,” and inserting “Secretary”.

19 USC 2318. (7) Section 246 of the Trade Act of 1974 is amended—

(A) in subsection (a)(3)(B)(iii), by striking “and” after the semicolon;

(B) in subsection (a)(5), by striking “section 238(a)(2)(B)” and inserting “paragraph (2)(B)”; and

(C) in subsection (b)(2), by striking “provided that” and inserting “if”.

(8) The table of contents of the Trade Act of 1974 is amended by striking

“Sec. 246. Supplemental wage allowances demonstration projects.”.

19 USC 2401e. (9) Section 296 of the Trade Act of 1974 is amended—

(A) in subsection (a)(1)—

(i) in the matter preceding subparagraph (A)—

(I) by striking “trade adjustment allowance” and inserting “adjustment assistance under this chapter”; and

(II) by striking “such allowance” and inserting “such assistance”; and

(ii) in subparagraph (A), by striking “subsection (a)” and inserting “this subsection”; and

(B) in subsection (b)(2), by striking “paragraph (1) except” and inserting “paragraph (1), except”.

19 USC 2401 note. (10) Section 141(b) of the Trade Act of 2002 is amended by striking “title” and inserting “subtitle”.

(11) Section 142 of the Trade Act of 2002 is amended—

19 USC 2395. (A) in subsection (a)(1)—

(i) by striking “284(a)” and “2395(a)” and inserting “284” and “2395”, respectively; and

(ii) in subparagraph (A), by inserting “in subsection (a),” after “(A)”; and

(B) in subsection (b), by striking “, as amended by subparagraph (A),”.

(12) Section 583(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1583(c)(1)) is amended by moving the matter preceding subparagraph (A) and subparagraphs (A) through (K) 2 ems to the right.

19 USC 1330. (13) Section 371(b) of the Trade Act of 2002 is amended by striking “1330(e)(2)” and inserting “1330(e)”.

(14) Section 336 of the Trade Act of 2002 is amended to read as follows:

“SEC. 336. STUDY AND REPORT RELATING TO CUSTOMS USER FEES.

“(a) STUDY.—The Comptroller General shall conduct a study on the extent to which the amount of each customs user fee imposed

under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) approximates the cost of services provided by the Customs Service relating to the fee so imposed.

“(b) REPORT.—Not later than 180 days after the date of the enactment of the Miscellaneous Trade and Technical Corrections Act of 2004, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing—

“(1) the results of the study conducted under subsection (a); and

“(2) recommendations for the appropriate amount of the customs user fees if such results indicate that the fees are not commensurate with the level of services provided by the Customs Service.

Notwithstanding any other provision of law, the report or its contents may only be disclosed by the Comptroller General to the committees or Members of Congress and the Customs Service and shall not be disclosed to the public.”.

(15) Section 141(b)(2) of the Trade Act of 1974 (19 U.S.C. 2171(b)(2)) is amended by moving the paragraph 2 ems to the left.

(16) Section 2102(c) of the Trade Act of 2002 is amended— 19 USC 3802.

(A) in paragraph (8), by striking “this Act” and inserting “this title”; and

(B) in paragraph (12), by striking “government engaged” and inserting “government is engaged”.

(17) Section 2103 of the Trade Act of 2002 is amended— 19 USC 3803.

(A) in subsection (a)(1)(A), by striking “June 1” each place it appears and inserting “July 1”;

(B) in subsection (b)(1)(C), by striking “June 1” each place it appears and inserting “July 1” and

(C) in subsection (c)—

(i) in paragraph (1)(B)(ii), by striking “June 1” and inserting “July 1”;

(ii) in paragraph (2), by striking “March 1” and inserting “April 1”; and

(iii) in paragraph (3), by striking “May 1” each place it appears and inserting “June 1”.

(18) Section 2105(c) of the Trade Act of 2002 is amended by striking “and” and inserting “and”. 19 USC 3805.

(19) Section 2113 of the Trade Act of 2002 is amended— 19 USC 3813.

(A) in the first paragraph designated “(2)”, by striking “101(d)(12)” and “3511(d)(12)” and inserting “101(d)(13)” and “3511(d)(13)”, respectively; and

(B) in the second paragraph designated “(2)”—

(i) by redesignating such paragraph as paragraph (3); and

(ii) by striking “101(d)(13)” and “3511(d)(13)” and inserting “101(d)(12)” and “3511(d)(12)”, respectively.

(20) Section 4101(b)(1) of the Trade Act of 2002 is amended— 19 USC 2465

(A) in the matter preceding subparagraph (A), by striking “entry—” and inserting “entry of any article—”; and note.

(B) in subparagraph (A), by striking “of any article”.

(21) Section 151(a) of the Trade Act of 2002 is amended by striking “and 141(b)” and inserting “, 141(b), 201(d), and 202(e)”. 19 USC note prec. 2271.

- (22) Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961), is amended by striking “or (17)” after “any other person described in subsection (l)(16)” each place it appears and inserting “or (18)”.
- 26 USC 6103. (b) APPAREL ARTICLES UNDER CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—(1) Section 213(b)(2)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)(2)(A)) is amended—
- (A) in clause (i), by striking “(including)” and inserting “or both (including)”;
- (B) in clause (v), by striking “, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries”; and
- (C) in clause (vii)(IV), by striking “(i) or (ii)” and inserting “(i), (ii), or (ix)”.
- 116 Stat. 1035. (2) Section 3107(a)(1)(B) of the Trade Act of 2002 is amended by striking “(B) by adding at the end the following:” and inserting “(B) by amending the last two sentences to read as follows:”.
- 19 USC 1505. (c) TARIFF ACT OF 1930.—Section 505(a) of the Tariff Act of 1930 is amended—
- (1) in the first sentence—
- (A) by inserting “referred to in this subsection” after “periodic payment”; and
- (B) by striking “10 working days” and inserting “12 working days”; and
- (2) in the second sentence, by striking “a participating” and all that follows through the end of the sentence and inserting the following: “the Secretary shall promulgate regulations, after testing the module, permitting a participating importer of record to deposit estimated duties and fees for entries of merchandise, other than merchandise entered for warehouse, transportation, or under bond, no later than the 15 working days following the month in which the merchandise is entered or released, whichever comes first.”.
- Regulations.
Deadline. (d) ADDITIONAL TECHNICAL AMENDMENTS.—(1) The second and third U.S. notes 6 to subchapter XVII 14 of chapter 98 of the Harmonized Tariff Schedule of the United States (as added by sections 1433(b) and 1456(b) of the Tariff Suspension and Trade Act of 2000, respectively) are redesignated as U.S. notes 7 and 8 to subchapter XVII of such chapter 98, respectively.
- (2) U.S. notes 4 and 12 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States are hereby repealed.
- (3) Section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) is amended by striking “subtitle” each place it appears and inserting “chapter”.
- (4) Section 422(j) of the Trade Act of 1974 (19 U.S.C. 2451a(j)) is amended by striking “(1)”.
- (5) Section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337) is amended—
- (A) in paragraph (1), by aligning the text of subparagraph (E) with the text of subparagraph (D); and
- (B) in paragraph (2), by striking “and (D)” and inserting “(D), and (E)”.
- (6) Section 313(n)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1313(n)(1)(B)) is amended by adding a semicolon after “Act”.

(7) Section 202(d)(1) of the United States-Chile Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) is amended by striking “subsection (a)(2)” and inserting “subsection (a)(1)(B)”.

(8)(A) Subheading 9804.00.70 of the Harmonized Tariff Schedule of the United States is amended in the article description column—

- (i) by striking “\$1200” and inserting “\$1600”;
- (ii) by striking “\$400” and inserting “\$800”; and
- (iii) by striking “or up to \$600 of which have been acquired in one or more beneficiary countries”.

(B) Subheading 9804.00.72 of the Harmonized Tariff Schedule of the United States is amended in the article description column—

- (i) by striking “\$600” and inserting “\$800”; and
- (ii) by striking “not more than \$400 of which shall have been acquired elsewhere than in beneficiary countries”.

(e) UNITED STATES VESSELS.—Section 204(b)(4)(B)(i) of the Andean Trade Preference Act is amended to read as follows:

19 USC 3203.

“(i) UNITED STATES VESSEL.—A ‘United States vessel’ is—

“(I) a vessel that has a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code; or

“(II) in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988 (16 U.S.C. 973g).”.

(f) CUSTOMS USER FEES.—(1) Section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(A)) is amended by striking “less than \$2,000” and inserting “\$2,000 or less”.

(2) Section 13031(b)(9)(A)(ii) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(A)(ii)) is amended to read as follows:

“(ii) Notwithstanding subsection (e)(6) and subject to the provisions of subparagraph (B), in the case of an express consignment carrier facility or centralized hub facility—

“(I) \$.66 per individual airway bill or bill of lading; and

“(II) if the merchandise is formally entered, the fee provided for in subsection (a)(9), if applicable.”.

(3) Section 13031(b)(9)(B) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(B)) is amended—

(A) by moving the margins for subparagraph (B) 4 ems to the left; and

(B) in clause (ii), by striking “subparagraph (A)(ii)” and inserting “subparagraph (A)(ii) (I) or (II)”.

(4) Section 13031(f)(1)(B) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(1)(B)) is amended by moving the subparagraph 2 ems to the left.

(g) ENTRIES OF CERTAIN APPAREL ARTICLES PURSUANT TO THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—

19 USC 2703
note.
Deadlines.

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the Customs Service shall liquidate or reliquidate as free of duty and free of any quantitative restrictions, limitations, or

consultation levels entries of articles described in paragraph (4) made on or after October 1, 2000.

(2) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry described in paragraph (4) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located.

(3) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under paragraph (1) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(4) ENTRIES.—The entries referred to in paragraph (1) are entries of apparel articles (other than socks provided for in heading 6115 of the Harmonized Tariff Schedule of the United States) that meet the requirements of section 213(b)(2)(A) of the Caribbean Basin Economic Recovery Act (as amended by section 3107(a) of the Trade Act of 2002 and subsection (b) of this section).

(h) LABELING REQUIREMENTS.—

(1) IN GENERAL.—Section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end the following new subsection:

“(k) MARKING OF CERTAIN SOCK PRODUCTS.—

“(1) Notwithstanding any other provision of law, socks provided for in subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall be marked as legibly, indelibly, and permanently as the nature of the article or package will permit in such a manner as to indicate to the ultimate consumer in the United States the English name of the country of origin of the article. The marking required by this subsection shall be on the front of the package, adjacent to the size designation of the product, and shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the ultimate consumer.

“(2) EXCEPTIONS.—Any package that contains several different types of goods and includes socks classified under subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall not be subject to the requirements of paragraph (1).”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date that is 15 months after the date of enactment of this Act, and on and after the date that is 15 months after such date of enactment, any provision of part 303 of title 16, Code of Federal Regulations, that is inconsistent with such amendment shall not apply.

(i) EXTENSION OF INDUSTRY TRADE ADVISORY COMMITTEES.—

(1) IN GENERAL.—Section 135(f)(2) of the Trade Act of 1974 (19 U.S.C. 2155(f)(2)) is amended to read as follows:

“(2) to all other advisory committees which may be established under subsection (c) of this section, except that—

“(A) the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt

15 USC 70b note.

President.

from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or the President's designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives, or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section; and

“(B) notwithstanding subsection (a)(2) of section 14 of the Federal Advisory Committee Act, any committee established under subsection (b) or (c) may, in the discretion of the President or the President's designee, terminate not later than the expiration of the 4-year period beginning on the date of their establishment.”.

(2) CONFORMING AMENDMENT.—Section 135(b)(1) of the Trade Act of 1974 (19 U.S.C. 2155(b)(1)) is amended by striking “2 years” and inserting “4 years or until the committee is scheduled to expire”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on February 1, 2006.

19 USC 2155
note.

(j) RETROACTIVITY FOR CERTAIN AGOA PROVISIONS.—

(1) IN GENERAL.—Section 8(d) of the AGOA Acceleration Act of 2004 (Public Law 108–274) is amended by striking “section 112(b)” and inserting “section 112”.

19 USC 3701
note.

(2) APPLICABILITY.—

19 USC 3701
note.

(A) IN GENERAL.—The amendment made by paragraph (1) shall take effect as if included in the enactment of section 8 of the AGOA Acceleration Act of 2004.

(B) REQUESTS FOR RETROACTIVE APPLICATION.—Section 8(b) of the AGOA Acceleration Act of 2004 shall be applied with respect to the amendment made by paragraph (1) by substituting “90 days after the date of the enactment of the Miscellaneous Trade and Technical Corrections Act of 2004” for “90 days after the date of the enactment of this Act”.

Deadline.

(k) MAURITIUS.—

(1) IN GENERAL.—Section 112(b)(3)(B) of the African Growth and Opportunity Act (19 U.S.C. 3271(b)(3)(B)) is amended by adding at the end the following new clause:

19 USC 3721.

“(iv) SEPARATE LIMITATION FOR MAURITIUS.—For the 1-year period beginning October 1, 2004—

Effective date.

“(I) the term ‘lesser developed beneficiary sub-Saharan African country’ includes Mauritius; and

“(II) the applicable percentage with respect to Mauritius shall be 5 percent of the applicable percentage described in clause (ii)(II).”.

(2) RETROACTIVE APPLICATION.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Bureau of Customs and Border Protection before the 90th day after

19 USC 3721
note.

the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of any good—

(A) that was made on or after October 1, 2004, and before the date of the enactment of this Act, and

(B) with respect to which there would have been no duty if the amendment made by this subsection applied to such entry or withdrawal, shall be liquidated or reliquidated as if such amendment applied to such entry or withdrawal.

SEC. 2005. EXTENSION OF NORMAL TRADE RELATIONS TO LAOS.

(a) FINDINGS.—Congress finds that—

(1) the Lao People's Democratic Republic is pursuing a broad policy of adopting market-based reforms to enhance its economic competitiveness and achieve an attractive climate for investment;

(2) extension of normal trade relations treatment would assist the Lao People's Democratic Republic in developing its economy based on free market principles and becoming competitive in the global marketplace;

(3) establishing normal commercial relations on a reciprocal basis with the Lao People's Democratic Republic will promote United States exports to the rapidly growing southeast Asian region and expand opportunities for United States business and investment in the Lao People's Democratic Republic economy;

(4) United States and Laotian commercial interests would benefit from the bilateral trade agreement between the United States and the Lao People's Democratic Republic, signed in 2003, providing for market access and the protection of intellectual property rights;

(5) the Lao People's Democratic Republic has taken cooperative steps with the United States in the global war on terrorism, combating the trafficking of narcotics, and the accounting for American servicemen and civilians still missing from the Vietnam war; and

(6) expanding bilateral trade relations that include a commercial agreement may promote further progress by the Lao People's Democratic Republic on human rights, religious tolerance, democratic rule, and transparency, and assist that country in adopting regional and world trading rules and principles.

(b) EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC.—

(1) Harmonized tariff schedule amendment.—General note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking “Laos”.

(2) Effective date.—The amendment made by paragraph (1) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective date of a notice published in the Federal Register by the United States Trade Representative that a trade agreement obligating reciprocal most-favored-nation treatment between the Lao People's Democratic Republic and the United States has entered into force.

SEC. 2006. REPEAL OF ANTIDUMPING PROVISION OF REVENUE ACT OF 1916.

(a) **REPEAL.**—Section 801 of the Act entitled “An Act to increase the revenue, and for other purposes”, approved September 8, 1916 (15 U.S.C. 72), is repealed.

(b) **EFFECT OF REPEAL.**—The repeal made by subsection (a) shall not affect any action under section 801 of the Act referred to in subsection (a) that was commenced before the date of the enactment of this Act and is pending on such date. 15 USC 72 note.

Subtitle B—Technical Amendments Relating to Entry and Protest

SEC. 2101. ENTRY OF MERCHANDISE.

(a) **IN GENERAL.**—Subsection (a) of section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) is amended—

(1) in paragraph (1)(B), by inserting after “entry” the following: “, or substitute 1 or more reconfigured entries on an import activity summary statement,”; and

(2) in paragraph (2)(A)—

(A) in the second sentence, by inserting after “statements,” the following: “and permit the filing of reconfigured entries,”; and

(B) by adding at the end the following: “Entries filed under paragraph (1)(A) shall not be liquidated if covered by an import activity summary statement, but instead each reconfigured entry in the import activity summary statement shall be subject to liquidation or reliquidation pursuant to section 500, 501, or 504.”.

(b) **RECONCILIATION.**—Subsection (b)(1) of such section is amended in the fourth sentence by striking “15 months” and inserting “21 months”.

SEC. 2102. LIMITATION ON LIQUIDATIONS.

Section 504 of the Tariff Act of 1930 (19 U.S.C. 1504) is amended—

(1) in subsection (a)—

(A) by striking “or” at the end of paragraph (3);

(B) in paragraph (4), by striking “filed,” and inserting “filed, whichever is earlier; or”; and

(C) by inserting after paragraph (4) the following:

“(5) if a reconfigured entry is filed under an import activity summary statement, the date the import activity summary statement is filed or should have been filed, whichever is earlier;”; and

(2) by striking “at the time of entry” each place it appears.

SEC. 2103. PROTESTS.

Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “(relating to refunds and errors) of this Act” and inserting “(relating to refunds), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or

contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and”;

(B) in paragraph (5), by inserting “, including the liquidation of an entry, pursuant to either section 500 or section 504” after “thereof”; and

(C) in paragraph (7), by striking “(c) or”; and
(2) in subsection (c)—

(A) in paragraph (1), in the sixth sentence, by striking “A protest may be amended,” and inserting “Unless a request for accelerated disposition is filed under section 515(b), a protest may be amended,”; and

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking “ninety days” and inserting “180 days”;

(ii) in subparagraph (A), by striking “notice of” and inserting “date of”; and

(iii) in the second sentence, by striking “90 days” and inserting “180 days”.

SEC. 2104. REVIEW OF PROTESTS.

Section 515(b) of the Tariff Act of 1930 (19 U.S.C. 1515(b)) is amended in the first sentence by striking “after ninety days” and inserting “concurrent with or”.

SEC. 2105. REFUNDS AND ERRORS.

Section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)) is repealed.

SEC. 2106. DEFINITIONS AND MISCELLANEOUS PROVISIONS.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended by adding at the end the following:

“(t) RECONFIGURED ENTRY.—The term ‘reconfigured entry’ means an entry filed on an import activity summary statement which substitutes for all or part of 1 or more entries filed under section 484(a)(1)(A) or filed on a reconciliation entry that aggregates the entry elements to be reconciled under section 484(b) for purposes of liquidation, reliquidation, or protest.”.

SEC. 2107. VOLUNTARY RELIQUIDATIONS.

Section 501 of the Tariff Act of 1930 (19 U.S.C. 1501) is amended in the first sentence by inserting “or 504” after “section 500”.

SEC. 2108. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

Subtitle C—Protection of Intellectual Property Rights

SEC. 2201. USTR DETERMINATIONS IN TRIPS AGREEMENT INVESTIGATIONS.

(a) IN GENERAL.—Section 304(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2414(a)(2)(A)) is amended by inserting after “agreement,” the following: “except an investigation initiated pursuant to section

302(b)(2)(A) involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 101(d)(15) of the Uruguay Round Agreements Act) or the GATT 1994 (as defined in section 2(1)(B) of that Act) relating to products subject to intellectual property protection.”.

(b) TIMEFRAME FOR TRIPS AGREEMENT DETERMINATIONS.—Section 304(a)(3)(A) of the Trade Act of 1974 is amended to read as follows: Deadlines.

“(3)(A) If an investigation is initiated under this chapter by reason of section 302(b)(2) and—

“(i) the Trade Representative considers that rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights or the GATT 1994 relating to products subject to intellectual property protection are involved, the Trade Representative shall make the determination required under paragraph (1) not later than 30 days after the date on which the dispute settlement procedure is concluded; or

“(ii) the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation not later than the date that is 6 months after the date on which such investigation is initiated.”.

(c) CONFORMING AMENDMENT.—Section 305(a)(2)(B) of the Trade Act of 1974 is amended by striking “section 304(a)(3)(A)” and inserting “section 304(a)(3)(A)(ii)”. 19 USC 2415.

TITLE III—IRAQI CULTURAL ANTIQUITIES

Emergency
Protection for
Iraqi Cultural
Antiquities Act of
2004.

SEC. 3001. SHORT TITLE.

This title may be cited as the “Emergency Protection for Iraqi Cultural Antiquities Act of 2004”.

SEC. 3002. EMERGENCY IMPLEMENTATION OF IMPORT RESTRICTIONS.

(a) AUTHORITY.—The President may exercise the authority of the President under section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603) with respect to any archaeological or ethnological material of Iraq without regard to whether Iraq is a State Party under that Act, except that, in exercising such authority, subsection (c) of such section shall not apply.

(b) DEFINITION.—In this section, the term “archaeological or ethnological material of Iraq” means cultural property of Iraq and other items of archaeological, historical, cultural, rare scientific, or religious importance illegally removed from the Iraq National Museum, the National Library of Iraq, and other locations in Iraq, since the adoption of United Nations Security Council Resolution 661 of 1990.

SEC. 3003. TERMINATION OF AUTHORITY.

The authority of the President under section 3002(a) shall terminate on September 30, 2009.

Wool Suit and
Textile Trade
Extension Act of
2004.
7 USC 7101 note.

TITLE IV—WOOL TRUST FUND**SEC. 4001. SHORT TITLE.**

This title may be cited as the “Wool Suit and Textile Trade Extension Act of 2004”.

SEC. 4002. EXTENSION AND MODIFICATION OF DUTY SUSPENSION ON WOOL PRODUCTS, WOOL RESEARCH FUND, WOOL DUTY REFUNDS.**(a) EXTENSION OF TEMPORARY DUTY REDUCTIONS.—**

(1) **HEADING 9902.51.11.**—Heading 9902.51.11 of the Harmonized Tariff Schedule of the United States is amended—

(A) in the article description, by striking “all the foregoing” through the end and inserting “(provided for in subheading 5112.11.60 or 5112.19.95)”;

(B) by striking “2005” and inserting “2007”; and

(C) by striking “17.5%” and inserting “10%”.

(2) **HEADING 9902.51.12.**—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by striking heading 9902.51.12.

(3) **HEADING 9902.51.13.**—Heading 9902.51.13 of the Harmonized Tariff Schedule of the United States is amended by striking “2005” and inserting “2007”.

(4) **HEADING 9902.51.14.**—Heading 9902.51.14 of the Harmonized Tariff Schedule of the United States is amended—

(A) in the article description, by inserting “the foregoing” after “top,”; and

(B) by striking “2005” and inserting “2007”.

(5) **FABRICS OF COMBED WOOL.**—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following:

“	9902.51.15	Fabrics of combed wool, containing 85 percent or more by weight of wool, with wool yarns of average fiber diameters of 18.5 micron or less, under the terms of U.S. note 16(b) to this subchapter (provided for in subheading 5112.11.30 or 5112.19.60)	Free	No change	No change	On or before 12/31/2006
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9902.51.16	Fabrics of combed wool, containing 85 percent or more by weight of wool, with wool yarns of average fiber diameters of 18.5 micron or less, under the terms of U.S. note 17 to this subchapter (provided for in subheading 5112.11.30 or 5112.19.60)	Free	No change	No change	On or before 12/31/2006	"
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(b) MODIFICATION OF LIMITATION ON QUANTITY OF IMPORTS.—

(1) NOTE 15.—U.S. Note 15 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking “The aggregate” and inserting:

“(a) The aggregate”;

(B) in subdivision (a), as redesignated by subparagraph

(A)—

(i) by striking the comma after “9902.51.11”;

(ii) by striking “and” after “2002,”; and

(iii) by striking “year 2003” and all that follows through the end period and inserting the following: “years 2003 and 2004, and 5,500,000 square meter equivalents in calendar year 2005 and each calendar year thereafter for the benefit of persons who cut and sew men’s and boys’ worsted wool suits and suit-like jackets and trousers in the United States, allocated as required by section 501(e) of the Trade and Development Act of 2000.”; and

(C) by adding at the end the following new division:

“(b) For purposes of heading 9902.51.11, all fabrics entered under such heading must be certified by the importer as suitable for use in making men’s and boys’ suits (as defined in U.S. note 13 to this subchapter), suit-type jackets, or trousers and must be imported for the benefit of persons who cut and sew such clothing in the United States.”.

(2) NOTE 16.—U.S. Note 16 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking “The aggregate” and inserting

“(a) The aggregate”;

(B) in subdivision (a), as redesignated by subparagraph

(A)—

(i) by striking “9902.51.12,” and inserting “9902.51.15”;

(ii) by striking “and” after “2002,”; and

(iii) by striking “year 2003” and all that follows through the end period and inserting the following: “years 2003 and 2004, 5,000,000 square meter equivalents in calendar year 2005 and each calendar year thereafter, allocated as required by section 501(e) of the Trade and Development Act of 2000 for the benefit of persons who cut and sew such clothing in the United States.”; and

(C) by adding at the end the following new subdivision:

“(b) For purposes of heading 9902.51.15, all fabrics entered under such heading must be certified by the importer as suitable for use in making men’s and boys’ suits (as defined in U.S. note 13 to this subchapter), suit-type jackets, or trousers and must be imported for the benefit of persons who cut and sew such clothing in the United States.”.

(3) NOTE 17.—The U.S. Notes for subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States are amended by adding at the end the following new Note:

“17. (a) The aggregate quantity of worsted wool fabric entered under subheading 9902.51.16 shall be limited to 2,000,000 square meter equivalents in calendar year 2005 and each calendar year thereafter, allocated in accordance with section 501(e) of the Trade and Development Act of 2000 for the benefit of persons who weave worsted wool fabric suitable for use in men’s and boys’ suits.

“(b) For purposes of heading 9902.51.16, all fabrics entered under such heading must be certified by the importer as suitable for use in making men’s and boys’ suits (as defined in U.S. note 13 to this subchapter), suit-type jackets, or trousers and must be imported for the benefit of persons who weave in the United States worsted wool fabric suitable for use in such clothing.”.

(4) CONFORMING AMENDMENTS.—

(A) SUNSET STAGED REDUCTION REQUIREMENT.—Section 501(a)(2) of the Trade and Development Act of 2000 (Public Law 106-200; 114 Stat. 299) is amended by inserting before the period “for goods entered, or withdrawn from warehouse for consumption, before January 1, 2005”.

(B) ALLOCATION OF TARIFF-RATE QUOTAS.—Subsection (e) of section 501 of the Trade and Development Act of 2000 (Public Law 106-200; 114 Stat. 200) is amended—

(i) by striking “9902.51.12” and inserting “9902.51.15”;

(ii) by inserting “for manufacturers of men’s and boys’ suits” after “implementing the limitation”; and

(iii) by inserting at the end the following new sentence: “In implementing the limitation for manufacturers of worsted wool fabric with respect to the quantity of worsted wool fabrics under heading 9902.51.16 of the Harmonized Tariff Schedule of the United States, as required by U.S. Note 17 of subchapter II of chapter 99 of such Schedule, the Secretary of Commerce shall prescribe regulations to allocate fairly the quantity of worsted wool fabrics required under U.S. Note 17 of such Schedule to manufacturers who weave worsted wool fabric in the United States.”.

(C) SUNSET AUTHORITY TO MODIFY LIMITATION ON QUANTITY.—Section 504(b) of the Trade and Development Act of 2000 (Public Law 106-200; 114 Stat. 301) is repealed, effective January 1, 2005.

(c) EXTENSION OF DUTY REFUNDS AND WOOL RESEARCH TRUST FUND.—

(1) ESTABLISHMENT OF TRUST FUND.—There is hereby established within the Treasury of the United States a trust fund to be known as the Wool Apparel Manufacturers Trust Fund (in this subsection referred to as the “Trust Fund”), consisting of such amounts as may be transferred to the Trust Fund under paragraph (2).

114 Stat. 300.

Effective date.

(2) TRANSFER OF AMOUNTS.—

(A) IN GENERAL.—The Secretary of the Treasury shall transfer to the Trust Fund, out of the general fund of the Treasury of the United States, amounts determined by the Secretary of the Treasury to be equivalent to the amounts received in the general fund that are attributable to the duty received on articles classified under chapter 51 of the Harmonized Tariff Schedule of the United States, subject to the limitation in subparagraph (B).

(B) LIMITATION.—In any fiscal year, the Secretary shall not transfer more than the amount determined by the Secretary necessary for the Bureau of Customs and Border Protection to make payments authorized under paragraph (3) and the Secretary of Commerce to make grants under paragraph (6).

(3) AVAILABILITY OF AMOUNTS FROM TRUST FUND.—From amounts in the Trust Fund, the Bureau of Customs and Border Protection shall pay to each manufacturer that receives a payment during calendar year 2005 under section 505 of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 303), as amended by section 5101 of the Trade Act of 2002 (116 Stat. 1041), and that provides an affidavit, no later than March 1 of the year of the payment, that it remains a manufacturer in the United States as of January 1 of the year of the payment, 2 additional payments, each payment equal to the payment received for calendar year 2005 as follows:

Deadline.

(A) The first payment to be made after January 1, 2006, but on or before April 15, 2006.

(B) The second payment to be made after January 1, 2007, but on or before April 15, 2007.

(4) SUCCESSOR-IN-INTEREST.—Any manufacturer that becomes a successor-in-interest to a claimant of a payment under section 505 of the Trade and Development Act of 2000, as amended by section 5101 of the Trade Act of 2002, because of—

(A) an assignment of the claim,

(B) an assignment of the original claimant's right to manufacture under the same trade name, or

(C) a reorganization,

or otherwise, shall be eligible to claim the payment as if the successor manufacturer were the original claimant, without regard to section 3727 of title 31, United States Code. Such right to claim payment as a successor shall be effective as if the right were included in section 505 of the Trade and Development Act of 2000.

(5) EXTENSION OF WOOL RESEARCH, DEVELOPMENT, AND PROMOTION TRUST FUND.—Section 506(f) of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 303), as amended by section 5102(c)(2) of the Trade Act of 2002 (116 Stat. 1047), is amended by striking “2006” and inserting “2008”.

7 USC 7101 note.

(6) COMMERCE AUTHORITY TO PROMOTE DOMESTIC EMPLOYMENT.—

(A) GRANTS TO MANUFACTURERS OF WORSTED WOOL FABRICS.—The Secretary of Commerce shall provide to—

(i) persons who were, during calendar years 1999, 2000, and 2001, manufacturers of worsted wool fabric of the kind described in heading 9902.51.12 of the

Harmonized Tariff Schedule of the United States (as in effect on the day before the date of the enactment of this Act), and

(ii) persons who were, during such calendar years, manufacturers of worsted wool fabric of the kind described in heading 9902.51.11 of the Harmonized Tariff Schedule of the United States, grants in each of calendar years 2005 through 2007 in the amounts determined under subparagraph (B).

(B) AMOUNTS.—(i) The total amount of grants to manufacturers under subparagraph (A)(i) shall be \$2,666,000 each calendar year, allocated among such manufacturers on the basis of the percentage of each manufacturer's production of the fabric described in heading 9902.51.12 of the Harmonized Tariff Schedule of the United States (as in effect on the day before the date of the enactment of this Act) for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all such manufacturers who qualify under subparagraph (A)(i) for such grants.

(ii) The total amount of grants to manufacturers under subparagraph (A)(ii) shall be \$2,666,000 each calendar year, allocated among such manufacturers on the basis of the percentage of each manufacturer's production of the fabric described in heading 9902.51.11 of the Harmonized Tariff Schedule of the United States for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all manufacturers who qualify under subparagraph (A)(ii) for such grants.

(iii) Any grant awarded by the Secretary under this paragraph shall be final and not subject to appeal or protest.

(d) EFFECTIVE DATE FOR DUTY REDUCTION.—The amendment made by subsection (a)(1)(B) shall apply to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2005.

TITLE V—REFERENCE TO CUSTOMS SERVICE

19 USC 2703
note.

SEC. 5001. REFERENCE TO CUSTOMS SERVICE.

Except as otherwise expressly provided, any reference in this Act to the “United States Customs Service” or the “Customs Service”

shall be considered to be a reference to the “Bureau of Customs and Border Protection” of the Department of Homeland Security.

Approved December 3, 2004.

LEGISLATIVE HISTORY—H.R. 1047 (S. 671):

HOUSE REPORTS: No. 108–771 (Comm. of Conference).

SENATE REPORTS: No. 108–28 accompanying S. 671 (Comm. on Finance).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Mar. 5, considered and passed House.

Vol. 150 (2004): Mar. 4, considered and passed Senate, amended, in lieu of S. 671.

Oct. 8, House agreed to conference report.

Nov. 17, 19, Senate considered and agreed to conference report.



Public Law 108–430
108th Congress

An Act

Dec. 3, 2004
[H.R. 1630]

To revise the boundary of the Petrified Forest National Park in the State of Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Petrified Forest
National Park
Expansion Act of
2004.
16 USC 119 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Petrified Forest National Park Expansion Act of 2004”.

16 USC 119 note.

SEC. 2. DEFINITIONS.

In this Act:

(1) MAP.—The term “map” means the map entitled “Proposed Boundary Adjustments, Petrified Forest National Park”, numbered 110/80,044, and dated July 2004.

(2) PARK.—The term “Park” means the Petrified Forest National Park in the State.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) STATE.—The term “State” means the State of Arizona.

16 USC 119 note.

SEC. 3. BOUNDARY REVISION.

(a) IN GENERAL.—The Secretary is authorized to revise the boundary of the Park to include approximately 125,000 acres as depicted on the map.

(b) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

16 USC 119 note.

SEC. 4. ACQUISITION OF ADDITIONAL LAND.

(a) PRIVATE LAND.—The Secretary may acquire from a willing seller, by donation, purchase with donated or appropriated funds, or exchange, any private land or interests in private land within the revised boundary of the Park. In acquiring private land and interests in private land within the revised boundary of the Park, the Secretary shall undertake to acquire such private land and interests in private land first by donation or exchange.

(b) STATE LAND.—

(1) IN GENERAL.—The Secretary may, with the consent of the State and in accordance with Federal and State law, acquire from the State any State land or interests in State land within the revised boundary of the Park.

Deadline.

(2) PLAN.—Not later than 3 years after the date of the enactment of this Act, the Secretary shall, in coordination with the State, develop a plan for acquisition for State land or interests in State land under paragraph (1).

(3) **MANAGEMENT AGREEMENT.**—If the Secretary is unable to acquire the State land under paragraph (1) within the 3-year period required by paragraph (2), the Secretary may enter into an agreement that would allow the National Park Service to manage State land within the revised boundary of the Park.

SEC. 5. ADMINISTRATION.

16 USC 119 note.

(a) **IN GENERAL.**—Subject to applicable laws, all land and interests in land acquired under this Act shall be administered by the Secretary as part of the Park.

(b) **TRANSFER OF JURISDICTION.**—The Secretary shall transfer to the National Park Service administrative jurisdiction over any land under the jurisdiction of the Secretary that—

(1) is depicted on the map as being within the boundaries of the Park; and

(2) is not under the administrative jurisdiction of the National Park Service on the date of enactment of this Act.

(c) **EXCHANGE AFTER ENACTMENT.**—Upon completion of an exchange of land after the date of the enactment of this Act, the Secretary shall transfer administrative jurisdiction over the exchanged lands within the boundary of the Park as depicted on the map to the National Park Service.

(d) **GRAZING.**—

(1) **IN GENERAL.**—The Secretary shall permit the continuation of grazing on land transferred to the Secretary under this Act, subject to applicable laws, regulations, and Executive orders.

(2) **TERMINATION OF LEASES OR PERMITS.**—Nothing in this subsection prohibits the Secretary from accepting the voluntary termination of a grazing permit or grazing lease within the Park.

(e) **AMENDMENT TO GENERAL MANAGEMENT PLAN.**—Not later than 3 years after the date of the enactment of this Act, the Secretary shall amend the general management plan for the Park to address the use and management of any additional land acquired under this Act. Deadline.

16 USC 119 note. **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Approved December 3, 2004.

LEGISLATIVE HISTORY—H.R. 1630:

HOUSE REPORTS: No. 108–713 (Comm. on Resources).
CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 4, considered and passed House.
Oct. 10, considered and passed Senate, amended.
Nov. 19, House concurred in Senate amendment.



Public Law 108–431
108th Congress

An Act

To reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government.

Dec. 3, 2004
[H.R. 2912]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Oklahoma.

SECTION 1. REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE.

(a) FINDINGS.—The Congress finds as follows:

(1) The Osage Tribe is a federally recognized tribe based in Pawhuska, Oklahoma.

(2) The Osage Allotment Act of June 28, 1906 (34 Stat. 539), states that the “legal membership” of the Osage Tribe includes the persons on the January 1, 1906 roll and their children, and that each “member” on that roll is entitled to a headright share in the distribution of funds from the Osage mineral estate and an allotment of the surface lands of the Osage Reservation.

(3) Today only Osage Indians who have a headright share in the mineral estate are “members” of the Osage Tribe.

(4) Adult Osage Indians without a headright interest cannot vote in Osage government elections and are not eligible to seek elective office in the Osage Tribe as a matter of Federal law.

(5) A principal goal of Federal Indian policy is to promote tribal self-sufficiency and strong tribal government.

(b) REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE.—

(1) MEMBERSHIP.—Congress hereby clarifies that the term “legal membership” in section 1 of the Act entitled, “An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes”, approved June 28, 1906 (34 Stat. 539), means the persons eligible for allotments of Osage Reservation lands and a pro rata share of the Osage mineral estate as provided in that Act, not membership in the Osage Tribe for all purposes. Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own membership, provided that the rights of any person to Osage mineral estate shares are not diminished thereby.

(2) GOVERNMENT.—Notwithstanding section 9 of the Act entitled, “An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes”, approved June 28, 1906 (34 Stat. 539), Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government.

(3) ELECTIONS AND REFERENDA.—At the request of the Osage Tribe, the Secretary of the Interior shall assist the Osage Tribe with conducting elections and referenda to implement this section.

Approved December 3, 2004.

LEGISLATIVE HISTORY—H.R. 2912:

HOUSE REPORTS: No. 108–502 (Comm. on Resources)

SENATE REPORTS: No. 108–343 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 1, considered and passed House.

Nov. 19, considered and passed Senate.



Public Law 108–432
108th Congress

Joint Resolution

Recognizing the 60th anniversary of the Battle of the Bulge during World War II.

Dec. 3, 2004
[H.J. Res. 110]

Whereas the battle in the European theater of operations during World War II known as the Battle of the Bulge was fought from December 16, 1944, to January 25, 1945;

Whereas the Battle of the Bulge was a major German offensive in the Ardennes forest region of Belgium and Luxembourg which took Allied forces by surprise and was intended to split the Allied forces in Europe by breaking through the Allied lines, crippling the Allied fuel supply lines, and exacerbating tensions within the alliance;

Whereas 600,000 American troops, joined by 55,000 British, Belgian, Canadian, and other soldiers, participated in the Battle of the Bulge, overcoming numerous disadvantages in the early days of the battle that included fewer numbers, treacherous terrain, and bitter weather conditions;

Whereas the Battle of the Bulge resulted in 81,000 American and 1,400 British casualties, of whom approximately 19,000 American and 200 British soldiers were killed, with the remainder wounded, captured, or listed as missing in action;

Whereas the worst atrocity involving Americans in the European theater during World War II, known as the Malmédy Massacre, occurred on December 17, 1944, when 86 unarmed American prisoners of war were gunned down by elements of the German 1st SS Panzer Division;

Whereas American, British, Belgian, Canadian, and other forces overcame great odds throughout the battle, including most famously the action of the 101st Airborne Division in holding back German forces at the key Belgian crossroads town of Bastogne, thereby preventing German forces from achieving their main objective of reaching Antwerp as well as the Meuse River line;

Whereas the success of American, British, Belgian, Canadian, and other forces in defeating the German attack made possible the defeat of Nazi Germany four months later in April 1945;

Whereas thousands of United States veterans of the Battle of the Bulge have traveled to Belgium and Luxembourg in the years since the battle to honor their fallen comrades who died during the battle;

Whereas the peoples of Belgium and Luxembourg, symbolizing their friendship and gratitude toward the American soldiers who fought

to secure their freedom, have graciously hosted countless veterans groups over the years;

Whereas Luxembourg has erected over 90 monuments and plaques commemorating the liberation of Luxembourg by United States Armed Forces during World War II;

Whereas the 60th anniversary of the Battle of the Bulge in 2004 will be marked by many commemorative events by citizens of the United States, Belgium, Luxembourg, and many other nations;

Whereas the friendship between the United States and both Belgium and Luxembourg is strong today in part because of the Battle of the Bulge; and

Whereas section 204 of the Veterans Benefits Act of 2002 (38 U.S.C. 2409 note) authorized the Secretary of the Army to place in Arlington National Cemetery a memorial marker honoring those who fought in the Battle of the Bulge: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) recognizes the 60th anniversary of the battle in the European theater of operations during World War II known as the Battle of the Bulge, which began with a German surprise attack in the Ardennes forest region of Belgium and Luxembourg and ended with an Allied victory that made possible the defeat of Nazi Germany four months later;

(2) honors those who gave their lives during the Battle of the Bulge;

(3) authorizes the President to issue a proclamation calling upon the people of the United States to honor the veterans of the Battle of the Bulge with appropriate programs, ceremonies, and activities; and

(4) reaffirms the bonds of friendship between the United States and both Belgium and Luxembourg.

Approved December 3, 2004.

LEGISLATIVE HISTORY—H.J. Res. 110:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 16, considered and passed House.

Nov. 19, considered and passed Senate.



Public Law 108–433
108th Congress

Joint Resolution

Appointing the day for the convening of the first session of the One Hundred
Ninth Congress.

Dec. 3, 2004
[H.J. Res. 111]

*Resolved by the Senate and House of Representatives of the
United States of America in Congress assembled,* That the first
regular session of the One Hundred Ninth Congress shall begin
at noon on Tuesday, January 4, 2005.

Approved December 3, 2004.

LEGISLATIVE HISTORY—H.J. Res. 111:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 17, considered and passed House.

Nov. 19, considered and passed Senate.



Public Law 108–434
108th Congress

Joint Resolution

Dec. 3, 2004
[H.J. Res. 115]

Making further continuing appropriations for the fiscal year 2005, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 108–309 is further amended by striking the date specified in section 107(c) and inserting the following: “December 8, 2004”.

Ante, p. 2338.

Approved December 3, 2004.

LEGISLATIVE HISTORY—H.J. Res. 115:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 24, considered and passed House and Senate.



Public Law 108–435
108th Congress

An Act

To make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

Dec. 3, 2004
[S. 150]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Internet Tax Nondiscrimination Act”.

Internet Tax
Nondiscrimi-
nation Act.
47 USC 609 note.

SEC. 2. FOUR-YEAR EXTENSION OF INTERNET TAX MORATORIUM.

(a) **IN GENERAL.**—Subsection (a) of section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

“(a) **MORATORIUM.**—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2007:

“(1) Taxes on Internet access.

“(2) Multiple or discriminatory taxes on electronic commerce.”

(b) **CONFORMING AMENDMENTS.**—(1) Section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(2) Section 1104(10) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended to read as follows:

“(10) **TAX ON INTERNET ACCESS.**—

“(A) **IN GENERAL.**—The term ‘tax on Internet access’ means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

“(B) **GENERAL EXCEPTION.**—The term ‘tax on Internet access’ does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.”

(3) Section 1104(2)(B)(i) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking “except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,”.

(c) **INTERNET ACCESS SERVICE; INTERNET ACCESS.**—

(1) **INTERNET ACCESS SERVICE.**—Paragraph (3)(D) of section 1101(d) (as redesignated by subsection (b)(1) of this section) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting “The

term ‘Internet access service’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

47 USC 151 note.

(2) **INTERNET ACCESS.**—Section 1104(5) of that Act is amended by striking the second sentence and inserting “The term ‘Internet access’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

47 USC 151 note.

- (1) by redesignating section 1104 as section 1105; and
- (2) by inserting after section 1103 the following:

“SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

“(a) **PRE-OCTOBER 1998 TAXES.**—

“(1) **IN GENERAL.**—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date—

“(A) the tax was authorized by statute; and

“(B) either—

“(i) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

“(ii) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) **TERMINATION.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), this subsection shall not apply after November 1, 2007.

“(B) **STATE TELECOMMUNICATIONS SERVICE TAX.**—

“(i) **DATE FOR TERMINATION.**—This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in clause (ii).

“(ii) **DESCRIPTION OF TAX.**—A State telecommunications service tax referred to in subclause (i) is a State tax—

“(I) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

“(II) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.”.

“(b) **PRE-NOVEMBER 2003 TAXES.**—

“(1) **IN GENERAL.**—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

“(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate

administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

“(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

“(2) TERMINATION.—This subsection shall not apply after November 1, 2005.”.

SEC. 4. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

“SEC. 1106. ACCOUNTING RULE.

“(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

“(b) DEFINITIONS.—In this section:

“(1) CHARGES FOR INTERNET ACCESS.—The term ‘charges for Internet access’ means all charges for Internet access as defined in section 1105(5).

“(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term ‘charges for telecommunications services’ means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”.

SEC. 5. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

“SEC. 1107. EFFECT ON OTHER LAWS.

“(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

“(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

“(2) in effect on February 8, 1996.

“(b) 911 AND E-911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E-911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E-911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E-911 services.

“(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.”.

SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES OVER THE INTERNET.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 5, is amended by adding at the end the following:

“SEC. 1108. EXCEPTION FOR VOICE SERVICES OVER THE INTERNET.

“Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.”.

SEC. 6A. EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 6, is amended by adding at the end the following:

“SEC. 1109. EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.

“Nothing in this Act shall prohibit Texas or a political subdivision thereof from imposing or collecting the Texas municipal access line fee pursuant to Texas Local Govt. Code Ann. ch. 283 (Vernon 2005) and the definition of access line as determined by the Public Utility Commission of Texas in its ‘Order Adopting Amendments to Section 26.465 As Approved At The February 13, 2003 Public Hearing’, issued March 5, 2003, in Project No. 26412.”.

SEC. 7. GAO STUDY OF EFFECTS OF INTERNET TAX MORATORIUM ON STATE AND LOCAL GOVERNMENTS AND ON BROADBAND DEPLOYMENT.

The Comptroller General shall conduct a study of the impact of the Internet tax moratorium, including its effects on the revenues of State and local governments and on the deployment and adoption of broadband technologies for Internet access throughout the United States, including the impact of the Internet Tax Freedom Act (47 U.S.C. 151 note) on build-out of broadband technology resources in rural underserved areas of the country. The study shall compare deployment and adoption rates in States that tax broadband Internet access service with States that do not tax such service, and take into account other factors to determine whether the Internet Tax Freedom Act has had an impact on the deployment or adoption of broadband Internet access services. The Comptroller General shall report the findings, conclusions, and any recommendations from the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce no later than November 1, 2005.

Reports.
Deadline.

SEC. 8. EFFECTIVE DATE.

47 USC 151 note.

The amendments made by this Act take effect on November 1, 2003.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 150 (H.R. 49):

HOUSE REPORTS: No. 108–234 accompanying H.R. 49 (Comm. on the Judiciary).

SENATE REPORTS: No. 108–155 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 6, 7, considered in Senate.

Vol. 150 (2004): Apr. 27–29, considered and passed Senate.

Nov. 19, considered and passed House.



Public Law 108–436
108th Congress

An Act

Dec. 3, 2004
[S. 434]

Idaho Panhandle
National Forest
Improvement Act
of 2004.

To authorize the Secretary of Agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for National Forest System purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Idaho Panhandle National Forest Improvement Act of 2004”.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term “Secretary” means the Secretary of Agriculture.

SEC. 3. SALE OR EXCHANGE OF ADMINISTRATIVE SITES.

(a) **IN GENERAL.**—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any or all right, title, and interest of the United States in and to the following National Forest System land and improvements:

(1) Granite/Reeder Bay, Priest Lake Parcel, T61N, R4E, Boise Principal Meridian, section 17, S½NE¼ (80 acres, more or less).

(2) North South Ski area, T43N, R3W, Boise Principal Meridian, section 13, SE¼SE¼SW¼, S½SW¼SE¼, NE¼SW¼SE¼, and SW¼SE¼SE¼ (50 acres more or less).

(3) Shoshone work camp (including easements for utilities), T50N, R4E, Boise Principal Meridian, section 5, a portion of the S½SE¼ (19 acres, more or less).

(b) **DESCRIPTIONS.**—The Secretary may modify the descriptions in subsection (a) to correct errors or to make minor adjustments to the parcels in order to facilitate the conveyance of the parcels.

(c) **CONSIDERATION.**—Consideration for a sale or exchange of land under subsection (a)—

(1) shall be equal to the fair market value of the land; and

(2) may include cash or improved or unimproved land.

(d) **APPLICABLE LAW.**—Except as otherwise provided in this Act, any sale or exchange of National Forest System land under subsection (a) shall be subject to the laws applicable to the conveyance and acquisition of land for the National Forest System.

(e) **VALUATION.**—The market value of the land and the improvements to be sold or exchanged under this Act shall be determined by an appraisal that is acceptable to the Secretary and conforms

with the Uniform Appraisal Standards for Federal Land Acquisitions.

(f) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may accept a cash equalization payment in excess of 25 percent of the value of land exchanged under subsection (a).

(g) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—The Secretary may solicit offers for the sale or exchange of land under this section on such terms and conditions as the Secretary may prescribe.

(2) REJECTION OF OFFERS.—The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(h) METHODS OF SALE.—The Secretary may sell land under subsection (a) at public or private sale (including at auction), in accordance with any terms, conditions, and procedures that the Secretary determines to be in the best interests of the United States.

SEC. 4. DISPOSITION OF FUNDS.

(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of a sale or the cash equalization proceeds, if any, from an exchange under section 3(a) in the fund established under Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a).

(b) USE OF PROCEEDS.—Amounts deposited under subsection (a) shall be available to the Secretary, without further appropriation—

(1) for the acquisition of, construction of, or rehabilitation of existing facilities for, a new ranger station in the Silver Valley portion of the Panhandle National Forest; or

(2) to the extent that the amount of funds deposited exceeds the amount needed for the purpose described in paragraph (1), for the acquisition, construction, or rehabilitation of other facilities in the Panhandle National Forest.

(c) NONDISTRIBUTION OF PROCEEDS.—Proceeds from the sale or exchange of land under this Act shall not be paid or distributed to States or counties under any provision of law, or otherwise treated as money received from a national forest, for purposes of—

(1) the Act of May 23, 1908 (16 U.S.C. 500);

(2) section 13 of the Act of March 1, 1911 (commonly known as the “Weeks Law”) (16 U.S.C. 500); or

(3) the Act of March 4, 1913 (16 U.S.C. 501).

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—Land transferred to or otherwise acquired by the Secretary under this Act shall be managed in accordance with—

(1) the Act of March 1, 1911 (commonly known as the “Weeks Law”) (16 U.S.C. 480 et seq.); and

(2) other laws relating to the National Forest System.

(b) EXEMPTION FROM PROPERTY MANAGEMENT REGULATIONS.—Part 1955 of title 7, Code of Federal Regulations (or any successor regulation), shall not apply to any actions taken under this Act.

(c) WITHDRAWALS AND REVOCATIONS.—

(1) WITHDRAWAL.—Subject to valid existing rights, all land described in section 3(a) is withdrawn from—

(A) location, entry, and patent under the mining laws;
and

(B) the operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(2) REVOCATION OF PUBLIC LAND ORDERS.—As of the date of this Act, any public land order withdrawing land described in section 3(a) from all forms of appropriation under the public land laws is revoked with respect to any portion of the land conveyed by the Secretary under this section.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 434:

HOUSE REPORTS: No. 108–740 (Comm. on Resources).

SENATE REPORTS: No. 108–132 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 24, considered and passed Senate.

Vol. 150 (2004): Nov. 17, considered and passed House.



Public Law 108–437
108th Congress

An Act

To implement the recommendations of the Garrison Unit Joint Tribal Advisory Committee by providing authorization for the construction of a rural health care facility on the Fort Berthold Indian Reservation, North Dakota.

Dec. 3, 2004

[S. 1146]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Three Affiliated Tribes Health Facility Compensation Act”.

Three Affiliated
Tribes Health
Facility
Compensation
Act.

SEC. 2. FINDINGS.

Congress finds that—

(1) in 1949, the United States assumed jurisdiction over more than 150,000 prime acres on the Fort Berthold Indian Reservation, North Dakota, for the construction of the Garrison Dam and Reservoir;

(2) the reservoir flooded and destroyed vital infrastructure on the reservation, including a hospital of the Indian Health Service;

(3) the United States made a commitment to the Three Affiliated Tribes of the Fort Berthold Indian Reservation to replace the lost infrastructure;

(4) on May 10, 1985, the Secretary of the Interior established the Garrison Unit Joint Tribal Advisory Committee to examine the effects of the Garrison Dam and Reservoir on the Fort Berthold Indian Reservation;

(5) the final report of the Committee issued on May 23, 1986, acknowledged the obligation of the Federal Government to replace the infrastructure destroyed by the Federal action;

(6) the Committee on Indian Affairs of the Senate—

(A) acknowledged the recommendations of the final report of the Committee in Senate Report No. 102–250; and

(B) stated that every effort should be made by the Administration and Congress to provide additional Federal funding to replace the lost infrastructure; and

(7) on August 30, 2001, the Chairman of the Three Affiliated Tribes testified before the Committee on Indian Affairs of the Senate that the promise to replace the lost infrastructure, particularly the hospital, still had not been kept.

SEC. 3. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

The Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act is amended—

(1) in section 3504 (106 Stat. 4732), by adding at the end the following:

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.”; and

(2) by striking section 3511 (106 Stat. 4739) and inserting the following:

“SEC. 3511. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

“There are authorized to be appropriated to the Secretary of Health and Human Services \$20,000,000 for the construction of, and such sums as are necessary for other expenses relating to, a rural health care facility on the Fort Berthold Indian Reservation of the Three Affiliated Tribes, North Dakota.”.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 1146:

HOUSE REPORTS: No. 108–523, Pt. 1 (Comm. on Resources).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 27, considered and passed Senate.

Vol. 150 (2004): Nov. 17, considered and passed House.



Public Law 108–438
108th Congress

An Act

To establish the Kate Mullany National Historic Site in the State of New York,
and for other purposes.

Dec. 3, 2004
[S. 1241]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Kate Mullany National Historic Site Act”.

Kate Mullany
National Historic
Site Act.
16 USC 461 note.

SEC. 2. DEFINITIONS.

In this Act:

(1) **CENTER.**—The term “Center” means the American Labor Studies Center.

(2) **HISTORIC SITE.**—The term “historic site” means the Kate Mullany National Historic Site established by section 3(a).

(3) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

SEC. 3. KATE MULLANY NATIONAL HISTORIC SITE.

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—There is established as an affiliated area of the National Park System the Kate Mullany National Historic Site in the State of New York.

(2) **COMPONENTS.**—The historic site shall consist of the home of Kate Mullany, located at 350 Eighth Street in Troy, New York.

(b) **ADMINISTRATION.**—

(1) **IN GENERAL.**—The Center shall own, administer, and operate the historic site.

(2) **APPLICABILITY OF NATIONAL PARK SYSTEM LAWS.**—The historic site shall be administered in accordance with—

(A) this Act; and

(B) the laws generally applicable to units of the National Park System, including—

(i) the Act of August 25, 1916 (commonly known as the “National Park Service Organic Act”) (16 U.S.C. 1 et seq.); and

(ii) the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(c) **COOPERATIVE AGREEMENTS.**—(1) The Secretary may enter into cooperative agreements with the Center under which the Secretary may provide to the Center technical, planning, interpretive, construction, and preservation assistance for—

- (A) the preservation of the historic site; and
- (B) educational, interpretive, and research activities relating to the historic site and any related sites.

(2) The Secretary may provide to the Center financial assistance in an amount equal to not more than \$500,000 to assist the Center in acquiring from a willing seller the structure adjacent to the historic site, located at 352 Eighth Street in Troy, New York. On acquisition of the structure, the Secretary shall revise the boundary of the historic site to reflect the acquisition. The non-Federal share of the total cost of acquiring the structure shall be at least 50 percent.

Deadline.

(d) GENERAL MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 full fiscal years after the date on which funds are made available to carry out this Act, the Secretary, in cooperation with the Center, shall develop a general management plan for the historic site.

(2) CONTENTS.—The general management plan shall define the role and responsibilities of the Secretary with respect to the interpretation and preservation of the historic site.

(3) APPLICABLE LAW.—The general management plan shall be prepared in accordance with section 12(b) of the Act of August 18, 1970 (16 U.S.C. 1a–7(b)).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 1241:

SENATE REPORTS: No. 108–295 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Nov. 17, considered and passed House.



Public Law 108–439
108th Congress

An Act

To authorize additional appropriations for the Reclamation Safety of Dams Act of 1978.

Dec. 3, 2004
[S. 1727]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR THE RECLAMATION SAFETY OF DAMS ACT OF 1978.

(a) REIMBURSEMENT OF CERTAIN MODIFICATION COSTS.—Section 4(c) of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508(c)) is amended by striking “(c) With respect to” and all that follows through “2001” and inserting the following:

“(c) REIMBURSEMENT OF CERTAIN MODIFICATION COSTS.—With respect to the additional amounts authorized to be appropriated by section 5”.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 5 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 509) is amended in the first sentence—

(1) by inserting “and, effective October 1, 2003, not to exceed an additional \$540,000,000 (October 1, 2003, price levels),” after “(October 1, 2001, price levels),”; and

(2) by striking “\$750,000” and inserting “\$1,250,000 (October 1, 2003, price levels), as adjusted to reflect any ordinary fluctuations in construction costs indicated by applicable engineering cost indexes,”.

SEC. 2. PARTICIPATION BY PROJECT BENEFICIARIES.

(a) COST CONTAINMENT; MODIFICATION STATUS.—Section 4 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508) is amended by adding at the end the following:

“(e)(1) During the construction of the modification, the Secretary shall consider cost containment measures recommended by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.

“(2) The Secretary shall provide to project beneficiaries on a periodic basis notice regarding the costs and status of the modification.”.

Notice.

(b) PROJECT BENEFICIARIES.—The Reclamation Safety of Dams Act of 1978 is amended by inserting after section 5 (43 U.S.C. 509) the following:

“SEC. 5A. (a) On identifying a Bureau of Reclamation facility for modification, the Secretary shall provide to the project beneficiaries written notice—

Notice.
43 USC 509a.

“(1) describing the need for the modification and the process for identifying and implementing the modification; and

“(2) summarizing the administrative and legal requirements relating to the modification.

“(b) The Secretary shall—

“(1) provide project beneficiaries an opportunity to consult with the Bureau of Reclamation on the planning, design, and construction of the proposed modification; and

“(2) in consultation with project beneficiaries, develop and provide timeframes for the consultation described in paragraph (1).

“(c)(1) Prior to submitting the reports required under section 5, the Secretary shall consider any alternative submitted in writing, in accordance with the timeframes established under subsection (b), by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.

“(2) The Secretary shall provide to the project beneficiary a timely written response describing proposed actions, if any, to address the recommendation.

“(3) The response of the Secretary shall be included in the reports required by section 5.

“(d) The Secretary may waive 1 or more of the requirements of subsections (a), (b), and (c), if the Secretary determines that implementation of the requirement could have an adverse impact on dam safety or security.”.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 1727 (H.R. 4893):

HOUSE REPORTS: No. 108–757 accompanying H.R. 4893 (Comm. on Resources).

SENATE REPORTS: No. 108–296 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 15, considered and passed Senate.

Nov. 17, considered and passed House.



Public Law 108–440
108th Congress

An Act

To designate the facility of the United States Postal Service located at 3150 Great Northern Avenue in Missoula, Montana, as the “Mike Mansfield Post Office”.

Dec. 3, 2004
[S. 2214]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MIKE MANSFIELD POST OFFICE, MISSOULA, MONTANA.

(a) DESIGNATION.—The facility of the United States Postal Service located at 3150 Great Northern Avenue in Missoula, Montana, shall be known and designated as the “Mike Mansfield Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Mike Mansfield Post Office”.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 2214:

CONGRESSIONAL RECORD, Vol. 150 (2004):
June 9, considered and passed Senate.
Nov. 16, considered and passed House.



Public Law 108–441
108th Congress

An Act

Dec. 3, 2004

[S. 2302]

To improve access to physicians in medically underserved areas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATION OF VISA REQUIREMENTS WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) EXTENSION OF DEADLINE.—

(1) IN GENERAL.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) (as amended by section 11018 of Public Law 107–273) is amended by striking “2004.” and inserting “2006.”.

8 USC 1182 note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if enacted on May 31, 2004.

(b) EXEMPTION FROM H–1B NUMERICAL LIMITATIONS.—Section 214(l)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(2)(A)) is amended by adding at the end the following: “The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.”.

(c) LIMITATION ON MEDICAL PRACTICE AREAS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is amended by striking “agrees to practice medicine” and inserting “agrees to practice primary care or specialty medicine”.

(d) EXEMPTIONS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is further amended—

(1) by striking “except that,” and all that follows and inserting “except that—”; and

(2) by adding at the end the following:

“(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;

“(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in

subparagraph (B)) in accordance with the conditions of this clause to exceed 5; and

“(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.”.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 2302:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 11, considered and passed Senate.

Nov. 17, considered and passed House.



Public Law 108–442
108th Congress

An Act

Dec. 3, 2004
[S. 2640]

To designate the facility of the United States Postal Service located at 1050 North Hills Boulevard in Reno, Nevada, as the “Guardians of Freedom Memorial Post Office Building” and to authorize the installation of a plaque at such site, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF GUARDIANS OF FREEDOM MEMORIAL POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Post Office located at 1050 North Hills Boulevard in Reno, Nevada, shall be known and designated as the “Guardians of Freedom Memorial Post Office Building”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Guardians of Freedom Memorial Post Office Building”.

SEC. 2. INSTALLATION OF PLAQUE.

(a) AGREEMENT.—The Postmaster General may enter into an agreement with the Office of Veterans’ Services of the State of Nevada under which the Office of Veterans’ Services of the State of Nevada agrees—

(1) to install a plaque to be displayed at the Guardians of Freedom Memorial Post Office Building referred to in section 1(a); and

(2) to maintain and update such plaque, as appropriate and in accordance with subsections (b) and (c).

(b) INSCRIPTIONS.—

(1) DEDICATION.—The plaque installed pursuant to subsection (a) shall bear the following inscription: “This post office building is dedicated in the memory of those men and women of the State of Nevada who have lost their lives while serving in the Armed Forces of the United States in the Global War on Terrorism and in Operation Iraqi Freedom.”.

(2) ADDITIONAL INFORMATION.—The plaque installed pursuant to subsection (a) shall also include with respect to the men and women of the Armed Forces referred to in paragraph (1) inscriptions containing the names, ranks, branches of service, hometowns, and dates of death of such men and women.

(c) EXPENDITURE OF COSTS.—The agreement referred to in subsection (a) shall provide that the Office of Veterans' Services of the State of Nevada shall have sole responsibility for the expenditure of all costs associated with the installation, maintenance, and updating of the plaque.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 2640 (H.R. 4442):

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 22, considered and passed Senate.

Nov. 16, considered and passed House.



Public Law 108–443
108th Congress

An Act

Dec. 3, 2004
[S. 2693]

To designate the facility of the United States Postal Service located at 1475 Western Avenue, Suite 45, in Albany, New York, as the “Lieutenant John F. Finn Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIEUTENANT JOHN F. FINN POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 1475 Western Avenue, Suite 45, in Albany, New York, shall be known and designated as the “Lieutenant John F. Finn Post Office”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the “Lieutenant John F. Finn Post Office”.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 2693 (H.R. 5053):
CONGRESSIONAL RECORD, Vol. 150 (2004):
Oct. 10, considered and passed Senate.
Nov. 16, considered and passed House.



Public Law 108–444
108th Congress

An Act

To amend the Livestock Mandatory Price Reporting Act of 1999 to modify the termination date for mandatory price reporting.

Dec. 3, 2004
[S. 2965]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION.

Section 942 of the Livestock Mandatory Price Reporting Act of 1999 (7 U.S.C. 1635 note; Public Law 106–78) is amended by striking “terminate” and all that follows and inserting “terminate on September 30, 2005.”.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 2965:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 8, considered and passed Senate.

Nov. 17, considered and passed House.



Public Law 108–445
108th Congress

An Act

Dec. 3, 2004
[S. 2484]

Department of
Veterans Affairs
Health Care
Personnel
Enhancement
Act of 2004.
38 USC 101 note.

To amend title 38, United States Code, to simplify and improve pay provisions for physicians and dentists and to authorize alternate work schedules and executive pay for nurses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004”.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 3. SIMPLIFICATION AND IMPROVEMENT OF GRADE AND PAY PROVISIONS FOR PHYSICIANS AND DENTISTS.

(a) SIMPLIFICATION OF GRADES AND GRADE REQUIREMENTS.—
(1) Subsection (b) of section 7404 is amended—

(A) by striking “(1)” after “(b)”;

(B) in the Physician and Dentist Schedule, by striking the items relating to the grades and inserting the following:
“Physician grade.

“Dentist grade.”; and

(C) by striking paragraph (2).

(2) Subsection (a) of such section is amended by adding at the end the following: “The pay of physicians and dentists serving in positions to which an Executive order applies under the preceding sentence shall be determined under subchapter III of this chapter instead of such Executive order.”.

(b) SIMPLIFICATION AND IMPROVEMENT OF PAY AUTHORITIES.—
Subchapter III of chapter 74 is amended to read as follows:

“SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS

“§ 7431. Pay

“(a) ELEMENTS OF PAY.—Pay of physicians and dentists in the Veterans Health Administration shall consist of three elements as follows:

“(1) Base pay as provided for under subsection (b).

“(2) Market pay as provided for under subsection (c).

“(3) Performance pay as provided under subsection (d).

“(b) **BASE PAY.**—One element of pay for physicians and dentists shall be base pay. Base pay shall meet the following requirements:

“(1) Each physician and dentist is entitled to base pay determined under the Physician and Dentist Base and Longevity Pay Schedule.

“(2) The Physician and Dentist Base and Longevity Pay Schedule is composed of 15 rates of base pay designated, from the lowest rate of pay to the highest rate of pay, as base pay steps 1 through 15.

“(3) The rate of base pay payable to a physician or dentist is based on the total number of the years of the service of the physician or dentist in the Veterans Health Administration as follows:

“For a physician or dentist

with total service of:

**The rate of
base pay is
the rate
payable for:**

two years or less	step 1
more than 2 years and not more than 4 years	step 2
more than 4 years and not more than 6 years	step 3
more than 6 years and not more than 8 years	step 4
more than 8 years and not more than 10 years	step 5
more than 10 years and not more than 12 years	step 6
more than 12 years and not more than 14 years	step 7
more than 14 years and not more than 16 years	step 8
more than 16 years and not more than 18 years	step 9
more than 18 years and not more than 20 years	step 10
more than 20 years and not more than 22 years	step 11
more than 22 years and not more than 24 years	step 12
more than 24 years and not more than 26 years	step 13
more than 26 years and not more than 28 years	step 14
more than 28 years	step 15.

“(4) At the same time as rates of basic pay are increased for a year under section 5303 of title 5, the Secretary shall increase the amount of base pay payable under this subsection for that year by a percentage equal to the percentage by which rates of basic pay are increased under such section for that year.

“(c) **MARKET PAY.**—One element of pay for physicians and dentists shall be market pay. Market pay shall meet the following requirements:

“(1) Each physician and dentist is eligible for market pay.

“(2) Market pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment (as defined by the Secretary) of a particular physician or dentist in a facility of the Department of Veterans Affairs.

“(3) The annual amount of the market pay payable to a physician or dentist shall be determined by the Secretary on a case-by-case basis.

“(4)(A) In determining the amount of market pay for physicians or dentists, the Secretary shall consult two or more national surveys of pay for physicians or dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians or dentists, as applicable.

“(B)(i) In determining the amount of the market pay for a particular physician or dentist under this subsection, and in determining a tier (if any) to apply to a physician or dentist under subsection (e)(1)(B), the Secretary shall consult with

and consider the recommendations of an appropriate panel or board composed of physicians or dentists (as applicable).

“(ii) A physician or dentist may not be a member of the panel or board that makes recommendations under clause (i) with respect to the market pay of such physician or dentist, as the case may be.

“(iii) The Secretary should, to the extent practicable, ensure that a panel or board consulted under this subparagraph includes physicians or dentists (as applicable) who are practicing clinicians and who do not hold management positions in the medical facility of the Department at which the physician or dentist subject to the consultation is employed.

“(5) The determination of the amount of market pay of a physician or dentist shall take into account—

“(A) the level of experience of the physician or dentist in the specialty or assignment of the physician or dentist;

“(B) the need for the specialty or assignment of the physician or dentist at the medical facility of the Department concerned;

“(C) the health care labor market for the specialty or assignment of the physician or dentist, which may cover any geographic area the Secretary considers appropriate for the specialty or assignment;

“(D) the board certifications, if any, of the physician or dentist;

“(E) the prior experience, if any, of the physician or dentist as an employee of the Veterans Health Administration; and

“(F) such other considerations as the Secretary considers appropriate.

“(6) The amount of market pay of a physician or dentist shall be evaluated by the Secretary not less often than once every 24 months. The amount of market pay may be adjusted as the result of an evaluation under this paragraph. A physician or dentist whose market pay is evaluated under this paragraph shall receive written notice of the results of such evaluation in accordance with procedures prescribed under section 7433 of this title.

“(7) No adjustment of the amount of market pay of a physician or dentist under paragraph (6) may result in a reduction of the amount of market pay of the physician or dentist while in the same position or assignment at the medical facility of the Department concerned.

“(d) PERFORMANCE PAY.—(1) One element of pay for physicians and dentists shall be performance pay.

“(2) Performance pay shall be paid to a physician or dentist on the basis of the physician’s or dentist’s achievement of specific goals and performance objectives prescribed by the Secretary.

“(3) The Secretary shall ensure that each physician and dentist of the Department is advised of the specific goals or objectives that are to be measured by the Secretary in determining the eligibility of that physician or dentist for performance pay.

“(4) The amount of the performance pay payable to a physician or dentist may vary annually on the basis of individual achievement or attainment of the goals or objectives applicable to the physician or dentist under paragraph (2).

Notice.

“(5) The amount of performance pay payable to a physician or dentist in a fiscal year shall be determined in accordance with regulations prescribed by the Secretary, but may not exceed the lower of—

“(A) \$15,000; or

“(B) the amount equal to 7.5 percent of the sum of the base pay and the market pay payable to such physician or dentist in that fiscal year.

“(6) A failure to meet goals or objectives applicable to a physician or dentist under paragraph (2) may not be the sole basis for an adverse personnel action against that physician or dentist.

“(e) REQUIREMENTS AND LIMITATIONS ON TOTAL PAY.—(1)(A) Not less often than once every two years, the Secretary shall prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid under this section to physicians and the minimum and maximum amounts of annual pay that may be paid under this section to dentists.

“(B) The Secretary may prescribe for Department-wide applicability under this paragraph separate minimum and maximum amounts of pay for a specialty or assignment. If the Secretary prescribes separate minimum and maximum amounts for a specialty or assignment, the Secretary may establish up to four tiers of minimum and maximum amounts for such specialty or assignment and prescribe for each tier a minimum amount and a maximum amount that the Secretary determines appropriate for the professional responsibilities, professional achievements, and administrative duties of the physicians or dentists (as the case may be) whose pay is set within that tier.

“(C) Amounts prescribed under this paragraph shall be published in the Federal Register, and shall not take effect until at least 60 days after the date of publication.

Federal Register,
publication.
Effective date.

“(2) Except as provided in paragraph (3) and subject to paragraph (4), the sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may not be less than the minimum amount, nor more than the maximum amount, applicable to specialty or assignment of the physician or dentist under paragraph (1).

“(3) The sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may exceed the maximum amount applicable to the specialty or assignment of the physician or dentist under paragraph (1) as a result of an adjustment under paragraph (3) or (4) of subsection (b).

“(4) In no case may the total amount of compensation paid to a physician or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

“(f) TREATMENT OF PAY.—Pay under subsections (b) and (c) of this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

“(g) ANCILLARY EFFECTS OF DECREASES IN PAY.—(1) A decrease in pay of a physician or dentist resulting from an adjustment in the amount of market pay of the physician or dentist under subsection (c) shall not be treated as an adverse action.

“(2) If the pay of a physician or dentist is reduced under this subchapter as a result of an involuntary reassignment in connection with a disciplinary action taken against the physician or dentist, the involuntary reassignment shall be subject to appeal under subchapter V of this chapter.

“(h) DELEGATION OF RESPONSIBILITIES.—The Secretary may delegate to an appropriate officer or employee of the Department any responsibility of the Secretary under subsection (c), (d), or (e) except for the responsibilities of the Secretary under subsection (e)(1).

“§ 7432. Pay of Under Secretary for Health

“(a) BASE PAY.—The base pay of the Under Secretary for Health shall be the annual rate of basic pay for positions at Level III of the Executive Schedule under section 5314 of title 5.

“(b) MARKET PAY.—(1) In the case of an Under Secretary for Health who is also a physician or dentist, in addition to the base pay specified in subsection (a) the Under Secretary for Health may also be paid the market pay element of pay of physicians and dentists under section 7431(c) of this title.

“(2) The amount of market pay of the Under Secretary for Health under this subsection shall be established by the Secretary.

“(3) In establishing the amount of market pay of the Under Secretary for Health under this subsection, the Secretary shall utilize an appropriate health care labor market selected by the Secretary for purposes of this subsection.

“(c) TREATMENT OF PAY.—Pay under this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

“§ 7433. Administrative matters

“(a) REGULATIONS.—(1) The Secretary shall prescribe regulations relating to the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

“(2) In prescribing the regulations, the Secretary shall take into account the recommendations of the Under Secretary for Health on the administration of this subchapter. In formulating recommendations for the purpose of this paragraph, the Under Secretary shall request the views of representatives of labor organizations that are exclusive representatives of physicians and dentists of the Department and the views of representatives of professional organizations of physicians and dentists of the Department.

“(b) REPORTS.—(1) Not later than 18 months after the Secretary prescribes the regulations required by subsection (a), and annually thereafter for the next 5 years, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

“(2) Each report under this subsection shall include the following:

“(A) A description of the rates of pay in effect during the current fiscal year with a comparison to the rates in effect during the fiscal year preceding the current fiscal year, set forth by facility and by specialty.

“(B) The number of physicians and dentists who left the Veterans Health Administration during the preceding fiscal year.

“(C) The number of unfilled physician positions and dentist positions in each specialty in the Veterans Health Administration, the average and maximum lengths of time that such positions have been unfilled, and an assessment of the reasons that such positions remain unfilled.

“(D) An assessment of the impact of implementation of this subchapter on efforts to recruit and retain physicians and dentists in the Veterans Health Administration.

“(3) The first two annual reports under this subsection shall also include a comparison of staffing levels, contract expenditures, and average salaries of physicians and dentists in the Veterans Health Administration for the current fiscal year and for the fiscal year preceding the current fiscal year, set forth by facility and by specialty.”.

(c) **INITIAL RATES OF BASE PAY FOR PHYSICIANS AND DENTISTS.**—The initial rates of base pay established for the base pay steps under the Physician and Dentist Base and Longevity Pay Schedule provided in section 7431(b) of title 38, United States Code (as added by subsection (b)), are as follows:

38 USC 7431
note.

Base Pay Step:	Rate of Pay:
1	\$90,000
2	\$93,000
3	\$96,000
4	\$99,000
5	\$102,000
6	\$105,000
7	\$108,000
8	\$111,000
9	\$114,000
10	\$117,000
11	\$120,000
12	\$123,000
13	\$126,000
14	\$129,000
15	\$132,000.

(d) **EFFECTIVE DATE.**—(1) Notwithstanding the 60-day waiting requirement in section 7431(e)(1)(C) of title 38, United States Code (as amended by subsection (b)), pay provided for a physician or dentist under subchapter III of chapter 74 of such title, as amended by subsection (b), shall take effect on the first day of the first pay period applicable to such physician or dentist that begins on or after January 1, 2006.

38 USC 7431
note.

(2) Pay provided for the Under Secretary for Health under subchapter III of chapter 74 of title 38, United States Code, as amended by this section shall take effect on the first day of the first pay period applicable to the Under Secretary that begins on or after January 1, 2006.

(e) **TRANSITION PROVISIONS.**—

38 USC 7431
note.

(1) **PHYSICIANS AND DENTISTS.**—

(A) **PAY.**—(i) The amount of the pay payable on and after the date of the enactment of this Act to a physician or dentist in receipt of pay under section 7404 or 7405 of title 38, United States Code, as of the day before such date shall continue to be determined under such section (as in effect on the day before such date) until the effective date that is applicable under subsection (d) to such physician or dentist, as the case may be.

(ii) A physician or dentist appointed or reassigned on or after the date of the enactment of this Act, but before

the effective date applicable under subsection (d) to such physician or dentist, shall be compensated in accordance with applicable provisions of section 7404 or 7405 of title 38, United States Code (as in effect on the day before date of the enactment of this Act), until such effective date.

(B) SPECIAL PAY.—(i) A special pay agreement entered into by a physician or dentist under subchapter III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act shall terminate on the date of the enactment of this Act. However, a physician or dentist in receipt of special pay pursuant to such an agreement on that date shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) to such physician or dentist.

(ii) A physician or dentist described in subparagraph (A)(ii) may be paid special pay under applicable provisions of section 7433, 7434, 7435, or 7436 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of the appointment or reassignment of such physician or dentist, as the case may be, and ending on the effective date applicable under subsection (d) to such physician or dentist. However, no special pay agreement shall be required for the payment of special pay under this clause.

(C) TREATMENT OF SPECIAL PAY.—(i) Special pay paid under subparagraph (B) to a physician or dentist during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to such physician or dentist shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act).

(ii) Special pay paid to a physician or dentist under section 7438 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

(D) PRESERVATION OF PAY.—The amount of pay paid to a physician or dentist after the effective date of this Act shall not be less than the amount of pay paid to such physician or dentist on the day before the effective date of this Act while such physician or dentist remains in the same position or assignment.

(2) UNDER SECRETARY FOR HEALTH.—

(A) SPECIAL PAY.—(i) The current special pay agreement entered into by the Under Secretary for Health under subchapters I and III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act shall terminate on the date of the enactment of this Act. However, the Under Secretary shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) to the Under Secretary.

(ii) An individual appointed as Under Secretary for Health on or after the date of the enactment of this Act and before the effective date applicable under subsection (d) to the Under Secretary shall be paid special pay in accordance with the provisions of sections 7432(d)(2) and 7433 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of appointment and ending on such effective date. However, no special pay agreement shall be required for the payment of special pay under this clause.

(B) TREATMENT OF SPECIAL PAY.—Special pay paid under subparagraph (A) during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to the Under Secretary—

(i) shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act); and

(ii) shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

(f) CONFORMING AMENDMENTS.—Section 7404 is amended—

(1) in subsection (c), by striking “special pay” and inserting “pay”; and

(2) in subsection (d), by striking “pay may not be paid” and all that follows and inserting “pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.”.

(g) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 74 is amended by striking the items relating to subchapter III and inserting the following new items:

“SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS

“Sec. 7431. Pay.

“Sec. 7432. Pay of Under Secretary for Health.

“Sec. 7433. Administrative matters.”.

SEC. 4. ALTERNATE WORK SCHEDULES FOR REGISTERED NURSES.

(a) IN GENERAL.—(1) Chapter 74 is amended by inserting after section 7456 the following new section:

“§ 7456A. Nurses: alternate work schedules

“(a) APPLICABILITY.—This section applies to registered nurses appointed under this chapter.

“(b) 36/40 WORK SCHEDULE.—(1)(A) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work three regularly scheduled 12-hour tours of duty within a work week shall be considered for all purposes to have worked a full 40-hour basic work week.

“(B) A nurse who works under the authority in subparagraph (A) shall be considered a 0.90 full-time equivalent employee in

computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

“(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) to have worked a full 40-hour basic work week shall be subject to subparagraphs (B) and (C).

“(B) The hourly rate of basic pay for a nurse covered by this paragraph for service performed as part of a regularly scheduled 36-hour tour of duty within the work week shall be derived by dividing the nurse’s annual rate of basic pay by 1,872.

Overtime pay.

“(C) The Secretary shall pay overtime pay to a nurse covered by this paragraph who—

“(i) performs a period of service in excess of such nurse’s regularly scheduled 36-hour tour of duty within an administrative work week;

“(ii) for officially ordered or approved service, performs a period of service in excess of 8 hours on a day other than a day on which such nurse’s regularly scheduled 12-hour tour of duty falls;

“(iii) performs a period of service in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty work week; or

“(iv) performs a period of service in excess of 40 hours during an administrative work week.

“(D) The Secretary may provide a nurse to whom this subsection applies with additional pay under section 7453 of this title for any period included in a regularly scheduled 12-hour tour of duty.

“(3) A nurse who works a work schedule described in this subsection who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of ten hours of leave for every nine hours of absence.

“(c) HOLIDAY PAY.—A nurse working a work schedule under subsection (b) that includes a holiday designated by law or Executive order shall be eligible for holiday pay under section 7453(d) of this title for any service performed by the nurse on such holiday under such section.

“(d) 9-MONTH WORK SCHEDULE FOR CERTAIN NURSES.—(1) The Secretary may authorize a registered nurse appointed under section 7405 of this title, with the nurse’s written consent, to work full time for nine months with 3 months off duty, within a fiscal year, and be paid at 75 percent of the full-time rate for such nurse’s grade for each pay period of such fiscal year.

“(2) A nurse who works under the authority in paragraph (1) shall be considered a 0.75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

“(3) Work under this subsection shall be considered part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

“(4) A nurse who works under the authority in paragraph (1) shall be considered a full-time employee for purposes of chapter 89 of title 5.

“(e) NOTIFICATION OF MODIFICATION OF BENEFITS.—The Secretary shall provide each employee with respect to whom an alternate work schedule under this section may apply written notice of the effect, if any, that the alternate work schedule will have on the employee’s health care premium, retirement, life insurance

premium, probationary status, or other benefit or condition of employment. The notice shall be provided not later than 14 days before the employee consents to the alternate work schedule. Deadline.

“(f) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.”.

(2) The table of sections at the beginning of chapter 74 is amended by inserting after the item relating to section 7456 the following new item:

“Sec. 7456A. Nurses: alternate work schedules.”.

(b) POLICY AGAINST CERTAIN WORK HOURS.—(1) It is the sense of Congress to encourage the Secretary of Veterans Affairs to prevent work hours by nurses providing direct patient care in excess of 12 consecutive hours or in excess of 60 hours in any 7-day period, except in the case of nurses providing emergency care.

(2) Not later than one year after the date of the enactment of this Act and every year thereafter for the next two years, the Secretary shall certify to Congress whether or not each Veterans Health Administration facility has in place, as of the date of such certification, a policy designed to prevent work hours by nurses providing direct patient care (other than nurses providing emergency care) in excess of 12 consecutive hours or in excess of 60 hours in any 7-day period. Deadline.
Certification.

SEC. 5. NURSE EXECUTIVE SPECIAL PAY.

Section 7452 is amended by adding at the end the following new subsection:

“(g)(1) In order to recruit and retain highly qualified Department nurse executives, the Secretary may, in accordance with regulations prescribed by the Secretary, pay special pay to the nurse executive at each location as follows:

“(A) Each Department health care facility.

“(B) The Central Office.

“(2) The amount of special pay paid to a nurse executive under paragraph (1) shall be not less than \$10,000 or more than \$25,000.

“(3) The amount of special pay paid to a nurse executive under paragraph (1) shall be based on factors such as the grade of the nurse executive position, the scope and complexity of the nurse executive position, the personal qualifications of the nurse executive, the characteristics of the health care facility concerned, the nature and number of specialty care units at the health care facility concerned, demonstrated difficulties in recruitment and retention of nurse executives at the health care facility concerned, and such other factors as the Secretary considers appropriate.

“(4) Special pay paid to a nurse executive under paragraph (1) shall be in addition to any other pay (including basic pay) and allowances to which the nurse executive is entitled, and shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits, but shall

not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.”.

Approved December 3, 2004.

LEGISLATIVE HISTORY—S. 2484:

SENATE REPORTS: No. 108–357 (Comm. on Veterans’ Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed Senate.

Nov. 17, considered and passed House.



Public Law 108–446
108th Congress

An Act

To reauthorize the Individuals with Disabilities Education Act, and for other purposes.

Dec. 3, 2004
[H.R. 1350]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Individuals with Disabilities Education Improvement Act of 2004”.

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

Title I—Amendments to the Individuals With Disabilities Education Act.

Title II—National Center for Special Education Research.

Title III—Miscellaneous Provisions.

Individuals with
Disabilities
Education
Improvement Act
of 2004.
20 USC 1400
note.

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

“PART A—GENERAL PROVISIONS

“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES. 20 USC 1400.

“(a) **SHORT TITLE.**—This title may be cited as the ‘Individuals with Disabilities Education Act’.

“(b) **TABLE OF CONTENTS.**—The table of contents for this title is as follows:

“PART A—GENERAL PROVISIONS

“Sec. 601. Short title; table of contents; findings; purposes.

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

“Sec. 605. Acquisition of equipment; construction or alteration of facilities.

“Sec. 606. Employment of individuals with disabilities.

“Sec. 607. Requirements for prescribing regulations.

“Sec. 608. State administration.

“Sec. 609. Paperwork reduction.

“Sec. 610. Freely associated states.

“PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

- “Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
- “Sec. 612. State eligibility.
- “Sec. 613. Local educational agency eligibility.
- “Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
- “Sec. 615. Procedural safeguards.
- “Sec. 616. Monitoring, technical assistance, and enforcement.
- “Sec. 617. Administration.
- “Sec. 618. Program information.
- “Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

- “Sec. 631. Findings and policy.
- “Sec. 632. Definitions.
- “Sec. 633. General authority.
- “Sec. 634. Eligibility.
- “Sec. 635. Requirements for statewide system.
- “Sec. 636. Individualized family service plan.
- “Sec. 637. State application and assurances.
- “Sec. 638. Uses of funds.
- “Sec. 639. Procedural safeguards.
- “Sec. 640. Payor of last resort.
- “Sec. 641. State interagency coordinating council.
- “Sec. 642. Federal administration.
- “Sec. 643. Allocation of funds.
- “Sec. 644. Authorization of appropriations.

“PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

- “Sec. 650. Findings.

“SUBPART 1—STATE PERSONNEL DEVELOPMENT GRANTS

- “Sec. 651. Purpose; definition of personnel; program authority.
- “Sec. 652. Eligibility and collaborative process.
- “Sec. 653. Applications.
- “Sec. 654. Use of funds.
- “Sec. 655. Authorization of appropriations.

“SUBPART 2—PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, MODEL DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION

- “Sec. 661. Purpose; definition of eligible entity.
- “Sec. 662. Personnel development to improve services and results for children with disabilities.
- “Sec. 663. Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research.
- “Sec. 664. Studies and evaluations.
- “Sec. 665. Interim alternative educational settings, behavioral supports, and systemic school interventions.
- “Sec. 667. Authorization of appropriations.

“SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES

- “Sec. 670. Purposes.
- “Sec. 671. Parent training and information centers.
- “Sec. 672. Community parent resource centers.
- “Sec. 673. Technical assistance for parent training and information centers.
- “Sec. 674. Technology development, demonstration, and utilization; and media services.
- “Sec. 675. Authorization of appropriations.

“SUBPART 4—GENERAL PROVISIONS

- “Sec. 681. Comprehensive plan for subparts 2 and 3.
- “Sec. 682. Administrative provisions.

“(c) FINDINGS.—Congress finds the following:

“(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national

policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

“(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met because—

“(A) the children did not receive appropriate educational services;

“(B) the children were excluded entirely from the public school system and from being educated with their peers;

“(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

“(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

“(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this title has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

“(4) However, the implementation of this title has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

“(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

“(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to—

“(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

“(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

“(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

“(C) coordinating this title with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

“(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

“(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional

performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

“(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;

“(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

“(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

“(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

“(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

“(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

“(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

“(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

“(B) America’s ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

“(C) Minority children comprise an increasing percentage of public school students.

“(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

“(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

“(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

“(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation’s students from non-English language backgrounds.

“(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high drop-out rates among minority children with disabilities.

“(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

“(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.

“(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

“(E) Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.

“(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

“(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this title, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

“(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

“(d) PURPOSES.—The purposes of this title are—

“(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

“(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

“(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

“(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

“(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

“(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

“SEC. 602. DEFINITIONS.

“Except as otherwise provided, in this title:

“(1) ASSISTIVE TECHNOLOGY DEVICE.—

“(A) IN GENERAL.—The term ‘assistive technology device’ means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

“(B) EXCEPTION.—The term does not include a medical device that is surgically implanted, or the replacement of such device.

“(2) ASSISTIVE TECHNOLOGY SERVICE.—The term ‘assistive technology service’ means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

“(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child’s customary environment;

“(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

“(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

“(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

“(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

“(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

“(3) CHILD WITH A DISABILITY.—

“(A) IN GENERAL.—The term ‘child with a disability’ means a child—

“(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

“(ii) who, by reason thereof, needs special education and related services.

“(B) CHILD AGED 3 THROUGH 9.—The term ‘child with a disability’ for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

“(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic

instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

“(ii) who, by reason thereof, needs special education and related services.

“(4) CORE ACADEMIC SUBJECTS.—The term ‘core academic subjects’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

“(5) EDUCATIONAL SERVICE AGENCY.—The term ‘educational service agency’—

“(A) means a regional public multiservice agency—

“(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

“(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

“(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

“(6) ELEMENTARY SCHOOL.—The term ‘elementary school’ means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

“(7) EQUIPMENT.—The term ‘equipment’ includes—

“(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

“(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

“(8) EXCESS COSTS.—The term ‘excess costs’ means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

“(A) amounts received—

“(i) under part B;

“(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

“(iii) under parts A and B of title III of that Act; and

“(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

“(9) FREE APPROPRIATE PUBLIC EDUCATION.—The term ‘free appropriate public education’ means special education and related services that—

“(A) have been provided at public expense, under public supervision and direction, and without charge;

“(B) meet the standards of the State educational agency;

“(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

“(D) are provided in conformity with the individualized education program required under section 614(d).

“(10) HIGHLY QUALIFIED.—

“(A) IN GENERAL.—For any special education teacher, the term ‘highly qualified’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also—

“(i) includes the requirements described in subparagraph (B); and

“(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

“(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—

“(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State’s public charter school law;

“(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

“(iii) the teacher holds at least a bachelor’s degree.

“(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS.—When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either—

“(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

“(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

“(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS.—When used with respect to a special education

teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either—

“(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

“(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

“(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

“(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

“(F) DEFINITION FOR PURPOSES OF THE ESEA.—A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

“(11) HOMELESS CHILDREN.—The term ‘homeless children’ has the meaning given the term ‘homeless children and youths’ in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

“(12) INDIAN.—The term ‘Indian’ means an individual who is a member of an Indian tribe.

“(13) INDIAN TRIBE.—The term ‘Indian tribe’ means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

“(14) INDIVIDUALIZED EDUCATION PROGRAM; IEP.—The term ‘individualized education program’ or ‘IEP’ means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

“(15) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term ‘individualized family service plan’ has the meaning given the term in section 636.

“(16) INFANT OR TODDLER WITH A DISABILITY.—The term ‘infant or toddler with a disability’ has the meaning given the term in section 632.

“(17) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’—

“(A) has the meaning given the term in section 101 of the Higher Education Act of 1965; and

“(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.

“(18) LIMITED ENGLISH PROFICIENT.—The term ‘limited English proficient’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

“(19) LOCAL EDUCATIONAL AGENCY.—

“(A) IN GENERAL.—The term ‘local educational agency’ means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

“(B) EDUCATIONAL SERVICE AGENCIES AND OTHER PUBLIC INSTITUTIONS OR AGENCIES.—The term includes—

“(i) an educational service agency; and

“(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

“(C) BIA FUNDED SCHOOLS.—The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this title with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

“(20) NATIVE LANGUAGE.—The term ‘native language’, when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

“(21) NONPROFIT.—The term ‘nonprofit’, as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

“(22) OUTLYING AREA.—The term ‘outlying area’ means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(23) PARENT.—The term ‘parent’ means—

“(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

“(B) a guardian (but not the State if the child is a ward of the State);

“(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or

“(D) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent.

“(24) PARENT ORGANIZATION.—The term ‘parent organization’ has the meaning given the term in section 671(g).

“(25) PARENT TRAINING AND INFORMATION CENTER.—The term ‘parent training and information center’ means a center assisted under section 671 or 672.

“(26) RELATED SERVICES.—

“(A) IN GENERAL.—The term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

“(B) EXCEPTION.—The term does not include a medical device that is surgically implanted, or the replacement of such device.

“(27) SECONDARY SCHOOL.—The term ‘secondary school’ means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

“(28) SECRETARY.—The term ‘Secretary’ means the Secretary of Education.

“(29) SPECIAL EDUCATION.—The term ‘special education’ means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

“(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

“(B) instruction in physical education.

“(30) SPECIFIC LEARNING DISABILITY.—

“(A) IN GENERAL.—The term ‘specific learning disability’ means a disorder in 1 or more of the basic psychological processes involved in understanding or in using

language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

“(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

“(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

“(31) STATE.—The term ‘State’ means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

“(32) STATE EDUCATIONAL AGENCY.—The term ‘State educational agency’ means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

“(33) SUPPLEMENTARY AIDS AND SERVICES.—The term ‘supplementary aids and services’ means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

“(34) TRANSITION SERVICES.—The term ‘transition services’ means a coordinated set of activities for a child with a disability that—

“(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

“(B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

“(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

“(35) UNIVERSAL DESIGN.—The term ‘universal design’ has the meaning given the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

“(36) WARD OF THE STATE.—

“(A) IN GENERAL.—The term ‘ward of the State’ means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

“(B) EXCEPTION.—The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

“SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

20 USC 1402.

“(a) **ESTABLISHMENT.**—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in the Department for administering and carrying out this title and other programs and activities concerning the education of children with disabilities.

“(b) **DIRECTOR.**—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

“(c) **VOLUNTARY AND UNCOMPENSATED SERVICES.**—Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this title.

“SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

20 USC 1403.

“(a) **IN GENERAL.**—A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this title.

“(b) **REMEDIES.**—In a suit against a State for a violation of this title, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

“(c) **EFFECTIVE DATE.**—Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

20 USC 1404.

“(a) **IN GENERAL.**—If the Secretary determines that a program authorized under this title will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

“(b) **COMPLIANCE WITH CERTAIN REGULATIONS.**—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

“(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the ‘Americans with Disabilities Accessibility Guidelines for Buildings and Facilities’); or

“(2) appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the ‘Uniform Federal Accessibility Standards’).

“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

20 USC 1405.

“The Secretary shall ensure that each recipient of assistance under this title makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this title.

“SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

20 USC 1406.

“(a) **IN GENERAL.**—In carrying out the provisions of this title, the Secretary shall issue regulations under this title only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this title.

“(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this title that—

“(1) violates or contradicts any provision of this title; or

“(2) procedurally or substantively lessens the protections provided to children with disabilities under this title, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

“(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under part B or part C on which an opportunity for public comment is otherwise required by law.

“(d) POLICY LETTERS AND STATEMENTS.—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

“(1) violate or contradict any provision of this title; or

“(2) establish a rule that is required for compliance with, and eligibility under, this title without following the requirements of section 553 of title 5, United States Code.

“(e) EXPLANATION AND ASSURANCES.—Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B shall include an explanation in the written response that—

“(1) such response is provided as informal guidance and is not legally binding;

“(2) when required, such response is issued in compliance with the requirements of section 553 of title 5, United States Code; and

“(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

“(f) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS TITLE.—

“(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this title or the regulations implemented pursuant to this title.

“(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall—

“(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

“(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5, United States Code.

“SEC. 608. STATE ADMINISTRATION.

20 USC 1407.

“(a) RULEMAKING.—Each State that receives funds under this title shall—

“(1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;

“(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and

“(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

“(b) SUPPORT AND FACILITATION.—State rules, regulations, and policies under this title shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

“SEC. 609. PAPERWORK REDUCTION.

20 USC 1408.

“(a) PILOT PROGRAM.—

“(1) PURPOSE.—The purpose of this section is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this title, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

“(2) AUTHORIZATION.—

“(A) IN GENERAL.—In order to carry out the purpose of this section, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, part B for a period of time not to exceed 4 years with respect to not more than 15 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

“(B) EXCEPTION.—The Secretary shall not waive under this section any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

“(C) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

“(i) affect the right of a child with a disability to receive a free appropriate public education under part B; and

“(ii) permit a State or local educational agency to waive procedural safeguards under section 615.

“(3) PROPOSAL.—

“(A) IN GENERAL.—A State desiring to participate in the program under this section shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

“(B) CONTENT.—The proposal shall include—

“(i) a list of any statutory requirements of, or regulatory requirements relating to, part B that the State

desires the Secretary to waive, in whole or in part; and

“(ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

“(4) **TERMINATION OF WAIVER.**—The Secretary shall terminate a State’s waiver under this section if the Secretary determines that the State—

“(A) needs assistance under section 616(d)(2)(A)(ii) and that the waiver has contributed to or caused such need for assistance;

“(B) needs intervention under section 616(d)(2)(A)(iii) or needs substantial intervention under section 616(d)(2)(A)(iv); or

“(C) failed to appropriately implement its waiver.

“(b) **REPORT.**—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall include in the annual report to Congress submitted pursuant to section 426 of the Department of Education Organization Act information related to the effectiveness of waivers granted under subsection (a), including any specific recommendations for broader implementation of such waivers, in—

“(1) reducing—

“(A) the paperwork burden on teachers, principals, administrators, and related service providers; and

“(B) noninstructional time spent by teachers in complying with part B;

“(2) enhancing longer-term educational planning;

“(3) improving positive outcomes for children with disabilities;

“(4) promoting collaboration between IEP Team members; and

“(5) ensuring satisfaction of family members.

20 USC 1409.

“SEC. 610. FREELY ASSOCIATED STATES.

“The Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall continue to be eligible for competitive grants administered by the Secretary under this title to the extent that such grants continue to be available to States and local educational agencies under this title.

**“PART B—ASSISTANCE FOR EDUCATION OF
ALL CHILDREN WITH DISABILITIES**

20 USC 1411.

“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

“(a) **GRANTS TO STATES.**—

“(1) **PURPOSE OF GRANTS.**—The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

“(2) **MAXIMUM AMOUNT.**—The maximum amount of the grant a State may receive under this section—

“(A) for fiscal years 2005 and 2006 is—

“(i) the number of children with disabilities in the State who are receiving special education and related services—

“(I) aged 3 through 5 if the State is eligible for a grant under section 619; and

“(II) aged 6 through 21; multiplied by

“(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

“(B) for fiscal year 2007 and subsequent fiscal years

is—

“(i) the number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—

“(I) aged 3 through 5 if the State is eligible for a grant under section 619; and

“(II) aged 6 through 21; multiplied by

“(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

“(iii) the rate of annual change in the sum of—

“(I) 85 percent of such State’s population described in subsection (d)(3)(A)(i)(II); and

“(II) 15 percent of such State’s population described in subsection (d)(3)(A)(i)(III).

“(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES; SECRETARY OF THE INTERIOR.—

“(1) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

“(A) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used—

“(i) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

“(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

“(B) SPECIAL RULE.—The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

“(C) DEFINITION.—In this paragraph, the term ‘freely associated States’ means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

“(2) SECRETARY OF THE INTERIOR.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (h).

“(c) TECHNICAL ASSISTANCE.—

“(1) IN GENERAL.—The Secretary may reserve not more than $\frac{1}{2}$ of 1 percent of the amounts appropriated under this part for each fiscal year to provide technical assistance activities authorized under section 616(i).

“(2) MAXIMUM AMOUNT.—The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

“(d) ALLOCATIONS TO STATES.—

“(1) IN GENERAL.—After reserving funds for technical assistance, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

“(2) SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State’s amount for fiscal year 1999, solely for the purpose of calculating the State’s allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

“(3) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

“(A) ALLOCATION OF INCREASE.—

“(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

“(I) to each State the amount the State received under this section for fiscal year 1999;

“(II) 85 percent of any remaining funds to States on the basis of the States’ relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

“(III) 15 percent of those remaining funds to States on the basis of the States’ relative populations of children described in subclause (II) who are living in poverty.

“(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

“(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

“(i) PRECEDING YEAR ALLOCATION.—No State’s allocation shall be less than its allocation under this section for the preceding fiscal year.

“(ii) MINIMUM.—No State’s allocation shall be less than the greatest of—

“(I) the sum of—

“(aa) the amount the State received under this section for fiscal year 1999; and

“(bb) $\frac{1}{3}$ of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

“(II) the sum of—

“(aa) the amount the State received under this section for the preceding fiscal year; and

“(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

“(III) the sum of—

“(aa) the amount the State received under this section for the preceding fiscal year; and

“(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

“(iii) MAXIMUM.—Notwithstanding clause (ii), no State’s allocation under this paragraph shall exceed the sum of—

“(I) the amount the State received under this section for the preceding fiscal year; and

“(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

“(C) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

“(4) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

“(A) AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

“(i) the amount the State received under this section for fiscal year 1999; and

“(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

“(B) AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.—

“(i) IN GENERAL.—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

“(ii) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

“(e) STATE-LEVEL ACTIVITIES.—

“(1) STATE ADMINISTRATION.—

“(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

“(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or \$800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

“(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) for the fiscal year or \$35,000, whichever is greater.

“(B) CUMULATIVE ANNUAL ADJUSTMENTS.—For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust—

“(i) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and

“(ii) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

“(C) CERTIFICATION.—Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.

“(D) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under such part.

“(2) OTHER STATE-LEVEL ACTIVITIES.—

“(A) STATE-LEVEL ACTIVITIES.—

“(i) IN GENERAL.—Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State’s allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal

year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

“(ii) SMALL STATE ADJUSTMENT.—Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than \$850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State’s allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

“(iii) EXCEPTION.—If a State does not reserve funds under paragraph (3) for a fiscal year, then—

“(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting ‘9.0 percent’ for ‘10 percent’; and

“(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting ‘9.5 percent’ for ‘10.5 percent’.

“(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

“(i) For monitoring, enforcement, and complaint investigation.

“(ii) To establish and implement the mediation process required by section 615(e), including providing for the cost of mediators and support personnel.

“(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

“(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

“(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

“(iii) To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

“(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

“(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.

“(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.

“(vii) To assist local educational agencies in meeting personnel shortages.

“(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

“(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.

“(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

“(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or local educational agencies identified for improvement under section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) the Elementary and Secondary Education Act of 1965.

“(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

“(A) IN GENERAL.—

“(i) RESERVATION OF FUNDS.—For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)—

“(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and

“(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).

“(ii) DEFINITION OF LOCAL EDUCATIONAL AGENCY.—

In this paragraph the term ‘local educational agency’ includes a charter school that is a local educational agency, or a consortium of local educational agencies.

“(B) LIMITATION ON USES OF FUNDS.—

“(i) ESTABLISHMENT OF HIGH COST FUND.—A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

“(ii) INNOVATIVE AND EFFECTIVE COST SHARING.—A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i) for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

“(C) STATE PLAN FOR HIGH COST FUND.—

“(i) DEFINITION.—The State educational agency shall establish the State’s definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.

“(ii) STATE PLAN.—The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall—

Deadline.

“(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum—

“(aa) addresses the financial impact a high need child with a disability has on the budget of the child’s local educational agency; and

“(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act of 1965) in that State;

“(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;

Deadline.

“(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (II); and

“(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

“(iii) PUBLIC AVAILABILITY.—The State shall make its final State plan publicly available not less than 30 days before the beginning of the school year, including dissemination of such information on the State website.

“(D) DISBURSEMENTS FROM THE HIGH COST FUND.—

“(i) IN GENERAL.—Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

“(ii) USE OF DISBURSEMENTS.—Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

“(iii) APPROPRIATE COSTS.—The costs associated with educating a high need child with a disability under subparagraph (C)(i) are only those costs associated with providing direct special education and related services to such child that are identified in such child’s IEP.

“(E) LEGAL FEES.—The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a free appropriate public education for such child.

“(F) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this paragraph shall be construed—

“(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in the least restrictive environment pursuant to section 612(a)(5); or

“(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

“(G) SPECIAL RULE FOR RISK POOL AND HIGH NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2004.—Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need

child with a disability as described in subparagraph (C)(ii)(I).

“(H) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

“(I) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) for the succeeding fiscal year.

“(4) INAPPLICABILITY OF CERTAIN PROHIBITIONS.—A State may use funds the State reserves under paragraphs (1) and (2) without regard to—

“(A) the prohibition on commingling of funds in section 612(a)(17)(B); and

“(B) the prohibition on supplanting other funds in section 612(a)(17)(C).

“(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe how amounts under this section—

“(A) will be used to meet the requirements of this title; and

“(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

“(6) SPECIAL RULE FOR INCREASED FUNDS.—A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

“(7) FLEXIBILITY IN USING FUNDS FOR PART C.—Any State eligible to receive a grant under section 619 may use funds made available under paragraph (1)(A), subsection (f)(3), or section 619(f)(5) to develop and implement a State policy jointly with the lead agency under part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under section 619 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

“(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

“(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

“(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

“(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.

“(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

“(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency’s jurisdiction; and

“(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

“(3) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

“(g) DEFINITIONS.—In this section:

“(1) AVERAGE PER-PUPIL EXPENDITURE IN PUBLIC ELEMENTARY SCHOOLS AND SECONDARY SCHOOLS IN THE UNITED STATES.—The term ‘average per-pupil expenditure in public elementary schools and secondary schools in the United States’ means—

“(A) without regard to the source of funds—

“(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

“(ii) any direct expenditures by the State for the operation of those agencies; divided by

“(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

“(2) STATE.—The term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(h) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

“(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

“(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (b)(2) for that fiscal year. Of the amount described in the preceding sentence—

“(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

“(ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

“(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (referred to in this subsection as the ‘BIA’) schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for those children, in accordance with paragraph (2).

“(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

“(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

“(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

“(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

“(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in subparagraph (A);

“(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

“(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

“(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.

“(3) APPLICABILITY.—The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under section 616(e)(6).

“(4) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.—

“(A) IN GENERAL.—With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2).

“(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

“(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

“(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification

of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The tribe or tribal organization shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

“(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

“(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

“(5) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this title. Such plan shall provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State educational agencies and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

“(6) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall

be selected by the Secretary of the Interior. The advisory board shall—

“(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

“(B) advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior’s responsibilities described in this subsection;

“(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

“(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

“(E) provide assistance in the preparation of information required under paragraph (2)(D).

“(7) ANNUAL REPORTS.—

“(A) IN GENERAL.—The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

“(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

“(i) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated—

“(1) \$12,358,376,571 for fiscal year 2005;

“(2) \$14,648,647,143 for fiscal year 2006;

“(3) \$16,938,917,714 for fiscal year 2007;

“(4) \$19,229,188,286 for fiscal year 2008;

“(5) \$21,519,458,857 for fiscal year 2009;

“(6) \$23,809,729,429 for fiscal year 2010;

“(7) \$26,100,000,000 for fiscal year 2011; and

“(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

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“SEC. 612. STATE ELIGIBILITY.

“(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

“(1) FREE APPROPRIATE PUBLIC EDUCATION.—

“(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

“(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

“(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

“(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

“(I) were not actually identified as being a child with a disability under section 602; or

“(II) did not have an individualized education program under this part.

“(C) STATE FLEXIBILITY.—A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education.

“(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

“(3) CHILD FIND.—

“(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

“(B) CONSTRUCTION.—Nothing in this title requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

“(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

“(5) LEAST RESTRICTIVE ENVIRONMENT.—

“(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

“(B) ADDITIONAL REQUIREMENT.—

“(i) IN GENERAL.—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child’s IEP.

“(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

“(6) PROCEDURAL SAFEGUARDS.—

“(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

“(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child’s native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

“(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

“(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

“(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10).

“(10) CHILDREN IN PRIVATE SCHOOLS.—

“(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

“(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part

by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

“(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

“(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

“(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

“(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

“(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

“(ii) CHILD FIND REQUIREMENT.—

“(I) IN GENERAL.—The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

“(II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

“(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency’s public school children.

“(IV) COST.—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

“(V) COMPLETION PERIOD.—Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

“(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding—

“(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

“(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

“(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

“(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

“(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

“(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall

forward the documentation of the consultation process to the State educational agency.

“(v) COMPLIANCE.—

“(I) IN GENERAL.—A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

“(II) PROCEDURE.—If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

“(vi) PROVISION OF EQUITABLE SERVICES.—

“(I) DIRECTLY OR THROUGH CONTRACTS.—The provision of services pursuant to this subparagraph shall be provided—

“(aa) by employees of a public agency; or

“(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

“(II) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

“(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.

“(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

“(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

“(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

“(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.—

“(i) IN GENERAL.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

“(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

“(iii) LIMITATION ON REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—

“(I) if—

“(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

“(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

“(II) if, prior to the parents’ removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

“(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

“(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

“(I) shall not be reduced or denied for failure to provide such notice if—

“(aa) the school prevented the parent from providing such notice;

“(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); or

“(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

“(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

“(aa) the parent is illiterate or cannot write in English; or

“(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

“(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

“(A) IN GENERAL.—The State educational agency is responsible for ensuring that—

“(i) the requirements of this part are met;

“(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency—

“(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

“(II) meet the educational standards of the State educational agency; and

“(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

“(B) LIMITATION.—Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

“(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

“(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

“(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

“(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child’s IEP).

“(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

“(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

“(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

“(B) OBLIGATION OF PUBLIC AGENCY.—

“(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(26) relating to related services, 602(33) relating to supplementary aids and services, and 602(34) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or

other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

“(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child’s IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

“(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—

“(i) State statute or regulation;

“(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

“(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

“(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

“(14) PERSONNEL QUALIFICATIONS.—

“(A) IN GENERAL.—The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

“(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that—

“(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

“(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

“(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in

meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

“(C) QUALIFICATIONS FOR SPECIAL EDUCATION TEACHERS.—The qualifications described in subparagraph (A) shall ensure that each person employed as a special education teacher in the State who teaches elementary school, middle school, or secondary school is highly qualified by the deadline established in section 1119(a)(2) of the Elementary and Secondary Education Act of 1965.

“(D) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

“(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.

“(15) PERFORMANCE GOALS AND INDICATORS.—The State—

“(A) has established goals for the performance of children with disabilities in the State that—

“(i) promote the purposes of this title, as stated in section 601(d);

“(ii) are the same as the State’s definition of adequate yearly progress, including the State’s objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

“(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and

“(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

“(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and

“(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act of 1965.

“(16) PARTICIPATION IN ASSESSMENTS.—

“(A) IN GENERAL.—All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section

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1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

“(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

“(C) ALTERNATE ASSESSMENTS.—

“(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

“(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under clause (i) shall provide for alternate assessments that—

“(I) are aligned with the State’s challenging academic content standards and challenging student academic achievement standards; and

“(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

“(iii) CONDUCT OF ALTERNATE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.

“(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

“(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

“(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

“(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

“(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

“(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

“(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

“(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

“(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.

“(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

“(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

“(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

“(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

“(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

“(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

“(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

“(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall

be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

“(19) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

“(20) RULE OF CONSTRUCTION.—In complying with paragraphs (17) and (18), a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

“(21) STATE ADVISORY PANEL.—

“(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

“(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including—

“(i) parents of children with disabilities (ages birth through 26);

“(ii) individuals with disabilities;

“(iii) teachers;

“(iv) representatives of institutions of higher education that prepare special education and related services personnel;

“(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);

“(vi) administrators of programs for children with disabilities;

“(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

“(viii) representatives of private schools and public charter schools;

“(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

“(x) a representative from the State child welfare agency responsible for foster care; and

“(xi) representatives from the State juvenile and adult corrections agencies.

“(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

“(D) DUTIES.—The advisory panel shall—

“(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

“(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

“(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

“(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

“(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

“(22) SUSPENSION AND EXPULSION RATES.—

“(A) IN GENERAL.—The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

“(i) among local educational agencies in the State;

or

“(ii) compared to such rates for nondisabled children within such agencies.

“(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this title.

“(23) ACCESS TO INSTRUCTIONAL MATERIALS.—

“(A) IN GENERAL.—The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

“(B) RIGHTS OF STATE EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

“(C) PREPARATION AND DELIVERY OF FILES.—If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the

Deadline.
Contracts.

agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to—

“(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

“(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

“(D) ASSISTIVE TECHNOLOGY.—In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

“(E) DEFINITIONS.—In this paragraph:

“(i) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—The term ‘National Instructional Materials Access Center’ means the center established pursuant to section 674(e).

“(ii) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term ‘National Instructional Materials Accessibility Standard’ has the meaning given the term in section 674(e)(3)(A).

“(iii) SPECIALIZED FORMATS.—The term ‘specialized formats’ has the meaning given the term in section 674(e)(3)(D).

“(24) OVERIDENTIFICATION AND DISPROPORTIONALITY.—The State has in effect, consistent with the purposes of this title and with section 618(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 602.

“(25) PROHIBITION ON MANDATORY MEDICATION.—

“(A) IN GENERAL.—The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, or receiving services under this title.

“(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student’s academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

“(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.—If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

“(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

“(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

“(c) EXCEPTION FOR PRIOR STATE PLANS.—

“(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

Termination
date.

“(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

Applicability.

“(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by a Federal court or a State’s highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State’s compliance with this part.

“(d) APPROVAL BY THE SECRETARY.—

Notification.

“(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

“(2) NOTICE AND HEARING.—The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State—

“(A) with reasonable notice; and

“(B) with an opportunity for a hearing.

“(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

“(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

“(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with

disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements that shall be subject to the requirements of such subsection.

“(2) PAYMENTS.—

“(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

“(i) the total amount received by the State under this part for such fiscal year; by

“(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

“(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

“(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

“(3) NOTICE AND HEARING.—

Deadlines.

“(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary’s designee to show cause why such action should not be taken.

“(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary’s final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary’s action, as provided in section 2112 of title 28, United States Code.

“(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further

evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

“(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

20 USC 1413.

“SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

“(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

“(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

“(2) USE OF AMOUNTS.—

“(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

“(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

“(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

“(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

“(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

“(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

“(ii) a decrease in the enrollment of children with disabilities;

“(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

“(I) has left the jurisdiction of the agency;

“(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

“(III) no longer needs such program of special education; or

“(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

“(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS.—

“(i) AMOUNTS IN EXCESS.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

“(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA.—If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

“(iii) STATE PROHIBITION.—Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

“(iv) SPECIAL RULE.—The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

“(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

“(i) the number of children with disabilities participating in the schoolwide program; multiplied by

“(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

“(II) the number of children with disabilities in the jurisdiction of that agency.

“(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of section 612(a)(14) and section 2122 of the Elementary and Secondary Education Act of 1965.

“(4) PERMISSIVE USE OF FUNDS.—

“(A) USES.—Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

“(i) SERVICES AND AIDS THAT ALSO BENEFIT NON-DISABLED CHILDREN.—For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

“(ii) EARLY INTERVENING SERVICES.—To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

“(iii) HIGH COST EDUCATION AND RELATED SERVICES.—To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

“(B) ADMINISTRATIVE CASE MANAGEMENT.—A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

“(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

“(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

“(B) provides funds under this part to those charter schools—

“(i) on the same basis as the local educational agency provides funds to the local educational agency’s other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

“(ii) at the same time as the agency distributes other Federal funds to the agency’s other public schools, consistent with the State’s charter school law.

“(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—

“(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 612(a)(23).

Deadline.

“(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

“(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

“(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

“(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES.—The local educational agency shall cooperate in the Secretary’s efforts under section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

“(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

“(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

“(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain

in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

“(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency’s compliance with this part or State law.

“(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

“(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

“(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

“(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

“(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

“(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

“(1) JOINT ESTABLISHMENT.—

“(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

“(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under

subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

“(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

“(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

“(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

“(B) be jointly responsible for implementing programs that receive assistance under this part.

“(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

“(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

“(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

“(ii) be carried out only by that educational service agency.

“(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

“(f) EARLY INTERVENING SERVICES.—

“(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

“(2) ACTIVITIES.—In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include—

“(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

“(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

“(3) CONSTRUCTION.—Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this part.

“(4) REPORTING.—Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on—

“(A) the number of students served under this subsection; and

“(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the preceding 2-year period.

“(5) COORDINATION WITH ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

“(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

“(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

“(A) has not provided the information needed to establish the eligibility of such local educational agency or State agency under this section;

“(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

“(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

“(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

“(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—

The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State educational agency considers appropriate. Such education and services shall be provided in accordance with this part.

“(h) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that—

“(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

“(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

“(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of non-disabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child’s records shall include both the child’s current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

“(j) STATE AGENCY FLEXIBILITY.—

“(1) ADJUSTMENT TO STATE FISCAL EFFORT IN CERTAIN FISCAL YEARS.—For any fiscal year for which the allotment received by a State under section 611 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

“(2) PROHIBITION.—Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

“(3) EDUCATION ACTIVITIES.—If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

“(4) REPORT.—For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph

and the activities that were funded pursuant to paragraph (3).

“(5) LIMITATION.—Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency.

20 USC 1414.

“SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

“(a) EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS.—

“(1) INITIAL EVALUATIONS.—

“(A) IN GENERAL.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

“(B) REQUEST FOR INITIAL EVALUATION.—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

“(C) PROCEDURES.—

“(i) IN GENERAL.—Such initial evaluation shall consist of procedures—

“(I) to determine whether a child is a child with a disability (as defined in section 602) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

“(II) to determine the educational needs of such child.

“(ii) EXCEPTION.—The relevant timeframe in clause

(i)(I) shall not apply to a local educational agency if—

“(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child’s previous local educational agency as to whether the child is a child with a disability (as defined in section 602), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

“(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

“(D) PARENTAL CONSENT.—

“(i) IN GENERAL.—

Deadline.

“(I) CONSENT FOR INITIAL EVALUATION.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

“(II) CONSENT FOR SERVICES.—An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

“(ii) ABSENCE OF CONSENT.—

“(I) FOR INITIAL EVALUATION.—If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

“(II) FOR SERVICES.—If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.

“(III) EFFECT ON AGENCY OBLIGATIONS.—If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—

“(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

“(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

“(iii) CONSENT FOR WARDS OF THE STATE.—

“(I) IN GENERAL.—If the child is a ward of the State and is not residing with the child’s parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 602) of the child for an

initial evaluation to determine whether the child is a child with a disability.

“(II) EXCEPTION.—The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if—

“(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

“(bb) the rights of the parents of the child have been terminated in accordance with State law; or

“(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

“(E) RULE OF CONSTRUCTION.—The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

“(2) REEVALUATIONS.—

“(A) IN GENERAL.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

“(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

“(ii) if the child’s parents or teacher requests a reevaluation.

“(B) LIMITATION.—A reevaluation conducted under subparagraph (A) shall occur—

“(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

“(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

“(b) EVALUATION PROCEDURES.—

“(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

“(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

“(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

“(i) whether the child is a child with a disability; and

“(ii) the content of the child’s individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

“(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

“(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

“(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

“(A) assessments and other evaluation materials used to assess a child under this section—

“(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

“(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

“(iii) are used for purposes for which the assessments or measures are valid and reliable;

“(iv) are administered by trained and knowledgeable personnel; and

“(v) are administered in accordance with any instructions provided by the producer of such assessments;

“(B) the child is assessed in all areas of suspected disability;

“(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

“(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children’s prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

“(4) DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED.—Upon completion of the administration of assessments and other evaluation measures—

“(A) the determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

“(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

“(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

“(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);

“(B) lack of instruction in math; or

“(C) limited English proficiency.

“(6) SPECIFIC LEARNING DISABILITIES.—

“(A) IN GENERAL.—Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

“(B) ADDITIONAL AUTHORITY.—In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

“(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

“(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall—

“(A) review existing evaluation data on the child, including—

“(i) evaluations and information provided by the parents of the child;

“(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

“(iii) observations by teachers and related services providers; and

“(B) on the basis of that review, and input from the child’s parents, identify what additional data, if any, are needed to determine—

“(i) whether the child is a child with a disability as defined in section 602(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

“(ii) the present levels of academic achievement and related developmental needs of the child;

“(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

“(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

“(2) SOURCE OF DATA.—The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

“(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child’s parent has failed to respond.

“(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child’s educational needs, the local educational agency—

“(A) shall notify the child’s parents of—

“(i) that determination and the reasons for the determination; and

“(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child’s educational needs; and

“(B) shall not be required to conduct such an assessment unless requested to by the child’s parents.

“(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

“(B) EXCEPTION.—

“(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child’s eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

“(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child’s academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child’s postsecondary goals.

“(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

“(1) DEFINITIONS.—In this title:

“(A) INDIVIDUALIZED EDUCATION PROGRAM.—

“(i) IN GENERAL.—The term ‘individualized education program’ or ‘IEP’ means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

“(I) a statement of the child’s present levels of academic achievement and functional performance, including—

“(aa) how the child’s disability affects the child’s involvement and progress in the general education curriculum;

“(bb) for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities; and

“(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

“(II) a statement of measurable annual goals, including academic and functional goals, designed to—

“(aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and

“(bb) meet each of the child’s other educational needs that result from the child’s disability;

“(III) a description of how the child’s progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

“(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

“(aa) to advance appropriately toward attaining the annual goals;

“(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

“(cc) to be educated and participate with other children with disabilities and non-disabled children in the activities described in this subparagraph;

“(V) an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the activities described in subclause (IV)(cc);

“(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

“(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

“(AA) the child cannot participate in the regular assessment; and

“(BB) the particular alternate assessment selected is appropriate for the child;

“(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

“(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—

“(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

“(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

“(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child’s rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

“(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require—

“(I) that additional information be included in a child’s IEP beyond what is explicitly required in this section; and

“(II) the IEP Team to include information under 1 component of a child’s IEP that is already contained under another component of such IEP.

“(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term ‘individualized education program team’ or ‘IEP Team’ means a group of individuals composed of—

“(i) the parents of a child with a disability;

“(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

“(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;

“(iv) a representative of the local educational agency who—

“(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

“(II) is knowledgeable about the general education curriculum; and

“(III) is knowledgeable about the availability of resources of the local educational agency;

“(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

“(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

“(vii) whenever appropriate, the child with a disability.

“(C) IEP TEAM ATTENDANCE.—

“(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting.

“(ii) EXCUSAL.—A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services, if—

“(I) the parent and the local educational agency consent to the excusal; and

“(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

“(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED.—A parent’s agreement under clause (i) and consent under clause (ii) shall be in writing.

“(D) IEP TEAM TRANSITION.—In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.

“(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

“(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency’s jurisdiction, an individualized education program, as defined in paragraph (1)(A).

“(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is—

“(i) consistent with State policy; and

“(ii) agreed to by the agency and the child’s parents.

“(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—

“(i) IN GENERAL.—

“(I) TRANSFER WITHIN THE SAME STATE.—In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

“(II) TRANSFER OUTSIDE STATE.—In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

“(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i)—

“(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

“(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

“(3) DEVELOPMENT OF IEP.—

“(A) IN GENERAL.—In developing each child’s IEP, the IEP Team, subject to subparagraph (C), shall consider—

“(i) the strengths of the child;

“(ii) the concerns of the parents for enhancing the education of their child;

“(iii) the results of the initial evaluation or most recent evaluation of the child; and

“(iv) the academic, developmental, and functional needs of the child.

“(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

“(i) in the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

“(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child’s IEP;

“(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

“(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode; and

“(v) consider whether the child needs assistive technology devices and services.

“(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

“(D) AGREEMENT.—In making changes to a child’s IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child’s current IEP.

“(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

“(F) AMENDMENTS.—Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

“(4) REVIEW AND REVISION OF IEP.—

“(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

“(i) reviews the child’s IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

“(ii) revises the IEP as appropriate to address—

“(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

“(II) the results of any reevaluation conducted under this section;

“(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

“(IV) the child’s anticipated needs; or

“(V) other matters.

“(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

“(5) MULTI-YEAR IEP DEMONSTRATION.—

“(A) PILOT PROGRAM.—

“(i) PURPOSE.—The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

“(ii) AUTHORIZATION.—In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

“(iii) PROPOSAL.—

“(I) IN GENERAL.—A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

“(II) CONTENT.—The proposal shall include—

“(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

“(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

“(cc) a list of required elements for each multi-year IEP, including—

“(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child’s other needs that result from the child’s disability; and

“(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

“(dd) a description of the process for the review and revision of each multi-year IEP, including—

“(AA) a review by the IEP Team of the child’s multi-year IEP at each of the child’s natural transition points;

“(BB) in years other than a child’s natural transition points, an annual review of the child’s IEP to determine the child’s current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

“(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

“(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child’s multi-year IEP rather than or subsequent to an annual review.

“(B) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including—

“(i) reducing—

“(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

“(II) noninstructional time spent by teachers in complying with this part;

“(ii) enhancing longer-term educational planning;

“(iii) improving positive outcomes for children with disabilities;

“(iv) promoting collaboration between IEP Team members; and

“(v) ensuring satisfaction of family members.

“(C) DEFINITION.—In this paragraph, the term ‘natural transition points’ means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades

to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

“(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

“(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

“(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

“(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).

“(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of such children’s age, before such children will be released from prison.

“(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child’s IEP Team may modify the child’s IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

“(e) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

“(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP team meetings and placement meetings pursuant to this section, section 615(e), and section 615(f)(1)(B), and carrying out administrative matters under section 615 (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

“SEC. 615. PROCEDURAL SAFEGUARDS.

20 USC 1415.

“(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

“(b) TYPES OF PROCEDURES.—The procedures required by this section shall include the following:

“(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

“(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—

“(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child’s care provided that the surrogate meets the requirements of this paragraph; and

“(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.

“(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

“(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

“(A) proposes to initiate or change; or

“(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

“(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

“(5) An opportunity for mediation, in accordance with subsection (e).

“(6) An opportunity for any party to present a complaint—

“(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

“(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

“(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice

Applicability.

in accordance with subsection (c)(2) (which shall remain confidential)—

“(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

“(ii) that shall include—

“(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

“(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), available contact information for the child and the name of the school the child is attending;

“(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

“(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

“(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

“(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

“(c) NOTIFICATION REQUIREMENTS.—

“(1) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

“(A) a description of the action proposed or refused by the agency;

“(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

“(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

“(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

“(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

“(F) a description of the factors that are relevant to the agency’s proposal or refusal.

“(2) DUE PROCESS COMPLAINT NOTICE.—

“(A) COMPLAINT.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

“(B) RESPONSE TO COMPLAINT.—

- Deadline. “(i) LOCAL EDUCATIONAL AGENCY RESPONSE.—
- “(I) IN GENERAL.—If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—
- “(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;
- “(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;
- “(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- “(dd) a description of the factors that are relevant to the agency’s proposal or refusal.
- “(II) SUFFICIENCY.—A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent’s due process complaint notice was insufficient where appropriate.
- Deadline. “(ii) OTHER PARTY RESPONSE.—Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.
- Deadline. “(C) TIMING.—The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.
- Deadline. “(D) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.
- “(E) AMENDED COMPLAINT NOTICE.—
- “(i) IN GENERAL.—A party may amend its due process complaint notice only if—
- “(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or
- “(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.
- “(ii) APPLICABLE TIMELINE.—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).
- “(d) PROCEDURAL SAFEGUARDS NOTICE.—

“(1) IN GENERAL.—

“(A) COPY TO PARENTS.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

“(i) upon initial referral or parental request for evaluation;

“(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

“(iii) upon request by a parent.

“(B) INTERNET WEBSITE.—A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

“(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

“(A) independent educational evaluation;

“(B) prior written notice;

“(C) parental consent;

“(D) access to educational records;

“(E) the opportunity to present and resolve complaints, including—

“(i) the time period in which to make a complaint;

“(ii) the opportunity for the agency to resolve the complaint; and

“(iii) the availability of mediation;

“(F) the child’s placement during pendency of due process proceedings;

“(G) procedures for students who are subject to placement in an interim alternative educational setting;

“(H) requirements for unilateral placement by parents of children in private schools at public expense;

“(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

“(J) State-level appeals (if applicable in that State);

“(K) civil actions, including the time period in which to file such actions; and

“(L) attorneys’ fees.

“(e) MEDIATION.—

“(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

“(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

“(A) The procedures shall ensure that the mediation process—

“(i) is voluntary on the part of the parties;

“(ii) is not used to deny or delay a parent’s right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

“(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

“(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

“(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

“(ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

“(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

“(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

“(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

“(F) WRITTEN AGREEMENT.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—

“(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

“(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

“(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

“(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

“(f) IMPARTIAL DUE PROCESS HEARING.—

“(1) IN GENERAL.—

“(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

“(B) RESOLUTION SESSION.—

“(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall

Confidential
information.

convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

“(I) within 15 days of receiving notice of the parents’ complaint; Deadline.

“(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

“(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

“(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

“(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence. Deadline.

“(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—

“(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

“(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

“(iv) REVIEW PERIOD.—If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement’s execution.

“(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

“(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party’s evaluations, that the party intends to use at the hearing. Deadline.

“(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

“(3) LIMITATIONS ON HEARING.—

“(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

“(i) not be—

“(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

“(II) a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;

“(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts;

“(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

“(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

“(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

“(C) TIMELINE FOR REQUESTING HEARING.—A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

“(D) EXCEPTIONS TO THE TIMELINE.—The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

“(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

“(ii) the local educational agency’s withholding of information from the parent that was required under this part to be provided to the parent.

“(E) DECISION OF HEARING OFFICER.—

“(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

“(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

“(I) impeded the child’s right to a free appropriate public education;

“(II) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child; or

“(III) caused a deprivation of educational benefits.

“(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to preclude a hearing

officer from ordering a local educational agency to comply with procedural requirements under this section.

“(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

“(g) APPEAL.—

“(1) IN GENERAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

“(2) IMPARTIAL REVIEW AND INDEPENDENT DECISION.—The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

“(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

“(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

“(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

“(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

“(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

“(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

“(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(21).

“(i) ADMINISTRATIVE PROCEDURES.—

“(1) IN GENERAL.—

“(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

“(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

“(2) RIGHT TO BRING CIVIL ACTION.—

“(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

“(B) LIMITATION.—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

“(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

“(i) shall receive the records of the administrative proceedings;

“(ii) shall hear additional evidence at the request of a party; and

“(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

“(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS’ FEES.—

“(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

“(B) AWARD OF ATTORNEYS’ FEES.—

“(i) IN GENERAL.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs—

“(I) to a prevailing party who is the parent of a child with a disability;

“(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

“(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent’s complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

“(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

“(C) DETERMINATION OF AMOUNT OF ATTORNEYS’ FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

“(D) PROHIBITION OF ATTORNEYS’ FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

“(i) IN GENERAL.—Attorneys’ fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

“(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

“(II) the offer is not accepted within 10 days; and

“(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

“(ii) IEP TEAM MEETINGS.—Attorneys’ fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

“(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

“(I) a meeting convened as a result of an administrative hearing or judicial action; or

“(II) an administrative hearing or judicial action for purposes of this paragraph.

“(E) EXCEPTION TO PROHIBITION ON ATTORNEYS’ FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys’ fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

“(F) REDUCTION IN AMOUNT OF ATTORNEYS’ FEES.—Except as provided in subparagraph (G), whenever the court finds that—

“(i) the parent, or the parent’s attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

“(ii) the amount of the attorneys’ fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

“(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

“(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys’ fees awarded under this section.

“(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS’ FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

“(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(4), during the pendency of

any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

“(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

“(1) AUTHORITY OF SCHOOL PERSONNEL.—

“(A) CASE-BY-CASE DETERMINATION.—School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

“(B) AUTHORITY.—School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

“(C) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

“(D) SERVICES.—A child with a disability who is removed from the child’s current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child’s disability) or subparagraph (C) shall—

“(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and

“(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

“(E) MANIFESTATION DETERMINATION.—

“(i) IN GENERAL.—Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student’s file, including the

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child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

“(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

“(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

“(ii) **MANIFESTATION.**—If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

“(F) **DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION.**—If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

“(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

“(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

“(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

“(G) **SPECIAL CIRCUMSTANCES.**—School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

“(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

“(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

“(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

“(H) **NOTIFICATION.**—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision,

and of all procedural safeguards accorded under this section.

“(2) DETERMINATION OF SETTING.—The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

“(3) APPEAL.—

“(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

“(B) AUTHORITY OF HEARING OFFICER.—

“(i) IN GENERAL.—A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

“(ii) CHANGE OF PLACEMENT ORDER.—In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

“(I) return a child with a disability to the placement from which the child was removed; or

“(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

“(4) PLACEMENT DURING APPEALS.—When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

“(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

“(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

“(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

“(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

“(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child

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with a disability if, before the behavior that precipitated the disciplinary action occurred—

“(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

“(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

“(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

“(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

“(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

“(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

“(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

“(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

“(A) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

“(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records

of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

“(7) DEFINITIONS.—In this subsection:

“(A) CONTROLLED SUBSTANCE.—The term ‘controlled substance’ means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

“(B) ILLEGAL DRUG.—The term ‘illegal drug’ means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

“(C) WEAPON.—The term ‘weapon’ has the meaning given the term ‘dangerous weapon’ under section 930(g)(2) of title 18, United States Code.

“(D) SERIOUS BODILY INJURY.—The term ‘serious bodily injury’ has the meaning given the term ‘serious bodily injury’ under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

“(1) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

“(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

“(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

“(A) the agency shall provide any notice required by this section to both the individual and the parents;

“(B) all other rights accorded to parents under this part transfer to the child;

“(C) the agency shall notify the individual and the parents of the transfer of rights; and

“(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

“(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

“(n) ELECTRONIC MAIL.—A parent of a child with a disability may elect to receive notices required under this section by an

Notification.

electronic mail (e-mail) communication, if the agency makes such option available.

“(o) SEPARATE COMPLAINT.—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

“SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT. 20 USC 1416.

“(a) FEDERAL AND STATE MONITORING.—

“(1) IN GENERAL.—The Secretary shall—

“(A) monitor implementation of this part through—

“(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

“(ii) the State performance plans, described in subsection (b);

“(B) enforce this part in accordance with subsection (e); and

“(C) require States to—

“(i) monitor implementation of this part by local educational agencies; and

“(ii) enforce this part in accordance with paragraph (3) and subsection (e).

“(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

“(A) improving educational results and functional outcomes for all children with disabilities; and

“(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

“(3) MONITORING PRIORITIES.—The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

“(A) Provision of a free appropriate public education in the least restrictive environment.

“(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9).

“(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

“(4) PERMISSIVE AREAS OF REVIEW.—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

“(b) STATE PERFORMANCE PLANS.—

“(1) PLAN.—

Deadline.

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State’s efforts to implement the requirements and purposes of this part and describes how the State will improve such implementation.

“(B) SUBMISSION FOR APPROVAL.—Each State shall submit the State’s performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

Deadline.

“(C) REVIEW.—Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

“(2) TARGETS.—

“(A) IN GENERAL.—As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

“(B) DATA COLLECTION.—

“(i) IN GENERAL.—Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

“(ii) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

“(C) PUBLIC REPORTING AND PRIVACY.—

“(i) IN GENERAL.—The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

“(ii) REPORT.—

“(I) PUBLIC REPORT.—The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State’s performance plan. The State shall make the State’s performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

“(II) STATE PERFORMANCE REPORT.—The State shall report annually to the Secretary on the performance of the State under the State’s performance plan.

“(iii) PRIVACY.—The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

“(c) APPROVAL PROCESS.—

“(1) DEEMED APPROVAL.—The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b). Deadline.

“(2) DISAPPROVAL.—The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

“(3) NOTIFICATION.—If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—

“(A) give the State notice and an opportunity for a hearing; and

“(B) notify the State of the finding, and in such notification shall—

“(i) cite the specific provisions in the plan that do not meet the requirements; and

“(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

“(4) RESPONSE.—If the State responds to the Secretary’s notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of— Deadlines.

“(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

“(B) the expiration of the 120-day period described in paragraph (1).

“(5) FAILURE TO RESPOND.—If the State does not respond to the Secretary’s notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

“(d) SECRETARY’S REVIEW AND DETERMINATION.—

“(1) REVIEW.—The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

“(2) DETERMINATION.—

“(A) IN GENERAL.—Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

“(i) meets the requirements and purposes of this part;

“(ii) needs assistance in implementing the requirements of this part;

“(iii) needs intervention in implementing the requirements of this part; or

“(iv) needs substantial intervention in implementing the requirements of this part.

“(B) NOTICE AND OPPORTUNITY FOR A HEARING.—For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

“(e) ENFORCEMENT.—

“(1) NEEDS ASSISTANCE.—If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this part, the Secretary shall take 1 or more of the following actions:

“(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—

“(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

“(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

“(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

“(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

“(B) Direct the use of State-level funds under section 611(e) on the area or areas in which the State needs assistance.

“(C) Identify the State as a high-risk grantee and impose special conditions on the State’s grant under this part.

“(2) NEEDS INTERVENTION.—If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this part, the following shall apply:

“(A) The Secretary may take any of the actions described in paragraph (1).

“(B) The Secretary shall take 1 or more of the following actions:

“(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

“(ii) Require the State to enter into a compliance agreement under section 457 of the General Education

Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

“(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State’s funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

“(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

“(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

“(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

“(3) NEEDS SUBSTANTIAL INTERVENTION.—Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply with any condition of a State educational agency’s or local educational agency’s eligibility under this part, the Secretary shall take 1 or more of the following actions:

“(A) Recover funds under section 452 of the General Education Provisions Act.

“(B) Withhold, in whole or in part, any further payments to the State under this part.

“(C) Refer the case to the Office of the Inspector General at the Department of Education.

“(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

“(4) OPPORTUNITY FOR HEARING.—

“(A) WITHHOLDING FUNDS.—Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

Notification.

“(B) SUSPENSION.—Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

“(5) REPORT TO CONGRESS.—The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

“(6) NATURE OF WITHHOLDING.—

“(A) LIMITATION.—If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—

“(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary’s determination under subsection (d)(2); or

“(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary’s determination under subsection (d)(2).

“(B) WITHHOLDING UNTIL RECTIFIED.—Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

“(i) payments to the State under this part shall be withheld in whole or in part; and

“(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary’s determination under subsection (d)(2), as the case may be.

“(7) PUBLIC ATTENTION.—Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

“(8) JUDICIAL REVIEW.—

Deadline.

“(A) IN GENERAL.—If any State is dissatisfied with the Secretary’s action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary’s action was based, as provided in section 2112 of title 28, United States Code.

Records.

“(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

Records.

“(C) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary’s previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

“(f) STATE ENFORCEMENT.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State’s performance

plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 613(a)(2)(C) for any fiscal year.

“(g) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this title.

“(h) **DIVIDED STATE AGENCY RESPONSIBILITY.**—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that—

“(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

“(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

“(i) **DATA CAPACITY AND TECHNICAL ASSISTANCE REVIEW.**—The Secretary shall—

“(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

“(2) provide technical assistance (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements.

“SEC. 617. ADMINISTRATION.

20 USC 1417.

“(a) **RESPONSIBILITIES OF SECRETARY.**—The Secretary shall—

“(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

“(A) the education of children with disabilities; and

“(B) carrying out this part; and

“(2) provide short-term training programs and institutes.

“(b) **PROHIBITION AGAINST FEDERAL MANDATES, DIRECTION, OR CONTROL.**—Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.

“(c) **CONFIDENTIALITY.**—The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this part.

“(d) **PERSONNEL.**—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary’s duties under subsection (a), under section 618, and under subpart 4 of part D, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than 20 such personnel shall be employed at any time.

Deadline.
Public
information.

“(e) **MODEL FORMS.**—Not later than the date that the Secretary publishes final regulations under this title, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

“(1) a model IEP form;

“(2) a model individualized family service plan (IFSP) form;

“(3) a model form of the notice of procedural safeguards described in section 615(d); and

“(4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 615 that is consistent with the requirements of this part and is sufficient to meet such requirements.

20 USC 1418.

“SEC. 618. PROGRAM INFORMATION.

“(a) **IN GENERAL.**—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

“(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:

“(i) Receiving a free appropriate public education.

“(ii) Participating in regular education.

“(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

“(iv) For each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services.

“(v)(I) Removed to an interim alternative educational setting under section 615(k)(1).

“(II) The acts or items precipitating those removals.

“(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

“(B) The number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services.

“(C) The number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

“(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

“(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

“(F) The number of due process complaints filed under section 615 and the number of hearings conducted.

“(G) The number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings.

“(H) The number of mediations held and the number of settlement agreements reached through such mediations.

“(2) The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C.

“(3) Any other information that may be required by the Secretary.

“(b) DATA REPORTING.—

“(1) PROTECTION OF IDENTIFIABLE DATA.—The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

“(2) SAMPLING.—The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

“(c) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

“(d) DISPROPORTIONALITY.—

“(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to—

“(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

“(B) the placement in particular educational settings of such children; and

“(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

“(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall—

“(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies,

procedures, and practices comply with the requirements of this title;

“(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 613(f) to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

“(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

20 USC 1419.

“SEC. 619. PRESCHOOL GRANTS.

“(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

“(1) to children with disabilities aged 3 through 5, inclusive; and

“(2) at the State’s discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

“(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

“(1) is eligible under section 612 to receive a grant under this part; and

“(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

“(c) ALLOCATIONS TO STATES.—

“(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

“(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

“(A) ALLOCATION.—

“(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—

“(I) allocate to each State the amount the State received under this section for fiscal year 1997;

“(II) allocate 85 percent of any remaining funds to States on the basis of the States’ relative populations of children aged 3 through 5; and

“(III) allocate 15 percent of those remaining funds to States on the basis of the States’ relative populations of all children aged 3 through 5 who are living in poverty.

“(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

“(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

“(i) PRECEDING YEARS.—No State’s allocation shall be less than its allocation under this section for the preceding fiscal year.

“(ii) MINIMUM.—No State’s allocation shall be less than the greatest of—

“(I) the sum of—

“(aa) the amount the State received under this section for fiscal year 1997; and

“(bb) $\frac{1}{3}$ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

“(II) the sum of—

“(aa) the amount the State received under this section for the preceding fiscal year; and

“(bb) that amount multiplied by the percentage by which the increase in the funds appropriated under this section from the preceding fiscal year exceeds 1.5 percent; or

“(III) the sum of—

“(aa) the amount the State received under this section for the preceding fiscal year; and

“(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated under this section from the preceding fiscal year.

“(iii) MAXIMUM.—Notwithstanding clause (ii), no State’s allocation under this paragraph shall exceed the sum of—

“(I) the amount the State received under this section for the preceding fiscal year; and

“(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

“(C) RATABLE REDUCTIONS.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

“(3) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

“(A) ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

“(i) the amount the State received under this section for fiscal year 1997; and

“(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over

fiscal year 1997 bears to the total of all such increases for all States.

“(B) RATABLE REDUCTIONS.—If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

“(d) RESERVATION FOR STATE ACTIVITIES.—

“(1) IN GENERAL.—Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

Reports.

“(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

“(A) the percentage increase, if any, from the preceding fiscal year in the State’s allocation under this section; or

“(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

“(e) STATE ADMINISTRATION.—

“(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

“(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C.

“(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—

“(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

“(2) for direct services for children eligible for services under this section;

“(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15);

“(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year;

“(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy

skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten; or

“(6) at the State’s discretion, to continue service coordination or case management for families who receive services under part C.

“(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

“(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

“(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

“(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

“(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency’s jurisdiction; and

“(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

“(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by the local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

“(h) PART C INAPPLICABLE.—Part C does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

“(i) STATE DEFINED.—In this section, the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

20 USC 1431.

“SEC. 631. FINDINGS AND POLICY.

“(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

“(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child’s first 3 years of life;

“(2) to reduce the educational costs to our society, including our Nation’s schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

“(3) to maximize the potential for individuals with disabilities to live independently in society;

“(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

“(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.

“(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

“(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

“(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

“(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

“(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

20 USC 1432.

“SEC. 632. DEFINITIONS.

“In this part:

“(1) AT-RISK INFANT OR TODDLER.—The term ‘at-risk infant or toddler’ means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

“(2) COUNCIL.—The term ‘council’ means a State interagency coordinating council established under section 641.

“(3) DEVELOPMENTAL DELAY.—The term ‘developmental delay’, when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

“(4) EARLY INTERVENTION SERVICES.—The term ‘early intervention services’ means developmental services that—

“(A) are provided under public supervision;

“(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

“(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

- “(i) physical development;
- “(ii) cognitive development;
- “(iii) communication development;
- “(iv) social or emotional development; or
- “(v) adaptive development;

“(D) meet the standards of the State in which the services are provided, including the requirements of this part;

“(E) include—

- “(i) family training, counseling, and home visits;
- “(ii) special instruction;
- “(iii) speech-language pathology and audiology services, and sign language and cued language services;
- “(iv) occupational therapy;
- “(v) physical therapy;
- “(vi) psychological services;
- “(vii) service coordination services;
- “(viii) medical services only for diagnostic or evaluation purposes;
- “(ix) early identification, screening, and assessment services;
- “(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
- “(xi) social work services;
- “(xii) vision services;
- “(xiii) assistive technology devices and assistive technology services; and
- “(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant’s or toddler’s family to receive another service described in this paragraph;

“(F) are provided by qualified personnel, including—

- “(i) special educators;
- “(ii) speech-language pathologists and audiologists;
- “(iii) occupational therapists;
- “(iv) physical therapists;
- “(v) psychologists;
- “(vi) social workers;
- “(vii) nurses;
- “(viii) registered dietitians;
- “(ix) family therapists;
- “(x) vision specialists, including ophthalmologists and optometrists;
- “(xi) orientation and mobility specialists; and
- “(xii) pediatricians and other physicians;

“(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

“(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

“(5) INFANT OR TODDLER WITH A DISABILITY.—The term ‘infant or toddler with a disability’—

“(A) means an individual under 3 years of age who needs early intervention services because the individual—

“(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

“(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

“(B) may also include, at a State’s discretion—

“(i) at-risk infants and toddlers; and

“(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include—

“(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

“(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.

Grants.
20 USC 1433.

“SEC. 633. GENERAL AUTHORITY.

“The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

20 USC 1434.

“SEC. 634. ELIGIBILITY.

“In order to be eligible for a grant under section 633, a State shall provide assurances to the Secretary that the State—

“(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

“(2) has in effect a statewide system that meets the requirements of section 635.

“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

20 USC 1435.

“(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

“(1) A rigorous definition of the term ‘developmental delay’ that will be used by the State in carrying out programs under this part in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part.

“(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.

“(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

“(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

“(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services.

“(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this part and of services under section 619, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

“(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

“(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that—

“(A) shall include—

“(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

“(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified

to provide early intervention services under this part; and

“(iii) training personnel to coordinate transition services for infants and toddlers served under this part from a program providing early intervention services under this part and under part B (other than section 619), to a preschool program receiving funds under section 619, or another appropriate program; and

“(B) may include—

“(i) training personnel to work in rural and inner-city areas; and

“(ii) training personnel in the emotional and social development of young children.

“(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

“(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

“(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

“(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

“(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

“(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

“(E) the resolution of intra- and interagency disputes; and

“(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

“(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

“(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

“(13) Procedural safeguards with respect to programs under this part, as required by section 639.

“(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

“(15) A State interagency coordinating council that meets the requirements of section 641.

“(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

“(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

“(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

“(b) **POLICY.**—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

“(c) **FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE UNTIL ENTRANCE INTO ELEMENTARY SCHOOL.**—

“(1) **IN GENERAL.**—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

“(2) **REQUIREMENTS.**—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—

“(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—

“(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and

“(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under part B, including—

“(I) types of services and the locations at which the services are provided;

“(II) applicable procedural safeguards; and

“(III) possible costs (including any fees to be charged to families as described in section 632(4)(B)), if any, to parents of infants or toddlers with disabilities;

“(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

“(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

“(D) all early intervention services outlined in the child’s individualized family service plan under section 636 are continued while any eligibility determination is being made for services under this subsection;

“(E) the parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

“(F) the requirements under section 637(a)(9) shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

“(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 320 of the Family Violence Prevention and Services Act).

“(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State’s report under section 637(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part.

“(4) AVAILABLE FUNDS.—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 632(4)(B).

“(5) RULES OF CONSTRUCTION.—

“(A) SERVICES UNDER PART B.—If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection

to a child with a disability who is eligible for services under section 619 shall not be required to provide the child with a free appropriate public education under part B for the period of time in which the child is receiving services under this part.

“(B) SERVICES UNDER THIS PART.—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

20 USC 1436.

“(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant’s or toddler’s family, to receive—

“(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

“(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the infant or toddler; and

“(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

“(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

“(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents’ consent, early intervention services may commence prior to the completion of the assessment.

“(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

“(1) a statement of the infant’s or toddler’s present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

“(2) a statement of the family’s resources, priorities, and concerns relating to enhancing the development of the family’s infant or toddler with a disability;

“(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

“(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

“(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

“(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

“(7) the identification of the service coordinator from the profession most immediately relevant to the infant’s or toddler’s or family’s needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

“(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

“(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

20 USC 1437.

“SEC. 637. STATE APPLICATION AND ASSURANCES.

“(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

“(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

“(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;

“(3) information demonstrating eligibility of the State under section 634, including—

“(A) information demonstrating to the Secretary’s satisfaction that the State has in effect the statewide system required by section 633; and

“(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

“(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

“(5) a description of the uses for which funds will be expended in accordance with this part;

“(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who—

“(A) is involved in a substantiated case of child abuse or neglect; or

“(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

“(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

“(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

“(9) a description of the policies and procedures to be used—

“(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(c)) to preschool, school, other appropriate services, or exiting the program, including a description of how—

“(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

“(ii) the lead agency designated or established under section 635(a)(10) will—

“(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

“(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

“(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

“(B) to review the child’s program options for the period from the child’s third birthday through the remainder of the school year; and

“(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

“(10) a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs, and services under part C; and

“(11) such other information and assurances as the Secretary may reasonably require.

“(b) ASSURANCES.—The application described in subsection (a)—

“(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

“(2) shall contain an assurance that the State will comply with the requirements of section 640;

“(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

“(4) shall provide for—

“(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary’s functions under this part; and

“(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;

“(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

“(A) will not be commingled with State funds; and

“(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

“(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

“(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this part; and

“(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

“(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

“(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this part (as in effect before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

“(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

“(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State’s compliance with this part, if—

“(1) an amendment is made to this title, or a Federal regulation issued under this title;

“(2) a new interpretation of this title is made by a Federal court or the State’s highest court; or

“(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

“SEC. 638. USES OF FUNDS.

20 USC 1438.

“In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

“(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

“(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

“(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

“(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and

“(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

“(A) identifying and evaluating at-risk infants and toddlers;

“(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

“(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

“SEC. 639. PROCEDURAL SAFEGUARDS.

20 USC 1439.

“(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

“(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court

shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

“(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

“(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

“(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

“(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

“(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

“(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents’ native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

“(8) The right of parents to use mediation in accordance with section 615, except that—

“(A) any reference in the section to a State educational agency shall be considered to be a reference to a State’s lead agency established or designated under section 635(a)(10);

“(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State’s lead agency under this part, as the case may be; and

“(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

“(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention

services currently being provided or, if applying for initial services, shall receive the services not in dispute.

“SEC. 640. PAYOR OF LAST RESORT.

20 USC 1440.

“(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

“(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

“(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

“(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

“(i) the provision of, and financial responsibility for, services provided under this part; and

“(ii) such services are consistent with the requirements of section 635 and the State’s application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

“(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State’s agreement or mechanism under section 612(a)(12), where appropriate.

“(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

“(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

“(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

“(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

“(A) State statute or regulation;

“(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

“(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State’s application pursuant to section 637.

“(c) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

20 USC 1441.

“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

“(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

“(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

“(b) COMPOSITION.—

“(1) IN GENERAL.—The council shall be composed as follows:

“(A) PARENTS.—Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

“(B) SERVICE PROVIDERS.—Not less than 20 percent of the members shall be public or private providers of early intervention services.

“(C) STATE LEGISLATURE.—Not less than 1 member shall be from the State legislature.

“(D) PERSONNEL PREPARATION.—Not less than 1 member shall be involved in personnel preparation.

“(E) AGENCY FOR EARLY INTERVENTION SERVICES.—Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

“(F) AGENCY FOR PRESCHOOL SERVICES.—Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

“(G) STATE MEDICAID AGENCY.—Not less than 1 member shall be from the agency responsible for the State medicaid program.

“(H) HEAD START AGENCY.—Not less than 1 member shall be a representative from a Head Start agency or program in the State.

“(I) CHILD CARE AGENCY.—Not less than 1 member shall be a representative from a State agency responsible for child care.

“(J) AGENCY FOR HEALTH INSURANCE.—Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.

“(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH.—Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

“(L) STATE FOSTER CARE REPRESENTATIVE.—Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.

“(M) MENTAL HEALTH AGENCY.—Not less than 1 member shall be a representative from the State agency responsible for children’s mental health.

“(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

“(c) MEETINGS.—The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

“(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

“(e) FUNCTIONS OF COUNCIL.—

“(1) DUTIES.—The council shall—

“(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

“(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

“(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

Reports.

“(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

“(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

“(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

Applicability.
20 USC 1442.

“SEC. 642. FEDERAL ADMINISTRATION.

“Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

“(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State’s lead agency established or designated under section 635(a)(10);

“(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

“(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

20 USC 1443.

“SEC. 643. ALLOCATION OF FUNDS.

“(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

“(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this part.

“(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95-134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

“(b) PAYMENTS TO INDIANS.—

“(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment

for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

“(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

“(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

“(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

“(5) REPORTS.—To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

“(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

“(c) STATE ALLOTMENTS.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

“(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

“(A) $\frac{1}{2}$ of 1 percent of the remaining amount described in paragraph (1); or

“(B) \$500,000.

“(3) RATABLE REDUCTION.—

“(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

“(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

“(4) DEFINITIONS.—In this subsection—

“(A) the terms ‘infants’ and ‘toddlers’ mean children under 3 years of age; and

“(B) the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallocate, among the remaining States, amounts from such State in accordance with such subsection.

“(e) RESERVATION FOR STATE INCENTIVE GRANTS.—

“(1) IN GENERAL.—For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 exceeds \$460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 635(c) in order to facilitate the implementation of such policy.

“(2) AMOUNT OF GRANT.—

“(A) IN GENERAL.—Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.

“(B) MAXIMUM AMOUNT.—No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

“(3) CARRYOVER OF AMOUNTS.—

“(A) FIRST SUCCEEDING FISCAL YEAR.—Pursuant to section 421(b) of the General Education Provisions Act, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

“(B) SECOND SUCCEEDING FISCAL YEAR.—Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 633 (from their allotments under this section) during such second succeeding fiscal year.

“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

20 USC 1444.

“For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2010.

**“PART D—NATIONAL ACTIVITIES TO IMPROVE
EDUCATION OF CHILDREN WITH DISABILITIES**

“SEC. 650. FINDINGS.

20 USC 1450.

“Congress finds the following:

“(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling those children to lead productive and independent adult lives.

“(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

“(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

“(4) An effective educational system serving students with disabilities should—

“(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

“(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

“(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

“(5) The availability of an adequate number of qualified personnel is critical—

“(A) to serve effectively children with disabilities;

“(B) to assume leadership positions in administration and direct services;

“(C) to provide teacher training; and

“(D) to conduct high quality research to improve special education.

“(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

“(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

“(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

“(9) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

“(10) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

“(11) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

“(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

“(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

“(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

“(D) providing such parents information on their rights, protections, and responsibilities under this title to ensure improved early intervention, educational, and transitional results for children with disabilities;

“(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 673(b)(6);

“(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

“(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

“(12) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

“Subpart 1—State Personnel Development Grants

“SEC. 651. PURPOSE; DEFINITION OF PERSONNEL; PROGRAM AUTHORITY. 20 USC 1451.

“(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

“(b) DEFINITION OF PERSONNEL.—In this subpart the term ‘personnel’ means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

“(c) COMPETITIVE GRANTS.—

“(1) IN GENERAL.—Except as provided in subsection (d), for any fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than \$100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 653.

“(2) PRIORITY.—In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that—

“(A) are in States with the greatest personnel shortages; or

“(B) demonstrate the greatest difficulty meeting the requirements of section 612(a)(14).

“(3) MINIMUM AMOUNT.—The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is—

“(A) not less than \$500,000, nor more than \$4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

“(B) not less than \$80,000 in the case of an outlying area.

“(4) INCREASE IN AMOUNT.—The Secretary may increase the amounts of grants under paragraph (4) to account for inflation.

“(5) FACTORS.—The Secretary shall determine the amount of a grant under paragraph (1) after considering—

“(A) the amount of funds available for making the grants;

“(B) the relative population of the State or outlying area;

“(C) the types of activities proposed by the State or outlying area;

“(D) the alignment of proposed activities with section 612(a)(14);

“(E) the alignment of proposed activities with the State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and

“(F) the use, as appropriate, of scientifically based research activities.

“(d) FORMULA GRANTS.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than \$100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose application meets the requirements of this subpart, an amount that bears the same relation to the amount remaining as the amount the State received under section 611(d) for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this subpart) under section 611(d) for that fiscal year.

“(2) MINIMUM ALLOTMENTS FOR STATES THAT RECEIVED COMPETITIVE GRANTS.—

“(A) IN GENERAL.—The amount allotted under this subsection to any State educational agency that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be not less than the amount specified for that fiscal year in the State educational agency’s grant award document under that subsection.

“(B) SPECIAL RULE.—Each such State educational agency shall use the minimum amount described in subparagraph (A) for the activities described in the State educational agency’s competitive grant award document for that year, unless the Secretary approves a request from the State educational agency to spend the funds on other activities.

“(3) MINIMUM ALLOTMENT.—The amount of any State educational agency’s allotment under this subsection for any fiscal year shall not be less than—

“(A) the greater of \$500,000 or $\frac{1}{2}$ of 1 percent of the total amount available under this subsection for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

“(B) \$80,000, in the case of an outlying area.

“(4) DIRECT BENEFIT.—In using grant funds allotted under paragraph (1), a State educational agency shall, through grants, contracts, or cooperative agreements, undertake activities that significantly and directly benefit the local educational agencies in the State.

“(e) CONTINUATION AWARDS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this subpart, from funds appropriated under section 655 for each fiscal year, the Secretary shall reserve the amount that

is necessary to make a continuation award to any State educational agency (at the request of the State educational agency) that received a multi-year award under this part (as this part was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), to enable the State educational agency to carry out activities in accordance with the terms of the multi-year award.

“(2) PROHIBITION.—A State educational agency that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this subpart for that fiscal year.

“SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

20 USC 1452.

“(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

“(b) PARTNERS.—

“(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including—

“(A) not less than 1 institution of higher education; and

“(B) the State agencies responsible for administering part C, early education, child care, and vocational rehabilitation programs.

“(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

“(A) the Governor;

“(B) parents of children with disabilities ages birth through 26;

“(C) parents of nondisabled children ages birth through 26;

“(D) individuals with disabilities;

“(E) parent training and information centers or community parent resource centers funded under sections 671 and 672, respectively;

“(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

“(G) personnel as defined in section 651(b);

“(H) the State advisory panel established under part B;

“(I) the State interagency coordinating council established under part C;

“(J) individuals knowledgeable about vocational education;

“(K) the State agency for higher education;

“(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

“(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

“(N) other individuals.

“(3) REQUIRED PARTNER.—If State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the State educational agency, the State educational agency shall—

“(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

“(B) ensure that any activities the State educational agency will carry out under this subpart that are within that partner’s jurisdiction (which may include activities described in section 654(b)) are carried out by that partner.

20 USC 1453.

“SEC. 653. APPLICATIONS.

“(a) IN GENERAL.—

“(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

“(2) STATE PLAN.—The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

“(A) is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a) (8) and (9);

“(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

“(i) current and anticipated personnel vacancies and shortages; and

“(ii) the number of preservice and inservice programs; and

“(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965.

“(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).

“(b) ELEMENTS OF STATE PERSONNEL DEVELOPMENT PLAN.—Each State personnel development plan under subsection (a)(2) shall—

“(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

“(A) the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership, including the partner described in section 652(b)(3) if applicable; and

“(B) how the State educational agency will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

“(2) describe how the strategies and activities described in paragraph (4) will be coordinated with activities supported with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

“(3) describe how the State educational agency will align its personnel development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

“(4) describe those strategies the State educational agency will use to address the professional development and personnel needs identified under subsection (a)(2) and how such strategies will be implemented, including—

“(A) a description of the programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

“(B) how such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662;

“(5) provide an assurance that the State educational agency will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

“(6) provide an assurance that the State educational agency will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

“(7) describe how the State educational agency will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

“(8) describe the steps the State educational agency will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

“(9) describe how the State educational agency will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).

“(c) PEER REVIEW.—

“(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

“(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

“(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

“(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall—

“(1) describe the progress of the State educational agency in implementing its plan;

“(2) analyze the effectiveness of the State educational agency’s activities under this subpart and of the State educational agency’s strategies for meeting its goals under section 612(a)(15); and

“(3) identify changes in the strategies used by the State educational agency and described in subsection (b)(4), if any, to improve the State educational agency’s performance.

20 USC 1454.

“SEC. 654. USE OF FUNDS.

“(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State’s plan described in section 653, including 1 or more of the following:

“(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

“(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;

“(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 9101 of the Elementary and Secondary Education Act of 1965; and

“(C) encourage collaborative and consultative models of providing early intervention, special education, and related services.

“(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

“(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

“(B) to enhance learning by children with disabilities; and

“(C) to effectively communicate with parents.

“(3) Providing professional development activities that—

“(A) improve the knowledge of special education and regular education teachers concerning—

“(i) the academic and developmental or functional needs of students with disabilities; or

“(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

“(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, and that—

“(i) provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

“(ii) involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

“(iii) provide training in methods of—

“(I) positive behavioral interventions and supports to improve student behavior in the classroom;

“(II) scientifically based reading instruction, including early literacy instruction;

“(III) early and appropriate interventions to identify and help children with disabilities;

“(IV) effective instruction for children with low incidence disabilities;

“(V) successful transitioning to postsecondary opportunities; and

“(VI) using classroom-based techniques to assist children prior to referral for special education;

“(iv) provide training to enable personnel to work with and involve parents in their child’s education, including parents of low income and limited English proficient children with disabilities;

“(v) provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate IEPs; and

“(vi) provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students;

“(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

“(D) train early intervention, preschool, and related services providers, and other relevant school personnel, in conducting effective individualized family service plan (IFSP) meetings.

“(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruiting and retaining highly qualified teachers, including programs that provide—

“(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

“(B) induction and support for special education teachers during their first 3 years of employment as teachers; or

“(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

“(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

“(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101 of the Elementary and Secondary Education Act of 1965; and

“(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

“(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

“(A) professional development programs to improve the delivery of early intervention services;

“(B) initiatives to promote the recruitment and retention of early intervention personnel; and

“(C) interagency activities to ensure that early intervention personnel are adequately prepared and trained.

“(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State’s plan described in section 653, including 1 or more of the following:

“(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

“(A) special education and regular education teachers have—

“(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

“(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

“(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

“(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

“(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master’s degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

“(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

“(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

“(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

“(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

“(7) Assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

“(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

“(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

“(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

“(c) **CONTRACTS AND SUBGRANTS.**—A State educational agency that receives a grant under this subpart—

“(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

“(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out the State plan.

“(d) **USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.**—A State educational agency that receives a grant under this subpart shall use—

“(1) not less than 90 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

“(2) not more than 10 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

“(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

20 USC 1455.

“SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2005 through 2010.

“Subpart 2—Personnel Preparation, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

20 USC 1461.

“SEC. 661. PURPOSE; DEFINITION OF ELIGIBLE ENTITY.

“(a) PURPOSE.—The purpose of this subpart is—

“(1) to provide Federal funding for personnel preparation, technical assistance, model demonstration projects, information dissemination, and studies and evaluations, in order to improve early intervention, educational, and transitional results for children with disabilities; and

“(2) to assist State educational agencies and local educational agencies in improving their education systems for children with disabilities.

“(b) DEFINITION OF ELIGIBLE ENTITY.—

“(1) IN GENERAL.—In this subpart, the term ‘eligible entity’ means—

“(A) a State educational agency;

“(B) a local educational agency;

“(C) a public charter school that is a local educational agency under State law;

“(D) an institution of higher education;

“(E) a public agency not described in subparagraphs (A) through (D);

“(F) a private nonprofit organization;

“(G) an outlying area;

“(H) an Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act); or

“(I) a for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.

“(2) SPECIAL RULE.—The Secretary may limit which eligible entities described in paragraph (1) are eligible for a grant, contract, or cooperative agreement under this subpart to 1 or more of the categories of eligible entities described in paragraph (1).

20 USC 1462.

“SEC. 662. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

“(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to carry out 1 or more of the following objectives:

“(1) To help address the needs identified in the State plan described in section 653(a)(2) for highly qualified personnel, as defined in section 651(b), to work with infants or toddlers

with disabilities, or children with disabilities, consistent with the qualifications described in section 612(a)(14).

“(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

“(3) To encourage increased focus on academics and core content areas in special education personnel preparation programs.

“(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

“(5) To ensure that all special education teachers are highly qualified.

“(6) To ensure that preservice and in-service personnel preparation programs include training in—

“(A) the use of new technologies;

“(B) the area of early intervention, educational, and transition services;

“(C) effectively involving parents; and

“(D) positive behavioral supports.

“(7) To provide high-quality professional development for principals, superintendents, and other administrators, including training in—

“(A) instructional leadership;

“(B) behavioral supports in the school and classroom;

“(C) paperwork reduction;

“(D) promoting improved collaboration between special education and general education teachers;

“(E) assessment and accountability;

“(F) ensuring effective learning environments; and

“(G) fostering positive relationships with parents.

“(b) PERSONNEL DEVELOPMENT; ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities—

“(A) for personnel development, including activities for the preparation of personnel who will serve children with high incidence and low incidence disabilities, to prepare special education and general education teachers, principals, administrators, and related services personnel (and school board members, when appropriate) to meet the diverse and individualized instructional needs of children with disabilities and improve early intervention, educational, and transitional services and results for children with disabilities, consistent with the objectives described in subsection (a); and

“(B) for enhanced support for beginning special educators, consistent with the objectives described in subsection (a).

“(2) PERSONNEL DEVELOPMENT.—In carrying out paragraph (1)(A), the Secretary shall support not less than 1 of the following activities:

“(A) Assisting effective existing, improving existing, or developing new, collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities that

incorporate best practices and scientifically based research, where applicable, in providing special education and general education teachers, principals, administrators, and related services personnel with the knowledge and skills to effectively support students with disabilities, including—

“(i) working collaboratively in regular classroom settings;

“(ii) using appropriate supports, accommodations, and curriculum modifications;

“(iii) implementing effective teaching strategies, classroom-based techniques, and interventions to ensure appropriate identification of students who may be eligible for special education services, and to prevent the misidentification, inappropriate overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children;

“(iv) effectively working with and involving parents in the education of their children;

“(v) utilizing strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom;

“(vi) effectively constructing IEPs, participating in IEP meetings, and implementing IEPs;

“(vii) preparing children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate, and to ensure that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965; and

“(viii) working in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

“(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers to reduce teacher shortages, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

“(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities.

“(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

“(E) In the case of principals and superintendents, providing activities to promote instructional leadership and

improved collaboration between general educators, special education teachers, and related services personnel.

“(F) Supporting institutions of higher education with minority enrollments of not less than 25 percent for the purpose of preparing personnel to work with children with disabilities.

“(G) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

“(H) Providing continuous personnel preparation, training, and professional development designed to provide support and improve the qualifications of personnel who provide related services to children with disabilities, including to enable such personnel to obtain advanced degrees.

“(3) ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—In carrying out paragraph (1)(B), the Secretary shall support not less than 1 of the following activities:

“(A) Enhancing and restructuring existing programs or developing preservice teacher education programs to prepare special education teachers, at colleges or departments of education within institutions of higher education, by incorporating an extended (such as an additional 5th year) clinical learning opportunity, field experience, or supervised practicum into such programs.

“(B) Creating or supporting teacher-faculty partnerships (such as professional development schools) that—

“(i) consist of not less than—

“(I) 1 or more institutions of higher education with special education personnel preparation programs;

“(II) 1 or more local educational agencies that serve high numbers or percentages of low-income students; or

“(III) 1 or more elementary schools or secondary schools, particularly schools that have failed to make adequate yearly progress on the basis, in whole and in part, of the assessment results of the disaggregated subgroup of students with disabilities;

“(ii) may include other entities eligible for assistance under this part; and

“(iii) provide—

“(I) high-quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

“(II) inservice professional development to beginning and veteran special education teachers through the ongoing exchange of information and instructional strategies with faculty.

“(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

“(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

“(A) Preparing persons who—

“(i) have prior training in educational and other related service fields; and

“(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

“(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

“(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

“(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

“(ii) to improve communication with parents.

“(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

“(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

“(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

“(G) Preparing personnel who provide services to children with low incidence disabilities and limited English proficient children.

“(3) DEFINITION.—In this section, the term ‘low incidence disability’ means—

“(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

“(B) a significant cognitive impairment; or

“(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

“(4) SELECTION OF RECIPIENTS.—In selecting eligible entities for assistance under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

“(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.

“(B) A demonstration of an effective collaboration between an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with low incidence disabilities.

“(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of awards under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille, will prepare those individuals to provide those services in Braille.

“(d) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

“(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

“(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

“(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, related services faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities, including children with disabilities who are limited English proficient children.

“(e) APPLICATIONS.—

“(1) IN GENERAL.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(2) IDENTIFIED STATE NEEDS.—

“(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—An application for assistance under subsection (b), (c), or (d) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the eligible entity proposes to serve.

“(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—An eligible entity that is not a local educational agency or a State educational agency shall include in the eligible entity’s application information demonstrating to the satisfaction of the Secretary that the eligible entity and 1 or more State educational agencies or local educational agencies will cooperate in carrying out and monitoring the proposed project.

“(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require eligible entities to provide in the eligible entities’ applications assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in

State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities.

“(f) SELECTION OF RECIPIENTS.—

“(1) IMPACT OF PROJECT.—In selecting eligible entities for assistance under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

Grants.
Contracts.

“(2) REQUIREMENT FOR ELIGIBLE ENTITIES TO MEET STATE AND PROFESSIONAL QUALIFICATIONS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible entities that meet State and professionally recognized qualifications for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

“(3) PREFERENCES.—In selecting eligible entities for assistance under this section, the Secretary may give preference to eligible entities that are institutions of higher education that are—

“(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

“(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

“(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

“(g) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), and (d).

“(h) SERVICE OBLIGATION.—

“(1) IN GENERAL.—Each application for assistance under subsections (b), (c), and (d) shall include an assurance that the eligible entity will ensure that individuals who receive a scholarship under the proposed project agree to subsequently provide special education and related services to children with disabilities, or in the case of leadership personnel to subsequently work in the appropriate field, for a period of 2 years for every year for which the scholarship was received or repay all or part of the amount of the scholarship, in accordance with regulations issued by the Secretary.

“(2) SPECIAL RULE.—Notwithstanding paragraph (1), the Secretary may reduce or waive the service obligation requirement under paragraph (1) if the Secretary determines that the service obligation is acting as a deterrent to the recruitment of students into special education or a related field.

“(3) SECRETARY’S RESPONSIBILITY.—The Secretary—

“(A) shall ensure that individuals described in paragraph (1) comply with the requirements of that paragraph; and

“(B) may use not more than 0.5 percent of the funds appropriated under subsection (i) for each fiscal year, to carry out subparagraph (A), in addition to any other funds that are available for that purpose.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2005 through 2010.

“SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.

“(a) IN GENERAL.—The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, support model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

Grants.
Contracts.
20 USC 1463.

“(b) REQUIRED ACTIVITIES.—Funds received under this section shall be used to support activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through—

“(1) implementing effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

“(2) improving the alignment, compatibility, and development of valid and reliable assessments and alternate assessments for assessing adequate yearly progress, as described under section 1111(b)(2)(B) of the Elementary and Secondary Education Act of 1965;

“(3) providing training for both regular education teachers and special education teachers to address the needs of students with different learning styles;

“(4) disseminating information about innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and identifying positive academic and social learning opportunities, that—

“(A) provide effective transitions between educational settings or from school to post school settings; and

“(B) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

“(5) applying scientifically based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

“(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through—

“(1) applying and testing research findings in typical settings where children with disabilities receive services to determine the usefulness, effectiveness, and general applicability

of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media;

“(2) supporting and promoting the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

“(3) promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, and evaluation of such reforms;

“(4) enabling professionals, parents of children with disabilities, and other persons to learn about, and implement, the findings of scientifically based research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities;

“(5) conducting outreach, and disseminating information, relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services to personnel who provide services to children with disabilities;

“(6) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

“(7) promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes;

“(8) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

“(A) to schools and agencies serving deaf-blind children and their families;

“(B) to programs and agencies serving other groups of children with low incidence disabilities and their families;

“(C) addressing the postsecondary education needs of individuals who are deaf or hard-of-hearing; and

“(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;

“(9) demonstrating models of personnel preparation to ensure appropriate placements and services for all students and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children; and

“(10) disseminating information on how to reduce inappropriate racial and ethnic disproportionalities identified under section 618.

“(d) **BALANCE AMONG ACTIVITIES AND AGE RANGES.**—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges of children with disabilities.

“(e) **LINKING STATES TO INFORMATION SOURCES.**—In carrying out this section, the Secretary shall support projects that link States to technical assistance resources, including special education and general education resources, and shall make research and

related products available through libraries, electronic networks, parent training projects, and other information sources, including through the activities of the National Center for Education Evaluation and Regional Assistance established under part D of the Education Sciences Reform Act of 2002.

“(f) APPLICATIONS.—

“(1) IN GENERAL.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(2) STANDARDS.—To the maximum extent feasible, each eligible entity shall demonstrate that the project described in the eligible entity’s application is supported by scientifically valid research that has been carried out in accordance with the standards for the conduct and evaluation of all relevant research and development established by the National Center for Education Research.

“(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment.

“SEC. 664. STUDIES AND EVALUATIONS.

20 USC 1464.

“(a) STUDIES AND EVALUATIONS.—

“(1) DELEGATION.—The Secretary shall delegate to the Director of the Institute of Education Sciences responsibility to carry out this section, other than subsections (d) and (f).

“(2) ASSESSMENT.—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded to eligible entities on a competitive basis, assess the progress in the implementation of this title, including the effectiveness of State and local efforts to provide—

“(A) a free appropriate public education to children with disabilities; and

“(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to the infants and toddlers.

“(b) ASSESSMENT OF NATIONAL ACTIVITIES.—

“(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this title in order—

“(A) to determine the effectiveness of this title in achieving the purposes of this title;

“(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this title more effectively; and

“(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this title more effectively.

“(2) SCOPE OF ASSESSMENT.—The national assessment shall assess activities supported under this title, including—

“(A) the implementation of programs assisted under this title and the impact of such programs on addressing the developmental needs of, and improving the academic

achievement of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments;

“(B) the types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

“(C) the implementation of the professional development activities assisted under this title and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

“(D) the effectiveness of schools, local educational agencies, States, other recipients of assistance under this title, and the Secretary in achieving the purposes of this title by—

“(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments as compared to nondisabled children, and the performance of children with disabilities on alternate assessments;

“(ii) improving the participation of children with disabilities in the general education curriculum;

“(iii) improving the transitions of children with disabilities at natural transition points;

“(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

“(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

“(vi) addressing the reading and literacy needs of children with disabilities;

“(vii) reducing the inappropriate overidentification of children, especially minority and limited English proficient children, as having a disability;

“(viii) improving the participation of parents of children with disabilities in the education of their children; and

“(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities, including mediation.

“(3) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—

“(A) an interim report that summarizes the preliminary findings of the assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004; and

“(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of such Act.

“(C) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WHO ARE HELD TO ALTERNATIVE ACHIEVEMENT STANDARDS.—The Secretary shall carry out a national study or studies to examine—

“(1) the criteria that States use to determine—

“(A) eligibility for alternate assessments; and

“(B) the number and type of children who take those assessments and are held accountable to alternative achievement standards;

“(2) the validity and reliability of alternate assessment instruments and procedures;

“(3) the alignment of alternate assessments and alternative achievement standards to State academic content standards in reading, mathematics, and science; and

“(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

“(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—

“(1) summarizes the research conducted under part E of the Education Sciences Reform Act of 2002;

“(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

“(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

“(4) describes the extent and progress of the assessment of national activities; and

“(5) describes the findings and determinations resulting from reviews of State implementation of this title.

“(e) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that—

“(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

“(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

“(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

“(A) data on—

“(i) the number of minority children who are referred for special education evaluation;

“(ii) the number of minority children who are receiving special education and related services and their educational or other service placement;

“(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

“(iv) the number of minority children who drop out of the educational system; and

“(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

“(4) measure educational and transitional services and results for children with disabilities served under this title, including longitudinal studies that—

“(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this title, using a national, representative sample of distinct age cohorts and disability categories; and

“(B) examine educational results, transition services, postsecondary placement, and employment status for individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this title; and

“(5) identify and report on the placement of children with disabilities by disability category.

Reports.

“(f) STUDY.—The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in section 635(c)(1) and on the effects of those policies.

20 USC 1465.

“SEC. 665. INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, BEHAVIORAL SUPPORTS, AND SYSTEMIC SCHOOL INTERVENTIONS.

“(a) PROGRAM AUTHORIZED.—The Secretary may award grants, and enter into contracts and cooperative agreements, to support safe learning environments that support academic achievement for all students by—

“(1) improving the quality of interim alternative educational settings; and

“(2) providing increased behavioral supports and research-based, systemic interventions in schools.

“(b) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support activities to—

“(1) establish, expand, or increase the scope of behavioral supports and systemic interventions by providing for effective, research-based practices, including—

“(A) training for school staff on early identification, prereferral, and referral procedures;

“(B) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

“(C) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

“(D) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

“(E) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

“(F) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

“(2) improve interim alternative educational settings by—

“(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other

school staff (including ongoing mentoring of new teachers) in behavioral supports and interventions;

“(B) attracting and retaining a high quality, diverse staff;

“(C) providing for referral to counseling services;

“(D) utilizing research-based interventions, curriculum, and practices;

“(E) allowing students to use instructional technology that provides individualized instruction;

“(F) ensuring that the services are fully consistent with the goals of the individual student’s IEP;

“(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

“(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

“(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

“(c) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term “eligible entity” means—

“(1) a local educational agency; or

“(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

“(A) Another local educational agency.

“(B) A community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed.

“(C) An institution of higher education.

“(D) A community mental health provider.

“(E) An educational service agency.

“(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall—

“(1) submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require; and

“(2) involve parents of participating students in the design and implementation of the activities funded under this section.

“(e) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this section shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

“SEC. 667. AUTHORIZATION OF APPROPRIATIONS.

20 USC 1466.

“(a) IN GENERAL.—There are authorized to be appropriated to carry out this subpart (other than section 662) such sums as may be necessary for each of the fiscal years 2005 through 2010.

“(b) RESERVATION.—From amounts appropriated under subsection (a) for fiscal year 2005, the Secretary shall reserve \$1,000,000 to carry out the study authorized in section 664(c). From amounts appropriated under subsection (a) for a succeeding fiscal year, the Secretary may reserve an additional amount to

carry out such study if the Secretary determines the additional amount is necessary.

“Subpart 3—Supports To Improve Results for Children With Disabilities

20 USC 1470.

“SEC. 670. PURPOSES.

“The purposes of this subpart are to ensure that—

“(1) children with disabilities and their parents receive training and information designed to assist the children in meeting developmental and functional goals and challenging academic achievement goals, and in preparing to lead productive independent adult lives;

“(2) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this title, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

“(3) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such personnel in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

“(4) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

20 USC 1471.

“SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

“(a) PROGRAM AUTHORIZED.—

“(1) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

“(2) DEFINITION OF PARENT ORGANIZATION.—In this section, the term ‘parent organization’ means a private nonprofit organization (other than an institution of higher education) that—

“(A) has a board of directors—

“(i) the majority of whom are parents of children with disabilities ages birth through 26;

“(ii) that includes—

“(I) individuals working in the fields of special education, related services, and early intervention; and

“(II) individuals with disabilities; and

“(iii) the parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

“(B) has as its mission serving families of children with disabilities who—

“(i) are ages birth through 26; and

“(ii) have the full range of disabilities described in section 602(3).

“(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

“(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

“(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

“(B) be prepared to lead productive independent adult lives, to the maximum extent possible;

“(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);

“(3) ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

“(4) assist parents to—

“(A) better understand the nature of their children’s disabilities and their educational, developmental, and transitional needs;

“(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

“(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

“(D) obtain appropriate information about the range, type, and quality of—

“(i) options, programs, services, technologies, practices and interventions based on scientifically based research, to the extent practicable; and

“(ii) resources available to assist children with disabilities and their families in school and at home;

“(E) understand the provisions of this title for the education of, and the provision of early intervention services to, children with disabilities;

“(F) participate in activities at the school level that benefit their children; and

“(G) participate in school reform activities;

“(5) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;

“(6) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

“(7) assist parents and students with disabilities to understand their rights and responsibilities under this title, including those under section 615(m) upon the student’s reaching the age of majority (as appropriate under State law);

Reports.
Deadlines.

“(8) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this title, including the resolution session described in section 615(e);

“(9) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);

“(10) establish cooperative partnerships with community parent resource centers funded under section 672;

“(11) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and

“(12) annually report to the Secretary on—

“(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

“(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

“(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

“(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

“(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—

“(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

“(2) to work with community based organizations, including community based organizations that work with low-income parents and parents of limited English proficient children.

“(e) DISTRIBUTION OF FUNDS.—

“(1) IN GENERAL.—The Secretary shall—

“(A) make not less than 1 award to a parent organization in each State for a parent training and information center that is designated as the statewide parent training and information center; or

“(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

“(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

“(f) QUARTERLY REVIEW.—

“(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet not less than once in each calendar quarter to review the activities for which the award was made.

“(2) CONTINUATION AWARD.—When a parent organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the parent organization during the preceding fiscal year.

“SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

20 USC 1472.

“(a) PROGRAM AUTHORIZED.—

“(1) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support community parent resource centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of limited English proficient children, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

“(A) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

“(B) to be prepared to lead productive independent adult lives, to the maximum extent possible.

“(2) DEFINITION OF LOCAL PARENT ORGANIZATION.—In this section, the term ‘local parent organization’ means a parent organization, as defined in section 671(a)(2), that—

“(A) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

“(B) has as its mission serving parents of children with disabilities who—

“(i) are ages birth through 26; and

“(ii) have the full range of disabilities described in section 602(3).

“(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—

“(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

“(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

“(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

“(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

“SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

20 USC 1473.

“(a) PROGRAM AUTHORIZED.—

“(1) IN GENERAL.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under section 671 and

community parent resource centers receiving assistance under section 672.

“(2) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term ‘eligible entity’ has the meaning given the term in section 661(b).

“(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center or a community parent resource center under this section in areas such as—

“(1) effective coordination of parent training efforts;

“(2) dissemination of scientifically based research and information;

“(3) promotion of the use of technology, including assistive technology devices and assistive technology services;

“(4) reaching underserved populations, including parents of low-income and limited English proficient children with disabilities;

“(5) including children with disabilities in general education programs;

“(6) facilitation of transitions from—

“(A) early intervention services to preschool;

“(B) preschool to elementary school;

“(C) elementary school to secondary school; and

“(D) secondary school to postsecondary environments;

and

“(7) promotion of alternative methods of dispute resolution, including mediation.

“(c) COLLABORATION WITH THE RESOURCE CENTERS.—Each eligible entity receiving an award under subsection (a) shall develop collaborative agreements with the geographically appropriate regional resource center and, as appropriate, the regional educational laboratory supported under section 174 of the Education Sciences Reform Act of 2002, to further parent and professional collaboration.

20 USC 1474.

“SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; MEDIA SERVICES; AND INSTRUCTIONAL MATERIALS.

“(a) PROGRAM AUTHORIZED.—

“(1) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

“(2) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term ‘eligible entity’ has the meaning given the term in section 661(b).

“(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

“(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:

“(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

Grants.
Contracts.

“(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.

“(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

“(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

“(c) EDUCATIONAL MEDIA SERVICES.—

“(1) IN GENERAL.—In carrying out this section, the Secretary shall support—

“(A) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

“(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of—

“(i) television programs;

“(ii) videos;

“(iii) other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or

“(iv) news (but only until September 30, 2006);

“(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and

“(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools, postsecondary schools, and graduate schools.

“(2) LIMITATION.—The video description, open captioning, or closed captioning described in paragraph (1)(B) shall be provided only when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

“(d) APPLICATIONS.—

“(1) IN GENERAL.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under subsection (b) or (c) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(2) SPECIAL RULE.—For the purpose of an application for an award to carry out activities described in subsection (c)(1)(D), such eligible entity shall—

“(A) be a national, nonprofit entity with a proven track record of meeting the needs of students with print disabilities through services described in subsection (c)(1)(D);

“(B) have the capacity to produce, maintain, and distribute in a timely fashion, up-to-date textbooks in digital audio formats to qualified students; and

Establishment.
Deadline.

“(C) have a demonstrated ability to significantly leverage Federal funds through other public and private contributions, as well as through the expansive use of volunteers.

“(e) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

“(1) IN GENERAL.—The Secretary shall establish and support, through the American Printing House for the Blind, a center to be known as the ‘National Instructional Materials Access Center’ not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

“(2) DUTIES.—The duties of the National Instructional Materials Access Center are the following:

“(A) To receive and maintain a catalog of print instructional materials prepared in the National Instructional Materials Accessibility Standard, as established by the Secretary, made available to such center by the textbook publishing industry, State educational agencies, and local educational agencies.

“(B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.

“(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under sections 612(a)(23) and 613(a)(6).

“(3) DEFINITIONS.—In this subsection:

“(A) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term ‘blind or other persons with print disabilities’ means children served under this Act and who may qualify in accordance with the Act entitled ‘An Act to provide books for the adult blind’, approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

“(B) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term ‘National Instructional Materials Accessibility Standard’ means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

“(C) PRINT INSTRUCTIONAL MATERIALS.—The term ‘print instructional materials’ means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

“(D) SPECIALIZED FORMATS.—The term ‘specialized formats’ has the meaning given the term in section 121(d)(3) of title 17, United States Code.

“(4) APPLICABILITY.—This subsection shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard was published in the Federal Register.

“(5) **LIABILITY OF THE SECRETARY.**—Nothing in this subsection shall be construed to establish a private right of action against the Secretary for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the duties of such center, or to otherwise authorize a private right of action related to the performance by such center, including through the application of the rights of children and parents established under this Act.

“(6) **INAPPLICABILITY.**—Subsections (a) through (d) shall not apply to this subsection.

“SEC. 675. AUTHORIZATION OF APPROPRIATIONS.

20 USC 1475.

“There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2005 through 2010.

“Subpart 4—General Provisions

“SEC. 681. COMPREHENSIVE PLAN FOR SUBPARTS 2 AND 3.

20 USC 1481.

“(a) **COMPREHENSIVE PLAN.**—

“(1) **IN GENERAL.**—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under subparts 2 and 3 in order to enhance the provision of early intervention services, educational services, related services, and transitional services to children with disabilities under parts B and C. To the extent practicable, the plan shall be coordinated with the plan developed pursuant to section 178(c) of the Education Sciences Reform Act of 2002 and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State personnel development grants under subpart 1 and for grants under subparts 2 and 3.

“(2) **PUBLIC COMMENT.**—The Secretary shall provide a public comment period of not less than 45 days on the plan.

“(3) **DISTRIBUTION OF FUNDS.**—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds awarded under subparts 2 and 3 are used to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

“(4) **REPORTS TO CONGRESS.**—The Secretary shall annually report to Congress on the Secretary’s activities under subparts 2 and 3, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

“(b) **ASSISTANCE AUTHORIZED.**—The Secretary is authorized to award grants to, or enter into contracts or cooperative agreements with, eligible entities to enable the eligible entities to carry out the purposes of such subparts in accordance with the comprehensive plan described in subsection (a).

“(c) **SPECIAL POPULATIONS.**—

“(1) **APPLICATION REQUIREMENT.**—In making an award of a grant, contract, or cooperative agreement under subpart 2 or 3, the Secretary shall, as appropriate, require an eligible

Historically
Black colleges
and universities.

entity to demonstrate how the eligible entity will address the needs of children with disabilities from minority backgrounds.

“(2) REQUIRED OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this title, the Secretary shall reserve not less than 2 percent of the total amount of funds appropriated to carry out subparts 2 and 3 for either or both of the following activities:

“(A) Providing outreach and technical assistance to historically Black colleges and universities, and to institutions of higher education with minority enrollments of not less than 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

“(B) Enabling historically Black colleges and universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities, if the historically Black colleges and universities and the institutions of higher education described in subparagraph (A) meet the criteria established by the Secretary under this subpart.

“(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under subpart 2 or 3, may, without regard to the rulemaking procedures under section 553 of title 5, United States Code, limit competitions to, or otherwise give priority to—

“(1) projects that address 1 or more—

“(A) age ranges;

“(B) disabilities;

“(C) school grades;

“(D) types of educational placements or early intervention environments;

“(E) types of services;

“(F) content areas, such as reading; or

“(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

“(2) projects that address the needs of children based on the severity or incidence of their disability;

“(3) projects that address the needs of—

“(A) low achieving students;

“(B) underserved populations;

“(C) children from low income families;

“(D) limited English proficient children;

“(E) unserved and underserved areas;

“(F) rural or urban areas;

“(G) children whose behavior interferes with their learning and socialization;

“(H) children with reading difficulties;

“(I) children in public charter schools;

“(J) children who are gifted and talented; or

“(K) children with disabilities served by local educational agencies that receive payments under title VIII of the Elementary and Secondary Education Act of 1965;

“(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

“(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

“(6) projects that promote the development and use of technologies with universal design, assistive technology devices, and assistive technology services to maximize children with disabilities’ access to and participation in the general education curriculum; and

“(7) any activity that is authorized in subpart 2 or 3.

“(e) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

“SEC. 682. ADMINISTRATIVE PROVISIONS.

20 USC 1482.

“(a) APPLICANT AND RECIPIENT RESPONSIBILITIES.—

“(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under subpart 2 or 3—

“(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

“(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

“(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under subpart 2 or 3 to—

“(A) share in the cost of the project;

“(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

“(C) disseminate such findings and products; and

“(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

“(b) APPLICATION MANAGEMENT.—

“(1) STANDING PANEL.—

“(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are qualified, by virtue of their training, expertise, or experience, to evaluate each application under subpart 2 or 3 that requests more than \$75,000 per year in Federal financial assistance.

“(B) MEMBERSHIP.—The standing panel shall include, at a minimum—

“(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;

“(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

“(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;

“(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

“(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

“(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

“(vii) individuals who are parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

“(viii) individuals with disabilities.

“(C) TERM.—No individual shall serve on the standing panel for more than 3 consecutive years.

“(2) PEER-REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

“(A) COMPOSITION.—The Secretary shall ensure that each subpanel selected from the standing panel that reviews an application under subpart 2 or 3 includes—

“(i) individuals with knowledge and expertise on the issues addressed by the activities described in the application; and

“(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

“(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each subpanel that reviews an application under subpart 2 or 3 shall be individuals who are not employees of the Federal Government.

“(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

“(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds available under subpart 2 or 3 to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

“(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds appropriated to carry out subpart 2 or 3 to pay non-Federal entities for administrative support related to management of applications submitted under subpart 2 or 3, respectively.

“(C) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out subpart 2 or 3 to evaluate activities carried out under subpart 2 or 3, respectively.

“(d) MINIMUM FUNDING REQUIRED.—

“(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, not less than the following amounts are provided under subparts 2 and 3 to address the following needs:

“(A) \$12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

“(B) \$4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

“(C) \$4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

“(2) RATABLE REDUCTION.—If the sum of the amount appropriated to carry out subparts 2 and 3, and part E of the Education Sciences Reform Act of 2002 for any fiscal year is less than \$130,000,000, the amounts listed in paragraph (1) shall be ratably reduced for the fiscal year.”.

TITLE II—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

SEC. 201. NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.

(a) AMENDMENT.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

- (1) by redesignating part E as part F; and
- (2) by inserting after part D the following:

“PART E—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

“SEC. 175. ESTABLISHMENT.

20 USC 9567.

“(a) ESTABLISHMENT.—There is established in the Institute a National Center for Special Education Research (in this part referred to as the ‘Special Education Research Center’).

“(b) MISSION.—The mission of the Special Education Research Center is—

“(1) to sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;

“(2) to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

“(3) to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

“(c) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and F, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.

“SEC. 176. COMMISSIONER FOR SPECIAL EDUCATION RESEARCH.

20 USC 9567a.

“The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as the ‘Special Education Research Commissioner’) who

shall have substantial knowledge of the Special Education Research Center's activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.

20 USC 9567b.

“SEC. 177. DUTIES.

“(a) GENERAL DUTIES.—The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 175(b), such as activities that—

“(1) improve services provided under the Individuals with Disabilities Education Act in order to improve—

“(A) academic achievement, functional outcomes, and educational results for children with disabilities; and

“(B) developmental outcomes for infants or toddlers with disabilities;

“(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

“(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

“(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

“(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 1111(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b));

“(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

“(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

“(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

“(9) improve reading and literacy skills of children with disabilities;

“(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

“(11) examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;

“(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods to improve educational and transitional results for children with disabilities;

“(13) improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;

“(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;

“(15) help parents improve educational results for their children, particularly related to transition issues;

“(16) address the unique needs of children with significant cognitive disabilities; and

“(17) examine the special needs of limited English proficient children with disabilities.

“(b) STANDARDS.—The Special Education Research Commissioner shall ensure that activities assisted under this section—

“(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

“(2) are carried out in accordance with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

“(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

“(c) PLAN.—The Special Education Research Commissioner shall propose to the Director a research plan, developed in collaboration with the Assistant Secretary for Special Education and Rehabilitative Services, that—

“(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

“(2) is carried out, updated, and modified, as appropriate;

“(3) is consistent with the purposes of the Individuals with Disabilities Education Act;

“(4) contains an appropriate balance across all age ranges and types of children with disabilities;

“(5) provides for research that is objective and uses measurable indicators to assess its progress and results; and

“(6) is coordinated with the comprehensive plan developed under section 681 of the Individuals with Disabilities Education Act.

“(d) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—

“(1) IN GENERAL.—In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible applicants.

“(2) ELIGIBLE APPLICANTS.—Activities carried out under this subsection through contracts, grants, or cooperative agreements shall be carried out only by recipients with the ability and capacity to conduct scientifically valid research.

“(3) APPLICATIONS.—An eligible applicant that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

“(e) DISSEMINATION.—The Special Education Research Center shall—

“(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Special Education Research Center; and

“(2) assist the Director in the preparation of a biennial report, as described in section 119.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2005 through 2010.”.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO THE TABLE OF CONTENTS.—The table of contents in section 1 of the Act entitled “An Act to provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, and for other purposes”, approved November 5, 2002 (116 Stat. 1940; Public Law 107-279), is amended—

(A) by redesignating the item relating to part E as the item relating to part F; and

(B) by inserting after the item relating to section 174 the following:

“PART E—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

“Sec. 175. Establishment.

“Sec. 176. Commissioner for Special Education Research.

“Sec. 177. Duties.”.

(2) EDUCATION SCIENCES REFORM ACT OF 2002.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(A) in section 111(b)(1)(A) (20 U.S.C. 9511(b)(1)(A)), by inserting “and special education” after “early childhood education”;

(B) in section 111(c)(3) (20 U.S.C. 9511(c)(3))—

(i) in subparagraph (B), by striking “and” after the semicolon;

(ii) in subparagraph (C), by striking the period and inserting “; and”; and

(iii) by adding at the end the following:

“(D) the National Center for Special Education Research (as described in part E).”;

(C) in section 115(a) (20 U.S.C. 9515(a)), by striking “including those” and all that follows through “such as” and inserting “including those associated with the goals and requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), such as”; and

(D) in section 116(c)(4)(A)(ii) (20 U.S.C. 9516(c)(4)(A)(ii)), by inserting “special education experts,” after “early childhood experts,”.

(3) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 1117(a)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6317(a)(3)) is amended by striking “part E” and inserting “part D”.

SEC. 202. NATIONAL BOARD FOR EDUCATION SCIENCES.

Section 116(c)(9) of the Education Sciences Reform Act of 2002 (20 U.S.C. 9516(c)(9)) is amended by striking the third sentence and inserting the following: “Meetings of the Board are subject to section 552b of title 5, United States Code (commonly referred to as the Government in the Sunshine Act).”.

SEC. 203. REGIONAL ADVISORY COMMITTEES.

Section 206(d)(3) of the Educational Technical Assistance Act of 2002 (20 U.S.C. 9605(d)(3)) is amended by striking “Academy” and inserting “Institute”.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. AMENDMENT TO CHILDREN’S HEALTH ACT OF 2000.

Section 1004 of the Children’s Health Act of 2000 (42 U.S.C. 285g note) is amended—

(1) in subsection (b), by striking “Agency” and inserting “Agency, and the Department of Education”; and

(2) in subsection (c)—

(A) in paragraph (2), by striking “and” after the semicolon;

(B) in paragraph (3), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.”.

SEC. 302. EFFECTIVE DATES.

(a) PARTS A, B, AND C, AND SUBPART 1 OF PART D.—

20 USC 1400
note.

(1) IN GENERAL.—Except as provided in paragraph (2), parts A, B, and C, and subpart 1 of part D, of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on July 1, 2005.

(2) HIGHLY QUALIFIED DEFINITION.—Subparagraph (A), and subparagraphs (C) through (F), of section 602(10) of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on the date of enactment of this Act for purposes of the Elementary and Secondary Education Act of 1965.

(b) SUBPARTS 2, 3, AND 4 OF PART D.—Subparts 2, 3, and 4 of part D of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on the date of enactment of this Act.

(c) EDUCATION SCIENCES REFORM ACT OF 2002.—

20 USC 9567b
note.

(1) NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.—Sections 175, 176, and 177 (other than section 177(c)) of the Education Sciences Reform Act of 2002, as enacted by section 201(a)(2) of this Act, shall take effect on the date of enactment of this Act.

(2) PLAN.—Section 177(c) of the Education Sciences Reform Act of 2002, as enacted by section 201(a)(2) of this Act, shall take effect on October 1, 2005.

SEC. 303. TRANSITION.

20 USC 1400
note.

(a) ORDERLY TRANSITION.—

(1) **IN GENERAL.**—The Secretary of Education (in this section referred to as “the Secretary”) shall take such steps as are necessary to provide for the orderly transition from the Individuals with Disabilities Education Act, as such Act was in effect on the day preceding the date of enactment of this Act, to the Individuals with Disabilities Education Act and part E of the Education Sciences Reform Act of 2002, as amended by this Act.

(2) **LIMITATION.**—The Secretary’s authority in paragraph (1) shall terminate 1 year after the date of enactment of this Act.

(b) **MULTI-YEAR AWARDS.**—Notwithstanding any other provision of law, the Secretary may use funds appropriated under part D of the Individuals with Disabilities Education Act to make continuation awards for projects that were funded under section 618, and part D, of the Individuals with Disabilities Education Act (as such section and part were in effect on September 30, 2004), in accordance with the terms of the original awards.

(c) **RESEARCH.**—Notwithstanding section 302(b) or any other provision of law, the Secretary may award funds that are appropriated under the Department of Education Appropriations Act, 2005 for special education research under either of the headings “SPECIAL EDUCATION” or “INSTITUTE OF EDUCATION SCIENCES” in accordance with sections 672 and 674 of the Individuals with Disabilities Education Act, as such sections were in effect on October 1, 2004.

SEC. 304. REPEALER.

20 USC 1444.

Section 644 of the Individuals with Disabilities Education Act, as such section was in effect on the day before the enactment of this Act, is repealed.

SEC. 305. IDEA TECHNICAL AMENDMENTS TO OTHER LAWS.

(a) **TITLE 10.**—Section 2164(f) of title 10, United States Code is amended—

(1) in paragraph (1)(B)—

(A) by striking “infants and toddlers” each place the term appears and inserting “infants or toddlers”;

(B) by striking “part H” and inserting “part C”; and

(C) by striking “1471” and inserting “1431”; and

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking “602(a)(1)” and inserting “602”; and

(ii) by striking “1401(a)(1)” and inserting “1401”;

(B) by striking subparagraph (B);

(C) by redesignating subparagraph (C) as subparagraph (B); and

(D) in subparagraph (B) (as so redesignated)—

(i) by striking “and toddlers” and inserting “or toddlers”;

(ii) by striking “672(1)” and inserting “632”; and

(iii) by striking “1472(1)” and inserting “1432”.

(b) **DEFENSE DEPENDENTS EDUCATION ACT OF 1978.**—Section 1409(c)(2) of the Defense Dependents Education Act of 1978 (20 U.S.C. 927(c)(2)) is amended—

(1) by striking “677” and inserting “636”; and

(2) by striking “part H” and inserting “part C”.

(c) HIGHER EDUCATION ACT OF 1965.—The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 465(a)(2)(C) (20 U.S.C. 1087ee(a)(2)(C)), by striking “Individuals With” and inserting “Individuals with” and;

(2) in section 469(c) (20 U.S.C. 1087ii(c)), by striking “602(a)(1) and 672(1)” and inserting “602 and 632”.

(d) EDUCATION OF THE DEAF ACT.—The matter preceding subparagraph (A) of section 104(b)(2) of the Education of the Deaf Act (20 U.S.C. 4304(b)(2)) is amended by striking “618(a)(1)(A)” and inserting “618(a)(1)”.

(e) GOALS 2000: EDUCATE AMERICA ACT.—Section 3(a)(9) of the Goals 2000: Educate America Act (20 U.S.C. 5802(a)(9)) is amended by striking “602(a)(17)” and inserting “602”.

(f) SCHOOL-TO-WORK OPPORTUNITIES ACT OF 1994.—Section 4(15) of the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6103(15)) is amended—

(1) by striking “602(a)(17)” and inserting “602”; and

(2) by striking “1401(17)” and inserting “1401”.

(g) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(1) in section 1111(b)(2)(I)(ii) (20 U.S.C. 6311(b)(2)(I)(ii)), by striking “612(a)(17)(A)” and inserting “612(a)(16)(A)”;

(2) in section 5208 (20 U.S.C. 7221g), by striking “602(11)” and inserting “602”; and

(3) in section 5563(b)(8)(C) (20 U.S.C. 7273b(b)(8)(C)), by striking “682” and inserting “671”.

(h) REHABILITATION ACT OF 1973.—The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) is amended—

(1) in section 101(a)(11)(D)(ii) (29 U.S.C. 721(a)(11)(D)(ii)), by striking “(as added by section 101 of Public Law 105–17)”;

(2) in section 105(b)(1)(A)(ii) (29 U.S.C. 725(b)(1)(A)(ii)), by striking “682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)” and inserting “671 of the Individuals with Disabilities Education Act”;

(3) in section 105(c)(6) (29 U.S.C. 725(c)(6))—

(A) by striking “612(a)(21)” and inserting “612(a)(20)”;

(B) by striking “Individual with” and inserting “Individuals with”; and

(C) by striking “(as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)”;

(4) in section 302(f)(1)(D)(ii) (29 U.S.C. 772 (f)(1)(D)(ii)), by striking “(as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997 (Public Law 105–17))”;

(5) in section 303(c)(6) (29 U.S.C. 773(c)(6))—

(A) by striking “682(a)” and inserting “671”; and

(B) by striking “(as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)”;

(6) in section 303(c)(4)(A)(ii) (29 U.S.C. 773(c)(4)(A)(ii)), by striking “682(a) of the Individuals with Disabilities Education

Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17)” and inserting “671 of the Individuals with Disabilities Education Act”.

(i) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

42 USC
290bb-25.

(1) in section 399A(f) (42 U.S.C. 280d(f), by striking “part H” and inserting “part C”;

(2) in section 399(n)(3) (42 U.S.C. 280c-6(n)(3)), by striking “part H” and inserting “part C”;

42 USC
290bb-25.

(3) in section 399A(b)(8) (42 U.S.C. 280d(b)(8)), by striking “part H” and inserting “part C”;

(4) in section 562(d)(3)(B) (42 U.S.C. 290ff-1(d)(3)(B)), by striking “and H” and inserting “and C”; and

(5) in section 563(d)(2) (42 U.S.C. 290ff-2(d)(2)), by striking “602(a)(19)” and inserting “602”.

(j) SOCIAL SECURITY ACT.—The Social Security Act (42 U.S.C. 301 et seq.) is amended—

(1) in section 1903(c) (42 U.S.C. 1396b(c)), by striking “part H” and inserting “part C”; and

(2) in section 1915(c)(5)(C)(i) (42 U.S.C. 1396n(c)(5)(C)(i)), by striking “(as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16), (17))” and inserting “(as such terms are defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401))”.

(k) DOMESTIC VOLUNTEER SERVICE ACT OF 1973.—Section 211(a) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5011(a)) is amended—

(1) by striking “part H” and inserting “part C”; and

(2) by striking “1471” and inserting “1431”.

(l) HEAD START ACT.—The Head Start Act (42 U.S.C. 9831 et seq.) is amended—

(1) in section 640(a)(5)(C)(iv) (42 U.S.C. 9835(a)(5)(C)(iv)), by striking “1445” and inserting “1444”;

(2) in section 640(d) (42 U.S.C. 9835(d))—

(A) by striking “U.S.C.” and inserting “U.S.C.”; and

(B) by striking “1445” and inserting “1444”;

(3) in section 641(d)(3) (42 U.S.C. 9836(d)(3)), by striking “U.S.C 1431-1445” and inserting “U.S.C. 1431-1444”; and

(4) in section 642(c) (42 U.S.C. 9837(c)), by striking “1445” and inserting “1444”.

(m) NATIONAL AND COMMUNITY SERVICE ACT OF 1990.—Section 101(21)(B) of the National and Community Service Act of 1990 (42 U.S.C. 12511(21)(B)) is amended—

(1) by striking “602(a)(1)” and inserting “602”; and

(2) by striking “1401(a)(1)” and inserting “1401”.

(n) DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000.—The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.) is amended—

(1) in section 125(c)(5)(G)(i) (42 U.S.C. 15025(c)(5)(G)(i)), by striking “subtitle C” and inserting “part C”; and

(2) in section 154(a)(3)(E)(ii)(VI) (42 U.S.C. 15064(a)(3)(E)(ii)(VI))—

(A) by striking “682 or 683” and inserting “671 or 672”; and

(B) by striking “(20 U.S.C. 1482, 1483)”.

(o) DISTRICT OF COLUMBIA SCHOOL REFORM ACT OF 1995.—
The District of Columbia School Reform Act of 1995 (Public Law 104–134) is amended—

- (1) in section 2002(32)—
 - (A) by striking “602(a)(1)” and inserting “602”; and
 - (B) by striking “1401(a)(1)” and inserting “1401”;
- (2) in section 2202(19), by striking “Individuals With” and inserting “Individuals with”; and
- (3) in section 2210—
 - (A) in the heading for subsection (c), by striking “WITH DISABILITIES” and inserting “WITH DISABILITIES”; and
 - (B) in subsection (c), by striking “Individuals With” and inserting “Individuals with”.

110 Stat.
1321–107.

110 Stat.
1321–116.

110 Stat.
1321–125.

SEC. 306. COPYRIGHT.

Section 121 of title 17, United States Code, is amended—

- (1) by redesignating subsection (c) as subsection (d);
- (2) by inserting after subsection (b) the following:

“(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if—

“(1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;

“(2) the publisher had the right to publish such print instructional materials in print formats; and

“(3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats.”; and

- (3) in subsection (d), as redesignated by this section—

(A) in paragraph (2), by striking “and” after the semicolon; and

(B) by striking paragraph (3) and inserting the following:

“(3) ‘print instructional materials’ has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act; and

- “(4) ‘specialized formats’ means—

“(A) braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and

“(B) with respect to print instructional materials, includes large print formats when such materials are

distributed exclusively for use by blind or other persons with disabilities.”.

Approved December 3, 2004.

LEGISLATIVE HISTORY—H.R. 1350 (S. 1248):

HOUSE REPORTS: Nos. 108–77 (Comm. on Education and the Workforce) and 108–779 (Comm. of Conference).

SENATE REPORTS: No. 108–185 accompanying S. 1248 (Comm. on Health, Education, Labor, and Pensions).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Apr. 30, considered and passed House.

Vol. 150 (2004): May 13, considered and passed Senate, amended, in lieu of S. 1248.

Nov. 19, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Dec. 3, Presidential statement and remarks.



Public Law 108–447
108th Congress

An Act

Making appropriations for foreign operations, export financing, and related programs
for the fiscal year ending September 30, 2005, and for other purposes.

Dec. 8, 2004
[H.R. 4818]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

Consolidated
Appropriations
Act, 2005

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consolidated Appropriations
Act, 2005”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References.
- Sec. 4. Statement of appropriations.

**DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG
ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005**

- Title I—Agricultural Programs
- Title II—Conservation Programs
- Title III—Rural Development Programs
- Title IV—Domestic Food Programs
- Title V—Foreign Assistance and Related Programs
- Title VI—Related Agencies and Food and Drug Administration
- Title VII—General Provisions

**DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE
JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005**

- Title I—Department of Justice
- Title II—Department of Commerce and Related Agencies
- Title III—The Judiciary
- Title IV—Department of State and Related Agency
- Title V—Related Agencies
- Title VI—General Provisions
- Title VII—Rescissions
- Title VIII—Patent and Trademark Fees
- Title IX—Oceans and Human Health Act

**DIVISION C—ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT,
2005**

- Title I—Department of Defense—Civil
- Title II—Department of the Interior
- Title III—Department of Energy
- Title IV—Independent Agencies
- Title V—General Provisions
- Title VI—Reform of the Board of Directors of the Tennessee Valley Authority

**DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED
PROGRAMS APPROPRIATIONS ACT, 2005**

- Title I—Export and Investment Assistance

Title II—Bilateral Economic Assistance
 Title III—Military Assistance
 Title IV—Multilateral Economic Assistance
 Title V—General Provisions

DIVISION E—DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES
 APPROPRIATIONS ACT, 2005

Title I—Department of the Interior
 Title II—Related Agencies
 Title III—General Provisions
 Title IV—Urgent Wildland Fire Suppression Activities
 Title V—General Reduction

DIVISION F—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES,
 AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Title I—Department of Labor
 Title II—Department of Health and Human Services
 Title III—Department of Education
 Title IV—Related Agencies
 Title V—General Provisions

DIVISION G—LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2005

Title I—Legislative Branch Appropriations
 Title II—General Provisions

DIVISION H—TRANSPORTATION, TREASURY, INDEPENDENT AGENCIES,
 AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2005

Title I—Department of Transportation
 Title II—Department of the Treasury
 Title III—Executive Office of the President and Funds Appropriated to the President
 Title IV—Independent Agencies
 Title V—General Provisions
 Title VI—General Provisions

DIVISION I—DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND
 URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2005

Title I—Department of Veterans Affairs
 Title II—Department of Housing and Urban Development
 Title III—Independent Agencies
 Title IV—General Provisions

DIVISION J—OTHER MATTERS

Title I—Miscellaneous Provisions and Offsets
 Title II—225th Anniversary of the American Revolution Commemoration Act
 Title III—Rural Air Service Improvement Act of 2004
 Title IV—L–1 Visa and H–1B Visa Reform Act
 Title V—National Aviation Heritage Area Act
 Title VI—Oil Region National Heritage Area Act
 Title VII—Mississippi Gulf Coast National Heritage Area Act
 Title VIII—Federal Lands Recreation Enhancement Act
 Title IX—Satellite Home Viewer Extension and Reauthorization Act of 2004
 Title X—Snake River Water Rights Act of 2004

DIVISION K—SMALL BUSINESS

1 USC 1 note.

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to “this Act” contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 4. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2005.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD
AND DRUG ADMINISTRATION, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2005Agriculture,
Rural
Development,
Food and Drug
Administration,
and Related
Agencies
Appropriations
Act, 2005.

TITLE I

AGRICULTURAL PROGRAMS

PRODUCTION, PROCESSING, AND MARKETING

OFFICE OF THE SECRETARY

For necessary expenses of the Office of the Secretary of Agriculture, \$5,124,000: *Provided*, That not to exceed \$11,000 of this amount shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary.

EXECUTIVE OPERATIONS

CHIEF ECONOMIST

For necessary expenses of the Chief Economist, including economic analysis, risk assessment, cost-benefit analysis, energy and new uses, and the functions of the World Agricultural Outlook Board, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1622g), \$10,317,000.

NATIONAL APPEALS DIVISION

For necessary expenses of the National Appeals Division, \$14,331,000.

OFFICE OF BUDGET AND PROGRAM ANALYSIS

For necessary expenses of the Office of Budget and Program Analysis, \$8,228,000.

HOMELAND SECURITY STAFF

For necessary expenses of the Homeland Security Staff, \$775,000.

OFFICE OF THE CHIEF INFORMATION OFFICER

For necessary expenses of the Office of the Chief Information Officer, \$16,595,000.

COMMON COMPUTING ENVIRONMENT

For necessary expenses to acquire a Common Computing Environment for the Natural Resources Conservation Service, the Farm and Foreign Agricultural Service, and Rural Development mission areas for information technology, systems, and services, \$125,585,000, to remain available until expended, for the capital asset acquisition of shared information technology systems, including services as authorized by 7 U.S.C. 6915–16 and 40 U.S.C. 1421–28: *Provided*, That obligation of these funds shall be consistent with the Department of Agriculture Service Center Modernization

Plan of the county-based agencies, and shall be with the concurrence of the Department's Chief Information Officer.

OFFICE OF THE CHIEF FINANCIAL OFFICER

For necessary expenses of the Office of the Chief Financial Officer, \$5,742,000: *Provided*, That the Chief Financial Officer shall actively market and expand cross-servicing activities of the National Finance Center: *Provided further*, That no funds made available by this appropriation may be obligated for FAIR Act or Circular A-76 activities until the Secretary has submitted to the Committees on Appropriations of both Houses of Congress and the Committee on Government Reform of the House of Representatives a report on the Department's contracting out policies, including agency budgets for contracting out.

WORKING CAPITAL FUND

For the acquisition of disaster recovery and continuity of operations technology of the National Finance Center's data, \$12,850,000, to remain available until expended.

OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

For necessary salaries and expenses of the Office of the Assistant Secretary for Civil Rights, \$818,000.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, \$19,889,000.

OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

For necessary salaries and expenses of the Office of the Assistant Secretary for Administration, \$669,000.

AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

(INCLUDING TRANSFERS OF FUNDS)

For payment of space rental and related costs pursuant to Public Law 92-313, including authorities pursuant to the 1984 delegation of authority from the Administrator of General Services to the Department of Agriculture under 40 U.S.C. 486, for programs and activities of the Department which are included in this Act, and for alterations and other actions needed for the Department and its agencies to consolidate unneeded space into configurations suitable for release to the Administrator of General Services, and for the operation, maintenance, improvement, and repair of Agriculture buildings and facilities, and for related costs, \$163,870,000, to remain available until expended: *Provided*, That not to exceed 5 percent of amounts which are made available for space rental and related costs for the Department of Agriculture in this Act may be transferred between such appropriations to cover the costs of new or replacement space 15 days after notice thereof is transmitted to the Appropriations Committees of both Houses of Congress.

Notice.

HAZARDOUS MATERIALS MANAGEMENT

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), \$15,532,000, to remain available until expended: *Provided*, That appropriations and funds available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

DEPARTMENTAL ADMINISTRATION

(INCLUDING TRANSFERS OF FUNDS)

For Departmental Administration, \$22,626,000, to provide for necessary expenses for management support services to offices of the Department and for general administration, security, repairs and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department: *Provided*, That this appropriation shall be reimbursed from applicable appropriations in this Act for travel expenses incident to the holding of hearings as required by 5 U.S.C. 551–558.

OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL
RELATIONS

(INCLUDING TRANSFERS OF FUNDS)

For necessary salaries and expenses of the Office of the Assistant Secretary for Congressional Relations to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison within the executive branch, \$3,852,000: *Provided*, That these funds may be transferred to agencies of the Department of Agriculture funded by this Act to maintain personnel at the agency level: *Provided further*, That no funds made available by this appropriation may be obligated after 30 days from the date of enactment of this Act, unless the Secretary has notified the Committees on Appropriations of both Houses of Congress on the allocation of these funds by USDA agency: *Provided further*, That no other funds appropriated to the Department by this Act shall be available to the Department for support of activities of congressional relations.

Deadline.
Notification.

OFFICE OF COMMUNICATIONS

For necessary expenses to carry out services relating to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department, \$9,365,000: *Provided*, That not to exceed \$2,000,000 may be used for farmers' bulletins.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General, including employment pursuant to the Inspector General Act of 1978, \$78,289,000, including such sums as may be necessary for contracting and other arrangements with public agencies and private persons pursuant to section 6(a)(9) of the Inspector General Act of 1978, and including not to exceed \$125,000 for certain confidential operational expenses, including the payment of informants, to be expended under the direction of the Inspector General pursuant to Public Law 95-452 and section 1337 of Public Law 97-98.

OFFICE OF THE GENERAL COUNSEL

For necessary expenses of the Office of the General Counsel, \$35,861,000.

OFFICE OF THE UNDER SECRETARY FOR RESEARCH, EDUCATION AND ECONOMICS

For necessary salaries and expenses of the Office of the Under Secretary for Research, Education and Economics to administer the laws enacted by the Congress for the Economic Research Service, the National Agricultural Statistics Service, the Agricultural Research Service, and the Cooperative State Research, Education, and Extension Service, \$592,000.

ECONOMIC RESEARCH SERVICE

For necessary expenses of the Economic Research Service in conducting economic research and analysis, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) and other laws, \$74,768,000.

NATIONAL AGRICULTURAL STATISTICS SERVICE

For necessary expenses of the National Agricultural Statistics Service in conducting statistical reporting and service work, including crop and livestock estimates, statistical coordination and improvements, marketing surveys, and the Census of Agriculture, as authorized by 7 U.S.C. 1621-1627 and 2204g, and other laws, \$129,480,000, of which up to \$22,405,000 shall be available until expended for the Census of Agriculture.

AGRICULTURAL RESEARCH SERVICE

SALARIES AND EXPENSES

For necessary expenses to enable the Agricultural Research Service to perform agricultural research and demonstration relating to production, utilization, marketing, and distribution (not otherwise provided for); home economics or nutrition and consumer use including the acquisition, preservation, and dissemination of agricultural information; and for acquisition of lands by donation, exchange, or purchase at a nominal cost not to exceed \$100, and for land exchanges where the lands exchanged shall be of equal value or shall be equalized by a payment of money to the grantor which shall not exceed 25 percent of the total value of the land

or interests transferred out of Federal ownership, \$1,110,887,000: *Provided*, That appropriations hereunder shall be available for the operation and maintenance of aircraft and the purchase of not to exceed one for replacement only: *Provided further*, That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for the construction, alteration, and repair of buildings and improvements, but unless otherwise provided, the cost of constructing any one building shall not exceed \$375,000, except for headhouses or greenhouses which shall each be limited to \$1,200,000, and except for 10 buildings to be constructed or improved at a cost not to exceed \$750,000 each, and the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building or \$375,000, whichever is greater: *Provided further*, That the limitations on alterations contained in this Act shall not apply to modernization or replacement of existing facilities at Beltsville, Maryland: *Provided further*, That appropriations hereunder shall be available for granting easements at the Beltsville Agricultural Research Center: *Provided further*, That the foregoing limitations shall not apply to replacement of buildings needed to carry out the Act of April 24, 1948 (21 U.S.C. 113a): *Provided further*, That funds may be received from any State, other political subdivision, organization, or individual for the purpose of establishing or operating any research facility or research project of the Agricultural Research Service, as authorized by law: *Provided further*, That all rights and title of the United States in the 1.0664-acre parcel of land including improvements, as recorded at Book 1320, Page 253, records of Larimer County, State of Colorado, shall be conveyed to the Board of Governors of the Colorado State University for the benefit of Colorado State University. 7 USC 2254.

None of the funds appropriated under this heading shall be available to carry out research related to the production, processing, or marketing of tobacco or tobacco products.

BUILDINGS AND FACILITIES

For acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities as necessary to carry out the agricultural research programs of the Department of Agriculture, where not otherwise provided, \$187,838,000, to remain available until expended.

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

RESEARCH AND EDUCATION ACTIVITIES

For payments to agricultural experiment stations, for cooperative forestry and other research, for facilities, and for other expenses, \$660,781,000, as follows: to carry out the provisions of the Hatch Act of 1887 (7 U.S.C. 361a-i), \$180,148,000; for grants for cooperative forestry research (16 U.S.C. 582a through a-7), \$22,384,000; for payments to the 1890 land-grant colleges, including Tuskegee University and West Virginia State University (7 U.S.C. 3222), \$37,000,000, of which \$1,507,496 shall be made available only for the purpose of ensuring that each institution shall receive no less than \$1,000,000; for special grants for agricultural research (7 U.S.C. 450i(c)), \$121,284,000; for special grants for agricultural

research on improved pest control (7 U.S.C. 450i(c)), \$15,280,000; for competitive research grants (7 U.S.C. 450i(b)), \$181,000,000; for the support of animal health and disease programs (7 U.S.C. 3195), \$5,098,000; for supplemental and alternative crops and products (7 U.S.C. 3319d), \$1,196,000; for grants for research pursuant to the Critical Agricultural Materials Act (7 U.S.C. 178 et seq.), \$1,111,000, to remain available until expended; for the 1994 research grants program for 1994 institutions pursuant to section 536 of Public Law 103-382 (7 U.S.C. 301 note), \$1,087,000, to remain available until expended; for rangeland research grants (7 U.S.C. 3333), \$1,000,000; for higher education graduate fellowship grants (7 U.S.C. 3152(b)(6)), \$3,000,000, to remain available until expended (7 U.S.C. 2209b); for higher education challenge grants (7 U.S.C. 3152(b)(1)), \$5,500,000; for a higher education multicultural scholars program (7 U.S.C. 3152(b)(5)), \$998,000, to remain available until expended (7 U.S.C. 2209b); for an education grants program for Hispanic-serving Institutions (7 U.S.C. 3241), \$5,645,000; for noncompetitive grants for the purpose of carrying out all provisions of 7 U.S.C. 3242 (section 759 of Public Law 106-78) to individual eligible institutions or consortia of eligible institutions in Alaska and in Hawaii, with funds awarded equally to each of the States of Alaska and Hawaii, \$3,500,000; for a secondary agriculture education program and 2-year post-secondary education (7 U.S.C. 3152(j)), \$1,000,000; for aquaculture grants (7 U.S.C. 3322), \$4,000,000; for sustainable agriculture research and education (7 U.S.C. 5811), \$12,500,000; for a program of capacity building grants (7 U.S.C. 3152(b)(4)) to colleges eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321-326 and 328), including Tuskegee University and West Virginia State University, \$12,411,000, to remain available until expended (7 U.S.C. 2209b); for payments to the 1994 Institutions pursuant to section 534(a)(1) of Public Law 103-382, \$2,250,000; for resident instruction grants for insular areas under section 1491 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3363), \$500,000; and for necessary expenses of Research and Education Activities, \$42,889,000.

None of the funds appropriated under this heading shall be available to carry out research related to the production, processing, or marketing of tobacco or tobacco products: *Provided*, That this paragraph shall not apply to research on the medical, biotechnological, food, and industrial uses of tobacco.

NATIVE AMERICAN INSTITUTIONS ENDOWMENT FUND

For the Native American Institutions Endowment Fund authorized by Public Law 103-382 (7 U.S.C. 301 note), \$12,000,000.

EXTENSION ACTIVITIES

For payments to States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Micronesia, Northern Marianas, and American Samoa, \$449,225,000, as follows: payments for cooperative extension work under the Smith-Lever Act, to be distributed under sections 3(b) and 3(c) of said Act, and under section 208(c) of Public Law 93-471, for retirement and employees' compensation costs for extension agents, \$277,742,000; payments for extension work at the 1994 Institutions under the Smith-Lever Act (7 U.S.C.

343(b)(3)), \$3,273,000; payments for the nutrition and family education program for low-income areas under section 3(d) of the Act, \$58,909,000; payments for the pest management program under section 3(d) of the Act, \$10,000,000; payments for the farm safety program under section 3(d) of the Act, \$4,600,000; payments to upgrade research, extension, and teaching facilities at the 1890 land-grant colleges, including Tuskegee University and West Virginia State University, as authorized by section 1447 of Public Law 95–113 (7 U.S.C. 3222b), \$16,912,000, to remain available until expended; payments for youth-at-risk programs under section 3(d) of the Smith-Lever Act, \$7,538,000; for youth farm safety education and certification extension grants, to be awarded competitively under section 3(d) of the Act, \$444,000; payments for carrying out the provisions of the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.), \$4,093,000; payments for Indian reservation agents under section 3(d) of the Smith-Lever Act, \$1,774,000; payments for sustainable agriculture programs under section 3(d) of the Act, \$4,100,000; payments for rural health and safety education as authorized by section 502(i) of Public Law 92–419 (7 U.S.C. 2662(i)), \$1,981,000; payments for cooperative extension work by the colleges receiving the benefits of the second Morrill Act (7 U.S.C. 321–326 and 328) and Tuskegee University and West Virginia State University, \$33,133,000, of which \$1,724,884 shall be made available only for the purpose of ensuring that each institution shall receive no less than \$1,000,000; for grants to youth organizations pursuant to section 7630 of title 7, United States Code, \$2,667,000; and for necessary expenses of Extension Activities, \$22,059,000.

INTEGRATED ACTIVITIES

For the integrated research, education, and extension grants programs, including necessary administrative expenses, \$55,153,000, as follows: for competitive grants programs authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626), \$43,058,000, including \$12,971,000 for the water quality program, \$14,967,000 for the food safety program, \$4,200,000 for the regional pest management centers program, \$4,500,000 for the Food Quality Protection Act risk mitigation program for major food crop systems, \$1,400,000 for the crops affected by Food Quality Protection Act implementation, \$3,131,000 for the methyl bromide transition program, and \$1,889,000 for the organic transition program; for a competitive international science and education grants program authorized under section 1459A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3292b), to remain available until expended, \$1,000,000; for grants programs authorized under section 2(c)(1)(B) of Public Law 89–106, as amended, \$750,000, to remain available until September 30, 2006 for the critical issues program, and \$1,345,000 for the regional rural development centers program; and \$9,000,000 for the homeland security program authorized under section 1484 of the National Agricultural Research, Extension, and Teaching Act of 1977, to remain available until September 30, 2006.

OUTREACH FOR SOCIALLY DISADVANTAGED FARMERS

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279), \$5,935,000, to remain available until expended.

OFFICE OF THE UNDER SECRETARY FOR MARKETING AND
REGULATORY PROGRAMS

For necessary salaries and expenses of the Office of the Under Secretary for Marketing and Regulatory Programs to administer programs under the laws enacted by the Congress for the Animal and Plant Health Inspection Service; the Agricultural Marketing Service; and the Grain Inspection, Packers and Stockyards Administration; \$721,000.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For expenses, not otherwise provided for, necessary to prevent, control, and eradicate pests and plant and animal diseases; to carry out inspection, quarantine, and regulatory activities; and to protect the environment, as authorized by law, \$814,623,000, of which \$4,119,000 shall be available for the control of outbreaks of insects, plant diseases, animal diseases and for control of pest animals and birds to the extent necessary to meet emergency conditions; of which \$47,500,000 shall be used for the boll weevil eradication program for cost share purposes or for debt retirement for active eradication zones; of which \$33,197,000 shall be available for a National Animal Identification program: *Provided*, That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 percent: *Provided further*, That this appropriation shall be available for the operation and maintenance of aircraft and the purchase of not to exceed four, of which two shall be for replacement only: *Provided further*, That, in addition, in emergencies which threaten any segment of the agricultural production industry of this country, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department such sums as may be deemed necessary, to be available only in such emergencies for the arrest and eradication of contagious or infectious disease or pests of animals, poultry, or plants, and for expenses in accordance with sections 10411 and 10417 of the Animal Health Protection Act (7 U.S.C. 8310 and 8316) and sections 431 and 442 of the Plant Protection Act (7 U.S.C. 7751 and 7772), and any unexpended balances of funds transferred for such emergency purposes in the preceding fiscal year shall be merged with such transferred amounts: *Provided further*, That appropriations hereunder shall be available pursuant to law (7 U.S.C. 2250) for the repair and alteration of leased buildings and improvements, but unless otherwise provided the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building: *Provided further*, That no funds shall be used to implement a national animal identification system prior

to notification to the Committees on Appropriations which shall include a detailed explanation of the components of such system.

In fiscal year 2005, the agency is authorized to collect fees to cover the total costs of providing technical assistance, goods, or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity's liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the agency, and such fees shall be credited to this account, to remain available until expended, without further appropriation, for providing such assistance, goods, or services.

BUILDINGS AND FACILITIES

For plans, construction, repair, preventive maintenance, environmental support, improvement, extension, alteration, and purchase of fixed equipment or facilities, as authorized by 7 U.S.C. 2250, and acquisition of land as authorized by 7 U.S.C. 428a, \$4,967,000, to remain available until expended.

AGRICULTURAL MARKETING SERVICE

MARKETING SERVICES

For necessary expenses to carry out services related to consumer protection, agricultural marketing and distribution, transportation, and regulatory programs, as authorized by law, and for administration and coordination of payments to States, \$75,698,000, including funds for the wholesale market development program for the design and development of wholesale and farmer market facilities for the major metropolitan areas of the country: *Provided*, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

Fees may be collected for the cost of standardization activities, as established by regulation pursuant to law (31 U.S.C. 9701).

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed \$64,459,000 (from fees collected) shall be obligated during the current fiscal year for administrative expenses: *Provided*, That if crop size is understated and/or other uncontrollable events occur, the agency may exceed this limitation by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

FUNDS FOR STRENGTHENING MARKETS, INCOME, AND SUPPLY (SECTION 32)

(INCLUDING TRANSFERS OF FUNDS)

Funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be used only for commodity program expenses as authorized therein, and other related operating expenses, except for: (1) transfers to the Department of Commerce as authorized by the Fish and Wildlife Act of August 8, 1956;

(2) transfers otherwise provided in this Act; and (3) not more than \$15,800,000 for formulation and administration of marketing agreements and orders pursuant to the Agricultural Marketing Agreement Act of 1937 and the Agricultural Act of 1961.

PAYMENTS TO STATES AND POSSESSIONS

For payments to departments of agriculture, bureaus and departments of markets, and similar agencies for marketing activities under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623(b)), \$3,847,000, of which not less than \$2,500,000 shall be used to make a grant under this heading.

GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the United States Grain Standards Act, for the administration of the Packers and Stockyards Act, for certifying procedures used to protect purchasers of farm products, and the standardization activities related to grain under the Agricultural Marketing Act of 1946, \$37,299,000: *Provided*, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

LIMITATION ON INSPECTION AND WEIGHING SERVICES EXPENSES

Not to exceed \$42,463,000 (from fees collected) shall be obligated during the current fiscal year for inspection and weighing services: *Provided*, That if grain export activities require additional supervision and oversight, or other uncontrollable factors occur, this limitation may be exceeded by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

OFFICE OF THE UNDER SECRETARY FOR FOOD SAFETY

For necessary salaries and expenses of the Office of the Under Secretary for Food Safety to administer the laws enacted by the Congress for the Food Safety and Inspection Service, \$595,000.

FOOD SAFETY AND INSPECTION SERVICE

For necessary expenses to carry out services authorized by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, including not to exceed \$50,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), \$823,760,000, of which no less than \$742,305,000 shall be available for Federal food safety inspection; and in addition, \$1,000,000 may be credited to this account from fees collected for the cost of laboratory accreditation as authorized by section 1327 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 138f): *Provided*, That no fewer than 63 full time equivalent positions above the fiscal year 2002 level shall be employed during fiscal year 2005 for purposes dedicated solely to inspections and enforcement related to the Humane Methods of Slaughter Act: *Provided further*,

That of the amount available under this heading, notwithstanding section 704 of this Act \$3,000,000, available until September 30, 2006, shall be obligated to include the Humane Animal Tracking System as part of the Field Automation and Information Management System following notification to the Committees on Appropriations, which shall include a detailed explanation of the components of such system: *Provided further*, That of the total amount made available under this heading, no less than \$20,653,000 shall be obligated for regulatory and scientific training: *Provided further*, That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building. Notification.

OFFICE OF THE UNDER SECRETARY FOR FARM AND FOREIGN
AGRICULTURAL SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Farm and Foreign Agricultural Services to administer the laws enacted by Congress for the Farm Service Agency, the Foreign Agricultural Service, the Risk Management Agency, and the Commodity Credit Corporation, \$631,000.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs administered by the Farm Service Agency, \$1,007,597,000: *Provided*, That the Secretary is authorized to use the services, facilities, and authorities (but not the funds) of the Commodity Credit Corporation to make program payments for all programs administered by the Agency: *Provided further*, That other funds made available to the Agency for authorized activities may be advanced to and merged with this account.

STATE MEDIATION GRANTS

For grants pursuant to section 502(b) of the Agricultural Credit Act of 1987, as amended (7 U.S.C. 5101–5106), \$4,000,000.

DAIRY INDEMNITY PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses involved in making indemnity payments to dairy farmers and manufacturers of dairy products under a dairy indemnity program, \$100,000, to remain available until expended: *Provided*, That such program is carried out by the Secretary in the same manner as the dairy indemnity program described in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106–387, 114 Stat. 1549A–12).

AGRICULTURAL CREDIT INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C. 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, Indian tribe land acquisition loans (25 U.S.C. 488), and boll weevil loans (7 U.S.C. 1989), to be available from funds in the Agricultural Credit Insurance Fund, as follows: farm ownership loans, \$1,610,000,000, of which \$1,400,000,000 shall be for guaranteed loans and \$210,000,000 shall be for direct loans; operating loans, \$2,035,000,000, of which \$1,100,000,000 shall be for unsubsidized guaranteed loans, \$285,000,000 shall be for subsidized guaranteed loans and \$650,000,000 shall be for direct loans; Indian tribe land acquisition loans, \$2,000,000; and for boll weevil eradication program loans, \$100,000,000: *Provided*, That the Secretary shall deem the pink bollworm to be a boll weevil for the purpose of boll weevil eradication program loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, as follows: farm ownership loans, \$18,655,000, of which \$7,420,000 shall be for guaranteed loans, and \$11,235,000 shall be for direct loans; operating loans, \$139,049,000, of which \$35,530,000 shall be for unsubsidized guaranteed loans, \$37,934,000 shall be for subsidized guaranteed loans, and \$65,585,000 shall be for direct loans; and Indian tribe land acquisition loans, \$105,000.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$301,764,000, of which \$293,764,000 shall be transferred to and merged with the appropriation for “Farm Service Agency, Salaries and Expenses”.

Funds appropriated by this Act to the Agricultural Credit Insurance Program Account for farm ownership and operating direct loans and guaranteed loans may be transferred among these programs: *Provided*, That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer.

Notification.
Deadline.

RISK MANAGEMENT AGENCY

For administrative and operating expenses, as authorized by section 226A of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6933), \$72,044,000: *Provided*, That not to exceed \$1,000 shall be available for official reception and representation expenses, as authorized by 7 U.S.C. 1506(i).

CORPORATIONS

The following corporations and agencies are hereby authorized to make expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided.

FEDERAL CROP INSURANCE CORPORATION FUND

For payments as authorized by section 516 of the Federal Crop Insurance Act (7 U.S.C. 1516), such sums as may be necessary, to remain available until expended.

COMMODITY CREDIT CORPORATION FUND

REIMBURSEMENT FOR NET REALIZED LOSSES

For the current fiscal year, such sums as may be necessary to reimburse the Commodity Credit Corporation for net realized losses sustained, but not previously reimbursed, pursuant to section 2 of the Act of August 17, 1961 (15 U.S.C. 713a-11): *Provided*, That of the funds available to the Commodity Credit Corporation under section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i) for the conduct of its business with the Foreign Agricultural Service, up to \$5,000,000 may be transferred to and used by the Foreign Agricultural Service for information resource management activities of the Foreign Agricultural Service that are not related to Commodity Credit Corporation business.

HAZARDOUS WASTE MANAGEMENT

(LIMITATION ON EXPENSES)

For the current fiscal year, the Commodity Credit Corporation shall not expend more than \$5,000,000 for site investigation and cleanup expenses, and operations and maintenance expenses to comply with the requirement of section 107(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(g)), and section 6001 of the Resource Conservation and Recovery Act (42 U.S.C. 6961).

TITLE II

CONSERVATION PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT

For necessary salaries and expenses of the Office of the Under Secretary for Natural Resources and Environment to administer the laws enacted by the Congress for the Forest Service and the Natural Resources Conservation Service, \$741,000.

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION OPERATIONS

For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a-f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests.

therein for use in the plant materials program by donation, exchange, or purchase at a nominal cost not to exceed \$100 pursuant to the Act of August 3, 1956 (7 U.S.C. 428a); purchase and erection or alteration or improvement of permanent and temporary buildings; and operation and maintenance of aircraft, \$837,360,000, to remain available until June 30, 2006, of which not less than \$10,500,000 is for snow survey and water forecasting, and not less than \$14,433,000 is for operation and establishment of the plant materials centers, and of which not less than \$23,500,000 shall be for the grazing lands conservation initiative: *Provided*, That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for construction and improvement of buildings and public improvements at plant materials centers, except that the cost of alterations and improvements to other buildings and other public improvements shall not exceed \$250,000: *Provided further*, That when buildings or other structures are erected on non-Federal land, that the right to use such land is obtained as provided in 7 U.S.C. 2250a: *Provided further*, That this appropriation shall be available for technical assistance and related expenses to carry out programs authorized by section 202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. 1592(c)): *Provided further*, That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: *Provided further*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED SURVEYS AND PLANNING

For necessary expenses to conduct research, investigation, and surveys of watersheds of rivers and other waterways, and for small watershed investigations and planning, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1009), \$7,083,000: *Provided*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures, including but not limited to research, engineering operations, methods of cultivation, the growing of vegetation, rehabilitation of existing works and changes in use of land, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1005 and 1007–1009), the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), and in accordance with the provisions of laws relating to the activities of the Department, \$75,576,000, to remain available until expended; of which up to \$10,000,000 may be available for the watersheds authorized under the Flood Control Act (33 U.S.C. 701 and 16 U.S.C. 1006a): *Provided*, That not to exceed \$35,000,000 of this appropriation shall be available for technical assistance: *Provided further*, That not to exceed \$1,000,000 of this appropriation is available to carry out the purposes of the Endangered Species Act of 1973 (Public Law 93–

205), including cooperative efforts as contemplated by that Act to relocate endangered or threatened species to other suitable habitats as may be necessary to expedite project construction: *Provided further*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED REHABILITATION PROGRAM

For necessary expenses to carry out rehabilitation of structural measures, in accordance with section 14 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012), and in accordance with the provisions of laws relating to the activities of the Department, \$27,500,000, to remain available until expended: *Provided*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

RESOURCE CONSERVATION AND DEVELOPMENT

For necessary expenses in planning and carrying out projects for resource conservation and development and for sound land use pursuant to the provisions of sections 31 and 32 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011; 76 Stat. 607); the Act of April 27, 1935 (16 U.S.C. 590a–f); and subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451–3461), \$51,641,000, to remain available until expended: *Provided*, That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)): *Provided further*, That the Secretary shall enter into a cooperative or contribution agreement with a national association regarding a Resource Conservation and Development program and such agreement shall contain the same matching, contribution requirements, and funding level, set forth in a similar cooperative or contribution agreement with a national association in fiscal year 2002: *Provided further*, That not to exceed \$3,504,300 shall be available for national headquarters activities.

Contracts.

TITLE III

RURAL DEVELOPMENT PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR RURAL DEVELOPMENT

For necessary salaries and expenses of the Office of the Under Secretary for Rural Development to administer programs under the laws enacted by the Congress for the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service of the Department of Agriculture, \$632,000.

RURAL COMMUNITY ADVANCEMENT PROGRAM
(INCLUDING TRANSFERS OF FUNDS)

For the cost of direct loans, loan guarantees, and grants, as authorized by 7 U.S.C. 1926, 1926a, 1926c, 1926d, and 1932, except for sections 381E–H and 381N of the Consolidated Farm and Rural Development Act, \$716,049,000, to remain available until expended, of which \$89,180,000 shall be for rural community programs described in section 381E(d)(1) of such Act; of which \$552,689,000 shall be for the rural utilities programs described in sections 381E(d)(2), 306C(a)(2), and 306D of such Act, of which not to exceed \$500,000 shall be available for the rural utilities program described in section 306(a)(2)(B) of such Act, and of which not to exceed \$1,000,000 shall be available for the rural utilities program described in section 306E of such Act; and of which \$74,180,000 shall be for the rural business and cooperative development programs described in sections 381E(d)(3) and 310B(f) of such Act: *Provided*, That of the total amount appropriated in this account, \$25,000,000 shall be for loans and grants to benefit Federally Recognized Native American Tribes, including grants for drinking water and waste disposal systems pursuant to section 306C of such Act, of which \$4,500,000 shall be available for community facilities grants to tribal colleges, as authorized by section 306(a)(19) of the Consolidated Farm and Rural Development Act, and of which \$250,000 shall be available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development: *Provided further*, That of the amount appropriated for rural community programs, \$6,350,000 shall be available for a Rural Community Development Initiative: *Provided further*, That such funds shall be used solely to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, low-income rural communities, and Federally Recognized Native American Tribes to undertake projects to improve housing, community facilities, community and economic development projects in rural areas: *Provided further*, That such funds shall be made available to qualified private, nonprofit and public intermediary organizations proposing to carry out a program of financial and technical assistance: *Provided further*, That such intermediary organizations shall provide matching funds from other sources, including Federal funds for related activities, in an amount not less than funds provided: *Provided further*, That of the amount appropriated for the rural business and cooperative development programs, not to exceed \$500,000 shall be made available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development; \$1,000,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.) for any purpose under this heading: *Provided further*, That of the amount appropriated for rural utilities programs, not to exceed \$25,000,000 shall be for water and waste disposal systems to benefit the Colonias along the United States/Mexico border, including grants pursuant to section 306C of such Act; not to exceed \$26,000,000 shall be for water and waste disposal systems for rural and native villages in Alaska pursuant to section 306D of such Act, with up to 2 percent available to administer the program and/or improve interagency coordination may be transferred to and merged with the appropriation for “Rural Development, Salaries

and Expenses”, of which \$100,000 shall be provided to develop a regional system for centralized billing, operation, and management of rural water and sewer utilities through regional cooperatives, of which 25 percent shall be provided for water and sewer projects in regional hubs, and the State of Alaska shall provide a 25 percent cost share, and grantees may use up to 5 percent of grant funds, not to exceed \$35,000 per community, for the completion of comprehensive community safe water plans; not to exceed \$18,250,000 shall be for technical assistance grants for rural water and waste systems pursuant to section 306(a)(14) of such Act, of which \$5,600,000 shall be for Rural Community Assistance Programs and not less than \$800,000 shall be for a qualified national Native American organization to provide technical assistance for rural water systems for tribal communities; and not to exceed \$13,500,000 shall be for contracting with qualified national organizations for a circuit rider program to provide technical assistance for rural water systems: *Provided further*, That of the total amount appropriated, not to exceed \$22,166,000 shall be available through June 30, 2005, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones; of which \$1,081,000 shall be for the rural community programs described in section 381E(d)(1) of such Act, of which \$12,582,000 shall be for the rural utilities programs described in section 381E(d)(2) of such Act, and of which \$8,503,000 shall be for the rural business and cooperative development programs described in section 381E(d)(3) of such Act: *Provided further*, That of the amount appropriated for rural community programs, not to exceed \$21,000,000 shall be to provide grants for facilities in rural communities with extreme unemployment and severe economic depression (Public Law 106-387), with 5 percent for administration and capacity building in the State rural development offices: *Provided further*, That of the amount appropriated, \$28,000,000 shall be transferred to and merged with the “Rural Utilities Service, High Energy Cost Grants Account” to provide grants authorized under section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 918a): *Provided further*, That any prior year balances for high cost energy grants authorized by section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 901(19)) shall be transferred to and merged with the “Rural Utilities Service, High Energy Costs Grants Account”.

RURAL DEVELOPMENT SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs in the Rural Development mission area, including activities with institutions concerning the development and operation of agricultural cooperatives; and for cooperative agreements; \$148,452,000: *Provided*, That of funds appropriated under this title for salaries and expenses, not less than \$5,000,000 shall be used to complete the consolidation of Rural Development activities in St. Louis, to the Goodfellow facility also in St. Louis: *Provided further*, That notwithstanding any other provision of law, funds appropriated under this section may be used for advertising and promotional activities that support the Rural Development mission area: *Provided further*, That not more than \$10,000 may

be expended to provide modest nonmonetary awards to non-USDA employees: *Provided further*, That any balances available from prior years for the Rural Utilities Service, Rural Housing Service, and the Rural Business-Cooperative Service salaries and expenses accounts shall be transferred to and merged with this appropriation.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, as follows: \$4,459,297,000 for loans to section 502 borrowers, as determined by the Secretary, of which \$1,150,000,000 shall be for direct loans, and of which \$3,309,297,000 shall be for unsubsidized guaranteed loans; \$35,000,000 for section 504 housing repair loans; \$100,000,000 for section 515 rental housing; \$100,000,000 for section 538 guaranteed multi-family housing loans; \$5,045,000 for section 524 site loans; \$11,501,000 for credit sales of acquired property, of which up to \$1,501,000 may be for multi-family credit sales; and \$10,000,000 for section 523 self-help housing land development loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: section 502 loans, \$166,778,000, of which \$133,170,000 shall be for direct loans, and of which \$33,608,000, to remain available until expended, shall be for unsubsidized guaranteed loans; section 504 housing repair loans, \$10,171,000; section 515 rental housing, \$47,090,000; section 538 multi-family housing guaranteed loans, \$3,490,000; multi-family credit sales of acquired property, \$727,000: *Provided*, That of the total amount appropriated in this paragraph, \$7,100,000 shall be available through June 30, 2005, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones: *Provided further*, That any funds under this paragraph initially allocated by the Secretary for housing projects in the State of Alaska that are not obligated by September 30, 2005, shall be carried over until September 30, 2006, and made available for such housing projects only in the State of Alaska.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$448,342,000, which shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

RENTAL ASSISTANCE PROGRAM

For rental assistance agreements entered into or renewed pursuant to the authority under section 521(a)(2) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Housing Act of 1949, \$592,000,000; and, in addition, such sums as may be necessary, as authorized by section 521(c) of the Act, to liquidate debt incurred prior to fiscal year 1992 to carry out the rental assistance program under section 521(a)(2) of the Act: *Provided*,

That of this amount, \$5,900,000 shall be available for debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Act, and not to exceed \$20,000 per project for advances to nonprofit organizations or public agencies to cover direct costs (other than purchase price) incurred in purchasing projects pursuant to section 502(c)(5)(C) of the Act: *Provided further*, That agreements entered into or renewed during the current fiscal year shall be funded for a four-year period: *Provided further*, That any unexpended balances remaining at the end of such four-year agreements may be transferred and used for the purposes of any debt reduction; maintenance, repair, or rehabilitation of any existing projects; preservation; and rental assistance activities authorized under title V of the Act.

MUTUAL AND SELF-HELP HOUSING GRANTS

For grants and contracts pursuant to section 523(b)(1)(A) of the Housing Act of 1949 (42 U.S.C. 1490c), \$34,000,000, to remain available until expended: *Provided*, That of the total amount appropriated, \$1,000,000 shall be available through June 30, 2005, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

RURAL HOUSING ASSISTANCE GRANTS

For grants and contracts for very low-income housing repair, supervisory and technical assistance, compensation for construction defects, and rural housing preservation made by the Rural Housing Service, as authorized by 42 U.S.C. 1474, 1479(c), 1490e, and 1490m, \$43,992,000, to remain available until expended: *Provided*, That \$3,000,000 shall be made available for loans to private nonprofit organizations, or such non-profit organizations' affiliate loan funds and State housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of low-income multi-family housing projects: *Provided further*, That loans under such demonstration program shall have an interest rate of not more than 1 percent direct loan to the recipient: *Provided further*, That the Secretary may defer the interest and principal payment to the Rural Housing Service for up to 3 years and the term of such loans shall not exceed 30 years: *Provided further*, That of the total amount appropriated, \$1,800,000 shall be available through June 30, 2005, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

FARM LABOR PROGRAM ACCOUNT

For the cost of direct loans, grants, and contracts, as authorized by 42 U.S.C. 1484 and 1486, \$34,118,000, to remain available until expended, for direct farm labor housing loans and domestic farm labor housing grants and contracts.

RURAL BUSINESS—COOPERATIVE SERVICE
RURAL DEVELOPMENT LOAN FUND PROGRAM ACCOUNT
(INCLUDING TRANSFER OF FUNDS)

For the principal amount of direct loans, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), \$34,213,000.

For the cost of direct loans, \$15,868,000, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), of which \$1,724,000 shall be available through June 30, 2005, for Federally Recognized Native American Tribes and of which \$3,449,000 shall be available through June 30, 2005, for Mississippi Delta Region counties (as determined in accordance with Public Law 100-460): *Provided*, That of such amount made available, the Secretary may provide up to \$1,500,000 for the Delta Regional Authority (7 U.S.C. 1921 et seq.): *Provided further*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That of the total amount appropriated, \$2,447,000 shall be available through June 30, 2005, for the cost of direct loans for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

In addition, for administrative expenses to carry out the direct loan programs, \$4,316,000 shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

RURAL ECONOMIC DEVELOPMENT LOANS PROGRAM ACCOUNT
(INCLUDING RESCISSION OF FUNDS)

For the principal amount of direct loans, as authorized under section 313 of the Rural Electrification Act, for the purpose of promoting rural economic development and job creation projects, \$25,003,000.

For the cost of direct loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, \$4,698,000, to remain available until expended.

Of the funds derived from interest on the cushion of credit payments in the current fiscal year, as authorized by section 313 of the Rural Electrification Act of 1936, \$4,698,000 shall not be obligated and \$4,698,000 are rescinded.

RURAL COOPERATIVE DEVELOPMENT GRANTS

For rural cooperative development grants authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932), \$24,000,000, of which \$2,500,000 shall be for cooperative agreements for the appropriate technology transfer for rural areas program: *Provided*, That not to exceed \$1,500,000 shall be for cooperatives or associations of cooperatives whose primary focus is to provide assistance to small, minority producers and whose governing board and/or membership is comprised of at least 75 percent minority; and of which not to exceed \$15,500,000, to remain available until expended, shall be for value-added agricultural product market development grants, as authorized by section 6401 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1621 note).

RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES GRANTS

For grants in connection with second and third rounds of empowerment zones and enterprise communities, \$12,500,000, to remain available until expended, for designated rural empowerment zones and rural enterprise communities, as authorized by the Taxpayer Relief Act of 1997 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277): *Provided*, That of the funds appropriated, \$1,000,000 shall be made available to third round empowerment zones, as authorized by the Community Renewal Tax Relief Act (Public Law 106–554).

RENEWABLE ENERGY PROGRAM

For the cost of a program of direct loans, loan guarantees, and grants, under the same terms and conditions as authorized by section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106), \$23,000,000 for direct and guaranteed renewable energy loans and grants: *Provided*, That the cost of direct loans and loan guarantees, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

RURAL UTILITIES SERVICE

RURAL ELECTRIFICATION AND TELECOMMUNICATIONS LOANS PROGRAM
ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

Insured loans pursuant to the authority of section 305 of the Rural Electrification Act of 1936 (7 U.S.C. 935) shall be made as follows: 5 percent rural electrification loans, \$120,000,000; municipal rate rural electric loans, \$100,000,000; loans made pursuant to section 306 of that Act, rural electric, \$2,100,000,000; Treasury rate direct electric loans, \$1,000,000,000; guaranteed underwriting loans pursuant to section 313A, \$1,000,000,000; 5 percent rural telecommunications loans, \$145,000,000; cost of money rural telecommunications loans, \$250,000,000; and for loans made pursuant to section 306 of that Act, rural telecommunications loans, \$125,000,000.

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, including the cost of modifying loans, of direct and guaranteed loans authorized by sections 305 and 306 of the Rural Electrification Act of 1936 (7 U.S.C. 935 and 936), as follows: cost of rural electric loans, \$5,058,000, and the cost of telecommunications loans, \$100,000: *Provided*, That notwithstanding section 305(d)(2) of the Rural Electrification Act of 1936, borrower interest rates may exceed 7 percent per year.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, \$38,277,000 which shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

RURAL TELEPHONE BANK PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

The Rural Telephone Bank is hereby authorized to make such expenditures, within the limits of funds available to such corporation in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out its authorized programs. During fiscal year 2005 and within the resources and authority available, gross obligations for the principal amount of direct loans shall be \$175,000,000.

In addition, for administrative expenses, including audits, necessary to carry out the loan programs, \$3,152,000, which shall be transferred to and merged with the appropriation for “Rural Development, Salaries and Expenses”.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

For the principal amount of direct distance learning and telemedicine loans, \$50,000,000; and for the principal amount of direct broadband telecommunication loans, \$550,000,000.

For the cost of direct loans and grants for telemedicine and distance learning services in rural areas, as authorized by 7 U.S.C. 950aaa et seq., \$35,710,000, to remain available until expended, of which \$710,000 shall be for direct loans: *Provided*, That the cost of direct loans shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That \$10,000,000 shall be made available to convert analog to digital operation those noncommercial educational television broadcast stations that serve rural areas and are qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934, including associated translators and repeaters, regardless of the location of their main transmitter, studio-to-transmitter links, and equipment to allow local control over digital content and programming through the use of high-definition broadcast, multi-casting and datacasting technologies.

For the cost of broadband loans, as authorized by 7 U.S.C. 901 et seq., \$11,715,000, to remain available until September 30, 2006: *Provided*, That the interest rate for such loans shall be the cost of borrowing to the Department of the Treasury for obligations of comparable maturity: *Provided further*, That the cost of direct loans shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, \$9,000,000, to remain available until expended, for a grant program to finance broadband transmission in rural areas eligible for Distance Learning and Telemedicine Program benefits authorized by 7 U.S.C. 950aaa.

TITLE IV

DOMESTIC FOOD PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR FOOD, NUTRITION AND
CONSUMER SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Food, Nutrition and Consumer Services to administer the laws enacted by the Congress for the Food and Nutrition Service, \$595,000.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21; \$11,782,000,000, to remain available through September 30, 2006, of which \$6,629,038,000 is hereby appropriated and \$5,152,962,000 shall be derived by transfer from funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c): *Provided*, That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further*, That up to \$5,235,000 shall be available for independent verification of school food service claims.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS,
AND CHILDREN (WIC)

For necessary expenses to carry out the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), \$5,277,250,000, to remain available through September 30, 2006, of which \$125,000,000 shall be placed in reserve, to remain available until expended, to be allocated as the Secretary deems necessary, notwithstanding section 17(i) of such Act, to support participation should cost or participation exceed budget estimates: *Provided*, That of the total amount available, the Secretary shall obligate not less than \$15,000,000 for a breastfeeding support initiative in addition to the activities specified in section 17(h)(3)(A): *Provided further*, That notwithstanding section 17(h)(10)(A) of such Act, \$14,000,000 shall be available for the purposes specified in section 17(h)(10)(B): *Provided further*, That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further*, That none of the funds in this Act shall be available to pay administrative expenses of WIC clinics except those that have an announced policy of prohibiting smoking within the space used to carry out the program: *Provided further*, That none of the funds provided in this account shall be available for the purchase of infant formula except in accordance with the cost containment and competitive bidding requirements specified in section 17 of such Act: *Provided further*, That none of the funds provided shall be available for activities that are not fully reimbursed by other Federal Government departments or agencies unless authorized by section 17 of such Act.

FOOD STAMP PROGRAM

For necessary expenses to carry out the Food Stamp Act (7 U.S.C. 2011 et seq.), \$35,154,554,000, of which \$3,000,000,000 to remain available through September 30, 2006, shall be placed in reserve for use only in such amounts and at such times as may become necessary to carry out program operations: *Provided*, That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further*, That of the funds made available under this heading and not already appropriated to the Food Distribution Program on Indian Reservations (FDPIR) established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)), not to exceed \$4,000,000 shall be used to purchase bison meat for the FDPIR from Native American bison producers as well as from producer-owned cooperatives of bison ranchers: *Provided further*, That funds provided herein shall be expended in accordance with section 16 of the Food Stamp Act: *Provided further*, That this appropriation shall be subject to any work registration or workfare requirements as may be required by law: *Provided further*, That funds made available for Employment and Training under this heading shall remain available until expended, as authorized by section 16(h)(1) of the Food Stamp Act: *Provided further*, That notwithstanding section 5(d) of the Food Stamp Act of 1977, any additional payment received under chapter 5 of title 37, United States Code, by a member of the United States Armed Forces deployed to a designated combat zone shall be excluded from household income for the duration of the member's deployment if the additional pay is the result of deployment to or while serving in a combat zone, and it was not received immediately prior to serving in the combat zone.

COMMODITY ASSISTANCE PROGRAM

For necessary expenses to carry out disaster assistance and the commodity supplemental food program as authorized by section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); the Emergency Food Assistance Act of 1983; and special assistance (in a form determined by the Secretary of Agriculture) for the nuclear affected islands, as authorized by section 103(f)(2) of the Compact of Free Association Amendments Act of 2003 (Public Law 108–188); and the Farmers' Market Nutrition Program, as authorized by section 17(m) of the Child Nutrition Act of 1966, \$178,797,000, to remain available through September 30, 2006: *Provided*, That none of these funds shall be available to reimburse the Commodity Credit Corporation for commodities donated to the program: *Provided further*, That notwithstanding any other provision of law, effective with funds made available in fiscal year 2005 to support the Senior Farmers' Market Nutrition Program, as authorized by section 4402 of Public Law 107–171, such funds shall remain available through September 30, 2006.

NUTRITION PROGRAMS ADMINISTRATION

For necessary administrative expenses of the domestic nutrition assistance programs funded under this Act, \$139,937,000, of which \$5,000,000 shall be available only for simplifying procedures, reducing overhead costs, tightening regulations, improving food

stamp benefit delivery, and assisting in the prevention, identification, and prosecution of fraud and other violations of law.

TITLE V

FOREIGN ASSISTANCE AND RELATED PROGRAMS

FOREIGN AGRICULTURAL SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Foreign Agricultural Service, including carrying out title VI of the Agricultural Act of 1954 (7 U.S.C. 1761–1768), market development activities abroad, and for enabling the Secretary to coordinate and integrate activities of the Department in connection with foreign agricultural work, including not to exceed \$158,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), \$137,822,000: *Provided*, That the Service may utilize advances of funds, or reimburse this appropriation for expenditures made on behalf of Federal agencies, public and private organizations and institutions under agreements executed pursuant to the agricultural food production assistance programs (7 U.S.C. 1737) and the foreign assistance programs of the United States Agency for International Development.

PUBLIC LAW 480 TITLE I PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of agreements under the Agricultural Trade Development and Assistance Act of 1954, and the Food for Progress Act of 1985, including the cost of modifying credit arrangements under said Acts, \$94,198,000, to remain available until expended: *Provided*, That the Secretary of Agriculture may implement a commodity monetization program under existing provisions of the Food for Progress Act of 1985 to provide no less than \$5,000,000 in local-currency funding support for rural electrification development overseas.

In addition, for administrative expenses to carry out the credit program of title I, Public Law 83–480, and the Food for Progress Act of 1985, to the extent funds appropriated for Public Law 83–480 are utilized, \$4,034,000, of which \$1,097,000 may be transferred to and merged with the appropriation for “Foreign Agricultural Service, Salaries and Expenses”, and of which \$2,937,000 may be transferred to and merged with the appropriation for “Farm Service Agency, Salaries and Expenses”.

PUBLIC LAW 480 TITLE I OCEAN FREIGHT DIFFERENTIAL GRANTS

(INCLUDING TRANSFER OF FUNDS)

For ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress

Notice.

Act of 1985, \$22,723,000, to remain available until expended: *Provided*, That funds made available for the cost of agreements under title I of the Agricultural Trade Development and Assistance Act of 1954 and for title I ocean freight differential may be used interchangeably between the two accounts with prior notice to the Committees on Appropriations of both Houses of Congress.

PUBLIC LAW 480 TITLE II GRANTS

For expenses during the current fiscal year, not otherwise recoverable, and unrecovered prior years' costs, including interest thereon, under the Agricultural Trade Development and Assistance Act of 1954, for commodities supplied in connection with dispositions abroad under title II of said Act, \$1,182,501,000, to remain available until expended.

COMMODITY CREDIT CORPORATION EXPORT LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For administrative expenses to carry out the Commodity Credit Corporation's export guarantee program, GSM 102 and GSM 103, \$4,423,000; to cover common overhead expenses as permitted by section 11 of the Commodity Credit Corporation Charter Act and in conformity with the Federal Credit Reform Act of 1990, of which \$3,421,000 may be transferred to and merged with the appropriation for "Foreign Agricultural Service, Salaries and Expenses", and of which \$1,002,000 may be transferred to and merged with the appropriation for "Farm Service Agency, Salaries and Expenses".

MCGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM GRANTS

For necessary expenses to carry out the provisions of section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o-1), \$87,500,000, to remain available until expended: *Provided*, That the Commodity Credit Corporation is authorized to provide the services, facilities, and authorities for the purpose of implementing such section, subject to reimbursement from amounts provided herein.

TITLE VI

RELATED AGENCIES AND FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Food and Drug Administration, including hire and purchase of passenger motor vehicles; for payment of space rental and related costs pursuant to Public Law 92-313 for programs and activities of the Food and Drug Administration which are included in this Act; for rental of special purpose space in the District of Columbia or elsewhere; for miscellaneous and emergency expenses of enforcement activities, authorized and

approved by the Secretary and to be accounted for solely on the Secretary's certificate, not to exceed \$25,000; and notwithstanding section 521 of Public Law 107-188; \$1,788,478,000: *Provided*, That of the amount provided under this heading, \$284,394,000 shall be derived from prescription drug user fees authorized by 21 U.S.C. 379h, and shall be credited to this account and remain available until expended; \$33,938,000 shall be derived from medical device user fees authorized by 21 U.S.C. 379j, and shall be credited to this account and remain available until expended; and \$8,354,000 shall be derived from animal drug user fees authorized by 21 U.S.C. 379j, and shall be credited to this account and remain available until expended: *Provided further*, That fees derived from prescription drug, medical device, and animal drug assessments received during fiscal year 2005, including any such fees assessed prior to the current fiscal year but credited during the current year, shall be subject to the fiscal year 2005 limitation: *Provided further*, That none of these funds shall be used to develop, establish, or operate any program of user fees authorized by 31 U.S.C. 9701: *Provided further*, That of the total amount appropriated: (1) \$439,038,000 shall be for the Center for Food Safety and Applied Nutrition and related field activities in the Office of Regulatory Affairs; (2) \$498,647,000 shall be for the Center for Drug Evaluation and Research and related field activities in the Office of Regulatory Affairs; (3) \$172,714,000 shall be for the Center for Biologics Evaluation and Research and for related field activities in the Office of Regulatory Affairs; (4) \$98,964,000 shall be for the Center for Veterinary Medicine and for related field activities in the Office of Regulatory Affairs; (5) \$235,078,000 shall be for the Center for Devices and Radiological Health and for related field activities in the Office of Regulatory Affairs; (6) \$40,530,000 shall be for the National Center for Toxicological Research; (7) \$57,722,000 shall be for Rent and Related activities, other than the amounts paid to the General Services Administration for rent; (8) \$129,815,000 shall be for payments to the General Services Administration for rent; and (9) \$115,970,000 shall be for other activities, including the Office of the Commissioner; the Office of Management; the Office of External Relations; the Office of Policy and Planning; and central services for these offices: *Provided further*, That funds may be transferred from one specified activity to another with the prior approval of the Committees on Appropriations of both Houses of Congress.

In addition, mammography user fees authorized by 42 U.S.C. 263b may be credited to this account, to remain available until expended.

In addition, export certification user fees authorized by 21 U.S.C. 381 may be credited to this account, to remain available until expended.

INDEPENDENT AGENCIES

COMMODITY FUTURES TRADING COMMISSION

For necessary expenses to carry out the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), including the purchase and hire of passenger motor vehicles, and the rental of space (to

include multiple year leases) in the District of Columbia and elsewhere, \$94,327,000, including not to exceed \$3,000 for official reception and representation expenses.

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed \$42,350,000 (from assessments collected from farm credit institutions and from the Federal Agricultural Mortgage Corporation) shall be obligated during the current fiscal year for administrative expenses as authorized under 12 U.S.C. 2249: *Provided*, That this limitation shall not apply to expenses associated with receiverships.

TITLE VII—GENERAL PROVISIONS

SEC. 701. Within the unit limit of cost fixed by law, appropriations and authorizations made for the Department of Agriculture for the current fiscal year under this Act shall be available for the purchase, in addition to those specifically provided for, of not to exceed 388 passenger motor vehicles, of which 388 shall be for replacement only, and for the hire of such vehicles.

SEC. 702. Funds in this Act available to the Department of Agriculture shall be available for uniforms or allowances therefor as authorized by law (5 U.S.C. 5901–5902).

SEC. 703. Funds appropriated by this Act shall be available for employment pursuant to the second sentence of section 706(a) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2225) and 5 U.S.C. 3109.

7 USC 2209b.

SEC. 704. New obligational authority provided for the following appropriation items in this Act shall remain available until expended: Animal and Plant Health Inspection Service, the contingency fund to meet emergency conditions, information technology infrastructure, fruit fly program, emerging plant pests, boll weevil program, low pathogen avian influenza program, up to \$33,197,000 in animal health monitoring and surveillance for the animal identification system, up to \$3,000,000 in the emergency management systems program for the vaccine bank, up to \$1,000,000 for wildlife services methods development, up to \$1,000,000 of the wildlife services operations program for aviation safety, and up to 25 percent of the screwworm program; Food Safety and Inspection Service, field automation and information management project; Cooperative State Research, Education, and Extension Service, funds for competitive research grants (7 U.S.C. 450i(b)), funds for the Research, Education, and Economics Information System, and funds for the Native American Institutions Endowment Fund; Farm Service Agency, salaries and expenses funds made available to county committees; Foreign Agricultural Service, middle-income country training program, and up to \$1,565,000 of the Foreign Agricultural Service appropriation solely for the purpose of offsetting fluctuations in international currency exchange rates, subject to documentation by the Foreign Agricultural Service.

SEC. 705. The Secretary of Agriculture may transfer unobligated balances of discretionary funds appropriated by this Act or other available unobligated discretionary balances of the Department of Agriculture to the Working Capital Fund for the acquisition of plant and capital equipment necessary for the delivery of financial,

administrative, and information technology services of primary benefit to the agencies of the Department of Agriculture: *Provided*, That none of the funds made available by this Act or any other Act shall be transferred to the Working Capital Fund without the prior approval of the agency administrator: *Provided further*, That none of the funds transferred to the Working Capital Fund pursuant to this section shall be available for obligation without the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 706. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 707. Not to exceed \$50,000 of the appropriations available to the Department of Agriculture in this Act shall be available to provide appropriate orientation and language training pursuant to section 606C of the Act of August 28, 1954 (7 U.S.C. 1766b).

SEC. 708. No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties. This does not preclude appropriate payment of indirect costs on grants and contracts with such institutions when such indirect costs are computed on a similar basis for all agencies for which appropriations are provided in this Act.

SEC. 709. None of the funds in this Act shall be available to restrict the authority of the Commodity Credit Corporation to lease space for its own use or to lease space on behalf of other agencies of the Department of Agriculture when such space will be jointly occupied.

SEC. 710. None of the funds in this Act shall be available to pay indirect costs charged against competitive agricultural research, education, or extension grant awards issued by the Cooperative State Research, Education, and Extension Service that exceed 20 percent of total Federal funds provided under each award: *Provided*, That notwithstanding section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310), funds provided by this Act for grants awarded competitively by the Cooperative State Research, Education, and Extension Service shall be available to pay full allowable indirect costs for each grant awarded under section 9 of the Small Business Act (15 U.S.C. 638).

SEC. 711. Notwithstanding any other provision of this Act, all loan levels provided in this Act shall be considered estimates, not limitations.

SEC. 712. Appropriations to the Department of Agriculture for the cost of direct and guaranteed loans made available in the current fiscal year shall remain available until expended to cover obligations made in the current fiscal year for the following accounts: the Rural Development Loan Fund program account, the Rural Telephone Bank program account, the Rural Electrification and Telecommunication Loans program account, and the Rural Housing Insurance Fund program account.

SEC. 713. None of the funds in this Act may be used to retire more than 5 percent of the Class A stock of the Rural Telephone Bank or to maintain any account or subaccount within the

accounting records of the Rural Telephone Bank the creation of which has not specifically been authorized by statute: *Provided*, That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available in this Act may be used to transfer to the Treasury or to the Federal Financing Bank any unobligated balance of the Rural Telephone Bank telephone liquidating account which is in excess of current requirements and such balance shall receive interest as set forth for financial accounts in section 505(c) of the Federal Credit Reform Act of 1990.

SEC. 714. Of the funds made available by this Act, not more than \$1,800,000 shall be used to cover necessary expenses of activities related to all advisory committees, panels, commissions, and task forces of the Department of Agriculture, except for panels used to comply with negotiated rule makings and panels used to evaluate competitively awarded grants.

SEC. 715. None of the funds appropriated by this Act may be used to carry out section 410 of the Federal Meat Inspection Act (21 U.S.C. 679a) or section 30 of the Poultry Products Inspection Act (21 U.S.C. 471).

SEC. 716. No employee of the Department of Agriculture may be detailed or assigned from an agency or office funded by this Act to any other agency or office of the Department for more than 30 days unless the individual's employing agency or office is fully reimbursed by the receiving agency or office for the salary and expenses of the employee for the period of assignment.

SEC. 717. None of the funds appropriated or otherwise made available to the Department of Agriculture shall be used to transmit or otherwise make available to any non-Department of Agriculture employee questions or responses to questions that are a result of information requested for the appropriations hearing process.

SEC. 718. None of the funds made available to the Department of Agriculture by this Act may be used to acquire new information technology systems or significant upgrades, as determined by the Office of the Chief Information Officer, without the approval of the Chief Information Officer and the concurrence of the Executive Information Technology Investment Review Board: *Provided*, That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by this Act may be transferred to the Office of the Chief Information Officer without the prior approval of the Committees on Appropriations of both Houses of Congress: *Provided further*, That none of the funds available to the Department of Agriculture for information technology shall be obligated for projects over \$25,000 prior to receipt of written approval by the Chief Information Officer.

SEC. 719. (a) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes offices, programs, or activities; or (6) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees

on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$500,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

Notification.
Deadline.

(c) The Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission shall notify the Committees on Appropriations of both Houses of Congress before implementing a program or activity not carried out during the previous fiscal year unless the program or activity is funded by this Act or specifically funded by any other Act.

Notification.

SEC. 720. With the exception of funds needed to administer and conduct oversight of grants awarded and obligations incurred in prior fiscal years, none of the funds appropriated or otherwise made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out the provisions of section 401 of Public Law 105–185, the Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).

SEC. 721. None of the funds appropriated by this or any other Act shall be used to pay the salaries and expenses of personnel who prepare or submit appropriations language as part of the President's Budget submission to the Congress of the United States for programs under the jurisdiction of the Appropriations Subcommittees on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies that assumes revenues or reflects a reduction from the previous year due to user fees proposals that have not been enacted into law prior to the submission of the Budget unless such Budget submission identifies which additional spending reductions should occur in the event the user fees proposals are not enacted prior to the date of the convening of a committee of conference for the fiscal year 2006 appropriations Act.

SEC. 722. None of the funds made available by this or any other Act may be used to close or relocate a State Rural Development office unless or until cost effectiveness and enhancement of program delivery have been determined.

SEC. 723. In addition to amounts otherwise appropriated or made available by this Act, \$2,500,000 is appropriated for the purpose of providing Bill Emerson and Mickey Leland Hunger Fellowships, through the Congressional Hunger Center.

SEC. 724. Notwithstanding section 412 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f), any

balances available to carry out title III of such Act as of the date of enactment of this Act, and any recoveries and reimbursements that become available to carry out title III of such Act, may be used to carry out title II of such Act.

SEC. 725. Section 375(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j(e)(6)(B)) is amended by striking “\$26,998,000” and inserting “\$27,998,000”.

SEC. 726. (a) None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel to collect from the lender at the time of issuance a guarantee fee of less than 2 percent of the principal obligation of guaranteed single-family housing loans administered by the Rural Housing Service: *Provided*, That this section shall not apply to loans made to refinance other single-family housing loans administered by the Rural Housing Service.

(b) Section 502(h)(6)(C) of the Housing Act of 1949 (42 U.S.C. 1472(h)(6)(C)) is amended by inserting “, plus the guarantee fee as authorized by subsection (h)(7)” after “whichever is less”, in each of paragraphs (i) and (ii).

State listing.

SEC. 727. Notwithstanding any other provision of law, and until receipt of the decennial Census in the year 2010, the Secretary of Agriculture shall consider—

(1) the City of Salinas, California; the City of Watsonville, California; and the City of Hollister, California, eligible for programs administered by the Rural Housing Service;

(2) the Town of Horseshoe Beach, Florida; the City of Wewahitchka, Florida; the City of Southport, Florida; the City of Resota Beach, Florida; the City of Creedmoor, North Carolina; the County of Lake, Florida; the City of St. Cloud, Florida; the City of Plantation, Florida; the Cleburne County Water Authority of Alabama; and the City of Coburg, Oregon, eligible for loans and grants funded through the rural utilities programs in the Rural Community Advancement Program account;

(3) the City of Casa Grande, Arizona, a rural area for purposes of eligibility for loans and grants provided through the Rural Housing Insurance Fund Program account, the Rural Housing Assistance Grants account and the rural utilities programs in the Rural Community Advancement Program account;

(4) the City of Coachella, California, eligible for loans and grants funded through the rural utilities programs and rural business and cooperative development programs in the Rural Community Advancement Program account and the Rural Housing Insurance Fund Program account;

(5) the City of Springfield, Ohio; the City of Lexington, Virginia; the City of Clarksdale, Mississippi; the City of Vicksburg, Mississippi; the City of Cache, Oklahoma; and the City of Elgin, Oklahoma, eligible for loans and grants funded through the rural community programs in the Rural Community Advancement Program account;

(6) the City of Carbondale, Illinois, a rural area for purposes of eligibility for loans and grants funded through the Rural Housing Insurance Fund Program account and the Rural Housing Assistance Grants account;

(7) the City of St. Joseph, Missouri, eligible for loans and grants funded through the rural business and cooperative development programs in the Rural Community Advancement Program account relating to an application submitted to the

Department by a farmer-owned cooperative, a majority of whose members reside in a rural area, as determined by the Secretary, and for the purchase and operation of a facility beneficial to the purpose of the cooperative; and

(8) the fiber-to-premises broadband facilities in St. Lucie County, Florida, and the City of Port St. Lucie, Florida, collectively, to meet the eligibility requirements for loans and loan guarantees under section 601 of the Rural Electrification Act of 1936 (7 U.S.C. 950bb).

SEC. 728. Of any shipments of commodities made pursuant to section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), the Secretary of Agriculture shall, to the extent practicable, direct that tonnage equal in value to not more than \$25,000,000 shall be made available to foreign countries to assist in mitigating the effects of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome on communities, including the provision of—

(1) agricultural commodities to—

(A) individuals with Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome in the communities; and

(B) households in the communities, particularly individuals caring for orphaned children; and

(2) agricultural commodities monetized to provide other assistance (including assistance under microcredit and microenterprise programs) to create or restore sustainable livelihoods among individuals in the communities, particularly individuals caring for orphaned children.

SEC. 729. Notwithstanding any other provision of law, the Natural Resources Conservation Service shall provide financial and technical assistance to the DuPage County, Illinois, Kress Creek Water Quality Enhancement Project, from funds available for the Watershed and Flood Prevention Operations program, not to exceed \$1,000,000 and Rockhouse Creek Watershed, Leslie County, Kentucky, not to exceed \$1,000,000.

SEC. 730. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide financial and technical assistance through the Watershed and Flood Prevention Operations program for the Kuhn Bayou project in Arkansas, the Matanuska River erosion control project in Alaska, the DuPage County watershed project in Illinois, and the Coal Creek project in Utah.

SEC. 731. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this or any other appropriation Act.

SEC. 732. Notwithstanding any other provision of law, of the funds made available in this Act for competitive research grants (7 U.S.C. 450i(b)), the Secretary may use up to 20 percent of the amount provided to carry out a competitive grants program under the same terms and conditions as those provided in section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621).

SEC. 733. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and

expenses of personnel to carry out section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)).

SEC. 734. None of the funds made available to the Food and Drug Administration by this Act shall be used to close or relocate, or to plan to close or relocate, the Food and Drug Administration Division of Pharmaceutical Analysis in St. Louis, Missouri, outside the city or county limits of St. Louis, Missouri.

SEC. 735. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out subtitle I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009dd through dd-7).

SEC. 736. Agencies and offices of the Department of Agriculture may utilize any unobligated salaries and expenses funds to reimburse the Office of the General Counsel for salaries and expenses of personnel, and for other related expenses, incurred in representing such agencies and offices in the resolution of complaints by employees or applicants for employment, and in cases and other matters pending before the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or the Merit Systems Protection Board with the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 737. None of the funds appropriated or made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6405 of Public Law 107-171 (7 U.S.C. 2655).

SEC. 738. The Agricultural Marketing Service and the Grain Inspection, Packers and Stockyards Administration, that have statutory authority to purchase interest bearing investments outside of the Treasury, are not required to establish obligations and outlays for those investments, provided those investments are insured by the Federal Deposit Insurance Corporation or are collateralized at the Federal Reserve with securities approved by the Federal Reserve, operating under the guidelines of the United States Department of the Treasury.

SEC. 739. Of the funds made available under section 27(a) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), the Secretary may use up to \$10,000,000 for costs associated with the distribution of commodities.

SEC. 740. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to enroll in excess of 154,500 acres in the calendar year 2005 wetlands reserve program as authorized by 16 U.S.C. 3837.

SEC. 741. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel who carry out an environmental quality incentives program authorized by chapter 4 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) in excess of \$1,017,000,000.

SEC. 742. Hereafter, the Secretary of Agriculture is authorized to permit employees of the United States Department of Agriculture to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties.

SEC. 743. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries

and expenses of personnel to expend the \$23,000,000 made available by section 9006(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106(f)).

SEC. 744. With the exception of funds provided in fiscal year 2003, none of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the \$40,000,000 made available by section 601(j)(1)(A) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(j)(1)(A)).

SEC. 745. None of the funds made available in fiscal year 2005 or preceding fiscal years for programs authorized under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) in excess of \$20,000,000 shall be used to reimburse the Commodity Credit Corporation for the release of eligible commodities under section 302(f)(2)(A) of the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f–1): *Provided*, That any such funds made available to reimburse the Commodity Credit Corporation shall only be used pursuant to section 302(b)(2)(B)(i) of the Bill Emerson Humanitarian Trust Act.

SEC. 746. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to expend the \$80,000,000 made available by section 6401(a) of Public Law 107–171.

SEC. 747. Notwithstanding subsections (c) and (e)(2) of section 313A of the Rural Electrification Act (7 U.S.C. 940c(c) and (e)(2)) in implementing section 313A of that Act, the Secretary shall, with the consent of the lender, structure the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees under that section.

SEC. 748. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide from appropriated funds financial and technical assistance to the Dry Creek project, Utah.

SEC. 749. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out a Conservation Security Program authorized by 16 U.S.C. 3838 et seq., in excess of \$202,411,000.

SEC. 750. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2502 of Public Law 107–171 in excess of \$47,000,000.

SEC. 751. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2503 of Public Law 107–171 in excess of \$112,000,000.

SEC. 752. The Secretary of Agriculture shall use \$30,000,000 of the funds of the Commodity Credit Corporation, to remain available until expended, to compensate commercial citrus and lime growers in the State of Florida for tree replacement and for lost production with respect to trees removed to control citrus canker, and with respect to certified citrus nursery stocks within the citrus canker quarantine areas, as determined by the Secretary. For a grower to receive assistance for a tree under this section, the tree must have been removed after September 30, 2001.

SEC. 753. Not more than \$10,000,000 for fiscal year 2005 of the funds appropriated or otherwise made available by this or any other Act shall be used to carry out section 6029 of Public Law 107-171.

SEC. 754. None of the funds appropriated or otherwise made available in this Act shall be expended to violate Public Law 105-264.

SEC. 755. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out a ground and surface water conservation program authorized by section 2301 of Public Law 107-171 in excess of \$51,000,000.

SEC. 756. None of the funds made available by this Act may be used to issue a final rule in furtherance of, or otherwise implement, the proposed rule on cost-sharing for animal and plant health emergency programs of the Animal and Plant Health Inspection Service published on July 8, 2003 (Docket No. 02-062-1; 68 Fed. Reg. 40541).

SEC. 757. None of the funds made available in this Act may be used to study, complete a study of, or enter into a contract with a private party to carry out, without specific authorization in a subsequent Act of Congress, a competitive sourcing activity of the Secretary of Agriculture, including support personnel of the Department of Agriculture, relating to rural development or farm loan programs.

SEC. 758. Notwithstanding any other provision of law, the Secretary of Agriculture may use appropriations available to the Secretary for activities authorized under sections 426-426c of title 7, United States Code, under this or any other Act, to enter into cooperative agreements, with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, to lease aircraft if the Secretary determines that the objectives of the agreement will: (1) serve a mutual interest of the parties to the agreement in carrying out the programs administered by the Animal and Plant Health Inspection Service, Wildlife Services; and (2) all parties will contribute resources to the accomplishment of these objectives; award of a cooperative agreement authorized by the Secretary may be made for an initial term not to exceed 5 years.

SEC. 759. There is hereby appropriated \$1,491,000, to remain available until September 30, 2006, to carry out section 6028 of Public Law 107-171: *Provided*, That notwithstanding section 383B(g)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb-1(g)(1)), the Federal share of the administrative expenses of the Northern Great Plains Regional Authority for fiscal year 2005 shall be 100 percent.

SEC. 760. None of the funds appropriated or otherwise made available by this or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 9010 of Public Law 107-171 in excess of \$100,000,000.

SEC. 761. (a) The matter under the heading "Rural Community Advancement Program" in division A—Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Programs Appropriations, 2004, title III—Rural Development Programs, in Public Law 108-199 is amended by striking "\$1,750,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.); and not less than \$2,000,000 shall be available for grants

in accordance with section 310B(f) of the Consolidated Farm and Rural Development Act” and inserting “and not less than \$2,000,000 shall be available for grants in accordance with section 310B(f) of the Consolidated Farm and Rural Development Act: *Provided further*, That of the total amount appropriated in this account, \$1,750,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.) for any Rural Community Advancement Program purpose”.

(b) Consistent with any legal commitments made by the Delta Regional Authority, at the request of the Authority and if the Secretary of Agriculture agrees, the Secretary may deobligate any unexpended Rural Community Advancement Program grant funds made to the Authority pursuant to division A of Public Law 108–7: *Provided*, That such reobligated funds are used by the Authority for projects that are consistent with the purposes of the Rural Housing Service Community Facilities Program.

SEC. 762. Of the unobligated balances available in the Rural Housing Assistance Grant Program account, \$1,000,000 is hereby rescinded.

SEC. 763. Agencies and offices of the Department of Agriculture may utilize any available discretionary funds to cover the costs of preparing, or contracting for the preparation of, final agency decisions regarding complaints of discrimination in employment or program activities arising within such agencies and offices.

SEC. 764. Of the unobligated balances available in the Rural Housing Insurance Fund Program account, \$3,000,000 is hereby rescinded.

SEC. 765. Notwithstanding any other provision of law, for any fiscal year and hereafter, in the case of a high cost isolated rural area in Alaska that is not connected to a road system, the maximum level for the single family housing assistance shall be 150 percent of the average income level in the metropolitan areas of the State and 115 percent of all other eligible areas of the State.

42 USC 1472
note.

SEC. 766. Funds made available under section 1240I and section 1241(a) of the Food Security Act of 1985 in fiscal years 2002, 2003, 2004, and 2005 shall remain available until expended to cover obligations made in fiscal years 2002, 2003, 2004, and 2005, respectively, and are not available for new obligations.

SEC. 767. There is hereby appropriated \$1,500,000, to remain available until expended, for the Denali Commission to address deficiencies in solid waste disposal sites which threaten to contaminate rural drinking water supplies.

SEC. 768. Notwithstanding any other provision of law—

(1)(A) the Alaska Department of Community and Economic Development shall be eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) in an amount that is equal to not more than 75 percent of the total cost of providing water and sewer service to the proposed hospital in the Matanuska-Susitna Borough, Alaska; and

(B) the Alaska Department of Community and Economic Development shall be allowed to pass the grant funds through to the local government entity that will provide water and sewer service to the hospital;

(2) or any percentage of cost limitation in current law or regulations, the construction projects known as the Tri-Valley Community Center addition in Healy, Alaska; the Cold

Climate Housing Research Center in Fairbanks, Alaska; and the University of Alaska-Fairbanks Allied Health Learning Center skill labs/classrooms shall be eligible to receive Community Facilities grants in amounts that are equal to not more than 75 percent of the total facility costs: *Provided*, That for the purposes of this paragraph, the Cold Climate Housing Research Center is designated an “essential community facility” for rural Alaska;

(3) the Secretary shall consider the City of Guymon, Oklahoma; the City of Shawnee, Oklahoma; the Village of New Miami, Ohio; the City of Vicksburg, Mississippi; and the City of Altus, Oklahoma, to be eligible for loans and grants provided through the Rural Housing Insurance Fund until receipt of the decennial Census in the year 2010;

(4) grants made under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)) using funds made available under this Act for the cities of Ellisville and Waynesboro, Mississippi, shall be made without a non-Federal cost share requirement;

(5) the City of Great Falls, Montana, shall be considered a rural area for purposes of eligibility for business and industry guaranteed loans under section 310B(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(a)(1)) until receipt of the decennial Census in the year 2010;

(6) the Secretary may consider the Piedmont Municipal Power Agency of South Carolina eligible to participate in programs administered by the Rural Utilities Service until receipt of the decennial Census in the year 2010; and

(7) until receipt of the decennial Census for the year 2010, for all activities under programs of the Rural Development Mission Area within the County of Honolulu, Hawaii, the Secretary may designate any portion of the county as a rural area or eligible rural community that the Secretary determines is not urban in character: *Provided*, That the Secretary shall not include in any such rural area or eligible rural community any area included in the Honolulu Census Designated Place as determined by the Secretary of Commerce.

SEC. 769. Section 501 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1737) is amended—

(1) in subsection (b)(1), by inserting “and Doug Bereuter” after “John Ogonowski”; and

(2) in the heading, by inserting “AND DOUG BEREUTER” after “JOHN OGONOWSKI”.

Contracts.

SEC. 770. Notwithstanding the provisions of the Consolidated Farm and Rural Development Act (including the associated regulations) governing the Community Facilities Program, the Secretary may allow all Community Facility Program facility borrowers and grantees to enter into contracts with not-for-profit third parties for services consistent with the requirements of the Program, grant, and/or loan: *Provided*, That the contracts protect the interests of the Government regarding cost, liability, maintenance, and administrative fees.

SEC. 771. Notwithstanding any other provision of law, the Secretary of Agriculture is authorized to make funding and other assistance available through the emergency watershed protection program under section 403 of the Agricultural Credit Act of 1978 (16 U.S.C. 2203) to repair and prevent damage to non-Federal

land in watersheds that have been impaired by fires initiated by the Federal Government and shall waive cost sharing requirements for the funding and assistance.

SEC. 772. None of the funds made available in this Act may be used to provide credits or credit guarantees for agricultural commodities provided for use in Iraq in violation of subsection (e) or (f) of section 202 of the Agricultural Trade Act of 1978 (7 U.S.C. 5622).

SEC. 773. None of the funds provided in this Act may be used for salaries and expenses to carry out any regulation or rule insofar as it would make ineligible for enrollment in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) land that is planted to hardwood trees as of the date of enactment of this Act and was enrolled in the conservation reserve program under a contract that expired prior to calendar year 2002.

SEC. 774. None of the funds made available in this Act may be used to restrict to prescription use a contraceptive that is determined to be safe and effective for use without the supervision of a practitioner licensed by law to administer prescription drugs under section 503(b) of the Federal Food, Drug, and Cosmetic Act.

SEC. 775. Of the unobligated balances in the Local Television Loan Guarantee Program account, \$88,000,000 are hereby rescinded.

SEC. 776. PRIVACY PROTECTION OF CERTAIN SELLERS OF FARM PRODUCTS. Section 1324(c) of the Food Security Act of 1985 (7 U.S.C. 1631(c)) is amended—

(1) in subsection (c)—

(A) in paragraph (2)(C)(ii)(II), by inserting “, or other approved unique identifier,” after both “social security number” and “identification number”;

(B) in paragraph (4)(C)(iii), by inserting “, or other approved unique identifier,” after both “social security number” and “identification number”; and

(C) by adding the following at the end:

“(5) The term ‘approved unique identifier’ means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.”;

(2) in subsection (e)(1)(A)(ii)(III), by inserting “, or other approved unique identifier,” after both “social security number” and “identification number”; and

(3) in subsection (g)(2)(A)(ii)(III), by inserting “, or other approved unique identifier,” after both “social security number” and “identification number”.

SEC. 777. Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 193–382) is amended—

(1) by redesignating paragraphs (23) through (32) as paragraphs (24) through (33), respectively; and

(2) by inserting after paragraph (22) the following: “(23) Tohono O’odham Community College.”

SEC. 778. Of the unobligated balances of funds in the Agricultural Conservation Program account, \$3,500,000 are hereby rescinded.

SEC. 779. Notwithstanding any other provision of law, the amounts made available to the Dakota Value Capture Cooperative under section 747 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 (Public Law 107-76; 115 Stat. 738) shall remain available until expended for a project conducted by the Dakota Value Capture Cooperative at South Dakota State University.

SEC. 780. None of the funds made available under this Act shall be available to pay the administrative expenses of a State agency that, after the date of enactment of this Act, authorizes any new for-profit vendor(s) to transact food instruments under the Special Supplemental Nutrition Program for Women, Infants, and Children if it is expected that more than 50 percent of the annual revenue of the vendor from the sale of food items will be derived from the sale of supplemental foods that are obtained with WIC food instruments, except that the Secretary may approve the authorization of such a vendor if the approval is necessary to assure participant access to program benefits.

SEC. 781. Of the unobligated balances under section 32 of the Act of August 24, 1935, \$163,000,000 are hereby rescinded.

SEC. 782. Of the unobligated balances available to the Foreign Agricultural Service for the Public Law 480 Title I Program at the beginning of fiscal year 2005, \$191,108,000 are hereby rescinded: *Provided*, That for purposes of determining the amount of funds available for transfer under section 412(b) of Public Law 83-480, as amended, the maximum amount of funds available for transfer shall be calculated based upon the total funds available prior to this rescission.

SEC. 783. The Secretary of Agriculture may use any unobligated carryover funds made available for any program administered by the Rural Utilities Service (not including funds made available under the heading “Rural Community Advancement Program” in any Act of appropriation) to carry out section 315 of the Rural Electrification Act of 1936 (7 U.S.C. 940e).

SEC. 784. None of the funds made available by this or any other Act may be used to reduce the mission, resources, staffing, facilities, or capabilities of the Wildlife Habitat Management Institute in Mississippi as in existence on December 17, 2003.

SEC. 785. LIVESTOCK ASSISTANCE. (a) IN GENERAL.—In carrying out a livestock assistance, compensation, or feed program, the Secretary of Agriculture shall include elk, reindeer, and bison within the definition of “livestock” covered by the program.

(b) CONFORMING AMENDMENTS.—

(1) Section 602(2) of the Agricultural Act of 1949 (7 U.S.C. 1471(2)) is amended by inserting “elk, reindeer, bison,” after “cattle,”.

(2) Section 10104 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1472) is amended—

(A) by redesignating subsections (a) through (d) as subsections (b) through (e), respectively; and

(B) by inserting before subsection (b) (as so redesignated) the following:

“(a) DEFINITION OF LIVESTOCK.—In this section, the term ‘livestock’ includes elk, reindeer, and bison.”.

(3) Section 203(d) of the Agricultural Assistance Act of 2003 (Public Law 108-7; 117 Stat. 541) is amended—

(A) by redesignating paragraph (2) as paragraph (3);
and

(B) by inserting after paragraph (1) the following:

“(2) LIVESTOCK.—The term ‘livestock’ includes elk, reindeer,
and bison.”.

SEC. 786. There is hereby appropriated \$1,000,000, to remain available until expended, to carry out provisions of section 751 of division A of Public Law 108–7.

SEC. 787. There is hereby appropriated \$500,000 for a grant to Alaska Village Initiatives for the purpose of administering a private lands wildlife management program in Alaska.

SEC. 788. TECHNICAL CORRECTIONS. (a) Section 104(b)(1) of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108–265) is amended by striking the closing quotation marks and the following period at the end of section 9(b)(5)(A)(iv) of the Richard B. Russell National School Lunch Act (as added by that section 104(b)(1) of Public Law 108–265).

42 USC 1758.

(b) Section 13(a)(10) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)(10)) (as added by section 116(d) of Public Law 108–265) is amended—

(1) in subparagraph (C), by striking “2005” and inserting “2006”; and

(2) in subparagraph (D)—

(A) in clause (i), by striking “2007” and inserting “2008”; and

(B) in clause (ii), by striking “2008” and inserting “2009”.

(c) Section 21(e)(2)(A) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b–1(e)(2)(A)) (as amended by section 125(c)(2)(B) of Public Law 108–265) is amended by inserting “and” after “2005”.

(d) Section 17(f)(1)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(i)) (as amended by section 203(e)(10)(B) of Public Law 108–265) is amended by striking the period after “subsection (h)(11)”.

(e) Section 17(h)(8)(A)(vi) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)(vi)) (as added by section 203(e)(5) of Public Law 108–265) is amended by striking “Each State” and inserting “Effective beginning October 1, 2004, each State”.

(f) Section 502(b) of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108–265) is amended—

(1) in paragraph (2), by striking “203(e)(5),”; and

(2) in paragraph (4), by striking “104” and inserting “104 (other than section 104(a)(1))”.

42 USC 1754
note.

SEC. 789. Section 104 of chapter 1 of the Emergency Supplemental Appropriations for Hurricane Disasters Assistance Act, 2005, Public Law 108–324, is amended by adding “and tropical storms” after “hurricanes”.

15 USC 720b.

SEC. 790. There is hereby appropriated \$1,000,000, to remain available until expended, for a grant to the Ohio Livestock Expo Center in Springfield, Ohio.

SEC. 791. There is hereby appropriated \$1,000,000, to remain available until expended, for a grant to the Virginia Horse Center in Lexington, Virginia.

SEC. 792. Notwithstanding any other provision of law, unobligated funding balances in the Great Plains Conservation Program authorized under section 16(b) of the Soil Conservation and

Domestic Allotment Act (16 U.S.C. 590p(b)); the Forestry Incentives Program authorized by section 4 and section 6 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103); The Water Bank Program authorized by The Water Bank Act of 1970 (Public Law 91-559); and funding for the John's Creek, TN Watershed and Flood Prevention Operations project are hereby rescinded.

SEC. 793. There is hereby appropriated \$2,250,000, to remain available until expended, for a grant to the Wisconsin Federation of Cooperatives for pilot Wisconsin-Minnesota health care cooperative purchasing alliances.

SEC. 794. (a) Section 1240B of the Food Security Act of 1985, 16 U.S.C. 3839 aa-2, is amended at the end by adding the following:

“(h) FUNDING FOR FEDERALLY RECOGNIZED NATIVE AMERICAN INDIAN TRIBES AND ALASKA NATIVE CORPORATIONS.—The Secretary may enter into alternative funding arrangements with federally recognized Native American Indian Tribes and Alaska Native Corporations (including their affiliated membership organizations) if the Secretary determines that the goals and objectives of the program will be met by such arrangements, and that statutory limitations regarding contracts with individual producers as defined under this Subtitle will not be exceeded by any Tribal or Native Corporation member.”.

(b) Section 1240G of the Food Security Act of 1985, 16 U.S.C. 3839aa-7, is amended by inserting after “2007,” the following: “(excluding funding arrangements with federally recognized Native American Indian Tribes or Alaska Native Corporations under section 1240B(h))”.

SEC. 795. There is hereby appropriated \$6,000,000, to remain available until expended, for a grant to the Florida Department of Citrus.

SEC. 796 Notwithstanding any other provision of law, effective with funds made available in fiscal year 2004 to States administering the Child and Adult Care Food Program, for the purpose of conducting audits of participating institutions, funds identified by the Secretary as having been unused during the initial fiscal year of availability may be recovered and reallocated by the Secretary: *Provided*, That States may use the reallocated funds until expended for the purpose of conducting audits of participating institutions.

16 USC 3838q.

SEC. 797. Section 1238Q of the Food Security Act of 1985 is amended—

(1) in subsection (a), by striking “permit” and inserting “transfer title of ownership to an easement under this subchapter to”; and

(2) by striking subsection (d) and inserting the following new subsection:

“(d) TRANSFER OF TITLE OF OWNERSHIP OF EASEMENT.—Reversion—If a private organization or State agency holding an easement on land under this subchapter dissolves or fails to enforce the terms of the easement, the easement shall revert to the Secretary.”.

This division may be cited as the “Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005”.

DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND
STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

Departments of
Commerce,
Justice, and
State, the
Judiciary, and
Related Agencies
Appropriations
Act, 2005.
Department of
Justice
Appropriations
Act, 2005.

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, \$124,100,000, of which not to exceed \$3,317,000 is for the Facilities Program 2000, to remain available until expended: *Provided*, That not to exceed 45 permanent positions and 46 full-time equivalent workyears and \$11,078,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 2004: *Provided further*, That not to exceed 26 permanent positions, 21 full-time equivalent workyears and \$3,305,000 shall be expended for the Office of Legislative Affairs: *Provided further*, That not to exceed 17 permanent positions, 21 full-time equivalent workyears and \$2,470,000 shall be expended for the Office of Public Affairs: *Provided further*, That the latter two aforementioned offices may utilize non-reimbursable details of career employees within the caps described in the preceding two provisos.

JOINT AUTOMATED BOOKING SYSTEM

For expenses necessary for the nationwide deployment of a Joint Automated Booking System including automated capability to transmit fingerprint and image data, \$20,185,000, to remain available until September 30, 2006.

AUTOMATED BIOMETRIC IDENTIFICATION SYSTEM/INTEGRATED
AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

For necessary expenses for the planning, development, and deployment of an integrated fingerprint identification system, including automated capability to transmit fingerprint and image data, \$5,054,000, to remain available until September 30, 2006.

LEGAL ACTIVITIES OFFICE AUTOMATION

For necessary expenses related to the design, development, engineering, acquisition, and implementation of office automation systems for the organizations funded under the headings “Salaries and Expenses, General Legal Activities”, and “General Administration, Salaries and Expenses”, and the United States Attorneys, the United States Marshals Service, the Antitrust Division, the United States Trustee Program, the Executive Office for Immigration Review, the Community Relations Service, the Bureau of Prisons, the Office of Justice Programs, and the United States Parole Commission, \$40,510,000, to remain available until September 30, 2006.

NARROWBAND COMMUNICATIONS

For the costs of conversion to narrowband communications, including the cost for operation and maintenance of Land Mobile

Radio legacy systems, \$100,000,000, to remain available until September 30, 2006: *Provided*, That the Attorney General shall transfer to the “Narrowband Communications” account all funds made available to the Department of Justice for the purchase of portable and mobile radios: *Provided further*, That any transfer made under the preceding proviso shall be subject to section 605 of this Act.

ADMINISTRATIVE REVIEW AND APPEALS

For expenses necessary for the administration of pardon and clemency petitions and immigration-related activities, \$203,965,000.

DETENTION TRUSTEE

Deadline.

For necessary expenses of the Federal Detention Trustee, \$885,994,000, to remain available until expended: *Provided*, That the Trustee shall be responsible for managing the Justice Prisoner and Alien Transportation System and for overseeing housing related to such detention: *Provided further*, That any unobligated balances available in prior years from the funds appropriated under the heading “Federal Prisoner Detention” shall be transferred to and merged with the appropriation under the heading “Detention Trustee” and shall be available until expended. *Provided further*, That the Trustee, working in consultation with the Bureau of Prisons, shall submit a plan for collecting information related to evaluating the health and safety of Federal prisoners in non-Federal institutions no later than 180 days following the enactment of this Act.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, \$63,813,000, including not to exceed \$10,000 to meet unforeseen emergencies of a confidential character.

UNITED STATES PAROLE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States Parole Commission as authorized, \$10,638,000.

LEGAL ACTIVITIES

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed \$20,000 for expenses of collecting evidence, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; and rent of private or Government-owned space in the District of Columbia, \$634,193,000, of which not to exceed \$10,000,000 for litigation support contracts shall remain available until expended: *Provided*, That of the total amount appropriated, not to exceed \$1,000 shall be available to the United States National Central Bureau, INTERPOL, for official reception and representation expenses: *Provided further*, That notwithstanding any other provision of law, upon a determination by the Attorney General that emergent circumstances require additional

funding for litigation activities of the Civil Division, the Attorney General may transfer such amounts to “Salaries and Expenses, General Legal Activities” from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: *Provided further*, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

In addition, for reimbursement of expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed \$6,333,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

SALARIES AND EXPENSES, ANTITRUST DIVISION

For expenses necessary for the enforcement of antitrust and kindred laws, \$138,763,000, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, not to exceed \$101,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2005, so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than \$37,763,000.

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For necessary expenses of the Offices of the United States Attorneys, including inter-governmental and cooperative agreements, \$1,547,519,000; of which not to exceed \$2,500,000 shall be available until September 30, 2006, for: (1) training personnel in debt collection; (2) locating debtors and their property; (3) paying the net costs of selling property; and (4) tracking debts owed to the United States Government: *Provided*, That of the total amount appropriated, not to exceed \$8,000 shall be available for official reception and representation expenses: *Provided further*, That not to exceed \$10,000,000 of those funds available for automated litigation support contracts shall remain available until expended: *Provided further*, That not to exceed \$2,500,000 for the operation of the National Advocacy Center shall remain available until expended: *Provided further*, That, in addition to reimbursable full-time equivalent workyears available to the Offices of the United States Attorneys, not to exceed 10,212 positions and 10,273 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the United States Attorneys: *Provided further*, That of the funds made available under this heading, \$1,500,000 shall only be available to continue “Operation Streetsweeper”: *Provided further*, That of the total amount appropriated, \$5,000,000 shall be for Project Seahawk and shall remain available until expended.

UNITED STATES TRUSTEE SYSTEM FUND

For necessary expenses of the United States Trustee Program, as authorized, \$173,602,000, to remain available until expended and to be derived from the United States Trustee System Fund: *Provided*, That, notwithstanding any other provision of law, deposits to the Fund shall be available in such amounts as may be necessary to pay refunds due depositors: *Provided further*, That, notwithstanding any other provision of law, \$173,602,000 of offsetting collections pursuant to 28 U.S.C. 589a(b) shall be retained and used for necessary expenses in this appropriation and remain available until expended: *Provided further*, That the sum herein appropriated from the Fund shall be reduced as such offsetting collections are received during fiscal year 2005, so as to result in a final fiscal year 2005 appropriation from the Fund estimated at \$0.

SALARIES AND EXPENSES, FOREIGN CLAIMS SETTLEMENT COMMISSION

For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission, including services as authorized by 5 U.S.C. 3109, \$1,220,000.

UNITED STATES MARSHALS SERVICE

SALARIES AND EXPENSES

For necessary expenses of the United States Marshals Service, \$751,985,000; of which not to exceed \$6,000 shall be available for official reception and representation expenses; and of which \$4,000,000 for information technology systems shall remain available until expended; of which not less than \$11,580,000 shall be available for the costs of courthouse security equipment, including furnishings, relocations, and telephone systems and cabling, and shall remain available until September 30, 2006: *Provided*, That, in addition to reimbursable full-time equivalent workyears available to the United States Marshals Service, not to exceed 4,543 positions and 4,387 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the United States Marshals Service.

CONSTRUCTION

For construction of United States Marshals Service prisoner-holding space in United States courthouses and Federal buildings, \$5,734,000, to remain available until expended.

FEES AND EXPENSES OF WITNESSES

For fees and expenses of witnesses, for expenses of contracts for the procurement and supervision of expert witnesses, for private counsel expenses, including advances, \$177,585,000, to remain available until expended; of which not to exceed \$8,000,000 may be made available for construction of buildings for protected witness safesites; of which not to exceed \$1,000,000 may be made available for the purchase and maintenance of armored vehicles for transportation of protected witnesses; and of which not to exceed \$7,000,000 may be made available for the purchase, installation, maintenance and upgrade of secure telecommunications equipment and a secure

automated information network to store and retrieve the identities and locations of protected witnesses.

SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE

For necessary expenses of the Community Relations Service, \$9,664,000: *Provided*, That notwithstanding any other provision of law, upon a determination by the Attorney General that emergent circumstances require additional funding for conflict resolution and violence prevention activities of the Community Relations Service, the Attorney General may transfer such amounts to the Community Relations Service, from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: *Provided further*, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524(c)(1)(B), (F), and (G), \$21,759,000, to be derived from the Department of Justice Assets Forfeiture Fund.

PAYMENT TO RADIATION EXPOSURE COMPENSATION TRUST FUND

In addition to amounts appropriated by subsection 3(e) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note), \$27,800,000 for payment to the Radiation Exposure Compensation Trust Fund, to remain available until expended.

INTERAGENCY LAW ENFORCEMENT

INTERAGENCY CRIME AND DRUG ENFORCEMENT

For necessary expenses for the identification, investigation, and prosecution of individuals associated with the most significant drug trafficking and affiliated money laundering organizations not otherwise provided for, to include inter-governmental agreements with State and local law enforcement agencies engaged in the investigation and prosecution of individuals involved in organized crime drug trafficking, \$561,033,000, of which \$50,000,000 shall remain available until expended: *Provided*, That any amounts obligated from appropriations under this heading may be used under authorities available to the organizations reimbursed from this appropriation.

FEDERAL BUREAU OF INVESTIGATION

SALARIES AND EXPENSES

For necessary expenses of the Federal Bureau of Investigation for detection, investigation, and prosecution of crimes against the United States; including purchase for police-type use of not to exceed 2,988 passenger motor vehicles, of which 2,619 will be for replacement only; and not to exceed \$70,000 to meet unforeseen emergencies of a confidential character pursuant to 28 U.S.C. 530C, \$5,205,028,000; of which not to exceed \$150,000,000 shall remain

available until expended; of which \$1,017,000,000 shall be for counterterrorism investigations, foreign counterintelligence, and other activities related to our national security; of which \$56,349,000 shall be for the operations, equipment, and facilities of the Foreign Terrorist Tracking Task Force; and of which not to exceed \$20,000,000 is authorized to be made available for making advances for expenses arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities related to violent crime, terrorism, organized crime, gang-related crime, cybercrime, and drug investigations: *Provided*, That not to exceed \$200,000 shall be available for official reception and representation expenses: *Provided further*, That, in addition to reimbursable full-time equivalent workyears available to the Federal Bureau of Investigation, not to exceed 30,039 positions and 29,082 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the Federal Bureau of Investigation: *Provided further*, That up to \$6,800,000 of prior year unobligated balances shall be available for the necessary expense of construction of an aviation hangar, to remain available until September 30, 2006.

CONSTRUCTION

For necessary expenses to construct or acquire buildings and sites by purchase, or as otherwise authorized by law (including equipment for such buildings); conversion and extension of Federally-owned buildings; and preliminary planning and design of projects; \$10,242,000, to remain available until expended: *Provided*, That \$9,000,000 shall be available to lease a records management facility, including equipment and relocation expenses, in Frederick County, Virginia.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Drug Enforcement Administration, including not to exceed \$70,000 to meet unforeseen emergencies of a confidential character pursuant to 28 U.S.C. 530C; expenses for conducting drug education and training programs, including travel and related expenses for participants in such programs and the distribution of items of token value that promote the goals of such programs; and purchase of not to exceed 1,461 passenger motor vehicles, of which 1,346 will be for replacement only, for police-type use, \$1,653,265,000; of which not to exceed \$75,000,000 shall remain available until expended; and of which not to exceed \$100,000 shall be available for official reception and representation expenses: *Provided*, That, in addition to reimbursable full-time equivalent workyears available to the Drug Enforcement Administration, not to exceed 8,361 positions and 8,250 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the Drug Enforcement Administration: *Provided further*, That not to exceed \$8,100,000 from prior year unobligated balances shall be available for the design, construction and ownership of a clandestine laboratory training facility and shall remain available until expended.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

SALARIES AND EXPENSES

For necessary expenses of the Bureau of Alcohol, Tobacco, Firearms and Explosives, including the purchase of not to exceed 822 vehicles for police-type use, of which 650 shall be for replacement only; not to exceed \$25,000 for official reception and representation expenses; for training of State and local law enforcement agencies with or without reimbursement, including training in connection with the training and acquisition of canines for explosives and fire accelerants detection; and for provision of laboratory assistance to State and local law enforcement agencies, with or without reimbursement, \$890,357,000, of which not to exceed \$1,000,000 shall be available for the payment of attorneys' fees as provided by 18 U.S.C. 924(d)(2); and of which \$10,000,000 shall remain available until expended: *Provided*, That no funds appropriated herein shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees: *Provided further*, That no funds appropriated herein shall be used to pay administrative expenses or the compensation of any officer or employee of the United States to implement an amendment or amendments to 27 CFR 178.118 or to change the definition of "Curios or relics" in 27 CFR 178.11 or remove any item from ATF Publication 5300.11 as it existed on January 1, 1994: *Provided further*, That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c): *Provided further*, That such funds shall be available to investigate and act upon applications filed by corporations for relief from Federal firearms disabilities under section 925(c) of title 18, United States Code: *Provided further*, That no funds made available by this or any other Act may be used to transfer the functions, missions, or activities of the Bureau of Alcohol, Tobacco, Firearms and Explosives to other agencies or Departments in fiscal year 2005: *Provided further*, That no funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), to anyone other than a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure and not for use in any civil action or proceeding other than an action or proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or a review of such an action or proceeding, to enforce the provisions of chapter 44 of such title, and all such data shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding other than a proceeding commenced by the Bureau

18 USC 923 note.

of Alcohol, Tobacco, Firearms, and Explosives to enforce the provisions of that chapter, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title): *Provided further*, That no funds made available by this or any other Act shall be expended to promulgate or implement any rule requiring a physical inventory of any business licensed under section 923 of title 18, United States Code: *Provided further*, That no funds under this Act may be used to electronically retrieve information gathered pursuant to 18 U.S.C. 923(g)(4) by name or any personal identification code: *Provided further*, That no funds authorized or made available under this or any other Act may be used to deny any application for a license under section 923 of title 18, United States Code, or renewal of such a license due to a lack of business activity, provided that the applicant is otherwise eligible to receive such a license, and is eligible to report business income or to claim an income tax deduction for business expenses under the Internal Revenue Code of 1986: *Provided further*, That of the total amount provided under this paragraph, \$5,600,000 shall be for the construction and establishment of the Federal Firearms Licensing Center at the Bureau of Alcohol, Tobacco, Firearms and Explosives National Tracing Center Facility and shall remain available until expended.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

42 USC 250a. For expenses necessary of the Federal Prison System for the administration, operation, and maintenance of Federal penal and correctional institutions, including purchase (not to exceed 780, of which 649 are for replacement only) and hire of law enforcement and passenger motor vehicles, and for the provision of technical assistance and advice on corrections related issues to foreign governments, \$4,627,696,000: *Provided*, That the Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions: *Provided further*, That the Director of the Federal Prison System, where necessary, may enter into contracts with a fiscal agent/fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the Federal Prison System, furnish health services to individuals committed to the custody of the Federal Prison System: *Provided further*, That not to exceed \$6,000 shall be available for official reception and representation expenses: *Provided further*, That not to exceed \$365,836,000 shall remain available for prison activations until September 30, 2006: *Provided further*, That, of the amounts provided for Contract Confinement, not to exceed \$20,000,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements, and other expenses authorized by section 501(c) of the Refugee Education Assistance Act of 1980, for the care and security in the United States of Cuban and Haitian entrants: *Provided further*, That the Director of the Federal Prison System may accept donated property and services relating to the operation of the prison card program

from a not-for-profit entity which has operated such program in the past notwithstanding the fact that such not-for-profit entity furnishes services under contracts to the Federal Prison System relating to the operation of pre-release services, halfway houses or other custodial facilities.

BUILDINGS AND FACILITIES

For planning, acquisition of sites and construction of new facilities; purchase and acquisition of facilities and remodeling, and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account, \$189,000,000, to remain available until expended, of which not to exceed \$14,000,000 shall be available to construct areas for inmate work programs: *Provided*, That labor of United States prisoners may be used for work performed under this appropriation.

FEDERAL PRISON INDUSTRIES, INCORPORATED

The Federal Prison Industries, Incorporated, is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available, and in accord with the law, and to make such contracts and commitments, without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation, including purchase (not to exceed five for replacement only) and hire of passenger motor vehicles.

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

Not to exceed \$3,411,000 of the funds of the corporation shall be available for its administrative expenses, and for services as authorized by 5 U.S.C. 3109, to be computed on an accrual basis to be determined in accordance with the corporation's current prescribed accounting system, and such amounts shall be exclusive of depreciation, payment of claims, and expenditures which such accounting system requires to be capitalized or charged to cost of commodities acquired or produced, including selling and shipping expenses, and expenses in connection with acquisition, construction, operation, maintenance, improvement, protection, or disposition of facilities and other property belonging to the corporation or in which it has an interest.

OFFICE ON VIOLENCE AGAINST WOMEN

VIOLENCE AGAINST WOMEN PREVENTION AND PROSECUTION PROGRAMS

For grants, contracts, cooperative agreements, and other assistance for the prevention and prosecution of violence against women as authorized by the Omnibus Crime Control and Safe Streets Act of 1968 ("the 1968 Act"); the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) ("the 1994 Act");

Deadline.

the Victims of Child Abuse Act of 1990 (“the 1990 Act”); the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (Public Law 108-21); the Juvenile Justice and Delinquency Prevention Act of 1974 (“the 1974 Act”); and the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386); \$387,275,000, including amounts for administrative costs, to remain available until expended: *Provided*, That all balances, unobligated and obligated, from grants and activities administered by the Office on Violence Against Women shall be transferred from the Office of Justice Programs to the Office on Violence Against Women within 60 days of enactment of this Act: *Provided further*, That of the amount provided—

(1) \$11,897,000 for the court-appointed special advocate program, as authorized by section 217 of the 1990 Act;

(2) \$1,925,000 for child abuse training programs for judicial personnel and practitioners, as authorized by section 222 of the 1990 Act;

(3) \$983,000 for grants for televised testimony, as authorized by Part N of the 1968 Act;

(4) \$187,086,000 for grants to combat violence against women, as authorized by part T of the 1968 Act, of which—

(A) \$5,000,000 shall be for the National Institute of Justice for research and evaluation of violence against women;

(B) \$10,000,000 shall be for the Office of Juvenile Justice and Delinquency Prevention for the Safe Start Program, as authorized by the 1974 Act; and

(C) \$12,500,000 shall be for transitional housing assistance grants for victims of domestic violence, stalking or sexual assault as authorized by Public Law 108-21;

(5) \$63,491,000 for grants to encourage arrest policies as authorized by part U of the 1968 Act;

(6) \$39,685,000 for rural domestic violence and child abuse enforcement assistance grants, as authorized by section 40295(a) of the 1994 Act;

(7) \$4,415,000 for training programs as authorized by section 40152 of the 1994 Act, and for related local demonstration projects;

(8) \$2,950,000 for grants to improve the stalking and domestic violence databases, as authorized by section 40602 of the 1994 Act;

(9) \$9,175,000 to reduce violent crimes against women on campus, as authorized by section 1108(a) of Public Law 106-386;

(10) \$39,740,000 for legal assistance for victims, as authorized by section 1201(c) of Public Law 106-386;

(11) \$4,600,000 for enhancing protection for older and disabled women from domestic violence and sexual assault, as authorized by section 40802 of the 1994 Act;

(12) \$14,078,000 for the safe havens for children pilot program, as authorized by section 1301(a) of Public Law 106-386; and

(13) \$7,250,000 for education and training to end violence against and abuse of women with disabilities, as authorized by section 1402(a) of Public Law 106-386.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, the Missing Children's Assistance Act, including salaries and expenses in connection therewith, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Public Law 108–21), and the Victims of Crime Act of 1984, \$227,900,000, to remain available until expended.

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) (“the 1994 Act”); the Omnibus Crime Control and Safe Streets Act of 1968 (“the 1968 Act”); the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386); and other programs; \$1,295,510,000 (including amounts for administrative costs, which shall be transferred to and merged with the “Justice Assistance” account): *Provided*, That funding provided under this heading shall remain available until expended, as follows—

(1) \$634,000,000 for the Edward Byrne Memorial Justice Assistance Grant program pursuant to the amendments made by section 201 of H.R. 3036 of the 108th Congress, as passed by the House of Representatives on March 30, 2004 (except that the special rules for Puerto Rico established pursuant to such amendments shall not apply for purposes of this Act), of which—

(A) \$85,000,000 shall be for Boys and Girls Clubs in public housing facilities and other areas in cooperation with State and local law enforcement, as authorized by section 401 of Public Law 104–294 (42 U.S.C. 13751 note);

(B) \$10,000,000 shall be available for the National Institute of Justice in assisting units of local government to identify, select, develop, modernize, and purchase new technologies for use by law enforcement; and

(C) \$2,500,000 for USA Freedom Corps activities;

(2) \$305,000,000 for the State Criminal Alien Assistance Program, as authorized by section 242(j) of the Immigration and Nationality Act;

(3) \$30,000,000 is for the Southwest Border Prosecutor Initiative to reimburse State, county, parish, tribal, or municipal governments only for costs associated with the prosecution of criminal cases declined by local United States Attorneys offices;

(4) \$18,000,000 for assistance to Indian tribes, of which—

(A) \$5,000,000 shall be available for grants under section 20109(a)(2) of subtitle A of title II of the 1994 Act;

(B) \$8,000,000 shall be available for the Tribal Courts Initiative; and

(C) \$5,000,000 shall be available for demonstration projects on alcohol and crime in Indian Country;

(5) \$170,027,000 for discretionary grants authorized by subpart 2 of part E, of title I of the 1968 Act, notwithstanding the provisions of section 511 of said Act;

(6) \$10,000,000 for victim services programs for victims of trafficking, as authorized by section 107(b)(2) of Public Law 106-386;

(7) \$883,000 for the Missing Alzheimer's Disease Patient Alert Program, as authorized by section 240001(c) of the 1994 Act;

(8) \$40,000,000 for Drug Courts, as authorized by Part EE of the 1968 Act;

(9) \$2,000,000 for public awareness programs addressing marketing scams aimed at senior citizens, as authorized by section 250005(3) of the 1994 Act;

(10) \$10,000,000 for a prescription drug monitoring program;

(11) \$37,000,000 for prison rape prevention and prosecution programs as authorized by the Prison Rape Elimination Act of 2003 (Public Law 108-79), of which \$1,000,000 shall be transferred to the National Prison Rape Elimination Commission for authorized activities;

(12) \$25,000,000 for grants for residential substance abuse treatment for State prisoners, as authorized by part S of the 1968 Act;

(13) \$10,500,000 for a program to improve State and local law enforcement intelligence capabilities including training to ensure that constitutional rights, civil liberties, civil rights, and privacy interests are protected throughout the intelligence process;

(14) \$1,000,000 for a State and local law enforcement hate crimes training and technical assistance program;

(15) \$2,000,000 for Law Enforcement Family Support Programs, as authorized by section 1001(a)(21) of the 1968 Act; and

(16) \$100,000 for Motor Vehicle Theft Prevention Programs, as authorized by section 220002(h) of the 1994 Act:

Provided, That, if a unit of local government uses any of the funds made available under this title to increase the number of law enforcement officers, the unit of local government will achieve a net gain in the number of law enforcement officers who perform nonadministrative public safety service.

WEED AND SEED PROGRAM FUND

For necessary expenses, including salaries and related expenses of the Executive Office for Weed and Seed, to implement "Weed and Seed" program activities, \$62,000,000, to remain available until September 30, 2006, for inter-governmental agreements, including grants, cooperative agreements, and contracts, with State and local law enforcement agencies, non-profit organizations, and agencies of local government engaged in the investigation and prosecution of violent and gang-related crimes and drug offenses in "Weed and Seed" designated communities, and for either reimbursements or transfers to appropriation accounts of the Department of Justice and other Federal Agencies which shall be specified by the Attorney General to execute the "Weed and Seed" program strategy: *Provided*, That funds designated by Congress through language for other Department of Justice appropriation accounts for "Weed and Seed" program activities shall be managed and executed by the Attorney General through the Executive Office for Weed and Seed: *Provided further*, That the Attorney General may direct the use of other

Department of Justice funds and personnel in support of “Weed and Seed” program activities only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act: *Provided further*, That of the funds appropriated for the Executive Office for Weed and Seed, \$2,000,000 shall be directed for comprehensive community development training and technical assistance.

COMMUNITY ORIENTED POLICING SERVICES

For activities authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) (including administrative costs), \$606,446,000, to remain available until expended: *Provided*, That funds that become available as a result of deobligations from prior year balances may not be obligated except in accordance with section 605 of this Act: *Provided further*, That of the funds under this heading, not to exceed \$2,575,000 shall be available for the Office of Justice Programs for reimbursable services associated with programs administered by the Community Oriented Policing Services Office: *Provided further*, That section 1703(b) and (c) of the Omnibus Crime Control and Safe Streets Act of 1968 (“the 1968 Act”) shall not apply to non-hiring grants made pursuant to part Q of title I thereof (42 U.S.C. 3796dd et seq.). Of the amounts provided—

- (1) \$10,000,000 is for the hiring of law enforcement officers, including \$5,000,000 for school resource officers;
- (2) \$15,000,000 is for training and technical assistance;
- (3) \$20,000,000 is for improving tribal law enforcement including equipment and training;
- (4) \$100,000,000 is for the COPS Interoperable Communications Technology Program;
- (5) \$7,500,000 is for a police integrity program;
- (6) \$25,000,000 is for the matching grant program for law enforcement armor vests as authorized by section 2501 of part Y of the 1968 Act: *Provided*, That not to exceed 2 percent of such funds shall be available to the Office of Justice Programs for testing of and research relating to law enforcement armor vests;
- (7) \$52,556,000 is for policing initiatives to combat methamphetamine production and trafficking and to enhance policing initiatives in “drug hot spots”;
- (8) \$15,000,000 is for Police Corps education and training: *Provided*, That the out-year program costs of new recruits shall be fully funded from funds currently available;
- (9) \$138,615,000 is for a law enforcement technology program;
- (10) \$25,000,000 is for grants to upgrade criminal records, as authorized under the Crime Identification Technology Act of 1998 (42 U.S.C. 14601);
- (11) \$28,450,000 is for grants, contracts and other assistance to States under section 102(b) of the Crime Identification Technology Act of 1998 (42 U.S.C. 14601);
- (12) \$110,000,000 is for a DNA analysis and capacity enhancement program;
- (13) \$15,000,000 is for Paul Coverdell Forensic Sciences Improvement Grants under part BB of title I of the 1968 Act (42 U.S.C. 3797j et seq.);

(14) \$10,000,000 is for an offender re-entry program, as authorized by Public Law 107-273;

(15) \$4,325,000 is for the Safe Schools Initiative; and

(16) not to exceed \$30,000,000 is for program management and administration.

JUVENILE JUSTICE PROGRAMS

For grants, contracts, cooperative agreements, and other assistance authorized by the Juvenile Justice and Delinquency Prevention Act of 1974 (“the Act”), and other juvenile justice programs, including salaries and expenses in connection therewith to be transferred to and merged with the appropriations for Justice Assistance, \$384,177,000, to remain available until expended, as follows—

(1) \$3,000,000 for concentration of Federal efforts, as authorized by section 204 of the Act;

(2) \$84,000,000 for State and local programs authorized by section 221 of the Act, including training and technical assistance to assist small, non-profit organizations with the Federal grants process;

(3) \$102,177,000 for demonstration projects, as authorized by sections 261 and 262 of the Act;

(4) \$10,000,000 for research, evaluation, training and technical assistance, as authorized by sections 251 and 252 of the Act;

(5) \$15,000,000 for juvenile mentoring programs;

(6) \$80,000,000 for delinquency prevention, as authorized by section 505 of the Act, of which—

(A) \$10,000,000 shall be for the Tribal Youth Program;

(B) \$25,000,000 shall be for a gang resistance education and training program to be administered by the Bureau of Justice Assistance and to be coordinated with the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Office of Juvenile Justice and Delinquency Prevention; and

(C) \$25,000,000 shall be for grants of \$360,000 to each State and \$6,640,000 shall be available for discretionary grants to States, for programs and activities to enforce State laws prohibiting the sale of alcoholic beverages to minors or the purchase or consumption of alcoholic beverages by minors, prevention and reduction of consumption of alcoholic beverages by minors, and for technical assistance and training;

(7) \$5,000,000 for Project Childsafe;

(8) \$15,000,000 for the Secure Our Schools Act as authorized by Public Law 106-386;

(9) \$15,000,000 for programs authorized by the Victims of Child Abuse Act of 1990; and

(10) \$55,000,000 for the Juvenile Accountability Block Grants program as authorized by Public Law 107-273 and Guam shall be considered a State:

Provided, That not more than 10 percent of each amount may be used for research, evaluation, and statistics activities designed to benefit the programs or activities authorized: *Provided further*, That not more than 2 percent of each amount may be used for training and technical assistance.

PUBLIC SAFETY OFFICERS BENEFITS

To remain available until expended, for payments authorized by part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796), such sums as are necessary, as authorized by section 6093 of Public Law 100–690 (102 Stat. 4339–4340); and \$3,615,000, to remain available until expended for payments as authorized by section 1201(b) of said Act; and \$2,795,000 for educational assistance, as authorized by section 1212 of the 1968 Act.

GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

SEC. 101. In addition to amounts otherwise made available in this title for official reception and representation expenses, a total of not to exceed \$60,000 from funds appropriated to the Department of Justice in this title shall be available to the Attorney General for official reception and representation expenses.

SEC. 102. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape: *Provided*, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

SEC. 103. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion.

SEC. 104. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: *Provided*, That nothing in this section in any way diminishes the effect of section 103 intended to address the philosophical beliefs of individual employees of the Bureau of Prisons.

SEC. 105. Authorities contained in the 21st Century Department of Justice Appropriations Authorization Act (Public Law 107–273) shall remain in effect until the effective date of a subsequent Department of Justice appropriations authorization Act.

SEC. 106. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section: *Provided further*, That none of the funds appropriated to “Buildings and Facilities, Federal Prison System” in this or any other Act may be transferred to “Salaries and Expenses, Federal Prison System”, or any other Department of Justice account, unless the President certifies that such a transfer is necessary to the national security interests of the United States, and such authority shall not be delegated, and shall be subject to section 605 of this Act.

SEC. 107. Section 114 of Public Law 107–77 shall remain in effect during fiscal year 2005.

SEC. 108. In addition to the amounts provided under “Salaries and Expenses, United States Attorneys”, \$15,000,000 shall be for Project Seahawk and shall remain available until expended.

5 USC 3104 note.

SEC. 109. The Attorney General is authorized to extend through September 30, 2006, the Personnel Management Demonstration Project transferred to the Attorney General pursuant to section 1115 of the Homeland Security Act of 2002, Public Law 107–296 (6 U.S.C. 533) without limitation on the number of employees or the positions covered.

SEC. 110. (a) None of the funds made available in this Act may be used by the Drug Enforcement Administration to establish a procurement quota following the approval of a new drug application or an abbreviated new drug application for a controlled substance.

Effective date.

(b) The limitation established in subsection (a) shall not apply until 180 days after enactment of this Act.

SEC. 111. The limitation established in the preceding section shall not apply to any new drug application or abbreviated new drug application for which the Drug Enforcement Administration has reviewed and provided public comments on labeling, promotion, risk management plans, and any other documents.

SEC. 112. (a) Section 8335(b) of title 5, United States Code, is amended—

(1) by striking “(b)” and inserting “(b)(1)”; and

(2) by adding at the end the following:

Applicability.

“(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting ‘65 years of age’ for ‘60 years of age’. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009.”.

Termination date.

(b) Section 8425(b) of title 5, United States Code, is amended—

(1) by striking “(b)” and inserting “(b)(1)”; and

(2) by adding at the end the following:

Applicability.

“(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting ‘65 years of age’ for ‘60 years of age’. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009.”.

Termination date.

SEC. 113. (a) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end the following:

“§ 5759. Retention and relocation bonuses for the Federal Bureau of Investigation

“(a) **AUTHORITY.**—The Director of the Federal Bureau of Investigation, after consultation with the Director of the Office of Personnel Management, may pay, on a case-by-case basis, a bonus under this section to an employee of the Bureau if—

“(1)(A) the unusually high or unique qualifications of the employee or a special need of the Bureau for the employee’s services makes it essential to retain the employee; and

“(B) the Director of the Federal Bureau of Investigation determines that, in the absence of such a bonus, the employee would be likely to leave—

“(i) the Federal service; or

“(ii) for a different position in the Federal service;

or

“(2) the individual is transferred to a different geographic area with a higher cost of living (as determined by the Director of the Federal Bureau of Investigation).

“(b) SERVICE AGREEMENT.—Payment of a bonus under this section is contingent upon the employee entering into a written service agreement with the Bureau to complete a period of service with the Bureau. Such agreement shall include—

“(1) the period of service the individual shall be required to complete in return for the bonus; and

“(2) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(c) LIMITATION ON AUTHORITY.—A bonus paid under this section may not exceed 50 percent of the employee’s basic pay.

“(d) IMPACT ON BASIC PAY.—A retention bonus is not part of the basic pay of an employee for any purpose.

“(e) TERMINATION OF AUTHORITY.—The authority to grant bonuses under this section shall cease to be available after December 31, 2009.”.

(b) The analysis for chapter 57 of title 5, United States Code, is amended by adding at the end the following:

“5759. Retention and relocation bonuses for the Federal Bureau of Investigation.”.

SEC. 114. (a) Chapter 35 of title 5 of the United States Code, is amended by adding at the end the following:

“SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

“§ 3598. Federal Bureau of Investigation Reserve Service

“(a) ESTABLISHMENT.—The Director of the Federal Bureau of Investigation may provide for the establishment and training of a Federal Bureau of Investigation Reserve Service (hereinafter in this section referred to as the ‘FBI Reserve Service’) for temporary reemployment of employees in the Bureau during periods of emergency, as determined by the Director.

“(b) MEMBERSHIP.—Membership in the FBI Reserve Service shall be limited to individuals who previously served as full-time employees of the Bureau.

“(c) ANNUITANTS.—If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby. An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

“(d) NO IMPACT ON BUREAU PERSONNEL CEILING.—FBI Reserve Service members reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Bureau.

“(e) EXPENSES.—The Director may provide members of the FBI Reserve Service transportation and per diem in lieu of subsistence, in accordance with applicable provisions of this title, for the purpose of participating in any training that relates to service as a member of the FBI Reserve Service.

“(f) LIMITATION ON MEMBERSHIP.—Membership of the FBI Reserve Service is not to exceed 500 members at any given time.”.

(b) The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end the following:

“SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE
FEDERAL BUREAU OF INVESTIGATION

“3598. Federal Bureau of Investigation reserve service.”.

SEC. 115. Section 5377(a)(2) of title 5, United States Code, is amended—

- (1) by striking “and” at the end of subparagraph (E);
- (2) by striking the period at the end of subparagraph (F) and inserting “; and”; and
- (3) by inserting after subparagraph (F) the following:

“(G) a position at the Federal Bureau of Investigation, the primary duties and responsibilities of which relate to intelligence functions (as determined by the Director of the Federal Bureau of Investigation).”.

28 USC 533 note.

SEC. 116. Notwithstanding any other provision of law, Public Law 102-395 section 102(b) shall extend to the Bureau of Alcohol, Tobacco, Firearms and Explosives in the conduct of undercover investigative operations and shall apply without fiscal year limitation with respect to any undercover investigative operation initiated by the Bureau of Alcohol, Tobacco, Firearms and Explosives that is necessary for the detection and prosecution of crimes against the United States.

31 USC 1344 and note.

SEC. 117. Section 1344 of title 31 of the United States Code, is amended in subsection (b) paragraph (6) by inserting after “Federal Bureau of Investigation,” the words “Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives”. This amendment shall take effect as if enacted on January 1, 2004.

Effective date.

Deadline.

SEC. 118. Within 45 days of enactment of this Act, the Bureau of Prisons will submit a comprehensive financial plan for the Federal Prison System to the Committees on Appropriations.

SEC. 119. The Bureau of Prisons shall implement a pilot program in the Southern District of Florida which would allow the Federal Public Defender to transfer computers to the local detention facility to review electronic discovery. These computers will be used according to schedules and protocols developed by the staff of the local facility in consultation with the Federal Defender and the District Court’s Criminal Justice Act Selection Committee.

SEC. 120. None of the funds made available to the Department of Justice in this Act may be used for the purpose of transporting an individual who is a prisoner pursuant to conviction for crime under State or Federal law and is classified as a maximum or high security prisoner, other than to a prison or other facility certified by the Federal Bureau of Prisons as appropriately secure for housing such a prisoner.

SEC. 121. (a) None of the funds appropriated by this Act may be used by Federal prisons to purchase cable television services, to rent or purchase videocassettes, videocassette recorders, or other audiovisual or electronic equipment used primarily for recreational purposes.

(b) The preceding sentence does not preclude the renting, maintenance, or purchase of audiovisual or electronic equipment for inmate training, religious, or educational programs.

SEC. 122. Section 3(e) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended—

- (1) in paragraph (1), by striking “through fiscal year 2011”; and
- (2) in paragraph (2), by striking subparagraphs (E) through (J).

SEC. 123. The Prison Rape Elimination Act of 2003 is amended—

(1) in section 7—

42 USC 15606.

(A) in the heading by striking “REDUCTION” and inserting “ELIMINATION”; and

(B) in subsection (a) by striking “Reduction” and inserting “Elimination”; and

(2) in section 1(b), by striking “Reduction” in the item relating to section 7 and inserting “Elimination”.

SEC. 124. (a) The President shall award and present a 9/11 Heroes Medal of Valor of appropriate design, with ribbons and appurtenances, to an appropriate representative of those individuals who were members of public safety agencies and were killed in the terrorist attacks in the United States on September 11, 2001, as certified by the Attorney General, on behalf of such individuals.

President.
Medals.
31 USC 5111
note.

(b) The presentation of medals pursuant to subsection (a) shall be made as close as feasible to the 4th anniversary of the terrorist attacks described in that subsection.

(c)(1) To be eligible for the medal referred to in subsection (a), an individual shall have been a public safety officer (as defined in section 5 of the Public Safety Officer Medal of Valor Act of 2001) who—

(A) was present in New York, Virginia, or Pennsylvania on September 11, 2001;

(B) participated in the response that day to the terrorist attacks on the World Trade Center, the terrorist attack on the Pentagon, or the terrorist attack that resulted in the crash of the fourth airplane in Pennsylvania; and

(C) died as a result of such participation.

(2) An individual who was killed in one of the attacks referred to in paragraph (1)(B) shall be deemed, for purposes of the eligibility requirement of that paragraph, to have participated in the response.

(3) The certification of eligible recipients of the medal under subsection (a) shall be completed by the Attorney General by July 1, 2005.

Certification.
Deadline.

(d)(1)(A) The design of the medal under this section shall be selected by the Attorney General after consultation with—

(i) the Commission of Fine Arts; and

(ii) the Institute of Heraldry within the Department of Defense, regarding the design and artistry of the 9/11 Heroes Medal of Valor.

(B) The Attorney General may also consider suggestions received by the Department of Justice regarding the design of the medal, including those made by persons not employed by the Department of Justice.

(2) After such consultation and selection of design, the Attorney General shall make necessary arrangements with the Secretary of the Treasury for the Secretary to prepare and strike, on a reimbursable basis, such number of medals as may be required to carry out this section.

(3) The medals struck under this section are national medals for purposes of chapter 51 of title 31, United States Code.

(e) The Attorney General shall establish such procedures and requirements as may be necessary to carry out this section.

Procedures.

(f) There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out this section.

Real property.

SEC. 125. (a) The Attorney General shall transfer, without reimbursement, to the Secretary of the Army a parcel of real property, including any improvements thereon, consisting of approximately 57.8 acres located on River Road in Prince George County, Virginia. The real property is currently under the administrative jurisdiction of the Bureau of Prisons. Upon transfer of the real property under this subsection, the Secretary of the Army shall assume administrative and jurisdictional accountability over property and include the property as part of Fort Lee, Virginia.

(b) The exact acreage and legal description of the real property to be transferred under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Army.

Establishment.
28 USC 501 note.

SEC. 126. The Department of Justice shall establish an Office of Justice for Victims of Overseas Terrorism.

This title may be cited as the “Department of Justice Appropriations Act, 2005”.

Department of
Commerce and
Related Agencies
Appropriations
Act, 2005.

TITLE II—DEPARTMENT OF COMMERCE AND RELATED AGENCIES

TRADE AND INFRASTRUCTURE DEVELOPMENT

RELATED AGENCIES

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SALARIES AND EXPENSES

For necessary expenses of the Office of the United States Trade Representative, including the hire of passenger motor vehicles and the employment of experts and consultants as authorized by 5 U.S.C. 3109, \$41,552,000, of which \$1,000,000 shall remain available until expended: *Provided*, That not to exceed \$124,000 shall be available for official reception and representation expenses: *Provided further*, That not less than \$2,000,000 provided under this heading shall be for expenses authorized by 19 U.S.C. 2451 and 1677b(c): *Provided further*, That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties: *Provided further*, That there is established a position of Chief Negotiator for Intellectual Property Enforcement.

Establishment.
Government
organization.
19 USC 2171
note.

NATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATION COUNCIL

For necessary expenses of the National Intellectual Property Law Enforcement Coordination Council to coordinate domestic and international intellectual property protection and law enforcement relating to intellectual property among Federal and foreign entities, \$2,000,000, to remain available until September 30, 2006: *Provided*, That there shall be at the head of the National Intellectual Property Law Enforcement Coordination Council a Coordinator for International Intellectual Property Enforcement: *Provided further*, That the Coordinator for International Intellectual Property Enforcement shall be appointed by the President: *Provided further*, That no person shall serve as the Coordinator for International Intellectual Property Enforcement while serving in any other position in the Federal Government: *Provided further*, That the co-chairs of the

15 USC 1128
note.
Government
organization.
President.

National Intellectual Property Law Enforcement Coordination Council, as designated by Public Law 106-58, shall report to the Coordinator for International Intellectual Property Enforcement on matters concerning the National Intellectual Property Law Enforcement Coordination Council: *Provided further*, That the National Intellectual Property Law Enforcement Coordination Council shall—

(1) establish policies, objectives, and priorities concerning international intellectual property protection and intellectual property law enforcement;

(2) promulgate a strategy for protecting American intellectual property overseas; and

(3) coordinate and oversee implementation by agencies with responsibilities for intellectual property protection and intellectual property law enforcement of the policies, objectives, and priorities established under paragraph (1) and the fulfillment of the responsibilities assigned to such agencies in the strategy described in paragraph (2):

Provided further, That the Coordinator for International Intellectual Property Enforcement shall develop for each fiscal year, with the advice of the members of the National Intellectual Property Law Enforcement Coordination Council and any other departments and agencies with responsibilities for intellectual property protection and intellectual property law enforcement, a budget proposal to implement the strategy described in paragraph (2) and for the operations of the National Intellectual Property Law Enforcement Coordination Council, and shall transmit such budget proposal to the President and to the Congress: *Provided further*, That the Coordinator for International Intellectual Property Enforcement may select, appoint, employ, and fix compensation of such officers and employees as may be necessary to carry out the functions of the National Intellectual Property Law Enforcement Coordination Council: *Provided further*, That the Coordinator for International Intellectual Property Enforcement may direct, with the concurrence of the Secretary of a department or head of an agency, the temporary reassignment within the Federal Government of personnel employed by such department or agency.

INTERNATIONAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the International Trade Commission, including hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, and not to exceed \$2,500 for official reception and representation expenses, \$61,700,000, to remain available until expended.

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

For necessary expenses for international trade activities of the Department of Commerce provided for by law, and for engaging in trade promotional activities abroad, including expenses of grants and cooperative agreements for the purpose of promoting exports

of United States firms, without regard to 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas; travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 40118; employment of Americans and aliens by contract for services; rental of space abroad for periods not exceeding 10 years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed \$327,000 for official representation expenses abroad; purchase of passenger motor vehicles for official use abroad, not to exceed \$30,000 per vehicle; obtaining insurance on official motor vehicles; and rental of tie lines, \$401,513,000, to remain available until expended, of which \$8,000,000 is to be derived from fees to be retained and used by the International Trade Administration, notwithstanding 31 U.S.C. 3302: *Provided*, That \$48,509,000 shall be for Manufacturing and Services; \$40,087,000 shall be for Market Access and Compliance; \$64,544,000 shall be for the Import Administration of which not less than \$3,000,000 is for the Office of China Compliance; \$222,365,000 shall be for the United States and Foreign Commercial Service of which \$1,500,000 is for the Advocacy Center, \$2,500,000 is for the Trade Information Center, and \$2,100,000 is for a China and Middle East Business Center; and \$26,008,000 shall be for Executive Direction and Administration: *Provided further*, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912); and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 shall include payment for assessments for services provided as part of these activities: *Provided further*, That negotiations shall be conducted within the World Trade Organization to recognize the right of members to distribute monies collected from antidumping and countervailing duties: *Provided further*, That of the amount provided, \$1,000,000 is for a grant to the United States Air and Trade Show Inc., to study the feasibility of the establishment and operation of a biennial United States international air trade show to promote international exports from the United States and for initial expenses of implementing the recommendations set forth in the study: *Provided further*, That for purposes of section 31.205(d)(2) of the Federal Acquisition Regulation, any international air and trade show conducted by the grantee shall be considered to be a trade show containing a significant effort to promote exports from the United States.

BUREAU OF INDUSTRY AND SECURITY

OPERATIONS AND ADMINISTRATION

For necessary expenses for export administration and national security activities of the Department of Commerce, including costs associated with the performance of export administration field activities both domestically and abroad; full medical coverage for

dependent members of immediate families of employees stationed overseas; employment of Americans and aliens by contract for services abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed \$15,000 for official representation expenses abroad; awards of compensation to informers under the Export Administration Act of 1979, and as authorized by 22 U.S.C. 401(b); and purchase of passenger motor vehicles for official use and motor vehicles for law enforcement use with special requirement vehicles eligible for purchase without regard to any price limitation otherwise established by law, \$68,393,000, to remain available until expended, of which \$7,200,000 shall be for inspections and other activities related to national security: *Provided*, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities: *Provided further*, That payments and contributions collected and accepted for materials or services provided as part of such activities may be retained for use in covering the cost of such activities, and for providing information to the public with respect to the export administration and national security activities of the Department of Commerce and other export control programs of the United States and other governments.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For grants for economic development assistance as provided by the Public Works and Economic Development Act of 1965, and for trade adjustment assistance, \$257,423,000, to remain available until expended.

SALARIES AND EXPENSES

For necessary expenses of administering the economic development assistance programs as provided for by law, \$30,483,000: *Provided*, That these funds may be used to monitor projects approved pursuant to title I of the Public Works Employment Act of 1976, title II of the Trade Act of 1974, and the Community Emergency Drought Relief Act of 1977.

MINORITY BUSINESS DEVELOPMENT AGENCY

MINORITY BUSINESS DEVELOPMENT

For necessary expenses of the Department of Commerce in fostering, promoting, and developing minority business enterprise, including expenses of grants, contracts, and other agreements with public or private organizations, \$29,899,000.

ECONOMIC AND INFORMATION INFRASTRUCTURE

ECONOMIC AND STATISTICAL ANALYSIS

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, of economic and statistical analysis programs of the Department of Commerce,

\$80,000,000, to remain available until September 30, 2006, of which \$2,000,000 is for a grant to the National Academy of Public Administration to study impacts of off-shoring on the economy and workforce of the United States.

BUREAU OF THE CENSUS

SALARIES AND EXPENSES

For expenses necessary for collecting, compiling, analyzing, preparing, and publishing statistics, provided for by law, \$198,765,000.

PERIODIC CENSUSES AND PROGRAMS

For necessary expenses related to the 2010 decennial census, \$393,515,000, to remain available until September 30, 2006: *Provided*, That of the total amount available related to the 2010 decennial census, \$165,196,000 is for the Re-engineered Design Process for the Short-Form Only Census, \$146,009,000 is for the American Community Survey, and \$82,310,000 is for the Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) system.

Reports. In addition, for expenses to collect and publish statistics for other periodic censuses and programs provided for by law, \$162,601,000, to remain available until September 30, 2006, of which \$73,473,000 is for economic statistics programs and \$89,128,000 is for demographic statistics programs: *Provided*, That regarding construction of a facility at the Suitland Federal Center, quarterly reports regarding the expenditure of funds and project planning, design and cost decisions shall be provided by the Bureau, in cooperation with the General Services Administration, to the Committees on Appropriations of the Senate and the House of Representatives: *Provided further*, That none of the funds provided in this or any other Act under the heading “Bureau of the Census, Periodic Censuses and Programs” shall be used to fund the construction and tenant build-out costs of a facility at the Suitland Federal Center: *Provided further*, That none of the funds provided in this or any other Act for any fiscal year may be used for the collection of Census data on race identification that does not include “some other race” as a category.

13 USC 5 note.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, as provided for by law, of the National Telecommunications and Information Administration (NTIA), \$17,433,000, to remain available until September 30, 2006: *Provided*, That, notwithstanding 31 U.S.C. 1535(d), the Secretary of Commerce shall charge Federal agencies for costs incurred in spectrum management, analysis, and operations, and related services and such fees shall be retained and used as offsetting collections for costs of such spectrum services, to remain available until expended: *Provided further*, That the Secretary of Commerce is authorized to retain and use as offsetting collections all funds transferred, or previously transferred, from other Government agencies for all costs incurred in telecommunications research,

engineering, and related activities by the Institute for Telecommunication Sciences of NTIA, in furtherance of its assigned functions under this paragraph, and such funds received from other Government agencies shall remain available until expended.

PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND
CONSTRUCTION

For the administration of grants authorized by section 392 of the Communications Act of 1934, \$21,769,000, to remain available until expended as authorized by section 391 of the Act: *Provided*, That not to exceed \$2,000,000 shall be available for program administration as authorized by section 391 of the Act: *Provided further*, That, notwithstanding the provisions of section 391 of the Act, the prior year unobligated balances may be made available for grants for projects for which applications have been submitted and approved during any fiscal year.

INFORMATION INFRASTRUCTURE GRANTS

For the administration of prior year grants, recoveries and unobligated balances of funds previously appropriated for grants are available only for the administration of all open grants until their expiration.

UNITED STATES PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

For necessary expenses of the United States Patent and Trademark Office provided for by law, including defense of suits instituted against the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, \$1,336,000,000, to remain available until expended, which shall be derived from offsetting collections assessed and collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41 and 376, and shall be retained and used for necessary expenses: *Provided*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2005, so as to result in a fiscal year 2005 appropriation from the general fund estimated at \$0: *Provided further*, That during fiscal year 2005, should the total amount of offsetting fee collections be less than \$1,356,000,000, this amount shall be reduced accordingly: *Provided further*, That not less than 526 full-time equivalents, 530 positions and \$72,899,000 shall be for the examination of trademark applications; and not less than 5,057 full-time equivalents, 5,139 positions and \$759,021,000 shall be for the examination and searching of patent applications: *Provided further*, That not more than 244 full-time equivalents, 251 positions and \$31,906,000 shall be for the Office of the General Counsel: *Provided further*, That of amounts made available under this heading, \$20,000,000 shall only be available for initiatives to protect United States intellectual property overseas: *Provided further*, That from amounts provided herein, not to exceed \$1,000 shall be made available in fiscal year 2005 for official reception and representation expenses: *Provided further*, That notwithstanding section 1353 of title 31, United States Code, no employee of the United States Patent and Trademark Office may accept payment or reimbursement from a non-Federal

entity for travel, subsistence, or related expenses for the purpose of enabling an employee to attend and participate in a convention, conference, or meeting when the entity offering payment or reimbursement is a person or corporation subject to regulation by the Office, or represents a person or corporation subject to regulation by the Office, unless the person or corporation is an organization exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986.

In addition, fees authorized by title VIII of this Act may be collected and credited to this account as offsetting collections: *Provided*, That not to exceed \$218,754,000 derived from such offsetting collections shall be available until expended for authorized purposes: *Provided further*, That not less than 58 full-time equivalents, 72 positions and \$5,551,000 shall be for the examination of trademark applications; and not less than 378 full-time equivalents, 709 positions and \$106,986,000 shall be for the examination and searching of patent applications: *Provided further*, That not more than 20 full-time equivalents, 20 positions and \$4,955,000 shall be for the Office of the General Counsel: *Provided further*, That the total amount appropriated from fees collected in fiscal year 2005, including such increased fees, shall not exceed \$1,574,754,000: *Provided further*, That in fiscal year 2005, from the amounts made available for “Salaries and Expenses” for the United States Patent and Trademark Office (PTO), the amounts necessary to pay: (1) the difference between the percentage of basic pay contributed by the PTO and employees under section 8334(a) of title 5, United States Code, and the normal cost percentage (as defined by section 8331(17) of that title) of basic pay, of employees subject to subchapter III of chapter 83 of that title; and (2) the present value of the otherwise unfunded accruing costs, as determined by the Office of Personnel Management, of post-retirement life insurance and post-retirement health benefits coverage for all PTO employees, shall be transferred to the Civil Service Retirement and Disability Fund, the Employees Life Insurance Fund, and the Employees Health Benefits Fund, as appropriate, and shall be available for the authorized purposes of those accounts.

SCIENCE AND TECHNOLOGY

TECHNOLOGY ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Under Secretary for Technology Office of Technology Policy, \$6,547,000: *Provided*, That section 8(a) of the Technology Administration Act of 1998 (15 U.S.C. 1511e(a)) is amended by striking “Technology Administration of” after “within the”: *Provided further*, That \$200,000 is for the World Congress on Information Technology.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the National Institute of Standards and Technology, \$383,892,000, to remain available until expended, of which not to exceed \$2,900,000 may be transferred to the “Working Capital Fund”.

INDUSTRIAL TECHNOLOGY SERVICES

For necessary expenses of the Manufacturing Extension Partnership of the National Institute of Standards and Technology, \$109,000,000, to remain available until expended: *Provided*, That the Secretary of Commerce shall not recompetite any existing Manufacturing Extension Partnership Center prior to 2007: *Provided further*, That hereafter the Manufacturing Extension Partnership Program authorized under 15 U.S.C. 278k shall be renamed the Hollings Manufacturing Partnership Program and the centers established and receiving funding under 15 U.S.C. 278k paragraph (a) shall be named the Hollings Manufacturing Extension Centers.

15 USC 278k
note.

In addition, for necessary expenses of the Advanced Technology Program of the National Institute of Standards and Technology, \$142,300,000, to remain available until expended.

CONSTRUCTION OF RESEARCH FACILITIES

For construction of new research facilities, including architectural and engineering design, and for renovation and maintenance of existing facilities, not otherwise provided for the National Institute of Standards and Technology, as authorized by 15 U.S.C. 278c–278e, \$73,500,000, to remain available until expended.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration, including maintenance, operation, and hire of aircraft and vessels; grants, contracts, or other payments to nonprofit organizations for the purposes of conducting activities pursuant to cooperative agreements; and relocation of facilities, \$2,804,065,000, to remain available until September 30, 2006, except for funds provided for cooperative enforcement which shall remain available until September 30, 2007: *Provided*, That fees and donations received by the National Ocean Service for the management of national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302: *Provided further*, That in addition, \$3,000,000 shall be derived by transfer from the fund entitled “Coastal Zone Management” and in addition \$65,000,000 shall be derived by transfer from the fund entitled “Promote and Develop Fishery Products and Research Pertaining to American Fisheries”: *Provided further*, That of the \$2,872,065,000 provided for in direct obligations under this heading \$2,804,065,000 is appropriated from the General Fund: *Provided further*, That no general administrative charge shall be applied against an assigned activity included in this Act or the report accompanying this Act except for additional costs above the fiscal year 2004 level of \$2,600,000 for automating and modernizing the NOAA grant processing systems up to a total of \$5,000,000: *Provided further*, That the total amount available for the National Oceanic and Atmospheric Administration corporate services administrative support costs shall not exceed \$171,530,000: *Provided further*, That

payments of funds made available under this heading to the Department of Commerce Working Capital Fund including Department of Commerce General Counsel legal services shall not exceed \$39,500,000: *Provided further*, That any deviation from the amounts designated for specific activities in the report accompanying this Act shall be subject to the procedures set forth in section 605 of this Act: *Provided further*, That grants to States pursuant to sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, shall not exceed \$2,000,000, unless funds provided for “Coastal Zone Management Grants” exceed funds provided in the previous fiscal year: *Provided further*, That if funds provided for “Coastal Zone Management Grants” exceed funds provided in the previous fiscal year, then no State shall receive more than 5 percent or less than 1 percent of the additional funds: *Provided further*, That none of the funds under this heading are available to alter the existing structure, organization, function, and funding of the National Marine Fisheries Service Southwest Region and Fisheries Science Center and Northwest Region and Fisheries Science Center: *Provided further*, That notwithstanding any other provision of law, \$600,000 shall be available only for the National Oceanic and Atmospheric Administration Office of Space Commercialization: *Provided further*, That the personnel management demonstration project established at the National Oceanic and Atmospheric Administration pursuant to 5 U.S.C. 4703 may be expanded by 3,500 full-time positions to include up to 6,925 full-time positions and may be extended indefinitely: *Provided further*, That the Administrator of the National Oceanic and Atmospheric Administration may engage in formal and informal education activities, including primary and secondary education, related to the agency’s mission goals.

In addition, for necessary retired pay expenses under the Retired Serviceman’s Family Protection and Survivor Benefits Plan, and for payments for the medical care of retired personnel and their dependents under the Dependents Medical Care Act (10 U.S.C. ch. 55), such sums as may be necessary.

PROCUREMENT, ACQUISITION AND CONSTRUCTION

For procurement, acquisition and construction of capital assets, including alteration and modification costs, of the National Oceanic and Atmospheric Administration, \$1,053,436,000 to remain available until September 30, 2007, except funds provided for construction of facilities which shall remain available until September 30, 2009, and funds provided for the Honolulu Laboratory and the Marine Environmental Health Research Laboratory which shall remain available until expended: *Provided*, That of the amounts provided for the National Polar-orbiting Operational Environmental Satellite System, funds shall only be made available on a dollar for dollar matching basis with funds provided for the same purpose by the Department of Defense: *Provided further*, That except to the extent expressly prohibited by any other law, the Department of Defense may delegate procurement functions related to the National Polar-orbiting Operational Environmental Satellite System to officials of the Department of Commerce pursuant to section 2311 of title 10, United States Code: *Provided further*, That any deviation from the amounts designated for specific activities in the report accompanying this Act shall be subject to the procedures set forth in section 605 of this Act: *Provided further*, That none

of the funds provided in this Act or any other Act under the heading “National Oceanic and Atmospheric Administration, Procurement, Acquisition and Construction” shall be used to fund the General Services Administration’s standard construction and tenant build-out costs of a facility at the Suitland Federal Center: *Provided further*, That beginning in fiscal year 2006 and for each fiscal year thereafter, the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31, 10 United States Code) an estimate for each National Oceanic and Atmospheric Administration procurement, acquisition and construction program having a total multiyear program cost of more than \$5,000,000 and simultaneously the budget justification materials shall include an estimate of the budgetary requirements for each such program for each of the 5 subsequent fiscal years. 15 USC 1513a.

PACIFIC COASTAL SALMON RECOVERY

For necessary expenses associated with the restoration of Pacific salmon populations, \$90,000,000: *Provided*, That section 628(2)(A) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (16 U.S.C. 3645) is amended—

- (1) by striking “2000, 2001, 2002, and 2003” and inserting “2005”, and
- (2) by inserting “Idaho,” after “Oregon,”.

COASTAL ZONE MANAGEMENT FUND

Of amounts collected pursuant to section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a), not to exceed \$3,000,000 shall be transferred to the “Operations, Research, and Facilities” account to offset the costs of implementing such Act.

FISHERMEN’S CONTINGENCY FUND

For carrying out the provisions of title IV of Public Law 95–372, not to exceed \$499,000, to be derived from receipts collected pursuant to that Act, to remain available until expended.

FISHERIES FINANCE PROGRAM ACCOUNT

For the costs of direct loans, \$287,000, as authorized by the Merchant Marine Act of 1936: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in the Federal Credit Reform Act of 1990: *Provided further*, That these funds are only available to subsidize gross obligations for the principal amount of direct loans not to exceed \$5,000,000 for Individual Fishing Quota loans, and not to exceed \$59,000,000 for traditional direct loans, of which \$40,000,000 may be used for direct loans to the United States distant water tuna fleet, and of which \$19,000,000 may be used for direct loans to the United States menhaden fishery: *Provided further*, That none of the funds made available under this heading may be used for direct loans for any new fishing vessel that will increase the harvesting capacity in any United States fishery.

OTHER

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For expenses necessary for the departmental management of the Department of Commerce provided for by law, including not to exceed \$5,000 for official entertainment, \$48,109,000: *Provided*, That not to exceed 12 full-time equivalents and \$1,621,000 shall be expended for the legislative affairs function of the Department.

UNITED STATES TRAVEL AND TOURISM PROMOTION

For necessary expenses of the United States Travel and Tourism Promotion Program, as authorized by section 210 of Public Law 108-7, for programs promoting travel to the United States including grants, contracts, cooperative agreements and related costs, \$10,000,000, to remain available until September 30, 2006.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.), \$21,660,000.

GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

SEC. 201. During the current fiscal year, applicable appropriations and funds made available to the Department of Commerce by this Act shall be available for the activities specified in the Act of October 26, 1949 (15 U.S.C. 1514), to the extent and in the manner prescribed by the Act, and, notwithstanding 31 U.S.C. 3324, may be used for advanced payments not otherwise authorized only upon the certification of officials designated by the Secretary of Commerce that such payments are in the public interest.

SEC. 202. During the current fiscal year, appropriations made available to the Department of Commerce by this Act for salaries and expenses shall be available for hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; services as authorized by 5 U.S.C. 3109; and uniforms or allowances therefore, as authorized by law (5 U.S.C. 5901–5902).

SEC. 203. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section: *Provided further*, That the Secretary of Commerce shall notify the Committees on Appropriations at least 15 days in advance of the acquisition or disposal of any capital asset (including land, structures, and equipment) not specifically provided for in this or any other Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act.

SEC. 204. Any costs incurred by a department or agency funded under this title resulting from personnel actions taken in response to funding reductions included in this title or from actions taken

Notification.
Deadline.

for the care and protection of loan collateral or grant property shall be absorbed within the total budgetary resources available to such department or agency: *Provided*, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: *Provided further*, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 205. Hereafter, none of the funds made available by this or any other Act for the Department of Commerce shall be available to reimburse the Unemployment Trust Fund or any other fund or account of the Treasury to pay for any expenses authorized by section 8501 of title 5, United States Code, for services performed by individuals appointed to temporary positions within the Bureau of the Census for purposes relating to the decennial censuses of population.

13 USC 23 note.

SEC. 206. Of the amount available from the fund entitled “Promote and Develop Fishery Products and Research Pertaining to American Fisheries”, \$10,000,000 shall be provided to the Alaska Fisheries Marketing Board, \$1,000,000 shall be available for the “Wild American Shrimp Initiative”, and \$1,000,000 shall be available for the Gulf Oyster Industry Education Program: *Provided*, That: (1) the Alaska Fisheries Marketing Board (hereinafter “the Board”) shall be a nonprofit organization and not an agency or establishment of the United States; (2) the Secretary may appoint, assign, or otherwise designate as Executive Director an employee of the Department of Commerce, who may serve in an official capacity in such position, with or without reimbursement, and such appointment or assignment shall be without interruption or loss of civil service status or privilege; and (3) the Board may adopt bylaws consistent with the purposes of this section, and may undertake other acts necessary to carry out the provisions of this section.

SEC. 207. (a) Hereafter, the Secretary of Commerce is authorized to operate a marine laboratory in South Carolina in accordance with a memorandum of agreement, including any future amendments, among the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, the State of South Carolina, the Medical University of South Carolina, and the College of Charleston as a partnership for collaborative, interdisciplinary marine scientific research.

South Carolina.
Laboratories.
Research and
development.

(b) To carry out subsection (a), the agencies that are partners in the Laboratory may accept, apply for, use, and spend Federal, State, private and grant funds as necessary to further the mission of the Laboratory without regard to the source or of the period of availability of these funds and may apply for and hold patents, as well as share personnel, facilities, and property. Any funds collected or accepted by any partner may be used to offset all or portions of its costs, including overhead, without regard to 31 U.S.C. 143302(b); to reimburse other participating agencies for all or portions of their costs; and to fund research and facilities expansion. Funds for management and operation of the Laboratory may be used to sustain basic laboratory operations for all participating entities. The Secretary of Commerce is authorized to charge fees and enter into contracts, grants, cooperative agreements and other

arrangements with Federal, State, private entities, and other entities, domestic and foreign, to further the mission of the Laboratory. Any funds collected from such fees or arrangements shall be used to support cooperative research, basic operations, and facilities enhancement at the Laboratory.

SEC. 208. Funds made available for salaries and administrative expenses to administer the Emergency Steel Loan Guarantee Program in section 211(b) of Public Law 108–199 shall remain available until expended.

Alaska.
Salmon.

SEC. 209. A fishing capacity reduction program for the Southeast Alaska purse seine fishery is authorized to be financed through a capacity reduction loan of \$50,000,000 pursuant to sections 1111 and 1112 of title XI of the Merchant Marine Act of 1936 (46 U.S.C. App. 1279f and 1279g) subject to the conditions of this section. In accordance with the Federal Credit Reform Act of 1990, 2 U.S.C. 661 et seq., \$500,000 is made available from funds appropriated for “Pacific Coastal Salmon Recovery” in this Act for the cost of the loan authorized by this section. The loan shall have a term of 30 years, except that the amount to be repaid in any 1 year shall not exceed 2 percent of the total value of salmon landed in the fishery and such repayment shall begin with salmon landed after January 1, 2006.

15 USC 1128.

SEC. 210. Section 653(a) of Public Law 106–58 is amended by inserting the following: “(7) The Coordinator for International Intellectual Property Enforcement.” after “Under Secretary of Commerce for International Trade.”.

Contracts.

SEC. 211. Notwithstanding any other provision of law, of the amounts made available elsewhere in this title to the “National Institute of Standards and Technology, Construction of Research Facilities”, \$20,000,000 is for a cooperative agreement with the Medical University of South Carolina; \$10,000,000 is for the Cancer Research Center in Hawaii; \$4,000,000 is for the Thayer School of Engineering, of which \$1,000,000 is for a biomass energy research project, \$2,000,000 is for a smart laser beam project, and \$1,000,000 is for research relating to biomaterials; \$1,000,000 is for civic education programs at the New Hampshire Institute of Politics; \$1,500,000 is for the Franklin Pierce Community Center; \$2,000,000 is for the Southern New Hampshire University School of Community Economic Development; and \$5,000,000 is for the Boston Museum of Science.

16 USC 1165
note.

SEC. 212. Section 3(f) of Public Law 104–91 is amended by striking “and 2005” and inserting “2005, 2006, and 2007”.

Hawaii.
16 USC 1379
note.

SEC. 213. Hereafter, notwithstanding any other Federal law related to the conservation and management of marine mammals, the State of Hawaii may enforce any State law or regulation with respect to the operation in State waters of recreational and commercial vessels, for the purpose of conservation and management of humpback whales, to the extent that such law or regulation is no less restrictive than Federal law.

15 USC 1542.

SEC. 214. ESTABLISHMENT OF THE ERNEST F. HOLLINGS SCHOLARSHIP PROGRAM. (a) ESTABLISHMENT.—The Administrator of the National Oceanic and Atmospheric Administration shall establish and administer the Ernest F. Hollings Scholarship Program. Under the program, the Administrator shall award scholarships in oceanic and atmospheric science, research, technology, and education to be known as Ernest F. Hollings Scholarships.

(b) **PURPOSES.**—The purposes of the Ernest F. Hollings Scholarships Program are—

(1) to increase undergraduate training in oceanic and atmospheric science, research, technology, and education and foster multidisciplinary training opportunities;

(2) to increase public understanding and support for stewardship of the ocean and atmosphere and improve environmental literacy;

(3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, State and Local levels of government; and

(4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric science and to improve scientific and environmental education in the United States.

(c) **AWARD.**—Each Ernest F. Hollings Scholarship—

(1) shall be used to support undergraduate studies in oceanic and atmospheric science, research, technology, and education that support the purposes of the programs and missions of the National Oceanic and Atmospheric Administration;

(2) shall recognize outstanding scholarship and ability;

(3) shall promote participation by groups underrepresented in oceanic and atmospheric science and technology; and

(4) shall be awarded competitively in accordance with guidelines issued by the Administrator and published in the Federal Register.

(d) **ELIGIBILITY.**—In order to be eligible to participate in the program, an individual must—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965) in an academic field or discipline described in subsection (c);

(2) be a United States citizen;

(3) not have received a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver; and

(4) submit an application at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

(e) **DISTRIBUTION OF FUNDS.**—The amount of each Ernest F. Hollings Scholarship shall be provided directly to a recipient selected by the Administrator upon receipt of certification that the recipient will adhere to a specific and detailed plan of study and research approved by an institution of higher education.

(f) **FUNDING.**—Of the total amount appropriated for fiscal year 2005 and annually hereafter to the National Oceanic and Atmospheric Administration, the Administrator shall make available for the Ernest F. Hollings Scholarship program one-tenth of 1 percent of such appropriations.

(g) **SCHOLARSHIP REPAYMENT REQUIREMENT.**—The Administrator shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the National Oceanic and Atmospheric Administration if the Administrator determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship. Such repayments shall

be deposited in the NOAA Operations, Research, and Facilities Appropriations Account and treated as an offsetting collection and only be available for financing additional scholarships.

116 Stat. 3102.

SEC. 215. Section 402(f) of Public Law 107-372 is amended—

(1) in paragraph (1), by striking “All right” and inserting “For the period ending April 3, 2008, all right”; and

(2) in paragraph (3), by inserting “for the period ending April 3, 2008” after “and annually thereafter”.

SEC. 216. Of the amounts made available under this heading for the National Oceanic and Atmospheric Administration, the Secretary of Commerce shall pay by March 1, 2005, \$5,000,000 to the National Marine Sanctuaries Foundation to capitalize a fund for ocean activities.

SEC. 217. Any funding provided under this title used to implement the Department of Commerce’s E-Government Initiatives shall be subject to the procedures set forth in section 605 of this Act.

SEC. 218. A fishing capacity reduction program for the Federal Gulf of Mexico Reef Fish Fishery Management Plan principally intended for commercial long line vessels is authorized to be financed through a capacity reduction loan of \$35,000,000 pursuant to sections 1111 and 1112 of title XI of the Merchant Marine Act of 1936 (46 U.S.C. App. 1279f and 1279g) subject to the conditions of this section. In accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), \$350,000 is hereby appropriated for the subsidy cost of the loan authorized under this section and shall remain available until expended. The Secretary of Commerce, working in close coordination with active fishery participants, is hereby authorized to design and implement a comprehensive voluntary capacity reduction program using the loan authorized under this section. The Secretary shall set the loan term at 35 years and repayment shall begin within 1 year of final implementation of the program. In addition to the authority of the Gulf of Mexico Regional Fishery Management Council to develop and recommend conservation and management measures for the Gulf of Mexico reef fish fishery, the Secretary of Commerce is authorized to develop and implement a limited access program pursuant to the standards set forth in section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(b)(6)).

Loans.
Fisheries.
Deadline.

SEC. 219. (a) DEFINITIONS.—In this section:

(1) AFA TRAWL CATCHER PROCESSOR SUBSECTOR.—The term “AFA trawl catcher processor subsector” means the owners of each catcher/processor listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (16 U.S.C. 1851 note).

(2) BSAI.—The term “BSAI” has the meaning given the term “Bering Sea and Aleutian Islands Management Area” in section 679.2 of title 50, Code of Federal Regulations (or successor regulation).

(3) CATCHER PROCESSOR SUBSECTOR.—The term “catcher processor subsector” means, as appropriate, one of the following:

(A) The longline catcher processor subsector.

(B) The AFA trawl catcher processor subsector.

(C) The non-AFA trawl catcher processor subsector.

(D) The pot catcher processor subsector.

(4) COUNCIL.—The term “Council” means the North Pacific Fishery Management Council established in section 302(a)(1)(G)

of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(G)).

(5) **LLP LICENSE.**—The term “LLP license” means a Federal License Limitation program groundfish license issued pursuant to section 679.4(k) of title 50, Code of Federal Regulations (or successor regulation).

(6) **LONGLINE CATCHER PROCESSOR SUBSECTOR.**—The term “longline catcher processor subsector” means the holders of an LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod, and hook and line gear.

(7) **NON-AFA TRAWL CATCHER PROCESSOR SUBSECTOR.**—The term “non-AFA trawl catcher processor subsector” means the owner of each trawl catcher processor—

(A) that is not an AFA trawl catcher processor;

(B) to whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and

(C) that the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock groundfish during the period January 1, 1997 through December 31, 2002.

(8) **NON-POLLOCK GROUND FISH FISHERY.**—The term “non-pollock groundfish fishery” means target species of Atka mackerel, flathead sole, Pacific cod, Pacific Ocean perch, rock sole, turbot, or yellowfin sole harvested in the BSAI.

(9) **POT CATCHER PROCESSOR SUBSECTOR.**—The term “pot catcher processor subsector” means the holders of an LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod, and pot gear.

(10) **SECRETARY.**—Except as otherwise provided in this Act, the term “Secretary” means the Secretary of Commerce.

(b) **AUTHORITY FOR BSAI CATCHER PROCESSOR CAPACITY REDUCTION PROGRAM.**—

(1) **IN GENERAL.**—A fishing capacity reduction program for the non-pollock groundfish fishery in the BSAI is authorized to be financed through a capacity reduction loan of not more than \$75,000,000 under sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g).

(2) **RELATIONSHIP TO MERCHANT MARINE ACT, 1936.**—The fishing capacity reduction program authorized by paragraph (1) shall be a program for the purposes of subsection (e) of section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f), except, notwithstanding subsection (b)(4) of such section, the capacity reduction loan authorized by paragraph (1) may have a maturity not to exceed 30 years.

(c) **AVAILABILITY OF CAPACITY REDUCTION FUNDS TO CATCHER PROCESSOR SUBSECTORS.**—

(1) **IN GENERAL.**—The Secretary shall make available the amounts of the capacity reduction loan authorized by subsection (b)(1) to each catcher processor subsector as described in this subsection.

(2) INITIAL AVAILABILITY OF FUNDS.—The Secretary shall make available the amounts of the capacity reduction loan authorized by subsection (b)(1) as follows:

(A) Not more than \$36,000,000 for the longline catcher processor subsector.

(B) Not more than \$6,000,000 for the AFA trawl catcher processor subsector.

(C) Not more than \$31,000,000 for the non-AFA trawl catcher processor subsector.

(D) Not more than \$2,000,000 for the pot catcher processor subsector.

(3) OTHER AVAILABILITY OF FUNDS.—After January 1, 2009, the Secretary may make available for fishing capacity reduction to one or more of the catcher processor subsectors any amounts of the capacity reduction loan authorized by subsection (b)(1) that have not been expended by that date.

(d) BINDING REDUCTION CONTRACTS.—

(1) REQUIREMENT FOR CONTRACTS.—The Secretary may not provide funds to a person under the fishing capacity reduction program authorized by subsection (b) if such person does not enter into a binding reduction contract between the United States and such person, the performance of which may only be subject to the approval of an appropriate capacity reduction plan under subsection (e).

(2) REQUIREMENT TO REVOKE LICENSES.—The Secretary shall revoke all Federal fishery licenses, fishery permits, and area and species endorsements issued for a vessel, or any vessel named on an LLP license purchased through the fishing capacity reduction program authorized by subsection (b).

(e) DEVELOPMENT, APPROVAL, AND NOTIFICATION OF CAPACITY REDUCTION PLANS.—

(1) DEVELOPMENT.—Each catcher processor subsector may, after notice to the Council, submit to the Secretary a capacity reduction plan for the appropriate subsector to promote sustainable fisheries management through the removal of excess harvesting capacity from the non-pollock groundfish fishery.

(2) APPROVAL BY THE SECRETARY.—The Secretary is authorized to approve a capacity reduction plan submitted under paragraph (1) if such plan—

(A) is consistent with the requirements of section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)) except—

(i) the requirement that a Council or Governor of a State request such a program set out in paragraph (1) of such subsection; and

(ii) the requirements of paragraph (4) of such subsection;

(B) contains provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by a catcher processor subsector and that may provide for the assessment of such fees based on methods other than ex-vessel value of fish harvested;

(C) does not require a bidding or auction process;

(D) will result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

(E) permits vessels in the catcher processor subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(3) APPROVAL BY REFERENDUM.—

(A) IN GENERAL.—Following approval by the Secretary under paragraph (2), the Secretary shall conduct a referendum for approval of a capacity reduction plan for the appropriate catcher processor subsector. The capacity reduction plan and fee system shall be approved if the referendum votes which are cast in favor of the proposed system by the appropriate catcher processor subsector are—

(i) 100 percent of the members of the AFA trawl catcher processor subsector; or

(ii) not less than $\frac{2}{3}$ of the members of—

(I) the longline catcher processor subsector;

(II) the non-AFA trawl catcher processor subsector; or

(III) the pot catcher processor subsector.

(B) NOTIFICATION PRIOR TO REFERENDUM.—Prior to conducting a referendum under subparagraph (A) for a capacity reduction plan, the Secretary shall—

(i) identify, to the extent practicable, and notify the catcher processor subsector that will be affected by such plan; and

(ii) make available to such subsector information about any industry fee system contained in such plan, a description of the schedule, procedures, and eligibility requirements for the referendum, the proposed program, the estimated capacity reduction, the amount and duration, and any other terms and conditions of the fee system proposed in such plan.

(4) IMPLEMENTATION.—

(A) NOTICE OF IMPLEMENTATION.—Not later than 90 days after a capacity reduction plan is approved by a referendum under paragraph (3), the Secretary shall publish a notice in the Federal Register that includes the exact terms and conditions under which the Secretary shall implement the fishing capacity reduction program authorized by subsection (b).

Deadline.
Federal Register,
publication.

(B) INAPPLICABILITY OF IMPLEMENTATION PROVISION OF MAGNUSON.—Section 312(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(e)) shall not apply to a capacity reduction plan approved under this subsection.

(5) AUTHORITY TO COLLECT FEES.—The Secretary is authorized to collect fees to fund a fishing capacity reduction program and to repay debt obligations incurred pursuant to a plan approved under paragraph (3)(A).

(f) ACTION BY OTHER ENTITIES.—Upon the request of the Secretary, the Secretary of the Department in which the National Vessel Documentation Center operates or the Secretary of the Department in which the Maritime Administration operates, as appropriate, shall, with respect to any vessel or any vessel named on an LLP license purchased through the fishing capacity reduction program authorized by subsection (b)—

(1)(A) permanently revoke any fishery endorsement issued to the vessel under section 12108 of title 46, United States Code;

(B) refuse to grant the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for the placement of the vessel under foreign registry or the operation of the vessel under the authority of a foreign country; and

(C) require that the vessel operate under United States flag and remain under Federal documentation; or

(2) require that the vessel be scrapped as a reduction vessel under section 600.1011(c) of title 50, Code of Federal Regulations.

(g) NON-POLLOCK GROUND FISH FISHERY.—

(1) PARTICIPATION IN THE FISHERY.—Only a member of a catcher processor subsector may participate in—

(A) the catcher processor sector of the BSAI non-pollock groundfish fishery; or

(B) the fishing capacity reduction program authorized by subsection (b).

(2) PLANS FOR THE FISHERY.—It is the sense of Congress that—

(A) the Council should continue on its path toward rationalization of the BSAI non-pollock groundfish fisheries, complete its ongoing work with respect to developing management plans for the BSAI non-pollock groundfish fisheries in a timely manner, and take actions that promote stability of these fisheries consistent with the goals of this section and the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act; and

(B) such plans should not penalize members of any catcher processor subsector for achieving capacity reduction under this Act or any other provision of law.

(h) REPORTS.—

(1) REQUIREMENT.—The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives 5 reports on the fishing capacity reduction program authorized by subsection (b).

(2) CONTENT.—Each report shall contain the following:

(A) A description of the fishing capacity reduction program carried out under the authority in subsection (b).

(B) An evaluation of the cost and cost-effectiveness of such program.

(C) An evaluation of the effectiveness of such program in achieving the objective set out in section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)).

(3) SCHEDULE.—

(A) INITIAL REPORT.—The Secretary shall submit the first report under paragraph (1) not later than 90 days after the date that the first referendum referred to in subsection (e)(3) is held.

(B) SUBSEQUENT REPORTS.—During each of the 4 years after the year in which the report is submitted under subparagraph (A), the Secretary shall submit to Congress an annual report as described in this subsection.

(i) CONFORMING AMENDMENT.—Section 214 of the Department of Commerce and Related Agencies Appropriations Act, 2004 (title II of division B of Public Law 108–199; 118 Stat. 75) is amended by striking “that—” and all that follows, and inserting “under the capacity reduction program authorized in section 219 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005.”.

SEC. 220. None of the funds appropriated in this Act or any other Act may be used to disqualify any community which was a participant in the Bering Sea Community Development Quota program on January 1, 2004, from continuing to receive quota allocations under that program.

SEC. 221. In addition to amounts made available under section 214 of the Department of Commerce and Related Agencies Appropriations Act, 2004 (title II of division B of Public Law 108–199; 118 Stat. 75), of the funding provided in this Act under the heading “NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, OPERATIONS, RESEARCH, AND FACILITIES”, \$250,000, to remain available until expended, for the Federal Credit Reform Act cost of a reduction loan under sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g), not to exceed an additional \$25,000,000 in principal, for the capacity reduction program authorized in section 219.

This title may be cited as the “Department of Commerce and Related Agencies Appropriations Act, 2005”.

TITLE III—THE JUDICIARY

Judiciary
Appropriations
Act, 2005.

SUPREME COURT OF THE UNITED STATES

SALARIES AND EXPENSES

For expenses necessary for the operation of the Supreme Court, as required by law, excluding care of the building and grounds, including purchase or hire, driving, maintenance, and operation of an automobile for the Chief Justice, not to exceed \$10,000 for the purpose of transporting Associate Justices, and hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; not to exceed \$10,000 for official reception and representation expenses; and for miscellaneous expenses, to be expended as the Chief Justice may approve, \$58,122,000.

CARE OF THE BUILDING AND GROUNDS

For such expenditures as may be necessary to enable the Architect of the Capitol to carry out the duties imposed upon the Architect by the Act approved May 7, 1934 (40 U.S.C. 13a–13b), \$9,979,000, which shall remain available until expended.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SALARIES AND EXPENSES

For salaries of the chief judge, judges, and other officers and employees, and for necessary expenses of the court, as authorized by law, \$21,780,000.

UNITED STATES COURT OF INTERNATIONAL TRADE

SALARIES AND EXPENSES

For salaries of the chief judge and eight judges, salaries of the officers and employees of the court, services, and necessary expenses of the court, as authorized by law, \$14,888,000.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the United States Court of Federal Claims, bankruptcy judges, magistrate judges, and all other officers and employees of the Federal Judiciary not otherwise specifically provided for, and necessary expenses of the courts, as authorized by law, \$4,177,244,000 (including the purchase of firearms and ammunition); of which not to exceed \$27,817,000 shall remain available until expended for space alteration projects and for furniture and furnishings related to new space alteration and construction projects; of which not to exceed \$2,800,000 shall be available for a national probation and pretrial services training program; of which \$1,300,000 of the funds provided for the Judiciary Information Technology Fund will be for the Edwin L. Nelson Local Initiatives Program, within which \$1,000,000 will be reserved for local court grants.

In addition, for expenses of the United States Court of Federal Claims associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed \$3,298,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

DEFENDER SERVICES

For the operation of Federal Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964; the compensation and reimbursement of expenses of persons furnishing investigative, expert and other services under the Criminal Justice Act of 1964 (18 U.S.C. 3006A(e)); the compensation (in accordance with Criminal Justice Act maximums) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of travel expenses of guardians ad litem acting on behalf of financially eligible minor or incompetent offenders in connection with transfers from the United States to foreign countries with which the United States has a treaty for the execution of penal sentences; the compensation of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. 1875(d); and for necessary training and general administrative expenses, \$676,385,000, to remain available until expended.

FEES OF JURORS AND COMMISSIONERS

For fees and expenses of jurors as authorized by 28 U.S.C. 1871 and 1876; compensation of jury commissioners as authorized

by 28 U.S.C. 1863; and compensation of commissioners appointed in condemnation cases pursuant to rule 71A(h) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix Rule 71A(h)), \$61,535,000, to remain available until expended: *Provided*, That the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code.

COURT SECURITY

For necessary expenses, not otherwise provided for, incident to providing protective guard services for United States courthouses and other facilities housing Federal court operations, and the procurement, installation, and maintenance of security equipment for United States courthouses and other facilities housing Federal court operations, including building ingress-egress control, inspection of mail and packages, directed security patrols, perimeter security, basic security services provided by the Department of Homeland Security, and other similar activities as authorized by section 1010 of the Judicial Improvement and Access to Justice Act (Public Law 100–702), \$332,000,000, of which not to exceed \$10,000,000 shall remain available until expended, to be expended directly or transferred to the United States Marshals Service, which shall be responsible for administering the Judicial Facility Security Program consistent with standards or guidelines agreed to by the Director of the Administrative Office of the United States Courts and the Attorney General.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

SALARIES AND EXPENSES

For necessary expenses of the Administrative Office of the United States Courts as authorized by law, including travel as authorized by 31 U.S.C. 1345, hire of a passenger motor vehicle as authorized by 31 U.S.C. 1343(b), advertising and rent in the District of Columbia and elsewhere, \$68,200,000, of which not to exceed \$8,500 is authorized for official reception and representation expenses.

FEDERAL JUDICIAL CENTER

SALARIES AND EXPENSES

For necessary expenses of the Federal Judicial Center, as authorized by Public Law 90–219, \$21,737,000; of which \$1,800,000 shall remain available through September 30, 2006, to provide education and training to Federal court personnel; and of which not to exceed \$1,500 is authorized for official reception and representation expenses.

JUDICIAL RETIREMENT FUNDS

PAYMENT TO JUDICIARY TRUST FUNDS

For payment to the Judicial Officers' Retirement Fund, as authorized by 28 U.S.C. 377(o), \$32,000,000; to the Judicial Survivors' Annuities Fund, as authorized by 28 U.S.C. 376(c), \$2,000,000; and to the United States Court of Federal Claims

Judges' Retirement Fund, as authorized by 28 U.S.C. 178(l), \$2,700,000.

UNITED STATES SENTENCING COMMISSION

SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, \$13,304,000, of which not to exceed \$1,000 is authorized for official reception and representation expenses.

GENERAL PROVISIONS—THE JUDICIARY

SEC. 301. Appropriations and authorizations made in this title which are available for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

SEC. 302. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Judiciary in this Act may be transferred between such appropriations, but no such appropriation, except "Courts of Appeals, District Courts, and Other Judicial Services, Defender Services" and "Courts of Appeals, District Courts, and Other Judicial Services, Fees of Jurors and Commissioners", shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 303. Notwithstanding any other provision of law, the salaries and expenses appropriation for Courts of Appeals, District Courts, and Other Judicial Services shall be available for official reception and representation expenses of the Judicial Conference of the United States: *Provided*, That such available funds shall not exceed \$11,000 and shall be administered by the Director of the Administrative Office of the United States Courts in the capacity as Secretary of the Judicial Conference.

SEC. 304. (a) Section 3006A(d)(2) of title 18, United States Code, is amended—

(1) by striking "5,200" and inserting "7,000";

(2) by striking "1,500" and inserting "2,000";

(3) by striking "3,700" and inserting "5,000";

(4) by striking "1,200" each place it appears and inserting "1,500"; and

(5) by striking "3,900" and inserting "5,000".

(b) Section 3006A(e) of title 18, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking "300" and inserting "500"; and

(B) in subparagraph (B), by striking "300" and inserting "500"; and

(2) in paragraph (3) in the first sentence by striking "1,000" and inserting "1,600".

Deadline.
Financial plan.

SEC. 305. Within 90 days of enactment of this Act, the Administrative Office of the U.S. Courts shall submit to the Committees on Appropriations a comprehensive financial plan for the Judiciary allocating all sources of available funds including appropriations,

fee collections, and carryover balances, to include a separate and detailed plan for the Judiciary Information Technology fund.

SEC. 306. Pursuant to section 140 of Public Law 97–92, and from funds appropriated in this Act, Justices and judges of the United States are authorized during fiscal year 2005, to receive a salary adjustment in accordance with 28 U.S.C. 461. 28 USC 461 note.

SEC. 307. (a) Section 1914(a) of title 28, United States Code, is amended by striking “\$150” and inserting “\$250”.

(b) Section 1931(a) of title 28, United States Code, is amended—
(1) in subsection (a) by striking “\$90” and inserting “\$190”;
and

(2) in subsection (b)—

(A) by striking “\$150” and inserting “\$250”; and

(B) by striking “\$90” and inserting “\$190”.

(c) This section shall take effect 60 days after the date of the enactment of this Act.

Effective date.
28 USC 1914
note.
28 USC 331 note.

SEC. 308. For fiscal year 2005 and hereafter, such fees as shall be collected for the processing of violations through the Central Violations Bureau cases as prescribed by the Judicial Conference of the United States shall be deposited to the “Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses” appropriation to be used for salaries and other expenses.

This title may be cited as the “Judiciary Appropriations Act, 2005”.

TITLE IV—DEPARTMENT OF STATE AND RELATED AGENCY

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

Department of
State and
Related Agency
Appropriations
Act, 2005.

For necessary expenses of the Department of State and the Foreign Service not otherwise provided for, including employment, without regard to civil service and classification laws, of persons on a temporary basis (not to exceed \$700,000 of this appropriation), as authorized by section 801 of the United States Information and Educational Exchange Act of 1948; representation to certain international organizations in which the United States participates pursuant to treaties ratified pursuant to the advice and consent of the Senate or specific Acts of Congress; arms control, non-proliferation and disarmament activities as authorized; acquisition by exchange or purchase of passenger motor vehicles as authorized by law; and for expenses of general administration, \$3,570,000,000: *Provided*, That not to exceed 71 permanent positions shall be for the Bureau of Legislative Affairs: *Provided further*, That none of the funds made available under this heading may be used to transfer any full-time equivalent employees into or out of the Bureau of Legislative Affairs: *Provided further*, That, of the amount made available under this heading, not to exceed \$4,000,000 may be transferred to, and merged with, funds in the “Emergencies in the Diplomatic and Consular Service” appropriations account, to be available only for emergency evacuations and terrorism rewards: *Provided further*, That, of the amount made available under this heading, \$319,994,000 shall be available only for public diplomacy international information programs: *Provided further*, That of the amount made available under this heading, \$3,000,000

Deadline.
Notification.

Government
organization.
Deadline.

shall be available only for the operations of the Office on Right-Sizing the United States Government Overseas Presence: *Provided further*, That funds available under this heading may be available for a United States Government interagency task force to examine, coordinate and oversee United States participation in the United Nations headquarters renovation project: *Provided further*, That no funds may be obligated or expended for processing licenses for the export of satellites of United States origin (including commercial satellites and satellite components) to the People's Republic of China unless, at least 15 days in advance, the Committees on Appropriations of the House of Representatives and the Senate are notified of such proposed action: *Provided further*, That of the amount made available under this heading, \$185,128,000 is for Near Eastern Affairs, \$80,234,000 is for South Asian Affairs, and \$251,706,000 is for African Affairs: *Provided further*, That, of the amount made available under this heading, \$2,000,000 shall be available for a grant to conduct an international conference on the human rights situation in North Korea: *Provided further*, That of the amount made available under this heading, \$200,000 is for a grant to the Center for the Study of the Presidency and \$1,900,000 is for a grant to Shared Hope International to combat international sex tourism: *Provided further*, That the Intellectual Property Division shall be elevated to office-level status and shall be renamed the Office of International Intellectual Property Enforcement within 60 days of enactment of this Act.

In addition, not to exceed \$1,426,000 shall be derived from fees collected from other executive agencies for lease or use of facilities located at the International Center in accordance with section 4 of the International Center Act; in addition, as authorized by section 5 of such Act, \$490,000, to be derived from the reserve authorized by that section, to be used for the purposes set out in that section; in addition, as authorized by section 810 of the United States Information and Educational Exchange Act, not to exceed \$6,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from English teaching, library, motion pictures, and publication programs and from fees from educational advising and counseling and exchange visitor programs; and, in addition, not to exceed \$15,000, which shall be derived from reimbursements, surcharges, and fees for use of Blair House facilities.

In addition, for the costs of worldwide security upgrades, \$658,702,000, to remain available until expended: *Provided*, That of the amounts made available under this paragraph, \$5,000,000 is for the Center for Antiterrorism and Security Training.

8 USC 1714.

Beginning in fiscal year 2005 and thereafter, the Secretary of State is authorized to charge surcharges related to consular services in support of enhanced border security that are in addition to the passport and immigrant visa fees in effect on January 1, 2004: *Provided*, That funds collected pursuant to this authority shall be credited to this account, and shall be available until expended for the purposes of such account: *Provided further*, That such surcharges shall be \$12 on passport fees, and \$45 on immigrant visa fees.

CAPITAL INVESTMENT FUND

For necessary expenses of the Capital Investment Fund, \$52,149,000, to remain available until expended, as authorized:

Provided, That section 135(e) of Public Law 103–236 shall not apply to funds available under this heading.

CENTRALIZED INFORMATION TECHNOLOGY MODERNIZATION PROGRAM

For expenses relating to the modernization of the information technology systems and networks of the Department of State, \$77,851,000, to remain available until expended.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, \$30,435,000, notwithstanding section 209(a)(1) of the Foreign Service Act of 1980 (Public Law 96–465), as it relates to post inspections.

EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

For expenses of educational and cultural exchange programs, as authorized, \$360,750,000, to remain available until expended: *Provided*, That not to exceed \$2,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from or in connection with English teaching, educational advising and counseling programs, and exchange visitor programs as authorized.

REPRESENTATION ALLOWANCES

For representation allowances as authorized, \$8,640,000.

PROTECTION OF FOREIGN MISSIONS AND OFFICIALS

For expenses, not otherwise provided, to enable the Secretary of State to provide for extraordinary protective services, as authorized, \$9,894,000, to remain available until September 30, 2006.

EMBASSY SECURITY, CONSTRUCTION, AND MAINTENANCE

For necessary expenses for carrying out the Foreign Service Buildings Act of 1926 (22 U.S.C. 292–303), preserving, maintaining, repairing, and planning for buildings that are owned or directly leased by the Department of State, renovating, in addition to funds otherwise available, the Harry S Truman Building, and carrying out the Diplomatic Security Construction Program as authorized, \$611,680,000, to remain available until expended as authorized, of which not to exceed \$25,000 may be used for domestic and overseas representation as authorized: *Provided*, That none of the funds appropriated in this paragraph shall be available for acquisition of furniture, furnishings, or generators for other departments and agencies: *Provided further*, That the United States Embassy Annex building in Rome, Italy, previously known as the “INA Building”, shall hereafter be known and designated as the “Mel Sembler Building”.

Federal buildings
and facilities.

In addition, for the costs of worldwide security upgrades, acquisition, and construction as authorized, \$912,320,000, to remain available until expended: *Provided*, That funds appropriated to this account in Public Law 108–287 may also be used for non-interim facilities for the United States Mission in Iraq, including associated planning, site preparation and pre-construction activities.

EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE

Sierra Leone.
Deadline.

For expenses necessary to enable the Secretary of State to meet unforeseen emergencies arising in the Diplomatic and Consular Service, \$1,000,000, to remain available until expended as authorized, of which such sums as necessary may be transferred to and merged with the Repatriation Loans Program Account, subject to the same terms and conditions: *Provided*, That funds previously appropriated under this heading for rewards for an indictee of the Special Court for Sierra Leone shall be transferred to the Special Court for Sierra Leone within 15 days of enactment of this Act: *Provided further*, That any transfer of funds provided under this heading shall be treated as a reprogramming of funds under section 605 of this Act.

REPATRIATION LOANS PROGRAM ACCOUNT

For the cost of direct loans, \$612,000, as authorized: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974. In addition, for administrative expenses necessary to carry out the direct loan program, \$607,000, which may be transferred to and merged with the Diplomatic and Consular Programs account under Administration of Foreign Affairs.

PAYMENT TO THE AMERICAN INSTITUTE IN TAIWAN

For necessary expenses to carry out the Taiwan Relations Act (Public Law 96-8), \$19,482,000.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For payment to the Foreign Service Retirement and Disability Fund, as authorized by law, \$132,600,000.

INTERNATIONAL ORGANIZATIONS

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

22 USC 269a
note.

Notification.
Deadline.

For expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties ratified pursuant to the advice and consent of the Senate, conventions or specific Acts of Congress, \$1,182,000,000, of which up to \$6,000,000, to remain available until expended, may be used for the cost of a direct loan to the United Nations for the cost of renovating its headquarters in New York: *Provided*, That such costs, including the cost of modifying such loan, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal of up to \$1,200,000,000: *Provided further*, That the Secretary of State shall, at the time of the submission of the President's budget to Congress under section 1105(a) of title 31, United States Code, transmit to the Committees on Appropriations of the Senate and of the House of Representatives the most recent biennial budget prepared by the United Nations for the operations of the United Nations: *Provided further*, That the Secretary of State shall notify the Committees on Appropriations at least 15 days in advance (or in an emergency, as far in advance

as is practicable) of any United Nations action to increase funding for any United Nations program without identifying an offsetting decrease elsewhere in the United Nations budget and cause the United Nations to exceed the adopted budget for the biennium 2004–2005 of \$3,160,860,000: *Provided further*, That any payment of arrearages under this title shall be directed toward special activities that are mutually agreed upon by the United States and the respective international organization: *Provided further*, That none of the funds appropriated in this paragraph shall be available for a United States contribution to an international organization for the United States share of interest costs made known to the United States Government by such organization for loans incurred on or after October 1, 1984, through external borrowings, except that such restriction shall not apply to loans to the United Nations for renovation of its headquarters.

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

For necessary expenses to pay assessed and other expenses of international peacekeeping activities directed to the maintenance or restoration of international peace and security, \$490,000,000: *Provided*, That none of the funds made available under this Act shall be obligated or expended for any new or expanded United Nations peacekeeping mission unless, at least 15 days in advance of voting for the new or expanded mission in the United Nations Security Council (or in an emergency as far in advance as is practicable): (1) the Committees on Appropriations of the House of Representatives and the Senate and other appropriate committees of the Congress are notified of the estimated cost and length of the mission, the vital national interest that will be served, and the planned exit strategy; and (2) a reprogramming of funds pursuant to section 605 of this Act is submitted, and the procedures therein followed, setting forth the source of funds that will be used to pay for the cost of the new or expanded mission: *Provided further*, That funds shall be available for peacekeeping expenses only upon a certification by the Secretary of State to the appropriate committees of the Congress that American manufacturers and suppliers are being given opportunities to provide equipment, services, and material for United Nations peacekeeping activities equal to those being given to foreign manufacturers and suppliers: *Provided further*, That none of the funds made available under this heading are available to pay the United States share of the cost of court monitoring that is part of any United Nations peacekeeping mission.

Deadline.

INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided for, to meet obligations of the United States arising under treaties, or specific Acts of Congress, as follows:

22 USC 269a
note.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

For necessary expenses for the United States Section of the International Boundary and Water Commission, United States and Mexico, and to comply with laws applicable to the United States Section, including not to exceed \$6,000 for representation; as follows:

SALARIES AND EXPENSES

For salaries and expenses, not otherwise provided for, \$27,244,000.

CONSTRUCTION

For detailed plan preparation and construction of authorized projects, \$5,310,000, to remain available until expended, as authorized.

AMERICAN SECTIONS, INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided, for the International Joint Commission and the International Boundary Commission, United States and Canada, as authorized by treaties between the United States and Canada or Great Britain, and for the Border Environment Cooperation Commission as authorized by Public Law 103–182, \$9,594,000, of which not to exceed \$9,000 shall be available for representation expenses incurred by the International Joint Commission.

INTERNATIONAL FISHERIES COMMISSIONS

For necessary expenses for international fisheries commissions, not otherwise provided for, as authorized by law, \$21,982,000: *Provided*, That the United States' share of such expenses may be advanced to the respective commissions pursuant to 31 U.S.C. 3324.

OTHER

PAYMENT TO THE ASIA FOUNDATION

For a grant to the Asia Foundation, as authorized by the Asia Foundation Act (22 U.S.C. 4402), \$13,000,000, to remain available until expended, as authorized.

CENTER FOR MIDDLE EASTERN-WESTERN DIALOGUE

For a grant to the Center for Middle Eastern-Western Dialogue Trust Fund, \$6,750,000, for operation of the Center for Middle Eastern-Western Dialogue in Istanbul, Turkey, to remain available until expended.

In addition, for the operations of the Steering Committee of the Center for Middle Eastern-Western Dialogue, \$250,000, to remain available until expended.

In addition, for necessary expenses of the Center for Middle Eastern-Western Dialogue Trust Fund, the total amount of the interest and earnings accruing to such Fund before October 1, 2005, to remain available until expended.

EISENHOWER EXCHANGE FELLOWSHIP PROGRAM

For necessary expenses of Eisenhower Exchange Fellowships, Incorporated, as authorized by sections 4 and 5 of the Eisenhower Exchange Fellowship Act of 1990 (20 U.S.C. 5204–5205), all interest and earnings accruing to the Eisenhower Exchange Fellowship Program Trust Fund on or before September 30, 2005, to remain

available until expended: *Provided*, That none of the funds appropriated herein shall be used to pay any salary or other compensation, or to enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376; or for purposes which are not in accordance with OMB Circulars A-110 (Uniform Administrative Requirements) and A-122 (Cost Principles for Non-profit Organizations), including the restrictions on compensation for personal services.

ISRAELI ARAB SCHOLARSHIP PROGRAM

For necessary expenses of the Israeli Arab Scholarship Program as authorized by section 214 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (22 U.S.C. 2452), all interest and earnings accruing to the Israeli Arab Scholarship Fund on or before September 30, 2005, to remain available until expended.

EAST-WEST CENTER

To enable the Secretary of State to provide for carrying out the provisions of the Center for Cultural and Technical Interchange Between East and West Act of 1960, by grant to the Center for Cultural and Technical Interchange Between East and West in the State of Hawaii, \$19,500,000: *Provided*, That none of the funds appropriated herein shall be used to pay any salary, or enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376.

NATIONAL ENDOWMENT FOR DEMOCRACY

For grants made by the Department of State to the National Endowment for Democracy as authorized by the National Endowment for Democracy Act, \$60,000,000 to remain available until expended.

RELATED AGENCY

BROADCASTING BOARD OF GOVERNORS

INTERNATIONAL BROADCASTING OPERATIONS

For expenses necessary to enable the Broadcasting Board of Governors, as authorized, to carry out international communication activities, including the purchase, installation, rent, and improvement of facilities for radio and television transmission and reception to Cuba, and to make and supervise grants for radio and television broadcasting to the Middle East, \$591,000,000, of which \$27,629,000 is for Broadcasting to Cuba: *Provided*, That of the total amount in this heading, not to exceed \$16,000 may be used for official receptions within the United States as authorized, not to exceed \$35,000 may be used for representation abroad as authorized, and not to exceed \$39,000 may be used for official reception and representation expenses of Radio Free Europe/Radio Liberty; and in addition, notwithstanding any other provision of law, not to exceed \$2,000,000 in receipts from advertising and revenue from business ventures, not to exceed \$500,000 in receipts from cooperating international organizations, and not to exceed \$1,000,000 in receipts

from privatization efforts of the Voice of America and the International Broadcasting Bureau, to remain available until expended for carrying out authorized purposes.

BROADCASTING CAPITAL IMPROVEMENTS

For the purchase, rent, construction, and improvement of facilities for radio transmission and reception, and purchase and installation of necessary equipment for radio and television transmission and reception as authorized, \$8,560,000, to remain available until expended, as authorized.

GENERAL PROVISIONS—DEPARTMENT OF STATE AND RELATED AGENCY

SEC. 401. Funds appropriated under this title shall be available, except as otherwise provided, for allowances and differentials as authorized by subchapter 59 of title 5, United States Code; for services as authorized by 5 U.S.C. 3109; and for hire of passenger transportation pursuant to 31 U.S.C. 1343(b).

SEC. 402. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of State in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided*, That not to exceed 5 percent of any appropriation made available for the current fiscal year for the Broadcasting Board of Governors in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: *Provided further*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 403. None of the funds made available in this Act may be used by the Department of State or the Broadcasting Board of Governors to provide equipment, technical support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

SEC. 404. (a) The Senior Policy Operating Group on Trafficking in Persons, established under section 406 of division B of Public Law 108-7 to coordinate agency activities regarding policies (including grants and grant policies) involving the international trafficking in persons, shall coordinate all such policies related to the activities of traffickers and victims of severe forms of trafficking.

(b) None of the funds provided in this or any other Act shall be expended to perform functions that duplicate coordinating responsibilities of the Operating Group.

Reports.

(c) The Operating Group shall continue to report only to the authorities that appointed them pursuant to section 406 of division B of Public Law 108-7.

SEC. 405. (a) Subsection (b) of section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is amended—

(1) in paragraph (5) by striking “or” at the end;

(2) in paragraph (6) by striking the period and inserting “; or”; and

(3) by adding at the end the following new paragraph:

“(7) the disruption of financial mechanisms of a foreign terrorist organization, including the use by the organization of illicit narcotics production or international narcotics trafficking—

“(A) to finance acts of international terrorism; or

“(B) to sustain or support any terrorist organization.”.

(b) Subsection (e)(1) of such section is amended—

(1) by striking “\$5,000,000” and inserting “\$25,000,000”;

(2) by striking the second period at the end; and

(3) by adding at the end the following new sentence: “Without first making such determination, the Secretary may authorize a reward of up to twice the amount specified in this paragraph for the capture or information leading to the capture of a leader of a foreign terrorist organization.”.

(c) Subsection (e) of such section is amended by adding at the end the following new paragraph:

“(6) FORMS OF REWARD PAYMENT.—The Secretary may make a reward under this section in the form of money, a nonmonetary item (including such items as automotive vehicles), or a combination thereof.”.

(d) Such section is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (h) the following new subsection:

“(i) MEDIA SURVEYS AND ADVERTISEMENTS.—

“(1) SURVEYS CONDUCTED.—For the purpose of more effectively disseminating information about the rewards program, the Secretary may use the resources of the rewards program to conduct media surveys, including analyses of media markets, means of communication, and levels of literacy, in countries determined by the Secretary to be associated with acts of international terrorism.

“(2) CREATION AND PURCHASE OF ADVERTISEMENTS.—The Secretary may use the resources of the rewards program to create advertisements to disseminate information about the rewards program. The Secretary may base the content of such advertisements on the findings of the surveys conducted under paragraph (1). The Secretary may purchase radio or television time, newspaper space, or make use of any other means of advertisement, as appropriate.”.

(e) Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall submit to the Committees on Appropriations of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a plan to maximize awareness of the reward available under section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708 et seq.) for the capture or information leading to the capture of a leader of a foreign terrorist organization who may be in Pakistan or Afghanistan. The Secretary may use the resources of the rewards program to prepare the plan.

Deadline.
Plan.
Terrorism.

SEC. 406. For the purposes of registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary of State shall, upon request of the citizen, record the place of birth as Israel.

Deadline.

SEC. 407. The Secretary of State shall provide to a member of the Committee on Appropriations of the Senate or the Committee on Appropriations of the House of Representatives a copy of each cable sent to or by a Department of State employee that pertains to any topic specified by the requesting member, regardless of the level of classification of the cable, not later than 15 days after the date on which the member makes a written or verbal request for such copies.

Establishment.
22 USC 2651a
note.

SEC. 408. There is established within the Department of State the Office of the Coordinator for Reconstruction and Stabilization: *Provided*, That the head of the Office shall be the Coordinator for Reconstruction and Stabilization, who shall report directly to the Secretary of State: *Provided further*, That the functions of the Office of the Coordinator for Reconstruction and Stabilization shall include—

(1) cataloguing and monitoring the non-military resources and capabilities of Executive agencies (as that term is defined in section 105 of title 5, United States Code), State and local governments, and entities in the private and non-profit sectors that are available to address crises in countries or regions that are in, or are in transition from, conflict or civil strife;

(2) monitoring political and economic instability worldwide to anticipate the need for mobilizing United States and international assistance for countries or regions described in paragraph (1);

(3) assessing crises in countries or regions described in paragraph (1) and determining the appropriate non-military United States, including but not limited to demobilization, policing, human rights monitoring, and public information efforts;

(4) planning for response efforts under paragraph (3);

(5) coordinating with relevant Executive agencies the development of interagency contingency plans for such response efforts; and

(6) coordinating the training of civilian personnel to perform stabilization and reconstruction activities in response to crises in such countries or regions described in paragraph (1).

22 USC 3927a.

SEC. 409. (a) The Secretary of State shall require each chief of mission to review, not less than once every 5 years, every staff element under chief of mission authority, including staff from other departments or agencies of the United States, and recommend approval or disapproval of each staff element. Each such review shall be conducted pursuant to a process established by the President for determining appropriate staffing at diplomatic missions and overseas constituent posts (commonly referred to as the “NSDD-38 process”).

(b) The Secretary of State, as part of the process established by the President referred to in subsection (a), shall take actions to carry out the recommendations made in each such review.

Deadline.
Reports.

(c) Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit a report on such reviews that occurred during the previous 12 months, together with the Secretary’s recommendations regarding such reviews to the appropriate committees of Congress, the heads of all affected departments or agencies, and the Inspector General of the Department of State.

SEC. 410. Funds appropriated by this Act for the Broadcasting Board of Governors and the Department of State may be obligated and expended notwithstanding section 15 of the State Department Basic Authorities Act of 1956, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

SEC. 411. During fiscal year 2005, section 404(b)(2)(B) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 22 U.S.C. 287e note), shall be administered as though the matter following clause (iii) reads as follows:

22 USC 287e
note.

“(v) For assessments made during calendar year 2005, 27.1 percent.”.

SEC. 412. (a) Section 402(a) of the Foreign Service Act of 1980 (22 U.S.C. 3962(a)) is amended—

(1) in paragraph (1), by striking the second and third sentences and inserting the following new sentences: “The President shall also prescribe ranges of basic salary rates for each class. Except as provided in paragraph (3), basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, United States Code.”; and

President.

(2) by striking paragraph (2) and inserting the following new paragraphs:

“(2) The Secretary shall determine which basic salary rate within the ranges prescribed by the President under paragraph (1) shall be paid to each member of the Senior Foreign Service based on individual performance, contribution to the mission of the Department, or both, as determined under a rigorous performance management system. Except as provided in regulations prescribed by the Secretary and, to the extent possible, consistent with regulations governing the Senior Executive Service, the Secretary may adjust the basic salary rate of a member of the Senior Foreign Service not more than once during any 12-month period.

Wages.
Government
employees.

“(3) Upon a determination by the Secretary that the Senior Foreign Service performance appraisal system, as designed and applied, makes meaningful distinctions based on relative performance—

“(A) the maximum rate of basic pay payable for the Senior Foreign Service shall be level II of the Executive Schedule; and

“(B) the applicable aggregate pay cap shall be equivalent to the aggregate pay cap set forth in section 5307(d)(1) of title 5, United States Code, for members of the Senior Executive Service.”.

(b) Section 405(b)(4) of such Act (22 U.S.C. 3965(b)(4)) is amended by inserting before the period the following: “, or the limitation under section 402(a)(3), whichever is higher”.

(c) Section 401(a) of such Act (22 U.S.C. 3961(a)) is amended by striking “shall not exceed the annual rate of pay payable for level I of such Executive Schedule” and inserting “shall be subject to the limitation on certain payments under section 5307 of title 5, United States Code, or the limitation under section 402(a)(3), whichever is higher”.

SEC. 413. (a) Section 2 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669) is amended by adding at the end the following:

“(o) make administrative corrections or adjustments to an employee’s pay, allowances, or differentials, resulting from mistakes or retroactive personnel actions, as well as provide back pay and other categories of payments under section 5596 of title 5, United States Code, as part of the settlement or compromise of administrative claims or grievances filed against the Department.”.

(b) Such section is further amended—

(1) in subsection (k), by striking “and”;

(2) by transferring subsection (m) within such section to appear after subsection (l);

(3) in subsections (l) and (m), by striking the period at the end of each subsection and inserting a semicolon; and

(4) in subsection (n), by striking the period at the end and inserting a semicolon and “and”.

This title may be cited as the “Department of State and Related Agency Appropriations Act, 2005”.

TITLE V—RELATED AGENCIES

ANTITRUST MODERNIZATION COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Antitrust Modernization Commission, as authorized by Public Law 107–273, \$1,187,000, to remain available until expended.

COMMISSION FOR THE PRESERVATION OF AMERICA’S HERITAGE ABROAD

SALARIES AND EXPENSES

For expenses for the Commission for the Preservation of America’s Heritage Abroad, \$499,000, as authorized by section 1303 of Public Law 99–83.

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

For necessary expenses of the Commission on Civil Rights, including hire of passenger motor vehicles, \$9,096,000: *Provided*, That not to exceed \$50,000 may be used to employ consultants: *Provided further*, That none of the funds appropriated in this paragraph shall be used to employ in excess of four full-time individuals under Schedule C of the Excepted Service exclusive of one special assistant for each Commissioner: *Provided further*, That none of the funds appropriated in this paragraph shall be used to reimburse Commissioners for more than 75 billable days, with the exception of the chairperson, who is permitted 125 billable days.

COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

SALARIES AND EXPENSES

For necessary expenses for the United States Commission on International Religious Freedom, as authorized by title II of the International Religious Freedom Act of 1998 (Public Law 105–292), \$3,000,000, to remain available until expended: *Provided*, That in fiscal year 2005, the Commission may procure temporary services for the purpose of conducting a study on conditions of the right to freedom of religion or belief in North Korea, notwithstanding section 208(c)(1) of Public Law 105–292 (22 U.S.C. 6435a(c)(1)).

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

SALARIES AND EXPENSES

For necessary expenses of the Commission on Security and Cooperation in Europe, as authorized by Public Law 94–304, \$1,831,000, to remain available until expended as authorized by section 3 of Public Law 99–7.

CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE’S
REPUBLIC OF CHINA

SALARIES AND EXPENSES

For necessary expenses of the Congressional-Executive Commission on the People’s Republic of China, as authorized, \$1,900,000, including not more than \$3,000 for the purpose of official representation, to remain available until expended: *Provided*, That \$100,000 shall be for the Political Prisoner Database.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Equal Employment Opportunity Commission as authorized by title VII of the Civil Rights Act of 1964 (29 U.S.C. 206(d) and 621–634), the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); non-monetary awards to private citizens; and not to exceed \$33,000,000 for payments to State and local enforcement agencies for services to the Commission pursuant to title VII of the Civil Rights Act of 1964, sections 6 and 14 of the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, \$331,228,000: *Provided*, That the Commission is authorized to make available for official reception and representation expenses not to exceed \$2,500 from available funds: *Provided further*, That the Commission may take no action to implement any workforce repositioning, restructuring, or reorganization until such time as the Committees on Appropriations have been notified of such proposals, in accordance with the reprogramming provisions of section 605 of this Act: *Provided further*, That the Commission shall not have fewer field position in fiscal year 2005 than in fiscal year 2004.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Communications Commission, as authorized by law, including uniforms and allowances therefor, as authorized by 5 U.S.C. 5901–5902; not to exceed \$600,000 for land and structure; not to exceed \$500,000 for improvement and care of grounds and repair to buildings; not to exceed \$4,000 for official reception and representation expenses; purchase and hire of motor vehicles; special counsel fees; and services as authorized by 5 U.S.C. 3109, \$281,098,000: *Provided*, That \$280,098,000 of offsetting collections shall be assessed and collected pursuant to section 9 of title I of the Communications Act of 1934, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced as such offsetting collections are received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation estimated at \$1,000,000: *Provided further*, That any offsetting collections received in excess of \$280,098,000 in fiscal year 2005 shall remain available until expended, but shall not be available for obligation until October 1, 2005: *Provided further*, That notwithstanding 47 U.S.C. 309(j)(8)(B), proceeds from the use of a competitive bidding system that may be retained and made available for obligation shall not exceed \$85,000,000 for fiscal year 2005.

FEDERAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed \$2,000 for official reception and representation expenses, \$205,430,000, to remain available until expended: *Provided*, That not to exceed \$300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718: *Provided further*, That, notwithstanding any other provision of law, not to exceed \$101,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further*, That \$21,901,000 in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telephone Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2005, so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than \$82,529,000: *Provided further*, That none of the funds made available to the Federal Trade Commission may be used to enforce subsection (e) of section 43 of the Federal Deposit Insurance Act (12 U.S.C.

1831t) or section 151(b)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831t note).

HELP COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the HELP Commission, \$1,000,000, to remain available until expended.

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$335,282,000, of which \$316,604,000 is for basic field programs and required independent audits; \$2,573,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; \$13,000,000 is for management and administration; \$1,272,000 is for client self-help and information technology; and \$1,833,000 is for grants to offset losses due to census adjustments: *Provided*, That not to exceed \$1,000,000 from amounts previously appropriated under this heading may be used for a student loan repayment pilot program.

ADMINISTRATIVE PROVISION—LEGAL SERVICES CORPORATION

None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of, sections 501, 502, 503, 504, 505, and 506 of Public Law 105–119, and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such sections, except that all references in sections 502 and 503 to 1997 and 1998 shall be deemed to refer instead to 2004 and 2005, respectively, and except that section 501(a)(1) of Public Law 104–134 (110 Stat. 1321–51 et seq.) shall not apply to the use of the \$1,833,000 to address loss of funding due to Census-based reallocations.

MARINE MAMMAL COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Marine Mammal Commission as authorized by title II of Public Law 92–522, \$1,890,000.

NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION

For necessary expenses of the National Veterans Business Development Corporation as authorized under section 33(a) of the Small Business Act, \$2,000,000, to remain available until expended.

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission, including services as authorized by 5 U.S.C. 3109, the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, and not to exceed \$3,000 for official reception and representation expenses, \$913,000,000, to remain available until expended; of which not to exceed \$10,000 may be used toward funding a permanent secretariat for the International Organization of Securities Commissions; and of which not to exceed \$100,000 shall be available for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to securities matters, development and implementation of cooperation agreements concerning securities matters and provision of technical assistance for the development of foreign securities markets, such expenses to include necessary logistic and administrative expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including: (1) such incidental expenses as meals taken in the course of such attendance; (2) any travel and transportation to or from such meetings; and (3) any other related lodging or subsistence: *Provided*, That fees and charges authorized by sections 6(b) of the Securities Exchange Act of 1933 (15 U.S.C. 77f(b)), and 13(e), 14(g) and 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e), 78n(g), and 78ee), shall be credited to this account as offsetting collections: *Provided further*, That not to exceed \$856,000,000 of such offsetting collections shall be available until expended for necessary expenses of this account: *Provided further*, That \$57,000,000 shall be derived from prior year unobligated balances from funds previously appropriated to the Securities and Exchange Commission: *Provided further*, That the total amount appropriated under this heading from the general fund for fiscal year 2005 shall be reduced as such offsetting fees are received so as to result in a final total fiscal year 2005 appropriation from the general fund estimated at not more than \$0.

Deadlines.
Reports.
Investments.

Not later than May 1, 2005, the Securities and Exchange Commission shall submit a report to the Committee on Appropriations of the Senate that provides a justification for final rules issued by the Commission on June 30, 2004 (amending title 17, Code of Federal Regulations, Parts 239, 240, and 274), requiring that the chair of the board of directors of a mutual fund be an independent director: *Provided*, That such report shall analyze whether mutual funds chaired by disinterested directors perform better, have lower expenses, or have better compliance records than mutual funds chaired by interested directors: *Provided further*, That the Securities and Exchange Commission shall act upon the recommendations of such report not later than January 1, 2006.

Deadline.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the Small Business Administration as authorized by Public Law 106-554,

including hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344, and not to exceed \$3,500 for official reception and representation expenses, \$322,335,000: *Provided*, That the Administrator is authorized to charge fees to cover the cost of publications developed by the Small Business Administration, and certain loan servicing activities: *Provided further*, That, notwithstanding 31 U.S.C. 3302, revenues received from all such activities shall be credited to this account, to be available for carrying out these purposes without further appropriations: *Provided further*, That \$89,000,000 shall be available to fund grants for performance in fiscal year 2005 or fiscal year 2006 as authorized: *Provided further*, That the Small Business Administration is authorized to award grants under the Women’s Business Center Sustainability Pilot Program established by section 4(a) of Public Law 106–165 (15 U.S.C. 656(1)): *Provided further*, That, of the amounts provided for Women’s Business Centers, not less than 48 percent shall be available to continue Women’s Business Centers in sustainability status.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, \$13,014,000.

SURETY BOND GUARANTEES REVOLVING FUND

For additional capital for the Surety Bond Guarantees Revolving Fund, authorized by the Small Business Investment Act, as amended, \$2,900,000, to remain available until expended.

BUSINESS LOANS PROGRAM ACCOUNT

For the cost of direct loans, \$1,455,000, to remain available until expended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That subject to section 502 of the Congressional Budget Act of 1974, during fiscal year 2005 commitments to guarantee loans under section 503 of the Small Business Investment Act of 1958, shall not exceed \$5,000,000,000: *Provided further*, That subsection 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)), as amended by section 2 of Public Law 108–217, is further amended by striking “October 1, 2004” and inserting “October 1, 2005”: *Provided further*, That during fiscal year 2005 commitments for general business loans authorized under section 7(a) of the Small Business Act, shall not exceed \$16,000,000,000: *Provided further*, That during fiscal year 2005 commitments to guarantee loans for debentures and participating securities under section 303(b) of the Small Business Investment Act of 1958, shall not exceed the levels established by section 20(i)(1)(C) of the Small Business Act: *Provided further*, That during fiscal year 2005 guarantees of trust certificates authorized by section 5(g) of the Small Business Act shall not exceed a principal amount of \$10,000,000,000.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, \$126,653,000, which may be transferred to and merged with the appropriations for Salaries and Expenses.

DISASTER LOANS PROGRAM ACCOUNT

For administrative expenses to carry out the direct loan program authorized by section 7(b), of the Small Business Act, \$113,159,000, which may be transferred to and merged with appropriations for Salaries and Expenses, of which \$500,000 is for the Office of Inspector General of the Small Business Administration for audits and reviews of disaster loans and the disaster loan program and shall be transferred to and merged with appropriations for the Office of Inspector General; of which \$104,409,000 is for direct administrative expenses of loan making and servicing to carry out the direct loan program, to remain available until expended; and of which \$8,250,000 is for indirect administrative expenses: *Provided*, That any amount in excess of \$8,250,000 to be transferred to and merged with appropriations for Salaries and Expenses for indirect administrative expenses shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

ADMINISTRATIVE PROVISION—SMALL BUSINESS ADMINISTRATION

Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Small Business Administration in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this paragraph shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

STATE JUSTICE INSTITUTE

SALARIES AND EXPENSES

For necessary expenses of the State Justice Institute, as authorized by the State Justice Institute Authorization Act of 1992 (Public Law 102-572), \$2,613,000: *Provided*, That not to exceed \$2,500 shall be available for official reception and representation expenses.

UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW
COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States-China Economic and Security Review Commission, \$3,000,000, including not more than \$5,000 for the purpose of official representation, to remain available until expended.

UNITED STATES INSTITUTE OF PEACE

OPERATING EXPENSES

For necessary expenses of the United States Institute of Peace as authorized in the United States Institute of Peace Act, \$23,000,000: *Provided*, That \$1,500,000 is for necessary expenses for the Task Force on the United Nations: *Provided further*, That

the Task Force on the United Nations shall submit a report on its findings to the Committees on Appropriations of the House of Representatives and Senate not later than 180 days after the date of the enactment of this Act.

UNITED STATES SENATE-CHINA INTERPARLIAMENTARY GROUP

SALARIES AND EXPENSES

For necessary expenses of the United States Senate-China Interparliamentary Group, as authorized under section 153 of the Consolidated Appropriations Act, 2004 (22 U.S.C. 276n; Public Law 108–199; 118 Stat. 448), \$100,000, to remain available until expended.

TITLE VI—GENERAL PROVISIONS

(INCLUDING RESCISSIONS)

SEC. 601. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 602. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 603. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Contracts.
Public
information.

SEC. 604. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of each provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 605. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes or renames offices; (6) reorganizes programs or activities; or (7) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

Notification.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or

Notification.

expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$750,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings, including savings from a reduction in personnel, which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

SEC. 606. Hereafter, none of the funds made available in this Act may be used for the construction, repair (other than emergency repair), overhaul, conversion, or modernization of vessels for the National Oceanic and Atmospheric Administration in shipyards located outside of the United States.

Religious
harassment.

SEC. 607. None of the funds made available in this Act may be used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission covering harassment based on religion, when it is made known to the Federal entity or official to which such funds are made available that such guidelines do not differ in any respect from the proposed guidelines published by the Commission on October 1, 1993 (58 Fed. Reg. 51266).

SEC. 608. If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

SEC. 609. None of the funds made available by this Act may be used for any United Nations undertaking when it is made known to the Federal official having authority to obligate or expend such funds that: (1) the United Nations undertaking is a peacekeeping mission; (2) such undertaking will involve United States Armed Forces under the command or operational control of a foreign national; and (3) the President's military advisors have not submitted to the President a recommendation that such involvement is in the national security interests of the United States and the President has not submitted to the Congress such a recommendation.

Records.

SEC. 610. The Departments of Commerce, Justice, and State, the Judiciary, the Federal Communications Commission, the Securities and Exchange Commission and the Small Business Administration shall provide to the Committees on Appropriations of the Senate and of the House of Representatives a quarterly accounting of the cumulative balances of any unobligated funds that were received by such agency during any previous fiscal year.

SEC. 611. (a) None of the funds appropriated or otherwise made available by this Act shall be expended for any purpose for which appropriations are prohibited by section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999.

(b) The requirements in subparagraphs (A) and (B) of section 609 of that Act shall continue to apply during fiscal year 2005. Applicability.

SEC. 612. Any costs incurred by a department or agency funded under this Act resulting from personnel actions taken in response to funding reductions included in this Act shall be absorbed within the total budgetary resources available to such department or agency: *Provided*, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: *Provided further*, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 613. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

SEC. 614. (a) None of the funds appropriated or otherwise made available by this Act shall be expended for any purpose for which appropriations are prohibited by section 616 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999.

(b) The requirements in subsections (b) and (c) of section 616 of that Act shall continue to apply during fiscal year 2005. Applicability.

SEC. 615. None of the funds appropriated pursuant to this Act or any other provision of law may be used for— Firearms.

(1) the implementation of any tax or fee in connection with the implementation of subsection 922(t) of title 18, United States Code; and

(2) any system to implement subsection 922(t) of title 18, United States Code, that does not require and result in the destruction of any identifying information submitted by or on behalf of any person who has been determined not to be prohibited from possessing or receiving a firearm no more than 24 hours after the system advises a Federal firearms licensee that possession or receipt of a firearm by the prospective transferee would not violate subsection (g) or (n) of section 922 of title 18, United States Code, or State law.

SEC. 616. Notwithstanding any other provision of law, amounts deposited or available in the Fund established under 42 U.S.C. 10601 in any fiscal year in excess of \$625,000,000 shall not be available for obligation until the following fiscal year. 42 USC 10601 note.

SEC. 617. None of the funds made available to the Department of Justice in this Act may be used to discriminate against or denigrate the religious or moral beliefs of students who participate in programs for which financial assistance is provided from those funds, or of the parents or legal guardians of such students. Non-discrimination.

SEC. 618. None of the funds appropriated or otherwise made available to the Department of State shall be available for the purpose of granting either immigrant or nonimmigrant visas, or both, consistent with the determination of the Secretary of State under section 243(d) of the Immigration and Nationality Act, to citizens, subjects, nationals, or residents of countries that the Secretary of Homeland Security has determined deny or unreasonably

delay accepting the return of citizens, subjects, nationals, or residents under that section.

SEC. 619. (a) For additional amounts under the heading “Small Business Administration, Salaries and Expenses”, \$500,000 shall be available for the Adelante Development Center, Inc.; \$150,000 shall be available for the Advanced Polymer Processing Institute; \$150,000 shall be available for the Alaska Procurement Technical Assistance Center; \$250,000 shall be available for Business and Professional Women of Alaska; \$75,000 shall be available for the Center for Applied Research and Economic Development at the University of Southern Indiana; \$300,000 shall be available for the Center for Emerging Technologies; \$225,000 shall be available for the Center for Entrepreneurship and Technology at the Nevada Commission for Economic Development; \$100,000 shall be available for the Central Connecticut State University Institute of Technology and Business Development; \$600,000 shall be available for the Des Moines Higher Education Pappajohn Center; \$150,000 shall be available for the East Central Indiana Business Incubator at Ball State University; \$100,000 shall be available for the Entrepreneurial Venture Assistance Demonstration Project at the Iowa Department of Economic Development; \$75,000 shall be available for the Idaho Virtual Incubator at Lewis-Clark State College for an E-Commerce Certification program; \$600,000 shall be available for the Industrial Outreach Service at Mississippi State University; \$2,000,000 shall be available for the Innovation and Commercialization Center at the University of Southern Mississippi; \$100,000 shall be available for the Kennebec Valley Council of Governments’ Business Development Program; \$100,000 shall be available for the Knoxville College Small Business Incubator Program; \$250,000 shall be available for the Louisiana State University Law School’s Latin American Commercial Law Program; \$250,000 shall be available for the Minority Business Development Center at Alcorn State University; \$600,000 shall be available for the Mississippi Technology Alliance; \$200,000 shall be available for the Montana Department of Commerce for a State government information sharing initiative; \$125,000 shall be available for the Myrtle Beach International Trade and Convention Center; \$250,000 shall be available for the Nanotechnology Research Program at the Oregon Health and Science University; \$550,000 shall be available for the New Product Development and Commercialization Center for Rural Manufacturers; \$125,000 shall be available for the New Hampshire Women’s Business Center; \$500,000 shall be available for Operation Safe Commerce; \$200,000 shall be available for the Southern University Foundation’s Martin Luther King Initiative; \$75,000 shall be available for Technology 2020; \$1,000,000 shall be available for the Technology Venture Center/InvestNet Partnership for Alaska and Montana; \$500,000 shall be available for the Textile Marking System; \$300,000 shall be available for the Towson University International Business Incubator; \$1,000,000 shall be available for the Tuck School of Business/MBDA Partnership; \$325,000 shall be available for the University of Colorado Nanotechnology and Characterization Facility; \$8,000,000 shall be available for the University of South Carolina Thomas Cooper Library; \$100,000 shall be available for the Virginia Electronic Commerce Technology Center at Christopher Newport University; \$125,000 shall be available for the Women’s Business Development Center in Stamford, Connecticut; and \$100,000 shall be available for the World Trade

Center of Greater Philadelphia; \$50,000 shall be available for a grant to the Center for Excellence in Education; \$100,000 shall be available for a grant to The Cedar Creek Battlefield Foundation; \$100,000 shall be available for a grant to Belle Grove Plantation; \$150,000 shall be available for a grant to the City of Manassas Park for economic development; \$100,000 shall be available for a grant to the Shenandoah Valley Travel Association; \$1,200,000 shall be available for a grant to Shenandoah University to develop a facility for a business program; \$115,000 shall be available for a grant to Economic Alliance Houston Port Region; \$20,000 shall be available for a grant to the Town of South Boston, Virginia, for small business development; \$100,000 shall be available for a grant to Patrick Henry Community College for a workforce training program; \$100,000 shall be available for a grant for Danville Community College for a workforce training program; \$1,000,000 shall be available for a grant to the University of Illinois for the Information Trust Institute initiative; \$500,000 shall be available for a grant to Wittenberg University for a technology initiative; \$500,000 shall be available for a grant to the Dayton Development Coalition; \$250,000 shall be available for a grant for REI Rural Business Resources Center in Seminole, Oklahoma; \$50,000 shall be available for a grant to Experience Works to expand opportunities for older workers; \$50,000 shall be available for a grant to Project Listo for workforce development and procurement opportunities; \$100,000 shall be available for a grant to North Iowa Area Community College for a small business incubator; \$450,000 shall be available for a grant to California State University, in San Bernardino, California, for development of the Center for the Commercialization of Advanced Technology; \$50,000 shall be available for a grant to Rowan University for a workforce training program; \$200,000 shall be available for a grant to the Freeport Downtown Development Foundation for a small business economic development initiative; \$1,500,000 shall be available for a grant to the Rockford Area Convention and Visitors Bureau for a manufacturing program; \$200,000 shall be available for a grant to Jefferson County Development Council; \$200,000 shall be available for a grant to Clearfield County Economic Development Corporation; \$500,000 shall be available for a grant to the Columbus College of Art and Design for facilities development to build partnerships with businesses; \$115,000 shall be available for a grant to Ohio Business Connection; \$1,000,000 shall be available for a grant to the Southern and Eastern Kentucky Tourism Development Association; \$500,000 shall be available for a grant to the Bridgeport Regional Business Council for an economic integration initiative; \$100,000 shall be available for a grant to Cedarbridge Development Corporation for a redevelopment initiative; \$900,000 shall be available for a grant to Western Carolina University for a computer engineering program; \$100,000 shall be available for a grant to Asheville-Buncombe Technical Community College for an economic development initiative; \$100,000 shall be available for a grant to Jubilee Homes for the Southwest Economic Business Resource Center; \$400,000 shall be available for a grant for the Connect the Valley initiative; \$400,000 shall be available for a grant to the University of Tennessee Corridor Initiative; \$500,000 shall be available for a grant to the Illinois Institute for Technology to examine and assess advancements in biotechnologies; \$250,000 shall be available for a grant to the City of Largo, Florida, for business

information; \$250,000 shall be available for a grant to Pro Co Technology, Inc., in the Bronx, New York, for a computer training center; \$50,000 shall be available for a grant for the Promesa Foundation in the Bronx, New York, to provide community growth funding; \$200,000 shall be available for a grant to Bronx Shepherds for community programs; \$150,000 shall be available for a grant to HOGAR, Inc., in the Bronx, New York; \$200,000 shall be available for a grant to Promesa Enterprises to provide services and support to community based organizations in the Bronx, New York; \$200,000 for the Arthur Avenue Retail Market in the Bronx, New York, for facility, improvement, and maintenance needs to meet the Market's business requirements; \$200,000 shall be available for a grant to Pregones Theater in the Bronx, New York, for business infrastructure; \$200,000 shall be available for a grant to Presbyterian Senior Services for their Grandparent Family Apartments project and programs in the Bronx, New York; \$100,000 shall be available for a grant to Thorpe Family Residence, Inc., to continue its services and programs in the Bronx, New York; \$100,000 shall be available for a grant to the Puerto Rican Traveling Theater in the Bronx, New York, for outreach and programs; \$100,000 shall be available for Casita Maria's Career and College Placement Preparation to be implemented in coordination with business partners in New York City; \$1,100,000 shall be available for a grant to the MountainMade Foundation to fulfill its charter purposes and to continue the initiative developed by the NTTC for outreach and promotion, business and sites development, the education of artists and craftspeople, and to promote small businesses, artisans and their products through market development, advertisement, commercial sale and other promotional means; \$1,000,000 shall be available for a grant for Northwest Shoals Community College to complete the Center for Business and Industry; \$1,000,000 shall be available for the Rhode Island School of Design in Providence, Rhode Island, for the continued modernization of the Mason Building; \$1,000,000 shall be available for a grant to the Norwegian American Foundation to fulfill its charter purposes; \$750,000 shall be available for a grant to St. Mary's College for a telecommunications initiative; \$400,000 shall be available for a grant to the Economic Growth Council Procurement Assistance Program; \$500,000 shall be available for a grant to Johnstown Area Regional Industries in Pennsylvania for an enhanced economic development initiative; \$300,000 shall be available for a grant to the Good Old Lower East Side organization for a small business economic development initiative for the Lower East Side, New York; \$200,000 shall be available for a grant for the Sunnyside Chamber of Commerce to conduct a redevelopment study for Sunnyside, Queens, New York, and to implement improvements.

Ante, p. 96.

(b) Section 621 of division B of Public Law 108-199 is amended—

(1) by striking “\$1,000,000 shall be available for the Providence, Rhode Island Center for Women and Enterprise for infrastructure development;” and inserting “\$100,000 shall be available for the Providence, Rhode Island Center for Women and Enterprise for small business development programs and infrastructure development; \$900,000 shall be available for the Rhode Island School of Design in Providence, Rhode Island, for the continued modernization of the Mason Building;”,

(2) by inserting “for the purpose of conducting the program and providing financial assistance” after “the Economic Growth Connection Paperless Procurement Program”, and

(3) by inserting “and to implement improvements” after “the Ridgewood Myrtle Avenue Business Improvement District to conduct a redevelopment study”.

SEC. 620. All disaster loans issued in Alaska shall be administered by the Small Business Administration and shall not be sold during fiscal year 2005.

Alaska.

SEC. 621. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 622. The Departments of Commerce, Justice, State, the Judiciary, the Securities and Exchange Commission and the Small Business Administration shall, not later than two months after the date of the enactment of this Act, certify that telecommuting opportunities are made available to 100 percent of the eligible workforce: *Provided*, That, of the total amounts appropriated to the Departments of Commerce, Justice, State, the Judiciary, the Securities and Exchange Commission and the Small Business Administration, \$5,000,000 shall be available only upon such certification: *Provided further*, That each Department or agency shall provide quarterly reports to the Committees on Appropriations on the status of telecommuting programs, including the number of Federal employees eligible for, and participating in, such programs: *Provided further*, That each Department or agency shall designate a “Telework Coordinator” to be responsible for overseeing the implementation and operations of telecommuting programs, and serve as a point of contact on such programs for the Committees on Appropriations.

Deadline.
Certification.
5 USC 6120 note.

Reports.

SEC. 623. With the consent of the President, the Secretary of Commerce shall represent the United States Government in negotiating and monitoring international agreements regarding fisheries, marine mammals, or sea turtles: *Provided*, That the Secretary of Commerce shall be responsible for the development and interdepartmental coordination of the policies of the United States with respect to the international negotiations and agreements referred to in this section.

SEC. 624. (a) Tracing studies conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives are released without adequate disclaimers regarding the limitations of the data.

(b) The Bureau of Alcohol, Tobacco, Firearms and Explosives shall include in all such data releases, language similar to the following that would make clear that trace data cannot be used to draw broad conclusions about firearms-related crime:

(1) Firearm traces are designed to assist law enforcement authorities in conducting investigations by tracking the sale and possession of specific firearms. Law enforcement agencies may request firearms traces for any reason, and those reasons are not necessarily reported to the Federal Government. Not all firearms used in crime are traced and not all firearms traced are used in crime.

(2) Firearms selected for tracing are not chosen for purposes of determining which types, makes or models of firearms are used for illicit purposes. The firearms selected do not constitute

a random sample and should not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe. Firearms are normally traced to the first retail seller, and sources reported for firearms traced do not necessarily represent the sources or methods by which firearms in general are acquired for use in crime.

SEC. 625. None of the funds made available in this Act may be used in violation of section 212(a)(10)(C) of the Immigration and Nationality Act.

SEC. 626. None of the funds appropriated or otherwise made available under this Act may be used to issue patents on claims directed to or encompassing a human organism.

United Nations.

SEC. 627. None of the funds made available in this Act may be used to pay expenses for any United States delegation to any specialized agency, body, or commission of the United Nations if such commission is chaired or presided over by a country, the government of which the Secretary of State has determined, for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), has provided support for acts of international terrorism.

SEC. 628. (a) The Department of Justice, the Department of Homeland Security, and the Department of State shall jointly conduct a thorough study of all matters relating to the efficiency and effectiveness of the interagency process used to review applications for nonimmigrant visas issued under section 221(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1201(a)(1)(B)). The Department of Justice, the Department of Homeland Security, and the Department of State shall, in conducting this study, develop recommendations on—

(1) clearance procedures for nonimmigrant visas that should be eliminated;

(2) such procedures that should be continued;

(3) the appropriate Federal agencies or departments or entities that should participate in each such procedure; and

(4) legislation that could be enacted to increase the efficiency and effectiveness of such procedures.

Deadline.
Reports.

(b) Not later than 1 year after the date of enactment of this Act, the Department of Justice, the Department of Homeland Security, and the Department of State shall jointly submit a report to the Committees on Appropriations of the Senate and House of Representatives which shall contain a detailed statement of the findings and conclusions of the study referred to in subsection (a), together with recommendations for such legislation and administrative actions as the Department of Justice, the Department of Homeland Security, and the Department of State consider appropriate. The report may be submitted in a classified and unclassified form.

22 USC 4865
note.

SEC. 629. Section 604 of the Secure Embassy Construction and Counterterrorism Act of 1999 (title VI of division A of H.R. 3427, as enacted by section 1000(a)(7) of Public Law 106-113) is amended by adding the following new subsection at the end:

“(e) CAPITAL SECURITY COST SHARING.—

“(1) AUTHORITY.—Notwithstanding any other provision of law, all agencies with personnel overseas subject to chief of mission authority pursuant to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) shall participate and provide funding in advance for their share of costs of providing new,

safe, secure United States diplomatic facilities, without offsets, on the basis of the total overseas presence of each agency as determined annually by the Secretary of State in consultation with such agency. Amounts advanced by such agencies to the Department of State shall be credited to the Embassy Security, Construction and Maintenance account, and remain available until expended.

“(2) IMPLEMENTATION.—Implementation of this subsection shall be carried out in a manner that encourages right-sizing of each agency’s overseas presence.

“(3) EXCLUSION.—For purposes of this subsection ‘agency’ does not include the Marine Security Guard.”.

SEC. 630. (a) Except as provided in subsection (b), a project to construct a diplomatic facility of the United States may not include office space or other accommodations for an employee of a Federal agency or department if the Secretary of State determines that such department or agency has not provided to the Department of State the full amount of funding required by subsection (e) of section 604 of the Secure Embassy Construction and Counterterrorism Act of 1999 (as enacted into law by section 1000(a)(7) of Public Law 106–113 and contained in appendix G of that Act; 113 Stat. 1501A–453), as added by section 629 of this Act.

(b) Notwithstanding the prohibition in subsection (a), a project to construct a diplomatic facility of the United States may include office space or other accommodations for members of the Marine Corps.

SEC. 631. It is the sense of the Congress that the Secretary of State, at the most immediate opportunity, should—

(1) make a determination as to whether recent events in the Darfur region of Sudan constitute genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide; and

(2) support the investigation and prosecution of war crimes and crimes against humanity committed in the Darfur region of Sudan.

SEC. 632. None of the funds made available in this Act shall be used in any way whatsoever to support or justify the use of torture by any official or contract employee of the United States Government.

SEC. 633. (a) Section 111(b) of Public Law 102–395 (21 U.S.C. 886a) is amended—

(1) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), and indenting accordingly;

(2) in subparagraph (B), as redesignated, by striking “program.” and inserting “program. Such reimbursements shall be made without distinguishing between expenses related to controlled substance activities and expenses related to chemical activities.”;

(3) by striking “There is established” and inserting the following: “(1) IN GENERAL.—There is established”; and

(4) by adding at the end the following:

“(2) DEFINITIONS.—In this section:

“(A) DIVERSION CONTROL PROGRAM.—The term ‘diversion control program’ means the controlled substance and chemical diversion control activities of the Drug Enforcement Administration.

“(B) CONTROLLED SUBSTANCE AND CHEMICAL DIVERSION CONTROL ACTIVITIES.—The term ‘controlled substance and chemical diversion control activities’ means those activities related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals.”.

(b) Section 301 of the Controlled Substances Act (21 U.S.C. 821) is amended by striking “the registration and control of regulated” and all that follows through the period, and inserting “listed chemicals.”.

(c) Section 1088(f) of the Controlled Substances Import and Export Act (21 U.S.C. 958(f)) is amended—

(1) by inserting “and control” after “the registration”; and

(2) by striking “list I chemicals under this section.” and inserting “listed chemicals.”.

SEC. 634. None of the funds appropriated by this Act may be used by the Federal Communications Commission to modify, amend, or change its rules or regulations for universal service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.

SEC. 635. The unobligated balance of the amount appropriated by title V of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (Public Law 107-77; 115 Stat. 798) for necessary expenses of the United States-Canada Alaska Rail Commission shall be transferred as a direct lump-sum payment to the University of Alaska.

SEC. 636. Section 33(a) of the Small Business Act (15 U.S.C. 657c(a)) is amended by adding at the end the following: “Notwithstanding any other provision of law, the Corporation is a private entity and is not an agency, instrumentality, authority, entity, or establishment of the United States Government.”.

SEC. 637. Of the amounts made available in this Act, \$160,186,300 from “Department of State”; \$14,449,118 from “Department of Justice”; \$3,095,206 from “Department of Commerce”; \$213,154 from “United States Trade Representative”; and \$302,985 from “Broadcasting Board of Governors” shall be available for the purposes of implementing the Capital Security Cost Sharing program, as provided in section 629 of the Act.

SEC. 638. Notwithstanding 40 U.S.C. 524, 571, and 572, the Federal Communications Commission may sell the monitoring facilities in Honolulu, Hawaii, and Livermore, California, including all real property: *Provided*, That any sale shall be made in accordance with section 605 of this Act.

SEC. 639. None of the funds made available in this Act may be used in contravention of the provisions of subsections (e) and (f) of section 301 of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108-25; 22 U.S.C. 7631(e) and (f)).

SEC. 640. (a) There is hereby rescinded an amount equal to 0.54 percent of the budget authority provided for in fiscal year 2005 for any discretionary account in this Act.

(b) Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in subsection (a); and

Applicability.

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

TITLE VII—RESCISSIONS

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

WORKING CAPITAL FUND

(RESCISSION)

Of the unobligated balances available under this heading, \$60,000,000 are rescinded.

LEGAL ACTIVITIES

ASSET FORFEITURE FUND

(RESCISSION)

Of the unobligated balances available under this heading, \$61,800,000 are rescinded.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

(RESCISSION)

Of the unobligated balances available under this heading, \$1,619,000 are rescinded.

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

(RESCISSION)

Of the unobligated balances available under this heading, \$29,380,000 are rescinded.

COMMUNITY ORIENTED POLICING SERVICES

(RESCISSION)

Of the unobligated balances available under this heading, \$99,000,000 are rescinded.

JUVENILE JUSTICE

(RESCISSION)

Of the unobligated balances available under this heading, \$3,500,000 are rescinded.

DEPARTMENT OF COMMERCE

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

INDUSTRIAL TECHNOLOGY SERVICES

(RESCISSION)

Of the unobligated balances available under this heading for the Advanced Technology Program, \$3,900,000 are rescinded.

RELATED AGENCIES

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

(RESCISSION)

Of the unobligated balances available under this heading, \$12,000,000 are rescinded.

TITLE VIII—PATENT AND TRADEMARK FEES

35 USC 41 note.

SEC. 801. FEES FOR PATENT SERVICES.

(a) GENERAL PATENT FEES.—During fiscal years 2005 and 2006, subsection (a) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(a) GENERAL FEES.—The Director shall charge the following fees:

“(1) FILING AND BASIC NATIONAL FEES.—

“(A) On filing each application for an original patent, except for design, plant, or provisional applications, \$300.

“(B) On filing each application for an original design patent, \$200.

“(C) On filing each application for an original plant patent, \$200.

“(D) On filing each provisional application for an original patent, \$200.

“(E) On filing each application for the reissue of a patent, \$300.

“(F) The basic national fee for each international application filed under the treaty defined in section 351(a) of this title entering the national stage under section 371 of this title, \$300.

“(G) In addition, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director, for any application the specification and drawings of which exceed 100 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium), \$250 for each additional 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium) or fraction thereof.

“(2) EXCESS CLAIMS FEES.—In addition to the fee specified in paragraph (1)—

“(A) on filing or on presentation at any other time, \$200 for each claim in independent form in excess of 3;

“(B) on filing or on presentation at any other time, \$50 for each claim (whether dependent or independent) in excess of 20; and

“(C) for each application containing a multiple dependent claim, \$360.

For the purpose of computing fees under this paragraph, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any claim that is canceled before an examination on the merits, as prescribed by the Director, has been made of the application under section 131 of this title. Errors in payment of the additional fees under this paragraph may be rectified in accordance with regulations prescribed by the Director.

“(3) EXAMINATION FEES.—

“(A) For examination of each application for an original patent, except for design, plant, provisional, or international applications, \$200.

“(B) For examination of each application for an original design patent, \$130.

“(C) For examination of each application for an original plant patent, \$160.

“(D) For examination of the national stage of each international application, \$200.

“(E) For examination of each application for the reissue of a patent, \$600.

The provisions of section 111(a) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

Applicability.

Applicability.

“(4) ISSUE FEES.—

“(A) For issuing each original patent, except for design or plant patents, \$1,400.

“(B) For issuing each original design patent, \$800.

“(C) For issuing each original plant patent, \$1,100.

“(D) For issuing each reissue patent, \$1,400.

“(5) DISCLAIMER FEE.—On filing each disclaimer, \$130.

“(6) APPEAL FEES.—

“(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$500.

“(B) In addition, on filing a brief in support of the appeal, \$500, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$1,000.

“(7) REVIVAL FEES.—On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in any reexamination proceeding, \$1,500,

unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$500.

“(8) EXTENSION FEES.—For petitions for 1-month extensions of time to take actions required by the Director in an application—

“(A) on filing a first petition, \$120;

“(B) on filing a second petition, \$330; and

“(C) on filing a third or subsequent petition, \$570.”.

(b) PATENT MAINTENANCE FEES.—During fiscal years 2005 and 2006, subsection (b) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(b) MAINTENANCE FEES.—The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

“(1) 3 years and 6 months after grant, \$900.

“(2) 7 years and 6 months after grant, \$2,300.

“(3) 11 years and 6 months after grant, \$3,800.

Unless payment of the applicable maintenance fee is received in the United States Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.”.

(c) PATENT SEARCH FEES.—During fiscal years 2005 and 2006, subsection (d) of section 41 of title 35, United States Code, shall be administered as though that subsection reads as follows:

“(d) PATENT SEARCH AND OTHER FEES.—

“(1) PATENT SEARCH FEES.—

“(A) The Director shall charge a fee for the search of each application for a patent, except for provisional applications. The Director shall establish the fees charged under this paragraph to recover an amount not to exceed the estimated average cost to the Office of searching applications for patent either by acquiring a search report from a qualified search authority, or by causing a search by Office personnel to be made, of each application for patent. For the 3-year period beginning on the date of enactment of this Act, the fee for a search by a qualified search authority of a patent application described in clause (i), (iv), or (v) of subparagraph (B) may not exceed \$500, of a patent application described in clause (ii) of subparagraph (B) may not exceed \$100, and of a patent application described in clause (iii) of subparagraph (B) may not exceed \$300. The Director may not increase any such fee by more than 20 percent in each of the next three 1-year periods, and the Director may not increase any such fee thereafter.

“(B) For purposes of determining the fees to be established under this paragraph, the cost to the Office of causing a search of an application to be made by Office personnel shall be deemed to be—

“(i) \$500 for each application for an original patent, except for design, plant, provisional, or international applications;

“(ii) \$100 for each application for an original design patent;

“(iii) \$300 for each application for an original plant patent;

“(iv) \$500 for the national stage of each international application; and

“(v) \$500 for each application for the reissue of a patent.

“(C) The provisions of section 111(a)(3) of this title relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in this paragraph with respect to an application filed under section 111(a) of this title. The provisions of section 371(d) of this title relating to the payment of the national fee shall apply to the payment of the fee specified in this paragraph with respect to an international application.

“(D) The Director may by regulation provide for a refund of any part of the fee specified in this paragraph for any applicant who files a written declaration of express abandonment as prescribed by the Director before an examination has been made of the application under section 131 of this title, and for any applicant who provides a search report that meets the conditions prescribed by the Director.

“(E) For purposes of subparagraph (A), a ‘qualified search authority’ may not include a commercial entity unless—

“(i) the Director conducts a pilot program of limited scope, conducted over a period of not more than 18 months, which demonstrates that searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications—

“(I) are accurate; and

“(II) meet or exceed the standards of searches conducted by and used by the Patent and Trademark Office during the patent examination process;

“(ii) the Director submits a report on the results of the pilot program to Congress and the Patent Public Advisory Committee that includes—

“(I) a description of the scope and duration of the pilot program;

“(II) the identity of each commercial entity participating in the pilot program;

“(III) an explanation of the methodology used to evaluate the accuracy and quality of the search reports; and

“(IV) an assessment of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on—

“(aa) patentability determinations;

“(bb) productivity of the Patent and Trademark Office;

“(cc) costs to the Patent and Trademark Office;

“(dd) costs to patent applicants; and

“(ee) other relevant factors;

“(iii) the Patent Public Advisory Committee reviews and analyzes the Director’s report under clause (ii) and the results of the pilot program and submits a separate report on its analysis to the Director and the Congress that includes—

“(I) an independent evaluation of the effects that the pilot program, as compared to searches conducted by the Patent and Trademark Office, had and will have on the factors set forth in clause (ii)(IV); and

“(II) an analysis of the reasonableness, appropriateness, and effectiveness of the methods used in the pilot program to make the evaluations required under clause (ii)(IV); and

“(iv) Congress does not, during the 1-year period beginning on the date on which the Patent Public Advisory Committee submits its report to the Congress under clause (iii), enact a law prohibiting searches by commercial entities of the available prior art relating to the subject matter of inventions claimed in patent applications.

“(F) The Director shall require that any search by a qualified search authority that is a commercial entity is conducted in the United States by persons that—

“(i) if individuals, are United States citizens; and

“(ii) if business concerns, are organized under the laws of the United States or any State and employ United States citizens to perform the searches.

“(G) A search of an application that is the subject of a secrecy order under section 181 or otherwise involves classified information may only be conducted by Office personnel.

“(H) A qualified search authority that is a commercial entity may not conduct a search of a patent application if the entity has any direct or indirect financial interest in any patent or in any pending or imminent application for patent filed or to be filed in the Patent and Trademark Office.

“(2) OTHER FEES.—The Director shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Director shall charge the following fees for the following services:

“(A) For recording a document affecting title, \$40 per property.

“(B) For each photocopy, \$.25 per page.

“(C) For each black and white copy of a patent, \$3. The yearly fee for providing a library specified in section 12 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be \$50.”

(d) ADJUSTMENTS.—During fiscal years 2005 and 2006, subsection (f) of section 41 of title 35, United States Code, shall apply to the fees established under this section.

(e) FEES FOR SMALL ENTITIES.—During fiscal years 2005 and 2006, subsection (h) of section 41 of title 35, United States Code, shall be administered as though that subsection is amended—

(1) in paragraph (1), by striking “Fees charged under subsection (a) or (b)” and inserting “Subject to paragraph (3), fees charged under subsections (a), (b), and (d)(1)”; and

(2) by adding at the end the following new paragraph:

“(3) The fee charged under subsection (a)(1)(A) shall be reduced by 75 percent with respect to its application to any entity to which paragraph (1) applies, if the application is filed by electronic means as prescribed by the Director.”.

SEC. 802. ADJUSTMENT OF TRADEMARK FEES.

35 USC 41 note.

(a) **FEE FOR FILING APPLICATION.**—During fiscal years 2005 and 2006, under such conditions as may be prescribed by the Director, the fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for: (1) the filing of a paper application for the registration of a trademark shall be \$375; (2) the filing of an electronic application shall be \$325; and (3) the filing of an electronic application meeting certain additional requirements prescribed by the Director shall be \$275. During fiscal years 2005 and 2006, the provisions of the second and third sentences of section 31(a) of the Trademark Act of 1946 shall apply to the fees established under this section.

Applicability.

(b) **REFERENCE TO TRADEMARK ACT OF 1946.**—For purposes of this section, the “Trademark Act of 1946” refers to the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.”, approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 803. EFFECTIVE DATE, APPLICABILITY, AND TRANSITIONAL PROVISION.

35 USC 41 note.

(a) **EFFECTIVE DATE.**—Except as otherwise provided in this title (including this section), the provisions of this title shall take effect on the date of the enactment of this Act and shall apply only with respect to the remaining portion of fiscal year 2005 and fiscal year 2006.

(b) **APPLICABILITY.**—

(1)(A) Except as provided in subparagraphs (B) and (C), the provisions of section 801 shall apply to all patents, whenever granted, and to all patent applications pending on or filed after the effective date set forth in subsection (a) of this section.

(B)(i) Except as provided in clause (ii), subsections (a)(1) and (3) and (d)(1) of section 41 of title 35, United States Code, as administered as provided in this title, shall apply only to—

(I) applications for patents filed under section 111 of title 35, United States Code, on or after the effective date set forth in subsection (a) of this section, and

(II) international applications entering the national stage under section 371 of title 35, United States Code, for which the basic national fee specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

(ii) Section 41(a)(1)(D) of title 35, United States Code, as administered as provided in this title, shall apply only to applications for patent filed under section 111(b) of title 35, United States Code, before, on, or after the effective date set forth in subsection (a) of this section in which the filing fee

specified in section 41 of title 35, United States Code, was not paid before the effective date set forth in subsection (a) of this section.

(C) Section 41(a)(2) of title 35, United States Code, as administered as provided in this title, shall apply only to the extent that the number of excess claims, after giving effect to any cancellation of claims, is in excess of the number of claims for which the excess claims fee specified in section 41 of title 35, United States Code, was paid before the effective date set forth in subsection (a) of this section.

(2) The provisions of section 802 shall apply to all applications for the registration of a trademark filed or amended on or after the effective date set forth in subsection (a) of this section.

(c) TRANSITIONAL PROVISIONS.—

(1) SEARCH FEES.—During fiscal years 2005 and 2006, the Director shall charge—

(A) for the search of each application for an original patent, except for design, plant, provisional, or international application, \$500;

(B) for the search of each application for an original design patent, \$100;

(C) for the search of each application for an original plant patent, \$300;

(D) for the search of the national stage of each international application, \$500; and

(E) for the search of each application for the reissue of a patent, \$500.

(2) TIMING OF FEES.—The provisions of section 111(a)(3) of title 35, United States Code, relating to the payment of the fee for filing the application shall apply to the payment of the fee specified in paragraph (1) with respect to an application filed under section 111(a) of title 35, United States Code. The provisions of section 371(d) of title 35, United States Code, relating to the payment of the national fee shall apply to the payment of the fee specified in paragraph (1) with respect to an international application.

35 USC 41 note.

SEC. 804. DEFINITION.

In this title, the term “Director” means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Oceans and
Human Health
Act.

TITLE IX—OCEANS AND HUMAN HEALTH ACT

33 USC 3101
note.

SEC. 901. SHORT TITLE.

This title may be cited as the “Oceans and Human Health Act”.

33 USC 3101
note.

SEC. 902. INTERAGENCY OCEANS AND HUMAN HEALTH RESEARCH PROGRAM.

President.

(a) COORDINATION.—The President, through the National Science and Technology Council, shall coordinate and support a national research program to improve understanding of the role of the oceans in human health.

(b) IMPLEMENTATION PLAN.—Within 1 year after the date of enactment of this Act, the National Science and Technology Council, through the Director of the Office of Science and Technology Policy shall develop and submit to the Congress a plan for coordinated Federal activities under the program. Nothing in this subsection is intended to duplicate or supersede the activities of the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia established under section 603 of the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998 (16 U.S.C. 1451 note). In developing the plan, the Committee will consult with the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia. Such plan will build on and complement the ongoing activities of the National Oceanic and Atmospheric Administration, the National Science Foundation, and other departments and agencies and shall—

Deadline.

(1) establish, for the 10-year period beginning in the year it is submitted, the goals and priorities for Federal research which most effectively advance scientific understanding of the connections between the oceans and human health, provide usable information for the prediction of marine-related public health problems and use the biological potential of the oceans for development of new treatments of human diseases and a greater understanding of human biology;

(2) describe specific activities required to achieve such goals and priorities, including the funding of competitive research grants, ocean and coastal observations, training and support for scientists, and participation in international research efforts;

(3) identify and address, as appropriate, relevant programs and activities of the Federal agencies and departments that would contribute to the program;

(4) identify alternatives for preventive unnecessary duplication of effort among Federal agencies and departments with respect to the program;

(5) consider and use, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, the Ocean Research Advisory Panel, the Commission on Ocean Policy and other expert scientific bodies;

(6) make recommendations for the coordination of program activities with ocean and human health-related activities of other national and international organizations; and

(7) estimate Federal funding for research activities to be conducted under the program.

(c) PROGRAM SCOPE.—The program may include the following activities related to the role of oceans in human health:

(1) Interdisciplinary research among the ocean and medical sciences, and coordinated research and activities to improve understanding of processes within the ocean that may affect human health and to explore the potential contribution of marine organisms to medicine and research, including—

(A) vector- and water-borne diseases of humans and marine organisms, including marine mammals and fish;

(B) harmful algal blooms and hypoxia (through the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia);

(C) marine-derived pharmaceuticals;

(D) marine organisms as models for biomedical research and as indicators of marine environmental health;

(E) marine environmental microbiology;

(F) bioaccumulative and endocrine-disrupting chemical contaminants; and

(G) predictive models based on indicators of marine environmental health or public health threats.

(2) Coordination with the National Ocean Research Leadership Council (10 U.S.C. 7902(a)) to ensure that any integrated ocean and coastal observing system provides information necessary to monitor and reduce marine public health problems including health-related data on biological populations and detection of contaminants in marine waters and seafood.

(3) Development through partnerships among Federal agencies, States, academic institutions, or non-profit research organizations of new technologies and approaches for detecting and reducing hazards to human health from ocean sources and to strengthen understanding of the value of marine biodiversity to biomedicine, including—

(A) genomics and proteomics to develop genetic and immunological detection approaches and predictive tools and to discover new biomedical resources;

(B) biomaterials and bioengineering;

(C) in situ and remote sensors used to detect, quantify, and predict the presence and spread of contaminants in marine waters and organisms and to identify new genetic resources for biomedical purposes;

(D) techniques for supplying marine resources, including chemical synthesis, culturing and aquaculturing marine organisms, new fermentation methods and recombinant techniques; and

(E) adaptation of equipment and technologies from human health fields.

(4) Support for scholars, trainees and education opportunities that encourage an interdisciplinary and international approach to exploring the diversity of life in the oceans.

(d) ANNUAL REPORT.—Beginning with the first year occurring more than 24 months after the date of enactment of this Act, the National Science and Technology Council, through the Director of the Office of Science and Technology Policy shall prepare and submit to the President and the Congress not later than January 31st of each year an annual report on the activities conducted pursuant to this title during the preceding fiscal year, including—

(1) a summary of the achievements of Federal oceans and human health research, including Federally supported external research, during the preceding fiscal year;

(2) an analysis of the progress made toward achieving the goals and objectives of the plan developed under subsection (b), including identification of trends and emerging trends;

(3) a copy or summary of the plan and any changes made in the plan;

(4) a summary of agency budgets for oceans and human health activities for that preceding fiscal year; and

(5) any recommendations regarding additional action or legislation that may be required to assist in achieving the purposes of this title.

SEC. 903. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION 33 USC 3102.
OCEANS AND HUMAN HEALTH INITIATIVE.

(a) **ESTABLISHMENT.**—As part of the interagency oceans and human health research program, the Secretary of Commerce is authorized to establish an Oceans and Human Health Initiative to coordinate and implement research and activities of the National Oceanic and Atmospheric Administration related to the role of the oceans, the coasts, and the Great Lakes in human health. In carrying out this section, the Secretary shall consult with other Federal agencies conducting integrated oceans and human health research and research in related areas, including the National Science Foundation. The Oceans and Human Health Initiative is authorized to provide support for—

- (1) centralized program and research coordination;
- (2) an advisory panel;
- (3) one or more National Oceanic and Atmospheric Administration national centers of excellence;
- (4) research grants; and
- (5) distinguished scholars and traineeships.

(b) **ADVISORY PANEL.**—The Secretary is authorized to establish an oceans and human health advisory panel to assist in the development and implementation of the Oceans and Human Health Initiative. Membership of the advisory group shall provide for balanced representation of individuals with multi-disciplinary expertise in the marine and biomedical sciences. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oceans and human health advisory panel.

(c) **NATIONAL CENTERS.**—

(1) The Secretary is authorized to identify and provide financial support through a competitive process to develop, within the National Oceanic and Atmospheric Administration, for one or more centers of excellence that strengthen the capabilities of the National Oceanic and Atmospheric Administration to carry out its programs and activities related to the oceans' role in human health.

(2) The centers shall focus on areas related to agency missions, including use of marine organisms as indicators for marine environmental health, ocean pollutants, marine toxins and pathogens, harmful algal blooms, hypoxia, seafood testing, identification of potential marine products, and biology and pathobiology of marine mammals, and on disciplines including marine genomics, marine environmental microbiology, ecological chemistry and conservation medicine.

(3) In selecting centers for funding, the Secretary will give priority to proposals with strong interdisciplinary scientific merit that encourage educational opportunities and provide for effective partnerships among the Administration, other Federal entities, State, academic, non-profit research organizations, medical, and industry participants.

(d) **EXTRAMURAL RESEARCH GRANTS.**—

(1) The Secretary is authorized to provide grants of financial assistance to the scientific community for critical research and projects that explore the relationship between the oceans and human health and that complement or strengthen programs and activities of the National Oceanic and Atmospheric Administration related to the ocean's role in human health. Officers and employees of Federal agencies may collaborate

with, and participate in, such research and projects to the extent requested by the grant recipient. The Secretary shall consult with the oceans and human health advisory panel established under subsection (b) and may work cooperatively with other agencies participating in the interagency program to establish joint criteria for such research and projects.

(2) Grants under this subsection shall be awarded through a competitive peer-reviewed, merit-based process that may be conducted jointly with other agencies participating in the interagency program.

(e) **TRAINEESHIPS.**—The Secretary of Commerce is authorized to establish a program to provide traineeships, training, and experience to pre-doctoral and post-doctoral students and to scientists at the beginning of their careers who are interested in the oceans in human health research conducted under the NOAA initiative.

33 USC 3103.

SEC. 904. PUBLIC INFORMATION AND OUTREACH.

(a) **IN GENERAL.**—The Secretary of Commerce, in consultation with other Federal agencies, and in cooperation with the National Sea Grant program, shall design and implement a program to disseminate information developed under the NOAA Oceans and Human Health Initiative, including research, assessments, and findings regarding the relationship between oceans and human health, on both a regional and national scale. The information, particularly with respect to potential health risks, shall be made available in a timely manner to appropriate Federal or State agencies, involved industries, and other interested persons through a variety of means, including through the Internet.

(b) **REPORT.**—As part of this program, the Secretary shall submit to Congress an annual report reviewing the results of the research, assessments, and findings developed under the NOAA Oceans and Human Health Initiative, as well as recommendations for improving or expanding the program.

33 USC 3104.

SEC. 905. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Commerce to carry out the National Oceanic and Atmospheric Administration Oceans and Human Health Initiative, \$60,000,000 for fiscal years 2005 through 2008. Not less than 50 percent of the amounts appropriated to carry out the initiative shall be utilized in each fiscal year to support the extramural grant and traineeship programs of the Initiative.

This division may be cited as the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005”.

DIVISION C—ENERGY AND WATER DEVELOPMENT
APPROPRIATIONS ACT, 2005Energy and
Water
Development
Appropriations
Act, 2005.

TITLE I

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

The following appropriations shall be expended under the direction of the Secretary of the Army and the supervision of the Chief of Engineers for authorized civil functions of the Department of the Army pertaining to rivers and harbors, flood control, shore protection and storm damage reduction, aquatic ecosystem restoration, and related purposes.

GENERAL INVESTIGATIONS

For expenses necessary for the collection and study of basic information pertaining to river and harbor, flood control, shore protection and storm damage reduction, aquatic ecosystem restoration, and related projects, restudy of authorized projects, miscellaneous investigations, and, when authorized by law, surveys and detailed studies and plans and specifications of projects prior to construction, \$144,500,000, to remain available until expended: *Provided*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use \$300,000 for the continued preconstruction, engineering, and design of Waikiki Beach, Oahu, Hawaii, the project to be designed and evaluated, as authorized and that any recommendations for a National Economic Development Plan shall be accepted notwithstanding the extent of recreation benefits supporting the project features, in view of the fact that recreation is extremely important in sustaining and increasing the economic well-being of the State of Hawaii and the nation: *Provided further*, That in conducting the Southwest Valley Flood Damage Reduction Study, Albuquerque, New Mexico, the Secretary of the Army, acting through the Chief of Engineers, shall include an evaluation of flood damage reduction measures that would otherwise be excluded from the feasibility analysis based on policies regarding the frequency of flooding, the drainage areas, and the amount of runoff: *Provided further*, That for the Ohio Riverfront, Cincinnati, Ohio, project, the cost of planning and design undertaken by non-Federal interests shall be credited toward the non-Federal share of project design costs.

CONSTRUCTION, GENERAL

For expenses necessary for the construction of river and harbor, flood control, shore protection and storm damage reduction, aquatic ecosystem restoration, and related projects authorized by law; for conducting detailed studies, and plans and specifications, of such projects (including those for development with participation or under consideration for participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such detailed studies, and plans and specifications, shall not constitute a commitment of the Government to construction);

and for the benefit of federally listed species to address the effects of civil works projects owned or operated by the United States Army Corps of Engineers, \$1,796,089,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of construction costs for facilities under the Dredged Material Disposal Facilities program shall be derived from the Harbor Maintenance Trust Fund as authorized by Public Law 104-303; and of which such sums as are necessary pursuant to Public Law 99-662 shall be derived from the Inland Waterways Trust Fund, to cover one-half of the costs of construction and rehabilitation of inland waterways projects, (including the rehabilitation costs for Lock and Dam 11, Mississippi River, Iowa; Lock and Dam 19, Mississippi River, Iowa; Lock and Dam 24, Mississippi River, Illinois and Missouri; and Lock and Dam 3, Mississippi River, Minnesota) shall be derived from the Inland Waterways Trust Fund: *Provided*, That using \$12,500,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue construction of the Dallas Floodway Extension, Texas, project, including the Cadillac Heights feature, generally in accordance with the Chief of Engineers report dated December 7, 1999: *Provided further*, That the Secretary of the Army is directed to accept advance funds, pursuant to section 11 of the River and Harbor Act of 1925, from the non-Federal sponsor of the Los Angeles Harbor, California, project authorized by section 101(b)(5) of Public Law 106-541: *Provided further*, That the Secretary of the Army is directed to accept advance funds, or any portion thereof, pursuant to section 11 of the River and Harbor Act of 1925, from the non-Federal sponsor of the Oakland Harbor, California, project authorized by section 101(a)(7) of Public Law 106-53: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use \$500,000 of the funds provided herein to continue construction of the Hawaii Water Management Project: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use \$3,000,000 of the funds appropriated herein to continue construction of the navigation project at Kaumalapau Harbor, Hawaii: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use \$3,000,000 of the funds provided herein for the Dam Safety and Seepage/Stability Correction Program to complete construction of seepage control features and repairs to the tainter gates at Waterbury Dam, Vermont: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use \$9,000,000 of the funds appropriated herein to proceed with planning, engineering, design or construction of the Grundy, Buchanan County, and Dickenson County, Virginia, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River Project: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use \$15,000,000 of the funds appropriated herein to continue with the planning, engineering, design or construction of the Lower Mingo County, Upper Mingo County, Wayne County, McDowell County, West Virginia, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River Project: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to continue the Dickenson County Detailed Project Report as generally defined in Plan 4 of the Huntington District

Engineer's Draft Supplement to the section 202 General Plan for Flood Damage Reduction dated April 1997, including all Russell Fork tributary streams within the County and special considerations as may be appropriate to address the unique relocations and resettlement needs for the flood prone communities within the County: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use \$8,750,000 of the funds appropriated herein for the Clover Fork, City of Cumberland, Town of Martin, Pike County (including Levisa Fork and Tug Fork Tributaries), Bell County, Harlan County in accordance with the Draft Detailed Project Report dated January 2002, Floyd County, Martin County, Johnson County, and Knox County, Kentucky, detailed project report, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to continue with the construction of the Seward Harbor, Alaska, project, in accordance with the Report of the Chief of Engineers, dated June 8, 1999, and the economic justification contained therein: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to continue with the construction of the False Pass, Alaska, project, in accordance with the Report of the Chief of Engineers, dated December 29, 2000: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to proceed with construction of the Sand Point Harbor, Alaska project, in accordance with the Report of the Chief of Engineers, dated October 13, 1998, and the economic justification contained therein: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to design and construct modifications to the Federal navigation project at Thomsen Harbor, Sitka, Alaska, authorized by section 101 of the Water Resources Development Act of 1992: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, shall correct the design deficiency at Thomsen Harbor, Sitka, Alaska, by adding to, or extending, the existing breakwaters to reduce wave and swell motion within the harbor at an additional cost of \$1,000,000 at full Federal expense: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed and authorized to continue the work to replace and upgrade the dam and all connections to the existing system at Kake, Alaska: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to continue with the construction of the Wrangell Harbor, Alaska, project in accordance with the Chief of Engineer's report dated December 23, 1999: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to proceed with the construction of the New York and New Jersey Harbor project, 50-foot deepening element, upon execution of the Project Cooperation Agreement: *Provided further*, That no funds made available under this Act or any other Act for any fiscal year may be used by the Secretary of the Army to carry out the construction of the Port Jersey element of the New York and New Jersey Harbor or reimbursement to the Local Sponsor for the construction of the Port Jersey element until commitments for construction of container handling facilities are obtained from the non-Federal sponsor for a second user along the Port Jersey element: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to

use funds appropriated for the navigation project, Tampa Harbor, Florida, to carry out, as part of the project, construction of passing lanes in an area approximately 3.5 miles long, centered on Tampa Bay Cut B, if the Secretary determines that such construction is technically sound, environmentally acceptable, and cost effective: *Provided further*, That using \$750,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to plan, design, and initiate reconstruction of the Cape Girardeau, Missouri, project, originally authorized by the Flood Control Act of 1950, at an estimated total cost of \$9,000,000, with cost sharing on the same basis as cost sharing for the project as originally authorized, if the Secretary determines that the reconstruction is technically sound and environmentally acceptable: *Provided further*, That the planned reconstruction shall be based on the most cost-effective engineering solution and shall require no further economic justification: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to proceed without further delay with work on the permanent bridge to replace Folsom Bridge Dam Road, Folsom, California, as authorized by the Energy and Water Development Appropriations Act, 2004 (Public Law 108-137), and, of the \$8,000,000 available for the American River Watershed (Folsom Dam Mini-Raise), California, project, up to \$5,000,000 of those funds be directed for the permanent bridge, with all remaining devoted to the Mini-Raise: *Provided further*, That the Secretary of the Army is directed to use \$1,365,000 of the funds appropriated herein to construct a project for flood control, Cass River, Spaulding Township, Michigan, pursuant to section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), notwithstanding that the benefits of the project may not exceed the estimated costs of the project: *Provided further*, That the non-Federal interest for the project shall receive credit towards its share of project costs in the amount of \$345,000 for work carried out by the non-Federal interest on the project prior to entering into a project cooperation agreement: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to undertake and fund a demonstration project utilizing the Bidlocker system of escrowing contract bid documents: *Provided further*, That the system should provide a method of securing bidder documents prior to the award of the contracts, thus allowing the contractor to provide those documents to the Government in the case of disputes: *Provided further*, That the demonstration project should include use of the system on at least three contracts: *Provided further*, That a report on the results of the demonstration project shall be provided within 1 year of the date of enactment of this Act.

Reports.
Deadline.

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES, ARKANSAS, ILLINOIS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, AND TENNESSEE

For expenses necessary for the flood damage reduction program for the Mississippi River alluvial valley below Cape Girardeau, Missouri, as authorized by law, \$324,500,000, to remain available until expended: *Provided*, That the Secretary of the Army, acting through the Chief of Engineers, using \$12,000,000 of the funds provided herein, is directed to continue design and real estate activities and to initiate the pump supply contract for the Yazoo

Basin, Yazoo Backwater Pumping Plant, Mississippi: *Provided further*, That the pump supply contract shall be performed by awarding continuing contracts in accordance with 33 U.S.C. 621: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers is directed, with \$500,000 appropriated herein, to continue construction of water withdrawal features of the Grand Prairie, Arkansas, project.

OPERATION AND MAINTENANCE

For expenses necessary for the operation, maintenance, and care of existing river and harbor, flood and storm damage reduction, aquatic ecosystem restoration, and related projects authorized by law; for the benefit of federally listed species to address the effects of civil works projects owned or operated by the United States Army Corps of Engineers; for providing security for infrastructure owned and operated by, or on behalf of, the United States Army Corps of Engineers, including administrative buildings and facilities, laboratories, and the Washington Aqueduct; for the maintenance of harbor channels provided by a State, municipality, or other public agency that serve essential navigation needs of general commerce, where authorized by law; and for surveys and charting of northern and northwestern lakes and connecting waters, clearing and straightening channels, and removal of obstructions to navigation, \$1,959,101,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of operation and maintenance costs for coastal harbors and channels shall be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99-662 may be derived from that fund; of which such sums as become available from the special account for the United States Army Corps of Engineers established by the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 4601-6a(i)), may be derived from that account for resource protection, research, interpretation, and maintenance activities related to resource protection in the areas at which outdoor recreation is available; and of which such sums as become available under section 217 of the Water Resources Development Act of 1996, Public Law 104-303, shall be used to cover the cost of operation and maintenance of the dredged material disposal facilities for which fees have been collected: *Provided*, That utilizing funds appropriated herein, for the Intracoastal Waterway, Delaware River to Chesapeake Bay, Delaware and Maryland, the Secretary of the Army, acting through the Chief of Engineers, is directed to reimburse the State of Delaware for normal operation and maintenance costs incurred by the State of Delaware for the SR1 Bridge from station 58+00 to station 293+00 between October 1, 2003, and September 30, 2004: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use funds appropriated herein to rehabilitate the existing dredged material disposal site for the project for navigation, Bodega Bay Harbor, California, and to continue maintenance dredging of the Federal channel: *Provided further*, That the Secretary shall make suitable material excavated from the Bodega Bay Harbor, California, disposal site as part of the rehabilitation effort available to the non-Federal sponsor, at no cost to the Federal Government, for use by the non-Federal sponsor in the development of public facilities: *Provided further*, That the Secretary of the Army, acting through the Chief of Engineers, is authorized to undertake, at full Federal expense, a detailed

evaluation of the Albuquerque levees for purposes of determining structural integrity, impacts of vegetative growth, and performance under current hydrological conditions: *Provided further*, That using \$175,000 provided herein, the Secretary of the Army, acting through the Chief of Engineers is authorized to remove the sunken vessel *State of Pennsylvania* from the Christina River in Delaware: *Provided further*, That the Corps of Engineers shall not allocate any funds to deposit dredged material along the Laguna Madre portion of the Gulf Intracoastal Waterway except at the placement areas specified in the Dredged Material Management Plan in section 2.11 of the Final Environmental Impact Statement for Maintenance Dredging of the Gulf Intracoastal Waterway, Laguna Madre, Texas, Nueces, Kleberg, Kenedy, Willacy, and Cameron Counties, Texas, prepared by the Corps of Engineers dated September 2003: *Provided further*, That nothing in the above proviso shall prevent the Corps of Engineers from performing necessary maintenance operations along the Gulf Intracoastal Waterway if the following conditions are met: if the Corps proposes to use any placement areas that are not currently specified in the Dredged Material Management Plan and failure to use such alternative placement areas will result in the closure of any segment of the Gulf Intracoastal Waterway, then such proposal shall be analyzed in an Environmental Impact Statement (EIS) and comply with all other applicable requirements of the National Environmental Policy Act, 42 U.S.C. 4321 et seq., and all other applicable State and Federal laws, including the Clean Water Act, 33 U.S.C. 1251 et seq., the Endangered Species Act, 16 U.S.C. 1531 et seq., and the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.: *Provided further*, That, of the funds made available, \$7,000,000 is to be used to perform work authorized in section 136 of Public Law 108–357.

REGULATORY PROGRAM

For expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, \$145,000,000, to remain available until expended.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

For expenses necessary to clean up contamination from sites in the United States resulting from work performed as part of the Nation's early atomic energy program, \$165,000,000, to remain available until expended.

GENERAL EXPENSES

For expenses necessary for general administration and related civil works functions in the headquarters of the United States Army Corps of Engineers, the offices of the Division Engineers, the Humphreys Engineer Center Support Activity, the Institute for Water Resources, the United States Army Engineer Research and Development Center, and the United States Army Corps of Engineers Finance Center, \$167,000,000, to remain available until expended: *Provided*, That no part of any other appropriation provided in title I of this Act shall be available to fund the civil works activities of the Office of the Chief of Engineers or the civil works executive direction and management activities of the division offices: *Provided further*, That none of these funds shall

be available to support an office of congressional affairs within the executive office of the Chief of Engineers.

OFFICE OF ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

For expenses necessary for the Office of Assistant Secretary of the Army (Civil Works), as authorized by 10 U.S.C. 3016(b)(3), \$4,000,000.

ADMINISTRATIVE PROVISION

Appropriations in this title shall be available for official reception and representation expenses (not to exceed \$5,000); and during the current fiscal year the Revolving Fund, Corps of Engineers, shall be available for purchase (not to exceed 100 for replacement only) and hire of passenger motor vehicles.

GENERAL PROVISIONS

CORPS OF ENGINEERS—CIVIL

SEC. 101. Beginning in fiscal year 2005 and thereafter, agreements proposed for execution by the Assistant Secretary of the Army for Civil Works or the United States Army Corps of Engineers after the date of the enactment of this Act pursuant to section 4 of the Rivers and Harbor Act of 1915, Public Law 64–291; section 11 of the River and Harbor Act of 1925, Public Law 68–585; the Civil Functions Appropriations Act, 1936, Public Law 75–208; section 215 of the Flood Control, Act of 1968, as amended, Public Law 90–483; sections 104, 203, and 204 of the Water Resources Development Act of 1986, as amended, Public Law 99–662; section 206 of the Water Resources Development Act of 1992, as amended, Public Law 102–580; section 211 of the Water Resources Development Act of 1996, Public Law 104–303; and any other specific project authority, shall be limited to credits and reimbursements per project not to exceed \$10,000,000 in each fiscal year, and total credits and reimbursements for all applicable projects not to exceed \$50,000,000 in each fiscal year, except that for environmental infrastructure projects, the \$10,000,000 limitation shall apply to each State wherein such projects are undertaken.

Applicability.
33 USC 2221.

SEC. 102. None of the funds appropriated in this or any other Act may be used by the United States Army Corps of Engineers to support activities related to the proposed Ridge Landfill in Tuscarawas County, Ohio.

SEC. 103. None of the funds appropriated in this or any other Act shall be used to demonstrate or implement any plans divesting or transferring any Civil Works missions, functions, or responsibilities of the United States Army Corps of Engineers to other government agencies without specific direction in a subsequent Act of Congress.

SEC. 104. ALAMOGORDO, NEW MEXICO. The project for flood protection at Alamogordo, New Mexico, authorized by the Flood Control Act of 1962 (Public Law 87–874), is modified to authorize and direct the Secretary to construct a flood detention basin to protect the north side of the City of Alamogordo, New Mexico, from flooding. The flood detention basin shall be constructed to provide protection from a 100-year flood event. The project cost share for the flood detention basin shall be consistent with section

103(a) of the Water Resources Development Act of 1986, notwithstanding section 202(a) of the Water Resources Development Act of 1996.

SEC. 105. None of the funds appropriated in this or any other Act may be used by the United States Army Corps of Engineers to support activities related to the proposed Indian Run Sanitary Landfill in Sandy Township, Stark County, Ohio.

SEC. 106. ST. GEORGES BRIDGE, DELAWARE. None of the funds made available in this Act may be used to carry out any activity relating to closure or removal of the St. Georges Bridge across the Intracoastal Waterway, Delaware River to Chesapeake Bay, Delaware and Maryland, including a hearing or any other activity relating to preparation of an environmental impact statement concerning the closure or removal.

SEC. 107. WATER REALLOCATION, LAKE CUMBERLAND, KENTUCKY. (a) IN GENERAL.—Subject to subsection (b), none of the funds made available by this Act may be used to carry out any water reallocation project or component under the Wolf Creek Project, Lake Cumberland, Kentucky, authorized under the Act of June 28, 1938 (52 Stat. 1215, chapter 795) and the Act of July 24, 1946 (60 Stat. 636, chapter 595).

(b) EXISTING REALLOCATIONS.—Subsection (a) shall not apply to any water reallocation for Lake Cumberland, Kentucky, that is carried out subject to an agreement or payment schedule in effect on the date of enactment of this Act.

SEC. 108. LAKE TAHOE BASIN RESTORATION, NEVADA AND CALIFORNIA. (a) DEFINITION.—In this section, the term “Lake Tahoe Basin” means the entire watershed drainage of Lake Tahoe including that portion of the Truckee River 1,000 feet downstream from the United States Bureau of Reclamation dam in Tahoe City, California.

(b) ESTABLISHMENT OF PROGRAM.—The Secretary may establish a program for providing environmental assistance to non-Federal interests in Lake Tahoe Basin.

(c) FORM OF ASSISTANCE.—Assistance under this section may be in the form of planning, design, and construction assistance for water-related environmental infrastructure and resource protection and development projects in Lake Tahoe Basin—

(1) urban stormwater conveyance, treatment and related facilities;

(2) watershed planning, science and research;

(3) environmental restoration; and

(4) surface water resource protection and development.

(d) PUBLIC OWNERSHIP REQUIREMENT.—The Secretary may provide assistance for a project under this section only if the project is publicly owned.

(e) LOCAL COOPERATION AGREEMENT.—

(1) IN GENERAL.—Before providing assistance under this section, the Secretary shall enter into a local cooperation agreement with a non-Federal interest to provide for design and construction of the project to be carried out with the assistance.

(2) REQUIREMENTS.—Each local cooperation agreement entered into under this subsection shall provide for the following:

(A) PLAN.—Development by the Secretary, in consultation with appropriate Federal and State and Regional officials, of appropriate environmental documentation, engineering plans and specifications.

(B) LEGAL AND INSTITUTIONAL STRUCTURES.—Establishment of such legal and institutional structures as are necessary to ensure the effective long-term operation of the project by the non-Federal interest.

(3) COST SHARING.—

(A) IN GENERAL.—The Federal share of project costs under each local cooperation agreement entered into under this subsection shall be 75 percent. The Federal share may be in the form of grants or reimbursements of project costs.

(B) CREDIT FOR DESIGN WORK.—The non-Federal interest shall receive credit for the reasonable costs of planning and design work completed by the non-Federal interest before entering into a local cooperation agreement with the Secretary for a project.

(C) LAND, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS.—The non-Federal interest shall receive credit for land, easements, rights-of-way, and relocations provided by the non-Federal interest toward the non-Federal share of project costs (including all reasonable costs associated with obtaining permits necessary for the construction, operation, and maintenance of the project on publicly owned or controlled land), but not to exceed 25 percent of total project costs.

(D) OPERATION AND MAINTENANCE.—The non-Federal share of operation and maintenance costs for projects constructed with assistance provided under this section shall be 100 percent.

(f) APPLICABILITY OF OTHER FEDERAL AND STATE LAWS.—Nothing in this section waives, limits, or otherwise affects the applicability of any provision of Federal or State law that would otherwise apply to a project to be carried out with assistance provided under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section for the period beginning with fiscal year 2005, \$25,000,000, to remain available until expended.

SEC. 109. WATERSHED MANAGEMENT AND DEVELOPMENT. Section 503 of the Water Resources Development Act of 1996 (110 Stat. 3756) is amended in subsection (c) by inserting the following: “The non-Federal share of the cost to provide assistance for the Lake Tahoe watershed, California and Nevada, and Walker River Basin, Nevada may be provided as work-in-kind.”

SEC. 110. The Assistant Secretary of the Army for Civil Works shall enter into an agreement with the Orange County Water District, Orange County, California for purposes of water conservation storage and operations to provide at a minimum a conservation level up to elevation 498 feet mean sea level during the flood season, and up to elevation 505 feet mean sea level during the non-flood season at Prado Dam, California. The Orange County Water District shall pay to the Government only the separable costs associated with implementation and operation and maintenance of Prado Dam for water conservation.

Contracts.
California.

SEC. 111. BLACK WARRIOR-TOMBIGBEE RIVERS, ALABAMA. (a) IN GENERAL.—The Secretary is authorized to construct a new project management office located in the city of Tuscaloosa, Alabama, at a location within the vicinity of the city, at full Federal expense.

(b) TRANSFER OF LAND AND STRUCTURES.—The Secretary is authorized to convey, or otherwise transfer to the City of Tuscaloosa, Alabama, at fair market value, the land and structures associated with the existing project management office, if the city agrees to assume full responsibility for demolition of the existing project management office.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (a) \$32,000,000.

Deadline.
Reports.

SEC. 112. Within 75 days of the date of the Chief of Engineers Report on a water resource matter, the Assistant Secretary of the Army (Civil Works) shall submit the report to the appropriate authorizing and appropriating committees of the Congress.

Deadline.
Reports.

SEC. 113. Within 90 days of the date of enactment of this Act, the Assistant Secretary of the Army (Civil Works) shall transmit to Congress his report on any water resources matter on which the Chief of Engineers has reported.

SEC. 114. COASTAL WETLAND CONSERVATION PROJECT FUNDING. (a) FUNDING.—Section 306 of the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3955) is amended—

(1) in subsection (a), by striking “, not to exceed \$70,000,000,”;

(2) in subsection (b), by striking “, not to exceed \$15,000,000”; and

(3) in subsection (c), by striking “, not to exceed \$15,000,000.”.

(b) PERIOD OF AUTHORIZATION.—Section 4(a) of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c(a)) is amended in the second sentence by striking “2009” and inserting “2019”.

SEC. 115. The Secretary of the Army, acting through the Chief of Engineers, is directed to design and construct a marina and associated facilities project capable of remaining in operation through extended drought conditions at Federal expense at Lake Sakakawea, North Dakota.

SEC. 116. CENTRAL CITY, FORT WORTH, TEXAS. The project for flood control and other purposes on the Trinity River and Tributaries, Texas, authorized by the River and Harbor Act of 1965 (Public Law 89-298), as modified, is further modified to authorize the Secretary to undertake the Central City River Project, as generally described in the Trinity River Vision Master Plan, dated April 2003, as amended, at a total cost not to exceed \$220,000,000, at a Federal cost of \$110,000,000, and a non-Federal cost of \$110,000,000, if the Secretary determines the work is technically sound and environmentally acceptable. The cost of work undertaken by the non-Federal interests before the date of execution of a project cooperation agreement shall be credited against the non-Federal share of project costs if the Secretary determines that the work is integral to the project.

SEC. 117. Notwithstanding any other provision of law, the Secretary of the Army is authorized to carry out, at full Federal expense, structural and non-structural projects for storm damage

prevention and reduction, coastal erosion, and ice and glacial damage in Alaska, including relocation of affected communities and construction of replacement facilities.

SEC. 118. COOK INLET, ALASKA. (a) ANCHORAGE HARBOR.—

(1) HARBOR DEPTH.—The project for navigation improvements, Cook Inlet, Alaska (Anchorage Harbor, Alaska), authorized by section 101 of the River and Harbor Act of 1958 (72 Stat. 299) and modified by section 199 of the Water Resources Development Act of 1976 (90 Stat. 2944), is further modified to direct the Secretary of the Army to construct a harbor depth of minus 45 feet mean lower low water for a length of 10,860 feet at the modified Port of Anchorage intermodal marine facility at each phase of facility modification as such phases are completed and thereafter as the entire project is completed.

(2) COST-SHARING.—If the Secretary determines that the modified Port of Anchorage will be used by vessels operated by the Department of Defense that have a draft of greater than 35 feet, the modification referred to in paragraph (1) shall be at full Federal expense.

(3) TRANSITIONAL DREDGING.—Before completion of the project modification described in paragraph (1), the Secretary may conduct dredging to a depth of at least minus 35 feet mean lower low water in such locations as will allow maintenance of navigation and vessel access to the Port of Anchorage intermodal marine facility during modification of such facility. Such work shall be carried out by the Secretary in accordance with section 101 of the River and Harbor Act of 1958.

(4) FACILITATING FACILITY MODIFICATION.—Before establishing the harbor depth of minus 45 feet mean lower low water, the Secretary may undertake dredging in accordance with section 101 of the River and Harbor Act of 1958 within the design footprint of the modified intermodal marine facility referred to in paragraph (1) to facilitate modification. The Secretary may carry out such dredging as part of operation and maintenance of the project modified by paragraph (1).

(5) MAINTENANCE.—Federal maintenance shall continue for the existing project until the modified intermodal marine facility is completed. Federal maintenance of the modified project shall be in accordance with section 101 of the River and Harbor Act of 1958; except that the project shall be maintained at a depth of minus 45 feet mean lower low water for 10,860 feet referred to in paragraph (1).

(b) NAVIGATION CHANNEL.—The Secretary shall modify the channel in the exiting Cook Inlet Navigation Channel approach to Anchorage Harbor, Alaska, to run the entire length of Fire Island Range and Point Woronzof Range and shall modify the depth of that channel to minus 45 feet mean lower low water. The channel shall be maintained at a depth of minus 45 feet mean lower low water.

(c) HYDRODYNAMIC MODELING.—The Secretary shall carry out hydrodynamic modeling of the Knik Arm to identify causes of, and measures to address, shoaling at the Port of Anchorage, at a total cost of \$3,000,000.

(d) ALTERNATIVES ANALYSIS.—No alternative other than the alternative authorized in this section shall be considered in any

analysis of the modified project to be carried out by the Secretary in accordance with this section.

SEC. 119. NORTHERN WISCONSIN. Section 154(c) of title I of division B of the Miscellaneous Appropriations Act, 2001, enacted into law by the Consolidated Appropriations Act, 2001 (114 Stat. 2763A-252), is amended—

(1) by inserting after “design” the following: “, construction,”; and

(2) by inserting before “wastewater treatment” the following: “navigation and inland harbor improvement and expansion,”.

SEC. 120. ST. CROIX FALLS ENVIRONMENTAL INFRASTRUCTURE, WISCONSIN. ADDITIONAL ASSISTANCE.—Section 219(f) of the Water Resources Development Act of 1992 (106 Stat. 4835; 110 Stat. 3757; 113 Stat. 335; 114 Stat. 2763A-220) is amended by adding at the end the following:

“(73) ST. CROIX FALLS, WISCONSIN.—\$5,000,000 for waste water infrastructure, St. Croix Falls, Wisconsin.”.

SEC. 121. BURNS HARBOR, INDIANA. The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to dredge sediments, at 100 percent Federal cost, in the vicinity of the Bailey (NIPSCO) intake structure that is approximately 5,000 feet east of and 2,300 feet north of the northern most point of the Burns Waterway Harbor Breakwater authorized by Public Law 89-298.

SEC. 122. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to transfer the unexpended balance of funds appropriated in fiscal years 2003 and 2004 for the Duck River Water Supply Infrastructure Project, Cullman, Alabama, to the Appalachian Regional Commission.

(b) Funds transferred pursuant to subsection (a) of this section may be used for planning, engineering, and construction activities on the Duck River Water Supply Infrastructure Project under the Memorandum of Agreement between the Appalachian Regional Commission and the Army Corps of Engineers and may be used to reimburse the City of Cullman, Alabama, for expenses incurred by the City for planning and environmental work associated with the Project.

SEC. 123. With the funds previously provided under the account heading “Flood Control and Coastal Emergencies”, the Secretary of the Army, acting through the Chief of Engineers is directed to provide assistance to Yakutat, Alaska Dam.

SEC. 124. The Secretary of the Army, acting through the Chief of Engineers, shall not implement changes to existing shoreline protection policies that have not been specifically authorized by Congress.

TITLE II

DEPARTMENT OF THE INTERIOR

CENTRAL UTAH PROJECT

CENTRAL UTAH PROJECT COMPLETION ACCOUNT

For carrying out activities authorized by the Central Utah Project Completion Act, \$46,275,000, to remain available until expended, of which \$15,469,000 shall be deposited into the Utah

Reclamation Mitigation and Conservation Account for use by the Utah Reclamation Mitigation and Conservation Commission.

In addition, for necessary expenses incurred in carrying out related responsibilities of the Secretary of the Interior, \$1,734,000, to remain available until expended.

BUREAU OF RECLAMATION

The following appropriations shall be expended to execute authorized functions of the Bureau of Reclamation:

WATER AND RELATED RESOURCES

(INCLUDING TRANSFER OF FUNDS)

For management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance, and rehabilitation of reclamation and other facilities, participation in fulfilling related Federal responsibilities to Native Americans, and related grants to, and cooperative and other agreements with, State and local governments, Indian tribes, and others, \$859,481,000, to remain available until expended, of which \$53,299,000 shall be available for transfer to the Upper Colorado River Basin Fund and \$33,794,000 shall be available for transfer to the Lower Colorado River Basin Development Fund; of which such amounts as may be necessary may be advanced to the Colorado River Dam Fund; of which not more than \$500,000 is for high priority projects which shall be carried out by the Youth Conservation Corps, as authorized by 16 U.S.C. 1706: *Provided further*, That such transfers may be increased or decreased within the overall appropriation under this heading: *Provided further*, That of the total appropriated, the amount for program activities can be financed by the Reclamation Fund or the Bureau of Reclamation special fee account established by 16 U.S.C. 460l–6a(i) shall be derived from that Fund or account: *Provided further*, That funds contributed under 43 U.S.C. 395 are available until expended for the purposes for which contributed: *Provided further*, That \$250,000 is provided under the Weber Basin project for the Park City, Utah feasibility study: *Provided further*, That funds advanced under 43 U.S.C. 397a shall be credited to this account and are available until expended for the same purposes as the sums appropriated under this heading: *Provided further*, That funds available for expenditure for the Departmental Irrigation Drainage Program may be expended by the Bureau of Reclamation for site remediation on a non-reimbursable basis.

CENTRAL VALLEY PROJECT RESTORATION FUND

For carrying out the programs, projects, plans, and habitat restoration, improvement, and acquisition provisions of the Central Valley Project Improvement Act, \$54,695,000, to be derived from such sums as may be collected in the Central Valley Project Restoration Fund pursuant to sections 3407(d), 3404(c)(3), 3405(f), and 3406(c)(1) of Public Law 102–575, to remain available until expended: *Provided*, That the Bureau of Reclamation is directed to assess and collect the full amount of the additional mitigation and restoration payments authorized by section 3407(d) of Public

Law 102–575: *Provided further*, That none of the funds made available under this heading may be used for the acquisition or leasing of water for in-stream purposes if the water is already committed to in-stream purposes by a court adopted decree or order.

POLICY AND ADMINISTRATION

For necessary expenses of policy, administration, and related functions in the office of the Commissioner, the Denver office, and offices in the five regions of the Bureau of Reclamation, to remain available until expended, \$58,153,000 to be derived from the Reclamation Fund and be nonreimbursable as provided in 43 U.S.C. 377: *Provided*, That no part of any other appropriation in this Act shall be available for activities or functions budgeted as policy and administration expenses.

ADMINISTRATIVE PROVISIONS

Appropriations for the Bureau of Reclamation shall be available for purchase of not to exceed 14 passenger motor vehicles, of which 11 are for replacement only.

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

SEC. 201. (a) None of the funds appropriated or otherwise made available by this Act may be used to determine the final point of discharge for the interceptor drain for the San Luis Unit until development by the Secretary of the Interior and the State of California of a plan, which shall conform to the water quality standards of the State of California as approved by the Administrator of the Environmental Protection Agency, to minimize any detrimental effect of the San Luis drainage waters.

(b) The costs of the Kesterson Reservoir Cleanup Program and the costs of the San Joaquin Valley Drainage Program shall be classified by the Secretary of the Interior as reimbursable or nonreimbursable and collected until fully repaid pursuant to the “Cleanup Program-Alternative Repayment Plan” and the “SJVDP-Alternative Repayment Plan” described in the report entitled “Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995”, prepared by the Department of the Interior, Bureau of Reclamation. Any future obligations of funds by the United States relating to, or providing for, drainage service or drainage studies for the San Luis Unit shall be fully reimbursable by San Luis Unit beneficiaries of such service or studies pursuant to Federal reclamation law.

New Mexico.

SEC. 202. None of the funds appropriated or otherwise made available by this or any other Act may be used to pay the salaries and expenses of personnel to purchase or lease water in the Middle Rio Grande or the Carlsbad Projects in New Mexico unless said purchase or lease is in compliance with the purchase requirements of section 202 of Public Law 106–60.

43 USC 1543
note.

SEC. 203. LOWER COLORADO RIVER BASIN DEVELOPMENT. (a) IN GENERAL.—Notwithstanding section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)), no amount from the Lower Colorado River Basin Development Fund shall be paid to the general fund of the Treasury until each provision of the revised Stipulation Regarding a Stay and for Ultimate Judgment Upon the Satisfaction of Conditions, filed in United States District Court on April 24,

2003, in *Central Arizona Water Conservation District v. United States* (No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-OHX-EHC (Consolidated Action)), and any amendment or revision thereof, is met.

(b) **PAYMENT TO GENERAL FUND.**—If any of the provisions of the stipulation referred to in subsection (a) are not met by the date that is 10 years after the date of enactment of this Act, payments to the general fund of the Treasury shall resume in accordance with section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)). Deadline.

(c) **AUTHORIZATION.**—Amounts in the Lower Colorado River Basin Development Fund that but for this section would be returned to the general fund of the Treasury shall not be expended until further Act of Congress.

SEC. 204. Funds under this title for Drought Emergency Assistance shall be made available primarily for leasing of water for specified drought related purposes from willing lessors, in compliance with existing State laws and administered under State water priority allocation. Such leases may be entered into with an option to purchase: *Provided*, That such purchase is approved by the State in which the purchase takes place and the purchase does not cause economic harm within the State in which the purchase is made.

SEC. 205. (a) Notwithstanding any other provision of law and hereafter, the Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, may not obligate funds, and may not use discretion, if any, to restrict, reduce or reallocate any water stored in Heron Reservoir or delivered pursuant to San Juan-Chama Project contracts, including execution of said contracts facilitated by the Middle Rio Grande Project, to meet the requirements of the Endangered Species Act, unless such water is acquired or otherwise made available from a willing seller or lessor and the use is in compliance with the laws of the State of New Mexico, including but not limited to, permitting requirements.

(b) Complying with the reasonable and prudent alternatives and the incidental take limits defined in the Biological Opinion released by the United States Fish and Wildlife Service dated March 17, 2003 combined with efforts carried out pursuant to Public Law 106-377, Public Law 107-66, and Public Law 108-7 fully meet all requirements of the Endangered Species Act (16 U.S.C. 1531 et seq.) for the conservation of the Rio Grande Silvery Minnow (*Hybognathus amarus*) and the Southwestern Willow Flycatcher (*Empidonax trailii extimus*) on the Middle Rio Grande in New Mexico.

(c) This section applies only to those Federal agencies and non-Federal actions addressed in the March 17, 2003 Biological Opinion. Applicability.

(d) Subsection (b) will remain in effect until March 16, 2013.

SEC. 206. The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, is authorized to enter into grants, cooperative agreements, and other agreements with irrigation or water districts and States to fund up to 50 percent of the cost of planning, designing, and constructing improvements that will conserve water, increase water use efficiency, or enhance water management through measurement or automation, at existing water supply projects within the States identified in the Act of June 17, 1902, as amended, and supplemented: *Provided*, Termination
date.
Grants.
Contracts.

That when such improvements are to federally owned facilities, such funds may be provided in advance on a non-reimbursable basis to an entity operating affected transferred works or may be deemed non-reimbursable for non-transferred works: *Provided further*, That the calculation of the non-Federal contribution shall provide for consideration of the value of any in-kind contributions, but shall not include funds received from other Federal agencies: *Provided further*, That the cost of operating and maintaining such improvements shall be the responsibility of the non-Federal entity: *Provided further*, That this section shall not supercede any existing project-specific funding authority: *Provided further*, That the Secretary is also authorized to enter into grants or cooperative agreements with universities or non-profit research institutions to fund water use efficiency research.

SEC. 207. ANIMAS-LA PLATA NON-INDIAN SPONSOR OBLIGATIONS. In accordance with the nontribal repayment obligation specified in Subsection 6(a)(3)(B) of the Colorado Ute Indian Rights Settlement Act of 1988 (Public Law 100-585), as amended by the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554), the reimbursable cost upon which the cost allocation shall be based shall not exceed \$43,000,000, plus interest during construction for those parties not utilizing the up front payment option, of the first \$500,000,000 (January 2003 price level) of the total project costs. Consequently, the Secretary may forgive the obligation of the non-Indian sponsors relative to the \$163,000,000 increase in estimated total project costs that occurred in 2003.

SEC. 208. MONTANA WATER CONTRACTS EXTENSION. (a) AUTHORITY TO EXTEND.—The Secretary of the Interior may extend each of the water contracts listed in subsection (b) until the earlier of—

(1) the expiration of the 2-year period beginning on the date on which the contract would expire but for this section; or

(2) the date on which a new long-term water contract is executed by the parties to the contract listed in subsection (b).

(b) EXTENDED CONTRACTS.—The water contracts referred to in subsection (a) are the following:

(1) Contract Number 14-06-600-2078, as amended, for purchase of water between the United States of America and the City of Helena, Montana.

(2) Contract Number 14-06-600-2079, as amended, between the United States of America and the Helena Valley Irrigation District for water service.

(3) Contract Number 14-06-600-8734, as amended, between the United States of America and the Toston Irrigation District for water service.

(4) Contract Number 14-06-600-3592, as amended, between the United States and the Clark Canyon Water Supply Company, Inc., for water service and for a supplemental supply.

(5) Contract Number 14-06-600-3593, as amended, between the United States and the East Bench Irrigation District for water service.

TITLE III

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY SUPPLY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for energy supply activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed 9 passenger motor vehicles for replacement only, and one ambulance, \$946,272,000, to remain available until expended.

NON-DEFENSE SITE ACCELERATION COMPLETION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for non-defense environmental management site acceleration completion activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, \$151,850,000, to remain available until expended.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING
FUND

For necessary expenses in carrying out uranium enrichment facility decontamination and decommissioning, remedial actions, and other activities of title II of the Atomic Energy Act of 1954, as amended, and title X, subtitle A, of the Energy Policy Act of 1992, \$499,007,000, to be derived from the Fund, to remain available until expended, of which \$80,000,000 shall be available in accordance with title X, subtitle A, of the Energy Policy Act of 1992.

NON-DEFENSE ENVIRONMENTAL SERVICES

For Department of Energy expenses necessary for non-defense environmental services activities that indirectly support the accelerated cleanup and closure mission at environmental management sites, including the purchase, construction, and acquisition of plant and capital equipment and other necessary expenses, \$291,296,000, to remain available until expended.

SCIENCE

For Department of Energy expenses including the purchase, construction and acquisition of plant and capital equipment, and other expenses necessary for science activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any

real property or facility or for plant or facility acquisition, construction, or expansion, and purchase of not to exceed four passenger motor vehicles for replacement only, including not to exceed one ambulance, \$3,628,902,000, to remain available until expended.

NUCLEAR WASTE DISPOSAL

For nuclear waste disposal activities to carry out the purposes of Public Law 97-425, as amended, including the acquisition of real property or facility construction or expansion, \$346,000,000, to remain available until expended: *Provided*, That of the funds made available in this Act for Nuclear Waste Disposal, \$2,000,000 shall be provided to the State of Nevada solely for expenditures, other than salaries and expenses of State employees, to conduct scientific oversight responsibilities and participate in licensing activities pursuant to the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended: *Provided further*, That \$8,000,000 shall be provided to affected units of local governments, as defined in Public Law 97-425, to conduct scientific oversight responsibilities and participate in licensing activities pursuant to the Act: *Provided further*, That the distribution of the funds as determined by the units of local government shall be approved by the Department of Energy: *Provided further*, That the funds for the State of Nevada shall be made available solely to the Nevada Division of Emergency Management by direct payment and units of local government by direct payment: *Provided further*, That within 90 days of the completion of each Federal fiscal year, the Nevada Division of Emergency Management and the Governor of the State of Nevada and each local entity shall provide certification to the Department of Energy that all funds expended from such payments have been expended for activities authorized by Public Law 97-425 and this Act: *Provided further*, That failure to provide such certification shall cause such entity to be prohibited from any further funding provided for similar activities: *Provided further*, That none of the funds herein appropriated may be: (1) used directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for lobbying activity as provided in 18 U.S.C. 1913; (2) used for litigation expenses; or (3) used to support multi-State efforts or other coalition building activities inconsistent with the restrictions contained in this Act: *Provided further*, That all proceeds and recoveries realized by the Secretary in carrying out activities authorized by the Nuclear Waste Policy Act of 1982, Public Law 97-425, as amended, including but not limited to, any proceeds from the sale of assets, shall be available without further appropriation and shall remain available until expended.

Deadline.
Certification.

Lobbying.

DEPARTMENTAL ADMINISTRATION

(INCLUDING TRANSFER OF FUNDS)

For salaries and expenses of the Department of Energy necessary for departmental administration in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the hire of passenger motor vehicles and official reception and representation expenses (not to exceed \$35,000), \$240,426,000, to remain available until expended, plus such additional amounts as necessary to cover increases in the estimated amount of cost of work for others notwithstanding the provisions

of the Anti-Deficiency Act (31 U.S.C. 1511 et seq.): *Provided*, That such increases in cost of work are offset by revenue increases of the same or greater amount, to remain available until expended: *Provided further*, That moneys received by the Department for miscellaneous revenues estimated to total \$122,000,000 in fiscal year 2005 may be retained and used for operating expenses within this account, and may remain available until expended, as authorized by section 201 of Public Law 95-238, notwithstanding the provisions of 31 U.S.C. 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of miscellaneous revenues received during fiscal year 2005, and any related unappropriated receipt account balances remaining from prior years' miscellaneous revenues, so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than \$118,426,000.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$41,508,000, to remain available until expended.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

(INCLUDING TRANSFER OF FUNDS)

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense weapons activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion; and the purchase of not to exceed 19 passenger motor vehicles, for replacement only, including not to exceed two buses; \$6,226,471,000, together with \$300,000,000 to be derived by transfer from the Department of Defense, to remain available until expended: *Provided*, That the Secretary of Defense shall reduce proportionately each program, project, and activity funded by appropriations in titles I through VI of the Department of Defense Appropriations Act, 2005 (Public Law 108-287) to fund this transfer: *Provided further*, That \$91,100,000 is authorized to be appropriated for Project 01-D-108, Microsystems and engineering sciences applications (MESA), Sandia National Laboratories, Albuquerque, New Mexico: *Provided further*, That \$40,000,000 is authorized to be appropriated for Project 04-D-125, chemistry and metallurgy facility replacement project, Los Alamos Laboratory, Los Alamos, New Mexico: *Provided further*, That \$1,500,000 is authorized to be appropriated for Project 04-D-103, Project engineering and design (PED), various locations: *Provided further*, That a plant or construction project for which amounts are made available under this heading but not exclusive to the Atomic Energy Defense Weapons Activities account, with a current estimated cost of less than \$10,000,000 is considered for purposes of section 3622 of Public Law 107-314 as a plant project for which the approved

total estimated cost does not exceed the minor construction threshold and for purposes of section 3623 of Public Law 107-314 as a construction project with a current estimated cost of less than the minor construction threshold.

DEFENSE NUCLEAR NONPROLIFERATION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense, defense nuclear nonproliferation activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, \$1,420,397,000, to remain available until expended.

NAVAL REACTORS

For Department of Energy expenses necessary for naval reactors activities to carry out the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition (by purchase, condemnation, construction, or otherwise) of real property, plant, and capital equipment, facilities, and facility expansion, \$807,900,000, to remain available until expended.

OFFICE OF THE ADMINISTRATOR

For necessary expenses of the Office of the Administrator in the National Nuclear Security Administration, including official reception and representation expenses (not to exceed \$12,000), \$356,200,000, to remain available until expended.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE SITE ACCELERATION COMPLETION

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense site acceleration completion activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, \$6,096,429,000, to remain available until expended.

DEFENSE ENVIRONMENTAL SERVICES

For Department of Energy expenses necessary for defense-related environmental services activities that indirectly support the accelerated cleanup and closure mission at environmental management sites, including the purchase, construction, and acquisition of plant and capital equipment and other necessary expenses, and the purchase of not to exceed three ambulances for replacement only, \$937,976,000, to remain available until expended.

OTHER DEFENSE ACTIVITIES

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses, necessary for atomic energy defense, other defense activities, and classified activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, \$692,691,000, to remain available until expended.

DEFENSE NUCLEAR WASTE DISPOSAL

For nuclear waste disposal activities to carry out the purposes of Public Law 97–425, as amended, including the acquisition of real property or facility construction or expansion, \$231,000,000, to remain available until expended.

POWER MARKETING ADMINISTRATIONS

BONNEVILLE POWER ADMINISTRATION FUND

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454, are approved for official reception and representation expenses in an amount not to exceed \$1,500. During fiscal year 2005, no new direct loan obligations may be made.

OPERATION AND MAINTENANCE, SOUTHEASTERN POWER
ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, including transmission wheeling and ancillary services, pursuant to the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southeastern power area, \$5,200,000, to remain available until expended: *Provided*, That notwithstanding the provisions of 31 U.S.C. 3302, up to \$34,000,000 collected by the Southeastern Power Administration pursuant to the Flood Control Act of 1944 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures.

OPERATION AND MAINTENANCE, SOUTHWESTERN POWER
ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, for construction and acquisition of transmission lines, substations and appurtenant facilities, and for administrative expenses, including official reception and representation expenses in an amount not to exceed \$1,500 in carrying out the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southwestern power area, \$29,352,000, to remain

16 USC 825s-4.

available until expended: *Provided*, That, notwithstanding the provisions of 31 U.S.C. 3302, up to \$2,900,000 collected by the Southwestern Power Administration pursuant to the Flood Control Act to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures; in addition, notwithstanding 31 U.S.C. 3302, beginning in fiscal year 2005 and thereafter, such funds as are received by the Southwestern Power Administration from any State, municipality, corporation, association, firm, district, or individual as advance payment for work that is associated with Southwestern's transmission facilities, consistent with that authorized in section 5 of the Flood Control Act, shall be credited to this account and be available until expended.

CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE,
WESTERN AREA POWER ADMINISTRATION

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable resources programs as authorized, including official reception and representation expenses in an amount not to exceed \$1,500; \$173,100,000, to remain available until expended, of which \$167,236,000 shall be derived from the Department of the Interior Reclamation Fund: *Provided*, That of the amount herein appropriated, \$10,000,000 shall be available until expended on a non-reimbursable basis to the Western Area Power Administration to design, construct, operate and maintain transmission facilities and services for the Animas-LaPlata Project as authorized by section 301(b)(10) of Public Law 106-554: *Provided further*, That of the amount herein appropriated, \$6,200,000 is for deposit into the Utah Reclamation Mitigation and Conservation Account pursuant to title IV of the Reclamation Projects Authorization and Adjustment Act of 1992: *Provided further*, That of the amount herein appropriated, \$6,000,000 shall be available until expended on a nonreimbursable basis to the Western Area Power Administration for Topock-Davis-Mead Transmission Line Upgrades: *Provided further*, That notwithstanding the provision of 31 U.S.C. 3302, up to \$227,600,000 collected by the Western Area Power Administration pursuant to the Flood Control Act of 1944 and the Reclamation Project Act of 1939 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures.

FALCON AND AMISTAD OPERATING AND MAINTENANCE FUND

For operation, maintenance, and emergency costs for the hydroelectric facilities at the Falcon and Amistad Dams, \$2,827,000, to remain available until expended, and to be derived from the Falcon and Amistad Operating and Maintenance Fund of the Western Area Power Administration, as provided in section 423 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

FEDERAL ENERGY REGULATORY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Energy Regulatory Commission to carry out the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including services as authorized by 5 U.S.C. 3109, the hire of passenger motor vehicles, and official reception and representation expenses (not to exceed \$3,000), \$210,000,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, not to exceed \$210,000,000 of revenues from fees and annual charges, and other services and collections in fiscal year 2005 shall be retained and used for necessary expenses in this account, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as revenues are received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than \$0.

42 USC 7171
note.

GENERAL PROVISIONS

DEPARTMENT OF ENERGY

SEC. 301. (a)(1) None of the funds in this or any other appropriations Act for fiscal year 2005 or any previous fiscal year may be used to make payments for a noncompetitive management and operating contract unless the Secretary of Energy has published in the Federal Register and submitted to the Committees on Appropriations of the House of Representatives and the Senate a written notification, with respect to each such contract, of the Secretary's decision to use competitive procedures for the award of the contract, or to not renew the contract, when the term of the contract expires.

Federal Register,
publication.
Notification.

(2) Paragraph (1) does not apply to an extension for up to 2 years of a noncompetitive management and operating contract, if the extension is for purposes of allowing time to award competitively a new contract, to provide continuity of service between contracts, or to complete a contract that will not be renewed.

(b) In this section:

(1) The term “noncompetitive management and operating contract” means a contract that was awarded more than 50 years ago without competition for the management and operation of Ames Laboratory, Argonne National Laboratory, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory.

(2) The term “competitive procedures” has the meaning provided in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) and includes procedures described in section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) other than a procedure that solicits a proposal from only one source.

(c) For all management and operating contracts other than those listed in subsection (b)(1), none of the funds appropriated by this Act may be used to award a management and operating contract, or award a significant extension or expansion to an existing management and operating contract, unless such contract is awarded using competitive procedures or the Secretary of Energy

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Reports.

grants, on a case-by-case basis, a waiver to allow for such a deviation. The Secretary may not delegate the authority to grant such a waiver. At least 60 days before a contract award for which the Secretary intends to grant such a waiver, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report notifying the Committees of the waiver and setting forth, in specificity, the substantive reasons why the Secretary believes the requirement for competition should be waived for this particular award.

SEC. 302. None of the funds appropriated by this Act may be used to—

(1) develop or implement a workforce restructuring plan that covers employees of the Department of Energy; or

(2) provide enhanced severance payments or other benefits for employees of the Department of Energy, under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 42 U.S.C. 7274h).

SEC. 303. None of the funds appropriated by this Act may be used to augment the funds made available for obligation by this Act for severance payments and other benefits and community assistance grants under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 42 U.S.C. 7274h) unless the Department of Energy submits a reprogramming request subject to approval by the appropriate congressional committees.

SEC. 304. None of the funds appropriated by this Act may be used to prepare or initiate Requests For Proposals (RFPs) for a program if the program has not been funded by Congress.

(TRANSFERS OF UNEXPENDED BALANCES)

SEC. 305. The unexpended balances of prior appropriations provided for activities in this Act may be transferred to appropriation accounts for such activities established pursuant to this title. Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

SEC. 306. None of the funds in this or any other Act for the Administrator of the Bonneville Power Administration may be used to enter into any agreement to perform energy efficiency services outside the legally defined Bonneville service territory, with the exception of services provided internationally, including services provided on a reimbursable basis, unless the Administrator certifies in advance that such services are not available from private sector businesses.

SEC. 307. When the Department of Energy makes a user facility available to universities or other potential users, or seeks input from universities or other potential users regarding significant characteristics or equipment in a user facility or a proposed user facility, the Department shall ensure broad public notice of such availability or such need for input to universities and other potential users. When the Department of Energy considers the participation of a university or other potential user as a formal partner in the establishment or operation of a user facility, the Department shall employ full and open competition in selecting such a partner. For purposes of this section, the term “user facility” includes, but is not limited to: (1) a user facility as described in section 2203(a)(2) of the Energy Policy Act of 1992 (42 U.S.C. 13503(a)(2)); (2) a

National Nuclear Security Administration Defense Programs Technology Deployment Center/User Facility; and (3) any other Departmental facility designated by the Department as a user facility.

SEC. 308. The Administrator of the National Nuclear Security Administration may authorize the manager of a covered nuclear weapons research, development, testing or production facility to engage in research, development, and demonstration activities with respect to the engineering and manufacturing capabilities at such facility in order to maintain and enhance such capabilities at such facility: *Provided*, That of the amount allocated to a covered nuclear weapons facility each fiscal year from amounts available to the Department of Energy for such fiscal year for national security programs, not more than an amount equal to 2 percent of such amount may be used for these activities: *Provided further*, That for purposes of this section, the term “covered nuclear weapons facility” means the following:

50 USC 2812
note.

- (1) The Kansas City Plant, Kansas City, Missouri.
- (2) The Y–12 Plant, Oak Ridge, Tennessee.
- (3) The Pantex Plant, Amarillo, Texas.
- (4) The Savannah River Plant, South Carolina.
- (5) The Nevada Test Site.

SEC. 309. Funds appropriated by this or any other Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2005 until the enactment of the Intelligence Authorization Act for fiscal year 2005.

SEC. 310. (a) The Secretary of Energy was directed to file a permit modification to the Waste Analysis Plan (WAP) and associated provisions contained in the Hazardous Waste Facility Permit for the Waste Isolation Pilot Plant (WIPP). For purposes of determining hereafter compliance of the modifications to the WAP with the hazardous waste analysis requirements of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or other applicable laws waste confirmation for all waste received for storage and disposal shall be limited to: (1) confirmation that the waste contains no ignitable, corrosive, or reactive waste through the use of either radiography or visual examination of a statistically representative subpopulation of the waste; and (2) review of the Waste Stream Profile Form to verify that the waste contains no ignitable, corrosive, or reactive waste and that assigned Environmental Protection Agency hazardous waste numbers are allowed for storage and disposal by the WIPP Hazardous Waste Facility Permit.

(b) Compliance with the disposal room performance standards of the WAP hereafter shall be demonstrated exclusively by monitoring airborne volatile organic compounds in underground disposal rooms in which waste has been emplaced until panel closure.

SEC. 311. Section 3113 of Public Law 102–486 (42 U.S.C. 2297h–11) is amended by adding a new paragraph (4) to subsection (a), as follows:

“(4) In the event that a licensee requests the Secretary to accept for disposal depleted uranium pursuant to this subsection, the Secretary shall be required to take title to and possession of such depleted uranium at an existing DUF6 storage facility.”

SEC. 312. The Department of Energy may use the funds appropriated by this Act to undertake any procurement action necessary

Deadline.
Reports.

to achieve its small business contracting goals set forth in subsection (g) of the Small Business Act, 15 U.S.C. 644(g): *Provided*, That, none of the funds appropriated by this Act may be used by the Department of Energy for procurement actions resulting from the break-out of requirements from current facility management and operating contracts unless, consistent with requirements of Subpart 19.4 of the Federal Acquisition Regulation, the Secretary of Energy or his duly authorized designee formally requests, considers, and renders an appropriate decision on the views of the Small Business Administration Breakout Procurement Center Representative or the Representative's duly authorized designee concerning cost effectiveness, mission performance, security, safety, small business participation, and other legitimate acquisition objectives of procurement actions at issue. No later than April 1, 2005, the Secretary of Energy shall submit a report to the Comptroller General and to Congress discussing the Secretary's plans required by section 15(h) of the Small Business Act, 15 U.S.C. 644(h), for meeting the Department's statutory small business contracting goals while taking into account other legitimate acquisition objectives. In preparing the report, the Secretary shall request and consider the views of the Administrator of the Small Business Administration and the Director of the Office of Small and Disadvantaged Business Utilization of the Department of Energy. The report shall discuss the Department's policies and activities concerning break-outs of procurement requirements from current management and operating contracts, consistent with requirements of this Act, section 15(h) of the Small Business Act, and Subpart 19.4 of the Federal Acquisition Regulations.

SEC. 313. None of the funds appropriated by this Act may be used by the Department of Energy to require its management and operating contractors to perform contract management, oversight, or administration functions prohibited by section 7.503 of the Federal Acquisition Regulation in connection with any small business prime contract awarded by the Department of Energy.

SEC. 314. None of the funds in this Act may be used to dispose of transuranic waste in the Waste Isolation Pilot Plant which contains concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment of this Act, or is generated after such date. For the purpose of this section, the material categories of transuranic waste at the Rocky Flats Environmental Technology Site include: (1) ash residues; (2) salt residue; (3) wet residues; (4) direct repackaging residues; and (5) scrub alloy as referenced in the "Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site".

TITLE IV

INDEPENDENT AGENCIES

APPALACHIAN REGIONAL COMMISSION

For expenses necessary to carry out the programs authorized by the Appalachian Regional Development Act of 1965, as amended, for necessary expenses for the Federal Co-Chairman and the alternate on the Appalachian Regional Commission, for payment of

the Federal share of the administrative expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and hire of passenger motor vehicles, \$66,000,000, to remain available until expended.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the Defense Nuclear Facilities Safety Board in carrying out activities authorized by the Atomic Energy Act of 1954, as amended by Public Law 100–456, section 1441, \$20,268,000, to remain available until expended.

DELTA REGIONAL AUTHORITY

SALARIES AND EXPENSES

For necessary expenses of the Delta Regional Authority and to carry out its activities, as authorized by the Delta Regional Authority Act of 2000, as amended, notwithstanding sections 382C(b)(2), 382F(d), and 382M(b) of said Act, \$6,048,000, to remain available until expended.

DENALI COMMISSION

For expenses of the Denali Commission including the purchase, construction and acquisition of plant and capital equipment as necessary and other expenses, \$67,000,000 notwithstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998, \$2,500,000, to remain available until expended: *Provided*, That of the amounts provided to the Denali Commission, \$5,000,000 is for community showers and washeteria in villages with homes with no running water; \$13,000,000 is for the Juneau/Green's Creek/Hoonah Intertie project; \$3,200,000 is for the Swan Lake/Tyee Intertie project; \$5,000,000 is for multi-purpose community facilities including the Bering Straits Region, Dillingham, Moose Pass, Sterling, Funny River, Eclutna, and Anchor Point; \$10,000,000 is for teacher housing in remote villages such as Savoogna, Allakakaet, Hughes, Huslia, Minto, Nulato, and Ruby where there is limited housing available for teachers; \$10,000,000 is for facilities serving Native elders and senior citizens; and \$5,000,000 is for: (1) the Rural Communications service to provide broadcast facilities in communities with no television or radio station; (2) the Public Broadcasting Digital Distribution Network to link rural broadcasting facilities together to improve economies of scale, share programming, and reduce operating costs; and (3) rural public broadcasting facilities and equipment upgrades.

NUCLEAR REGULATORY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed \$15,000), and purchase of promotional items for use in the recruitment of individuals for

employment, \$662,777,000, to remain available until expended: *Provided*, That of the amount appropriated herein, \$69,050,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at \$534,354,000 in fiscal year 2005 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation estimated at not more than \$128,423,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$7,518,000, to remain available until expended: *Provided*, That revenues from licensing fees, inspection services, and other services and collections estimated at \$6,766,200 in fiscal year 2005 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation estimated at not more than \$751,800.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

SALARIES AND EXPENSES

For necessary expenses of the Nuclear Waste Technical Review Board, as authorized by Public Law 100–203, section 5051, \$3,177,000, to be derived from the Nuclear Waste Fund, and to remain available until expended.

TITLE V

GENERAL PROVISIONS

SEC. 501. None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

SEC. 502. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 503. None of the funds made available in this Act may be used to deny requests for the public release of documents or evidence obtained through or in the Western Energy Markets: Enron Investigation (Docket No. PA02–2), the California Refund case (Docket No. EL00–95), the Anomalous Bidding Investigation (Docket No. IN03–10), or the Physical Withholding Investigation.

SEC. 504. EXTENSION OF PROHIBITION OF OIL AND GAS DRILLING IN THE GREAT LAKES. Section 503 of the Energy and Water Development Appropriations Act, 2002 (115 Stat. 512), as amended, is amended by striking “2005” and inserting “2007”.

SEC. 505. The Secretary of the Army is hereby authorized, without further appropriation, to transfer and advance funds to the Administrator of the Bonneville Power Administration for the purposes necessary to carry out joint activities in connection with section 2406 of the Energy Policy Act of 1992.

SEC. 506. VOTING METHOD FOR DELTA REGIONAL AUTHORITY. Section 382B(c)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa–1(c)(1)) is amended—

(1) in subparagraph (A), by striking “2004” and inserting “2008”; and

(2) in subparagraph (B), by striking “2005” and inserting “2009”.

TITLE VI—REFORM OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY

SEC. 601. CHANGE IN COMPOSITION, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY.

The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended by striking section 2 and inserting the following:

“SEC. 2. MEMBERSHIP, OPERATION, AND DUTIES OF THE BOARD OF DIRECTORS. 16 USC 831a.

“(a) MEMBERSHIP.—

“(1) APPOINTMENT.—The Board of Directors of the Corporation (referred to in this Act as the ‘Board’) shall be composed of 9 members appointed by the President by and with the advice and consent of the Senate, at least 7 of whom shall be a legal resident of the service area of the Corporation.

“(2) CHAIRMAN.—The members of the Board shall select 1 of the members to act as chairman of the Board.

“(b) QUALIFICATIONS.—To be eligible to be appointed as a member of the Board, an individual—

“(1) shall be a citizen of the United States;

“(2) shall have management expertise relative to a large for-profit or nonprofit corporate, government, or academic structure;

“(3) shall not be an employee of the Corporation;

“(4) shall make full disclosure to Congress of any investment or other financial interest that the individual holds in the energy industry; and

“(5) shall affirm support for the objectives and missions of the Corporation, including being a national leader in technological innovation, low-cost power, and environmental stewardship.

“(c) RECOMMENDATIONS.—In appointing members of the Board, the President shall—

“(1) consider recommendations from such public officials as—

“(A) the Governors of States in the service area;

“(B) individual citizens;

“(C) business, industrial, labor, electric power distribution, environmental, civic, and service organizations; and

“(D) the congressional delegations of the States in the service area; and

“(2) seek qualified members from among persons who reflect the diversity, including the geographical diversity, and needs of the service area of the Corporation.

“(d) TERMS.—

“(1) IN GENERAL.—A member of the Board shall serve a term of 5 years. A member of the Board whose term has expired may continue to serve after the member’s term has expired until the date on which a successor takes office, except that the member shall not serve beyond the end of the session of Congress in which the term of the member expires.

“(2) VACANCIES.—A member appointed to fill a vacancy on the Board occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed for the remainder of that term.

“(e) QUORUM.—

“(1) IN GENERAL.—Five of the members of the Board shall constitute a quorum for the transaction of business.

“(2) VACANCIES.—A vacancy on the Board shall not impair the power of the Board to act.

“(f) COMPENSATION.—

“(1) IN GENERAL.—A member of the Board shall be entitled to receive—

“(A) a stipend of—

“(i) \$45,000 per year; or

“(ii)(I) in the case of the chairman of any committee of the Board created by the Board, \$46,000 per year; or

“(II) in the case of the chairman of the Board, \$50,000 per year; and

“(B) travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code.

“(2) ADJUSTMENTS IN STIPENDS.—The amount of the stipend under paragraph (1)(A)(i) shall be adjusted by the same percentage, at the same time and manner, and subject to the same limitations as are applicable to adjustments under section 5318 of title 5, United States Code.

“(g) DUTIES.—

“(1) IN GENERAL.—The Board shall—

“(A) establish the broad goals, objectives, and policies of the Corporation that are appropriate to carry out this Act;

“(B) develop long-range plans to guide the Corporation in achieving the goals, objectives, and policies of the Corporation and provide assistance to the chief executive officer to achieve those goals, objectives, and policies;

“(C) ensure that those goals, objectives, and policies are achieved;

“(D) approve an annual budget for the Corporation;

“(E) adopt and submit to Congress a conflict-of-interest policy applicable to members of the Board and employees of the Corporation;

“(F) establish a compensation plan for employees of the Corporation in accordance with subsection (i);

“(G) approve all compensation (including salary or any other pay, bonuses, benefits, incentives, and any other form of remuneration) of all managers and technical personnel that report directly to the chief executive officer (including any adjustment to compensation);

“(H) ensure that all activities of the Corporation are carried out in compliance with applicable law;

“(I) create an audit committee, composed solely of Board members independent of the management of the Corporation, which shall—

“(i) in consultation with the inspector general of the Corporation, recommend to the Board an external auditor;

“(ii) receive and review reports from the external auditor of the Corporation and inspector general of the Corporation; and

“(iii) make such recommendations to the Board as the audit committee considers necessary;

“(J) create such other committees of Board members as the Board considers to be appropriate;

“(K) conduct such public hearings as it deems appropriate on issues that could have a substantial effect on—

“(i) the electric ratepayers in the service area; or

“(ii) the economic, environmental, social, or physical well-being of the people of the service area;

“(L) establish the electricity rates charged by the Corporation; and

“(M) engage the services of an external auditor for the Corporation.

“(2) MEETINGS.—The Board shall meet at least 4 times each year.

“(h) CHIEF EXECUTIVE OFFICER.—

“(1) APPOINTMENT.—The Board shall appoint a person to serve as chief executive officer of the Corporation.

“(2) QUALIFICATIONS.—

“(A) IN GENERAL.—To serve as chief executive officer of the Corporation, a person—

“(i) shall have senior executive-level management experience in large, complex organizations;

“(ii) shall not be a current member of the Board or have served as a member of the Board within 2 years before being appointed chief executive officer; and

“(iii) shall comply with the conflict-of-interest policy adopted by the Board.

“(B) EXPERTISE.—In appointing a chief executive officer, the Board shall give particular consideration to appointing an individual with expertise in the electric industry and with strong financial skills.

“(3) TENURE.—The chief executive officer shall serve at the pleasure of the Board.

“(i) COMPENSATION PLAN.—

“(1) IN GENERAL.—The Board shall approve a compensation plan that specifies all compensation (including salary or any other pay, bonuses, benefits, incentives, and any other form of remuneration) for the chief executive officer and employees of the Corporation.

“(2) ANNUAL SURVEY.—The compensation plan shall be based on an annual survey of the prevailing compensation for similar positions in private industry, including engineering and electric utility companies, publicly owned electric utilities, and Federal, State, and local governments.

“(3) CONSIDERATIONS.—The compensation plan shall provide that education, experience, level of responsibility, geographic differences, and retention and recruitment needs will be taken into account in determining compensation of employees.

“(4) POSITIONS AT OR BELOW LEVEL IV.—The chief executive officer shall determine the salary and benefits of employees whose annual salary is not greater than the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

“(5) POSITIONS ABOVE LEVEL IV.—On the recommendation of the chief executive officer, the Board shall approve the salaries of employees whose annual salaries would be in excess of the annual rate payable for positions at level IV of the Executive Schedule under section 5315 of title 5, United States Code.”.

SEC. 602. CHANGE IN MANNER OF APPOINTMENT OF STAFF.

Section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b) is amended—

(1) by striking the first undesignated paragraph and inserting the following:

“(a) APPOINTMENT BY THE CHIEF EXECUTIVE OFFICER.—The chief executive officer shall appoint, with the advice and consent of the Board, and without regard to the provisions of the civil service laws applicable to officers and employees of the United States, such managers, assistant managers, officers, employees, attorneys, and agents as are necessary for the transaction of the business of the Corporation.”; and

(2) by striking “All contracts” and inserting the following: “(b) WAGE RATES.—All contracts”.

SEC. 603. CONFORMING AMENDMENTS.

(a) The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831 et seq.) is amended—

(1) by striking “board of directors” each place it appears and inserting “Board of Directors”; and

(2) by striking “board” each place it appears and inserting “Board”.

(b) Section 9 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h) is amended—

(1) by striking “The Comptroller General of the United States shall audit” and inserting the following:

“(c) AUDITS.—The Comptroller General of the United States shall audit”; and

(2) by striking “The Corporation shall determine” and inserting the following:

“(d) ADMINISTRATIVE ACCOUNTS AND BUSINESS DOCUMENTS.—The Corporation shall determine”.

(c) Title 5, United States Code, is amended—

(1) in section 5314, by striking “Chairman, Board of Directors of the Tennessee Valley Authority.”; and

(2) in section 5315, by striking “Members, Board of Directors of the Tennessee Valley Authority.”.

SEC. 604. APPOINTMENTS; EFFECTIVE DATE; TRANSITION.

16 USC 831a
note.
President.

(a) APPOINTMENTS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the President shall submit to the Senate nominations of six persons to serve as members of the Board of Directors of the Tennessee Valley Authority in addition to the members serving on the date of enactment of this Act.

(2) INITIAL TERMS.—Notwithstanding section 2(d) of the Tennessee Valley Authority Act of 1933 (as amended by this title), in making the appointments under paragraph (1), the President shall appoint—

(A) two members for a term to expire on May 18, 2007;

(B) two members for a term to expire on May 18, 2009; and

(C) two members for a term to expire on May 18, 2011.

(b) EFFECTIVE DATE.—The amendments made by this title take effect on the later of—

(1) the date on which at least three persons nominated under subsection (a) take office; or

(2) May 18, 2005.

(c) SELECTION OF CHAIRMAN.—The Board of Directors of the Tennessee Valley Authority shall select one of the members to act as chairman of the Board not later than 30 days after the effective date specified in subsection (b).

Deadline.

(d) CONFLICT-OF-INTEREST POLICY.—The Board of Directors of the Tennessee Valley Authority shall adopt and submit to Congress a conflict-of-interest policy, as required by section 2(g)(1)(E) of the Tennessee Valley Authority Act of 1933 (as amended by this title), as soon as practicable after the effective date specified in subsection (b).

(e) TRANSITION.—A person who is serving as a member of the board of directors of the Tennessee Valley Authority on the date of enactment of this Act—

(1) shall continue to serve until the end of the current term of the member; but

(2) after the effective date specified in subsection (b), shall serve under the terms of the Tennessee Valley Authority Act of 1933 (as amended by this title).

This division may be cited as the “Energy and Water Development Appropriations Act, 2005”.

Foreign
Operations,
Export
Financing, and
Related
Programs
Appropriations
Act, 2005.

DIVISION D—FOREIGN OPERATIONS, EXPORT FINANCING,
AND RELATED PROGRAMS APPROPRIATIONS ACT, 2005

TITLE I—EXPORT AND INVESTMENT ASSISTANCE

EXPORT-IMPORT BANK OF THE UNITED STATES

12 USC 635 note.
Termination
date.

The Export-Import Bank of the United States is authorized to make such expenditures within the limits of funds and borrowing authority available to such corporation, and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations, as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out the program for the current fiscal year for such corporation: *Provided*, That none of the funds available during the current fiscal year may be used to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel, or technology to any country, other than a nuclear-weapon state as defined in Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons eligible to receive economic or military assistance under this Act, that has detonated a nuclear explosive after the date of the enactment of this Act: *Provided further*, That notwithstanding section 1(c) of Public Law 103–428, as amended, sections 1(a) and (b) of Public Law 103–428 shall remain in effect through October 1, 2005.

SUBSIDY APPROPRIATION

Deadline.
Reports.

For the cost of direct loans, loan guarantees, insurance, and tied-aid grants as authorized by section 10 of the Export-Import Bank Act of 1945, as amended, \$59,800,000, to remain available until September 30, 2008: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That such sums shall remain available until September 30, 2023, for the disbursement of direct loans, loan guarantees, insurance and tied-aid grants obligated in fiscal years 2005, 2006, 2007, and 2008: *Provided further*, That none of the funds appropriated by this Act or any prior Act appropriating funds for foreign operations, export financing, and related programs for tied-aid credits or grants may be used for any other purpose except through the regular notification procedures of the Committees on Appropriations: *Provided further*, That funds appropriated by this paragraph are made available notwithstanding section 2(b)(2) of the Export-Import Bank Act of 1945, in connection with the purchase or lease of any product by any Eastern European country, any Baltic State or any agency or national thereof: *Provided further*, That not later than 30 days after the date of enactment of this Act, the Export-Import Bank shall submit a report to the Committees on Appropriations of the House of Representatives and the Senate, containing an analysis of the economic impact on United States producers of ethanol of the extension of credit and financial guarantees for the development of an ethanol dehydration plant in Trinidad and Tobago, including a determination of whether such extension will cause substantial injury to such producers, as defined in section 2(e)(4) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)(4)).

ADMINISTRATIVE EXPENSES

For administrative expenses to carry out the direct and guaranteed loan and insurance programs, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, and not to exceed \$30,000 for official reception and representation expenses for members of the Board of Directors, \$73,200,000: *Provided*, That the Export-Import Bank may accept, and use, payment or services provided by transaction participants for legal, financial, or technical services in connection with any transaction for which an application for a loan, guarantee or insurance commitment has been made: *Provided further*, That, notwithstanding subsection (b) of section 117 of the Export Enhancement Act of 1992, subsection (a) thereof shall remain in effect until October 1, 2005.

Termination
date.
12 USC 635a
note.

OVERSEAS PRIVATE INVESTMENT CORPORATION

NONCREDIT ACCOUNT

The Overseas Private Investment Corporation is authorized to make, without regard to fiscal year limitations, as provided by 31 U.S.C. 9104, such expenditures and commitments within the limits of funds available to it and in accordance with law as may be necessary: *Provided*, That the amount available for administrative expenses to carry out the credit and insurance programs (including an amount for official reception and representation expenses which shall not exceed \$35,000) shall not exceed \$42,885,000: *Provided further*, That project-specific transaction costs, including direct and indirect costs incurred in claims settlements, and other direct costs associated with services provided to specific investors or potential investors pursuant to section 234 of the Foreign Assistance Act of 1961, shall not be considered administrative expenses for the purposes of this heading.

PROGRAM ACCOUNT

For the cost of direct and guaranteed loans, \$24,000,000, as authorized by section 234 of the Foreign Assistance Act of 1961, to be derived by transfer from the Overseas Private Investment Corporation Non-Credit Account: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That such sums shall be available for direct loan obligations and loan guaranty commitments incurred or made during fiscal years 2005 and 2006: *Provided further*, That such sums shall remain available through fiscal year 2013 for the disbursement of direct and guaranteed loans obligated in fiscal year 2005, and through fiscal year 2014 for the disbursement of direct and guaranteed loans obligated in fiscal year 2006: *Provided further*, That notwithstanding any other provision of law, the Overseas Private Investment Corporation is authorized to undertake any program authorized by title IV of the Foreign Assistance Act of 1961 in Iraq: *Provided further*, That funds made available pursuant to the authority of the previous proviso shall be subject to the regular notification procedures of the Committees on Appropriations.

In addition, such sums as may be necessary for administrative expenses to carry out the credit program may be derived from amounts available for administrative expenses to carry out the

credit and insurance programs in the Overseas Private Investment Corporation Noncredit Account and merged with said account.

FUNDS APPROPRIATED TO THE PRESIDENT

TRADE AND DEVELOPMENT AGENCY

For necessary expenses to carry out the provisions of section 661 of the Foreign Assistance Act of 1961, \$51,500,000, to remain available until September 30, 2006.

TITLE II—BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

For expenses necessary to enable the President to carry out the provisions of the Foreign Assistance Act of 1961, and for other purposes, to remain available until September 30, 2005, unless otherwise specified herein, as follows:

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

CHILD SURVIVAL AND HEALTH PROGRAMS FUND

(INCLUDING TRANSFER OF FUNDS)

Immunization.
HIV/AIDS.

For necessary expenses to carry out the provisions of chapters 1 and 10 of part I of the Foreign Assistance Act of 1961, for child survival, health, and family planning/reproductive health activities, in addition to funds otherwise available for such purposes, \$1,550,000,000, to remain available until September 30, 2006: *Provided*, That this amount shall be made available for such activities as: (1) immunization programs; (2) oral rehydration programs; (3) health, nutrition, water and sanitation programs which directly address the needs of mothers and children, and related education programs; (4) assistance for children displaced or orphaned by causes other than AIDS; (5) programs for the prevention, treatment, control of, and research on HIV/AIDS, tuberculosis, polio, malaria, and other infectious diseases, and for assistance to communities severely affected by HIV/AIDS, including children displaced or orphaned by AIDS; and (6) family planning/reproductive health: *Provided further*, That none of the funds appropriated under this heading may be made available for nonproject assistance, except that funds may be made available for such assistance for ongoing health activities: *Provided further*, That of the funds appropriated under this heading, not to exceed \$250,000, in addition to funds otherwise available for such purposes, may be used to monitor and provide oversight of child survival, maternal and family planning/reproductive health, and infectious disease programs: *Provided further*, That the following amounts should be allocated as follows: \$345,000,000 for child survival and maternal health; \$30,000,000 for vulnerable children; \$350,000,000 for HIV/AIDS including not less than \$30,000,000 to support the development of microbicides as a means for combating HIV/AIDS; \$200,000,000 for other infectious diseases; and \$375,000,000 for family planning/reproductive health, including in areas where population growth threatens biodiversity or endangered species: *Provided further*, That of the funds appropriated under this heading, and in addition to funds allocated under the previous proviso, not less than \$250,000,000 shall be

made available, notwithstanding any other provision of law, except for the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (Public Law 108-25), for a United States contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”), and shall be expended at the minimum rate necessary to make timely payment for projects and activities: *Provided further*, That of the funds appropriated under this heading in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, that were withheld from obligation to the Global Fund, not less than \$87,800,000 shall be made available to the Global Fund, notwithstanding section 202(d)(4) of Public Law 108-25 which required such withholding from the Global Fund in fiscal year 2004: *Provided further*, That the funds made available in the previous proviso shall be subject to any withholding required by section 202(d)(4) of Public Law 108-25 for contributions made to the Global Fund in fiscal year 2005: *Provided further*, That up to 5 percent of the aggregate amount of funds made available to the Global Fund in fiscal year 2005 may be made available to the United States Agency for International Development for technical assistance related to the activities of the Global Fund: *Provided further*, That of the funds appropriated under this heading that are available for HIV/AIDS programs and activities, not less than \$27,000,000 should be made available for the International AIDS Vaccine Initiative: *Provided further*, That of the funds appropriated under this heading, \$65,000,000 should be made available for a United States contribution to The Vaccine Fund, and up to \$6,000,000 may be transferred to and merged with funds appropriated by this Act under the heading “Operating Expenses of the United States Agency for International Development” for costs directly related to international health, but funds made available for such costs may not be derived from amounts made available for contribution under this and preceding provisos: *Provided further*, That none of the funds made available in this Act nor any unobligated balances from prior appropriations may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: *Provided further*, That none of the funds made available under this Act may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions: *Provided further*, That nothing in this paragraph shall be construed to alter any existing statutory prohibitions against abortion under section 104 of the Foreign Assistance Act of 1961: *Provided further*, That none of the funds made available under this Act may be used to lobby for or against abortion: *Provided further*, That in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services, and that any such voluntary family planning project shall meet the following requirements: (1) service providers or referral agents in the project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (this provision shall not be construed to include the use of quantitative estimates or indicators for budgeting and planning purposes); (2) the project shall not include

Abortion.

Deadline.
Reports.

Non-
discrimination.

payment of incentives, bribes, gratuities, or financial reward to: (A) an individual in exchange for becoming a family planning acceptor; or (B) program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning; (3) the project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual's decision not to accept family planning services; (4) the project shall provide family planning acceptors comprehensible information on the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method; and (5) the project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits; and, not less than 60 days after the date on which the Administrator of the United States Agency for International Development determines that there has been a violation of the requirements contained in paragraph (1), (2), (3), or (5) of this proviso, or a pattern or practice of violations of the requirements contained in paragraph (4) of this proviso, the Administrator shall submit to the Committees on Appropriations a report containing a description of such violation and the corrective action taken by the Agency: *Provided further*, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso: *Provided further*, That for purposes of this or any other Act authorizing or appropriating funds for foreign operations, export financing, and related programs, the term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options: *Provided further*, That to the maximum extent feasible, taking into consideration cost, timely availability, and best health practices, funds appropriated in this Act or prior appropriations Acts that are made available for condom procurement shall be made available only for the procurement of condoms manufactured in the United States: *Provided further*, That information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated by this Act shall be medically accurate and shall include the public health benefits and failure rates of such use.

DEVELOPMENT ASSISTANCE

For necessary expenses of the United States Agency for International Development to carry out the provisions of sections 103, 105, 106, and 131, and chapter 10 of part I of the Foreign Assistance Act of 1961, \$1,460,000,000, to remain available until September 30, 2006: *Provided*, That \$194,000,000 should be allocated for trade capacity building: *Provided further*, That \$300,000,000 should be allocated for basic education: *Provided further*, That of the funds appropriated under this heading and managed by the United States

Agency for International Development Bureau of Democracy, Conflict, and Humanitarian Assistance, not less than \$15,000,000 shall be made available only for programs to improve women's leadership capacity in recipient countries: *Provided further*, That such funds may not be made available for construction: *Provided further*, That of the aggregate amount of the funds appropriated by this Act that are made available for agriculture and rural development programs, \$25,000,000 should be made available for plant biotechnology research and development: *Provided further*, That not less than \$2,300,000 should be made available for core support for the International Fertilizer Development Center: *Provided further*, That of the funds appropriated under this heading, not less than \$20,000,000 should be made available for the American Schools and Hospitals Abroad program: *Provided further*, That of the funds appropriated under this heading that are made available for assistance programs for displaced and orphaned children and victims of war, not to exceed \$37,500, in addition to funds otherwise available for such purposes, may be used to monitor and provide oversight of such programs: *Provided further*, That funds appropriated under this heading should be made available for programs in sub-Saharan Africa to address sexual and gender-based violence: *Provided further*, That of the funds appropriated under this heading, \$2,000,000 should be made available to develop clean water treatment activities in developing countries: *Provided further*, That of the funds appropriated by this Act, \$100,000,000 shall be made available for drinking water supply projects and related activities.

INTERNATIONAL DISASTER AND FAMINE ASSISTANCE

For necessary expenses of the United States Agency for International Development to carry out the provisions of section 491 of the Foreign Assistance Act of 1961 for international disaster relief, rehabilitation, and reconstruction assistance, \$335,500,000, to remain available until expended.

In addition, for necessary expenses for assistance for famine prevention and relief, including for mitigation of the effects of famine, \$34,500,000, to remain available until expended: *Provided*, That such funds shall be made available utilizing the general authorities of section 491 of the Foreign Assistance Act of 1961, and shall be in addition to amounts otherwise available for such purposes: *Provided further*, That funds appropriated by this paragraph shall be available for obligation subject to prior consultation with the Committees on Appropriations.

TRANSITION INITIATIVES

For necessary expenses for international disaster rehabilitation and reconstruction assistance pursuant to section 491 of the Foreign Assistance Act of 1961, \$49,000,000, to remain available until expended, to support transition to democracy and to long-term development of countries in crisis: *Provided*, That such support may include assistance to develop, strengthen, or preserve democratic institutions and processes, revitalize basic infrastructure, and foster the peaceful resolution of conflict: *Provided further*, That the United States Agency for International Development shall submit a report to the Committees on Appropriations at least 5 days prior to beginning a new program of assistance: *Provided further*, That if the President determines that is important to the

Reports.
Deadline.

national interests of the United States to provide transition assistance in excess of the amount appropriated under this heading, up to \$15,000,000 of the funds appropriated by this Act to carry out the provisions of part I of the Foreign Assistance Act of 1961 may be used for purposes of this heading and under the authorities applicable to funds appropriated under this heading: *Provided further*, That funds made available pursuant to the previous proviso shall be made available subject to prior consultation with the Committees on Appropriations.

DEVELOPMENT CREDIT AUTHORITY

(INCLUDING TRANSFER OF FUNDS)

Applicability.

For the cost of direct loans and loan guarantees provided by the United States Agency for International Development, as authorized by sections 108 and 635 of the Foreign Assistance Act of 1961, funds may be derived by transfer from funds appropriated by this Act to carry out part I of such Act and under the heading “Assistance for Eastern Europe and the Baltic States”: *Provided*, That such funds shall not exceed \$21,000,000, which shall be made available only for micro and small enterprise programs, urban programs, and other programs which further the purposes of part I of the Act: *Provided further*, That such costs, including the cost of modifying such direct and guaranteed loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That funds made available by this paragraph may be used for the cost of modifying any such guaranteed loans under this Act or prior Acts, and funds used for such costs shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the provisions of section 107A(d) (relating to general provisions applicable to the Development Credit Authority) of the Foreign Assistance Act of 1961, as contained in section 306 of H.R. 1486 as reported by the House Committee on International Relations on May 9, 1997, shall be applicable to direct loans and loan guarantees provided under this heading.

In addition, for administrative expenses to carry out credit programs administered by the United States Agency for International Development, \$8,000,000, which may be transferred to and merged with the appropriation for Operating Expenses of the United States Agency for International Development: *Provided*, That funds made available under this heading shall remain available until September 30, 2007.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For payment to the “Foreign Service Retirement and Disability Fund”, as authorized by the Foreign Service Act of 1980, \$42,500,000.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Reports.
Deadline.

For necessary expenses to carry out the provisions of section 667 of the Foreign Assistance Act of 1961, \$618,000,000, of which up to \$25,000,000 may remain available until September 30, 2006: *Provided*, That none of the funds appropriated under this heading

and under the heading “Capital Investment Fund” may be made available to finance the construction (including architect and engineering services), purchase, or long-term lease of offices for use by the United States Agency for International Development, unless the Administrator has identified such proposed construction (including architect and engineering services), purchase, or long-term lease of offices in a report submitted to the Committees on Appropriations at least 15 days prior to the obligation of these funds for such purposes: *Provided further*, That the previous proviso shall not apply where the total cost of construction (including architect and engineering services), purchase, or long-term lease of offices does not exceed \$1,000,000: *Provided further*, That contracts or agreements entered into with funds appropriated under this heading may entail commitments for the expenditure of such funds through fiscal year 2006: *Provided further*, That none of the funds in this Act may be used to open a new overseas mission of the United States Agency for International Development without the prior written notification of the Committees on Appropriations: *Provided further*, That the authority of sections 610 and 109 of the Foreign Assistance Act of 1961 may be exercised by the Secretary of State to transfer funds appropriated to carry out chapter 1 of part I of such Act to “Operating Expenses of the United States Agency for International Development” in accordance with the provisions of those sections.

CAPITAL INVESTMENT FUND

For necessary expenses for overseas construction and related costs, and for the procurement and enhancement of information technology and related capital investments, pursuant to section 667 of the Foreign Assistance Act of 1961, \$59,000,000, to remain available until expended: *Provided*, That this amount is in addition to funds otherwise available for such purposes: *Provided further*, That funds appropriated under this heading shall be available for obligation only pursuant to the regular notification procedures of the Committees on Appropriations: *Provided further*, That of the amounts appropriated under this heading, not to exceed \$19,709,000 may be made available for the purposes of implementing the Capital Security Cost Sharing Program.

OPERATING EXPENSES OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OFFICE OF INSPECTOR GENERAL

For necessary expenses to carry out the provisions of section 667 of the Foreign Assistance Act of 1961, \$35,000,000, to remain available until September 30, 2006, which sum shall be available for the Office of the Inspector General of the United States Agency for International Development.

OTHER BILATERAL ECONOMIC ASSISTANCE

ECONOMIC SUPPORT FUND

For necessary expenses to carry out the provisions of chapter 4 of part II, \$2,482,500,000, to remain available until September 30, 2006: *Provided*, That of the funds appropriated under this heading, not less than \$360,000,000 shall be available only for Israel, which sum shall be available on a grant basis as a cash

Deadline.

President.

transfer and shall be disbursed within 30 days of the enactment of this Act: *Provided further*, That not less than \$535,000,000 shall be available only for Egypt, which sum shall be provided on a grant basis, and of which sum cash transfer assistance shall be provided with the understanding that Egypt will undertake significant economic reforms which are additional to those which were undertaken in previous fiscal years, and of which \$200,000,000 should be provided as Commodity Import Program assistance: *Provided further*, That with respect to the provision of assistance for Egypt for democracy and governance activities, the organizations implementing such assistance and the specific nature of that assistance shall not be subject to the prior approval by the Government of Egypt: *Provided further*, That in exercising the authority to provide cash transfer assistance for Israel, the President shall ensure that the level of such assistance does not cause an adverse impact on the total level of nonmilitary exports from the United States to such country and that Israel enters into a side letter agreement in an amount proportional to the fiscal year 1999 agreement: *Provided further*, That of the funds appropriated under this heading, not less than \$250,000,000 should be made available only for assistance for Jordan: *Provided further*, That \$13,500,000 of the funds appropriated under this heading shall be made available for Cyprus to be used only for scholarships, administrative support of the scholarship program, bicommunal projects, and measures aimed at reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities on Cyprus: *Provided further*, That \$35,000,000 of the funds appropriated under this heading shall be made available for assistance for Lebanon, of which not less than \$4,000,000 should be made available for scholarships and direct support of American educational institutions in Lebanon: *Provided further*, That funds appropriated under this heading may be used, notwithstanding any other provision of law, to provide assistance to the National Democratic Alliance of Sudan to strengthen its ability to protect civilians from attacks, slave raids, and aerial bombardment by the Sudanese Government forces and its militia allies, and the provision of such funds shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That in the previous proviso, the term “assistance” includes non-lethal, non-food aid such as blankets, medicine, fuel, mobile clinics, water drilling equipment, communications equipment to notify civilians of aerial bombardment, non-military vehicles, tents, and shoes: *Provided further*, That not to exceed \$200,000,000 of the funds appropriated under this heading may be used for the costs, as defined in section 502 of the Congressional Budget Act of 1974, of modifying direct loans and guarantees for Pakistan: *Provided further*, That amounts that are made available under the previous proviso for the costs of modifying direct loans and guarantees shall not be considered “assistance” for the purposes of provisions of law limiting assistance to a country: *Provided further*, That of the funds appropriated under this heading, not less than \$22,000,000 shall be made available for assistance for the Democratic Republic of Timor-Leste, of which up to \$1,000,000 may be available for administrative expenses of the United States Agency for International Development: *Provided further*, That of the funds available under this heading for assistance for Indonesia, \$3,000,000 should be made available to promote freedom of the

media in Indonesia: *Provided further*, That of the funds appropriated under this heading, \$5,000,000 shall be made available to continue to support the provision of wheelchairs for needy persons in developing countries: *Provided further*, That funds appropriated under this heading that are made available for a Middle East Financing Facility, Middle East Enterprise Fund, or any other similar entity in the Middle East shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That with respect to funds appropriated under this heading in this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, the responsibility for policy decisions and justifications for the use of such funds, including whether there will be a program for a country that uses those funds and the amount of each such program, shall be the responsibility of the Secretary of State and the Deputy Secretary of State and this responsibility shall not be delegated.

INTERNATIONAL FUND FOR IRELAND

For necessary expenses to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, \$18,500,000, which shall be available for the United States contribution to the International Fund for Ireland and shall be made available in accordance with the provisions of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99–415): *Provided*, That such amount shall be expended at the minimum rate necessary to make timely payment for projects and activities: *Provided further*, That funds made available under this heading shall remain available until September 30, 2006.

ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES

(a) For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 and the Support for East European Democracy (SEED) Act of 1989, \$396,600,000, to remain available until September 30, 2006, which shall be available, notwithstanding any other provision of law, for assistance and for related programs for Eastern Europe and the Baltic States: *Provided*, That of the funds appropriated under this heading that are made available for assistance for Bulgaria, \$2,000,000 should be made available to enhance safety at nuclear power plants.

(b) Funds appropriated under this heading shall be considered to be economic assistance under the Foreign Assistance Act of 1961 for purposes of making available the administrative authorities contained in that Act for the use of economic assistance.

(c) The provisions of section 529 of this Act shall apply to funds appropriated under this heading: *Provided*, That notwithstanding any provision of this or any other Act, including provisions in this subsection regarding the application of section 529 of this Act, local currencies generated by, or converted from, funds appropriated by this Act and by previous appropriations Acts and made available for the economic revitalization program in Bosnia may be used in Eastern Europe and the Baltic States to carry out the provisions of the Foreign Assistance Act of 1961 and the Support for East European Democracy (SEED) Act of 1989.

Applicability.

(d) The President is authorized to withhold funds appropriated under this heading made available for economic revitalization programs in Bosnia and Herzegovina, if he determines and certifies

to the Committees on Appropriations that the Federation of Bosnia and Herzegovina has not complied with article III of annex 1-A of the General Framework Agreement for Peace in Bosnia and Herzegovina concerning the withdrawal of foreign forces, and that intelligence cooperation on training, investigations, and related activities between state sponsors of terrorism and terrorist organizations and Bosnian officials has not been terminated.

ASSISTANCE FOR THE INDEPENDENT STATES OF THE FORMER SOVIET UNION

Applicability.

(a) For necessary expenses to carry out the provisions of chapters 11 and 12 of part I of the Foreign Assistance Act of 1961 and the FREEDOM Support Act, for assistance for the Independent States of the former Soviet Union and for related programs, \$560,000,000, to remain available until September 30, 2006: *Provided*, That the provisions of such chapters shall apply to funds appropriated by this paragraph: *Provided further*, That funds made available for the Southern Caucasus region may be used, notwithstanding any other provision of law, for confidence-building measures and other activities in furtherance of the peaceful resolution of the regional conflicts, especially those in the vicinity of Abkhazia and Nagorno-Karabagh: *Provided further*, That of the funds appropriated under this heading, \$3,859,000 should be available only to meet the health and other assistance needs of victims of trafficking in persons: *Provided further*, That of the funds appropriated under this heading, \$17,500,000 shall be made available solely for assistance for the Russian Far East: *Provided further*, That, notwithstanding any other provision of law, funds appropriated under this heading in this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, that are made available pursuant to the provisions of section 807 of Public Law 102-511 shall be subject to a 6 percent ceiling on administrative expenses.

(b) Of the funds appropriated under this heading that are made available for assistance for Ukraine, not less than \$5,000,000 should be made available for nuclear reactor safety initiatives, and not less than \$1,500,000 shall be made available for coal mine safety programs.

(c) Of the funds appropriated under this heading, not less than \$55,000,000 should be made available, in addition to funds otherwise available for such purposes, for assistance for child survival, environmental and reproductive health, and to combat HIV/AIDS, tuberculosis and other infectious diseases, and for related activities.

President.
Certification.

(d)(1) Of the funds appropriated under this heading that are allocated for assistance for the Government of the Russian Federation, 60 percent shall be withheld from obligation until the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation—

(A) has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability; and

(B) is providing full access to international non-government organizations providing humanitarian relief to refugees and internally displaced persons in Chechnya.

(2) Paragraph (1) shall not apply to—

(A) assistance to combat infectious diseases, child survival activities, or assistance for victims of trafficking in persons; and

(B) activities authorized under title V (Nonproliferation and Disarmament Programs and Activities) of the FREEDOM Support Act.

(e) Section 907 of the FREEDOM Support Act shall not apply to—

(1) activities to support democracy or assistance under title V of the FREEDOM Support Act and section 1424 of Public Law 104-201 or non-proliferation assistance;

(2) any assistance provided by the Trade and Development Agency under section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421);

(3) any activity carried out by a member of the United States and Foreign Commercial Service while acting within his or her official capacity;

(4) any insurance, reinsurance, guarantee or other assistance provided by the Overseas Private Investment Corporation under title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2191 et seq.);

(5) any financing provided under the Export-Import Bank Act of 1945; or

(6) humanitarian assistance.

INDEPENDENT AGENCIES

INTER-AMERICAN FOUNDATION

For necessary expenses to carry out the functions of the Inter-American Foundation in accordance with the provisions of section 401 of the Foreign Assistance Act of 1969, \$18,000,000, to remain available until September 30, 2006.

AFRICAN DEVELOPMENT FOUNDATION

For necessary expenses to carry out title V of the International Security and Development Cooperation Act of 1980, Public Law 96-533, \$19,000,000, to remain available until September 30, 2006: *Provided*, That funds made available to grantees may be invested pending expenditure for project purposes when authorized by the board of directors of the Foundation: *Provided further*, That interest earned shall be used only for the purposes for which the grant was made: *Provided further*, That notwithstanding section 505(a)(2) of the African Development Foundation Act, in exceptional circumstances the board of directors of the Foundation may waive the \$250,000 limitation contained in that section with respect to a project: *Provided further*, That the Foundation shall provide a report to the Committees on Appropriations after each time such waiver authority is exercised.

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PEACE CORPS

For necessary expenses to carry out the provisions of the Peace Corps Act (75 Stat. 612), \$320,000,000, including the purchase of not to exceed five passenger motor vehicles for administrative purposes for use outside of the United States: *Provided*, That none

of the funds appropriated under this heading shall be used to pay for abortions: *Provided further*, That funds appropriated under this heading shall remain available until September 30, 2006.

MILLENNIUM CHALLENGE CORPORATION

For necessary expenses for the “Millennium Challenge Corporation”, \$1,500,000,000, to remain available until expended: *Provided*, That of the funds appropriated under this heading, up to \$50,000,000 may be available for administrative expenses of the Millennium Challenge Corporation: *Provided further*, That none of the funds appropriated under this heading may be made available for the provision of assistance until the Chief Executive Officer of the Millennium Challenge Corporation provides a written budget justification to the Committees on Appropriations: *Provided further*, That up to 10 percent of the funds appropriated under this heading may be made available to carry out the purposes of section 616 of the Millennium Challenge Act of 2003: *Provided further*, That none of the funds available to carry out section 616 of such Act may be made available until the Chief Executive Officer of the Millennium Challenge Corporation provides a report to the Committees on Appropriations listing the candidate countries that will be receiving assistance under section 616 of such Act, the level of assistance proposed for each such country, a description of the proposed programs, projects and activities, and the implementing agency or agencies of the United States Government: *Provided further*, That section 605(e)(4) of the Millennium Challenge Act of 2003 shall apply to funds appropriated under this heading: *Provided further*, That funds appropriated under this heading, and funds appropriated under this heading in division D of Public Law 108-199, may be made available for a Millennium Challenge Compact entered into pursuant to section 609 of the Millennium Challenge Act of 2003 only if such Compact obligates, or contains a commitment to obligate subject to the availability of funds and the mutual agreement of the parties to the Compact to proceed, the entire amount of the United States Government funding anticipated for the duration of the Compact: *Provided further*, That the previous proviso shall be effective on the date of enactment of this Act.

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Applicability.

Effective date.

DEPARTMENT OF STATE

GLOBAL HIV/AIDS INITIATIVE

For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 for the prevention, treatment, and control of, and research on, HIV/AIDS, \$1,385,000,000, to remain available until expended: *Provided*, That of the funds appropriated under this heading, not more than \$8,818,000 may be made available for administrative expenses of the Office of the Coordinator of United States Government Activities to Combat HIV/AIDS Globally of the Department of State: *Provided further*, That of the funds appropriated under this heading, not less than \$27,000,000 should be made available for a United States contribution to UNAIDS.

INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT

For necessary expenses to carry out section 481 of the Foreign Assistance Act of 1961, \$328,820,000, to remain available until September 30, 2007: *Provided*, That during fiscal year 2005, the Department of State may also use the authority of section 608 of the Foreign Assistance Act of 1961, without regard to its restrictions, to receive excess property from an agency of the United States Government for the purpose of providing it to a foreign country under chapter 8 of part I of that Act subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the Secretary of State shall provide to the Committees on Appropriations not later than 45 days after the date of the enactment of this Act and prior to the initial obligation of funds appropriated under this heading, a report on the proposed uses of all funds under this heading on a country-by-country basis for each proposed program, project, or activity: *Provided further*, That of the funds appropriated under this heading, not less than \$11,900,000 should be made available for training programs and activities of the International Law Enforcement Academies: *Provided further*, That of the funds appropriated under this heading, not less than \$4,000,000 should be made available for assistance for the Philippines for police training and other related activities: *Provided further*, That \$10,000,000 of the funds appropriated under this heading shall be made available for demand reduction programs: *Provided further*, That \$40,000,000 of the funds appropriated under this heading should be made available for assistance for Mexico: *Provided further*, That \$10,500,000 of the funds appropriated under this heading should be made available for assistance for countries and programs in Africa: *Provided further*, That of the funds appropriated under this heading, \$3,000,000 shall be made available for assistance for the Government of Malta for the purchase of helicopters to enhance its ability to control its borders and deter terrorists: *Provided further*, That of the funds appropriated under this heading, not more than \$30,300,000 may be available for administrative expenses.

Deadline.
Reports.

ANDEAN COUNTERDRUG INITIATIVE

For necessary expenses to carry out section 481 of the Foreign Assistance Act of 1961 to support counterdrug activities in the Andean region of South America, \$731,000,000, to remain available until September 30, 2007: *Provided*, That in fiscal year 2005, funds available to the Department of State for assistance to the Government of Colombia shall be available to support a unified campaign against narcotics trafficking, against activities by organizations designated as terrorist organizations such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC), and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations: *Provided further*, That this authority shall cease to be effective if the Secretary of State has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations: *Provided further*, That the President shall ensure that if any helicopter procured with funds under this heading is used to aid or abet the operations

President.

of any illegal self-defense group or illegal security cooperative, such helicopter shall be immediately returned to the United States: *Provided further*, That none of the funds appropriated by this Act may be made available to support a Peruvian air interdiction program until the Secretary of State and Director of Central Intelligence certify to the Congress, 30 days before any resumption of United States involvement in a Peruvian air interdiction program, that an air interdiction program that permits the ability of the Peruvian Air Force to shoot down aircraft will include enhanced safeguards and procedures to prevent the occurrence of any incident similar to the April 20, 2001 incident: *Provided further*, That the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall provide to the Committees on Appropriations not later than 45 days after the date of the enactment of this Act and prior to the initial obligation of funds appropriated under this heading, a report on the proposed uses of all funds under this heading on a country-by-country basis for each proposed program, project, or activity: *Provided further*, That of the funds appropriated under this heading, not less than \$264,600,000 shall be made available for alternative development/institution building, of which \$237,000,000 shall be apportioned directly to the United States Agency for International Development, including \$125,700,000 for assistance for Colombia: *Provided further*, That with respect to funds apportioned to the United States Agency for International Development under the previous proviso, the responsibility for policy decisions for the use of such funds, including what activities will be funded and the amount of funds that will be provided for each of those activities, shall be the responsibility of the Administrator of the United States Agency for International Development in consultation with the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs: *Provided further*, That of the funds appropriated under this heading, not less than \$6,000,000 should be made available for judicial reform programs in Colombia: *Provided further*, That of the funds appropriated under this heading, in addition to funds made available pursuant to the previous proviso, not less than \$6,000,000 shall be made available to the United States Agency for International Development for organizations and programs to protect human rights: *Provided further*, That funds made available in this Act for demobilization/reintegration of members of foreign terrorist organizations in Colombia shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations: *Provided further*, That not more than 20 percent of the funds appropriated by this Act that are used for the procurement of chemicals for aerial coca and poppy fumigation programs may be made available for such programs unless the Secretary of State certifies to the Committees on Appropriations that: (1) the herbicide mixture is being used in accordance with EPA label requirements for comparable use in the United States and with Colombian laws; and (2) the herbicide mixture, in the manner it is being used, does not pose unreasonable risks or adverse effects to humans or the environment: *Provided further*, That such funds may not be made available unless the Secretary of State certifies to the Committees on Appropriations that complaints of harm to health or licit crops caused by such fumigation are evaluated and fair compensation is being paid for meritorious claims: *Provided further*, That such funds may not

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be made available for such purposes unless programs are being implemented by the United States Agency for International Development, the Government of Colombia, or other organizations, in consultation with local communities, to provide alternative sources of income in areas where security permits for small-acreage growers whose illicit crops are targeted for fumigation: *Provided further*, That of the funds appropriated under this heading, \$2,000,000 should be made available through nongovernmental organizations for programs to protect biodiversity and indigenous reserves in Colombia: *Provided further*, That funds appropriated by this Act may be used for aerial fumigation in Colombia's national parks or reserves only if the Secretary of State determines that it is in accordance with Colombian laws and that there are no effective alternatives to reduce drug cultivation in these areas: *Provided further*, That section 482(b) of the Foreign Assistance Act of 1961 shall not apply to funds appropriated under this heading: *Provided further*, That assistance provided with funds appropriated under this heading that is made available notwithstanding section 482(b) of the Foreign Assistance Act of 1961 shall be made available subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That no United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available by this Act for Colombia: *Provided further*, That funds appropriated under this heading that are available for assistance for the Bolivian military and police may be made available for such purposes only if the Bolivian military and police are respecting human rights and cooperating with civilian judicial authorities, and the Bolivian Government is prosecuting and punishing those responsible for violations of human rights: *Provided further*, That of the funds appropriated under this heading, not more than \$16,285,000 may be available for administrative expenses of the Department of State, and not more than \$7,800,000 may be available, in addition to amounts otherwise available for such purposes, for administrative expenses of the United States Agency for International Development.

MIGRATION AND REFUGEE ASSISTANCE

For expenses, not otherwise provided for, necessary to enable the Secretary of State to provide, as authorized by law, a contribution to the International Committee of the Red Cross, assistance to refugees, including contributions to the International Organization for Migration and the United Nations High Commissioner for Refugees, and other activities to meet refugee and migration needs; salaries and expenses of personnel and dependents as authorized by the Foreign Service Act of 1980; allowances as authorized by sections 5921 through 5925 of title 5, United States Code; purchase and hire of passenger motor vehicles; and services as authorized by section 3109 of title 5, United States Code, \$770,000,000, which shall remain available until expended: *Provided*, That not more than \$22,000,000 may be available for administrative expenses: *Provided further*, That not less than \$50,000,000 of the funds made available under this heading shall be made available for refugees from the former Soviet Union and Eastern Europe and other refugees resettling in Israel: *Provided further*, That funds appropriated under this heading may be made

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Israel.

available for a headquarters contribution to the International Committee of the Red Cross only if the Secretary of State determines (and so reports to the appropriate committees of Congress) that the Magen David Adom Society of Israel is not being denied participation in the activities of the International Red Cross and Red Crescent Movement.

UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSISTANCE
FUND

For necessary expenses to carry out the provisions of section 2(c) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)), \$30,000,000, to remain available until expended: *Provided*, That funds made available under this heading are appropriated notwithstanding the provisions contained in section 2(c)(2) of such Act which would limit the amount of funds which could be appropriated for this purpose.

NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED
PROGRAMS

For necessary expenses for nonproliferation, anti-terrorism, demining and related programs and activities, \$402,000,000, to carry out the provisions of chapter 8 of part II of the Foreign Assistance Act of 1961 for anti-terrorism assistance, chapter 9 of part II of the Foreign Assistance Act of 1961, section 504 of the FREEDOM Support Act, section 23 of the Arms Export Control Act or the Foreign Assistance Act of 1961 for demining activities, the clearance of unexploded ordnance, the destruction of small arms, and related activities, notwithstanding any other provision of law, including activities implemented through nongovernmental and international organizations, and section 301 of the Foreign Assistance Act of 1961 for a voluntary contribution to the International Atomic Energy Agency (IAEA), and for a United States contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission: *Provided*, That of this amount not to exceed \$32,000,000, to remain available until expended, may be made available for the Nonproliferation and Disarmament Fund, notwithstanding any other provision of law, to promote bilateral and multilateral activities relating to nonproliferation and disarmament: *Provided further*, That such funds may also be used for such countries other than the Independent States of the former Soviet Union and international organizations when it is in the national security interest of the United States to do so: *Provided further*, That funds appropriated under this heading may be made available for the International Atomic Energy Agency only if the Secretary of State determines (and so reports to the Congress) that Israel is not being denied its right to participate in the activities of that Agency: *Provided further*, That funds available during fiscal year 2005 for a contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission and that are not necessary to make the United States contribution to the Commission in the amount assessed for fiscal year 2005 shall be made available for a voluntary contribution to the International Atomic Energy Agency and shall remain available until September 30, 2006: *Provided further*, That of the funds made available for demining and related activities, not to exceed \$690,000, in addition to funds otherwise available for such purposes, may be used for administrative expenses related to the

operation and management of the demining program: *Provided further*, That funds appropriated under this heading that are available for “Anti-terrorism Assistance” and “Export Control and Border Security” shall remain available until September 30, 2006.

DEPARTMENT OF THE TREASURY

INTERNATIONAL AFFAIRS TECHNICAL ASSISTANCE

For necessary expenses to carry out the provisions of section 129 of the Foreign Assistance Act of 1961, \$19,000,000, to remain available until September 30, 2007, which shall be available notwithstanding any other provision of law.

DEBT RESTRUCTURING

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of modifying loans and loan guarantees, as the President may determine, for which funds have been appropriated or otherwise made available for programs within the International Affairs Budget Function 150, including the cost of selling, reducing, or canceling amounts owed to the United States as a result of concessional loans made to eligible countries, pursuant to parts IV and V of the Foreign Assistance Act of 1961, and of modifying concessional credit agreements with least developed countries, as authorized under section 411 of the Agricultural Trade Development and Assistance Act of 1954, as amended, and concessional loans, guarantees and credit agreements, as authorized under section 572 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461), and of canceling amounts owed, as a result of loans or guarantees made pursuant to the Export-Import Bank Act of 1945, by countries that are eligible for debt reduction pursuant to title V of H.R. 3425 as enacted into law by section 1000(a)(5) of Public Law 106–113, \$100,000,000, to remain available until September 30, 2007: *Provided*, That not less than \$20,000,000 of the funds appropriated under this heading shall be made available to carry out the provisions of part V of the Foreign Assistance Act of 1961: *Provided further*, That up to \$75,000,000 of the funds appropriated under this heading may be used by the Secretary of the Treasury to pay to the Heavily Indebted Poor Countries (HIPC) Trust Fund administered by the International Bank for Reconstruction and Development amounts for the benefit of countries that are eligible for debt reduction pursuant to title V of H.R. 3425 as enacted into law by section 1000(a)(5) of Public Law 106–113: *Provided further*, That amounts paid to the HIPC Trust Fund may be used only to fund debt reduction under the enhanced HIPC initiative by—

- (1) the Inter-American Development Bank;
- (2) the African Development Fund;
- (3) the African Development Bank; and
- (4) the Central American Bank for Economic Integration:

Provided further, That funds may not be paid to the HIPC Trust Fund for the benefit of any country if the Secretary of State has credible evidence that the government of such country is engaged in a consistent pattern of gross violations of internationally recognized human rights or in military or civil conflict that undermines its ability to develop and implement measures to alleviate poverty

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and to devote adequate human and financial resources to that end: *Provided further*, That on the basis of final appropriations, the Secretary of the Treasury shall consult with the Committees on Appropriations concerning which countries and international financial institutions are expected to benefit from a United States contribution to the HIPC Trust Fund during the fiscal year: *Provided further*, That the Secretary of the Treasury shall inform the Committees on Appropriations not less than 15 days in advance of the signature of an agreement by the United States to make payments to the HIPC Trust Fund of amounts for such countries and institutions: *Provided further*, That the Secretary of the Treasury may disburse funds designated for debt reduction through the HIPC Trust Fund only for the benefit of countries that—

(1) have committed, for a period of 24 months, not to accept new market-rate loans from the international financial institution receiving debt repayment as a result of such disbursement, other than loans made by such institutions to export-oriented commercial projects that generate foreign exchange which are generally referred to as “enclave” loans; and

(2) have documented and demonstrated their commitment to redirect their budgetary resources from international debt repayments to programs to alleviate poverty and promote economic growth that are additional to or expand upon those previously available for such purposes:

Notification.

Provided further, That any limitation of subsection (e) of section 411 of the Agricultural Trade Development and Assistance Act of 1954 shall not apply to funds appropriated under this heading: *Provided further*, That none of the funds made available under this heading in this or any other appropriations Act shall be made available for Sudan or Burma unless the Secretary of the Treasury determines and notifies the Committees on Appropriations that a democratically elected government has taken office: *Provided further*, That none of the funds appropriated under this heading may be paid to the HIPC Trust Fund for the benefit of any country that has accepted loans from an international financial institution between such country’s decision point and completion point: *Provided further*, That the terms “decision point” and “completion point” shall have the same meaning as defined by the International Monetary Fund.

TITLE III—MILITARY ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL MILITARY EDUCATION AND TRAINING

For necessary expenses to carry out the provisions of section 541 of the Foreign Assistance Act of 1961, \$89,730,000, of which up to \$3,000,000 may remain available until expended: *Provided*, That the civilian personnel for whom military education and training may be provided under this heading may include civilians who are not members of a government whose participation would contribute to improved civil-military relations, civilian control of the military, or respect for human rights: *Provided further*, That funds appropriated under this heading for military education and training for Guatemala may only be available for expanded international military education and training, and funds made available

for Haiti, the Democratic Republic of the Congo, and Nigeria may only be provided through the regular notification procedures of the Committees on Appropriations.

FOREIGN MILITARY FINANCING PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for grants to enable the President to carry out the provisions of section 23 of the Arms Export Control Act, \$4,783,500,000: *Provided*, That of the funds appropriated under this heading, not less than \$2,220,000,000 shall be available for grants only for Israel, and not less than \$1,300,000,000 shall be made available for grants only for Egypt: *Provided further*, That the funds appropriated by this paragraph for Israel shall be disbursed within 30 days of the enactment of this Act: *Provided further*, That to the extent that the Government of Israel requests that funds be used for such purposes, grants made available for Israel by this paragraph shall, as agreed by Israel and the United States, be available for advanced weapons systems, of which not less than \$580,000,000 shall be available for the procurement in Israel of defense articles and defense services, including research and development: *Provided further*, That of the funds appropriated by this paragraph, \$206,000,000 should be made available for assistance for Jordan: *Provided further*, That in addition to the funds appropriated under this heading, up to \$150,000,000 for assistance for Pakistan may be derived by transfer from unobligated balances of funds appropriated under the headings “Economic Support Fund” and “Foreign Military Financing Program” in prior appropriations Acts and not otherwise designated in those Acts for a specific country, use, or purpose: *Provided further*, That of the funds appropriated under this heading, not more than \$2,000,000 may be made available for assistance for Uganda and only for non-lethal military equipment if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uganda has made significant progress in: (1) the protection of human rights, especially preventing acts of torture; (2) the protection of civilians in northern and eastern Uganda; and (3) the professionalization of the Ugandan armed forces: *Provided further*, That funds appropriated or otherwise made available by this paragraph shall be nonrepayable notwithstanding any requirement in section 23 of the Arms Export Control Act: *Provided further*, That funds made available under this paragraph shall be obligated upon apportionment in accordance with paragraph (5)(C) of title 31, United States Code, section 1501(a).

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None of the funds made available under this heading shall be available to finance the procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act unless the foreign country proposing to make such procurements has first signed an agreement with the United States Government specifying the conditions under which such procurements may be financed with such funds: *Provided*, That all country and funding level increases in allocations shall be submitted through the regular notification procedures of section 515 of this Act: *Provided further*, That none of the funds appropriated under this heading shall be available for assistance for Sudan and Guatemala: *Provided further*, That none of the funds appropriated under this heading may be

Deadline.

made available for assistance for Haiti except pursuant to the regular notification procedures of the Committees on Appropriations: *Provided further*, That funds made available under this heading may be used, notwithstanding any other provision of law, for demining, the clearance of unexploded ordnance, and related activities, and may include activities implemented through non-governmental and international organizations: *Provided further*, That only those countries for which assistance was justified for the “Foreign Military Sales Financing Program” in the fiscal year 1989 congressional presentation for security assistance programs may utilize funds made available under this heading for procurement of defense articles, defense services or design and construction services that are not sold by the United States Government under the Arms Export Control Act: *Provided further*, That funds appropriated under this heading shall be expended at the minimum rate necessary to make timely payment for defense articles and services: *Provided further*, That not more than \$40,000,000 of the funds appropriated under this heading may be obligated for necessary expenses, including the purchase of passenger motor vehicles for replacement only for use outside of the United States, for the general costs of administering military assistance and sales: *Provided further*, That not more than \$367,000,000 of funds realized pursuant to section 21(e)(1)(A) of the Arms Export Control Act may be obligated for expenses incurred by the Department of Defense during fiscal year 2005 pursuant to section 43(b) of the Arms Export Control Act, except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations: *Provided further*, That foreign military financing program funds estimated to be outlayed for Egypt during fiscal year 2005 shall be transferred to an interest bearing account for Egypt in the Federal Reserve Bank of New York within 30 days of enactment of this Act.

PEACEKEEPING OPERATIONS

For necessary expenses to carry out the provisions of section 551 of the Foreign Assistance Act of 1961, \$104,000,000: *Provided*, That none of the funds appropriated under this heading shall be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

TITLE IV—MULTILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

GLOBAL ENVIRONMENT FACILITY

For the United States contribution for the Global Environment Facility, \$107,500,000 to the International Bank for Reconstruction and Development as trustee for the Global Environment Facility, by the Secretary of the Treasury, to remain available until expended.

CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

For payment to the International Development Association by the Secretary of the Treasury, \$850,000,000, to remain available until expended.

CONTRIBUTION TO THE ENTERPRISE FOR THE AMERICAS
MULTILATERAL INVESTMENT FUND

For payment to the Enterprise for the Americas Multilateral Investment Fund by the Secretary of the Treasury, for the United States contribution to the fund, \$11,000,000, to remain available until expended.

CONTRIBUTION TO THE ASIAN DEVELOPMENT FUND

For the United States contribution by the Secretary of the Treasury to the increase in resources of the Asian Development Fund, as authorized by the Asian Development Bank Act, as amended, \$100,000,000, to remain available until expended.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT BANK

For payment to the African Development Bank by the Secretary of the Treasury, \$4,100,000, for the United States paid-in share of the increase in capital stock, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the African Development Bank may subscribe without fiscal year limitation for the callable capital portion of the United States share of such capital stock in an amount not to exceed \$79,532,933.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT FUND

For the United States contribution by the Secretary of the Treasury to the increase in resources of the African Development Fund, \$106,000,000, to remain available until expended.

CONTRIBUTION TO THE EUROPEAN BANK FOR RECONSTRUCTION AND
DEVELOPMENT

For payment to the European Bank for Reconstruction and Development by the Secretary of the Treasury, \$35,431,111 for the United States share of the paid-in portion of the increase in capital stock, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the European Bank for Reconstruction and Development may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed \$121,996,662.

CONTRIBUTION TO THE INTERNATIONAL FUND FOR AGRICULTURAL
DEVELOPMENT

For the United States contribution by the Secretary of the Treasury to increase the resources of the International Fund for

Agricultural Development, \$15,000,000, to remain available until expended.

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

For necessary expenses to carry out the provisions of section 301 of the Foreign Assistance Act of 1961, and of section 2 of the United Nations Environment Program Participation Act of 1973, \$328,394,000: *Provided*, That none of the funds appropriated under this heading may be made available to the International Atomic Energy Agency (IAEA).

TITLE V—GENERAL PROVISIONS

COMPENSATION FOR UNITED STATES EXECUTIVE DIRECTORS TO INTERNATIONAL FINANCIAL INSTITUTIONS

SEC. 501. (a) No funds appropriated by this Act may be made as payment to any international financial institution while the United States Executive Director to such institution is compensated by the institution at a rate which, together with whatever compensation such Director receives from the United States, is in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while any alternate United States Director to such institution is compensated by the institution at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) For purposes of this section “international financial institutions” are: the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the Asian Development Fund, the African Development Bank, the African Development Fund, the International Monetary Fund, the North American Development Bank, and the European Bank for Reconstruction and Development.

RESTRICTIONS ON VOLUNTARY CONTRIBUTIONS TO UNITED NATIONS AGENCIES

SEC. 502. None of the funds appropriated by this Act may be made available to pay any voluntary contribution of the United States to the United Nations (including the United Nations Development Program) if the United Nations implements or imposes any taxation on any United States persons.

LIMITATION ON RESIDENCE EXPENSES

SEC. 503. Of the funds appropriated or made available pursuant to this Act, not to exceed \$100,500 shall be for official residence expenses of the United States Agency for International Development during the current fiscal year: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

LIMITATION ON EXPENSES

SEC. 504. Of the funds appropriated or made available pursuant to this Act, not to exceed \$5,000 shall be for entertainment expenses of the United States Agency for International Development during the current fiscal year.

LIMITATION ON REPRESENTATIONAL ALLOWANCES

SEC. 505. Of the funds appropriated or made available pursuant to this Act, not to exceed \$125,000 shall be available for representation allowances for the United States Agency for International Development during the current fiscal year: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars: *Provided further*, That of the funds made available by this Act for general costs of administering military assistance and sales under the heading “Foreign Military Financing Program”, not to exceed \$4,000 shall be available for entertainment expenses and not to exceed \$130,000 shall be available for representation allowances: *Provided further*, That of the funds made available by this Act under the heading “International Military Education and Training”, not to exceed \$55,000 shall be available for entertainment allowances: *Provided further*, That of the funds made available by this Act for the Inter-American Foundation, not to exceed \$2,000 shall be available for entertainment and representation allowances: *Provided further*, That of the funds made available by this Act for the Peace Corps, not to exceed a total of \$4,000 shall be available for entertainment expenses: *Provided further*, That of the funds made available by this Act under the heading “Trade and Development Agency”, not to exceed \$4,000 shall be available for representation and entertainment allowances: *Provided further*, That of the funds made available by this Act under the heading “Millennium Challenge Corporation”, not to exceed \$115,000 shall be available for representation and entertainment allowances.

PROHIBITION ON TAXATION OF UNITED STATES ASSISTANCE

SEC. 506. (a) PROHIBITION ON TAXATION.—None of the funds appropriated by this Act may be made available to provide assistance for a foreign country under a new bilateral agreement governing the terms and conditions under which such assistance is to be provided unless such agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government, and the Secretary of State shall expeditiously seek to negotiate amendments to existing bilateral agreements, as necessary, to conform with this requirement.

(b) REIMBURSEMENT OF FOREIGN TAXES.—An amount equivalent to 200 percent of the total taxes assessed during fiscal year 2005 on funds appropriated by this Act by a foreign government or entity against commodities financed under United States assistance programs for which funds are appropriated by this Act, either directly or through grantees, contractors and subcontractors shall be withheld from obligation from funds appropriated for assistance for fiscal year 2006 and allocated for the central government of such country and for the West Bank and Gaza Program to the extent that the Secretary of State certifies and reports in writing

Certification.
Reports.

to the Committees on Appropriations that such taxes have not been reimbursed to the Government of the United States.

(c) DE MINIMIS EXCEPTION.—Foreign taxes of a de minimis nature shall not be subject to the provisions of subsection (b).

(d) REPROGRAMMING OF FUNDS.—Funds withheld from obligation for each country or entity pursuant to subsection (b) shall be reprogrammed for assistance to countries which do not assess taxes on United States assistance or which have an effective arrangement that is providing substantial reimbursement of such taxes.

(e) DETERMINATIONS.—

(1) The provisions of this section shall not apply to any country or entity the Secretary of State determines—

(A) does not assess taxes on United States assistance or which has an effective arrangement that is providing substantial reimbursement of such taxes; or

(B) the foreign policy interests of the United States outweigh the policy of this section to ensure that United States assistance is not subject to taxation.

Deadline.

(2) The Secretary of State shall consult with the Committees on Appropriations at least 15 days prior to exercising the authority of this subsection with regard to any country or entity.

Rules.
Regulations.
Taxes.

(f) IMPLEMENTATION.—The Secretary of State shall issue rules, regulations, or policy guidance, as appropriate, to implement the prohibition against the taxation of assistance contained in this section.

(g) DEFINITIONS.—As used in this section—

(1) the terms “taxes” and “taxation” refer to value added taxes and customs duties imposed on commodities financed with United States assistance for programs for which funds are appropriated by this Act; and

(2) the term “bilateral agreement” refers to a framework bilateral agreement between the Government of the United States and the government of the country receiving assistance that describes the privileges and immunities applicable to United States foreign assistance for such country generally, or an individual agreement between the Government of the United States and such government that describes, among other things, the treatment for tax purposes that will be accorded the United States assistance provided under that agreement.

PROHIBITION AGAINST DIRECT FUNDING FOR CERTAIN COUNTRIES

SEC. 507. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, Libya, North Korea, Iran, or Syria: *Provided*, That for purposes of this section, the prohibition on obligations or expenditures shall include direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents.

MILITARY COUPS

SEC. 508. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by decree or

military coup: *Provided*, That assistance may be resumed to such government if the President determines and certifies to the Committees on Appropriations that subsequent to the termination of assistance a democratically elected government has taken office: *Provided further*, That the provisions of this section shall not apply to assistance to promote democratic elections or public participation in democratic processes: *Provided further*, That funds made available pursuant to the previous provisos shall be subject to the regular notification procedures of the Committees on Appropriations.

President.
Certification.

TRANSFERS

SEC. 509. (a)(1) LIMITATION ON TRANSFERS BETWEEN AGENCIES.—None of the funds made available by this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

(2) Notwithstanding paragraph (1), in addition to transfers made by, or authorized elsewhere in, this Act, funds appropriated by this Act to carry out the purposes of the Foreign Assistance Act of 1961 may be allocated or transferred to agencies of the United States Government pursuant to the provisions of sections 109, 610, and 632 of the Foreign Assistance Act of 1961.

(b) TRANSFERS BETWEEN ACCOUNTS.—None of the funds made available by this Act may be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided for in this Act, unless the President, not less than 5 days prior to the exercise of any authority contained in the Foreign Assistance Act of 1961 to transfer funds, consults with and provides a written policy justification to the Committees on Appropriations of the House of Representatives and the Senate.

President.
Deadline.

(c) AUDIT OF INTER-AGENCY TRANSFERS.—Any agreement for the transfer or allocation of funds appropriated by this Act, or prior Acts, entered into between the United States Agency for International Development and another agency of the United States Government under the authority of section 632(a) of the Foreign Assistance Act of 1961 or any comparable provision of law, shall expressly provide that the Office of the Inspector General for the agency receiving the transfer or allocation of such funds shall perform periodic program and financial audits of the use of such funds: *Provided*, That funds transferred under such authority may be made available for the cost of such audits.

COMMERCIAL LEASING OF DEFENSE ARTICLES

SEC. 510. Notwithstanding any other provision of law, and subject to the regular notification procedures of the Committees on Appropriations, the authority of section 23(a) of the Arms Export Control Act may be used to provide financing to Israel, Egypt and NATO and major non-NATO allies for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by

commercial lease rather than by government-to-government sale under such Act.

AVAILABILITY OF FUNDS

SEC. 511. No part of any appropriation contained in this Act shall remain available for obligation after the expiration of the current fiscal year unless expressly so provided in this Act: *Provided*, That funds appropriated for the purposes of chapters 1, 8, 11, and 12 of part I, section 667, chapters 4, 6, 8, and 9 of part II of the Foreign Assistance Act of 1961, section 23 of the Arms Export Control Act, and funds provided under the heading “Assistance for Eastern Europe and the Baltic States”, shall remain available for an additional 4 years from the date on which the availability of such funds would otherwise have expired, if such funds are initially obligated before the expiration of their respective periods of availability contained in this Act: *Provided further*, That, notwithstanding any other provision of this Act, any funds made available for the purposes of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961 which are allocated or obligated for cash disbursements in order to address balance of payments or economic policy reform objectives, shall remain available until expended.

LIMITATION ON ASSISTANCE TO COUNTRIES IN DEFAULT

SEC. 512. No part of any appropriation contained in this Act shall be used to furnish assistance to the government of any country which is in default during a period in excess of 1 calendar year in payment to the United States of principal or interest on any loan made to the government of such country by the United States pursuant to a program for which funds are appropriated under this Act unless the President determines, following consultations with the Committees on Appropriations, that assistance to such country is in the national interest of the United States.

COMMERCE AND TRADE

SEC. 513. (a) None of the funds appropriated or made available pursuant to this Act for direct assistance and none of the funds otherwise made available pursuant to this Act to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity: *Provided*, That such prohibition shall not apply to the Export-Import Bank if in the judgment of its Board of Directors the benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity, and the Chairman of the Board so notifies the Committees on Appropriations.

(b) None of the funds appropriated by this or any other Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility

study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States: *Provided*, That this subsection shall not prohibit—

(1) activities designed to increase food security in developing countries where such activities will not have a significant impact on the export of agricultural commodities of the United States; or

(2) research activities intended primarily to benefit American producers.

SURPLUS COMMODITIES

SEC. 514. The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the North American Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or made available pursuant to this Act, for the production or extraction of any commodity or mineral for export, if it is in surplus on world markets and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

22 USC 262h
note.

NOTIFICATION REQUIREMENTS

SEC. 515. For the purposes of providing the executive branch with the necessary administrative flexibility, none of the funds made available under this Act for “Child Survival and Health Programs Fund”, “Development Assistance”, “International Organizations and Programs”, “Trade and Development Agency”, “International Narcotics Control and Law Enforcement”, “Andean Counterdrug Initiative”, “Assistance for Eastern Europe and the Baltic States”, “Assistance for the Independent States of the Former Soviet Union”, “Economic Support Fund”, “Global HIV/AIDS Initiative”, “Peacekeeping Operations”, “Capital Investment Fund”, “Operating Expenses of the United States Agency for International Development”, “Operating Expenses of the United States Agency for International Development Office of Inspector General”, “Non-proliferation, Anti-terrorism, Demining and Related Programs”, “Millennium Challenge Corporation” (by country only), “Foreign Military Financing Program”, “International Military Education and Training”, “Peace Corps”, and “Migration and Refugee Assistance”, shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Committees on Appropriations for obligation under any of these specific headings unless the Committees on Appropriations of both Houses of Congress are previously notified 15 days in advance: *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control

Deadline.

Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 percent in excess of the quantities justified to Congress unless the Committees on Appropriations are notified 15 days in advance of such commitment: *Provided further*, That this section shall not apply to any reprogramming for an activity, program, or project for which funds are appropriated under title II of this Act of less than 10 percent of the amount previously justified to the Congress for obligation for such activity, program, or project for the current fiscal year: *Provided further*, That the requirements of this section or any similar provision of this Act or any other Act, including any prior Act requiring notification in accordance with the regular notification procedures of the Committees on Appropriations, may be waived if failure to do so would pose a substantial risk to human health or welfare: *Provided further*, That in case of any such waiver, notification to the Congress, or the appropriate congressional committees, shall be provided as early as practicable, but in no event later than 3 days after taking the action to which such notification requirement was applicable, in the context of the circumstances necessitating such waiver: *Provided further*, That any notification provided pursuant to such a waiver shall contain an explanation of the emergency circumstances.

LIMITATION ON AVAILABILITY OF FUNDS FOR INTERNATIONAL ORGANIZATIONS AND PROGRAMS

SEC. 516. Subject to the regular notification procedures of the Committees on Appropriations, funds appropriated under this Act or any previously enacted Act making appropriations for foreign operations, export financing, and related programs, which are returned or not made available for organizations and programs because of the implementation of section 307(a) of the Foreign Assistance Act of 1961, shall remain available for obligation until September 30, 2006.

INDEPENDENT STATES OF THE FORMER SOVIET UNION

22 USC 5814
note.

SEC. 517. (a) None of the funds appropriated under the heading “Assistance for the Independent States of the Former Soviet Union” shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union, such as those violations included in the Helsinki Final Act: *Provided*, That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national security interest of the United States.

(b) None of the funds appropriated under the heading “Assistance for the Independent States of the Former Soviet Union” shall be made available for any state to enhance its military capability: *Provided*, That this restriction does not apply to demilitarization, demining or nonproliferation programs.

(c) Funds appropriated under the heading “Assistance for the Independent States of the Former Soviet Union” for the Russian Federation, Armenia, Georgia, and Ukraine shall be subject to

the regular notification procedures of the Committees on Appropriations.

(d) Funds made available in this Act for assistance for the Independent States of the former Soviet Union shall be subject to the provisions of section 117 (relating to environment and natural resources) of the Foreign Assistance Act of 1961.

(e) In issuing new task orders, entering into contracts, or making grants, with funds appropriated in this Act or prior appropriations Acts under the heading “Assistance for the Independent States of the Former Soviet Union” and under comparable headings in prior appropriations Acts, for projects or activities that have as one of their primary purposes the fostering of private sector development, the Coordinator for United States Assistance to Europe and Eurasia and the implementing agency shall encourage the participation of and give significant weight to contractors and grantees who propose investing a significant amount of their own resources (including volunteer services and in-kind contributions) in such projects and activities.

PROHIBITION ON FUNDING FOR ABORTIONS AND INVOLUNTARY STERILIZATION

SEC. 518. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for any biomedical research which relates in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be obligated or expended for any country or organization if the President certifies that the use of these funds by any such country or organization would violate any of the above provisions related to abortions and involuntary sterilizations.

EXPORT FINANCING TRANSFER AUTHORITIES

SEC. 519. Not to exceed 5 percent of any appropriation other than for administrative expenses made available for fiscal year 2005, for programs under title I of this Act may be transferred between such appropriations for use for any of the purposes, programs, and activities for which the funds in such receiving account may be used, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 25 percent by any such transfer: *Provided*, That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.

SPECIAL NOTIFICATION REQUIREMENTS

SEC. 520. None of the funds appropriated by this Act shall be obligated or expended for Liberia, Serbia, Sudan, Zimbabwe, Pakistan, or Cambodia except as provided through the regular notification procedures of the Committees on Appropriations.

DEFINITION OF PROGRAM, PROJECT, AND ACTIVITY

Reports.
Deadline.

SEC. 521. For the purpose of this Act “program, project, and activity” shall be defined at the appropriations Act account level and shall include all appropriations and authorizations Acts earmarks, ceilings, and limitations with the exception that for the following accounts: Economic Support Fund and Foreign Military Financing Program “program, project, and activity” shall also be considered to include country, regional, and central program level funding within each such account; for the development assistance accounts of the United States Agency for International Development “program, project, and activity” shall also be considered to include central, country, regional, and program level funding, either as: (1) justified to the Congress; or (2) allocated by the executive branch in accordance with a report, to be provided to the Committees on Appropriations within 30 days of the enactment of this Act, as required by section 653(a) of the Foreign Assistance Act of 1961.

CHILD SURVIVAL AND HEALTH ACTIVITIES

HIV/AIDS.

SEC. 522. Up to \$13,500,000 of the funds made available by this Act for assistance under the heading “Child Survival and Health Programs Fund”, may be used to reimburse United States Government agencies, agencies of State governments, institutions of higher learning, and private and voluntary organizations for the full cost of individuals (including for the personal services of such individuals) detailed or assigned to, or contracted by, as the case may be, the United States Agency for International Development for the purpose of carrying out activities under that heading: *Provided*, That up to \$3,500,000 of the funds made available by this Act for assistance under the heading “Development Assistance” may be used to reimburse such agencies, institutions, and organizations for such costs of such individuals carrying out other development assistance activities: *Provided further*, That funds appropriated by titles II and III of this Act that are made available for bilateral assistance for child survival activities or disease programs including activities relating to research on, and the prevention, treatment and control of, HIV/AIDS may be made available notwithstanding any other provision of law except for the provisions under the heading “Child Survival and Health Programs Fund” and the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (117 Stat. 711; 22 U.S.C. 7601 et seq.), as amended: *Provided further*, That of the funds appropriated under title II of this Act, not less than \$441,000,000 shall be made available for family planning/reproductive health.

AFGHANISTAN

SEC. 523. Of the funds appropriated by titles II and III of this Act, not less than \$980,000,000 should be made available for humanitarian, reconstruction, and related assistance for

Afghanistan: *Provided*, That of the funds made available pursuant to this section, not less than \$2,000,000 should be made available for reforestation activities: *Provided further*, That funds made available pursuant to the previous proviso should be matched, to the maximum extent possible, with contributions from American and Afghan businesses: *Provided further*, That of the funds made available pursuant to this section, not less than \$2,000,000 should be made available for the Afghan Independent Human Rights Commission and for other Afghan human rights organizations: *Provided further*, That to the maximum extent practicable members of the Afghan National Army should be vetted for involvement in terrorism, human rights violations, and drug trafficking: *Provided further*, That of the funds allocated for assistance for Afghanistan from this Act and other Acts making appropriations for foreign operations, export financing, and related programs for fiscal year 2005, not less than \$50,000,000 should be made available to support programs that directly address the needs of Afghan women and girls, of which not less than \$7,500,000 shall be made available for small grants to support training and equipment to improve the capacity of women-led Afghan nongovernmental organizations and to support the activities of such organizations.

Human rights.

NOTIFICATION ON EXCESS DEFENSE EQUIPMENT

SEC. 524. Prior to providing excess Department of Defense articles in accordance with section 516(a) of the Foreign Assistance Act of 1961, the Department of Defense shall notify the Committees on Appropriations to the same extent and under the same conditions as are other committees pursuant to subsection (f) of that section: *Provided*, That before issuing a letter of offer to sell excess defense articles under the Arms Export Control Act, the Department of Defense shall notify the Committees on Appropriations in accordance with the regular notification procedures of such Committees if such defense articles are significant military equipment (as defined in section 47(9) of the Arms Export Control Act) or are valued (in terms of original acquisition cost) at \$7,000,000 or more, or if notification is required elsewhere in this Act for the use of appropriated funds for specific countries that would receive such excess defense articles: *Provided further*, That such Committees shall also be informed of the original acquisition cost of such defense articles.

HIV/AIDS

SEC. 525. (a)(1) Notwithstanding any other provision of this Act, 25 percent of the funds that are appropriated by this Act for a contribution to support the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”) shall be withheld from obligation to the Global Fund until the Secretary of State certifies to the Committees on Appropriations that the Global Fund—

(A) is establishing a full time, professional, independent office which reports directly to the Global Fund Board regarding, among other things, the integrity of processes for consideration and approval of grant proposals, and the implementation, monitoring and evaluation of grants made by the Global Fund;

(B) is strengthening domestic civil society participation, especially for people living with HIV/AIDS, in country coordinating mechanisms;

(C) is establishing procedures to assess the need for, and coordinate, technical assistance for Global Fund activities, in cooperation with bilateral and multilateral donors;

(D) has established clear progress indicators upon which to determine the release of incremental disbursements;

(E) is releasing such incremental disbursements only if positive results have been attained based on those indicators; and

(F) is providing support and oversight to country-level entities, such as country coordinating mechanisms, principal recipients, and local Fund agents, to enable them to fulfill their mandates.

(2) The Secretary of State may waive paragraph (1) of this subsection if he determines and reports to the Committees on Appropriations that such waiver is important to the national interest of the United States.

22 USC 7612a.

(b)(1) In furtherance of the purposes of section 104A of the Foreign Assistance Act of 1961, and to assist in providing a safe, secure, reliable, and sustainable supply chain of pharmaceuticals and other products needed to provide care and treatment of persons with HIV/AIDS and related infections, the Coordinator of the United States Government Activities to Combat HIV/AIDS Globally (the “Coordinator”) is authorized to establish an HIV/AIDS Working Capital Fund (in this section referred to as the “HIV/AIDS Fund”).

(2) Funds deposited during any fiscal year in the HIV/AIDS Fund shall be available without fiscal year limitation and used for pharmaceuticals and other products needed to provide care and treatment of persons with HIV/AIDS and related infections, including, but not limited to—

(A) anti-retroviral drugs;

(B) other pharmaceuticals and medical items needed to provide care and treatment to persons with HIV/AIDS and related infections;

(C) laboratory and other supplies for performing tests related to the provision of care and treatment to persons with HIV/AIDS and related infections;

(D) other medical supplies needed for the operation of HIV/AIDS treatment and care centers, including products needed in programs for the prevention of mother-to-child transmission;

(E) pharmaceuticals and health commodities needed for the provision of palliative care; and

(F) laboratory and clinical equipment, as well as equipment needed for the transportation and care of HIV/AIDS supplies, and other equipment needed to provide prevention, care and treatment of HIV/AIDS described above.

(3) There may be deposited during any fiscal year in the HIV/AIDS Fund payments for HIV/AIDS pharmaceuticals and products provided from the HIV/AIDS Fund received from applicable appropriations and funds of the United States Agency for International Development, the Department of Health and Human Services, the Department of Defense, or other Federal agencies and other sources at actual cost of the HIV/AIDS pharmaceuticals and other products, actual cost plus the additional costs of providing such HIV/AIDS

pharmaceuticals and other products, or at any other price agreed to by the Coordinator or his designee.

(4) There may be deposited in the HIV/AIDS Fund payments for the loss of, or damage to, HIV/AIDS pharmaceuticals and products held in the HIV/AIDS Fund, rebates, reimbursements, refunds and other credits applicable to the operation of the HIV/AIDS Fund.

(5) At the close of each fiscal year the Coordinator may transfer out of the HIV/AIDS Fund to other HIV/AIDS programmatic areas such amounts as the Coordinator determines to be in excess of the needs of the HIV/AIDS Fund.

(6) At the close of each fiscal year the Coordinator shall submit a report to the Committees on Appropriations detailing the financial activities of the HIV/AIDS Fund, including sources of income and information regarding disbursements.

Reports.

DEMOCRACY PROGRAMS

SEC. 526. (a) Notwithstanding any other provision of law, of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, not less than \$19,000,000 shall be made available for assistance for activities to support democracy, human rights, and the rule of law in the People's Republic of China and Hong Kong: *Provided*, That funds appropriated under the heading "Economic Support Fund" should be made available for assistance for Taiwan for the purposes of furthering political and legal reforms: *Provided further*, That such funds shall only be made available to the extent that they are matched from sources other than the United States Government: *Provided further*, That funds made available pursuant to the authority of this subsection shall be subject to the regular notification procedures of the Committees on Appropriations.

(b)(1) In addition to the funds made available in subsection (a), of the funds appropriated by this Act under the heading "Economic Support Fund" not less than \$15,000,000 shall be made available for programs and activities to foster democracy, human rights, civic education, women's development, press freedom, and the rule of law in countries with a significant Muslim population, and where such programs and activities would be important to United States efforts to respond to, deter, or prevent acts of international terrorism: *Provided*, That funds made available pursuant to the authority of this subsection should support new initiatives and activities in those countries: *Provided further*, That of the funds appropriated under this heading, \$3,000,000 shall be made available for programs and activities that provide professional training for journalists: *Provided further*, That, notwithstanding any other provision of law, not less than \$3,000,000 of such funds may be used for making grants to educational, humanitarian and nongovernmental organizations and individuals inside Iran to support the advancement of democracy and human rights in Iran: *Provided further*, That, notwithstanding any other provision of law, funds appropriated pursuant to the authority of this subsection may be made available for democracy, human rights, and rule of law programs for Syria: *Provided further*, That funds made available pursuant to this subsection shall be subject to the regular notification procedures of the Committees on Appropriations.

(2) In addition to funds made available under subsections (a) and (b)(1), of the funds appropriated by this Act under the heading

“Economic Support Fund” not less than \$4,500,000 shall be made available for programs and activities of the National Endowment for Democracy to foster democracy, human rights, civic education, women’s development, press freedom, and the rule of law in countries in sub-Saharan Africa.

(c) Of the funds made available under subsection (a), not less than \$15,000,000 shall be made available for the Human Rights and Democracy Fund of the Bureau of Democracy, Human Rights and Labor, Department of State, to support the activities described in subsection (a), and of the funds made available under subsection (b)(1), not less than \$11,000,000 shall be made available for such Fund to support the activities described in subsection (b)(1): *Provided*, That up to \$1,200,000 may be used for the Reagan/Fascell Democracy Fellows program: *Provided further*, That the total amount of funds made available by this Act under “Economic Support Fund” for activities of the Bureau of Democracy, Human Rights and Labor, Department of State, including funds available in this section, shall be not less than \$37,000,000.

(d) Of the funds made available under subsection (a), not less than \$4,000,000 shall be made available for the National Endowment for Democracy to support the activities described in subsection (a), and of the funds made available under subsection (b)(1), not less than \$4,000,000 shall be made available for the National Endowment for Democracy to support the activities described in subsection (b)(1): *Provided*, That the Secretary of State shall provide a report to the Committees on Appropriations within 120 days of the date of enactment of this Act on the status of the allocation and obligation of such funds.

Reports.
Deadline.

PROHIBITION ON BILATERAL ASSISTANCE TO TERRORIST COUNTRIES

SEC. 527. (a) Funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to the enactment of this Act, shall not be made available to any country which the President determines—

(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism; or

(2) otherwise supports international terrorism.

(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

President.
Federal Register,
publication.
Deadline.

DEBT-FOR-DEVELOPMENT

SEC. 528. In order to enhance the continued participation of nongovernmental organizations in debt-for-development and debt-for-nature exchanges, a nongovernmental organization which is a grantee or contractor of the United States Agency for International Development may place in interest bearing accounts local currencies which accrue to that organization as a result of economic assistance provided under title II of this Act and, subject to the regular

notification procedures of the Committees on Appropriations, any interest earned on such investment shall be used for the purpose for which the assistance was provided to that organization.

SEPARATE ACCOUNTS

SEC. 529. (a) SEPARATE ACCOUNTS FOR LOCAL CURRENCIES.— 22 USC 2362
note.
(1) If assistance is furnished to the government of a foreign country under chapters 1 and 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961 under agreements which result in the generation of local currencies of that country, the Administrator of the United States Agency for International Development shall—

(A) require that local currencies be deposited in a separate account established by that government;

(B) enter into an agreement with that government which sets forth—

(i) the amount of the local currencies to be generated; and

(ii) the terms and conditions under which the currencies so deposited may be utilized, consistent with this section; and

(C) establish by agreement with that government the responsibilities of the United States Agency for International Development and that government to monitor and account for deposits into and disbursements from the separate account.

(2) USES OF LOCAL CURRENCIES.—As may be agreed upon with the foreign government, local currencies deposited in a separate account pursuant to subsection (a), or an equivalent amount of local currencies, shall be used only—

(A) to carry out chapter 1 or 10 of part I or chapter 4 of part II (as the case may be), for such purposes as—

(i) project and sector assistance activities; or

(ii) debt and deficit financing; or

(B) for the administrative requirements of the United States Government.

(3) PROGRAMMING ACCOUNTABILITY.—The United States Agency for International Development shall take all necessary steps to ensure that the equivalent of the local currencies disbursed pursuant to subsection (a)(2)(A) from the separate account established pursuant to subsection (a)(1) are used for the purposes agreed upon pursuant to subsection (a)(2).

(4) TERMINATION OF ASSISTANCE PROGRAMS.—Upon termination of assistance to a country under chapter 1 or 10 of part I or chapter 4 of part II (as the case may be), any unencumbered balances of funds which remain in a separate account established pursuant to subsection (a) shall be disposed of for such purposes as may be agreed to by the government of that country and the United States Government.

(5) REPORTING REQUIREMENT.—The Administrator of the United States Agency for International Development shall report on an annual basis as part of the justification documents submitted to the Committees on Appropriations on the use of local currencies for the administrative requirements of the United States Government as authorized in subsection (a)(2)(B), and such report shall include the amount of local currency (and United States dollar equivalent) used and/or to be used for such purpose in each applicable country.

(b) SEPARATE ACCOUNTS FOR CASH TRANSFERS.—(1) If assistance is made available to the government of a foreign country, under chapter 1 or 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961, as cash transfer assistance or as nonproject sector assistance, that country shall be required to maintain such funds in a separate account and not commingle them with any other funds.

(2) APPLICABILITY OF OTHER PROVISIONS OF LAW.—Such funds may be obligated and expended notwithstanding provisions of law which are inconsistent with the nature of this assistance including provisions which are referenced in the Joint Explanatory Statement of the Committee of Conference accompanying House Joint Resolution 648 (House Report No. 98-1159).

President.

(3) NOTIFICATION.—At least 15 days prior to obligating any such cash transfer or nonproject sector assistance, the President shall submit a notification through the regular notification procedures of the Committees on Appropriations, which shall include a detailed description of how the funds proposed to be made available will be used, with a discussion of the United States interests that will be served by the assistance (including, as appropriate, a description of the economic policy reforms that will be promoted by such assistance).

(4) EXEMPTION.—Nonproject sector assistance funds may be exempt from the requirements of subsection (b)(1) only through the notification procedures of the Committees on Appropriations.

ENTERPRISE FUND RESTRICTIONS

SEC. 530. (a) Prior to the distribution of any assets resulting from any liquidation, dissolution, or winding up of an Enterprise Fund, in whole or in part, the President shall submit to the Committees on Appropriations, in accordance with the regular notification procedures of the Committees on Appropriations, a plan for the distribution of the assets of the Enterprise Fund.

(b) Funds made available by this Act for Enterprise Funds shall be expended at the minimum rate necessary to make timely payment for projects and activities.

BURMA

50 USC 1701
note.

SEC. 531. (a) The Secretary of the Treasury shall instruct the United States executive director to each appropriate international financial institution in which the United States participates, to oppose and vote against the extension by such institution of any loan or financial or technical assistance or any other utilization of funds of the respective bank to and for Burma.

(b) Of the funds appropriated under the heading “Economic Support Fund”, not less than \$8,000,000 shall be made available to support democracy activities in Burma, along the Burma-Thailand border, for activities of Burmese student groups and other organizations located outside Burma, and for the purpose of supporting the provision of humanitarian assistance to displaced Burmese along Burma’s borders: *Provided*, That funds made available under this heading may be made available notwithstanding any other provision of law: *Provided further*, That in addition to assistance for Burmese refugees provided under the heading “Migration and Refugee Assistance” in this Act, not less than \$4,000,000 shall

be allocated to the United States Agency for International Development for humanitarian assistance for displaced Burmese and host communities in Thailand: *Provided further*, That funds made available under this section shall be subject to the regular notification procedures of the Committees on Appropriations.

(c) The President shall include amounts expended by the Global Fund to Fight AIDS, Tuberculosis and Malaria to the State Peace and Development Council in Burma, directly or through groups and organizations affiliated with the Global Fund, in making determinations regarding the amount to be withheld by the United States from its contribution to the Global Fund pursuant to section 202(d)(4)(A)(ii) of Public Law 108–25.

President.

AUTHORITIES FOR THE PEACE CORPS, INTER-AMERICAN FOUNDATION
AND AFRICAN DEVELOPMENT FOUNDATION

SEC. 532. Unless expressly provided to the contrary, provisions of this or any other Act, including provisions contained in prior Acts authorizing or making appropriations for foreign operations, export financing, and related programs, shall not be construed to prohibit activities authorized by or conducted under the Peace Corps Act, the Inter-American Foundation Act or the African Development Foundation Act. The agency shall promptly report to the Committees on Appropriations whenever it is conducting activities or is proposing to conduct activities in a country for which assistance is prohibited.

Reports.

IMPACT ON JOBS IN THE UNITED STATES

SEC. 533. None of the funds appropriated by this Act may be obligated or expended to provide—

(1) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States; or

(2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: *Provided*, That the application of section 507(4)(D) and (E) of such Act should be commensurate with the level of development of the recipient country and sector, and shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

SPECIAL AUTHORITIES

SEC. 534. (a) AFGHANISTAN, PAKISTAN, LEBANON, MONTENEGRO, VICTIMS OF WAR, DISPLACED CHILDREN, AND DISPLACED BURMESE.—Funds appropriated by this Act that are made available for assistance for Afghanistan may be made available notwithstanding section 512 of this Act or any similar provision of law and section 660 of the Foreign Assistance Act of 1961, and funds appropriated in titles I and II of this Act that are made available for Lebanon,

Montenegro, Pakistan, and for victims of war, displaced children, and displaced Burmese, and to assist victims of trafficking in persons and, subject to the regular notification procedures of the Committees on Appropriations, to combat such trafficking, may be made available notwithstanding any other provision of law.

(b) TROPICAL FORESTRY AND BIODIVERSITY CONSERVATION ACTIVITIES.—Funds appropriated by this Act to carry out the provisions of sections 103 through 106, and chapter 4 of part II, of the Foreign Assistance Act of 1961 may be used, notwithstanding any other provision of law, for the purpose of supporting tropical forestry and biodiversity conservation activities and energy programs aimed at reducing greenhouse gas emissions: *Provided*, That such assistance shall be subject to sections 116, 502B, and 620A of the Foreign Assistance Act of 1961.

(c) PERSONAL SERVICES CONTRACTORS.—Funds appropriated by this Act to carry out chapter 1 of part I, chapter 4 of part II, and section 667 of the Foreign Assistance Act of 1961, and title II of the Agricultural Trade Development and Assistance Act of 1954, may be used by the United States Agency for International Development to employ up to 25 personal services contractors in the United States, notwithstanding any other provision of law, for the purpose of providing direct, interim support for new or expanded overseas programs and activities managed by the agency until permanent direct hire personnel are hired and trained: *Provided*, That not more than 10 of such contractors shall be assigned to any bureau or office: *Provided further*, That such funds appropriated to carry out title II of the Agricultural Trade Development and Assistance Act of 1954, may be made available only for personal services contractors assigned to the Office of Food for Peace.

(d)(1) WAIVER.—The President may waive the provisions of section 1003 of Public Law 100-204 if the President determines and certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that it is important to the national security interests of the United States.

(2) PERIOD OF APPLICATION OF WAIVER.—Any waiver pursuant to paragraph (1) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(e) SMALL BUSINESS.—In entering into multiple award indefinite-quantity contracts with funds appropriated by this Act, the United States Agency for International Development may provide an exception to the fair opportunity process for placing task orders under such contracts when the order is placed with any category of small or small disadvantaged business.

(f) CONTINGENCIES.—During fiscal year 2005, the President may use up to \$45,000,000 under the authority of section 451 of the Foreign Assistance Act of 1961, notwithstanding the funding ceiling in section 451(a).

(g) RECONSTITUTING CIVILIAN POLICE AUTHORITY.—In providing assistance with funds appropriated by this Act under section 660(b)(6) of the Foreign Assistance Act of 1961, support for a nation emerging from instability may be deemed to mean support for regional, district, municipal, or other sub-national entity emerging from instability, as well as a nation emerging from instability.

(h) WORLD FOOD PROGRAM.—Of the funds managed by the Bureau for Democracy, Conflict, and Humanitarian Assistance of

the United States Agency for International Development, from this or any other Act, not less than \$6,000,000 shall be made available as a general contribution to the World Food Program, notwithstanding any other provision of law.

(i) NATIONAL ENDOWMENT FOR DEMOCRACY.—Funds appropriated by this Act that are provided to the National Endowment for Democracy may be provided notwithstanding any other provision of law or regulation.

(j) TECHNICAL AMENDMENT.—Section 201(a)(2) of the North Korean Human Rights Act of 2004 (Public Law 108–333) is amended by striking “paragraphs (1) through (4) of section 202(b)” and inserting “subparagraphs (A) through (D) of section 202(b)(1)”.

22 USC 7831.

(k) REPORT MODIFICATION.—Section 406(b)(4) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101–246; 22 U.S.C. 2414a(b)(4)) is amended by inserting after “United States” the following: “, including a separate listing of all plenary votes cast by member countries of the United Nations in the General Assembly on resolutions specifically related to Israel that are opposed by the United States”.

(l) UNIVERSITY PROGRAMS.—Notwithstanding any other provision of law, funds made available in this Act under the heading “Development Assistance” may be made available to American educational institutions for programs and activities in the People’s Republic of China relating to the environment, democracy, and the rule of law: *Provided*, That funds made available pursuant to this authority shall be subject to the regular notification procedures of the Committees on Appropriations.

(m) INDOCHINESE PAROLEES.—Section 586 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (8 U.S.C. 1255 note), as enacted into law by section 101(a) of Public Law 106–429, is amended—

(1) by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”;

(2) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “she” and inserting “the Secretary of Homeland Security”; and

(B) in paragraph (1), by striking “within three years after the date of promulgation by the Attorney General of regulations in connection with this title”;

Regulations.

(3) in subsection (c), by striking “212(8)(A)” and inserting “212(a)(8)(A)”;

(4) by striking subsection (d);

(5) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively;

(6) by adding at the end the following new subsection: “(f) ADJUDICATION OF APPLICATIONS.—The Secretary of Homeland Security shall—

land Security shall—

“(1) adjudicate applications for adjustment under this section, notwithstanding any limitation on the number of adjustments under this section or any deadline for such applications that previously existed in law or regulation; and

“(2) not charge a fee in addition to any fee that previously was submitted with such application.”; and

(7) The amendments made by this subsection shall take effect as if enacted as part of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001.

Effective date.
8 USC 1255 note.

(n) EXTENSION OF AUTHORITY.—Public Law 107–57, as amended, is further amended—

115 Stat. 403. (1) in section 1(b) by striking “2004” wherever appearing (including in the caption), and inserting “2005”;

115 Stat. 404. (2) in section 3(2), by striking “and 2004” and inserting “2004 and 2005”; and

115 Stat. 405. (3) in section 6, by striking “2004” and inserting “2005”.

(o) ENDOWMENTS.—

(1) Of the funds appropriated by this Act and prior Acts making appropriations for foreign operations, export financing, and related programs, that are available for assistance for Cambodia, the following amounts should be made available as follows:

(A) \$2,000,000 for an endowment for a Cambodian nongovernmental organization to document genocide and crimes against humanity in Cambodia; and

(B) \$3,750,000 for an endowment for an American nongovernmental organization to sustain rehabilitation programs in Cambodia for persons suffering from physical disabilities.

(2) Such organizations may place amounts made available under this subsection in interest bearing accounts and any interest earned on such investment shall be used for the purpose for which funds were made available under this subsection.

(p) EXTENSION OF AUTHORITY.—Chapter 5 of title I of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11), is amended under the heading “Loan Guarantees to Israel”—

(1) by striking “During the period beginning March 1, 2003, and ending September 30, 2005,” and inserting “During the period beginning March 1, 2003, and ending September 30, 2007,”; and

(2) by striking “That if less than the full amount of guarantees authorized to be made available is issued prior to September 30, 2005,” and inserting “That if less than the full amount of guarantees authorized to be made available is issued prior to September 30, 2007,”.

22 USC 7702. (q) DEFINITION.—Section 603 of title VI of division D of the Consolidated Appropriations Act, 2004, Public Law 108–199, is amended by adding the following paragraph:

“(8) INVESTMENTS IN THE PEOPLE.—The term “investments in the people” means government policies or programs of an eligible country that promote the health, education, and other factors which contribute to the well-being and productivity of their people, such as decent, affordable housing for all.”.

ARAB LEAGUE BOYCOTT OF ISRAEL

SEC. 535. It is the sense of the Congress that—

(1) the Arab League boycott of Israel, and the secondary boycott of American firms that have commercial ties with Israel, is an impediment to peace in the region and to United States investment and trade in the Middle East and North Africa;

(2) the Arab League boycott, which was regrettably reinstated in 1997, should be immediately and publicly terminated, and the Central Office for the Boycott of Israel immediately disbanded;

(3) the three Arab League countries with diplomatic and trade relations with Israel should return their ambassadors to Israel, should refrain from downgrading their relations with Israel, and should play a constructive role in securing a peaceful resolution of the Israeli-Arab conflict;

(4) the remaining Arab League states should normalize relations with their neighbor Israel;

(5) the President and the Secretary of State should continue to vigorously oppose the Arab League boycott of Israel and find concrete steps to demonstrate that opposition by, for example, taking into consideration the participation of any recipient country in the boycott when determining to sell weapons to said country; and

(6) the President should report to Congress annually on specific steps being taken by the United States to encourage Arab League states to normalize their relations with Israel to bring about the termination of the Arab League boycott of Israel, including those to encourage allies and trading partners of the United States to enact laws prohibiting businesses from complying with the boycott and penalizing businesses that do comply.

President.
Reports.

ELIGIBILITY FOR ASSISTANCE

SEC. 536. (a) ASSISTANCE THROUGH NONGOVERNMENTAL ORGANIZATIONS.—Restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance in support of programs of nongovernmental organizations from funds appropriated by this Act to carry out the provisions of chapters 1, 10, 11, and 12 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, and from funds appropriated under the heading “Assistance for Eastern Europe and the Baltic States”: *Provided*, That before using the authority of this subsection to furnish assistance in support of programs of nongovernmental organizations, the President shall notify the Committees on Appropriations under the regular notification procedures of those committees, including a description of the program to be assisted, the assistance to be provided, and the reasons for furnishing such assistance: *Provided further*, That nothing in this subsection shall be construed to alter any existing statutory prohibitions against abortion or involuntary sterilizations contained in this or any other Act.

President.
Notification.

(b) PUBLIC LAW 480.—During fiscal year 2005, restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance under the Agricultural Trade Development and Assistance Act of 1954: *Provided*, That none of the funds appropriated to carry out title I of such Act and made available pursuant to this subsection may be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

(c) EXCEPTION.—This section shall not apply—

(1) with respect to section 620A of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting assistance to countries that support international terrorism; or

(2) with respect to section 116 of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting

assistance to the government of a country that violates internationally recognized human rights.

RESERVATIONS OF FUNDS

SEC. 537. (a) Funds appropriated by this Act which are earmarked may be reprogrammed for other programs within the same account notwithstanding the earmark if compliance with the earmark is made impossible by operation of any provision of this or any other Act: *Provided*, That any such reprogramming shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That assistance that is reprogrammed pursuant to this subsection shall be made available under the same terms and conditions as originally provided.

(b) In addition to the authority contained in subsection (a), the original period of availability of funds appropriated by this Act and administered by the United States Agency for International Development that are earmarked for particular programs or activities by this or any other Act shall be extended for an additional fiscal year if the Administrator of such agency determines and reports promptly to the Committees on Appropriations that the termination of assistance to a country or a significant change in circumstances makes it unlikely that such earmarked funds can be obligated during the original period of availability: *Provided*, That such earmarked funds that are continued available for an additional fiscal year shall be obligated only for the purpose of such earmark.

CEILINGS AND EARMARKS

SEC. 538. Ceilings and earmarks contained in this Act shall not be applicable to funds or authorities appropriated or otherwise made available by any subsequent Act unless such Act specifically so directs. Earmarks or minimum funding requirements contained in any other Act shall not be applicable to funds appropriated by this Act.

PROHIBITION ON PUBLICITY OR PROPAGANDA

SEC. 539. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes within the United States not authorized before the date of the enactment of this Act by the Congress: *Provided*, That not to exceed \$750,000 may be made available to carry out the provisions of section 316 of Public Law 96-533.

PROHIBITION ON PAYMENTS TO UNITED NATIONS MEMBERS

SEC. 540. None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, may be used to pay in whole or in part any assessments, arrearages, or dues of any member of the United Nations or, from funds appropriated by this Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, the costs for participation of another country's delegation at international conferences held under the auspices of multilateral or international organizations.

NONGOVERNMENTAL ORGANIZATIONS—DOCUMENTATION

SEC. 541. None of the funds appropriated or made available pursuant to this Act shall be available to a nongovernmental organization which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

PROHIBITION ON ASSISTANCE TO FOREIGN GOVERNMENTS THAT EXPORT LETHAL MILITARY EQUIPMENT TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

SEC. 542. (a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 6(j) of the Export Administration Act. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

Termination
date.

Applicability.

(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States.

(c) Whenever the waiver authority of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance. Any such report shall include a detailed explanation of the assistance to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.

President.
Reports.

WITHHOLDING OF ASSISTANCE FOR PARKING FINES AND REAL PROPERTY TAXES OWED BY FOREIGN COUNTRIES

SEC. 543. (a) Subject to subsection (c), of the funds appropriated by this Act that are made available for assistance for a foreign country, an amount equal to 110 percent of the total amount of the unpaid fully adjudicated parking fines and penalties and unpaid property taxes owed by the central government of such country shall be withheld from obligation for assistance for the central government of such country until the Secretary of State submits a certification to the appropriate congressional committees stating that such parking fines and penalties and unpaid property taxes are fully paid.

Certification.

(b) Funds withheld from obligation pursuant to subsection (a) may be made available for other programs or activities funded by this Act, after consultation with and subject to the regular notification procedures of the appropriate congressional committees, provided that no such funds shall be made available for assistance for the central government of a foreign country that has not paid the total amount of the fully adjudicated parking fines and penalties and unpaid property taxes owed by such country.

(c) Subsection (a) shall not include amounts that have been withheld under any other provision of law.

Deadline.
Reports.

(d)(1) The Secretary of State may waive the requirements set forth in subsection (a) with respect to parking fines and penalties no sooner than 60 days from the date of enactment of this Act, or at any time with respect to a particular country, if the Secretary determines that it is in the national interests of the United States to do so.

(2) The Secretary of State may waive the requirements set forth in subsection (a) with respect to the unpaid property taxes if the Secretary of State determines that it is in the national interests of the United States to do so.

(e) Not later than 6 months after the initial exercise of the waiver authority in subsection (d), the Secretary of State, after consultations with the City of New York, shall submit a report to the Committees on Appropriations describing a strategy, including a timetable and steps currently being taken, to collect the parking fines and penalties and unpaid property taxes and interest owed by nations receiving foreign assistance under this Act.

(f) In this section:

(1) The term “appropriate congressional committees” means the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives.

(2) The term “fully adjudicated” includes circumstances in which the person to whom the vehicle is registered—

(A)(i) has not responded to the parking violation summons; or

(ii) has not followed the appropriate adjudication procedure to challenge the summons; and

(B) the period of time for payment of or challenge to the summons has lapsed.

(3) The term “parking fines and penalties” means parking fines and penalties—

(A) owed to—

(i) the District of Columbia; or

(ii) New York, New York; and

(B) incurred during the period April 1, 1997, through September 30, 2004.

(4) The term “unpaid property taxes” means the amount of unpaid taxes and interest determined to be owed by a foreign country on real property in the District of Columbia or New York, New York in a court order or judgment entered against such country by a court of the United States or any State or subdivision thereof.

LIMITATION ON ASSISTANCE FOR THE PLO FOR THE WEST BANK AND GAZA

SEC. 544. None of the funds appropriated by this Act may be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza unless the President has exercised the authority under section 604(a) of the Middle East Peace Facilitation Act of 1995 (title VI of Public Law 104-107) or any other legislation to suspend or make inapplicable section 307 of the Foreign Assistance Act of 1961 and that suspension is still in effect: *Provided*, That if the President fails to make the certification under section 604(b)(2) of the Middle East Peace Facilitation Act of 1995

or to suspend the prohibition under other legislation, funds appropriated by this Act may not be obligated for assistance for the Palestine Liberation Organization for the West Bank and Gaza.

WAR CRIMES TRIBUNALS DRAWDOWN

SEC. 545. If the President determines that doing so will contribute to a just resolution of charges regarding genocide or other violations of international humanitarian law, the President may direct a drawdown pursuant to section 552(c) of the Foreign Assistance Act of 1961 of up to \$30,000,000 of commodities and services for the United Nations War Crimes Tribunal established with regard to the former Yugoslavia by the United Nations Security Council or such other tribunals or commissions as the Council may establish or authorize to deal with such violations, without regard to the ceiling limitation contained in paragraph (2) thereof: *Provided*, That the determination required under this section shall be in lieu of any determinations otherwise required under section 552(c): *Provided further*, That the drawdown made under this section for any tribunal shall not be construed as an endorsement or precedent for the establishment of any standing or permanent international criminal tribunal or court: *Provided further*, That funds made available for tribunals other than Yugoslavia, Rwanda, or the Special Court for Sierra Leone shall be made available subject to the regular notification procedures of the Committees on Appropriations.

LANDMINES

SEC. 546. Notwithstanding any other provision of law, demining equipment available to the United States Agency for International Development and the Department of State and used in support of the clearance of landmines and unexploded ordnance for humanitarian purposes may be disposed of on a grant basis in foreign countries, subject to such terms and conditions as the President may prescribe.

RESTRICTIONS CONCERNING THE PALESTINIAN AUTHORITY

SEC. 547. None of the funds appropriated by this Act may be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: *Provided*, That this restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem: *Provided further*, That meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles, for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem. As has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

PROHIBITION OF PAYMENT OF CERTAIN EXPENSES

SEC. 548. None of the funds appropriated or otherwise made available by this Act under the heading “International Military Education and Training” or “Foreign Military Financing Program” for Informational Program activities or under the headings “Child Survival and Health Programs Fund”, “Development Assistance”, and “Economic Support Fund” may be obligated or expended to pay for—

- (1) alcoholic beverages; or
- (2) entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.

HAITI

SEC. 549. (a) Of the funds appropriated by this Act, not less than the following amounts shall be made available for assistance for Haiti—

(1) \$20,000,000 from “Child Survival and Health Programs Fund”;

(2) \$25,000,000 from “Development Assistance”, of which funds should be made available for poverty reduction, agriculture, environment, and basic education programs; and

(3) \$40,000,000 from “Economic Support Fund”, of which funds should be made available for judicial reform programs, police training, and activities in support of national elections.

(b) The Government of Haiti shall be eligible to purchase defense articles and services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), for the Coast Guard.

LIMITATION ON ASSISTANCE TO THE PALESTINIAN AUTHORITY

SEC. 550. (a) PROHIBITION OF FUNDS.—None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority.

President.
Certification.

(b) WAIVER.—The prohibition included in subsection (a) shall not apply if the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that waiving such prohibition is important to the national security interests of the United States.

Termination
date.

(c) PERIOD OF APPLICATION OF WAIVER.—Any waiver pursuant to subsection (b) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

President.

(d) REPORT.—Whenever the waiver authority pursuant to subsection (b) is exercised, the President shall submit a report to the Committees on Appropriations detailing the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure. The report shall also include a description of how funds will be spent and the accounting procedures in place to ensure that they are properly disbursed.

LIMITATION ON ASSISTANCE TO SECURITY FORCES

SEC. 551. None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice: *Provided*, That nothing in this section shall be construed to withhold funds made available by this Act from any unit of the security forces of a foreign country not credibly alleged to be involved in gross violations of human rights: *Provided further*, That in the event that funds are withheld from any unit pursuant to this section, the Secretary of State shall promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice. Human rights.

FOREIGN MILITARY TRAINING REPORT

SEC. 552. The annual foreign military training report required by section 656 of the Foreign Assistance Act of 1961 shall be submitted by the Secretary of Defense and the Secretary of State to the Committees on Appropriations of the House of Representatives and the Senate by the date specified in that section.

AUTHORIZATION REQUIREMENT

SEC. 553. Funds appropriated by this Act, except funds appropriated under the headings “Trade and Development Agency”, “Millennium Challenge Corporation”, “Overseas Private Investment Corporation”, and “Global HIV/AIDS Initiative”, may be obligated and expended notwithstanding section 10 of Public Law 91–672 and section 15 of the State Department Basic Authorities Act of 1956.

CAMBODIA

SEC. 554. (a) The Secretary of the Treasury should instruct the United States executive directors of the international financial institutions to use the voice and vote of the United States to oppose loans to the Central Government of Cambodia, except loans to meet basic human needs.

(b)(1) None of the funds appropriated by this Act may be made available for assistance for the Central Government of Cambodia.

(2) Paragraph (1) shall not apply to assistance for basic education, reproductive and maternal and child health, cultural and historic preservation, programs for the prevention, treatment, and control of, and research on, HIV/AIDS, tuberculosis, malaria, polio and other infectious diseases, development and implementation of legislation and implementation of procedures on inter-country adoptions consistent with international standards, rule of law programs, counternarcotics programs, programs to combat human trafficking that are provided through nongovernmental organizations, and for the Ministry of Women and Veterans Affairs to combat human trafficking.

- Deadline.
- (c) Notwithstanding subsection (b), of the funds appropriated by this Act under the heading “Economic Support Fund”, up to \$4,000,000 may be made available for activities to support democracy, including assistance for democratic political parties.
 - (d) Funds appropriated by this Act to carry out provisions of section 541 of the Foreign Assistance Act of 1961 may be made available notwithstanding subsection (b) only if at least 15 days prior to the obligation of such funds, the Secretary of State provides to the Committees on Appropriations a list of those individuals who have been credibly alleged to have ordered or carried out extra-judicial and political killings that occurred during the March 1997 grenade attack against the Khmer Nation Party.
 - (e) None of the funds appropriated or otherwise made available by this Act may be used to provide assistance to any tribunal established by the Government of Cambodia unless the Secretary of State determines and reports to the Committees on Appropriations that: (1) Cambodia’s judiciary is competent, independent, free from widespread corruption, and its decisions are free from interference by the executive branch; and (2) the proposed tribunal is capable of delivering justice, that meets internationally recognized standards, for crimes against humanity and genocide in an impartial and credible manner.

PALESTINIAN STATEHOOD

SEC. 555. (a) LIMITATION ON ASSISTANCE.—None of the funds appropriated by this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that—

(1) a new leadership of a Palestinian governing entity has been democratically elected through credible and competitive elections;

(2) the elected governing entity of a new Palestinian state—

(A) has demonstrated a firm commitment to peaceful co-existence with the State of Israel;

(B) is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures;

(C) is establishing a new Palestinian security entity that is cooperative with appropriate Israeli and other appropriate security organizations; and

(3) the Palestinian Authority (or the governing body of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships, which should include—

(A) termination of all claims or states of belligerency;

(B) respect for and acknowledgement of the sovereignty, territorial integrity, and political independence of every state in the area through measures including the establishment of demilitarized zones;

(C) their right to live in peace within secure and recognized boundaries free from threats or acts of force;

(D) freedom of navigation through international waterways in the area; and

(E) a framework for achieving a just settlement of the refugee problem.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the newly-elected governing entity should enact a constitution assuring the rule of law, an independent judiciary, and respect for human rights for its citizens, and should enact other laws and regulations assuring transparent and accountable governance.

(c) WAIVER.—The President may waive subsection (a) if he determines that it is vital to the national security interests of the United States to do so.

(d) EXEMPTION.—The restriction in subsection (a) shall not apply to assistance intended to help reform the Palestinian Authority and affiliated institutions, or a newly-elected governing entity, in order to help meet the requirements of subsection (a), consistent with the provisions of section 550 of this Act (“Limitation on Assistance to the Palestinian Authority”).

COLOMBIA

SEC. 556. (a) DETERMINATION AND CERTIFICATION REQUIRED.—Notwithstanding any other provision of law, funds appropriated by this Act that are available for assistance for the Colombian Armed Forces, may be made available as follows:

(1) Up to 75 percent of such funds may be obligated prior to a determination and certification by the Secretary of State pursuant to paragraph (2).

(2) Up to 12.5 percent of such funds may be obligated only after the Secretary of State certifies and reports to the appropriate congressional committees that:

(A) The Commander General of the Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank who, according to the Minister of Defense or the Procuraduria General de la Nacion, have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations.

(B) The Colombian Government is vigorously investigating and prosecuting those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations, and is promptly punishing those members of the Colombian Armed Forces found to have committed such violations of human rights or to have aided or abetted paramilitary organizations.

(C) The Colombian Armed Forces have made substantial progress in cooperating with civilian prosecutors and judicial authorities in such cases (including providing requested information, such as the identity of persons suspended from the Armed Forces and the nature and cause of the suspension, and access to witnesses, relevant military documents, and other requested information).

(D) The Colombian Armed Forces have made substantial progress in severing links (including denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation) at the command, battalion, and brigade levels, with

paramilitary organizations, especially in regions where these organizations have a significant presence.

(E) The Colombian Government is dismantling paramilitary leadership and financial networks by arresting commanders and financial backers, especially in regions where these networks have a significant presence.

(3) The balance of such funds may be obligated after July 31, 2005, if the Secretary of State certifies and reports to the appropriate congressional committees, after such date, that the Colombian Armed Forces are continuing to meet the conditions contained in paragraph (2) and are conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(b) CONGRESSIONAL NOTIFICATION.—Funds made available by this Act for the Colombian Armed Forces shall be subject to the regular notification procedures of the Committees on Appropriations.

(c) CONSULTATIVE PROCESS.—Not later than 60 days after the date of enactment of this Act, and every 90 days thereafter until September 30, 2006, the Secretary of State shall consult with internationally recognized human rights organizations regarding progress in meeting the conditions contained in that subsection.

(d) DEFINITIONS.—In this section:

(1) AIDED OR ABETTED.—The term “aided or abetted” means to provide any support to paramilitary groups, including taking actions which allow, facilitate, or otherwise foster the activities of such groups.

(2) PARAMILITARY GROUPS.—The term “paramilitary groups” means illegal self-defense groups and illegal security cooperatives.

ILLEGAL ARMED GROUPS

SEC. 557. (a) DENIAL OF VISAS TO SUPPORTERS OF COLOMBIAN ILLEGAL ARMED GROUPS.—Subject to subsection (b), the Secretary of State shall not issue a visa to any alien who the Secretary determines, based on credible evidence—

(1) has willfully provided any support to the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), or the United Self-Defense Forces of Colombia (AUC), including taking actions or failing to take actions which allow, facilitate, or otherwise foster the activities of such groups; or

(2) has committed, ordered, incited, assisted, or otherwise participated in the commission of gross violations of human rights, including extra-judicial killings, in Colombia.

(b) WAIVER.—Subsection (a) shall not apply if the Secretary of State determines and certifies to the appropriate congressional committees, on a case-by-case basis, that the issuance of a visa to the alien is necessary to support the peace process in Colombia or for urgent humanitarian reasons.

PROHIBITION ON ASSISTANCE TO THE PALESTINIAN BROADCASTING CORPORATION

SEC. 558. None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical

Deadlines.
Termination
date.

Certification.

support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

WEST BANK AND GAZA PROGRAM

SEC. 559. (a) OVERSIGHT.—For fiscal year 2005, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the appropriate committees of Congress that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading “Economic Support Fund” for the West Bank and Gaza.

Deadline.
Certification.

(b) VETTING.—Prior to the obligation of funds appropriated by this Act under the heading “Economic Support Fund” for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity. The Secretary of State shall, as appropriate, establish procedures specifying the steps to be taken in carrying out this subsection and shall terminate assistance to any individual, entity, or educational institution which he has determined to be involved in or advocating terrorist activity.

Procedures.

(c) PROHIBITION.—None of the funds appropriated by this Act for assistance under the West Bank and Gaza program may be made available for the purpose of recognizing or otherwise honoring individuals who commit, or have committed, acts of terrorism.

(d) AUDITS.—

(1) The Administrator of the United States Agency for International Development shall ensure that Federal or non-Federal audits of all contractors and grantees, and significant subcontractors and subgrantees, under the West Bank and Gaza Program, are conducted at least on an annual basis to ensure, among other things, compliance with this section.

(2) Of the funds appropriated by this Act under the heading “Economic Support Fund” that are made available for assistance for the West Bank and Gaza, up to \$1,000,000 may be used by the Office of the Inspector General of the United States Agency for International Development for audits, inspections, and other activities in furtherance of the requirements of this subsection. Such funds are in addition to funds otherwise available for such purposes.

CONTRIBUTIONS TO UNITED NATIONS POPULATION FUND

SEC. 560. (a) LIMITATIONS ON AMOUNT OF CONTRIBUTION.—Of the amounts made available under “International Organizations and Programs” and “Child Survival and Health Programs Fund” for fiscal year 2005, \$34,000,000 shall be made available for the United Nations Population Fund (hereafter in this section referred to as the “UNFPA”): *Provided*, That of this amount, not less than \$25,000,000 shall be derived from funds appropriated under the heading “International Organizations and Programs”.

(b) AVAILABILITY OF FUNDS.—Funds appropriated under the heading “International Organizations and Programs” in this Act

that are available for UNFPA, that are not made available for UNFPA because of the operation of any provision of law, shall be transferred to “Child Survival and Health Programs Fund” and shall be made available for family planning, maternal, and reproductive health activities, subject to the regular notification procedures of the Committees on Appropriations.

(c) REPROGRAMMING OF FUNDS.—Of the funds appropriated in Public Law 108-199 that were available for the UNFPA, \$12,500,000 shall be made available for anti-trafficking programs: *Provided*, That of the funds appropriated in Public Law 108-199 that were available for the UNFPA, \$12,500,000 shall be made available for the family planning, maternal, and reproductive health activities of the United States Agency for International Development in Albania, Azerbaijan, the Democratic Republic of the Congo, Ethiopia, Georgia, Haiti, Kazakhstan, Kenya, Nigeria, Romania, Russia, Rwanda, Tanzania, Uganda, and the Ukraine: *Provided further*, That such programs and activities shall be deemed to have been justified to Congress.

(d) PROHIBITION ON USE OF FUNDS IN CHINA.—None of the funds made available under “International Organizations and Programs” may be made available for the UNFPA for a country program in the People’s Republic of China.

(e) CONDITIONS ON AVAILABILITY OF FUNDS.—Amounts made available under “International Organizations and Programs” for fiscal year 2005 for the UNFPA may not be made available to UNFPA unless—

- (1) the UNFPA maintains amounts made available to the UNFPA under this section in an account separate from other accounts of the UNFPA;
- (2) the UNFPA does not commingle amounts made available to the UNFPA under this section with other sums; and
- (3) the UNFPA does not fund abortions.

WAR CRIMINALS

SEC. 561. (a)(1) None of the funds appropriated or otherwise made available pursuant to this Act may be made available for assistance, and the Secretary of the Treasury shall instruct the United States executive directors to the international financial institutions to vote against any new project involving the extension by such institutions of any financial or technical assistance, to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations to apprehend and transfer to the International Criminal Tribunal for the former Yugoslavia (the “Tribunal”) all persons in their territory who have been indicted by the Tribunal and to otherwise cooperate with the Tribunal.

(2) The provisions of this subsection shall not apply to humanitarian assistance or assistance for democratization.

(b) The provisions of subsection (a) shall apply unless the Secretary of State determines and reports to the appropriate congressional committees that the competent authorities of such country, entity, or municipality are—

- (1) cooperating with the Tribunal, including access for investigators to archives and witnesses, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension; and

(2) are acting consistently with the Dayton Accords.

(c) Not less than 10 days before any vote in an international financial institution regarding the extension of any new project involving financial or technical assistance or grants to any country or entity described in subsection (a), the Secretary of the Treasury, in consultation with the Secretary of State, shall provide to the Committees on Appropriations a written justification for the proposed assistance, including an explanation of the United States position regarding any such vote, as well as a description of the location of the proposed assistance by municipality, its purpose, and its intended beneficiaries.

Deadline.
Justification.

(d) In carrying out this section, the Secretary of State, the Administrator of the United States Agency for International Development, and the Secretary of the Treasury shall consult with representatives of human rights organizations and all government agencies with relevant information to help prevent indicted war criminals from benefiting from any financial or technical assistance or grants provided to any country or entity described in subsection (a).

(e) The Secretary of State may waive the application of subsection (a) with respect to projects within a country, entity, or municipality upon a written determination to the Committees on Appropriations that such assistance directly supports the implementation of the Dayton Accords.

(f) DEFINITIONS.—As used in this section:

(1) COUNTRY.—The term “country” means Bosnia and Herzegovina, Croatia and Serbia.

(2) ENTITY.—The term “entity” refers to the Federation of Bosnia and Herzegovina, Kosovo, Montenegro and the Republika Srpska.

(3) MUNICIPALITY.—The term “municipality” means a city, town or other subdivision within a country or entity as defined herein.

(4) DAYTON ACCORDS.—The term “Dayton Accords” means the General Framework Agreement for Peace in Bosnia and Herzegovina, together with annexes relating thereto, done at Dayton, November 10 through 16, 1995.

USER FEES

SEC. 562. The Secretary of the Treasury shall instruct the United States Executive Director at each international financial institution (as defined in section 1701(c)(2) of the International Financial Institutions Act) and the International Monetary Fund to oppose any loan, grant, strategy or policy of these institutions that would require user fees or service charges on poor people for primary education or primary healthcare, including prevention and treatment efforts for HIV/AIDS, malaria, tuberculosis, and infant, child, and maternal well-being, in connection with the institutions’ financing programs.

FUNDING FOR SERBIA

SEC. 563. (a) Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2005, if the President has made the determination and certification contained in subsection (c).

(b) After May 31, 2005, the Secretary of the Treasury should instruct the United States executive directors to the international financial institutions to support loans and assistance to the Government of Serbia and Montenegro subject to the conditions in subsection (c): *Provided*, That section 576 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, as amended, shall not apply to the provision of loans and assistance to the Government of Serbia and Montenegro through international financial institutions.

President.
Certification.

(c) The determination and certification referred to in subsection (a) is a determination by the President and a certification to the Committees on Appropriations that the Government of Serbia and Montenegro is—

(1) cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension, including making all practicable efforts to apprehend and transfer Ratko Mladic;

(2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and

(3) taking steps to implement policies which reflect a respect for minority rights and the rule of law.

(d) This section shall not apply to Montenegro, Kosovo, humanitarian assistance or assistance to promote democracy.

COMMUNITY-BASED POLICE ASSISTANCE

22 USC 2151
note.

SEC. 564. (a) **AUTHORITY.**—Funds made available by this Act to carry out the provisions of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, may be used, notwithstanding section 660 of that Act, to enhance the effectiveness and accountability of civilian police authority through training and technical assistance in human rights, the rule of law, strategic planning, and through assistance to foster civilian police roles that support democratic governance including assistance for programs to prevent conflict, respond to disasters, address gender-based violence, and foster improved police relations with the communities they serve.

(b) **NOTIFICATION.**—Assistance provided under subsection (a) shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.

SPECIAL DEBT RELIEF FOR THE POOREST

SEC. 565. (a) **AUTHORITY TO REDUCE DEBT.**—The President may reduce amounts owed to the United States (or any agency of the United States) by an eligible country as a result of—

(1) guarantees issued under sections 221 and 222 of the Foreign Assistance Act of 1961;

(2) credits extended or guarantees issued under the Arms Export Control Act; or

(3) any obligation or portion of such obligation, to pay for purchases of United States agricultural commodities guaranteed by the Commodity Credit Corporation under export credit guarantee programs authorized pursuant to section 5(f) of the

Commodity Credit Corporation Charter Act of June 29, 1948, as amended, section 4(b) of the Food for Peace Act of 1966, as amended (Public Law 89-808), or section 202 of the Agricultural Trade Act of 1978, as amended (Public Law 95-501).
(b) LIMITATIONS.—

(1) The authority provided by subsection (a) may be exercised only to implement multilateral official debt relief and referendum agreements, commonly referred to as “Paris Club Agreed Minutes”.

(2) The authority provided by subsection (a) may be exercised only in such amounts or to such extent as is provided in advance by appropriations Acts.

(3) The authority provided by subsection (a) may be exercised only with respect to countries with heavy debt burdens that are eligible to borrow from the International Development Association, but not from the International Bank for Reconstruction and Development, commonly referred to as “IDA-only” countries.

(c) CONDITIONS.—The authority provided by subsection (a) may be exercised only with respect to a country whose government—

(1) does not have an excessive level of military expenditures;

(2) has not repeatedly provided support for acts of international terrorism;

(3) is not failing to cooperate on international narcotics control matters;

(4) (including its military or other security forces) does not engage in a consistent pattern of gross violations of internationally recognized human rights; and

(5) is not ineligible for assistance because of the application of section 527 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

(d) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to the funds appropriated by this Act under the heading “Debt Restructuring”.

(e) CERTAIN PROHIBITIONS INAPPLICABLE.—A reduction of debt pursuant to subsection (a) shall not be considered assistance for the purposes of any provision of law limiting assistance to a country. The authority provided by subsection (a) may be exercised notwithstanding section 620(r) of the Foreign Assistance Act of 1961 or section 321 of the International Development and Food Assistance Act of 1975.

AUTHORITY TO ENGAGE IN DEBT BUYBACKS OR SALES

SEC. 566. (a) LOANS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION.—

(1) AUTHORITY TO SELL, REDUCE, OR CANCEL CERTAIN LOANS.—Notwithstanding any other provision of law, the President may, in accordance with this section, sell to any eligible purchaser any concessional loan or portion thereof made before January 1, 1995, pursuant to the Foreign Assistance Act of 1961, to the government of any eligible country as defined in section 702(6) of that Act or on receipt of payment from an eligible purchaser, reduce or cancel such loan or portion thereof, only for the purpose of facilitating—

(A) debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps; or

(B) a debt buyback by an eligible country of its own qualified debt, only if the eligible country uses an additional amount of the local currency of the eligible country, equal to not less than 40 percent of the price paid for such debt by such eligible country, or the difference between the price paid for such debt and the face value of such debt, to support activities that link conservation and sustainable use of natural resources with local community development, and child survival and other child development, in a manner consistent with sections 707 through 710 of the Foreign Assistance Act of 1961, if the sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan.

President.

(2) TERMS AND CONDITIONS.—Notwithstanding any other provision of law, the President shall, in accordance with this section, establish the terms and conditions under which loans may be sold, reduced, or canceled pursuant to this section.

Notification.

(3) ADMINISTRATION.—The Facility, as defined in section 702(8) of the Foreign Assistance Act of 1961, shall notify the administrator of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 of purchasers that the President has determined to be eligible, and shall direct such agency to carry out the sale, reduction, or cancellation of a loan pursuant to this section. Such agency shall make adjustment in its accounts to reflect the sale, reduction, or cancellation.

(4) LIMITATION.—The authorities of this subsection shall be available only to the extent that appropriations for the cost of the modification, as defined in section 502 of the Congressional Budget Act of 1974, are made in advance.

(b) DEPOSIT OF PROCEEDS.—The proceeds from the sale, reduction, or cancellation of any loan sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such loan.

(c) ELIGIBLE PURCHASERS.—A loan may be sold pursuant to subsection (a)(1)(A) only to a purchaser who presents plans satisfactory to the President for using the loan for the purpose of engaging in debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(d) DEBTOR CONSULTATIONS.—Before the sale to any eligible purchaser, or any reduction or cancellation pursuant to this section, of any loan made to an eligible country, the President should consult with the country concerning the amount of loans to be sold, reduced, or canceled and their uses for debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(e) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to funds appropriated by this Act under the heading “Debt Restructuring”.

BASIC EDUCATION

SEC. 567. Of the funds appropriated by title II of this Act, not less than \$400,000,000 shall be made available for basic education.

RECONCILIATION PROGRAMS

SEC. 568. Of the funds appropriated under the heading “Economic Support Fund”, not less than \$12,000,000 shall be made available to support reconciliation programs and activities which bring together individuals of different ethnic, religious, and political backgrounds from areas of civil conflict and war.

SUDAN

SEC. 569. (a) AVAILABILITY OF FUNDS.—Of the funds appropriated by title II of this Act, not less than \$311,000,000 should be made available for assistance for Sudan.

(b) LIMITATION ON ASSISTANCE.—Subject to subsection (c):

(1) Notwithstanding section 501(a) of the International Malaria Control Act of 2000 (Public Law 106–570) or any other provision of law, none of the funds appropriated by this Act may be made available for assistance for the Government of Sudan.

(2) None of the funds appropriated by this Act may be made available for the cost, as defined in section 502, of the Congressional Budget Act of 1974, of modifying loans and loan guarantees held by the Government of Sudan, including the cost of selling, reducing, or canceling amounts owed to the United States, and modifying concessional loans, guarantees, and credit agreements.

(c) Subsection (b) shall not apply if the Secretary of State determines and certifies to the Committees on Appropriations that—

Certification.

(1) the Government of Sudan has taken significant steps to disarm and disband government-supported militia groups in the Darfur region;

(2) the Government of Sudan and all government-supported militia groups are honoring their commitments made in the cease-fire agreement of April 8, 2004; and

(3) the Government of Sudan is allowing unimpeded access to Darfur to humanitarian aid organizations, the human rights investigation and humanitarian teams of the United Nations, including protection officers, and an international monitoring team that is based in Darfur and that has the support of the United States.

(d) EXCEPTIONS.—The provisions of subsection (b) shall not apply to—

(1) humanitarian assistance; and

(2) assistance for Darfur and for areas outside the control of the Government of Sudan.

(e) NOTIFICATION.—Not more than \$45,000,000 of the funds appropriated by this Act under the headings “International Disaster and Famine Assistance” and “Transition Initiatives” may be made available for assistance for Sudan outside of the Darfur region unless written notice has been provided to the Committees on Appropriations not less than 5 days prior to the obligation of such funds.

Deadline.

(f) DEFINITIONS.—For the purposes of this Act and section 501 of Public Law 106–570, the terms “Government of Sudan”, “areas outside of control of the Government of Sudan”, and “area in Sudan outside of control of the Government of Sudan” shall have the same meaning and application as was the case immediately prior to June 5, 2004, and, with regard to assistance in support of

a viable peace agreement, Southern Kordofan/Nuba Mountains State, Blue Nile State and Abyei.

(g) APPROPRIATION.—In addition to amounts appropriated elsewhere in this Act, \$75,000,000 is hereby appropriated for “Peacekeeping Operations” to support peace and humanitarian intervention operations for Sudan, and \$18,000,000 is hereby appropriated for “International Disaster and Famine Assistance” for humanitarian assistance and related activities in Sudan: *Provided*, That the entire amount appropriated in this subsection is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287: *Provided further*, That the Secretary of State shall consult with the Committees on Appropriations regarding the proposed uses of these funds within 30 days of the date of enactment of this Act.

(h) TECHNICAL CHANGE.—Section 12 of the International Organizations Immunities Act (22 U.S.C. 288f–2) is amended by striking “Organization of African Unity” and inserting “African Union”.

TRADE CAPACITY BUILDING

SEC. 570. Of the funds appropriated by this Act, under the headings “Trade and Development Agency”, “Development Assistance”, “Transition Initiatives”, “Economic Support Fund”, “International Affairs Technical Assistance”, and “International Organizations and Programs”, not less than \$507,000,000 should be made available for trade capacity building assistance: *Provided*, That \$20,000,000 of the funds appropriated in this Act under the heading “Economic Support Fund” shall be made available for labor and environmental capacity building activities relating to the free trade agreement with the countries of Central America and the Dominican Republic.

EXCESS DEFENSE ARTICLES FOR CENTRAL AND SOUTH EUROPEAN COUNTRIES AND CERTAIN OTHER COUNTRIES

SEC. 571. Notwithstanding section 516(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(e)), during fiscal year 2005, funds available to the Department of Defense may be expended for crating, packing, handling, and transportation of excess defense articles transferred under the authority of section 516 of such Act to Albania, Bulgaria, Croatia, Estonia, Former Yugoslavian Republic of Macedonia, Georgia, India, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Pakistan, Romania, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

INDONESIA

Certification.

SEC. 572. (a) Funds appropriated by this Act under the heading “Foreign Military Financing Program” may be made available for assistance for Indonesia, and licenses may be issued for the export of lethal defense articles for the Indonesian Armed Forces, only if the Secretary of State certifies to the appropriate congressional committees that—

(1) the Armed Forces are taking steps to counter international terrorism, consistent with democratic principles and the rule of law, and in cooperation with countries in the region;

(2) the Indonesian Government is prosecuting and punishing, in a manner proportional to the crime, members of the Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights or to have aided or abetted militia groups;

(3) at the direction of the President of Indonesia, the Armed Forces are cooperating with civilian judicial authorities and with international efforts to resolve cases of gross violations of human rights in East Timor and elsewhere; and

(4) at the direction of the President of Indonesia, the Armed Forces are implementing reforms to increase the transparency and accountability of their operations and financial management, including making publicly available audits of receipts and expenditures.

(b) Funds appropriated under the heading “International Military Education and Training” may be made available for assistance for Indonesia if the Secretary of State determines and reports to the Committees on Appropriations that the Indonesian Government and Armed Forces are cooperating with the Federal Bureau of Investigation’s investigation into the August 31, 2002, murders of two American citizens and one Indonesian citizen in Timika, Indonesia: *Provided*, That this restriction shall not apply to expanded international military education and training, which may include English language training.

LIMITATION ON CONTRACTS

SEC. 573. None of the funds made available under this Act may be used to fund any contract in contravention of section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)).

LIMITATION ON ECONOMIC SUPPORT FUND ASSISTANCE FOR CERTAIN FOREIGN GOVERNMENTS THAT ARE PARTIES TO THE INTERNATIONAL CRIMINAL COURT

SEC. 574. (a) None of the funds made available in this Act in title II under the heading “Economic Support Fund” may be used to provide assistance to the government of a country that is a party to the International Criminal Court and has not entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country.

(b) The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a North Atlantic Treaty Organization (“NATO”) member country, a major non-NATO ally (including Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand), or Taiwan if he determines and reports to the appropriate congressional committees that it is important to the national security interests of the United States to waive such prohibition.

(c) The President may, without prior notice to Congress, waive the prohibition of subsection (a) with respect to a particular country if he determines and reports to the appropriate congressional committees that such country has entered into an agreement with

the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against United States personnel present in such country.

(d) The prohibition of this section shall not apply to countries otherwise eligible for assistance under the Millennium Challenge Act of 2003, notwithstanding section 606(a)(2)(B) of such Act.

PROHIBITION AGAINST DIRECT FUNDING FOR SAUDI ARABIA

SEC. 575. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance any assistance to Saudi Arabia: *Provided*, That the President may waive the prohibition of this section if he certifies to the Committees on Appropriations, 15 days prior to the obligation of funds for assistance for Saudi Arabia, that Saudi Arabia is cooperating with efforts to combat international terrorism and that the proposed assistance will help facilitate that effort.

President.
Certification.
Deadline.

ENVIRONMENT PROGRAMS

SEC. 576. (a) FUNDING.—Of the funds appropriated under the heading “Development Assistance”, not less than \$165,500,000 shall be made available for programs and activities which directly protect biodiversity, including forests, in developing countries, of which not less than \$8,000,000 should be made available to implement a regional strategy for biodiversity conservation in the countries comprising the Amazon basin of South America, including to improve the capacity of indigenous communities and local law enforcement agencies to protect the biodiversity of indigenous reserves, which amount shall be in addition to the amounts requested for biodiversity activities in these countries in fiscal year 2005: *Provided*, That of the funds appropriated by this Act, not less than \$180,000,000 shall be made available to support clean energy and other climate change policies and programs in developing countries, of which \$100,000,000 should be made available to directly promote and deploy energy conservation, energy efficiency, and renewable and clean energy technologies, and of which the balance should be made available to directly: (1) measure, monitor, and reduce greenhouse gas emissions; (2) increase carbon sequestration activities; and (3) enhance climate change mitigation and adaptation programs.

President.

(b) CLIMATE CHANGE REPORT.—Not later than 45 days after the date on which the President’s fiscal year 2006 budget request is submitted to Congress, the President shall submit a report to the Committees on Appropriations describing in detail the following—

(1) all Federal agency obligations and expenditures, domestic and international, for climate change programs and activities in fiscal year 2005, including an accounting of expenditures by agency with each agency identifying climate change activities and associated costs by line item as presented in the President’s Budget Appendix; and

(2) all fiscal year 2004 obligations and estimated expenditures, fiscal year 2005 estimated expenditures and estimated obligations, and fiscal year 2006 requested funds by the United States Agency for International Development, by country and central program, for each of the following: (i) to promote the transfer and deployment of a wide range of United States

clean energy and energy efficiency technologies; (ii) to assist in the measurement, monitoring, reporting, verification, and reduction of greenhouse gas emissions; (iii) to promote carbon capture and sequestration measures; (iv) to help meet such countries' responsibilities under the Framework Convention on Climate Change; and (v) to develop assessments of the vulnerability to impacts of climate change and mitigation and adaptation response strategies.

(c) EXTRACTION OF NATURAL RESOURCES.—

(1) The Secretary of the Treasury shall inform the managements of the international financial institutions and the public that it is the policy of the United States that any assistance by such institutions (including but not limited to any loan, credit, grant, or guarantee) for the extraction and export of oil, gas, coal, timber, or other natural resource should not be provided unless the government of the country has in place or is taking the necessary steps to establish functioning systems for: (i) accurately accounting for revenues and expenditures in connection with the extraction and export of the type of natural resource to be extracted or exported; (ii) the independent auditing of such accounts and the widespread public dissemination of the audits; and (iii) verifying government receipts against company payments including widespread dissemination of such payment information in a manner that does not create competitive disadvantage or disclose proprietary information.

(2) Not later than 180 days after the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committees on Appropriations describing, for each international financial institution, the amount and type of assistance provided, by country, for the extraction and export of oil, gas, coal, timber, or other national resource since September 30, 2004.

Deadline.
Reports.

UZBEKISTAN

SEC. 577. Funds appropriated by this Act may be made available for assistance for the central Government of Uzbekistan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Uzbekistan is making substantial and continuing progress in meeting its commitments under the “Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America”, including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media.

CENTRAL ASIA

SEC. 578. (a) Funds appropriated by this Act may be made available for assistance for the Government of Kazakhstan only if the Secretary of State determines and reports to the Committees on Appropriations that the Government of Kazakhstan has made significant improvements in the protection of human rights during the preceding 6 month period.

(b) The Secretary of State may waive subsection (a) if he determines and reports to the Committees on Appropriations that

Deadline.
Reports.

such a waiver is in the national security interest of the United States.

(c) Not later than October 1, 2005, the Secretary of State shall submit a report to the Committees on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives describing the following:

(1) The defense articles, defense services, and financial assistance provided by the United States to the countries of Central Asia during the 6-month period ending 30 days prior to submission of such report.

(2) The use during such period of defense articles, defense services, and financial assistance provided by the United States by units of the armed forces, border guards, or other security forces of such countries.

(d) For purposes of this section, the term “countries of Central Asia” means Uzbekistan, Kazakhstan, Kyrgyz Republic, Tajikistan, and Turkmenistan.

DISABILITY PROGRAMS

SEC. 579. (a) Of the funds appropriated by this Act under the heading “Economic Support Fund”, not less than \$2,500,000 shall be made available for programs and activities to address the needs and protect the rights of people with disabilities in developing countries: *Provided*, That such funds shall be administered by the United States Agency for International Development (“USAID”) and the Department of State, and shall be available for grants to nongovernmental organizations that work on behalf of people with disabilities in such countries.

(b) The Secretary of State and the USAID Administrator shall designate within their respective agencies an individual to serve as Disability “Advisor” or “Coordinator”, whose function it shall be to ensure that disability rights are addressed, where appropriate, in United States policies and programs.

(c) Funds made available under subsection (a) may be made available for an international conference on the needs of people with disabilities, including disability rights, advocacy and access.

(d) The Secretary of State, the Secretary of the Treasury, and the USAID Administrator shall seek to ensure that the needs of people with disabilities are addressed, where appropriate, in democracy, human rights, and rule of law programs, projects and activities supported by the Department of State, Department of the Treasury, and USAID.

Deadline.
Procedures.

(e) The USAID Administrator shall seek to ensure that programs, projects and activities administered by USAID comply fully with USAID’s “Policy Paper: Disability” issued on September 12, 1997: *Provided*, That not later than 90 days after enactment of this Act, USAID shall implement procedures to require that prospective grantees seeking funding from USAID specify, when relevant, how the proposed program, project or activity for which funding is being requested will include protecting the rights and addressing the needs of persons with disabilities.

ZIMBABWE

22 USC 2151
note.

SEC. 580. The Secretary of the Treasury shall instruct the United States executive director to each international financial

institution to vote against any extension by the respective institution of any loans to the Government of Zimbabwe, except to meet basic human needs or to promote democracy, unless the Secretary of State determines and certifies to the Committees on Appropriations that the rule of law has been restored in Zimbabwe, including respect for ownership and title to property, freedom of speech and association.

TIBET

SEC. 581. (a) The Secretary of the Treasury should instruct the United States executive director to each international financial institution to use the voice and vote of the United States to support projects in Tibet if such projects do not provide incentives for the migration and settlement of non-Tibetans into Tibet or facilitate the transfer of ownership of Tibetan land and natural resources to non-Tibetans; are based on a thorough needs-assessment; foster self-sufficiency of the Tibetan people and respect Tibetan culture and traditions; and are subject to effective monitoring.

(b) Notwithstanding any other provision of law, not less than \$4,000,000 of the funds appropriated by this Act under the heading “Economic Support Fund” should be made available to nongovernmental organizations to support activities which preserve cultural traditions and promote sustainable development and environmental conservation in Tibetan communities in the Tibetan Autonomous Region and in other Tibetan communities in China, and not less than \$250,000 should be made available to the National Endowment for Democracy for human rights and democracy programs relating to Tibet.

NIGERIA

SEC. 582. The President shall submit a report to the Committees on Appropriations describing the involvement of the Nigerian Armed Forces in the incident in Benue State, the measures that are being taken to bring such individuals to justice, and whether any Nigerian Armed Forces units involved with the incident in Benue State are receiving United States assistance.

President.
Reports.

DISCRIMINATION AGAINST MINORITY RELIGIOUS FAITHS IN THE
RUSSIAN FEDERATION

SEC. 583. None of the funds appropriated under this Act may be made available for the Government of the Russian Federation, after 180 days from the date of the enactment of this Act, unless the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation has implemented no statute, Executive order, regulation or similar government action that would discriminate, or which has as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.

Deadline.
President.
Certification.

CENTRAL AMERICA

SEC. 584. (a) Of the funds appropriated by this Act under the headings “Child Survival and Health Programs Fund” and

“Development Assistance”, not less than the amount of funds initially allocated pursuant to section 653(a) of the Foreign Assistance Act of 1961 for fiscal year 2004 should be made available for El Salvador, Guatemala, Nicaragua and Honduras.

Certification.

(b) Not to exceed \$3,227,000 in prior year “Military Assistance Program” funds that are available for Guatemala may be made available for non-lethal defense items for Guatemala if the Secretary of State certifies to the Committees on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that—

(1) the role of the Guatemalan military has been limited, in doctrine and in practice, to substantially those activities in defense of Guatemala’s sovereignty and territorial integrity that are permitted by the 1996 Peace Accords, and the Government of Guatemala is taking steps to pass a new governing law of the Army (Ley Constitutiva del Ejército);

(2) the Guatemalan military is cooperating with civilian judicial authorities, including providing full cooperation on access to witnesses, documents and classified intelligence files, in investigations and prosecutions of military personnel who have been implicated in human rights violations and other criminal activity;

(3) the Government of Guatemala is working with the United Nations to resolve legal impediments to the establishment of the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (CICIACS), so that CICIACS can effectively accomplish its mission of investigating and bringing to justice illegal groups and members of clandestine security organizations;

(4) the Government of Guatemala is continuing its efforts to make the military budget process transparent and accessible to civilian authorities and to the public, for both present and past expenditures;

(5) the Government of Guatemala is working to facilitate the prompt establishment of an office in Guatemala of the United Nations High Commissioner for Human Rights with the unimpeded authority to investigate and report on human rights in Guatemala; and

(6) the Government of Guatemala is taking steps to increase its efforts to combat narcotics trafficking and organized crime.

22 USC 2370a.

(c) Section 527 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (22 U.S.C. 2370(a)) is amended by adding at the end the following new subsection:

“(i) CERTAIN CLAIMS FOR EXPROPRIATION BY THE GOVERNMENT OF NICARAGUA.—

“(1) Any action of the types set forth in subparagraphs (A), (B), and (C) of subsection (a)(1) that was taken by the Government of Nicaragua during the period beginning on January 1, 1956, and ending on January 9, 2002, shall not be considered in implementing the prohibition under subsection (a) unless the action has been presented in accordance with the procedure set forth in paragraph (2).

“(2) An action shall be deemed presented for purposes of paragraph (1) if it is—

“(A) in writing; and

“(B) received by the United States Department of State on or before 120 days after the date specified in paragraph (3) at—

Deadline.

“(i) the headquarters of the United States Department of State in Washington, D.C.; or

“(ii) the Embassy of the United States of America to Nicaragua.

“(3) The date to which paragraph (2) refers is a date after enactment of this subsection that is specified by the Secretary of State, in the Secretary’s discretion, in a notice published in the Federal Register.”.

Notice.
Federal Register,
publication.

WAR CRIMES IN AFRICA

SEC. 585. (a) The Congress recognizes the important contribution that the democratically elected Government of Nigeria has played in fostering stability in West Africa.

(b) The Congress reaffirms its support for the efforts of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) to bring to justice individuals responsible for war crimes and crimes against humanity in a timely manner.

(c) Funds appropriated by this Act, including funds for debt restructuring, may be made available for assistance to the central government of a country in which individuals indicted by ICTR and SCSL are credibly alleged to be living, if the Secretary of State determines and reports to the Committees on Appropriations that such government is cooperating with ICTR and SCSL, including the surrender and transfer of indictees in a timely manner: *Provided*, That this subsection shall not apply to assistance provided under section 551 of the Foreign Assistance Act of 1961 or to project assistance under title II of this Act: *Provided further*, That the United States shall use its voice and vote in the United Nations Security Council to fully support efforts by ICTR and SCSL to bring to justice individuals indicted by such tribunals in a timely manner.

(d) The prohibition in subsection (c) may be waived on a country by country basis if the President determines that doing so is in the national security interest of the United States: *Provided*, That prior to exercising such waiver authority, the President shall submit a report to the Committees on Appropriations, in classified form if necessary, on: (1) the steps being taken to obtain the cooperation of the government in surrendering the indictee in question to SCSL or ICTR; (2) a strategy for bringing the indictee before ICTR or SCSL; and (3) the justification for exercising the waiver authority.

President.
Reports.

ADMISSION OF REFUGEES

SEC. 586. (a) The Secretary of State shall utilize private voluntary organizations with expertise in the protection needs of refugees in the processing of refugees overseas for admission and resettlement to the United States, and shall utilize such agencies in addition to the United Nations High Commissioner for Refugees in the identification and referral of refugees.

(b) The Secretary of State should maintain a system for accepting referrals of appropriate candidates for resettlement from local private, voluntary organizations and work to ensure that

particularly vulnerable refugee groups receive special consideration for admission into the United States, including—

- (1) long-stayers in countries of first asylum;
 - (2) unaccompanied refugee minors;
 - (3) refugees outside traditional camp settings; and
 - (4) refugees in woman-headed households.
- (c) The Secretary of State shall give special consideration to—
- (1) refugees of all nationalities who have close family ties to citizens and residents of the United States; and
 - (2) other groups of refugees who are of special concern to the United States.

CODE OF CONDUCT

SEC. 587. (a) None of the funds made available by title II under the heading “Migration and Refugee Assistance” or “Transition Initiatives” to provide assistance to refugees or internally displaced persons may be provided to an organization that has failed to adopt a code of conduct consistent with the Inter-Agency Standing Committee Task Force on Protection From Sexual Exploitation and Abuse in Humanitarian Crises six core principles for the protection of beneficiaries of humanitarian assistance.

(b) In administering the amounts made available for the accounts described in subsection (a), the Secretary of State and Administrator of the United States Agency for International Development shall incorporate specific policies and programs for the purpose of identifying specific needs of, and particular threats to, women and children at the various stages of humanitarian emergencies, especially at the onset of such emergency.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT HIRING AUTHORITY

22 USC 3948
note.

SEC. 588. (a) AUTHORITY.—Up to \$37,500,000 of the funds made available in this Act to carry out the provisions of part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading “Assistance for Eastern Europe and the Baltic States”, may be used by the United States Agency for International Development (USAID) to hire and employ individuals in the United States and overseas on a limited appointment basis pursuant to the authority of sections 308 and 309 of the Foreign Service Act of 1980.

(b) RESTRICTIONS.—

(1) The number of individuals hired in any fiscal year pursuant to the authority contained in subsection (a) may not exceed 175, of which not more than 75 may be hired for employment in the United States.

Expiration date.

(2) The authority to hire individuals contained in subsection (a) shall expire on September 30, 2007.

(c) CONDITIONS.—The authority of this section may only be used—

(1) to the extent that an equivalent number of positions that are filled by personal services contractors or other non-direct-hire employees of USAID, who are compensated with funds appropriated to carry out part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading “Assistance for Eastern Europe and the Baltic States”, are eliminated; and

(2) after consultations between the Committees on Appropriations and the USAID Administrator on the implementation of this section and USAID work force issues more generally.

(d) PRIORITY SECTORS.—In exercising the authority of this section, primary emphasis shall be placed on enabling USAID to meet personnel positions in technical skill areas currently encumbered by contractor or other nondirect-hire personnel.

(e) CONSULTATIONS.—After the initial consultations required by subsection (c)(2), the USAID Administrator shall consult with the Committees on Appropriations at least on a quarterly basis thereafter concerning the implementation of this section.

(f) PROGRAM ACCOUNT CHARGED.—The account charged for the cost of an individual hired and employed under the authority of this section shall be the account to which such individual's responsibilities primarily relate. Funds made available to carry out this section may be transferred to and merged and consolidated with funds appropriated for "Operating Expenses of the United States Agency for International Development".

(g) RELATION TO PRIOR LAW.—Upon completion of the consultations required by subsection (c)(2), the authority contained in this section shall supersede the authority contained in section 525 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004.

(h) DISASTER SURGE CAPACITY.—Funds appropriated by this Act to carry out part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading "Assistance for Eastern Europe and the Baltic States", may be used, in addition to funds otherwise available for such purposes, for the cost (including the support costs) of individuals detailed to or employed by the United States Agency for International Development whose primary responsibility is to carry out programs in response to natural disasters.

OVERSEAS PRIVATE INVESTMENT CORPORATION AND EXPORT-IMPORT
BANK RESTRICTIONS

SEC. 589. (a) LIMITATION ON USE OF FUNDS BY OPIC.—None of the funds made available in this Act may be used by the Overseas Private Investment Corporation to insure, reinsure, guarantee, or finance any investment in connection with a project involving the mining, polishing or other processing, or sale of diamonds in a country that fails to meet the requirements of subsection (c).

(b) LIMITATION ON USE OF FUNDS BY THE EXPORT-IMPORT BANK.—None of the funds made available in this Act may be used by the Export-Import Bank of the United States to guarantee, insure, extend credit, or participate in an extension of credit in connection with the export of any goods to a country for use in an enterprise involving the mining, polishing or other processing, or sale of diamonds in a country that fails to meet the requirements of subsection (c).

(c) REQUIREMENTS.—The requirements referred to in subsections (a) and (b) are that the country concerned is implementing the recommendations, obligations and requirements developed by the Kimberley Process on conflict diamonds.

SECURITY IN ASIA

Reports.

SEC. 590. (a) INDONESIA.—Funds made available for assistance for Indonesia under the heading “Foreign Military Financing Program” may be made available for assistance for the Indonesian navy notwithstanding section 572 of this Act if the Secretary of State reports to the Committees on Appropriations that the Indonesian navy is not violating human rights and is cooperating with civilian judicial authorities on cases involving human rights violations: *Provided*, That such funds may only be made available for assistance for the Indonesian navy for the purposes of enhancing maritime security: *Provided further*, That such funds shall be made available subject to the regular notification procedures of the Committees on Appropriations.

(b) CAMBODIA.—Funds made available for assistance for Cambodia under the heading “Foreign Military Financing Program” may be made available notwithstanding section 554 of this Act: *Provided*, That such funds shall only be made available subject to the regular notification procedures of the Committees on Appropriations.

(c) NEPAL.—

(1) The Congress deplores and condemns the Maoist insurgency in Nepal which has engaged in widespread atrocities against civilians and Nepalese security forces, and calls on other nations to denounce these vicious acts.

Reports.

(2) Funds appropriated under the heading “Foreign Military Financing Program” may be made available for assistance for Nepal if the Secretary of State reports to the Committees on Appropriations that the Government of Nepal:

(A) has determined the number of and is making substantial progress in complying with habeas corpus orders issued by the Supreme Court of Nepal, including all outstanding orders;

(B) is cooperating with the National Human Rights Commission of Nepal to identify and resolve all security related cases involving individuals in government custody;

(C) is granting the National Human Rights Commission of Nepal unimpeded access to all places of detention; and

(D) is taking effective steps to end torture by security forces and to prosecute members of such forces who are responsible for gross violations of human rights.

(3) The Secretary of State may waive the requirements of paragraph (2) if he determines and reports to the Committees on Appropriations that to do so is in the national security interests of the United States.

HIPC DEBT REDUCTION AND TRUST FUND

114 Stat.
1900A-64.

SEC. 591. (a) Section 801(b)(1) of Public Law 106-429 is amended—

(1) by inserting “(i)” after “appropriated”; and

(2) by inserting before the period “; and (ii) for fiscal years 2004-2006, not more than \$150,000,000, for purposes of additional United States contributions to the HIPC Trust Fund administered by the Bank, which are authorized to remain available until expended”.

(b) Section 501(i) of Public Law 106–113 is amended by striking “2003–2004” and inserting “2000–2006”. 22 USC 2395 note.

COMPLIANCE WITH THE ALGIERS AGREEMENTS

SEC. 592. None of the funds appropriated by this Act may be made available for assistance for the central Governments of Ethiopia or Eritrea unless the Secretary of State certifies and reports to the Committees on Appropriations that such government is taking steps to comply with the terms of the Algiers Agreements: *Provided*, That this section shall not apply to democracy, rule of law, peacekeeping programs and activities, child survival and health, basic education, and agriculture programs: *Provided further*, That the Secretary may waive the requirements of this section if he determines that to do so is in the national security interests of the United States.

ADMINISTRATIVE PROVISIONS RELATED TO MULTILATERAL DEVELOPMENT BANKS

SEC. 593. (a) Section 1307 of the International Financial Institutions Act (22 U.S.C. 262m–7) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) ASSESSMENT REQUIRED BEFORE FAVORABLE VOTE ON PROPOSAL.—The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank not to vote in favor of any proposal (including but not limited to any loan, credit, grant, guarantee) which would result or be likely to result in significant impact on the environment, unless the Secretary, after consultation with the Secretary of State and the Administrators of the United States Agency for International Development and the Environmental Protection Agency, determines that for at least 120 days before the date of the vote—

“(1) an assessment analyzing the environmental impacts of the proposed action, including associated and cumulative impacts, and of alternatives to the proposed action, has been completed by the borrower or the bank and has been made available to the board of directors of the bank; and

“(2) such assessment or a comprehensive summary of the assessment (with proprietary information redacted) has been made available to affected groups, and local nongovernmental organizations and notice of its availability in the country and at the bank has been posted on the bank’s website.”; and

(2) by striking subsection (g) and inserting the following:

“(g) MULTILATERAL DEVELOPMENT BANK DEFINED.—In this title, the term ‘multilateral development bank’ means the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, the African Development Bank, the African Development Fund, the Asian Development Bank, the Inter-American Development Bank, the Inter-American Investment Corporation, any other institution (other than the International Monetary Fund) specified in section 1701(c)(2), and any subsidiary of any such institution.”.

(b) Section 1303(b) of the International Financial Institutions Act (22 U.S.C. 262m–2(b)) is amended—

(1) by inserting “(1)” after “(b)” and replacing “International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank” with the phrase “multilateral development banks as defined in section 1307(g)”; and

(2) by inserting at the end of subsection (b) the following text:

“(2) The Secretary of the Treasury shall instruct such Executive Directors to work with other countries’ Executive Directors and multilateral development bank management to—

“(A) improve the procedures of each multilateral development bank for providing its board of directors with a complete and accurate record regarding public consultation before they vote on proposed projects with significant environmental implications; and

“(B) revise bank procedures to consistently require public consultation on operational policy proposals or revisions that have significant environmental or social implications.

“(3) Progress under this subsection shall be incorporated into Treasury’s required annual report to Congress on the environmental performance of the multilateral development banks.”.

VIETNAMESE REFUGEES

SEC. 594. (a) ELIGIBILITY FOR IN-COUNTRY REFUGEE PROCESSING IN VIETNAM.—For purposes of eligibility for in-country refugee processing for nationals of Vietnam during fiscal years 2004 and 2005, an alien described in subsection (b) shall be considered to be a refugee of special humanitarian concern to the United States (within the meaning of section 207 of the Immigration and Nationality Act (8 U.S.C. 1157)) and shall be admitted to the United States for resettlement if the alien would be admissible as an immigrant under the Immigration and Nationality Act (except as provided in section 207(c)(3) of that Act).

(b) ALIENS COVERED.—An alien described in this subsection is an alien who—

(1) is the son or daughter of a qualified national;

(2) is 21 years of age or older; and

(3) was unmarried as of the date of acceptance of the alien’s parent for resettlement under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City.

(c) QUALIFIED NATIONAL.—The term “qualified national” in subsection (b)(1) means a national of Vietnam who—

(1)(A) was formerly interned in a re-education camp in Vietnam by the Government of the Socialist Republic of Vietnam; or

(B) is the widow or widower of an individual described in subparagraph (A);

(2)(A) qualified for refugee processing under the Orderly Departure Program re-education subprogram; and

(B) is or was accepted under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City—

(i) for resettlement as a refugee; or

(ii) for admission to the United States as an immediate relative immigrant; and

Definition.

(3)(A) is presently maintaining a residence in the United States or whose surviving spouse is presently maintaining such a residence; or

(B) was approved for refugee resettlement or immigrant visa processing and is awaiting departure formalities from Vietnam or whose surviving spouse is awaiting such departure formalities.

JOINT EXPLANATORY STATEMENT

SEC. 595. (a) Funds provided in this Act for the following accounts shall be made available for programs and countries in the amounts contained in the respective tables included in the joint explanatory statement of managers accompanying this Act:

“Economic Support Fund”.

“Assistance for Eastern Europe and the Baltic States”.

“Assistance for the Independent States of the Former Soviet Union”.

“Andean Counterdrug Initiative”.

“Nonproliferation, Anti-Terrorism, Demining and Related Programs”.

“Foreign Military Financing Program”.

“International Organizations and Programs”.

(b) Any proposed increases or decreases to the amounts contained in such tables in the joint explanatory statement of managers shall be subject to the regular notification procedures of the Committees on Appropriations and section 634A of the Foreign Assistance Act of 1961.

This division may be cited as the “Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005”.

DIVISION E—DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

TITLE I—DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For necessary expenses for protection, use, improvement, development, disposal, cadastral surveying, classification, acquisition of easements and other interests in lands, and performance of other functions, including maintenance of facilities, as authorized by law, in the management of lands and their resources under the jurisdiction of the Bureau of Land Management, including the general administration of the Bureau, and assessment of mineral potential of public lands pursuant to Public Law 96–487 (16 U.S.C. 3150(a)), \$848,939,000, to remain available until expended, of which \$1,000,000 is for high priority projects, to be carried out by the Youth Conservation Corps; \$4,000,000 is for assessment of the mineral potential of public lands in Alaska pursuant to section 1010 of Public Law 96–487; (16 U.S.C. 3150); and of which not to exceed \$1,000,000 shall be derived from the special receipt account established by the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 4601–6a(i)); and of which \$3,500,000 shall be available in fiscal year 2005 subject to a match by at least an equal amount by the National Fish and Wildlife Foundation

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for cost-shared projects supporting conservation of Bureau lands; and such funds shall be advanced to the Foundation as a lump sum grant without regard to when expenses are incurred.

In addition, \$32,696,000 is for Mining Law Administration program operations, including the cost of administering the mining claim fee program; to remain available until expended, to be reduced by amounts collected by the Bureau and credited to this appropriation from annual mining claim fees so as to result in a final appropriation estimated at not more than \$848,939,000, and \$2,000,000, to remain available until expended, from communication site rental fees established by the Bureau for the cost of administering communication site activities.

WILDLAND FIRE MANAGEMENT

For necessary expenses for fire preparedness, suppression operations, fire science and research, emergency rehabilitation, hazardous fuels reduction, and rural fire assistance by the Department of the Interior, \$743,099,000, to remain available until expended, of which not to exceed \$12,374,000 shall be for the renovation or construction of fire facilities: *Provided*, That such funds are also available for repayment of advances to other appropriation accounts from which funds were previously transferred for such purposes: *Provided further*, That persons hired pursuant to 43 U.S.C. 1469 may be furnished subsistence and lodging without cost from funds available from this appropriation: *Provided further*, That notwithstanding 42 U.S.C. 1856d, sums received by a bureau or office of the Department of the Interior for fire protection rendered pursuant to 42 U.S.C. 1856 et seq., protection of United States property, may be credited to the appropriation from which funds were expended to provide that protection, and are available without fiscal year limitation: *Provided further*, That using the amounts designated under this title of this Act, the Secretary of the Interior may enter into procurement contracts, grants, or cooperative agreements, for hazardous fuels reduction activities, and for training and monitoring associated with such hazardous fuels reduction activities, on Federal land, or on adjacent non-Federal land for activities that benefit resources on Federal land: *Provided further*, That the costs of implementing any cooperative agreement between the Federal Government and any non-Federal entity may be shared, as mutually agreed on by the affected parties: *Provided further*, That notwithstanding requirements of the Competition in Contracting Act, the Secretary, for purposes of hazardous fuels reduction activities, may obtain maximum practicable competition among: (1) local private, nonprofit, or cooperative entities; (2) Youth Conservation Corps crews or related partnerships with State, local, or non-profit youth groups; (3) small or micro-businesses; or (4) other entities that will hire or train locally a significant percentage, defined as 50 percent or more, of the project workforce to complete such contracts: *Provided further*, That in implementing this section, the Secretary shall develop written guidance to field units to ensure accountability and consistent application of the authorities provided herein: *Provided further*, That funds appropriated under this head may be used to reimburse the United States Fish and Wildlife Service and the National Marine Fisheries Service for the costs of carrying out their responsibilities under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to consult and conference, as required by section 7 of such Act, in

Contracts.
Grants.

Guidance.

connection with wildland fire management activities: *Provided further*, That the Secretary of the Interior may use wildland fire appropriations to enter into non-competitive sole source leases of real property with local governments, at or below fair market value, to construct capitalized improvements for fire facilities on such leased properties, including but not limited to fire guard stations, retardant stations, and other initial attack and fire support facilities, and to make advance payments for any such lease or for construction activity associated with the lease: *Provided further*, That the Secretary of the Interior and the Secretary of Agriculture may authorize the transfer of funds appropriated for wildland fire management, in an aggregate amount not to exceed \$12,000,000, between the Departments when such transfers would facilitate and expedite jointly funded wildland fire management programs and projects: *Provided further*, That funds provided for wildfire suppression shall be available for support of Federal emergency response actions.

CENTRAL HAZARDOUS MATERIALS FUND

For necessary expenses of the Department of the Interior and any of its component offices and bureaus for the remedial action, including associated activities, of hazardous waste substances, pollutants, or contaminants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.), \$9,855,000, to remain available until expended: *Provided*, That, notwithstanding 31 U.S.C. 3302, sums recovered from or paid by a party in advance of or as reimbursement for remedial action or response activities conducted by the Department pursuant to section 107 or 113(f) of such Act, shall be credited to this account, to be available until expended without further appropriation: *Provided further*, That such sums recovered from or paid by any party are not limited to monetary payments and may include stocks, bonds or other personal or real property, which may be retained, liquidated, or otherwise disposed of by the Secretary and which shall be credited to this account.

CONSTRUCTION

For construction of buildings, recreation facilities, roads, trails, and appurtenant facilities, \$11,500,000, to remain available until expended.

LAND ACQUISITION

For expenses necessary to carry out sections 205, 206, and 318(d) of Public Law 94-579, including administrative expenses and acquisition of lands or waters, or interests therein, \$11,350,000, to be derived from the Land and Water Conservation Fund and to remain available until expended.

OREGON AND CALIFORNIA GRANT LANDS

For expenses necessary for management, protection, and development of resources and for construction, operation, and maintenance of access roads, reforestation, and other improvements on the revested Oregon and California Railroad grant lands, on other Federal lands in the Oregon and California land-grant counties of Oregon, and on adjacent rights-of-way; and acquisition of

lands or interests therein, including existing connecting roads on or adjacent to such grant lands; \$109,057,000, to remain available until expended: *Provided*, That 25 percent of the aggregate of all receipts during the current fiscal year from the revested Oregon and California Railroad grant lands is hereby made a charge against the Oregon and California land-grant fund and shall be transferred to the General Fund in the Treasury in accordance with the second paragraph of subsection (b) of title II of the Act of August 28, 1937 (50 Stat. 876).

FOREST ECOSYSTEM HEALTH AND RECOVERY FUND

(REVOLVING FUND, SPECIAL ACCOUNT)

In addition to the purposes authorized in Public Law 102-381, funds made available in the Forest Ecosystem Health and Recovery Fund can be used for the purpose of planning, preparing, implementing and monitoring salvage timber sales and forest ecosystem health and recovery activities, such as release from competing vegetation and density control treatments. The Federal share of receipts (defined as the portion of salvage timber receipts not paid to the counties under 43 U.S.C. 1181f and 43 U.S.C. 1181f-1 et seq., and Public Law 106-393) derived from treatments funded by this account shall be deposited into the Forest Ecosystem Health and Recovery Fund.

RANGE IMPROVEMENTS

For rehabilitation, protection, and acquisition of lands and interests therein, and improvement of Federal rangelands pursuant to section 401 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), notwithstanding any other Act, sums equal to 50 percent of all moneys received during the prior fiscal year under sections 3 and 15 of the Taylor Grazing Act (43 U.S.C. 315 et seq.) and the amount designated for range improvements from grazing fees and mineral leasing receipts from Bankhead-Jones lands transferred to the Department of the Interior pursuant to law, but not less than \$10,000,000, to remain available until expended: *Provided*, That not to exceed \$600,000 shall be available for administrative expenses.

SERVICE CHARGES, DEPOSITS, AND FORFEITURES

For administrative expenses and other costs related to processing application documents and other authorizations for use and disposal of public lands and resources, for costs of providing copies of official public land documents, for monitoring construction, operation, and termination of facilities in conjunction with use authorizations, and for rehabilitation of damaged property, such amounts as may be collected under Public Law 94-579, as amended, and Public Law 93-153, to remain available until expended: *Provided*, That, notwithstanding any provision to the contrary of section 305(a) of Public Law 94-579 (43 U.S.C. 1735(a)), any moneys that have been or will be received pursuant to that section, whether as a result of forfeiture, compromise, or settlement, if not appropriate for refund pursuant to section 305(c) of that Act (43 U.S.C. 1735(c)), shall be available and may be expended under the authority of this Act by the Secretary to improve, protect, or rehabilitate any public lands administered through the Bureau

43 USC 1735
note.

of Land Management which have been damaged by the action of a resource developer, purchaser, permittee, or any unauthorized person, without regard to whether all moneys collected from each such action are used on the exact lands damaged which led to the action: *Provided further*, That any such moneys that are in excess of amounts needed to repair damage to the exact land for which funds were collected may be used to repair other damaged public lands.

MISCELLANEOUS TRUST FUNDS

In addition to amounts authorized to be expended under existing laws, there is hereby appropriated such amounts as may be contributed under section 307 of the Act of October 21, 1976 (43 U.S.C. 1701), and such amounts as may be advanced for administrative costs, surveys, appraisals, and costs of making conveyances of omitted lands under section 211(b) of that Act, to remain available until expended.

ADMINISTRATIVE PROVISIONS

Appropriations for the Bureau of Land Management shall be available for purchase, erection, and dismantlement of temporary structures, and alteration and maintenance of necessary buildings and appurtenant facilities to which the United States has title; up to \$100,000 for payments, at the discretion of the Secretary, for information or evidence concerning violations of laws administered by the Bureau; miscellaneous and emergency expenses of enforcement activities authorized or approved by the Secretary and to be accounted for solely on her certificate, not to exceed \$10,000: *Provided*, That, notwithstanding 44 U.S.C. 501, the Bureau may, under cooperative cost-sharing and partnership arrangements authorized by law, procure printing services from cooperators in connection with jointly produced publications for which the cooperators share the cost of printing either in cash or in services, and the Bureau determines the cooperator is capable of meeting accepted quality standards.

Contracts.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

For necessary expenses of the United States Fish and Wildlife Service, as authorized by law, and for scientific and economic studies, maintenance of the herd of long-horned cattle on the Wichita Mountains Wildlife Refuge, general administration, and for the performance of other authorized functions related to such resources by direct expenditure, contracts, grants, cooperative agreements and reimbursable agreements with public and private entities, \$977,205,000, to remain available until September 30, 2006, except as otherwise provided herein: *Provided*, That not less than \$1,000,000 shall be provided to local governments in southern California for planning associated with the Natural Communities Conservation Planning (NCCP) program and shall remain available until expended: *Provided further*, That \$2,000,000 is for high priority projects, which shall be carried out by the Youth Conservation Corps: *Provided further*, That, not to exceed \$16,175,000, shall be used for implementing subsections (a), (b), (c), and (e) of section

4 of the Endangered Species Act, as amended, for species that are indigenous to the United States (except for processing petitions, developing and issuing proposed and final regulations, and taking any other steps to implement actions described in subsection (c)(2)(A), (c)(2)(B)(i), or (c)(2)(B)(ii)), of which not to exceed \$11,400,000 shall be used for any activity regarding the designation of critical habitat, pursuant to subsection (a)(3), excluding litigation support, for species listed pursuant to subsection (a)(1) prior to October 1, 2004: *Provided further*, That of the amount available for law enforcement, up to \$400,000, to remain available until expended, may at the discretion of the Secretary be used for payment for information, rewards, or evidence concerning violations of laws administered by the Service, and miscellaneous and emergency expenses of enforcement activity, authorized or approved by the Secretary and to be accounted for solely on her certificate: *Provided further*, That of the amount provided for environmental contaminants, up to \$1,000,000 may remain available until expended for contaminant sample analyses.

CONSTRUCTION

For construction, improvement, acquisition, or removal of buildings and other facilities required in the conservation, management, investigation, protection, and utilization of fishery and wildlife resources, and the acquisition of lands and interests therein; \$53,400,000, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, a single procurement for the construction project at the Clark R. Bavin Forensics Laboratory in Oregon may be issued which includes the full scope of the project: *Provided further*, That the solicitation and the contract shall contain the clause “availability of funds” found at 48 CFR 52.232.18.

LAND ACQUISITION

For expenses necessary to carry out the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-4 through 11), including administrative expenses, and for acquisition of land or waters, or interest therein, in accordance with statutory authority applicable to the United States Fish and Wildlife Service, \$37,526,000, to be derived from the Land and Water Conservation Fund and to remain available until expended, of which \$750,000 is for support of acquisition of lands for waterfowl habitat in the Yukon Flats National Wildlife Refuge, and the related conveyance of Federal lands and interests in lands to Doyon, Limited, an Alaska Native Corporation organized pursuant to the Alaska Native Claims Settlement Act: *Provided*, That the Secretary is authorized to, and shall, execute all necessary acquisitions and exchange agreement documents in furtherance of this acquisition and exchange as soon as possible: *Provided further*, That, notwithstanding any other law, all revenues, fees and royalties received by the Federal Government from oil and/or gas production from the lands, and interests in land, acquired by Doyon, Limited, pursuant to the exchange of lands located within Yukon Flats National Wildlife Refuge shall be deposited in a special account in the Treasury of the United States to be called the Alaska National Wildlife Refuge Land Acquisition and Facility Account (“Acquisition Account”): *Provided further*, That all amounts deposited in the

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acquisition account shall be available until expended without further act of appropriation to the Director of the United States Fish and Wildlife Service for only the following purposes: (1) to acquire lands from Doyon, Limited, located within Yukon Flats National Wildlife Refuge in accordance with the Exchange Agreement; (2) to acquire lands from other willing sellers in the Yukon Flats National Wildlife Refuge, or from other willing sellers in other units of the National Wildlife Refuge System located within the State of Alaska; and (3) to construct facilities and infrastructure for Alaska refuges: *Provided further*, That none of the funds appropriated for specific land acquisition projects, other than the appropriations for the Yukon Flats National Wildlife Refuge exchange and acquisition provided for under this heading, can be used to pay for any administrative overhead, planning or other management costs: *Provided further*, That none of the funds in this or any other Act may be used for the acquisition of land for inclusion in the Deep Fork National Wildlife Refuge.

LANDOWNER INCENTIVE PROGRAM

For expenses necessary to carry out the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-4 through 11), including administrative expenses, and for private conservation efforts to be carried out on private lands, \$22,000,000, to be derived from the Land and Water Conservation Fund, and to remain available until expended: *Provided*, That the amount provided herein is for a Landowner Incentive Program established by the Secretary that provides matching, competitively awarded grants to States, the District of Columbia, federally recognized Indian tribes, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa, to establish or supplement existing landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, candidate, or other at-risk species on private lands.

Grants.
State listing.

PRIVATE STEWARDSHIP GRANTS

For expenses necessary to carry out the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-4 through 11), including administrative expenses, and for private conservation efforts to be carried out on private lands, \$7,000,000, to be derived from the Land and Water Conservation Fund, and to remain available until expended: *Provided*, That the amount provided herein is for the Private Stewardship Grants Program established by the Secretary to provide grants and other assistance to individuals and groups engaged in private conservation efforts that benefit federally listed, proposed, candidate, or other at-risk species: *Provided further*, That balances from amounts previously appropriated under the heading “Stewardship Grants” shall be transferred to and merged with this appropriation and shall remain available until expended.

COOPERATIVE ENDANGERED SPECIES CONSERVATION FUND

For expenses necessary to carry out section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended,

\$81,596,000, of which \$32,212,000 is to be derived from the Cooperative Endangered Species Conservation Fund and \$49,384,000 is to be derived from the Land and Water Conservation Fund and to remain available until expended.

NATIONAL WILDLIFE REFUGE FUND

For expenses necessary to implement the Act of October 17, 1978 (16 U.S.C. 715s), \$14,414,000.

NORTH AMERICAN WETLANDS CONSERVATION FUND

For expenses necessary to carry out the provisions of the North American Wetlands Conservation Act, Public Law 101-233, as amended, \$38,000,000, to remain available until expended.

NEOTROPICAL MIGRATORY BIRD CONSERVATION

For financial assistance for projects to promote the conservation of neotropical migratory birds in accordance with the Neotropical Migratory Bird Conservation Act, Public Law 106-247 (16 U.S.C. 6101-6109), \$4,000,000, to remain available until expended.

MULTINATIONAL SPECIES CONSERVATION FUND

For expenses necessary to carry out the African Elephant Conservation Act (16 U.S.C. 4201-4203, 4211-4213, 4221-4225, 4241-4245, and 1538), the Asian Elephant Conservation Act of 1997 (Public Law 105-96; 16 U.S.C. 4261-4266), the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5301-5306), the Great Ape Conservation Act of 2000 (16 U.S.C. 6301), and the Marine Turtle Conservation Act of 2004 (Public Law 108-266; 16 U.S.C. 6601), \$5,800,000, to remain available until expended.

STATE AND TRIBAL WILDLIFE GRANTS

For wildlife conservation grants to States and to the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and federally recognized Indian tribes under the provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished, \$70,000,000, to be derived from the Land and Water Conservation Fund, and to remain available until expended: *Provided*, That of the amount provided herein, \$6,000,000 is for a competitive grant program for Indian tribes not subject to the remaining provisions of this appropriation: *Provided further*, That the Secretary shall, after deducting said \$6,000,000 and administrative expenses, apportion the amount provided herein in the following manner: (1) to the District of Columbia and to the Commonwealth of Puerto Rico, each a sum equal to not more than one-half of 1 percent thereof; and (2) to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, each a sum equal to not more than one-fourth of 1 percent thereof: *Provided further*, That the Secretary shall apportion the remaining amount in the following manner: (1) one-third of which is based on the ratio to which the land area of such State bears to the total land area of all such States; and

(2) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States: *Provided further*, That the amounts apportioned under this paragraph shall be adjusted equitably so that no State shall be apportioned a sum which is less than 1 percent of the amount available for apportionment under this paragraph for any fiscal year or more than 5 percent of such amount: *Provided further*, That the Federal share of planning grants shall not exceed 75 percent of the total costs of such projects and the Federal share of implementation grants shall not exceed 50 percent of the total costs of such projects: *Provided further*, That the non-Federal share of such projects may not be derived from Federal grant programs: *Provided further*, That no State, territory, or other jurisdiction shall receive a grant unless it has developed, or committed to develop by October 1, 2005, a comprehensive wildlife conservation plan, consistent with criteria established by the Secretary of the Interior, that considers the broad range of the State, territory, or other jurisdiction's wildlife and associated habitats, with appropriate priority placed on those species with the greatest conservation need and taking into consideration the relative level of funding available for the conservation of those species: *Provided further*, That any amount apportioned in 2005 to any State, territory, or other jurisdiction that remains unobligated as of September 30, 2006, shall be reapportioned, together with funds appropriated in 2007, in the manner provided herein: *Provided further*, That balances from amounts previously appropriated under the heading "State Wildlife Grants" shall be transferred to and merged with this appropriation and shall remain available until expended.

Deadline.

ADMINISTRATIVE PROVISIONS

Appropriations and funds available to the United States Fish and Wildlife Service shall be available for purchase of not to exceed 179 passenger motor vehicles, of which 161 are for replacement only (including 44 for police-type use); repair of damage to public roads within and adjacent to reservation areas caused by operations of the Service; options for the purchase of land at not to exceed \$1 for each option; facilities incident to such public recreational uses on conservation areas as are consistent with their primary purpose; and the maintenance and improvement of aquaria, buildings, and other facilities under the jurisdiction of the Service and to which the United States has title, and which are used pursuant to law in connection with management, and investigation of fish and wildlife resources: *Provided*, That notwithstanding 44 U.S.C. 501, the Service may, under cooperative cost sharing and partnership arrangements authorized by law, procure printing services from cooperators in connection with jointly produced publications for which the cooperators share at least one-half the cost of printing either in cash or services and the Service determines the cooperator is capable of meeting accepted quality standards: *Provided further*, That, notwithstanding any other provision of law, the Service may use up to \$2,000,000 from funds provided for contracts for employment-related legal services: *Provided further*, That the Service may accept donated aircraft as replacements for existing aircraft: *Provided further*, That, notwithstanding any other provision of law, the Secretary of the Interior may not spend any of the funds appropriated in this Act for the purchase of lands or interests in lands to be used in the establishment of any new

Contracts.

unit of the National Wildlife Refuge System unless the purchase is approved in advance by the House and Senate Committees on Appropriations in compliance with the reprogramming procedures contained in House Report 108-330.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

For expenses necessary for the management, operation, and maintenance of areas and facilities administered by the National Park Service (including special road maintenance service to trucking permittees on a reimbursable basis), and for the general administration of the National Park Service, \$1,707,282,000, of which \$10,708,000 is for planning and interagency coordination in support of Everglades restoration and shall remain available until expended; of which \$96,440,000 is for maintenance, repair or rehabilitation projects for constructed assets, operation of the National Park Service automated facility management software system, and comprehensive facility condition assessments; and of which \$2,000,000 is for the Youth Conservation Corps for high priority projects: *Provided*, That the only funds in this account which may be made available to support United States Park Police are those funds approved for emergency law and order incidents pursuant to established National Park Service procedures, those funds needed to maintain and repair United States Park Police administrative facilities, and those funds necessary to reimburse the United States Park Police account for the unbudgeted overtime and travel costs associated with special events for an amount not to exceed \$10,000 per event subject to the review and concurrence of the Washington headquarters office.

UNITED STATES PARK POLICE

For expenses necessary to carry out the programs of the United States Park Police, \$81,204,000.

NATIONAL RECREATION AND PRESERVATION

For expenses necessary to carry out recreation programs, natural programs, cultural programs, heritage partnership programs, environmental compliance and review, international park affairs, statutory or contractual aid for other activities, and grant administration, not otherwise provided for, \$61,832,000: *Provided*, That \$700,000 from the Statutory and Contractual Aid Account shall be provided to the City of Tacoma, Washington for the purpose of conducting a feasibility study for the Train to the Mountain project: *Provided further*, That none of the funds in this Act for the River, Trails and Conservation Assistance program may be used for cash agreements, or for cooperative agreements that are inconsistent with the program's final strategic plan: *Provided further*, That notwithstanding section 8(b) of Public Law 102-543 (16 U.S.C. 410yy-8(b)), amounts made available under this heading to the Keweenaw National Historical Park shall be matched on not less than a 1-to-1 basis by non-Federal funds.

HISTORIC PRESERVATION FUND

For expenses necessary in carrying out the Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333), \$72,750,000, to be derived from the Historic Preservation Fund, to remain available until September 30, 2006, of which \$30,000,000 shall be for Save America's Treasures for preservation of nationally significant sites, structures, and artifacts: *Provided*, That any individual Save America's Treasures grant shall be matched by non-Federal funds: *Provided further*, That individual projects shall only be eligible for one grant: *Provided further*, That all projects to be funded shall be approved by the Secretary of the Interior in consultation with the House and Senate Committees on Appropriations and the President's Committee on the Arts and Humanities prior to the commitment of Save America's Treasures grant funds: *Provided further*, That Save America's Treasures funds allocated for Federal projects, following approval, shall be available by transfer to appropriate accounts of individual agencies: *Provided further*, That hereinafter and notwithstanding 20 U.S.C. 951 et seq. the National Endowment for the Arts may award Save America's Treasures grants based upon the recommendations of the Save America's Treasures grant selection panel convened by the President's Committee on the Arts and the Humanities and the National Park Service.

CONSTRUCTION

For construction, improvements, repair or replacement of physical facilities, including the modifications authorized by section 104 of the Everglades National Park Protection and Expansion Act of 1989, \$307,362,000, to remain available until expended, of which \$500,000 for the L.Q.C. Lamar House National Historic Landmark shall be derived from the Historic Preservation Fund pursuant to 16 U.S.C. 470a: *Provided*, That none of the funds available to the National Park Service may be used to plan, design, or construct any partnership project with a total value in excess of \$5,000,000, without advance approval of the House and Senate Committees on Appropriations: *Provided further*, That, notwithstanding any other provision of law, the National Park Service may not accept donations or services associated with the planning, design, or construction of such new facilities without advance approval of the House and Senate Committees on Appropriations: *Provided further*, That these restrictions do not apply to the Flight 93 Memorial: *Provided further*, That funds provided under this heading for implementation of modified water deliveries to Everglades National Park shall be expended consistent with the requirements of the fifth proviso under this heading in Public Law 108–108: *Provided further*, That none of the funds provided in this or any other Act may be used for planning, design, or construction of any underground security screening or visitor contact facility at the Washington Monument until such facility has been approved in writing by the House and Senate Committees on Appropriations: *Provided further*, That the National Park Service may use funds provided herein to construct a parking lot and connecting trail on leased, non-Federal land in order to accommodate visitor use of the Old Rag Mountain Trail at Shenandoah National Park, and may for the duration of such lease use any funds available

to the Service for the maintenance of the parking lot and connecting trail.

LAND AND WATER CONSERVATION FUND

(RESCISSION)

16 USC 460l-10a
note.

The contract authority provided for fiscal year 2005 by 16 U.S.C. 460l-10a are rescinded.

LAND ACQUISITION AND STATE ASSISTANCE

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary to carry out the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460l-4 through 11), including administrative expenses, and for acquisition of lands or waters, or interest therein, in accordance with the statutory authority applicable to the National Park Service, \$148,411,000, to be derived from the Land and Water Conservation Fund and to remain available until expended, of which \$92,500,000 is for the State assistance program including \$1,500,000 to administer this program: *Provided*, That none of the funds provided for the State assistance program may be used to establish a contingency fund: *Provided further*, That in lieu of State assistance program indirect costs (as described in OMB Circular A-87), not to exceed 5 percent of apportionments under the State assistance program may be used by States, the District of Columbia, and insular areas to support program administrative costs: *Provided further*, That \$250,000 of the amount provided under this heading for civil war battlefield protection shall be available for transfer to the “National Recreation and Preservation” account.

ADMINISTRATIVE PROVISIONS

Expiration date.
Reports.

Appropriations for the National Park Service shall be available for the purchase of not to exceed 249 passenger motor vehicles, of which 202 shall be for replacement only, including not to exceed 193 for police-type use, 10 buses, and 8 ambulances: *Provided*, That none of the funds appropriated to the National Park Service may be used to process any grant or contract documents which do not include the text of 18 U.S.C. 1913: *Provided further*, That none of the funds appropriated to the National Park Service may be used to implement an agreement for the redevelopment of the southern end of Ellis Island until such agreement has been submitted to the Congress and shall not be implemented prior to the expiration of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) from the receipt by the Speaker of the House of Representatives and the President of the Senate of a full and comprehensive report on the development of the southern end of Ellis Island, including the facts and circumstances relied upon in support of the proposed project: *Provided further*, That appropriations available to the National Park Service may be used to maintain the following areas in Washington, District of Columbia: Jackson Place, Madison Place, and Pennsylvania Avenue between 15th and 17th Streets, Northwest.

None of the funds in this Act may be spent by the National Park Service for activities taken in direct response to the United Nations Biodiversity Convention.

The National Park Service may distribute to operating units based on the safety record of each unit the costs of programs designed to improve workplace and employee safety, and to encourage employees receiving workers' compensation benefits pursuant to chapter 81 of title 5, United States Code, to return to appropriate positions for which they are medically able.

Notwithstanding any other provision of law, in fiscal year 2005, with respect to the administration of the National Park Service park pass program by the National Park Foundation, the Secretary may pay to the Foundation administrative funds expected to be received in that fiscal year before the revenues are collected, so long as total payments in the administrative account do not exceed total revenue collected and deposited in that account by the end of the fiscal year.

If the Secretary of the Interior considers the decision of any value determination proceeding conducted under a National Park Service concession contract issued prior to November 13, 1998, to misinterpret or misapply relevant contractual requirements or their underlying legal authority, the Secretary may seek, within 180 days of any such decision, the de novo review of the value determination by the United States Court of Federal Claims, and that court may make an order affirming, vacating, modifying or correcting the determination.

Deadline.

In addition to other uses set forth in section 407(d) of Public Law 105–391, franchise fees credited to a sub-account shall be available for expenditure by the Secretary, without further appropriation, for use at any unit within the National Park System to extinguish or reduce liability for Possessory Interest or leasehold surrender interest. Such funds may only be used for this purpose to the extent that the benefiting unit anticipated franchise fee receipts over the term of the contract at that unit exceed the amount of funds used to extinguish or reduce liability. Franchise fees at the benefiting unit shall be credited to the sub-account of the originating unit over a period not to exceed the term of a single contract at the benefiting unit, in the amount of funds so expended to extinguish or reduce liability.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For expenses necessary for the United States Geological Survey to perform surveys, investigations, and research covering topography, geology, hydrology, biology, and the mineral and water resources of the United States, its territories and possessions, and other areas as authorized by 43 U.S.C. 31, 1332, and 1340; classify lands as to their mineral and water resources; give engineering supervision to power permittees and Federal Energy Regulatory Commission licensees; administer the minerals exploration program (30 U.S.C. 641); and publish and disseminate data relative to the foregoing activities; and to conduct inquiries into the economic conditions affecting mining and materials processing industries (30 U.S.C. 3, 21a, and 1603; 50 U.S.C. 98g(1)) and related purposes as authorized by law and to publish and disseminate data; \$948,921,000, of which \$63,262,000 shall be available only for

cooperation with States or municipalities for water resources investigations; and of which \$7,901,000 shall remain available until expended for satellite operations; and of which \$21,971,000 shall be available until September 30, 2006, for the operation and maintenance of facilities and deferred maintenance; and of which \$1,600,000 shall be available until expended for deferred maintenance and capital improvement projects that exceed \$100,000 in cost; and of which \$174,219,000 shall be available until September 30, 2006, for the biological research activity and the operation of the Cooperative Research Units: *Provided*, That none of the funds provided for the biological research activity shall be used to conduct new surveys on private property, unless specifically authorized in writing by the property owner: *Provided further*, That no part of this appropriation shall be used to pay more than one-half the cost of topographic mapping or water resources data collection and investigations carried on in cooperation with States and municipalities.

43 USC 50.

ADMINISTRATIVE PROVISIONS

Contracts.

The amount appropriated for the United States Geological Survey shall be available for the purchase and replacement of passenger motor vehicles; reimbursement to the General Services Administration for security guard services; contracting for the furnishing of topographic maps and for the making of geophysical or other specialized surveys when it is administratively determined that such procedures are in the public interest; construction and maintenance of necessary buildings and appurtenant facilities; acquisition of lands for gauging stations and observation wells; expenses of the United States National Committee on Geology; and payment of compensation and expenses of persons on the rolls of the Survey duly appointed to represent the United States in the negotiation and administration of interstate compacts: *Provided*, That activities funded by appropriations herein made may be accomplished through the use of contracts, grants, or cooperative agreements as defined in 31 U.S.C. 6302 et seq.: *Provided further*, That the United States Geological Survey may enter into contracts or cooperative agreements directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5, for the temporary or intermittent services of students or recent graduates, who shall be considered employees for the purpose of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but shall not be considered to be Federal employees for any other purposes.

MINERALS MANAGEMENT SERVICE

ROYALTY AND OFFSHORE MINERALS MANAGEMENT

For expenses necessary for minerals leasing and environmental studies, regulation of industry operations, and collection of royalties, as authorized by law; for enforcing laws and regulations applicable to oil, gas, and other minerals leases, permits, licenses and operating contracts; and for matching grants or cooperative agreements; including the purchase of not to exceed eight passenger motor vehicles for replacement only, \$169,175,000, of which \$76,106,000

shall be available for royalty management activities; and an amount not to exceed \$103,730,000, to be credited to this appropriation and to remain available until expended, from additions to receipts resulting from increases to rates in effect on August 5, 1993, from rate increases to fee collections for Outer Continental Shelf administrative activities performed by the Minerals Management Service (MMS) over and above the rates in effect on September 30, 1993, and from additional fees for Outer Continental Shelf administrative activities established after September 30, 1993: *Provided*, That to the extent \$103,730,000 in additions to receipts are not realized from the sources of receipts stated above, the amount needed to reach \$103,730,000 shall be credited to this appropriation from receipts resulting from rental rates for Outer Continental Shelf leases in effect before August 5, 1993: *Provided further*, That \$3,000,000 for computer acquisitions shall remain available until September 30, 2006: *Provided further*, That funds appropriated under this Act shall be available for the payment of interest in accordance with 30 U.S.C. 1721(b) and (d): *Provided further*, That not to exceed \$3,000 shall be available for reasonable expenses related to promoting volunteer beach and marine cleanup activities: *Provided further*, That notwithstanding any other provision of law, \$15,000 under this heading shall be available for refunds of overpayments in connection with certain Indian leases in which the Director of MMS concurred with the claimed refund due, to pay amounts owed to Indian allottees or tribes, or to correct prior unrecoverable erroneous payments: *Provided further*, That MMS may under the royalty-in-kind program, or under its authority to transfer oil to the Strategic Petroleum Reserve, use a portion of the revenues from royalty-in-kind sales, without regard to fiscal year limitation, to pay for transportation to wholesale market centers or upstream pooling points, to process or otherwise dispose of royalty production taken in kind, and to recover MMS transportation costs, salaries, and other administrative costs directly related to the royalty-in-kind program: *Provided further*, That MMS shall analyze and document the expected return in advance of any royalty-in-kind sales to assure to the maximum extent practicable that royalty income under the pilot program is equal to or greater than royalty income recognized under a comparable royalty-in-value program: *Provided further*, That in fiscal year 2005 and thereafter, notwithstanding 30 U.S.C. 191(a) and 43 U.S.C. 1338, the Secretary shall pay amounts owed to States under the provision of 30 U.S.C. 1721(b) from amounts received as current receipts from bonuses, royalties, interest collected from lessees and designees, and rentals of the public lands and the outer continental shelf under provisions of the Mineral Leasing Act (30 U.S.C. 181 et seq.), and the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), which are not payable to a State or the Reclamation Fund.

30 USC 1721
note.

OIL SPILL RESEARCH

For necessary expenses to carry out title I, section 1016, title IV, sections 4202 and 4303, title VII, and title VIII, section 8201 of the Oil Pollution Act of 1990, \$7,105,000, which shall be derived from the Oil Spill Liability Trust Fund, to remain available until expended.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

REGULATION AND TECHNOLOGY

30 USC 1211
note.

For necessary expenses to carry out the provisions of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, as amended, including the purchase of not to exceed 10 passenger motor vehicles, for replacement only; \$109,805,000: *Provided*, That the Secretary of the Interior, pursuant to regulations, may use directly or through grants to States, moneys collected in fiscal year 2005 for civil penalties assessed under section 518 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268), to reclaim lands adversely affected by coal mining practices after August 3, 1977, to remain available until expended: *Provided further*, That appropriations for the Office of Surface Mining Reclamation and Enforcement may provide for the travel and per diem expenses of State and tribal personnel attending Office of Surface Mining Reclamation and Enforcement sponsored training.

ABANDONED MINE RECLAMATION FUND

For necessary expenses to carry out title IV of the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, as amended, including the purchase of not more than 10 passenger motor vehicles for replacement only, \$190,863,000, to be derived from receipts of the Abandoned Mine Reclamation Fund and to remain available until expended; of which up to \$10,000,000, to be derived from the Federal Expenses Share of the Fund, shall be for supplemental grants to States for the reclamation of abandoned sites with acid mine rock drainage from coal mines, and for associated activities, through the Appalachian Clean Streams Initiative: *Provided*, That grants to minimum program States will be \$1,500,000 per State in fiscal year 2005: *Provided further*, That pursuant to Public Law 97-365, the Department of the Interior is authorized to use up to 20 percent from the recovery of the delinquent debt owed to the United States Government to pay for contracts to collect these debts: *Provided further*, That funds made available under title IV of Public Law 95-87 may be used for any required non-Federal share of the cost of projects funded by the Federal Government for the purpose of environmental restoration related to treatment or abatement of acid mine drainage from abandoned mines: *Provided further*, That such projects must be consistent with the purposes and priorities of the Surface Mining Control and Reclamation Act: *Provided further*, That the State of Maryland may set aside the greater of \$1,000,000 or 10 percent of the total of the grants made available to the State under title IV of the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1231 et seq.), if the amount set aside is deposited in an acid mine drainage abatement and treatment fund established under a State law, pursuant to which law the amount (together with all interest earned on the amount) is expended by the State to undertake acid mine drainage abatement and treatment projects, except that before any amounts greater than 10 percent of its title IV grants are deposited in an acid

mine drainage abatement and treatment fund, the State of Maryland must first complete all Surface Mining Control and Reclamation Act priority one projects: *Provided further*, That amounts provided under this heading may be used for the travel and per diem expenses of State and tribal personnel attending Office of Surface Mining Reclamation and Enforcement sponsored training.

ADMINISTRATIVE PROVISION

With funds available for the Technical Innovation and Professional Services program in this Act, the Secretary may transfer title for computer hardware, software and other technical equipment to State and Tribal regulatory and reclamation programs.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For expenses necessary for the operation of Indian programs, as authorized by law, including the Snyder Act of November 2, 1921 (25 U.S.C. 13), the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 et seq.), as amended, the Education Amendments of 1978 (25 U.S.C. 2001–2019), and the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.), as amended, \$1,955,047,000, to remain available until September 30, 2006 except as otherwise provided herein, of which not to exceed \$87,638,000 shall be for welfare assistance payments and notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, not to exceed \$136,314,000 shall be available for payments to tribes and tribal organizations for contract support costs associated with ongoing contracts, grants, compacts, or annual funding agreements entered into with the Bureau prior to or during fiscal year 2005, as authorized by such Act, except that tribes and tribal organizations may use their tribal priority allocations for unmet indirect costs of ongoing contracts, grants, or compacts, or annual funding agreements and for unmet welfare assistance costs; and of which not to exceed \$456,057,000 for school operations costs of Bureau-funded schools and other education programs shall become available on July 1, 2005, and shall remain available until September 30, 2006; and of which not to exceed \$61,801,000 shall remain available until expended for housing improvement, road maintenance, attorney fees, litigation support, the Indian Self-Determination Fund, land records improvement, and the Navajo-Hopi Settlement Program: *Provided*, That notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, and 25 U.S.C. 2008, not to exceed \$45,348,000 within and only from such amounts made available for school operations shall be available to tribes and tribal organizations for administrative cost grants associated with ongoing grants entered into with the Bureau prior to or during fiscal year 2004 for the operation of Bureau-funded schools, and up to \$1,000,000 within and only from such amounts made available for school operations shall be available for the transitional costs of initial administrative cost grants to tribes and tribal organizations that enter into grants for the operation on or after July 1, 2004, of Bureau-operated schools: *Provided further*, That any forestry funds allocated to a tribe which remain unobligated as of September

30, 2006, may be transferred during fiscal year 2007 to an Indian forest land assistance account established for the benefit of such tribe within the tribe's trust fund account: *Provided further*, That any such unobligated balances not so transferred shall expire on September 30, 2007.

CONSTRUCTION

For construction, repair, improvement, and maintenance of irrigation and power systems, buildings, utilities, and other facilities, including architectural and engineering services by contract; acquisition of lands, and interests in lands; and preparation of lands for farming, and for construction of the Navajo Indian Irrigation Project pursuant to Public Law 87-483, \$323,626,000, to remain available until expended: *Provided*, That such amounts as may be available for the construction of the Navajo Indian Irrigation Project may be transferred to the Bureau of Reclamation: *Provided further*, That not to exceed 6 percent of contract authority available to the Bureau of Indian Affairs from the Federal Highway Trust Fund may be used to cover the road program management costs of the Bureau: *Provided further*, That any funds provided for the Safety of Dams program pursuant to 25 U.S.C. 13 shall be made available on a nonreimbursable basis: *Provided further*, That for fiscal year 2005, in implementing new construction or facilities improvement and repair project grants in excess of \$100,000 that are provided to tribally controlled grant schools under Public Law 100-297, as amended, the Secretary of the Interior shall use the Administrative and Audit Requirements and Cost Principles for Assistance Programs contained in 43 CFR part 12 as the regulatory requirements: *Provided further*, That such grants shall not be subject to section 12.61 of 43 CFR; the Secretary and the grantee shall negotiate and determine a schedule of payments for the work to be performed: *Provided further*, That in considering applications, the Secretary shall consider whether the Indian tribe or tribal organization would be deficient in assuring that the construction projects conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required by 25 U.S.C. 2005(b), with respect to organizational and financial management capabilities: *Provided further*, That if the Secretary declines an application, the Secretary shall follow the requirements contained in 25 U.S.C. 2504(f): *Provided further*, That any disputes between the Secretary and any grantee concerning a grant shall be subject to the disputes provision in 25 U.S.C. 2507(e): *Provided further*, That in order to ensure timely completion of replacement school construction projects, the Secretary may assume control of a project and all funds related to the project, if, within eighteen months of the date of enactment of this Act, any tribe or tribal organization receiving funds appropriated in this Act or in any prior Act, has not completed the planning and design phase of the project and commenced construction of the replacement school: *Provided further*, That, of the funds provided for the tribal school demonstration program, notwithstanding the provisions of paragraph (b)(1) of section 122 of division F of Public Law 108-7, as amended by section 136 of Public Law 108-108, \$4,500,000 is for the Eastern Band of Cherokee education campus at the Ravensford tract, \$4,000,000 is for the Sac and Fox Meskwaki Settlement school, and \$4,000,000 is for the Twin Buttes elementary school on the Fort Berthold Reservation: *Provided further*, That

this Appropriation may be reimbursed from the Office of the Special Trustee for American Indians Appropriation for the appropriate share of construction costs for space expansion needed in agency offices to meet trust reform implementation.

INDIAN LAND AND WATER CLAIM SETTLEMENTS AND MISCELLANEOUS
PAYMENTS TO INDIANS

For miscellaneous payments to Indian tribes and individuals and for necessary administrative expenses, \$44,771,000, to remain available until expended, for implementation of Indian land and water claim settlements pursuant to Public Laws 99-264, 100-580, 101-618, 106-554, 107-331, and 108-34, and for implementation of other land and water rights settlements, of which \$10,032,000 shall be available for payment to the Quinault Indian Nation pursuant to the terms of the North Boundary Settlement Agreement dated July 14, 2000, providing for the acquisition of perpetual conservation easements from the Nation.

INDIAN GUARANTEED LOAN PROGRAM ACCOUNT

For the cost of guaranteed and insured loans, \$6,421,000, of which \$695,000 is for administrative expenses, as authorized by the Indian Financing Act of 1974, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$84,699,000.

ADMINISTRATIVE PROVISIONS

The Bureau of Indian Affairs may carry out the operation of Indian programs by direct expenditure, contracts, cooperative agreements, compacts and grants, either directly or in cooperation with States and other organizations.

Notwithstanding 25 U.S.C. 15, the Bureau of Indian Affairs may contract for services in support of the management, operation, and maintenance of the Power Division of the San Carlos Irrigation Project. Contracts.

Appropriations for the Bureau of Indian Affairs (except the revolving fund for loans, the Indian loan guarantee and insurance fund, and the Indian Guaranteed Loan Program account) shall be available for expenses of exhibits, and purchase of not to exceed 229 passenger motor vehicles, of which not to exceed 187 shall be for replacement only.

Notwithstanding any other provision of law, no funds available to the Bureau of Indian Affairs for central office operations or pooled overhead general administration (except facilities operations and maintenance) shall be available for tribal contracts, grants, compacts, or cooperative agreements with the Bureau of Indian Affairs under the provisions of the Indian Self-Determination Act or the Tribal Self-Governance Act of 1994 (Public Law 103-413).

In the event any tribe returns appropriations made available by this Act to the Bureau of Indian Affairs for distribution to other tribes, this action shall not diminish the Federal Government's trust responsibility to that tribe, or the government-to-government

Alaska.

relationship between the United States and that tribe, or that tribe's ability to access future appropriations.

Notwithstanding any other provision of law, no funds available to the Bureau, other than the amounts provided herein for assistance to public schools under 25 U.S.C. 452 et seq., shall be available to support the operation of any elementary or secondary school in the State of Alaska.

Appropriations made available in this or any other Act for schools funded by the Bureau shall be available only to the schools in the Bureau school system as of September 1, 1996. No funds available to the Bureau shall be used to support expanded grades for any school or dormitory beyond the grade structure in place or approved by the Secretary of the Interior at each school in the Bureau school system as of October 1, 1995. Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school (as that term is defined in section 1146 of the Education Amendments of 1978 (25 U.S.C. 2026)), except that a charter school that is in existence on the date of the enactment of this Act and that has operated at a Bureau-funded school before September 1, 1999, may continue to operate during that period, but only if the charter school pays to the Bureau a pro rata share of funds to reimburse the Bureau for the use of the real and personal property (including buses and vans), the funds of the charter school are kept separate and apart from Bureau funds, and the Bureau does not assume any obligation for charter school programs of the State in which the school is located if the charter school loses such funding. Employees of Bureau-funded schools sharing a campus with a charter school and performing functions related to the charter school's operation and employees of a charter school shall not be treated as Federal employees for purposes of chapter 171 of title 28, United States Code.

Notwithstanding any other provision of law, including section 113 of title I of appendix C of Public Law 106-113, if a tribe or tribal organization in fiscal year 2003 or 2004 received indirect and administrative costs pursuant to a distribution formula based on section 5(f) of Public Law 101-301, the Secretary shall continue to distribute indirect and administrative cost funds to such tribe or tribal organization using the section 5(f) distribution formula.

DEPARTMENTAL OFFICES

INSULAR AFFAIRS

ASSISTANCE TO TERRITORIES

For expenses necessary for assistance to territories under the jurisdiction of the Department of the Interior, \$76,255,000, of which: (1) \$69,682,000 shall be available until expended for technical assistance, including maintenance assistance, disaster assistance, insular management controls, coral reef initiative activities, and brown tree snake control and research; grants to the judiciary in American Samoa for compensation and expenses, as authorized by law (48 U.S.C. 1661(c)); grants to the Government of American Samoa, in addition to current local revenues, for construction and support of governmental functions; grants to the Government of the Virgin Islands as authorized by law; grants to the Government of Guam, as authorized by law; and grants to the Government

of the Northern Mariana Islands as authorized by law (Public Law 94–241; 90 Stat. 272); and (2) \$6,563,000 shall be available for salaries and expenses of the Office of Insular Affairs: *Provided*, That all financial transactions of the territorial and local governments herein provided for, including such transactions of all agencies or instrumentalities established or used by such governments, may be audited by the Government Accountability Office, at its discretion, in accordance with chapter 35 of title 31, United States Code: *Provided further*, That Northern Mariana Islands Covenant grant funding shall be provided according to those terms of the Agreement of the Special Representatives on Future United States Financial Assistance for the Northern Mariana Islands approved by Public Law 104–134: *Provided further*, That of the amounts provided for technical assistance, sufficient funds shall be made available for a grant to the Pacific Basin Development Council: *Provided further*, That of the amounts provided for technical assistance, sufficient funding shall be made available for a grant to the Close Up Foundation: *Provided further*, That the funds for the program of operations and maintenance improvement are appropriated to institutionalize routine operations and maintenance improvement of capital infrastructure with territorial participation and cost sharing to be determined by the Secretary based on the grantee’s commitment to timely maintenance of its capital assets: *Provided further*, That any appropriation for disaster assistance under this heading in this Act or previous appropriations Acts may be used as non-Federal matching funds for the purpose of hazard mitigation grants provided pursuant to section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c).

48 USC 1469b.

COMPACT OF FREE ASSOCIATION

For grants and necessary expenses, \$5,499,000, as provided for in sections 221(a)(2), 221(b), and 233 of the Compact of Free Association for the Republic of Palau as authorized by Public Law 99–658; Public Law 108–188; and section 221(a)(2) of the Compacts of Free Association and their related agreements between the Government of the United States and the Government of the Republic of the Marshall Islands, and the Government of the United States of the Federated States of Micronesia, respectively, as amended.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for management of the Department of the Interior, \$90,855,000, of which not to exceed \$8,500 may be for official reception and representation expenses, of which up to \$1,000,000 shall be available for workers compensation payments and unemployment compensation payments associated with the orderly closure of the United States Bureau of Mines, and of which \$14,250,000 shall remain available until expended for a departmental financial and business management system: *Provided*, That of the funds provided for a departmental financial and business management system, \$13,500,000 shall be derived by transfer from

Deadline.

unobligated balances in the “Central Hazardous Materials Fund”: *Provided further*, That none of the funds in this or previous appropriations Acts may be used to establish any additional reserves in the Working Capital Fund account other than the two authorized reserves without prior approval of the House and Senate Committees on Appropriations: *Provided further*, That amounts otherwise appropriated by this Act for motor vehicle lease, purchase or service costs at the Department of the Interior are reduced by \$3,000,000 and, not later than 30 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a listing of the amounts by account of the reductions made pursuant to this proviso.

PAYMENTS IN LIEU OF TAXES

For expenses necessary to implement the Act of October 20, 1976, as amended (31 U.S.C. 6901–6907), \$230,000,000, of which not to exceed \$400,000 shall be available for administrative expenses: *Provided*, That no payment shall be made to otherwise eligible units of local government if the computed amount of the payment is less than \$100.

OFFICE OF THE SOLICITOR

SALARIES AND EXPENSES

For necessary expenses of the Office of the Solicitor, \$52,384,000.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General, \$37,800,000.

OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS

FEDERAL TRUST PROGRAMS

For the operation of trust programs for Indians by direct expenditure, contracts, cooperative agreements, compacts, and grants, \$196,267,000, to remain available until expended, of which not to exceed \$58,000,000 shall be available for historical accounting: *Provided*, That funds for trust management improvements and litigation support may, as needed, be transferred to or merged with the Bureau of Indian Affairs, “Operation of Indian Programs” account; the Office of the Solicitor, “Salaries and Expenses” account; and the Departmental Management, “Salaries and Expenses” account: *Provided further*, That funds made available to Tribes and Tribal organizations through contracts or grants obligated during fiscal year 2005, as authorized by the Indian Self-Determination Act of 1975 (25 U.S.C. 450 et seq.), shall remain available until expended by the contractor or grantee: *Provided further*, That, notwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim, including any claim in litigation pending on the date of the enactment of this Act, concerning losses to or mismanagement of trust

funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss: *Provided further*, That, notwithstanding any other provision of law, the Secretary shall not be required to provide a quarterly statement of performance for any Indian trust account that has not had activity for at least 18 months and has a balance of \$1.00 or less: *Provided further*, That the Secretary shall issue an annual account statement and maintain a record of any such accounts and shall permit the balance in each such account to be withdrawn upon the express written request of the account holder: *Provided further*, That, not to exceed \$50,000, is available for the Secretary to make payments to correct administrative errors of either disbursements from or deposits to Individual Indian Money or Tribal accounts after September 30, 2002: *Provided further*, That erroneous payments that are recovered shall be credited to and remain available in this account for this purpose.

25 USC 4011
note.

Records.

INDIAN LAND CONSOLIDATION

For consolidation of fractional interests in Indian lands and expenses associated with redetermining and redistributing escheated interests in allotted lands, and for necessary expenses to carry out the Indian Land Consolidation Act of 1983, as amended, by direct expenditure or cooperative agreement, \$35,000,000, to remain available until expended, and which may be transferred to the Bureau of Indian Affairs and Departmental Management accounts: *Provided*, That funds provided under this heading may be expended pursuant to the authorities contained in the provisos under the heading “Office of Special Trustee for American Indians, Indian Land Consolidation” of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291).

NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION

NATURAL RESOURCE DAMAGE ASSESSMENT FUND

To conduct natural resource damage assessment and restoration activities by the Department of the Interior necessary to carry out the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990 (Public Law 101–380) (33 U.S.C. 2701 et seq.), and Public Law 101–337, as amended (16 U.S.C. 19jj et seq.), \$5,818,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

There is hereby authorized for acquisition from available resources within the Working Capital Fund, 15 aircraft, 10 of which shall be for replacement and which may be obtained by donation, purchase or through available excess surplus property: *Provided*, That existing aircraft being replaced may be sold, with proceeds derived or trade-in value used to offset the purchase price for the replacement aircraft: *Provided further*, That no programs funded with appropriated funds in the “Departmental Management”, “Office of the Solicitor”, and “Office of Inspector General” may

Reports.

be augmented through the Working Capital Fund: *Provided further*, That the annual budget justification for Departmental Management shall describe estimated Working Capital Fund charges to bureaus and offices, including the methodology on which charges are based: *Provided further*, That departures from the Working Capital Fund estimates contained in the Departmental Management budget justification shall be presented to the Committees on Appropriations for approval: *Provided further*, That the Secretary shall provide a semi-annual report to the Committees on Appropriations on reimbursable support agreements between the Office of the Secretary and the National Business Center and the bureaus and offices of the Department, including the amounts billed pursuant to such agreements.

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

SEC. 101. Appropriations made in this title shall be available for expenditure or transfer (within each bureau or office), with the approval of the Secretary, for the emergency reconstruction, replacement, or repair of aircraft, buildings, utilities, or other facilities or equipment damaged or destroyed by fire, flood, storm, or other unavoidable causes: *Provided*, That no funds shall be made available under this authority until funds specifically made available to the Department of the Interior for emergencies shall have been exhausted: *Provided further*, That all funds used pursuant to this section are hereby designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287, and must be replenished by a supplemental appropriation which must be requested as promptly as possible.

SEC. 102. The Secretary may authorize the expenditure or transfer of any no year appropriation in this title, in addition to the amounts included in the budget programs of the several agencies, for the suppression or emergency prevention of wildland fires on or threatening lands under the jurisdiction of the Department of the Interior; for the emergency rehabilitation of burned-over lands under its jurisdiction; for emergency actions related to potential or actual earthquakes, floods, volcanoes, storms, or other unavoidable causes; for contingency planning subsequent to actual oil spills; for response and natural resource damage assessment activities related to actual oil spills; for the prevention, suppression, and control of actual or potential grasshopper and Mormon cricket outbreaks on lands under the jurisdiction of the Secretary, pursuant to the authority in section 1773(b) of Public Law 99-198 (99 Stat. 1658); for emergency reclamation projects under section 410 of Public Law 95-87; and shall transfer, from any no year funds available to the Office of Surface Mining Reclamation and Enforcement, such funds as may be necessary to permit assumption of regulatory authority in the event a primacy State is not carrying out the regulatory provisions of the Surface Mining Act: *Provided*, That appropriations made in this title for wildland fire operations shall be available for the payment of obligations incurred during the preceding fiscal year, and for reimbursement to other Federal agencies for destruction of vehicles, aircraft, or other equipment in connection with their use for wildland fire operations, such reimbursement to be credited to appropriations

currently available at the time of receipt thereof: *Provided further*, That for wildland fire operations, no funds shall be made available under this authority until the Secretary determines that funds appropriated for “wildland fire operations” shall be exhausted within 30 days: *Provided further*, That all funds used pursuant to this section are hereby designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287, and must be replenished by a supplemental appropriation which must be requested as promptly as possible: *Provided further*, That such replenishment funds shall be used to reimburse, on a pro rata basis, accounts from which emergency funds were transferred.

SEC. 103. Appropriations made to the Department of the Interior shall hereafter be available for operation of warehouses, garages, shops, and similar facilities, wherever consolidation of activities will contribute to efficiency or economy, and said appropriations shall be reimbursed for services rendered to any other activity in the same manner as authorized by sections 1535 and 1536 of title 31, United States Code: *Provided*, That reimbursements for costs and supplies, materials, equipment, and for services rendered may be credited to the appropriation current at the time such reimbursements are received. 43 USC 1471c-1.

SEC. 104. Appropriations made to the Department of the Interior in this title shall be available for services as authorized by 5 U.S.C. 3109, when authorized by the Secretary, in total amount not to exceed \$500,000; hire, maintenance, and operation of aircraft; hire of passenger motor vehicles; purchase of reprints; payment for telephone service in private residences in the field, when authorized under regulations approved by the Secretary; and the payment of dues, when authorized by the Secretary, for library membership in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members.

SEC. 105. Appropriations available to the Department of the Interior for salaries and expenses shall hereafter be available for uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902 and D.C. Code 4-204). 43 USC 1471h.

SEC. 106. Annual appropriations made to the Department of the Interior shall hereafter be available for obligation in connection with contracts issued for services or rentals for periods not in excess of 12 months beginning at any time during the fiscal year. 43 USC 1471i.

SEC. 107. No funds provided in this title may be expended by the Department of the Interior for the conduct of offshore preleasing, leasing and related activities placed under restriction in the President's moratorium statement of June 12, 1998, in the areas of northern, central, and southern California; the North Atlantic; Washington and Oregon; and the eastern Gulf of Mexico south of 26 degrees north latitude and east of 86 degrees west longitude.

SEC. 108. No funds provided in this title may be expended by the Department of the Interior to conduct offshore oil and natural gas preleasing, leasing and related activities in the eastern Gulf of Mexico planning area for any lands located outside Sale 181, as identified in the final Outer Continental Shelf 5-Year Oil and Gas Leasing Program, 1997-2002.

SEC. 109. No funds provided in this title may be expended by the Department of the Interior to conduct oil and natural gas preleasing, leasing and related activities in the Mid-Atlantic and South Atlantic planning areas.

SEC. 110. Notwithstanding any other provisions of law, the National Park Service shall not develop or implement a reduced entrance fee program to accommodate non-local travel through a unit. The Secretary may provide for and regulate local non-recreational passage through units of the National Park System, allowing each unit to develop guidelines and permits for such activity appropriate to that unit.

25 USC 450e-3.

SEC. 111. Advance payments made by the Department of the Interior to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) may hereafter be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are—

(1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

SEC. 112. Appropriations made in this Act under the headings Bureau of Indian Affairs and Office of Special Trustee for American Indians and any unobligated balances from prior appropriations Acts made under the same headings shall be available for expenditure or transfer for Indian trust management and reform activities, except that total funding for historical accounting activities shall not exceed amounts specifically designated in this Act for such purpose.

SEC. 113. Notwithstanding any other provision of law, for the purpose of reducing the backlog of Indian probate cases in the Department of the Interior, the hearing requirements of chapter 10 of title 25, United States Code, are deemed satisfied by a proceeding conducted by an Indian probate judge, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing the appointments in the competitive service, for such period of time as the Secretary determines necessary: *Provided*, That the basic pay of an Indian probate judge so appointed may be fixed by the Secretary without regard to the provisions of chapter 51, and subchapter III of chapter 53 of title 5, United States Code, governing the classification and pay of General Schedule employees, except that no such Indian probate judge may be paid at a level which exceeds the maximum rate payable for the highest grade of the General Schedule, including locality pay.

SEC. 114. Notwithstanding any other provision of law, the Secretary of the Interior is authorized to redistribute any Tribal Priority Allocation funds, including tribal base funds, to alleviate tribal funding inequities by transferring funds to address identified,

unmet needs, dual enrollment, overlapping service areas or inaccurate distribution methodologies. No tribe shall receive a reduction in Tribal Priority Allocation funds of more than 10 percent in fiscal year 2005. Under circumstances of dual enrollment, overlapping service areas or inaccurate distribution methodologies, the 10 percent limitation does not apply.

SEC. 115. Funds appropriated for the Bureau of Indian Affairs for postsecondary schools for fiscal year 2005 shall be allocated among the schools proportionate to the unmet need of the schools as determined by the Postsecondary Funding Formula adopted by the Office of Indian Education Programs.

SEC. 116. (a) The Secretary of the Interior shall hereafter take such action as may be necessary to ensure that the lands comprising the Huron Cemetery in Kansas City, Kansas (as described in section 123 of Public Law 106–291) are used only in accordance with this section.

Kansas.
Cemeteries.

(b) The lands of the Huron Cemetery shall be used only: (1) for religious and cultural uses that are compatible with the use of the lands as a cemetery; and (2) as a burial ground.

SEC. 117. Notwithstanding any other provision of law, in conveying the Twin Cities Research Center under the authority provided by Public Law 104–134, as amended by Public Law 104–208, the Secretary may accept and retain land and other forms of reimbursement: *Provided*, That the Secretary may retain and use any such reimbursement until expended and without further appropriation: (1) for the benefit of the National Wildlife Refuge System within the State of Minnesota; and (2) for all activities authorized by Public Law 100–696; 16 U.S.C. 460zz.

SEC. 118. Notwithstanding 31 U.S.C. 3302(b), sums received by the Bureau of Land Management for the sale of seeds or seedlings, may hereafter be credited to the appropriation from which funds were expended to acquire or grow the seeds or seedlings and are available without fiscal year limitation.

43 USC 1474e.

SEC. 119. The Secretary of the Interior may use or contract for the use of helicopters or motor vehicles on the Sheldon and Hart National Wildlife Refuges for the purpose of capturing and transporting horses and burros. The provisions of subsection (a) of the Act of September 8, 1959 (18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.

SEC. 120. (a) LIMITATION ON INCREASES IN CLAIMS MAINTENANCE AND LOCATION FEES.—The fees established in 30 U.S.C. 28f and 28g shall be equal to the fees in effect immediately prior to the rule of July 1, 2004 (69 Fed. Reg. 40,294) until the Department of the Interior has complied with the obligations established in subsections (b) and (c).

(b) ESTABLISHMENT OF PERMIT TRACKING SYSTEM.—The Department of the Interior shall establish a nationwide tracking system to determine and address the length of time from submission of a plan of operations to mine on public lands to final approval of such submission.

(c) REPORT.—Within 1 year of enactment, the Department shall file a detailed report with the House and Senate Committees on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate providing detailed information on the length

of time it takes the Department to approve proposed mining plans of operations and recommending steps to reduce current delays.

SEC. 121. Funds provided in this Act for Federal land acquisition by the National Park Service for Shenandoah Valley Battlefields National Historic District and Ice Age National Scenic Trail may be used for a grant to a State, a local government, or any other land management entity for the acquisition of lands without regard to any restriction on the use of Federal land acquisition funds provided through the Land and Water Conservation Fund Act of 1965 as amended.

SEC. 122. None of the funds made available by this Act may be obligated or expended by the National Park Service to enter into or implement a concession contract which permits or requires the removal of the underground lunchroom at the Carlsbad Caverns National Park.

SEC. 123. None of the funds made available in this Act may be used: (1) to demolish the bridge between Jersey City, New Jersey, and Ellis Island; or (2) to prevent pedestrian use of such bridge, when such pedestrian use is consistent with generally accepted safety standards.

SEC. 124. None of the funds in this or any other Act can be used to compensate the Special Master and the Special Master-Monitor, and all variations thereto, appointed by the United States District Court for the District of Columbia in the Cobell v. Norton litigation at an annual rate that exceeds 200 percent of the highest Senior Executive Service rate of pay for the Washington-Baltimore locality pay area.

SEC. 125. The Secretary of the Interior may use discretionary funds to pay private attorneys fees and costs for employees and former employees of the Department of the Interior reasonably incurred in connection with Cobell v. Norton to the extent that such fees and costs are not paid by the Department of Justice or by private insurance. In no case shall the Secretary make payments under this section that would result in payment of hourly fees in excess of the highest hourly rate approved by the District Court for the District of Columbia for counsel in Cobell v. Norton.

SEC. 126. The United States Fish and Wildlife Service shall, in carrying out its responsibilities to protect threatened and endangered species of salmon, implement a system of mass marking of salmonid stocks, intended for harvest, that are released from Federally operated or Federally financed hatcheries including but not limited to fish releases of coho, chinook, and steelhead species. Marked fish must have a visible mark that can be readily identified by commercial and recreational fishers.

SEC. 127. Such sums as may be necessary from “Departmental Management, Salaries and Expenses”, may be transferred to “United States Fish and Wildlife Service, Resource Management” for operational needs at the Midway Atoll National Wildlife Refuge airport.

SEC. 128. (a) IN GENERAL.—Nothing in section 134 of the Department of the Interior and Related Agencies Appropriations Act, 2002 (115 Stat. 443) affects the decision of the United States Court of Appeals for the 10th Circuit in *Sac and Fox Nation v. Norton*, 240 F.3d 1250 (2001).

(b) USE OF CERTAIN INDIAN LAND.—Nothing in this section permits the conduct of gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) on land described in section 123

of the Department of the Interior and Related Agencies Appropriations Act, 2001 (114 Stat. 944), or land that is contiguous to that land, regardless of whether the land or contiguous land has been taken into trust by the Secretary of the Interior.

SEC. 129. No funds appropriated for the Department of the Interior by this Act or any other Act shall be used to study or implement any plan to drain Lake Powell or to reduce the water level of the lake below the range of water levels required for the operation of the Glen Canyon Dam.

SEC. 130. Notwithstanding the limitation in subparagraph (2)(B) of section 18(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)), the total amount of all fees imposed by the National Indian Gaming Commission for fiscal year 2006 shall not exceed \$12,000,000.

SEC. 131. Notwithstanding any implementation of the Department of the Interior's trust reorganization or reengineering plans, or the implementation of the "To Be" Model, funds appropriated for fiscal year 2005 shall be available to the tribes within the California Tribal Trust Reform Consortium and to the Salt River Pima-Maricopa Indian Community, the Confederated Salish and Kootenai Tribes of the Flathead Reservation and the Chippewa Cree Tribe of the Rocky Boys Reservation through the same methodology as funds were distributed in fiscal year 2003. This Demonstration Project shall continue to operate separate and apart from the Department of the Interior's trust reform and reorganization and the Department shall not impose its trust management infrastructure upon or alter the existing trust resource management systems of the above referenced tribes having a self-governance compact and operating in accordance with the Tribal Self-Governance Program set forth in 25 U.S.C. 458aa–458hh: *Provided*, That the California Trust Reform Consortium and any other participating tribe agree to carry out their responsibilities under the same written and implemented fiduciary standards as those being carried by the Secretary of the Interior: *Provided further*, That they demonstrate to the satisfaction of the Secretary that they have the capability to do so: *Provided further*, That the Department shall provide funds to the tribes in an amount equal to that required by 25 U.S.C. 458cc(g)(3), including funds specifically or functionally related to the provision of trust services to the tribes or their members.

SEC. 132. Notwithstanding any provision of law, including 42 U.S.C. 4321 et. seq., nonrenewable grazing permits authorized in the Jarbidge Field Office, Bureau of Land Management within the past 8 years, shall be renewed. The Animal Unit Months contained in the most recently expired nonrenewable grazing permit, authorized between March 1, 1997, and February 28, 2003, shall continue in effect under the renewed permit. Nothing in this section shall be deemed to extend the nonrenewable permits beyond the standard 1-year term.

SEC. 133. Pursuant to section 10101f(d)(3) of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f(d)(3)), the following claims shall be given notice of defect and the opportunity to cure: AKFF061472, AKFF085155–AKFF085156, AKFF061632–AKFF061633, AKFF061636–AKFF061637, and AKFF084718.

SEC. 134. Section 702(b)(2) of Public Law 107–282 (116 Stat. 2013) is amended by striking "that if the land" and all that follows through "conveyed by the Foundation." and inserting the following:

Notices.
Mining.
Claims.

“that provides that (except in a case in which the proceeds of a lease are provided to the Foundation to carry out the purposes for which the Foundation was established), if the land described in paragraph (3) is sold, leased, or otherwise conveyed by the Foundation—”.

SEC. 135. AMENDMENT OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977. (a) Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking “September 30, 2004” and inserting “June 30, 2005”.

Ante, p. 1142.

(b) Section 125 of Public Law 108-309 is hereby repealed.

SEC. 136. Notwithstanding any other provision of law, the Secretary of the Interior is authorized to acquire lands, waters, or interests therein including the use of all or part of any pier, dock, or landing within the State of New York and the State of New Jersey, for the purpose of operating and maintaining facilities in the support of transportation and accommodation of visitors to Ellis, Governors, and Liberty Islands, and of other program and administrative activities, by donation or with appropriated funds, including franchise fees (and other monetary consideration), or by exchange; and the Secretary is authorized to negotiate and enter into leases, subleases, concession contracts or other agreements for the use of such facilities on such terms and conditions as the Secretary may determine reasonable.

South Carolina.
16 USC 668dd
note.

SEC. 137. ERNEST F. HOLLINGS ACE BASIN NATIONAL WILDLIFE REFUGE. (a) REDESIGNATION.—The ACE Basin National Wildlife Refuge in the State of South Carolina shall be known and designated as the “Ernest F. Hollings ACE Basin National Wildlife Refuge”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the refuge referred to in subsection (a) shall be deemed to be a reference to the “Ernest F. Hollings ACE Basin National Wildlife Refuge”.

SEC. 138. FINANCIAL ASSISTANCE; FLOOD INSURANCE. The limitations on Federal expenditures or financial assistance in section 5 of the Coastal Barrier Resources Act (16 U.S.C. 3504) and the limitations on flood insurance coverage in section 1321(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4028(a)) shall not apply to lots 15, 16, 25, and 29 within the Jeremy Cay Subdivision on Edisto Island, South Carolina, depicted on the reference map entitled “John H. Chafee Coastal Barrier Resources System Edisto Complex M09/M09P” dated January 24, 2003.

California.
Federal buildings
and facilities.

SEC. 139. (a) There is hereby released, without consideration, all right, title, and interest of the United States in and to the surface portion of that portion of the existing building located at 615 North Burnett Road in Tipton, California, which encroaches upon land that, subject to a reversionary interest, was conveyed by the United States pursuant to the Act of July 27, 1866 (14 Stat. 292). The United States retains any subsurface mineral rights held by the United States as of the date of the enactment of this Act associated with that property. The Secretary of the Interior shall execute and file in the appropriate office a deed of release, amended deed, or other appropriate instrument effectuating the release of interests made by this subsection.

16 USC 45f.

(b) Section 314 of the National Parks and Recreation Act of 1978 (Public Law 95-625; 92 Stat. 3480) is amended—

(1) in subsection (c)(2), by striking “Such rights of use and occupancy shall be for not more than twenty-five years

or for a term ending at the death of the owner or his or her spouse, whichever is later.”; and

(2) in subsection (d)(2)(B), by inserting “and to their heirs, successors, and assigns” after “those persons who were lessees or permittees of record on the date of enactment of this Act”.

(c)(1) The first section of Public Law 99-338 is amended by striking “one renewal” and inserting “3 renewals”.

16 USC 45a-1
note.

(2) Section 3 of Public Law 99-338 is amended to read as follows:

100 Stat. 641.

“SEC. 3. The permit shall contain the following provisions:

“(1) A prohibition on expansion of the Kaweah Project in Sequoia National Park.

“(2) A requirement that an independent safety assessment of the Kaweah Project be conducted, and that any deficiencies identified as a result of the assessment would be corrected.

“(3) A requirement that the Secretary prepare and submit to Congress an update of the July 1983 report on the impact of the operations of the Kaweah No. 3 facility on Sequoia National Park.

“(4) A requirement that the permittee pay the park compensation as determined by the Secretary in consultation with the permittee.

“(5) Any other reasonable terms and conditions that the Secretary of the Interior deems necessary and proper for the management and care of Sequoia National Park and the purposes for which it was established.”.

(3) Public Law 99-338 is further amended by adding at the end the following new section:

“SEC. 4. The proceeds from any fees imposed pursuant to a permit issued under this Act shall be retained by Sequoia National Park and Kings Canyon National Park and shall be available, without further appropriation, for resources protection, maintenance, and other park operational needs.”.

SEC. 140. (a) SHORT TITLE.—This section may be cited as the “Gaylord A. Nelson Apostle Islands National Lakeshore Wilderness Act”.

Gaylord A.
Nelson Apostle
Islands National
Lakeshore
Wilderness Act.

(b) DEFINITIONS.—In this section:

(1) MAP.—The term “map” means the map entitled “Apostle Islands Lakeshore Wilderness”, numbered 633/80,058 and dated September 17, 2004.

(2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(3) HIGH-WATER MARK.—The term “high-water mark” means the point on the bank or shore up to which the water, by its presence and action or flow, leaves a distinct mark indicated by erosion, destruction of or change in vegetation or other easily recognizable characteristic.

(c) DESIGNATION OF APOSTLE ISLANDS NATIONAL LAKESHORE WILDERNESS.—

16 USC 1132
note.

(1) DESIGNATION.—Certain lands comprising approximately 33,500 acres within the Apostle Islands National Lakeshore, as generally depicted on the map referred to in subsection (b), are hereby designated as wilderness in accordance with section 3(c) of the Wilderness Act (16 U.S.C. 1132), and therefore as components of the National Wilderness Preservation System.

(2) MAP AND DESCRIPTION.—

(A) The map referred to in subsection (b) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(B) As soon as practical after enactment of this section, the Secretary shall submit a description of the boundary of the wilderness areas to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

(C) The map and description shall have the same force and effect as if included in this section, except that the Secretary may correct clerical and typographical errors in the description and maps.

(3) BOUNDARY OF THE WILDERNESS.—Any portion of wilderness designated in paragraph (c)(1) that is bordered by Lake Superior shall use as its boundary the high-water mark.

(4) NAMING.—The wilderness area designated by this section shall be known as the Gaylord A. Nelson National Wilderness.

(d) ADMINISTRATION.—

(1) MANAGEMENT.—Subject to valid existing rights, the lands designated as wilderness by this section shall be administered by the Secretary in accordance with the applicable provisions of the Wilderness Act (16 U.S.C. 1131), except that—

(A) any reference in that Act to the effective date shall be considered to be a reference to the date of enactment of this section; and

(B) where appropriate, any reference to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior with respect to lands administered by the Secretary.

(2) SAVINGS PROVISIONS.—Nothing in this section shall—

(A) modify, alter, or in any way affect any treaty rights;

(B) alter the management of the waters of Lake Superior within the boundary of the Apostle Islands National Lakeshore in existence on the date of enactment of this section; or

(C) be construed to modify, limit, or in any way affect the use of motors on the lake waters, including snowmobiles and the beaching of motorboats adjacent to wilderness areas below the high-water mark, and the maintenance and expansion of any docks existing at the time of the enactment of this section.

SEC. 141. Upon the request of the permittee for the Clark Mountain Allotment lands adjacent to the Mojave National Preserve, the Secretary shall also issue a special use permit for that portion of the grazing allotment located within the Preserve. The special use permit shall be issued with the same terms and conditions as the most recently-issued permit for that allotment and the Secretary shall consider the permit to be one transferred in accordance with section 325 of Public Law 108-108.

SEC. 142. SALE OF WILD FREE-ROAMING HORSES AND BURROS.

(a) IN GENERAL.—Section 3 of Public Law 92-195 (16 U.S.C. 1333) is amended—

(1) in subsection (d)(5), by striking “this section” and all that follows through the period at the end and inserting “this section.”; and

(2) by adding at the end the following:

“(e) SALE OF EXCESS ANIMALS.—

“(1) IN GENERAL.—Any excess animal or the remains of an excess animal shall be sold if—

“(A) the excess animal is more than 10 years of age;

or

“(B) the excess animal has been offered unsuccessfully for adoption at least 3 times.

“(2) METHOD OF SALE.—An excess animal that meets either of the criteria in paragraph (1) shall be made available for sale without limitation, including through auction to the highest bidder, at local sale yards or other convenient livestock selling facilities, until such time as—

“(A) all excess animals offered for sale are sold; or

“(B) the appropriate management level, as determined by the Secretary, is attained in all areas occupied by wild free-roaming horses and burros.

“(3) DISPOSITION OF FUNDS.—Funds generated from the sale of excess animals under this subsection shall be—

“(A) credited as an offsetting collection to the Management of Lands and Resources appropriation for the Bureau of Land Management; and

“(B) used for the costs relating to the adoption of wild free-roaming horses and burros, including the costs of marketing such adoption.

“(4) EFFECT OF SALE.—Any excess animal sold under this provision shall no longer be considered to be a wild free-roaming horse or burro for purposes of this Act.”.

(b) CRIMINAL PROVISIONS.—Section 8(a)(4) of Public Law 92–195 (16 U.S.C. 1338(a)(4)) is amended by inserting “except as provided in section 3(e),” before “processes”.

SEC. 143. (a) SHORT TITLE.—This section may be cited as the “Migratory Bird Treaty Reform Act of 2004”.

(b) EXCLUSION OF NON-NATIVE SPECIES FROM APPLICATION OF CERTAIN PROHIBITIONS UNDER MIGRATORY BIRD TREATY ACT.—Section 2 of the Migratory Bird Treaty Act (16 U.S.C. 703) is amended—

(1) in the first sentence by striking “That unless and except as permitted” and inserting the following: “(a) IN GENERAL.—Unless and except as permitted”; and

(2) by adding at the end the following:

“(b) LIMITATION ON APPLICATION TO INTRODUCED SPECIES.—

“(1) IN GENERAL.—This Act applies only to migratory bird species that are native to the United States or its territories.

“(2) NATIVE TO THE UNITED STATES DEFINED.—

“(A) IN GENERAL.—Subject to subparagraph (B), in this subsection the term ‘native to the United States or its territories’ means occurring in the United States or its territories as the result of natural biological or ecological processes.

“(B) TREATMENT OF INTRODUCED SPECIES.—For purposes of paragraph (1), a migratory bird species that occurs in the United States or its territories solely as a result of intentional or unintentional human-assisted introduction shall not be considered native to the United States or its territories unless—

“(i) it was native to the United States or its territories and extant in 1918;

Migratory Bird
Treaty Reform
Act of 2004.
16 USC 710 note.

“(ii) it was extirpated after 1918 throughout its range in the United States and its territories; and
 “(iii) after such extirpation, it was reintroduced in the United States or its territories as a part of a program carried out by a Federal agency.”.

16 USC 703 note.
 Deadline.
 Federal Register,
 publication.

(c) PUBLICATION OF LIST.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Secretary of the Interior shall publish in the Federal Register a list of all nonnative, human-introduced bird species to which the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) does not apply. As necessary, the Secretary may update and publish the list of species exempted from protection of the Migratory Bird Treaty Act.

(2) PUBLIC COMMENT.—Before publishing the list under paragraph (1), the Secretary shall provide adequate time for public comment.

(3) EFFECT OF SECTION.—Nothing in this subsection shall delay implementation of other provisions of this section or amendments made by this section that exclude nonnative, human-introduced bird species from the application of the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

16 USC 703 note.

(d) RELATIONSHIP TO TREATIES.—It is the sense of Congress that the language of this section is consistent with the intent and language of the 4 bilateral treaties implemented by this section.

Foundation for
 Nevada's
 Veterans Land
 Transfer Act of
 2004.

SEC. 144. (a) SHORT TITLE.—This section may be cited as the “Foundation for Nevada’s Veterans Land Transfer Act of 2004”.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION, BUREAU OF LAND MANAGEMENT LAND, CLARK COUNTY, NEVADA.—

(1) IN GENERAL.—Administrative jurisdiction over the land described in paragraph (2) is transferred from the Secretary of the Interior to the Secretary of Veterans Affairs.

(2) DESCRIPTION OF LAND.—The parcel of land referred to in paragraph (1) is the approximately 150 acres of Bureau of Land Management land in Clark County, Nevada, as generally depicted on the map entitled “Veterans Administration Conveyance” and dated September 24, 2004.

(3) USE OF LAND.—The parcel of land described in paragraph (2) shall be used by the Secretary of Veterans Affairs for the construction and operation of medical and related facilities, as determined to be appropriate by the Secretary of Veterans Affairs.

SEC. 145. CUMBERLAND ISLAND WILDERNESS BOUNDARY ADJUSTMENT. (a) IN GENERAL.—Public Law 97-250 (96 Stat. 709) is amended by striking section 2 and inserting the following:

16 USC 1132
 note.
 Cumberland
 Island
 Wilderness
 Boundary
 Adjustment Act
 of 2004.

“SEC. 2. CUMBERLAND ISLAND WILDERNESS.

“(a) DEFINITIONS.—In this section:

“(1) MAP.—The term ‘map’ means the map entitled ‘Cumberland Island Wilderness’, numbered 640/20,038I, and dated September 2004.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(3) WILDERNESS.—The term ‘Wilderness’ means the Cumberland Island Wilderness established by subsection (b).

“(4) POTENTIAL WILDERNESS.—The term ‘Potential Wilderness’ means the 10,500 acres of potential wilderness described in subsection (c)(2), but does not include the area at the north

end of Cumberland Island known as the ‘High Point Half-Moon Bluff Historic District’.

“(b) ESTABLISHMENT.—

“(1) IN GENERAL.—Approximately 9,886 acres of land in the Cumberland Island National Seashore depicted on the map as ‘Wilderness’ is designated as a component of the National Wilderness Preservation System and shall be known as the ‘Cumberland Island Wilderness’.

“(2) EXCLUSIONS.—The 25-foot wide roadways depicted on the map as the ‘Main Road’, ‘Plum Orchard’, and the ‘North Cut Road’ shall not be included in the Wilderness and shall be maintained by the Secretary for continued vehicle use.

“(c) ADDITIONAL LAND.—In addition to the land designated under subsection (b), the Secretary shall—

“(1) on acquisition of the approximately 231 acres of land identified on the map as ‘Areas Become Designated Wilderness upon Acquisition by the NPS’; and

“(2) on publication in the Federal Register of a notice that all uses of the approximately 10,500 acres of land depicted on the map as ‘Potential Wilderness’ that are prohibited under the Wilderness Act (16 U.S.C. 1131 et seq.) have ceased, adjust the boundary of the Wilderness to include the land.

“(d) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

“(e) ADMINISTRATION.—Subject to valid existing rights, the Wilderness shall be administered by the Secretary, in accordance with the applicable provisions of the Wilderness Act (16 U.S.C. 1131 et seq.) governing areas designated by that Act as wilderness areas, except that—

“(1) any reference in such provisions to the effective date of that Act shall be deemed to be a reference to the effective date of this Act; and

“(2) where appropriate, any reference in that Act to the Secretary of Agriculture shall be deemed to be a reference to the Secretary.

“(f) EFFECT.—Any person with a right to utility service on Cumberland Island on the date of enactment of this subsection shall continue to have the right to utility service in the Wilderness after the date of enactment of this subsection.

“(g) MANAGEMENT PLAN FOR ACCESS TO MAIN ROAD AND NORTH CUT ROAD.—Not later than 1 year after the date of the enactment of the Cumberland Island Wilderness Boundary Adjustment Act of 2004, the Secretary shall complete a management plan to ensure that not more than 8 and not less than 5 round trips are made available daily on the Main Road north of the Plum Orchard Spur and the North Cut Road by the National Park Service or a concessionaire for the purpose of transporting visitors to and from the historic sites located adjacent to Wilderness.”.

(b) TOURS OF CUMBERLAND ISLAND NATIONAL SEASHORE.—Section 6 of Public Law 92–536 (86 Stat. 1066) is amended—

(1) in subsection (b), by inserting “, except as provided in subsection (c),” before “no development of the project”; and

(2) by adding at the end the following:

“(c) TOURS OF THE SEASHORE.—Notwithstanding subsection (b), the Secretary may enter into not more than 3 concession contracts,

Federal Register,
publication.
Notice.

Deadline.

16 USC 429i–5.

Contracts.

as the Secretary determines appropriate, for the provision of tours for visitors to the seashore that are consistent with—

“(1) this Act;

“(2) the Wilderness Act (16 U.S.C. 1131 et seq.); and

“(3) Public Law 97-250 (96 Stat. 709).”.

16 USC 459i
note.

(c) SHORT TITLE.—This section may be cited as the “Cumberland Island Wilderness Boundary Adjustment Act of 2004”.

SEC. 146. Notwithstanding any other provision of law, the National Park Service final winter use rules published in Part VII of the Federal Register for November 10, 2004, 69 Fed. Reg. 65348 et seq., shall be in force and effect for the winter use season of 2004-2005 that commences on or about December 15, 2004.

TITLE II—RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

FOREST AND RANGELAND RESEARCH

For necessary expenses of forest and rangeland research as authorized by law, \$280,278,000, to remain available until expended: *Provided*, That of the funds provided, \$56,714,000 is for the forest inventory and analysis program.

STATE AND PRIVATE FORESTRY

For necessary expenses of cooperating with and providing technical and financial assistance to States, territories, possessions, and others, and for forest health management, including treatments of pests, pathogens, and invasive or noxious plants and for restoring and rehabilitating forests damaged by pests or invasive plants, cooperative forestry, and education and land conservation activities and conducting an international program as authorized, \$296,626,000, to remain available until expended, as authorized by law of which \$57,939,000 is to be derived from the Land and Water Conservation Fund: *Provided*, That none of the funds provided under this heading for the acquisition of lands or interests in lands shall be available until the Forest Service notifies the House Committee on Appropriations and the Senate Committee on Appropriations, in writing, of specific contractual and grant details including the non-Federal cost share: *Provided further*, That notwithstanding any other provision of law, of the funds provided under this heading, \$2,000,000 shall be made available to Kake Tribal Corporation as an advance direct lump sum payment to implement the Kake Tribal Corporation Land Transfer Act (Public Law 106-283), and \$1,500,000 shall be made available to Canton, North Carolina, as an advance direct lump sum payment for wood products wastewater treatment repairs.

NATIONAL FOREST SYSTEM

For necessary expenses of the Forest Service, not otherwise provided for, for management, protection, improvement, and utilization of the National Forest System, \$1,400,260,000, to remain available until expended, which shall include 50 percent of all moneys received during prior fiscal years as fees collected under the Land

and Water Conservation Fund Act of 1965, as amended, in accordance with section 4 of the Act (16 U.S.C. 4601–6a(i)): *Provided*, That unobligated balances under this heading available at the start of fiscal year 2005 shall be displayed by budget line item in the fiscal year 2006 budget justification: *Provided further*, That, through fiscal year 2009, the Secretary may authorize the expenditure or transfer of such sums as necessary to the Department of the Interior, Bureau of Land Management, for removal, preparation, and adoption of excess wild horses and burros from National Forest System lands, and for the performance of cadastral surveys to designate the boundaries of such lands: *Provided further*, That of the funds provided under this heading for Forest Products, \$5,000,000 shall be allocated to the Alaska Region, in addition to its normal allocation for the purposes of preparing additional timber for sale, to establish a 3-year timber supply and such funds may be transferred to other appropriations accounts as necessary to maximize accomplishment: *Provided further*, That within funds available for the purpose of implementing the Valles Caldera Preservation Act, notwithstanding the limitations of section 107(e)(2) of the Valles Caldera Preservation Act (Public Law 106–248), for fiscal year 2005, the Chair of the Board of Trustees of the Valles Caldera Trust may receive, upon request, compensation for each day (including travel time) that the Chair is engaged in the performance of the functions of the Board, except that compensation shall not exceed the daily equivalent of the annual rate in effect for members of the Senior Executive Service at the ES–1 level, and shall be in addition to any reimbursement for travel, subsistence and other necessary expenses incurred by the Chair in the performance of the Chair’s duties.

WILDLAND FIRE MANAGEMENT

For necessary expenses for forest fire presuppression activities on National Forest System lands, for emergency fire suppression on or adjacent to such lands or other lands under fire protection agreement, hazardous fuels reduction on or adjacent to such lands, and for emergency rehabilitation of burned-over National Forest System lands and water, \$1,727,008,000, to remain available until expended: *Provided*, That such funds including unobligated balances under this heading, are available for repayment of advances from other appropriations accounts previously transferred for such purposes: *Provided further*, That such funds shall be available to reimburse State and other cooperating entities for services provided in response to wildfire and other emergencies or disasters to the extent such reimbursements by the Forest Service for non-fire emergencies are fully repaid by the responsible emergency management agency: *Provided further*, That not less than 50 percent of any unobligated balances remaining (exclusive of amounts for hazardous fuels reduction) at the end of fiscal year 2004 shall be transferred, as repayment for past advances that have not been repaid, to the fund established pursuant to section 3 of Public Law 71–319 (16 U.S.C. 576 et seq.): *Provided further*, That, notwithstanding any other provision of law, \$8,000,000 of funds appropriated under this appropriation shall be used for Fire Science Research in support of the Joint Fire Science Program: *Provided further*, That all authorities for the use of funds, including the use of contracts, grants, and cooperative agreements, available to execute the Forest

and Rangeland Research appropriation, are also available in the utilization of these funds for Fire Science Research: *Provided further*, That funds provided shall be available for emergency rehabilitation and restoration, hazardous fuels reduction activities in the urban-wildland interface, support to Federal emergency response, and wildfire suppression activities of the Forest Service: *Provided further*, That of the funds provided, \$266,238,000 is for hazardous fuels reduction activities, \$13,000,000 is for rehabilitation and restoration, \$22,025,000 is for research activities and to make competitive research grants pursuant to the Forest and Rangeland Renewable Resources Research Act, as amended (16 U.S.C. 1641 et seq.), \$40,745,000 is for State fire assistance, \$8,000,000 is for volunteer fire assistance, \$15,000,000 is for forest health activities on Federal lands and \$10,000,000 is for forest health activities on State and private lands: *Provided further*, That amounts in this paragraph may be transferred to the “State and Private Forestry”, “National Forest System”, and “Forest and Rangeland Research” accounts to fund State fire assistance, volunteer fire assistance, forest health management, forest and rangeland research, vegetation and watershed management, heritage site rehabilitation, and wildlife and fish habitat management and restoration: *Provided further*, That transfers of any amounts in excess of those authorized in this paragraph, shall require approval of the House and Senate Committees on Appropriations in compliance with reprogramming procedures contained in House Report 108-330: *Provided further*, That the costs of implementing any cooperative agreement between the Federal Government and any non-Federal entity may be shared, as mutually agreed on by the affected parties: *Provided further*, That in addition to funds provided for State Fire Assistance programs, and subject to all authorities available to the Forest Service under the State and Private Forestry Appropriations, up to \$15,000,000 may be used on adjacent non-Federal lands for the purpose of protecting communities when hazard reduction activities are planned on national forest lands that have the potential to place such communities at risk: *Provided further*, That included in funding for hazardous fuel reduction is \$5,000,000 for implementing the Community Forest Restoration Act, Public Law 106-393, title VI, and any portion of such funds shall be available for use on non-Federal lands in accordance with authorities available to the Forest Service under the State and Private Forestry Appropriation: *Provided further*, That the Secretary of the Interior and the Secretary of Agriculture may authorize the transfer of funds appropriated for wildland fire management, in an aggregate amount not to exceed \$12,000,000, between the Departments when such transfers would facilitate and expedite jointly funded wildland fire management programs and projects: *Provided further*, That of the funds provided for hazardous fuels reduction, not to exceed \$5,000,000, may be used to make grants, using any authorities available to the Forest Service under the State and Private Forestry appropriation, for the purpose of creating incentives for increased use of biomass from national forest lands.

CAPITAL IMPROVEMENT AND MAINTENANCE

For necessary expenses of the Forest Service, not otherwise provided for, \$521,952,000, to remain available until expended for construction, reconstruction, maintenance and acquisition of buildings and other facilities, and for construction, reconstruction,

repair, decommissioning, and maintenance of forest roads and trails by the Forest Service as authorized by 16 U.S.C. 532–538 and 23 U.S.C. 101 and 205: *Provided*, That up to \$15,000,000 of the funds provided herein for road maintenance shall be available for the decommissioning of roads, including unauthorized roads not part of the transportation system, which are no longer needed: *Provided further*, That no funds shall be expended to decommission any system road until notice and an opportunity for public comment has been provided on each decommissioning project: *Provided further*, That subject to all the authorities available to the Forest Service under the State and Private Forestry appropriation, up to \$1,000,000 may be used on non-Federal lands adjacent to the Chugach National Forest for the purpose of expanding recreational opportunities.

LAND ACQUISITION

For expenses necessary to carry out the provisions of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for acquisition of land or waters, or interest therein, in accordance with statutory authority applicable to the Forest Service, \$61,866,000, to be derived from the Land and Water Conservation Fund and to remain available until expended.

ACQUISITION OF LANDS FOR NATIONAL FORESTS SPECIAL ACTS

For acquisition of lands within the exterior boundaries of the Cache, Uinta, and Wasatch National Forests, Utah; the Toiyabe National Forest, Nevada; and the Angeles, San Bernardino, Sequoia, and Cleveland National Forests, California, as authorized by law, \$1,069,000, to be derived from forest receipts.

ACQUISITION OF LANDS TO COMPLETE LAND EXCHANGES

For acquisition of lands, such sums, to be derived from funds deposited by State, county, or municipal governments, public school districts, or other public school authorities, and for authorized expenditures from funds deposited by non-Federal parties pursuant to Land Sale and Exchange Acts, pursuant to the Act of December 4, 1967, as amended (16 U.S.C. 484a), to remain available until expended.

RANGE BETTERMENT FUND

For necessary expenses of range rehabilitation, protection, and improvement, 50 percent of all moneys received during the prior fiscal year, as fees for grazing domestic livestock on lands in National Forests in the 16 Western States, pursuant to section 401(b)(1) of Public Law 94–579, as amended, to remain available until expended, of which not to exceed 6 percent shall be available for administrative expenses associated with on-the-ground range rehabilitation, protection, and improvements.

GIFTS, DONATIONS AND BEQUESTS FOR FOREST AND RANGELAND
RESEARCH

For expenses authorized by 16 U.S.C. 1643(b), \$65,000, to remain available until expended, to be derived from the fund established pursuant to the above Act.

MANAGEMENT OF NATIONAL FOREST LANDS FOR SUBSISTENCE USES

For necessary expenses of the Forest Service to manage Federal lands in Alaska for subsistence uses under title VIII of the Alaska National Interest Lands Conservation Act (Public Law 96-487), \$5,962,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS, FOREST SERVICE

Appropriations to the Forest Service for the current fiscal year shall be available for: (1) purchase of not to exceed 124 passenger motor vehicles of which 21 will be used primarily for law enforcement purposes and of which 124 shall be for replacement; acquisition of 25 passenger motor vehicles from excess sources, and hire of such vehicles; purchase, lease, operation, maintenance, and acquisition of aircraft from excess sources to maintain the operable fleet at 195 aircraft for use in Forest Service wildland fire programs and other Forest Service programs; notwithstanding other provisions of law, existing aircraft being replaced may be sold, with proceeds derived or trade-in value used to offset the purchase price for the replacement aircraft; (2) services pursuant to 7 U.S.C. 2225, and not to exceed \$100,000 for employment under 5 U.S.C. 3109; (3) purchase, erection, and alteration of buildings and other public improvements (7 U.S.C. 2250); (4) acquisition of land, waters, and interests therein pursuant to 7 U.S.C. 428a; (5) for expenses pursuant to the Volunteers in the National Forest Act of 1972 (16 U.S.C. 558a, 558d, and 558a note); (6) the cost of uniforms as authorized by 5 U.S.C. 5901-5902; and (7) for debt collection contracts in accordance with 31 U.S.C. 3718(c).

None of the funds made available under this Act shall be obligated or expended to abolish any region, to move or close any regional office for National Forest System administration of the Forest Service, Department of Agriculture without the consent of the House and Senate Committees on Appropriations.

Notification.

Any appropriations or funds available to the Forest Service may be transferred to the Wildland Fire Management appropriation for forest firefighting, emergency rehabilitation of burned-over or damaged lands or waters under its jurisdiction, and fire preparedness due to severe burning conditions upon notification of the House and Senate Committees on Appropriations and if and only if all previously appropriated emergency contingent funds under the heading "Wildland Fire Management" have been released by the President and apportioned and all wildfire suppression funds under the heading "Wildland Fire Management" are obligated.

The first transfer of funds into the Wildland Fire Management account shall include unobligated funds, if available, from the Land Acquisition account and the Forest Legacy program within the State and Private Forestry account.

Funds appropriated to the Forest Service shall be available for assistance to or through the Agency for International Development and the Foreign Agricultural Service in connection with forest

and rangeland research, technical information, and assistance in foreign countries, and shall be available to support forestry and related natural resource activities outside the United States and its territories and possessions, including technical assistance, education and training, and cooperation with United States and international organizations.

None of the funds made available to the Forest Service under this Act shall be subject to transfer under the provisions of section 702(b) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2257) or 7 U.S.C. 147b.

Not less than \$20,000,000 of funds under section 8002 of the Farm Security and Rural Investment Act of 2002 is hereby canceled.

None of the funds available to the Forest Service may be reprogrammed without the advance approval of the House and Senate Committees on Appropriations in accordance with the reprogramming procedures contained in House Report 108–330.

Not more than \$72,467,000 of the funds available to the Forest Service shall be transferred to the Working Capital Fund of the Department of Agriculture.

Funds available to the Forest Service shall be available to conduct a program of not less than \$2,000,000 for high priority projects within the scope of the approved budget which shall be carried out by the Youth Conservation Corps.

Of the funds available to the Forest Service, \$2,500 is available to the Chief of the Forest Service for official reception and representation expenses.

Pursuant to sections 405(b) and 410(b) of Public Law 101–593, of the funds available to the Forest Service, \$3,300,000 may be advanced in a lump sum to the National Forest Foundation to aid conservation partnership projects in support of the Forest Service mission, without regard to when the Foundation incurs expenses, for administrative expenses or projects on or benefitting National Forest System lands or related to Forest Service programs: *Provided*, That of the Federal funds made available to the Foundation, \$300,000 may be used for Forest Service Centennial activities and, of the total available to the Foundation, no more than \$350,000 shall be available for administrative expenses: *Provided further*, That the Foundation shall obtain, by the end of the period of Federal financial assistance, private contributions to match on at least one-for-one basis funds made available by the Forest Service: *Provided further*, That the Foundation may transfer Federal funds to a non-Federal recipient for a project at the same rate that the recipient has obtained the non-Federal matching funds: *Provided further*, That authorized investments of Federal funds held by the Foundation may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

16 USC 583j–9
note.

Pursuant to section 2(b)(2) of Public Law 98–244, \$2,650,000 of the funds available to the Forest Service shall be available for matching funds to the National Fish and Wildlife Foundation, as authorized by 16 U.S.C. 3701–3709, and may be advanced in a lump sum to aid conservation partnership projects in support of the Forest Service mission, without regard to when expenses are incurred, for projects on or benefitting National Forest System lands or related to Forest Service programs: *Provided*, That the Foundation shall obtain, by the end of the period of Federal financial assistance, private contributions to match on at least one-for-one

basis funds advanced by the Forest Service: *Provided further*, That the Foundation may transfer Federal funds to a non-Federal recipient for a project at the same rate that the recipient has obtained the non-Federal matching funds.

Funds appropriated to the Forest Service shall be available for interactions with and providing technical assistance to rural communities for sustainable rural development purposes.

Funds appropriated to the Forest Service shall be available for payments to counties within the Columbia River Gorge National Scenic Area, pursuant to sections 14(c)(1) and (2), and section 16(a)(2) of Public Law 99-663.

Notwithstanding any other provision of law, any appropriations or funds available to the Forest Service not to exceed \$500,000 may be used to reimburse the Office of the General Counsel (OGC), Department of Agriculture, for travel and related expenses incurred as a result of OGC assistance or participation requested by the Forest Service at meetings, training sessions, management reviews, land purchase negotiations and similar non-litigation related matters. Future budget justifications for both the Forest Service and the Department of Agriculture should clearly display the sums previously transferred and the requested funding transfers.

Any appropriations or funds available to the Forest Service may be used for necessary expenses in the event of law enforcement emergencies as necessary to protect natural resources and public or employee safety: *Provided*, That such amounts shall not exceed \$1,000,000.

For fiscal years 2005 and 2006, the Secretary of Agriculture may authorize the sale of excess buildings, facilities, and other properties owned by the Forest Service and located on the Green Mountain National Forest, the revenues of which shall be retained by the Forest Service and available to the Secretary without further appropriation and until expended for maintenance and rehabilitation activities on the Green Mountain National Forest.

For each fiscal year through 2009, the Secretary of Agriculture may transfer or reimburse funds available to the Forest Service, not to exceed \$15,000,000, to the Secretary of the Interior or the Secretary of Commerce to expedite conferencing and consultations as required under section 7 of the Endangered Species Act, 16 U.S.C. 1536. The amount of the transfer or reimbursement shall be as mutually agreed by the Secretary of Agriculture and the Secretary of the Interior or Secretary of Commerce, as applicable, or their designees. The amount shall in no case exceed the actual costs of consultation and conferencing.

Termination
date.

Beginning on June 30, 2001 and concluding on December 31, 2005, an eligible individual who is employed in any project funded under title V of the Older American Act of 1965 (42 U.S.C. 3056 et seq.) and administered by the Forest Service shall be considered to be a Federal employee for purposes of chapter 171 of title 28, United States Code.

Any funds appropriated to the Forest Service may be used to meet the non-Federal share requirement in section 502(c) of the Older American Act of 1965 (42 U.S.C. 3056(c)(2)).

Funds available to the Forest Service in this Act may be used for the purpose of expenses associated with primary and secondary schooling for dependents of agency personnel stationed in Puerto Rico prior to the date of enactment of this Act, who are subject to transfer and reassignment to other locations in the United States,

at a cost not in excess of those authorized for the Department of Defense for the same area, when it is determined by the Chief of the Forest Service that public schools available in the locality are unable to provide adequately for the education of such dependents.

For fiscal years 2005 and 2006, the Secretary of Agriculture may authorize the sale of excess buildings, facilities, and other properties owned by the Forest Service and located on the Wasatch-Cache National Forest, the revenues of which shall be retained by the Forest Service and available to the Secretary without further appropriation and until expended for acquisition and construction of administrative sites on the Wasatch-Cache National Forest.

DEPARTMENT OF ENERGY

CLEAN COAL TECHNOLOGY

(DEFERRAL)

Of the funds made available under this heading for obligation in prior years, \$257,000,000 shall not be available until October 1, 2005: *Provided*, That funds made available in previous appropriations Acts shall be available for any ongoing project regardless of the separate request for proposal under which the project was selected.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

For necessary expenses in carrying out fossil energy research and development activities, under the authority of the Department of Energy Organization Act (Public Law 95–91), including the acquisition of interest, including defeasible and equitable interests in any real property or any facility or for plant or facility acquisition or expansion, and for conducting inquiries, technological investigations and research concerning the extraction, processing, use, and disposal of mineral substances without objectionable social and environmental costs (30 U.S.C. 3, 1602, and 1603), \$579,911,000, to remain available until expended, of which \$4,000,000 is to continue a multi-year project for construction, renovation, furnishing, and demolition or removal of buildings at National Energy Technology Laboratory facilities in Morgantown, West Virginia and Pittsburgh, Pennsylvania: *Provided*, That of the amounts provided, \$18,000,000 is to continue a multi-year project coordinated with the private sector for FutureGen, without regard to the terms and conditions applicable to clean coal technology projects: *Provided further*, That the initial planning and research stages of the FutureGen project shall include a matching requirement from non-Federal sources of at least 20 percent of the costs: *Provided further*, That any demonstration component of such project shall require a matching requirement from non-Federal sources of at least 50 percent of the costs of the component: *Provided further*, That of the amounts provided, \$50,000,000 is available, after coordination with the private sector, for a request for proposals for a Clean Coal Power Initiative providing for competitively-awarded research, development, and demonstration projects to reduce the barriers to continued and expanded coal use: *Provided further*, That no project may be selected for which sufficient funding is not available to provide for the total project: *Provided further*, That funds shall

be expended in accordance with the provisions governing the use of funds contained under the heading “Clean Coal Technology” in 42 U.S.C. 5903d: *Provided further*, That the Department may include provisions for repayment of Government contributions to individual projects in an amount up to the Government contribution to the project on terms and conditions that are acceptable to the Department including repayments from sale and licensing of technologies from both domestic and foreign transactions: *Provided further*, That such repayments shall be retained by the Department for future coal-related research, development and demonstration projects: *Provided further*, That any technology selected under this program shall be considered a Clean Coal Technology, and any project selected under this program shall be considered a Clean Coal Technology Project, for the purposes of 42 U.S.C. 7651n, and chapters 51, 52, and 60 of title 40 of the Code of Federal Regulations: *Provided further*, That funds shall be expended in accordance with the provisions governing the use of funds contained under the heading “Clean Coal Technology” in prior appropriations: *Provided further*, That no part of the sum herein made available shall be used for the field testing of nuclear explosives in the recovery of oil and gas: *Provided further*, That up to 4 percent of program direction funds available to the National Energy Technology Laboratory may be used to support Department of Energy activities not included in this account.

NAVAL PETROLEUM AND OIL SHALE RESERVES

For expenses necessary to carry out naval petroleum and oil shale reserve activities, \$18,000,000, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, unobligated funds remaining from prior years shall be available for all naval petroleum and oil shale reserve activities.

ELK HILLS SCHOOL LANDS FUND

For necessary expenses in fulfilling installment payments under the Settlement Agreement entered into by the United States and the State of California on October 11, 1996, as authorized by section 3415 of Public Law 104-106, \$36,000,000, to become available on October 1, 2005 for payment to the State of California for the State Teachers’ Retirement Fund from the Elk Hills School Lands Fund.

ENERGY CONSERVATION

For necessary expenses in carrying out energy conservation activities, \$649,092,000, to remain available until expended: *Provided*, That \$44,798,000 is for State energy program grants pursuant to 42 U.S.C. 6323, notwithstanding section 3003(d)(2) of Public Law 99-509.

STRATEGIC PETROLEUM RESERVE

For necessary expenses for Strategic Petroleum Reserve facility development and operations and program management activities pursuant to the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6201 et seq.), \$172,100,000, to remain available until expended.

NORTHEAST HOME HEATING OIL RESERVE

For necessary expenses for Northeast Home Heating Oil Reserve storage, operations, and management activities pursuant to the Energy Policy and Conservation Act of 2000, \$5,000,000, to remain available until expended.

ENERGY INFORMATION ADMINISTRATION

For necessary expenses in carrying out the activities of the Energy Information Administration, \$85,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS, DEPARTMENT OF ENERGY

Appropriations under this Act for the current fiscal year shall be available for hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase, repair, and cleaning of uniforms; and reimbursement to the General Services Administration for security guard services.

From appropriations under this Act, transfers of sums may be made to other agencies of the Government for the performance of work for which the appropriation is made.

None of the funds made available to the Department of Energy under this Act shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriations Act.

The Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, private or foreign: *Provided*, That revenues and other moneys received by or for the account of the Department of Energy or otherwise generated by sale of products in connection with projects of the Department appropriated under this Act may be retained by the Secretary of Energy, to be available until expended, and used only for plant construction, operation, costs, and payments to cost-sharing entities as provided in appropriate cost-sharing contracts or agreements: *Provided further*, That the remainder of revenues after the making of such payments shall be covered, into the Treasury as miscellaneous receipts: *Provided further*, That any contract, agreement, or provision thereof entered into by the Secretary pursuant to this authority shall not be executed prior to the expiration of 30 calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than 3 calendar days to a day certain) from the receipt by the Speaker of the House of Representatives and the President of the Senate of a full comprehensive report on such project, including the facts and circumstances relied upon in support of the proposed project.

Reports.

No funds provided in this Act may be expended by the Department of Energy to prepare, issue, or process procurement documents for programs or projects for which appropriations have not been made.

In addition to other authorities set forth in this Act, the Secretary may accept fees and contributions from public and private sources, to be deposited in a contributed funds account, and prosecute projects using such fees and contributions in cooperation with other Federal, State or private agencies or concerns.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For expenses necessary to carry out the Act of August 5, 1954 (68 Stat. 674), the Indian Self-Determination Act, the Indian Health Care Improvement Act, and titles II and III of the Public Health Service Act with respect to the Indian Health Service, \$2,633,072,000, together with payments received during the fiscal year pursuant to 42 U.S.C. 238(b) for services furnished by the Indian Health Service: *Provided*, That funds made available to tribes and tribal organizations through contracts, grant agreements, or any other agreements or compacts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450), shall be deemed to be obligated at the time of the grant or contract award and thereafter shall remain available to the tribe or tribal organization without fiscal year limitation: *Provided further*, That up to \$18,000,000 shall remain available until expended, for the Indian Catastrophic Health Emergency Fund: *Provided further*, That \$487,085,000 for contract medical care shall remain available for obligation until September 30, 2006: *Provided further*, That of the funds provided, up to \$27,000,000 to remain available until expended, shall be used to carry out the loan repayment program under section 108 of the Indian Health Care Improvement Act: *Provided further*, That funds provided in this Act may be used for one-year contracts and grants which are to be performed in two fiscal years, so long as the total obligation is recorded in the year for which the funds are appropriated: *Provided further*, That the amounts collected by the Secretary of Health and Human Services under the authority of title IV of the Indian Health Care Improvement Act shall remain available until expended for the purpose of achieving compliance with the applicable conditions and requirements of titles XVIII and XIX of the Social Security Act (exclusive of planning, design, or construction of new facilities): *Provided further*, That funding contained herein, and in any earlier appropriations Acts for scholarship programs under the Indian Health Care Improvement Act (25 U.S.C. 1613) shall remain available until expended: *Provided further*, That amounts received by tribes and tribal organizations under title IV of the Indian Health Care Improvement Act shall be reported and accounted for and available to the receiving tribes and tribal organizations until expended: *Provided further*, That, notwithstanding any other provision of law, of the amounts provided herein, not to exceed \$267,398,000 shall be for payments to tribes and tribal organizations for contract or grant support costs associated with contracts, grants, self-governance compacts or annual funding agreements between the Indian Health Service and a tribe or tribal organization pursuant to the Indian Self-Determination Act of 1975, as amended, prior to or during fiscal year 2005, of which not to exceed \$2,500,000 may be used for contract support costs associated with new or expanded self-determination contracts, grants, self-governance compacts or annual funding agreements: *Provided further*, That funds available for the Indian Health Care Improvement Fund may be used, as needed, to carry out activities typically funded under the Indian Health Facilities account: *Provided further*, That of the amounts provided to the Indian Health Service, \$15,000,000

Reports.
Records.

is provided for alcohol control, enforcement, prevention, treatment, sobriety and wellness, and education in Alaska: *Provided further*, That none of the funds may be used for tribal courts or tribal ordinance programs or any program that is not directly related to alcohol control, enforcement, prevention, treatment, or sobriety: *Provided further*, That no more than 15 percent may be used by any entity receiving funding for administrative overhead including indirect costs.

INDIAN HEALTH FACILITIES

For construction, repair, maintenance, improvement, and equipment of health and related auxiliary facilities, including quarters for personnel; preparation of plans, specifications, and drawings; acquisition of sites, purchase and erection of modular buildings, and purchases of trailers; and for provision of domestic and community sanitation facilities for Indians, as authorized by section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Indian Self-Determination Act, and the Indian Health Care Improvement Act, and for expenses necessary to carry out such Acts and titles II and III of the Public Health Service Act with respect to environmental health and facilities support activities of the Indian Health Service, \$394,048,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, funds appropriated for the planning, design, construction or renovation of health facilities for the benefit of an Indian tribe or tribes may be used to purchase land for sites to construct, improve, or enlarge health or related facilities: *Provided further*, That not to exceed \$500,000 shall be used by the Indian Health Service to purchase TRANSAM equipment from the Department of Defense for distribution to the Indian Health Service and tribal facilities: *Provided further*, That none of the funds appropriated to the Indian Health Service may be used for sanitation facilities construction for new homes funded with grants by the housing programs of the United States Department of Housing and Urban Development: *Provided further*, That not to exceed \$1,000,000 from this account and the “Indian Health Services” account shall be used by the Indian Health Service to obtain ambulances for the Indian Health Service and tribal facilities in conjunction with an existing interagency agreement between the Indian Health Service and the General Services Administration: *Provided further*, That notwithstanding any other provision of law, funds appropriated for the planning, design, and construction of the replacement health care facility in Barrow, Alaska, may be used to purchase land up to approximately 8 hectares for a site upon which to construct the new health care facility: *Provided further*, That not to exceed \$500,000 shall be placed in a Demolition Fund, available until expended, to be used by the Indian Health Service for demolition of Federal buildings: *Provided further*, That up to \$2,700,000 from unobligated balances may be used for the purchase of land at two sites for the construction of the northern and southern California Youth Regional Treatment Centers subject to advance approval from the House and Senate Committees on Appropriations.

ADMINISTRATIVE PROVISIONS, INDIAN HEALTH SERVICE

Appropriations in this Act to the Indian Health Service shall be available for services as authorized by 5 U.S.C. 3109 but at

rates not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376; hire of passenger motor vehicles and aircraft; purchase of medical equipment; purchase of reprints; purchase, renovation and erection of modular buildings and renovation of existing facilities; payments for telephone service in private residences in the field, when authorized under regulations approved by the Secretary; and for uniforms or allowances therefor as authorized by 5 U.S.C. 5901-5902; and for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of those functions or activities.

In accordance with the provisions of the Indian Health Care Improvement Act, non-Indian patients may be extended health care at all tribally administered or Indian Health Service facilities, subject to charges, and the proceeds along with funds recovered under the Federal Medical Care Recovery Act (42 U.S.C. 2651-2653) shall be credited to the account of the facility providing the service and shall be available without fiscal year limitation. Notwithstanding any other law or regulation, funds transferred from the Department of Housing and Urban Development to the Indian Health Service shall be administered under Public Law 86-121 (the Indian Sanitation Facilities Act) and Public Law 93-638, as amended.

Funds appropriated to the Indian Health Service in this Act, except those used for administrative and program direction purposes, shall not be subject to limitations directed at curtailing Federal travel and transportation.

None of the funds made available to the Indian Health Service in this Act shall be used for any assessments or charges by the Department of Health and Human Services unless identified in the budget justification and provided in this Act, or approved by the House and Senate Committees on Appropriations through the reprogramming process. Personnel ceilings may not be imposed on the Indian Health Service nor may any action be taken to reduce the full time equivalent level of the Indian Health Service below the level in fiscal year 2002 adjusted upward for the staffing of new and expanded facilities, funding provided for staffing at the Lawton, Oklahoma hospital in fiscal years 2003 and 2004, critical positions not filled in fiscal year 2002, and staffing necessary to carry out the intent of Congress with regard to program increases.

Notwithstanding any other provision of law, funds previously or herein made available to a tribe or tribal organization through a contract, grant, or agreement authorized by title I or title V of the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450), may be deobligated and reobligated to a self-determination contract under title I, or a self-governance agreement under title V of such Act and thereafter shall remain available to the tribe or tribal organization without fiscal year limitation.

None of the funds made available to the Indian Health Service in this Act shall be used to implement the final rule published in the Federal Register on September 16, 1987, by the Department of Health and Human Services, relating to the eligibility for the health care services of the Indian Health Service until the Indian Health Service has submitted a budget request reflecting the increased costs associated with the proposed final rule, and such

request has been included in an appropriations Act and enacted into law.

With respect to functions transferred by the Indian Health Service to tribes or tribal organizations, the Indian Health Service is authorized to provide goods and services to those entities, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received therefrom, along with the funds received from those entities pursuant to the Indian Self-Determination Act, may be credited to the same or subsequent appropriation account which provided the funding. Such amounts shall remain available until expended.

Reimbursements for training, technical assistance, or services provided by the Indian Health Service will contain total costs, including direct, administrative, and overhead associated with the provision of goods, services, or technical assistance.

The Indian Health Service may purchase 8.5 acres of land for expansion of parking facilities at the W.W. Hastings hospital in Tahlequah, Oklahoma using third party collections subject to advance approval from the House and Senate Committees on Appropriations.

Notwithstanding any other provision of law, the Tulsa and Oklahoma City Clinic demonstration projects shall be permanent programs under the direct care program of the Indian Health Service; shall be treated as service units and operating units in the allocation of resources and coordination of care; shall continue to meet the requirements applicable to an Urban Indian organization under this title; and shall not be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

The appropriation structure for the Indian Health Service may not be altered without advance approval of the House and Senate Committees on Appropriations.

Oklahoma.
25 USC 1660b
note.

OTHER RELATED AGENCIES

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

SALARIES AND EXPENSES

For necessary expenses of the Office of Navajo and Hopi Indian Relocation as authorized by Public Law 93-531, \$5,000,000, to remain available until expended: *Provided*, That funds provided in this or any other appropriations Act are to be used to relocate eligible individuals and groups including evictees from District 6, Hopi-partitioned lands residents, those in significantly substandard housing, and all others certified as eligible and not included in the preceding categories: *Provided further*, That none of the funds contained in this or any other Act may be used by the Office of Navajo and Hopi Indian Relocation to evict any single Navajo or Navajo family who, as of November 30, 1985, was physically domiciled on the lands partitioned to the Hopi Tribe unless a new or replacement home is provided for such household: *Provided further*, That no relocatee will be provided with more than one new or replacement home: *Provided further*, That the Office shall relocate any certified eligible relocatees who have selected and received an approved homesite on the Navajo reservation or selected a replacement residence off the Navajo reservation or on the land acquired pursuant to 25 U.S.C. 640d-10.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND
ARTS DEVELOPMENT

PAYMENT TO THE INSTITUTE

For payment to the Institute of American Indian and Alaska Native Culture and Arts Development, as authorized by title XV of Public Law 99-498, as amended (20 U.S.C. 56 part A), \$6,000,000, of which up to \$1,000,000 may remain available until expended to assist with the Institute's efforts to develop a Continuing Education Lifelong Learning Center.

SMITHSONIAN INSTITUTION

SALARIES AND EXPENSES

For necessary expenses of the Smithsonian Institution, as authorized by law, including research in the fields of art, science, and history; development, preservation, and documentation of the National Collections; presentation of public exhibits and performances; collection, preparation, dissemination, and exchange of information and publications; conduct of education, training, and museum assistance programs; maintenance, alteration, operation, lease (for terms not to exceed 30 years), and protection of buildings, facilities, and approaches; not to exceed \$100,000 for services as authorized by 5 U.S.C. 3109; up to five replacement passenger vehicles; purchase, rental, repair, and cleaning of uniforms for employees, \$495,925,000, of which not to exceed \$10,108,000 for the instrumentation program, collections acquisition, exhibition reinstallation, the National Museum of African American History and Culture, and the repatriation of skeletal remains program shall remain available until expended; and of which \$1,620,000 for fellowships and scholarly awards shall remain available until September 30, 2006; and including such funds as may be necessary to support American overseas research centers and a total of \$125,000 for the Council of American Overseas Research Centers: *Provided*, That funds appropriated herein are available for advance payments to independent contractors performing research services or participating in official Smithsonian presentations: *Provided further*, That the Smithsonian Institution may expend Federal appropriations designated in this Act for lease or rent payments for long term and swing space, as rent payable to the Smithsonian Institution, and such rent payments may be deposited into the general trust funds of the Institution to the extent that federally supported activities are housed in the 900 H Street, N.W. building in the District of Columbia: *Provided further*, That this use of Federal appropriations shall not be construed as debt service, a Federal guarantee of, a transfer of risk to, or an obligation of, the Federal Government: *Provided further*, That no appropriated funds may be used to service debt which is incurred to finance the costs of acquiring the 900 H Street building or of planning, designing, and constructing improvements to such building.

FACILITIES CAPITAL

For necessary expenses of repair, revitalization, and alteration of facilities owned or occupied by the Smithsonian Institution, by contract or otherwise, as authorized by section 2 of the Act of

August 22, 1949 (63 Stat. 623), and for construction, including necessary personnel, \$127,900,000, to remain available until expended, of which not to exceed \$10,000 is for services as authorized by 5 U.S.C. 3109: *Provided*, That contracts awarded for environmental systems, protection systems, and repair or restoration of facilities of the Smithsonian Institution may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.

ADMINISTRATIVE PROVISIONS, SMITHSONIAN INSTITUTION

None of the funds in this or any other Act may be used to make any changes to the existing Smithsonian science programs including closure of facilities, relocation of staff or redirection of functions and programs without the advance approval of the House and Senate Committees on Appropriations.

None of the funds in this or any other Act may be used to initiate the design for any proposed expansion of current space or new facility without consultation with the House and Senate Appropriations Committees.

None of the funds in this or any other Act may be used for the Holt House located at the National Zoological Park in Washington, D.C., unless identified as repairs to minimize water damage, monitor structure movement, or provide interim structural support.

None of the funds available to the Smithsonian may be reprogrammed without the advance written approval of the House and Senate Committees on Appropriations in accordance with the reprogramming procedures contained in the statement of the managers accompanying this Act.

None of the funds in this or any other Act may be used to purchase any additional buildings without prior consultation with the House and Senate Committees on Appropriations.

NATIONAL GALLERY OF ART

SALARIES AND EXPENSES

For the upkeep and operations of the National Gallery of Art, the protection and care of the works of art therein, and administrative expenses incident thereto, as authorized by the Act of March 24, 1937 (50 Stat. 51), as amended by the public resolution of April 13, 1939 (Public Resolution 9, Seventy-sixth Congress), including services as authorized by 5 U.S.C. 3109; payment in advance when authorized by the treasurer of the Gallery for membership in library, museum, and art associations or societies whose publications or services are available to members only, or to members at a price lower than to the general public; purchase, repair, and cleaning of uniforms for guards, and uniforms, or allowances therefor, for other employees as authorized by law (5 U.S.C. 5901–5902); purchase or rental of devices and services for protecting buildings and contents thereof, and maintenance, alteration, improvement, and repair of buildings, approaches, and grounds; and purchase of services for restoration and repair of works of art for the National Gallery of Art by contracts made, without advertising, with individuals, firms, or organizations at such rates or prices and under such terms and conditions as the Gallery may deem proper, \$93,000,000, of which not to exceed \$3,026,000

for the special exhibition program shall remain available until expended.

REPAIR, RESTORATION AND RENOVATION OF BUILDINGS

For necessary expenses of repair, restoration and renovation of buildings, grounds and facilities owned or occupied by the National Gallery of Art, by contract or otherwise, as authorized, \$11,100,000, to remain available until expended: *Provided*, That contracts awarded for environmental systems, protection systems, and exterior repair or renovation of buildings of the National Gallery of Art may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.

JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

OPERATIONS AND MAINTENANCE

For necessary expenses for the operation, maintenance and security of the John F. Kennedy Center for the Performing Arts, \$17,152,000.

CONSTRUCTION

For necessary expenses for capital repair and restoration of the existing features of the building and site of the John F. Kennedy Center for the Performing Arts, \$16,334,000, to remain available until expended.

WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

SALARIES AND EXPENSES

For expenses necessary in carrying out the provisions of the Woodrow Wilson Memorial Act of 1968 (82 Stat. 1356) including hire of passenger vehicles and services as authorized by 5 U.S.C. 3109, \$8,987,000.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS

GRANTS AND ADMINISTRATION

For necessary expenses to carry out the National Foundation on the Arts and the Humanities Act of 1965, as amended, \$122,972,000, shall be available to the National Endowment for the Arts for the support of projects and productions in the arts through assistance to organizations and individuals pursuant to sections 5(c) and 5(g) of the Act, including \$21,729,000 for support of arts education and public outreach activities through the Challenge America program, for program support, and for administering the functions of the Act, to remain available until expended: *Provided*, That funds previously appropriated to the National Endowment for the Arts “Matching Grants” account and “Challenge America” account may be transferred to and merged with this account.

NATIONAL ENDOWMENT FOR THE HUMANITIES

GRANTS AND ADMINISTRATION

For necessary expenses to carry out the National Foundation on the Arts and the Humanities Act of 1965, as amended, \$123,877,000, shall be available to the National Endowment for the Humanities for support of activities in the humanities, pursuant to section 7(c) of the Act, and for administering the functions of the Act, to remain available until expended.

MATCHING GRANTS

To carry out the provisions of section 10(a)(2) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, \$16,122,000, to remain available until expended, of which \$10,436,000 shall be available to the National Endowment for the Humanities for the purposes of section 7(h): *Provided*, That this appropriation shall be available for obligation only in such amounts as may be equal to the total amounts of gifts, bequests, and devises of money, and other property accepted by the chairman or by grantees of the Endowment under the provisions of subsections 11(a)(2)(B) and 11(a)(3)(B) during the current and preceding fiscal years for which equal amounts have not previously been appropriated.

ADMINISTRATIVE PROVISIONS

None of the funds appropriated to the National Foundation on the Arts and the Humanities may be used to process any grant or contract documents which do not include the text of 18 U.S.C. 1913: *Provided*, That none of the funds appropriated to the National Foundation on the Arts and the Humanities may be used for official reception and representation expenses: *Provided further*, That funds from nonappropriated sources may be used as necessary for official reception and representation expenses: *Provided further*, That the Chairperson of the National Endowment for the Arts may approve grants up to \$10,000, if in the aggregate this amount does not exceed 5 percent of the sums appropriated for grant-making purposes per year: *Provided further*, That such small grant actions are taken pursuant to the terms of an expressed and direct delegation of authority from the National Council on the Arts to the Chairperson.

COMMISSION OF FINE ARTS

SALARIES AND EXPENSES

For expenses made necessary by the Act establishing a Commission of Fine Arts (40 U.S.C. 104), \$1,793,000: *Provided*, That the Commission is authorized to charge fees to cover the full costs of its publications, and such fees shall be credited to this account as an offsetting collection, to remain available until expended without further appropriation.

NATIONAL CAPITAL ARTS AND CULTURAL AFFAIRS

For necessary expenses as authorized by Public Law 99–190 (20 U.S.C. 956(a)), as amended, \$7,000,000.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

SALARIES AND EXPENSES

For necessary expenses of the Advisory Council on Historic Preservation (Public Law 89–665, as amended), \$4,600,000: *Provided*, That none of these funds shall be available for compensation of level V of the Executive Schedule or higher positions.

NATIONAL CAPITAL PLANNING COMMISSION

SALARIES AND EXPENSES

For necessary expenses, as authorized by the National Capital Planning Act of 1952 (40 U.S.C. 71–71i), including services as authorized by 5 U.S.C. 3109, \$8,000,000: *Provided*, That one-quarter of 1 percent of the funds provided under this heading may be used for official reception and representational expenses to host international visitors engaged in the planning and physical development of world capitals.

UNITED STATES HOLOCAUST MEMORIAL MUSEUM

HOLOCAUST MEMORIAL MUSEUM

For expenses of the Holocaust Memorial Museum, as authorized by Public Law 106–292 (36 U.S.C. 2301–2310), \$41,433,000, of which \$1,900,000 for the museum’s repair and rehabilitation program and \$1,264,000 for the museum’s exhibitions program shall remain available until expended.

PRESIDIO TRUST

PRESIDIO TRUST FUND

For necessary expenses to carry out title I of the Omnibus Parks and Public Lands Management Act of 1996, \$20,000,000 shall be available to the Presidio Trust, to remain available until expended.

TITLE III—GENERAL PROVISIONS

Contracts.
Public
information.

SEC. 301. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 302. No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete.

SEC. 303. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 304. None of the funds provided in this Act to any department or agency shall be obligated or expended to provide a personal

cook, chauffeur, or other personal servants to any officer or employee of such department or agency except as otherwise provided by law.

SEC. 305. No assessments may be levied against any program, budget activity, subactivity, or project funded by this Act unless notice of such assessments and the basis therefor are presented to the Committees on Appropriations and are approved by such committees.

SEC. 306. None of the funds in this Act may be used to plan, prepare, or offer for sale timber from trees classified as giant sequoia (*Sequoiadendron giganteum*) which are located on National Forest System or Bureau of Land Management lands in a manner different than such sales were conducted in fiscal year 2004.

SEC. 307. (a) LIMITATION OF FUNDS.—None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to accept or process applications for a patent for any mining or mill site claim located under the general mining laws.

(b) EXCEPTIONS.—The provisions of subsection (a) shall not apply if the Secretary of the Interior determines that, for the claim concerned: (1) a patent application was filed with the Secretary on or before September 30, 1994; and (2) all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims, and section 2337 of the Revised Statutes (30 U.S.C. 42) for mill site claims, as the case may be, were fully complied with by the applicant by that date.

(c) REPORT.—On September 30, 2005, the Secretary of the Interior shall file with the House and Senate Committees on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on actions taken by the Department under the plan submitted pursuant to section 314(c) of the Department of the Interior and Related Agencies Appropriations Act, 1997 (Public Law 104–208).

(d) MINERAL EXAMINATIONS.—In order to process patent applications in a timely and responsible manner, upon the request of a patent applicant, the Secretary of the Interior shall allow the applicant to fund a qualified third-party contractor to be selected by the Bureau of Land Management to conduct a mineral examination of the mining claims or mill sites contained in a patent application as set forth in subsection (b). The Bureau of Land Management shall have the sole responsibility to choose and pay the third-party contractor in accordance with the standard procedures employed by the Bureau of Land Management in the retention of third-party contractors.

Contracts.

SEC. 308. Notwithstanding any other provision of law, amounts appropriated to or earmarked in committee reports for the Bureau of Indian Affairs and the Indian Health Service by Public Laws 103–138, 103–332, 104–134, 104–208, 105–83, 105–277, 106–113, 106–291, 107–63, 108–7, and 108–108 for payments to tribes and tribal organizations for contract support costs associated with self-determination or self-governance contracts, grants, compacts, or annual funding agreements with the Bureau of Indian Affairs or the Indian Health Service as funded by such Acts, are the total amounts available for fiscal years 1994 through 2004 for such

purposes, except that, for the Bureau of Indian Affairs, tribes and tribal organizations may use their tribal priority allocations for unmet indirect costs of ongoing contracts, grants, self-governance compacts or annual funding agreements.

SEC. 309. Of the funds provided to the National Endowment for the Arts:

Grants.

(1) The Chairperson shall only award a grant to an individual if such grant is awarded to such individual for a literature fellowship, National Heritage Fellowship, or American Jazz Masters Fellowship.

Procedures.

(2) The Chairperson shall establish procedures to ensure that no funding provided through a grant, except a grant made to a State or local arts agency, or regional group, may be used to make a grant to any other organization or individual to conduct activity independent of the direct grant recipient. Nothing in this subsection shall prohibit payments made in exchange for goods and services.

(3) No grant shall be used for seasonal support to a group, unless the application is specific to the contents of the season, including identified programs and/or projects.

SEC. 310. The National Endowment for the Arts and the National Endowment for the Humanities are authorized to solicit, accept, receive, and invest in the name of the United States, gifts, bequests, or devises of money and other property or services and to use such in furtherance of the functions of the National Endowment for the Arts and the National Endowment for the Humanities. Any proceeds from such gifts, bequests, or devises, after acceptance by the National Endowment for the Arts or the National Endowment for the Humanities, shall be paid by the donor or the representative of the donor to the Chairman. The Chairman shall enter the proceeds in a special interest-bearing account to the credit of the appropriate endowment for the purposes specified in each case.

SEC. 311. (a) In providing services or awarding financial assistance under the National Foundation on the Arts and the Humanities Act of 1965 from funds appropriated under this Act, the Chairperson of the National Endowment for the Arts shall ensure that priority is given to providing services or awarding financial assistance for projects, productions, workshops, or programs that serve underserved populations.

(b) In this section:

(1) The term “underserved population” means a population of individuals, including urban minorities, who have historically been outside the purview of arts and humanities programs due to factors such as a high incidence of income below the poverty line or to geographic isolation.

(2) The term “poverty line” means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

(c) In providing services and awarding financial assistance under the National Foundation on the Arts and Humanities Act of 1965 with funds appropriated by this Act, the Chairperson of the National Endowment for the Arts shall ensure that priority is given to providing services or awarding financial assistance for projects, productions, workshops, or programs that will encourage

public knowledge, education, understanding, and appreciation of the arts.

(d) With funds appropriated by this Act to carry out section 5 of the National Foundation on the Arts and Humanities Act of 1965—

(1) the Chairperson shall establish a grant category for projects, productions, workshops, or programs that are of national impact or availability or are able to tour several States;

Grants.

(2) the Chairperson shall not make grants exceeding 15 percent, in the aggregate, of such funds to any single State, excluding grants made under the authority of paragraph (1);

(3) the Chairperson shall report to the Congress annually and by State, on grants awarded by the Chairperson in each grant category under section 5 of such Act; and

Reports.

(4) the Chairperson shall encourage the use of grants to improve and support community-based music performance and education.

SEC. 312. No part of any appropriation contained in this Act shall be expended or obligated to complete and issue the 5-year program under the Forest and Rangeland Renewable Resources Planning Act.

SEC. 313. None of the funds in this Act may be used to support Government-wide administrative functions unless such functions are justified in the budget process and funding is approved by the House and Senate Committees on Appropriations.

SEC. 314. Notwithstanding any other provision of law, for fiscal year 2005 the Secretaries of Agriculture and the Interior are authorized to limit competition for watershed restoration project contracts as part of the “Jobs in the Woods” Program established in Region 10 of the Forest Service to individuals and entities in historically timber-dependent areas in the States of Washington, Oregon, northern California, Idaho, Montana, and Alaska that have been affected by reduced timber harvesting on Federal lands. The Secretaries shall consider the benefits to the local economy in evaluating bids and designing procurements which create economic opportunities for local contractors.

Contracts.
State listing.

SEC. 315. Amounts deposited during fiscal year 2004 in the roads and trails fund provided for in the 14th paragraph under the heading “FOREST SERVICE” of the Act of March 4, 1913 (37 Stat. 843; 16 U.S.C. 501), shall be used by the Secretary of Agriculture, without regard to the State in which the amounts were derived, to repair or reconstruct roads, bridges, and trails on National Forest System lands or to carry out and administer projects to improve forest health conditions, which may include the repair or reconstruction of roads, bridges, and trails on National Forest System lands in the wildland-community interface where there is an abnormally high risk of fire. The projects shall emphasize reducing risks to human safety and public health and property and enhancing ecological functions, long-term forest productivity, and biological integrity. The projects may be completed in a subsequent fiscal year. Funds shall not be expended under this section to replace funds which would otherwise appropriately be expended from the timber salvage sale fund. Nothing in this section shall be construed to exempt any project from any environmental law.

SEC. 316. Other than in emergency situations, none of the funds in this Act may be used to operate telephone answering machines during core business hours unless such answering

machines include an option that enables callers to reach promptly an individual on-duty with the agency being contacted.

SEC. 317. No timber sale in Region 10 shall be advertised if the indicated rate is deficit when appraised using a residual value approach that assigns domestic Alaska values for western redcedar. Program accomplishments shall be based on volume sold. Should Region 10 sell, in the current fiscal year, the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan in sales which are not deficit when appraised using a residual value approach that assigns domestic Alaska values for western redcedar, all of the western redcedar timber from those sales which is surplus to the needs of domestic processors in Alaska, shall be made available to domestic processors in the contiguous 48 United States at prevailing domestic prices. Should Region 10 sell, in the current fiscal year, less than the annual average portion of the decadal allowable sale quantity called for in the Tongass Land Management Plan in sales which are not deficit when appraised using a residual value approach that assigns domestic Alaska values for western redcedar, the volume of western redcedar timber available to domestic processors at prevailing domestic prices in the contiguous 48 United States shall be that volume: (1) which is surplus to the needs of domestic processors in Alaska; and (2) is that percent of the surplus western redcedar volume determined by calculating the ratio of the total timber volume which has been sold on the Tongass to the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan. The percentage shall be calculated by Region 10 on a rolling basis as each sale is sold (for purposes of this amendment, a "rolling basis" shall mean that the determination of how much western redcedar is eligible for sale to various markets shall be made at the time each sale is awarded). Western redcedar shall be deemed "surplus to the needs of domestic processors in Alaska" when the timber sale holder has presented to the Forest Service documentation of the inability to sell western redcedar logs from a given sale to domestic Alaska processors at a price equal to or greater than the log selling value stated in the contract. All additional western redcedar volume not sold to Alaska or contiguous 48 United States domestic processors may be exported to foreign markets at the election of the timber sale holder. All Alaska yellow cedar may be sold at prevailing export prices at the election of the timber sale holder.

SEC. 318. Section 3 of the Act of June 9, 1930 (commonly known as the Knutson-Vandenberg Act; 16 U.S.C. 576b), is amended—

(1) by striking "The Secretary of Agriculture may, when in his" and inserting "(a) The Secretary of Agriculture may, when in his or her";

"(b) Amounts deposited under subsection (a)";

(2) by striking "may direct:" and all that follows through "That the Secretary of Agriculture" and inserting "may direct. The Secretary of Agriculture"; and

(3) by adding at the end the following new subsection:

"(c) Any portion of the balance at the end of a fiscal year in the special fund established pursuant to this section that the Secretary of Agriculture determines to be in excess of the cost of doing work described in subsection (a) (as well as any portion

of the balance in the special fund that the Secretary determined, before October 1, 2004, to be excess of the cost of doing work described in subsection (a), but which has not been transferred by that date) shall be transferred to miscellaneous receipts, National Forest Fund, as a National Forest receipt, but only if the Secretary also determines that—

“(1) the excess amounts will not be needed for emergency wildfire suppression during the fiscal year in which the transfer would be made; and

“(2) the amount to be transferred to miscellaneous receipts, National Forest Fund, exceeds the outstanding balance of unreimbursed funds transferred from the special fund in prior fiscal years for wildfire suppression.”.

SEC. 319. A project undertaken by the Forest Service under the Recreation Fee Demonstration Program as authorized by section 315 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996, as amended, shall not result in—

16 USC 460l–6a
note.

(1) displacement of the holder of an authorization to provide commercial recreation services on Federal lands. Prior to initiating any project, the Secretary shall consult with potentially affected holders to determine what impacts the project may have on the holders. Any modifications to the authorization shall be made within the terms and conditions of the authorization and authorities of the impacted agency; and

(2) the return of a commercial recreation service to the Secretary for operation when such services have been provided in the past by a private sector provider, except when—

(A) the private sector provider fails to bid on such opportunities;

(B) the private sector provider terminates its relationship with the agency; or

(C) the agency revokes the permit for non-compliance with the terms and conditions of the authorization.

In such cases, the agency may use the Recreation Fee Demonstration Program to provide for operations until a subsequent operator can be found through the offering of a new prospectus.

SEC. 320. Prior to October 1, 2005, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 et seq.) or any other law: *Provided*, That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.

16 USC 1604
note.

SEC. 321. No funds provided in this Act may be expended to conduct preleasing, leasing and related activities under either the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) within the boundaries of a National Monument established pursuant to the Act of June 8, 1906 (16 U.S.C. 431 et seq.) as such boundary existed on January 20, 2001, except where such activities are

allowed under the Presidential proclamation establishing such monument.

SEC. 322. EXTENSION OF FOREST SERVICE CONVEYANCES PILOT PROGRAM.—Section 329 of the Department of the Interior and Related Agencies Appropriations Act, 2002 (16 U.S.C. 580d note; Public Law 107-63) is amended—

- (1) in subsection (b), by striking “30” and inserting “40”;
- (2) in subsection (c) by striking “8” and inserting “13”;
- and
- (3) in subsection (d), by striking “2007” and inserting “2008”.

SEC. 323. Section 3(c) of the Harriet Tubman Special Resource Study Act (Public Law 106-516; 114 Stat. 2405) is amended by striking “section 8 of section 8” and inserting “section 8.”.

SEC. 324. In entering into agreements with foreign countries pursuant to the Wildfire Suppression Assistance Act (42 U.S.C. 1856m) the Secretary of Agriculture and the Secretary of the Interior are authorized to enter into reciprocal agreements in which the individuals furnished under said agreements to provide wildfire services are considered, for purposes of tort liability, employees of the country receiving said services when the individuals are engaged in fire suppression: *Provided*, That the Secretary of Agriculture or the Secretary of the Interior shall not enter into any agreement under this provision unless the foreign country (either directly or through its fire organization) agrees to assume any and all liability for the acts or omissions of American firefighters engaged in firefighting in a foreign country: *Provided further*, That when an agreement is reached for furnishing fire fighting services, the only remedies for acts or omissions committed while fighting fires shall be those provided under the laws of the host country, and those remedies shall be the exclusive remedies for any claim arising out of fighting fires in a foreign country: *Provided further*, That neither the sending country nor any legal organization associated with the firefighter shall be subject to any legal action whatsoever pertaining to or arising out of the firefighter’s role in fire suppression.

SEC. 325. Notwithstanding any other provision of law or regulation, to promote the more efficient use of the health care funding allocation for fiscal year 2005, the Eagle Butte Service Unit of the Indian Health Service, at the request of the Cheyenne River Sioux Tribe, may pay base salary rates to health professionals up to the highest grade and step available to a physician, pharmacist, or other health professional and may pay a recruitment or retention bonus of up to 25 percent above the base pay rate.

SEC. 326. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 327. None of the funds in this Act may be used to prepare or issue a permit or lease for oil or gas drilling in the Finger Lakes National Forest, New York, during fiscal year 2005.

SEC. 328. In awarding a Federal contract with funds made available by this Act, the Secretary of Agriculture and the Secretary of the Interior (the “Secretaries”) may, in evaluating bids and proposals, give consideration to local contractors who are from,

and who provide employment and training for, dislocated and displaced workers in an economically disadvantaged rural community, including those historically timber-dependent areas that have been affected by reduced timber harvesting on Federal lands and other forest-dependent rural communities isolated from significant alternative employment opportunities: *Provided*, That notwithstanding Federal Government procurement and contracting laws the Secretaries may award contracts, grants or cooperative agreements to local non-profit entities, Youth Conservation Corps or related partnerships with State, local or non-profit youth groups, or small or disadvantaged business: *Provided further*, That the contract, grant, or cooperative agreement is for forest hazardous fuels reduction, watershed or water quality monitoring or restoration, wildlife or fish population monitoring, or habitat restoration or management: *Provided further*, That the terms “rural community” and “economically disadvantaged” shall have the same meanings as in section 2374 of Public Law 101–624: *Provided further*, That the Secretaries shall develop guidance to implement this section: *Provided further*, That nothing in this section shall be construed as relieving the Secretaries of any duty under applicable procurement laws, except as provided in this section.

SEC. 329. No funds appropriated in this Act for the acquisition of lands or interests in lands may be expended for the filing of declarations of taking or complaints in condemnation without the approval of the House and Senate Committees on Appropriations: *Provided*, That this provision shall not apply to funds appropriated to implement the Everglades National Park Protection and Expansion Act of 1989, or to funds appropriated for Federal assistance to the State of Florida to acquire lands for Everglades restoration purposes.

SEC. 330. Section 338 of Public Law 108–108 is amended by striking “2003” and inserting “2004”. 117 Stat. 1314.

SEC. 331. Section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 110 Stat. 1321–200; 16 U.S.C. 4601–6a note), is amended—

(1) in subsection (b), by inserting “subject to subsection (g) but” before “notwithstanding” in the matter preceding paragraph (1); and

(2) by adding at the end the following new subsection:
“(g) The Secretary of Agriculture may not charge or collect fees under this section for the following:

“(1) Admission to a unit of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

“(2) The use either singly or in any combination, of the following—

“(A) undesignated parking along roads;

“(B) overlook sites or scenic pullouts;

“(C) information offices and centers that only provide general area information and limited services or interpretive exhibits; and

“(D) dispersed areas for which expenditures in facilities or services are limited.”.

SEC. 332. (a) LIMITATION ON COMPETITIVE SOURCING STUDIES.—

(1) Of the funds made available by this or any other Act to the Department of Energy or the Department of the Interior

for fiscal year 2005, not more than the maximum amount specified in paragraph (2) may be used by the Secretary of Energy or the Secretary of the Interior to initiate or continue competitive sourcing studies in fiscal year 2005 for programs, projects, and activities for which funds are appropriated by this Act until such time as the Secretary concerned submits a reprogramming proposal to the Committees on Appropriations of the Senate and the House of Representatives, and such proposal has been processed consistent with the reprogramming guidelines in House Report 108-330.

(2) For the purposes of paragraph (1) the maximum amount—

(A) with respect to the Department of Energy is \$500,000; and

(B) with respect to the Department of the Interior is \$3,250,000.

(3) Of the funds appropriated by this Act, not more than \$2,000,000 may be used in fiscal year 2005 for competitive sourcing studies and related activities by the Forest Service.

(b) COMPETITIVE SOURCING STUDY DEFINED.—In this section, the term “competitive sourcing study” means a study on subjecting work performed by Federal Government employees or private contractors to public-private competition or on converting the Federal Government employees or the work performed by such employees to private contractor performance under the Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.

31 USC 501 note.

(c) Section 340(b) of Public Law 108-108 is hereby repealed.

(d) COMPETITIVE SOURCING EXEMPTION FOR FOREST SERVICE STUDIES CONDUCTED PRIOR TO FISCAL YEAR 2005.—Notwithstanding requirements of Office of Management and Budget Circular A-76, Attachment B, the Forest Service is hereby exempted from implementing the Letter of Obligation and post-competition accountability guidelines where a competitive sourcing study involved 65 or fewer full-time equivalents, the performance decision was made in favor of the agency provider; no net savings was achieved by conducting the study, and the study was completed prior to the date of this Act.

(e) In preparing any reports to the Committees on Appropriations on competitive sourcing activities, agencies funded in this Act shall include the incremental cost directly attributable to conducting the competitive sourcing competitions, including costs attributable to paying outside consultants and contractors and, in accordance with full cost accounting principles, all costs attributable to developing, implementing, supporting, managing, monitoring, and reporting on competitive sourcing, including personnel, consultant, travel, and training costs associated with program management.

SEC. 333. Estimated overhead charges, deductions, reserves or holdbacks from programs, projects and activities to support governmentwide, departmental, agency or bureau administrative functions or headquarters, regional or central office operations shall be presented in annual budget justifications. Changes to such estimates shall be presented to the Committees on Appropriations for approval.

SEC. 334. None of the funds in this Act or prior Acts making appropriations for the Department of the Interior and Related Agencies may be provided to the managing partners or their agents for the SAFECOM or Disaster Management projects.

SEC. 335. CONVEYANCE OF A SMALL PARCEL OF PUBLIC DOMAIN LAND IN THE SAN BERNARDINO NATIONAL FOREST IN THE STATE OF CALIFORNIA. (a) FINDINGS.—The Congress finds that—

(1) a select area of the San Bernardino National Forest in California is heavily developed with recreation residences and is immediately adjacent to comparably developed private property;

(2) it is in the public interest to convey the above referenced area to the owners of the recreation residences; and

(3) the Secretary of Agriculture should use the proceeds of such conveyance for critical San Bernardino National Forest infrastructure improvements or to acquire additional lands within the boundaries of the San Bernardino National Forest.

(b) CONVEYANCE REQUIRED.—Subject to valid existing rights and such terms, conditions, and restrictions as the Secretary deems necessary or desirable in the public interest, the Secretary of Agriculture shall convey to the Mill Creek Homeowners Association (hereinafter Association) all right, title, and interest of the United States in and to the Mill Creek parcel of real estate described in subsection (c)(1). In the event the Secretary and the Association for any reason do not complete the sale within 2 years from the date of enactment of this Act, this authority shall expire.

Expiration date.

(c) LEGAL DESCRIPTION AND CORRECTION AUTHORITY.—

(1) DESCRIPTION.—The Mill Creek parcel, approximately 35 acres, as shown on a map “The Mill Creek Conveyance Parcel—San Bernardino National Forest, dated June 1, 2004” generally located in the northeast quarter of Section 8, T.1S., R.1W., San Bernardino Meridian, of the United States Public Lands Survey System, California. The map shall be on file and available for inspection in the office of the Chief, Forest Service, Washington, DC and in the office of the Forest Supervisor, San Bernardino National Forest until such time as the lands are conveyed.

California.

(2) CORRECTIONS.—The Secretary is authorized to make minor corrections to this map and may modify the description to correct errors or to reconfigure the property in order to facilitate conveyance. In the event of a conflict between the map description and the USPLSS description of the land in paragraph (1), the map will be considered the definitive description of the land.

(d) CONSIDERATION.—Consideration for the conveyance under subsection (b) shall be equal to the appraised fair market value of the parcel of real property to be conveyed. Such appraisal shall be prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisition.

(e) ACCESS REQUIREMENTS.—Notwithstanding section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)) or any other law, the Secretary is not required to provide access over National Forest System lands to the parcel of real estate to be conveyed under subsection (b).

(f) ADMINISTRATIVE COSTS.—All costs incurred by the Secretary of Agriculture and any costs associated with the creation of a subdivided parcel, conducting and recordation of a survey, zoning,

planning approval, and similar expenses with respect to the conveyance under subsection (b), shall be borne by the Association.

(g) ASSUMPTION OF LIABILITY.—By acceptance of the conveyance of the parcel of real property referred to in subsection (b), the Association and its successors and assigns will indemnify and hold harmless the United States for any and all liability to any party that is associated with the parcel.

(h) TREATMENT OF RECEIPTS.—All funds received pursuant to the conveyance of the parcel of real property referred to in subsection (b) shall be deposited in the fund established under Public Law 90-171 (16 U.S.C. 484a; commonly known as the Sisk Act), and the funds shall remain available to the Secretary, until expended, for critical San Bernardino National Forest infrastructure improvements or the acquisition of lands, waters, and interests in land for inclusion in the San Bernardino National Forest.

SEC. 336. Section 331 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106-291; 114 Stat. 996), is amended—

(1) in subsection (a), by striking “Until September 30, 2004, the” and inserting “The”; and

(2) by adding at the end the following new subsections:

“(d) INCLUSION OF COLORADO BLM LANDS.—The authority provided by this section shall also be available to the Secretary of the Interior with respect to public lands in the State of Colorado administered by the Secretary through the Bureau of Land Management.

“(e) EXPIRATION OF AUTHORITY.—The authority of the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements and contracts under this section expires September 30, 2009, and the term of any cooperative agreement or contract entered into under this section shall not extend beyond that date.”.

SEC. 337. FEDERAL AND STATE COOPERATIVE FOREST, RANGELAND, AND WATERSHED RESTORATION IN UTAH. (a) AUTHORITY.—Until September 30, 2006, the Secretary of Agriculture, via cooperative agreement or contract (including sole source contract) as appropriate, may permit the State Forester of the State of Utah to perform forest, rangeland, and watershed restoration services on National Forest System lands in the State of Utah. Restoration services provided are to be on a project to project basis as planned or made ready for implementation under existing authorities of the Forest Service. The types of restoration services that may be contracted under this authority include treatment of insect infested trees, reduction of hazardous fuels, and other activities to restore or improve forest, rangeland, and watershed health including fish and wildlife habitat.

(b) STATE AS AGENT.—Except as provided in subsection (c), a cooperative agreement or contract under subsection (a) may authorize the State Forester of the State of Utah to serve as agent for the Forest Service in providing services necessary to facilitate the performance and treatment of insect infested trees, reduction of hazardous fuels, and to restore or improve forest, rangeland, and watershed health including fish and wildlife habitat under subsection (a). The services to be performed by the State Forester of Utah may be conducted with subcontracts utilizing State of Utah contract procedures. Subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C.

472a) shall not apply to services performed under a cooperative agreement or contract under subsection (a).

(c) RETENTION OF NEPA RESPONSIBILITIES.—With respect to any treatment activity to restore and improve forest, rangeland, and watershed health including fish and wildlife habitat services on National Forest System lands programmed for treatment by the State Forester of the State of Utah under subsection (a), any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4821 et seq.) may not be delegated to any officer or employee of the State of Utah.

SEC. 338. (a) IN GENERAL.—An entity that enters into a contract with the United States to operate the National Recreation Reservation Service (as solicited by the solicitation numbered WO-04-06vm) shall not carry out any duties under the contract using:

(1) a contact center located outside the United States;

or

(2) a reservation agent who does not live in the United States.

(b) NO WAIVER.—The Secretary of Agriculture may not waive the requirements of subsection (a).

(c) TELECOMMUTING.—A reservation agent who is carrying out duties under the contract described in subsection (a) may not telecommute from a location outside the United States.

(d) LIMITATIONS.—Nothing in this Act shall be construed to apply to any employee of the entity who is not a reservation agent carrying out the duties under the contract described in subsection (a) or who provides managerial or support services.

SEC. 339. For fiscal years 2005 through 2007, a decision made by the Secretary of Agriculture to authorize grazing on an allotment shall be categorically excluded from documentation in an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if: (1) the decision continues current grazing management of the allotment; (2) monitoring indicates that current grazing management is meeting, or satisfactorily moving toward, objectives in the land and resource management plan, as determined by the Secretary; and (3) the decision is consistent with agency policy concerning extraordinary circumstances. The total number of allotments that may be categorically excluded under this section may not exceed 900.

SEC. 340. SALMON RIVER COMMERCIAL OUTFITTER HUNTING CAMPS. Section 3(a)(24) of Public Law 90-542 (16 U.S.C. 1274) is amended to add the following after paragraph (C) and redesignate subsequent paragraphs accordingly:

“(D) The established use and occupancy as of June 6, 2003, of lands and maintenance or replacement of facilities and structures for commercial recreation services at Stub Creek located in section 28, T24N, R14E, Boise Principal Meridian, at Arctic Creek located in section 21, T25N, R12E, Boise Principal Meridian and at Smith Gulch located in section 27, T25N, R12E, Boise Principal Meridian shall continue to be authorized, subject to such reasonable regulation as the Secretary deems appropriate, including rules that would provide for termination for non-compliance, and if terminated, reoffering the site through a competitive process.”.

SEC. 341. (a) IN GENERAL.—

Grants.
Nevada.

(1) The Secretary of Agriculture and the Secretary of the Interior are authorized to make grants to the Eastern Nevada Landscape Coalition for the study and restoration of rangeland and other lands in Nevada's Great Basin in order to help assure the reduction of hazardous fuels and for related purposes.

Contracts.

(2) Notwithstanding 31 U.S.C. 6301-6308, the Director of the Bureau of Land Management shall enter into a cooperative agreement with the Eastern Nevada Landscape Coalition for the Great Basin Restoration Project, including hazardous fuels and mechanical treatments and related work.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

Alaska.

SEC. 342. (a) FINDINGS.—

(1) In 1953, Public Land Order 899 (PLO 899) eliminated approximately 80 acres from the Tongass National Forest, for the Community of Elfin Cove, Alaska. From 1953 until 2001, the USDA Forest Service believed two small islets within the Elfin Cove Harbor (Lots 1 and 2 of U.S. Survey 13150, approximately 0.29 acres) were included as part of PLO 899. However, due to a Bureau of Land Management rule in effect when PLO 899 was issued, ownership of unsurveyed, unmapped islets remained with the original landowner, in this case the United States.

(2) These two islets are needed by the Community of Elfin Cove to resolve public health and safety problems.

(3) The two islets serve no national forest purposes, but the Forest Service has no authority to transfer ownership of them to the Community of Elfin Cove, without receiving fair market value for the land interests.

(4) Neither the Bureau of Land Management nor the Forest Service intended to retain Federal ownership of these two islets, and they remained in ownership of the United States only through an inadvertent error.

(5) Conveyance of these two islets from the United States to the Community of Elfin Cove, Alaska, without consideration, is in the public interest.

(b) Based on the findings in subsection (a) and notwithstanding any other provision of law, Congress hereby authorizes and directs the Secretary of Agriculture to convey in fee simple without compensation, Lots 1 and 2 of U.S. Survey 13150, comprising approximately 0.29 acres, to the Community of Elfin Cove, Alaska.

SEC. 343. (a) Notwithstanding any other provision of law, and until October 1, 2007, the Indian Health Service may not disburse funds for the provision of health care services pursuant to Public Law 93-638 (25 U.S.C. 450 et seq.) to any Alaska Native village or Alaska Native village corporation that is located within the area served by an Alaska Native regional health entity.

(b) Nothing in this section shall be construed to prohibit the disbursement of funds to any Alaska Native village or Alaska Native village corporation under any contract or compact entered into prior to May 1, 2004, or to prohibit the renewal of any such agreement.

Health and
health care.

(c) For the purpose of this section, Eastern Aleutian Tribes, Inc., shall be treated as an Alaska Native regional health entity to whom funds may be disbursed under this section.

SEC. 344. Notwithstanding any other provision of law and using funds previously appropriated for such purpose under Public Law 106–291 (\$1,630,000) and Public Law 108–199 (\$2,300,000), the National Park Service shall (1) not later than 60 days after enactment of this section purchase the seven parcels of real property in Seward, Alaska identified by Kenai Peninsula tax identification numbers 14910001, 14910002, 14911033, 14913005, 14913020, 14913007, and 14913008 that have been selected for the administrative complex, visitor facility, plaza and related parking for the Kenai Fjords National Park and Chugach National Forest which shall hereafter be known as the Mary Lowell Center; and (2) transfer to the City of Seward any remaining balance of previously appropriated funds not necessary for property acquisition and design upon the vacation by the City of Seward of Washington Street between 4th Avenue and 5th Avenue and transfer of title of the appropriate portions thereof to the Federal Government, provided that the City of Seward uses any such funds for the related waterfront planning, pavilions, boardwalks, trails, or related purposes that compliment the new Federal facility.

Deadline.
Real property.

SEC. 345. Section 331, of Public Law 106–113, is amended—

16 USC 497 note.

(1) in part (a) by striking “2004” and inserting “2005”; and

(2) in part (b) by striking “2004” and inserting “2005”.

SEC. 346. FEDERAL BUILDING, SANDPOINT, IDAHO. (a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of General Services.

(2) MAP.—The term “map” means the map that is—

(A) entitled “Sandpoint Federal Building”;

(B) dated September 12, 2002; and

(C) on file in—

(i) the Office of the Chief of the Forest Service; and

(ii) the Office of the Supervisor, Idaho National Forests, Coeur d’Alene, Idaho.

(3) PROPERTY.—The term “property” means the Sandpoint Federal Building and approximately 3.17 acres of land in Sandpoint, Idaho, as depicted on the map.

(4) SECRETARY.—The term “Secretary” means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(b) CONVEYANCE OF PROPERTY.—

(1) IN GENERAL.—Notwithstanding subtitle I of title 40, United States Code, the Administrator may convey to the Secretary, all right, title, and interest of the United States in and to the property.

(2) CONDITIONS.—The conveyance of the property under paragraph (1) shall be on a noncompetitive basis, for consideration, and subject to any other terms and conditions to which the Administrator and the Secretary may agree, including a purchase period with multiple payments over multiple fiscal years.

(3) SOURCE OF FUNDS.—The Secretary may use amounts made available to the Forest Service for any of fiscal years 2005 through 2010 to acquire the property under paragraph (1).

(c) SALE OR EXCHANGE OF PROPERTY.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may use, maintain, lease, sublease, sell, or exchange all or part of the property.

(2) TERMS.—The sale or exchange of the property under paragraph (1) shall be for market value and subject to such terms as the Secretary determines to be in the public interest.

(3) METHOD OF SALE OR EXCHANGE.—The sale or exchange of the property under paragraph (1) may be on a competitive or noncompetitive basis.

(4) CONSIDERATION.—Consideration for the sale or exchange of the property may be in the form of cash, land, or improvements (including improvements to be constructed after the date of the sale or exchange).

(3) DISPOSITION AND USE OF PROCEEDS.—

(A) DISPOSITION OF PROCEEDS.—The Secretary shall deposit the proceeds derived from any lease, sublease, sale, exchange, or any other use or disposition of the property in the fund established by Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a).

(B) USE OF PROCEEDS.—Amounts deposited under subparagraph (A) shall be available to the Secretary, without further appropriation, until expended, for the construction and maintenance of Forest Service offices and related facilities on National Forest System land in the vicinity of Sandpoint, Idaho.

SEC. 347. (a) SHORT TITLE.—This section may be cited as the “Chris Zajicek Memorial Land Exchange Act of 2004”.

(b) NATIONAL FOREST SYSTEM LAND EXCHANGE IN THE STATE OF FLORIDA.—

(1) IN GENERAL.—Notwithstanding the effect of the wildfire known as the “Impassable 1 Fire” on the value of the land to be exchanged, the Secretary of Agriculture (acting through the Chief of the Forest Service) may carry out the exchange agreement entered into by the Forest Service and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and dated March 5, 2004.

(2) VALUATION.—For purposes of determining the value of the land to be exchanged under paragraph (1), the value of the land shall be considered to be the value of the land determined by the appraisal conducted on August 21, 2003.

SEC. 348. (a) SHORT TITLE.—This section may be cited as the “Grey Towers National Historic Site Act of 2004”.

(b) FINDINGS; PURPOSES; DEFINITIONS.—

(1) FINDINGS.—Congress finds the following:

(A) James and Mary Pinchot constructed a home and estate that is known as Grey Towers in Milford, Pennsylvania.

(B) James and Mary Pinchot were also the progenitors of a family of notable accomplishment in the history of the Commonwealth of Pennsylvania and the Nation, in particular, their son, Gifford Pinchot.

(C) Gifford Pinchot was the first Chief of the Forest Service, a major influence in formulating and implementing forest conservation policies in the early 20th Century, and twice Governor of Pennsylvania.

(D) During the early 20th century, James and Gifford Pinchot used Grey Towers and the environs to establish

Chris Zajicek
Memorial Land
Exchange Act of
2004.

Grey Towers
National Historic
Site Act of 2004.
Pennsylvania.
16 USC 461 note.
James Pinchot.
Mary Pinchot.

Gifford Pinchot.

scientific forestry, to develop conservation leaders, and to formulate conservation principles, thus making this site one of the primary birthplaces of the American conservation movement.

(E) In 1963, Gifford Bryce Pinchot, the son of Gifford and Cornelia Pinchot, donated Grey Towers and 102 acres to the Nation.

Gifford Bryce
Pinchot.
Cornelia Pinchot.

(F) In 1963, President John F. Kennedy dedicated the Pinchot Institute for Conservation for the greater knowledge of land and its uses at Grey Towers National Historic Landmark, thereby establishing a partnership between the public and private sectors.

John F. Kennedy.

(G) Grey Towers today is a place of historical significance where leaders in natural resource conservation meet, study, and share ideas, analyses, values, and philosophies, and is also a place where the public can learn and appreciate our conservation heritage.

(H) As established by President Kennedy, the Pinchot Institute for Conservation, and the Forest Service at Grey Towers operate through an established partnership in developing and delivering programs that carry on Gifford Pinchot's conservation legacy.

(I) Grey Towers and associated structures in and around Milford, Pennsylvania, can serve to enhance regional recreational and educational opportunities.

(2) PURPOSES.—The purposes of this section are as follows:

(A) To honor and perpetuate the memory of Gifford Pinchot.

(B) To promote the recreational and educational resources of Milford, Pennsylvania, and its environs.

(C) To authorize the Secretary of Agriculture—

(i) to further the scientific, policy analysis, educational, and cultural programs in natural resource conservation at Grey Towers;

(ii) to manage the property and environs more efficiently and effectively; and

(iii) to further collaborative ties with the Pinchot Institute for Conservation, and other Federal, State, and local agencies with shared interests.

(3) DEFINITIONS.—For the purposes of this section:

(A) ASSOCIATED PROPERTIES.—The term “Associated Properties” means lands and improvements outside of the Grey Towers National Historic Landmark within Pike County, Pennsylvania, and which were associated with James and Mary Pinchot, the Yale School of Forestry, or the Forest Service.

(B) GREY TOWERS.—The term “Grey Towers” means the buildings and surrounding area of approximately 303 acres, including the 102 acres donated in 1963 to the United States and so designated that year.

(C) HISTORIC SITE.—The term “Historic Site” means the Grey Towers National Historic Site, as so designated by this Act.

(D) PINCHOT INSTITUTE.—The term “Pinchot Institute” means the Pinchot Institute for Conservation, a nonprofit corporation established under the laws of the District of Columbia.

(E) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(c) DESIGNATION OF NATIONAL HISTORIC SITE.—Subject to valid existing rights, all lands and improvements formerly encompassed within the Grey Towers National Historic Landmark are designated as the “Grey Towers National Historic Site”.

(d) ADMINISTRATION.—

(1) PURPOSES.—The Historic Site shall be administered for the following purposes:

(A) Education, public demonstration projects, and research related to natural resource conservation, protection, management, and use.

(B) Leadership development within the natural resource professions and the Federal civil service.

(C) Continuing Gifford Pinchot’s legacy through pursuit of new ideas, strategies, and solutions to natural resource issues that include economic, ecological, and social values.

(D) Preservation, use, and maintenance of the buildings, grounds, facilities, and archives associated with Gifford Pinchot.

(E) Study and interpretation of the life and works of Gifford Pinchot.

(F) Public recreation and enjoyment.

(G) Protection and enjoyment of the scenic and natural environs.

(2) APPLICABLE LAWS.—The Secretary shall administer federally owned lands and interests in lands at the Historic Site and Associated Properties as components of the National Forest System in accordance with this Act, 16 U.S.C. 461 et seq. and other laws generally applicable to the administration of national historic sites, and the laws, rules, and regulations applicable to the National Forest System, except that the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.) shall not apply.

(3) LAND ACQUISITION.—The Secretary is authorized to acquire, on a willing seller basis, by purchase, donation, exchange, or otherwise, privately owned lands and interests in lands, including improvements, within the Historic Site and the Associated Properties, using donated or appropriated funds.

(4) GIFTS.—

(A) ACCEPTED BY ENTITIES OTHER THAN THE SECRETARY.—Subject to such terms and conditions as the Secretary may prescribe, any public or private agency, organization, institution, or individual may solicit, accept, and administer private gifts of money and real or personal property for the benefit of or in connection with, the activities and services at the Historic Site.

(B) ACCEPTED BY THE SECRETARY.—Gifts may be accepted by the Secretary for the benefit of or in connection with, the activities and services at the Historic Site notwithstanding the fact that a donor conducts business with or is regulated by the Department of Agriculture in any capacity.

(e) COOPERATIVE AUTHORITIES.—

(1) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—The Secretary is authorized to enter into Agreements for grants, contracts, and cooperative agreements as appropriate with the

National Forest
System.
Public lands.

Pinchot Institute, public and other private agencies, organizations, institutions, and individuals to provide for the development, administration, maintenance, or restoration of land, facilities, or Forest Service programs at Grey Towers or to otherwise further the purposes of this section.

(2) INTERDEPARTMENTAL.—The Secretary and the Secretary of the Interior are authorized and encouraged to cooperate in promoting public use and enjoyment of Grey Towers and the Delaware Water Gap National Recreation Area and in otherwise furthering the administration and purposes for which both areas were designated. Such cooperation may include collocation and use of facilities within Associated Properties and elsewhere.

(3) OTHER.—The Secretary may authorize use of the grounds and facilities of Grey Towers by the Pinchot Institute and other participating partners including Federal, State, and local agencies, on such terms and conditions as the Secretary may prescribe, including the waiver of special use authorizations and the waiver of rental and use fees.

(f) FUNDS.—

(1) FEES AND CHARGES.—The Secretary may impose reasonable fees and charges for admission to and use of facilities on Grey Towers.

(2) SPECIAL FUND.—Any monies received by the Forest Service in administering Grey Towers shall be deposited into the Treasury of the United States and covered in a special fund called the Grey Towers National Historic Site Fund. Monies in the Grey Towers National Historic Site Fund shall be available until expended, without further appropriation, for support of programs of Grey Towers, and any other expenses incurred in the administration of Grey Towers.

(g) MAP.—The Secretary shall produce and keep for public inspection a map of the Historic Site and associated properties within Pike County, Pennsylvania, which were associated with James and Mary Pinchot, the Yale School of Forestry, or the Forest Service.

(h) SAVINGS PROVISION.—Nothing in this section shall be deemed to diminish the authorities of the Secretary under the Cooperative Forestry Assistance Act or any other law pertaining to the National Forest System.

SEC. 349. (a) SHORT TITLE.—This section may be cited as the “Montana National Forests Boundary Adjustment Act of 2004”.

(b) DEFINITIONS.—In this section:

(1) FORESTS.—The term “Forests” means the Helena National Forest, Lolo National Forest, and Beaverhead-Deerlodge National Forest in the State of Montana.

(2) MAP.—The term “map” means—

(A) the map entitled “Helena National Forest Boundary Adjustment Northern Region, USDA Forest Service” and dated September 13, 2004;

(B) the map entitled “Lolo National Forest Boundary Adjustment Northern Region, USDA Forest Service” and dated September 13, 2004; and

(C) the map entitled “Deerlodge National Forest Boundary Adjustment Northern Region USDA Forest Service” and dated September 13, 2004.

Montana
National Forests
Boundary
Adjustment Act
of 2004.

(3) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(c) HELENA, LOLO, AND BEAVERHEAD-DEERLODGE NATIONAL FORESTS BOUNDARY ADJUSTMENT.—

(1) IN GENERAL.—The boundaries of the Forests are modified as depicted on the maps.

(2) MAPS.—

(A) AVAILABILITY.—The maps shall be on file and available for public inspection in—

(i) the Office of the Chief of the Forest Service; and

(ii) the office of the Regional Forester, Missoula, Montana.

(B) CORRECTION AUTHORITY.—The Secretary may make technical corrections to the maps.

(3) ADMINISTRATION.—Any land or interest in land acquired within the boundaries of the Forests for National Forest System purposes shall be managed in accordance with—

(A) the Act of March 1, 1911 (commonly known as the “Weeks Law”) (16 U.S.C. 480 et seq.); and

(B) the laws (including regulations) applicable to the National Forest System.

(4) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), the boundaries of the Forests, as adjusted under paragraph (1), shall be considered to be the boundaries of the Forests as of January 1, 1965.

(5) EFFECT.—Nothing in this section limits the authority of the Secretary to adjust the boundaries of the Forests under section 11 of the Act of March 1, 1911 (16 U.S.C. 521).

Illinois.
Grant.

SEC. 350. In addition to amounts provided to the Department of the Interior in this Act, \$5,000,000 is provided for a grant to Kendall County, Illinois.

TITLE IV—SUPPLEMENTAL APPROPRIATIONS FOR URGENT WILDLAND FIRE SUPPRESSION ACTIVITIES

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WILDLAND FIRE MANAGEMENT

For an additional amount for “Wildland Fire Management”, \$100,000,000, to remain available until expended, for urgent wildland fire suppression activities pursuant to section 312 of S. Con. Res. 95 (108th Congress) as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108-287: *Provided*, That such funds shall only become available if funds provided for wildland fire suppression in title I of this Act will be exhausted imminently and the Secretary of the Interior notifies the House and Senate Committees on Appropriations and the House and Senate Committees on the Budget in writing of the need for these additional funds: *Provided further*, That such funds are also available for repayment to other appropriation accounts from which funds were transferred for wildfire suppression: *Provided further*, That cost containment measures shall be implemented within this

Reports.
Deadline.

account for fiscal year 2005, and the Secretary of the Interior and the Secretary of Agriculture shall submit a joint report to the Committees on Appropriations of the Senate and the House of Representatives on such cost containment measures by December 31, 2005: *Provided further*, That Public Law 108–287, title X, chapter 3 is amended under the heading “Department of the Interior, Bureau of Land Management, Wildland Fire Management”, by striking the phrases “for fiscal year 2004” and “related to the fiscal year 2004 fire season” in the text preceding the first proviso.

Ante, p. 1012.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

WILDLAND FIRE MANAGEMENT

For an additional amount for “Wildland Fire Management”, \$400,000,000, to remain available until expended, for urgent wildland fire suppression activities pursuant to section 312 of S. Con. Res. 95 (108th Congress) as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287: *Provided*, That such funds shall only become available if funds provided for wildland fire suppression in title II of this Act will be exhausted imminently and the Secretary of Agriculture notifies the House and Senate Committees on Appropriations and the House and Senate Committees on the Budget in writing of the need for these additional funds: *Provided further*, That such funds are also available for repayment to other appropriation accounts from which funds were transferred for wildfire suppression: *Provided further*, That cost containment measures shall be implemented within this account for fiscal year 2005, and the Secretary of Agriculture and the Secretary of the Interior shall submit a joint report to the Committees on Appropriations of the Senate and the House of Representatives on such cost containment measures by December 31, 2005: *Provided further*, That the Secretary of Agriculture shall establish an independent cost-control review panel to examine and report on fire suppression costs for individual wildfire incidents that exceed \$10,000,000 in cost: *Provided further*, That if the independent review panel report finds that appropriate actions were not taken to control suppression costs for one or more such wildfire incidents, then an amount equal to the aggregate estimated excess costs of suppressing those wildfire incidents shall be transferred to the Treasury from unobligated balances remaining at the end of fiscal year 2005 in the Wildland Fire Management account: *Provided further*, That Public Law 108–287, title X, chapter 3 is amended under the heading “Department of Agriculture, Forest Service, Wildland Fire Management”, by striking the phrases “for fiscal year 2004” and “related to the fiscal year 2004 fire season” in the text preceding the first proviso.

Applicability.

Applicability.

Reports.
Deadline.

Establishment.
Reports.

Ante, p. 1012.

TITLE V

SEC. 501. (a) ACROSS-THE-BOARD RESCISSIONS.—There is hereby rescinded an amount equal to 0.594 percent of—

(1) the budget authority provided for fiscal year 2005 for any discretionary account in this Act; and

(2) the budget authority provided in any advance appropriation for fiscal year 2005 for any discretionary account in the Department of the Interior and Related Agencies Appropriations Act, 2004.

(b) PROPORTIONATE APPLICATION.—Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in subsection (a); and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

Applicability.

(c) INDIAN LAND AND WATER CLAIM SETTLEMENTS.—Under the heading “Bureau of Indian Affairs, Indian Land and Water Claim Settlements and Miscellaneous Payments to Indians”, the across-the-board rescission in this section, and any subsequent across-the-board rescission for fiscal year 2005, shall apply only to the first dollar amount in the paragraph and the distribution of the rescission shall be at the discretion of the Secretary of the Interior who shall submit a report on such distribution and the rationale therefor to the House and Senate Committees on Appropriations.

This division may be cited as the “Department of the Interior and Related Agencies Appropriations Act, 2005”.

Departments of
Labor, Health
and Human
Services, and
Education, and
Related Agencies
Appropriations
Act, 2005.
Department of
Labor
Appropriations
Act, 2005.

DIVISION F—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

TITLE I—DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

(INCLUDING RESCISSION)

For necessary expenses of the Workforce Investment Act of 1998, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by such Act; \$2,898,957,000 plus reimbursements, of which \$1,885,794,000 is available for obligation for the period July 1, 2005 through June 30, 2006; except that amounts determined by the Secretary of Labor to be necessary pursuant to sections 173(a)(4)(A) and 174(c) of such Act shall be available from October 1, 2004 until expended; of which \$994,242,000 is available for obligation for the period April 1, 2005 through June 30, 2006, to carry out chapter 4 of the Act; and of which \$16,321,000 is available for the period July 1, 2005 through June 30, 2008 for necessary expenses of construction, rehabilitation, and acquisition of Job Corps centers: *Provided*, That notwithstanding any other provision of law, of the funds provided herein under section 137(c) of the Workforce Investment Act of 1998, \$283,371,000 shall be for activities described in section 132(a)(2)(A) of such Act and \$1,196,048,000 shall be for activities described in section

132(a)(2)(B) of such Act: *Provided further*, That \$250,000,000 shall be available for Community-Based Job Training Grants, of which \$125,000,000 shall be from funds reserved under section 132(a)(2)(A) of the Workforce Investment Act of 1998 and shall be used to carry out such grants under section 171(d) of such Act, except that the 10 percent limitation otherwise applicable to the amount of funds that may be used to carry out section 171(d) shall not be applicable to funds used for Community-Based Job Training grants: *Provided further*, That funds provided to carry out section 132(a)(2)(A) of the Workforce Investment Act of 1998 may be used to provide assistance to a State for State-wide or local use in order to address cases where there have been worker dislocations across multiple sectors or across multiple local areas and such workers remain dislocated; coordinate the State workforce development plan with emerging economic development needs; and train such eligible dislocated workers: *Provided further*, That \$8,000,000 shall be for carrying out section 172 of the Workforce Investment Act of 1998: *Provided further*, That, notwithstanding any other provision of law or related regulation, \$76,874,000 shall be for carrying out section 167 of the Workforce Investment Act of 1998, including \$71,787,000 for formula grants, \$4,583,000 for migrant and seasonal housing (of which not less than 70 percent shall be for permanent housing), and \$504,000 for other discretionary purposes: *Provided further*, That notwithstanding the transfer limitation under section 133(b)(4) of such Act, up to 30 percent of such funds may be transferred by a local board if approved by the Governor: *Provided further*, That funds provided to carry out section 171(d) of the Workforce Investment Act of 1998 may be used for demonstration projects that provide assistance to new entrants in the workforce and incumbent workers: *Provided further*, That funding provided to carry out projects under section 171 of the Workforce Investment Act of 1998 that are identified in the Conference Agreement, shall not be subject to the requirements of section 171(b)(2)(B) of such Act, the requirements of section 171(c)(4)(D) of such Act, the joint funding requirements of sections 171(b)(2)(A) and 171(c)(4)(A) of such Act, or any time limit requirements of sections 171(b)(2)(C) and 171(c)(4)(B) of such Act: *Provided further*, That no funds from any other appropriation shall be used to provide meal services at or for Job Corps centers.

For necessary expenses of the Act, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the Act; \$2,463,000,000 plus reimbursements, of which \$2,363,000,000 is available for obligation for the period October 1, 2005 through June 30, 2006, and of which \$100,000,000 is available for the period October 1, 2005 through June 30, 2008, for necessary expenses of construction, rehabilitation, and acquisition of Job Corps centers.

Of the funds provided under this heading in Public Law 108-199 for the Employment and Training Administration, \$2,200,000 shall be for a non-competitive grant to the AFL-CIO Appalachian Council, Incorporated, and shall be awarded no later than January 31, 2005.

Grants.
Deadline.

Of the funds provided under this heading in Public Law 108-199 for the Employment and Training Administration \$1,500,000 shall be for a non-competitive grant to the AFL-CIO Working

Grants.
Deadline.

for America Institute, and shall be awarded no later than January 31, 2005.

Grants.
Religion.
Deadline.

Of the funds provided under this heading in Public Law 108-199 for the Employment and Training Administration, \$4,000,000 shall be for a non-competitive grant to the Black Clergy of Philadelphia and Vicinity, and shall be awarded no later than January 31, 2005.

Grants.
Deadline.

Of the funds provided under this heading in Public Law 108-199 for the Employment and Training Administration, \$2,600,000 shall be for a non-competitive grant to the National Center on Education and the Economy, and shall be awarded no later than January 31, 2005.

Notwithstanding any other provision of law, funds awarded under grants to the State of Tennessee for Workforce Essentials, Inc., in Clarksville, Tennessee on June 29, 2004, and to Hampton Roads on behalf of the Hampton Roads Workforce Development Board in Norfolk, Virginia on June 30, 2001, pursuant to section 173 of the Workforce Investment Act of 1998 (29 U.S.C. 2918), may be used to provide services to spouses of members of the armed forces.

The Secretary of Labor shall take no action to amend, through regulatory or administration action, the definition established in 20 CFR 667.220 for functions and activities under title I of the Workforce Investment Act of 1998 until such time as legislation reauthorizing the Act is enacted.

Of the unobligated funds contained in the H-1B Nonimmigrant Petitioner Account that are available to the Secretary of Labor pursuant to section 286(s)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(2)), \$100,000,000 are rescinded.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

To carry out title V of the Older Americans Act of 1965, as amended, \$440,200,000.

FEDERAL UNEMPLOYMENT BENEFITS AND ALLOWANCES

For payments during the current fiscal year of trade adjustment benefit payments and allowances under part I and section 246; and for training, allowances for job search and relocation, and related State administrative expenses under part II of chapter 2, title II of the Trade Act of 1974 (including the benefits and services described under sections 123(c)(2) and 151(b) and (c) of the Trade Adjustment Assistance Reform Act of 2002, Public Law 107-210), \$1,057,300,000, together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15 of the current year.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For authorized administrative expenses, \$141,934,000, together with not to exceed \$3,524,301,000 (including not to exceed \$1,228,000 which may be used for amortization payments to States which had independent retirement plans in their State employment service agencies prior to 1980), which may be expended from the

Employment Security Administration Account in the Unemployment Trust Fund including the cost of administering section 51 of the Internal Revenue Code of 1986, as amended, section 7(d) of the Wagner-Peyser Act, as amended, the Trade Act of 1974, as amended, the Immigration Act of 1990, and the Immigration and Nationality Act, as amended, and of which the sums available in the allocation for activities authorized by title III of the Social Security Act, as amended (42 U.S.C. 502–504), and the sums available in the allocation for necessary administrative expenses for carrying out 5 U.S.C. 8501–8523, shall be available for obligation by the States through December 31, 2005, except that funds used for automation acquisitions shall be available for obligation by the States through September 30, 2007; of which \$141,934,000, together with not to exceed \$763,587,000 of the amount which may be expended from said trust fund, shall be available for obligation for the period July 1, 2005 through June 30, 2006, to fund activities under the Act of June 6, 1933, as amended, including the cost of penalty mail authorized under 39 U.S.C. 3202(a)(1)(E) made available to States in lieu of allotments for such purpose: *Provided*, That to the extent that the Average Weekly Insured Unemployment (AWIU) for fiscal year 2005 is projected by the Department of Labor to exceed 3,227,000, an additional \$28,600,000 shall be available for obligation for every 100,000 increase in the AWIU level (including a pro rata amount for any increment less than 100,000) from the Employment Security Administration Account of the Unemployment Trust Fund: *Provided further*, That funds appropriated in this Act which are used to establish a national one-stop career center system, or which are used to support the national activities of the Federal-State unemployment insurance or immigration programs, may be obligated in contracts, grants or agreements with non-State entities: *Provided further*, That funds appropriated under this Act for activities authorized under the Wagner-Peyser Act, as amended, and title III of the Social Security Act, may be used by the States to fund integrated Employment Service and Unemployment Insurance automation efforts, notwithstanding cost allocation principles prescribed under Office of Management and Budget Circular A-87.

ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

For repayable advances to the Unemployment Trust Fund as authorized by sections 905(d) and 1203 of the Social Security Act, as amended, and to the Black Lung Disability Trust Fund as authorized by section 9501(c)(1) of the Internal Revenue Code of 1954, as amended; and for nonrepayable advances to the Unemployment Trust Fund as authorized by section 8509 of title 5, United States Code, and to the “Federal unemployment benefits and allowances” account, to remain available until September 30, 2006, \$517,000,000.

In addition, for making repayable advances to the Black Lung Disability Trust Fund in the current fiscal year after September 15, 2005, for costs incurred by the Black Lung Disability Trust Fund in the current fiscal year, such sums as may be necessary.

PROGRAM ADMINISTRATION

For expenses of administering employment and training programs, \$113,810,000, together with not to exceed \$57,663,000, which

may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

EMPLOYEE BENEFITS SECURITY ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employee Benefits Security Administration, \$132,345,000.

PENSION BENEFIT GUARANTY CORPORATION

PENSION BENEFIT GUARANTY CORPORATION FUND

The Pension Benefit Guaranty Corporation is authorized to make such expenditures, including financial assistance authorized by section 104 of Public Law 96-364, within limits of funds and borrowing authority available to such Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended (31 U.S.C. 9104), as may be necessary in carrying out the program, including associated administrative expenses, through September 30, 2005 for such Corporation: *Provided*, That none of the funds available to the Corporation for fiscal year 2005 shall be available for obligations for administrative expenses in excess of \$266,330,000: *Provided further*, That obligations in excess of such amount may be incurred after approval by the Office of Management and Budget and the Committees on Appropriations of the House and Senate.

EMPLOYMENT STANDARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employment Standards Administration, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, \$402,305,000, together with \$2,040,000 which may be expended from the Special Fund in accordance with sections 39(c), 44(d) and 44(j) of the Longshore and Harbor Workers' Compensation Act: *Provided*, That \$1,250,000 shall be for the development of an alternative system for the electronic submission of reports required to be filed under the Labor-Management Reporting and Disclosure Act of 1959, as amended, and for a computer database of the information for each submission by whatever means, that is indexed and easily searchable by the public via the Internet: *Provided further*, That the Secretary of Labor is authorized to accept, retain, and spend, until expended, in the name of the Department of Labor, all sums of money ordered to be paid to the Secretary of Labor, in accordance with the terms of the Consent Judgment in Civil Action No. 91-0027 of the United States District Court for the District of the Northern Mariana Islands (May 21, 1992): *Provided further*, That the Secretary of Labor is authorized to establish and, in accordance with 31 U.S.C. 3302, collect and deposit in the Treasury fees for processing applications and issuing certificates under sections 11(d) and 14 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 211(d) and 214) and for processing applications and issuing registrations under title I of the

Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

SPECIAL BENEFITS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation, benefits, and expenses (except administrative expenses) accruing during the current or any prior fiscal year authorized by title 5, chapter 81 of the United States Code; continuation of benefits as provided for under the heading “Civilian War Benefits” in the Federal Security Agency Appropriation Act, 1947; the Employees’ Compensation Commission Appropriation Act, 1944; sections 4(c) and 5(f) of the War Claims Act of 1948 (50 U.S.C. App. 2012); and 50 percent of the additional compensation and benefits required by section 10(h) of the Longshore and Harbor Workers’ Compensation Act, as amended, \$233,000,000, together with such amounts as may be necessary to be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to August 15 of the current year: *Provided*, That amounts appropriated may be used under section 8104 of title 5, United States Code, by the Secretary of Labor to reimburse an employer, who is not the employer at the time of injury, for portions of the salary of a reemployed, disabled beneficiary: *Provided further*, That balances of reimbursements unobligated on September 30, 2004, shall remain available until expended for the payment of compensation, benefits, and expenses: *Provided further*, That in addition there shall be transferred to this appropriation from the Postal Service and from any other corporation or instrumentality required under section 8147(c) of title 5, United States Code, to pay an amount for its fair share of the cost of administration, such sums as the Secretary determines to be the cost of administration for employees of such fair share entities through September 30, 2005: *Provided further*, That of those funds transferred to this account from the fair share entities to pay the cost of administration of the Federal Employees’ Compensation Act, \$39,668,000 shall be made available to the Secretary as follows: (1) for enhancement and maintenance of automated data processing systems and telecommunications systems, \$12,351,000; (2) for automated workload processing operations, including document imaging, centralized mail intake and medical bill processing, \$14,221,000; (3) for periodic roll management and medical review, \$13,096,000; and (4) the remaining funds shall be paid into the Treasury as miscellaneous receipts: *Provided further*, That the Secretary may require that any person filing a notice of injury or a claim for benefits under chapter 81 of title 5, United States Code, or 33 U.S.C. 901 et seq., provide as part of such notice and claim, such identifying information (including Social Security account number) as such regulations may prescribe.

SPECIAL BENEFITS FOR DISABLED COAL MINERS

For carrying out title IV of the Federal Mine Safety and Health Act of 1977, as amended by Public Law 107–275, (the “Act”), \$276,000,000, to remain available until expended.

For making after July 31 of the current fiscal year, benefit payments to individuals under title IV of the Act, for costs incurred in the current fiscal year, such amounts as may be necessary.

For making benefit payments under title IV for the first quarter of fiscal year 2006, \$81,000,000, to remain available until expended.

ADMINISTRATIVE EXPENSES, ENERGY EMPLOYEES OCCUPATIONAL
ILLNESS COMPENSATION FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to administer the Energy Employees Occupational Illness Compensation Act, \$40,821,000, to remain available until expended: *Provided*, That the Secretary of Labor is authorized to transfer to any executive agency with authority under the Energy Employees Occupational Illness Compensation Act, including within the Department of Labor, such sums as may be necessary in fiscal year 2005 to carry out those authorities: *Provided further*, That the Secretary may require that any person filing a claim for benefits under the Act provide as part of such claim, such identifying information (including Social Security account number) as may be prescribed.

BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

26 USC 9501
note.

In fiscal year 2005 and thereafter, such sums as may be necessary from the Black Lung Disability Trust Fund, to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (4), and (7) of the Internal Revenue Code of 1954, as amended; and interest on advances, as authorized by section 9501(c)(2) of that Act. In addition, the following amounts shall be available from the Fund for fiscal year 2005 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): \$32,646,000 for transfer to the Employment Standards Administration “Salaries and Expenses”; \$23,705,000 for transfer to Departmental Management, “Salaries and Expenses”; \$342,000 for transfer to Departmental Management, “Office of Inspector General”; and \$356,000 for payments into miscellaneous receipts for the expenses of the Department of the Treasury.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

29 USC 670 note.

For necessary expenses for the Occupational Safety and Health Administration, \$468,109,000, including not to exceed \$91,747,000 which shall be the maximum amount available for grants to States under section 23(g) of the Occupational Safety and Health Act (the “Act”), which grants shall be no less than 50 percent of the costs of State occupational safety and health programs required to be incurred under plans approved by the Secretary under section 18 of the Act; and, in addition, notwithstanding 31 U.S.C. 3302, the Occupational Safety and Health Administration may retain up to \$750,000 per fiscal year of training institute course tuition fees, otherwise authorized by law to be collected, and may utilize such sums for occupational safety and health training and education grants: *Provided*, That, notwithstanding 31 U.S.C. 3302, the Secretary of Labor is authorized, during the fiscal year ending September 30, 2005, to collect and retain fees for services provided

to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further*, That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Act with respect to any employer of 10 or fewer employees who is included within a category having a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate, at the most precise industrial classification code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of that Act (29 U.S.C. 673), except—

(1) to provide, as authorized by such Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies;

(2) to conduct an inspection or investigation in response to an employee complaint, to issue a citation for violations found during such inspection, and to assess a penalty for violations which are not corrected within a reasonable abatement period and for any willful violations found;

(3) to take any action authorized by such Act with respect to imminent dangers;

(4) to take any action authorized by such Act with respect to health hazards;

(5) to take any action authorized by such Act with respect to a report of an employment accident which is fatal to one or more employees or which results in hospitalization of two or more employees, and to take any action pursuant to such investigation authorized by such Act; and

(6) to take any action authorized by such Act with respect to complaints of discrimination against employees for exercising rights under such Act:

Provided further, That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further*, That not less than \$3,200,000 shall be used to extend funding for the Institutional Competency Building training grants which commenced in September 2000, for program activities for the period of September 30, 2005 to September 30, 2006, provided that a grantee has demonstrated satisfactory performance: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended to administer or enforce the provisions of 29 CFR 1910.134(f)(2) (General Industry Respiratory Protection Standard) to the extent that such provisions require the annual fit testing (after the initial fit testing) of respirators for occupational exposure to tuberculosis.

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Mine Safety and Health Administration, \$281,535,000, including purchase and bestowal of certificates and trophies in connection with mine rescue and first-aid work, and the hire of passenger motor vehicles, including up to \$2,000,000 for mine rescue and recovery activities; in addition, not to exceed \$750,000 may be collected by the National Mine Health and Safety Academy for room, board, tuition, and the sale of training materials, otherwise authorized by law to be collected, to be available for mine safety and health education and training activities, notwithstanding 31 U.S.C. 3302; and, in addition, the Mine Safety and Health Administration may retain up to \$1,000,000 from fees collected for the approval and certification of equipment, materials, and explosives for use in mines, and may utilize such sums for such activities; the Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; and any funds available to the department may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of a major disaster.

30 USC 962.

BUREAU OF LABOR STATISTICS

SALARIES AND EXPENSES

For necessary expenses for the Bureau of Labor Statistics, including advances or reimbursements to State, Federal, and local agencies and their employees for services rendered, \$455,045,000, together with not to exceed \$78,473,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund, of which \$5,000,000 may be used to fund the mass layoff statistics program under section 15 of the Wagner-Peyser Act (29 U.S.C. 491-2).

OFFICE OF DISABILITY EMPLOYMENT POLICY

SALARIES AND EXPENSES

For necessary expenses for the Office of Disability Employment Policy to provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities, \$47,555,000.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For necessary expenses for Departmental Management, including the hire of three sedans, and including the management or operation, through contracts, grants or other arrangements of Departmental activities conducted by or through the Bureau of

International Labor Affairs, including bilateral and multilateral technical assistance and other international labor activities, \$323,108,000, of which, \$7,000,000, to remain available until September 30, 2006, is for Frances Perkins Building Security Enhancements, and \$30,000,000 is for the acquisition of Departmental information technology, architecture, infrastructure, equipment, software and related needs, which will be allocated by the Department's Chief Information Officer in accordance with the Department's capital investment management process to assure a sound investment strategy; together with not to exceed \$314,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund: *Provided*, That no funds made available by this Act may be used by the Solicitor of Labor to participate in a review in any United States court of appeals of any decision made by the Benefits Review Board under section 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921) where such participation is precluded by the decision of the United States Supreme Court in *Director, Office of Workers' Compensation Programs v. Newport News Shipbuilding*, 115 S. Ct. 1278 (1995), notwithstanding any provisions to the contrary contained in Rule 15 of the Federal Rules of Appellate Procedure: *Provided further*, That no funds made available by this Act may be used by the Secretary of Labor to review a decision under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) that has been appealed and that has been pending before the Benefits Review Board for more than 12 months: *Provided further*, That any such decision pending a review by the Benefits Review Board for more than 1 year shall be considered affirmed by the Benefits Review Board on the 1-year anniversary of the filing of the appeal, and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals: *Provided further*, That these provisions shall not be applicable to the review or appeal of any decision issued under the Black Lung Benefits Act (30 U.S.C. 901 et seq.).

33 USC 921 note.

VETERANS EMPLOYMENT AND TRAINING

Not to exceed \$195,098,000 may be derived from the Employment Security Administration Account in the Unemployment Trust Fund to carry out the provisions of 38 U.S.C. 4100–4110A, 4212, 4214, and 4321–4327, and Public Law 103–353, and which shall be available for obligation by the States through December 31, 2005, of which \$2,000,000 is for the National Veterans' Employment and Training Services Institute. To carry out the Homeless Veterans Reintegration Programs (38 U.S.C. 2021) and the Veterans Workforce Investment Programs (29 U.S.C. 2913), \$29,550,000, of which \$8,550,000 shall be available for obligation for the period July 1, 2005 through June 30, 2006.

OFFICE OF INSPECTOR GENERAL

For salaries and expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$64,029,000, together with not to exceed \$5,561,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

WORKING CAPITAL FUND

For the acquisition of a new core accounting system for the Department of Labor, including hardware and software infrastructure and the costs associated with implementation thereof, \$10,000,000.

GENERAL PROVISIONS

SEC. 101. None of the funds appropriated in this title for the Job Corps shall be used to pay the compensation of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level II.

(TRANSFER OF FUNDS)

SEC. 102. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the current fiscal year for the Department of Labor in this Act may be transferred between a program, project, or activity, but no such program, project, or activity shall be increased by more than 3 percent by any such transfer: *Provided*, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

Notification.

SEC. 103. In accordance with Executive Order No. 13126, none of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended for the procurement of goods mined, produced, manufactured, or harvested or services rendered, whole or in part, by forced or indentured child labor in industries and host countries already identified by the United States Department of Labor prior to enactment of this Act.

SEC. 104. There is authorized to be appropriated such sums as may be necessary to the Denali Commission through the Department of Labor to conduct job training of the local workforce where Denali Commission projects will be constructed.

Deadline.
Transit subsidy.

SEC. 105. Not later than 45 days after the date of enactment of this Act, the Secretary of Labor shall issue a monthly transit subsidy of not less than the amount each of its employees of the National Capital Region is eligible to receive, not to exceed a maximum of \$100, as directed by Executive Order No. 13150.

Reports.

SEC. 106. The Department of Labor shall submit its fiscal year 2006 congressional budget justifications to the Committees on Appropriations of the House of Representatives and the Senate in the format as they were prepared prior to fiscal year 2003.

This title may be cited as the “Department of Labor Appropriations Act, 2005”.

Department of
Health and
Human Services
Appropriations
Act, 2005.TITLE II—DEPARTMENT OF HEALTH AND HUMAN
SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For carrying out titles II, III, IV, VII, VIII, X, XII, XIX, and XXVI of the Public Health Service Act, section 427(a) of the Federal Coal Mine Health and Safety Act, title V and sections 1128E, 711, and 1820 of the Social Security Act, the Health Care Quality

Improvement Act of 1986, as amended, the Native Hawaiian Health Care Act of 1988, as amended, the Cardiac Arrest Survival Act of 2000, section 712 of the American Jobs Creation Act of 2004, and the Poison Control Center Enhancement and Awareness Act, as amended, \$6,856,624,000, of which \$484,629,000 shall be available for construction and renovation (including equipment) of health care and other facilities and other health-related activities as specified in the statement of the managers on the conference report accompanying this Act, and of which \$39,499,000 from general revenues, notwithstanding section 1820(j) of the Social Security Act, shall be available for carrying out the Medicare rural hospital flexibility grants program under section 1820 of such Act: *Provided*, That of the funds made available under this heading, \$249,000 shall be available until expended for facilities renovations at the Gillis W. Long Hansen's Disease Center: *Provided further*, That in addition to fees authorized by section 427(b) of the Health Care Quality Improvement Act of 1986, fees shall be collected for the full disclosure of information under the Act sufficient to recover the full costs of operating the National Practitioner Data Bank, and shall remain available until expended to carry out that Act: *Provided further*, That fees collected for the full disclosure of information under the "Health Care Fraud and Abuse Data Collection Program", authorized by section 1128E(d)(2) of the Social Security Act, shall be sufficient to recover the full costs of operating the program, and shall remain available until expended to carry out that Act: *Provided further*, That \$31,000,000 of the funding provided for community health centers shall be used for base grant adjustments for existing centers: *Provided further*, That no more than \$100,000 is available until expended for carrying out the provisions of 42 U.S.C. 233(o) including associated administrative expenses: *Provided further*, That no more than \$45,000,000 is available until expended for carrying out the provisions of Public Law 104–73: *Provided further*, That \$9,941,000 is available until expended for the National Cord Blood Stem Cell Bank Program as described in House Report 108–401: *Provided further*, That of the funds made available under this heading, \$288,283,000 shall be for the program under title X of the Public Health Service Act to provide for voluntary family planning projects: *Provided further*, That amounts provided to said projects under such title shall not be expended for abortions, that all pregnancy counseling shall be nondirective, and that such amounts shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office: *Provided further*, That \$793,872,000 shall be for State AIDS Drug Assistance Programs authorized by section 2616 of the Public Health Service Act: *Provided further*, That in addition to amounts provided herein, \$25,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out Parts A, B, C, and D of title XXVI of the Public Health Service Act to fund section 2691 Special Projects of National Significance: *Provided further*, That, notwithstanding section 502(a)(1) of the Social Security Act, not to exceed \$119,158,000 is available for carrying out special projects of regional and national significance pursuant to section 501(a)(2) of such Act: *Provided further*, That of the funds provided, \$40,000,000 shall be provided to the Denali Commission as a direct lump payment pursuant to Public Law

106–113, of which \$10,000,000 shall be for a psychiatric treatment facility in Bethel, Alaska, \$10,000,000 shall be for residential and supportive housing for elders, \$2,500,000 shall be for medical and dental equipment for rural clinics, and \$5,000,000 shall be for upgrade and construction of shelters for victims of domestic violence and child abuse.

HEALTH EDUCATION ASSISTANCE LOANS PROGRAM ACCOUNT

Such sums as may be necessary to carry out the purpose of the program, as authorized by title VII of the Public Health Service Act, as amended. For administrative expenses to carry out the guaranteed loan program, including section 709 of the Public Health Service Act, \$3,270,000.

VACCINE INJURY COMPENSATION PROGRAM TRUST FUND

For payments from the Vaccine Injury Compensation Program Trust Fund, such sums as may be necessary for claims associated with vaccine-related injury or death with respect to vaccines administered after September 30, 1988, pursuant to subtitle 2 of title XXI of the Public Health Service Act, to remain available until expended: *Provided*, That for necessary administrative expenses, not to exceed \$3,176,000 shall be available from the Trust Fund to the Secretary of Health and Human Services.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

To carry out titles II, III, VII, XI, XV, XVII, XIX, XXI, and XXVI of the Public Health Service Act, sections 101, 102, 103, 201, 202, 203, 301, and 501 of the Federal Mine Safety and Health Act of 1977, sections 20, 21, and 22 of the Occupational Safety and Health Act of 1970, title IV of the Immigration and Nationality Act, and section 501 of the Refugee Education Assistance Act of 1980; including purchase and insurance of official motor vehicles in foreign countries; and purchase, hire, maintenance, and operation of aircraft, \$4,533,911,000, of which \$272,000,000 shall remain available until expended for equipment, and construction and renovation of facilities, and of which \$124,882,000 for international HIV/AIDS shall remain available until September 30, 2006. In addition, such sums as may be derived from authorized user fees, which shall be credited to this account: *Provided*, That in addition to amounts provided herein, the following amounts shall be available from amounts available under section 241 of the Public Health Service Act: (1) \$12,794,000 to carry out the National Immunization Surveys; (2) \$109,021,000 to carry out the National Center for Health Statistics surveys; (3) \$24,751,000 to carry out information systems standards development and architecture and applications-based research used at local public health levels; (4) \$463,000 for Health Marketing evaluations; (5) \$31,000,000 to carry out Public Health Research; and (6) \$87,071,000 to carry out Research Tools and Approaches activities within the National Occupational Research Agenda: *Provided further*, That none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used, in whole or in part, to advocate or promote gun control: *Provided further*, That up

to \$30,000,000 shall be made available until expended for Individual Learning Accounts for full-time equivalent employees of the Centers for Disease Control and Prevention: *Provided further*, That the Director may redirect the total amount made available under authority of Public Law 101–502, section 3, dated November 3, 1990, to activities the Director may so designate: *Provided further*, That the Congress is to be notified promptly of any such transfer: *Provided further*, That not to exceed \$12,500,000 may be available for making grants under section 1509 of the Public Health Service Act to not more than 15 States, tribes, or tribal organizations: *Provided further*, That without regard to existing statute, funds appropriated may be used to proceed, at the discretion of the Centers for Disease Control and Prevention, with property acquisition, including a long-term ground lease for construction on non-Federal land, to support the construction of a replacement laboratory in the Fort Collins, Colorado area: *Provided further*, That notwithstanding any other provision of law, a single contract or related contracts for development and construction of facilities may be employed which collectively include the full scope of the project: *Provided further*, That the solicitation and contract shall contain the clause “availability of funds” found at 48 CFR 52.232–18: *Provided further*, That of the funds appropriated, \$10,000 is for official reception and representation expenses when specifically approved by the Director of the Centers for Disease Control and Prevention.

Notification.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CANCER INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cancer, \$4,865,525,000, of which up to \$8,000,000 may be used for facilities repairs and improvements at the NCI–Frederick Federally Funded Research and Development Center in Frederick, Maryland.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cardiovascular, lung, and blood diseases, and blood and blood products, \$2,965,453,000.

NATIONAL INSTITUTE OF DENTAL AND CRANIOFACIAL RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to dental disease, \$395,080,000.

NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY
DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to diabetes and digestive and kidney disease, \$1,727,696,000.

NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

For carrying out section 301 and title IV of the Public Health Service Act with respect to neurological disorders and stroke, \$1,552,123,000.

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

(INCLUDING TRANSFER OF FUNDS)

For carrying out section 301 and title IV of the Public Health Service Act with respect to allergy and infectious diseases, \$4,440,007,000: *Provided*, That \$100,000,000 may be made available to International Assistance Programs “Global Fund to Fight HIV/AIDS, Malaria, and Tuberculosis”, to remain available until expended: *Provided further*, That up to \$150,000,000 shall be for extramural facilities construction grants to enhance the Nation’s capability to do research on biological and other agents.

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to general medical sciences, \$1,959,810,000.

NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

For carrying out section 301 and title IV of the Public Health Service Act with respect to child health and human development, \$1,280,915,000.

NATIONAL EYE INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to eye diseases and visual disorders, \$674,578,000.

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For carrying out sections 301 and 311 and title IV of the Public Health Service Act with respect to environmental health sciences, \$650,027,000.

NATIONAL INSTITUTE ON AGING

For carrying out section 301 and title IV of the Public Health Service Act with respect to aging, \$1,060,666,000.

NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to arthritis and musculoskeletal and skin diseases, \$515,378,000.

NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS

For carrying out section 301 and title IV of the Public Health Service Act with respect to deafness and other communication disorders, \$397,507,000.

NATIONAL INSTITUTE OF NURSING RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to nursing research, \$139,198,000.

NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM

For carrying out section 301 and title IV of the Public Health Service Act with respect to alcohol abuse and alcoholism, \$441,911,000.

NATIONAL INSTITUTE ON DRUG ABUSE

For carrying out section 301 and title IV of the Public Health Service Act with respect to drug abuse, \$1,014,760,000.

NATIONAL INSTITUTE OF MENTAL HEALTH

For carrying out section 301 and title IV of the Public Health Service Act with respect to mental health, \$1,423,609,000.

NATIONAL HUMAN GENOME RESEARCH INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to human genome research, \$492,670,000.

NATIONAL INSTITUTE OF BIOMEDICAL IMAGING AND BIOENGINEERING

For carrying out section 301 and title IV of the Public Health Service Act with respect to biomedical imaging and bioengineering research, \$300,647,000.

NATIONAL CENTER FOR RESEARCH RESOURCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to research resources and general research support grants, \$1,124,141,000: *Provided*, That none of these funds shall be used to pay recipients of the general research support grants program any amount for indirect expenses in connection with such grants: *Provided further*, That \$30,000,000 shall be for extramural facilities construction grants.

NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE
MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to complementary and alternative medicine, \$123,116,000.

NATIONAL CENTER ON MINORITY HEALTH AND HEALTH DISPARITIES

For carrying out section 301 and title IV of the Public Health Service Act with respect to minority health and health disparities research, \$197,780,000.

JOHN E. FOGARTY INTERNATIONAL CENTER

For carrying out the activities at the John E. Fogarty International Center, \$67,182,000.

NATIONAL LIBRARY OF MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to health information communications, \$317,947,000, of which \$4,000,000 shall be available until expended for improvement of information systems: *Provided*, That in fiscal

year 2005, the Library may enter into personal services contracts for the provision of services in facilities owned, operated, or constructed under the jurisdiction of the National Institutes of Health: *Provided further*, That in addition to amounts provided herein, \$8,200,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out National Information Center on Health Services Research and Health Care Technology and related health services.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For carrying out the responsibilities of the Office of the Director, National Institutes of Health, \$361,145,000, of which up to \$10,000,000 shall be used to carry out section 217 of this Act: *Provided*, That funding shall be available for the purchase of not to exceed 29 passenger motor vehicles for replacement only: *Provided further*, That the Director may direct up to 1 percent of the total amount made available in this or any other Act to all National Institutes of Health appropriations to activities the Director may so designate: *Provided further*, That no such appropriation shall be decreased by more than 1 percent by any such transfers and that the Congress is promptly notified of the transfer: *Provided further*, That the National Institutes of Health is authorized to collect third party payments for the cost of clinical services that are incurred in National Institutes of Health research facilities and that such payments shall be credited to the National Institutes of Health Management Fund: *Provided further*, That all funds credited to the National Institutes of Health Management Fund shall remain available for 1 fiscal year after the fiscal year in which they are deposited: *Provided further*, That up to \$500,000 shall be available to carry out section 499 of the Public Health Service Act: *Provided further*, That of the funds provided \$10,000 shall be for official reception and representation expenses when specifically approved by the Director of NIH: *Provided further*, That a uniform percentage of the amounts appropriated in this Act to each Institute and Center may be utilized for the National Institutes of Health Roadmap Initiative: *Provided further*, That the amount utilized under the preceding proviso shall not exceed \$176,800,000 without prior notification to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That amounts utilized under the preceding two provisos shall be in addition to amounts made available for the Roadmap Initiative from the Director's Discretionary Fund and to any amounts allocated to activities related to the Roadmap Initiative through the normal research priority-setting process of individual Institutes and Centers.

BUILDINGS AND FACILITIES

For the study of, construction of, renovation of, and acquisition of equipment for, facilities of or used by the National Institutes of Health, including the acquisition of real property, \$111,177,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, single contracts or related contracts, which collectively include the full scope of the project, may be employed for the development and construction of the first and

second phases of the John Edward Porter Neuroscience Research Center: *Provided further*, That the solicitations and contracts shall contain the clause “availability of funds” found at 48 CFR 52.232–18.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

For carrying out titles V and XIX of the Public Health Service Act with respect to substance abuse and mental health services, the Protection and Advocacy for Individuals with Mental Illness Act, and section 301 of the Public Health Service Act with respect to program management, \$3,295,361,000, of which \$23,107,000 shall be available for projects and in the amounts specified in the statement of the managers on the conference report accompanying this Act: *Provided*, That in addition to amounts provided herein, the following amounts shall be available from amounts available under section 241 of the Public Health Service Act: (1) \$79,200,000 to carry out subpart II of title XIX of the Public Health Service Act to fund section 1935(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1935(b) activities shall not exceed 5 percent of the amounts appropriated for subpart II of title XIX; (2) \$21,803,000 to carry out subpart I of Part B of title XIX of the Public Health Service Act to fund section 1920(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1920(b) activities shall not exceed 5 percent of the amounts appropriated for subpart I of Part B of title XIX; (3) \$16,000,000 to carry out national surveys on drug abuse; (4) \$2,000,000 for mental health data collection; and (5) \$4,300,000 for substance abuse treatment programs.

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

For carrying out titles III and IX of the Public Health Service Act, and part A of title XI of the Social Security Act, amounts received from Freedom of Information Act fees, reimbursable and interagency agreements, and the sale of data shall be credited to this appropriation and shall remain available until expended: *Provided*, That the amount made available pursuant to section 927(c) of the Public Health Service Act shall not exceed \$318,695,000.

CENTERS FOR MEDICARE AND MEDICAID SERVICES

GRANTS TO STATES FOR MEDICAID

For carrying out, except as otherwise provided, titles XI and XIX of the Social Security Act, \$119,124,488,000, to remain available until expended.

For making, after May 31, 2005, payments to States under title XIX of the Social Security Act for the last quarter of fiscal year 2005 for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

For making payments to States or in the case of section 1928 on behalf of States under title XIX of the Social Security Act for the first quarter of fiscal year 2006, \$58,517,290,000, to remain available until expended.

Payment under title XIX may be made for any quarter with respect to a State plan or plan amendment in effect during such quarter, if submitted in or prior to such quarter and approved in that or any subsequent quarter.

PAYMENTS TO HEALTH CARE TRUST FUNDS

For payment to the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as provided under section 1844, 1860D-16, and 1860D-31 of the Social Security Act, sections 103(c) and 111(d) of the Social Security Amendments of 1965, section 278(d) of Public Law 97-248, and for administrative expenses incurred pursuant to section 201(g) of the Social Security Act, \$114,608,900,000. To ensure prompt payments of Medicare prescription drug benefits as provided under section 1860 D-16 of the Social Security Act, \$5,216,900,000, to become available on October 1, 2005 for fiscal year 2006.

PROGRAM MANAGEMENT

For carrying out, except as otherwise provided, titles XI, XVIII, XIX, and XXI of the Social Security Act, titles XIII and XXVII of the Public Health Service Act, and the Clinical Laboratory Improvement Amendments of 1988, not to exceed \$2,696,402,000, to be transferred from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as authorized by section 201(g) of the Social Security Act; together with all funds collected in accordance with section 353 of the Public Health Service Act and section 1857(e)(2) of the Social Security Act, and such sums as may be collected from authorized user fees and the sale of data, which shall remain available until expended: *Provided*, That all funds derived in accordance with 31 U.S.C. 9701 from organizations established under title XIII of the Public Health Service Act shall be credited to and available for carrying out the purposes of this appropriation: *Provided further*, That \$24,400,000, to remain available until September 30, 2006, is for contract costs for CMS's Systems Revitalization Plan: *Provided further*, That \$78,300,000, to remain available until September 30, 2006, is for contract costs for the Healthcare Integrated General Ledger Accounting System: *Provided further*, That of the amounts made available for research, demonstration and evaluation, \$100,000 is available for Advocate Metro Outreach Initiative, Oak Brook, Illinois, to implement an initiative to provide comprehensive health education and services to the deaf and hard-of-hearing community, \$150,000 is available for African American Interdenominational Ministries, Inc., Philadelphia, Pennsylvania, to implement an insurance outreach program, \$1,900,000 is available for AIDS Healthcare Foundation, Los Angeles, California, for a demonstration of residential and outpatient treatment facilities, \$450,000 is available for Bronx-Lebanon Hospital Center, Bronx, New York, for a comprehensive adolescent and young adult health program to demonstrate means of improving health care and preventive services for underserved inner city teenagers and young adults, \$300,000 is available for Children's Institute for Palliative Care, Children's

Hospitals and Clinics, Minneapolis, Minnesota, for a pediatric palliative care demonstration program, \$600,000 is available for the City of Detroit, Michigan, for a project to improve access to primary care and preventive health services for low-income and uninsured persons, \$100,000 is available for Community Catalyst, Inc., Boston, Massachusetts, for the expansion of a benefits management program, \$150,000 is available for Cook County Bureau of Health Services in Chicago, Illinois, for the Antibiotic Resistance Program, \$340,000 is available for Donald R. Watkins Memorial Foundation, Houston, Texas, for a comprehensive HIV/AIDS treatment and research demonstration program, \$100,000 is available for Focus on Therapeutic Outcomes, Inc., Knoxville, Tennessee, \$250,000 is available for Hamot Medical Center, Erie, Pennsylvania and the Ohio Health System, Columbus, Ohio, to implement a demonstration project on the Medicare Advantage program, \$25,000 is available for HealthRight, Inc., Philadelphia, Pennsylvania, for their Care Access Program, \$75,000 is available for the Inglis Foundation, Philadelphia, Pennsylvania, for healthcare and social services for low-income adults with severe physical disabilities in an effort to promote independent living, \$50,000 is available for Medical Care for Children Partnership, Fairfax, Virginia, for access to specialty health care for children who have serious medical needs, \$500,000 is available for Memphis Biotech Foundation in Memphis, Tennessee, to develop a biologistics network in Mississippi and Tennessee, \$225,000 is available for Muskegon Community Health Project, Muskegon, Michigan, for the Access Health Program, \$30,000 is available for Our House of Portland, Portland, Oregon, to develop a Care Program for people living with AIDS, \$750,000 is available for Pace Vermont, Burlington, Vermont, for the Rural Program for All-inclusive Care for the Elderly, \$150,000 is available for Patient Advocate Foundation, Newport News, Virginia, to assist the PAF in serving patients experiencing difficulty accessing quality health care services, \$450,000 is available for Puerto Rico's Governor's Office of Elderly Affairs for the Medication Error Prevention Pilot Program, \$1,500,000 is available for San Francisco Department of Public Health, San Francisco, California, for a demonstration project to improve HIV/AIDS treatment and prevention services, \$300,000 is available for Santa Clara County, California, for outreach and enrollment assistance activities of the Children's Health Initiative, \$500,000 is available for Susquehanna Health System, Williamsport, Pennsylvania, for stabilizing workforce for patient care, \$500,000 is available for Swope Health Services, Kansas City, Missouri, to supplement recurring healthcare costs for underemployed, uninsured, and income-qualified patients in Wyandotte and Johnson Counties, Kansas, \$100,000 is available for Temple University, Crime and Justice Research Center, Philadelphia, Pennsylvania, for DNA backlog and utilization, and \$250,000 is available for University of Maine, Partnership for Early Childhood Health & Services: *Provided further*, That funds appropriated under this heading are available for the Healthy Start, Grow Smart program under which the Centers for Medicare and Medicaid Services may, directly or through grants, contracts, or cooperative agreements, produce and distribute informational materials including, but not limited to, pamphlets and brochures on infant and toddler health care to expectant parents enrolled in the Medicaid program and to parents and guardians enrolled in such program with infants and children: *Provided further*, That

not less than \$79,000,000 shall be for processing Medicare appeals: *Provided further*, That the Secretary of Health and Human Services is directed to collect fees in fiscal year 2005 from Medicare + Choice organizations pursuant to section 1857(e)(2) of the Social Security Act and from eligible organizations with risk-sharing contracts under section 1876 of that Act pursuant to section 1876(k)(4)(D) of that Act: *Provided further*, That to the extent Medicare claims processing unit costs are projected by the Centers for Medicare and Medicaid Services to exceed \$0.87 for Part A claims and/or \$0.63 for Part B claims, up to an additional \$18,000,000 may be available for obligation for every \$0.04 increase in Medicare claims processing unit costs from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds. The calculation of projected unit costs shall be derived in the same manner in which the estimated unit costs were calculated for the Federal budget estimate for the fiscal year.

HEALTH MAINTENANCE ORGANIZATION LOAN AND LOAN GUARANTEE
FUND

For carrying out subsections (d) and (e) of section 1308 of the Public Health Service Act, any amounts received by the Secretary in connection with loans and loan guarantees under title XIII of the Public Health Service Act, to be available without fiscal year limitation for the payment of outstanding obligations. During fiscal year 2005, no commitments for direct loans or loan guarantees shall be made.

ADMINISTRATION FOR CHILDREN AND FAMILIES

PAYMENTS TO STATES FOR CHILD SUPPORT ENFORCEMENT AND
FAMILY SUPPORT PROGRAMS

For making payments to States or other non-Federal entities under titles I, IV–D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9), \$2,873,802,000, to remain available until expended; and for such purposes for the first quarter of fiscal year 2006, \$1,200,000,000, to remain available until expended.

For making payments to each State for carrying out the program of Aid to Families with Dependent Children under title IV–A of the Social Security Act before the effective date of the program of Temporary Assistance for Needy Families (TANF) with respect to such State, such sums as may be necessary: *Provided*, That the sum of the amounts available to a State with respect to expenditures under such title IV–A in fiscal year 1997 under this appropriation and under such title IV–A as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall not exceed the limitations under section 116(b) of such Act.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under titles I, IV–D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9), for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

LOW-INCOME HOME ENERGY ASSISTANCE

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, \$1,900,000,000.

For making payments under title XXVI of the Omnibus Budget Reconciliation Act of 1981, \$300,000,000, to remain available until expended: *Provided*, That these funds are for the unanticipated home energy assistance needs of one or more States, as authorized by section 2604(e) of the Act: *Provided further*, That the entire amount is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress) as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

Applicability.

REFUGEE AND ENTRANT ASSISTANCE

For necessary expenses for refugee and entrant assistance activities and for costs associated with the care and placement of unaccompanied alien children authorized by title IV of the Immigration and Nationality Act and section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–422), for carrying out section 462 of the Homeland Security Act of 2002 (Public Law 107–296), and for carrying out the Torture Victims Relief Act of 2003 (Public Law 108–179), \$488,336,000, of which up to \$10,000,000 shall be available to carry out the Trafficking Victims Protection Act of 2003 (Public Law 108–193): *Provided*, That funds appropriated under this heading pursuant to section 414(a) of the Immigration and Nationality Act and section 462 of the Homeland Security Act of 2002 for fiscal year 2005 shall be available for the costs of assistance provided and other activities to remain available through September 30, 2007.

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT
BLOCK GRANT

For carrying out sections 658A through 658R of the Omnibus Budget Reconciliation Act of 1981 (The Child Care and Development Block Grant Act of 1990), \$2,099,729,000 shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: *Provided*, That \$19,120,000 shall be available for child care resource and referral and school-aged child care activities, of which \$1,000,000 shall be for the Child Care Aware toll free hotline: *Provided further*, That, in addition to the amounts required to be reserved by the States under section 658G, \$272,672,000 shall be reserved by the States for activities authorized under section 658G, of which \$100,000,000 shall be for activities that improve the quality of infant and toddler care: *Provided further*, That \$10,000,000 shall be for use by the Secretary for child care research, demonstration, and evaluation activities.

SOCIAL SERVICES BLOCK GRANT

For making grants to States pursuant to section 2002 of the Social Security Act, \$1,700,000,000: *Provided*, That notwithstanding subparagraph (B) of section 404(d)(2) of such Act, the applicable percent specified under such subparagraph for a State to carry out State programs pursuant to title XX of such Act shall be 10 percent.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For carrying out, except as otherwise provided, the Runaway and Homeless Youth Act, the Developmental Disabilities Assistance and Bill of Rights Act, the Head Start Act, the Child Abuse Prevention and Treatment Act, sections 310 and 316 of the Family Violence Prevention and Services Act, as amended, the Native American Programs Act of 1974, title II of Public Law 95-266 (adoption opportunities), the Adoption and Safe Families Act of 1997 (Public Law 105-89), sections 1201 and 1211 of the Children's Health Act of 2000, the Abandoned Infants Assistance Act of 1988, sections 261 and 291 of the Help America Vote Act of 2002, the Early Learning Opportunities Act, part B(1) of title IV and sections 413, 429A, 1110, and 1115 of the Social Security Act, and sections 40155, 40211, and 40241 of Public Law 103-322; for making payments under the Community Services Block Grant Act, sections 439(h), 473A, and 477(i) of the Social Security Act, and title IV of Public Law 105-285, and for necessary administrative expenses to carry out said Acts and titles I, IV, V, X, XI, XIV, XVI, and XX of the Social Security Act, the Act of July 5, 1960 (24 U.S.C. ch. 9), the Omnibus Budget Reconciliation Act of 1981, title IV of the Immigration and Nationality Act, section 501 of the Refugee Education Assistance Act of 1980, sections 40155, 40211, and 40241 of Public Law 103-322, and section 126 and titles IV and V of Public Law 100-485, \$9,069,853,000, of which \$32,103,000, to remain available until September 30, 2006, shall be for grants to States for adoption incentive payments, as authorized by section 473A of title IV of the Social Security Act (42 U.S.C. 670-679) and may be made for adoptions completed before September 30, 2005: *Provided further*, That \$6,898,580,000 shall be for making payments under the Head Start Act, of which \$1,400,000,000 shall become available October 1, 2005 and remain available through September 30, 2006: *Provided further*, That \$732,385,000 shall be for making payments under the Community Services Block Grant Act: *Provided further*, That not less than \$7,300,000 shall be for section 680(3)(B) of the Community Services Block Grant Act, *Provided further*, That within amounts provided herein for abstinence education for adolescents, up to \$10,000,000 may be available for a national abstinence education campaign: *Provided further*, That in addition to amounts provided herein, \$6,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out the provisions of section 1110 of the Social Security Act: *Provided further*, That to the extent Community Services Block Grant funds are distributed as grant funds by a State to an eligible entity as provided under the Act, and have not been expended by such entity, they shall remain with such entity for carryover into the next fiscal year for expenditure by such entity consistent with program purposes: *Provided further*, That the Secretary shall establish procedures regarding the disposition of intangible property which permits grant funds, or intangible assets acquired with funds authorized under section 680 of the Community Services Block Grant Act, as amended, to become the sole property of such grantees after a period of not more than 12 years after the end of the grant for purposes and uses consistent with the original grant: *Provided further*, That funds appropriated for section 680(a)(2) of the Community Services Block Grant Act, as amended, shall be available for financing construction and

Procedures.
Grants.
42 USC 9921
note.

rehabilitation and loans or investments in private business enterprises owned by community development corporations: *Provided further*, That \$55,000,000 is for a compassion capital fund to provide grants to charitable organizations to emulate model social service programs and to encourage research on the best practices of social service organizations: *Provided further*, That \$15,000,000 shall be for activities authorized by the Help America Vote Act of 2002, of which \$10,000,000 shall be for payments to States to promote access for voters with disabilities, and of which \$5,000,000 shall be for payments to States for protection and advocacy systems for voters with disabilities: *Provided further*, That \$100,000,000 shall be for making competitive grants to provide abstinence education (as defined by section 510(b)(2) of the Social Security Act) to adolescents, and for Federal costs of administering the grant: *Provided further*, That grants under the immediately preceding proviso shall be made only to public and private entities which agree that, with respect to an adolescent to whom the entities provide abstinence education under such grant, the entities will not provide to that adolescent any other education regarding sexual conduct, except that, in the case of an entity expressly required by law to provide health information or services the adolescent shall not be precluded from seeking health information or services from the entity in a different setting than the setting in which abstinence education was provided: *Provided further*, That in addition to amounts provided herein for abstinence education for adolescents, \$4,500,000 shall be available from amounts available under section 241 of the Public Health Services Act to carry out evaluations (including longitudinal evaluations) of adolescent pregnancy prevention approaches: *Provided further*, That \$2,000,000 shall be for improving the Public Assistance Reporting Information System, including grants to States to support data collection for a study of the system's effectiveness.

Abstinence.

PROMOTING SAFE AND STABLE FAMILIES

For carrying out section 436 of the Social Security Act, \$305,000,000 and for section 437, \$99,383,000.

PAYMENTS TO STATES FOR FOSTER CARE AND ADOPTION ASSISTANCE

For making payments to States or other non-Federal entities under title IV-E of the Social Security Act, \$5,037,900,000.

For making payments to States or other non-Federal entities under title IV-E of the Act, for the first quarter of fiscal year 2006, \$1,767,200,000.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under section 474 of title IV-E, for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For carrying out, to the extent not otherwise provided, the Older Americans Act of 1965, as amended, and section 398 of the Public Health Service Act, \$1,404,634,000, of which \$5,500,000

shall be available for activities regarding medication management, screening, and education to prevent incorrect medication and adverse drug reactions; and of which \$4,558,000 shall remain available until September 30, 2007, for the White House Conference on Aging.

OFFICE OF THE SECRETARY

GENERAL DEPARTMENTAL MANAGEMENT

For necessary expenses, not otherwise provided, for general departmental management, including hire of six sedans, and for carrying out titles III, XVII, XX, and XXI of the Public Health Service Act, and the United States-Mexico Border Health Commission Act, \$371,975,000, together with \$55,851,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund: *Provided*, That of the funds made available under this heading for carrying out title XX of the Public Health Service Act, \$13,120,000 shall be for activities specified under section 2003(b)(2), all of which shall be for prevention service demonstration grants under section 510(b)(2) of title V of the Social Security Act, as amended, without application of the limitation of section 2010(c) of said title XX: *Provided further*, That of this amount, \$52,838,000 shall be for minority AIDS prevention and treatment activities; \$14,847,000 shall be for an Information Technology Security and Innovation Fund for Department-wide activities involving cybersecurity, information technology security, and related innovation projects; and \$6,000,000 shall be to assist Afghanistan in the development of maternal and child health clinics, consistent with section 103(a)(4)(H) of the Afghanistan Freedom Support Act of 2002: *Provided further*, That no more than \$2,754,000 shall be available for the Office of the Assistant Secretary for Legislation: *Provided further*, That \$50,000,000 shall be transferred to the Social Security Administration for processing Medicare appeals: *Provided further*, That specific information requests from the chairmen and ranking members of the Subcommittees on Labor, Health and Human Services, and Education, and Related Agencies, on scientific research or any other matter, shall be transmitted to the Committees on Appropriations in a prompt professional manner and within the time frame specified in the request: *Provided further*, That scientific information requested by the Committees on Appropriations and prepared by government researchers and scientists shall be transmitted to the Committees on Appropriations, uncensored and without delay.

OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General, including the hire of passenger motor vehicles for investigations, in carrying out the provisions of the Inspector General Act of 1978, as amended, \$40,323,000: *Provided*, That of such amount, necessary sums are available for providing protective services to the Secretary and investigating non-payment of child support cases for which non-payment is a Federal offense under 18 U.S.C. 228.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, \$32,043,000, together with not to exceed \$3,314,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund.

POLICY RESEARCH

For carrying out, to the extent not otherwise provided, research studies under section 1110 of the Social Security Act and title III of the Public Health Service Act, \$20,750,000, which shall be available from amounts available under section 241 of the Public Health Service Act to carry out national health or human services research and evaluation activities: *Provided*, That the expenditure of any funds available under section 241 of the Public Health Service Act are subject to the requirements of section 206 of this Act.

RETIREMENT PAY AND MEDICAL BENEFITS FOR COMMISSIONED OFFICERS

For retirement pay and medical benefits of Public Health Service Commissioned Officers as authorized by law, for payments under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan, for medical care of dependents and retired personnel under the Dependents' Medical Care Act (10 U.S.C. chapters 55 and 56), such amounts as may be required during the current fiscal year. The following are definitions for the medical benefits of the Public Health Service Commissioned Officers that apply to 10 U.S.C. chapter 56, section 1116(c). The source of funds for the monthly accrual payments into the Department of Defense Medicare-Eligible Retiree Health Care Fund shall be the Retirement Pay and Medical Benefits for Commissioned Officers account. For purposes of this Act, the term "pay of members" shall be construed to be synonymous with retirement payments to United States Public Health Service officers who are retired for age, disability, or length of service; payments to survivors of deceased officers; medical care to active duty and retired members and dependents and beneficiaries; all of which payments are provided for by the Retirement Pay and Medical Benefits for Commissioned Officers account.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For expenses necessary to support activities related to countering potential biological, disease, nuclear, radiological and chemical threats to civilian populations, \$2,208,287,000: *Provided*, That this amount is distributed as follows: Centers for Disease Control and Prevention, \$1,173,300,000; Office of the Secretary, \$64,438,000; Strategic National Stockpile, \$400,000,000, to remain available until expended; National Institutes of Health, \$47,400,000; and Health Resources and Services Administration, \$523,149,000: *Provided further*, That employees of the Centers for Disease Control and Prevention or the Public Health Service, both civilian and Commissioned Officers, detailed to States, municipalities, or other organizations under authority of section 214 of the Public Health Service Act for purposes related to homeland security, shall be treated as non-Federal employees for reporting purposes only and

shall not be included within any personnel ceiling applicable to the Agency, Service, or the Department of Health and Human Services during the period of detail or assignment.

In addition, for activities to ensure a year-round influenza vaccine production capacity; the development and implementation of rapidly expandable influenza vaccine production technologies; and if determined necessary by the Secretary, the purchase of influenza vaccine, \$100,000,000, to remain available until expended.

GENERAL PROVISIONS

SEC. 201. Funds appropriated in this title shall be available for not to exceed \$50,000 for official reception and representation expenses when specifically approved by the Secretary.

HIV/AIDS.

SEC. 202. The Secretary shall make available through assignment not more than 60 employees of the Public Health Service to assist in child survival activities and to work in AIDS programs through and with funds provided by the Agency for International Development, the United Nations International Children's Emergency Fund or the World Health Organization.

SEC. 203. None of the funds appropriated under this Act may be used to implement section 399F(b) of the Public Health Service Act or section 1503 of the National Institutes of Health Revitalization Act of 1993, Public Law 103-43.

SEC. 204. None of the funds appropriated in this Act for the National Institutes of Health, the Agency for Healthcare Research and Quality, and the Substance Abuse and Mental Health Services Administration shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level I.

SEC. 205. None of the funds appropriated in this title for Head Start shall be used to pay the compensation of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level II.

SEC. 206. None of the funds appropriated in this Act may be expended pursuant to section 241 of the Public Health Service Act, except for funds specifically provided for in this Act, or for other taps and assessments made by any office located in the Department of Health and Human Services, prior to the Secretary's preparation and submission of a report to the Committee on Appropriations of the Senate and of the House detailing the planned uses of such funds.

SEC. 207. Notwithstanding section 241(a) of the Public Health Service Act, such portion as the Secretary shall determine, but not more than 2.4 percent, of any amounts appropriated for programs authorized under said Act shall be made available for the evaluation (directly, or by grants or contracts) of the implementation and effectiveness of such programs.

(TRANSFER OF FUNDS)

SEC. 208. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the current fiscal year for the Department of Health and Human Services in this Act may be transferred between a program, project, or activity, but no such program, project, or activity shall be increased by more than 3 percent by any such transfer: *Provided*, That a

program, project, or activity may be increased by up to an additional 2 percent subject to approval by the House and Senate Committees on Appropriations: *Provided further*, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

Notification.
Deadline.

SEC. 209. Of the amounts made available in this Act for the National Institutes of Health, the amount for research related to the human immunodeficiency virus, as jointly determined by the Director of the National Institutes of Health and the Director of the Office of AIDS Research, shall be made available to the “Office of AIDS Research” account. The Director of the Office of AIDS Research shall transfer from such account amounts necessary to carry out section 2353(d)(3) of the Public Health Service Act.

HIV/AIDS.

SEC. 210. None of the funds appropriated in this Act may be made available to any entity under title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities.

SEC. 211. None of the funds appropriated by this Act (including funds appropriated to any trust fund) may be used to carry out the Medicare+Choice program if the Secretary denies participation in such program to an otherwise eligible entity (including a Provider Sponsored Organization) because the entity informs the Secretary that it will not provide, pay for, provide coverage of, or provide referrals for abortions: *Provided*, That the Secretary shall make appropriate prospective adjustments to the capitation payment to such an entity (based on an actuarially sound estimate of the expected costs of providing the service to such entity’s enrollees): *Provided further*, That nothing in this section shall be construed to change the Medicare program’s coverage for such services and a Medicare+Choice organization described in this section shall be responsible for informing enrollees where to obtain information about all Medicare covered services.

SEC. 212. Notwithstanding any other provision of law, no provider of services under title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.

SEC. 213. The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167) is amended—

(1) in section 599D (8 U.S.C. 1157 note)—

(A) in subsection (b)(3), by striking “1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, and 2005” and inserting “1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, and 2006”;

(B) in subsection (e), by striking “October 1, 2004” each place it appears and inserting “October 1, 2005”; and

(C) in subsection (b)(1)—

(i) in subparagraph (A), by striking “and” at the end;

(ii) in subparagraph (B), by striking the period and inserting “; and”; and

(iii) by adding at the end the following:

“(C) one or more categories of aliens who are or were nationals and residents of the Islamic Republic of Iran who, as members of a religious minority in Iran, share common characteristics that identify them as targets of persecution in that state on account of race, religion, nationality, membership in a particular social group, or political opinion.”; and

(2) in section 599E (8 U.S.C. 1255 note) in subsection (b)(2), by striking “September 30, 2004” and inserting “September 30, 2005”.

Deadline.
Certification.
Tobacco.

SEC. 214. (a) Except as provided by subsection (e) none of the funds appropriated by this Act may be used to withhold substance abuse funding from a State pursuant to section 1926 of the Public Health Service Act (42 U.S.C. 300x-26) if such State certifies to the Secretary of Health and Human Services by May 1, 2005 that the State will commit additional State funds, in accordance with subsection (b), to ensure compliance with State laws prohibiting the sale of tobacco products to individuals under 18 years of age.

(b) The amount of funds to be committed by a State under subsection (a) shall be equal to 1 percent of such State’s substance abuse block grant allocation for each percentage point by which the State misses the retailer compliance rate goal established by the Secretary of Health and Human Services under section 1926 of such Act.

Reports.
Deadline.

(c) The State is to maintain State expenditures in fiscal year 2005 for tobacco prevention programs and for compliance activities at a level that is not less than the level of such expenditures maintained by the State for fiscal year 2004, and adding to that level the additional funds for tobacco compliance activities required under subsection (a). The State is to submit a report to the Secretary on all fiscal year 2004 State expenditures and all fiscal year 2005 obligations for tobacco prevention and compliance activities by program activity by July 31, 2005.

(d) The Secretary shall exercise discretion in enforcing the timing of the State obligation of the additional funds required by the certification described in subsection (a) as late as July 31, 2005.

(e) None of the funds appropriated by this Act may be used to withhold substance abuse funding pursuant to section 1926 from a territory that receives less than \$1,000,000.

SEC. 215. In order for the Centers for Disease Control and Prevention to carry out international health activities, including HIV/AIDS and other infectious disease, chronic and environmental disease, and other health activities abroad during fiscal year 2005, the Secretary of Health and Human Services—

(1) may exercise authority equivalent to that available to the Secretary of State in section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)). The Secretary of Health and Human Services shall consult with the Secretary of State and relevant Chief of Mission to ensure that the authority provided in this section is exercised in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) and other applicable statutes administered by the Department of State, and

(2) is authorized to provide such funds by advance or reimbursement to the Secretary of State as may be necessary to pay the costs of acquisition, lease, alteration, renovation,

and management of facilities outside of the United States for the use of the Department of Health and Human Services. The Department of State shall cooperate fully with the Secretary of Health and Human Services to ensure that the Department of Health and Human Services has secure, safe, functional facilities that comply with applicable regulation governing location, setback, and other facilities requirements and serve the purposes established by this Act. The Secretary of Health and Human Services is authorized, in consultation with the Secretary of State, through grant or cooperative agreement, to make available to public or nonprofit private institutions or agencies in participating foreign countries, funds to acquire, lease, alter, or renovate facilities in those countries as necessary to conduct programs of assistance for international health activities, including activities relating to HIV/AIDS and other infectious diseases, chronic and environmental diseases, and other health activities abroad.

SEC. 216. The Division of Federal Occupational Health may utilize personal services contracting to employ professional management/administrative and occupational health professionals.

SEC. 217. (a) **AUTHORITY.**—Notwithstanding any other provision of law, the Director of the National Institutes of Health may use funds available under section 402(i) of the Public Health Service Act (42 U.S.C. 282(i)) to enter into transactions (other than contracts, cooperative agreements, or grants) to carry out research in support of the NIH Roadmap Initiative of the Director.

(b) **PEER REVIEW.**—In entering into transactions under subsection (a), the Director of the National Institutes of Health may utilize such peer review procedures (including consultation with appropriate scientific experts) as the Director determines to be appropriate to obtain assessments of scientific and technical merit. Such procedures shall apply to such transactions in lieu of the peer review and advisory council review procedures that would otherwise be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494 of the Public Health Service Act (42 U.S.C. 241, 284(b)(1)(B), 284(b)(2), 284a(a)(3)(A), 289a, and 289c).

Applicability.

SEC. 218. Notwithstanding any other provisions of law, funds made available under this heading may be used to continue operating the Council on Graduate Medical Education established by section 301 of Public Law 102–408.

42 USC 294o
note.

SEC. 219. (a) Notwithstanding section 412.23(b)(2) of title 42 of the Code of Federal Regulations, none of the funds appropriated by this Act may be expended by the Secretary of Health and Human Services to treat a hospital or unit of a hospital that was certified by the Secretary as an inpatient rehabilitation facility on or before June 30, 2004, as a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) until, not later than 60 days after the date on which the report under subsection (b) is issued, the Secretary, taking into account the recommendations in such report—

Effective date.

(1) determines that the classification criteria of hospitals and units of hospitals as inpatient rehabilitation facilities under such section 412.23(b)(2) are not inconsistent with such recommendations; or

Regulations.

(2) promulgates a regulation providing for revised criteria under such section 412.23(b)(2), which regulation shall be effective and final immediately on an interim basis as of the date of publication of the regulation.

(b) The study referred to in subsection (a) is a study by the Comptroller General of the United States directed in the statement of managers accompanying the conference report on the bill H.R. 1 of the 108th Congress regarding clinically appropriate standards for defining inpatient rehabilitation services under such section 412.23(b)(2).

SEC. 220. In addition to funds appropriated to the Office of Inspector General of the Department of Health and Human Services under Public Law 104–191 and this Act, \$25,000,000 shall be transferred from amounts appropriated under section 1015(a)(1) of Public Law 108–173 for activities by the Office of Inspector General of the Department of Health and Human Services relating to oversight of programs established or revised by Public Law 108–173.

Rescission.
Student loans.

SEC. 221. The unobligated balance of the Health Professions Student Loan program authorized in Subpart II, Federally-Supported Student Loan Funds, of title VII of the Public Health Services Act is rescinded.

Rescission.
Student loans.

SEC. 222. The unobligated balance of the Nursing Student Loan program authorized by section 835 of the Public Health Services Act is rescinded.

Rescission.
Medical facilities.

SEC. 223. The unobligated balance, excluding amounts necessary for the costs of potential defaults, in the Medical Facilities Guarantee and Loan Fund is rescinded.

Rescission.
Health and
health care.

SEC. 224. The unobligated balance in the amount of \$20,000,000 appropriated by Public Law 108–11 under the heading “Public Health and Social Services Emergency Fund” is rescinded.

Federal buildings
and facilities.

SEC. 225. The Center for Biodefense and Emerging Infectious Diseases (Building 33) at the National Institutes of Health is hereby named the C.W. Bill Young Center for Biodefense and Emerging Infectious Diseases.

This title may be cited as the “Department of Health and Human Services Appropriations Act, 2005”.

Department of
Education
Appropriations
Act, 2005.

TITLE III—DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

For carrying out title I of the Elementary and Secondary Education Act of 1965 (“ESEA”) and section 418A of the Higher Education Act of 1965, \$14,963,683,000, of which \$7,382,995,000 shall become available on July 1, 2005, and shall remain available through September 30, 2006, and of which \$7,383,301,000 shall become available on October 1, 2005, and shall remain available through September 30, 2006 for academic year 2005–2006, and of which \$25,000,000 shall become available on October 1, 2004 and shall remain available until September 30, 2006: *Provided*, That \$7,037,592,000 shall be available for basic grants under section 1124: *Provided further*, That up to \$3,500,000 of these funds shall be available to the Secretary of Education on October 1, 2004, to obtain annually updated educational-agency-level census poverty data from the Bureau of the Census: *Provided further*, That \$1,365,031,000 shall be available for concentration grants under

section 1124A: *Provided further*, That \$2,219,843,000 shall be available for targeted grants under section 1125: *Provided further*, That \$2,219,843,000 shall be available for education finance incentive grants under section 1125A: *Provided further*, That \$25,000,000, available until September 30, 2006, shall be for a striving readers initiative authorized under section 1502 of the ESEA: *Provided further*, That \$9,500,000 shall be available to carry out part E of title I: *Provided further*, That from the funds available to carry out part E of title I, up to \$1,000,000 shall be available to the Secretary of Education to provide technical assistance to State and local educational agencies concerning part A of title I: *Provided further*, That \$207,000,000 shall be available for comprehensive school reform grants under part F of the ESEA.

IMPACT AID

For carrying out programs of financial assistance to federally affected schools authorized by title VIII of the Elementary and Secondary Education Act of 1965, \$1,253,893,000, of which \$1,083,687,000 shall be for basic support payments under section 8003(b), \$50,369,000 shall be for payments for children with disabilities under section 8003(d), \$48,936,000 shall be for construction under section 8007 and shall remain available through September 30, 2006, \$63,000,000 shall be for Federal property payments under section 8002, and \$7,901,000, to remain available until expended, shall be for facilities maintenance under section 8008: *Provided*, That \$3,000,000 of the funds for section 8007 shall be available for the local educational agencies and in the amounts specified in the statement of the managers on the conference report accompanying this Act: *Provided further*, That, notwithstanding any other provision of law, these funds shall remain available until expended: *Provided further*, That for purposes of computing the amount of a payment for an eligible local educational agency under section 8003(a) of the Elementary and Secondary Education Act (20 U.S.C. 7703(a)) for school year 2004–2005, children enrolled in a school of such agency that would otherwise be eligible for payment under section 8003(a)(1)(B) of such Act, but due to the deployment of both parents or legal guardians, or a parent or legal guardian having sole custody of such children, or due to the death of a military parent or legal guardian while on active duty (so long as such children reside on Federal property as described in section 8003(a)(1)(B)), are no longer eligible under such section, shall be considered as eligible students under such section, provided such students remain in average daily attendance at a school in the same local educational agency they attended prior to their change in eligibility status.

SCHOOL IMPROVEMENT PROGRAMS

For carrying out school improvement activities authorized by titles II, part B of title IV, part A and subparts 6 and 9 of part D of title V, parts A and B of title VI, and parts B and C of title VII of the Elementary and Secondary Education Act of 1965 (“ESEA”); the McKinney-Vento Homeless Assistance Act; section 203 of the Educational Technical Assistance Act of 2002; the Compact of Free Association Amendments Act of 2003; and the Civil Rights Act of 1964, \$5,664,977,000, of which \$4,034,196,000 shall become available on July 1, 2005, and remain available through

September 30, 2006, and of which \$1,435,000,000 shall become available on October 1, 2005, and shall remain available through September 30, 2006, for academic year 2005–2006: *Provided*, That funds made available to carry out part B of title VII of the ESEA may be used for construction, renovation and modernization of any elementary school, secondary school, or structure related to an elementary school or secondary school, run by the Department of Education of the State of Hawaii, that serves a predominantly Native Hawaiian student body: *Provided further*, That from the funds referred to in the preceding proviso, not less than \$1,000,000 shall be for a grant to the Department of Education of the State of Hawaii for the activities described in such proviso, and \$600,000 shall be for a grant to the University of Hawaii School of Law for a Center of Excellence in Native Hawaiian law: *Provided further*, That funds made available to carry out part C of title VII of the ESEA may be used for construction: *Provided further*, That from the funds referred to in the preceding proviso, \$2,000,000 shall be provided to the Yuut Elitnaurviut Vocational Learning Center in Bethel, Alaska for construction; \$1,000,000 shall be provided to the University of Alaska Anchorage for high school enrichment programs of the UAA Native Science and Engineering program; and notwithstanding any other provision of law, of the funds available to the Alaska Native Heritage Center, up to \$1,000,000 may be used for repair and renovation of buildings on its campus: *Provided further*, That \$415,000,000 shall be for State assessments and related activities authorized under sections 6111 and 6112 of the ESEA: *Provided further*, That the amount made available in the Department of Education Appropriations Act, 2004, under the heading School Improvement Programs and including any funds transferred by the Secretary of Education pursuant to section 304 of that Act for State assessment grants authorized under section 6111 of the Elementary and Secondary Education Act of 1965, shall not be less than \$390,000,000: *Provided further*, That, notwithstanding any other provision of law, including any across-the-board reduction that would otherwise apply, the funds made available for fiscal year 2005 under the heading School Improvement Programs for State assessment grants under section 6111 of the Elementary and Secondary Education Act of 1965 shall not be less than \$400,000,000: *Provided further*, That \$57,283,000 shall be available to carry out section 203 of the Educational Technical Assistance Act of 2002: *Provided further*, That \$29,111,000 shall be available to carry out part D of title V of the ESEA: *Provided further*, That no funds appropriated under this heading may be used to carry out section 5494 under the ESEA: *Provided further*, That \$12,230,000 shall be available to carry out the Supplemental Education Grants program for the Federated States of Micronesia, and \$6,100,000 shall be available to carry out the Supplemental Education Grants program for the Republic of the Marshall Islands: *Provided further*, That up to 5 percent of these amounts may be reserved by the Federated States of Micronesia and the Republic of the Marshall Islands to administer the Supplemental Education Grants programs and to obtain technical assistance, oversight and consultancy services in the administration of these grants and to reimburse the United States Departments of Labor, Health and Human Services, and Education for such services.

INDIAN EDUCATION

For expenses necessary to carry out, to the extent not otherwise provided, title VII, part A of the Elementary and Secondary Education Act of 1965, \$120,856,000.

INNOVATION AND IMPROVEMENT

For carrying out activities authorized by parts G and H of title I, subpart 5 of part A and parts C and D of title II, parts B, C, and D of title V, and section 1504 of the Elementary and Secondary Education Act of 1965 (“ESEA”), \$1,101,454,000: *Provided*, That \$17,000,000 shall be available to carry out section 2151(c) of the ESEA, of which not less than \$10,000,000 shall be provided to the National Board for Professional Teaching Standards, and not less than \$7,000,000 shall be provided to the American Board for the Certification of Teacher Excellence: *Provided further*, That \$37,279,000 shall be for subpart 2 of part B of title V: *Provided further*, That \$417,418,000 shall be available to carry out part D of title V of the ESEA: *Provided further*, That \$246,963,000 of the funds for subpart 1, part D of title V of the ESEA shall be available for the projects and in the amounts specified in the statement of the managers on the conference report accompanying this Act.

SAFE SCHOOLS AND CITIZENSHIP EDUCATION

For carrying out activities authorized by subpart 3 of part C of title II, part A of title IV, and subparts 2, 3 and 10 of part D of title V of the Elementary and Secondary Education Act of 1965 (“ESEA”), title VIII–D of the Higher Education Amendments of 1998, and Public Law 102–73, \$867,713,000, of which \$467,908,000, shall become available on July 1, 2005 and remain available through September 30, 2006: *Provided*, That of the amount available for subpart 2 of part A of title IV of the ESEA, \$850,000 shall be used to continue the National Recognition Awards program under the same guidelines outlined by section 120(f) of Public Law 105–244: *Provided further*, That \$440,908,000 shall be available for subpart 1 of part A of title IV and \$236,472,000 shall be available for subpart 2 of part A of title IV: *Provided further*, That \$133,691,000 shall be available to carry out part D of title V of the ESEA: *Provided further*, That of the funds available to carry out subpart 3 of part C of title II, up to \$12,292,000 may be used to carry out section 2345 and \$3,050,000 shall be used by the Center for Civic Education to implement a comprehensive program to improve public knowledge, understanding, and support of the Congress and the State legislatures: *Provided further*, That \$27,000,000 shall be for Youth Offender Grants, of which \$5,000,000 shall be used in accordance with section 601 of Public Law 102–73 as that section was in effect prior to enactment of Public Law 105–220: *Provided further*, That of the funds available to carry out subpart 10 of part D of title V, up to \$2,000,000 may be used to support the Special Olympics National Summer Games.

ENGLISH LANGUAGE ACQUISITION

For carrying out part A of title III of the ESEA, \$681,215,000, of which \$595,715,000 shall become available on July 1, 2005,

and shall remain available through September 30, 2006: *Provided*, That funds reserved under section 3111(c)(1)(D) of the ESEA that are not used in accordance with section 3111(c)(2) may be added to the funds that are available July 1, 2005, through September 30, 2006, for State allotments under section 3111(c)(3).

SPECIAL EDUCATION

For carrying out parts B, C, and D of the Individuals with Disabilities Education Act, \$11,767,748,000, of which \$6,145,270,000 shall become available for obligation on July 1, 2005, and shall remain available through September 30, 2006, and of which \$5,413,000,000 shall become available on October 1, 2005, and shall remain available through September 30, 2006, for academic year 2005–2006: *Provided*, That \$11,400,000 shall be for Recording for the Blind and Dyslexic, Inc., to support the development, production, and circulation of recorded educational materials: *Provided further*, That \$1,500,000 shall be for the recipient of funds provided by Public Law 105–78 under section 687(b)(2)(G) of the Act (as in effect prior to the enactment of the Individuals with Disabilities Education Improvement Act of 2004) to provide information on diagnosis, intervention, and teaching strategies for children with disabilities: *Provided further*, That the amount for section 611(c) of the Act shall be equal to the amount available for that section during fiscal year 2004, increased by the amount of inflation as specified in section 611(f)(1)(B)(ii) of the Act (as in effect prior to the enactment of the Individuals with Disabilities Education Improvement Act of 2004).

REHABILITATION SERVICES AND DISABILITY RESEARCH

For carrying out, to the extent not otherwise provided, the Rehabilitation Act of 1973, the Assistive Technology Act of 1998 (“the AT Act”), and the Helen Keller National Center Act, \$3,076,112,000, of which \$1,000,000 shall be awarded to the American Academy of Orthotists and Prosthetists for activities that further the purposes of the grant received by the Academy for the period beginning October 1, 2003, including activities to meet the demand for orthotic and prosthetic provider services and improve patient care: *Provided*, That \$30,000,000 shall be used for carrying out the AT Act, including \$4,420,760 for State grants for protection and advocacy under section 5 of the AT Act and \$4,055,000 shall be for alternative financing programs: *Provided further*, That the Federal share of grants for alternative financing programs under section 4(b)(2)(D) of the AT Act shall not exceed 75 percent, and the requirements in section 301(c)(2) and section 302 of the AT Act (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004) shall not apply to such grants: *Provided further*, That \$7,030,000 of the funds for section 303 of the Rehabilitation Act of 1973 shall be available for the projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES

AMERICAN PRINTING HOUSE FOR THE BLIND

For carrying out the Act of March 3, 1879, as amended (20 U.S.C. 101 et seq.), \$17,000,000.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

For the National Technical Institute for the Deaf under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), \$55,790,000, of which \$1,685,000 shall be for construction and shall remain available until expended: *Provided*, That from the total amount available, the Institute may at its discretion use funds for the endowment program as authorized under section 207.

GALLAUDET UNIVERSITY

For the Kendall Demonstration Elementary School, the Model Secondary School for the Deaf, and the partial support of Gallaudet University under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), \$105,400,000: *Provided*, That from the total amount available, the University may at its discretion use funds for the endowment program as authorized under section 207.

VOCATIONAL AND ADULT EDUCATION

For carrying out, to the extent not otherwise provided, the Carl D. Perkins Vocational and Technical Education Act of 1998, the Adult Education and Family Literacy Act, and subparts 4 and 11 of part D of title V of the Elementary and Secondary Education Act of 1965 (“ESEA”), \$2,027,166,000, of which \$1,226,404,000 shall become available on July 1, 2005 and shall remain available through September 30, 2006 and of which \$791,000,000 shall become available on October 1, 2005 and shall remain available through September 30, 2006: *Provided*, That of the amount provided for Adult Education State Grants, \$69,135,000 shall be made available for integrated English literacy and civics education services to immigrants and other limited English proficient populations: *Provided further*, That of the amount reserved for integrated English literacy and civics education, notwithstanding section 211 of the Adult Education and Family Literacy Act, 65 percent shall be allocated to States based on a State’s absolute need as determined by calculating each State’s share of a 10-year average of the Immigration and Naturalization Service data for immigrants admitted for legal permanent residence for the 10 most recent years, and 35 percent allocated to States that experienced growth as measured by the average of the 3 most recent years for which Immigration and Naturalization Service data for immigrants admitted for legal permanent residence are available, except that no State shall be allocated an amount less than \$60,000: *Provided further*, That of the amounts made available for the Adult Education and Family Literacy Act, \$9,169,000 shall be for national leadership activities under section 243 and \$6,692,000 shall be for the National Institute for Literacy under section 242: *Provided further*, That \$100,238,000 shall be available to carry out part D of title V of the ESEA: *Provided further*,

That \$95,238,000 shall be available to support the activities authorized under subpart 4 of part D of title V of the Elementary and Secondary Education Act of 1965, of which up to 5 percent shall become available October 1, 2004 and shall remain available through September 30, 2006, for evaluation, technical assistance, school networking, peer review of applications, and program outreach activities, and of which not less than 95 percent shall become available on July 1, 2005, and remain available through September 30, 2006, for grants to local educational agencies: *Provided further*, That funds made available to local education agencies under this subpart shall be used only for activities related to establishing smaller learning communities in high schools.

STUDENT FINANCIAL ASSISTANCE

For carrying out subparts 1, 3 and 4 of part A, part C and part E of title IV of the Higher Education Act of 1965, as amended, \$14,380,795,000, which shall remain available through September 30, 2006.

20 USC 1070a
note.

The maximum Pell Grant for which a student shall be eligible during award year 2005–2006 shall be \$4,050.

STUDENT AID ADMINISTRATION

For Federal administrative expenses (in addition to funds made available under section 458), to carry out part D of title I, and subparts 1, 3, and 4 of part A, and parts B, C, D and E of title IV of the Higher Education Act of 1965, as amended, \$120,247,000.

HIGHER EDUCATION

For carrying out, to the extent not otherwise provided, section 121 and titles II, III, IV, V, VI, and VII of the Higher Education Act of 1965 (“HEA”), as amended, section 1543 of the Higher Education Amendments of 1992, the Mutual Educational and Cultural Exchange Act of 1961, title VIII of the Higher Education Amendments of 1998, and section 117 of the Carl D. Perkins Vocational and Technical Education Act, \$2,134,269,000, of which \$1,500,000 for interest subsidies authorized by section 121 of the HEA shall remain available until expended: *Provided*, That \$9,876,000, to remain available through September 30, 2006, shall be available to fund fellowships for academic year 2006–2007 under part A, subpart 1 of title VII of said Act, under the terms and conditions of part A, subpart 1: *Provided further*, That notwithstanding any other provision of law or any regulation, the Secretary of Education shall not require the use of a restricted indirect cost rate for grants issued pursuant to section 117 of the Carl D. Perkins Vocational and Technical Education Act of 1998: *Provided further*, That \$988,000 is for data collection and evaluation activities for programs under the HEA, including such activities needed to comply with the Government Performance and Results Act of 1993: *Provided further*, That notwithstanding any other provision of law, funds made available in this Act to carry out title VI of the HEA and section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 may be used to support visits and study in foreign countries by individuals who are participating in advanced foreign language training and international studies in areas that are vital

to United States national security and who plan to apply their language skills and knowledge of these countries in the fields of government, the professions, or international development: *Provided further*, That of the funds referred to in the preceding proviso up to 1 percent may be used for program evaluation, national outreach, and information dissemination activities and \$1,500,000 shall be used for a contract with the National Research Council to carry out an independent review of title VI international education and foreign language studies and the section 102(b)(6) Fulbright-Hays programs: *Provided further*, That the funds provided for title II of the HEA shall be allocated notwithstanding section 210 of such Act: *Provided further*, That \$146,360,000 of the funds for part B of title VII of the Higher Education Act of 1965 shall be available for the projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

HOWARD UNIVERSITY

For partial support of Howard University (20 U.S.C. 121 et seq.), \$240,715,000, of which not less than \$3,552,000 shall be for a matching endowment grant pursuant to the Howard University Endowment Act (Public Law 98–480) and shall remain available until expended.

COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS PROGRAM

For Federal administrative expenses authorized under section 121 of the Higher Education Act of 1965, \$578,000 to carry out activities related to existing facility loans entered into under the Higher Education Act of 1965.

HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAPITAL FINANCING PROGRAM ACCOUNT

The aggregate principal amount of outstanding bonds insured pursuant to section 344 of title III, part D of the Higher Education Act of 1965, shall not exceed \$357,000,000, and the cost, as defined in section 502 of the Congressional Budget Act of 1974, of such bonds shall not exceed zero.

For administrative expenses to carry out the Historically Black College and University Capital Financing Program entered into pursuant to title III, part D of the Higher Education Act of 1965, as amended, \$212,000.

INSTITUTE OF EDUCATION SCIENCES

For carrying out activities authorized by the Education Sciences Reform Act of 2002, as amended, The National Assessment of Educational Progress Authorization Act, and section 208 of the Educational Technical Assistance Act of 2002, \$527,453,000: *Provided*, That, of the amount appropriated, \$190,518,000 shall be available for obligation until September 30, 2006: *Provided further*, That \$83,774,000 shall be for research and innovation in special education authorized under section 177 of the Education Science Reform Act, as amended: *Provided further*, That \$10,623,000 of the funds for section 177 of the Act shall be available for the

projects and in the amounts specified in the statement of the managers of the conference report accompanying this Act.

DEPARTMENTAL MANAGEMENT

PROGRAM ADMINISTRATION

For carrying out, to the extent not otherwise provided, the Department of Education Organization Act, including rental of conference rooms in the District of Columbia and hire of three passenger motor vehicles, \$423,379,000.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, as authorized by section 203 of the Department of Education Organization Act, \$90,248,000.

OFFICE OF THE INSPECTOR GENERAL

For expenses necessary for the Office of the Inspector General, as authorized by section 212 of the Department of Education Organization Act, \$47,790,000.

Schools.

GENERAL PROVISIONS

SEC. 301. No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

SEC. 302. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing or clustering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 303. No funds appropriated under this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

(TRANSFER OF FUNDS)

SEC. 304. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the Department of Education in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: *Provided*, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

Notification.
Deadline.

SEC. 305. Section 8002(m) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7702(m)) is amended by striking “5 years” each place it appears and inserting “7 years”.

SEC. 306. (a) Section 167 of division H of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 3) is amended by striking “\$200,000, for Western Maine Technical College, South Paris, Maine, for education programs and marketing activities” and inserting “\$200,000, for Central Maine Community College, Auburn, Maine, for education programs, student recruitment and marketing activities at the Central Maine Community College-Western Maine University and Community College Center in South Paris, Maine”. *Ante*, p. 452.

(b) In the statement of the managers of the committee of conference accompanying H.R. 2673 (Public Law 108–199; House Report 108–401), in the matter in title III of division E, relating to the Fund for the Improvement of Education under the heading “Innovation and Improvement” the provision specifying \$300,000 for the Provo City Public Schools, Provo, Utah, to develop, purchase and implement an English language instructional program for training and certifying ESL teachers shall be deemed to read as follows: “Provo City Public Schools, Provo, Utah, for an English language instructional program, \$300,000”. *Utah*.

SEC. 307. Notwithstanding any other provision of law, students from the Republic of the Marshall Islands and the Federated States of Micronesia enrolled in institutions in the Republic of Palau shall be eligible for grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 to the extent such grants continue to be available to students from the Republic of the Marshall Islands and the Federated States of Micronesia who are attending institutions in the United States. *Marshall Islands. Micronesia.*

This title may be cited as the “Department of Education Appropriations Act, 2005”.

TITLE IV—RELATED AGENCIES

ARMED FORCES RETIREMENT HOME

For expenses necessary for the Armed Forces Retirement Home to operate and maintain the Armed Forces Retirement Home—Washington and the Armed Forces Retirement Home—Gulfport, to be paid from funds available in the Armed Forces Retirement Home Trust Fund, \$61,624,000, of which \$4,000,000 shall remain available until expended for construction and renovation of the physical plants at the Armed Forces Retirement Home—Washington and the Armed Forces Retirement Home—Gulfport.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

For expenses necessary of the Committee for Purchase From People Who Are Blind or Severely Disabled established by Public Law 92–28, \$4,707,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

DOMESTIC VOLUNTEER SERVICE PROGRAMS, OPERATING EXPENSES

For expenses necessary for the Corporation for National and Community Service to carry out the provisions of the Domestic Volunteer Service Act of 1973, as amended, \$356,598,000: *Provided*, That none of the funds made available to the Corporation for National and Community Service in this Act for activities authorized by section 122 of part C of title I and part E of title II of the Domestic Volunteer Service Act of 1973 shall be used to provide stipends or other monetary incentives to volunteers or volunteer leaders whose incomes exceed 125 percent of the national poverty level.

CORPORATION FOR PUBLIC BROADCASTING

For payment to the Corporation for Public Broadcasting, as authorized by the Communications Act of 1934, an amount which shall be available within limitations specified by that Act, for the fiscal year 2007, \$400,000,000: *Provided*, That no funds made available to the Corporation for Public Broadcasting by this Act shall be used to pay for receptions, parties, or similar forms of entertainment for Government officials or employees: *Provided further*, That none of the funds contained in this paragraph shall be available or used to aid or support any program or activity from which any person is excluded, or is denied benefits, or is discriminated against, on the basis of race, color, national origin, religion, or sex: *Provided further*, That for fiscal year 2005, in addition to the amounts provided above, \$39,705,000 shall be for costs related to digital program production, development, and distribution, associated with the transition of public broadcasting to digital broadcasting, to be awarded as determined by the Corporation in consultation with public radio and television licensees or permittees, or their designated representatives: *Provided further*, That for fiscal year 2005, in addition to the amounts provided above, \$40,000,000 shall be for the costs associated with replacement and upgrade of the public television interconnection system: *Provided further*, That none of the funds made available to the Corporation for Public Broadcasting by this Act, Public Law 108-199 or Public Law 108-7, shall be used to support the Television Future Fund or any similar purpose.

FEDERAL MEDIATION AND CONCILIATION SERVICE

SALARIES AND EXPENSES

For expenses necessary for the Federal Mediation and Conciliation Service to carry out the functions vested in it by the Labor Management Relations Act, 1947 (29 U.S.C. 171-180, 182-183), including hire of passenger motor vehicles; for expenses necessary for the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a); and for expenses necessary for the Service to carry out the functions vested in it by the Civil Service Reform Act, Public Law 95-454 (5 U.S.C. ch. 71), \$44,797,000, including \$1,500,000, to remain available through September 30, 2006, for activities authorized by the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a): *Provided*, That notwithstanding 31 U.S.C. 3302, fees

charged, up to full-cost recovery, for special training activities and other conflict resolution services and technical assistance, including those provided to foreign governments and international organizations, and for arbitration services shall be credited to and merged with this account, and shall remain available until expended: *Provided further*, That fees for arbitration services shall be available only for education, training, and professional development of the agency workforce: *Provided further*, That the Director of the Service is authorized to accept and use on behalf of the United States gifts of services and real, personal, or other property in the aid of any projects or functions within the Director's jurisdiction.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Federal Mine Safety and Health Review Commission (30 U.S.C. 801 et seq.), \$7,872,000.

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

OFFICE OF MUSEUM AND LIBRARY SERVICES: GRANTS AND ADMINISTRATION

For carrying out the Museum and Library Services Act of 1996, \$282,827,000, to remain available until expended: *Provided*, That of the amount provided, \$100,000 shall be awarded to Academy of Natural Sciences, Philadelphia, Pennsylvania, for exhibits and programming associated with the Lewis and Clark expedition, \$300,000 shall be awarded to Alaska Native Heritage Museum, Anchorage, AK in cooperation with the Koahnic Broadcasting Corporation for its Elders Oral History Project, \$50,000 shall be awarded to Alex Haley House and Museum, Henning, TN to preserve collections and improve exhibits, \$100,000 shall be awarded to Allegheny County, Pittsburgh, Pennsylvania, for exhibit design and development, \$100,000 shall be awarded to Allentown Public Library, Allentown, Pennsylvania, for technological upgrades and educational programs, \$400,000 shall be awarded to AMISTAD America, Inc., New Haven, Connecticut, for an endowment fund as authorized under Public Law 108-184, \$320,000 shall be awarded to Amistad Research Center, Tulane University, New Orleans, Louisiana, for faculty research fellowship and student internship programs, \$50,000 shall be awarded to Anniston Museum of Natural History, Anniston, Alabama, for enhanced classroom curriculum, \$100,000 shall be awarded to Antiquarian & Landmarks Society, Hartford, Connecticut, for the Nathan Hale Homestead in Coventry, \$100,000 shall be awarded to Arab Community Center for Economic and Social Services (ACCESS), Dearborn, Michigan, for exhibits and museum programs, \$75,000 shall be awarded to Athenaeum of Philadelphia, Philadelphia, Pennsylvania, for conservation and preservation of library materials, \$75,000 shall be awarded to Audubon Pennsylvania, Audubon, Pennsylvania, for exhibits and nature education programs at the Mill Grove Audubon Center, \$200,000 shall be awarded to Autry National Center, Los Angeles, California, for exhibits, education programs and outreach at its Southwest Museum of the American Indian and/or its Museum of the American West, \$200,000 shall be awarded to Baylor University, Waco, Texas, for archival activities, exhibits, and education

programs for the Mayborn Museum Complex, \$500,000 shall be awarded to Beth Medrash Govoha, Lakewood, New Jersey, for equipment, exhibits and preservation of collections, \$125,000 shall be awarded to Bibliographical Society of America, New York, New York, \$500,000 shall be awarded to Bishop Museum in Hawaii for digitization of old Hawaiian language newspapers and other activities to preserve the culture of Native Hawaiians, \$100,000 shall be awarded to Boys and Girls Harbor, New York, New York, for the preservation and digitalization of Raices Collection, a multimedia collection documenting the history of Afro-Caribbean Latin music in America, \$75,000 shall be awarded to Brooklyn Academy of Music, Brooklyn, New York, for preservation and management of its archives, \$50,000 shall be awarded to Business Association of West Parkside, Philadelphia, Pennsylvania, to exhibit the Negro Leagues Baseball Memorial, \$200,000 shall be awarded to Canton Museum of Art, Canton, Ohio, to develop and implement the HeARTland program, \$100,000 shall be awarded to Cape Cod Maritime Museum, Hyannis, Massachusetts, for the development of exhibitions and programs, \$100,000 shall be awarded to Carnegie Museums of Pittsburgh, Pittsburgh, Pennsylvania, for preservation of collections at the Carnegie Museum of Natural History, \$25,000 shall be awarded to Catawba County Historical Association, Newton, North Carolina, \$200,000 shall be awarded to Chaldean Community Culture Center, West Bloomfield, Michigan, for programs that promote Chaldean language, history, culture and teacher training, \$400,000 shall be awarded to Charles H. Wright Museum of African American History, Detroit, Michigan, for exhibits, education programs, technology and operations, \$84,000 shall be awarded to Cherry Hill Township in New Jersey for improved library technology, \$150,000 shall be awarded to Chicago Historical Society, Chicago, Illinois, for expansion of the Chicago Historical Society's collections and exhibits, \$200,000 shall be awarded to Children's Museum in Oak Lawn, Oak Lawn, Illinois, for its "Explore and Soar" education program, \$100,000 shall be awarded to City of Henderson, North Carolina, for personnel, equipment and technology for the H. Leslie Perry Memorial Library, \$200,000 shall be awarded to City of Jackson, Mississippi, for the Medger Wiley Evers Museum for program and exhibit design and development, \$250,000 shall be awarded to City of Jackson, Tennessee, to support technology upgrades at the Jackson-Madison County Public Library, \$150,000 shall be awarded to City of Murrieta Public Library, Murrieta, California, for a Literacy thru Technology Program, \$500,000 shall be awarded to Claude Pepper Center in Tallahassee, Florida for the digitization of library holdings, \$100,000 shall be awarded to College of Physicians of Philadelphia, Philadelphia, Pennsylvania, to preserve its medical library and art collection, \$50,000 shall be awarded to Colleton County Memorial Library, Walterboro, South Carolina, for books and library materials, \$76,000 shall be awarded to Columbus Museum of Art, Columbus, Ohio, to develop, test, and fabricate the exhibition, train teachers and docents and publicize the project and produce related educational materials, \$72,000 shall be awarded to Contra Costa County, Martinez, California, for the Contra Costa Reads program, \$300,000 shall be awarded to Currier Museum of Art, Manchester, New Hampshire for educational programs and community outreach, \$825,000 shall be awarded to Des Moines Arts Center for the protection of the current collection, \$500,000 shall be awarded to

East Tennessee Historical Society, Knoxville, Tennessee, to expand and develop exhibits that teach of the culture and history of east Tennessee, \$30,000 shall be awarded to Edison House Museum, Louisville, Kentucky, for educational programs, \$100,000 shall be awarded to Everhart Museum, Scranton, Pennsylvania, \$430,000 shall be awarded to Experience Music Project in Seattle, Washington, for an Oral History Program, \$100,000 shall be awarded to Fairfax County Public Library, Fairfax, Virginia, for its Motherhead/Fatheread Plus family literacy initiative, \$800,000 shall be awarded to Field Museum, Chicago, Illinois, for establishing networked computer database for collections management, \$100,000 shall be awarded to Fine Arts Museums of San Francisco for the De Young Museum's Art Education Program, \$275,000 shall be awarded to Florence Library Learning Center, Los Angeles, California, for reading and other education programs, \$650,000 shall be awarded to Florida International Museum, St. Petersburg, Florida, for professional activities, \$500,000 shall be awarded to Folger Library, Washington, D.C., for exhibits, operations, and public programs including education and outreach, \$50,000 shall be awarded to Frederick Douglass Museum, Washington, D.C., for an African American cultural outreach center, \$75,000 shall be awarded to Free Library of Philadelphia, Philadelphia, Pennsylvania, for technology and equipment upgrades, \$350,000 shall be awarded to George Washington University, Washington, D.C., for the Eleanor Roosevelt Papers Project, \$12,000 shall be awarded to Greenburgh Public Library, Tarrytown, New York, for computers and technology, \$50,000 shall be awarded to Greensburg Hempfield Area Public Library, Greensburg, Pennsylvania, for computers, \$500,000 shall be awarded to Grout Museum, Waterloo, Iowa, for exhibitions, \$200,000 shall be awarded to Harbor Heritage Society, Cleveland, Ohio, for MAKING WAVES: Vessel-wide interpretive exhibit planning for the Steamship William G. Mather Maritime Museum, \$250,000 shall be awarded to HealthSpace Cleveland, Cleveland, Ohio, for exhibits, \$75,000 shall be awarded to Hellenic Cultural Association, Salt Lake City, Utah, for exhibit and program development at the Hellenic Cultural Museum, \$150,000 shall be awarded to Hendry County, LaBelle, Florida, for books and technology for Harlem Library, \$500,000 shall be awarded to Hesperia Community Library, Hesperia, California, \$75,000 shall be awarded to Historical Society of Western Pennsylvania, Pittsburgh, Pennsylvania, for exhibit and curriculum development for the Western Pennsylvania Sports Museum, \$75,000 shall be awarded to HistoryMakers, Chicago, Illinois, to create a digital archive dedicated to preserving the history and accomplishments of African Americans, \$150,000 shall be awarded to Home Port Alliance for the USS New Jersey for restoration and preservation, \$100,000 shall be awarded to Hopkinsville-Christian County Public Library, Hopkinsville, Kentucky, \$250,000 shall be awarded to Hunter College, New York, New York, to digitize, preserve and archive collections of the Center for Puerto Rican Studies and for public access and dissemination activities, \$300,000 shall be awarded to Huntsville Museum of Art, Huntsville, Alabama, for exhibits, technology, outreach and education programs, \$300,000 shall be awarded to International Museum of Women, San Francisco, California, for education and teacher professional development programs, \$75,000 shall be awarded to Iona College, New York, for technology upgrade for the Ryan Library, \$150,000 shall be awarded to Italian-American

Cultural Center of Iowa in Des Moines, Iowa, for exhibits, multimedia collections, display, \$72,000 shall be awarded to Jackson County Library System, Ripley, West Virginia, \$415,000 shall be awarded to James Ford Bell Museum of Natural History, University of Minnesota, Minneapolis, Minnesota, for exhibits and education programs, \$350,000 shall be awarded to Johnstown Area Heritage Association, Johnstown, Pennsylvania, for exhibits and education programs for the Heritage Discovery Center, \$25,000 shall be awarded to Josephine School Community Museum, Berryville, Virginia, \$400,000 shall be awarded to Kansas State University, Manhattan, Kansas, for the 20th Century Soldier Project, \$250,000 shall be awarded to Kidspace Children's Museum, Pasadena, California, to develop its Shake Zone Education Exhibit, \$100,000 shall be awarded to Lafayette College, Easton, Pennsylvania, for technology updates to the David Bishop Skillman Library, \$50,000 shall be awarded to Livingston Parish Hungarian Museum, Denham Springs, Louisiana, \$500,000 shall be awarded to Maltz Museum of Jewish Heritage, Beachwood, Ohio, for a Cradle of Christianity: Biblical Treasures from the Holy Land traveling exhibition, \$250,000 shall be awarded to MAPS Air Museum, North Canton, Ohio, to develop educational displays, upkeep of current displays, library expansion, historical research and operation expenses, \$100,000 shall be awarded to Mauch Chunk Historical Society of Carbon County, Jim Thorpe, Pennsylvania, \$500,000 shall be awarded to Memphis Zoo, Memphis, Tennessee, to develop exhibits and support students programs, \$400,000 shall be awarded to Miami Museum of Science & Space Transit Planetarium, Miami, Florida, for exhibits, outreach, and education programs, \$200,000 shall be awarded to Mid-Hudson Children's Museum, Poughkeepsie, New York, for a Comprehensive Technology Enrichment Program to enhance exhibits, \$40,000 shall be awarded to Milford Area Historical Society, Milford, Ohio, for the Promont House Museum, \$450,000 shall be awarded to Milton J. Rubenstein Museum of Science and Technology, Syracuse, New York, \$1,540,000 shall be awarded to Missouri Historical Society, St. Louis, Missouri, for the establishment and maintenance of an archive for materials relating to the Congressional career of the Honorable Richard A. Gephardt, \$260,000 shall be awarded to Mount Vernon Public Library, Mount Vernon, New York for operations and upgrades, \$100,000 shall be awarded to Mt. San Antonio College, Walnut, California for equipment, \$500,000 shall be awarded to Museum of Appalachia, Norris, Tennessee, to preserve and restore the collection of Appalachian pioneer artifacts, \$250,000 shall be awarded to Museum of Aviation Foundation, Warner Robin, Georgia, \$200,000 shall be awarded to Museum of Fine Arts, Boston, Massachusetts, for the development of exhibitions and programs, \$600,000 shall be awarded to Museum of Flight in Seattle, Washington, for the American Fighter Aces Archive and Collection, \$250,000 shall be awarded to Museum of Science and Industry, Chicago, Illinois, for the Science in Your World Program, \$500,000 shall be awarded to Museum of Science, Boston, Massachusetts, for community outreach, exhibit design and development, and educational programs, \$75,000 shall be awarded to National Center for American Revolution, Wayne, Pennsylvania, for exhibit design and curriculum development for the Museum of the American Revolution at Valley Forge National Historic Park, \$100,000 shall

be awarded to National City Public Library, National City, California, for collections and technology, \$950,000 shall be awarded to National D-Day Museum in New Orleans, Louisiana, to improve the education, outreach, and exhibition of the museum, \$100,000 shall be awarded to National Museum of American Jewish History, Philadelphia, Pennsylvania, to develop a fully interactive learning center linked to their web site that will extend the reach of the Museum, \$1,000,000 shall be awarded to National Museum of Women in the Arts, Washington, D.C., \$750,000 shall be awarded to National Trust for Historic Preservation, Washington, D.C., for the Farnsworth House Museum in Plano, Illinois, \$2,100,000 shall be awarded to Native American Cultural Center and Museum, Oklahoma City, Oklahoma, \$500,000 shall be awarded to New York Botanical Garden, Bronx, New York, for the Virtual Herbarium Project, \$1,000,000 shall be awarded to New York Hall of Science to develop, expand, and display science-related materials, \$90,000 shall be awarded to North Carolina Museum of Art Foundation, Inc., Raleigh, North Carolina, for exhibits and education programs, \$1,000,000 shall be awarded to Omaha Performing Arts Center in Nebraska for telecommunications systems, \$100,000 shall be awarded to Pennsylvania Hunting & Fishing Museum, Warren, Pennsylvania, to develop curriculum for conservation education, \$200,000 shall be awarded to Pittsburgh Children's Museum, Pittsburgh, Pennsylvania, to expand arts and after-school programs for at-risk children, \$950,000 shall be awarded to Please Touch Museum, Philadelphia, Pennsylvania, to develop educational programs focusing on hands-on learning experiences, \$320,000 shall be awarded to Portland State University, Portland, Oregon, to enhance library collections and outreach in the area of Middle Eastern and Judaic Studies, \$50,000 shall be awarded to Putnam County Library, Cookeville, Tennessee, to improve exhibits and purchase technology upgrades, \$100,000 shall be awarded to Reading Company Technical and Historical Society, Inc., Reading, Pennsylvania, to expand interpretive activities, \$550,000 shall be awarded to Rochester Museum & Science Center, Rochester, New York, for expansion of exhibitions, \$350,000 shall be awarded to Rock and Roll Hall of Fame and Museum, Cleveland, Ohio, for music education programs, \$200,000 shall be awarded to Saint Louis County Economic Council, Saint Louis, Missouri, for Jefferson Barracks, \$100,000 shall be awarded to Sam Davis Memorial Association, Smyrna, Tennessee, for interpretive exhibits and education programs for the Sam Davis Home, \$350,000 shall be awarded to San Bernardino County, San Bernardino, California, for the San Bernardino County Museum, \$300,000 shall be awarded to Save the Speaker's House, Inc., Trappe, Pennsylvania, \$315,000 shall be awarded to Sci-Quest, The North Alabama Science Center, Huntsville, Alabama, for science and mathematics education programs, \$175,000 shall be awarded to Serra Cooperative Library System, San Diego, California, \$100,000 shall be awarded to Simon Wiesenthal Center's Los Angeles Museum for Tolerance, Los Angeles, California, for the Tools for Tolerance for Educators program to provide teacher training in diversity, tolerance and cooperation, \$50,000 shall be awarded to Smithtown Library, Smithtown, New York, for equipment and technology for its Virtual Worldwide Neighborhood Website Project, \$75,000 shall be awarded to Soldiers and Sailors National Military Museum and Memorial, Pittsburgh, Pennsylvania, for education and outreach programs, \$125,000 shall

be awarded to Southwest Missouri State University, Springfield, Missouri, for digitization of Archives and Rare-book Collections at the Meyer Library, \$250,000 shall be awarded to Stark County Park District, Canton, Ohio, for exhibits, \$1,000,000 shall be awarded to State Historical Society of Iowa in Des Moines, Iowa, for the development of exhibits for the World Food Prize, \$250,000 shall be awarded to Taft Museum of Art, Cincinnati, Ohio, \$600,000 shall be awarded to Tubman African American Museum, Macon, Georgia, \$250,000 shall be awarded to University of Alaska Fairbanks for the continuation of the Alaska Digital Archives project, \$250,000 shall be awarded to University of Vermont of Burlington, Vermont, for a digitization project for the preservation of Vermont cultural heritage materials, \$500,000 shall be awarded to Vietnam Archives Center at Texas Tech University, Lubbock, Texas, for technology infrastructure, \$200,000 shall be awarded to Virginia Living Museum, Newport News, Virginia, for science education, \$135,000 shall be awarded to Waterloo Center for the Arts, Waterloo, Iowa, for the Youth Pavillion to provide educational programs and exhibit design and development, \$400,000 shall be awarded to Western Reserve Historical Society, Cleveland, Ohio, \$25,000 shall be awarded to William McKinley Presidential Library and Museum, Canton, Ohio, \$50,000 shall be awarded to Williamsburg County Library, Kingstree, South Carolina, for books, library materials and computers, \$250,000 shall be awarded to Winchester Conservation Museum, Edgefield, South Carolina, \$50,000 shall be awarded to Wisconsin Historical Society, Madison, Wisconsin, to catalog and microfilm military base papers, \$100,000 shall be awarded to Witte Museum, San Antonio, Texas, for the Water Works project, \$75,000 shall be awarded to Woodmere Art Museum, Philadelphia, Pennsylvania, for technology upgrades and education and outreach programs, \$500,000 shall be awarded to Woodrow Wilson Presidential Library, Staunton, Virginia, \$100,000 shall be awarded to World War II Victory Memorial Museum, Auburn, Indiana, and \$75,000 shall be awarded to Zimmer Children's Museum, Los Angeles, California, to develop and expand the youTHink education program.

MEDICARE PAYMENT ADVISORY COMMISSION

SALARIES AND EXPENSES

For expenses necessary to carry out section 1805 of the Social Security Act, \$9,979,000, to be transferred to this appropriation from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

SALARIES AND EXPENSES

For necessary expenses for the National Commission on Libraries and Information Science, established by the Act of July 20, 1970 (Public Law 91-345, as amended), \$1,001,000.

NATIONAL COUNCIL ON DISABILITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Disability as authorized by title IV of the Rehabilitation Act of 1973, as amended, \$3,371,000.

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, as amended (29 U.S.C. 141–167), and other laws, \$251,875,000: *Provided*, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 percent of the water stored or supplied thereby is used for farming purposes.

NATIONAL MEDIATION BOARD

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions of the Railway Labor Act, as amended (45 U.S.C. 151–188), including emergency boards appointed by the President, \$11,722,000.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Occupational Safety and Health Review Commission (29 U.S.C. 661), \$10,595,000.

RAILROAD RETIREMENT BOARD

DUAL BENEFITS PAYMENTS ACCOUNT

For payment to the Dual Benefits Payments Account, authorized under section 15(d) of the Railroad Retirement Act of 1974, \$108,000,000, which shall include amounts becoming available in fiscal year 2005 pursuant to section 224(c)(1)(B) of Public Law 98-76; and in addition, an amount, not to exceed 2 percent of the amount provided herein, shall be available proportional to the amount by which the product of recipients and the average benefit received exceeds \$108,000,000: *Provided*, That the total amount provided herein shall be credited in 12 approximately equal amounts on the first day of each month in the fiscal year.

FEDERAL PAYMENTS TO THE RAILROAD RETIREMENT ACCOUNTS

For payment to the accounts established in the Treasury for the payment of benefits under the Railroad Retirement Act for interest earned on unnegotiated checks, \$150,000, to remain available through September 30, 2006, which shall be the maximum amount available for payment pursuant to section 417 of Public Law 98-76.

LIMITATION ON ADMINISTRATION

For necessary expenses for the Railroad Retirement Board for administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, \$103,370,000, to be derived in such amounts as determined by the Board from the railroad retirement accounts and from moneys credited to the railroad unemployment insurance administration fund.

LIMITATION ON THE OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General for audit, investigatory and review activities, as authorized by the Inspector General Act of 1978, as amended, not more than \$7,254,000, to be derived from the railroad retirement accounts and railroad unemployment insurance account: *Provided*, That none of the funds made available in any other paragraph of this Act may be transferred to the Office; used to carry out any such transfer; used to provide any office space, equipment, office supplies, communications facilities or services, maintenance services, or administrative services for the Office; used to pay any salary, benefit, or award for any personnel of the Office; used to pay any other operating expense of the Office; or used to reimburse the Office for any service provided, or expense incurred, by the Office.

SOCIAL SECURITY ADMINISTRATION

PAYMENTS TO SOCIAL SECURITY TRUST FUNDS

For payment to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance trust funds, as provided under sections 201(m), 228(g), and 1131(b)(2) of the Social Security Act, \$20,454,000.

SUPPLEMENTAL SECURITY INCOME PROGRAM

For carrying out titles XI and XVI of the Social Security Act, section 401 of Public Law 92-603, section 212 of Public Law 93-66, as amended, and section 405 of Public Law 95-216, including payment to the Social Security trust funds for administrative expenses incurred pursuant to section 201(g)(1) of the Social Security Act, \$28,586,829,000, to remain available until expended: *Provided*, That any portion of the funds provided to a State in the current fiscal year and not obligated by the State during that year shall be returned to the Treasury.

For making, after June 15 of the current fiscal year, benefit payments to individuals under title XVI of the Social Security Act, for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

For making benefit payments under title XVI of the Social Security Act for the first quarter of fiscal year 2006, \$10,930,000,000, to remain available until expended.

LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, including the hire of two passenger motor vehicles, and not to exceed \$15,000 for official reception and representation expenses, not more than \$8,674,296,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: *Provided*, That not less than \$2,000,000 shall be for the Social Security Advisory Board: *Provided further*, That unobligated balances of funds provided under this paragraph at the end of fiscal year 2005 not needed for fiscal year 2005 shall remain available until expended to invest in the Social Security Administration information technology and telecommunications hardware and software infrastructure, including related equipment and non-payroll administrative expenses associated solely with this information technology and telecommunications infrastructure: *Provided further*, That reimbursement to the trust funds under this heading for expenditures for official time for employees of the Social Security Administration pursuant to section 7131 of title 5, United States Code, and for facilities or support services for labor organizations pursuant to policies, regulations, or procedures referred to in section 7135(b) of such title shall be made by the Secretary of the Treasury, with interest, from amounts in the general fund not otherwise appropriated, as soon as possible after such expenditures are made.

In addition, \$124,000,000 to be derived from administration fees in excess of \$5.00 per supplementary payment collected pursuant to section 1616(d) of the Social Security Act or section 212(b)(3) of Public Law 93–66, which shall remain available until expended. To the extent that the amounts collected pursuant to such section 1616(d) or 212(b)(3) in fiscal year 2005 exceed \$124,000,000, the amounts shall be available in fiscal year 2006 only to the extent provided in advance in appropriations Acts.

In addition, up to \$3,600,000 to be derived from fees collected pursuant to section 303(c) of the Social Security Protection Act (Public Law 108–203), which shall remain available until expended.

From funds previously appropriated for Federal-State Partnerships, any unobligated balances at the end of fiscal year 2004 shall be transferred to the Supplemental Security Income Program and remain available until expended to promote Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$25,748,000, together with not to exceed \$65,359,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

Notice.

In addition, an amount not to exceed 3 percent of the total provided in this appropriation may be transferred from the “Limitation on Administrative Expenses”, Social Security Administration, to be merged with this account, to be available for the time and purposes for which this account is available: *Provided*, That notice of such transfers shall be transmitted promptly to the Committees on Appropriations of the House and Senate.

TITLE V—GENERAL PROVISIONS

SEC. 501. The Secretaries of Labor, Health and Human Services, and Education are authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act: *Provided*, That such transferred balances are used for the same purpose, and for the same periods of time, for which they were originally appropriated.

SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 503. (a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

SEC. 504. The Secretaries of Labor and Education are authorized to make available not to exceed \$28,000 and \$20,000, respectively, from funds available for salaries and expenses under titles I and III, respectively, for official reception and representation expenses; the Director of the Federal Mediation and Conciliation Service is authorized to make available for official reception and representation expenses not to exceed \$5,000 from the funds available for “Salaries and expenses, Federal Mediation and Conciliation Service”; and the Chairman of the National Mediation Board is authorized to make available for official reception and representation expenses not to exceed \$5,000 from funds available for “Salaries and expenses, National Mediation Board”.

SEC. 505. Notwithstanding any other provision of this Act, no funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

SEC. 506. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds included in this Act, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state—

(1) the percentage of the total costs of the program or project which will be financed with Federal money;

(2) the dollar amount of Federal funds for the project or program; and

(3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

SEC. 507. (a) None of the funds appropriated under this Act, and none of the funds in any trust fund to which funds are appropriated under this Act, shall be expended for any abortion.

(b) None of the funds appropriated under this Act, and none of the funds in any trust fund to which funds are appropriated under this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) The term “health benefits coverage” means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

SEC. 508. (a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State’s or locality’s contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State’s or locality’s contribution of Medicaid matching funds).

(d)(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term “health care entity” includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

SEC. 509. (a) None of the funds made available in this Act may be used for—

(1) the creation of a human embryo or embryos for research purposes; or

(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(b) For purposes of this section, the term “human embryo or embryos” includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this

Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

SEC. 510. (a) None of the funds made available in this Act may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established by section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) The limitation in subsection (a) shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

SEC. 511. None of the funds made available in this Act may be obligated or expended to enter into or renew a contract with an entity if—

(1) such entity is otherwise a contractor with the United States and is subject to the requirement in section 4212(d) of title 38, United States Code, regarding submission of an annual report to the Secretary of Labor concerning employment of certain veterans; and

(2) such entity has not submitted a report as required by that section for the most recent year for which such requirement was applicable to such entity.

SEC. 512. None of the funds made available in this Act may be used to promulgate or adopt any final standard under section 1173(b) of the Social Security Act (42 U.S.C. 1320d-2(b)) providing for, or providing for the assignment of, a unique health identifier for an individual (except in an individual's capacity as an employer or a health care provider), until legislation is enacted specifically approving the standard.

SEC. 513. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 514. None of the funds made available by this Act to carry out the Library Services and Technology Act may be made available to any library covered by paragraph (1) of section 224(f) of such Act (20 U.S.C. 9134(f)), as amended by the Children's Internet Protections Act, unless such library has made the certifications required by paragraph (4) of such section.

SEC. 515. None of the funds made available by this Act to carry out part D of title II of the Elementary and Secondary Education Act of 1965 may be made available to any elementary or secondary school covered by paragraph (1) of section 2441(a) of such Act (20 U.S.C. 6777(a)), as amended by the Children's Internet Protections Act and the No Child Left Behind Act, unless the local educational agency with responsibility for such covered school has made the certifications required by paragraph (2) of such section.

SEC. 516. None of the funds appropriated in this Act may be used to enter into an arrangement under section 7(b)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(4)) with a nongovernmental financial institution to serve as disbursing agent for benefits payable under the Railroad Retirement Act of 1974.

SEC. 517. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that—

- (1) creates new programs;
- (2) eliminates a program, project, or activity;
- (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;
- (4) relocates an office or employees;
- (5) reorganizes or renames offices;
- (6) reorganizes programs or activities; or
- (7) contracts out or privatizes any functions or activities presently performed by Federal employees.

None of the funds made available by this Act may be reprogrammed unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of a reprogramming or announcement of intent to reprogram funds, whichever occurs earlier.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds in excess of \$500,000 or 10 percent, whichever is less, that—

- (1) augments existing programs, projects (including construction projects), or activities;
- (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or
- (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of a reprogramming or announcement of intent to reprogram funds, whichever occurs earlier.

SEC. 518. Notwithstanding any other provision of law or regulation, the United States Government's interest in the property at 1818 W. Northern Lights Boulevard in Anchorage, Alaska, with legal description: T13N R4W Section 25, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Portion W135 E953 N350, Anchorage Recording District shall be conveyed to Southcentral Foundation for a replacement Head Start facility.

SEC. 519. (a) IN GENERAL.—Amounts made available under this Act for the administrative and related expenses for departmental management for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced on a pro rata basis by \$18,000,000: *Provided*, That not later than 15 days after the enactment of this Act, the Director of the Office of Management and Budget shall report to the House and Senate Committees on Appropriations the accounts subject to the pro rata reductions and the amount to be reduced in each account.

Alaska.
Real property.

Deadline.
Reports.

(b) LIMITATION.—The reduction required by subsection (a) shall not apply to the Food and Drug Administration and the Indian Health Service.

This division may be cited as the “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2005”.

Legislative
Branch
Appropriations
Act, 2005.

2 USC 60a note.

DIVISION G

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2005

TITLE I—LEGISLATIVE BRANCH APPROPRIATIONS

SENATE

EXPENSE ALLOWANCES

For expense allowances of the Vice President, \$20,000; the President Pro Tempore of the Senate, \$40,000; Majority Leader of the Senate, \$40,000; Minority Leader of the Senate, \$40,000; Majority Whip of the Senate, \$10,000; Minority Whip of the Senate, \$10,000; President Pro Tempore emeritus, \$15,000; Chairmen of the Majority and Minority Conference Committees, \$5,000 for each Chairman; and Chairmen of the Majority and Minority Policy Committees, \$5,000 for each Chairman; in all, \$195,000.

REPRESENTATION ALLOWANCES FOR THE MAJORITY AND MINORITY LEADERS

For representation allowances of the Majority and Minority Leaders of the Senate, \$15,000 for each such Leader; in all, \$30,000.

SALARIES, OFFICERS AND EMPLOYEES

For compensation of officers, employees, and others as authorized by law, including agency contributions, \$134,840,000, which shall be paid from this appropriation without regard to the following limitations:

OFFICE OF THE VICE PRESIDENT

For the Office of the Vice President, \$2,108,000.

OFFICE OF THE PRESIDENT PRO TEMPORE

For the Office of the President Pro Tempore, \$561,000.

OFFICE OF THE PRESIDENT PRO TEMPORE EMERITUS

For the Office of the President Pro Tempore emeritus, \$163,000.

OFFICES OF THE MAJORITY AND MINORITY LEADERS

For Offices of the Majority and Minority Leaders, \$3,808,000.

OFFICES OF THE MAJORITY AND MINORITY WHIPS

For Offices of the Majority and Minority Whips, \$2,556,000.

COMMITTEE ON APPROPRIATIONS

For salaries of the Committee on Appropriations, \$13,301,000.

CONFERENCE COMMITTEES

For the Conference of the Majority and the Conference of the Minority, at rates of compensation to be fixed by the Chairman of each such committee, \$1,413,000 for each such committee; in all, \$2,826,000.

OFFICES OF THE SECRETARIES OF THE CONFERENCE OF THE MAJORITY
AND THE CONFERENCE OF THE MINORITY

For Offices of the Secretaries of the Conference of the Majority and the Conference of the Minority, \$702,000.

POLICY COMMITTEES

For salaries of the Majority Policy Committee and the Minority Policy Committee, \$1,473,000 for each such committee; in all, \$2,946,000.

OFFICE OF THE CHAPLAIN

For Office of the Chaplain, \$341,000.

OFFICE OF THE SECRETARY

For Office of the Secretary, \$19,586,000.

OFFICE OF THE SERGEANT AT ARMS AND DOORKEEPER

For Office of the Sergeant at Arms and Doorkeeper, \$50,635,000.

OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY

For Offices of the Secretary for the Majority and the Secretary for the Minority, \$1,528,000.

AGENCY CONTRIBUTIONS AND RELATED EXPENSES

For agency contributions for employee benefits, as authorized by law, and related expenses, \$33,779,000.

OFFICE OF THE LEGISLATIVE COUNSEL OF THE SENATE

For salaries and expenses of the Office of the Legislative Counsel of the Senate, \$5,152,000.

OFFICE OF SENATE LEGAL COUNSEL

For salaries and expenses of the Office of Senate Legal Counsel, \$1,265,000.

EXPENSE ALLOWANCES OF THE SECRETARY OF THE SENATE, SER-
GEANT AT ARMS AND DOORKEEPER OF THE SENATE, AND SECRE-
TARIES FOR THE MAJORITY AND MINORITY OF THE SENATE

For expense allowances of the Secretary of the Senate, \$6,000; Sergeant at Arms and Doorkeeper of the Senate, \$6,000; Secretary

for the Majority of the Senate, \$6,000; Secretary for the Minority of the Senate, \$6,000; in all, \$24,000.

CONTINGENT EXPENSES OF THE SENATE

INQUIRIES AND INVESTIGATIONS

For expenses of inquiries and investigations ordered by the Senate, or conducted under section 134(a) of the Legislative Reorganization Act of 1946 (Public Law 97-601), section 112 of the Supplemental Appropriations and Rescission Act, 1980 (Public Law 96-304), and Senate Resolution 281, 96th Congress, agreed to March 11, 1980, \$110,000,000.

EXPENSES OF THE UNITED STATES SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

For expenses of the United States Senate Caucus on International Narcotics Control, \$520,000.

SECRETARY OF THE SENATE

For expenses of the Office of the Secretary of the Senate, \$1,700,000.

SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

For expenses of the Office of the Sergeant at Arms and Doorkeeper of the Senate, \$127,182,000, of which \$20,045,000 shall remain available until September 30, 2007, and of which \$4,255,000 shall remain available until September 30, 2009.

MISCELLANEOUS ITEMS

For miscellaneous items, \$18,326,000, of which up to \$500,000 shall be made available for a pilot program for mailings of postal patron postcards by Senators for the purpose of providing notice of a town meeting by a Senator in a county (or equivalent unit of local government) at which the Senator will personally attend: *Provided*, That any amount allocated to a Senator for such mailing shall not exceed 50 percent of the cost of the mailing and the remaining cost shall be paid by the Senator from other funds available to the Senator.

SENATORS' OFFICIAL PERSONNEL AND OFFICE EXPENSE ACCOUNT

For Senators' Official Personnel and Office Expense Account, \$326,533,000.

OFFICIAL MAIL COSTS

For expenses necessary for official mail costs of the Senate, \$300,000.

ADMINISTRATIVE PROVISIONS

2 USC 61-1.

2 USC 61-1 note.

SEC. 1. GROSS RATE OF COMPENSATION IN OFFICES OF SENATORS. Effective on and after October 1, 2004, each of the dollar amounts contained in the table under section 105(d)(1)(A) of the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 61-1(d)(1)(A)) shall be deemed to be the dollar amounts in that table, as adjusted

by law and in effect on September 30, 2004, increased by an additional \$50,000 each.

SEC. 2. CONSULTANTS. With respect to fiscal year 2005, the first sentence of section 101(a) of the Supplemental Appropriations Act, 1977 (2 U.S.C. 61h–6(a)) shall be applied by substituting “nine individual consultants” for “eight individual consultants”. 2 USC 61h–6
note.

SEC. 3. UNITED STATES SENATE COLLECTION. Section 316 of Public Law 101–302 (2 U.S.C. 2107) is amended in the first sentence of subsection (a) by striking “2004” and inserting “2005”.

SEC. 4. PRESIDENT PRO TEMPORE EMERITUS OF THE SENATE. Section 7(e) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 32b note) is amended by inserting “and the 109th Congress” after “108th Congress”.

SEC. 5. TRANSFER OF FUNDS FROM APPROPRIATIONS ACCOUNT OF THE OFFICE OF THE VICE PRESIDENT AND THE OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY TO THE SENATE CONTINGENT FUND. (a) OFFICE OF THE VICE PRESIDENT.— 2 USC 31a–2d.

(1) IN GENERAL.—Upon the written request of the Vice President, the Secretary of the Senate shall transfer from the appropriations account appropriated under the subheading “OFFICE OF THE VICE PRESIDENT” under the heading “SALARIES, OFFICERS AND EMPLOYEES” such amount as the Vice President shall specify to the appropriations account under the heading “MISCELLANEOUS ITEMS” within the contingent fund of the Senate.

(2) AUTHORITY TO INCUR EXPENSES.—The Vice President may incur such expenses as may be necessary or appropriate. Expenses incurred by the Vice President shall be paid from the amount transferred under paragraph (1) by the Vice President and upon vouchers approved by the Vice President.

(3) AUTHORITY TO ADVANCE SUMS.—The Secretary of the Senate may advance such sums as may be necessary to defray expenses incurred in carrying out paragraphs (1) and (2).

(b) OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY.—

(1) IN GENERAL.—Upon the written request of the Secretary for the Majority or the Secretary for the Minority, the Secretary of the Senate shall transfer from the appropriations account appropriated under the subheading “OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY” under the heading “SALARIES, OFFICERS AND EMPLOYEES” such amount as the Secretary for the Majority or the Secretary for the Minority shall specify to the appropriations account under the heading “MISCELLANEOUS ITEMS” within the contingent fund of the Senate.

(2) AUTHORITY TO INCUR EXPENSES.—The Secretary for the Majority or the Secretary for the Minority may incur such expenses as may be necessary or appropriate. Expenses incurred by the Secretary for the Majority or the Secretary for the Minority shall be paid from the amount transferred under paragraph (1) by the Secretary for the Majority or the Secretary for the Minority and upon vouchers approved by the Secretary for the Majority or the Secretary for the Minority, as applicable.

(3) AUTHORITY TO ADVANCE SUMS.—The Secretary of the Senate may advance such sums as may be necessary to defray expenses incurred in carrying out paragraphs (1) and (2).

(c) EFFECTIVE DATE.—This section shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 6. ACTIVITIES RELATING TO FOREIGN PARLIAMENTARY GROUPS AND FOREIGN OFFICIALS. Section 2(c) of chapter VIII of title I of the Supplemental Appropriations Act, 1987 (2 U.S.C. 65f(c)) is amended in the first sentence by striking “with the approval of” and inserting “and upon notification to”.

2 USC 59d-1.

SEC. 7. TRANSPORTATION OF OFFICIAL RECORDS AND PAPERS TO A SENATOR’S STATE. (a) PAYMENT OF REASONABLE TRANSPORTATION EXPENSES.—Upon request of a Senator, amounts in the appropriation account “Miscellaneous Items” within the contingent fund of the Senate shall be available to pay the reasonable expenses of sending or transporting the official records and papers of the Senator from the District of Columbia to any location designated by such Senator in the State represented by the Senator.

(b) SENDING AND TRANSPORTATION.—The Sergeant at Arms and Doorkeeper of the Senate shall provide for the most economical means of sending or transporting the official records and papers under this section while ensuring the orderly and timely delivery of the records and papers to the location specified by the Senator.

(c) OVERSIGHT.—The Committee on Rules and Administration shall have the authority to issue rules and regulations to carry out the provisions of this section.

(d) OFFICIAL RECORDS DEFINED.—In this section, the term “official records and papers” means books, records, papers, and official files which could be sent as franked mail.

(e) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

2 USC 117d-1.

SEC. 8. COMPENSATION FOR LOST OR DAMAGED PROPERTY. (a) IN GENERAL.—Any amounts received by the Sergeant at Arms and Doorkeeper of the Senate (in this section referred to as the “Sergeant at Arms”) for compensation for damage to, loss of, or loss of use of property of the Sergeant at Arms that was procured using amounts available to the Sergeant at Arms in the account for Contingent Expenses, Sergeant at Arms and Doorkeeper of the Senate, shall be credited to that account or, if applicable, to any subaccount of that account.

(b) AVAILABILITY.—Amounts credited to any account or subaccount under subsection (a) shall be merged with amounts in that account or subaccount and shall be available to the same extent, and subject to the same terms and conditions, as amounts in that account or subaccount.

(c) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each fiscal year thereafter.

2 USC 88b-1.

SEC. 9. AGE REQUIREMENT FOR SENATE PAGES. Section 491(b)(1) of the Legislative Reorganization Act of 1970 (2 U.S.C. 88b-1(b)(1)) is amended by striking “fourteen” and inserting “sixteen”.

SEC. 10. TREATMENT OF ELECTRONIC SERVICES PROVIDED BY SERGEANT AT ARMS. The Office of the Sergeant at Arms and Doorkeeper of the United States Senate, and any officer, employee, or agent of the Office, shall not be treated as acquiring possession, custody, or control of any electronic mail or other electronic communication, data, or information by reason of its being transmitted, processed, or stored (whether temporarily or otherwise) through the use of an electronic system established, maintained, or operated, or the use of electronic services provided, in whole or in part by the Office.

SEC. 11. MODIFICATION OF APPLICATION OF SECTION 47 OF THE REVISED STATUTES. Section 47 of the Revised Statutes of the United States (2 U.S.C. 48) is amended by striking “of Senators shall be certified by the President of the Senate, and those of Representatives and Delegates” and inserting “of Representatives and Delegates shall be certified”.

SEC. 12. OVERSEAS TRAVEL. (a) DEFINITION.—In this section, the term “United States” means each of the several States of the United States, the District of Columbia, and the territories and possessions of the United States. 2 USC 1975.

(b) IN GENERAL.—A member of the Capitol Police may travel outside of the United States if—

(1) that travel is with, or in preparation for, travel of a Senator, including travel of a Senator as part of a congressional delegation;

(2) the member of the Capitol Police is performing security advisory and liaison functions (including advance security liaison preparations) relating to the travel of that Senator; and

(3) the Sergeant at Arms and Doorkeeper of the Senate gives prior approval to the travel of the member of the Capitol Police.

(c) LAW ENFORCEMENT FUNCTIONS.—Subsection (b) shall not be construed to authorize the performance of law enforcement functions by a member of the Capitol Police in connection with the travel authorized under that subsection.

(d) REIMBURSEMENT.—The Capitol Police shall be reimbursed for the overtime pay, travel, and related expenses of any member of the Capitol Police who travels under the authority of this section. Any reimbursement under this subsection shall be paid from the account under the heading “SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE” under the heading “CONTINGENT EXPENSES OF THE SENATE”.

(e) AMOUNTS RECEIVED.—Any amounts received by the Capitol Police for reimbursements under subsection (d) shall be credited to the accounts established for the general expenses or salaries of the Capitol Police, and shall be available to carry out the purposes of such accounts during the fiscal year in which the amounts are received and the following fiscal year.

(f) EFFECTIVE DATE.—This section shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 13. EXPENSE ALLOWANCES. (a) IN GENERAL.—The matter under the subheading “EXPENSE ALLOWANCES OF THE VICE PRESIDENT, PRESIDENT PRO TEMPORE, MAJORITY AND MINORITY LEADERS AND MAJORITY AND MINORITY WHIPS” under the heading “LEGISLATIVE BRANCH” under chapter VI of title I of the Second Supplemental Appropriations Act, 1978 (Public Law 95-355; 92 Stat. 532) is amended—

(1) in the second sentence (2 U.S.C. 31a-1) (relating to the Majority and Minority Leaders of the Senate) by striking “\$20,000” and inserting “\$40,000”; and

(2) in the third sentence (2 U.S.C. 32b) (relating to the President pro tempore) by striking “\$20,000” and inserting “\$40,000”.

(b) PRESIDENT PRO TEMPORE EMERITUS.—Section 7(d) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 32b note) is amended in the first sentence (relating to the President pro tempore emeritus) by striking “\$7,500” and inserting “\$15,000”.

2 USC 31a–1
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal year 2005 and each fiscal year thereafter.

HOUSE OF REPRESENTATIVES

SALARIES AND EXPENSES

For salaries and expenses of the House of Representatives, \$1,048,581,000, as follows:

HOUSE LEADERSHIP OFFICES

For salaries and expenses, as authorized by law, \$18,678,000, including: Office of the Speaker, \$2,708,000, including \$25,000 for official expenses of the Speaker; Office of the Majority Floor Leader, \$2,027,000, including \$10,000 for official expenses of the Majority Leader; Office of the Minority Floor Leader, \$2,840,000, including \$10,000 for official expenses of the Minority Leader; Office of the Majority Whip, including the Chief Deputy Majority Whip, \$1,741,000, including \$5,000 for official expenses of the Majority Whip; Office of the Minority Whip, including the Chief Deputy Minority Whip, \$1,303,000, including \$5,000 for official expenses of the Minority Whip; Speaker's Office for Legislative Floor Activities, \$470,000; Republican Steering Committee, \$881,000; Republican Conference, \$1,500,000; Democratic Steering and Policy Committee, \$1,589,000; Democratic Caucus, \$792,000; nine minority employees, \$1,409,000; training and program development—majority, \$290,000; training and program development—minority, \$290,000; Cloakroom Personnel—majority, \$419,000; and Cloakroom Personnel—minority, \$419,000.

MEMBERS' REPRESENTATIONAL ALLOWANCES

INCLUDING MEMBERS' CLERK HIRE, OFFICIAL EXPENSES OF MEMBERS, AND OFFICIAL MAIL

For Members' representational allowances, including Members' clerk hire, official expenses, and official mail, \$521,195,000.

COMMITTEE EMPLOYEES

STANDING COMMITTEES, SPECIAL AND SELECT

For salaries and expenses of standing committees, special and select, authorized by House resolutions, \$114,299,000: *Provided*, That such amount shall remain available for such salaries and expenses until December 31, 2006.

COMMITTEE ON APPROPRIATIONS

For salaries and expenses of the Committee on Appropriations, \$24,926,000, including studies and examinations of executive agencies and temporary personal services for such committee, to be expended in accordance with section 202(b) of the Legislative Reorganization Act of 1946 and to be available for reimbursement to agencies for services performed: *Provided*, That such amount shall remain available for such salaries and expenses until December 31, 2006.

SALARIES, OFFICERS AND EMPLOYEES

For compensation and expenses of officers and employees, as authorized by law, \$160,133,000, including: for salaries and expenses of the Office of the Clerk, including not more than \$13,000, of which not more than \$10,000 is for the Family Room, for official representation and reception expenses, \$20,534,000; for salaries and expenses of the Office of the Sergeant at Arms, including the position of Superintendent of Garages, and including not more than \$3,000 for official representation and reception expenses, \$5,879,000; for salaries and expenses of the Office of the Chief Administrative Officer, \$116,034,000, of which \$7,500,000 shall remain available until expended; for salaries and expenses of the Office of the Inspector General, \$3,986,000; for salaries and expenses of the Office of Emergency Planning, Preparedness and Operations, \$1,000,000, to remain available until expended; for salaries and expenses of the Office of General Counsel, \$962,000; for the Office of the Chaplain, \$155,000; for salaries and expenses of the Office of the Parliamentarian, including the Parliamentarian and \$2,000 for preparing the Digest of Rules, \$1,673,000; for salaries and expenses of the Office of the Law Revision Counsel of the House, \$2,346,000; for salaries and expenses of the Office of the Legislative Counsel of the House, \$6,721,000; for salaries and expenses of the Office of Interparliamentary Affairs, \$687,000; and for other authorized employees, \$156,000.

ALLOWANCES AND EXPENSES

For allowances and expenses as authorized by House resolution or law, \$209,350,000, including: supplies, materials, administrative costs and Federal tort claims, \$4,350,000; official mail for committees, leadership offices, and administrative offices of the House, \$410,000; Government contributions for health, retirement, Social Security, and other applicable employee benefits, \$203,900,000; and miscellaneous items including purchase, exchange, maintenance, repair and operation of House motor vehicles, interparliamentary receptions, and gratuities to heirs of deceased employees of the House, \$690,000.

CHILD CARE CENTER

For salaries and expenses of the House of Representatives Child Care Center, such amounts as are deposited in the account established by section 312(d)(1) of the Legislative Branch Appropriations Act, 1992 (2 U.S.C. 2112), subject to the level specified in the budget of the Center, as submitted to the Committee on Appropriations of the House of Representatives.

ADMINISTRATIVE PROVISIONS

SEC. 101. (a) REQUIRING AMOUNTS REMAINING IN MEMBERS' REPRESENTATIONAL ALLOWANCES TO BE USED FOR DEFICIT REDUCTION OR TO REDUCE THE FEDERAL DEBT.—Notwithstanding any other provision of law, any amounts appropriated under this Act for “HOUSE OF REPRESENTATIVES—SALARIES AND EXPENSES—MEMBERS' REPRESENTATIONAL ALLOWANCES” shall be available only for fiscal year 2005. Any amount remaining after all payments are made under such allowances for fiscal year 2005 shall be

deposited in the Treasury and used for deficit reduction (or, if there is no Federal budget deficit after all such payments have been made, for reducing the Federal debt, in such manner as the Secretary of the Treasury considers appropriate).

(b) REGULATIONS.—The Committee on House Administration of the House of Representatives shall have authority to prescribe regulations to carry out this section.

(c) DEFINITION.—As used in this section, the term “Member of the House of Representatives” means a Representative in, or a Delegate or Resident Commissioner to, the Congress.

2 USC 112h.

SEC. 102. NET EXPENSES OF TELECOMMUNICATIONS REVOLVING FUND. (a) There is hereby established in the Treasury of the United States a revolving fund for the House of Representatives to be known as the Net Expenses of Telecommunications Revolving Fund (hereafter in this section referred to as the “Revolving Fund”), consisting of funds deposited by the Chief Administrative Officer of the House of Representatives from amounts provided by legislative branch offices to purchase, lease, obtain, and maintain the data and voice telecommunications services and equipment located in such offices.

(b) Amounts in the Revolving Fund shall be used by the Chief Administrative Officer without fiscal year limitation to purchase, lease, obtain, and maintain the data and voice telecommunications services and equipment of legislative branch offices.

(c) The Revolving Fund shall be treated as a category of allowances and expenses for purposes of section 101(a) of the Legislative Branch Appropriations Act, 1993 (2 U.S.C. 95b(a)).

(d) Section 306 of the Legislative Branch Appropriations Act, 1989 (2 U.S.C. 117f) is amended—

(1) by striking subsection (b) and redesignating subsection (c) as subsection (b); and

(2) in subsection (b) (as so redesignated), by striking “subsections (a) and (b)” and inserting “subsection (a)”.

(e) Section 102 of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 112g) is amended by adding at the end the following new subsection:

“(e) This section shall not apply with respect to any telecommunications equipment which is subject to coverage under section 103 of the Legislative Branch Appropriations Act, 2005 (relating to the Net Expenses of Telecommunications Revolving Fund).”.

(f) This section and the amendments made by this section shall apply with respect to fiscal year 2005 and each succeeding fiscal year, except that for purposes of making deposits into the Revolving Fund under subsection (a), the Chief Administrative Officer may deposit amounts provided by legislative branch offices during fiscal year 2004 or any succeeding fiscal year.

SEC. 103. CONTRACT FOR EXERCISE FACILITY. (a) IN GENERAL.—The Chief Administrative Officer of the House of Representatives shall enter into a contract on a competitive basis with a private entity for the management, operation, and maintenance of the exercise facility established for the use of employees of the House of Representatives which is constructed with funds made available under this Act.

(b) USE OF FEES TO SUPPORT CONTRACT.—Any amounts paid as fees for the use of the exercise facility described in subsection (a) shall be used to cover costs incurred by the Chief Administrative Officer under the contract entered into under this section or to

otherwise support the management, operation, and maintenance of the facility, and shall remain available until expended.

SEC. 104. SENSE OF THE HOUSE. It is the sense of the House of Representatives that Members of the House who use vehicles in traveling for official and representational purposes, including Members who lease vehicles for which the lease payments are made using funds provided under the Members' Representational Allowance, are encouraged to use hybrid electric and alternatively fueled vehicles whenever possible, as the use of these vehicles will help to move our Nation toward the use of a hydrogen fuel cell vehicle and reduce our dependence on oil.

SEC. 105. (a) ESTABLISHMENT OF HOUSE SERVICES REVOLVING FUND.—There is hereby established in the Treasury of the United States a revolving fund for the House of Representatives to be known as the “House Services Revolving Fund” (hereafter in this section referred to as the “Revolving Fund”), consisting of funds deposited by the Chief Administrative Officer of the House of Representatives from all amounts received by the House of Representatives with respect to the following activities:

- (1) The operation of the House Barber Shop.
- (2) The operation of the House Beauty Shop.
- (3) The operation of the House Restaurant System (including vending operations).
- (4) The provision of mail services to entities which are not part of the House of Representatives.

(b) USE OF AMOUNTS IN FUND.—Amounts in the Revolving Funds shall be used for any purpose designated by the Chief Administrative Officer which is approved by the Committee on Appropriations of the House of Representatives.

(c) TRANSFER AUTHORITY.—The Revolving Fund shall be treated as a category of allowances and expenses for purposes of section 101(a) of the Legislative Branch Appropriations Act, 1993 (2 U.S.C. 95b(a)).

(d) TERMINATION AND TRANSFER OF EXISTING FUNDS AND ACCOUNTS.—

(1) IN GENERAL.—Each fund and account specified in paragraph (2) is hereby terminated, and the balance of each such fund and account is hereby transferred to the Revolving Fund.

(2) FUNDS AND ACCOUNTS SPECIFIED.—The funds and accounts referred to in paragraph (1) are as follows:

(A) The revolving fund for the House Barber Shop, established by the paragraph under the heading “HOUSE BARBER SHOPS REVOLVING FUND” in the matter relating to the House of Representatives in chapter III of title I of the Supplemental Appropriations Act, 1975 (Public Law 93–554; 88 Stat. 1776).

(B) The revolving funds for the House Beauty Shop, established by the matter under the heading “HOUSE BEAUTY SHOP” in the matter relating to administrative provisions for the House of Representatives in the Legislative Branch Appropriations Act, 1970 (Public Law 91–145; 83 Stat. 347).

(C) The special deposit account established for the House of Representatives Restaurant by section 208 of the First Supplemental Civil Functions Appropriation Act, 1941 (2 U.S.C. 2041 note), or any successor fund or account

established for the receipt of revenues of the House Restaurant System.

(e) EFFECTIVE DATE.—This section shall take effect October 1, 2004, and shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

Records.
2 USC 104c.

SEC. 106. (a) If the Clerk of the House of Representatives is required under any law, rule, or regulation to make available for public inspection a report, statement, or other document filed with the Office of the Clerk, the Clerk shall preserve the report, statement, or document—

(1) for a period of 6 years from the date on which the document is filed; or

(2) if the law, rule, or regulation so provides, the period required under such law, rule, or regulation.

Applicability.

(b) Subsection (a) shall apply with respect to reports, statements, and documents filed before, on, or after the date of the enactment of this Act.

SEC. 107. (a) PERMITTING ORGANIZATIONAL CAUCUSES AND CONFERENCES TO BE HELD AT ANY TIME.—Section 202(a)(1) of House Resolution 988, Ninety-third Congress, agreed to on October 8, 1974, and enacted into permanent law by chapter III of title I of the Supplemental Appropriations Act, 1975 (2 U.S.C. 29a(a)(1)), is amended by striking “conference, to begin on or after” all that follows through “to be attended by all” and inserting “conference of all”.

(b) PERIOD OF AVAILABILITY OF PER DIEM.—

(1) MEMBERS.—Section 202(b)(1)(B) of House Resolution 988, Ninety-third Congress, agreed to on October 8, 1974, and enacted into permanent law by chapter III of title I of the Supplemental Appropriations Act, 1975 (2 U.S.C. 29a(b)(1)(B)), is amended by striking “for a period” and all that follows and inserting a period.

(2) STAFF.—Section 1(b) of House Resolution 10, Ninety-fourth Congress, agreed to on January 14, 1975, and enacted into permanent law by section 201 of the Legislative Branch Appropriations Act, 1976 (2 U.S.C. 43b-2(b)), is amended by striking “for a period” and all that follows and inserting a period.

(c) APPLICABILITY OF PROVISIONS TO ORIENTATION SESSIONS FOR NEW MEMBERS.—

(1) MEMBERS.—Section 202 of House Resolution 988, Ninety-third Congress, agreed to on October 8, 1974, and enacted into permanent law by chapter III of title I of the Supplemental Appropriations Act, 1975 (2 U.S.C. 29a), is amended by adding at the end the following new subsection:

“(d) With the approval of the majority leader (in the case of a Member or Member-elect of the majority party) or the minority leader (in the case of a Member or Member-elect of the minority party), subsections (b) and (c) shall apply with respect to the attendance of a Member or Member-elect at a program conducted by the Committee on House Administration for the orientation of new members in the same manner as such provisions apply to the attendance of the Member or Member-elect at the organizational caucus or conference.”.

(2) STAFF.—Section 1 of House Resolution 10, Ninety-fourth Congress, agreed to on January 14, 1975, and enacted into

permanent law by section 201 of the Legislative Branch Appropriations Act, 1976 (2 U.S.C. 43b–2), is amended by adding at the end the following new subsection:

“(c) With the approval of the majority leader (in the case of a Member or Member-elect of the majority party) or the minority leader (in the case of a Member or Member-elect of the minority party), subsections (a) and (b) shall apply with respect to the attendance of a Member or Member-elect at a program conducted by the Committee on House Administration for the orientation of new members in the same manner as such provisions apply to the attendance of the Member or Member-elect at the organizational caucus or conference.”.

Applicability.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the One Hundred Tenth Congress and each succeeding Congress.

2 USC 29a note.

SEC. 108. (a) Subject to the approval of the Committee on House Administration, the Chief Administrative Officer of the House of Representatives shall implement regulations under which the Chief Administrative Officer shall be authorized to handle any mail matter delivered by the United States Postal Service or any other carrier to the House of Representatives, or to any other entity with whom the Chief Administrative Officer has entered into an agreement to receive mail matter delivered to the entity, in such manner as the Chief Administrative Officer deems necessary to ensure the safety of any individuals who may come into contact with, or otherwise be exposed to, such mail matter.

Regulations.
2 USC 117j–1.

(b) No action taken under the regulations implemented pursuant to this section may serve as a basis for civil or criminal liability of any individual or entity.

(c) As used in this section, the term “handle” includes but is not limited to collecting, isolating, testing, opening, disposing, and destroying.

(d) This section shall apply with respect to fiscal year 2004 and each succeeding fiscal year.

Applicability.

SEC. 109. (a) There is established in the House of Representatives an office to be known as the Republican Policy Committee, which shall have such responsibilities as may be assigned by the chair of the Republican Conference.

Establishment.
2 USC 74a–13.

(b) There shall be a lump sum allowance for the salaries and expenses of the Republican Policy Committee, which shall be treated as a category of House leadership offices for purposes of section 101(c) of the Legislative Branch Appropriations Act, 1993 (2 U.S.C. 95b(c)).

(c) This section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

Applicability.

SEC. 110. The first sentence of section 5 of House Resolution 1238, Ninety-first Congress, agreed to December 22, 1970 (as enacted into permanent law by chapter VIII of the supplemental Appropriations Act, 1971) (2 U.S.C. 31b–5), is amended—

(1) by striking “step 5 of level 11” and inserting “step 11 of level 13”; and

(2) by striking “step 9 of level 8” and inserting “step 8 of level 12”.

JOINT ITEMS

For Joint Committees, as follows:

JOINT ECONOMIC COMMITTEE

For salaries and expenses of the Joint Economic Committee, \$4,139,000, to be disbursed by the Secretary of the Senate.

JOINT COMMITTEE ON TAXATION

For salaries and expenses of the Joint Committee on Taxation, \$8,433,000, to be disbursed by the Chief Administrative Officer of the House of Representatives.

For other joint items, as follows:

OFFICE OF THE ATTENDING PHYSICIAN

For medical supplies, equipment, and contingent expenses of the emergency rooms, and for the Attending Physician and his assistants, including: (1) an allowance of \$2,175 per month to the Attending Physician; (2) an allowance of \$725 per month each to four medical officers while on duty in the Office of the Attending Physician; (3) an allowance of \$725 per month to two assistants and \$580 per month each not to exceed 11 assistants on the basis heretofore provided for such assistants; and (4) \$1,680,000 for reimbursement to the Department of the Navy for expenses incurred for staff and equipment assigned to the Office of the Attending Physician, which shall be advanced and credited to the applicable appropriation or appropriations from which such salaries, allowances, and other expenses are payable and shall be available for all the purposes thereof, \$2,528,000, to be disbursed by the Chief Administrative Officer of the House of Representatives.

CAPITOL GUIDE SERVICE AND SPECIAL SERVICES OFFICE

For salaries and expenses of the Capitol Guide Service and Special Services Office, \$3,844,000, to be disbursed by the Secretary of the Senate: *Provided*, That no part of such amount may be used to employ more than 58 individuals: *Provided further*, That the Capitol Guide Board is authorized, during emergencies, to employ not more than two additional individuals for not more than 120 days each, and not more than 10 additional individuals for not more than 6 months each, for the Capitol Guide Service.

STATEMENTS OF APPROPRIATIONS

For the preparation, under the direction of the Committees on Appropriations of the Senate and the House of Representatives, of the statements for the second session of the 108th Congress, showing appropriations made, indefinite appropriations, and contracts authorized, together with a chronological history of the regular appropriations bills as required by law, \$30,000, to be paid to the persons designated by the chairmen of such committees to supervise the work.

CAPITOL POLICE

SALARIES

For salaries of employees of the Capitol Police, including overtime, hazardous duty pay differential, and Government contributions for health, retirement, social security, professional liability

insurance, and other applicable employee benefits, \$203,440,000, to be disbursed by the Chief of the Capitol Police or his designee.

GENERAL EXPENSES

For necessary expenses of the Capitol Police, including motor vehicles, communications and other equipment, security equipment and installation, uniforms, weapons, supplies, materials, training, medical services, forensic services, stenographic services, personal and professional services, the employee assistance program, the awards program, postage, communication services, travel advances, relocation of instructor and liaison personnel for the Federal Law Enforcement Training Center, and not more than \$5,000 to be expended on the certification of the Chief of the Capitol Police in connection with official representation and reception expenses, \$28,888,000, to be disbursed by the Chief of the Capitol Police or his designee: *Provided*, That, notwithstanding any other provision of law, the cost of basic training for the Capitol Police at the Federal Law Enforcement Training Center for fiscal year 2005 shall be paid by the Secretary of Homeland Security from funds available to the Department of Homeland Security.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

SEC. 1001. TRANSFER AUTHORITY. Amounts appropriated for fiscal year 2005 for the Capitol Police may be transferred between the headings “SALARIES” and “GENERAL EXPENSES” upon the approval of the Committees on Appropriations of the Senate and the House of Representatives.

SEC. 1002. LIMITATION ON CERTAIN HIRING AUTHORITY OF CAPITOL POLICE. Section 1006(b) of the Legislative Branch Appropriations Act, 2004 (Public Law 108–83; 117 Stat. 1023) is amended—

2 USC 1901 note.

(1) in paragraph (3)—

(A) in subparagraph (B), by inserting at the end “The Chief of Police may hire individuals under this subsection who are not submitted for selection under this subparagraph. All hirings under this subparagraph shall comply with the limitations under this paragraph for any fiscal year.”; and

(B) in subparagraph (C), by striking “(C) LIMITATION.—” and inserting “(C) LIMITATION FOR FISCAL YEAR 2004.—”; and

(C) by adding at the end the following:

“(D) LIMITATION FOR FISCAL YEAR 2005.—During fiscal year 2005, the number of individuals hired under this subsection may not exceed—

“(i) the number of Library of Congress Police employees who separated from service or transferred to a position other than a Library of Congress Police employee position during fiscal year 2004 for whom a corresponding hire was not made under this subsection; and

“(ii) the number of Library of Congress Police employees who separate from service or transfer to a position other than a Library of Congress Police employee position during fiscal year 2005.”; and

(2) in paragraph (4), by striking the first sentence and inserting “Notwithstanding subsection (a)(1)(C), the Chief of the Capitol Police may detail an individual hired under this subsection to the Library of Congress Police on a nonreimbursable basis. Any individual detailed under this subsection shall receive necessary training, including training by the Library of Congress Police.”.

SEC. 1003. AUTHORIZATION OF WEAPONS. Section 1824 of the Revised Statutes (2 U.S.C. 1941) is amended—

(1) in the first sentence—

(A) by striking “The Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives” and inserting “The Capitol Police Board”; and

(B) by striking all beginning with “payable out” through the period and inserting “payable from appropriations to the Capitol Police upon certification of payment by the Chief of the Capitol Police.”; and

(2) in the second sentence—

(A) by inserting “or other arms as authorized by the Capitol Police Board” after “furnished”; and

(B) by striking “the Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives” and inserting “the Capitol Police Board”.

2 USC 1921a.

SEC. 1004. SOLE AND EXCLUSIVE AUTHORITY OF BOARD AND CHIEF TO DETERMINE RATES OF PAY. (a) IN GENERAL.—The Capitol Police Board and the Chief of the Capitol Police shall have the sole and exclusive authority to determine the rates and amounts for each of the following for members of the Capitol Police:

(1) The rate of basic pay (including the rate of basic pay upon appointment), premium pay, specialty assignment and proficiency pay, and merit pay.

(2) The rate of cost-of-living adjustments, comparability adjustments, and locality adjustments.

(3) The amount for recruitment and relocation bonuses.

(4) The amount for retention allowances.

(5) The amount for educational assistance payments.

(b) NO REVIEW OR APPEAL PERMITTED.—The determination of a rate or amount described in subsection (a) may not be subject to review or appeal in any manner.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) any authority provided under law for a committee of the House of Representatives or Senate, or any other entity of the legislative branch, to review or approve any determination of a rate or amount described in subsection (a);

(2) any rate or amount described in subsection (a) which is established under law; or

(3) the terms of any collective bargaining agreement.

(d) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

2 USC 1976.

SEC. 1005. ACCEPTANCE OF DONATIONS OF ANIMALS. (a) IN GENERAL.—The Capitol Police may accept the donation of animals to be used in the canine units of the Capitol Police.

(b) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each fiscal year thereafter.

2 USC 1977.

SEC. 1006. SETTLEMENT AND PAYMENT OF TORT CLAIMS. (a) FEDERAL TORT CLAIMS ACT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Chief of the Capitol Police, in accordance with regulations prescribed by the Attorney General and any regulations as the Capitol Police Board may prescribe, may consider, ascertain, determine, compromise, adjust, and settle, in accordance with the provisions of chapter 171 of title 28, United States Code, any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Capitol Police while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) SPECIAL RULE FOR CLAIMS MADE BY MEMBERS OF CONGRESS AND CONGRESSIONAL EMPLOYEES.—

(A) IN GENERAL.—With respect to any claim described in paragraph (1) which is made by a Member of Congress or any officer or employee of Congress, the Chief of the Capitol Police shall—

Deadlines.

(i) not later than 14 days after the receipt of such a claim, notify the Chairman of the applicable Committee of the receipt of the claim; and

Notification.

(ii) not later than 90 days after the receipt of such a claim, submit a proposal for the resolution of such claim which shall be subject to the approval of the Chairman of the applicable Committee.

(B) EXTENSION.—The 90-day period in subparagraph (A)(ii) may be extended for an additional period (not to exceed 90 days) for good cause by the Chairman of the applicable Committee, upon the request of the Chief of the Capitol Police.

(C) APPROVAL CONSISTENT WITH FEDERAL TORT CLAIMS ACT.—Nothing in this paragraph may be construed to permit the Chairman of an applicable Committee to approve a proposal for the resolution of a claim described in paragraph (1) which is not consistent with the terms and conditions applicable under chapter 171 of title 28, United States Code, to the resolution of claims for money damages against the United States.

(D) APPLICABLE COMMITTEE DEFINED.—In this paragraph, the term “applicable Committee” means—

(i) the Committee on Rules and Administration of the Senate, in the case of a claim of a Senator or an officer or employee whose pay is disbursed by the Secretary of the Senate; or

(ii) the Committee on House Administration of the House of Representatives, in the case of a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or an officer or employee whose pay is disbursed by the Chief Administrative Officer of the House of Representatives.

(3) HEAD OF AGENCY.—For purposes of section 2672 of title 28, United States Code, the Chief of the Capitol Police shall be the head of a Federal agency with respect to the Capitol Police.

(4) REGULATIONS.—The Capitol Police Board may prescribe regulations to carry out this subsection.

(b) CLAIMS OF EMPLOYEES OF CAPITOL POLICE.—

(1) IN GENERAL.—The Capitol Police Board may prescribe regulations to apply the provisions of section 3721 of title 31, United States Code, for the settlement and payment of a claim against the Capitol Police by an employee of the Capitol Police for damage to, or loss of personal property incident to service.

(2) LIMITATION.—No settlement and payment of a claim under regulations prescribed under this subsection may exceed the limits applicable to the settlement and payment of claims under section 3721 of title 31, United States Code.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) any payment under section 1304 of title 31, United States Code, of a final judgment, award, compromise settlement, and interest and costs specified in the judgment based on a claim against the Capitol Police; or

(2) any authority for any—

(A) settlement under section 414 of the Congressional Accountability Act of 1995 (2 U.S.C. 1414), or

(B) payment under section 415 of that Act (2 U.S.C. 1415).

(d) EFFECTIVE DATE.—This section shall apply to fiscal year 2005 and each fiscal year thereafter.

2 USC 1978.

SEC. 1007. DEPLOYMENT OUTSIDE OF JURISDICTION. (a) REQUIREMENTS FOR PRIOR NOTICE AND APPROVAL.—The Chief of the Capitol Police may not deploy any officer outside of the areas established by law for the jurisdiction of the Capitol Police unless—

Notification.

(1) the Chief provides prior notification to the Committees on Appropriations of the House of Representatives and Senate of the costs anticipated to be incurred with respect to the deployment; and

(2) the Capitol Police Board gives prior approval to the deployment.

(b) EXCEPTION FOR CERTAIN SERVICES.—Subsection (a) does not apply with respect to the deployment of any officer for any of the following purposes:

(1) Responding to an imminent threat or emergency.

(2) Intelligence gathering.

(3) Providing protective services.

(c) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

SEC. 1008. GENERAL COUNSEL. The Capitol Police General Counsel, in the capacity as in-house counsel and in conjunction with the Capitol Police Employment Counsel for employment and labor law matters, shall be responsible for implementing and maintaining an effective legal compliance system with all applicable laws, under the oversight of the Capitol Police Board.

2 USC 1979.

SEC. 1009. RELEASE OF SECURITY INFORMATION. (a) DEFINITION.—In this section, the term “security information” means information that—

(1) is sensitive with respect to the policing, protection, physical security, intelligence, counterterrorism actions, or emergency preparedness and response relating to Congress, any statutory protectee of the Capitol Police, and the Capitol buildings and grounds; and

(2) is obtained by, on behalf of, or concerning the Capitol Police Board, the Capitol Police, or any incident command relating to emergency response.

(b) **AUTHORITY OF BOARD TO DETERMINE CONDITIONS OF RELEASE.**—Notwithstanding any other provision of law, any security information in the possession of the Capitol Police may be released by the Capitol Police to another entity, including an individual, only if the Capitol Police Board determines in consultation with other appropriate law enforcement officials, experts in security preparedness, and appropriate committees of Congress, that the release of the security information will not compromise the security and safety of the Capitol buildings and grounds or any individual whose protection and safety is under the jurisdiction of the Capitol Police.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to affect the ability of the Senate and the House of Representatives (including any Member, officer, or committee of either House of Congress) to obtain information from the Capitol Police regarding the operations and activities of the Capitol Police that affect the Senate and House of Representatives.

(d) **REGULATIONS.**—The Capitol Police Board may promulgate regulations to carry out this section, with the approval of the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives.

(e) **EFFECTIVE DATE.**—This section shall take effect on the date of enactment of this Act and apply with respect to—

(1) any remaining portion of fiscal year 2004, if this Act is enacted before October 1, 2004; and

(2) fiscal year 2005 and each fiscal year thereafter.

OFFICE OF COMPLIANCE

SALARIES AND EXPENSES

For salaries and expenses of the Office of Compliance, as authorized by section 305 of the Congressional Accountability Act of 1995 (2 U.S.C. 1385), \$2,421,000, of which \$305,000 shall remain available until September 30, 2006: *Provided*, That the Executive Director of the Office of Compliance may, within the limits of available appropriations, dispose of surplus or obsolete personal property by interagency transfer, donation, or discarding.

CONGRESSIONAL BUDGET OFFICE

SALARIES AND EXPENSES

For salaries and expenses necessary for operation of the Congressional Budget Office, including not more than \$3,000 to be expended on the certification of the Director of the Congressional Budget Office in connection with official representation and reception expenses, \$34,919,000.

ARCHITECT OF THE CAPITOL

GENERAL ADMINISTRATION

For salaries for the Architect of the Capitol, and other personal services, at rates of pay provided by law; for surveys and studies in connection with activities under the care of the Architect of the Capitol; for all necessary expenses for the general and administrative support of the operations under the Architect of the Capitol including the Botanic Garden; electrical substations of the Capitol, Senate and House office buildings, and other facilities under the jurisdiction of the Architect of the Capitol; including furnishings and office equipment; including not more than \$5,000 for official reception and representation expenses, to be expended as the Architect of the Capitol may approve; for purchase or exchange, maintenance, and operation of a passenger motor vehicle, \$80,347,000, of which \$2,220,000 shall remain available until September 30, 2009.

CAPITOL BUILDING

(INCLUDING TRANSFER OF FUNDS)

For all necessary expenses for the maintenance, care, and operation of the Capitol, \$28,857,000, of which not more than \$10,600,000, may be transferred for the use of the Capitol Visitor Center project: *Provided*, That the amount so transferred shall be deposited into the account established for the Capitol Visitor Center project and shall be subject to the same terms and conditions applicable to the amounts appropriated for such project under the heading "Capitol Visitor Center" in the Legislative Branch Appropriations Act, 2004: *Provided further*, That the amount so transferred, together with \$3,900,000 of the other amounts appropriated under this heading, shall remain available until expended.

CAPITOL GROUNDS

For all necessary expenses for care and improvement of grounds surrounding the Capitol, the Senate and House office buildings, and the Capitol Power Plant, \$6,974,000.

SENATE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of Senate office buildings; and furniture and furnishings to be expended under the control and supervision of the Architect of the Capitol, \$62,083,000, of which \$9,070,000 shall remain available until September 30, 2009.

HOUSE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of the House office buildings, \$65,353,000, of which \$27,103,000 shall remain available until September 30, 2009.

CAPITOL POWER PLANT

For all necessary expenses for the maintenance, care and operation of the Capitol Power Plant; lighting, heating, power (including

the purchase of electrical energy) and water and sewer services for the Capitol, Senate and House office buildings, Library of Congress buildings, and the grounds about the same, Botanic Garden, Senate garage, and air conditioning refrigeration not supplied from plants in any of such buildings; heating the Government Printing Office and Washington City Post Office, and heating and chilled water for air conditioning for the Supreme Court Building, the Union Station complex, the Thurgood Marshall Federal Judiciary Building and the Folger Shakespeare Library, expenses for which shall be advanced or reimbursed upon request of the Architect of the Capitol and amounts so received shall be deposited into the Treasury to the credit of this appropriation, \$56,834,000, of which \$1,000,000 shall remain available until September 30, 2009: *Provided*, That not more than \$4,400,000 of the funds credited or to be reimbursed to this appropriation as herein provided shall be available for obligation during fiscal year 2005.

LIBRARY BUILDINGS AND GROUNDS

For all necessary expenses for the mechanical and structural maintenance, care and operation of the Library buildings and grounds, \$40,097,000, of which \$21,506,000 shall remain available until September 30, 2009.

CAPITOL POLICE BUILDINGS AND GROUNDS

For all necessary expenses for the maintenance, care, and operation of buildings and grounds of the United States Capitol Police, \$5,853,000, of which \$500,000 shall remain available until September 30, 2009.

BOTANIC GARDEN

For all necessary expenses for the maintenance, care and operation of the Botanic Garden and the nurseries, buildings, grounds, and collections; and purchase and exchange, maintenance, repair, and operation of a passenger motor vehicle; all under the direction of the Joint Committee on the Library, \$6,326,000: *Provided*, That this appropriation shall not be available for construction of the National Garden.

ADMINISTRATIVE PROVISIONS

SEC. 1101. MANAGEMENT AND OPERATION OF THE CAPITOL POWER PLANT. (a) DEFINITION.—In this section, the term “appropriate congressional committees” means—

2 USC 2162 note.

(1) the Committee on Appropriations of the Senate and the House of Representatives;

(2) the Committee on Rules and Administration of the Senate; and

(3) the House Office Building Commission.

(b) STUDY OF CONTRACT WITH A PRIVATE ENTITY.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall conduct a study and submit to the appropriate congressional committees and the Architect of the Capitol a report that—

Deadline.
Reports.

(1) analyzes the costs, cost effectiveness, benefits, and feasibility of the Architect of the Capitol entering into a contract

with a private entity for the management and operation of the Capitol Power Plant; and

(2) makes a recommendation on whether the Architect of the Capitol should enter into such a contract.

Deadline.

(c) IMPLEMENTATION PLAN.—If the Comptroller General makes a recommendation under subsection (b)(2) in favor of entering into a contract, the Architect of the Capitol shall submit an implementation plan for that contract to the appropriate congressional committees not later than the later of—

(1) 270 days after the date of enactment of this Act; or

(2) the date of the completion of the West Refrigeration Plant.

(d) CONTRACT.—Subject to the approval of the appropriate congressional committees, the Architect of the Capitol shall enter into a contract with a private entity for the management and operation of the Capitol Power Plant.

(e) EFFECTIVE DATE.—This section shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 1102. (a) The Comptroller General shall conduct an analysis of the operations of the Office of the Architect of the Capitol, and shall include in the analysis recommendations regarding the extent to which the functions and duties of the Architect of the Capitol may be carried out more effectively through contracts with private entities, through reassignment to other entities of the legislative branch, and through such other methods as the Comptroller General considers appropriate.

Deadline.
Reports.

(b) Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the analysis conducted under subsection (a) to the Committees on Appropriations of the House of Representatives and Senate.

LIBRARY OF CONGRESS

SALARIES AND EXPENSES

For necessary expenses of the Library of Congress not otherwise provided for, including development and maintenance of the Library's catalogs; custody and custodial care of the Library buildings; special clothing; cleaning, laundering and repair of uniforms; preservation of motion pictures in the custody of the Library; operation and maintenance of the American Folklife Center in the Library; preparation and distribution of catalog records and other publications of the Library; hire or purchase of one passenger motor vehicle; and expenses of the Library of Congress Trust Fund Board not properly chargeable to the income of any trust fund held by the Board, \$384,671,000, of which not more than \$6,000,000 shall be derived from collections credited to this appropriation during fiscal year 2005, and shall remain available until expended, under the Act of June 28, 1902 (chapter 1301; 32 Stat. 480; 2 U.S.C. 150) and not more than \$350,000 shall be derived from collections during fiscal year 2005 and shall remain available until expended for the development and maintenance of an international legal information database and activities related thereto: *Provided*, That the Library of Congress may not obligate or expend any funds derived from collections under the Act of June 28, 1902, in excess of the amount authorized for obligation or expenditure in appropriations Acts: *Provided further*, That the total amount

available for obligation shall be reduced by the amount by which collections are less than the \$6,350,000: *Provided further*, That of the total amount appropriated, \$12,481,000 shall remain available until expended for the partial acquisition of books, periodicals, newspapers, and all other materials including subscriptions for bibliographic services for the Library, including \$40,000 to be available solely for the purchase, when specifically approved by the Librarian, of special and unique materials for additions to the collections: *Provided further*, That of the total amount appropriated, not more than \$12,000 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for the Overseas Field Offices: *Provided further*, That of the total amount appropriated, \$2,250,000 shall remain available until expended for the purpose of teaching educators and librarians how to incorporate the Library's digital collections into school curricula and shall be transferred to the educational consortium formed to conduct the "Adventure of the American Mind" project as approved by the Library: *Provided further*, That of the total amount appropriated, \$500,000 shall remain available until expended, and shall be transferred to the Abraham Lincoln Bicentennial Commission for carrying out the purposes of Public Law 106-173, of which \$10,000 may be used for official representation and reception expenses of the Abraham Lincoln Bicentennial Commission: *Provided further*, That of the total amount appropriated, \$15,620,000 shall remain available until expended for partial support of the National Audio-Visual Conservation Center: *Provided further*, That of the total amount appropriated, \$2,795,000 shall remain available until expended for the development and maintenance of the Alternate Computer Facility: *Provided further*, That of the total amount appropriated, \$500,000 shall be used to provide a grant to the Middle Eastern Text Initiative for translation and publishing of middle eastern text: *Provided further*, That, of the total amount appropriated, \$100,000 shall be provided to the Association for Diplomatic Studies and Training to provide for the oral history of United States foreign affairs personnel: *Provided further*, That of the total amount appropriated, \$300,000 shall be made available to initiate with the University of South Carolina a Cooperative Preservation and Conservation project for Movietone Newsreel collections.

Grants.

COPYRIGHT OFFICE

SALARIES AND EXPENSES

For necessary expenses of the Copyright Office, \$53,611,000, of which not more than \$26,981,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2005 under section 708(d) of title 17, United States Code: *Provided*, That the Copyright Office may not obligate or expend any funds derived from collections under such section, in excess of the amount authorized for obligation or expenditure in appropriations Acts: *Provided further*, That not more than \$6,496,000 shall be derived from collections during fiscal year 2005 under sections 111(d)(2), 119(b)(2), 802(h), 1005, and 1316 of such title: *Provided further*, That the total amount available for obligation shall be reduced by the amount by which collections are less than \$33,477,000: *Provided further*, That not more than \$100,000 of the amount appropriated is available for the maintenance of an

“International Copyright Institute” in the Copyright Office of the Library of Congress for the purpose of training nationals of developing countries in intellectual property laws and policies: *Provided further*, That not more than \$4,250 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for activities of the International Copyright Institute and for copyright delegations, visitors, and seminars.

CONGRESSIONAL RESEARCH SERVICE

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of section 203 of the Legislative Reorganization Act of 1946 (2 U.S.C. 166) and to revise and extend the Annotated Constitution of the United States of America, \$96,893,000: *Provided*, That no part of such amount may be used to pay any salary or expense in connection with any publication, or preparation of material therefor (except the Digest of Public General Bills), to be issued by the Library of Congress unless such publication has obtained prior approval of either the Committee on House Administration of the House of Representatives or the Committee on Rules and Administration of the Senate.

BOOKS FOR THE BLIND AND PHYSICALLY HANDICAPPED

SALARIES AND EXPENSES

For salaries and expenses to carry out the Act of March 3, 1931 (chapter 400; 46 Stat. 1487; 2 U.S.C. 135a), \$54,412,000, of which \$16,235,000 shall remain available until expended: *Provided*, That, of the total amount appropriated, \$200,000 shall remain available until expended to reimburse the National Federation of the Blind for costs incurred in the operation of its “NEWSLINE” program.

ADMINISTRATIVE PROVISIONS

SEC. 1201. INCENTIVE AWARDS PROGRAM. Of the amounts appropriated to the Library of Congress in this Act, not more than \$5,000 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for the incentive awards program.

SEC. 1202. REIMBURSABLE AND REVOLVING FUND ACTIVITIES. (a) IN GENERAL.—For fiscal year 2005, the obligational authority of the Library of Congress for the activities described in subsection (b) may not exceed \$106,985,000.

(b) ACTIVITIES.—The activities referred to in subsection (a) are reimbursable and revolving fund activities that are funded from sources other than appropriations to the Library in appropriations Acts for the legislative branch.

(c) TRANSFER OF FUNDS.—During fiscal year 2005, the Librarian of Congress may temporarily transfer funds appropriated in this Act, under the heading “LIBRARY OF CONGRESS” under the subheading “SALARIES AND EXPENSES” to the revolving fund for

the FEDLINK Program and the Federal Research Program established under section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 2 U.S.C. 182c): *Provided*, That the total amount of such transfers may not exceed \$1,900,000: *Provided further*, That the appropriate revolving fund account shall reimburse the Library for any amounts transferred to it before the period of availability of the Library appropriation expires.

SEC. 1203. NATIONAL DIGITAL INFORMATION INFRASTRUCTURE AND PRESERVATION PROGRAM. The Miscellaneous Appropriations Act, 2001 (enacted into law by section 1(a)(4) of Public Law 106–554, 114 Stat. 2763A–194) is amended in the first proviso under the subheading “SALARIES AND EXPENSES” under the heading “LIBRARY OF CONGRESS” in chapter 9 of division A—

(1) by inserting “and pledges” after “other than money”; and

(2) by striking “March 31, 2005” and inserting “March 31, 2010”.

SEC. 1204. UNITED STATES DIPLOMATIC FACILITIES. Funds made available for the Library of Congress under this Act are available for transfer to the Department of State as remittance for a fee charged by the Department for fiscal year 2005 for the maintenance, upgrade, or construction of United States diplomatic facilities only to the extent that the amount of the fee so charged is equal to or less than the unreimbursed value of the services provided during fiscal year 2005 to the Library of Congress on State Department diplomatic facilities.

SEC. 1205. NATIONAL FILM PRESERVATION BOARD AND NATIONAL FILM PRESERVATION FOUNDATION. (a) EFFECTIVE DATES.—Notwithstanding the effective date under section 113 of the National Film Preservation Act of 1996 (2 U.S.C. 179w), title I of that Act shall be considered to be effective through fiscal year 2005.

2 USC 179w
note.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 151711(a) of title 36, United States Code, is amended by striking “2003” and inserting “2005”.

GOVERNMENT PRINTING OFFICE

CONGRESSIONAL PRINTING AND BINDING

(INCLUDING TRANSFER OF FUNDS)

For authorized printing and binding for the Congress and the distribution of Congressional information in any format; printing and binding for the Architect of the Capitol; expenses necessary for preparing the semimonthly and session index to the Congressional Record, as authorized by law (section 902 of title 44, United States Code); printing and binding of Government publications authorized by law to be distributed to Members of Congress; and printing, binding, and distribution of Government publications authorized by law to be distributed without charge to the recipient, \$88,800,000: *Provided*, That this appropriation shall not be available for paper copies of the permanent edition of the Congressional Record for individual Representatives, Resident Commissioners or Delegates authorized under section 906 of title 44, United States Code: *Provided further*, That this appropriation shall be available for the payment of obligations incurred under the appropriations for similar purposes for preceding fiscal years: *Provided further*,

That notwithstanding the 2-year limitation under section 718 of title 44, United States Code, none of the funds appropriated or made available under this Act or any other Act for printing and binding and related services provided to Congress under chapter 7 of title 44, United States Code, may be expended to print a document, report, or publication after the 27-month period beginning on the date that such document, report, or publication is authorized by Congress to be printed, unless Congress reauthorizes such printing in accordance with section 718 of title 44, United States Code: *Provided further*, That any unobligated or unexpended balances in this account or accounts for similar purposes for preceding fiscal years may be transferred to the Government Printing Office revolving fund for carrying out the purposes of this heading, subject to the approval of the Committees on Appropriations of the House of Representatives and Senate.

OFFICE OF SUPERINTENDENT OF DOCUMENTS

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For expenses of the Office of Superintendent of Documents necessary to provide for the cataloging and indexing of Government publications and their distribution to the public, Members of Congress, other Government agencies, and designated depository and international exchange libraries as authorized by law, \$31,953,000: *Provided*, That amounts of not more than \$2,000,000 from current year appropriations are authorized for producing and disseminating Congressional serial sets and other related publications for fiscal years 2003 and 2004 to depository and other designated libraries: *Provided further*, That any unobligated or unexpended balances in this account or accounts for similar purposes for preceding fiscal years may be transferred to the Government Printing Office revolving fund for carrying out the purposes of this heading, subject to the approval of the Committees on Appropriations of the House of Representatives and Senate.

GOVERNMENT PRINTING OFFICE REVOLVING FUND

The Government Printing Office may make such expenditures, within the limits of funds available and in accord with the law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the programs and purposes set forth in the budget for the current fiscal year for the Government Printing Office revolving fund: *Provided*, That not more than \$5,000 may be expended on the certification of the Public Printer in connection with official representation and reception expenses: *Provided further*, That the revolving fund shall be available for the hire or purchase of not more than 12 passenger motor vehicles: *Provided further*, That expenditures in connection with travel expenses of the advisory councils to the Public Printer shall be deemed necessary to carry out the provisions of title 44, United States Code: *Provided further*, That the revolving fund shall be available for temporary or intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not more than the daily equivalent of the annual rate of basic

pay for level V of the Executive Schedule under section 5316 of such title: *Provided further*, That the revolving fund and the funds provided under the headings “OFFICE OF SUPERINTENDENT OF DOCUMENTS” and “SALARIES AND EXPENSES” together may not be available for the full-time equivalent employment of more than 2,621 workyears (or such other number of workyears as the Public Printer may request, subject to the approval of the Committees on Appropriations of the House of Representatives and Senate): *Provided further*, That activities financed through the revolving fund may provide information in any format: *Provided further*, That not more than \$10,000 may be expended from the revolving fund in support of the activities of the Benjamin Franklin Tercentenary Commission established by Public Law 107-202.

ADMINISTRATIVE PROVISION

SEC. 1301. DISCOUNTS FOR SALES COPIES. Section 1708 of title 44, United States Code, is amended by striking “of not to exceed 25 percent may be allowed to book dealers and quantity purchasers”, and inserting the following: “may be allowed as determined by the Superintendent of Documents”.

GOVERNMENT ACCOUNTABILITY OFFICE

SALARIES AND EXPENSES

For necessary expenses of the Government Accountability Office, including not more than \$12,500 to be expended on the certification of the Comptroller General of the United States in connection with official representation and reception expenses; temporary or intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not more than the daily equivalent of the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of such title; hire of one passenger motor vehicle; advance payments in foreign countries in accordance with section 3324 of title 31, United States Code; benefits comparable to those payable under section 901(5), (6), and (8) of the Foreign Service Act of 1980 (22 U.S.C. 4081(5), (6), and (8)); and under regulations prescribed by the Comptroller General of the United States, rental of living quarters in foreign countries, \$470,973,000: *Provided*, That not more than \$4,919,000 of payments received under section 782 of title 31, United States Code, shall be available for use in fiscal year 2005: *Provided further*, That not more than \$2,500,000 of reimbursements received under section 9105 of title 31, United States Code, shall be available for use in fiscal year 2005: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the National Intergovernmental Audit Forum or a Regional Intergovernmental Audit Forum shall be available to finance an appropriate share of either Forum’s costs as determined by the respective Forum, including necessary travel expenses of non-Federal participants: *Provided further*, That payments hereunder to the Forum may be credited as reimbursements to any appropriation from which costs involved are initially financed: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the American Consortium on International Public Administration (ACIPA) shall be available to finance an

appropriate share of ACIPA costs as determined by the ACIPA, including any expenses attributable to membership of ACIPA in the International Institute of Administrative Sciences.

ADMINISTRATIVE PROVISION

SEC. 1401. REPORTS TO THE COMPTROLLER GENERAL. (a) LIMITATIONS ON EXPENDITURES, OBLIGATIONS, AND VOLUNTARY SERVICES.—Section 1351 of title 31, United States Code, is amended by inserting “A copy of each report shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress.” after the first sentence.

(b) PROHIBITED OBLIGATIONS AND EXPENDITURES.—Section 1517(b) of title 31, United States Code, is amended by inserting “A copy of each report shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress.” after the first sentence.

PAYMENT TO THE OPEN WORLD LEADERSHIP CENTER TRUST FUND

For a payment to the Open World Leadership Center Trust Fund for financing activities of the Open World Leadership Center, \$13,500,000.

ADMINISTRATIVE PROVISIONS

SEC. 1501. EXPANSION OF OPEN WORLD LEADERSHIP COUNTRIES.—Section 313(j) of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1151(j)) is amended—

(1) in paragraph (1), by striking “and” after the semicolon;

(2) in paragraph (2), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

Notification.
Deadline.

“(3) any other country that is designated by the Board, except that the Board shall notify the Committees on Appropriations of the Senate and the House of Representatives of the designation at least 90 days before the designation is to take effect.”.

SEC. 1502. BOARD MEMBERSHIP. Section 313(a)(2) of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1151(a)(2)), as enacted by reference in section 1(a)(2) of the Consolidated Appropriations Act, 2001, is amended—

(1) in the matter preceding subparagraph (A), by striking “nine members” and inserting “11 members”; and

(2) by inserting after subparagraph (D) the following new subparagraph:

“(E) The chair of the Subcommittee on Legislative Branch of the Committee on Appropriations of the House of Representatives and the chair of the Subcommittee on Legislative Branch of the Committee on Appropriations of the Senate.”.

TITLE II—GENERAL PROVISIONS

SEC. 201. MAINTENANCE AND CARE OF PRIVATE VEHICLES. No part of the funds appropriated in this Act shall be used for the

maintenance or care of private vehicles, except for emergency assistance and cleaning as may be provided under regulations relating to parking facilities for the House of Representatives issued by the Committee on House Administration and for the Senate issued by the Committee on Rules and Administration.

SEC. 202. FISCAL YEAR LIMITATION. No part of the funds appropriated in this Act shall remain available for obligation beyond fiscal year 2005 unless expressly so provided in this Act.

SEC. 203. RATES OF COMPENSATION AND DESIGNATION. Whenever in this Act any office or position not specifically established by the Legislative Pay Act of 1929 (46 Stat. 32 et seq.) is appropriated for or the rate of compensation or designation of any office or position appropriated for is different from that specifically established by such Act, the rate of compensation and the designation in this Act shall be the permanent law with respect thereto: *Provided*, That the provisions in this Act for the various items of official expenses of Members, officers, and committees of the Senate and House of Representatives, and clerk hire for Senators and Members of the House of Representatives shall be the permanent law with respect thereto.

SEC. 204. CONSULTING SERVICES. The expenditure of any appropriation under this Act for any consulting service through procurement contract, under section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued under existing law.

SEC. 205. AWARDS AND SETTLEMENTS. Such sums as may be necessary are appropriated to the account described in subsection (a) of section 415 of the Congressional Accountability Act of 1995 (2 U.S.C. 1415(a)) to pay awards and settlements as authorized under such subsection.

SEC. 206. COSTS OF LBFMC. Amounts available for administrative expenses of any legislative branch entity which participates in the Legislative Branch Financial Managers Council (LBFMC) established by charter on March 26, 1996, shall be available to finance an appropriate share of LBFMC costs as determined by the LBFMC, except that the total LBFMC costs to be shared among all participating legislative branch entities (in such allocations among the entities as the entities may determine) may not exceed \$2,000.

SEC. 207. LANDSCAPE MAINTENANCE. The Architect of the Capitol, in consultation with the District of Columbia, is authorized to maintain and improve the landscape features, excluding streets and sidewalks, in the irregular shaped grassy areas bounded by Washington Avenue, SW on the northeast, Second Street SW on the west, Square 582 on the south, and the beginning of the I–395 tunnel on the southeast.

SEC. 208. LIMITATION ON TRANSFERS. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 209. ETRAVEL SERVICE. Notwithstanding any other provision of law, no entity within the legislative branch shall be required to use the eTravel Service established by the Administrator of

5 USC 5701 note.

General Services for official travel by officers or employees of the entity during fiscal year 2005 or any succeeding fiscal year.

2 USC 60q.

SEC. 210. VOLUNTARY SEPARATION INCENTIVE PAYMENTS. (a) AUTHORITY TO OFFER PAYMENTS.—Notwithstanding any other provision of law, the head of any office in the legislative branch may establish a program under which voluntary separation incentive payments may be offered to eligible employees of the office to encourage such employees to separate from service voluntarily (whether by retirement or resignation), in accordance with this section.

(b) AMOUNT AND ADMINISTRATION OF PAYMENTS.—A voluntary separation incentive payment made under this section—

(1) shall be paid in a lump sum after the employee's separation;

(2) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

(B) an amount determined by the head of the office involved, not to exceed \$25,000;

(3) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this section;

(4) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(5) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation; and

(6) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(c) PLAN.—

(1) PLAN REQUIRED FOR MAKING PAYMENTS.—No voluntary separation incentive payment may be paid under this section with respect to an office unless the head of the office submits a plan described in paragraph (2) to each applicable committee described in paragraph (3), and each applicable committee approves the plan.

(2) CONTENTS OF PLAN.—A plan described in this paragraph with respect to an office is a plan containing the following information:

(A) The specific positions and functions to be reduced or eliminated.

(B) A description of which categories of employees will be offered incentives.

(C) The time period during which incentives may be paid.

(D) The number and amounts of voluntary separation incentive payments to be offered.

(E) A description of how the office will operate without the eliminated positions and functions.

(3) APPLICABLE COMMITTEE.—For purposes of this subsection, the “applicable committee” with respect to an office means any committee of the House of Representatives or Senate

with jurisdiction over the activities of the office under the applicable rules of the House of Representatives and the Senate (as determined by the head of the office), but does not include the Committees on Appropriations of the House of Representatives and the Senate.

(d) EXCLUSION OF CERTAIN OFFICES.—This section shall not apply to any office which is an Executive agency under section 105 of title 5, United States Code, or any employee of such an office.

(e) ELIGIBLE EMPLOYEE DEFINED.—

(1) IN GENERAL.—In this section, an “eligible employee” is an employee (as defined in section 2105, United States Code) or a Congressional employee (as defined in section 2107, United States Code) who—

(A) is serving under an appointment without time limitation; and

(B) has been currently employed for a continuous period of at least 3 years.

(2) EXCLUSIONS.—An “eligible employee” does not include any of the following:

(A) A reemployed annuitant under subchapter III of chapter 83 or 84 of title 5, United States Code, or another retirement system for employees of the Government.

(B) An employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 of title 5, United States Code, or another retirement system for employees of the Government.

(C) An employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(D) An employee who has previously received any voluntary separation incentive payment from the Federal Government under this section or any other authority.

(E) An employee covered by statutory reemployment rights who is on transfer employment with another organization.

(F) Any employee who—

(i) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code, or any other authority;

(ii) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753 of such title or any other authority; or

(iii) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754 of such title or any other authority.

(f) REPAYMENT FOR INDIVIDUALS RETURNING TO GOVERNMENT EMPLOYMENT.—

(1) IN GENERAL.—Subject to paragraph (2), an employee who has received a voluntary separation incentive payment

under this section and accepts employment with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to repay the entire amount of the incentive payment to the office that paid the incentive payment.

(2) WAIVER FOR INDIVIDUALS POSSESSING UNIQUE ABILITIES.—

(A) If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment required under this subsection if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(B) If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment required under this subsection if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(C) If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment required under this subsection if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) TREATMENT OF PERSONAL SERVICES CONTRACTS.—For purposes of paragraph (1) (but not paragraph (2)), the term “employment” includes employment under a personal services contract with the United States.

(g) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act, and shall apply with respect to the portion of fiscal year 2005 occurring on and after such date and to each succeeding fiscal year.

SEC. 211. CAPITOL GROUNDS ENCLOSURE. None of the funds contained in this Act may be used to study, design, plan, or otherwise further the construction or consideration of a fence to enclose the perimeter of the grounds of the United States Capitol.

SEC. 212. CONGRESSIONAL RECOGNITION FOR EXCELLENCE IN ARTS EDUCATION. Section 210 of the Legislative Branch Appropriations Act, 2003 is amended—

(1) by striking the first proviso; and

(2) by striking “*Provide further*,” and inserting “*Provided*,”.

SEC. 213. TRANSFER OF JURISDICTION OVER REAL PROPERTY NEAR JAPANESE AMERICAN PATRIOTISM MEMORIAL. (a) TRANSFER OF JURISDICTION.—

(1) IN GENERAL.—Jurisdiction over the parcels of Federal real property described under paragraph (2) (over which jurisdiction was transferred under section 514(b)(2)(C) of the Omnibus Parks and Public Lands Management Act of 1996 (40 U.S.C. 5102 note; Public Law 104-333)) is transferred to the Architect of the Capitol, without consideration.

(2) PARCELS.—The parcels of Federal real property referred to under paragraph (1) are the following:

(A) That portion of New Jersey Avenue, N.W., between the northernmost point of the intersection of New Jersey Avenue, N.W., and D Street, N.W., and the northernmost point of the intersection of New Jersey Avenue, N.W., and

117 Stat. 383.

40 USC 5102
note.

Louisiana Avenue, N.W., between squares 631 and W632, which remains Federal property, and whose maintenance and repair shall be the responsibility of the District of Columbia.

(B) That portion of D Street, N.W., between its intersection with New Jersey Avenue, N.W., and its intersection with Louisiana Avenue, N.W., between squares 630 and W632, which remains Federal property.

(b) MISCELLANEOUS.—

(1) COMPLIANCE WITH OTHER LAWS.—Compliance with this section shall be deemed to satisfy the requirements of all laws otherwise applicable to transfers of jurisdiction over parcels of Federal real property.

(2) UNITED STATES CAPITOL GROUNDS.—

(A) DEFINITION.—Section 5102 of title 40, United States Code, is amended to include within the definition of the United States Capitol Grounds the parcels of Federal real property described in subsection (a)(2).

(B) JURISDICTION OF CAPITOL POLICE.—The United States Capitol Police shall have jurisdiction over the parcels of Federal real property described in subsection (a)(2) in accordance with section 9 of the Act entitled “An Act to define the United States Capitol Grounds, to regulate the use thereof, and for other purposes”, approved July 31, 1946 (2 U.S.C. 1961).

(3) EFFECT OF TRANSFER.—A person relinquishing jurisdiction over any parcel of Federal real property transferred by subsection (a) shall not retain any interest in the parcel except as specifically provided in this section.

(c) EFFECTIVE DATE.—This Act shall apply to fiscal year 2005 and each fiscal year thereafter.

SEC. 214. COMMISSION ON THE ABRAHAM LINCOLN STUDY ABROAD FELLOWSHIP PROGRAM. EXTENSION OF REPORT AND TERMINATION DATES.—Section 104 of division H of the Consolidated Appropriations Act, 2004 (Public Law 108–199; 118 Stat. 435) is amended—

(1) in subsection (f), by striking “December 1, 2004” and inserting “December 1, 2005”; and

(2) in subsection (g), by striking “December 31, 2004” and inserting “December 31, 2005”.

SEC. 215. (a) The Chief Administrative Officer of the House of Representatives and the Sergeant at Arms and Doorkeeper of the Senate may enter into a memorandum of understanding under which the Sergeant at Arms and Doorkeeper shall provide all services of the United States Capitol telephone exchange for the House of Representatives, in accordance with such terms and conditions as may be provided in the memorandum of understanding.

(b) For any period during which a memorandum of understanding is in effect pursuant to this section—

(1) all positions in the United States Capitol telephone exchange for which the employing authority is the Chief Administrative Officer shall be transferred to the Sergeant at Arms and Doorkeeper;

(2) all employees in the United States Capitol telephone exchange for whom the employing authority is the Chief Administrative Officer shall be transferred to, and appointed by, the Sergeant at Arms and Doorkeeper; and

2 USC 2168.

(3) the Sergeant at Arms and Doorkeeper shall serve as the employing authority for all personnel of the United States Capitol telephone exchange.

(c) In carrying out a memorandum of understanding pursuant to this section, the Sergeant at Arms and Doorkeeper shall ensure that, with respect to any employee of the United States Capitol telephone exchange whose employing authority prior to the effective date of the memorandum was the Chief Administrative Officer—

(1) the rate of pay and leave accrual for the employee shall not be less than the employee's rate of pay and leave accrual for the most recent pay period prior to such date, unless—

(A) the employee does not remain in the same position with the exchange; or

(B) the rate of pay or leave accrual is reduced for cause; and

(2) any leave accrued by the employee that remains unused as of such date shall be transferred to the employee and made available for the employee to use under the same terms and conditions that applied to the use of the leave prior to such date.

(d) The last sentence of section 4(b) of the House Employees Position Classification Act (2 U.S.C. 293(b)) is amended by striking “succeeding year,” and inserting the following: “succeeding year (other than any period during which a memorandum of understanding described in section 215(a) of the Legislative Branch Appropriations Act, 2005 is in effect).”.

(e)(1) A memorandum of understanding under this section may include a provision requiring the reimbursement by the House of Representatives during a fiscal year (paid out of the applicable accounts of the House) of the expenses incurred by the Sergeant at Arms and Doorkeeper during the fiscal year in carrying out the memorandum with respect to the employees of the United States Capitol telephone exchange whose employing authority prior to the effective date of the memorandum was the Chief Administrative Officer.

(2) Any reimbursement made pursuant to this subsection—

(A) in the case of a reimbursement for salaries or agency contributions and related expenses, shall be deposited in the account under the heading “OFFICE OF THE SERGEANT AT ARMS AND DOORKEEPER” or “AGENCY CONTRIBUTIONS AND RELATED EXPENSES”, under the heading “SALARIES, OFFICERS AND EMPLOYEES”; and

(B) in the case of a reimbursement for expenses, shall be deposited in the account under the heading “SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE” under the heading “CONTINGENT EXPENSES OF THE SENATE”.

(3) Any funds deposited under paragraph (2) shall be available in like manner and for the same purposes as are other funds in the account to which the funds were deposited.

(f) This section and the amendment made by this section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

This division may be cited as the “Legislative Branch Appropriations Act, 2005”.

DIVISION H—TRANSPORTATION, TREASURY, INDEPENDENT
AGENCIES, AND GENERAL GOVERNMENT APPROPRIA-
TIONS ACT, 2005Transportation,
Treasury,
Independent
Agencies, and
General
Government
Appropriations
Act, 2005.

TITLE I

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

For necessary expenses of the Office of the Secretary, \$87,234,000, of which not to exceed \$2,220,000 shall be available for the immediate Office of the Secretary; not to exceed \$705,000 shall be available for the immediate Office of the Deputy Secretary; not to exceed \$15,395,000 shall be available for the Office of the General Counsel; not to exceed \$12,627,000 shall be available for the Office of the Under Secretary of Transportation for Policy; not to exceed \$8,573,000 shall be available for the Office of the Assistant Secretary for Budget and Programs; not to exceed \$2,316,000 shall be available for the Office of the Assistant Secretary for Governmental Affairs; not to exceed \$23,436,000 shall be available for the Office of the Assistant Secretary for Administration; not to exceed \$1,929,000 shall be available for the Office of Public Affairs; not to exceed \$1,456,000 shall be available for the Office of the Executive Secretariat; not to exceed \$704,000 shall be available for the Board of Contract Appeals; not to exceed \$1,278,000 shall be available for the Office of Small and Disadvantaged Business Utilization; not to exceed \$2,053,000 for the Office of Intelligence and Security; not to exceed \$3,150,000 shall be available for the Office of Emergency Transportation; and not to exceed \$11,392,000 shall be available for the Office of the Chief Information Officer: *Provided*, That the Secretary of Transportation is authorized to transfer funds appropriated for any office of the Office of the Secretary to any other office of the Office of the Secretary: *Provided further*, That no appropriation for any office shall be increased or decreased by more than 5 percent by all such transfers: *Provided further*, That any change in funding greater than 5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further*, That not to exceed \$60,000 shall be for allocation within the Department for official reception and representation expenses as the Secretary may determine: *Provided further*, That notwithstanding any other provision of law, excluding fees authorized in Public Law 107–71, there may be credited to this appropriation up to \$2,500,000 in funds received in user fees: *Provided further*, That none of the funds provided in this Act shall be available for the position of Assistant Secretary for Public Affairs.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, \$8,700,000.

COMPENSATION FOR AIR CARRIERS

(RESCISSION)

Of the funds made available under section 101(a)(2) of Public Law 107-42, \$235,000,000 are rescinded.

TRANSPORTATION PLANNING, RESEARCH, AND DEVELOPMENT

For necessary expenses for conducting transportation planning, research, systems development, development activities, and making grants, to remain available until expended, \$20,000,000.

WORKING CAPITAL FUND

Necessary expenses for operating costs and capital outlays of the Working Capital Fund, not to exceed \$151,054,000, shall be paid from appropriations made available to the Department of Transportation: *Provided*, That such services shall be provided on a competitive basis to entities within the Department of Transportation: *Provided further*, That the above limitation on operating expenses shall not apply to non-DOT entities: *Provided further*, That no funds appropriated in this Act to an agency of the Department shall be transferred to the Working Capital Fund without the approval of the agency modal administrator: *Provided further*, That no assessments may be levied against any program, budget activity, subactivity or project funded by this Act unless notice of such assessments and the basis therefor are presented to the House and Senate Committees on Appropriations and are approved by such Committees.

MINORITY BUSINESS RESOURCE CENTER PROGRAM

For the cost of guaranteed loans, \$500,000, as authorized by 49 U.S.C. 332: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$18,367,000. In addition, for administrative expenses to carry out the guaranteed loan program, \$400,000.

MINORITY BUSINESS OUTREACH

For necessary expenses of Minority Business Resource Center outreach activities, \$3,000,000, to remain available until September 30, 2006: *Provided*, That notwithstanding 49 U.S.C. 332, these funds may be used for business opportunities related to any mode of transportation.

NEW HEADQUARTERS BUILDING

For necessary expenses of the Department of Transportation's new headquarters building and related services, \$68,000,000, to remain available until expended.

PAYMENTS TO AIR CARRIERS

(AIRPORT AND AIRWAY TRUST FUND)

In addition to funds made available from any other source to carry out the essential air service program under 49 U.S.C. 41731 through 41742, \$52,000,000, to be derived from the Airport and Airway Trust Fund, to remain available until expended.

FEDERAL AVIATION ADMINISTRATION

OPERATIONS

For necessary expenses of the Federal Aviation Administration, not otherwise provided for, including operations and research activities related to commercial space transportation, administrative expenses for research and development, establishment of air navigation facilities, the operation (including leasing) and maintenance of aircraft, subsidizing the cost of aeronautical charts and maps sold to the public, lease or purchase of passenger motor vehicles for replacement only, in addition to amounts made available by Public Law 108-176, \$7,775,000,000, of which \$4,918,073,000 shall be derived from the Airport and Airway Trust Fund, of which not to exceed \$6,234,417,600 shall be available for air traffic services activities; not to exceed \$916,894,000 shall be available for aviation regulation and certification activities; not to exceed \$224,039,000 shall be available for research and acquisition activities; not to exceed \$11,674,000 shall be available for commercial space transportation activities; not to exceed \$52,124,000 shall be available for financial services activities; not to exceed \$69,821,600 shall be available for human resources program activities; not to exceed \$149,569,800 shall be available for region and center operations and regional coordination activities; not to exceed \$139,302,000 shall be available for staff offices; and not to exceed \$36,254,000 shall be available for information services: *Provided*, That none of the funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act: *Provided further*, That there may be credited to this appropriation funds received from States, counties, municipalities, foreign authorities, other public authorities, and private sources, for expenses incurred in the provision of agency services, including receipts for the maintenance and operation of air navigation facilities, and for issuance, renewal or modification of certificates, including airman, aircraft, and repair station certificates, or for tests related thereto, or for processing major repair or alteration forms: *Provided further*, That of the funds appropriated under this heading, not less than \$7,000,000 shall be for the contract tower cost-sharing program: *Provided further*, That funds may be used to enter into a grant agreement with a nonprofit standard-setting organization to assist in the development of aviation safety standards: *Provided further*, That none of the funds in this Act shall be available for new applicants for the second career training program: *Provided further*, That none of the funds in this Act shall be available for paying premium pay under 5 U.S.C. 5546(a) to any Federal Aviation Administration employee unless such employee actually performed work during the time corresponding to such premium pay: *Provided*

further, That none of the funds in this Act may be obligated or expended to operate a manned auxiliary flight service station in the contiguous United States: *Provided further*, That none of the funds in this Act for aeronautical charting and cartography are available for activities conducted by, or coordinated through, the Working Capital Fund: *Provided further*, That of the funds provided under this heading, \$4,000,000 is available only for recruitment, personnel compensation and benefits, and related costs to raise the level of operational air traffic control supervisors to the level of 1,846: *Provided further*, That none of the funds in this Act may be obligated or expended for an employee of the Federal Aviation Administration to purchase a store gift card or gift certificate through use of a Government-issued credit card.

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for acquisition, establishment, technical support services, improvement by contract or purchase, and hire of air navigation and experimental facilities and equipment, as authorized under part A of subtitle VII of title 49, United States Code, including initial acquisition of necessary sites by lease or grant; engineering and service testing, including construction of test facilities and acquisition of necessary sites by lease or grant; construction and furnishing of quarters and related accommodations for officers and employees of the Federal Aviation Administration stationed at remote localities where such accommodations are not available; and the purchase, lease, or transfer of aircraft from funds available under this heading; to be derived from the Airport and Airway Trust Fund, \$2,540,000,000, of which \$2,119,000,000 shall remain available until September 30, 2007, and of which \$421,000,000 shall remain available until September 30, 2005: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the establishment and modernization of air navigation facilities: *Provided further*, That upon initial submission to the Congress of the fiscal year 2006 President's budget, the Secretary of Transportation shall transmit to the Congress a comprehensive capital investment plan for the Federal Aviation Administration which includes funding for each budget line item for fiscal years 2006 through 2010, with total funding for each year of the plan constrained to the funding targets for those years as estimated and approved by the Office of Management and Budget.

RESEARCH, ENGINEERING, AND DEVELOPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research, engineering, and development, as authorized under part A of subtitle VII of title 49, United States Code, including construction of experimental facilities and acquisition of necessary sites by lease or grant, \$130,927,000, to be derived from the Airport and Airway Trust Fund and to remain available until September 30, 2007: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public

authorities, and private sources, for expenses incurred for research, engineering, and development.

GRANTS-IN-AID FOR AIRPORTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(AIRPORT AND AIRWAY TRUST FUND)

For liquidation of obligations incurred for grants-in-aid for airport planning and development, and noise compatibility planning and programs as authorized under subchapter I of chapter 471 and subchapter I of chapter 475 of title 49, United States Code, and under other law authorizing such obligations; for procurement, installation, and commissioning of runway incursion prevention devices and systems at airports of such title; for grants authorized under section 41743 of title 49, United States Code; and for inspection activities and administration of airport safety programs, including those related to airport operating certificates under section 44706 of title 49, United States Code, \$2,800,000,000 to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided*, That none of the funds under this heading shall be available for the planning or execution of programs the obligations for which are in excess of \$3,500,000,000 in fiscal year 2005, notwithstanding section 47117(g) of title 49, United States Code: *Provided further*, That none of the funds under this heading shall be available for the replacement of baggage conveyor systems, reconfiguration of terminal baggage areas, or other airport improvements that are necessary to install bulk explosive detection systems: *Provided further*, That notwithstanding any other provision of law, not more than \$68,802,000 of funds limited under this heading shall be obligated for administration and not less than \$20,000,000 shall be for the Small Community Air Service Development Program.

GRANTS-IN-AID FOR AIRPORTS

(AIRPORT AND AIRWAY TRUST FUND)

(RESCISSION OF CONTRACT AUTHORIZATION)

Of the amount authorized for the fiscal year ending September 30, 2004, under sections 48103 and 48112 of title 49, United States Code, \$265,000,000 are rescinded.

GENERAL PROVISIONS—FEDERAL AVIATION ADMINISTRATION

SEC. 101. Notwithstanding any other provision of law, airports may transfer without consideration to the Federal Aviation Administration (FAA) instrument landing systems (along with associated approach lighting equipment and runway visual range equipment) which conform to FAA design and performance specifications, the purchase of which was assisted by a Federal airport-aid program, airport development aid program or airport improvement program grant: *Provided*, That, the Federal Aviation Administration shall accept such equipment, which shall thereafter be operated and maintained by FAA in accordance with agency criteria.

49 USC 44502
note.

SEC. 102. None of the funds in this Act may be used to compensate in excess of 375 technical staff-years under the federally funded research and development center contract between the Federal Aviation Administration and the Center for Advanced Aviation Systems Development during fiscal year 2005.

SEC. 103. None of the funds made available in this Act may be used for engineering work related to an additional runway at Louis Armstrong New Orleans International Airport.

SEC. 104. None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation, or weather reporting: *Provided*, That the prohibition of funds in this section does not apply to negotiations between the agency and airport sponsors to achieve agreement on “below-market” rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for air traffic control facilities.

SEC. 105. None of the funds appropriated or limited by this Act may be used to change weight restrictions or prior permission rules at Teterboro Airport in Teterboro, New Jersey.

SEC. 106. (a) Section 44302(f)(1) of title 49, United States Code, is amended by striking “2004,” each place it appears and inserting “2005,”.

(b) Section 44303(b) of such title is amended by striking “2004,” and inserting “2005,”.

Grants.
Airports.

SEC. 107. Notwithstanding any provision of law, the Secretary of Transportation is authorized and directed to make project grants under chapter 471 of title 49, United States Code, from funds available under 49 U.S.C. 48103, for the cost of acquisition of land, or reimbursement of the cost of land if purchased prior to enactment of this provision and prior to a grant agreement, for non-exclusive use aeronautical purposes on an airport layout plan that has been approved by the Secretary on January 23, 2004, pursuant to section 49 U.S.C. 47107(a)(16), for any small hub airport as defined in 49 U.S.C. 47102, and had scheduled or chartered direct international flights totaling at least 200 million pounds gross aircraft landed weight for calendar year 2002.

FEDERAL HIGHWAY ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

Necessary expenses for administration and operation of the Federal Highway Administration, not to exceed \$346,500,000, shall be paid in accordance with law from appropriations made available by this Act to the Federal Highway Administration together with advances and reimbursements received by the Federal Highway Administration.

FEDERAL-AID HIGHWAYS

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

23 USC 104 note.

None of the funds in this Act shall be available for the implementation or execution of programs, the obligations for which

are in excess of \$34,700,000,000 for Federal-aid highways and highway safety construction programs for fiscal year 2005: *Provided*, That within the \$34,700,000,000 obligation limitation on Federal-aid highways and highway safety construction programs, not more than \$462,500,000 shall be available for the implementation or execution of programs for transportation research (sections 502, 503, 504, 506, 507, and 508 of title 23, United States Code, as amended; section 5505 of title 49, United States Code, as amended; and sections 5112 and 5204–5209 of Public Law 105–178) for fiscal year 2005: *Provided further*, That this limitation on transportation research programs shall not apply to any authority previously made available for obligation: *Provided further*, That within the \$232,000,000 obligation limitation on Intelligent Transportation Systems, the following sums shall be made available for Intelligent Transportation System projects that are designed to achieve the goals and purposes set forth in section 5203 of the Intelligent Transportation Systems Act of 1998 (subtitle C of title V of Public Law 105–178; 112 Stat. 453; 23 U.S.C. 502 note) in the following specified areas:

Alameda Corridor-East Project, San Gabriel Valley, California, \$2,000,000.

Alexandria Fiber Optic Cable for Traffic Signal Coordination, Virginia, \$2,000,000.

Alliance for Transportation Research, Transportation Technology Center, New Mexico, \$750,000.

Appalachian Transportation Institute and U3C, West Virginia, \$1,000,000.

Atlanta Construction and Traffic Management Project, Georgia, \$2,000,000.

Baltimore City Intelligent Transportation System, Maryland, \$1,000,000.

Bay County Regional ITS, Florida, \$2,000,000.

Calmar Research Vehicle Communication Systems, New York, \$1,150,000.

Center for Injury Sciences, Alabama, \$2,000,000.

Central Florida Regional Transportation Authority (LYNX): North Orange/South Seminole ITS Enhanced Circulator, \$500,000.

Cicero Avenue Smart Corridor, Illinois, \$1,000,000.

City of Boston Directional Signage Program, Massachusetts, \$1,000,000.

City of Elk Grove ITS Project, California, \$1,500,000.

City of Fort Worth Intelligent Transportation Systems, Texas, \$1,800,000.

City of San Antonio Municipal ITS Technologies, Texas, \$1,300,000.

Clark County ITS, Washington, \$2,000,000.

Commercial Vehicle Information Systems Network, Illinois, \$500,000.

COTA ITS Integration Project Phases II and III, Ohio, \$800,000.

DeKalb Co. Signal System Improvements, Georgia, \$500,000.

Downtown Signalization Project, Mechanicsburg, Pennsylvania, \$750,000.

FAST-TRAC Signal Expansion, Michigan, \$1,000,000.

Florida State University System Center for Intermodal Transportation Safety, \$3,000,000.

Freeway Incident Management Program, Houston, Texas, \$3,250,000.

Ft. Lauderdale Intelligent Trans System Improvement, Florida, \$1,000,000.

GEARS Demonstration Project, Cumberland County, Pennsylvania, \$150,000.

Germantown ITS, Tennessee, \$500,000.

GMU ITS Appropriations, Virginia, \$2,000,000.

Highway Speed E-ZPass, Outerbridge Crossing, New York, \$350,000.

Hillsborough Area Regional Transit Authority: Bus Tracking, Communication and Security, Florida, \$750,000.

I-70 Incident Management Plan, Colorado, \$1,250,000.

I-91 Fiber and ITS Construction, Massachusetts, \$2,500,000.

Intelligent Transportation at George Washington University, Virginia, \$1,000,000.

Intelligent Transportation System Feasibility Study and Implementation Plan, Edmond, Oklahoma, \$100,000.

Intelligent Transportation System, Jackson, Tennessee, \$385,000.

Intelligent Transportation System, Wichita, Kansas, \$1,250,000.

Intelligent Transportation Systems, Nebraska, \$450,000.

Intelligent Transportation Systems, City of Jackson, Tennessee, \$1,000,000.

Intelligent Transportation Systems, Illinois, \$5,000,000.

Intercity Transit ITS (Thurston County), Washington, \$2,000,000.

Interurban Transit Partnership, Grand Rapids, Michigan, \$2,000,000.

Iowa ITS, \$2,000,000.

ITS—Commercial Vehicle Safety and Integration Statewide, Utah, \$500,000.

ITS—Northwest Arkansas Regional Architecture, Arkansas, \$250,000.

ITS—Rural Recreation & Tourism, Statewide, Utah, \$750,000.

ITS—Springfield, Illinois, \$650,000.

ITS Deployment Project, Inglewood, California, \$400,000.

ITS Statewide, Maryland, \$1,000,000.

Jacksonville Transportation Authority: Intelligent Transportation Systems Regional Planning, Florida, \$750,000.

JAXPORT Intermodal Cargo Tracking Project, Florida, \$900,000.

Kansas City SmartPort, Missouri, \$750,000.

King County, County-Wide Signal Program, Washington, \$2,000,000.

Lake County Passage, Lake County, Illinois, \$1,250,000.

Laredo ITS Multi-Agency Integration and Incidence Project, Texas, \$500,000.

Los Angeles Union Station Communication System, \$1,000,000.

Lynnwood Traffic Management Center of Multi-Jurisdictional ITS, Washington, \$1,000,000.

MARTA Automated Fare Collection/Smart Card System, Georgia, \$500,000.
Missouri Statewide Rural ITS, \$2,500,000.
Montgomery County Integrated ITS Program, Maryland, \$750,000.
Montgomery Intelligent Transportation System Acquisition and Implementation, Alabama, \$1,000,000.
Nepperhan Traffic Improvements, City of Yonkers, New York, \$300,000.
Northwest Arkansas Regional Planning Commission—ITS Regional Architecture, \$300,000.
Park Avenue Corridor Improvements, New Jersey, \$1,000,000.
Park Avenue Corridor Improvements, Union County, New Jersey, \$765,000.
Pennsylvania Turnpike ITS Initiative, Pennsylvania, \$2,000,000.
PSU's Center for Transportation Studies ITS Initiative, Oregon, \$400,000.
Puget Sound In-Vehicle Traffic Map Expansion Program, Washington, \$2,000,000.
Pulaski at Irving Park Intersection Improvement, Illinois, \$500,000.
PVTa ITS, Massachusetts, \$1,000,000.
Regional ITS Springfield, Missouri, \$2,000,000.
Reston Traffic Signal Prioritization, Virginia, \$750,000.
Route 28 traffic light synchronization, \$500,000.
Route 50 signalization improvement, Virginia, \$1,000,000.
Route 7 signalization improvements, Virginia, \$500,000.
Rural Highway Information System, Kentucky, \$2,000,000.
San Diego Joint Transportation Operations Center, California, \$750,000.
SCDOT InRoads, South Carolina, \$2,500,000.
Signal Pre-emption Upgrades, Culver City, California, \$110,000.
South Boulevard Signal System, North Carolina, \$470,000.
Springfield Regional Intelligent Transportation System, Missouri, \$2,000,000.
Stamford Urban Transitway Phase II, Connecticut, \$1,000,000.
State Transportation Incident Management Center, Wisconsin, \$500,000.
STRAP 3 Transportation Program Tracking, \$1,500,000.
The Mass Country Roads Traveler Information System, Massachusetts, \$200,000.
TMC Transportation Operations Center, Texas, \$500,000.
Traffic Operations Center, City of Fresno, California, \$500,000.
Traffic Response and Information, Partnership Center, Maryland, \$1,500,000.
Transportation Management & Emergency Ops Center/Oakland, California, \$750,000.
Transportation Research Center, Georgia, \$1,000,000.
Traveler Information System, Seattle, Washington, \$1,000,000.
Tri-County ITS Coordination Initiative, Michigan, \$500,000.

Twin Cities, Minnesota Redundant Communications Pilot, \$750,000.

University of Alaska Arctic Transportation Engineering Research Center, Alaska, \$1,500,000.

University of Kentucky Transportation Center, \$1,500,000.

US 2 Lohman Rail Crossing Advance Warning, Montana, \$1,000,000.

US 280 Corridor ITS, Alabama, \$800,000.

US 280, Jefferson County, ITS, Alabama, \$4,000,000.

US 98 Widening from Bayshore Road to Portside Road, Florida, \$500,000.

Variable Message Signs and 511 Implementation, Idaho, \$2,250,000.

Ventura County Intelligent Transportation Systems, California, \$750,000.

Vermont Roadway Weather Information System, \$1,000,000.

Village of Tarrytown, New York, \$320,000.

West Baton Rouge Emergency Communications Center, Louisiana, \$1,500,000.

Wisconsin State Patrol Mobile Data Communications Network—Phase III, \$3,400,000.

FEDERAL-AID HIGHWAYS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for carrying out the provisions of title 23, United States Code, that are attributable to Federal-aid highways, including the National Scenic and Recreational Highway as authorized by 23 U.S.C. 148, not otherwise provided, including reimbursement for sums expended pursuant to the provisions of 23 U.S.C. 308, \$35,000,000,000 or so much thereof as may be available in and derived from the Highway Trust Fund, to remain available until expended.

FEDERAL-AID HIGHWAYS

(HIGHWAY TRUST FUND)

(RESCISSION)

Of the unobligated balances of funds apportioned to each State under chapter 1 of title 23, United States Code, \$520,277,000 are rescinded: *Provided*, That such rescission shall not apply to the funds distributed in accordance with 23 U.S.C. 133(d)(1) and the first sentence of 23 U.S.C. 133(d)(3)(A) or to the funds apportioned to the program authorized under section 163 of title 23, United States Code.

FEDERAL-AID HIGHWAYS

EMERGENCY RELIEF PROGRAM

(INCLUDING RECISSION)

(HIGHWAY TRUST FUND)

For an additional amount for the “Emergency Relief Program” as authorized under section 125 of title 23, United States Code, \$741,000,000, to be derived from the Highway Trust Fund (other than the Mass Transit Account) and to remain available until expended: *Provided*, That of the unobligated balances of funds apportioned to each State under chapter 1 of title 23, United States Code, \$741,000,000 are rescinded: *Provided further*, That such rescission shall not apply to the funds distributed in accordance with 23 U.S.C. 133(d)(1) and the first sentence of 23 U.S.C. 133(d)(3)(A) or to the funds apportioned to the program authorized under section 163 of title 23, United States Code.

APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM

For necessary expenses for the Appalachian Development Highway System as authorized under section 1069(y) of Public Law 102–240, as amended, \$80,000,000, to remain available until expended.

GENERAL PROVISIONS—FEDERAL HIGHWAY ADMINISTRATION

SEC. 110. (a) For fiscal year 2005, the Secretary of Transportation shall— 23 USC 104 note.

(1) not distribute from the obligation limitation for Federal-aid highways amounts authorized for administrative expenses and programs funded from the administrative takedown authorized by section 104(a)(1)(A) of title 23, United States Code, for the highway use tax evasion program, for the Bureau of Transportation Statistics, and for the programs, projects, and activities funded from the takedown authorized by section 117 of this Act;

(2) not distribute an amount from the obligation limitation for Federal-aid highways that is equal to the unobligated balance of amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highways and highway safety programs for the prior fiscal years the funds for which are allocated by the Secretary;

(3) determine the ratio that—

(A) the obligation limitation for Federal-aid Highways less the aggregate of amounts not distributed under paragraphs (1) and (2), bears to

(B) the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction programs (other than sums authorized to be appropriated for sections set forth in paragraphs (1) through (7) of subsection (b) and sums authorized to be appropriated for section 105 of title 23, United States Code, equal to the amount referred to in subsection (b)(8)) for such fiscal year less the aggregate of the amounts not distributed under paragraph (1) of this subsection;

(4) distribute the obligation limitation for Federal-aid highways less the aggregate amounts not distributed under paragraphs (1) and (2) for section 201 of the Appalachian Regional Development Act of 1965 and \$2,000,000,000 for such fiscal year under section 105 of title 23, United States Code (relating to minimum guarantee) so that the amount of obligation authority available for each of such sections is equal to the amount determined by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such section (except in the case of section 105, \$2,000,000,000) for such fiscal year;

(5) distribute the obligation limitation provided for Federal-aid highways less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraph (4) for each of the programs that are allocated by the Secretary under title 23, United States Code (other than activities to which paragraph (1) applies and programs to which paragraph (4) applies) by multiplying the ratio determined under paragraph (3) by the sums authorized to be appropriated for such program for such fiscal year; and

(6) distribute the obligation limitation provided for Federal-aid highways less the aggregate amounts not distributed under paragraphs (1) and (2) and amounts distributed under paragraphs (4) and (5) for Federal-aid highways and highway safety construction programs (other than the minimum guarantee program, but only to the extent that amounts apportioned for the minimum guarantee program for such fiscal year exceed \$2,639,000,000, and the Appalachian development highway system program) that are apportioned by the Secretary under title 23, United States Code, in the ratio that—

(A) sums authorized to be appropriated for such programs that are apportioned to each State for such fiscal year, bear to

(B) the total of the sums authorized to be appropriated for such programs that are apportioned to all States for such fiscal year.

(b) **EXCEPTIONS FROM OBLIGATION LIMITATION.**—The obligation limitation for Federal-aid highways shall not apply to obligations: (1) under section 125 of title 23, United States Code; (2) under section 147 of the Surface Transportation Assistance Act of 1978; (3) under section 9 of the Federal-Aid Highway Act of 1981; (4) under sections 131(b) and 131(j) of the Surface Transportation Assistance Act of 1982; (5) under sections 149(b) and 149(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987; (6) under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991; (7) under section 157 of title 23, United States Code, as in effect on the day before the date of the enactment of the Transportation Equity Act for the 21st Century; (8) under section 105 of title 23, United States Code (but, only in an amount equal to \$639,000,000 for such fiscal year); and (9) for Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century or subsequent public laws for multiple years or to remain available until used, but only to the extent that such obligation authority has not lapsed or been used.

(c) **REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.**—Notwithstanding subsection (a), the Secretary shall after August 1

for such fiscal year revise a distribution of the obligation limitation made available under subsection (a) if a State will not obligate the amount distributed during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under sections 104 and 144 of title 23, United States Code, section 160 (as in effect on the day before the enactment of the Transportation Equity Act for the 21st Century) of title 23, United States Code, and under section 1015 of the Intermodal Surface Transportation Efficiency Act of 1991.

(d) **APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.**—The obligation limitation shall apply to transportation research programs carried out under chapter 5 of title 23, United States Code, except that obligation authority made available for such programs under such limitation shall remain available for a period of 3 fiscal years.

(e) **REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.**—Not later than 30 days after the date of the distribution of obligation limitation under subsection (a), the Secretary shall distribute to the States any funds: (1) that are authorized to be appropriated for such fiscal year for Federal-aid highways programs (other than the program under section 160 of title 23, United States Code) and for carrying out subchapter I of chapter 311 of title 49, United States Code, and highway-related programs under chapter 4 of title 23, United States Code; and (2) that the Secretary determines will not be allocated to the States, and will not be available for obligation, in such fiscal year due to the imposition of any obligation limitation for such fiscal year. Such distribution to the States shall be made in the same ratio as the distribution of obligation authority under subsection (a)(6). The funds so distributed shall be available for any purposes described in section 133(b) of title 23, United States Code.

Deadline.

(f) **SPECIAL RULE.**—Obligation limitation distributed for a fiscal year under subsection (a)(4) of this section for a section set forth in subsection (a)(4) shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

SEC. 111. Notwithstanding 31 U.S.C. 3302, funds received by the Bureau of Transportation Statistics from the sale of data products, for necessary expenses incurred pursuant to 49 U.S.C. 111 may be credited to the Federal-aid highways account for the purpose of reimbursing the Bureau for such expenses: *Provided*, That such funds shall be subject to the obligation limitation for Federal-aid highways and highway safety construction.

SEC. 112. Of the funds made available to the Bureau of Transportation Statistics in fiscal year 2005, \$400,000 shall be available to administer section 5402 of title 39, United States Code.

SEC. 113. (a) Notwithstanding any other provision of law, in section 1602 of the Transportation Equity Act for the 21st Century, item number 89 is amended by striking “Construct I–495/Route 2 interchange east of existing interchange to provide access to commuter rail station, Littleton” and inserting “Ayer commuter rail station improvements, land acquisition and parking improvements”.

(b) Of the \$6,000,000 portion of the funds appropriated under the heading “Highway Demonstration Projects” in title I of Public Law 102-143 (105 Stat. 929) that was allocated for Routes 70/38 Circle Elimination, New Jersey, \$4,500,000 shall be transferred to, and made available for, the following projects in the specified amounts: Mantua Creek Overpass in Paulsboro, New Jersey, \$2,000,000; Delsea Drive Route 47 Timber Creek in Westville, New Jersey, \$787,000; Camden Waterfront Parking Garage in Camden, New Jersey, \$1,213,000; and Route 47 Chapel Heights Avenue in Gloucester, New Jersey, \$500,000.

(c) Of the amount made available under item number 89 of the table contained in section 1107(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2052), \$3,300,000 shall be used to carry out a comprehensive regional transportation study on the multimodal transportation needs in Grand Traverse County, Michigan, and to implement recommendations resulting from the study.

(d) Of the funds provided for under “Transportation and Community and System Preservation Program” in Public Law 106-69 and Public Law 106-346 for the project known as “Utah-Colorado ‘Isolated Empire’ Rail Connector Study” as referenced in House Report 106-355 and House Report 106-940, any remaining unobligated balance as of October 1, 2004, shall be made available to the Central Utah Rail Line (Sigurd/Salina to Levan) Project.

(e) Section 378 of the Department of Transportation and Related Agencies Appropriations Act, 2001 (114 Stat. 1356A-38) is amended by striking “an extension of Highway 180 from the City of Mendota” and inserting “an extension of Highway 180 from the City of Fresno”.

SEC. 114. None of the funds made available in this Act may be used to require a State or local government to post a traffic control device or variable message sign, or any other type of traffic warning sign, in a language other than English, except with respect to the names of cities, streets, places, events, or signs related to an international border.

Ante, p. 294.

SEC. 115. Division F, title I, section 115 of Public Law 108-199 is amended by inserting before the period at the end the following: “: *Provided further*, That notwithstanding any other provision of law and the preceding clauses of this provision, the Secretary of Transportation may use amounts made available by this section to make grants for any surface transportation project otherwise eligible for funding under title 23 or title 49, United States Code”.

SEC. 116. Of the funds available under section 104(a)(1)(A) of title 23, United States Code, \$5,000,000 shall be available for environmental streamlining activities, which may include making grants to, or entering into contracts, cooperative agreements, and other transactions, with a Federal agency, State agency, local agency, authority, association, non-profit or for-profit corporation, or institution of higher education.

SEC. 117. Notwithstanding any other provision of law, whenever an allocation is made of the sums authorized to be appropriated for expenditure on the Federal lands highway program, and whenever an apportionment is made of the sums authorized to be appropriated for the surface transportation program, the congestion mitigation and air quality improvement program, the National Highway System, the Interstate maintenance program, the bridge program, the Appalachian development highway system, and the minimum

guarantee program, the Secretary of Transportation shall deduct a sum in such amount not to exceed 4.1 percent of all sums so authorized: *Provided*, That of the amount so deducted in accordance with this section, \$25,000,000 shall be made available to make grants to support planning, highway corridor development, and highway construction projects in the area that comprises the Delta Regional Authority; and \$1,211,360,000 shall be made available for surface transportation projects as identified under this section in the statement of the managers accompanying this Act: *Provided further*, That notwithstanding any other provision of law and the preceding clauses of this provision, the Secretary of Transportation may use amounts made available by this section to make grants for any surface transportation project otherwise eligible for funding under title 23 or, title 49, United States Code: *Provided further*, That funds made available under this section, at the request of a State, shall be transferred by the Secretary to another Federal agency: *Provided further*, That the Federal share payable on account of any program, project, or activity carried out with funds made available under this section shall be 100 percent: *Provided further*, That the sum deducted in accordance with this section shall remain available until expended: *Provided further*, That all funds made available under this section shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs set forth in this Act or any other Act: *Provided further*, That the obligation limitation made available for the programs, projects, and activities for which funds are made available under this section shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

SEC. 118. Of the funds made available under section 188(a)(1) of title 23, United States Code, \$100,000,000 are rescinded.

Rescission.

SEC. 119. For the purposes of 23 U.S.C. 181(9)(D) the project described in section 626 of division B, title VI of Public Law 108–7 is eligible as a publicly owned intermodal surface freight transfer facility.

SEC. 120. Notwithstanding any other provision of law, the Department of Transportation shall complete approval of the proposed surety substitution for one-half of the bond debt service reserve amount for the RETRAC project within 30 days after receiving from RETRAC a binding commitment from a qualified provider to deliver a surety at an acceptable price. Such bond debt service funds so released shall be deposited into the RETRAC project contingency fund for payment of RETRAC project costs in the event current project cost projections are exceeded.

Deadline.

SEC. 121. DESIGNATION OF MIKE O'CALLAGHAN-PAT TILLMAN MEMORIAL BRIDGE. (a) IN GENERAL.—The Hoover Dam Bypass Bridge in the Lake Mead National Recreation Area between Nevada and Arizona is designated as the “Mike O'Callaghan-Pat Tillman Memorial Bridge”.

(b) REFERENCES IN LAW.—Any reference in a law (including regulations), map, document, paper, or other record of the United States to the bridge described in subsection (a) shall be considered to be a reference to the Mike O'Callaghan-Pat Tillman Memorial Bridge.

SEC. 122. BYPASS BRIDGE AT HOOVER DAM. (a) IN GENERAL.—Subject to subsection (b), the Secretary of Transportation may

expend from any funds appropriated for expenditure in accordance with title 23, United States Code, for payment of debt service by the States of Arizona and Nevada on notes issued for the bypass bridge project at Hoover Dam, pending appropriation or replenishment for that project.

(b) REIMBURSEMENT.—Funds expended under subsection (a) shall be reimbursed from the funds made available to the States of Arizona and Nevada for payment of debt service on notes issued for the bypass bridge project at Hoover Dam.

SEC. 123. None of the funds made available in this Act shall be available for the development or dissemination by the Federal Highway Administration of any version of a programmatic agreement which regards the Dwight D. Eisenhower National System of Interstate and Defense Highways as eligible for inclusion on the National Register of Historic Places.

Rescission.

SEC. 124. Of the unobligated balances made available under Public Law 100-17, Public Law 100-457, Public Law 101-516, Public Law 102-143, Public Law 102-240, Public Law 102-388, Public Law 103-331, Public Law 105-178, and Public Law 106-346, \$16,407,908.88 are rescinded.

Grants.

SEC. 125. Notwithstanding any other provision of law, projects and activities described in the statement of managers accompanying this Act under the headings “Federal-Aid Highways” and “Federal Transit Administration” shall be eligible for fiscal year 2005 funds made available for the project for which each project or activity is so designated and projects and activities under the heading “Job Access and Reverse Commute Grants” shall be awarded those grants upon receipt of an application: *Provided*, That the Federal share payable on account of any such projects and activities subject to this section shall be the same as the share required by the Federal program under which each project or activity is designated unless otherwise provided in this Act.

SEC. 126. Notwithstanding any other provision of law, in addition to amounts provided in this or any other Act for fiscal year 2005, \$34,000,000, to be derived from the Highway Trust Fund and to remain available until expended, shall be available for the replacement of the Belleair Causeway Bridge in Pinellas County, Florida.

SEC. 127. Of the amounts made available for the Federal-Aid Highways Emergency Relief Program under division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (118 Stat. 1251), such sums as may be necessary shall be available for replacement of the I-10 bridge spanning Escambia Bay in Escambia and Santa Rosa Counties, Florida.

Ante, p. 1013.

SEC. 128. Section 14003 of Public Law 108-287, the Department of Defense Appropriations Act, 2005, is amended by adding a new subsection (c) at the end as follows:

“(c) Upon a request by a State to the Secretary that the State has an insufficient amount or type of apportionment to effectively utilize the funds provided in paragraph (b), the Secretary shall waive the requirement for apportionment. Such funds shall be eligible for any activity defined in section 133(b) of title 23. Funds distributed to each State under this section shall not be subject to section 105 of title 23.”.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

MOTOR CARRIER SAFETY

LIMITATION ON ADMINISTRATIVE EXPENSES

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

(INCLUDING TRANSFER OF FUNDS)

Notwithstanding any other provision of law, none of the funds in this Act shall be available for expenses for administration of motor carrier safety programs and motor carrier safety research, and grants, the obligations for which are in excess of \$257,547,000 for fiscal year 2005: *Provided*, That \$33,000,000 shall be available to make grants to, or enter into contracts with, States, local governments, or other persons for carrying out border commercial motor vehicle safety programs and enforcement activities and projects for the purposes described in 49 U.S.C. 31104(f)(2)(B), and the Federal share payable under such grants shall be 100 percent; \$20,000,000 shall be available to make grants to, or enter into contracts with, States, local governments, or other persons for commercial driver's licenses program improvements, and the Federal share payable under such grants shall be 100 percent; \$13,200,000 shall be available to make grants to States for implementation of section 210 of the Motor Carrier Safety Improvement Act of 1999, and the Federal share payable under such grant shall be 100 percent; and \$7,400,000 shall be available to make grants to, or enter into contracts with, States, local governments, or other persons for the commercial vehicle analysis reporting system, and the Federal share payable under such grants shall be 100 percent: *Provided further*, That notwithstanding any other provision of law, for payment of obligations incurred to pay administrative expenses of and grants by the Federal Motor Carrier Safety Administration, \$257,547,000, to be derived from the Highway Trust Fund, together with advances and reimbursements received by the Federal Motor Carrier Safety Administration, the sum of which shall remain available until expended.

NATIONAL MOTOR CARRIER SAFETY PROGRAM

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out 49 U.S.C. 31102, 31106, and 31309, \$190,000,000 to be derived from the Highway Trust Fund and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of \$190,000,000 for “Motor Carrier Safety Grants” and “Information Systems,” and of which \$17,000,000 shall be available for grants to States for implementation of section 210 of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1764–1765) and \$1,000,000 shall be available for grants to States, local governments,

or other entities for commercial driver's license program improvements: *Provided further*, That for grants made to States for implementation of section 210 of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1764–1765), and for grants to States, local governments, or other entities for commercial driver's license program improvements, the Federal share payable under such grants shall be 100 percent.

GENERAL PROVISIONS—FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION

Reports.

SEC. 130. Funds appropriated or limited in this Act shall be subject to the terms and conditions stipulated in section 350 of Public Law 107-87, including that the Secretary submit a report to the House and Senate Appropriations Committees annually on the safety and security of transportation into the United States by Mexico-domiciled motor carriers.

SEC. 131. None of the funds appropriated or otherwise made available by this Act may be used before December 31, 2005 to implement or enforce any provisions of the Final Rule, issued on April 16, 2003 (Docket No. FMCSA-97-2350), with respect to either of the following:

(1) The operators of utility service vehicles, as that term is defined in section 395.2 of title 49, Code of Federal Regulations.

(2) Maximum daily hours of service for drivers engaged in the transportation of property or passengers to or from a motion picture or television production site located within a 100-air mile radius of the work reporting location of such drivers.

SEC. 132. None of the funds made available under this Act may be used to issue or implement the Department of Transportation's proposed regulation entitled Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSSs), published in the Federal Register, volume 67, number 53, on March 19, 2002, relating to a phase-in period to bring vehicles into compliance with the requirements of the regulation.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OPERATIONS AND RESEARCH

(HIGHWAY TRUST FUND)

For expenses necessary to discharge the functions of the Secretary, with respect to traffic and highway safety under chapter 301 of title 49, United States Code, and part C of subtitle VI of title 49, United States Code, \$157,386,000, to be derived from the sum authorized to be deducted under section 117 of this Act and transferred to the National Highway Traffic Safety Administration, to remain available until expended: *Provided*, That such funds shall be transferred to and administered by the National Highway Traffic Safety Administration: *Provided further*, That none of the funds in this Act may be used to augment information technology or computer support funds provided to NHTSA in excess of \$2,900,000: *Provided further*, That none of the funds appropriated by this Act may be obligated or expended to plan, finalize, or

implement any rulemaking to add to section 575.104 of title 49 of the Code of Federal Regulations any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect: *Provided further*, That all funds made available under this heading shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs set forth in this Act or any other Act: *Provided further*, That the obligation limitation made available for the programs, projects, and activities for which funds are made available under this heading shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

OPERATIONS AND RESEARCH

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out the provisions of 23 U.S.C. 403, to remain available until expended, \$72,000,000, to be derived from the Highway Trust Fund: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which, in fiscal year 2005, are in excess of \$72,000,000 for programs authorized under 23 U.S.C. 403.

NATIONAL DRIVER REGISTER

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out chapter 303 of title 49, United States Code, \$3,600,000, to be derived from the Highway Trust Fund: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of \$3,600,000 for the National Driver Register authorized under chapter 303 of title 49, United States Code.

HIGHWAY TRAFFIC SAFETY GRANTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out the provisions of 23 U.S.C. 402, 405, and 410, to remain available until expended, \$225,000,000, to be derived from the Highway Trust Fund: *Provided*, That none

of the funds in this Act shall be available for the planning or execution of programs the total obligations for which, in fiscal year 2005, are in excess of \$225,000,000 for programs authorized under 23 U.S.C. 402, 405, and 410, of which \$165,000,000 shall be for “Highway Safety Programs” under 23 U.S.C. 402, \$20,000,000 shall be for “Occupant Protection Incentive Grants” under 23 U.S.C. 405, and \$40,000,000 shall be for “Alcohol-Impaired Driving Countermeasures Grants” under 23 U.S.C. 410: *Provided further*, That none of these funds shall be used for construction, rehabilitation, or remodeling costs, or for office furnishings and fixtures for State, local, or private buildings or structures: *Provided further*, That not to exceed \$10,000,000 of the funds made available for section 402, not to exceed \$2,306,000 of the funds made available for section 405, and not to exceed \$2,000,000 of the funds made available for section 410 shall be available to NHTSA for administering highway safety grants under chapter 4 of title 23, United States Code: *Provided further*, That not to exceed \$1,000,000 of the funds subject to allocation under section 157 of title 23, United States Code, and not to exceed \$1,000,000 of the funds subject to apportionment under section 163 of that title, shall be available to the National Highway Traffic Safety Administration for administering highway safety grants under those sections: *Provided further*, That not to exceed \$500,000 of the funds made available for section 410 “Alcohol-Impaired Driving Countermeasures Grants” shall be available for technical assistance to the States.

GENERAL PROVISIONS—NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION

Reports.

SEC. 140. Notwithstanding any other provision of law, States may use funds provided in this Act under section 402 of title 23, United States Code, to produce and place highway safety public service messages in television, radio, cinema, and print media, and on the Internet in accordance with guidance issued by the Secretary of Transportation: *Provided*, That any State that uses funds for such public service messages shall submit to the Secretary a report describing and assessing the effectiveness of the messages: *Provided further*, That \$10,000,000 of the funds allocated under section 157 of title 23, United States Code, shall be used as directed by the National Highway Traffic Safety Administrator to purchase national paid advertising (including production and placement) to support national safety belt mobilizations: *Provided further*, That, of the funds allocated under section 163 of title 23, United States Code, \$6,000,000 shall be used as directed by the Administrator to support national impaired driving mobilizations and enforcement efforts, \$14,000,000 shall be used as directed by the Administrator to purchase national paid advertising (including production and placement) to support such national impaired driving mobilizations and enforcement efforts.

SEC. 141. Notwithstanding any other provision of law, funds appropriated or limited in the Act to educate the motoring public on how to share the road safely with commercial motor vehicles shall be administered by the National Highway Traffic Safety Administration and shall not be used by or made available to any other Federal agency.

SEC. 142. Notwithstanding any other provision of law, for fiscal year 2005 the Secretary of Transportation is authorized to use amounts made available to carry out section 157 of title 23, United

States Code, to make innovative project allocations, not to exceed the prior year's amounts for such allocations, before making incentive grants for use of seat belts.

FEDERAL RAILROAD ADMINISTRATION

SAFETY AND OPERATIONS

For necessary expenses of the Federal Railroad Administration, not otherwise provided for, \$139,769,000, of which \$15,350,000 shall remain available until expended.

RAILROAD RESEARCH AND DEVELOPMENT

For necessary expenses for railroad research and development, \$36,025,000, to remain available until expended.

RAILROAD REHABILITATION AND IMPROVEMENT PROGRAM

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided*, That pursuant to section 502 of such Act, as amended, no new direct loans or loan guarantee commitments shall be made using Federal funds for the credit risk premium during fiscal year 2005: *Provided further*, That the Secretary of Transportation and the National Railroad Passenger Corporation shall reach agreement on a schedule for the repayment of all principal and interest on their June 28, 2002 direct loan agreement that provides for repayment in five equal annual installments over a 5-year period beginning in fiscal year 2005: *Provided further*, That each annual installment payment shall be made no later than thirty days after the enactment of the Departments of Transportation and Treasury, Independent Agencies, and General Government Appropriations Act for the fiscal year: *Provided further*, That in the event the Secretary and the National Railroad Passenger Corporation are unable to agree on the terms and conditions of such revised repayment schedule within sixty days after the enactment of this Act, then all principal and interest shall come due as provided for under the existing terms of the June 28, 2002 direct loan agreement.

Deadline.

NEXT GENERATION HIGH-SPEED RAIL

For necessary expenses for the Next Generation High-Speed Rail program as authorized under 49 U.S.C. 26101 and 26102, \$19,650,000, to remain available until expended.

ALASKA RAILROAD REHABILITATION

To enable the Secretary of Transportation to make grants to the Alaska Railroad, \$25,000,000, for capital rehabilitation and improvements benefiting its passenger operations, to remain available until expended.

GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of Transportation to make quarterly grants to the National Railroad Passenger Corporation, \$1,217,000,000, to remain available until September 30, 2005: *Provided*, That not less than \$500,000,000 shall be provided in quarterly grants for capital expenses: *Provided further*, That the Secretary of Transportation shall approve funding to cover operating losses and capital expenditures, including advance purchase orders, for the National Railroad Passenger Corporation only after receiving and reviewing a grant request for each specific train route: *Provided further*, That each such grant request shall be accompanied by a detailed financial analysis, revenue projection, and capital expenditure projection justifying the Federal support to the Secretary's satisfaction: *Provided further*, That the Secretary of Transportation shall reserve \$60,000,000 of the funds provided under this heading and is authorized to transfer such sums to the Surface Transportation Board, upon request from said Board, to carry out directed service orders issued pursuant to section 11123 of title 49, United States Code, to respond to the cessation of commuter rail operations by the National Railroad Passenger Corporation: *Provided further*, That the Secretary of Transportation shall make the reserved funds available to the National Railroad Passenger Corporation through an appropriate grant instrument during the end of the fourth quarter of fiscal year 2005 to the extent that no directed service orders have been issued by the Surface Transportation Board as of the date of transfer or there is a balance of reserved funds not needed by the Board to pay for any directed service order issued through September 30, 2005: *Provided further*, That not later than 60 days after enactment of this Act, Amtrak shall transmit, in electronic format, to the Secretary of Transportation, the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation a comprehensive business plan approved by the Board of Directors for fiscal year 2005 under section 24104(a) of title 49, United States Code: *Provided further*, That the business plan shall include, as applicable, targets for ridership, revenues, and capital and operating expenses: *Provided further*, That the plan shall also include a separate accounting of such targets for the Northeast Corridor; commuter service; long-distance Amtrak service; State-supported service; each intercity train route; including Autotrain; and commercial activities including contract operations and mail and express: *Provided further*, That the business plan shall include a description of the work to be funded, along with cost estimates and an estimated timetable for completion of the projects covered by this business plan: *Provided further*, That not later than December 1, 2004 and no later than 30 days following the last business day of the previous month thereafter, Amtrak shall submit to the Secretary of Transportation and the House and Senate Committees on Appropriations a supplemental report, in electronic format, regarding the pending business plan, which shall describe the work completed to date, any changes to the business plan, and the reasons for such changes: *Provided further*, That none of the funds in this Act may be used for operating expenses, including advance purchase orders, and capital projects not approved by the Secretary of Transportation nor on the National

Deadline.

Deadline.
Reports.

Railroad Passenger Corporation's fiscal year 2005 business plan: *Provided further*, That Amtrak shall display the business plan and all subsequent supplemental plans on the Corporation's website within a reasonable timeframe following their submission to the appropriate entities: *Provided further*, That none of the funds under this heading may be obligated or expended until the National Railroad Passenger Corporation agrees to continue abiding by the provisions of paragraphs 1, 2, 3, 5, 9, and 11 of the summary of conditions for the direct loan agreement of June 28, 2002, in the same manner as in effect on the date of enactment of this Act: *Provided further*, That the Secretary of Transportation is authorized to retain up to \$4,000,000 of the funds provided to be used to retain a consultant or consultants to assist the Secretary in preparing a comprehensive valuation of Amtrak's assets to be completed not later than September 30, 2005: *Provided further*, That these funds shall be available to the Secretary of Transportation until expended: *Provided further*, That this valuation shall to be used to retain a consultant or consultants to develop to the Secretary's satisfaction a methodology for determining the avoidable and fully allocated costs of each Amtrak route: *Provided further*, That once the Secretary has approved the methodology for determining the avoidable and fully allocated costs of each Amtrak route, Amtrak shall apply that methodology in compiling an annual report to Congress on the avoidable and fully allocated costs of each of its routes, with the initial report for fiscal year 2005 to be submitted to the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation before December 31, 2005, and each subsequent report to be submitted within 90 days after the end of the fiscal year to which the report pertains.

Public
information.

Deadline.
49 USC 24315
note.

Reports.
Deadlines.

GENERAL PROVISIONS—FEDERAL RAILROAD ADMINISTRATION

SEC. 150. For the purpose of assisting State-supported intercity rail service, in order to demonstrate whether competition will provide higher quality rail passenger service at reasonable prices, the Secretary of Transportation, working with affected States, shall develop and implement a procedure for fair competitive bidding by Amtrak and non-Amtrak operators for State-supported routes: *Provided*, That in the event a State desires to select or selects a non-Amtrak operator for the route, the State may make an agreement with Amtrak to use facilities and equipment of, or have services provided by, Amtrak under terms agreed to by the State and Amtrak to enable the non-Amtrak operator to provide the State-supported service: *Provided further*, That if the parties cannot agree on terms, the Secretary shall, as a condition of receipt of Federal grant funds, order that the facilities and equipment be made available and the services be provided by Amtrak under reasonable terms and compensation: *Provided further*, That when prescribing reasonable compensation to Amtrak, the Secretary shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services: *Provided further*, That the Secretary may reprogram up to \$2,500,000 from the Amtrak operating grant funds for costs associated with the implementation of the fair bid procedure and demonstration of competition under this section.

Procedures.
49 USC 24101
note.

49 USC 103 note.

SEC. 151. Notwithstanding any provisions of this or any other Act, during the fiscal year ending September 30, 2005, and hereafter, the Federal Railroad Administration may use funds appropriated by this or any other Act to provide for the installation of a broadband high speed internet service connection, including necessary equipment, for Federal Railroad Administration employees, and to either pay directly recurring monthly charges or to reimburse a percentage of such monthly charges which are paid by such employees: *Provided*, That the Federal Railroad Administration certifies that adequate safeguards against private misuse exist, and that the service is necessary for direct support of the agency's mission.

Certification.

SEC. 152. Public Law 97–468 is amended—

45 USC 1207.

(1) in section 608(a)(5) by inserting “, including any amount appropriated or otherwise made available to the State-owned railroad,” before “shall be retained”;

(2) in section 608 by adding a new subsection (e) as follows:

“(e) The State-owned railroad may take any necessary or appropriate action, consistent with Federal railroad safety laws, to preserve and protect its rail properties in the interests of safety.”; and

45 USC 1203.

(3) in section 604(d)(2) by adding a new paragraph (D) as follows:

“(D) Any hazardous substance, petroleum or other contaminant release at or from the State-owned rail properties that began prior to January 5, 1985, shall be and remain the liability of the United States for damages and for the costs of investigation and cleanup. Such liability shall be enforceable under 42 U.S.C. 9601 et seq. for any release described in the preceding sentence.”.

SEC. 153. Notwithstanding any other provision of law, from funds made available to the Federal Railroad Administration under the heading “Next Generation High-Speed Rail” in the Consolidated Appropriations Act of 2004 (Public Law 108–199), the Secretary of Transportation may award a grant in the amount of \$400,000 to the Illinois Department of Transportation for KBS Railroad track and grade crossing improvements in Kankakee County and North-eastern Illinois.

SEC. 154. The Northern New England High Speed Rail Corridor is expanded to include the train routes from Boston, Massachusetts, to Albany, New York, and from Springfield, Massachusetts, to New Haven, Connecticut.

Deadline.
Reports.

SEC. 155. Not later than March 1, 2005, Amtrak shall submit to the House and Senate Committees on Appropriations a report detailing Amtrak's obligations pursuant to 49 U.S.C. 24306(a), describing all investments made to develop mail and express, year-to-year operating results generated by mail and express, a detailed description of the impact on employees related to termination of mail and express, a detailed description of the proposed liquidation of assets related to mail and express, and an accounting of all incurred and estimated costs resulting from such termination, including legal and accounting costs, any contingent obligations that may result, and any other related costs. Before submission, both the Amtrak Board of Directors and the Department of Transportation shall review this report.

FEDERAL TRANSIT ADMINISTRATION

ADMINISTRATIVE EXPENSES

For necessary administrative expenses of the Federal Transit Administration's programs authorized by chapter 53 of title 49, United States Code, \$9,750,000: *Provided*, That no more than \$78,000,000 of budget authority shall be available for these purposes: *Provided further*, That of the funds available not to exceed \$900,000 shall be available for the Office of the Administrator; not to exceed \$6,520,000 shall be available for the Office of Administration; not to exceed \$4,100,000 shall be available for the Office of the Chief Counsel; not to exceed \$1,243,000 shall be available for the Office of Communication and Congressional Affairs; not to exceed \$7,396,000 shall be available for the Office of Program Management; not to exceed \$6,929,000 shall be available for the Office of Budget and Policy; not to exceed \$4,645,000 shall be available for the Office of Demonstration and Innovation; not to exceed \$3,013,000 shall be available for the Office of Civil Rights; not to exceed \$4,171,000 shall be available for the Office of Planning; not to exceed \$20,150,000 shall be available for regional offices; and not to exceed \$16,433,000 shall be available for the central account: *Provided further*, That the Administrator is authorized to transfer funds appropriated for an office of the Federal Transit Administration: *Provided further*, That no appropriation for an office shall be increased or decreased by more than a total of 5 percent during the fiscal year by all such transfers: *Provided further*, That any change in funding greater than 5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further*, That any funding transferred from the central account shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further*, That none of the funds provided or limited in this Act may be used to create a permanent office of transit security under this heading: *Provided further*, That of the funds in this Act available for the execution of contracts under section 5327(c) of title 49, United States Code, \$2,000,000 shall be reimbursed to the Department of Transportation's Office of Inspector General for costs associated with audits and investigations of transit-related issues, including reviews of new fixed guideway systems: *Provided further*, That up to \$2,500,000 for the National transit database shall remain available until expended: *Provided further*, That upon submission to the Congress of the fiscal year 2006 President's budget, the Secretary of Transportation shall transmit to Congress the annual report on new starts, proposed allocations of funds for fiscal year 2006: *Provided further*, That the amount herein appropriated shall be reduced by \$20,000 per day for each day after initial submission of the President's budget that the report has not been submitted to the Congress.

Reports.

FORMULA GRANTS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out 49 U.S.C. 5307, 5308, 5310, 5311, 5327, and section 3038 of Public Law 105–178, \$504,022,000, to remain available until expended: *Provided*, That no more than \$4,032,175,000 of budget authority shall be available

for these purposes: *Provided further*, That notwithstanding any other provision of law, \$50,000,000 of the funds to carry out 49 U.S.C. 5308 shall be transferred to and merged with funding provided for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under “Federal Transit Administration, Capital investment grants”.

UNIVERSITY TRANSPORTATION RESEARCH

For necessary expenses to carry out 49 U.S.C. 5505, \$750,000, to remain available until expended: *Provided*, That no more than \$6,000,000 of budget authority shall be available for these purposes.

TRANSIT PLANNING AND RESEARCH

For necessary expenses to carry out 49 U.S.C. 5303, 5304, 5305, 5311(b)(2), 5312, 5313(a), 5314, 5315, and 5322, \$16,000,000, to remain available until expended: *Provided*, That no more than \$128,000,000 of budget authority shall be available for these purposes: *Provided further*, That \$5,250,000 is available to provide rural transportation assistance (49 U.S.C. 5311(b)(2)), \$4,000,000 is available to carry out programs under the National Transit Institute (49 U.S.C. 5315), \$8,250,000 is available to carry out transit cooperative research programs (49 U.S.C. 5313(a)), \$60,385,600 is available for metropolitan planning (49 U.S.C. 5303, 5304, and 5305), \$12,614,400 is available for State planning (49 U.S.C. 5313(b)); and \$37,500,000 is available for the national planning and research program (49 U.S.C. 5314).

TRUST FUND SHARE OF EXPENSES

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

Notwithstanding any other provision of law, for payment of obligations incurred in carrying out 49 U.S.C. 5303–5308, 5310–5315, 5317(b), 5322, 5327, 5334, 5505, and sections 3037 and 3038 of Public Law 105–178, \$6,744,500,000, to remain available until expended, and to be derived from the Mass Transit Account of the Highway Trust Fund: *Provided*, That \$3,528,153,000 shall be paid to the Federal Transit Administration’s formula grants account: *Provided further*, That \$112,000,000 shall be paid to the Federal Transit Administration’s transit planning and research account: *Provided further*, That \$68,250,000 shall be paid to the Federal Transit Administration’s administrative expenses account: *Provided further*, That \$5,250,000 shall be paid to the Federal Transit Administration’s university transportation research account: *Provided further*, That \$109,375,000 shall be paid to the Federal Transit Administration’s job access and reverse commute grants program: *Provided further*, That \$2,921,472,000 shall be paid to the Federal Transit Administration’s capital investment grants account.

CAPITAL INVESTMENT GRANTS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out 49 U.S.C. 5308, 5309, 5318, and 5327, \$417,353,000, to remain available until expended:

Provided, That no more than \$3,338,825,000 of budget authority shall be available for these purposes: *Provided further*, That there shall be available for fixed guideway modernization, \$1,214,400,000; there shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities, \$675,000,000, which shall include \$50,000,000 made available under 5309(m)(3)(C) of this title, plus \$50,000,000 transferred from “Federal Transit Administration, Formula Grants”; and there shall be available for new fixed guideway systems \$1,449,425,000, with \$3,591,548 in unobligated balances made available in Public Law 106-346, and \$22,554,144 in unobligated balances made available in Public Law 107-87, to be available as follows:

- Atlanta, Georgia/North Springs (North Line Extension), \$265,410.
- Baltimore, Maryland, Central Light Rail Double Track, \$29,010,000.
- Birmingham-Transit Corridor, Alabama, \$1,000,000.
- Boston, Massachusetts, Silver Line III, \$3,000,000.
- Capital Metro-Bus Rapid Transit, Texas, \$1,000,000.
- CATRAIL RTC Rail Project, Nevada, \$1,000,000.
- Charlotte, North Carolina, South Corridor Light Rail Project, \$30,000,000.
- Chicago, Illinois, Douglas Branch Reconstruction, \$85,000,000.
- Chicago, Illinois, Ravenswood Line Extension, \$40,000,000.
- Cleveland, Ohio, Euclid Corridor Transportation Project, \$25,000,000.
- Dallas, Texas NW/SE Extension, \$8,500,000.
- Denver, Colorado, Southeast Corridor LRT, \$80,000,000.
- Dulles Corridor Rapid Transit Project, Virginia, \$25,000,000.
- Fort Lauderdale, Florida, South Florida Commuter Rail Upgrades, \$11,409,506.
- Harrisburg, Pennsylvania, Corridor One Rail MOS, \$2,000,000.
- Hawaii and Alaska Ferry Boats, \$10,296,000.
- Houston Advanced Metro Transit Plan, Texas, \$8,500,000.
- I-5/I-205/SR50, Transit Loop, Washington and Oregon, \$1,500,000.
- Las Vegas, Nevada, Resort Corridor Fixed Guideway Project, \$30,000,000.
- Little Rock River Rail, Arkansas, \$3,500,000.
- Los Angeles, California/MOS3 Metro Rail (North Hollywood), \$675,103.
- Los Angeles, California, Eastside Light Rail Transit Project, \$60,000,000.
- Los Angeles, California, Gold Line Foothill Extension, \$500,000.
- Metra Commuter Rail Expansions and Extensions, Illinois, \$52,000,000.
- Minneapolis, Minnesota, Hiawatha Light Rail Project, \$33,698,453.
- Minneapolis, Minnesota, Northstar Commuter Rail Project, \$5,000,000.
- Nashville, Tennessee, East Corridor Commuter Rail, \$2,000,000.

New Jersey Trans-Hudson Midtown Corridor, \$1,200,000.
 New Orleans, Louisiana, Canal Street Corridor Project, \$16,747,023.
 New York, New York Long Island Rail Road East Side Access, \$100,000,000.
 Norfolk, Virginia, Light Rail Transit Project, \$2,000,000.
 Northern New Jersey Hudson-Bergen Light Rail MOS2, \$100,000,000.
 Northern New Jersey Newark Rail Link MOS 1, \$319,463.
 Northern New Jersey Newark-Elizabeth Rail Line MOS1, \$1,365,876.
 Philadelphia, Pennsylvania, Schuylkill Valley MetroRail, \$10,000,000.
 Phoenix, Arizona, Central Phoenix/East Valley Light Rail, \$75,000,000.
 Pittsburgh, Pennsylvania, North Shore Light Rail Connector, \$55,000,000.
 Pittsburgh, Pennsylvania, Stage II Light Rail, \$1,140,792.
 Portland, Oregon, Interstate Max Light Rail Extension, \$23,480,000.
 Raleigh, North Carolina, Triangle Transit Authority Regional Rail Project, \$20,000,000.
 Rhode Island Integrated Commuter Rail Project, \$6,000,000.
 Regional Commuter Rail (Weber County to Salt Lake City), Utah, \$8,000,000.
 Salt Lake City, Utah/CBD to University LRT, \$1,147,398.
 Salt Lake City, Utah/Medical Center Extension, \$8,836,110.
 San Diego, California, Mid-Coast Light Rail Extension, \$1,000,000.
 San Diego, California, Mission Valley East Light Rail Extension, \$81,640,000.
 San Diego, California, Oceanside-Escondido Rail Corridor, \$55,000,000.
 San Francisco, California, BART Extension to San Fran International Airport, \$100,000,000.
 San Francisco, California, Muni Third Street Light Rail Project, \$10,000,000.
 San Juan, Puerto Rico, Tren Urbano Rapid Transit System, \$44,620,000.
 Santa Clara County, California, Silicon Valley Rapid Transit Corridor Project, \$2,500,000.
 Seattle, Washington, Central Link Initial Segment, \$80,000,000.
 Sound Transit Sounder Commuter Rail, Lakewood to Nisqually, Washington, \$4,000,000.
 South Shore Commuter Rail, Indiana, \$2,500,000.
 St. Louis, Missouri/MetroLink St. Clair Extension, \$60,436.
 Stamford, Connecticut Urban Transitway, Phase 2, \$3,000,000.
 Washington County, Oregon, Wilsonville to Beaverton Commuter Rail Project, \$9,000,000.
 Washington, DC/Largo Extension, Maryland, \$76,770,615.

JOB ACCESS AND REVERSE COMMUTE GRANTS

For necessary expenses to carry out section 3037 of the Federal Transit Act of 1998, \$15,625,000, to remain available until

expended: *Provided*, That no more than \$125,000,000 of budget authority shall be available for these purposes: *Provided further*, That up to \$300,000 of the funds provided under this heading may be used by the Federal Transit Administration for technical assistance and support and performance reviews of the Job Access and Reverse Commute Grants program.

GENERAL PROVISIONS—FEDERAL TRANSIT ADMINISTRATION

SEC. 160. The limitations on obligations for the programs of the Federal Transit Administration shall not apply to any authority under 49 U.S.C. 5338, previously made available for obligation, or to any other authority previously made available for obligation. 49 USC 5338 note.

SEC. 161. Notwithstanding any other provision of law, and except for fixed guideway modernization projects, funds made available by this Act under “Federal Transit Administration, Capital investment grants” for projects specified in this Act or identified in reports accompanying this Act not obligated by September 30, 2007, and other recoveries, shall be made available for other projects under 49 U.S.C. 5309.

SEC. 162. Notwithstanding any other provision of law, any funds appropriated before October 1, 2004, under any section of chapter 53 of title 49, United States Code, that remain available for expenditure may be transferred to and administered under the most recent appropriation heading for any such section.

SEC. 163. None of the funds in this Act shall be available to any Federal transit grantee after February 1, 2004, involved directly or indirectly, in any activity that promotes the legalization or medical use of any substance listed in schedule I of section 202 of the Controlled Substances Act (21 U.S.C. 812 et seq.).

SEC. 164. From unobligated balances in the Federal Transit Administration’s Discretionary Grants account, not to exceed \$72,792,311 shall be transferred as follows: to the Federal Transit Administration’s Formula Grants account, not to exceed \$42,190,828; and to the Interstate Transfer Grants—Transit account, not to exceed \$30,601,483: *Provided*, That these unobligated balances are used, together with Formula Grant funds that are available for reapportionment in such account, to restore obligation authority reduced due to a prior deficiency.

SEC. 165. Funds made available for Alaska or Hawaii ferry boats or ferry terminal facilities pursuant to 49 U.S.C. 5309(m)(2)(B) may be used to construct new vessels and facilities, or to improve existing vessels and facilities, including both the passenger and vehicle-related elements of such vessels and facilities, and for repair facilities: *Provided*, That not more than \$3,000,000 of the funds made available pursuant to 49 U.S.C. 5309(m)(2)(B) may be used by the State of Hawaii to initiate and operate a passenger ferryboat services demonstration project to test the viability of different intra-island and inter-island ferry boat routes and technology: *Provided further*, That notwithstanding 49 U.S.C. 5302(a)(7), funds made available for Alaska or Hawaii ferry boats may be used to acquire passenger ferry boats and to provide passenger ferry transportation services within areas of the State of Hawaii under the control or use of the National Park Service.

SEC. 166. Notwithstanding any other provision of law, unobligated funds made available for a new fixed guideway systems projects under the heading “Federal Transit Administration, Capital Investment Grants” in any appropriations act prior to this Act

	may be used during this fiscal year to satisfy expenses incurred for such projects.
49 USC 5307 note.	SEC. 167. The Secretary shall continue the pilot program authorized under section 166 of the Consolidated Appropriations Act, 2004, Public Law 108-199; 118 Stat. 309, for cooperative procurement of major capital equipment under sections 5307, 5309, and 5311. The program shall be administered as required under subsections (b) through (g) of section 166, except that there shall be five pilot projects: <i>Provided</i> , That the Secretary shall evaluate all proposals based on selection criteria set forth in the announcement of the program and request for proposals (Federal Register Notice—Vol. 69, No. 120, Page 35127, June 23, 2004). All proposed projects shall be evaluated and the proposing party shall receive notification of acceptance or denial by no later than 90 days after the Secretary receives a request for review of a proposed project: <i>Provided further</i> , That not later than 30 days after delivery of the base order under each of the five pilot projects, the Secretary shall submit to the House and Senate Committees on Appropriations a report on the results of that pilot project. Each report shall evaluate any savings realized through the cooperative procurement and the benefits of incorporating cooperative procurement, as shown by that project, into the mass transit program as a whole.
Notification. Deadline.	
Deadline. Reports.	
	SEC. 168. Amounts made available under chapter 53 of title 49, United States Code, and section 1108 of Public Law 102-240 to the Port Authority of Allegheny County for the Airport Busway/Wabash HOV Facility project that remain unexpended may be used by the Port Authority for the purchase of buses and bus-related equipment in accordance with 49 U.S.C. 5309.
	SEC. 169. Notwithstanding any other provision of law, any unobligated funds made available under the bus category of the Capital Investment Account in prior fiscal year Appropriations Act for the Greater New Haven Transit District Fuel Cell and Electric Bus project or CNG/alternative fuel vehicle project shall be transferred to and administered under the Transit Planning and Research account, subject to such terms and conditions as the Secretary deems appropriate.
	SEC. 170. Notwithstanding any other provision of law, any unobligated funds made available to the Matanuska Susitna Borough under “Federal Transit Administration, Buses and Bus Facilities” shall be available for expenditure on ferry boat and ferry facilities and related expenses as part of the Port MacKenzie Intermodal Facility project.
	SEC. 171. Notwithstanding any other provision of law, \$8,900,000 of the funds made available under the new fixed guideway systems category of the Capital Investment Grants account in Public Law 107-87 for the “Honolulu, Hawaii, bus rapid transit project” shall be made available to the city and county of Honolulu for replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under 49 U.S.C. 5309 and shall remain available to the city and county of Honolulu for those purposes until expended: <i>Provided</i> , That any remaining unobligated balance from said project in Public Law 107-87 shall be transferred for any eligible activity under title 23, United States Code, and administered under that title, for use on improvements to the Kapolei Interchange Complex and shall remain available until expended: <i>Provided further</i> , That funds

made available in Public Law 108-10 for “Hawaii: BRT Systems, Appurtenances and Facilities” shall be generally available for bus and bus facilities by the city and county of Honolulu.

SEC. 172. Notwithstanding any other provision of law, the Navy may receive funds from the State of Hawaii for the procurement of passenger ferry boats to provide passenger ferry transportation services for the Arizona War Memorial.

SEC. 173. The Federal Transit Administration is directed to comply with section 3042 of the Federal Transit Act of 1998 (Public Law 105-178, as amended; 112 Stat. 338) and is further directed to comply with the associated Committee report language contained in House Report 108-401, accompanying H.R. 2673, pages 997-998.

Compliance.

SEC. 174. Hereafter, notwithstanding any other provision of law, for the purpose of calculating the non-New Starts share of the total project cost of both phases of San Francisco Muni’s Third Street Light Rail Transit project, the Secretary of Transportation shall include all non-New Starts contributions made towards Phase 1 of the two-phase project for engineering, final design and construction, and also shall allow non-New Starts funds expended on one element or phase of the project to be used to meet the non-New Starts share requirement of any element or phase of the project: *Provided further*, That none of the funds provided in this Act for the San Francisco Muni Third Street Light Rail Transit Project shall be obligated if the Federal Transit Administration determines that the project is found to be “not recommended” after evaluation and computation of revised transportation system user benefit data.

SEC. 175. Funds made available for the Burlington-Bennington, Vermont Commuter Rail project in Public Law 106-346, the Burlington-Middlebury, Vermont Commuter Rail project and Vermont Transportation Authority Rolling Stock in Public Law 108-7 that remain unobligated, and funds made available for the Burlington-Essex, Vermont commuter rail project in Public Laws 105-277 and 105-66 that remain unexpended shall be transferred to the Federal Railroad Administration and made available to upgrade and improve the publicly-owned Vermont Rail Infrastructure from Bennington to Burlington with a northern terminus in Essex Junction: *Provided*, That the Federal share shall be 80 percent of the total cost of the project and funds shall remain available until expended.

SEC. 176. Notwithstanding any other provision of law, any unobligated funds designated to the Oklahoma Transit Association on pages 1305 through 1307 of the Joint Explanatory Statement of the Committee of Conference for Public Law 108-7 may be made available to the Metropolitan Tulsa Transit Authority and the Central Oklahoma Transportation and Parking Authority for any project or activity authorized under section 3037 of Public Law 105-178 upon receipt of an application.

SEC. 177. Notwithstanding 49 U.S.C. 5336, any funds remaining available under Federal Transit Administration grant numbers NY-03-345-00, NY-03-0325-00, NY-03-0405, NY-90-X398-00, NY-90-X373-00, NY-90-X418-00, NY-90-X465-00 together with an amount not to exceed \$19,200,000 in urbanized area formula funds that were allocated by the New York Metropolitan Transportation Council to the New York City Department of Transportation as a designated recipient under 49 U.S.C. 5307 may be made available to the New York Metropolitan Transportation Authority for eligible

capital projects authorized under 49 U.S.C. 5307 and 5309 subject to the agreements, obligations, and responsibilities as set forth in the contracts of assistance applicable to these grants.

SEC. 178. Hereafter, fixed guideway extensions and new segments included in Metropolitan Transit Authority of Harris County, Texas, resolutions 2003-77 and 2003-93, and approved by the voters on November 4, 2003, shall be considered as the preferred alternatives for purposes of 49 U.S.C. 5390(e)(1)(A), 23 CFR 771.123, and 49 CFR 611.7.

SEC. 179. Of the funds made available under the heading "Federal Transit Administration—Discretionary Grants" in Public Laws 102-388 and 103-122 for the Hawthorne-Warwick Commuter Rail Project, \$4,000,000 shall be available for the Scranton, Pennsylvania, NY City Rail Service Fixed Guideway Project to be carried out in accordance with 49 U.S.C. 5309, \$1,100,000 shall be made available to study the feasibility of utilizing diesel multiple unit rolling stock on MOS-3 of the Hudson Bergen Light Rail Transit System to be carried out in accordance with 49 U.S.C. 5309, and \$6,000,000 shall be transferred to the Federal Railroad Administration and made available for the New York and Susquehanna and Western Rail Road Diesel Multiple Unit Compliance and Demonstration Project to be carried out under terms and conditions as determined by the Secretary: *Provided*, That the Federal share shall be 80 percent of the net project cost of that demonstration project and funds for that project shall remain available until expended.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation's budget for the current fiscal year.

OPERATIONS AND MAINTENANCE

(HARBOR MAINTENANCE TRUST FUND)

For necessary expenses for operations and maintenance of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation, \$15,900,000, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99-662: *Provided*, That, of this amount, \$1,500,000 shall be for the concrete replacement project and related expenses at the Eisenhower and Snell Locks.

MARITIME ADMINISTRATION

MARITIME SECURITY PROGRAM

For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, \$98,700,000, to remain available until expended.

OPERATIONS AND TRAINING

For necessary expenses of operations and training activities authorized by law, \$109,478,000, of which \$23,753,000 shall remain available until September 30, 2005, for salaries and benefits of employees of the United States Merchant Marine Academy; of which \$13,138,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; and of which \$8,090,000 shall remain available until expended for the State Maritime Schools Schoolship Maintenance and Repair.

SHIP DISPOSAL

For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, \$21,616,000, to remain available until expended.

MARITIME GUARANTEED LOAN (TITLE XI) PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For administrative expenses to carry out the guaranteed loan program, not to exceed \$4,764,000, which shall be transferred to and merged with the appropriation for Operations and Training: *Provided*, That of the \$25,000,000 authorized for the cost of guaranteed loans in chapter 10 of Public Law 108–11, Making Emergency Wartime Supplemental Appropriations for the Fiscal Year 2003, and for Other Purposes, available until September 30, 2005, and pursuant to the Department of Transportation Inspector General report CR–2004–095 certifying that the recommendations of report CR–2003–031 have been implemented to the Inspector General’s satisfaction, up to \$2,000,000 shall be used by the Department of Transportation to develop a comprehensive computer based financial monitoring system.

NATIONAL DEFENSE TANK VESSEL CONSTRUCTION PROGRAM

For necessary expenses to carry out the program of financial assistance for the construction of new product tank vessels as authorized by section 53101 of title 46, United States Code, as amended, \$75,000,000, to remain available until expended.

SHIP CONSTRUCTION

(RESCISSION)

Of the unobligated balances available under this heading, \$1,979,000 are rescinded.

GENERAL PROVISIONS—MARITIME ADMINISTRATION

SEC. 180. Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control of the Maritime Administration, and payments received therefore shall be credited to the appropriation charged with the cost thereof: *Provided*, That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts.

SEC. 181. No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936, or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior appropriations Act.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RESEARCH AND SPECIAL PROGRAMS

For expenses necessary to discharge the functions of the Research and Special Programs Administration, \$47,115,000, of which \$645,000 shall be derived from the Pipeline Safety Fund, and of which \$3,425,000 shall remain available until September 30, 2007: *Provided*, That up to \$1,200,000 in fees collected under 49 U.S.C. 5108(g) shall be deposited in the general fund of the Treasury as offsetting receipts: *Provided further*, That there may be credited to this appropriation, to be available until expended, funds received from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training, for reports publication and dissemination, and for travel expenses incurred in performance of hazardous materials exemptions and approvals functions.

PIPELINE SAFETY

(PIPELINE SAFETY FUND)

(OIL SPILL LIABILITY TRUST FUND)

For expenses necessary to conduct the functions of the pipeline safety program, for grants-in-aid to carry out a pipeline safety program, as authorized by 49 U.S.C. 60107, and to discharge the pipeline program responsibilities of the Oil Pollution Act of 1990, \$69,769,000, of which \$15,000,000 shall be derived from the Oil Spill Liability Trust Fund and shall remain available until September 30, 2007; of which \$54,769,000 shall be derived from the Pipeline Safety Fund, of which \$23,105,000 shall remain available until September 30, 2007: *Provided further*, That not less than \$1,000,000 of the funds provided under this heading shall be for the one-call State grant program.

EMERGENCY PREPAREDNESS GRANTS

(EMERGENCY PREPAREDNESS FUND)

For necessary expenses to carry out 49 U.S.C. 5127(c), \$200,000, to be derived from the Emergency Preparedness Fund, to remain available until September 30, 2006: *Provided*, That not more than \$14,300,000 shall be made available for obligation in fiscal year 2005 from amounts made available by 49 U.S.C. 5116(i) and 5127(d): *Provided further*, That none of the funds made available by 49 U.S.C. 5116(i), 5127(c), and 5127(d) shall be made available for obligation by individuals other than the Secretary of Transportation, or his designee.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General to carry out the provisions of the Inspector General Act of 1978, as amended, \$59,000,000: *Provided*, That the Inspector General shall have all necessary authority, in carrying out the duties specified in the Inspector General Act, as amended (5 U.S.C. App. 3) to investigate allegations of fraud, including false statements to the government (18 U.S.C. 1001), by any person or entity that is subject to regulation by the Department: *Provided further*, That the funds made available under this heading shall be used to investigate, pursuant to section 41712 of title 49, United States Code: (1) unfair or deceptive practices and unfair methods of competition by domestic and foreign air carriers and ticket agents; and (2) the compliance of domestic and foreign air carriers with respect to item (1) of this proviso.

SURFACE TRANSPORTATION BOARD

SALARIES AND EXPENSES

For necessary expenses of the Surface Transportation Board, including services authorized by 5 U.S.C. 3109, \$21,250,000: *Provided*, That notwithstanding any other provision of law, not to exceed \$1,050,000 from fees established by the Chairman of the Surface Transportation Board shall be credited to this appropriation as offsetting collections and used for necessary and authorized expenses under this heading: *Provided further*, That the sum herein appropriated from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2005, to result in a final appropriation from the general fund estimated at no more than \$20,200,000.

GENERAL PROVISIONS—DEPARTMENT OF TRANSPORTATION

(INCLUDING TRANSFERS OF FUNDS)

SEC. 185. During the current fiscal year applicable appropriations to the Department of Transportation shall be available for maintenance and operation of aircraft; hire of passenger motor vehicles and aircraft; purchase of liability insurance for motor vehicles operating in foreign countries on official department business; and uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901–5902).

SEC. 186. Appropriations contained in this Act for the Department of Transportation shall be available for services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for an Executive Level IV.

SEC. 187. None of the funds in this Act shall be available for salaries and expenses of more than 106 political and Presidential appointees in the Department of Transportation: *Provided*, That none of the personnel covered by this provision may be assigned on temporary detail outside the Department of Transportation.

SEC. 188. None of the funds in this Act shall be used to implement section 404 of title 23, United States Code.

SEC. 189. (a) No recipient of funds made available in this Act shall disseminate personal information (as defined in 18 U.S.C.

2725(3)) obtained by a State department of motor vehicles in connection with a motor vehicle record as defined in 18 U.S.C. 2725(1), except as provided in 18 U.S.C. 2721 for a use permitted under 18 U.S.C. 2721.

(b) Notwithstanding subsection (a), the Secretary shall not withhold funds provided in this Act for any grantee if a State is in noncompliance with this provision.

SEC. 190. Funds received by the Federal Highway Administration, Federal Transit Administration, and Federal Railroad Administration from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training may be credited respectively to the Federal Highway Administration's "Federal-Aid Highways" account, the Federal Transit Administration's "Transit Planning and Research" account, and to the Federal Railroad Administration's "Safety and Operations" account, except for State rail safety inspectors participating in training pursuant to 49 U.S.C. 20105.

SEC. 191. Notwithstanding any other provisions of law, rule or regulation, the Secretary of Transportation is authorized to allow the issuer of any preferred stock heretofore sold to the Department to redeem or repurchase such stock upon the payment to the Department of an amount determined by the Secretary.

SEC. 192. None of the funds in this Act to the Department of Transportation may be used to make a grant unless the Secretary of Transportation notifies the House and Senate Committees on Appropriations not less than 3 full business days before any discretionary grant award, letter of intent, or full funding grant agreement totaling \$1,000,000 or more is announced by the department or its modal administrations from: (1) any discretionary grant program of the Federal Highway Administration other than the emergency relief program; (2) the airport improvement program of the Federal Aviation Administration; or (3) any program of the Federal Transit Administration other than the formula grants and fixed guideway modernization programs: *Provided*, That no notification shall involve funds that are not available for obligation.

SEC. 193. Rebates, refunds, incentive payments, minor fees and other funds received by the Department of Transportation from travel management centers, charge card programs, the subleasing of building space, and miscellaneous sources are to be credited to appropriations of the Department of Transportation and allocated to elements of the Department of Transportation using fair and equitable criteria and such funds shall be available until expended.

SEC. 194. Amounts made available in this or any other Act that the Secretary determines represent improper payments by the Department of Transportation to a third party contractor under a financial assistance award, which are recovered pursuant to law, shall be available—

(1) to reimburse the actual expenses incurred by the Department of Transportation in recovering improper payments; and

(2) to pay contractors for services provided in recovering improper payments: *Provided*, That amounts in excess of that required for paragraphs (1) and (2)—

(A) shall be credited to and merged with the appropriation from which the improper payments were made, and

shall be available for the purposes and period for which such appropriations are available; or

(B) if no such appropriation remains available, shall be deposited in the Treasury as miscellaneous receipts: *Provided*, That prior to the transfer of any such recovery to an appropriations account, the Secretary shall notify the House and Senate Committees on Appropriations of the amount and reasons for such transfer: *Provided further*, That for purposes of this section, the term “improper payments”, has the same meaning as that provided in section 2(d)(2) of Public Law 107-300.

SEC. 195. The Secretary of Transportation is authorized to transfer the unexpended balances available for the bonding assistance program from “Office of the Secretary, Salaries and expenses” to “Minority Business Outreach”.

SEC. 196. None of the funds made available in this Act to the Department of Transportation may be obligated for the Office of the Secretary of Transportation to approve assessments or reimbursable agreements pertaining to funds appropriated to the modal administrations in this Act, except for activities underway on the date of enactment of this Act, unless such assessments or agreements have completed the normal reprogramming process for Congressional notification.

SEC. 197. Funds provided in this Act for the Working Capital Fund shall be reduced by \$20,844,000, which limits fiscal year 2005 Working Capital Fund obligational authority for elements of the Department of Transportation funded in this Act to no more than \$130,210,000: *Provided*, That such reductions from the budget request shall be allocated by the Department of Transportation to each appropriations account in proportion to the amount included in each account for the Working Capital Fund.

SEC. 198. For the purpose of any applicable law, for fiscal years 2004 and 2005, the city of Norman, Oklahoma, shall be considered to be part of the Oklahoma City urbanized area.

SEC. 199. Section 41716(b) of title 49, United States Code, is amended by adding before the period at the end the following: “; except that the Secretary may grant not to exceed 4 additional slot exemptions at LaGuardia Airport to an incumbent air carrier operating at least 20 but not more than 28 slots at such airport as of October 1, 2004, to provide air transportation between LaGuardia Airport and a small hub airport or nonhub airport”.

TITLE II

DEPARTMENT OF THE TREASURY

DEPARTMENTAL OFFICES

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Departmental Offices including operation and maintenance of the Treasury Building and Annex; hire of passenger motor vehicles; maintenance, repairs, and improvements of, and purchase of commercial insurance policies for, real properties leased or owned overseas, when necessary for the performance of official business, \$157,559,000, of which not

to exceed \$7,274,000 for executive direction program activities; not to exceed \$7,200,000 for general counsel program activities; not to exceed \$31,657,000 for economic policies and programs activities; not to exceed \$26,072,000 for financial policies and programs activities; not to exceed \$10,633,000 for terrorism and financial intelligence policies and programs activities; not to exceed \$16,760,000 for Treasury-wide management policies and programs activities; not to exceed \$57,963,000 for administration programs activities: *Provided*, That the Secretary of the Treasury is authorized to transfer funds appropriated for any program activity of the Departmental Offices to any other program activity of the Departmental Offices upon notification to the House and Senate Committees on Appropriations: *Provided further*, That no appropriation for any program activity shall be increased or decreased by more than 2.5 percent by all such transfers: *Provided further*, That any change in funding greater than 2.5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further*, That the funds identified within the administration program activity to support the Office of Foreign Assets Control shall be transferred to “Office of Foreign Assets Control”: *Provided further*, That this transfer authority shall be in addition to any other provided in this Act: *Provided further*, That of the amount appropriated under this heading, not to exceed \$3,000,000, to remain available until September 30, 2006, for information technology modernization requirements; not to exceed \$100,000 for official reception and representation expenses; and not to exceed \$258,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Secretary of the Treasury and to be accounted for solely on his certificate: *Provided further*, That of the amount appropriated under this heading, \$3,393,000, to remain available until September 30, 2006, is for the Treasury-wide Financial Statement Audit Program, of which such amounts as may be necessary may be transferred to accounts of the Department’s offices and bureaus to conduct audits: *Provided further*, That this transfer authority shall be in addition to any other provided in this Act.

OFFICE OF FOREIGN ASSETS CONTROL

SALARIES AND EXPENSES

For necessary expenses of the Office of Foreign Assets Control, \$22,291,000: *Provided*, That the funding available shall support no less than 138 full time equivalent positions.

DEPARTMENT-WIDE SYSTEMS AND CAPITAL INVESTMENTS PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For development and acquisition of automatic data processing equipment, software, and services for the Department of the Treasury, \$32,260,000, to remain available until September 30, 2007: *Provided*, That these funds shall be transferred to accounts and in amounts as necessary to satisfy the requirements of the Department’s offices, bureaus, and other organizations: *Provided further*, That this transfer authority shall be in addition to any other transfer authority provided in this Act: *Provided further*, That none of the funds appropriated shall be used to support

or supplement “Internal Revenue Service, Information Systems” or “Internal Revenue Service, Business Systems Modernization”.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, not to exceed \$2,000,000 for official travel expenses, including hire of passenger motor vehicles; and not to exceed \$100,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General of the Treasury, \$16,500,000, of which not to exceed \$2,500 shall be available for official reception and representation expenses.

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Treasury Inspector General for Tax Administration in carrying out the Inspector General Act of 1978, as amended, including purchase (not to exceed 150 for replacement only for police-type use) and hire of passenger motor vehicles (31 U.S.C. 1343(b)); services authorized by 5 U.S.C. 3109, at such rates as may be determined by the Inspector General for Tax Administration; not to exceed \$6,000,000 for official travel expenses; and not to exceed \$500,000 for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General for Tax Administration, \$129,126,000; and of which not to exceed \$1,500 shall be available for official reception and representation expenses.

AIR TRANSPORTATION STABILIZATION PROGRAM ACCOUNT

For necessary expenses to administer the Air Transportation Stabilization Board established by section 102 of the Air Transportation Safety and System Stabilization Act (Public Law 107–42), \$2,000,000, to remain available until expended.

TREASURY BUILDING AND ANNEX REPAIR AND RESTORATION

For the repair, alteration, and improvement of the Treasury Building and Annex, \$12,316,000, to remain available until September 30, 2007.

EXPANDED ACCESS TO FINANCIAL SERVICES

(RESCISSION)

Of the unobligated balances available under this heading, \$4,000,000 are rescinded.

VIOLENT CRIME REDUCTION PROGRAM

(RESCISSION)

Of the unobligated balances available under this heading, \$1,200,000 are rescinded.

FINANCIAL CRIMES ENFORCEMENT NETWORK

SALARIES AND EXPENSES

For necessary expenses of the Financial Crimes Enforcement Network, including hire of passenger motor vehicles; travel expenses of non-Federal law enforcement personnel to attend meetings concerned with financial intelligence activities, law enforcement, and financial regulation; not to exceed \$14,000 for official reception and representation expenses; and for assistance to Federal law enforcement agencies, with or without reimbursement, \$72,502,000, of which \$7,500,000 shall be available for BSA Direct; of which not to exceed \$7,000,000 shall remain available until September 30, 2007; and of which \$8,354,000 shall remain available until September 30, 2006: *Provided*, That funds appropriated in this account may be used to procure personal services contracts: *Provided further*, That up to \$350,000 of the funds under this heading may be available for planning, sponsoring, administering, receiving, and such other expenses as the Director deems necessary, including reception and representation expenses, to host the 2005 Annual Plenary of the Egmont Group.

FINANCIAL MANAGEMENT SERVICE

SALARIES AND EXPENSES

For necessary expenses of the Financial Management Service, \$230,930,000, of which not to exceed \$9,220,000 shall remain available until September 30, 2007, for information systems modernization initiatives; and of which not to exceed \$2,500 shall be available for official reception and representation expenses.

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

SALARIES AND EXPENSES

For necessary expenses of carrying out section 1111 of the Homeland Security Act of 2002, including hire of passenger motor vehicles, \$83,000,000; of which not to exceed \$6,000 for official reception and representation expenses; not to exceed \$50,000 for cooperative research and development programs for laboratory services; and provision of laboratory assistance to State and local agencies with or without reimbursement.

UNITED STATES MINT

UNITED STATES MINT PUBLIC ENTERPRISE FUND

Pursuant to section 5136 of title 31, United States Code, the United States Mint is provided funding through the United States Mint Public Enterprise Fund for costs associated with the production of circulating coins, numismatic coins, and protective services, including both operating expenses and capital investments. The aggregate amount of new liabilities and obligations incurred during fiscal year 2005 under such section 5136 for circulating coinage and protective service capital investments of the United States Mint shall not exceed \$24,000,000.

BUREAU OF THE PUBLIC DEBT
ADMINISTERING THE PUBLIC DEBT

For necessary expenses connected with any public-debt issues of the United States, \$179,566,000, of which not to exceed \$2,500 shall be available for official reception and representation expenses, and of which not to exceed \$2,000,000 shall remain available until expended for systems modernization: *Provided*, That the sum appropriated herein from the General Fund for fiscal year 2005 shall be reduced by not more than \$4,400,000 as definitive security issue fees and Treasury Direct Investor Account Maintenance fees are collected, so as to result in a final fiscal year 2005 appropriation from the general fund estimated at \$175,166,000. In addition, \$60,000 to be derived from the Oil Spill Liability Trust Fund to reimburse the Bureau for administrative and personnel expenses for financial management of the Fund, as authorized by section 1012 of Public Law 101-380.

INTERNAL REVENUE SERVICE
PROCESSING, ASSISTANCE, AND MANAGEMENT

For necessary expenses of the Internal Revenue Service for pre-filing taxpayer assistance and education, filing and account services, shared services support, general management and administration; and services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, \$4,089,574,000, of which up to \$4,100,000 shall be for the Tax Counseling for the Elderly Program, of which \$8,000,000 shall be available for low-income taxpayer clinic grants, and of which not to exceed \$25,000 shall be for official reception and representation expenses.

TAX LAW ENFORCEMENT
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Internal Revenue Service for determining and establishing tax liabilities; providing litigation support; conducting criminal investigation and enforcement activities; securing unfiled tax returns; collecting unpaid accounts; conducting a document matching program; resolving taxpayer problems through prompt identification, referral and settlement; expanded customer service and public outreach programs, strengthened enforcement activities, and enhanced research efforts to reduce erroneous filings associated with the earned income tax credit; compiling statistics of income and conducting compliance research; purchase (for police-type use, not to exceed 850) and hire of passenger motor vehicles (31 U.S.C. 1343(b)); and services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, \$4,398,729,000, of which not to exceed \$1,000,000 shall remain available until September 30, 2007, for research: *Provided*, That up to \$10,000,000 may be transferred as necessary from this account to the IRS Processing, Assistance, and Management appropriation or the IRS Information Systems appropriation solely for the purposes of management of the Earned Income Tax Credit compliance program and to reimburse the Social Security Administration for the cost of implementing section 1090

of the Taxpayer Relief Act of 1997 (Public Law 105–33): *Provided further*, That this transfer authority shall be in addition to any other transfer authority provided in this Act.

INFORMATION SYSTEMS

For necessary expenses of the Internal Revenue Service for information systems and telecommunications support, including developmental information systems and operational information systems; the hire of passenger motor vehicles (31 U.S.C. 1343(b)); and services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, \$1,590,492,000, of which \$200,000,000 shall remain available until September 30, 2006.

BUSINESS SYSTEMS MODERNIZATION

For necessary expenses of the Internal Revenue Service, \$205,000,000, to remain available until September 30, 2007, for the capital asset acquisition of information technology systems, including management and related contractual costs of said acquisitions, including contractual costs associated with operations authorized by 5 U.S.C. 3109: *Provided*, That none of these funds may be obligated until the Internal Revenue Service submits to the Committees on Appropriations, and such Committees approve, a plan for expenditure that: (1) meets the capital planning and investment control review requirements established by the Office of Management and Budget, including Circular A–11 part 3; (2) complies with the Internal Revenue Service's enterprise architecture, including the modernization blueprint; (3) conforms with the Internal Revenue Service's enterprise life cycle methodology; (4) is approved by the Internal Revenue Service, the Department of the Treasury, and the Office of Management and Budget; (5) has been reviewed by the Government Accountability Office; and (6) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government.

HEALTH INSURANCE TAX CREDIT ADMINISTRATION

For expenses necessary to implement the health insurance tax credit included in the Trade Act of 2002 (Public Law 107–210), \$34,841,000.

GENERAL PROVISIONS—INTERNAL REVENUE SERVICE

SEC. 201. Not to exceed 5 percent of any appropriation made available in this Act to the Internal Revenue Service or not to exceed 3 percent of appropriations under the heading “Tax Law Enforcement” may be transferred to any other Internal Revenue Service appropriation upon the advance approval of the Committees on Appropriations.

26 USC 7804
note.

SEC. 202. The Internal Revenue Service shall maintain a training program to ensure that Internal Revenue Service employees are trained in taxpayers' rights, in dealing courteously with the taxpayers, and in cross-cultural relations.

26 USC 6103
note.

SEC. 203. The Internal Revenue Service shall institute and enforce policies and procedures that will safeguard the confidentiality of taxpayer information.

SEC. 204. Funds made available by this or any other Act to the Internal Revenue Service shall be available for improved facilities and increased manpower to provide sufficient and effective 1-800 help line service for taxpayers. The Commissioner shall continue to make the improvement of the Internal Revenue Service 1-800 help line service a priority and allocate resources necessary to increase phone lines and staff to improve the Internal Revenue Service 1-800 help line service.

GENERAL PROVISIONS—DEPARTMENT OF THE TREASURY

SEC. 210. Appropriations to the Department of the Treasury in this Act shall be available for uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901), including maintenance, repairs, and cleaning; purchase of insurance for official motor vehicles operated in foreign countries; purchase of motor vehicles without regard to the general purchase price limitations for vehicles purchased and used overseas for the current fiscal year; entering into contracts with the Department of State for the furnishing of health and medical services to employees and their dependents serving in foreign countries; and services authorized by 5 U.S.C. 3109.

SEC. 211. Not to exceed 2 percent of any appropriations in this Act made available to the Departmental Offices—Salaries and Expenses, Office of Inspector General, Financial Management Service, Alcohol and Tobacco Tax and Trade Bureau, Financial Crimes Enforcement Network, and Bureau of the Public Debt, may be transferred between such appropriations upon the advance approval of the Committees on Appropriations: *Provided*, That no transfer may increase or decrease any such appropriation by more than 2 percent.

SEC. 212. Not to exceed 2 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to the Treasury Inspector General for Tax Administration's appropriation upon the advance approval of the Committees on Appropriations: *Provided*, That no transfer may increase or decrease any such appropriation by more than 2 percent.

SEC. 213. Of the funds available for the purchase of law enforcement vehicles, no funds may be obligated until the Secretary of the Treasury certifies that the purchase by the respective Treasury bureau is consistent with Departmental vehicle management principles: *Provided*, That the Secretary may delegate this authority to the Assistant Secretary for Management.

SEC. 214. None of the funds appropriated in this Act or otherwise available to the Department of the Treasury or the Bureau of Engraving and Printing may be used to redesign the \$1 Federal Reserve note.

SEC. 215. The Secretary of the Treasury may transfer funds from "Financial management service, salaries and expenses" to "Debt services" as necessary to cover the costs of debt collection: *Provided*, That such amounts shall be reimbursed to such salaries and expenses account from debt collections received in the Debt Services Account.

SEC. 216. Section 122(g)(1) of Public Law 105-119 (5 U.S.C. 3104 note), is further amended by striking "6 years" and inserting "7 years".

SEC. 217. None of the funds appropriated or otherwise made available by this or any other Act may be used by the United States Mint to construct or operate any museum without the explicit approval of the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs.

SEC. 218. None of the funds appropriated or otherwise made available by this or any other Act or source to the Department of the Treasury, the Bureau of Engraving and Printing, and the United States Mint, individually or collectively, may be used to consolidate any or all functions of the Bureau of Engraving and Printing and the United States Mint without the explicit approval of the House Committee on Financial Services; the Senate Committee on Banking, Housing, and Urban Affairs; the House Committee on Appropriations; and the Senate Committee on Appropriations.

31 USC 501 note.

SEC. 219. Section 101(f) of the Treasury Department Appropriations Act, 1997 (division A of Public Law 104–208), as amended, is further amended by striking “hereby” and “until October 1, 2004,” and inserting “Hereafter” before the phrase “there is established”.

SEC. 220. (a) Section 3333 of title 31, United States Code, is amended as follows:

(1) By revising paragraph (a)(1) to read as follows:

“(a)(1) The Secretary of the Treasury is not liable for a payment made by the Secretary or depositary in due course and without negligence, of—

“(A) a check, draft, or warrant drawn on the Treasury or the depositary;

“(B) an electronic payment issued by the Treasury or the depositary; and

“(C) a debt obligation guaranteed or assumed by the United States Government.”;

(2) By inserting after paragraph (a)(2) the following new paragraph:

“(3) The amount of the relief shall be charged to the Check Forgery Insurance Fund (31 U.S.C. 3343). A recovery or repayment of a loss for which replacement is made out of the fund shall be credited to the fund and is available for the purposes for which the fund was established.”.

31 USC 3343
note.

(b) The Check Forgery Insurance Fund (31 U.S.C. 3343) shall be available to fund amounts relating to the payment of items listed in 31 U.S.C. 3333(a)(1), as amended above, prior to the enactment of this Act.

Deadline.
Reports.

SEC. 221. Not later than 60 days after enactment of this Act, the Secretary of the Treasury shall submit to the Committees on Appropriations a report describing how statutory provisions addressing currency manipulation by America’s trading partners contained in, and relating to, title 22 U.S.C. 5304, 5305, and 286y can be better clarified administratively to provide for improved and more predictable evaluation, and to enable the problem of currency manipulation to be better understood by the American people and the Congress.

SEC. 222. TERRORISM AND FINANCIAL INTELLIGENCE. (a) IN GENERAL.—Subchapter I of chapter 3 of title 31, United States Code, is amended by adding at the end the following:

“§ 313. Terrorism and financial intelligence

“(a) OFFICE OF TERRORISM AND FINANCIAL INTELLIGENCE.—

“(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Terrorism and Financial Intelligence (in this section referred to as ‘OTFI’), which shall be the successor to any such office in existence on the date of enactment of this section.

“(2) LEADERSHIP.—

“(A) UNDERSECRETARY.—There is established within the Department of the Treasury, the Office of the Undersecretary for Terrorism and Financial Crimes, who shall serve as the head of the OTFI, and shall report to the Secretary of the Treasury through the Deputy Secretary of the Treasury. The Office of the Undersecretary for Terrorism and Financial Crimes shall be the successor to the Office of the Undersecretary for Enforcement.

Establishment.

“(B) APPOINTMENT.—The Undersecretary for Terrorism and Financial Crimes shall be appointed by the President, by and with the advice and consent of the Senate.

“(3) ASSISTANT SECRETARY FOR TERRORIST FINANCING.—

“(A) ESTABLISHMENT.—There is established within the OTFI the position of Assistant Secretary for Terrorist Financing.

“(B) APPOINTMENT.—The Assistant Secretary for Terrorist Financing shall be appointed by the President, by and with the advice and consent of the Senate.

“(C) DUTIES.—The Assistant Secretary for Terrorist Financing shall be responsible for formulating and coordinating the counter terrorist financing and anti-money laundering efforts of the Department of the Treasury, and shall report directly to the Undersecretary for Terrorism and Financial Crimes.

“(4) FUNCTIONS.—The functions of the OTFI include providing policy, strategic, and operational direction to the Department on issues relating to—

“(A) implementation of titles I and II of the Bank Secrecy Act;

“(B) United States economic sanctions programs;

“(C) combating terrorist financing;

“(D) combating financial crimes, including money laundering, counterfeiting, and other offenses threatening the integrity of the banking and financial systems;

“(E) other enforcement matters;

“(F) those intelligence analysis and coordination functions described in subsection (b); and

“(G) the security functions and programs of the Department of the Treasury.

“(5) REPORTS TO CONGRESS ON PROPOSED MEASURES.—The Undersecretary for Terrorism and Financial Crimes and the Assistant Secretary for Terrorist Financing shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 72 hours after proposing by rule, regulation, order, or otherwise, any measure to reorganize the structure of the Department for combatting money laundering and terrorist financing, before any such proposal becomes effective.

“(6) OTHER OFFICES WITHIN OTFI.—Notwithstanding any other provision of law, the following offices of the Department of the Treasury shall be within the OTFI:

“(A) The Office of the Assistant Secretary for Intelligence and Analysis, which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

“(B) The Office of the Assistant Secretary for Terrorist Financing, which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

“(C) The Office of Foreign Assets Control (in this section referred to as the ‘OFAC’), which shall report directly to the Undersecretary for Terrorism and Financial Crimes.

“(D) The Executive Office for Asset Forfeiture, which shall report to the Undersecretary for Terrorism and Financial Crimes.

“(E) The Office of Intelligence and Analysis (in this section referred to as the ‘OIA’), which shall report to the Assistant Secretary for Intelligence and Analysis.

“(F) The Office of Terrorist Financing, which shall report to the Assistant Secretary for Terrorist Financing.

“(7) FINCEN.—

“(A) REPORTING TO UNDERSECRETARY.—The Financial Crimes Enforcement Network (in this section referred to as ‘FinCEN’), a bureau of the Department of the Treasury, shall report to the Undersecretary for Terrorism and Financial Crimes. The Undersecretary for Terrorism and Financial Crimes may not redelegate its reporting authority over FinCEN.

Establishment.

“(B) OFFICE OF COMPLIANCE.—There is established within FinCEN, an Office of Compliance.

“(b) OFFICE OF INTELLIGENCE AND ANALYSIS.—

“(1) ASSISTANT SECRETARY FOR INTELLIGENCE AND ANALYSIS.—The Assistant Secretary for Intelligence and Analysis shall head the OIA.

“(2) RESPONSIBILITIES.—The OIA shall be responsible for the receipt, analysis, collation, and dissemination of intelligence and counterintelligence information related to the operations and responsibilities of the entire Department of the Treasury, including all components and bureaus of the Department.

“(3) PRIMARY FUNCTIONS.—The primary functions of the OIA are—

“(A) to build a robust analytical capability on terrorist finance by coordinating and overseeing work involving intelligence analysts in all components of the Department of the Treasury, focusing on the highest priorities of the Department, as well as ensuring that the existing intelligence needs of the OFAC and FinCEN are met; and

“(B) to provide intelligence support to senior officials of the Department on a wide range of international economic and other relevant issues.

“(4) OTHER FUNCTIONS AND DUTIES.—The OIA shall—

“(A) carry out the intelligence support functions that are assigned, to the Office of Intelligence Support under section 311 (pursuant to section 105 of the Intelligence Authorization Act for Fiscal Year 2004);

“(B) serve in a liaison capacity with the intelligence community; and

“(C) represent the Department in various intelligence related activities.

“(5) DUTIES OF THE ASSISTANT SECRETARY.—The Assistant Secretary for Intelligence and Analysis shall serve as the Senior Officer Intelligence Community, and shall represent the Department in intelligence community fora, including the National Foreign Intelligence Board committees and the Intelligence Community Management Staff.

“(c) DELEGATION.—To the extent that any authorities, powers, and responsibilities over enforcement matters delegated to the Undersecretary for Terrorism and Financial Crimes, or the positions of Assistant Secretary for Terrorism and Financial Crimes, Assistant Secretary for Enforcement and Operations, or Deputy Assistant Secretary for Terrorist Financing and Financial Crimes, have not been transferred to the Department of Homeland Security, the Department of Justice, or the Assistant Secretary for Tax Policy (related to the customs revenue functions of the Bureau of Alcohol and Tobacco Tax and Trade), those remaining authorities, powers, and responsibilities are delegated to the Undersecretary for Terrorism and Financial Crimes.

“(d) DESIGNATION AS ENFORCEMENT ORGANIZATION.—The Office of Terrorism and Financial Intelligence (including any components thereof) is designated as a law enforcement organization of the Department of the Treasury for purposes of section 9703 of title 31, United States Code, and other relevant authorities.

“(e) USE OF EXISTING RESOURCES.—The Secretary may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary on the date of enactment of this section in carrying out this section, except as otherwise prohibited by law.

“(f) REFERENCES.—References in this section to the ‘Secretary’, ‘Undersecretary’, ‘Deputy Secretary’, ‘Deputy Assistant Secretary’, ‘Office’, ‘Assistant Secretary’, and ‘Department’ are references to positions and offices of the Department of the Treasury, unless otherwise specified.”

(b) CONFORMING AMENDMENTS.—

(1) TITLE 31.—Section 311 of title 31, United States Code, is amended—

(A) in subsection (a)—

(i) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(ii) by inserting before paragraph (2), as so redesignated, the following:

“(1) be within the Office of Terrorism and Financial Intelligence;” and

(B) in subsection (b), by striking “Enforcement” and inserting “Terrorism and Financial Crimes”.

(2) OTHER OFFICE ABOLISHED.—The Office of the Undersecretary for Enforcement of the Department of the Treasury, established in accordance with section 103 of the Treasury Department Appropriations Act, 1994 (Public Law 103–123) is abolished, and all rights, duties, and responsibilities of that office are transferred on the date of enactment of this Act to the Office of the Undersecretary for Terrorism and Financial Crimes of the Department of the Treasury in accordance with this section and the amendments made by this section, except

31 USC 301 note.

as otherwise specifically provided in this section or the amendments made by this section, or other applicable law.

TITLE III

EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

COMPENSATION OF THE PRESIDENT

3 USC 102 note. For compensation of the President, including an expense allowance at the rate of \$50,000 per annum as authorized by 3 U.S.C. 102, \$450,000: *Provided*, That none of the funds made available for official expenses shall be expended for any other purpose and any unused amount shall revert to the Treasury pursuant to section 1552 of title 31, United States Code.

WHITE HOUSE OFFICE

SALARIES AND EXPENSES

For necessary expenses for the White House as authorized by law, including not to exceed \$3,850,000 for services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 105; subsistence expenses as authorized by 3 U.S.C. 105, which shall be expended and accounted for as provided in that section; hire of passenger motor vehicles, newspapers, periodicals, teletype news service, and travel (not to exceed \$100,000 to be expended and accounted for as provided by 3 U.S.C. 103); and not to exceed \$19,000 for official entertainment expenses, to be available for allocation within the Executive Office of the President, \$62,000,000: *Provided*, That of the funds appropriated under this heading, up to \$9,975,000 shall be available for reimbursements to the White House Communications Agency: *Provided further*, That of the funds appropriated under this heading, \$2,475,000 shall be for the Homeland Security Council.

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

OPERATING EXPENSES

For the care, maintenance, repair and alteration, refurnishing, improvement, heating, and lighting, including electric power and fixtures, of the Executive Residence at the White House and official entertainment expenses of the President, \$12,760,000, to be expended and accounted for as provided by 3 U.S.C. 105, 109, 110, and 112-114.

REIMBURSABLE EXPENSES

For the reimbursable expenses of the Executive Residence at the White House, such sums as may be necessary: *Provided*, That all reimbursable operating expenses of the Executive Residence shall be made in accordance with the provisions of this paragraph: *Provided further*, That, notwithstanding any other provision of law, such amount for reimbursable operating expenses shall be the exclusive authority of the Executive Residence to incur obligations and to receive offsetting collections, for such expenses: *Provided further*, That the Executive Residence shall require each person sponsoring a reimbursable political event to pay in advance an amount equal

to the estimated cost of the event, and all such advance payments shall be credited to this account and remain available until expended: *Provided further*, That the Executive Residence shall require the national committee of the political party of the President to maintain on deposit \$25,000, to be separately accounted for and available for expenses relating to reimbursable political events sponsored by such committee during such fiscal year: *Provided further*, That the Executive Residence shall ensure that a written notice of any amount owed for a reimbursable operating expense under this paragraph is submitted to the person owing such amount within 60 days after such expense is incurred, and that such amount is collected within 30 days after the submission of such notice: *Provided further*, That the Executive Residence shall charge interest and assess penalties and other charges on any such amount that is not reimbursed within such 30 days, in accordance with the interest and penalty provisions applicable to an outstanding debt on a United States Government claim under section 3717 of title 31, United States Code: *Provided further*, That each such amount that is reimbursed, and any accompanying interest and charges, shall be deposited in the Treasury as miscellaneous receipts: *Provided further*, That the Executive Residence shall prepare and submit to the Committees on Appropriations, by not later than 90 days after the end of the fiscal year covered by this Act, a report setting forth the reimbursable operating expenses of the Executive Residence during the preceding fiscal year, including the total amount of such expenses, the amount of such total that consists of reimbursable official and ceremonial events, the amount of such total that consists of reimbursable political events, and the portion of each such amount that has been reimbursed as of the date of the report: *Provided further*, That the Executive Residence shall maintain a system for the tracking of expenses related to reimbursable events within the Executive Residence that includes a standard for the classification of any such expense as political or nonpolitical: *Provided further*, That no provision of this paragraph may be construed to exempt the Executive Residence from any other applicable requirement of subchapter I or II of chapter 37 of title 31, United States Code.

Notice.
Deadline.

Deadline.

Deadline.
Reports.

Procedures.

WHITE HOUSE REPAIR AND RESTORATION

For the repair, alteration, and improvement of the Executive Residence at the White House, \$1,900,000, to remain available until expended, for required maintenance, safety and health issues, and continued preventative maintenance.

COUNCIL OF ECONOMIC ADVISERS

SALARIES AND EXPENSES

For necessary expenses of the Council of Economic Advisers in carrying out its functions under the Employment Act of 1946 (15 U.S.C. 1021), \$4,040,000.

OFFICE OF POLICY DEVELOPMENT

SALARIES AND EXPENSES

For necessary expenses of the Office of Policy Development, including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, \$2,300,000.

NATIONAL SECURITY COUNCIL

SALARIES AND EXPENSES

For necessary expenses of the National Security Council, including services as authorized by 5 U.S.C. 3109, \$8,932,000.

OFFICE OF ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Office of Administration, including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, and hire of passenger motor vehicles, \$92,269,000, of which \$12,075,000 shall remain available until expended for the Capital Investment Plan for continued modernization of the information technology infrastructure within the Executive Office of the President: *Provided*, That \$4,000,000 of Capital Investment Plan funds may not be obligated until the Executive Office of the President has submitted a report to the Committees on Appropriations that includes an Enterprise Architecture, as defined in OMB Circular A-130 and the Federal Chief Information Officers Council guidance, that is reviewed and approved by the Office of Management and Budget, reviewed by the United States Government Accountability Office, and approved by the Committees on Appropriations.

OFFICE OF MANAGEMENT AND BUDGET

SALARIES AND EXPENSES

For necessary expenses of the Office of Management and Budget, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109 and to carry out the provisions of chapter 35 of title 44, United States Code, \$68,411,000, of which not to exceed \$1,500 shall be available for official representation expenses: *Provided*, That, as provided in 31 U.S.C. 1301(a), appropriations shall be applied only to the objects for which appropriations were made except as otherwise provided by law: *Provided further*, That none of the funds appropriated in this Act for the Office of Management and Budget may be used for the purpose of reviewing any agricultural marketing orders or any activities or regulations under the provisions of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 et seq.): *Provided further*, That none of the funds made available for the Office of Management and Budget by this Act may be expended for the altering of the transcript of actual testimony of witnesses, except for testimony of officials of the Office of Management and Budget, before the Committees on Appropriations or their subcommittees: *Provided further*, That the preceding shall not apply to printed hearings released by the Committees on Appropriations: *Provided further*, That none of the funds appropriated in this Act may be available

to pay the salary or expenses of any employee of the Office of Management and Budget who calculates, prepares, or approves any tabular or other material that proposes the sub-allocation of budget authority or outlays by the Committees on Appropriations among their subcommittees: *Provided further*, That none of the funds provided in this or prior Acts shall be used, directly or indirectly, by the Office of Management and Budget, for evaluating or determining if water resource project or study reports submitted by the Chief of Engineers acting through the Secretary of the Army are in compliance with all applicable laws, regulations, and requirements relevant to the Civil Works water resource planning process: *Provided further*, That the Office of Management and Budget shall have not more than 60 days in which to perform budgetary policy reviews of water resource matters on which the Chief of Engineers has reported. The Director of the Office of Management and Budget shall notify the appropriate authorizing and Appropriations Committees when the 60-day review is initiated. If water resource reports have not been transmitted to the appropriate authorizing and appropriating committees within 15 days of the end of the OMB review period based on the notification from the Director, Congress shall assume OMB concurrence with the report and act accordingly.

Deadline.

Notification.
Deadline.

OFFICE OF NATIONAL DRUG CONTROL POLICY

SALARIES AND EXPENSES

For necessary expenses of the Office of National Drug Control Policy; for research activities pursuant to the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.); not to exceed \$10,000 for official reception and representation expenses; and for participation in joint projects or in the provision of services on matters of mutual interest with nonprofit, research, or public organizations or agencies, with or without reimbursement, \$27,000,000; of which \$1,350,000 shall remain available until expended for policy research and evaluation: *Provided*, That the Office is authorized to accept, hold, administer, and utilize gifts, both real and personal, public and private, without fiscal year limitation, for the purpose of aiding or facilitating the work of the Office.

21 USC 1702
note.

COUNTERDRUG TECHNOLOGY ASSESSMENT CENTER

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Counterdrug Technology Assessment Center for research activities pursuant to the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.), \$42,000,000, which shall remain available until expended, consisting of \$18,000,000 for counternarcotics research and development projects, and \$24,000,000 for the continued operation of the technology transfer program: *Provided*, That the \$18,000,000 for counternarcotics research and development projects shall be available for transfer to other Federal departments or agencies.

FEDERAL DRUG CONTROL PROGRAMS

HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

Deadline.

For necessary expenses of the Office of National Drug Control Policy's High Intensity Drug Trafficking Areas Program, \$228,350,000, for drug control activities consistent with the approved strategy for each of the designated High Intensity Drug Trafficking Areas, of which no less than 51 percent shall be transferred to State and local entities for drug control activities, which shall be obligated within 120 days of the date of the enactment of this Act: *Provided*, That up to 49 percent, to remain available until September 30, 2006, may be transferred to Federal agencies and departments at a rate to be determined by the Director, of which not less than \$2,000,000 shall be used for auditing services and associated activities, and at least \$500,000 of the \$2,000,000 shall be used to develop and implement a data collection system to measure the performance of the High Intensity Drug Trafficking Areas Program: *Provided further*, That High Intensity Drug Trafficking Areas Programs designated as of September 30, 2004, shall be funded at no less than the fiscal year 2004 initial allocation levels unless the Director submits to the Committees on Appropriations, and the Committees approve, justification for changes in those levels based on clearly articulated priorities for the High Intensity Drug Trafficking Areas Programs, as well as published Office of National Drug Control Policy performance measures of effectiveness: *Provided further*, That a request shall be submitted in compliance with the reprogramming guidelines to the Committees on Appropriations for approval prior to the obligation of funds of an amount in excess of the fiscal year 2005 budget request: *Provided further*, That not to exceed \$2,000,000 of the funds made available under this heading in excess of the fiscal year 2005 budget request shall be available for the Consolidated Priority Organization Target program.

OTHER FEDERAL DRUG CONTROL PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For activities to support a national anti-drug campaign for youth, and for other purposes, authorized by the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701 et seq.), \$213,700,000, to remain available until expended, of which the following amounts are available as follows: \$120,000,000 to support a national media campaign, as authorized by the Drug-Free Media Campaign Act of 1998; \$80,000,000 to continue a program of matching grants to drug-free communities, of which \$2,000,000 shall be a directed grant to the Community Anti-Drug Coalitions of America for the National Community Anti-Drug Coalition Institute, as authorized in chapter 2 of the National Narcotics Leadership Act of 1988, as amended; \$2,000,000 for the Counterdrug Intelligence Executive Secretariat; \$750,000 for the National Drug Court Institute; \$1,000,000 for the National Alliance for Model State Drug Laws; \$7,500,000 for the United States Anti-Doping Agency for anti-doping activities; \$1,450,000 for the United States membership dues to the World Anti-Doping Agency; and \$1,000,000

for evaluations and research related to National Drug Control Program performance measures: *Provided*, That such funds may be transferred to other Federal departments and agencies to carry out such activities: *Provided further*, That of the amounts appropriated for a national media campaign, not to exceed 10 percent shall be for administration, advertising production, research and testing, labor and related costs of the national media campaign.

UNANTICIPATED NEEDS

For expenses necessary to enable the President to meet unanticipated needs, in furtherance of the national interest, security, or defense which may arise at home or abroad during the current fiscal year, as authorized by 3 U.S.C. 108, \$1,000,000.

SPECIAL ASSISTANCE TO THE PRESIDENT

SALARIES AND EXPENSES

For necessary expenses to enable the Vice President to provide assistance to the President in connection with specially assigned functions; services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 106, including subsistence expenses as authorized by 3 U.S.C. 106, which shall be expended and accounted for as provided in that section; and hire of passenger motor vehicles, \$4,571,000.

OFFICIAL RESIDENCE OF THE VICE PRESIDENT

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For the care, operation, refurbishing, improvement, and to the extent not otherwise provided for, heating and lighting, including electric power and fixtures, of the official residence of the Vice President; the hire of passenger motor vehicles; and not to exceed \$90,000 for official entertainment expenses of the Vice President, to be accounted for solely on his certificate, \$333,000: *Provided*, That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.

TITLE IV

INDEPENDENT AGENCIES

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SALARIES AND EXPENSES

For expenses necessary for the Architectural and Transportation Barriers Compliance Board, as authorized by section 502 of the Rehabilitation Act of 1973, as amended, \$5,686,000: *Provided*, That, notwithstanding any other provision of law, there may be credited to this appropriation funds received for publications and training expenses.

ELECTION ASSISTANCE COMMISSION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the Help America Vote Act of 2002, \$14,000,000, of which \$2,800,000 shall be transferred to the National Institute of Standards and Technology for election reform activities authorized under the Help America Vote Act of 2002.

FEDERAL ELECTION COMMISSION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the Federal Election Campaign Act of 1971, as amended, \$52,159,000, of which no less than \$4,700,000 shall be available for internal automated data processing systems, and of which not to exceed \$5,000 shall be available for reception and representation expenses.

FEDERAL LABOR RELATIONS AUTHORITY

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan Numbered 2 of 1978, and the Civil Service Reform Act of 1978, including services authorized by 5 U.S.C. 3109, and including hire of experts and consultants, hire of passenger motor vehicles, and rental of conference rooms in the District of Columbia and elsewhere, \$25,673,000: *Provided*, That public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation as authorized by 5 U.S.C. 3109: *Provided further*, That notwithstanding 31 U.S.C. 3302, funds received from fees charged to non-Federal participants at labor-management relations conferences shall be credited to and merged with this account, to be available without further appropriation for the costs of carrying out these conferences.

(RESCISSION)

Of the unobligated balances under this heading from prior year appropriations, \$3,000,000 are rescinded.

FEDERAL MARITIME COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. App. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902, \$19,496,000: *Provided*, That not to exceed \$2,000 shall be available for official reception and representation expenses.

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

(INCLUDING TRANSFER OF FUNDS)

To carry out the purposes of the Fund established pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 592), the revenues and collections deposited into the Fund shall be available for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings; rental of buildings in the District of Columbia; restoration of leased premises; moving governmental agencies (including space adjustments and telecommunications relocation expenses) in connection with the assignment, allocation and transfer of space; contractual services incident to cleaning or servicing buildings, and moving; repair and alteration of federally owned buildings including grounds, approaches and appurtenances; care and safeguarding of sites; maintenance, preservation, demolition, and equipment; acquisition of buildings and sites by purchase, condemnation, or as otherwise authorized by law; acquisition of options to purchase buildings and sites; conversion and extension of federally owned buildings; preliminary planning and design of projects by contract or otherwise; construction of new buildings (including equipment for such buildings); and payment of principal, interest, and any other obligations for public buildings acquired by installment purchase and purchase contract; in the aggregate amount of \$7,217,043,000, of which: (1) \$708,542,000 shall remain available until expended for construction (including funds for sites and expenses and associated design and construction services) of additional projects at the following locations:

New Construction:

California:

Los Angeles, Federal Bureau of Investigation Facility,
\$14,054,000.

Los Angeles, United States Courthouse, \$314,385,000.

San Diego, United States Courthouse, \$3,068,000.

District of Columbia:

Southeast Federal Center Site Remediation,
\$2,650,000.

Illinois:

Chicago, 10 West Jackson Place (Purchase),
\$53,170,000.

Maine:

Calais, Border Station, \$3,269,000.

Madawaska, Border Station, \$1,760,000.

Maryland:

Montgomery County, Food and Drug Administration
Consolidation, \$88,710,000.

Minnesota:

Warroad, Border Station, \$1,837,000.

New Mexico:

Las Cruces, United States Courthouse, \$60,000,000.

New York:

Alexandria Bay, Border Station, \$8,884,000.

Massena, Border Station, \$15,000,000.

North Dakota:

Dunseith, Border Station, \$2,301,000.

Portal, Border Station, \$22,351,000.

Texas:

El Paso, Paso Del Norte Border Station, \$26,191,000.

El Paso, United States Courthouse, \$63,462,000.

El Paso, Ysleta Border Station, \$2,491,000.

Vermont:

Derby Line, Border Station, \$3,190,000.

Norton, Border Station, \$580,000.

Richford, Border Station, \$589,000.

Nonprospectus Construction, \$10,000,000.

Judgment Fund repayment, \$10,000,000:

Provided, That each of the foregoing limits of costs on new construction projects may be exceeded to the extent that savings are effected in other such projects, but not to exceed 10 percent of the amounts included in an approved prospectus, if required, unless advance approval is obtained from the Committees on Appropriations of a greater amount: *Provided further*, That all funds for direct construction projects shall expire on September 30, 2006, and remain in the Federal Buildings Fund except for funds for projects as to which funds for design or other funds have been obligated in whole or in part prior to such date; (2) \$980,222,000 shall remain available until expended for repairs and alterations, which includes associated design and construction services:

Repairs and Alterations:

District of Columbia:

Eisenhower Executive Office Building, \$5,000,000.

Federal Office Building 6, \$8,267,000.

Hoover FBI Building, \$10,242,000.

Mary E. Switzer Building, \$80,335,000.

New Executive Office Building, \$6,262,000.

Steam Distribution System, \$2,000,000.

Theodore Roosevelt Building, \$9,730,000.

Georgia:

Atlanta, Martin Luther King, Jr. Federal Building, \$14,800,000.

Atlanta, United States Court of Appeals, \$32,004,000.

Hawaii:

Hilo, Federal Building, \$5,133,000.

Louisiana:

New Orleans, Boggs Federal Building, \$22,581,000.

New Orleans, Wisdom Courthouse of Appeals, \$8,005,000.

Maryland:

Baltimore, George H. Fallon Federal Building, \$46,163,000.

Suitland, National Record Center, \$7,989,000.

Woodlawn, SSA Altmeyer Building, \$6,300,000.

Minnesota:

St. Paul, Warren E. Burger Federal Building—Court-house, \$36,644,000.

Missouri:

Expiration date.

Kansas City, Richard Bolling Federal Building,
\$40,048,000.

New York:

New York, Foley Square Courthouse, \$2,505,000.

Queens, Joseph P. Addabbo Federal Building,
\$5,455,000.

Ohio:

Cincinnati, Potter Stewart Courthouse, \$37,975,000.

Cleveland, Celebreeze Federal Building, \$37,375,000.

Washington:

Seattle, William Nakamura Courthouse, \$50,210,000.

Special Emphasis Programs:

Chlorofluorocarbons Program, \$13,000,000.

Energy Program, \$30,000,000.

Glass Fragment Retention, \$20,000,000.

Design Program, \$48,699,000.

Basic Repairs and Alterations, \$393,500,000:

Provided further, That funds made available in this or any previous Act in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount identified for each project, except each project in this or any previous Act may be increased by an amount not to exceed 10 percent unless advance approval is obtained from the Committees on Appropriations of a greater amount: *Provided further*, That additional projects for which prospectuses have been fully approved may be funded under this category only if advance approval is obtained from the Committees on Appropriations: *Provided further*, That the amounts provided in this or any prior Act for “Repairs and Alterations” may be used to fund costs associated with implementing security improvements to buildings necessary to meet the minimum standards for security in accordance with current law and in compliance with the reprogramming guidelines of the appropriate Committees of the House and Senate: *Provided further*, That the difference between the funds appropriated and expended on any projects in this or any prior Act, under the heading “Repairs and Alterations”, may be transferred to Basic Repairs and Alterations or used to fund authorized increases in prospectus projects: *Provided further*, That all funds for repairs and alterations prospectus projects shall expire on September 30, 2006, and remain in the Federal Buildings Fund except funds for projects as to which funds for design or other funds have been obligated in whole or in part prior to such date: *Provided further*, That the amount provided in this or any prior Act for Basic Repairs and Alterations may be used to pay claims against the Government arising from any projects under the heading “Repairs and Alterations” or used to fund authorized increases in prospectus projects; (3) \$161,442,000 for installment acquisition payments including payments on purchase contracts which shall remain available until expended; (4) \$3,657,315,000 for rental of space which shall remain available until expended; and (5) \$1,709,522,000 for building operations which shall remain available until expended: *Provided further*, That funds available to the General Services Administration shall not be available for expenses of any construction, repair, alteration and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses for the development of a proposed prospectus: *Provided further*,

Expiration date.

That funds available in the Federal Buildings Fund may be expended for emergency repairs when advance approval is obtained from the Committees on Appropriations: *Provided further*, That notwithstanding any other provision of law, the Administrator of General Services is authorized and directed to proceed with site acquisition, design, and subject to availability of funds, construction and management and inspection, of a new Federal Building in Tuscaloosa, Alabama for which funds for site acquisition and design were provided in Public Law 108-199: *Provided further*, That amounts necessary to provide reimbursable special services to other agencies under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 592(b)(2)) and amounts to provide such reimbursable fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control as may be appropriate to enable the United States Secret Service to perform its protective functions pursuant to 18 U.S.C. 3056, shall be available from such revenues and collections: *Provided further*, That revenues and collections and any other sums accruing to this Fund during fiscal year 2005, excluding reimbursements under section 210(f)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 592(b)(2)) in excess of the aggregate new obligational authority authorized for Real Property Activities of the Federal Buildings Fund in this Act shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

GENERAL ACTIVITIES

GOVERNMENT-WIDE POLICY

For expenses authorized by law, not otherwise provided for, for Government-wide policy and evaluation activities associated with the management of real and personal property assets and certain administrative services; Government-wide policy support responsibilities relating to acquisition, telecommunications, information technology management, and related technology activities; and services as authorized by 5 U.S.C. 3109, \$62,100,000.

OPERATING EXPENSES

For expenses authorized by law, not otherwise provided for, for Government-wide activities associated with utilization and donation of surplus personal property; disposal of real property; providing Internet access to Federal information and services; agency-wide policy direction and management, and Board of Contract Appeals; accounting, records management, and other support services incident to adjudication of Indian Tribal Claims by the United States Court of Federal Claims; services as authorized by 5 U.S.C. 3109; and not to exceed \$7,500 for official reception and representation expenses, \$92,175,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General and services authorized by 5 U.S.C. 3109, \$42,351,000: *Provided*, That not to exceed \$15,000 shall be available for payment for information and detection of fraud against the Government, including payment for recovery of stolen Government property: *Provided further*, That

not to exceed \$2,500 shall be available for awards to employees of other Federal agencies and private citizens in recognition of efforts and initiatives resulting in enhanced Office of Inspector General effectiveness.

ELECTRONIC GOVERNMENT FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in support of interagency projects that enable the Federal Government to expand its ability to conduct activities electronically, through the development and implementation of innovative uses of the Internet and other electronic methods, \$3,000,000, to remain available until expended: *Provided*, That these funds may be transferred to Federal agencies to carry out the purposes of the Fund: *Provided further*, That this transfer authority shall be in addition to any other transfer authority provided in this Act: *Provided further*, That such transfers may not be made until 10 days after a proposed spending plan and justification for each project to be undertaken has been submitted to the Committees on Appropriations.

ALLOWANCES AND OFFICE STAFF FOR FORMER PRESIDENTS

(INCLUDING TRANSFER OF FUNDS)

For carrying out the provisions of the Act of August 25, 1958, as amended (3 U.S.C. 102 note), and Public Law 95–138, \$3,106,000: *Provided*, That the Administrator of General Services shall transfer to the Secretary of the Treasury such sums as may be necessary to carry out the provisions of such Acts.

GENERAL PROVISIONS—GENERAL SERVICES ADMINISTRATION

(INCLUDING RECISSION OF FUNDS)

SEC. 401. The appropriate appropriation or fund available to the General Services Administration shall be credited with the cost of operation, protection, maintenance, upkeep, repair, and improvement, included as part of rentals received from Government corporations pursuant to law (40 U.S.C. 129).

SEC. 402. Funds available to the General Services Administration shall be available for the hire of passenger motor vehicles.

SEC. 403. Funds in the Federal Buildings Fund made available for fiscal year 2005 for Federal Buildings Fund activities may be transferred between such activities only to the extent necessary to meet program requirements: *Provided*, That any proposed transfers shall be approved in advance by the Committees on Appropriations.

SEC. 404. No funds made available by this Act shall be used to transmit a fiscal year 2006 request for United States Courthouse construction that: (1) does not meet the design guide standards for construction as established and approved by the General Services Administration, the Judicial Conference of the United States, and the Office of Management and Budget; and (2) does not reflect the priorities of the Judicial Conference of the United States as set out in its approved 5-year construction plan: *Provided*, That the fiscal year 2006 request must be accompanied by a standardized

courtroom utilization study of each facility to be constructed, replaced, or expanded.

SEC. 405. None of the funds provided in this Act may be used to increase the amount of occupiable square feet, provide cleaning services, security enhancements, or any other service usually provided through the Federal Buildings Fund, to any agency that does not pay the rate per square foot assessment for space and services as determined by the General Services Administration in compliance with the Public Buildings Amendments Act of 1972 (Public Law 92-313).

SEC. 406. From funds made available under the heading “Federal Buildings Fund, Limitations on Availability of Revenue”, claims against the Government of less than \$250,000 arising from direct construction projects and acquisition of buildings may be liquidated from savings effected in other construction projects with prior notification to the Committees on Appropriations.

SEC. 407. Notwithstanding 40 U.S.C. 524, 571, and 572, the Administrator of General Services may sell the Middle River Depot at Middle River, Maryland, and credit the proceeds of such sale as offsetting collections to the Federal Buildings Fund, to be available, in addition to amounts otherwise appropriated for such Fund, for such capital activities of the Fund as the Administrator may deem appropriate: *Provided*, That the Administrator shall, to the maximum extent practicable, cooperate and consult with Baltimore County, Maryland officials and other interested persons in communities located near the Middle River Depot so that the sale and use of the property is compatible with local economic development plans and is not inconsistent with local land use, environmental and zoning laws.

SEC. 408. Section 572(a)(2)(ii) of title 40, United States Code, is amended by inserting the following before the period: “, highest and best use of property studies, utilization of property studies, deed compliance inspection, and the expenses incurred in a relocation”.

Notification.
Deadline.

SEC. 409. Of the amounts made available under the heading “Federal Buildings Fund” for New Construction and Repairs and Alterations in this or any prior Act, a total amount of \$106,000,000 are rescinded: *Provided*, That the Administrator of General Services shall notify the Appropriations Committees of the House of Representatives and Senate of the specific projects, or parts thereof, from which funds have been rescinded within 30 days of enactment of this Act.

Deadline.

SEC. 410. In order to address heightened security requirements for the proposed Moss United States Courthouse Annex project, the Administrator of General Services is authorized to acquire and demolish the real property, including land and improvements, located in Salt Lake City, Utah, at the corner of 400 South Street and West Temple, said land and improvements commonly known as the Shubrick Building; to use previously appropriated project funds to immediately initiate compliance procedures in accordance with the National Historic Preservation Act and the National Environmental Policy Act; and to redesign the proposed courthouse expansion to incorporate this new site.

SEC. 411. CONVEYANCE OF LAND TO THE RECREATION AND PARK COMMISSION FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA. (a) CONVEYANCE.—Not later than 60 days after the date of enactment of this Act, the Postmaster General of the United States

Postal Service shall convey, for the consideration specified in subsection (b), the land described in subsection (d), including any improvements thereon, to the General Services Administration.

(b) PURCHASE PRICE.—Upon the conveyance described in subsection (a), the Administrator of General Services shall pay the United States Postal Service a purchase price equaling the fair market value not to exceed \$975,000, which price may be paid by cash or credited to the existing USPS/GSA property swap program.

(c) RECONVEYANCE.—Not later than 10 days after the conveyance described in subsection (a), the Administrator of General Services shall convey, without consideration by quitclaim deed and without recourse, the land described in subsection (d), including any improvements thereon, to the Recreation and Park Commission for the Parish of East Baton Rouge, Louisiana, for use as a downtown park or for other public purposes.

Deadline.

(d) DESCRIPTION OF PROPERTY.—The land referred to in subsections (a) and (c) is the property formerly used as the Main Postal Office Carrier Annex in Baton Rouge, Louisiana and located at 750 Florida Street. This land is situated north of Convention Street, south of Florida Street and west of 7th Street. This land comprises approximately 27,500 square feet and is improved by a one-story building.

SEC. 412. Notwithstanding any other provision of law, the Administrator of General Services may convey, by sale, lease, exchange or otherwise, including through leaseback arrangements, real and related personal property, or interests therein, and retain the net proceeds of such dispositions in an account within the Federal Buildings Fund to be used for the General Services Administration's real property capital needs: *Provided*, That all net proceeds realized under this section shall only be expended as authorized in annual appropriations Acts: *Provided further*, That for the purposes of this section, the term "net proceeds" means the rental and other sums received less the costs of the disposition, and the term "real property capital needs" means any expenses necessary and incident to the agency's real property capital acquisitions, improvements, and dispositions.

SEC. 413. LAND CONVEYANCE, NAHANT, MASSACHUSETTS. (a) CONVEYANCE AUTHORIZED.—Notwithstanding any other provision of law, the Administrator of General Services may sell all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, that is located at Castle Road, Gardner Road and Goddard Drive in Nahant, Massachusetts to the Town of Nahant. In the event a binding sales contract is not executed within 30 days of enactment the Administrator shall commence with a public, competitive sale of the property.

(b) CONSIDERATION.—As consideration for conveyance under subsection (a), the Town of Nahant shall pay, in a single lump sum payment, \$2,000,000.

(c) DEPOSIT OF FUNDS.—Notwithstanding any other provision of law, the Administrator may deposit the net proceeds in the Real Property Relocation account of the General Services Administration. In the event proceeds exceed \$2,000,000, the net amount in excess of \$2,000,000 shall be deposited in the United States Coast Guard Housing Fund established under 14 U.S.C. 687.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection

(a) shall be determined by a survey satisfactory to the Administrator. The cost of the survey shall be borne by the purchaser.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Administrator may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Administrator considers appropriate to protect the interests of the United States.

Deadline.

SEC. 414. None of the funds appropriated by this Act or any other Act may be used after July 1, 2005 for the provision of any telecommunications service for any Federal Government owned building, unless such building is in compliance with a regulation or Executive order issued after the date of enactment of this section that requires, to the extent deemed appropriate by the President or his designee, the provision of telecommunications services using redundant and physically separate entry points to those buildings, and the use of physically diverse local network facilities for the provision of such telecommunications services.

MERIT SYSTEMS PROTECTION BOARD

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan Numbered 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and direct procurement of survey printing, \$34,677,000 together with not to exceed \$2,626,000 for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board.

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

For payment to the Morris K. Udall Scholarship and Excellence in National Environmental Policy Trust Fund, pursuant to the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5601 et seq.), \$1,996,000, to remain available until expended, of which up to \$50,000 shall be used to conduct financial audits pursuant to the Accountability of Tax Dollars Act of 2002 (Public Law 107-289) notwithstanding sections 8 and 9 of Public Law 102-259: *Provided*, That up to 60 percent of such funds may be transferred by the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation for the necessary expenses of the Native Nations Institute.

ENVIRONMENTAL DISPUTE RESOLUTION FUND

For payment to the Environmental Dispute Resolution Fund to carry out activities authorized in the Environmental Policy and

Conflict Resolution Act of 1998, \$1,309,000, to remain available until expended.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

OPERATING EXPENSES

For necessary expenses in connection with the administration of the National Archives and Records Administration (including the Information Security Oversight Office) and archived Federal records and related activities, as provided by law, and for expenses necessary for the review and declassification of documents, and for the hire of passenger motor vehicles, \$266,945,000: *Provided*, That the Archivist of the United States is authorized to use any excess funds available from the amount borrowed for construction of the National Archives facility, for expenses necessary to provide adequate storage for holdings.

ELECTRONIC RECORDS ARCHIVES

For necessary expenses in connection with the development of the electronic records archives, to include all direct project costs associated with research, analysis, design, development, and program management, \$35,914,000.

REPAIRS AND RESTORATION

For the repair, alteration, and improvement of archives facilities, and to provide adequate storage for holdings, \$13,432,000, to remain available until expended, of which \$3,000,000 is for site preparation and construction management to construct a new regional archives and records facility in Anchorage, Alaska, and of which \$2,000,000 is for the repair and restoration of the plaza that surrounds the Lyndon Baines Johnson Presidential Library that is under the joint control and custody of the University of Texas: *Provided*, That such funds may be transferred directly to the University and used, together with University funds, for repair and restoration of the plaza and remain available until expended for this purpose.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

GRANTS PROGRAM

For necessary expenses for allocations and grants for historical publications and records as authorized by 44 U.S.C. 2504, as amended, \$5,000,000, to remain available until expended.

NATIONAL TRANSPORTATION SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the National Transportation Safety Board, including hire of passenger motor vehicles and aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for a GS–15; uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901–5902) \$76,700,000, of which not to exceed \$2,000 may be used for official reception and representation expenses.

(RESCISSION)

Of the available unobligated balances made available under Public Law 106-246, \$8,000,000 are rescinded.

OFFICE OF GOVERNMENT ETHICS

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Government Ethics pursuant to the Ethics in Government Act of 1978, as amended and the Ethics Reform Act of 1989, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and not to exceed \$1,500 for official reception and representation expenses, \$11,238,000.

OFFICE OF PERSONNEL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF TRUST FUNDS)

For necessary expenses to carry out functions of the Office of Personnel Management pursuant to Reorganization Plan Numbered 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109; medical examinations performed for veterans by private physicians on a fee basis; rental of conference rooms in the District of Columbia and elsewhere; hire of passenger motor vehicles; not to exceed \$2,500 for official reception and representation expenses; advances for reimbursements to applicable funds of the Office of Personnel Management and the Federal Bureau of Investigation for expenses incurred under Executive Order No. 10422 of January 9, 1953, as amended; and payment of per diem and/or subsistence allowances to employees where Voting Rights Act activities require an employee to remain overnight at his or her post of duty, \$125,500,000, of which \$12,000,000 shall remain available until September 30, 2007; and in addition \$128,462,000 for administrative expenses, to be transferred from the appropriate trust funds of the Office of Personnel Management without regard to other statutes, including direct procurement of printed materials, for the retirement and insurance programs, of which \$27,640,000 shall remain available until expended for the cost of automating the retirement record-keeping systems: *Provided*, That the provisions of this appropriation shall not affect the authority to use applicable trust funds as provided by sections 8348(a)(1)(B), and 9004(f)(1)(A) and (2)(A) of title 5, United States Code: *Provided further*, That no part of this appropriation shall be available for salaries and expenses of the Legal Examining Unit of the Office of Personnel Management established pursuant to Executive Order No. 9358 of July 1, 1943, or any successor unit of like purpose: *Provided further*, That the President's Commission on White House Fellows, established by Executive Order No. 11183 of October 3, 1964, may, during fiscal year 2005, accept donations of money, property, and personal services: *Provided further*, That such donations, including those from prior years, may be used for the development of publicity materials to provide information about the White House Fellows, except that no such donations shall be accepted for travel or reimbursement

of travel expenses, or for the salaries of employees of such Commission.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF TRUST FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act, as amended, including services as authorized by 5 U.S.C. 3109, hire of passenger motor vehicles, \$1,627,000, and in addition, not to exceed \$16,461,000 for administrative expenses to audit, investigate, and provide other oversight of the Office of Personnel Management's retirement and insurance programs, to be transferred from the appropriate trust funds of the Office of Personnel Management, as determined by the Inspector General: *Provided*, That the Inspector General is authorized to rent conference rooms in the District of Columbia and elsewhere.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH
BENEFITS

For payment of Government contributions with respect to retired employees, as authorized by chapter 89 of title 5, United States Code, and the Retired Federal Employees Health Benefits Act (74 Stat. 849), as amended, such sums as may be necessary.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE LIFE
INSURANCE

For payment of Government contributions with respect to employees retiring after December 31, 1989, as required by chapter 87 of title 5, United States Code, such sums as may be necessary.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

For financing the unfunded liability of new and increased annuity benefits becoming effective on or after October 20, 1969, as authorized by 5 U.S.C. 8348, and annuities under special Acts to be credited to the Civil Service Retirement and Disability Fund, such sums as may be necessary: *Provided*, That annuities authorized by the Act of May 29, 1944, as amended, and the Act of August 19, 1950, as amended (33 U.S.C. 771-775), may hereafter be paid out of the Civil Service Retirement and Disability Fund.

33 USC 776.

OFFICE OF SPECIAL COUNSEL

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Special Counsel pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978 (Public Law 95-454), as amended, the Whistleblower Protection Act of 1989 (Public Law 101-12), as amended, Public Law 103-424, and the Uniformed Services Employment and Reemployment Act of 1994 (Public Law 103-353), including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms

in the District of Columbia and elsewhere, and hire of passenger motor vehicles; \$15,449,000.

UNITED STATES POSTAL SERVICE

PAYMENT TO THE POSTAL SERVICE FUND

39 USC 403 note.

For payment to the Postal Service Fund for revenue forgone on free and reduced rate mail, pursuant to subsections (c) and (d) of section 2401 of title 39, United States Code, \$90,709,000, of which \$61,709,000 shall not be available for obligation until October 1, 2005: *Provided*, That mail for overseas voting and mail for the blind shall continue to be free: *Provided further*, That 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level: *Provided further*, That none of the funds made available to the Postal Service by this Act shall be used to implement any rule, regulation, or policy of charging any officer or employee of any State or local child support enforcement agency, or any individual participating in a State or local program of child support enforcement, a fee for information requested or provided concerning an address of a postal customer: *Provided further*, That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in fiscal year 2005.

EMERGENCY PREPAREDNESS

For an additional amount for “Payment to the Postal Service Fund” for emergency expenses to enable the Postal Service to protect postal employees and postal customers from exposure to hazardous materials in the mail, \$507,000,000, to remain available until expended: *Provided*, That the Postal Service shall submit a spending plan for funds under this heading to the Office of Management and Budget and the House and Senate Committees on Appropriations: *Provided further*, That the Government Accountability Office shall review the spending plan and capabilities of the systems to detect hazardous materials: *Provided further*, That \$7,000,000 is for the mail irradiation facility in Washington, D.C.: *Provided further*, That the \$7,000,000 specified for the mail irradiation facility is designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

UNITED STATES TAX COURT

SALARIES AND EXPENSES

26 USC 7443
note.

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. 3109, \$41,180,000: *Provided*, That travel expenses of the judges shall be paid upon the written certificate of the judge.

TITLE V

GENERAL PROVISIONS

THIS ACT

(INCLUDING TRANSFERS OF FUNDS)

SEC. 501. Such sums as may be necessary for fiscal year 2005 pay raises for programs funded in this Act shall be absorbed within the levels appropriated in this Act or previous appropriations Acts.

SEC. 502. None of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings funded in this Act.

SEC. 503. None of the funds appropriated in this Act shall remain available for obligation beyond the current fiscal year, nor may any be transferred to other appropriations, unless expressly so provided herein.

SEC. 504. The expenditure of any appropriation under this Act for any consulting service through procurement contract pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 505. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 506. None of the funds made available by this Act shall be available for any activity or for paying the salary of any Government employee where funding an activity or paying a salary to a Government employee would result in a decision, determination, rule, regulation, or policy that would prohibit the enforcement of section 307 of the Tariff Act of 1930.

SEC. 507. No part of any appropriation contained in this Act shall be available to pay the salary for any person filling a position, other than a temporary position, formerly held by an employee who has left to enter the Armed Forces of the United States and has satisfactorily completed his period of active military or naval service, and has within 90 days after his release from such service or from hospitalization continuing after discharge for a period of not more than 1 year, made application for restoration to his former position and has been certified by the Office of Personnel Management as still qualified to perform the duties of his former position and has not been restored thereto.

SEC. 508. No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the “Buy America Act”).

SEC. 509. No funds appropriated or otherwise made available under this Act shall be made available to any person or entity that has been convicted of violating the Buy American Act (41 U.S.C. 10a–10c).

Deadline.
Reports.

SEC. 510. None of the funds provided in this Act, provided by previous appropriations Acts to the agencies or entities funded in this Act that remain available for obligation or expenditure in fiscal year 2005, or provided from any accounts in the Treasury derived by the collection of fees and available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by either the House or Senate Committees on Appropriations for a different purpose; (5) augments existing programs, projects, or activities in excess of \$5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by \$5,000,000 or 10 percent, whichever is less; or (7) creates, reorganizes, or restructures a branch, division, office, bureau, board, commission, agency, administration, or department different from the budget justifications submitted to the Committees on Appropriations or the table accompanying the statement of the managers accompanying this Act, whichever is more detailed, unless prior approval is received from the House and Senate Committees on Appropriations: *Provided*, That not later than 60 days after the date of enactment of this Act, each agency funded by this Act shall submit a report to the Committee on Appropriations of the Senate and of the House of Representatives to establish the baseline for application of reprogramming and transfer authorities for the current fiscal year: *Provided further*, That the report shall include: (1) a table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level; (2) a delineation in the table for each appropriation both by object class and program, project, and activity as detailed in the budget appendix for the respective appropriation; and (3) an identification of items of special congressional interest: *Provided further*, That the amount appropriated or limited for salaries and expenses for an agency shall be reduced by \$100,000 per day for each day after the required date that the report has not been submitted to the Congress.

SEC. 511. Except as otherwise specifically provided by law, not to exceed 50 percent of unobligated balances remaining available at the end of fiscal year 2005 from appropriations made available for salaries and expenses for fiscal year 2005 in this Act, shall remain available through September 30, 2006, for each such account for the purposes authorized: *Provided*, That a request shall be submitted to the Committees on Appropriations for approval prior to the expenditure of such funds: *Provided further*, That these requests shall be made in compliance with reprogramming guidelines.

SEC. 512. None of the funds made available in this Act may be used by the Executive Office of the President to request from the Federal Bureau of Investigation any official background investigation report on any individual, except when—

- (1) such individual has given his or her express written consent for such request not more than 6 months prior to the date of such request and during the same presidential administration; or

(2) such request is required due to extraordinary circumstances involving national security.

SEC. 513. The cost accounting standards promulgated under section 26 of the Office of Federal Procurement Policy Act (Public Law 93–400; 41 U.S.C. 422) shall not apply with respect to a contract under the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

SEC. 514. For the purpose of resolving litigation and implementing any settlement agreements regarding the nonforeign area cost-of-living allowance program, the Office of Personnel Management may accept and utilize (without regard to any restriction on unanticipated travel expenses imposed in an Appropriations Act) funds made available to the Office pursuant to court approval.

SEC. 515. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions.

Abortion.

SEC. 516. The provision of section 515 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.

SEC. 517. In order to promote Government access to commercial information technology, the restriction on purchasing nondomestic articles, materials, and supplies set forth in the Buy American Act (41 U.S.C. 10a et seq.), shall not apply to the acquisition by the Federal Government of information technology (as defined in section 11101 of title 40, United States Code, that is a commercial item (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

SEC. 518. Public Law 108–199 is amended in division H, section 161, by inserting “and all Federal agencies” after “Office of Management and Budget”.

25 USC 450 note.

SEC. 519. None of the funds made available in the Act may be used to finalize, implement, administer, or enforce—

(1) the proposed rule relating to the determination that real estate brokerage is an activity that is financial in nature or incidental to a financial activity published in the Federal Register on January 3, 2001 (66 Fed. Reg. 307 et seq.); or

(2) the revision proposed in such rule to section 1501.2 of title 12 of the Code of Federal Regulations.

SEC. 520. TREATMENT OF THE TENNESSEE VALLEY AUTHORITY. The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3(a)(42)(B) (15 U.S.C. 78c(a)(42)(B)), by inserting “by the Tennessee Valley Authority or” after “issued or guaranteed”; and

(2) by adding at the end the following new section:

“SEC. 37. TENNESSEE VALLEY AUTHORITY.

15 USC 78nn.

“(a) IN GENERAL.—Commencing with the issuance by the Tennessee Valley Authority of an annual report on Commission Form 10–K (or any successor thereto) for fiscal year 2006 and thereafter, the Tennessee Valley Authority shall file with the Commission, in accordance with such rules and regulations as the Commission has prescribed or may prescribe, such periodic, current, and supplementary information, documents, and reports as would be required pursuant to section 13 if the Tennessee Valley Authority were

Reports.
Deadline.

an issuer of a security registered pursuant to section 12. Notwithstanding the preceding sentence, the Tennessee Valley Authority shall not be required to register any securities under this title, and shall not be deemed to have registered any securities under this title.

“(b) LIMITED TREATMENT AS ISSUER.—Commencing with the issuance by the Tennessee Valley Authority of an annual report on Commission Form 10-K (or any successor thereto) for fiscal year 2006 and thereafter, the Tennessee Valley Authority shall be deemed to be an issuer for purposes of section 10A, other than for subsection (m)(1) or (m)(3) of section 10A. The Tennessee Valley Authority shall not be required by this subsection to comply with the rules issued by any national securities exchange or national securities association in response to rules issued by the Commission pursuant to section 10A(m)(1).

“(c) NO EFFECT ON TVA AUTHORITY.—Nothing in this section shall be construed to diminish, impair, or otherwise affect the authority of the Board of Directors of the Tennessee Valley Authority to carry out its statutory functions under the Tennessee Valley Authority Act of 1933.”

SEC. 521. Section 307 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended by adding at the end the following new subsection:

“(e) DOCKS, WATERFRONT TRANSPORTATION DEVELOPMENT, AND RELATED INFRASTRUCTURE PROJECTS.—The Secretary of Transportation is authorized to make direct lump sum payments to the Commission to construct docks, waterfront development projects, and related transportation infrastructure, provided the local community provides a ten percent non-Federal match in the form of any necessary land or planning and design funds. To carry out this section, there is authorized to be appropriated such sums as may be necessary.”

5 USC 552a note.

SEC. 522. (a) PRIVACY OFFICER.—Each agency shall have a Chief Privacy Officer to assume primary responsibility for privacy and data protection policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of information in an identifiable form;

(2) assuring that technologies used to collect, use, store, and disclose information in identifiable form allow for continuous auditing of compliance with stated privacy policies and practices governing the collection, use and distribution of information in the operation of the program;

(3) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as defined in the Privacy Act of 1974;

(4) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(5) conducting a privacy impact assessment of proposed rules of the Department on the privacy of information in an identifiable form, including the type of personally identifiable information collected and the number of people affected;

(6) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of section 552a

Reports.
Deadline.

of title 5, 11 United States Code, internal controls, and other relevant matters;

(7) ensuring that the Department protects information in an identifiable form and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction;

(8) training and educating employees on privacy and data protection policies to promote awareness of and compliance with established privacy and data protection policies; and

(9) ensuring compliance with the Departments established privacy and data protection policies.

(b) ESTABLISHING PRIVACY AND DATA PROTECTION PROCEDURES AND POLICIES.—

(1) IN GENERAL.—Within 12 months of enactment of this Act, each agency shall establish and implement comprehensive privacy and data protection procedures governing the agency's collection, use, sharing, disclosure, transfer, storage and security of information in an identifiable form relating to the agency employees and the public. Such procedures shall be consistent with legal and regulatory guidance, including OMB regulations, the Privacy Act of 1974, and section 208 of the E-Government Act of 2002.

(c) RECORDING.—Each agency shall prepare a written report of its use of information in an identifiable form, along with its privacy and data protection policies and procedures and record it with the Inspector General of the agency to serve as a benchmark for the agency. Each report shall be signed by the agency privacy officer to verify that the agency intends to comply with the procedures in the report. By signing the report the privacy officer also verifies that the agency is only using information in identifiable form as detailed in the report.

Reports.

(d) INDEPENDENT, THIRD-PARTY REVIEW.—

(1) IN GENERAL.—At least every 2 years, each agency shall have performed an independent, third party review of the use of information in identifiable form as the privacy and data protection procedures of the agency to—

Deadlines.

(A) determine the accuracy of the description of the use of information in identifiable form;

(B) determine the effectiveness of the privacy and data protection procedures;

(C) ensure compliance with the stated privacy and data protection policies of the agency and applicable laws and regulations; and

(D) ensure that all technologies used to collect, use, store, and disclose information in identifiable form allow for continuous auditing of compliance with stated privacy policies and practices governing the collection, use and distribution of information in the operation of the program.

(2) PURPOSES.—The purposes of reviews under this subsection are to—

(A) ensure the agency's description of the use of information in an identifiable form is accurate and accounts for the agency's current technology and its processing of information in an identifiable form;

(B) measure actual privacy and data protection practices against the agency's recorded privacy and data protection procedures;

(C) ensure compliance and consistency with both online and offline stated privacy and data protection policies; and

(D) provide agencies with ongoing awareness and recommendations regarding privacy and data protection procedures.

Contracts.

(3) REQUIREMENTS OF REVIEW.—The Inspector General of each agency shall contract with an independent, third party that is a recognized leader in privacy consulting, privacy technology, data collection and data use management, and global privacy issues, to—

(A) evaluate the agency's use of information in identifiable form;

(B) evaluate the privacy and data protection procedures of the agency; and

(C) recommend strategies and specific steps to improve privacy and data protection management.

(4) CONTENT.—Each review under this subsection shall include—

(A) a review of the agency's technology, practices and procedures with regard to the collection, use, sharing, disclosure, transfer and storage of information in identifiable form;

(B) a review of the agency's stated privacy and data protection procedures with regard to the collection, use, sharing, disclosure, transfer, and security of personal information in identifiable form relating to agency employees and the public;

(C) a detailed analysis of agency intranet, network and Websites for privacy vulnerabilities, including—

(i) noncompliance with stated practices, procedures and policies; and

(ii) risks for inadvertent release of information in an identifiable form from the website of the agency; and

(D) a review of agency compliance with this Act.

(e) REPORT.—

(1) IN GENERAL.—Upon completion of a review, the Inspector General of an agency shall submit to the head of that agency a detailed report on the review, including recommendations for improvements or enhancements to management of information in identifiable form, and the privacy and data protection procedures of the agency.

Public
information.

(2) INTERNET AVAILABILITY.—Each agency shall make each independent third party review, and each report of the Inspector General relating to that review available to the public.

(f) DEFINITION.—In this section, the definition of “identifiable form” is consistent with Public Law 107-347, the E-Government Act of 2002, and means any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means.

SEC. 523. None of the funds made available under this Act may be obligated or expended to establish or implement a pilot program under which not more than 10 designated essential air service communities located in proximity to hub airports are required to assume 10 percent of their essential air subsidy costs for a 4-year period commonly referred to as the EAS local participation program.

SEC. 524. None of the funds made available in this Act may be used by the Council of Economic Advisers to produce an Economic Report of the President regarding the inclusion of employment at a retail fast food restaurant as part of the definition of manufacturing employment.

SEC. 525. Section 302(e)(3)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)(3)(B)) is amended by striking “\$1,000” and inserting in its place “\$2,000”.

SEC. 526. The Former Presidents Act, 3 U.S.C. 102, note, is amended to add the following at the end of section 1(b): “Amounts provided for ‘Allowances and Office Staff for Former Presidents’ may be used to pay fees of an independent contractor who is not a member of the staff of the office of a former President for the review of Presidential records of a former President in connection with the transfer of such records to the National Archives and Records Administration or a Presidential Library without regard to the limitation on staff compensation set forth herein.”.

SEC. 527. Of funds so made available in Items 18 and 19 of the table contained in section 3031 of Public Law 105-178, \$5,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 104-50 for Crossroads Intermodal Station, New York, \$1,000,000 shall be available for the Buffalo Inner Harbor Redevelopment Project; of the funds made available in Public Law 104-205 for Crossroads Intermodal Station, New York, \$1,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 106-346 for Buffalo, New York Intermodal facility, \$500,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project; of funds made available in Public Law 108-7 for Buffalo Intermodal Transportation Center, \$5,000,000 shall be available for the Buffalo, New York Inner Harbor Redevelopment Project.

SEC. 528. Funds in this Act that are apportioned to the Charleston Area Regional Transportation Authority to carry out section 5307 of title 49, United States Code, may be used to acquire land, equipment, or facilities used in public transportation from another governmental authority in the same geographic area: *Provided*, That the non-Federal share under section 5307 may include revenues from the sale of advertising and concessions.

SEC. 529. To the extent that funds remain available within the current budget for the project, the Secretary shall amend the Full Funding Grant Agreement for the Tri-Met Interstate light rail extension in Portland, Oregon, to allow acquisition of up to a total of twenty-four light rail vehicles.

SEC. 530. Section 1023(h) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127 note; Public Law 102-240 as amended by section 347 of Public Law 108-7) is amended in paragraph (1) by striking “October 1, 2003” and inserting “October 1, 2005”.

SEC. 531. Unobligated funds in an amount not to exceed \$4,500,000 that were designated to the North Country County Consortium, New York project in the conference report accompanying Public Law 108-99 under the Job Access and Reverse Commute Account shall be transferred to and administered under the bus category of the Capital Investment Grants Account and available for North Country Bus and Bus Related Equipment.

SEC. 532. Section 312a(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 439a(a)) is amended—

- (1) by striking the “or” at the end of paragraph (a)(3);
- (2) by striking the period, and adding a semi-colon at the end of paragraph (a)(4);
- (3) by adding a new paragraph (a)(5) to read as follows: “(5) for donations to State and local candidates subject to the provisions of State law; or”; and
- (4) by adding a new paragraph (a)(6) to read as follows: “(6) for any other lawful purpose unless prohibited by subsection (b) of this section.”.

SEC. 533. From funds made available in this Act under the headings “White House Office”, “Executive Residence at the White House”, “White House Repair and Restoration”, “Council of Economic Advisors”, “Office of Policy Development”, “National Security Council”, “Office of Administration”, “Office of Management and Budget”, “Office of National Drug Control Policy”, “Special Assistance to the President”, and “Official Residence of the Vice President”, the Director of the Office of Management and Budget (or such other officer as the President may designate in writing), may, fifteen days after giving notice to the House and Senate Committees on Appropriations, transfer not to exceed 10 percent of any such appropriation to any other such appropriation, to be merged with and available for the same time and for the same purposes as the appropriation to which transferred: *Provided*, That the amount of an appropriation shall not be increased by more than 50 percent by such transfers: *Provided further*, That no amount shall be transferred from “Special Assistance to the President” or “Official Residence of the Vice President” without the approval of the Vice President.

TITLE VI

GENERAL PROVISIONS

DEPARTMENTS, AGENCIES, AND CORPORATIONS

SEC. 601. Funds appropriated in this or any other Act may be used to pay travel to the United States for the immediate family of employees serving abroad in cases of death or life threatening illness of said employee.

SEC. 602. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for fiscal year 2005 shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such department, agency, or instrumentality.

SEC. 603. Unless otherwise specifically provided, the maximum amount allowable during the current fiscal year in accordance with section 16 of the Act of August 2, 1946 (60 Stat. 810), for the purchase of any passenger motor vehicle (exclusive of buses, ambulances, law enforcement, and undercover surveillance vehicles), is hereby fixed at \$8,100 except station wagons for which the maximum shall be \$9,100: *Provided*, That these limits may be exceeded

by not to exceed \$3,700 for police-type vehicles, and by not to exceed \$4,000 for special heavy-duty vehicles: *Provided further*, That the limits set forth in this section may not be exceeded by more than 5 percent for electric or hybrid vehicles purchased for demonstration under the provisions of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976: *Provided further*, That the limits set forth in this section may be exceeded by the incremental cost of clean alternative fuels vehicles acquired pursuant to Public Law 101-549 over the cost of comparable conventionally fueled vehicles.

SEC. 604. Appropriations of the executive departments and independent establishments for the current fiscal year available for expenses of travel, or for the expenses of the activity concerned, are hereby made available for quarters allowances and cost-of-living allowances, in accordance with 5 U.S.C. 5922-5924.

SEC. 605. Unless otherwise specified during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless such person: (1) is a citizen of the United States; (2) is a person in the service of the United States on the date of the enactment of this Act who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date and is actually residing in the United States; (3) is a person who owes allegiance to the United States; (4) is an alien from Cuba, Poland, South Vietnam, the countries of the former Soviet Union, or the Baltic countries lawfully admitted to the United States for permanent residence; (5) is a South Vietnamese, Cambodian, or Laotian refugee paroled in the United States after January 1, 1975; or (6) is a national of the People's Republic of China who qualifies for adjustment of status pursuant to the Chinese Student Protection Act of 1992: *Provided*, That for the purpose of this section, an affidavit signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status have been complied with: *Provided further*, That any person making a false affidavit shall be guilty of a felony, and, upon conviction, shall be fined no more than \$4,000 or imprisoned for not more than 1 year, or both: *Provided further*, That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law: *Provided further*, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government. This section shall not apply to citizens of Ireland, Israel, or the Republic of the Philippines, or to nationals of those countries allied with the United States in a current defense effort, or to international broadcasters employed by the United States Information Agency, or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies.

5 USC 3101 note.

SEC. 606. Appropriations available to any department or agency during the current fiscal year for necessary expenses, including maintenance or operating expenses, shall also be available for payment to the General Services Administration for charges for space and services and those expenses of renovation and alteration of

buildings and facilities which constitute public improvements performed in accordance with the Public Buildings Act of 1959 (73 Stat. 749), the Public Buildings Amendments of 1972 (87 Stat. 216), or other applicable law.

SEC. 607. In addition to funds provided in this or any other Act, all Federal agencies are authorized to receive and use funds resulting from the sale of materials, including Federal records disposed of pursuant to a records schedule recovered through recycling or waste prevention programs. Such funds shall be available until expended for the following purposes:

(1) Acquisition, waste reduction and prevention, and recycling programs as described in Executive Order No. 13101 (September 14, 1998), including any such programs adopted prior to the effective date of the Executive order.

(2) Other Federal agency environmental management programs, including, but not limited to, the development and implementation of hazardous waste management and pollution prevention programs.

(3) Other employee programs as authorized by law or as deemed appropriate by the head of the Federal agency.

SEC. 608. Funds made available by this or any other Act for administrative expenses in the current fiscal year of the corporations and agencies subject to chapter 91 of title 31, United States Code, shall be available, in addition to objects for which such funds are otherwise available, for rent in the District of Columbia; services in accordance with 5 U.S.C. 3109; and the objects specified under this head, all the provisions of which shall be applicable to the expenditure of such funds unless otherwise specified in the Act by which they are made available: *Provided*, That in the event any functions budgeted as administrative expenses are subsequently transferred to or paid from other funds, the limitations on administrative expenses shall be correspondingly reduced.

SEC. 609. No part of any appropriation for the current fiscal year contained in this or any other Act shall be paid to any person for the filling of any position for which he or she has been nominated after the Senate has voted not to approve the nomination of said person.

SEC. 610. No part of any appropriation contained in this or any other Act shall be available for interagency financing of boards (except Federal Executive Boards), commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality.

SEC. 611. Funds made available by this or any other Act to the Postal Service Fund (39 U.S.C. 2003) shall be available for employment of guards for all buildings and areas owned or occupied by the Postal Service and under the charge and control of the Postal Service, and such guards shall have, with respect to such property, the powers of special policemen provided by the first section of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318), and, as to property owned or occupied by the Postal Service, the Postmaster General may take the same actions as the Administrator of General Services may take under the provisions of sections 2 and 3 of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318a and 318b), attaching thereto penal consequences under the authority and within the limits provided

in section 4 of the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318c).

SEC. 612. None of the funds made available pursuant to the provisions of this Act shall be used to implement, administer, or enforce any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

SEC. 613. (a) Notwithstanding any other provision of law, and except as otherwise provided in this section, no part of any of the funds appropriated for fiscal year 2005, by this or any other Act, may be used to pay any prevailing rate employee described in section 5342(a)(2)(A) of title 5, United States Code—

5 USC 5343 note.

(1) during the period from the date of expiration of the limitation imposed by the comparable section for previous fiscal years until the normal effective date of the applicable wage survey adjustment that is to take effect in fiscal year 2005, in an amount that exceeds the rate payable for the applicable grade and step of the applicable wage schedule in accordance with such section; and

(2) during the period consisting of the remainder of fiscal year 2005, in an amount that exceeds, as a result of a wage survey adjustment, the rate payable under paragraph (1) by more than the sum of—

(A) the percentage adjustment taking effect in fiscal year 2005 under section 5303 of title 5, United States Code, in the rates of pay under the General Schedule; and

(B) the difference between the overall average percentage of the locality-based comparability payments taking effect in fiscal year 2005 under section 5304 of such title (whether by adjustment or otherwise), and the overall average percentage of such payments which was effective in the previous fiscal year under such section.

(b) Notwithstanding any other provision of law, no prevailing rate employee described in subparagraph (B) or (C) of section 5342(a)(2) of title 5, United States Code, and no employee covered by section 5348 of such title, may be paid during the periods for which subsection (a) is in effect at a rate that exceeds the rates that would be payable under subsection (a) were subsection (a) applicable to such employee.

(c) For the purposes of this section, the rates payable to an employee who is covered by this section and who is paid from a schedule not in existence on September 30, 2004, shall be determined under regulations prescribed by the Office of Personnel Management.

(d) Notwithstanding any other provision of law, rates of premium pay for employees subject to this section may not be changed from the rates in effect on September 30, 2004, except to the extent determined by the Office of Personnel Management to be consistent with the purpose of this section.

(e) This section shall apply with respect to pay for service performed after September 30, 2004.

Applicability.

(f) For the purpose of administering any provision of law (including any rule or regulation that provides premium pay, retirement, life insurance, or any other employee benefit) that requires any deduction or contribution, or that imposes any requirement or limitation on the basis of a rate of salary or basic pay, the

rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

(g) Nothing in this section shall be considered to permit or require the payment to any employee covered by this section at a rate in excess of the rate that would be payable were this section not in effect.

(h) The Office of Personnel Management may provide for exceptions to the limitations imposed by this section if the Office determines that such exceptions are necessary to ensure the recruitment or retention of qualified employees.

SEC. 614. During the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations. For the purposes of this section, the term “office” shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual.

SEC. 615. Notwithstanding section 1346 of title 31, United States Code, or section 610 of this Act, funds made available for the current fiscal year by this or any other Act shall be available for the interagency funding of national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities, as provided by Executive Order No. 12472 (April 3, 1984).

SEC. 616. (a) None of the funds appropriated by this or any other Act may be obligated or expended by any Federal department, agency, or other instrumentality for the salaries or expenses of any employee appointed to a position of a confidential or policy-determining character excepted from the competitive service pursuant to section 3302 of title 5, United States Code, without a certification to the Office of Personnel Management from the head of the Federal department, agency, or other instrumentality employing the Schedule C appointee that the Schedule C position was not created solely or primarily in order to detail the employee to the White House.

(b) The provisions of this section shall not apply to Federal employees or members of the armed services detailed to or from—

- (1) the Central Intelligence Agency;
- (2) the National Security Agency;
- (3) the Defense Intelligence Agency;
- (4) the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
- (5) the Bureau of Intelligence and Research of the Department of State;
- (6) any agency, office, or unit of the Army, Navy, Air Force, and Marine Corps, the Department of Homeland Security, the Federal Bureau of Investigation and the Drug Enforcement Administration of the Department of Justice, the Department of Transportation, the Department of the Treasury, and the Department of Energy performing intelligence functions; and

(7) the Director of Central Intelligence.

SEC. 617. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for the current fiscal year shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from discrimination and sexual harassment and that all of its workplaces are not in violation of title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973.

SEC. 618. No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who—

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

SEC. 619. (a) None of the funds made available in this or any other Act may be obligated or expended for any employee training that—

(1) does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties;

(2) contains elements likely to induce high levels of emotional response or psychological stress in some participants;

(3) does not require prior employee notification of the content and methods to be used in the training and written end of course evaluation;

(4) contains any methods or content associated with religious or quasi-religious belief systems or “new age” belief systems as defined in Equal Employment Opportunity Commission Notice N-915.022, dated September 2, 1988; or

(5) is offensive to, or designed to change, participants’ personal values or lifestyle outside the workplace.

(b) Nothing in this section shall prohibit, restrict, or otherwise preclude an agency from conducting training bearing directly upon the performance of official duties.

SEC. 620. No funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: “These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.”: *Provided*, That notwithstanding the preceding paragraph, a nondisclosure policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that they do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

SEC. 621. No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

SEC. 622. None of the funds appropriated by this or any other Act may be used by an agency to provide a Federal employee's home address to any labor organization except when the employee has authorized such disclosure or when such disclosure has been ordered by a court of competent jurisdiction.

SEC. 623. None of the funds made available in this Act or any other Act may be used to provide any non-public information such as mailing or telephone lists to any person or any organization outside of the Federal Government without the approval of the Committees on Appropriations.

SEC. 624. No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofor authorized by the Congress.

SEC. 625. (a) In this section the term “agency”—

(1) means an Executive agency as defined under section 105 of title 5, United States Code;

(2) includes a military department as defined under section 102 of such title, the Postal Service, and the Postal Rate Commission; and

(3) shall not include the Government Accountability Office.

(b) Unless authorized in accordance with law or regulations to use such time for other purposes, an employee of an agency shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under section 6301(2) of title 5, United States Code, has an obligation to expend an honest effort and a reasonable proportion of such employee’s time in the performance of official duties.

SEC. 626. Notwithstanding 31 U.S.C. 1346 and section 610 of this Act, funds made available for the current fiscal year by this or any other Act to any department or agency, which is a member of the Joint Financial Management Improvement Program (JFMIP), shall be available to finance an appropriate share of JFMIP administrative costs, as determined by the JFMIP, but not to exceed a total of \$800,000 including the salary of the Executive Director and staff support.

SEC. 627. Notwithstanding 31 U.S.C. 1346 and section 610 of this Act, the head of each Executive department and agency is hereby authorized to transfer to or reimburse “General Services Administration, Government-wide Policy” with the approval of the Director of the Office of Management and Budget, funds made available for the current fiscal year by this or any other Act, including rebates from charge card and other contracts: *Provided*, That these funds shall be administered by the Administrator of General Services to support Government-wide financial, information technology, procurement, and other management innovations, initiatives, and activities, as approved by the Director of the Office of Management and Budget, in consultation with the appropriate interagency groups designated by the Director (including the Chief Financial Officers Council and the Joint Financial Management Improvement Program for financial management initiatives, the Chief Information Officers Council for information technology initiatives, the Chief Human Capital Officers Council for human capital initiatives, and the Federal Acquisition Council for procurement initiatives). The total funds transferred or reimbursed shall not exceed \$17,000,000. Such transfers or reimbursements may only be made 15 days following notification of the Committees on Appropriations by the Director of the Office of Management and Budget.

SEC. 628. None of the funds made available in this or any other Act may be used by the Office of Personnel Management or any other department or agency of the Federal Government to prohibit any agency from using appropriated funds as they see fit to independently contract with private companies to provide online employment applications and processing services.

SEC. 629. Notwithstanding any other provision of law, a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

SEC. 630. Notwithstanding section 1346 of title 31, United States Code, or section 610 of this Act, funds made available for

Reports.

the current fiscal year by this or any other Act shall be available for the interagency funding of specific projects, workshops, studies, and similar efforts to carry out the purposes of the National Science and Technology Council (authorized by Executive Order No. 12881), which benefit multiple Federal departments, agencies, or entities: *Provided*, That the Office of Management and Budget shall provide a report describing the budget of and resources connected with the National Science and Technology Council to the Committees on Appropriations, the House Committee on Science; and the Senate Committee on Commerce, Science, and Transportation 90 days after enactment of this Act.

SEC. 631. Any request for proposals, solicitation, grant application, form, notification, press release, or other publications involving the distribution of Federal funds shall indicate the agency providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided: *Provided*, That this provision shall apply to direct payments, formula funds, and grants received by a State receiving Federal funds.

SEC. 632. Subsection (f) of section 403 of Public Law 103–356 (31 U.S.C. 501 note), as amended, is further amended by striking “October 1, 2004” and inserting “October 1, 2005”.

SEC. 633. (a) PROHIBITION OF FEDERAL AGENCY MONITORING OF INDIVIDUALS’ INTERNET USE.—None of the funds made available in this or any other Act may be used by any Federal agency—

(1) to collect, review, or create any aggregation of data, derived from any means, that includes any personally identifiable information relating to an individual’s access to or use of any Federal Government Internet site of the agency; or

(2) to enter into any agreement with a third party (including another government agency) to collect, review, or obtain any aggregation of data, derived from any means, that includes any personally identifiable information relating to an individual’s access to or use of any nongovernmental Internet site.

(b) EXCEPTIONS.—The limitations established in subsection (a) shall not apply to—

(1) any record of aggregate data that does not identify particular persons;

(2) any voluntary submission of personally identifiable information;

(3) any action taken for law enforcement, regulatory, or supervisory purposes, in accordance with applicable law; or

(4) any action described in subsection (a)(1) that is a system security action taken by the operator of an Internet site and is necessarily incident to the rendition of the Internet site services or to the protection of the rights or property of the provider of the Internet site.

(c) DEFINITIONS.—For the purposes of this section:

(1) The term “regulatory” means agency actions to implement, interpret or enforce authorities provided in law.

(2) The term “supervisory” means examinations of the agency’s supervised institutions, including assessing safety and soundness, overall financial condition, management practices and policies and compliance with applicable standards as provided in law.

SEC. 634. (a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision

providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with—

(1) any of the following religious plans:

(A) Personal Care's HMO; and

(B) OSF Health Plans, Inc.; and

(2) any existing or future plan, if the carrier for the plan objects to such coverage on the basis of religious beliefs.

(c) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions.

(d) Nothing in this section shall be construed to require coverage of abortion or abortion-related services.

SEC. 635. The Congress of the United States recognizes the United States Anti-Doping Agency (USADA) as the official anti-doping agency for Olympic, Pan American, and Paralympic sport in the United States.

Sports.
Drugs and drug
abuse.

SEC. 636. Notwithstanding any other provision of law, funds appropriated for official travel by Federal departments and agencies may be used by such departments and agencies, if consistent with Office of Management and Budget Circular A–126 regarding official travel for Government personnel, to participate in the fractional aircraft ownership pilot program.

SEC. 637. None of the funds made available under this or any other Act for fiscal year 2005 and each fiscal year thereafter shall be expended for the purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making such purchase determines that such offered product or service provides the best value to the buying agency pursuant to governmentwide procurement regulations, issued pursuant to section 25(c)(1) of the Office of Federal Procurement Act (41 U.S.C. 421(c)(1)) that impose procedures, standards, and limitations of section 2410n of title 10, United States Code.

18 USC 4124
note.

SEC. 638. Notwithstanding any other provision of law, none of the funds appropriated or made available under this Act or any other appropriations Act may be used to implement or enforce restrictions or limitations on the Coast Guard Congressional Fellowship Program, or to implement the proposed regulations of the Office of Personnel Management to add sections 300.311 through 300.316 to part 300 of title 5 of the Code of Federal Regulations, published in the Federal Register, volume 68, number 174, on September 9, 2003 (relating to the detail of executive branch employees to the legislative branch).

SEC. 639. Each Executive department and agency shall evaluate the creditworthiness of an individual before issuing the individual a government purchase charge card or government travel charge card. The department or agency may not issue a government purchase charge card or government travel charge card to an individual that either lacks a credit history or is found to have an unsatisfactory credit history as a result of this evaluation: *Provided*, That this restriction shall not preclude issuance of a restricted-use charge, debit, or stored value card made in accordance with agency procedures to: (1) an individual with an unsatisfactory credit history where such card is used to pay travel expenses and the agency

5 USC 5701 note.

determines there is no suitable alternative payment mechanism available before issuing the card; or (2) an individual who lacks a credit history. Each Executive department and agency shall establish guidelines and procedures for disciplinary actions to be taken against agency personnel for improper, fraudulent, or abusive use of government charge cards, which shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or agency or with applicable standards of conduct.

Effective date.
5 USC 5303 note.

SEC. 640. (a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2005 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.5 percent, and this adjustment shall apply to civilian employees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2005.

(b) Notwithstanding section 613 of this Act, the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2005 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as “Rest of US” pursuant to section 5304 of title 5 for purposes of this paragraph.

(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2005.

Deadline.
Reports.

SEC. 641. (a) Not later than 180 days after the end of the fiscal year, the head of each Federal agency shall submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in that fiscal year.

(b) The report required by subsection (a) shall separately indicate—

(1) the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States;

(2) an itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act (41 U.S.C. 10a et seq.); and

(3) a summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States.

Public
information.

(c) The head of each Federal agency submitting a report under subsection (a) shall make the report publicly available to the maximum extent practicable.

(d) This section shall not apply to acquisitions made by an agency, or component thereof, that is an element of the intelligence community as set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 642. Notwithstanding any other provision of law, no executive branch agency shall purchase, construct, and/or lease any additional facilities, except within or contiguous to existing locations, to be used for the purpose of conducting Federal law enforcement training without the advance approval of the Committees on Appropriations, except that the Federal Law Enforcement Training Center is authorized to obtain the temporary use of additional facilities by lease, contract, or other agreement for training which cannot be accommodated in existing Center facilities.

SEC. 643. Section 653(j) of title 42, United States Code, is amended by adding at the end the following new paragraph:

“(7) INFORMATION COMPARISONS AND DISCLOSURE TO ASSIST IN FEDERAL DEBT COLLECTION.—

“(A) FURNISHING OF INFORMATION BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall furnish to the Secretary, on such periodic basis as determined by the Secretary of the Treasury in consultation with the Secretary, information in the custody of the Secretary of the Treasury for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to persons—

“(i) who owe delinquent nontax debt to the United States; and

“(ii) whose debt has been referred to the Secretary of the Treasury in accordance with 31 U.S.C. 3711(g).

“(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.—

The Secretary of the Treasury shall seek information pursuant to this section only to the extent necessary to improve collection of the debt described in subparagraph (A).

“(C) DUTIES OF THE SECRETARY.—

“(i) INFORMATION DISCLOSURE.—The Secretary, in cooperation with the Secretary of the Treasury, shall compare information in the National Directory of New Hires with information provided by the Secretary of the Treasury with respect to persons described in subparagraph (A) and shall disclose information in such Directory regarding such persons to the Secretary of the Treasury in accordance with this paragraph, for the purposes specified in this paragraph. Such comparison of information shall not be considered a matching program as defined in 5 U.S.C. 552a.

“(ii) CONDITION ON DISCLOSURE.—The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part. Support collection under section 466(b) of this title shall be given priority over collection of any delinquent Federal nontax debt against the same income.

“(D) USE OF INFORMATION BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury may use information provided under this paragraph only for purposes of collecting the debt described in subparagraph (A).

“(E) DISCLOSURE OF INFORMATION BY THE SECRETARY OF THE TREASURY.—

“(i) PURPOSE OF DISCLOSURE.—The Secretary of the Treasury may make a disclosure under this

subparagraph only for purposes of collecting the debt described in subparagraph (A).

“(ii) DISCLOSURES PERMITTED.—Subject to clauses (iii) and (iv), the Secretary of the Treasury may disclose information resulting from a data match pursuant to this paragraph only to the Attorney General in connection with collecting the debt described in subparagraph (A).

“(iii) CONDITIONS ON DISCLOSURE.—Disclosures under this subparagraph shall be—

“(I) made in accordance with data security and control policies established by the Secretary of the Treasury and approved by the Secretary;

“(II) subject to audit in a manner satisfactory to the Secretary; and

“(III) subject to the sanctions under subsection (l)(2).

“(iv) ADDITIONAL DISCLOSURES.—

“(I) DETERMINATION BY SECRETARIES.—The Secretary of the Treasury and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of the Treasury (in consultation with and approved by the Secretary), of the costs and benefits of such disclosures and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

“(II) PERMITTED PERSONS OR ENTITIES.—If the Secretary of the Treasury and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of the Treasury, in connection with collecting the debt described in subparagraph (A), to a contractor or agent of either Secretary and to the Federal agency that referred such debt to the Secretary of the Treasury for collection, subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

“(v) RESTRICTIONS ON REDISCLOSURE.—A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for collecting the debt described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

“(F) REIMBURSEMENT OF HHS COSTS.—The Secretary of the Treasury shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph. Any such costs paid by the Secretary of the Treasury shall be considered costs of implementing 31 U.S.C. 3711(g) in accordance with 31 U.S.C. 3711(g)(6) and may be paid from the account established pursuant to 31 U.S.C. 3711(g)(7).”.

SEC. 644. Notwithstanding section 1346 of title 31, United States Code, and section 610 of this Act and any other provision of law, the head of each appropriate executive department and agency shall transfer to or reimburse the Federal Aviation Administration, upon the direction of the Director of the Office of Management and Budget, funds made available by this or any other Act for the purposes described below, and shall submit budget requests for such purposes. These funds shall be administered by the Federal Aviation Administration, in consultation with the appropriate inter-agency groups designated by the Director and shall be used to ensure the uninterrupted, continuous operation of the Midway Atoll Airfield by the Federal Aviation Administration pursuant to an operational agreement with the Department of the Interior for the entirety of fiscal year 2005 and any period thereafter that precedes the enactment of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2006. The Director of the Office of Management and Budget shall mandate the necessary transfers after determining an equitable allocation between the appropriate executive departments and agencies of the responsibility for funding the continuous operation of the Midway Atoll Airfield based on, but not limited to, potential use, interest in maintaining aviation safety, and applicability to governmental operations and agency mission. The total funds transferred or reimbursed shall not exceed \$6,000,000 for any twelve-month period. Such sums shall be sufficient to ensure continued operation of the airfield throughout the period cited above. Funds shall be available for operation of the airfield or airfield-related capital upgrades. The Director of the Office of Management and Budget shall notify the Committees on Appropriations of such transfers or reimbursements within 15 days of this Act. Such transfers or reimbursements shall begin within 30 days of enactment of this Act.

Notification.
Deadline.
Deadline.

SEC. 645. (a) DESIGNATION.—The United States Courthouse located at 95 Seventh Street in San Francisco, California, shall be known and designated as the “James R. Browning United States Courthouse”.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the courthouse referred to in subsection (a) shall be deemed to be a reference to the “James R. Browning United States Courthouse”.

DIVISION I—DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDE- PENDENT AGENCIES APPROPRIATIONS ACT, 2005

TITLE I—DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by law (38 U.S.C. 107, chapters 11, 13, 18, 51, 53, 55, and 61); pension benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 15, 51, 53, 55, and 61; 92 Stat. 2508);

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Veterans Affairs
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Urban
Development,
and Independent
Agencies
Appropriations
Act, 2005.

and burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 540 et seq.) and for other benefits as authorized by law (38 U.S.C. 107, 1312, 1977, and 2106, chapters 23, 51, 53, 55, and 61; 50 U.S.C. App. 540-548; 43 Stat. 122, 123; 45 Stat. 735; 76 Stat. 1198), \$32,607,688,000, to remain available until expended: *Provided*, That not to exceed \$20,703,000 of the amount appropriated under this heading shall be reimbursed to "General operating expenses" and "Medical services" for necessary expenses in implementing those provisions authorized in the Omnibus Budget Reconciliation Act of 1990, and in the Veterans' Benefits Act of 1992 (38 U.S.C. chapters 51, 53, and 55), the funding source for which is specifically provided as the "Compensation and pensions" appropriation: *Provided further*, That such sums as may be earned on an actual qualifying patient basis, shall be reimbursed to "Medical facilities revolving fund" to augment the funding of individual medical facilities for nursing home care provided to pensioners as authorized.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 21, 30, 31, 34, 35, 36, 39, 51, 53, 55, and 61), \$2,556,232,000, to remain available until expended: *Provided*, That expenses for rehabilitation program services and assistance which the Secretary is authorized to provide under section 3104(a) of title 38, United States Code, other than under subsection (a)(1), (2), (5), and (11) of that section, shall be charged to this account.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by 38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487, \$44,380,000, to remain available until expended.

VETERANS HOUSING BENEFIT PROGRAM FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the program, as authorized by 38 U.S.C. chapter 37, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That during fiscal year 2005, within the resources available, not to exceed \$500,000 in gross obligations for direct loans are authorized for specially adapted housing loans.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, \$154,075,000, which may be transferred to and merged with the appropriation for "General operating expenses".

VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, \$47,000, as authorized by 38 U.S.C. chapter 31, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That funds made available under this heading are available to subsidize gross obligations for the principal amount of direct loans not to exceed \$4,108,000.

In addition, for administrative expenses necessary to carry out the direct loan program, \$311,000, which may be transferred to and merged with the appropriation for “General operating expenses”.

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For administrative expenses to carry out the direct loan program authorized by 38 U.S.C. chapter 37, subchapter V, as amended, \$571,000, which may be transferred to and merged with the appropriation for “General operating expenses”: *Provided*, That no new loans in excess of \$50,000,000 may be made in fiscal year 2005.

GUARANTEED TRANSITIONAL HOUSING LOANS FOR HOMELESS
VETERANS PROGRAM ACCOUNT

For the administrative expenses to carry out the guaranteed transitional housing loan program authorized by 38 U.S.C. chapter 37, subchapter VI, not to exceed \$750,000 of the amounts appropriated by this Act for “General operating expenses” and “Medical administration” may be expended.

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in paragraphs (1) through (8) of section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the department and including medical supplies and equipment and salaries and expenses of health-care employees hired under title 38, United States Code, and aid to State homes as authorized by section 1741 of title 38, United States Code; \$19,472,777,000, plus reimbursements: *Provided*, That of the funds made available under this heading, not to exceed \$1,100,000,000 shall be available until September 30, 2006: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for treatment for veterans who are service-connected disabled, lower income, or have special needs: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding

for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: *Provided further*, That of the funds made available under this heading, the Secretary may transfer up to \$400,000,000, to remain available until expended, to “Construction, major projects” for purposes of implementing CARES subject to a determination by the Secretary that such funds will improve access and quality of veteran’s health care needs: *Provided further*, That, during the fiscal year ending September 30, 2005, the Secretary may transfer not more than \$125,000,000 of the unobligated balances in this account and amounts made available under this heading to “General operating expenses” for costs associated with processing claims where the basis of the entitlement is claimed disability incurred as a result of a veteran’s service, subject to a determination by the Secretary of Veterans Affairs that such additional funds are necessary: *Provided further*, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may authorize the dispensing of prescription drugs from Veterans Health Administration facilities to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: *Provided further*, That the implementation of the program described in the previous proviso shall incur no additional cost to the Department of Veterans Affairs: *Provided further*, That for the DOD VA Health Care Sharing Incentive Fund, as authorized by section 721 of Public Law 107-314, a minimum of \$15,000,000, to remain available until expended, for any purpose authorized by 38 U.S.C. 8111.

MEDICAL ADMINISTRATION

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities; information technology hardware and software; uniforms or allowances therefor, as authorized by sections 5901-5902 of title 5, United States Code; and administrative and legal expenses of the department for collecting and recovering amounts owed the department as authorized under chapter 17 of title 38, United States Code, and the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.); \$4,705,000,000, of which \$250,000,000 shall be available until September 30, 2006, plus reimbursements.

MEDICAL FACILITIES

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities and other necessary facilities for the Veterans Health Administration; for administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction and renovation of any facility under the jurisdiction or for the use of the department; for oversight, engineering and architectural activities not charged to project costs; for repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; for leases of facilities; and for laundry and food services, \$3,745,000,000, of which \$250,000,000 shall be available until September 30, 2006.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by chapter 73 of title 38, United States Code, to remain available until September 30, 2006, \$405,593,000, plus reimbursements.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including administrative expenses in support of department-wide capital planning, management and policy activities, uniforms or allowances therefor; not to exceed \$25,000 for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail, \$1,324,753,000: *Provided*, That expenses for services and assistance authorized under 38 U.S.C. 3104(a)(1), (2), (5), and (11) that the Secretary determines are necessary to enable entitled veterans: (1) to the maximum extent feasible, to become employable and to obtain and maintain suitable employment; or (2) to achieve maximum independence in daily living, shall be charged to this account: *Provided further*, That the Veterans Benefits Administration shall be funded at not less than \$1,027,193,000: *Provided further*, That of the funds made available under this heading, not to exceed \$66,000,000 shall be available for obligation until September 30, 2006: *Provided further*, That from the funds made available under this heading, the Veterans Benefits Administration may purchase up to two passenger motor vehicles for use in operations of that Administration in Manila, Philippines.

NATIONAL CEMETERY ADMINISTRATION

For necessary expenses of the National Cemetery Administration for operations and maintenance, not otherwise provided for, including uniforms or allowances therefor; cemeterial expenses as authorized by law; purchase of one passenger motor vehicle for use in cemeterial operations; and hire of passenger motor vehicles, \$148,925,000: *Provided*, That of the funds made available under this heading, not to exceed \$7,400,000 shall be available until September 30, 2006.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$69,711,000, to remain available until September 30, 2006.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities including parking projects under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including

Reports.

planning, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, where the estimated cost of a project is more than the amount set forth in 38 U.S.C. 8104(a)(3)(A) or where funds for a project were made available in a previous major project appropriation, \$458,800,000, to remain available until expended, of which \$370,709,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities; and of which \$8,091,000 shall be to make reimbursements as provided in 41 U.S.C. 612 for claims paid for contract disputes: *Provided*, That except for advance planning activities, including needs assessments which may or may not lead to capital investments, and other capital asset management related activities, such as portfolio development and management activities, and investment strategy studies funded through the advance planning fund and the planning and design activities funded through the design fund and CARES funds, including needs assessments which may or may not lead to capital investments, none of the funds appropriated under this heading shall be used for any project which has not been approved by the Congress in the budgetary process: *Provided further*, That funds provided in this appropriation for fiscal year 2005, for each approved project (except those for CARES activities referenced above) shall be obligated: (1) by the awarding of a construction documents contract by September 30, 2005; and (2) by the awarding of a construction contract by September 30, 2006: *Provided further*, That the Secretary of Veterans Affairs shall promptly report in writing to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities including parking projects under the jurisdiction or for the use of the Department of Veterans Affairs, including planning and assessments of needs which may lead to capital investments, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, 8122, and 8162 of title 38, United States Code, where the estimated cost of a project is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), \$230,779,000, to remain available until expended, along with unobligated balances of previous "Construction, minor projects" appropriations which are hereby made available for any project where the estimated cost is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), of which \$182,100,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities: *Provided*, That from amounts appropriated under this heading, additional amounts may be used for CARES activities upon notification of and approval by the Committees on Appropriations: *Provided further*, That funds in this account shall be available for: (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the department which are necessary because of loss

or damage caused by any natural disaster or catastrophe; and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans as authorized by 38 U.S.C. 8131–8137, \$105,163,000, to remain available until expended.

GRANTS FOR THE CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to aid States in establishing, expanding, or improving State veterans cemeteries as authorized by 38 U.S.C. 2408, \$32,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFERS OF FUNDS)

SEC. 101. Any appropriation for fiscal year 2005 for “Compensation and pensions”, “Readjustment benefits”, and “Veterans insurance and indemnities” may be transferred to any other of the mentioned appropriations.

SEC. 102. Appropriations available to the Department of Veterans Affairs for fiscal year 2005 for salaries and expenses shall be available for services authorized by 5 U.S.C. 3109 hire of passenger motor vehicles; lease of a facility or land or both; and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902.

SEC. 103. No appropriations in this Act for the Department of Veterans Affairs (except the appropriations for “Construction, major projects”, “Construction, minor projects”, and the “Parking revolving fund”) shall be available for the purchase of any site for or toward the construction of any new hospital or home.

SEC. 104. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or examination of any persons (except beneficiaries entitled under the laws bestowing such benefits to veterans, and persons receiving such treatment under 5 U.S.C. 7901–7904 or 42 U.S.C. 5141–5204), unless reimbursement of cost is made to the “Medical services” account at such rates as may be fixed by the Secretary of Veterans Affairs.

SEC. 105. Appropriations available to the Department of Veterans Affairs for fiscal year 2005 for “Compensation and pensions”, “Readjustment benefits”, and “Veterans insurance and indemnities” shall be available for payment of prior year accrued obligations required to be recorded by law against the corresponding prior year accounts within the last quarter of fiscal year 2004.

SEC. 106. Appropriations accounts available to the Department of Veterans Affairs for fiscal year 2005 shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from title X of the Competitive Equality Banking Act, Public Law 100–86, except that if such obligations are from trust fund accounts they shall be payable from “Compensation and pensions”.

SEC. 107. Notwithstanding any other provision of law, during fiscal year 2005, the Secretary of Veterans Affairs shall, from the National Service Life Insurance Fund (38 U.S.C. 1920), the Veterans' Special Life Insurance Fund (38 U.S.C. 1923), and the United States Government Life Insurance Fund (38 U.S.C. 1955), reimburse the "General operating expenses" account for the cost of administration of the insurance programs financed through those accounts: *Provided*, That reimbursement shall be made only from the surplus earnings accumulated in an insurance program in fiscal year 2005 that are available for dividends in that program after claims have been paid and actuarially determined reserves have been set aside: *Provided further*, That if the cost of administration of an insurance program exceeds the amount of surplus earnings accumulated in that program, reimbursement shall be made only to the extent of such surplus earnings: *Provided further*, That the Secretary shall determine the cost of administration for fiscal year 2005 which is properly allocable to the provision of each insurance program and to the provision of any total disability income insurance included in such insurance program.

31 USC 501 note.

SEC. 108. Notwithstanding any other provision of law, the Department of Veterans Affairs shall continue the Franchise Fund pilot program authorized to be established by section 403 of Public Law 103-356 until October 1, 2005: *Provided*, That the Franchise Fund, established by title I of Public Law 104-204 to finance the operations of the Franchise Fund pilot program, shall continue until October 1, 2005.

SEC. 109. Amounts deducted from enhanced-use lease proceeds to reimburse an account for expenses incurred by that account during a prior fiscal year for providing enhanced-use lease services, may be obligated during the fiscal year in which the proceeds are received.

SEC. 110. Funds available in any Department of Veterans Affairs appropriation for fiscal year 2005 or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management and the Office of Employment Discrimination Complaint Adjudication for all services provided at rates which will recover actual costs but not exceed \$29,318,000 for the Office of Resolution Management and \$3,059,000 for the Office of Employment and Discrimination Complaint Adjudication: *Provided*, That payments may be made in advance for services to be furnished based on estimated costs: *Provided further*, That amounts received shall be credited to "General operating expenses" for use by the office that provided the service.

Reports.
Deadline.

SEC. 111. No appropriations in this Act for the Department of Veterans Affairs shall be available to enter into any new lease of real property if the estimated annual rental is more than \$300,000 unless the Secretary submits a report which the Committees on Appropriations of the Congress approve within 30 days following the date on which the report is received.

SEC. 112. No funds of the Department of Veterans Affairs shall be available for hospital care, nursing home care, or medical services provided to any person under chapter 17 of title 38, United States Code, for a non-service-connected disability described in section 1729(a)(2) of such title, unless that person has disclosed to the Secretary of Veterans Affairs, in such form as the Secretary

may require, current, accurate third-party reimbursement information for purposes of section 1729 of such title: *Provided*, That the Secretary may recover, in the same manner as any other debt due the United States, the reasonable charges for such care or services from any person who does not make such disclosure as required: *Provided further*, That any amounts so recovered for care or services provided in a prior fiscal year may be obligated by the Secretary during the fiscal year in which amounts are received.

SEC. 113. Of the amounts provided in this Act, \$25,000,000 shall be for information technology initiatives to support the enterprise architecture of the Department of Veterans Affairs.

SEC. 114. None of the funds made available to the Department in this Act, or any other Act, may be used to implement sections 2 and 5 of Public Law 107–287.

SEC. 115. (a) Hereafter receipts that would otherwise be credited to the accounts listed in subsection (c) shall be deposited into the Medical Care Collections Fund, and shall be transferred to and merged with the “Medical services” account, in fiscal year 2005 and subsequent years, to remain available until expended, to carry out the purposes of the “Medical services” account.

38 USC 1729A
note.

(b) The unobligated balances in the accounts listed in subsection (c), shall be transferred to and merged with the “Medical services” account in fiscal year 2005 and subsequent years, and remain available until expended, to carry out the purposes of the “Medical services” account: *Provided*, That the obligated balances in these accounts may be transferred to the “Medical services” account at the discretion of the Secretary of Veterans Affairs and shall remain available until expended.

(c) Veterans Extended Care Revolving Fund; Medical Facilities Revolving Fund; Special Therapeutic and Rehabilitation Fund; Nursing Home Revolving Fund; Veterans Health Services Improvement Fund; and Parking Revolving Fund.

SEC. 116. (a) The Secretary of Veterans Affairs shall conduct by contract a program of recovery audits for the fee basis and other medical services contracts with respect to payments for hospital care. Notwithstanding section 3302(b) of title 31, United States Code, amounts collected, by setoff or otherwise, as the result of such audits shall be available, without fiscal year limitation, for the purposes for which funds are appropriated under “Medical services” and the purposes of paying a contractor a percent of the amount collected as a result of an audit carried out by the contractor.

Contracts.
Health and
health care.

(b) All amounts so collected under subsection (a) with respect to a designated health care region (as that term is defined in section 1729A(d)(2) of title 38, United States Code) shall be allocated, net of payments to the contractor, to that region.

SEC. 117. Notwithstanding any other provision of law, at the discretion of the Secretary of Veterans Affairs, proceeds or revenues derived from enhanced-use leasing activities (including disposal) that are deposited into the Medical Care Collections Fund may be transferred and merged with “Construction, major projects” and “Construction, minor projects” accounts and be used for construction (including site acquisition and disposition), alterations and improvements of any medical facility under the jurisdiction or for the use of the Department of Veterans Affairs. Such sums as realized are in addition to the amount provided for in “Construction, major projects” and “Construction, minor projects”.

SEC. 118. Amounts made available under “Medical services” are available—

(1) for furnishing recreational facilities, supplies, and equipment; and

(2) for funeral expenses, burial expenses, and other expenses incidental to funerals and burials for beneficiaries receiving care in the department.

SEC. 119. That such sums as may be deposited to the Medical Care Collections Fund pursuant to 38 U.S.C. 1729A may be transferred to “Medical services”, to remain available until expended for the purposes of this account.

SEC. 120. Amounts made available for fiscal year 2005 under the “Medical services”, “Medical administration”, and “Medical facilities” accounts may be transferred between the accounts to the extent necessary to implement the restructuring of the Veterans Health Administration accounts after notice of the amount and purpose of the transfer is provided to the Committees on Appropriations of the Senate and House of Representatives and a period of 30 days has elapsed: *Provided*, That the limitation on transfers is 20 percent in fiscal year 2005.

SEC. 121. Any appropriation for fiscal year 2005 for the Veterans Benefits Administration made available under the heading “General operating expenses” may be transferred to the “Veterans Housing Benefit Program Fund Program Account” for the purpose of providing funds for the nationwide property management contract if the administrative costs of such contract exceed \$8,800,000 in the budget year.

SEC. 122. The Department of Veterans Affairs is authorized to expend such sums as are available in the unobligated balances of the funds originally appropriated to “Medical Care” for emergency expenses resulting from the January 1994 earthquake in southern California in Public Law 103-211, Emergency Supplemental Appropriations Act of 1994, for the same purposes of the “Medical Services” account, to remain available until expended.

SEC. 123. Notwithstanding any other provision of law, the Secretary of Veterans Affairs (Secretary) shall allow veterans eligible under existing VA Medical Care requirements and who reside in Alaska to obtain medical care services from medical facilities supported by the Indian Health Services or tribal organizations. The Secretary shall: (1) limit the application of this provision to rural Alaskan veterans in areas where an existing VA facility or VA-contracted service is unavailable; (2) require participating veterans and facilities to comply with all appropriate rules and regulations, as established by the Secretary; (3) require this provision to be consistent with CARES; and (4) result in no additional cost to the Department of Veterans Affairs or the Indian Health Service.

SEC. 124. Of the funds made available under the heading “Construction, minor projects” in chapter 11 of division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, Public Law 108-324, the Secretary of Veterans Affairs may transfer up to \$19,800,000 to the “Medical Facilities” account for non-recurring maintenance expenses related to hurricane and tropical storm damage.

TITLE II—DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

PUBLIC AND INDIAN HOUSING

TENANT-BASED RENTAL ASSISTANCE

(INCLUDING TRANSFER OF FUNDS)

For activities and assistance for the provision of tenant-based rental assistance authorized under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) (“the Act” herein), not otherwise provided for, \$14,885,000,000, to remain available until expended, of which \$10,685,000,000 shall be available on October 1, 2004 and \$4,200,000,000 shall be available on October 1, 2005: *Provided*, That the amounts made available under this heading are provided as follows:

(1) \$13,462,989,000 for renewals of expiring section 8 tenant-based annual contributions contracts (including renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act): *Provided*, That notwithstanding any other provision of law, from amounts provided under this paragraph, the Secretary for the calendar year 2005 funding cycle shall renew such contracts for each public housing agency based on verified Voucher Management System (VMS) leasing and cost data averaged for the months of May, June, and July of 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: *Provided further*, That if such data is not available, verifiable, or complete, the Secretary shall use verified VMS leasing and cost data averaged for the months of February, March, and April of 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: *Provided further*, That if such data is not available, verifiable, or complete, the Secretary shall use leasing and cost data from the most recent end-of-year financial statements for public housing agency fiscal years ending no later than March 31, 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: *Provided further*, That the Secretary shall, to the extent necessary to stay within the amount provided under this paragraph, pro rata each public housing agency’s allocation otherwise established pursuant to this paragraph: *Provided further*, That the entire amount provided under this paragraph shall be obligated to the public housing agencies based on the allocation and pro rata method described above: *Provided further*, That public housing agencies participating in the Moving to Work demonstration shall be funded pursuant to their Moving to Work agreements and shall be subject to the same pro rata adjustments under the previous proviso: *Provided further*, That none of the funds provided in this paragraph may be used to support a total number of unit months under lease which

exceeds a public housing agency's authorized level of units under contract;

(2) \$163,000,000 for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134), conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, and tenant protection assistance, including replacement and relocation assistance;

(3) \$46,000,000 for family self-sufficiency coordinators under section 23 of the Act;

(4) \$2,904,000 shall be transferred to the Working Capital Fund; and

(5) \$1,210,107,000 for administrative and other expenses of public housing agencies in administering the section 8 tenant-based rental assistance program, of which up to \$25,000,000 shall be available to the Secretary to allocate to public housing agencies that need additional funds to administer their section 8 programs: *Provided*, That \$1,185,107,000 of the amount provided in this paragraph shall be allocated for the calendar year 2005 funding cycle on a pro rata basis to public housing agencies based on the amount public housing agencies were eligible to receive in calendar year 2004: *Provided further*, That all amounts provided under this paragraph shall be only for activities related to the provision of tenant-based rental assistance authorized under section 8, including related development activities.

PROJECT-BASED RENTAL ASSISTANCE

(INCLUDING TRANSFER OF FUNDS)

For activities and assistance for the provision of project-based subsidy contracts under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided for, \$5,341,000,000 to remain available until expended: *Provided*, That the amounts made available under this heading are provided as follows:

(1) \$5,237,100,000 for expiring or terminating section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for amendments to section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act, for renewal of section 8 contracts for units in projects that are subject to approved plans of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and for administrative and other expenses associated with project-based activities and assistance funded under this paragraph.

(2) \$101,900,000 for performance-based contract administrators for section 8 project-based assistance.

(3) \$2,000,000 shall be transferred to the Working Capital Fund.

PUBLIC HOUSING CAPITAL FUND

(INCLUDING TRANSFER OF FUNDS)

For the Public Housing Capital Fund Program to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g) (the “Act”) \$2,600,000,000, to remain available until September 30, 2008: *Provided*, That notwithstanding any other provision of law or regulation, during fiscal year 2005, the Secretary may not delegate to any Department official other than the Deputy Secretary and the Assistant Secretary for Public and Indian Housing any authority under paragraph (2) of section 9(j) regarding the extension of the time periods under such section: *Provided further*, That for purposes of such section 9(j), the term “obligate” means, with respect to amounts, that the amounts are subject to a binding agreement that will result in outlays, immediately or in the future: *Provided further*, That of the total amount provided under this heading, up to \$38,700,000 shall be for carrying out activities under section 9(h) of such Act, of which \$12,500,000 shall be for the provision of remediation services to public housing agencies identified as “troubled” under the Section 8 Management Assessment Program and for surveys used to calculate local Fair Market Rents and assess housing conditions in connection with rental assistance under section 8 of the Act: *Provided further*, That \$10,150,000 shall be transferred to the Working Capital Fund: *Provided further*, That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended: *Provided further*, That of the total amount provided under this heading, up to \$30,000,000 shall be available for the Secretary of Housing and Urban Development to make grants, notwithstanding section 205 of this Act, to public housing agencies for emergency capital needs resulting from unforeseen emergencies and natural disasters occurring in fiscal year 2005: *Provided further*, That of the total amount provided under this heading, \$53,500,000 shall be for supportive services, service coordinators and congregate services as authorized by section 34 of the Act and the Native American Housing Assistance and Self-Determination Act of 1996: *Provided further*, That up to \$3,000,000 is to support the costs of administrative and judicial receiverships in effect prior to date of enactment of this Act: *Provided further*, That of the total amount provided under this heading, \$15,000,000 shall be for Neighborhood Networks grants for activities authorized in section 9(d)(1)(E) of the United States Housing Act of 1937, as amended, of which up to \$1,000,000 may be used for technical assistance in connection with such grants as authorized in section 9(h)(8) of such Act: *Provided further*, That notwithstanding any other provision of law, amounts made available in the previous proviso shall be awarded to public housing agencies on a competitive basis: *Provided further*, That notwithstanding section 9(d)(1)(E) of the United States Housing Act of 1937, any Neighborhood Networks computer center established with funding made available under this heading in this or any other Act, shall be available for use by residents of public housing and residents

of other housing assisted with funding made available under this title in this Act or any other Act.

PUBLIC HOUSING OPERATING FUND

42 USC 1437g
note.

For 2005 payments to public housing agencies for the operation and management of public housing, as authorized by section 9(e) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g(e)), \$2,458,000,000, of which \$10,000,000 in bonus funds shall be provided to public housing agencies that assist program participants in moving away from dependency on housing assistance programs: *Provided*, That of the total amount provided under this heading, \$8,000,000 shall be for programs, as determined appropriate by the Attorney General, which assist in the investigation, prosecution, and prevention of violent crimes and drug offenses in public and federally-assisted low-income housing, including Indian housing, which shall be administered by the Department of Justice through a cooperative agreement with the Department of Housing and Urban Development: *Provided further*, That any such 2005 payment shall be provided in an amount sufficient to cover only the period beginning with the start of a public housing agency's fiscal year and ending on December 31, 2005: *Provided further*, That for fiscal year 2006 and all fiscal years thereafter, the Secretary shall provide assistance under this heading to public housing agencies on a calendar year basis: *Provided further*, That, in fiscal year 2005 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act: *Provided further*, That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended.

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)

For grants to public housing agencies for demolition, site revitalization, replacement housing, and tenant-based assistance grants to projects as authorized by section 24 of the United States Housing Act of 1937, as amended, \$144,000,000, to remain available until September 30, 2006, of which the Secretary may use up to \$4,000,000 for technical assistance and contract expertise, to be provided directly or indirectly by grants, contracts or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the department and of public housing agencies and to residents: *Provided*, That none of such funds shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments, unless expressly permitted herein.

NATIVE AMERICAN HOUSING BLOCK GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For the Native American Housing Block Grants program, as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.), \$627,000,000, to remain available until expended, of which \$2,200,000 shall be contracted through the Secretary as technical

assistance and capacity building to be used by the National American Indian Housing Council in support of the implementation of NAHASDA; of which \$4,500,000 shall be to support the inspection of Indian housing units, contract expertise, training, and technical assistance in the training, oversight, and management of Indian housing and tenant-based assistance, including up to \$300,000 for related travel; and of which \$2,600,000 shall be transferred to the Working Capital Fund: *Provided*, That of the amount provided under this heading, \$2,000,000 shall be made available for the cost of guaranteed notes and other obligations, as authorized by title VI of NAHASDA: *Provided further*, That such costs, including the costs of modifying such notes and other obligations, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize the total principal amount of any notes and other obligations, any part of which is to be guaranteed, not to exceed \$17,926,000: *Provided further*, That for administrative expenses to carry out the guaranteed loan program, up to \$150,000 from amounts in the first proviso, which shall be transferred to and merged with the appropriation for “Salaries and expenses”, to be used only for the administrative costs of these guarantees.

INDIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a), \$5,000,000, to remain available until expended: *Provided*, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$145,345,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to \$250,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for “Salaries and expenses”, to be used only for the administrative costs of these guarantees.

NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND PROGRAM
ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13b), \$1,000,000, to remain available until expended: *Provided*, That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$37,403,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to \$35,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for “Salaries and expenses”, to be used only for the administrative costs of these guarantees.

COMMUNITY PLANNING AND DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

Contracts.

For carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.), \$284,000,000, to remain available until September 30, 2006: *Provided*, That the Secretary shall renew all expiring contracts for permanent supportive housing that were funded under section 854(c)(3) of such Act that meet all program requirements before awarding funds for new contracts and activities authorized under this section: *Provided further*, That the Secretary may use up to \$2,500,000 of the funds under this heading for training, oversight, and technical assistance activities.

RURAL HOUSING AND ECONOMIC DEVELOPMENT

For the Office of Rural Housing and Economic Development in the Department of Housing and Urban Development, \$24,000,000 to remain available until expended, which amount shall be competitively awarded by September 1, 2005, to Indian tribes, State housing finance agencies, State community and/or economic development agencies, local rural nonprofits and community development corporations to support innovative housing and economic development activities in rural areas.

EMPOWERMENT ZONES/ENTERPRISE COMMUNITIES

For grants in connection with a second round of empowerment zones and enterprise communities, \$10,000,000, to remain available until September 30, 2005, for “Urban Empowerment Zones”, as authorized in section 1391(g) of the Internal Revenue Code of 1986 (26 U.S.C. 1391(g)), including \$666,666 for each empowerment zone for use in conjunction with economic development activities consistent with the strategic plan of each empowerment zone.

COMMUNITY DEVELOPMENT FUND

(INCLUDING TRANSFERS OF FUNDS)

For assistance to units of State and local government, and to other entities, for economic and community development activities, and for other purposes, \$4,709,000,000, to remain available until September 30, 2007, unless otherwise specified: *Provided*, That of the amount provided, \$4,150,035,000 is for carrying out the community development block grant program under title I of the Housing and Community Development Act of 1974, as amended (the “Act” herein) (42 U.S.C. 5301 et seq.): *Provided further*, That unless explicitly provided for under this heading (except for planning grants provided in the third paragraph and amounts made available in the second paragraph), not to exceed 20 percent of any grant made with funds appropriated under this heading (other than a grant made available in this paragraph to the Housing Assistance Council or the National American Indian Housing Council, or a grant using funds under section 107(b)(3) of the Act) shall be expended for planning and management development and administration: *Provided further*, That \$69,000,000 shall be for grants to Indian tribes notwithstanding section 106(a)(1) of such Act, of which, notwithstanding any other provision of law

(including section 205 of this Act), up to \$4,000,000 may be used for emergencies that constitute imminent threats to health and safety; \$3,300,000 shall be for a grant to the Housing Assistance Council; \$2,400,000 shall be for a grant to the National American Indian Housing Council; \$4,800,000 shall be available as a grant to the National Housing Development Corporation, for operating expenses not to exceed \$2,000,000 and for a program of affordable housing acquisition and rehabilitation; \$4,800,000 shall be available as a grant to the Raza Development Fund of La Raza for the HOPE Fund, of which \$500,000 is for technical assistance and fund management, and \$4,300,000 is for investments in the HOPE Fund and financing to affiliated organizations; \$43,700,000 shall be for grants pursuant to section 107 of the Act, of which \$9,000,000 shall be for the Native Hawaiian block grant authorized under title VIII of the Native American Housing Assistance and Self-Determination Act of 1996, to remain available until expended, of which \$500,000 shall be for training and technical assistance; \$3,465,000 shall be transferred to the Working Capital Fund; \$25,000,000 shall be for grants pursuant to the Self Help Homeownership Opportunity Program; \$34,500,000 shall be for capacity building, of which \$30,000,000 shall be for Capacity Building for Community Development and Affordable Housing for LISC and the Enterprise Foundation for activities as authorized by section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, with not less than \$5,000,000 of the funding to be used in rural areas, including tribal areas, and of which \$4,500,000 shall be for capacity building activities administered by Habitat for Humanity International; \$2,000,000 shall be for the Special Olympics National Games Organizing Committee for planning, equipment, and operational expenses associated with the 2006 games in Ames, Iowa; \$62,000,000 shall be available for YouthBuild program activities authorized by subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended, and such activities shall be an eligible activity with respect to any funds made available under this heading: *Provided*, That local YouthBuild programs that demonstrate an ability to leverage private and nonprofit funding shall be given a priority for YouthBuild funding: *Provided further*, That no more than 10 percent of any grant award under the YouthBuild program may be used for administrative costs: *Provided further*, That of the amount made available for YouthBuild not less than \$9,000,000 is for grants to establish YouthBuild programs in underserved and rural areas and \$2,000,000 is to be made available for a grant to YouthBuild USA for capacity building for community development and affordable housing activities as specified in section 4 of the HUD Demonstration Act of 1993, as amended.

Of the amount made available under this heading, \$42,000,000 shall be available for neighborhood initiatives that are utilized to improve the conditions of distressed and blighted areas and neighborhoods, to stimulate investment, economic diversification, and community revitalization in areas with population outmigration or a stagnating or declining economic base, or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives: *Provided*, That amounts made available under this paragraph shall be provided in accordance with the terms

and conditions specified in the statement of managers accompanying this Act.

Of the amount made available under this heading, \$262,000,000 shall be available for grants for the Economic Development Initiative (EDI) to finance a variety of targeted economic investments in accordance with the terms and conditions specified in the statement of managers accompanying this Act: *Provided*, That none of the funds provided under this paragraph may be used for program operations.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 2 with respect to amounts made available for the City of Boaz, Alabama by striking “facilities renovation and expansion” and inserting “construction of a new library”.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 740 by striking “facilities renovation and construction” and inserting “an economic development planning study”.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 254 by striking “Greater Community Council in Louisville, Kentucky for construction of a facility for low-income, disabled persons” and inserting “Portland Promise, Inc., in Louisville, Kentucky for a multi-purpose facility”.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 10 with respect to amounts made available to the St. Stephen Family Life Center in Louisville, Kentucky by striking “renovation” and inserting “construction”.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 584 with respect to amounts made available for Queens Borough Public Library in Queens, New York by striking “for facilities rehabilitation and expansion of the Parsons Boulevard complex” and inserting “for facilities construction and renovations”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 198 by striking “\$160,000 for the Pine Mountain Beautification and Economic Development project in Harris County, Georgia for streetscape improvements” and inserting “\$60,000 for the Beautification and Economic Development project in Harris County, Georgia for construction; and \$100,000 for the Beautification and Economic Development project in the Town of Pine Mountain, Georgia for streetscape improvements”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 96 with respect to amounts made available for the City of Corona, California by striking “construction” and inserting “rehabilitation and conversion”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 257 with respect to amounts made available for Fort Dodge, Iowa by inserting “planning, design and” before the word “facilities”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 776 with respect to amounts made available for

Rice University by inserting “planning, design and” before the word “construction”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 535 by striking “facilities renovation, expansion and buildout for the D’Youville College Library Improvement project” and inserting “Administration building renovation”.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 215 by striking “construction of a fieldhouse located at 39th and Cottage Grove” and inserting “costs associated with construction of a LULA lift at Ogden Park”.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 831 by striking “Bread and Rose in Olympia, Washington for renovations to a homeless shelter” and inserting “Catholic Community Services in Olympia, Washington for construction of a homeless shelter”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 303 by striking “Maine Environmental” and inserting “Marine Environmental”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 163 by striking “a special needs evacuation, senior, multipurpose center” and inserting “for Lakefront improvements to Lake Toho”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 499 by striking “relocation of and renovations to the Wolcott Carriage House” and inserting “facilities improvements to Erie Canal parks”.

The referenced statement of the managers under this heading in title II of Public Law 107-73; H. Rept. 107-272 is deemed to be amended by striking “Southern New Mexico Fair and Rodeo in Dona Ana County for infrastructure improvements and to build a multipurpose event center;” and inserting the following: “Dona Ana County, New Mexico, for the Southern New Mexico State Fair to make infrastructure improvements and to build a multipurpose event center;”.

The referenced statement of the managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108-199; H. Rept. 108-401) is deemed to be amended with respect to item 218 by striking “construction” and inserting “planning and design”.

The statement of managers accompanying Public Law 106-74, as amended by chapter 8 of title II of the Emergency Supplemental Act, 2000 (Public Law 106-246), is further amended by inserting “, to remain available to be expended until September 30, 2007,” after “\$25,000,000”.

The referenced statement of managers under the heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108-199; H. Rept. 108-401) is deemed to be amended with respect to numbers 418 and 423 by striking both specified grants and inserting “418. \$900,000 to Northland Neighborhoods, Inc., in Clay County, Missouri for the expansion

of the current Home Repair Program to provide home repairs to low- to moderate-income neighborhoods;”.

The referenced statement of managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108-199; H. Rept. 108-401) is deemed to be amended with respect to item 791 by inserting “for planning and design” after “Texas”.

The referenced statement of managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108-199; H. Rept. 108-401) is deemed to be amended with respect to item 218 by striking “construction” and inserting “planning and design”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 169 by striking “for renovation of an aviation high technology facility” and inserting the following: “for a feasibility study of a facilities improvement to the Airco Complex and surrounding properties”.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 740 by striking “for facilities renovation and construction” and inserting “for development and continuation of the National Medal of Honor Museum of Military History”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 163 by striking “for a special needs evacuation, senior, multipurpose center” and inserting “for construction at the Lakefront Improvement Project”.

The referenced statement of the managers under this heading in Public Law 108-7 is deemed to be amended with respect to item number 54 by striking “for renovation of facilities” and inserting “for the Screen Education Center”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 104 by striking “to Sonoma State University in California for construction of the Green Music Center” and inserting “to Center Point, Inc., to acquire and renovate a facility for the adolescent residential treatment center”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 4 by striking “for renovation of the old Uniontown Middle School” and inserting “for enhancements to facilities for industrial development”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 583 by striking “\$200,000 to the North Carolina Museum of Natural Sciences for construction of the Nature Research Center” and inserting “\$200,000 to the Friends of the North Carolina Museum of Natural Sciences for construction of the Nature Research Center”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 469 by striking “to Rutgers University in New Jersey land acquisition for LEAP University High School” and inserting “to the LEAP Academy University Charter High School in Camden City, New Jersey for facilities construction, renovation, and buildout”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 575 by striking “construction” and inserting “acquisition, renovation”.

The referenced statement of the managers under this heading in Public Law 108-199 is deemed to be amended with respect to item number 683 by striking “for construction related to Bailey Park and downtown streetscape, beautification, building renovation and restoration” and inserting “for master plan development, building acquisition, demolition, renovation and restoration”.

Section 167 of division H of Public Law 108-199 is amended by allocating the funding made available under the heading “Community Development Fund for project number 177 (House Report 108-235) to the Chicago Children’s Choir Academy in Illinois for facility design and construction”. 114 Stat. 452.

The referenced statement of the managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108-199; H. Rept. 108-401) is deemed to be amended with respect to item 24 by striking “Tuscaloosa County Commission for Community Development in Tuscaloosa County, Alabama;” and inserting “City of Tuscaloosa for community development in Tuscaloosa, Alabama;”.

The referenced statement of the managers under this heading in title II of division G of the Consolidated Appropriations Resolution, 2004 (Public Law 108-199; H. Rept. 108-401) is deemed to be amended with respect to item 796 by striking “Community Center” and inserting “Convention Center”.

COMMUNITY DEVELOPMENT LOAN GUARANTEES PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, \$6,000,000, to remain available until September 30, 2006, as authorized by section 108 of the Housing and Community Development Act of 1974, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$275,000,000, notwithstanding any aggregate limitation on outstanding obligations guaranteed in section 108(k) of the Housing and Community Development Act of 1974, as amended.

In addition, for administrative expenses to carry out the guaranteed loan program, \$1,000,000, which shall be transferred to and merged with the appropriation for “Salaries and expenses”.

BROWNFIELDS REDEVELOPMENT

For competitive economic development grants, as authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended, for Brownfields redevelopment projects, \$24,000,000, to remain available until September 30, 2006.

HOME INVESTMENT PARTNERSHIPS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, \$1,865,000,000, to remain available until September 30, 2007: *Provided*, That of the total amount provided in this paragraph, up to \$42,000,000 shall be available for housing counseling under section 106 of the Housing and Urban Development Act of 1968, and \$2,000,000 shall be transferred to the Working Capital Fund.

In addition to amounts otherwise made available under this heading, \$50,000,000, to remain available until September 30, 2007, for assistance to homebuyers as authorized under title I of the American Dream Downpayment Act.

HOMELESS ASSISTANCE GRANTS

(INCLUDING TRANSFER OF FUNDS)

For the emergency shelter grants program as authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, as amended; the supportive housing program as authorized under subtitle C of title IV of such Act; the section 8 moderate rehabilitation single room occupancy program as authorized under the United States Housing Act of 1937, as amended, to assist homeless individuals pursuant to section 441 of the McKinney-Vento Homeless Assistance Act; and the shelter plus care program as authorized under subtitle F of title IV of such Act, \$1,250,515,000, of which \$1,230,515,000 shall remain available until September 30, 2007, and of which \$20,000,000 shall remain available until expended: *Provided*, That not less than 30 percent of funds made available, excluding amounts provided for renewals under the shelter plus care program, shall be used for permanent housing: *Provided further*, That all funds awarded for services shall be matched by 25 percent in funding by each grantee: *Provided further*, That the Secretary shall renew on an annual basis expiring contracts or amendments to contracts funded under the shelter plus care program if the program is determined to be needed under the applicable continuum of care and meets appropriate program requirements and financial standards, as determined by the Secretary: *Provided further*, That all awards of assistance under this heading shall be required to coordinate and integrate homeless programs with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health and Substance Abuse Block Grant, Workforce Investment Act, and the Welfare-to-Work grant program: *Provided further*, That up to \$11,500,000 of the funds appropriated under this heading shall be available for the national homeless data analysis project and technical assistance: *Provided further*, That \$2,500,000 of the funds appropriated under this heading shall be transferred to the Working Capital Fund: *Provided further*, That all balances for Shelter Plus Care renewals previously funded from the Shelter Plus Care Renewal

account shall be transferred to this account, to be available for Shelter Plus Care renewals in fiscal year 2005.

HOUSING PROGRAMS

HOUSING FOR THE ELDERLY

(INCLUDING TRANSFER OF FUNDS)

For capital advances, including amendments to capital advance contracts, for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for project rental assistance for the elderly under section 202(c)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing, \$747,000,000, to remain available until September 30, 2008, of which amount \$50,000,000 shall be for service coordinators and the continuation of existing congregate service grants for residents of assisted housing projects, and of which amount up to \$25,000,000 shall be for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) for conversion of eligible projects under such section to assisted living or related use and for emergency capital repairs as determined by the Secretary: *Provided*, That of the amount made available under this heading, \$18,000,000 shall be available to the Secretary of Housing and Urban Development only for making competitive grants to private nonprofit organizations and consumer cooperatives for covering costs of architectural and engineering work, site control, and other planning relating to the development of supportive housing for the elderly that is eligible for assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q): *Provided further*, That \$450,000 shall be transferred to the Working Capital Fund: *Provided further*, That the Secretary may waive the provisions of section 202 governing the terms and conditions of project rental assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration.

Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004, is amended under this heading by striking the fourth proviso.

Ante, p. 384.

HOUSING FOR PERSONS WITH DISABILITIES

(INCLUDING TRANSFER OF FUNDS)

For capital advance contracts, including amendments to capital advance contracts, for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, for project rental assistance for supportive housing for persons with disabilities under section 811(d)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing for persons with disabilities as authorized by section 811(b)(1) of such Act, and for tenant-based rental assistance contracts entered into pursuant to section 811 of such Act, \$240,000,000: *Provided*, That \$450,000 shall be transferred to the

Working Capital Fund: *Provided further*, That, of the amount provided under this heading \$28,890,000 shall be for amendments to existing tenant-based assistance contracts entered into prior to fiscal year 2004 (only one amendment authorized for any such contract): *Provided further*, That of the amount provided under this heading, the Secretary may make available up to \$10,000,000 for incremental tenant-based rental assistance, as authorized by section 811 of such Act (which assistance is 5 years in duration): *Provided further*, That all tenant-based assistance made available under this heading shall continue to remain available only to persons with disabilities: *Provided further*, That the Secretary may waive the provisions of section 811 governing the terms and conditions of project rental assistance and tenant-based assistance, except that the initial contract term for such assistance shall not exceed 5 years in duration.

Ante, p. 385.

Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004, is amended under this heading by striking the fourth proviso and inserting “*Provided further*, That all section 811 balances outstanding, as of September 30, 2003, shall be transferred to the appropriation under this heading.”.

FLEXIBLE SUBSIDY FUND

(TRANSFER OF FUNDS)

12 USC 1715z-1
note.

From the Rental Housing Assistance Fund, all uncommitted balances of excess rental charges as of September 30, 2004, and any collections made during fiscal year 2005 and all subsequent fiscal years, shall be transferred to the Flexible Subsidy Fund, as authorized by section 236(g) of the National Housing Act, as amended.

MANUFACTURED HOUSING FEES TRUST FUND

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5401 et seq.), up to \$13,000,000 to remain available until expended, to be derived from the Manufactured Housing Fees Trust Fund: *Provided*, That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund pursuant to section 620 of such Act: *Provided further*, That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation from the general fund estimated at not more than \$0 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year 2005 appropriation.

FEDERAL HOUSING ADMINISTRATION

MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

During fiscal year 2005, commitments to guarantee loans to carry out the purposes of section 203(b) of the National Housing

Act, as amended, shall not exceed a loan principal of \$185,000,000,000.

During fiscal year 2005, obligations to make direct loans to carry out the purposes of section 204(g) of the National Housing Act, as amended, shall not exceed \$50,000,000: *Provided*, That the foregoing amount shall be for loans to nonprofit and governmental entities in connection with sales of single family real properties owned by the Secretary and formerly insured under the Mutual Mortgage Insurance Fund.

For administrative expenses necessary to carry out the guaranteed and direct loan program, \$356,906,000, of which not to exceed \$352,906,000 shall be transferred to the appropriation for “Salaries and expenses”; and not to exceed \$4,000,000 shall be transferred to the appropriation for “Office of Inspector General”. In addition, for administrative contract expenses, \$78,000,000, of which \$15,000,000 shall be transferred to the Working Capital Fund: *Provided*, That to the extent guaranteed loan commitments exceed \$65,500,000,000 on or before April 1, 2005, an additional \$1,400 for administrative contract expenses shall be available for each \$1,000,000 in additional guaranteed loan commitments (including a pro rata amount for any amount below \$1,000,000), but in no case shall funds made available by this proviso exceed \$30,000,000.

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of guaranteed loans, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z-3 and 1735c), including the cost of loan guarantee modifications, as that term is defined in section 502 of the Congressional Budget Act of 1974, as amended, \$10,000,000, to remain available until expended: *Provided*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, of up to \$35,000,000,000.

Gross obligations for the principal amount of direct loans, as authorized by sections 204(g), 207(l), 238, and 519(a) of the National Housing Act, shall not exceed \$50,000,000, of which not to exceed \$30,000,000 shall be for bridge financing in connection with the sale of multifamily real properties owned by the Secretary and formerly insured under such Act; and of which not to exceed \$20,000,000 shall be for loans to nonprofit and governmental entities in connection with the sale of single-family real properties owned by the Secretary and formerly insured under such Act.

In addition, for administrative expenses necessary to carry out the guaranteed and direct loan programs, \$227,767,000, of which \$207,767,000 shall be transferred to the appropriation for “Salaries and expenses”; and of which \$20,000,000 shall be transferred to the appropriation for “Office of Inspector General”.

In addition, for administrative contract expenses necessary to carry out the guaranteed and direct loan programs, \$86,000,000, of which \$9,600,000 shall be transferred to the Working Capital Fund: *Provided*, That to the extent guaranteed loan commitments exceed \$8,426,000,000 on or before April 1, 2005, an additional \$1,980 for administrative contract expenses shall be available for each \$1,000,000 in additional guaranteed loan commitments over \$8,426,000,000 (including a pro rata amount for any increment

below \$1,000,000), but in no case shall funds made available by this proviso exceed \$14,400,000.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

GUARANTEES OF MORTGAGE-BACKED SECURITIES LOAN GUARANTEE
PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

New commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721(g)), shall not exceed \$200,000,000,000, to remain available until September 30, 2006.

For administrative expenses necessary to carry out the guaranteed mortgage-backed securities program, \$10,695,000, to be derived from the GNMA guarantees of mortgage-backed securities guaranteed loan receipt account, of which not to exceed \$10,695,000, shall be transferred to the appropriation for “Salaries and expenses”.

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z–1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, \$45,500,000, to remain available until September 30, 2006: *Provided*, That of the total amount provided under this heading, \$7,000,000 shall be for the Partnership for Advancing Technology in Housing (PATH) Initiative: *Provided further*, That of the amounts made available for PATH under this heading, \$3,500,000 shall not be subject to the requirements of section 205 of this title.

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ACTIVITIES

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and section 561 of the Housing and Community Development Act of 1987, as amended, \$46,500,000, to remain available until September 30, 2006, of which \$20,000,000 shall be to carry out activities pursuant to such section 561: *Provided*, That no funds made available under this heading shall be used to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan.

OFFICE OF LEAD HAZARD CONTROL

LEAD HAZARD REDUCTION

For the Lead Hazard Reduction Program, as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, \$168,000,000, to remain available until September

30, 2006, of which \$9,900,000 shall be for the Healthy Homes Initiative, pursuant to sections 501 and 502 of the Housing and Urban Development Act of 1970 that shall include research, studies, testing, and demonstration efforts, including education and outreach concerning lead-based paint poisoning and other housing-related diseases and hazards: *Provided*, That for purposes of environmental review, pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other provisions of law that further the purposes of such Act, a grant under the Healthy Homes Initiative, Operation Lead Elimination Action Plan (LEAP), or the Lead Technical Studies program under this heading or under prior appropriations Acts for such purposes under this heading, shall be considered to be funds for a special project for purposes of section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994: *Provided further*, That of the total amount made available under this heading, \$47,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs, as identified by the Secretary as having: (1) the highest number of occupied pre-1940 units of rental housing; and (2) a disproportionately high number of documented cases of lead-poisoned children: *Provided further*, That each grantee receiving funds under the previous proviso shall target those privately owned units and multifamily buildings that are occupied by low-income families as defined under section 3(b)(2) of the United States Housing Act of 1937: *Provided further*, That not less than 90 percent of the funds made available under this paragraph shall be used exclusively for abatement, inspections, risk assessments, temporary relocations and interim control of lead-based hazards as defined by 42 U.S.C. 4851: *Provided further*, That each recipient of funds provided under the first proviso shall make a matching contribution in an amount not less than 25 percent: *Provided further*, That each applicant shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary to carry out the proposed use of funds pursuant to a Notice of Funding Availability.

MANAGEMENT AND ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary administrative and non-administrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed \$25,000 for official reception and representation expenses, \$1,120,000,000, of which \$560,673,000 shall be provided from the various funds of the Federal Housing Administration, \$10,695,000 shall be provided from funds of the Government National Mortgage Association, \$1,000,000 shall be provided from the “Community development loan guarantees program” account, \$150,000 shall be provided by transfer from the “Native American housing block grants” account, \$250,000 shall be provided by transfer from the “Indian housing loan guarantee fund program” account and \$35,000 shall be transferred from the “Native Hawaiian housing loan guarantee fund” account: *Provided*, That funds made available under

42 USC 3549
note.

Requirements.
Guidelines.

Government
organization.
Employment.

this heading shall only be allocated in the manner specified in the report accompanying this Act unless the Committees on Appropriations of both the House of Representatives and the Senate are notified of any changes in an operating plan or reprogramming: *Provided further*, That no official or employee of the Department shall be designated as an allotment holder unless the Office of the Chief Financial Officer (OCFO) has determined that such allotment holder has implemented an adequate system of funds control and has received training in funds control procedures and directives: *Provided further*, That the Chief Financial Officer shall establish positive control of and maintain adequate systems of accounting for appropriations and other available funds as required by 31 U.S.C. 1514: *Provided further*, That for purposes of funds control and determining whether a violation exists under the Anti-Deficiency Act (31 U.S.C. 1341 et seq.), the point of obligation shall be the executed agreement or contract, except with respect to insurance and guarantee programs, certain types of salaries and expenses funding, and incremental funding that is authorized under an executed agreement or contract, and shall be designated in the approved funds control plan: *Provided further*, That the Chief Financial Officer shall: (1) appoint qualified personnel to conduct investigations of potential or actual violations; (2) establish minimum training requirements and other qualifications for personnel that may be appointed to conduct investigations; (3) establish guidelines and timeframes for the conduct and completion of investigations; (4) prescribe the content, format and other requirements for the submission of final reports on violations; and (5) prescribe such additional policies and procedures as may be required for conducting investigations of, and administering, processing, and reporting on, potential and actual violations of the Anti-Deficiency Act and all other statutes and regulations governing the obligation and expenditure of funds made available in this or any other Act: *Provided further*, That up to \$20,000,000 may be transferred to the Working Capital Fund: *Provided further*, That the Secretary shall fill 7 out of 10 vacancies at the GS–14 and GS–15 levels until the total number of GS–14 and GS–15 positions in the Department has been reduced from the number of GS–14 and GS–15 positions on the date of enactment of Public Law 106–377 by 2½ percent.

WORKING CAPITAL FUND

For additional capital for the Working Capital Fund (42 U.S.C. 3535) for the development of, modifications to, and infrastructure for Department-wide information technology systems, for the continuing operation of both Department-wide and program-specific information systems, and for program-related development activities, \$270,000,000, to remain available until September 30, 2006: *Provided*, That any amounts transferred to this Fund under this Act shall remain available until expended: *Provided further*, That any amounts transferred to this Fund from amounts appropriated by previously enacted appropriations Acts or from within this Act may be used only for the purposes specified under this Fund, in addition to the purposes for which such amounts were appropriated.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, \$104,000,000, of which \$24,000,000 shall be provided from the various funds of the Federal Housing Administration: *Provided*, That the Inspector General shall have independent authority over all personnel issues within this office: *Provided further*, That \$300,000 shall be transferred to the Working Capital Fund.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, including not to exceed \$500 for official reception and representation expenses, \$59,209,000, to remain available until expended, to be derived from the Federal Housing Enterprises Oversight Fund: *Provided*, That of the amount made available under this heading, \$5,000,000 is for litigation and to continue ongoing special investigations of the Federal housing enterprises: *Provided further*, That the Director shall submit a spending plan for the amounts provided under this heading no later than January 15, 2005: *Provided further*, That not less than 80 percent of total amount made available under this heading shall be used only for examination, supervision, and capital oversight of the enterprises (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502)) to ensure that the enterprises are operating in a financially safe and sound manner and complying with the capital requirements under Subtitle B of such Act: *Provided further*, That not to exceed the amount provided herein shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: *Provided further*, That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than \$0.

Deadline.

PUBLIC AND INDIAN HOUSING

HOUSING CERTIFICATE FUND

(RESCISSION)

Of the unobligated balances, including recaptures and carry-over, remaining from funds appropriated to the Department of Housing and Urban Development under this heading or the heading “Annual contributions for assisted housing” or any other heading for fiscal year 2004 and prior years, \$1,557,000,000 is rescinded, to be effected by the Secretary no later than September 30, 2005: *Provided*, That any such balances governed by reallocation provisions under the statute authorizing the program for which the funds were originally appropriated shall be available for the rescission: *Provided further*, That any obligated balances of contract

authority from fiscal year 1974 and prior that have been terminated shall be cancelled: *Provided further*, That no amounts recaptured from amounts appropriated in prior years under this heading or the heading “Annual contributions for assisted housing” and no carryover of such appropriated amounts for project-based assistance shall be available for the calendar year 2005 funding cycle for activities provided for under the heading “Tenant-based rental assistance”: *Provided further*, That amounts recaptured under this heading or the heading “Annual contributions for assisted housing” from amounts appropriated for project-based section 8 activities may be used for amendments to section 8 project-based subsidy contracts or for performance-based contract administrators, notwithstanding the purposes for which such amounts were appropriated.

DRUG ELIMINATION GRANTS FOR LOW-INCOME HOUSING

(RESCISSION)

Of the unobligated balances remaining from funds appropriated in fiscal year 2001 and prior years under the heading “Drug elimination grants for low-income housing”, \$5,000,000 are rescinded.

NATIVE AMERICAN HOUSING BLOCK GRANTS

(RESCISSION)

Of the unobligated balances remaining from funds appropriated in fiscal year 2004 and prior years under the heading “Native American housing block grants” for activities related to title VI of NAHASDA, \$21,000,000 are rescinded.

INDIAN HOUSING LOAN GUARANTEE PROGRAM ACCOUNT

(RESCISSION)

Of the unobligated balances remaining from funds appropriated in fiscal year 2004 and prior years under the heading “Indian housing loan guarantee fund program account” for activities related to the cost of guaranteed loans, \$33,000,000 are rescinded.

HOUSING PROGRAMS

RENTAL HOUSING ASSISTANCE

(RESCISSION)

Of the amounts made available under the heading “Rent Supplement” in Public Law 98-63 for amendments to contracts under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and section 236(f)(2) of the National Housing Act (12 U.S.C. 1715z-1) in State-aided, non-insured rental housing projects, up to \$675,000,000 is cancelled.

FEDERAL HOUSING ADMINISTRATION

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(RESCISSION)

Of the unobligated balances remaining from credit subsidy appropriated in fiscal year 2004 and prior years under the heading

“General and special risk program account”, \$30,000,000 are rescinded.

ADMINISTRATIVE PROVISIONS

SEC. 201. Fifty percent of the amounts of budget authority, or in lieu thereof 50 percent of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 1437 note) shall be rescinded, or in the case of cash, shall be remitted to the Treasury, and such amounts of budget authority or cash recaptured and not rescinded or remitted to the Treasury shall be used by State housing finance agencies or local governments or local housing agencies with projects approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992, in accordance with such section. Notwithstanding the previous sentence, the Secretary may award up to 15 percent of the budget authority or cash recaptured and not rescinded or remitted to the Treasury to provide project owners with incentives to refinance their project at a lower interest rate.

Rescission.

SEC. 202. None of the amounts made available under this Act may be used during fiscal year 2005 to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a non-frivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a Government official or entity, or a court of competent jurisdiction.

SEC. 203. (a) Notwithstanding section 854(c)(1)(A) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)(1)(A)), from any amounts made available under this title for fiscal year 2005 that are allocated under such section, the Secretary of Housing and Urban Development shall allocate and make a grant, in the amount determined under subsection (b), for any State that—

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(1) received an allocation in a prior fiscal year under clause (ii) of such section; and

(2) is not otherwise eligible for an allocation for fiscal year 2005 under such clause (ii) because the areas in the State outside of the metropolitan statistical areas that qualify under clause (i) in fiscal year 2005 do not have the number of cases of acquired immunodeficiency syndrome (AIDS) required under such clause.

(b) The amount of the allocation and grant for any State described in subsection (a) shall be an amount based on the cumulative number of AIDS cases in the areas of that State that are outside of metropolitan statistical areas that qualify under clause (i) of such section 854(c)(1)(A) in fiscal year 2005, in proportion to AIDS cases among cities and States that qualify under clauses (i) and (ii) of such section and States deemed eligible under subsection (a).

(c) Notwithstanding any other provision of law, the amount allocated for fiscal year 2005 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), to the City of New York, New York, on behalf of the New York-Wayne-White Plains, New York-New Jersey Metropolitan Division (hereafter “metropolitan division”) of the New York-Newark-Edison, NY-NJ-PA Metropolitan Statistical Area, shall be adjusted by the Secretary of

Housing and Urban Development by: (1) allocating to the City of Jersey City, New Jersey, the proportion of the metropolitan area's or division's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area or division that is located in Hudson County, New Jersey, and adjusting for the proportion of the metropolitan division's high incidence bonus if this area in New Jersey also has a higher than average per capita incidence of AIDS; and (2) allocating to the City of Paterson, New Jersey, the proportion of the metropolitan area's or division's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area or division that is located in Bergen County and Passaic County, New Jersey, and adjusting for the proportion of the metropolitan division's high incidence bonus if this area in New Jersey also has a higher than average per capita incidence of AIDS. The recipient cities shall use amounts allocated under this subsection to carry out eligible activities under section 855 of the AIDS Housing Opportunity Act (42 U.S.C. 12904) in their respective portions of the metropolitan division that is located in New Jersey.

SEC. 204. (a) During fiscal year 2005, in the provision of rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) in connection with a program to demonstrate the economy and effectiveness of providing such assistance for use in assisted living facilities that is carried out in the counties of the State of Michigan specified in subsection (b) of this section, notwithstanding paragraphs (3) and (18)(B)(iii) of such section 8(o), a family residing in an assisted living facility in any such county, on behalf of which a public housing agency provides assistance pursuant to section 8(o)(18) of such Act, may be required, at the time the family initially receives such assistance, to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such a percentage or amount as the Secretary of Housing and Urban Development determines to be appropriate.

(b) The counties specified in this subsection are Oakland County, Macomb County, Wayne County, and Washtenaw County, in the State of Michigan.

SEC. 205. Except as explicitly provided in law, any grant, cooperative agreement or other assistance made pursuant to title II of this Act shall be made on a competitive basis and in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989.

SEC. 206. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal Home Loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811-1831).

SEC. 207. Unless otherwise provided for in this Act or through a reprogramming of funds, no part of any appropriation for the Department of Housing and Urban Development shall be available for any program, project or activity in excess of amounts set forth in the budget estimates submitted to Congress.

SEC. 208. Corporations and agencies of the Department of Housing and Urban Development which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of such Act as may be necessary in carrying out the programs set forth in the budget for 2005 for such corporation or agency except as hereinafter provided: *Provided*, That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

SEC. 209. None of the funds provided in this title for technical assistance, training, or management improvements may be obligated or expended unless HUD provides to the Committees on Appropriations a description of each proposed activity and a detailed budget estimate of the costs associated with each program, project or activity as part of the Budget Justifications. For fiscal year 2005, HUD shall transmit this information to the Committees by March 15, 2005 for 30 days of review.

Deadline.

SEC. 210. The Secretary of Housing and Urban Development shall provide quarterly reports to the House and Senate Committees on Appropriations regarding all uncommitted, unobligated, recaptured and excess funds in each program and activity within the jurisdiction of the Department and shall submit additional, updated budget information to these Committees upon request.

Reports.
Deadlines.

SEC. 211. Notwithstanding any other provision of law, in fiscal year 2005, in managing and disposing of any multifamily property that is owned or held by the Secretary and is occupied primarily by elderly or disabled families, the Secretary of Housing and Urban Development shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 that are attached to any dwelling units in the property. To the extent the Secretary determines that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other existing housing properties or provide other rental assistance.

SEC. 212. (a) Notwithstanding any other provision of law, the amount allocated for fiscal year 2005 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), to the City of Wilmington, Delaware, on behalf of the Wilmington, Delaware-Maryland-New Jersey Metropolitan Division (hereafter “metropolitan division”), shall be adjusted by the Secretary of Housing and Urban Development by allocating to the State of New Jersey the proportion of the metropolitan division’s amount that is based on the number of cases of AIDS reported in the portion of the metropolitan division that is located in New Jersey. The State of New Jersey shall use amounts allocated to the State under this subsection to carry out eligible activities under section 855 of the

HIV/AIDS.

AIDS Housing Opportunity Act (42 U.S.C. 12904) in the portion of the metropolitan division that is located in New Jersey.

(b) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall allocate to Wake County, North Carolina, the amounts that otherwise would be allocated for fiscal year 2005 under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to the City of Raleigh, North Carolina, on behalf of the Raleigh-Cary, North Carolina Metropolitan Statistical Area. Any amounts allocated to Wake County shall be used to carry out eligible activities under section 855 of such Act (42 U.S.C. 12904) within such metropolitan statistical area.

(c) Notwithstanding section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), the Secretary of Housing and Urban Development may adjust the allocation of the amounts that otherwise would be allocated for fiscal year 2005 under section 854(c) of such Act, upon the written request of an applicant, in conjunction with the State(s), for a formula allocation on behalf of a metropolitan statistical area, to designate the State or States in which the metropolitan statistical area is located as the eligible grantee(s) of the allocation. In the case that a metropolitan statistical area involves more than one State, such amounts allocated to each State shall be in proportion to the number of cases of AIDS reported in the portion of the metropolitan statistical area located in that State. Any amounts allocated to a State under this section shall be used to carry out eligible activities within the portion of the metropolitan statistical area located in that State.

12 USC 1701q-3.

SEC. 213. Notwithstanding any other provision of law, for this fiscal year and every fiscal year thereafter, funds appropriated for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, shall be available for the cost of maintaining and disposing of such properties that are acquired or otherwise become the responsibility of the Department.

Reports.
Deadlines.
42 USC 1437
note.

SEC. 214. The Secretary of Housing and Urban Development shall submit an annual report no later than August 30, 2005 and annually thereafter to the House and Senate Committees on Appropriations regarding the number of Federally assisted units under lease and the per unit cost of these units to the Department of Housing and Urban Development.

SEC. 215. The Department of Housing and Urban Development shall submit the Department's fiscal year 2006 congressional budget justifications to the Committees on Appropriations of the House of Representatives and the Senate using the identical structure provided under this Act and only in accordance with the direction specified in the report accompanying this Act.

SEC. 216. That incremental voucher previously made available under the heading "Housing Certificate Fund" for non-elderly disabled families shall, to the extent practicable, continue to be provided to non-elderly disabled families upon turnover.

SEC. 217. The installment contract between the Village of Hanna City, Illinois and the General Services Administration is in the nature of a purchase money mortgage which will be paid off at initial closing. The Department of Housing and Urban Development shall accept the Village of Hanna City, Illinois' holding

of equitable title to this property as sufficient for the purposes of the section 202 housing program.

SEC. 218. A public housing agency or such other entity that administers Federal housing assistance in the States of Alaska, Iowa, and Mississippi shall not be required to include a resident of public housing or a recipient of assistance provided under section 8 of the United States Housing Act of 1937 on the board of directors or a similar governing board of such agency or entity as required under section (2)(b) of such Act. Each public housing agency or other entity that administers Federal housing assistance under section 8 in the States of Alaska, Iowa and Mississippi shall establish an advisory board of not less than 6 residents of public housing or recipients of section 8 assistance to provide advice and comment to the public housing agency or other administering entity on issues related to public housing and section 8. Such advisory board shall meet not less than quarterly.

SEC. 219. (a) Section 536(b)(1) of the National Housing Act (12 U.S.C. 1735f–14(b)(1)) is amended by adding the following new subparagraph at the end:

“(J) Failure to perform a required physical inspection of the mortgaged property.”.

(b) Section 537(c)(1)(B)(ii) of such Act (12 U.S.C. 1735f–15(c)(1)(B)(ii)) is amended by inserting after “rents,” the following: “other revenues, or contract rights,”.

(c) Section 537(c)(1)(B)(x) of such Act (12 U.S.C. 1735f–15(c)(1)(B)(x)) is amended to read as follows:

“(x) Failure to furnish the Secretary, by the expiration of the 90-day period beginning on the first day after the completion of each fiscal year (unless the Secretary has approved an extension of the 90-day period in writing), with a complete annual financial report, in accordance with requirements prescribed by the Secretary, including requirements that the report be—

Expiration date.

“(I) based upon an examination of the books and records of the mortgagor;

“(II) prepared and certified to by an independent public accountant or a certified public accountant (unless the Secretary has waived this requirement in writing); and

“(III) certified to by the mortgagor or an authorized representative of the mortgagor.

“The Secretary shall approve an extension where the mortgagor demonstrates that failure to comply with this clause is due to events beyond the control of the mortgagor.”.

SEC. 220. Section 421 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715z–4a) is amended—

(1) in subsection (a)(1)(A), by inserting after “project” the following: “, nursing home, intermediate care facility, board and care home, assisted living facility, or hospital”;

(2) in subsection (a)(1)(B), by inserting after “is” the following: “or, at the time of the violations, was”;

(3) in the second sentence of subsection(a)(1), by striking “project” and inserting “property”;

(4) in subsection (a)(2) by striking “which” and all that follows through “any owner” and inserting the following: “that

owns or operates a property, as identified in the regulatory agreement, including but not limited to—

“(A) any stockholder holding 25 percent or more interest of a corporation that owns that property;

“(B) any beneficial owner of the property under any business or trust;

“(C) any officer, director, or partner of an entity owning or controlling the property;

“(D) any nursing home lessee or operator;

“(E) any hospital lessee or operator;

“(F) any other person or entity that controls the property regardless of that person or entity’s official relationship to the property; and

“(G) any heir, assignee, successor in interest, or agent of any person or entity described in the preceding subparagraphs”;

(5) in subsection (c), by striking “project” the first two places it appears and inserting “property”; and

(6) in subsection (d), by striking “project” and inserting “a property’s”.

SEC. 221. Section 204(h) of the National Housing Act (12 U.S.C. 1710(h)) is amended—

(1) in paragraph (2)—

(A) by striking “following assets of the Secretary” and inserting “following categories of assets of the Secretary, unless the Secretary determines at any time that the asset property is economically or otherwise infeasible to rehabilitate or that the best use of the asset property is as open space (including park land)”;

(B) in subparagraph (B)(ii), by inserting after “Act” the following: “except for mortgages insured under or made pursuant to sections 235, 247, or 255”; and

(C) by striking subparagraph (C);

(2) in the second sentence of paragraph (3), by inserting after “government” the following: “, States, and Indian tribes”;

(3) in paragraph (4)—

(A) in subparagraph (A)(i), by inserting after “government” the following: “, State, or Indian tribe”;

(B) by revising subparagraph (B)(ii) to read as follows:

“(ii) purchases all assets of the Secretary in the category or categories of eligible assets set forth in the sale agreement required under paragraph (7) that, at any time during the period which shall be set forth in the sale agreement—

“(I) are or become eligible for purchase under this subsection; and

“(II) are located in the asset control area of the purchaser; and”;

(C) in subparagraph (C), by striking “purchase of eligible assets under” and inserting “purchase of the category or categories of eligible assets set forth in the sale agreement under”;

(4) in paragraph (6)—

(A) by revising subparagraph (C) to read as follows:

“(C) DISCOUNTS.—The Secretary, in the sole discretion of the Secretary, shall establish the discount under this

paragraph for an eligible asset. In determining the discount, the Secretary may consider the condition of the asset property, the extent of resources available to the preferred purchaser, the comprehensive revitalization plan undertaken by such purchaser, the financial safety and soundness of the Mutual Mortgage Insurance Fund, and any other circumstances the Secretary considers appropriate”; and

(B) by striking subparagraph (D);

(5) in paragraph (7)(A), by striking “eligible assets to be purchased and the interests sold” and inserting “category or categories of eligible assets to be purchased and, based on the purchaser’s capacity to manage and dispose of assets, the maximum number of assets owned by the Secretary at the time the sale agreement is executed that shall be sold to the purchaser”; and

(6) in paragraph (8)—

(A) in subparagraph (F), by inserting after “State” the following: “, and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the jurisdiction with regard to the provisions of this subsection”; and

(B) by adding the following new subparagraphs at the end:

“(G) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to provisions of this subsection.

“(H) INDIAN TRIBE.—The term ‘Indian tribe’ has the same meaning as in section 248(i)(I) of this Act.”

SEC. 222. Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)), as amended, is further amended in paragraph (1) by striking “subsections (n) and (k)” and inserting “subsection (n)” and striking “or (k)”.

SEC. 223. Section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)) is amended in the last sentence after “subparagraph” by inserting the following: “, provided that the mortgagor refinances the unpaid principal obligation under title II of this Act”. This provision shall apply to loans that become insured on or after date of enactment of this Act.

Applicability.
12 USC 1709
note.

SEC. 224. The portion of any athletic scholarship assistance that is available for housing costs shall be considered adjusted income for purposes of section 3(b)(5) of the United States Housing Act of 1937. The Secretary of Housing and Urban Development shall by notice establish criteria under which persons who receive athletic scholarship assistance may be denied housing assistance under the United States Housing Act of 1937.

Notice.
Requirements.

SEC. 225. The funds made available for Native Alaskans under the heading “Native American Housing Block Grants” in title II of this Act shall be allocated to the same Native Alaskan housing block grant recipients that received funds in fiscal year 2004.

TITLE III—INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; not to exceed \$7,500 for official reception and representation expenses; and insurance of official motor vehicles in foreign countries, when required by law of such countries, \$41,100,000, to remain available until expended.

FOREIGN CURRENCY FLUCTUATIONS ACCOUNT

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, \$12,000,000, to remain available until expended, for purposes authorized by 36 U.S.C. 2109.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

SALARIES AND EXPENSES

For necessary expenses in carrying out activities pursuant to section 112(r)(6) of the Clean Air Act, as amended, including hire of passenger vehicles, uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902, and for services authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376, \$9,100,000: *Provided*, That the Chemical Safety and Hazard Investigation Board (Board) shall have not more than three career Senior Executive Service positions: *Provided further*, That notwithstanding any other provision of law, the individual appointed to the position of Inspector General of the Environmental Protection Agency (EPA) shall, by virtue of such appointment, also hold the position of Inspector General of the Board: *Provided further*, That notwithstanding any other provision of law, the Inspector General of the Board shall utilize personnel of the Office of Inspector General of EPA in performing the duties of the Inspector General of the Board, and shall not appoint any individuals to positions within the Board.

5 USC app. 8G
note.

EMERGENCY FUND

For necessary expenses of the Chemical Safety and Hazard Investigation Board for accident investigations not otherwise provided for, \$400,000, to remain available until expended.

DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM
ACCOUNT

To carry out the Community Development Banking and Financial Institutions Act of 1994, including services authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for ES–3, \$55,522,000, to remain available until September 30, 2006, of which \$4,000,000 shall be for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers, and up to \$14,900,000 may be used for administrative expenses, including administration of the New Markets Tax Credit, up to \$6,000,000 may be used for the cost of direct loans, and up to \$250,000 may be used for administrative expenses to carry out the direct loan program: *Provided*, That the cost of direct loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed \$11,000,000.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable under 5 U.S.C. 5376, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed \$500 for official reception and representation expenses, \$62,650,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

NATIONAL AND COMMUNITY SERVICE PROGRAMS OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Corporation for National and Community Service (the "Corporation") in carrying out programs, activities, and initiatives under the National and Community Service Act of 1990 (the "Act") (42 U.S.C. 12501 et seq.), \$545,884,000, to remain available until September 30, 2006: *Provided*, That not more than \$290,000,000 of the amount provided under this heading shall be available for grants under the National Service Trust Program authorized under subtitle C of title I of the Act (42 U.S.C. 12571 et seq.) (relating to activities of the AmeriCorps program), including grants to organizations operating projects under the AmeriCorps Education Awards Program (without

regard to the requirements of sections 121(d) and (e), section 131(e), section 132, and sections 140(a), (d), and (e) of the Act): *Provided further*, That not less than \$144,000,000 of the amount provided under this heading, to remain available without fiscal year limitation, shall be transferred to the National Service Trust for educational awards authorized under subtitle D of title I of the Act (42 U.S.C. 12601), of which up to \$3,900,000 shall be available to support national service scholarships for high school students performing community service, and of which \$13,000,000 shall be held in reserve as defined in Public Law 108-45: *Provided further*, That in addition to amounts otherwise provided to the National Service Trust under the second proviso, the Corporation may transfer funds from the amount provided under the first proviso, to the National Service Trust authorized under subtitle D of title I of the Act (42 U.S.C. 12601) upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to Congress: *Provided further*, That of the amount provided under this heading for grants under the National Service Trust program authorized under subtitle C of title I of the Act, not more than \$55,000,000 may be used to administer, reimburse, or support any national service program authorized under section 121(d)(2) of such Act (42 U.S.C. 12581(d)(2)): *Provided further*, That not more than \$13,334,000 shall be available for quality and innovation activities authorized under subtitle H of title I of the Act (42 U.S.C. 12853 et seq.), of which \$4,000,000 shall be available for challenge grants to non-profit organizations: *Provided further*, That notwithstanding subtitle H of title I of the Act (42 U.S.C. 12853), none of the funds provided under the previous proviso shall be used to support salaries and related expenses (including travel) attributable to Corporation employees: *Provided further*, That to the maximum extent feasible, funds appropriated under subtitle C of title I of the Act shall be provided in a manner that is consistent with the recommendations of peer review panels in order to ensure that priority is given to programs that demonstrate quality, innovation, replicability, and sustainability: *Provided further*, That \$25,500,000 of the funds made available under this heading shall be available for the Civilian Community Corps authorized under subtitle E of title I of the Act (42 U.S.C. 12611 et seq.): *Provided further*, That \$43,000,000 shall be available for school-based and community-based service-learning programs authorized under subtitle B of title I of the Act (42 U.S.C. 12521 et seq.): *Provided further*, That \$3,550,000 shall be available for audits and other evaluations authorized under section 179 of the Act (42 U.S.C. 12639): *Provided further*, That \$10,000,000 of the funds made available under this heading shall be made available for the Points of Light Foundation for activities authorized under title III of the Act (42 U.S.C. 12661 et seq.), of which not more than \$2,500,000 may be used to support an endowment fund, the corpus of which shall remain intact and the interest income from which shall be used to support activities described in title III of the Act, provided that the Foundation may invest the corpus and income in federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, mutual funds, obligations of the United States, and other market instruments and securities but not in real estate investments: *Provided further*, That no funds shall be available for national service programs run by Federal

agencies authorized under section 121(b) of such Act (42 U.S.C. 12571(b)): *Provided further*, That \$4,500,000 of the funds made available under this heading shall be made available to America's Promise—The Alliance for Youth, Inc.: *Provided further*, That to the maximum extent practicable, the Corporation shall increase significantly the level of matching funds and in-kind contributions provided by the private sector, and shall reduce the total Federal costs per participant in all programs.

SALARIES AND EXPENSES

For necessary expenses of administration as provided under section 501(a)(4) of the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, the employment of experts and consultants authorized under 5 U.S.C. 3109, and not to exceed \$2,500 for official reception and representation expenses, \$26,000,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, \$6,000,000, to remain available until September 30, 2006.

ADMINISTRATIVE PROVISIONS

Notwithstanding any other provision of law, the term “qualified student loan” with respect to national service education awards shall mean any loan determined by an institution of higher education to be necessary to cover a student's cost of attendance at such institution and made, insured, or guaranteed directly to a student by a State agency, in addition to other meanings under section 148(b)(7) of the National and Community Service Act.

Notwithstanding any other provision of law, funds made available under section 129(d)(5)(B) of the National and Community Service Act to assist entities in placing applicants who are individuals with disabilities may be provided to any entity that receives a grant under section 121 of the Act.

The Inspector General of the Corporation for National and Community Service shall conduct random audits of the grantees that administer activities under the AmeriCorps programs and shall levy sanctions in accordance with standard Inspector General audit resolution procedures which include, but are not limited to, debarment of any grantee (or successor in interest or any entity with substantially the same person or persons in control) that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs, including any grantee that has been determined to have violated the prohibition of using Federal funds to lobby the Congress: *Provided*, That the Inspector General shall obtain reimbursements in the amount of any misused funds from any grantee that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs.

For fiscal year 2005, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking. For fiscal year 2005, during any

grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information.

U.S. COURT OF APPEALS FOR VETERANS CLAIMS

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Appeals for Veterans Claims as authorized by 38 U.S.C. 7251-7298, \$17,250,000, of which \$1,100,000 shall be available for the purpose of providing financial assistance as described, and in accordance with the process and reporting procedures set forth, under this heading in Public Law 102-229.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of one passenger motor vehicle for replacement only, and not to exceed \$1,000 for official reception and representation expenses, \$29,600,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

NATIONAL INSTITUTES OF HEALTH

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For necessary expenses for the National Institute of Environmental Health Sciences in carrying out activities set forth in section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and section 126(g) of the Superfund Amendments and Reauthorization Act of 1986, \$80,486,000.

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

TOXIC SUBSTANCES AND ENVIRONMENTAL PUBLIC HEALTH

For necessary expenses for the Agency for Toxic Substances and Disease Registry (ATSDR) in carrying out activities set forth in sections 104(i), 111(c)(4), and 111(c)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; section 118(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended; and section 3019 of the Solid Waste Disposal Act, as amended, \$76,654,000: *Provided*, That notwithstanding any other provision of law, in lieu of performing a health assessment under section 104(i)(6) of CERCLA, the Administrator of ATSDR may conduct other appropriate health studies, evaluations, or activities,

including, without limitation, biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers: *Provided further*, That in performing any such health assessment or health study, evaluation, or activity, the Administrator of ATSDR shall not be bound by the deadlines in section 104(i)(6)(A) of CERCLA: *Provided further*, That none of the funds appropriated under this heading shall be available for ATSDR to issue in excess of 40 toxicological profiles pursuant to section 104(i) of CERCLA during fiscal year 2005, and existing profiles may be updated as necessary.

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

For science and technology, including research and development activities, which shall include research and development activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; necessary expenses for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; procurement of laboratory equipment and supplies; other operating expenses in support of research and development; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project, \$750,061,000, which shall remain available until September 30, 2006: *Provided*, That of the amounts made available under this heading \$1,000,000 shall be transferred to the Office of Environmental Quality Management fund.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901-5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project; and not to exceed \$9,000 for official reception and representation expenses, \$2,313,409,000, which shall remain available until September 30, 2006, including administrative costs of the brownfields program under the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, and for construction, alteration, repair, rehabilitation,

and renovation of facilities, not to exceed \$85,000 per project, \$38,000,000, to remain available until September 30, 2006.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of, or for use by, the Environmental Protection Agency, \$39,000,000, to remain available until expended.

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including sections 111(c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project; \$1,257,537,000, to remain available until expended, consisting of such sums as are available in the Trust Fund upon the date of enactment of this Act as authorized by section 517(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and up to \$1,257,537,000 as a payment from general revenues to the Hazardous Substance Superfund for purposes as authorized by section 517(b) of SARA, as amended: *Provided*, That funds appropriated under this heading may be allocated to other Federal agencies in accordance with section 111(a) of CERCLA: *Provided further*, That of the funds appropriated under this heading, \$13,000,000 shall be transferred to the “Office of Inspector General” appropriation to remain available until September 30, 2006, and \$36,097,000 shall be transferred to the “Science and technology” appropriation to remain available until September 30, 2006.

LEAKING UNDERGROUND STORAGE TANK PROGRAM

For necessary expenses to carry out leaking underground storage tank cleanup activities authorized by section 205 of the Superfund Amendments and Reauthorization Act of 1986, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed \$85,000 per project, \$70,000,000, to remain available until expended.

OIL SPILL RESPONSE

For expenses necessary to carry out the Environmental Protection Agency’s responsibilities under the Oil Pollution Act of 1990, \$16,000,000, to be derived from the Oil Spill Liability trust fund, to remain available until expended.

STATE AND TRIBAL ASSISTANCE GRANTS

For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants, \$3,604,182,000, to remain available until expended, of which \$1,100,000,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended (the “Act”), of which up to \$50,000,000 shall be available for loans, including interest free loans as authorized by 33 U.S.C.

1383(d)(1)(A), to municipal, inter-municipal, interstate, or State agencies or nonprofit entities for projects that provide treatment for or that minimize sewage or stormwater discharges using one or more approaches which include, but are not limited to, decentralized or distributed stormwater controls, decentralized wastewater treatment, low-impact development practices, conservation easements, stream buffers, or wetlands restoration; \$850,000,000 shall be for capitalization grants for the Drinking Water State Revolving Funds under section 1452 of the Safe Drinking Water Act, as amended, except that, notwithstanding section 1452(n) of the Safe Drinking Water Act, as amended, none of the funds made available under this heading in this Act, or in previous appropriations Acts, shall be reserved by the Administrator for health effects studies on drinking water contaminants; \$50,000,000 shall be for architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission; \$45,000,000 shall be for grants to the State of Alaska to address drinking water and waste infrastructure needs of rural and Alaska Native Villages: *Provided*, That, of these funds: (1) the State of Alaska shall provide a match of 25 percent; (2) no more than 5 percent of the funds may be used for administrative and overhead expenses; and (3) not later than October 1, 2005 the State of Alaska shall make awards consistent with the State-wide priority list established in 2004 for all water, sewer, waste disposal, and similar projects carried out by the State of Alaska that are funded under section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) or the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) which shall allocate not less than 25 percent of the funds provided for projects in regional hub communities; \$4,000,000 shall be for remediation of above ground leaking fuel tanks pursuant to Public Law 106-554; \$309,925,000 shall be for making grants for the construction of drinking water, wastewater and storm water infrastructure and for water quality protection in accordance with the terms and conditions specified for such grants in the joint explanatory statement of the managers accompanying this Act, and, for purposes of these grants, each grantee shall contribute not less than 45 percent of the cost of the project unless the grantee is approved for a waiver by the Agency; \$90,000,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including grants, interagency agreements, and associated program support costs; \$7,500,000 for a cost-shared grant program to school districts for necessary upgrades of their diesel bus fleets; and \$1,145,757,000 shall be for grants, including associated program support costs, to States, federally recognized tribes, interstate agencies, tribal consortia, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement and related activities, including activities pursuant to the provisions set forth under this heading in Public Law 104-134, and for making grants under section 103 of the Clean Air Act for particulate matter monitoring and data collection activities of which and subject to terms and conditions specified by the Administrator, of which \$50,000,000 shall be for carrying out section 128 of CERCLA, as amended, and \$19,500,000 shall be for Environmental Information Exchange Network grants,

42 USC 300j-12
note.

33 USC 1377
note.

including associated program support costs, and \$18,000,000 shall be for making competitive targeted watershed grants: *Provided further*, That for fiscal year 2005, State authority under section 302(a) of Public Law 104-182 shall remain in effect: *Provided further*, That notwithstanding section 603(d)(7) of the Act, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in fiscal year 2005 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration: *Provided further*, That for fiscal year 2005, and notwithstanding section 518(f) of the Act, the Administrator is authorized to use the amounts appropriated for any fiscal year under section 319 of that Act to make grants to Indian tribes pursuant to sections 319(h) and 518(e) of that Act: *Provided further*, That for fiscal year 2005, notwithstanding the limitation on amounts in section 518(c) of the Act, up to a total of 1½ percent of the funds appropriated for State Revolving Funds under title VI of that Act may be reserved by the Administrator for grants under section 518(c) of such Act: *Provided further*, That no funds provided by this legislation to address the water, wastewater and other critical infrastructure needs of the colonias in the United States along the United States-Mexico border shall be made available to a county or municipal government unless that government has established an enforceable local ordinance, or other zoning rule, which prevents in that jurisdiction the development or construction of any additional colonia areas, or the development within an existing colonia the construction of any new home, business, or other structure which lacks water, wastewater, or other necessary infrastructure: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-7, in reference to item number 471, is deemed to be amended by striking everything after “for” and inserting the following: “for water infrastructure improvements”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 22, is deemed to be amended by striking everything after “22.” and inserting the following: “\$200,000 to Jackson County, Alabama, for water system improvements and \$200,000 to the City of Muscle Shoals, Alabama, for water and sewer infrastructure improvements”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 158, is deemed to be amended by inserting “water and” after “for”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 107-73 is deemed to be amended by striking “Southeast” in reference to item 9 and inserting “Southwest”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 107-73, in reference to item number 103, is deemed to be amended by striking everything after the word “for”, and adding, “the City of Chicago, Illinois for water infrastructure improvements at the Thomas Jefferson and Lakeview Pumping Stations”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 484, is deemed to be amended by striking “City of Norfolk” and inserting

“Portsmouth Virginia”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 283, is deemed to be amended by striking “City of Kalispell, Montana” and inserting “Flathead County Water and Sewer District No. 1—Evergreen”: *Provided further*, That the referenced statement of managers under this heading in Public Law 108-7, in reference to item number 139, is deemed to be amended by striking “State of Hawaii Health Department” and inserting “County of Hawaii”: *Provided further*, That the referenced statement of managers under this heading in Public Law 108-199, in reference to item number 148, is deemed to be amended by striking everything after the word “for” and inserting “the replacement of cesspools in Hawaii, \$250,000 to the City and County of Honolulu for Varona Village, \$500,000 to the County of Hawaii and the remainder to the Housing and Community Development Corporation of Hawaii;”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 388, is deemed to be amended by striking everything after the word “for” and inserting “the Southeast Water Treatment Plant in Lawton, Oklahoma for water and wastewater infrastructure improvements;”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 106-377, in reference to item number 46, is deemed to be amended by striking “to construct pump stations, force mains, storage lagoons and spray irrigation facility”, and inserting “for wastewater treatment improvements”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 409, is deemed to be amended by striking “City of” and “Pennsylvania”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 265, is deemed to be amended by striking “Franklin County”, and inserting “Okhissa Lake Sewer District”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 322, is deemed to be amended by inserting “and water” after “wastewater”: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 173, is deemed to be amended by inserting “planning, design and” prior to “construction”: *Provided further*, notwithstanding any other provision of law, the Environmental Protection Agency and the New York State Department of Environmental Conservation are authorized to award a \$2,000,000 grant to the Town of Wheatfield, Niagara County, New York for the construction of sanitary collector sewers from funds reallocated to the State of New York under title II of the Clean Water Act: *Provided further*, That the referenced statement of the managers under this heading in Public Law 108-199, in reference to item number 184, is deemed to be amended by striking “be divided equally between” and by striking “and” and inserting in place of “and”, “or”.

ADMINISTRATIVE PROVISIONS

For fiscal year 2005, notwithstanding 31 U.S.C. 6303(1) and 6305(1), the Administrator of the Environmental Protection Agency, in carrying out the Agency’s function to implement directly Federal environmental programs required or authorized by law in the absence of an acceptable tribal program, may award cooperative

agreements to federally-recognized Indian Tribes or Intertribal consortia, if authorized by their member Tribes, to assist the Administrator in implementing Federal environmental programs for Indian Tribes required or authorized by law, except that no such cooperative agreements may be awarded from funds designated for State financial assistance agreements.

The Administrator of the Environmental Protection Agency is authorized to collect and obligate pesticide registration service fees in accordance with section 33 of the Federal Insecticide, Fungicide, and Rodenticide Act (as added by subsection (f)(2) of the Pesticide Registration Improvement Act of 2003), as amended.

Notwithstanding CERCLA 104(k)(4)(B)(i)(IV), appropriated funds for fiscal year 2005 may be used to award grants or loans under section 104(k) of CERCLA to eligible entities that satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was prior to the date of enactment of the Small Business Liability Relief and Brownfield Revitalization Act of 2001.

33 USC 1268
note.

The Administrator may hereafter receive and use funds contributed by a non-Federal sponsor as its share of the cost of a project to carry out a project under paragraph (c)(12) of section 118 of the Federal Water Pollution Control Act, as amended.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, not to exceed \$2,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, \$6,379,000.

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses to continue functions assigned to the Council on Environmental Quality and Office of Environmental Quality pursuant to the National Environmental Policy Act of 1969, the Environmental Quality Improvement Act of 1970, and Reorganization Plan No. 1 of 1977, and not to exceed \$750 for official reception and representation expenses, \$3,284,000: *Provided*, That notwithstanding section 202 of the National Environmental Policy Act of 1970, the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.

42 USC 4342
note.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$30,125,000, to be derived from the Bank Insurance

Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund.

GENERAL SERVICES ADMINISTRATION

FEDERAL CITIZEN INFORMATION CENTER FUND

For necessary expenses of the Federal Citizen Information Center, including services authorized by 5 U.S.C. 3109, \$14,907,000, to be deposited into the Federal Citizen Information Center Fund: *Provided*, That the appropriations, revenues, and collections deposited into the Fund shall be available for necessary expenses of Federal Citizen Information Center activities in the aggregate amount not to exceed \$27,000,000. Appropriations, revenues, and collections accruing to this Fund during fiscal year 2005 in excess of such amount shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

OPERATING EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms, and the employment of experts and consultants under section 3109 of title 5, United States Code) of the United States Interagency Council on Homelessness in carrying out the functions pursuant to title II of the McKinney-Vento Homeless Assistance Act, as amended, \$1,500,000.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SCIENCE, AERONAUTICS AND EXPLORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics and exploration research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed \$35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, \$7,742,550,000, to remain available until September 30, 2006, of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science, engineering, fabricating and testing services; and other administrative services may be transferred to “Exploration

capabilities” in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106-377.

EXPLORATION CAPABILITIES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of exploration capabilities research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed \$35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, \$8,425,850,000, to remain available until September 30, 2006, of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science, engineering, fabricating and testing services; and other administrative services may be transferred to “Science, aeronautics and exploration” in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106-377.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, \$31,600,000.

ADMINISTRATIVE PROVISIONS

Notwithstanding the limitation on the availability of funds appropriated for “Science, aeronautics and exploration”, or “Exploration capabilities” by this appropriations Act, when any activity has been initiated by the incurrence of obligations for construction of facilities or environmental compliance and restoration activities as authorized by law, such amount available for such activity shall remain available until expended. This provision does not apply to the amounts appropriated for institutional minor revitalization and construction of facilities, and institutional facility planning and design.

Notwithstanding the limitation on the availability of funds appropriated for “Science, aeronautics and exploration”, or “Exploration capabilities” by this appropriations Act, the amounts appropriated for construction of facilities shall remain available until September 30, 2007.

The unexpired balances of prior appropriations to NASA for activities for which funds are provided under this Act may be transferred to the new account established for the appropriation

that provides such activity under this Act. Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions but shall remain available for the same period of time as originally appropriated.

From amounts made available in this Act for these activities, subject to the operating plan procedures of the House and Senate Committees on Appropriations, the Administrator may transfer amounts between the “Science, aeronautics, and exploration” account and the “Exploration capabilities” account.

Funds for announced prizes otherwise authorized shall remain available, without fiscal year limitation, until the prize is claimed or the offer is withdrawn. Funding shall not be made available for Centennial Challenges unless authorized.

Funding made available under the headings “Exploration capabilities” and “Science, aeronautics, and exploration” in this Act shall be governed by the terms and conditions specified in the statement of managers except to the extent changes are made in accordance with the operating plan procedures of the House and Senate Committees on Appropriations.

NATIONAL CREDIT UNION ADMINISTRATION

CENTRAL LIQUIDITY FACILITY

During fiscal year 2005, gross obligations of the Central Liquidity Facility for the principal amount of new direct loans to member credit unions, as authorized by 12 U.S.C. 1795 et seq., shall not exceed \$1,500,000,000: *Provided*, That administrative expenses of the Central Liquidity Facility in fiscal year 2005 shall not exceed \$310,000.

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND

For the Community Development Revolving Loan Fund program as authorized by 42 U.S.C. 9812, 9822, and 9910, \$1,000,000 shall be available: *Provided*, That of this amount \$200,000, together with amounts of principal and interest on loans repaid, is available until expended for loans to community development credit unions, and \$800,000 is available until September 30, 2006, for technical assistance to low-income and community development credit unions.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of aircraft; \$4,254,593,000, of which not to exceed \$350,000,000 shall remain available until expended for Polar research and operations support, and for reimbursement to other Federal agencies for operational and science support and logistical and other related activities for the United States Antarctic program; the balance to remain available until September 30, 2006: *Provided*, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science

Foundation supported research facilities may be credited to this appropriation: *Provided further*, That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: *Provided further*, That \$95,000,000 of the funds available under this heading shall be made available for a comprehensive research initiative on plant genomes for economically significant crops: *Provided further*, That, not to exceed \$25,954,000 of these funds shall be for all costs, direct and indirect, associated with personnel assignments under the Intergovernmental Personnel Act.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets pursuant to the National Science Foundation Act of 1950, as amended, including authorized travel, \$175,050,000, to remain available until expended.

EDUCATION AND HUMAN RESOURCES

For necessary expenses in carrying out science and engineering education and human resources programs and activities pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), including services as authorized by 5 U.S.C. 3109, and rental of conference rooms in the District of Columbia, \$848,207,000, to remain available until September 30, 2006: *Provided*, That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: *Provided further*, That not to exceed \$5,500,000 of these funds shall be for all costs, direct and indirect, associated with personnel assignments under the Intergovernmental Personnel Act.

SALARIES AND EXPENSES

For salaries and expenses necessary in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875); services authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed \$9,000 for official reception and representation expenses; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; rental of conference rooms in the District of Columbia; and reimbursement of the General Services Administration for security guard services; \$225,000,000: *Provided*, That contracts may be entered into under "Salaries and expenses" in fiscal year 2005 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year.

OFFICE OF THE NATIONAL SCIENCE BOARD

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code)

involved in carrying out section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) and Public Law 86–209 (42 U.S.C. 1880 et seq.), \$4,000,000: *Provided*, That not more than \$9,000 shall be available for official reception and representation expenses.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General as authorized by the Inspector General Act of 1978, as amended, \$10,110,000, to remain available until September 30, 2006.

NEIGHBORHOOD REINVESTMENT CORPORATION

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107), \$115,000,000, of which \$5,000,000 shall be for a multi-family rental housing program.

SELECTIVE SERVICE SYSTEM

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by 5 U.S.C. 4101–4118 for civilian employees; purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed \$750 for official reception and representation expenses; \$26,300,000: *Provided*, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever the President deems such action to be necessary in the interest of national defense: *Provided further*, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States.

WHITE HOUSE COMMISSION ON THE NATIONAL MOMENT OF REMEMBRANCE

For necessary expenses of the White House Commission on the National Moment of Remembrance, \$250,000.

TITLE IV—GENERAL PROVISIONS

SEC. 401. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 402. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made; or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Officer or is specifically exempt by law from such audit.

SEC. 403. None of the funds provided in this Act to any department or agency may be obligated or expended for: (1) the transportation of any officer or employee of such department or agency between the domicile and the place of employment of the officer or employee, with the exception of an officer or employee authorized such transportation under 31 U.S.C. 1344 or 5 U.S.C. 7905; or (2) to provide a cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

SEC. 404. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

SEC. 405. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

SEC. 406. None of the funds provided in this Act may be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

SEC. 407. Except as otherwise provided under existing law, or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are: (1) a matter of public record and available for public inspection; and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

SEC. 408. None of the funds appropriated in this Act may be used to implement any cap on reimbursements to grantees for indirect costs, except as published in Office of Management and Budget Circular A-21.

SEC. 409. Such sums as may be necessary for fiscal year 2005 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 410. (a) It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act,

the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by Congress.

SEC. 411. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

SEC. 412. Except in the case of entities that are funded solely with Federal funds or any natural persons that are funded under this Act, none of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties to lobby or litigate in respect to adjudicatory proceedings funded in this Act. A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

SEC. 413. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before Congress, except in presentation to Congress itself.

SEC. 414. All departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of “E-Commerce” technologies and procedures in the conduct of their business practices and public service activities.

SEC. 415. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 416. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

SEC. 417. Section 313 of the National Aeronautics and Space Act of 1958, as amended, is further amended in subsection (a)—

(1) by striking “2004” and inserting “2005”; and

(2) by striking “Space flight capabilities” and inserting “Exploration capabilities”.

42 USC 2459f.

SEC. 418. None of the funds made available in this Act may be used to implement any policy prohibiting the Directors of the Veterans Integrated Service Networks from conducting outreach or marketing to enroll new veterans within their respective Networks.

SEC. 419. It is the sense of Congress that no veteran should wait more than 30 days for an initial doctor’s appointment.

SEC. 420. None of the funds made available to NASA in this Act may be used for voluntary separation incentive payments as provided for in subchapter II of chapter 35 of title 5, United States Code, unless the Administrator of NASA has first certified to Congress that such payments would not result in the loss of skills

related to the safety of the Space Shuttle or the International Space Station or to the conduct of independent safety oversight in the National Aeronautics and Space Administration.

SEC. 421. (a) TREATMENT OF PIONEER HOMES IN ALASKA AS STATE HOME FOR VETERANS.—For this fiscal year and each fiscal year hereafter, the Secretary of Veterans Affairs may—

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary may treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term “Pioneer Homes” means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

(1) Anchorage, Alaska.

(2) Fairbanks, Alaska.

(3) Juneau, Alaska.

(4) Ketchikan, Alaska.

(5) Palmer, Alaska.

(6) Sitka, Alaska.

(d) LIMITATION.—The number of beds occupied by veterans collectively in the six Pioneer Homes listed under subsection (c) for which per diem would be paid under this authority shall not exceed the number of veterans in State beds that otherwise would be permitted in Alaska under the Department of Veterans Affairs State home regulations governing the number of beds per veteran population.

SEC. 422. Of the amounts available to the National Aeronautics and Space Administration, such sums as may be necessary for the benefit of the families of the astronauts who died on board the Space Shuttle Columbia on February 1, 2003, are available under the terms of section 203(c)(13) of the National Aeronautics and Space Act of 1958, as amended, independent of the limitations established therein.

SEC. 423. Section 428 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004 is amended—

(1) in subsection (c), by inserting “new” before “spark ignition engines”; and

(2) in subsection (d), by striking “The prohibition in subsection (e)” and inserting “The prohibition in subsection (c)”.

SEC. 424. In addition to the amounts otherwise provided in this or any other Act for fiscal year 2005, for “Department of Housing and Urban Development, Community Development Fund”, \$31,000,000 to remain available until expended for a grant to The Hudson River Park Trust for planning, design and reconstruction of Pier 86 in New York City.

SEC. 425. From within funds available to the Secretary of Veterans Affairs, \$200,000 shall be made available until expended to Eric and Brian Simon of Minneapolis, Minnesota, to be divided evenly between the individuals.

SEC. 426. (a) WAIVER OF REQUIREMENTS.—Subject to subsection (b), the limitation on the release of funds in section 104(g)(2) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304) shall not apply to the Village of Chickasaw Sewer Collection and Treatment System, located in the Village of Chickasaw, Mercer County, Ohio.

(b) APPLICABILITY.—Subsection (a) only applies to the grant that was awarded to the Village of Chickasaw (Ohio Small Cities CDBG Grant # C–W–03–283–1), for the period beginning September 1, 2003, and ending October 31, 2005, and in the amount of \$600,000.

(c) ENVIRONMENTAL REVIEWS.—Notwithstanding the provisions of this section, the Village of Chickasaw must complete all appropriate environment reviews in a timely manner and to the satisfaction of the State of Ohio.

This division may be cited as the “Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2005”.

DIVISION J—OTHER MATTERS

TITLE I—MISCELLANEOUS PROVISIONS AND OFFSETS

SEC. 101. For an additional amount for the Department of Energy for the weatherization assistance program pursuant to 42 U.S.C. 6861 et seq. and notwithstanding section 3003(d)(2) of Public Law 99–509, \$230,000,000, to remain available until expended.

SEC. 102. Section 1201(a) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375) is amended by striking “\$300,000,000” in the matter preceding paragraph (1) and inserting “\$500,000,000”.

SEC. 103. (a) The District of Columbia Appropriations Act, 2005 (Public Law 108–335) is amended as follows:

(1) The paragraph under the heading “CAPITAL OUTLAY” is amended by striking “For construction projects, an increase of \$1,087,649,000, of which \$839,898,000 shall be from local funds, \$38,542,000 from Highway Trust funds, \$37,000,000 from the Rights-of-way funds, \$172,209,000 from Federal grant funds, and a rescission of \$361,763,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of \$725,886,000, to remain available until expended;” and inserting “For construction projects, an increase of \$1,102,039,000, of which \$839,898,000 shall be from local funds, \$38,542,000 from Highway Trust funds, \$51,390,000 from the Rights-of-way funds, \$172,209,000 from Federal grant funds, and a rescission of \$361,763,000 from local funds appropriated under this heading in prior fiscal years, for a net amount of \$740,276,000, to remain available until expended;”.

(2) Section 340(a) is amended to read as follows:

“(a) Section 603(e)(3)(E) of the Student Loan Marketing Association Reorganization Act of 1996 (20 U.S.C. 1155(e)(3)(E)) is amended—

“(1) by striking ‘and’ at the end of subclause (II);

“(2) by striking the period at the end of subclause (III) and inserting ‘; and’; and

“(3) by adding at the end the following new subclause:

Miscellaneous
Appropriations
and Offsets Act,
2005.

Ante, p. 2077.

Ante, p. 1338.

Ante, p. 1348.

“(IV) obtaining lease guarantees (in accordance with regulations promulgated by the Office of Public Charter School Financing).’”.

Ante, p. 1348.

(3) Section 342 is amended to read as follows:

“SEC. 342. PUBLIC SCHOOL SERVICES TO CHARTER SCHOOLS. Section 2209(b) of the District of Columbia School Reform Act of 1995 (sec. 38-1802.09(b), D.C. Official Code) is amended as follows:

“(1) In paragraph (1)—

“(A) by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—Notwithstanding any other provision of law, regulation, or order relating to the disposition of a facility or property described in subparagraph (B), the Mayor and the District of Columbia government shall give a right of first offer with respect to any facility or property described in subparagraph (B) not previously purchased, leased, or transferred, or under contract to be purchased, leased, or transferred, or the subject of a previously proposed resolution submitted by the Mayor on or before December 1, 2004, to the Council of the District of Columbia seeking authority for disposition of such facility or property, or under an Exclusive Rights Agreement executed on or before December 1, 2004, to an eligible applicant whose petition to establish a public charter school has been conditionally approved under section 2203(d)(2), or a Board of Trustees, with respect to the purchase, lease, transfer, or use of a facility or property described in subparagraph (B).’;

“(B) by amending subparagraph (B)(iii) to read as follows:

“(iii) with respect to which—

“(I) the Board of Education has transferred jurisdiction to the Mayor and over which the Mayor has jurisdiction on the effective date of this subclause; or

“(II) over which the Mayor or any successor agency gains jurisdiction after the effective date of this subclause.’; and

“(C) by adding at the end the following new subparagraph:

“(C) TERMS OF PURCHASE OR LEASE.—The terms of purchase or lease of a facility or property described in subparagraph (B) shall—

“(i) be negotiated by the Mayor in accordance with written rules or regulations as determined by the Mayor, and published in the District of Columbia Register;

“(ii) include rent or an acquisition price, as applicable, that is at the appraised value of the property based on use of the property for school purposes; and

“(iii) include a lease period, if the property is to be leased, of not less than 25 years, and renewable for additional 25-year periods as long as the eligible applicant or Board of Trustees maintains its charter.’.

“(2) In paragraph (2)(A), by striking ‘first preference’ and inserting ‘a right of first offer’.

“(3) By adding at the end the following new paragraph:

“(3) CONVERSION PUBLIC CHARTER SCHOOLS.—Any District of Columbia public school that was approved to become a conversion public charter school under section 2201 before the effective date of this subsection or is approved to become a conversion public charter school after the effective date of this subsection, shall have the right to exclusively occupy the facilities the school occupied as a District of Columbia public school under a lease for a period of not less than 25 years, renewable for additional 25-year periods as long as the school maintains its charter at the appraised value of the property based on use of the property for school purposes.’”.

(4) Section 347 is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) by striking subsection (f) and inserting the following:

“(f) AUDIT.—The Board shall maintain its accounts according to Generally Accepted Accounting Principles. The Board shall provide for an audit of the financial statements of the Board by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General. The findings and recommendations of any such audit shall be forwarded to the Mayor, the Council of the District of Columbia, and the Office of the Chief Financial Officer of the District of Columbia.’; and

“(2) by adding at the end the following new subsection:

“(h) CONTRACTING AND PROCUREMENT.—The Board shall have the authority to solicit, award, and execute contracts independently of the Office of Contracting and Procurement and the Chief Procurement Officer.’”.

(b) The amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005. Effective date.
20 USC 1155
note.

SEC. 104. The Secretary of the Department of Homeland Security shall transfer up to \$40,000,000 from funds appropriated to the Coast Guard’s “Acquisition, Construction, and Improvements” account in fiscal year 2005 from the Rescue 21 project to the HH-65 re-engining project, subject to 15-day advance notification to the House and Senate Committees on Appropriations.

SEC. 105. Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) is amended by striking “December 31, 2004” and inserting “December 31, 2005”. 42 USC 5133.

SEC. 106. Notwithstanding the amounts in the detailed funding table included in House Report 108-774, the appropriation for “Transportation Security Administration, Maritime and Land Security” shall include the following: “Credentialing, \$5,000,000; TWIC, \$15,000,000; Hazardous materials truck tracking, \$2,000,000; Hazardous materials safety, \$17,000,000; Enterprise staffing, \$24,000,000; Rail security, \$12,000,000; Offsetting collections, —\$27,000,000”.

SEC. 107. The matter under the heading “Military Construction, Navy and Marine Corps” in the Military Construction Appropriations Act, 2005 (division A of Public Law 108-324), is amended by striking “\$1,069,947,000” and inserting “\$1,065,597,000” and the matter under the heading “Military Construction, Naval Reserve” in such Act is amended by striking “\$44,246,000” and inserting “\$48,596,000”. Ante, p. 1221.

Ante, p. 1222.

SEC. 108. Notwithstanding any other provision of law, in addition to amounts otherwise made available in the Department of Defense Appropriations Act, 2005 (Public Law 108-287), an additional \$2,000,000 is hereby appropriated and shall be made available under the heading “Shipbuilding and Conversion, Navy”, only for the Secretary of the Navy for the purpose of acquiring a vessel with the Coast Guard registration number 225115: *Provided*, That the Secretary of the Navy shall provide for the transportation of the vessel from its present location: *Provided further*, That the Secretary of the Navy may lend, give, or otherwise dispose of the vessel at his election pursuant to 10 U.S.C. 2572, 7545, or 7306, or using such procedures as the Secretary deems appropriate, and to such recipient as the Secretary deems appropriate, without regard to these provisions.

SEC. 109. DESIGNATION OF NATIONAL TREE.

(a) DESIGNATION.—Chapter 3 of title 36, United States Code, is amended by adding at the end the following:

“§ 305. National tree

“The tree genus *Quercus*, commonly known as the oak tree, is the national tree.”.

(b) CONFORMING AMENDMENTS.—Such title is amended—

(1) in the table of contents for part A of subtitle I, by striking “, **and March**” and inserting “**March, and Tree**”;

(2) in the chapter heading for chapter 3, by striking “, **AND MARCH**” and inserting “**MARCH, AND TREE**”; and

(3) in the table of sections for chapter 3, by adding at the end the following:

“305. National tree.”.

SEC. 110. Section 204(g) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1054(g)) shall not apply at any time, whether before or after the enactment of this section, to an amendment adopted prior to June 7, 2004, by a (multiemployer) pension plan covering primarily employees working in the State of Alaska, to the extent that such amendment—

(1) provides for the suspension of the payment of benefits, modifies the conditions under which the payment of benefits is suspended, or suspends actuarial adjustments in benefit payments in accordance with section 203(a)(3)(B) of said Act (29 U.S.C. 1053(a)(3)(B)) and applicable regulations; and

(2) applies to participants who have not retired before the adoption of such amendment.

SEC. 111. (a) The head of each Federal agency or department shall—

(1) provide each new employee of the agency or department with educational and training materials concerning the United States Constitution as part of the orientation materials provided to the new employee; and

(2) provide educational and training materials concerning the United States Constitution to each employee of the agency or department on September 17 of each year.

(b) Each educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution.

(c) Title 36 of the United States Code, is amended—

Government
employees.
36 USC 106 note.

(1) in section 106—

(A) in the heading, by inserting “Constitution Day and” before “Citizenship Day”;

(B) in subsection (a), by striking “is Citizenship Day.” and inserting “is designated as Constitution Day and Citizenship Day.”;

(C) in subsection (b)—

(i) by inserting “Constitution Day and” before “Citizenship Day”;

(ii) by striking “commemorates” and inserting “commemorate”; and

(iii) by striking “recognizes” and inserting “recognize”;

(D) in subsection (c), by inserting “Constitution Day and” before “Citizenship Day” both places such term appears; and

(E) in subsection (d), by inserting “Constitution Day and” before “Citizenship Day”; and

(2) in the item relating to section 106 of the table of contents, by inserting “Constitution Day and” before “Citizenship Day”.

(d) This section shall be without fiscal year limitation.

SEC. 112. (a) Notwithstanding any other provision of law or any contract: (1) the rates in effect on November 15, 2004, under the tariff (the “tariff”) required by FCC 94-116 (reduced three percent annually starting January 1, 2006) shall apply beginning 45 days after the date of enactment of this Act through December 31, 2009, to the sale and purchase of interstate switched wholesale service elements offered by any provider originating or terminating anywhere in the area (the “market”) described in section 4.7 of the tariff (collectively the “covered services”); (2) beginning April 1, 2005, through December 31, 2009, no provider of covered services may provide, and no purchaser of such services may obtain, covered services in the same contract with services other than those that originate or terminate in the market, if the covered services in the contract represent more than 5 percent of such contract’s total value; and (3) revenues collected hereunder (less costs) for calendar years 2005 through 2009 shall be used to support and expand the network in the market.

Applicability.
Deadline.

(b) Effective on the date of enactment of this Act: (1) the conditions described in FCC 95-334 and the related conditions imposed in FCC 94-116, FCC 95-427, and FCC 96-485; and (2) all pending proceedings relating to the tariff, shall terminate. Thereafter, the State regulatory commission with jurisdiction over the market shall treat all interexchange carriers serving the market the same with respect to the provision of intrastate services, with the goal of reducing regulation, and shall not require such carriers to file reports based on the Uniform System of Accounts.

Effective date.

(c) Any provider may file to enforce this section (including damages and injunctive relief) before the FCC (whose final order may be appealed under 47 U.S.C. 402(a)) or under 47 U.S.C. 207 if the FCC fails to issue a final order within 90 days of a filing. Nothing herein shall affect rate integration, carrier-of-last-resort obligations of any carrier or its successor, or the purchase of covered services by any rural telephone company (as defined in 47 U.S.C. 153(37)), or an affiliate under its control, for its provision of retail interstate interexchange services originating in the market.

SEC. 113. Direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents may be made available for or in Libya, notwithstanding section 507 or similar provisions in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, or prior acts making appropriations for foreign operations, export financing, and related programs, if the President determines that to do so is important to the national security interests of the United States.

Ante, p. 444.

SEC. 114. (a) Section 146 of Public Law 108-199 is amended—

(1) by striking “section 386 of the Energy Policy Act of 2003” and inserting “section 116 of division C of Public Law 108-324”;

(2) by striking “, except that upon that Act becoming law, section 386 is amended through this Act:” and inserting “and section 116 of division C of Public Law 108-324 is amended:”;

(3) by striking “paragraph 386(b)(1)” and inserting “paragraph (b)(1) of section 116 of division C of Public Law 108-324”;

(4) by striking “paragraph 386(c)(2)” and inserting “paragraph (a)(2) of section 116 of division C of Public Law 108-324”; and

(5) by striking “paragraph 386(g)(4)” and inserting “paragraph (g)(4) of section 116 of division C of Public Law 108-324.”

Ante, p. 1226.

(b) Section 116 (b) of division C of Public Law 108-324, the Military Construction bill, is amended by adding a new paragraph as follows:

“(4) Such loan guarantee may be utilized only by the project chosen by the Federal Energy Regulatory Commission as the qualified project.”

SEC. 115. Any unobligated amount appropriated pursuant to section 353(b) of the Department of the Interior and Related Agencies Appropriations Act, 1999 (Public Law 105-277; 112 Stat. 2681-303), shall be made available to complete the project described in section 353(a) of that Act.

California.
16 USC 431 note.

SEC. 116. (a) DESIGNATION OF NATIONAL VETERANS MEMORIAL.—The Mt. Soledad Veterans Memorial located within the Soledad Natural Park in San Diego, California, which consists of a 29 foot-tall cross and surrounding granite memorial walls containing plaques engraved with the names and photographs of veterans of the United States Armed Forces, is hereby designated as a national memorial honoring veterans of the United States Armed Forces.

Deadline.

(b) ACQUISITION AND ADMINISTRATION BY UNITED STATES.—Not later than 90 days after the date on which the City of San Diego, California, offers to donate the Mt. Soledad Veterans Memorial to the United States, the Secretary of the Interior shall accept, on behalf of the United States, all right, title, and interest of the City in and to the Mt. Soledad Veterans Memorial.

(c) ADMINISTRATION OF MEMORIAL.—Upon acquisition of the Mt. Soledad Veterans Memorial by the United States, the Secretary of the Interior shall administer the Mt. Soledad Veterans Memorial as a unit of the National Park System, except that the Secretary shall enter into a memorandum of understanding with the Mt. Soledad Memorial Association for the continued maintenance by the Association of the cross and surrounding granite memorial walls and plaques of the Memorial.

(d) **LEGAL DESCRIPTION.**—The Mt. Soledad Veterans Memorial referred to in this section is all that portion of Pueblo lot 1265 of the Pueblo Lands of San Diego in the City and County of San Diego, California, according to the map thereof prepared by James Pascoe in 1879, a copy of which was filed in the office of the County Recorder of San Diego County on November 14, 1921, and is known as miscellaneous map NO. 36, more particularly described as follows: The area bounded by the back of the existing inner sidewalk on top of Mt. Soledad, being also a circle with a radius of 84 feet, the center of which circle is located as follows: Beginning at the Southwesterly corner of such Pueblo Lot 1265, such corner being South 17 degrees 14'33" East (Record South 17 degrees 14'09" East) 607.21 feet distant along the westerly line of such Pueblo lot 1265 from the intersection with the North line of La Jolla Scenic Drive South as described and dedicated as parcel 2 of City Council Resolution NO. 216644 adopted August 25, 1976; thence North 39 degrees 59'24" East 1147.62 feet to the center of such circle. The exact boundaries and legal description of the Mt. Soledad Veterans Memorial shall be determined by a survey prepared jointly by the City of San Diego and the Secretary of the Interior. Upon acquisition of the Mt. Soledad Veterans Memorial by the United States, the boundaries of the Memorial may not be expanded.

SEC. 117. Notwithstanding any other provision of law, except section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, \$80,000,000 of the funds appropriated for the Department of Defense for fiscal year 2005 may be transferred with the concurrence of the Secretary of Defense to the Department of State under "Peacekeeping Operations".

SEC. 118. In addition, for construction and related expenses of a facility for the United States Institute of Peace, \$100,000,000, to remain available until expended.

SEC. 119. Notwithstanding any other provision of law, in addition to amounts otherwise provided in this or any other Act for fiscal year 2005, the following amounts are appropriated: \$2,000,000 for the Helen Keller National Center for Deaf-Blind Youths and Adults for activities authorized under the Helen Keller National Center Act; and for the Department of Health and Human Services, Health Resources and Services Administration, \$1,000,000 for the Hospital for Special Surgery to establish a National Center for Musculoskeletal Research, New York, New York, for facilities and equipment; and for the Department of Health and Human Services, Health Resources and Services Administration, \$1,000,000 for the Jesse Helms Nursing Center at Union Regional Medical Center, Union County, North Carolina for facilities and equipment.

SEC. 120. In addition to any amounts provided in this or any other Act for fiscal year 2005, \$1,000,000 is appropriated for necessary expenses of the Benjamin A. Gilman Institute for Political and International Studies program at the State University of New York's Orange County Community College in Orange, New York.

SEC. 121. WEIGHT LIMITATIONS.

The next to the last sentence of section 127(a) of title 23, United States Code, is amended by striking "Interstate Route 95" and inserting "Interstate Routes 89, 93, and 95".

SEC. 122. (a) ACROSS-THE-BOARD RESCISSIONS.—There is hereby rescinded an amount equal to 0.80 percent of—

(1) the budget authority provided (or obligation limitation imposed) for fiscal year 2005 for any discretionary account in divisions A through J of this Act and in any other fiscal year 2005 appropriation Act (except any fiscal year 2005 supplemental appropriation Act, the Department of Homeland Security Appropriations Act, 2005, the Department of Defense Appropriations Act, 2005, or the Military Construction Appropriations Act, 2005);

(2) the budget authority provided in any advance appropriation for fiscal year 2005 for any discretionary account in any prior fiscal year appropriation Act; and

(3) the contract authority provided in fiscal year 2005 for any program subject to limitation contained in any division or appropriation Act subject to paragraph (1).

(b) PROPORTIONATE APPLICATION.—Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in such subsection; and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

This title may be cited as the “Miscellaneous Appropriations and Offsets Act, 2005”.

225th
Anniversary of
the American
Revolution
Commemoration
Act.
36 USC note
prec. 101.
36 USC note
prec. 101.

TITLE II—225TH ANNIVERSARY OF THE AMERICAN REVOLUTION COMMEMORATION ACT

SEC. 201. SHORT TITLE.

This title may be cited as the “225th Anniversary of the American Revolution Commemoration Act”.

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The American Revolution, inspired by the spirit of liberty and independence among the inhabitants of the original 13 colonies of Great Britain, was an event of global significance having a profound and lasting effect upon American Government, laws, culture, society, and values.

(2) The years 2000 through 2008 mark the 225th anniversary of the Revolutionary War.

(3) Every generation of American citizens should have an opportunity to understand and appreciate the continuing legacy of the American Revolution.

(4) This 225th anniversary provides an opportunity to enhance public awareness and understanding of the impact of the American Revolution's legacy on the lives of citizens today.

(5) Although the National Park Service administers battlefields, historical parks, historic sites, and programs that address elements of the story of the American Revolution, there is a need to establish partnerships that link sites and programs

administered by the National Park Service with those of other Federal and non-Federal entities in order to place the story of the American Revolution in the broad context of its causes, consequences, and meanings.

(6) The story and significance of the American Revolution can best engage the American people through a national program of the National Park Service that links historic structures and sites, routes, activities, community projects, exhibits, and multimedia materials, in a manner that is both unified and flexible.

(b) **PURPOSES.**—The purposes of this Act are as follows:

(1) To recognize the enduring importance of the American Revolution in the lives of American citizens today.

(2) To authorize the National Park Service to coordinate, connect, and facilitate Federal and non-Federal activities to commemorate, honor, and interpret the history of the American Revolution, its significance, and its relevance to the shape and spirit of American Government and society.

**SEC. 203. 225TH ANNIVERSARY OF THE AMERICAN REVOLUTION
COMMEMORATION PROGRAM.**

36 USC note
prec. 101.

(a) **IN GENERAL.**—The Secretary of the Interior (hereinafter in this Act referred to as the “Secretary”) shall establish a program to be known as the “225th Anniversary of the American Revolution Commemoration” (hereinafter in this Act referred to as the “225th Anniversary”). In administering the 225th Anniversary, the Secretary shall—

(1) produce and disseminate to appropriate persons educational materials, such as handbooks, maps, interpretive guides, or electronic information related to the 225th Anniversary and the American Revolution;

(2) enter into appropriate cooperative agreements and memoranda of understanding to provide technical assistance under subsection (c);

(3) assist in the protection of resources associated with the American Revolution;

(4) enhance communications, connections, and collaboration among the National Park Service units and programs related to the Revolutionary War;

(5) expand the research base for American Revolution interpretation and education; and

(6) create and adopt an official, uniform symbol or device for the theme “Lighting Freedom’s Flame: American Revolution, 225th Anniversary” and issue regulations for its use.

Regulations.

(b) **ELEMENTS.**—The 225th Anniversary shall encompass the following elements:

(1) All units and programs of the National Park Service determined by the Secretary to pertain to the American Revolution.

(2) Other governmental and nongovernmental sites, facilities, and programs of an educational, research, or interpretive nature that are documented to be directly related to the American Revolution.

(3) Through the Secretary of State, the participation of the Governments of the United Kingdom, France, the Netherlands, Spain, and Canada.

(c) COOPERATIVE AGREEMENTS AND MEMORANDA OF UNDERSTANDING.—To achieve the purposes of this Act and to ensure effective coordination of the Federal and non-Federal elements of the 225th Anniversary with National Park Service units and programs, the Secretary may enter into cooperative agreements and memoranda of understanding with, and provide technical assistance to, the following:

(1) The heads of other Federal agencies, States, units of local government, and private entities.

(2) In cooperation with the Secretary of State, the Governments of the United Kingdom, France, the Netherlands, Spain, and Canada.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this Act \$500,000 for each of fiscal years 2004 through 2009.

Rural Air Service
Improvement Act
of 2004.
39 USC 101 note.

TITLE III—RURAL AIR SERVICE IMPROVEMENTS

SEC. 301. (a) SHORT TITLE.—This title may be cited as the “Rural Air Service Improvement Act of 2004”.

(b) FURTHER AMENDMENTS.—The amendments made by this section are further amendments to section 5402 of title 39, United States Code, including the amendments made by section 3002 of the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States (Public Law 107–206) to that section of title 39, United States Code.

(c) EXISTING MAINLINE CARRIERS.—Section 5402(a)(10) of title 39, United States Code, is amended by striking subparagraph (C) and inserting the following:

“(C) actually engaged in the carriage, on scheduled service within the State of Alaska, of mainline nonpriority bypass mail tendered to it under its designator code.”.

(d) NONPRIORITY BYPASS MAIL.—Section 5402(g) of title 39, United States Code, is amended by striking the matter preceding paragraph (2) and inserting the following:

“(g)(1)(A) The Postal Service, in selecting carriers of nonpriority bypass mail to any point served by more than 1 carrier in the State of Alaska, shall adhere to an equitable tender policy within a qualified group of carriers, in accordance with the regulations of the Postal Service, and shall, at a minimum, require that any such carrier—

“(i) hold a certificate of public convenience and necessity issued under section 41102(a) of title 49;

“(ii) operate at least to such point at least the number of scheduled flights each week established under subparagraph (B)(i);

“(iii) exhibit an adherence to such scheduled flights; and

“(iv) have provided scheduled service with at least the number of scheduled noncontract flights each week established under subparagraph (B)(ii) between 2 points within the State of Alaska for at least 12 consecutive months with aircraft—

“(I) up to 7,500 pounds payload capacity before being selected as a carrier of nonpriority bypass mail at an applicable intra-Alaska bush service mail rate; and

“(II) over 7,500 pounds payload capacity before being selected as a carrier of nonpriority bypass mail at the intra-Alaska mainline service mail rate.

“(B)(i) For purposes of subparagraph (A)(ii)—

“(I) for aircraft described under subparagraph (A)(iv)(I) the number is 3; and

“(II) for aircraft described under subparagraph (A)(iv)(II), the number is 2, except as may be provided under subparagraph (C).

“(ii) For purposes of subparagraph (A)(iv)—

“(I) for aircraft described under subparagraph (A)(iv)(I), the number is 3; and

“(II) for aircraft described under subparagraph (A)(iv)(II), for any week in any month before the effective date of the Rural Air Service Improvement Act of 2004, the number is 3, and after such date, the number is 2.

“(C) The Postal Service, after consultation with affected carriers, may establish for service by aircraft described under subparagraph (A)(iv)(II)—

“(i) a larger number of flights than required under subparagraph (B)(i); or

“(ii) the days that service will operate.”.

(e) SUBCONTRACTS BY EXISTING MAINLINE CARRIERS.—Section 5402(g)(4) of title 39, United States Code, is amended by adding at the end the following:

“(C) A providing carrier selected under subparagraph (A) may subcontract the transportation of nonpriority bypass mail to another existing mainline carrier when additional or substitute aircraft are temporarily needed to meet the delivery schedule of the Postal Service or the carrier’s operating requirements. The providing carrier shall remain responsible for the mail from origin through destination.”.

(f) AIRCRAFT PREFERENCES FOR OTHER POSTAL PRODUCTS.—Section 5402(g) of title 39, United States Code, is amended by adding at the end the following:

“(7) Nothing in this section shall preclude the Postal Service from establishing by regulation aircraft preferences for the dispatch of postal products other than nonpriority bypass mail.”.

TITLE IV—VISA REFORM

SEC. 401. SHORT TITLE.

This title may be cited as the “L–1 Visa and H–1B Visa Reform Act”.

L–1 Visa and
H–1B Visa
Reform Act.
8 USC 1101 note.

Subtitle A—L–1 Visa Reform

SEC. 411. SHORT TITLE.

This subtitle may be cited as the “L–1 Visa (Intracompany Transferee) Reform Act of 2004”.

L–1 Visa
(Intracompany
Transferee)
Reform Act of
2004.
8 USC 1101 note.

SEC. 412. NONIMMIGRANT L–1 VISA CATEGORY.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

“(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—

“(i) the alien will be controlled and supervised principally by such unaffiliated employer; or

“(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.”.

(b) **APPLICABILITY.**—The amendment made by subsection (a) shall apply to petitions filed on or after the effective date of this subtitle, whether for initial, extended, or amended classification.

SEC. 413. REQUIREMENT FOR PRIOR CONTINUOUS EMPLOYMENT FOR CERTAIN INTRACOMPANY TRANSFEREES.

(a) **IN GENERAL.**—Section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)) is amended by striking the last sentence (relating to reduction of the 1-year period of continuous employment abroad to 6 months).

(b) **APPLICABILITY.**—The amendment made by subsection (a) shall apply only to petitions for initial classification filed on or after the effective date of this subtitle.

8 USC 1380.

SEC. 414. MAINTENANCE OF STATISTICS BY THE DEPARTMENT OF HOMELAND SECURITY.

(a) **IN GENERAL.**—The Department of Homeland Security shall maintain statistics regarding petitions filed, approved, extended, and amended with respect to nonimmigrants described in section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)), including the number of such nonimmigrants who are classified on the basis of specialized knowledge and the number of nonimmigrants who are classified on the basis of specialized knowledge in order to work primarily at offsite locations.

(b) **APPLICABILITY.**—Subsection (a) shall apply to petitions filed on or after the effective date of this subtitle.

Deadline.
8 USC 1184 note.

SEC. 415. INSPECTOR GENERAL REPORT ON L VISA PROGRAM.

Not later than 6 months after the date of enactment of this Act, the Inspector General of the Department of Homeland Security shall, consistent with the authority granted the Department under section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236), examine and report to the Committees on the Judiciary of the House of Representatives and the Senate on the vulnerabilities and potential abuses in the visa program carried out under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) with respect to nonimmigrants described in section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)).

8 USC 1184 note.

SEC. 416. ESTABLISHMENT OF TASK FORCE.

Deadline.

(a) **ESTABLISHMENT.**—Not later than 6 months after the date of enactment of this Act, there shall be established an L Visa Interagency Task Force that consists of representatives from the Department of Homeland Security, the Department of Justice, and

the Department of State. The Secretaries of each Department and each relevant bureau of the Department of Homeland Security shall appoint designees to the L Visa Interagency Task Force. The L Visa Interagency Task Force shall consult with other agencies deemed appropriate.

(b) **REPORT.**—Not later than 6 months after the submission of the report by the Inspector General of the Department of Homeland Security in accordance with section 6, the L Visa Interagency Task Force shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the efforts to implement the recommendations set forth by the Inspector General’s report. The L Visa Interagency Task Force shall note specific areas of agreement and disagreement, and make recommendations to Congress on the findings of the Task Force, including any suggestions for legislation. The Task Force shall also review other additional issues as may be raised by the Inspector General’s report or by the Task Force’s own deliberations regarding the policies and purposes of the visa program relative to national goals and transnational commerce.

Deadline.

SEC. 417. EFFECTIVE DATE.

8 USC 1184 note.

This subtitle and the amendments made by this subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—H-1B Visa Reform

H-1B Visa
Reform Act of
2004.
8 USC 1101 note.

SEC. 421. SHORT TITLE.

This subtitle may be cited as the “H-1B Visa Reform Act of 2004”.

SEC. 422. TEMPORARY WORKER PROVISIONS.

(a) **ATTESTATION REQUIREMENTS FOR H-1B WORKERS.**—Section 212(n)(1)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking “October 1, 2003.”

(b) **H-1B EMPLOYER PETITIONS.**—Section 214(c)(9) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(9)) is amended—

(1) in subparagraph (A), by striking “October 1, 2003”;
(2) in subparagraph (B), by striking “\$1,000” and inserting “\$1,500”; and

(3) in subparagraph (B), by inserting before the period “except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer)”.

SEC. 423. H-1B PREVAILING WAGE LEVEL.

Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended by adding at the end the following:

“(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections.

“(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision.

Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.”.

SEC. 424. DEPARTMENT OF LABOR INVESTIGATIVE AUTHORITIES.

(a) SECRETARY OF LABOR INVESTIGATIVE AUTHORITY.—

(1) IN GENERAL.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended by inserting after subparagraph (F) the following:

“(G)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(i)(b) if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

“(ii) If the Secretary of Labor receives specific credible information from a source who is likely to have knowledge of an employer’s practices or employment conditions, or an employer’s compliance with the employer’s labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor may conduct an investigation into the alleged failure or failures. The Secretary of Labor may withhold the identity of the source from the employer, and the source’s identity shall not be subject to disclosure under section 552 of title 5, United States Code.

Procedures.

“(iii) The Secretary of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor, unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

“(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

“(I) originates from a source other than an officer or employee of the Department of Labor; or

“(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this Act of any other Act.

“(v) The receipt by the Secretary of Labor of information submitted by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a nonimmigrant described in section 101(a)(15)(H)(i)(b) shall not be considered a receipt of information for purposes of clause (ii).

“(vi) No investigation described in clause (ii) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

“(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior to the commencement of an investigation under such clauses, of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by the Secretary of Labor to secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary of Labor under this clause. Notice.

“(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.”. Notice.

(2) RETROACTIVE.—The amendment made by paragraph (1) shall take effect as if enacted on October 1, 2003. Deadline.

(b) GOOD FAITH COMPLIANCE OR CONFORMITY.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (I); and

(2) by inserting after subparagraph (G), as added by subsection (a)(1), the following:

“(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

“(ii) Clause (i) shall not apply if—

“(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

Effective date.
8 USC 1182 note.

“(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

“(III) the person or entity has not corrected the failure voluntarily within such period.

“(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

“(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.”.

8 USC 1381.

(c) SECRETARY OF LABOR REPORT.—Not later than January 31 of each year, the Secretary of Labor shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the investigations undertaken based on—

(1) the authorities described in clauses (i) and (ii) of section 212(n)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(G)(i) and (ii)); and

(2) the expenditures by the Secretary of Labor described in section 286(v)(2)(D) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(D)).

SEC. 425. EXEMPTION OF CERTAIN ALIENS FROM NUMERICAL LIMITATIONS ON H-1B NONIMMIGRANTS.

(a) IN GENERAL.—Section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) is amended—

(1) in the matter preceding subparagraph (A), by striking “is employed (or has received an offer of employment) at”;

(2) in subparagraph (A)—

(A) by inserting “is employed (or has received an offer of employment) at” before “an institution”; and

(B) by striking “or” at the end;

(3) in subparagraph (B)—

(A) by inserting “is employed (or has received an offer of employment) at” before “a nonprofit”; and

(B) by striking the period and inserting “; or”; and

(4) by adding at the end the following:

“(C) has earned a master’s or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.”.

8 USC 1184 note.

(b) STATISTICS.—Beginning on the date of enactment of this Act, the Secretary of Homeland Security shall maintain statistical information on the country of origin and occupation of, educational level maintained by, and compensation paid to, each alien who is issued a visa or otherwise provided nonimmigrant status and is exempt under section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) for each fiscal year. The statistical information shall be included in the annual report to Congress under section 416(c) of the American Competitiveness and Workforce Improvement Act of 1998 (Public Law 105-277; 112 Stat. 2681-655).

SEC. 426. FRAUD PREVENTION AND DETECTION FEE.

(a) IMPOSITION OF FEE.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

“(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

“(i) initially to grant an alien nonimmigrant status described in subparagraph (H)(i)(b) or (L) of section 101(a)(15); or

“(ii) to obtain authorization for an alien having such status to change employers.

“(B) In addition to any other fees authorized by law, the Secretary of State shall impose a fraud prevention and detection fee on an alien filing an application abroad for a visa authorizing admission to the United States as a nonimmigrant described in section 101(a)(15)(L), if the alien is covered under a blanket petition described in paragraph (2)(A).

“(C) The amount of the fee imposed under subparagraph (A) or (B) shall be \$500.

“(D) The fee imposed under subparagraph (A) or (B) shall only apply to principal aliens and not to the spouses or children who are accompanying or following to join such principal aliens.

“(E) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(v).”

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

“(v) H-1B AND L FRAUD PREVENTION AND DETECTION ACCOUNT.—

“(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ‘H-1B and L Fraud Prevention and Detection Account’. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(12).

“(2) USE OF FEES TO COMBAT FRAUD.—

“(A) SECRETARY OF STATE.—One-third of the amounts deposited into the H-1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of State until expended for programs and activities at United States embassies and consulates abroad—

“(i) to increase the number diplomatic security personnel assigned exclusively to the function of preventing and detecting fraud by applicants for visas described in subparagraph (H)(i) or (L) of section 101(a)(15);

“(ii) otherwise to prevent and detect such fraud pursuant to the terms of a memorandum of understanding or other cooperative agreement between the Secretary of State and the Secretary of Homeland Security; and

“(iii) upon request by the Secretary of Homeland Security, to assist such Secretary in carrying out the fraud prevention and detection programs and activities described in subparagraph (B).

“(B) SECRETARY OF HOMELAND SECURITY.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in subparagraph (H)(i) or (L) of section 101(a)(15).

“(C) SECRETARY OF LABOR.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for enforcement programs and activities described in section 212(n).

“(D) CONSULTATION.—The Secretary of State, the Secretary of Homeland Security, and the Secretary of Labor shall consult one another with respect to the use of the funds in the H–1B and L Fraud Prevention and Detection Account.”.

8 USC 1184 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and the fees imposed under such amendments shall apply to petitions under section 214(c) of the Immigration and Nationality Act, and applications for nonimmigrant visas under section 222 of such Act, filed on or after the date that is 90 days after the date of the enactment of this Act.

SEC. 427. CHANGE OF FEE FORMULA.

Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended—

(1) in paragraph (2), by striking “55 percent” and inserting “50 percent”;

(2) in paragraph (3), by striking “22 percent” and inserting “30 percent”;

(3) in paragraph (4)(A), by striking “15 percent” and inserting “10 percent”;

(4) in paragraph (5)—

(A) by striking “4 percent” and inserting “5 percent”;

and

(B) by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”; and

(5) in paragraph (6), by striking “Beginning with fiscal year 2000,” and all that follows through “within a 7-day period.” and inserting “Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 212(n)(1).”.

29 USC 2916a.

SEC. 428. GRANTS FOR JOB TRAINING FOR EMPLOYMENT IN HIGH GROWTH INDUSTRIES.

29 USC 2916
note.

Section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (112 Stat. 2681–653) is amended to read as follows:

“(c) JOB TRAINING GRANTS.—

“(1) IN GENERAL.—The Secretary of Labor shall use funds available under section 286(s)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(2)) to award grants to eligible

entities to provide job training and related activities for workers to assist them in obtaining or upgrading employment in industries and economic sectors identified pursuant to paragraph (4) that are projected to experience significant growth and ensure that job training and related activities funded by such grants are coordinated with the public workforce investment system.

“(2) USE OF FUNDS.—

“(A) TRAINING PROVIDED.—Funds under this subsection may be used to provide job training services and related activities that are designed to assist workers (including unemployed and employed workers) in gaining the skills and competencies needed to obtain or upgrade career ladder employment positions in the industries and economic sectors identified pursuant to paragraph (4).

“(B) ENHANCED TRAINING PROGRAMS AND INFORMATION.—In order to facilitate the provision of job training services described in subparagraph (A), funds under this subsection may be used to assist in the development and implementation of model activities such as developing appropriate curricula to build core competencies and train workers, identifying and disseminating career and skill information, and increasing the integration of community and technical college activities with activities of businesses and the public workforce investment system to meet the training needs for the industries and economic sectors identified pursuant to paragraph (4).

“(3) ELIGIBLE ENTITIES.—Grants under this subsection may be awarded to partnerships of private and public sector entities, which may include—

“(A) businesses or business-related nonprofit organizations, such as trade associations;

“(B) education and training providers, including community colleges and other community-based organizations; and

“(C) entities involved in administering the workforce investment system established under title I of the Workforce Investment Act of 1998, and economic development agencies.

“(4) HIGH GROWTH INDUSTRIES AND ECONOMIC SECTORS.—

For purposes of this subsection, the Secretary of Labor, in consultation with State workforce investment boards, shall identify industries and economic sectors that are projected to experience significant growth, taking into account appropriate factors, such as the industries and sectors that—

“(A) are projected to add substantial numbers of new jobs to the economy;

“(B) are being transformed by technology and innovation requiring new skill sets for workers;

“(C) are new and emerging businesses that are projected to grow; or

“(D) have a significant impact on the economy overall or on the growth of other industries and economic sectors.

“(5) EQUITABLE DISTRIBUTION.—In awarding grants under this subsection, the Secretary of Labor shall ensure an equitable distribution of such grants across geographically diverse areas.

“(6) LEVERAGING OF RESOURCES AND AUTHORITY TO REQUIRE MATCH.—

“(A) LEVERAGING OF RESOURCES.—In awarding grants under this subsection, the Secretary of Labor shall take into account, in addition to other factors the Secretary determines are appropriate—

“(i) the extent to which resources other than the funds provided under this subsection will be made available by the eligible entities applying for grants to support the activities carried out under this subsection; and

“(ii) the ability of such entities to continue to carry out and expand such activities after the expiration of the grants.

“(B) AUTHORITY TO REQUIRE MATCH.—The Secretary of Labor may require the provision of specified levels of a matching share of cash or noncash resources from resources other than the funds provided under this subsection for projects funded under this subsection.

Reports.

“(7) PERFORMANCE ACCOUNTABILITY.—The Secretary of Labor shall require grantees to report on the employment outcomes obtained by workers receiving training under this subsection using indicators of performance that are consistent with other indicators used for employment and training programs administered by the Secretary, such as entry into employment, retention in employment, and increases in earnings. The Secretary of Labor may also require grantees to participate in evaluations of projects carried out under this subsection.”.

SEC. 429. NATIONAL SCIENCE FOUNDATION LOW-INCOME SCHOLARSHIP PROGRAM.

(a) EXPANSION OF ELIGIBILITY.—Section 414(d)(2)(A)(iii) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(2)(A)(iii)) is amended by striking “or computer science.” and inserting “computer science, or other technology and science programs designated by the Director.”.

(b) INCREASE IN AWARD AMOUNT.—Section 414(d)(3) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(3)) is amended by striking “\$3,125 per year” and inserting “\$10,000 per year”.

(c) FUNDS.—Section 414(d)(4) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(4)) is amended by adding at the end the following: “The Director may use no more than 50 percent of such funds for undergraduate programs for curriculum development, professional and workforce development, and to advance technological education. Funds for these other programs may be used for purposes other than scholarships.”.

(d) PUBLICATION OF ELIGIBLE PROGRAMS.—Section 414(d) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)) is amended by adding at the end the following:

Deadline.

“(5) FEDERAL REGISTER.—Not later than 60 days after the date of enactment of the L-1 Visa and H-1B Visa Reform Act, the Director shall publish in the Federal Register a list of eligible programs of study.”.

SEC. 430. EFFECTIVE DATES.

8 USC 1182 note.

(a) **IN GENERAL.**—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect 90 days after the date of enactment of this Act.

(b) **EXCEPTIONS.**—The amendments made by sections 422(b), 426(a), and 427 shall take effect upon the date of enactment of this Act.

TITLE V—NATIONAL AVIATION HERITAGE AREA

National
Aviation
Heritage Area
Act.**SEC. 501. SHORT TITLE.**

16 USC 461 note.

This title may be cited as the “National Aviation Heritage Area Act”.

SEC. 502. FINDINGS AND PURPOSE.

16 USC 461 note.

(a) **FINDINGS.**—Congress finds the following:

(1) Few technological advances have transformed the world or our Nation’s economy, society, culture, and national character as the development of powered flight.

(2) The industrial, cultural, and natural heritage legacies of the aviation and aerospace industry in the State of Ohio are nationally significant.

(3) Dayton, Ohio, and other defined areas where the development of the airplane and aerospace technology established our Nation’s leadership in both civil and military aeronautics and astronautics set the foundation for the 20th Century to be an American Century.

(4) Wright-Patterson Air Force Base in Dayton, Ohio, is the birthplace, the home, and an integral part of the future of aerospace.

(5) The economic strength of our Nation is connected integrally to the vitality of the aviation and aerospace industry, which is responsible for an estimated 11,200,000 American jobs.

(6) The industrial and cultural heritage of the aviation and aerospace industry in the State of Ohio includes the social history and living cultural traditions of several generations.

(7) The Department of the Interior is responsible for protecting and interpreting the Nation’s cultural and historic resources, and there are significant examples of these resources within Ohio to merit the involvement of the Federal Government to develop programs and projects in cooperation with the Aviation Heritage Foundation, Incorporated, the State of Ohio, and other local and governmental entities to adequately conserve, protect, and interpret this heritage for the educational and recreational benefit of this and future generations of Americans, while providing opportunities for education and revitalization.

(8) Since the enactment of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), partnerships among the Federal, State, and local governments and the private sector have greatly assisted the development and preservation of the historic aviation resources in the Miami Valley.

(9) An aviation heritage area centered in Southwest Ohio is a suitable and feasible management option to increase

collaboration, promote heritage tourism, and build on the established partnerships among Ohio's historic aviation resources and related sites.

(10) A critical level of collaboration among the historic aviation resources in Southwest Ohio cannot be achieved without a congressionally established national heritage area and the support of the National Park Service and other Federal agencies which own significant historic aviation-related sites in Ohio.

(11) The Aviation Heritage Foundation, Incorporated, would be an appropriate management entity to oversee the development of the National Aviation Heritage Area.

(12) Five National Park Service and Dayton Aviation Heritage Commission studies and planning documents: "Study of Alternatives: Dayton's Aviation Heritage", "Dayton Aviation Heritage National Historical Park Suitability/Feasibility Study", "Dayton Aviation Heritage General Management Plan", "Dayton Historic Resources Preservation and Development Plan", and Heritage Area Concept Study, demonstrated that sufficient historical resources exist to establish the National Aviation Heritage Area.

(13) With the advent of the 100th anniversary of the first powered flight in 2003, it is recognized that the preservation of properties nationally significant in the history of aviation is an important goal for the future education of Americans.

(14) Local governments, the State of Ohio, and private sector interests have embraced the heritage area concept and desire to enter into a partnership with the Federal Government to preserve, protect, and develop the Heritage Area for public benefit.

(15) The National Aviation Heritage Area would complement and enhance the aviation-related resources within the National Park Service, especially the Dayton Aviation Heritage National Historical Park, Ohio.

(b) PURPOSE.—The purpose of this title is to establish the Heritage Area to—

(1) encourage and facilitate collaboration among the facilities, sites, organizations, governmental entities, and educational institutions within the Heritage Area to promote heritage tourism and to develop educational and cultural programs for the public;

(2) preserve and interpret for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, structures, facilities, and sites within the National Aviation Heritage Area;

(3) encourage within the National Aviation Heritage Area a broad range of economic opportunities enhancing the quality of life for present and future generations;

(4) provide a management framework to assist the State of Ohio, its political subdivisions, other areas, and private organizations, or combinations thereof, in preparing and implementing an integrated Management Plan to conserve their aviation heritage and in developing policies and programs that will preserve, enhance, and interpret the cultural, historical, natural, recreation, and scenic resources of the Heritage Area; and

(5) authorize the Secretary to provide financial and technical assistance to the State of Ohio, its political subdivisions, and private organizations, or combinations thereof, in preparing and implementing the private Management Plan.

SEC. 503. DEFINITIONS.

16 USC 461 note.

For purposes of this title:

(1) **BOARD.**—The term “Board” means the Board of Directors of the Foundation.

(2) **FINANCIAL ASSISTANCE.**—The term “financial assistance” means funds appropriated by Congress and made available to the management entity for the purpose of preparing and implementing the Management Plan.

(3) **HERITAGE AREA.**—The term “Heritage Area” means the National Aviation Heritage Area established by section 104 to receive, distribute, and account for Federal funds appropriated for the purpose of this title.

(4) **MANAGEMENT PLAN.**—The term “Management Plan” means the management plan for the Heritage Area developed under section 106.

(5) **MANAGEMENT ENTITY.**—The term “management entity” means the Aviation Heritage Foundation, Incorporated (a non-profit corporation established under the laws of the State of Ohio).

(6) **PARTNER.**—The term “partner” means a Federal, State, or local governmental entity, organization, private industry, educational institution, or individual involved in promoting the conservation and preservation of the cultural and natural resources of the Heritage Area.

(7) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(8) **TECHNICAL ASSISTANCE.**—The term “technical assistance” means any guidance, advice, help, or aid, other than financial assistance, provided by the Secretary.

SEC. 504. NATIONAL AVIATION HERITAGE AREA.

16 USC 461 note.

(a) **ESTABLISHMENT.**—There is established in the States of Ohio and Indiana, the National Aviation Heritage Area.

Ohio.
Indiana.

(b) **BOUNDARIES.**—The Heritage Area shall include the following:

(1) A core area consisting of resources in Montgomery, Greene, Warren, Miami, Clark, Champaign, Shelby, and Auglaize Counties in Ohio.

(2) The Neil Armstrong Air & Space Museum, Wapakoneta, Ohio.

(3) Sites, buildings, and districts within the core area recommended by the Management Plan.

(c) **MAP.**—A map of the Heritage Area shall be included in the Management Plan. The map shall be on file in the appropriate offices of the National Park Service, Department of the Interior.

(d) **MANAGEMENT ENTITY.**—The management entity for the Heritage Area shall be the Aviation Heritage Foundation.

SEC. 505. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

16 USC 461 note.

(a) **AUTHORITIES.**—For purposes of implementing the Management Plan, the management entity may use Federal funds made available through this title to—

(1) make grants to, and enter into cooperative agreements with, the State of Ohio and political subdivisions of that State, private organizations, or any person;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—The management entity shall—

(1) develop and submit to the Secretary for approval the proposed Management Plan in accordance with section 106;

(2) give priority to implementing actions set forth in the Management Plan, including taking steps to assist units of government and nonprofit organizations in preserving resources within the Heritage Area;

(3) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area in developing and implementing the Management Plan;

(4) maintain a collaboration among the partners to promote heritage tourism and to assist partners to develop educational and cultural programs for the public;

(5) encourage economic viability in the Heritage Area consistent with the goals of the Management Plan;

(6) assist units of government and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the historical, natural, and architectural resources and sites in the Heritage Area; and

(D) restoring historic buildings that relate to the purposes of the Heritage Area;

(7) conduct public meetings at least quarterly regarding the implementation of the Management Plan;

(8) submit substantial amendments to the Management Plan to the Secretary for the approval of the Secretary; and

(9) for any year in which Federal funds have been received under this title—

(A) submit an annual report to the Secretary that sets forth the accomplishments of the management entity and its expenses and income;

(B) make available to the Secretary for audit all records relating to the expenditure of such funds and any matching funds; and

(C) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of such funds.

(c) USE OF FEDERAL FUNDS.—

(1) IN GENERAL.—The management entity shall not use Federal funds received under this title to acquire real property or an interest in real property.

(2) OTHER SOURCES.—Nothing in this title precludes the management entity from using Federal funds from other sources for authorized purposes.

Reports.
Deadlines.

SEC. 506. MANAGEMENT PLAN.

16 USC 461 note.

(a) **PREPARATION OF PLAN.**—Not later than 3 years after the date of the enactment of this title, the management entity shall submit to the Secretary for approval a proposed Management Plan that shall take into consideration State and local plans and involve residents, public agencies, and private organizations in the Heritage Area.

Deadline.

(b) **CONTENTS.**—The Management Plan shall incorporate an integrated and cooperative approach for the protection, enhancement, and interpretation of the natural, cultural, historic, scenic, and recreational resources of the Heritage Area and shall include the following:

(1) An inventory of the resources contained in the core area of the Heritage Area, including the Dayton Aviation Heritage Historical Park, the sites, buildings, and districts listed in section 202 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), and any other property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, or maintained because of its significance.

(2) An assessment of cultural landscapes within the Heritage Area.

(3) Provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with the purposes of this title.

(4) An interpretation plan for the Heritage Area.

(5) A program for implementation of the Management Plan by the management entity, including the following:

(A) Facilitating ongoing collaboration among the partners to promote heritage tourism and to develop educational and cultural programs for the public.

(B) Assisting partners planning for restoration and construction.

(C) Specific commitments of the partners for the first 5 years of operation.

(6) The identification of sources of funding for implementing the plan.

(7) A description and evaluation of the management entity, including its membership and organizational structure.

(c) **DISQUALIFICATION FROM FUNDING.**—If a proposed Management Plan is not submitted to the Secretary within 3 years of the date of the enactment of this title, the management entity shall be ineligible to receive additional funding under this title until the date on which the Secretary receives the proposed Management Plan.

(d) **APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.**—The Secretary, in consultation with the State of Ohio, shall approve or disapprove the proposed Management Plan submitted under this title not later than 90 days after receiving such proposed Management Plan.

Deadline.

(e) **ACTION FOLLOWING DISAPPROVAL.**—If the Secretary disapproves a proposed Management Plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions to the proposed Management Plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

Deadline.

(f) **APPROVAL OF AMENDMENTS.**—The Secretary shall review and approve substantial amendments to the Management Plan. Funds appropriated under this title may not be expended to implement any changes made by such amendment until the Secretary approves the amendment.

16 USC 461 note. **SEC. 507. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.**

Contracts. (a) **TECHNICAL AND FINANCIAL ASSISTANCE.**—Upon the request of the management entity, the Secretary may provide technical assistance, on a reimbursable or nonreimbursable basis, and financial assistance to the Heritage Area to develop and implement the management plan. The Secretary is authorized to enter into cooperative agreements with the management entity and other public or private entities for this purpose. In assisting the Heritage Area, the Secretary shall give priority to actions that in general assist in—

(1) conserving the significant natural, historic, cultural, and scenic resources of the Heritage Area; and

(2) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(b) **DUTIES OF OTHER FEDERAL AGENCIES.**—Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title;

(3) to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(4) to the maximum extent practicable, conduct or support such activities in a manner which the management entity determines will not have an adverse effect on the Heritage Area.

16 USC 461 note. **SEC. 508. COORDINATION BETWEEN THE SECRETARY AND THE SECRETARY OF DEFENSE AND THE ADMINISTRATOR OF NASA.**

The decisions concerning the execution of this title as it applies to properties under the control of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall be made by such Secretary or such Administrator, in consultation with the Secretary of the Interior.

16 USC 461 note. **SEC. 509. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.**

(a) **NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED.**—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) **LANDOWNER WITHDRAW.**—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

SEC. 510. PRIVATE PROPERTY PROTECTION.

16 USC 461 note.

(a) **ACCESS TO PRIVATE PROPERTY.**—Nothing in this title shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) **LIABILITY.**—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) **RECOGNITION OF AUTHORITY TO CONTROL LAND USE.**—Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) **PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREA.**—Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) **EFFECT OF ESTABLISHMENT.**—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

SEC. 511. AUTHORIZATION OF APPROPRIATIONS.

16 USC 461 note.

(a) **IN GENERAL.**—To carry out this title there is authorized to be appropriated \$10,000,000, except that not more than \$1,000,000 may be appropriated to carry out this title for any fiscal year.

(b) **FIFTY PERCENT MATCH.**—The Federal share of the cost of activities carried out using any assistance or grant under this title shall not exceed 50 percent.

SEC. 512. SUNSET PROVISION.

16 USC 461 note.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date that funds are first made available for this title.

SEC. 513. WRIGHT COMPANY FACTORY STUDY AND REPORT.

16 USC 461 note.

(a) **STUDY.**—

(1) **IN GENERAL.**—The Secretary shall conduct a special resource study updating the study required under section 104 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419) and detailing alternatives for incorporating the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park.

(2) **CONTENTS.**—The study shall include an analysis of alternatives for including the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park that detail management and development options and costs.

(3) **CONSULTATION.**—In conducting the study, the Secretary shall consult with the Delphi Corporation, the Aviation Heritage Foundation, State and local agencies, and other interested parties in the area.

(b) REPORT.—Not later than 3 years after funds are first made available for this section, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the results of the study conducted under this section.

Oil Region
National
Heritage Area
Act.

TITLE VI—OIL REGION NATIONAL HERITAGE AREA

16 USC 461 note.

SEC. 601. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the “Oil Region National Heritage Area Act”.

(b) DEFINITIONS.—For the purposes of this title, the following definitions shall apply:

(1) HERITAGE AREA.—The term “Heritage Area” means the Oil Region National Heritage Area established in section 603(a).

(2) MANAGEMENT ENTITY.—The term “management entity” means the Oil Heritage Region, Inc., or its successor entity.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

16 USC 461 note.

SEC. 602. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Oil Region of Northwestern Pennsylvania, with numerous sites and districts listed on the National Register of Historic Places, and designated by the Governor of Pennsylvania as one of the State Heritage Park Areas, is a region with tremendous physical and natural resources and possesses a story of State, national, and international significance.

(2) The single event of Colonel Edwin Drake’s drilling of the world’s first successful oil well in 1859 has affected the industrial, natural, social, and political structures of the modern world.

(3) Six national historic districts are located within the State Heritage Park boundary, in Emlenton, Franklin, Oil City, and Titusville, as well as 17 separate National Register sites.

(4) The Allegheny River, which was designated as a component of the national wild and scenic rivers system in 1992 by Public Law 102–271, traverses the Oil Region and connects several of its major sites, as do some of the river’s tributaries such as Oil Creek, French Creek, and Sandy Creek.

(5) The unspoiled rural character of the Oil Region provides many natural and recreational resources, scenic vistas, and excellent water quality for people throughout the United States to enjoy.

(6) Remnants of the oil industry, visible on the landscape to this day, provide a direct link to the past for visitors, as do the historic valley settlements, riverbed settlements, plateau developments, farmlands, and industrial landscapes.

(7) The Oil Region also represents a cross section of American history associated with Native Americans, frontier settlements, the French and Indian War, African Americans and the Underground Railroad, and immigration of Swedish and Polish individuals, among others.

(8) Involvement by the Federal Government shall serve to enhance the efforts of the Commonwealth of Pennsylvania,

volunteer organizations, and private businesses, to promote the cultural, national, and recreational resources of the region in order to fulfill their full potential.

(b) **PURPOSE.**—The purpose of this title is to enhance a cooperative management framework to assist the Commonwealth of Pennsylvania, its units of local government, and area citizens in conserving, enhancing, and interpreting the significant features of the lands, water, and structures of the Oil Region, in a manner consistent with compatible economic development for the benefit and inspiration of present and future generations in the Commonwealth of Pennsylvania and the United States.

SEC. 603. OIL REGION NATIONAL HERITAGE AREA.

16 USC 461 note.

(a) **ESTABLISHMENT.**—There is hereby established the Oil Region National Heritage Area.

(b) **BOUNDARIES.**—The boundaries of the Heritage Area shall include all of those lands depicted on a map entitled “Oil Region National Heritage Area”, numbered OIRE/20,000 and dated October 2000. The map shall be on file in the appropriate offices of the National Park Service. The Secretary of the Interior shall publish in the Federal Register, as soon as practical after the date of the enactment of this Act, a detailed description and map of the boundaries established under this subsection.

Federal Register,
publication.

(c) **MANAGEMENT ENTITY.**—The management entity for the Heritage Area shall be the Oil Heritage Region, Inc., the locally based private, nonprofit management corporation which shall oversee the development of a management plan in accordance with section 605(b).

SEC. 604. COMPACT.

16 USC 461 note.

To carry out the purposes of this title, the Secretary shall enter into a compact with the management entity. The compact shall include information relating to the objectives and management of the area, including a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the Secretary and management entity.

SEC. 605. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

16 USC 461 note.

(a) **AUTHORITIES OF THE MANAGEMENT ENTITY.**—The management entity may use funds made available under this title for purposes of preparing, updating, and implementing the management plan developed under subsection (b). Such purposes may include—

- (1) making grants to, and entering into cooperative agreements with, States and their political subdivisions, private organizations, or any other person;
- (2) hiring and compensating staff; and
- (3) undertaking initiatives that advance the purposes of the Heritage Area.

(b) **MANAGEMENT PLAN.**—The management entity shall develop a management plan for the Heritage Area that—

- (1) presents comprehensive strategies and recommendations for conservation, funding, management, and development of the Heritage Area;

(2) takes into consideration existing State, county, and local plans and involves residents, public agencies, and private organizations working in the Heritage Area;

(3) includes a description of actions that units of government and private organizations have agreed to take to protect the resources of the Heritage Area;

(4) specifies the existing and potential sources of funding to protect, manage, and develop the Heritage Area;

(5) includes an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historic, recreational, or scenic significance;

(6) describes a program for implementation of the management plan by the management entity, including plans for restoration and construction, and specific commitments for that implementation that have been made by the management entity and any other persons for the first 5 years of implementation;

(7) lists any revisions to the boundaries of the Heritage Area proposed by the management entity and requested by the affected local government; and

(8) includes an interpretation plan for the Heritage Area.

(c) DEADLINE; TERMINATION OF FUNDING.—

(1) DEADLINE.—The management entity shall submit the management plan to the Secretary within 2 years after the funds are made available for this title.

(2) TERMINATION OF FUNDING.—If a management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal assistance under this title.

(d) DUTIES OF MANAGEMENT ENTITY.—The management entity shall—

(1) give priority to implementing actions set forth in the compact and management plan;

(2) assist units of government, regional planning organizations, and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the natural, historical, and architectural resources and sites in the Heritage Area;

(D) the restoration of any historic building relating to the themes of the Heritage Area;

(E) ensuring that clear signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

(F) carrying out other actions that the management entity determines to be advisable to fulfill the purposes of this title;

(3) encourage by appropriate means economic viability in the Heritage Area consistent with the goals of the management plan;

(4) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area; and

(5) for any year in which Federal funds have been provided to implement the management plan under subsection (b)—

(A) conduct public meetings at least annually regarding the implementation of the management plan;

(B) submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each person to which any grant was made by the management entity in the year for which the report is made; and Reports.

(C) require, for all agreements entered into by the management entity authorizing expenditure of Federal funds by any other person, that the person making the expenditure make available to the management entity for audit all records pertaining to the expenditure of such funds.

(e) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity may not use Federal funds received under this title to acquire real property or an interest in real property.

SEC. 606. DUTIES AND AUTHORITIES OF THE SECRETARY.

16 USC 461 note.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—

(A) OVERALL ASSISTANCE.—The Secretary may, upon the request of the management entity, and subject to the availability of appropriations, provide technical and financial assistance to the management entity to carry out its duties under this title, including updating and implementing a management plan that is submitted under section 605(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives.

(B) OTHER ASSISTANCE.—If the Secretary has the resources available to provide technical assistance to the management entity to carry out its duties under this title (including updating and implementing a management plan that is submitted under section 605(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives), upon the request of the management entity the Secretary shall provide such assistance on a reimbursable basis. This subparagraph does not preclude the Secretary from providing nonreimbursable assistance under subparagraph (A).

(2) PRIORITY.—In assisting the management entity, the Secretary shall give priority to actions that assist in the—

(A) implementation of the management plan;

(B) provision of educational assistance and advice regarding land and water management techniques to conserve the significant natural resources of the region;

(C) development and application of techniques promoting the preservation of cultural and historic properties;

(D) preservation, restoration, and reuse of publicly and privately owned historic buildings;

(E) design and fabrication of a wide range of interpretive materials based on the management plan, including guide brochures, visitor displays, audio-visual and interactive exhibits, and educational curriculum materials for public education; and

(F) implementation of initiatives prior to approval of the management plan.

(3) **DOCUMENTATION OF STRUCTURES.**—The Secretary, acting through the Historic American Building Survey and the Historic American Engineering Record, shall conduct studies necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

Deadline. (b) **APPROVAL AND DISAPPROVAL OF MANAGEMENT PLANS.**—The Secretary, in consultation with the Governor of Pennsylvania, shall approve or disapprove a management plan submitted under this title not later than 90 days after receiving such plan. In approving the plan, the Secretary shall take into consideration the following criteria:

(1) The extent to which the management plan adequately preserves and protects the natural, cultural, and historical resources of the Heritage Area.

(2) The level of public participation in the development of the management plan.

(3) The extent to which the board of directors of the management entity is representative of the local government and a wide range of interested organizations and citizens.

Deadline. (c) **ACTION FOLLOWING DISAPPROVAL.**—If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions in the management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(d) **APPROVING CHANGES.**—The Secretary shall review and approve amendments to the management plan under section 605(b) that make substantial changes. Funds appropriated under this title may not be expended to implement such changes until the Secretary approves the amendments.

(e) **EFFECT OF INACTION.**—If the Secretary does not approve or disapprove a management plan, revision, or change within 90 days after it is submitted to the Secretary, then such management plan, revision, or change shall be deemed to have been approved by the Secretary.

16 USC 461 note. **SEC. 607. DUTIES OF OTHER FEDERAL ENTITIES.**

Any Federal entity conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner that the management entity determines shall not have an adverse effect on the Heritage Area.

16 USC 461 note. **SEC. 608. SUNSET.**

The Secretary may not make any grant or provide any assistance under this title after the expiration of the 15-year period beginning on the date that funds are first made available for this title.

SEC. 609. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY. 16 USC 461 note.

(a) **NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED.**—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) **LANDOWNER WITHDRAW.**—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

SEC. 610. PRIVATE PROPERTY PROTECTION.

16 USC 461 note.

(a) **ACCESS TO PRIVATE PROPERTY.**—Nothing in this title shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) **LIABILITY.**—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) **RECOGNITION OF AUTHORITY TO CONTROL LAND USE.**—Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) **PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREA.**—Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) **EFFECT OF ESTABLISHMENT.**—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexistent regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

SEC. 611. USE OF FEDERAL FUNDS FROM OTHER SOURCES.

16 USC 461 note.

Nothing in this title shall preclude the management entity from using Federal funds available under Acts other than this title for the purposes for which those funds were authorized.

SEC. 612. AUTHORIZATION OF APPROPRIATIONS.

16 USC 461 note.

(a) **IN GENERAL.**—There are authorized to be appropriated to carry out this title—

(1) not more than \$1,000,000 for any fiscal year; and

(2) not more than a total of \$10,000,000.

(b) **50 PERCENT MATCH.**—Financial assistance provided under this title may not be used to pay more than 50 percent of the total cost of any activity carried out with that assistance.

Mississippi Gulf
Coast National
Heritage Area
Act.

16 USC 461 note.

TITLE VII—MISSISSIPPI GULF COAST NATIONAL HERITAGE AREA ACT

SEC. 701. SHORT TITLE.

This title may be cited as the “Mississippi Gulf Coast National Heritage Area Act”.

16 USC 461 note.

SEC. 702. CONGRESSIONAL FINDINGS.

Congress finds that—

(1) the 6-county area in southern Mississippi located on the Gulf of Mexico and in the Mississippi Coastal Plain has a unique identity that is shaped by—

(A) the coastal and riverine environment; and

(B) the diverse cultures that have settled in the area;

(2) the area is rich with diverse cultural and historical significance, including—

(A) early Native American settlements; and

(B) Spanish, French, and English settlements originating in the 1600s;

(3) the area includes spectacular natural, scenic, and recreational resources;

(4) there is broad support from local governments and other interested individuals for the establishment of the Mississippi Gulf Coast National Heritage Area to coordinate and assist in the preservation and interpretation of those resources;

(5) the Comprehensive Resource Management Plan, coordinated by the Mississippi Department of Marine Resources—

(A) is a collaborative effort of the Federal Government and State and local governments in the area; and

(B) is a natural foundation on which to establish the Heritage Area; and

(6) establishment of the Heritage Area would assist local communities and residents in preserving the unique cultural, historical, and natural resources of the area.

16 USC 461 note.

SEC. 703. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term “Heritage Area” means the Mississippi Gulf Coast National Heritage Area established by section 4(a).

(2) COORDINATING ENTITY.—The term “coordinating entity” means the coordinating entity for the Heritage Area designated by section 4(c).

(3) MANAGEMENT PLAN.—The term “management plan” means the management plan for the Heritage Area developed under section 5.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(5) STATE.—The term “State” means the State of Mississippi.

16 USC 461 note.

SEC. 704. MISSISSIPPI GULF COAST NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State the Mississippi Gulf Coast National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall consist of the counties of Pearl River, Stone, George, Hancock, Harrison, and Jackson in the State.

(c) COORDINATING ENTITY.—

(1) **IN GENERAL.**—The Mississippi Department of Marine Resources, in consultation with the Mississippi Department of Archives and History, shall serve as the coordinating entity for the Heritage Area.

(2) **OVERSIGHT COMMITTEE.**—The coordinating entity shall ensure that each of the 6 counties included in the Heritage Area is appropriately represented on any oversight committee.

SEC. 705. MANAGEMENT PLAN.

16 USC 461 note.

(a) **IN GENERAL.**—Not later than 3 years after the date of enactment of this Act, the coordinating entity shall develop and submit to the Secretary a management plan for the Heritage Area.

Deadline.

(b) **REQUIREMENTS.**—The management plan shall—

(1) provide recommendations for the conservation, funding, management, interpretation, and development of the cultural, historical, archaeological, natural, and recreational resources of the Heritage Area;

(2) identify sources of funding for the Heritage Area;

(3) include—

(A) an inventory of the cultural, historical, archaeological, natural, and recreational resources of the Heritage Area; and

(B) an analysis of ways in which Federal, State, tribal, and local programs may best be coordinated to promote the purposes of this Act;

(4) provide recommendations for educational and interpretive programs to inform the public about the resources of the Heritage Area; and

(5) involve residents of affected communities and tribal and local governments.

(c) **FAILURE TO SUBMIT.**—If a management plan is not submitted to the Secretary by the date specified in subsection (a), the Secretary shall not provide any additional funding under this Act until a management plan for the Heritage Area is submitted to the Secretary.

(d) **APPROVAL OR DISAPPROVAL OF THE MANAGEMENT PLAN.**—

(1) **IN GENERAL.**—Not later than 90 days after receipt of the management plan under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) **ACTION FOLLOWING DISAPPROVAL.**—If the Secretary disapproves a management plan under paragraph (1), the Secretary shall—

(A) advise the coordinating entity in writing of the reasons for disapproval;

(B) make recommendations for revision of the management plan; and

(C) allow the coordinating entity to submit to the Secretary revisions to the management plan.

(e) **REVISION.**—After approval by the Secretary of the management plan, the coordinating entity shall periodically—

(1) review the management plan; and

(2) submit to the Secretary, for review and approval by the Secretary, any recommendations for revisions to the management plan.

SEC. 706. AUTHORITIES AND DUTIES OF COORDINATING ENTITY.

16 USC 461 note.

(a) **AUTHORITIES.**—For purposes of developing and implementing the management plan and otherwise carrying out this

Act, the coordinating entity may make grants to and provide technical assistance to tribal and local governments, and other public and private entities.

(b) DUTIES.—In addition to developing the management plan under section 5, in carrying out this Act, the coordinating entity shall—

- (1) implement the management plan; and
- (2) assist local and tribal governments and non-profit organizations in—

- (A) establishing and maintaining interpretive exhibits in the Heritage Area;

- (B) developing recreational resources in the Heritage Area;

- (C) increasing public awareness of, and appreciation for, the cultural, historical, archaeological, and natural resources of the Heritage Area;

- (D) restoring historic structures that relate to the Heritage Area; and

- (E) carrying out any other activity that the coordinating entity determines to be appropriate to carry out this Act, consistent with the management plan;

- (3) conduct public meetings at least annually regarding the implementation of the management plan; and

- (4) for any fiscal year for which Federal funds are made available under section 9—

Reports.

- (A) submit to the Secretary a report that describes, for the fiscal year, the actions of the coordinating entity in carrying out this Act;

- (B) make available to the Secretary for audit all records relating to the expenditure of funds and any matching funds; and

- (C) require, for all agreements authorizing the expenditure of Federal funds by any entity, that the receiving entity make available to the Secretary for audit all records relating to the expenditure of the funds.

(c) PROHIBITION ON ACQUISITION OF REAL PROPERTY.—The coordinating entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

16 USC 461 note.

SEC. 707. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) IN GENERAL.—On the request of the coordinating entity, the Secretary may provide technical and financial assistance to the coordinating entity for use in the development and implementation of the management plan.

(b) PROHIBITION OF CERTAIN REQUIREMENTS.—The Secretary may not, as a condition of the provision of technical or financial assistance under this section, require any recipient of the assistance to impose or modify any land use restriction or zoning ordinance.

16 USC 461 note.

SEC. 708. EFFECT OF ACT.

Nothing in this Act—

- (1) affects or authorizes the coordinating entity to interfere with—

- (A) the right of any person with respect to private property; or

- (B) any local zoning ordinance or land use plan;

(2) restricts an Indian tribe from protecting cultural or religious sites on tribal land;

(3) modifies, enlarges, or diminishes the authority of any State, tribal, or local government to regulate any use of land under any other law (including regulations);

(4)(A) modifies, enlarges, or diminishes the authority of the State to manage fish and wildlife in the Heritage Area, including the regulation of fishing and hunting; or

(B) authorizes the coordinating entity to assume any management authorities over such lands; or

(5) diminishes the trust responsibilities or government-to-government obligations of the United States to any federally recognized Indian tribe.

SEC. 709. AUTHORIZATION OF APPROPRIATIONS.

16 USC 461 note.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act \$10,000,000, of which not more than \$1,000,000 may be made available for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this Act shall be not more than 50 percent.

VIII—FEDERAL LANDS RECREATION ENHANCEMENT ACT

Federal Lands
Recreation
Enhancement
Act.
16 USC 6801
note.

SEC. 801. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the “Federal Lands Recreation Enhancement Act”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 801. Short title and table of contents.
Sec. 802. Definitions.
Sec. 803. Recreation fee authority.
Sec. 804. Public participation.
Sec. 805. Recreation passes.
Sec. 806. Cooperative agreements.
Sec. 807. Special account and distribution of fees and revenues.
Sec. 808. Expenditures.
Sec. 809. Reports.
Sec. 810. Sunset provision.
Sec. 811. Volunteers.
Sec. 812. Enforcement and protection of receipts.
Sec. 813. Repeal of superseded admission and use fee authorities.
Sec. 814. Relation to other laws and fee collection authorities.
Sec. 815. Limitation on use of fees for employee bonuses.

SEC. 802. DEFINITIONS.

16 USC 6801.

In this Act:

(1) STANDARD AMENITY RECREATION FEE.—The term “standard amenity recreation fee” means the recreation fee authorized by section 3(f).

(2) EXPANDED AMENITY RECREATION FEE.—The term “expanded amenity recreation fee” means the recreation fee authorized by section 3(g).

(3) ENTRANCE FEE.—The term “entrance fee” means the recreation fee authorized to be charged to enter onto lands managed by the National Park Service or the United States Fish and Wildlife Service.

(4) FEDERAL LAND MANAGEMENT AGENCY.—The term “Federal land management agency” means the National Park Service, the United States Fish and Wildlife Service, the Bureau

of Land Management, the Bureau of Reclamation, or the Forest Service.

(5) **FEDERAL RECREATIONAL LANDS AND WATERS.**—The term “Federal recreational lands and waters” means lands or waters managed by a Federal land management agency.

(6) **NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS.**—The term “National Parks and Federal Recreational Lands Pass” means the interagency national pass authorized by section 5.

(7) **PASSHOLDER.**—The term “passholder” means the person who is issued a recreation pass.

(8) **RECREATION FEE.**—The term “recreation fee” means an entrance fee, standard amenity recreation fee, expanded amenity recreation fee, or special recreation permit fee.

(9) **RECREATION PASS.**—The term “recreation pass” means the National Parks and Federal Recreational Lands Pass or one of the other recreation passes available as authorized by section 5.

(10) **SECRETARY.**—The term “Secretary” means—

(A) the Secretary of the Interior, with respect to a Federal land management agency (other than the Forest Service); and

(B) the Secretary of Agriculture, with respect to the Forest Service.

(11) **SECRETARIES.**—The term “Secretaries” means the Secretary of the Interior and the Secretary of Agriculture acting jointly.

(12) **SPECIAL ACCOUNT.**—The term “special account” means the special account established in the Treasury under section 7 for a Federal land management agency.

(13) **SPECIAL RECREATION PERMIT FEE.**—The term “special recreation permit fee” means the fee authorized by section 3(h).

16 USC 6802.

SEC. 803. RECREATION FEE AUTHORITY.

(a) **AUTHORITY OF SECRETARY.**—Beginning in fiscal year 2005 and thereafter, the Secretary may establish, modify, charge, and collect recreation fees at Federal recreational lands and waters as provided for in this section.

(b) **BASIS FOR RECREATION FEES.**—Recreation fees shall be established in a manner consistent with the following criteria:

(1) The amount of the recreation fee shall be commensurate with the benefits and services provided to the visitor.

(2) The Secretary shall consider the aggregate effect of recreation fees on recreation users and recreation service providers.

(3) The Secretary shall consider comparable fees charged elsewhere and by other public agencies and by nearby private sector operators.

(4) The Secretary shall consider the public policy or management objectives served by the recreation fee.

(5) The Secretary shall obtain input from the appropriate Recreation Resource Advisory Committee, as provided in section 4(d).

(6) The Secretary shall consider such other factors or criteria as determined appropriate by the Secretary.

(c) SPECIAL CONSIDERATIONS.—The Secretary shall establish the minimum number of recreation fees and shall avoid the collection of multiple or layered recreation fees for similar uses, activities, or programs.

(d) LIMITATIONS ON RECREATION FEES.—

(1) PROHIBITION ON FEES FOR CERTAIN ACTIVITIES OR SERVICES.—The Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for Federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this Act for any of the following:

(A) Solely for parking, undesignated parking, or picnicking along roads or trailsides.

(B) For general access unless specifically authorized under this section.

(C) For dispersed areas with low or no investment unless specifically authorized under this section.

(D) For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.

(E) For camping at undeveloped sites that do not provide a minimum number of facilities and services as described in subsection (g)(2)(A).

(F) For use of overlooks or scenic pullouts.

(G) For travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the Federal-aid System, as defined in section 101 of title 23, United States Code, which is commonly used by the public as a means of travel between two places either or both of which are outside any unit or area at which recreation fees are charged under this Act.

(H) For travel by private, noncommercial vehicle, boat, or aircraft over any road or highway, waterway, or airway to any land in which such person has any property right if such land is within any unit or area at which recreation fees are charged under this Act.

(I) For any person who has a right of access for hunting or fishing privileges under a specific provision of law or treaty.

(J) For any person who is engaged in the conduct of official Federal, State, Tribal, or local government business.

(K) For special attention or extra services necessary to meet the needs of the disabled.

(2) RELATION TO FEES FOR USE OF HIGHWAYS OR ROADS.—

An entity that pays a special recreation permit fee or similar permit fee shall not be subject to a road cost-sharing fee or a fee for the use of highways or roads that are open to private, noncommercial use within the boundaries of any Federal recreational lands or waters, as authorized under section 6 of Public Law 88-657 (16 U.S.C. 537; commonly known as the Forest Roads and Trails Act).

(3) PROHIBITION ON FEES FOR CERTAIN PERSONS OR PLACES.—The Secretary shall not charge an entrance fee or standard amenity recreation fee for the following:

(A) Any person under 16 years of age.

(B) Outings conducted for noncommercial educational purposes by schools or bona fide academic institutions.

(C) The U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, or Arlington House-Robert E. Lee National Memorial.

(D) The Flight 93 National Memorial.

(E) Entrance on other routes into the Great Smoky Mountains National Park or any part thereof unless fees are charged for entrance into that park on main highways and thoroughfares.

(F) Entrance on units of the National Park System containing deed restrictions on charging fees.

(G) An area or unit covered under section 203 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 16 U.S.C. 410hh-2), with the exception of Denali National Park and Preserve.

(H) A unit of the National Wildlife Refuge System created, expanded, or modified by the Alaska National Interest Lands Conservation Act (Public Law 96-487).

(I) Any person who visits a unit or area under the jurisdiction of the United States Fish and Wildlife Service and who has been issued a valid migratory bird hunting and conservation stamp issued under section 2 of the Act of March 16, 1934 (16 U.S.C. 718b; commonly known as the Duck Stamp Act).

(J) Any person engaged in a nonrecreational activity authorized under a valid permit issued under any other Act, including a valid grazing permit.

(4) NO RESTRICTION ON RECREATION OPPORTUNITIES.—Nothing in this Act shall limit the use of recreation opportunities only to areas designated for collection of recreation fees.

(e) ENTRANCE FEE.—

(1) AUTHORIZED SITES FOR ENTRANCE FEES.—The Secretary of the Interior may charge an entrance fee for a unit of the National Park System, including a national monument administered by the National Park Service, or for a unit of the National Wildlife Refuge System.

(2) PROHIBITED SITES.—The Secretary shall not charge an entrance fee for Federal recreational lands and waters managed by the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service.

(f) STANDARD AMENITY RECREATION FEE.—Except as limited by subsection (d), the Secretary may charge a standard amenity recreation fee for Federal recreational lands and waters under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service, but only at the following:

(1) A National Conservation Area.

(2) A National Volcanic Monument.

(3) A destination visitor or interpretive center that provides a broad range of interpretive services, programs, and media.

(4) An area—

(A) that provides significant opportunities for outdoor recreation;

(B) that has substantial Federal investments;

(C) where fees can be efficiently collected; and

(D) that contains all of the following amenities:

- (i) Designated developed parking.
- (ii) A permanent toilet facility.
- (iii) A permanent trash receptacle.
- (iv) Interpretive sign, exhibit, or kiosk.
- (v) Picnic tables.
- (vi) Security services.

(g) EXPANDED AMENITY RECREATION FEE.—

(1) NPS AND USFWS AUTHORITY.—Except as limited by subsection (d), the Secretary of the Interior may charge an expanded amenity recreation fee, either in addition to an entrance fee or by itself, at Federal recreational lands and waters under the jurisdiction of the National Park Service or the United States Fish and Wildlife Service when the Secretary of the Interior determines that the visitor uses a specific or specialized facility, equipment, or service.

(2) OTHER FEDERAL LAND MANAGEMENT AGENCIES.—Except as limited by subsection (d), the Secretary may charge an expanded amenity recreation fee, either in addition to a standard amenity fee or by itself, at Federal recreational lands and waters under the jurisdiction of the Forest Service, the Bureau of Land Management, or the Bureau of Reclamation, but only for the following facilities or services:

(A) Use of developed campgrounds that provide at least a majority of the following:

- (i) Tent or trailer spaces.
- (ii) Picnic tables.
- (iii) Drinking water.
- (iv) Access roads.
- (v) The collection of the fee by an employee or agent of the Federal land management agency.
- (vi) Reasonable visitor protection.
- (vii) Refuse containers.
- (viii) Toilet facilities.
- (ix) Simple devices for containing a campfire.

(B) Use of highly developed boat launches with specialized facilities or services such as mechanical or hydraulic boat lifts or facilities, multi-lane paved ramps, paved parking, restrooms and other improvements such as boarding floats, loading ramps, or fish cleaning stations.

(C) Rental of cabins, boats, stock animals, lookouts, historic structures, group day-use or overnight sites, audio tour devices, portable sanitation devices, binoculars or other equipment.

(D) Use of hookups for electricity, cable, or sewer.

(E) Use of sanitary dump stations.

(F) Participation in an enhanced interpretive program or special tour.

(G) Use of reservation services.

(H) Use of transportation services.

(I) Use of areas where emergency medical or first-aid services are administered from facilities staffed by public employees or employees under a contract or reciprocal agreement with the Federal Government.

(J) Use of developed swimming sites that provide at least a majority of the following:

- (i) Bathhouse with showers and flush toilets.
- (ii) Refuse containers.

- (iii) Picnic areas.
- (iv) Paved parking.
- (v) Attendants, including lifeguards.
- (vi) Floats encompassing the swimming area.
- (vii) Swimming deck.

(h) **SPECIAL RECREATION PERMIT FEE.**—The Secretary may issue a special recreation permit, and charge a special recreation permit fee in connection with the issuance of the permit, for specialized recreation uses of Federal recreational lands and waters, such as group activities, recreation events, motorized recreational vehicle use.

16 USC 6803.

SEC. 804. PUBLIC PARTICIPATION.

(a) **IN GENERAL.**—As required in this section, the Secretary shall provide the public with opportunities to participate in the development of or changing of a recreation fee established under this Act.

Federal Register,
publication.

(b) **ADVANCE NOTICE.**—The Secretary shall publish a notice in the Federal Register of the establishment of a new recreation fee area for each agency 6 months before establishment. The Secretary shall publish notice of a new recreation fee or a change to an existing recreation fee established under this Act in local newspapers and publications located near the site at which the recreation fee would be established or changed.

(c) **PUBLIC INVOLVEMENT.**—Before establishing any new recreation fee area, the Secretary shall provide opportunity for public involvement by—

Guidelines.

(1) establishing guidelines for public involvement;

(2) establishing guidelines on how agencies will demonstrate on an annual basis how they have provided information to the public on the use of recreation fee revenues; and

Federal Register,
publication.

(3) publishing the guidelines in paragraphs (1) and (2) in the Federal Register.

(d) **RECREATION RESOURCE ADVISORY COMMITTEE.**—

(1) **ESTABLISHMENT.**—

(A) **AUTHORITY TO ESTABLISH.**—Except as provided in subparagraphs (C) and (D), the Secretary or the Secretaries shall establish a Recreation Resource Advisory Committee in each State or region for Federal recreational lands and waters managed by the Forest Service or the Bureau of Land Management to perform the duties described in paragraph (2).

(B) **NUMBER OF COMMITTEES.**—The Secretary may have as many additional Recreation Resource Advisory Committees in a State or region as the Secretary considers necessary for the effective operation of this Act.

(C) **EXCEPTION.**—The Secretary shall not establish a Recreation Resource Advisory Committee in a State if the Secretary determines, in consultation with the Governor of the State, that sufficient interest does not exist to ensure that participation on the Committee is balanced in terms of the points of view represented and the functions to be performed.

(D) **USE OF OTHER ENTITIES.**—In lieu of establishing a Recreation Resource Advisory Committee under subparagraph (A), the Secretary may use a Resource Advisory Committee established pursuant to another provision of

law and in accordance with that law or a recreation fee advisory board otherwise established by the Secretary to perform the duties specified in paragraph (2).

(2) DUTIES.—In accordance with the procedures required by paragraph (9), a Recreation Resource Advisory Committee may make recommendations to the Secretary regarding a standard amenity recreation fee or an expanded amenity recreation fee, whenever the recommendations relate to public concerns in the State or region covered by the Committee regarding—

(A) the implementation of a standard amenity recreation fee or an expanded amenity recreation fee or the establishment of a specific recreation fee site;

(B) the elimination of a standard amenity recreation fee or an expanded amenity recreation fee; or

(C) the expansion or limitation of the recreation fee program.

(3) MEETINGS.—A Recreation Resource Advisory Committee shall meet at least annually, but may, at the discretion of the Secretary, meet as often as needed to deal with citizen concerns about the recreation fee program in a timely manner.

(4) NOTICE OF REJECTION.—If the Secretary rejects the recommendation of a Recreation Resource Advisory Committee, the Secretary shall issue a notice that identifies the reasons for rejecting the recommendation to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 30 days before the Secretary implements a decision pertaining to that recommendation.

Deadline.

(5) COMPOSITION OF THE ADVISORY COMMITTEE.—

(A) NUMBER.—A Recreation Resource Advisory Committee shall be comprised of 11 members.

(B) NOMINATIONS.—The Governor and the designated county official from each county in the relevant State or Region may submit a list of nominations in the categories described under subparagraph (D).

(C) APPOINTMENT.—The Secretary may appoint members of the Recreation Resource Advisory Committee from the list as provided in subparagraph (B).

(D) BROAD AND BALANCED REPRESENTATION.—In appointing the members of a Recreation Resource Advisory Committee, the Secretary shall provide for a balanced and broad representation from the recreation community that shall include the following:

(i) Five persons who represent recreation users and that include, as appropriate, persons representing the following:

(I) Winter motorized recreation, such as snowmobiling.

(II) Winter non-motorized recreation, such as snowshoeing, cross country and down hill skiing, and snowboarding.

(III) Summer motorized recreation, such as motorcycles, boaters, and off-highway vehicles.

(IV) Summer nonmotorized recreation, such as backpacking, horseback riding, mountain biking, canoeing, and rafting.

- (V) Hunting and fishing.
- (ii) Three persons who represent interest groups that include, as appropriate, the following:
 - (I) Motorized outfitters and guides.
 - (II) Non-motorized outfitters and guides.
 - (III) Local environmental groups.
- (iii) Three persons, as follows:
 - (I) State tourism official to represent the State.
 - (II) A person who represents affected Indian tribes.
 - (III) A person who represents affected local government interests.

(6) TERM.—

(A) LENGTH OF TERM.—The Secretary shall appoint the members of a Recreation Resource Advisory Committee for staggered terms of 2 and 3 years beginning on the date that the members are first appointed. The Secretary may reappoint members to subsequent 2- or 3-year terms.

(B) EFFECT OF VACANCY.—The Secretary shall make appointments to fill a vacancy on a Recreation Resource Advisory Committee as soon as practicable after the vacancy has occurred.

(C) EFFECT OF UNEXPECTED VACANCY.—Where an unexpected vacancy occurs, the Governor and the designated county officials from each county in the relevant State shall provide the Secretary with a list of nominations in the relevant category, as described under paragraph (5)(D), not later than two months after notification of the vacancy. To the extent possible, a vacancy shall be filled in the same category and term in which the original appointment was made.

(7) CHAIRPERSON.—The chairperson of a Recreation Resource Advisory Committee shall be selected by the majority vote of the members of the Committee.

(8) QUORUM.—Eight members shall constitute a quorum. A quorum must be present to constitute an official meeting of a Recreation Resource Advisory Committee.

(9) APPROVAL PROCEDURES.—A Recreation Resource Advisory Committee shall establish procedures for making recommendations to the Secretary. A recommendation may be submitted to the Secretary only if the recommendation is approved by a majority of the members of the Committee from each of the categories specified in paragraph (5)(D) and general public support for the recommendation is documented.

(10) COMPENSATION.—Members of the Recreation Resource Advisory Committee shall not receive any compensation.

(11) PUBLIC PARTICIPATION IN THE RECREATION RESOURCE ADVISORY COMMITTEE.—

(A) NOTICE OF MEETINGS.—All meetings of a Recreation Resource Advisory Committee shall be announced at least one week in advance in a local newspaper of record and the Federal Register, and shall be open to the public.

(B) RECORDS.—A Recreation Resource Advisory Committee shall maintain records of the meetings of the Recreation Resource Advisory Committee and make the records available for public inspection.

Newspaper,
publication.
Federal Register,
publication.

Public
information.

(12) **FEDERAL ADVISORY COMMITTEE ACT.**—A Recreation Resource Advisory Committee is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) **MISCELLANEOUS ADMINISTRATIVE PROVISIONS REGARDING RECREATION FEES AND RECREATION PASSES.**—

(1) **NOTICE OF ENTRANCE FEES, STANDARD AMENITY RECREATION FEES, AND PASSES.**—The Secretary shall post clear notice of any entrance fee, standard amenity recreation fee, and available recreation passes at appropriate locations in each unit or area of a Federal land management agency where an entrance fee or a standard amenity recreation fee is charged. The Secretary shall include such notice in publications distributed at the unit or area.

(2) **NOTICE OF RECREATION FEE PROJECTS.**—To the extent practicable, the Secretary shall post clear notice of locations where work is performed using recreation fee or recreation pass revenues collected under this Act.

SEC. 805. RECREATION PASSES.

16 USC 6804.

(a) **AMERICA THE BEAUTIFUL—THE NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS.**—

(1) **AVAILABILITY AND USE.**—The Secretaries shall establish, and may charge a fee for, an interagency national pass to be known as the “America the Beautiful—the National Parks and Federal Recreational Lands Pass”, which shall cover the entrance fee and standard amenity recreation fee for all Federal recreational lands and waters for which an entrance fee or a standard amenity recreation fee is charged.

(2) **IMAGE COMPETITION FOR RECREATION PASS.**—The Secretaries shall hold an annual competition to select the image to be used on the National Parks and Federal Recreational Lands Pass for a year. The competition shall be open to the public and used as a means to educate the American people about Federal recreational lands and waters.

(3) **NOTICE OF ESTABLISHMENT.**—The Secretaries shall publish a notice in the Federal Register when the National Parks and Federal Recreational Lands Pass is first established and available for purchase.

Federal Register,
publication.

(4) **DURATION.**—The National Parks and Federal Recreational Lands Pass shall be valid for a period of 12 months from the date of the issuance of the recreation pass to a passholder, except in the case of the age and disability discounted passes issued under subsection (b).

(5) **PRICE.**—The Secretaries shall establish the price at which the National Parks and Federal Recreational Lands Pass will be sold to the public.

(6) **SALES LOCATIONS AND MARKETING.**—

(A) **IN GENERAL.**—The Secretary shall sell the National Parks and Federal Recreational Lands Pass at all Federal recreational lands and waters at which an entrance fee or a standard amenity recreation fee is charged and at such other locations as the Secretaries consider appropriate and feasible.

(B) **USE OF VENDORS.**—The Secretary may enter into fee management agreements as provided in section 6.

(C) **MARKETING.**—The Secretaries shall take such actions as are appropriate to provide for the active marketing of the National Parks and Federal Recreational Lands Pass.

(7) **ADMINISTRATIVE GUIDELINES.**—The Secretaries shall issue guidelines on administration of the National Parks and Federal Recreational Lands Pass, which shall include agreement on price, the distribution of revenues between the Federal land management agencies, the sharing of costs, benefits provided, marketing and design, adequate documentation for age and disability discounts under subsection (b), and the issuance of that recreation pass to volunteers. The Secretaries shall take into consideration all relevant visitor and sales data available in establishing the guidelines.

(8) **DEVELOPMENT AND IMPLEMENTATION AGREEMENTS.**—The Secretaries may enter into cooperative agreements with governmental and nongovernmental entities for the development and implementation of the National Parks and Federal Recreational Lands Pass Program.

(9) **PROHIBITION ON OTHER NATIONAL RECREATION PASSES.**—The Secretary may not establish any national recreation pass, except as provided in this section.

(b) **DISCOUNTED PASSES.**—

(1) **AGE DISCOUNT.**—The Secretary shall make the National Parks and Federal Recreational Lands Pass available, at a cost of \$10.00, to any United States citizen or person domiciled in the United States who is 62 years of age or older, if the citizen or person provides adequate proof of such age and such citizenship or residency. The National Parks and Federal Recreational Lands Pass made available under this subsection shall be valid for the lifetime of the pass holder.

(2) **DISABILITY DISCOUNT.**—The Secretary shall make the National Parks and Federal Recreational Lands Pass available, without charge, to any United States citizen or person domiciled in the United States who has been medically determined to be permanently disabled for purposes of section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)), if the citizen or person provides adequate proof of the disability and such citizenship or residency. The National Parks and Federal Recreational Lands Pass made available under this subsection shall be valid for the lifetime of the passholder.

(c) **SITE-SPECIFIC AGENCY PASSES.**—The Secretary may establish and charge a fee for a site-specific pass that will cover the entrance fee or standard amenity recreation fee for particular Federal recreational lands and waters for a specified period not to exceed 12 months.

(d) **REGIONAL MULTIENTITY PASSES.**—

(1) **PASSES AUTHORIZED.**—The Secretary may establish and charge a fee for a regional multientity pass that will be accepted by one or more Federal land management agencies or by one or more governmental or nongovernmental entities for a specified period not to exceed 12 months. To include a Federal land management agency or governmental or nongovernmental entity over which the Secretary does not have jurisdiction, the Secretary shall obtain the consent of the head of such agency or entity.

(2) REGIONAL MULTIENTITY PASS AGREEMENT.—In order to establish a regional multientity pass under this subsection, the Secretary shall enter into a regional multientity pass agreement with all the participating agencies or entities on price, the distribution of revenues between participating agencies or entities, the sharing of costs, benefits provided, marketing and design, and the issuance of the pass to volunteers. The Secretary shall take into consideration all relevant visitor and sales data available when entering into this agreement.

(e) DISCOUNTED OR FREE ADMISSION DAYS OR USE.—The Secretary may provide for a discounted or free admission day or use of Federal recreational lands and waters.

(f) EFFECT ON EXISTING PASSPORTS AND PERMITS.—

(1) EXISTING PASSPORTS.—A passport issued under section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a) or title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105-391; 16 U.S.C. 5991-5995), such as the Golden Eagle Passport, the Golden Age Passport, the Golden Access Passport, and the National Parks Passport, that was valid on the day before the publication of the Federal Register notice required under subsection (a)(3) shall be valid in accordance with the terms agreed to at the time of issuance of the passport, to the extent practicable, and remain in effect until expired, lost, or stolen.

(2) PERMITS.—A permit issued under section 4 of the Land and Water Conservation Fund Act of 1965 that was valid on the day before the date of the enactment of this Act shall be valid and remain in effect until expired, revoked, or suspended.

SEC. 806. COOPERATIVE AGREEMENTS.

16 USC 6805.

(a) FEE MANAGEMENT AGREEMENT.—Notwithstanding chapter 63 of title 31, United States Code, the Secretary may enter into a fee management agreement, including a contract, which may provide for a reasonable commission, reimbursement, or discount, with the following entities for the following purposes:

(1) With any governmental or nongovernmental entity, including those in a gateway community, for the purpose of obtaining fee collection and processing services, including visitor reservation services.

(2) With any governmental or nongovernmental entity, including those in a gateway community, for the purpose of obtaining emergency medical services.

(3) With any governmental entity, including those in a gateway community, to obtain law enforcement services.

(b) REVENUE SHARING.—A State or legal subdivision of a State that enters into an agreement with the Secretary under subsection (a) may share in a percentage of the revenues collected at the site in accordance with that fee management agreement.

(c) COUNTY PROPOSALS.—The Secretary shall consider any proposal submitted by a county to provide services described in subsection (a). If the Secretary decides not to enter into a fee management agreement with the county under subsection (a), the Secretary shall notify the county in writing of the decision, identifying the reasons for the decision. The fee management agreement may include cooperative site planning and management provisions.

16 USC 6806.

SEC. 807. SPECIAL ACCOUNT AND DISTRIBUTION OF FEES AND REVENUES.

(a) **SPECIAL ACCOUNT.**—The Secretary of the Treasury shall establish a special account in the Treasury for each Federal land management agency.

(b) **DEPOSITS.**—Subject to subsections (c), (d), and (e), revenues collected by each Federal land management agency under this Act shall—

(1) be deposited in its special account; and

(2) remain available for expenditure, without further appropriation, until expended.

(c) **DISTRIBUTION OF RECREATION FEES AND SINGLE-SITE AGENCY PASS REVENUES.**—

(1) **LOCAL DISTRIBUTION OF FUNDS.**—

(A) **RETENTION OF REVENUES.**—Not less than 80 percent of the recreation fees and site-specific agency pass revenues collected at a specific unit or area of a Federal land management agency shall remain available for expenditure, without further appropriation, until expended at that unit or area.

(B) **REDUCTION.**—The Secretary may reduce the percentage allocation otherwise applicable under subparagraph (A) to a unit or area of a Federal land management agency, but not below 60 percent, for a fiscal year if the Secretary determines that the revenues collected at the unit or area exceed the reasonable needs of the unit or area for which expenditures may be made for that fiscal year.

(2) **AGENCY-WIDE DISTRIBUTION OF FUNDS.**—The balance of the recreation fees and site-specific agency pass revenues collected at a specific unit or area of a Federal land management and not distributed in accordance with paragraph (1) shall remain available to that Federal land management agency for expenditure on an agency-wide basis, without further appropriation, until expended.

(3) **OTHER AMOUNTS.**—Other amounts collected at other locations, including recreation fees collected by other entities or for a reservation service, shall remain available, without further appropriation, until expended in accordance with guidelines established by the Secretary.

(d) **DISTRIBUTION OF NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS REVENUES.**—Revenues collected from the sale of the National Parks and Federal Recreational Lands Pass shall be deposited in the special accounts established for the Federal land management agencies in accordance with the guidelines issued under section 5(a)(7).

(e) **DISTRIBUTION OF REGIONAL MULTIENTITY PASS REVENUES.**—Revenues collected from the sale of a regional multientity pass authorized under section 5(d) shall be deposited in each participating Federal land management agency's special account in accordance with the terms of the region multientity pass agreement for the regional multientity pass.

16 USC 6807.

SEC. 808. EXPENDITURES.

(a) **USE OF FEES AT SPECIFIC SITE OR AREA.**—Amounts available for expenditure at a specific site or area—

(1) shall be accounted for separately from the amounts collected;

(2) may be distributed agency-wide; and

(3) shall be used only for—

(A) repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety;

(B) interpretation, visitor information, visitor service, visitor needs assessments, and signs;

(C) habitat restoration directly related to wildlife-dependent recreation that is limited to hunting, fishing, wildlife observation, or photography;

(D) law enforcement related to public use and recreation;

(E) direct operating or capital costs associated with the recreation fee program; and

(F) a fee management agreement established under section 6(a) or a visitor reservation service.

(b) **LIMITATION ON USE OF FEES.**—The Secretary may not use any recreation fees for biological monitoring on Federal recreational lands and waters under the Endangered Species Act of 1973 for listed or candidate species.

(c) **ADMINISTRATION, OVERHEAD, AND INDIRECT COSTS.**—The Secretary may use not more than an average of 15 percent of total revenues collected under this Act for administration, overhead, and indirect costs related to the recreation fee program by that Secretary.

(d) **TRANSITIONAL EXCEPTION.**—Notwithstanding any other provision of this Act, the Secretary may use amounts available in the special account of a Federal land management agency to supplement administration and marketing costs associated with—

(1) the National Parks and Federal Recreational Lands Pass during the 5-year period beginning on the date the joint guidelines are issued under section 5(a)(7); and

(2) a regional multientity pass authorized section 5(d) during the 5-year period beginning on the date the regional multientity pass agreement for that recreation pass takes effect.

SEC. 809. REPORTS.

16 USC 6808.

Not later than May 1, 2006, and every 3 years thereafter, the Secretary shall submit to Congress a report detailing the status of the recreation fee program conducted for Federal recreational lands and waters, including an evaluation of the recreation fee program, examples of projects that were funded using such fees, and future projects and programs for funding with fees, and containing any recommendations for changes in the overall fee system.

SEC. 810. SUNSET PROVISION.

16 USC 6809.

The authority of the Secretary to carry out this Act shall terminate 10 years after the date of the enactment of this Act.

SEC. 811. VOLUNTEERS.

16 USC 6810.

(a) **AUTHORITY TO USE VOLUNTEERS.**—The Secretary may use volunteers, as appropriate, to collect recreation fees and sell recreation passes.

(b) **WAIVER OR DISCOUNT OF FEES; SITE-SPECIFIC AGENCY PASS.**—In exchange for volunteer services, the Secretary may waive or discount an entrance fee, standard amenity recreation fee, or

an expanded amenity recreation fee that would otherwise apply to the volunteer or issue to the volunteer a site-specific agency pass authorized under section 5(c).

(c) NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS.—In accordance with the guidelines issued under section 5(a)(7), the Secretaries may issue a National Parks and Federal Recreational Lands Pass to a volunteer in exchange for significant volunteer services performed by the volunteer.

(d) REGIONAL MULTIENTITY PASSES.—The Secretary may issue a regional multientity pass authorized under section 5(d) to a volunteer in exchange for significant volunteer services performed by the volunteer, if the regional multientity pass agreement under which the regional multientity pass was established provides for the issuance of the pass to volunteers.

16 USC 6811.

SEC. 812. ENFORCEMENT AND PROTECTION OF RECEIPTS.

(a) ENFORCEMENT AUTHORITY.—The Secretary concerned shall enforce payment of the recreation fees authorized by this Act.

(b) EVIDENCE OF NONPAYMENT.—If the display of proof of payment of a recreation fee, or the payment of a recreation fee within a certain time period is required, failure to display such proof as required or to pay the recreation fee within the time period specified shall constitute nonpayment.

(c) JOINT LIABILITY.—The registered owner and any occupant of a vehicle charged with a nonpayment violation involving the vehicle shall be jointly liable for penalties imposed under this section, unless the registered owner can show that the vehicle was used without the registered owner's express or implied permission.

(d) LIMITATION ON PENALTIES.—The failure to pay a recreation fee established under this Act shall be punishable as a Class A or Class B misdemeanor, except that in the case of a first offense of nonpayment, the fine imposed may not exceed \$100, notwithstanding section 3571(e) of title 18, United States Code.

16 USC 6812.

SEC. 813. REPEAL OF SUPERSEDED ADMISSION AND USE FEE AUTHORITIES.

Federal Register,
publication.

16 USC 460l–6a.

(a) LAND AND WATER CONSERVATION FUND ACT.—Subsections (a), (b), (c), (d), (e), (f), (g), and (i) of section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a et seq.) are repealed, except that the Secretary may continue to issue Golden Eagle Passports, Golden Age Passports, and Golden Access Passports under such section until the date the notice required by section 5(a)(3) is published in the Federal Register regarding the establishment of the National Parks and Federal Recreational Lands Pass.

16 USC 460l–6a.

(b) RECREATIONAL FEE DEMONSTRATION PROGRAM.—Section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 16 U.S.C. 460l–6a), is repealed.

(c) ADMISSION PERMITS FOR REFUGE UNITS.—Section 201 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911) is repealed.

Effective date.

(d) NATIONAL PARK PASSPORT, GOLDEN EAGLE PASSPORT, GOLDEN AGE PASSPORT, AND GOLDEN ACCESS PASSPORT.—Effective on the date the notice required by section 5(a)(3) is published in the Federal Register, the following provisions of law authorizing the establishment of a national park passport program or the

establishment and sale of a national park passport, Golden Eagle Passport, Golden Age Passport, or Golden Access Passport are repealed:

(1) Section 502 of the National Parks Omnibus Management Act of 1998 (Public Law 105–391; 16 U.S.C. 5982).

(2) Title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105–391; 16 U.S.C. 5991–5995).

(e) TREATMENT OF UNOBLIGATED FUNDS.—

(1) LAND AND WATER CONSERVATION FUND SPECIAL ACCOUNTS.—Amounts in the special accounts established under section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(i)(1)) for Federal land management agencies that are unobligated on the date of the enactment of this Act shall be transferred to the appropriate special account established under section 7 and shall be available to the Secretary in accordance with this Act. A special account established under section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 for a Federal agency that is not a Federal land management area, and the use of such special account, is not affected by the repeal of section 4 of the Land and Water Conservation Fund Act of 1965 by subsection (a) of this section.

(2) NATIONAL PARKS PASSPORT.—Any funds collected under title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105–391; 16 U.S.C. 5991–5995) that are unobligated on the day before the publication of the Federal Register notice required under section 5(a)(3) shall be transferred to the special account of the National Park Service for use in accordance with this Act. The Secretary of the Interior may use amounts available in that special account to pay any outstanding administration, marketing, or close-out costs associated with the national parks passport.

(3) RECREATIONAL FEE DEMONSTRATION PROGRAM.—Any funds collected in accordance with section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 16 U.S.C. 4601–6a), that are unobligated on the day before the date of the enactment of this Act shall be transferred to the appropriate special account and shall be available to the Secretary in accordance with this Act.

(4) ADMISSION PERMITS FOR REFUGE UNITS.—Any funds collected in accordance with section 201 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911) that are available as provided in subsection (c)(A) of such section and are unobligated on the day before the date of the enactment of this Act shall be transferred to the special account of the United States Fish and Wildlife Service for use in accordance with this Act.

(f) EFFECT OF REGULATIONS.—A regulation or policy issued under a provision of law repealed by this section shall remain in effect to the extent such a regulation or policy is consistent with the provisions of this Act until the Secretary issues a regulation, guideline, or policy under this Act that supersedes the earlier regulation.

SEC. 814. RELATION TO OTHER LAWS AND FEE COLLECTION AUTHORITIES.

(a) **FEDERAL AND STATE LAWS UNAFFECTED.**—Nothing in this Act shall authorize Federal hunting or fishing licenses or fees or charges for commercial or other activities not related to recreation, affect any rights or authority of the States with respect to fish and wildlife, or repeal or modify any provision of law that permits States or political subdivisions of States to share in the revenues from Federal lands or, except as provided in subsection (b), any provision of law that provides that any fees or charges collected at particular Federal areas be used for or credited to specific purposes or special funds as authorized by that provision of law.

(b) **RELATION TO REVENUE ALLOCATION LAWS.**—Amounts collected under this Act, and the existence of a fee management agreement with a governmental entity under section 6(a), may not be taken into account for the purposes of any of the following laws:

(1) The sixth paragraph under the heading “FOREST SERVICE” in the Act of May 23, 1908 (16 U.S.C. 500).

(2) Section 13 of the Act of March 1, 1911 (16 U.S.C. 500; commonly known as the Weeks Act).

(3) The fourteenth paragraph under the heading “FOREST SERVICE” in the Act of March 4, 1913 (16 U.S.C. 501).

(4) Section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012).

(5) Title II of the Act of August 8, 1937, and the Act of May 24, 1939 (43 U.S.C. 1181f et seq.).

(6) Section 6 of the Act of June 14, 1926 (43 U.S.C. 869–4).

(7) Chapter 69 of title 31, United States Code.

(8) Section 401 of the Act of June 15, 1935 (16 U.S.C. 715s; commonly known as the Refuge Revenue Sharing Act).

(9) The Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106-393; 16 U.S.C. 500 note), except that the exception made for such Act by this subsection is unique and is not intended to be construed as precedent for amounts collected from the use of Federal lands under any other provision of law.

(10) Section 2 of the Boulder Canyon Project Adjustment Act (43 U.S.C. 618a).

(11) The Federal Water Project Recreation Act (16 U.S.C. 460l–12 et seq.).

(12) The first section of the Act of June 17, 1902, as amended or supplemented (43 U.S.C. 391).

(13) The Act of February 25, 1920 (30 U.S.C. 181 et seq.; commonly known as the Mineral Leasing Act).

(14) Section 4(e) of the Southern Nevada Public Land Management Act of 1998 (Public Law 105-263; 31 U.S.C. 6901 note).

(15) Section 5(a) of the Lincoln County Land Act of 2000 (Public Law 106-298; 114 Stat. 1047).

(16) Any other provision of law relating to revenue allocation.

(c) **CONSIDERATION OF OTHER FUNDS COLLECTED.**—Amounts collected under any other law may not be disbursed under this Act.

(d) **SOLE RECREATION FEE AUTHORITY.**—Recreation fees charged under this Act shall be in lieu of fees charged for the same purposes under any other provision of law.

(e) **FEES CHARGED BY THIRD PARTIES.**—Notwithstanding any other provision of this Act, a third party may charge a fee for providing a good or service to a visitor of a unit or area of the Federal land management agencies in accordance with any other applicable law or regulation.

(f) **MIGRATORY BIRD HUNTING STAMP ACT.**—Revenues from the stamp established under the Act of March 16, 1934 (16 U.S.C. 718 et seq.; commonly known as the Migratory Bird Hunting Stamp Act or Duck Stamp Act), shall not be covered by this Act.

SEC. 815. LIMITATION ON USE OF FEES FOR EMPLOYEE BONUSES. 16 USC 6814.

Notwithstanding any other provision of law, fees collected under the authorities of the Act may not be used for employee bonuses.

**TITLE IX—SATELLITE HOME VIEWER EXTENSION AND
REAUTHORIZATION ACT OF 2004**

Satellite Home
Viewer Extension
and
Reauthorization
Act of 2004.

SECTION 1. SHORT TITLES; TABLE OF CONTENTS.

17 USC 101 note.

(a) **SHORT TITLES.**—This title may be cited as the “Satellite Home Viewer Extension and Reauthorization Act of 2004” or the “W. J. (Billy) Tauzin Satellite Television Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short titles; table of contents.

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

Sec. 101. Extension of authority.

Sec. 102. Reporting of subscribers; significantly viewed and other signals; technical amendments.

Sec. 103. Statutory license for satellite carriers outside local markets.

Sec. 104. Statutory license for satellite retransmission of low power television stations.

Sec. 105. Definitions.

Sec. 106. Effect on certain proceedings.

Sec. 107. Statutory license for satellite carriers retransmitting superstation signals to commercial establishments.

Sec. 108. Expedited consideration of voluntary agreements to provide satellite secondary transmissions to local markets.

Sec. 109. Study.

Sec. 110. Additional study.

Sec. 111. Special rules.

Sec. 112. Technical amendment.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

Sec. 201. Extension of retransmission consent exemption.

Sec. 202. Cable/satellite comparability.

Sec. 203. Carriage of local stations on a single dish.

Sec. 204. Replacement of distant signals with local signals.

Sec. 205. Additional notices to subscribers, networks, and stations concerning signal carriage.

Sec. 206. Privacy rights of satellite subscribers.

Sec. 207. Reciprocal bargaining obligations.

Sec. 208. Study of impact on cable television service.

Sec. 209. Reduction of required tests.

Sec. 210. Satellite carriage of television stations in noncontiguous States.

Sec. 211. Carriage of television signals to certain subscribers.

Sec. 212. Digital transition savings provision.

Sec. 213. Authorizing broadcast service in unserved areas of Alaska.

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

SEC. 101. EXTENSION OF AUTHORITY.

(a) IN GENERAL.—Section 4(a) of the Satellite Home Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103-369; 108 Stat. 3481) is amended by striking “December 31, 2004” and inserting “December 31, 2009”.

(b) EXTENSION FOR CERTAIN SUBSCRIBERS.—Section 119(e) of title 17, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2009”.

SEC. 102. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY VIEWED AND OTHER SIGNALS; TECHNICAL AMENDMENTS.

Section 119(a) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) in the paragraph heading, by striking “AND PBS SATELLITE FEED”;

(B) in the first sentence, by striking “(3), (4), and (6)” and inserting “(5), (6), and (8)”;

(C) in the first sentence, by striking “or by the Public Broadcasting Service satellite feed”; and

(D) by striking the second sentence;

(2) in paragraph (2)—

(A) in subparagraph (A), by striking “(3), (4), (5), and (6)” and inserting “(5), (6), (7), and (8)”;

(B) by striking subparagraph (C) and inserting the following:

“(C) EXCEPTIONS.—

“(i) STATES WITH SINGLE FULL-POWER NETWORK STATION.—In a State in which there is licensed by the Federal Communications Commission a single full-power station that was a network station on January 1, 1995, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmission of that station to any subscriber in a community that is located within that State and that is not within the first 50 television markets as listed in the regulations of the Commission as in effect on such date (47 CFR 76.51).

“(ii) STATES WITH ALL NETWORK STATIONS AND SUPERSTATIONS IN SAME LOCAL MARKET.—In a State in which all network stations and superstations licensed by the Federal Communications Commission within that State as of January 1, 1995, are assigned to the same local market and that local market does not encompass all counties of that State, the statutory license provided under subparagraph (A) shall apply to the secondary transmission by a satellite carrier of the primary transmissions of such station to all subscribers in the State who reside in a local market that is within the first 50 major television markets as listed in the regulations of the Commission as in effect on such date (section 76.51 of title 47 of the Code of Federal Regulations).

Applicability.

Applicability.

“(iii) ADDITIONAL STATIONS.—In the case of that State in which are located 4 counties that—

“(I) on January 1, 2004, were in local markets principally comprised of counties in another State, and

“(II) had a combined total of 41,340 television households, according to the U.S. Television Household Estimates by Nielsen Media Research for 2004,

the statutory license provided under subparagraph (A) shall apply to secondary transmissions by a satellite carrier to subscribers in any such county of the primary transmissions of any network station located in that State, if the satellite carrier was making such secondary transmissions to any subscribers in that county on January 1, 2004.

“(iv) CERTAIN ADDITIONAL STATIONS.—If 2 adjacent counties in a single State are in a local market comprised principally of counties located in another State, the statutory license provided for in subparagraph (A) shall apply to the secondary transmission by a satellite carrier to subscribers in those 2 counties of the primary transmissions of any network station located in the capital of the State in which such 2 counties are located, if—

Applicability.

“(I) the 2 counties are located in a local market that is in the top 100 markets for the year 2003 according to Nielsen Media Research; and

“(II) the total number of television households in the 2 counties combined did not exceed 10,000 for the year 2003 according to Nielsen Media Research.

“(v) APPLICABILITY OF ROYALTY RATES.—The royalty rates under subsection (b)(1)(B) apply to the secondary transmissions to which the statutory license under subparagraph (A) applies under clauses (i), (ii), (iii), and (iv).

“(D) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

“(i) INITIAL LISTS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station—

Deadline.

“(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households; and

“(II) a separate list, aggregated by designated market area (as defined in section 122(j)) (by name and address, including street or rural route number, city, State, and zip code), which shall indicate those subscribers being served pursuant to paragraph (3), relating to significantly viewed stations.

“(ii) MONTHLY LISTS.—After the submission of the initial lists under clause (i), on the 15th of each month, the satellite carrier shall submit to the network—

“(I) a list identifying (by name and address, including street or rural route number, city, State, and zip code) any persons who have been added or dropped as subscribers under clause (i)(I) since the last submission under clause (i); and

“(II) a separate list, aggregated by designated market area (by name and street address, including street or rural route number, city, State, and zip code), identifying those subscribers whose service pursuant to paragraph (3), relating to significantly viewed stations, has been added or dropped.

“(iii) USE OF SUBSCRIBER INFORMATION.—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of monitoring compliance by the satellite carrier with this subsection.

“(iv) APPLICABILITY.—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.”;

Public
information.
Records.

(3) by striking paragraph (8);

(4) by redesignating paragraphs (9) through (12) as paragraphs (10) through (13), respectively;

(5) by redesignating paragraphs (3) through (7) as paragraphs (5) through (9), respectively;

(6) by inserting after paragraph (2) the following:

“(3) SECONDARY TRANSMISSIONS OF SIGNIFICANTLY VIEWED SIGNALS.—

Applicability.

“(A) IN GENERAL.—Notwithstanding the provisions of paragraph (2)(B), and subject to subparagraph (B) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation to a subscriber who resides outside the station’s local market (as defined in section 122(j)) but within a community in which the signal has been determined by the Federal Communications Commission, to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.

Applicability.

“(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of the primary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122.

“(C) WAIVER.—

“(i) IN GENERAL.—A subscriber who is denied the secondary transmission of the primary transmission of a network station under subparagraph (B) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber’s request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber’s request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

Deadlines.

“(ii) SUNSET.—The authority under clause (i) to grant waivers shall terminate on December 31, 2008, and any such waiver in effect shall terminate on that date.”;

(7) in paragraph (2)(B)(i), by adding at the end the following new sentence: “The limitation in this clause shall not apply to secondary transmissions under paragraph (3).”.

SEC. 103. STATUTORY LICENSE FOR SATELLITE CARRIERS OUTSIDE LOCAL MARKETS.

Section 119 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended by inserting after paragraph (3), as added by section 102 of this Act, the following:

“(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

“(A) RULES FOR SUBSCRIBERS TO ANALOG SIGNALS UNDER SUBSECTION (e).—

“(i) FOR THOSE RECEIVING DISTANT ANALOG SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary analog transmission of a network station solely by reason of subsection (e) (in this subparagraph referred to as a ‘distant analog signal’), and who, as of October 1, 2004, is receiving the distant analog signal of that network station, the following shall apply:

“(I) In a case in which the satellite carrier makes available to the subscriber the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same television network—

Applicability.

Deadline.

“(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of the Communications Act of 1934, the subscriber elects to retain the distant analog signal; but

“(bb) only until such time as the subscriber elects to receive such local analog signal.

Deadline.

“(II) Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply with respect to any subscriber who is eligible to receive the distant analog signal of a television network station solely by reason of subsection (e), unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

“(aa) identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber; and

“(bb) states, to the best of the satellite carrier’s knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant analog signals.

“(ii) FOR THOSE NOT RECEIVING DISTANT ANALOG SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant analog signal of a network station solely by reason of subsection (e) and who did not receive a distant analog signal of a station affiliated with the same network on October 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same network.

Applicability.

“(B) RULES FOR OTHER SUBSCRIBERS.—In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary analog transmission of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as a ‘distant analog signal’), other than subscribers to whom subparagraph (A) applies, the following shall apply:

Deadline.

“(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant analog signal of a station affiliated with the same television network if the subscriber’s satellite

carrier, not later than March 1, 2005, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber.

“(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier of the distant analog signal of a station affiliated with the same network to that subscriber if—

“(I) that subscriber seeks to subscribe to such distant analog signal before the date on which such carrier commences to provide pursuant to the statutory license under section 122 the secondary transmissions of the primary analog transmission of stations from the local market of such local network station; and

“(II) the satellite carrier, within 60 days after such date, submits to each television network a list that identifies each subscriber in that local market provided such an analog signal by name and address (street or rural route number, city, State, and zip code) and specifies the distant analog signals received by the subscriber.

Deadline.

“(C) FUTURE APPLICABILITY.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of a primary analog transmission of a network station to a person who—

“(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

“(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary analog transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, and such secondary transmission of such primary transmission can reach such person.

“(D) SPECIAL RULES FOR DISTANT DIGITAL SIGNALS.—The statutory license under paragraph (2) shall apply to secondary transmissions by a satellite carrier to a subscriber of primary digital transmissions of network stations if such secondary transmissions to such subscriber are permitted under section 339(a)(2)(D) of the Communications Act of 1934, as in effect on the day after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, except that the reference

Applicability.

to section 73.683(a) of title 47, Code of Federal Regulations, referred to in section 339(a)(2)(D)(i)(I) shall refer to such section as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

“(E) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions under paragraph (3) or to unserved households included under paragraph (12).

“(F) WAIVER.—A subscriber who is denied the secondary transmission of a network station under subparagraph (C) or (D) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber’s request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber’s request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

“(G) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a secondary transmission of the primary transmission of a local station to a subscriber or person if the satellite carrier offers that secondary transmission to other subscribers who reside in the same zip code as that subscriber or person.”.

(2) Subsection (a) is amended by adding at the end the following:

“(14) WAIVERS.—A subscriber who is denied the secondary transmission of a signal of a network station under subsection (a)(2)(B) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station asserting that the secondary transmission is prohibited. The network station shall accept or reject a subscriber’s request for a waiver within 30 days after receipt of the request. If a television network station fails to accept or reject a subscriber’s request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934, and that was in effect on such date of enactment, shall constitute a waiver for purposes of this paragraph.”.

(3) Subsection (b)(1) is amended by striking subparagraph (B) and inserting the following:

“(B) a royalty fee for that 6-month period, computed by multiplying the total number of subscribers receiving

Deadline.

Deadline.

each secondary transmission of each superstation or network station during each calendar month by the appropriate rate in effect under this section.”.

(4) Subsection (b)(1) is further amended by adding at the end the following flush sentence: “Notwithstanding the provisions of subparagraph (B), a satellite carrier whose secondary transmissions are subject to statutory licensing under paragraph (1) or (2) of subsection (a) shall have no royalty obligation for secondary transmissions to a subscriber under paragraph (3) of such subsection.”.

(5) Subsection (c) is amended to read as follows:

“(c) ADJUSTMENT OF ROYALTY FEES.—

“(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR ANALOG SIGNALS.—

“(A) INITIAL FEE.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary analog transmissions of network stations and superstations shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on July 1, 2004, as modified under this paragraph.

“(B) FEE SET BY VOLUNTARY NEGOTIATION.—On or before January 2, 2005, the Librarian of Congress shall cause to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the secondary transmission of the primary analog transmission of network stations and superstations under subsection (b)(1)(B).

Deadline.
Federal Register,
publication.

“(C) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or agreements for the payment of royalty fees. Any such satellite carriers, distributors and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Congress shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the cost thereof.

“(D) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS; PUBLIC NOTICE.—(i) Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that a parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

Regulations.
Deadline.

“(ii)(I) Within 10 days after publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding pursuant to subparagraph (E).

Federal Register,
publication.
Deadline.

“(II) Upon receiving a request under subclause (I), the Librarian of Congress shall immediately provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

“(III) The Librarian shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening an arbitration proceeding unless a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

“(E) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 2009, or in accordance with the terms of the agreement, whichever is later.

“(F) FEE SET BY COMPULSORY ARBITRATION.—

“(i) NOTICE OF INITIATION OF PROCEEDINGS.—On or before May 1, 2005, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining the royalty fee to be paid for the secondary transmission of primary analog transmission of network stations and superstations under subsection (b)(1)(B) by satellite carriers and distributors

“(I) in the absence of a voluntary agreement filed in accordance with subparagraph (D) that establishes royalty fees to be paid by all satellite carriers and distributors; or

“(II) if an objection to the fees from a voluntary agreement submitted for adoption by the Librarian of Congress to apply to all satellite carriers, distributors, and copyright owners is received under subparagraph (D) from a party with an intent to participate in the arbitration proceeding and a significant interest in the outcome of that proceeding.

Such arbitrary proceeding shall be conducted under chapter 8 as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004.

“(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the copyright arbitration royalty panel appointed under chapter 8, as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004 shall establish fees for the secondary transmissions of the primary analog transmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions, except that the Librarian of Congress and any copyright arbitration royalty panel shall adjust those fees to account for the obligations of the parties under

Federal Register,
publication.
Deadline.

any applicable voluntary agreement filed with the Copyright Office pursuant to subparagraph (D). In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

“(I) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

“(II) the economic impact of such fees on copyright owners and satellite carriers; and

“(III) the impact on the continued availability of secondary transmissions to the public.

“(iii) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

“(I) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), as in effect on the day before the date of the enactment of the Copyright Royalty and Distribution Act of 2004; or

“(II) is established by the Librarian under section 802(f) as in effect on the day before such date of enactment shall be effective as of January 1, 2005.

“(iv) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in (iii) shall be binding on all satellite carriers, distributors and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

“(2) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR DIGITAL SIGNALS.—The process and requirements for establishing the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary digital transmissions of network stations and superstations shall be the same as that set forth in paragraph (1) for the secondary transmission of the primary analog transmission of network stations and superstations, except that—

“(A) the initial fee under paragraph (1)(A) shall be the rates set forth in section 298.3(b)(1) and (2) of title 37, Code of Federal Regulations, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, reduced by 22.5 percent;

“(B) the notice of initiation of arbitration proceedings required in paragraph (1)(F)(i) shall be published on or before December 31, 2005; and

“(C) the royalty fees that are established for the secondary transmission of the primary digital transmission of network stations and superstations in accordance with to the procedures set forth in paragraph (1)(F)(iii) and are payable under subsection (b)(1)(B)—

“(i) shall be reduced by 22.5 percent; and

Notice.
Deadline.

“(ii) shall be adjusted by the Librarian of Congress on January 1, 2007, and on January 1 of each year thereafter, to reflect any changes occurring during the preceding 12 months in the cost of living as determined by the most recent Consumer Price Index (for all consumers and items) published by the Secretary of Labor.”.

(6) Subsection (a)(7), as redesignated by section 102(5) of this Act, is amended—

(A) in subparagraph (A), by striking “who does not reside in an unserved household” and inserting “who is not eligible to receive the transmission under this section”;

(B) in subparagraph (B), by striking “who do not reside in unserved households” and inserting “who are not eligible to receive the transmission under this section”; and

(C) in subparagraph (D), by striking “is for private home viewing to an unserved household” and inserting “is to a subscriber who is eligible to receive the secondary transmission under this section”.

SEC. 104. STATUTORY LICENSE FOR SATELLITE RETRANSMISSION OF LOW POWER TELEVISION STATIONS.

(a) IN GENERAL.—Section 119(a) of title 17, United States Code (as amended by sections 102 and 103 of this Act), is further amended by adding at the end the following:

“(15) CARRIAGE OF LOW POWER TELEVISION STATIONS.—

“(A) IN GENERAL.—Notwithstanding paragraph (2)(B), and subject to subparagraphs (B) through (F) of this paragraph, the statutory license provided for in paragraphs (1) and (2) shall apply to the secondary transmission of the primary transmission of a network station or a superstation that is licensed as a low power television station, to a subscriber who resides within the same local market.

“(B) GEOGRAPHIC LIMITATION.—

“(i) NETWORK STATIONS.—With respect to network stations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who—

“(I) reside in the same local market as the station originating the signal; and

“(II) reside within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20.

“(ii) SUPERSTATIONS.—With respect to superstations, secondary transmissions provided for in subparagraph (A) shall be limited to secondary transmissions to subscribers who reside in the same local market as the station originating the signal.

Applicability.

“(C) NO APPLICABILITY TO REPEATERS AND TRANSLATORS.—Secondary transmissions provided for in subparagraph (A) shall not apply to any low power television station that retransmits the programs and signals of another television station for more than 2 hours each day.

“(D) ROYALTY FEES.—Notwithstanding subsection (b)(1)(B), a satellite carrier whose secondary transmissions of the primary transmissions of a low power television station are subject to statutory licensing under this section shall have no royalty obligation for secondary transmissions to a subscriber who resides within 35 miles of the transmitter site of such station, except that in the case of such a station located in a standard metropolitan statistical area which has 1 of the 50 largest populations of all standard metropolitan statistical areas (based on the 1980 decennial census of population taken by the Secretary of Commerce), the number of miles shall be 20. Carriage of a superstation that is a low power television station within the station’s local market, but outside of the 35-mile or 20-mile radius described in the preceding sentence, shall be subject to royalty payments under subsection (b)(1)(B).

“(E) LIMITATION TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—Secondary transmissions provided for in subparagraph (A) may be made only to subscribers who receive secondary transmissions of primary transmissions from that satellite carrier pursuant to the statutory license under section 122, and only in conformity with the requirements under 340(b) of the Communications Act of 1934, as in effect on the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.”.

SEC. 105. DEFINITIONS.

Section 119(d) of title 17, United States Code, is amended—

(1) in paragraph (2)(A), by striking “a television broadcast station” and inserting “a television station licensed by the Federal Communications Commission”;

(2) by amending paragraph (9) to read as follows:

“(9) SUPERSTATION.—The term ‘superstation’ means a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.”;

(3) in paragraph (10)—

(A) in subparagraph (B), by striking “granted under regulations established under section 339(c)(2) of the Communications Act of 1934” and inserting “that meets the standards of subsection (a)(14) whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004”; and

(B) in subparagraph (D), by striking “(a)(11)” and inserting “(a)(12)”; and

(4) by striking paragraphs (11) and (12) and inserting the following:

“(11) LOCAL MARKET.—The term ‘local market’ has the meaning given such term under section 122(j), except that with respect to a low power television station, the term ‘local

market’ means the designated market area in which the station is located.

“(12) LOW POWER TELEVISION STATION.—The term ‘low power television station’ means a low power television as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term ‘low power television station’ includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

“(13) COMMERCIAL ESTABLISHMENT.—The term ‘commercial establishment’—

“(A) means an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and

“(B) does not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.”.

17 USC 119 note. **SEC. 106. EFFECT ON CERTAIN PROCEEDINGS.**

Nothing in this title shall modify any remedy imposed on a party that is required by the judgment of a court in any action that was brought before May 1, 2004, against that party for a violation of section 119 of title 17, United States Code.

SEC. 107. STATUTORY LICENSE FOR SATELLITE CARRIERS RE-TRANSMITTING SUPERSTATION SIGNALS TO COMMERCIAL ESTABLISHMENTS.

(a) IN GENERAL.—Section 119 of title 17, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by inserting “or for viewing in a commercial establishment” after “for private home viewing” each place it appears; and

(B) by striking “household” and inserting “subscriber”;

(2) in subsection (b), by striking “for private home viewing” each place it appears;

(3) in subsection (d)(1)—

(A) by striking “for private home viewing”; and

(B) by inserting “in accordance with the provisions of this section” before the period;

(4) in subsection (d)(6), by inserting “pursuant to this section” before the period; and

(5) in subsection (d)(8)—

(A) by striking “who” and inserting “or entity that”;

(B) by striking “for private home viewing”; and

(C) by inserting “in accordance with the provisions of this section” before the period.

(b) CONFORMING AMENDMENTS.—Subsections (a)(4) and (d)(1)(A) of section 111 of title 17, United States Code, are each amended by striking “for private home viewing”.

**SEC. 108. EXPEDITED CONSIDERATION OF VOLUNTARY AGREEMENTS
TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO
LOCAL MARKETS.**

Section 119 of title 17, United States Code, is amended by adding at the end the following:

“(f) EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.—

“(1) IN GENERAL.—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

Deadline.

“(2) DEFINITION.—For purposes of this subsection, the term ‘antitrust laws’—

“(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

“(B) includes any State law similar to the laws referred to in paragraph (1).”.

SEC. 109. STUDY.

Deadline.
Reports.

No later than June 30, 2008, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register’s findings and recommendations on the operation and revision of the statutory licenses under sections 111, 119, and 122 of title 17, United States Code. The report shall include, but not be limited to, the following:

(1) A comparison of the royalties paid by licensees under such sections, including historical rates of increases in these royalties, a comparison between the royalties under each such section and the prices paid in the marketplace for comparable programming.

(2) An analysis of the differences in the terms and conditions of the licenses under such sections, an analysis of whether these differences are required or justified by historical, technological, or regulatory differences that affect the satellite and cable industries, and an analysis of whether the cable or satellite industry is placed in a competitive disadvantage due to these terms and conditions.

(3) An analysis of whether the licenses under such sections are still justified by the bases upon which they were originally created.

(4) An analysis of the correlation, if any, between the royalties, or lack thereof, under such sections and the fees

charged to cable and satellite subscribers, addressing whether cable and satellite companies have passed to subscribers any savings realized as a result of the royalty structure and amounts under such sections.

(5) An analysis of issues that may arise with respect to the application of the licenses under such sections to the secondary transmissions of the primary transmissions of network stations and superstations that originate as digital signals, including issues that relate to the application of the unserved household limitations under section 119 of title 17, United States Code, and to the determination of royalties of cable systems and satellite carriers.

Deadline.
Reports.

SEC. 110. ADDITIONAL STUDY.

No later than December 31, 2005, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and recommendations on the following:

(1) The extent to which the unserved household limitation for network stations contained in section 119 of title 17, United States Code, has operated efficiently and effectively and has forwarded the goal of title 17, United States Code, to protect copyright owners of over-the-air television programming, including what amendments, if any, are necessary to effectively identify the application of the limitation to individual households to receive secondary transmissions of primary digital transmissions of network stations.

(2) The extent to which secondary transmissions of primary transmissions of network stations and superstations under section 119 of title 17, United States Code, harm copyright owners of broadcast programming throughout the United States and the effect, if any, of the statutory license under section 122 of title 17, United States Code, in reducing such harm.

SEC. 111. SPECIAL RULES.

(a) RESTRICTIONS ON TRANSMISSION OF DISTANT TELEVISION STATIONS IN AREAS OF ALASKA WHERE LOCAL-INTO-LOCAL SERVICE IS AVAILABLE.—Section 119(a) of title 17, United States Code, is amended by adding at the end thereof the following:

“(16) RESTRICTED TRANSMISSION OF OUT-OF-STATE DISTANT NETWORK SIGNALS INTO CERTAIN MARKETS.—

“(A) OUT-OF-STATE NETWORK AFFILIATES.—Notwithstanding any other provision of this title, the statutory license in this subsection and subsection (b) shall not apply to any secondary transmission of the primary transmission of a network station located outside of the State of Alaska to any subscriber in that State to whom the secondary transmission of the primary transmission of a television station located in that State is made available by the satellite carrier pursuant to section 122.

“(B) EXCEPTION.—The limitation in subparagraph (A) shall not apply to the secondary transmission of the primary transmission of a digital signal of a network station located outside of the State of Alaska if at the time that the secondary transmission is made, no television station licensed to a community in the State and affiliated with the same network makes primary transmissions of a digital signal.”.

(b) **EXTRA DMA DEEMED LOCAL.**—Section 122(j)(2) of title 17, United States Code, is amended by adding at the end thereof the following:

“(D) **CERTAIN AREAS OUTSIDE OF ANY DESIGNATED MARKET AREA.**—Any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska. A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in such census area, borough, or other area.”.

SEC. 112. TECHNICAL AMENDMENT.

Section 803(b)(1)(A)(i)(V) of title 17, United States Code, as amended by the Copyright Royalty and Distribution Reform Act of 2004, is amended by inserting before the period at the end the following: “, except that in the case of proceedings under section 111 that are scheduled to commence in 2005, such notice may not be published.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

SEC. 201. EXTENSION OF RETRANSMISSION CONSENT EXEMPTION.

Section 325(b)(2)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(2)(C)) is amended by striking “December 31, 2004” and inserting “December 31, 2009”.

SEC. 202. CABLE/SATELLITE COMPARABILITY.

(a) **AMENDMENT.**—Part I of title III of the Communications Act of 1934 is amended by inserting after section 339 (47 U.S.C. 339) the following new section:

“SEC. 340. SIGNIFICANTLY VIEWED SIGNALS PERMITTED TO BE CARRIED. 47 USC 340.

“(a) **SIGNIFICANTLY VIEWED STATIONS.**—In addition to the broadcast signals that subscribers may receive under section 338 and 339, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal—

“(1) has, before the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission’s network nonduplication and syndicated exclusivity rules; or

“(2) is, after such date of enactment, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable

under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

“(b) LIMITATIONS.—

Applicability.

“(1) ANALOG SERVICE LIMITED TO SUBSCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338.

Applicability.

“(2) DIGITAL SERVICE LIMITATIONS.—With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—

“(A) the subscriber receives from the satellite carrier pursuant to section 338 the retransmission of the digital signal of a network station in the subscriber’s local market that is affiliated with the same television network; and

“(B) either—

“(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or

“(ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station.

“(3) LIMITATION NOT APPLICABLE WHERE NO NETWORK AFFILIATES.—The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

“(4) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

“(c) PUBLICATION AND MODIFICATIONS OF LISTS; REGULATIONS.—

Deadline.

“(1) IN GENERAL.—The Commission shall—

“(A) within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004—

“(i) publish a list of the stations that are eligible for retransmission under subsection (a)(1) and the communities in which such stations are eligible for such retransmission; and

“(ii) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;

“(B) adopt rules pursuant to such rulemaking within 1 year after such date of enactment.

“(2) PUBLIC AVAILABILITY OF LIST.—The Commission shall make readily available to the public in electronic form, on the Internet website of the Commission or other comparable

facility, a list of the stations that are eligible for retransmission under subsection (a) and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

Deadline.

“(3) MODIFICATIONS.—In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

“(A) by which stations may be added to those that are eligible for retransmission under subsection (a), and by which communities may be added in which such stations are eligible for such retransmission; and

“(B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e).

“(d) EFFECT ON OTHER OBLIGATIONS AND RIGHTS.—

“(1) NO EFFECT ON CARRIAGE OBLIGATIONS.—Carriage of a signal under this section is not mandatory, and any right of a station licensee to have the signal of such station carried under section 338 is not affected by the eligibility of such station to be carried under this section.

“(2) RETRANSMISSION CONSENT RIGHTS NOT AFFECTED.—The eligibility of the signal of a station to be carried under this section does not affect any right of the licensee of such station to grant (or withhold) retransmission consent under section 325(b)(1).

“(e) NETWORK NONDUPLICATION AND SYNDICATED EXCLUSIVITY.—

“(1) NOT APPLICABLE EXCEPT AS PROVIDED BY COMMISSION REGULATIONS.—Signals eligible to be carried under this section are not subject to the Commission’s regulations concerning network nonduplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection.

“(2) LIMITATION.—Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclusivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119(a)(2)(A) or (B) of title 17, United States Code, with respect to persons who reside in unserved households, under 119(a)(4)(A), or under section 119(a)(12), of such title.

“(f) ENFORCEMENT.—

“(1) ORDERS AND DAMAGES.—Upon complaint, the Commission shall issue a cease and desist order to any satellite carrier found to have violated this section in carrying any television broadcast station. Such order may, if a complaining station requests damages—

“(A) provide for the award of damages to a complaining station that establishes that the violation was committed in bad faith, in an amount up to \$50 per subscriber, per station, per day of the violation; and

“(B) provide for the award of damages to a prevailing satellite carrier if the Commission determines that the

complaint was frivolous, in an amount up to \$50 per subscriber alleged to be in violation, per station alleged, per day of the alleged violation.

Deadline.

“(2) COMMISSION DECISION.—The Commission shall issue a final determination resolving a complaint brought under this subsection not later than 180 days after the submission of a complaint under this subsection. The Commission may hear witnesses if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

“(3) REMEDIES IN ADDITION.—The remedies under this subsection are in addition to any remedies available under title 17, United States Code.

“(4) NO EFFECT ON COPYRIGHT PROCEEDINGS.—Any determination, action, or failure to act of the Commission under this subsection shall have no effect on any proceeding under title 17, United States Code, and shall not be introduced in evidence in any proceeding under that title. In no instance shall a Commission enforcement proceeding under this subsection be required as a predicate to the pursuit of a remedy available under title 17.

“(g) NOTICES CONCERNING SIGNIFICANTLY VIEWED STATIONS.—Each satellite carrier that proposes to commence the retransmission of a station pursuant to this section in any local market shall—

Deadline.

“(1) not less than 60 days before commencing such retransmission, provide a written notice to any television broadcast station in such local market of such proposal; and

“(2) designate on such carrier’s website all significantly viewed signals carried pursuant to section 340 and the communities in which the signals are carried.

Deadline.

“(h) ADDITIONAL CORRESPONDING CHANGES IN REGULATIONS.—

“(1) COMMUNITY-BY-COMMUNITY ELECTIONS.—The Commission shall, no later than October 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station pursuant to section 338, to elect, with respect to such satellite carrier, between retransmission consent pursuant to such section 325 and mandatory carriage pursuant to section 338 separately for each county within such station’s local market, if—

“(A) the satellite carrier has notified the station, pursuant to paragraph (3), that it intends to carry another affiliate of the same network pursuant to this section during the relevant election period in the station’s local market; or

“(B) on the date notification under paragraph (3) was due, the satellite carrier was retransmitting into the station’s local market pursuant to this section an affiliate of the same television network.

“(2) UNIFIED NEGOTIATIONS.—In revising its regulations as required by paragraph (1), the Commission shall provide that any such station shall conduct a unified negotiation for the

entire portion of its local market for which retransmission consent is elected.

“(3) ADDITIONAL PROVISIONS.—The Commission shall, no later than October 30, 2005, revise its regulations to provide the following: Deadline.

“(A) NOTIFICATIONS BY SATELLITE CARRIER.—A satellite carrier’s retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations:

“(i) In any local market in which the satellite carrier provides service pursuant to section 338 on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission’s regulations (47 CFR 76.66), of—

“(I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station’s local market pursuant to this section during the next election cycle under such section of such regulations; and

“(II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.

“(ii) In any local market in which the satellite carrier commences service pursuant to section 338 after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the carrier may notify a station in that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission’s regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station’s local market during the next election cycle under such section of such regulations.

“(iii) Beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal—

“(I) as to which it has provided the notifications set forth in clauses (i) and (ii); or

“(II) that it was retransmitting into the local market under this section as of the date such notifications were due.

“(B) HARMONIZATION OF ELECTIONS AND RETRANSMISSION CONSENT AGREEMENTS.—If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

“(i) DEFINITIONS.—As used in this section:

“(1) LOCAL MARKET; SATELLITE CARRIER; SUBSCRIBER; TELEVISION BROADCAST STATION.—The terms ‘local market’, ‘satellite carrier’, ‘subscriber’, and ‘television broadcast station’ have the meanings given such terms in section 338(k).

“(2) NETWORK STATION; TELEVISION NETWORK.—The terms ‘network station’ and ‘television network’ have the meanings given such terms in section 339(d).

“(3) COMMUNITY.—The term ‘community’ means—

“(A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or

“(B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section.

“(4) BANDWIDTH.—The terms ‘equivalent bandwidth’ and ‘entire bandwidth’ shall be defined by the Commission by regulation, except that this paragraph shall not be construed—

“(A) to prevent a satellite operator from using compression technology;

“(B) to require a satellite operator to use the identical bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting;

“(C) to require a satellite operator to use the identical bandwidth or bit rate for a local network station as it does for a distant network station;

“(D) to affect a satellite operator’s obligations under subsection (a)(1); or

“(E) to affect the definitions of ‘program related’ and ‘primary video’.”.

SEC. 203. CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.

(a) AMENDMENTS.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338(d)) is amended—

(1) by redesignating subsections (g) and (h) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (f) the following new subsection:

“(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE DISH.—

“(1) SINGLE DISH.—Each satellite carrier that retransmits the analog signals of local television broadcast stations in a local market shall retransmit such analog signals in such market by means of a single reception antenna and associated equipment.

“(2) EXCEPTION.—If the carrier retransmits signals in the digital television service, the carrier shall retransmit such digital signals in such market by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used for analog television service signals.

“(3) EFFECTIVE DATE.—The requirements of paragraphs (1) and (2) of this subsection shall apply on and after 18 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

“(4) NOTICE OF DISRUPTIONS.—A carrier that is providing signals of a local television broadcast station in a local market under this section on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 shall, not later than 15 months after such date of enactment, provide to the licensees for such stations and the carrier’s subscribers in such local market a notice that displays prominently and conspicuously a clear statement of—

Deadline.

“(A) any reallocation of signals between different reception antennas and associated equipment that the carrier intends to make in order to comply with the requirements of this subsection;

“(B) the need, if any, for subscribers to obtain an additional reception antenna and associated equipment to receive such signals; and

“(C) any cessation of carriage or other material change in the carriage of signals as a consequence of the requirements of this paragraph.”.

(b) CONFORMING AMENDMENTS: COMMISSION ENFORCEMENT OF SECTION; LOW POWER TELEVISION STATIONS.—

(1) Section 338(a) of such Act is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) IN GENERAL.—Each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b).

“(2) REMEDIES FOR FAILURE TO CARRY.—In addition to the remedies available to television broadcast stations under section 501(f) of title 17, United States Code, the Commission may use the Commission’s authority under this Act to assure compliance with the obligations of this subsection, but in no instance shall a Commission enforcement proceeding be required as a predicate to the pursuit of a remedy available under such section 501(f).

“(3) LOW POWER STATION CARRIAGE OPTIONAL.—No low power television station whose signals are provided under section 119(a)(14) of title 17, United States Code, shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to section 122 of such title, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.”.

(2) Section 338(c)(1) of such Act is amended by striking “subsection (a)” and inserting “subsection (a)(1)”.

(3) Section 338(k) of such Act (as redesignated by subsection (a)(1)) is amended—

(A) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8), respectively; and

(B) by inserting after paragraph (3) the following new paragraph:

“(4) LOW POWER TELEVISION STATION.—The term ‘low power television station’ means a low power television station as defined under section 74.701(f) of title 47, Code of Federal

Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term ‘low power television station’ includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.”.

SEC. 204. REPLACEMENT OF DISTANT SIGNALS WITH LOCAL SIGNALS.

(a) **REPLACEMENT.**—Section 339(a) of the Communications Act of 1934 (47 U.S.C. 339(a)) is amended—

(1) in paragraph (1), by adding at the end the following new sentence: “Such two network stations may be comprised of both the analog signal and digital signal of not more than two network stations.”;

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following new paragraph:

Applicability.

“(2) **REPLACEMENT OF DISTANT SIGNALS WITH LOCAL SIGNALS.**—Notwithstanding any other provision of paragraph (1), the following rules shall apply after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004:

“(A) **RULES FOR GRANDFATHERED SUBSCRIBERS TO ANALOG SIGNALS.**—

“(i) **FOR THOSE RECEIVING DISTANT ANALOG SIGNALS.**—In the case of a subscriber of a satellite carrier who is eligible to receive the analog signal of a network station solely by reason of section 119(e) of title 17, United States Code (in this subparagraph referred to as a ‘distant analog signal’), and who, as of October 1, 2004, is receiving the distant analog signal of that network station, the following shall apply:

“(I) In a case in which the satellite carrier makes available to the subscriber the analog signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber—

Deadline.

“(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of this Act, the subscriber elects to retain the distant analog signal; but

“(bb) only until such time as the subscriber elects to receive such local analog signal.

Deadline.

“(II) Notwithstanding subclause (I), the carrier may not retransmit the distant analog signal to any subscriber who is eligible to receive the analog signal of a network station solely by reason of section 119(e) of title 17, United States Code, unless such carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network the list and statement required by subparagraph (F)(i).

“(ii) FOR THOSE NOT RECEIVING DISTANT ANALOG SIGNALS.—In the case of any subscriber of a satellite carrier who is eligible to receive the distant analog signal of a network station solely by reason of section 119(e) of title 17, United States Code, and who did not receive a distant analog signal of a station affiliated with the same network on October 1, 2004, the carrier may not provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber.

“(B) RULES FOR OTHER SUBSCRIBERS TO ANALOG SIGNALS.—In the case of a subscriber of a satellite carrier who is eligible to receive the analog signal of a network station under this section (in this subparagraph referred to as a ‘distant analog signal’), other than subscribers to whom subparagraph (A) applies, the following shall apply:

Applicability.
Deadlines.

“(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the analog signal of a local network station affiliated with the same television network pursuant to section 338, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliate with the same network to that subscriber if the subscriber’s satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (F)(i).

“(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the analog signal of a local network station pursuant to section 338, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber if—

“(I) that subscriber seeks to subscribe to such distant analog signal before the date on which such carrier commences to carry pursuant to section 338 the analog signals of stations from the local market of such local network station; and

“(II) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (F)(ii).

“(C) FUTURE APPLICABILITY.—A satellite carrier may not provide a distant analog signal (within the meaning of subparagraph (A) or (B)) to a person who—

“(i) is not a subscriber lawfully receiving such secondary transmission as of the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; and

“(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the analog signal of a local network station affiliated with the same television network pursuant to section 338, and the retransmission of such signal by such carrier can reach such subscriber.

“(D) SPECIAL RULES FOR DISTANT DIGITAL SIGNALS.—

“(i) **ELIGIBILITY.**—In the case of a subscriber of a satellite carrier who, with respect to a local network station—

“(I) is a subscriber whose household is located outside the coverage area of the analog signal of such station as predicted by the model specified in subsection (c)(3) of this section for the signal intensity required under section 73.683(a) of title 47 of the Code of Federal Regulations, or a successor regulation;

“(II) is in an unserved household as determined under section 119(d)(1)(A) of title 17, United States Code; or

“(III) is, after the date on which the conditions required by clause (vii) are met with respect to such station, determined under clause (vi) of this subparagraph to be unable to receive a digital signal of such local network station that exceeds the signal intensity standard specified in such clause;

such subscriber is eligible to receive the digital signal of a distant network station affiliated with the same network under this section (in this subparagraph referred to as a ‘distant digital signal’) subject to the provisions of this subparagraph.

“(ii) **PRE-ENACTMENT DISTANT DIGITAL SIGNAL SUBSCRIBERS.**—Any eligible subscriber under this subparagraph who is a lawful subscriber to such a distant digital signal as of the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 may continue to receive such distant digital signal, whether or not such subscriber elects to subscribe to local digital signals.

“(iii) **LOCAL-TO-LOCAL ANALOG MARKETS.**—In a case in which the satellite carrier makes available to an eligible subscriber under this subparagraph the analog signal of a local network station pursuant to section 338, the carrier may only provide the distant digital signal of a station affiliated with the same network to that subscriber if—

“(I) in the case of any local market in the 48 contiguous States of the United States, the distant digital signal is the secondary transmission of a station whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market;

“(II) in any local market, the retransmission of the distant digital signal of the distant station occupies at least the equivalent bandwidth (as such term is defined by the Commission under section 340(h)(4)) as the digital signal broadcast by such station; and

“(III) the subscriber subscribes to the analog signal of such local network station within 60 days after such signal is made available by the satellite

Deadlines.

carrier, and adds to or replaces such analog signal with the digital signal from such local network station within 60 days after such signal is made available by the satellite carrier, except that such distant digital signal may continue to be provided to a subscriber who cannot be reached by the satellite transmission of the local digital signal.

“(iv) LOCAL-TO-LOCAL DIGITAL MARKETS.—After the date on which a satellite carrier makes available the digital signal of a local network station, the carrier may not offer the distant digital signal of a network station affiliated with the same television network to any new subscriber to such distant digital signal after such date, except that such distant digital signal may be provided to a new subscriber who cannot be reached by the satellite transmission of the local digital signal.

“(v) NON-LOCAL-TO-LOCAL MARKETS.—After the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, if the satellite carrier does not make available the digital signal of a local network station in a local market, the satellite carrier may offer a new subscriber after such date who is eligible under this subparagraph a distant digital signal from a station affiliated with the same network and, in the case of any local market in the 48 contiguous States of the United States, whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market, except that—

“(I) such carrier may continue to provide such distant digital signal to such a subscriber after the date on which the carrier makes available the digital signal of a local network station affiliated with such network only if such subscriber subscribes to the digital signal from such local network station; and

“(II) the limitation contained in subclause (I) of this clause shall not apply to a subscriber that cannot be reached by the satellite transmission of the local digital signal.

“(vi) SIGNAL TESTING FOR DIGITAL SIGNALS.—

“(I) A subscriber shall be eligible for a distant digital signal under clause (i)(III) if such subscriber is determined, based on a test conducted in accordance with section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, not to be able to receive a signal that exceeds the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, as in effect on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

“(II) Such test shall be conducted, upon written request for a digital signal strength test by the subscriber to the satellite carrier, within 30 days after the date the subscriber submits such

Deadline.

request for the test. Such test shall be conducted by a qualified and independent person selected by the satellite carrier and the network station or stations, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may not be so disapproved for a test after the tester has commenced such test.

“(III) Unless the satellite carrier and the network station or stations otherwise agree, the costs of conducting the test shall be borne as follows:

“(aa) If the subscriber is not eligible for a distant digital signal under clause (i)(I) of this subparagraph (by reason of being outside of the coverage area of the analog signal), the satellite carrier may request the station licensee for a waiver.

“(bb) If the licensee agrees to a waiver, or fails to respond to a waiver request within 30 days, the subscriber may receive such distant digital signal.

“(cc) If the licensee refuses to grant a waiver, the subscriber may request the satellite carrier to conduct the test.

“(dd) If the satellite carrier requests the test and—

“(AA) the station’s signal is determined to exceed such signal intensity standard, the costs of the test shall be borne by the satellite carrier; and

“(BB) the station’s signal is determined to not exceed such signal intensity standard, the costs of the test shall be borne by the licensee.

“(ee) If the satellite carrier does not request the test, or fails to respond within 30 days, the subscriber may request the test be conducted under the supervision of the carrier, and the costs of the test shall be borne by the subscriber in accordance with regulations prescribed by the Commission. Such regulations shall also require the carrier to notify the subscriber of the typical costs of such test.

“(vii) TRIGGER EVENTS FOR USE OF TESTING.—A subscriber shall not be eligible for a distant digital signal under clause (i)(III) pursuant to a test conducted under clause (vii) until—

“(I) in the case of a subscriber whose household is located within the area predicted to be served (by the predictive model for analog signals under subsection (b)(3) of this section) by the signal of a local network station and who is seeking a distant digital signal of a station affiliated with the same network as that local network station—

Deadline.

“(aa) April 30, 2006, if such local network station is within the top 100 television markets and—

“(AA) has received a tentative digital television service channel designation that is the same as such station’s current digital television service channel; or

“(BB) has been found by the Commission to have lost interference protection; or

“(bb) July 15, 2007, for any other local network stations, other than translator stations licensed to broadcast on the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004; or

“(II) in the case of a translator station, 1 year after the date on which the Commission completes all actions necessary for the allocation and assignment of digital television licenses to television translator stations.

“(viii) TESTING WAIVERS.—Upon request by a local network station, the Commission may grant a waiver with respect to such station to the beginning of testing under clause (vii), and prohibit subscribers from receiving digital signal strength testing with respect to such station. Such a request shall be filed not less than 5 months prior to the implementation deadline specified in such clause, and the Commission shall act on such request by such implementation deadline. Such a waiver shall expire at the end of not more than 6 months, except that a waiver may be renewed upon a proper showing. The Commission may only grant such a request upon submission of clear and convincing evidence that the station’s digital signal coverage is limited due to the unremediable presence of one or more of the following:

Deadline.

Expiration date.

“(I) the need for international coordination or approvals;

“(II) clear zoning or environmental legal impediments;

“(III) force majeure;

“(IV) the station experiences a substantial decrease in its digital signal coverage area due to necessity of using side-mounted antenna;

“(V) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or

“(VI) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market. Under no circumstances may such a waiver be based upon financial exigency.

“(ix) SPECIAL WAIVER PROVISION FOR TRANSLATORS.—Upon request by a television translator station, the Commission may grant, for not more than 3 years, a waiver with respect to such station to the beginning of testing under clause (vii), and prohibit subscribers from receiving digital signal strength testing with respect to such station, if the Commission determines that the translator station is not broadcasting a digital signal due to one or more of the following:

“(I) frequent occurrence of inclement weather; or

“(II) mountainous terrain at the transmitter tower location.

“(x) SAVINGS PROVISION.—Nothing in this subparagraph shall be construed to affect a satellite carrier’s obligations under section 338.

“(xi) DEFINITION.—For purposes of clause (viii), the term ‘emergency response providers’ means Federal, State, or local governmental and nongovernmental emergency public safety, law enforcement, fire, emergency response, emergency medical (including hospital emergency facilities), and related personnel, organizations, agencies, or authorities.

“(E) AUTHORITY TO GRANT STATION-SPECIFIC WAIVERS.—This paragraph shall not prohibit a retransmission of a distant analog signal or distant digital signal (within the meaning of subparagraph (A), (B), or (D)) of any distant network station to any subscriber to whom the signal of a local network station affiliated with the same network is available, if and to the extent that such local network station has affirmatively granted a waiver from the requirements of this paragraph to such satellite carrier with respect to retransmission of such distant network station to such subscriber.

“(F) NOTICES TO NETWORKS OF DISTANT SIGNAL SUBSCRIBERS.—

Deadline.

“(i) Within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, each satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (A) or (B)(i) of this paragraph shall submit to each network—

“(I) a list, aggregated by designated market area, identifying each subscriber provided such a signal by—

“(aa) name;

“(bb) address (street or rural route number, city, State, and zip code); and

“(cc) the distant network signal or signals received; and

“(II) a statement that, to the best of the carrier’s knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (A) or (B)(i) of this paragraph.

“(ii) Within 60 days after the date a satellite carrier commences to carry pursuant to section 338 the signals of stations from a local market, such a satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (B)(ii) of this paragraph shall submit to each network—

Deadline.

“(I) a list identifying each subscriber in that local market provided such a signal by—

“(aa) name;

“(bb) address (street or rural route number, city, State, and zip code); and

“(cc) the distant network signal or signals received; and

“(II) a statement that, to the best of the carrier’s knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (B)(ii) of this paragraph.

“(G) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the eligibility of a subscriber to receive secondary transmissions under section 340 of this Act or as an unserved household included under section 119(a)(12) of title 17, United States Code.

“(H) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a local signal to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zip code as that subscriber or person.”; and

(4) in paragraph (3) (as redesignated by paragraph (2) of this subsection), by adding at the end the following: “, except that paragraph (2)(D) of this subsection, relating to the provision of distant digital signals, shall be enforceable under the provisions of section 340(f)”.

(b) STUDY OF DIGITAL STRENGTH TESTING PROCEDURES.—Section 339(c) of such Act (47 U.S.C. 339(c)) is amended by striking paragraph (1) and inserting the following:

“(1) STUDY OF DIGITAL STRENGTH TESTING PROCEDURES.—

“(A) STUDY REQUIRED.—Not later than 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry regarding whether, for purposes of identifying if a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, United States Code, the digital signal strength standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, or the testing procedures in section 73.686(d) of title 47, Code of Federal Regulations, such statutes or regulations should be revised to take into account the types of antennas that are available to consumers.

Deadline.

“(B) STUDY CONSIDERATIONS.—In conducting the study under this paragraph, the Commission shall consider whether—

“(i) to account for the fact that an antenna can be mounted on a roof or placed in a home and can be fixed or capable of rotating;

“(ii) section 73.686(d) of title 47, Code of Federal Regulations, should be amended to create different procedures for determining if the requisite digital signal strength is present than for determining if the requisite analog signal strength is present;

“(iii) a standard should be used other than the presence of a signal of a certain strength to ensure that a household can receive a high-quality picture using antennas of reasonable cost and ease of installation;

“(iv) to develop a predictive methodology for determining whether a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, United States Code;

“(v) there is a wide variation in the ability of reasonably priced consumer digital television sets to receive over-the-air signals, such that at a given signal strength some may be able to display high-quality pictures while others cannot, whether such variation is related to the price of the television set, and whether such variation should be factored into setting a standard for determining whether a household is unserved by an adequate digital signal; and

“(vi) to account for factors such as building loss, external interference sources, or undesired signals from both digital television and analog television stations using either the same or adjacent channels in nearby markets, foliage, and man-made clutter.

“(C) REPORT.—Not later than 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

“(i) the results of the study under this paragraph; and

“(ii) recommendations, if any, as to what changes should be made to Federal statutes or regulations.”.

SEC. 205. ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.

Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is further amended by inserting after subsection (g) (as added by section 203) the following new subsection:

“(h) ADDITIONAL NOTICES TO SUBSCRIBERS, NETWORKS, AND STATIONS CONCERNING SIGNAL CARRIAGE.—

“(1) NOTICES TO AND ELECTIONS BY SUBSCRIBERS CONCERNING GRANDFATHERED SIGNALS.—Any carrier that provides a distant signal of a network station to a subscriber pursuant section 339(a)(2)(A) shall—

“(A) within 60 days after the local signal of a network station of the same television network is available pursuant to section 338, or within 60 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, whichever is later, send a notice to the subscriber—

Deadlines.

“(i) offering to substitute the local network signal for the duplicating distant network signal; and

“(ii) informing the subscriber that, if the subscriber fails to respond in 60 days, the subscriber will lose the distant network signal but will be permitted to subscribe to the local network signal; and

“(B) if the subscriber—

“(i) elects to substitute such local network signal within such 60 days, switch such subscriber to such local network signal within 10 days after the end of such 60-day period; or

“(ii) fails to respond within such 60 days, terminate the distant network signal within 10 days after the end of such 60-day period.

“(2) NOTICE TO STATION LICENSEES OF COMMENCEMENT OF LOCAL-INTO-LOCAL SERVICE.—

“(A) NOTICE REQUIRED.—Within 180 days after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph.

“(B) CONTENTS OF COMMENCEMENT NOTICE.—The notice required by such regulations shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage—

“(i) of the carrier’s intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier’s proposed local receive facility for that local market;

“(ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b);

“(iii) that such licensee has 30 days from the date of the receipt of such notice to make such election; and

“(iv) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325.

“(C) TRANSMISSION OF NOTICES.—Such regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.”.

SEC. 206. PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.

(a) AMENDMENT.—Section 338 of the Communications Act of 1934 (47 U.S.C. 338) is further amended by inserting after subsection (h) (as added by section 205) the following new subsection:

“(i) PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.—

“(1) NOTICE.—At the time of entering into an agreement to provide any satellite service or other service to a subscriber

and at least once a year thereafter, a satellite carrier shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

“(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

“(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

“(C) the period during which such information will be maintained by the satellite carrier;

“(D) the times and place at which the subscriber may have access to such information in accordance with paragraph (5); and

“(E) the limitations provided by this section with respect to the collection and disclosure of information by a satellite carrier and the right of the subscriber under paragraphs (7) and (9) to enforce such limitations.

Deadline.

In the case of subscribers who have entered into such an agreement before the effective date of this subsection, such notice shall be provided within 180 days of such date and at least once a year thereafter.

“(2) DEFINITIONS.—For purposes of this subsection, other than paragraph (9)—

“(A) the term ‘personally identifiable information’ does not include any record of aggregate data which does not identify particular persons;

“(B) the term ‘other service’ includes any wire or radio communications service provided using any of the facilities of a satellite carrier that are used in the provision of satellite service; and

“(C) the term ‘satellite carrier’ includes, in addition to persons within the definition of satellite carrier, any person who—

“(i) is owned or controlled by, or under common ownership or control with, a satellite carrier; and

“(ii) provides any wire or radio communications service.

“(3) PROHIBITIONS.—

“(A) CONSENT TO COLLECTION.—Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

“(B) EXCEPTIONS.—A satellite carrier may use such facilities to collect such information in order to—

“(i) obtain information necessary to render a satellite service or other service provided by the satellite carrier to the subscriber; or

“(ii) detect unauthorized reception of satellite communications.

“(4) DISCLOSURE.—

“(A) CONSENT TO DISCLOSURE.—Except as provided in subparagraph (B), a satellite carrier shall not disclose

personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or satellite carrier.

“(B) EXCEPTIONS.—A satellite carrier may disclose such information if the disclosure is—

“(i) necessary to render, or conduct a legitimate business activity related to, a satellite service or other service provided by the satellite carrier to the subscriber;

“(ii) subject to paragraph (9), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

“(iii) a disclosure of the names and addresses of subscribers to any satellite service or other service, if—

“(I) the satellite carrier has provided the subscriber the opportunity to prohibit or limit such disclosure; and

“(II) the disclosure does not reveal, directly or indirectly, the—

“(aa) extent of any viewing or other use by the subscriber of a satellite service or other service provided by the satellite carrier; or

“(bb) the nature of any transaction made by the subscriber over any facilities used by the satellite carrier; or

“(iv) to a government entity as authorized under chapter 119, 121, or 206 of title 18, United States Code, except that such disclosure shall not include records revealing satellite subscriber selection of video programming from a satellite carrier.

“(5) ACCESS BY SUBSCRIBER.—A satellite subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a satellite carrier. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such satellite carrier. A satellite subscriber shall be provided reasonable opportunity to correct any error in such information.

“(6) DESTRUCTION OF INFORMATION.—A satellite carrier shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under paragraph (5) or pursuant to a court order.

“(7) PENALTIES.—Any person aggrieved by any act of a satellite carrier in violation of this section may bring a civil action in a United States district court. The court may award—

“(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

“(B) punitive damages; and

“(C) reasonable attorneys’ fees and other litigation costs reasonably incurred.

The remedy provided by this subsection shall be in addition to any other lawful remedy available to a satellite subscriber.

“(8) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to prohibit any State from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

“(9) COURT ORDERS.—Except as provided in paragraph (4)(B)(iv), a governmental entity may obtain personally identifiable information concerning a satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

“(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

“(B) the subject of the information is afforded the opportunity to appear and contest such entity’s claim.”.

47 USC 338 note.

(b) EFFECTIVE DATE.—Section 338(i) of the Communications Act of 1934 (47 U.S.C. 338(i)) as amended by subsection (a) of this section shall be effective 60 days after the date of enactment of this Act.

SEC. 207. RECIPROCAL BARGAINING OBLIGATIONS.

(a) AMENDMENTS.—Section 325(b)(3)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(3)(C)) is amended—

(1) by striking “Within 45 days” and all that follows through “1999, the” and inserting “The”;

(2) by striking the second sentence;

(3) by striking “and” at the end of clause (i);

(4) in clause (ii)—

(A) by striking “January 1, 2006” and inserting “January 1, 2010”; and

(B) by striking the period at the end and inserting “; and”; and

(5) by adding at the end the following new clause:

“(iii) until January 1, 2010, prohibit a multi-channel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations.”.

Regulations.

47 USC 325 note.

(b) DEADLINE.—The Federal Communications Commission shall prescribe regulations to implement the amendment made by subsection (a)(5) within 180 days after the date of enactment of this Act.

SEC. 208. STUDY OF IMPACT ON CABLE TELEVISION SERVICE.

Deadline.

(a) STUDY REQUIRED.—No later than 9 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry regarding the impact on competition in the multichannel video programming distribution market of the current

retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with direct broadcast satellite industry in the provision of digital broadcast television signals to consumers. Such report shall include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate.

(b) **REPORT REQUIRED.**—The Federal Communications Commission shall submit a report on the results of the inquiry required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 9 months after the date of the enactment of this Act.

SEC. 209. REDUCTION OF REQUIRED TESTS.

Section 339(c)(4) of the Communications Act of 1934 (47 U.S.C. 339(c)(4)) is amended by inserting after subparagraph (C) the following new subparagraphs:

“(D) **REDUCTION OF VERIFICATION BURDENS.**—Within 1 year after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Commission shall by rule exempt from the verification requirements of subparagraph (A) any request for a test made by a subscriber to a satellite carrier to whom the retransmission of the signals of local broadcast stations is available under section 338 from such carrier.

“(E) **EXCEPTION.**—A satellite carrier may refuse to engage in the testing process. If the carrier does so refuse, a subscriber in a local market in which the satellite carrier does not offer the signals of local broadcast stations under section 338 may, at his or her own expense, authorize a signal intensity test to be performed pursuant to the procedures specified by the Commission in section 73.686(d) of title 47, Code of Federal Regulations, by a tester who is approved by the satellite carrier and by each affected network station, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may not be so disapproved for a test after the tester has commenced such test. The tester shall give 5 business days advance written notice to the satellite carrier and to the affected network station or stations. A signal intensity test conducted in accordance with this subparagraph shall be determinative of the signal strength received at that household for purposes of determining whether the household is capable of receiving a Grade B intensity signal.”.

Notice.

SEC. 210. SATELLITE CARRIAGE OF TELEVISION STATIONS IN NON-CONTIGUOUS STATES.

Section 338(a) of the Communications Act of 1934 (47 U.S.C. 338(a)) is amended by adding at the end the following:

“(4) **CARRIAGE OF SIGNALS OF LOCAL STATIONS IN CERTAIN MARKETS.**—A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, retransmit the signals originating as analog signals of each television broadcast station

Deadlines.

Regulations.

located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after such date of enactment retransmit the signals originating as digital signals of each such station. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the State shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after the date of enactment of that Act, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section 325(b), which shall take into account the schedule on which local television stations are made available to viewers in such State.”.

SEC. 211. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN SUBSCRIBERS.

Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by inserting after section 339 the following:

47 USC 341.

“SEC. 341. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN SUBSCRIBERS.

“(a)(1) IN GENERAL.—A cable operator or satellite carrier may elect to retransmit, to subscribers in an eligible county.—

“(A) any television broadcast stations that are located in the State in which the county is located and that any cable operator or satellite carrier was retransmitting to subscribers in the county on January 1, 2004; or

“(B) up to 2 television broadcast stations located in the State in which the county is located, if the number of television broadcast stations that the cable operator or satellite carrier is authorized to carry under paragraph (1) is less than 3.

“(2) DEEMED SIGNIFICANTLY VIEWED.—A station described in subsection (a) is deemed to be significantly viewed in the eligible county within the meaning of section 76.54 of the Commission's regulations (47 CFR 76.54).

“(3) DEFINITION OF ELIGIBLE COUNTY.—For purposes of this section, the term ‘eligible county’ means any 1 of 4 counties that—

“(A) are all in a single State;

“(B) on January 1, 2004, were each in designated market areas in which the majority of counties were located in another State or States; and

“(C) as a group had a combined total of 41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003–2004.

“(4) LIMITATION.—Carriage of a station under this section shall be at the option of the cable operator or satellite carrier.

“(b) CERTAIN MARKETS .—Notwithstanding any other provision of law, a satellite carrier may not carry the signal of a television station into an adjacent local market that is comprised of only a portion of a county, other than to unserved households located in that county.”.

SEC. 212. DIGITAL TRANSITION SAVINGS PROVISION.

47 USC 325 note.

Nothing in the dates by which requirements or other provisions are effective under this Act or the amendments made by this Act shall be construed—

- (1) to impair the authority of the Federal Communications Commission to take any action with respect to the transition by television broadcasters to the digital television service; or
- (2) to require the Commission to take any such action.

SEC. 213. AUTHORIZING BROADCAST SERVICE IN UNSERVED AREAS OF ALASKA.

Title III of the Communications Act of 1934 is amended as follows:

- (1) In section 307(c)(3)—

47 USC 307.

- (A) by striking “any hearing” and inserting “any administrative or judicial hearing”; and

- (B) by inserting “or section 402” after “section 405”.

- (2) In section 307, by adding at the end the following new subsection:

“(f) Notwithstanding any other provision of law, (1) any holder of a broadcast license may broadcast to an area of Alaska that otherwise does not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery even if another holder of a broadcast license begins broadcasting to such area, (2) any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such area, and shall not be fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary.”.

- (3) In section 312(g), by inserting before the period at the end the following: “, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated”.

47 USC 312.

TITLE X—SNAKE RIVER WATER RIGHTS ACT OF 2004

Snake River
Water Rights Act
of 2004.
Idaho.
Native
Americans.

SECTION 1. SHORT TITLE.

This title may be cited as the “Snake River Water Rights Act of 2004”.

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to resolve some of the largest outstanding issues with respect to the Snake River Basin Adjudication in Idaho in such a manner as to provide important benefits to the United States, the State of Idaho, the Nez Perce Tribe, the allottees, and citizens of the State;

(2) to achieve a fair, equitable, and final settlement of all claims of the Nez Perce Tribe, its members, and allottees and the United States on behalf of the Tribe, its members, and allottees to the water of the Snake River Basin within Idaho;

(3) to authorize, ratify, and confirm the Agreement among the parties submitted to the Snake River Basin Adjudication Court and provide all parties with the benefits of the Agreement;

(4) to direct—

(A) the Secretary, acting through the Bureau of Reclamation, the Bureau of Land Management, the Bureau of Indian Affairs, and other agencies; and

(B) the heads of other Federal agencies authorized to execute and perform actions necessary to carry out the Agreement;

to perform all of their obligations under the Agreement and this Act; and

(5) to authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under the Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term “Agreement” means the document titled “Mediator’s Term Sheet” dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03–10022 and SRBA Consolidated Subcase 67–13701, with all appendices to the document.

(2) ALLOTTEE.—The term “allottee” means a person that holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Nez Perce Reservation; and

(B) held in trust by the United States.

(3) CONSUMPTIVE USE RESERVED WATER RIGHT.—The term “consumptive use reserved water right” means the Federal reserved water right of 50,000 acre-feet per year, as described in the Agreement, to be decreed to the United States in trust for the Tribe and the allottees, with a priority date of 1855.

(4) PARTIES.—The term “parties” means the United States, the State, the Tribe, and any other entity or person that submitted, or joined in the submission of, the Agreement to the SRBA Court on April 20, 2004.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(6) SNAKE RIVER BASIN.—The term “Snake River Basin” means the geographic area in the State described in paragraph 3 of the Commencement Order issued by the SRBA Court on November 19, 1987.

(7) SPRINGS OR FOUNTAINS WATER RIGHT.—The term “springs or fountains water right” means the Tribe’s treaty right of access to and use of water from springs or fountains on Federal public land within the area ceded by the Tribe in the Treaty of June 9, 1863 (14 Stat. 647), as recognized under the Agreement.

(8) **SRBA.**—The term “SRBA” means the Snake River Basin Adjudication litigation before the SRBA Court styled as *In re Snake River Basin Adjudication*, Case No. 39576.

(9) **SRBA COURT.**—The term “SRBA Court” means the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls in *re Snake River Basin Adjudication*.

(10) **STATE.**—The term “State” means the State of Idaho.

(11) **TRIBE.**—The term “Tribe” means the Nez Perce Tribe.

SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF AGREEMENT.

(a) **IN GENERAL.**—Except to the extent that the Agreement conflicts with the express provisions of this Act, the Agreement is approved, ratified, and confirmed.

(b) **EXECUTION AND PERFORMANCE.**—The Secretary and the other heads of Federal agencies with obligations under the Agreement shall execute and perform all actions, consistent with this Act, that are necessary to carry out the Agreement.

SEC. 5. BUREAU OF RECLAMATION WATER USE.

(a) **IN GENERAL.**—As part of the overall implementation of the Agreement, the Secretary shall take such actions consistent with the Agreement, this Act, and water law of the State as are necessary to carry out the Snake River Flow Component of the Agreement.

(b) **MITIGATION FOR CHANGE OF USE OF WATER.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary \$2,000,000 for a 1-time payment to local governments to mitigate for the change of use of water acquired by the Bureau of Reclamation under section III.C.6 of the Agreement.

(2) **DISTRIBUTION OF FUNDS.**—Funds made available under paragraph (1) shall be distributed by the Secretary to local governments in accordance with a plan provided to the Secretary by the State.

(3) **PAYMENTS.**—Payments by the Secretary shall be made on a pro rata basis as water rights are acquired by the Bureau of Reclamation.

SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.

(a) **TRANSFER.**—

(1) **IN GENERAL.**—The Secretary shall transfer land selected by the Tribe under paragraph (2) to the Bureau of Indian Affairs to be held in trust for the Tribe.

(2) **LAND SELECTION.**—The land transferred shall be selected by the Tribe from a list of parcels of land managed by the Bureau of Land Management that are available for transfer, as depicted on the map entitled “North Idaho BLM Land Eligible for Selection by the Nez Perce Tribe” dated May 2004, on file with the Director of the Bureau of Land Management, not including any parcel designated on the map as being on the Clearwater River or Lolo Creek.

(3) **MAXIMUM VALUE.**—The land selected by the Tribe for transfer shall be limited to a maximum value in total of not more than \$7,000,000, as determined by an independent appraisal of fair market value prepared in accordance with the Uniform Standards of Professional Appraisal Practice and

the Uniform Appraisal Standards for Federal Land Acquisitions.

(b) EXISTING RIGHTS AND USES.—

(1) IN GENERAL.—On any land selected by the Tribe under subsection (a)(2), any use in existence on the date of transfer under subsection (a) under a lease or permit with the Bureau of Land Management, including grazing, shall remain in effect until the date of expiration of the lease or permit, unless the holder of the lease or permit requests an earlier termination of the lease or permit, in which case the Secretary shall grant the request.

(2) AVAILABILITY OF AMOUNTS.—Amounts that accrue to the United States under a lease or permit described in paragraph (1) from sales, bonuses, royalties, and rentals relating to any land transferred to the Tribe under this section shall be made available to the Tribe by the Secretary in the same manner as amounts received from other land held by the Secretary in trust for the Tribe.

(c) DATE OF TRANSFER.—No land shall be transferred to the Bureau of Indian Affairs to be held in trust for the Tribe under this section until the waivers and releases under section 10(a) take effect.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary \$200,000 for 1-time payments to local governments to mitigate for the transfer of land by the Bureau of Land Management to the Tribe under section I.F of the Agreement.

(2) PAYMENTS.—Payments under paragraph (1) shall be made on a pro rata basis as parcels of land are acquired by the Tribe.

SEC. 7. WATER RIGHTS.

(a) HOLDING IN TRUST.—

(1) IN GENERAL.—The consumptive use reserved water right shall—

(A) be held in trust by the United States for the benefit of the Tribe and allottees as set forth in this section; and

(B) be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

(2) SPRINGS OR FOUNTAINS WATER RIGHT.—The springs or fountains water right of the Tribe shall be held in trust by the United States for the benefit of the Tribe.

(3) ALLOTTEES.—Allottees shall be entitled to a just and equitable allocation of the consumptive use reserved water right for irrigation purposes.

(b) WATER CODE.—

(1) ENACTMENT OF WATER CODE.—Not later than 3 years after the date of enactment of this Act, the Tribe shall enact a water code, subject to any applicable provision of law, that—

(A) manages, regulates, and controls the consumptive use reserved water right so as to allocate water for irrigation, domestic, commercial, municipal, industrial, cultural, or other uses; and

(B) includes, subject to approval of the Secretary—

Deadline.

- (i) a due process system for the consideration and determination of any request by an allottee, or any successor in interest to an allottee, for an allocation of such water for irrigation purposes on allotted land, including a process for an appeal and adjudication of denied or disputed distribution of water and for resolution of contested administrative decisions; and
- (ii) a process to protect the interests of allottees when entering into any lease under subsection (e).

(2) SECRETARIAL APPROVAL.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to approval by the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

(3) INTERIM ADMINISTRATION.—The Secretary shall administer the consumptive use reserved water right until such date as the water code described in paragraph (2) has been enacted by the Tribe and the Secretary has approved the relevant portions of the water code.

(c) EXHAUSTION OF REMEDIES.—Before asserting any claim against the United States under section 7 of the Act of February 8, 1887 (25 U.S.C. 381) or other applicable law, a claimant shall exhaust remedies available under the Tribe's water code and Tribal law.

(d) PETITION TO THE SECRETARY.—Following exhaustion of remedies in accordance with subsection (c), a claimant may petition the Secretary for relief.

(e) SATISFACTION OF CLAIMS.—

(1) IN GENERAL.—The water rights and other benefits granted or confirmed by the Agreement and this Act shall be in full satisfaction of all claims for water rights and injuries to water rights of the allottees.

(2) SATISFACTION OF ENTITLEMENTS.—Any entitlement to water of any allottee under Federal law shall be satisfied out of the consumptive use reserved water right.

(3) COMPLETE SUBSTITUTION.—The water rights, resources, and other benefits provided by this Act are a complete substitution for any rights that may have been held by, or any claims that may have been asserted by, allottees within the exterior boundaries of the Reservation before the date of enactment of this Act.

(f) ABANDONMENT, FORFEITURE, OR NONUSE.—The consumptive use reserved water right and the springs or fountains water right shall not be subject to loss by abandonment, forfeiture, or nonuse.

(g) LEASE OF WATER.—

(1) IN GENERAL.—Subject to the water code, the Tribe, without further approval of the Secretary, may lease water to which the Tribe is entitled under the consumptive use reserved water right through any State water bank in the same manner and subject to the same rules and requirements that govern any other lessor of water to the water bank.

(2) FUNDS.—Any funds accruing to the Tribe from any lease under paragraph (1) shall be the property of the Tribe, and the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Tribe under any such lease.

SEC. 8. TRIBAL FUNDS.

(a) **DEFINITION OF FUND.**—In this section, the term “Fund” means—

(1) the Nez Perce Tribe Water and Fisheries Fund established under subsection (b)(1); and

(2) the Nez Perce Tribe Domestic Water Supply Fund established under subsection (b)(2).

(b) **ESTABLISHMENT.**—There are established in the Treasury of the United States—

(1) a fund to be known as the “Nez Perce Tribe Water and Fisheries Fund”, to be used to pay or reimburse costs incurred by the Tribe in acquiring land and water rights, restoring or improving fish habitat, or for fish production, agricultural development, cultural preservation, water resource development, or fisheries-related projects; and

(2) a fund to be known as the “Nez Perce Domestic Water Supply Fund”, to be used to pay the costs for design and construction of water supply and sewer systems for tribal communities, including a water quality testing laboratory.

(c) **MANAGEMENT OF THE FUNDS.**—The Secretary shall manage the Funds, make investments from the Funds, and make amounts available from the Funds for distribution to the Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), this Act, and the Agreement.

(d) **INVESTMENT OF THE FUNDS.**—The Secretary shall invest amounts in the Funds in accordance with—

(1) the Act of April 1, 1880 (25 U.S.C. 161; 21 Stat. 70, chapter 41);

(2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a; 52 Stat. 1037, chapter 648); and

(3) subsection (c).

(e) **AVAILABILITY OF AMOUNTS FROM THE FUNDS.**—Amounts made available under subsection (h) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

(f) **EXPENDITURES AND WITHDRAWAL.**—

(1) **TRIBAL MANAGEMENT PLAN.**—

(A) **IN GENERAL.**—The Tribe may withdraw all or part of amounts in the Funds on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(B) **REQUIREMENTS.**—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that the Tribe spend any amounts withdrawn from the Funds in accordance with the purposes described in subsection (b).

(C) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Funds under the plan are used in accordance with this Act and the Agreement.

(D) **LIABILITY.**—If the Tribe exercises the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts.

(2) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts made available under subsection (h) that the Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribe remaining in the Funds will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Agreement.

(D) ANNUAL REPORT.—For each Fund, the Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(g) NO PER CAPITA PAYMENTS.—No part of the principal of the Funds, or of the income accruing in the Funds, shall be distributed to any member of the Tribe on a per capita basis.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to the Nez Perce Tribe Water and Fisheries Fund—

- (A) for fiscal year 2007, \$7,830,000;
- (B) for fiscal year 2008, \$4,730,000;
- (C) for fiscal year 2009, \$7,380,000;
- (D) for fiscal year 2010, \$10,080,000;
- (E) for fiscal year 2011, \$11,630,000;
- (F) for fiscal year 2012, \$9,450,000; and
- (G) for fiscal year 2013, \$9,000,000; and

(2) to the Nez Perce Tribe Domestic Water Supply Fund—

- (A) for fiscal year 2007, \$5,100,000;
- (B) for fiscal year 2008, \$8,200,000;
- (C) for fiscal year 2009, \$5,550,000;
- (D) for fiscal year 2010, \$2,850,000; and
- (E) for fiscal year 2011, \$1,300,000.

SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT FUND.

(a) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the “Salmon and Clearwater River Basins Habitat Fund” (referred to in this section as the “Fund”), to be administered by the Secretary.

(2) ACCOUNTS.—There is established within the Fund—

(A) an account to be known as the “Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account”, which shall be administered by the Secretary for use by the Tribe subject to the same provisions for management, investment, and expenditure as the funds established by section 8; and

(B) an account to be known as the “Idaho Salmon and Clearwater River Basins Habitat Account”, which shall be administered by the Secretary and provided to the State as provided in the Agreement and this Act.

(b) USE OF THE FUND.—

(1) IN GENERAL.—The Fund shall be used to supplement amounts made available under any other law for habitat protection and restoration in the Salmon and Clearwater River Basins

in Idaho, including projects and programs intended to protect and restore listed fish and their habitat in those basins, as specified in the Agreement and this Act.

(2) **RELEASE OF FUNDS.**—The Secretary shall release funds from the Idaho Salmon and Clearwater River Basins Habitat Account in accordance with section 6(d)(2) of the Endangered Species Act (16 U.S.C. 1535(d)(2)).

(3) **NO ALLOCATION REQUIREMENT.**—The use of the Fund shall not be subject to the allocation procedures under section 6(d)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1535(d)(1)).

(c) **AVAILABILITY OF AMOUNTS IN THE FUND.**—Amounts made available under subsection (d) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated—

(1) to the Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account, \$2,533,334 for each of fiscal years 2007 through 2011; and

(2) to the Idaho Salmon and Clearwater River Basins Habitat Account, \$5,066,666 for each of fiscal years 2007 through 2011.

SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.

(a) **WAIVER AND RELEASE OF CLAIMS IN GENERAL.**—

(1) **CLAIMS TO WATER RIGHTS; CLAIMS FOR INJURIES TO WATER RIGHTS OR TREATY RIGHTS.**—Except as otherwise provided in this Act, the United States on behalf of the Tribe and the allottees, and the Tribe, waive and release—

(A) all claims to water rights within the Snake River Basin (as defined in section 3);

(B) all claims for injuries to such water rights; and

(C) all claims for injuries to the treaty rights of the Tribe to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available that accrued at any time up to and including the effective date of the settlement, and any continuation thereafter of any such claims, against the State, any agency or political subdivision of the State, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation.

(2) **CLAIMS BASED ON REDUCED WATER QUALITY OR REDUCTIONS IN WATER QUANTITY.**—The United States on behalf of the Tribe and the allottees, and the Tribe, waive and release any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin against any party to the Agreement.

(3) **NO FUTURE ASSERTION OF CLAIMS.**—No water right claim that the Tribe or the allottees have asserted or may in the future assert outside the Snake River Basin shall require water to be supplied from the Snake River Basin to satisfy the claim.

(4) **EFFECT OF WAIVERS AND RELEASES.**—The waivers and releases by the United States and the Tribe under this subsection—

(A) shall be permanent and enforceable; and

(B) shall survive any subsequent termination of any component of the settlement described in the Agreement or this Act.

(5) EFFECTIVE DATE.—The waivers and releases under this subsection shall take effect on the date on which the Secretary causes to be published in the Federal Register a statement of findings that the actions set forth in section IV.L of the Agreement—

Federal Register,
publication.

(A) have been completed, including issuance of a judgment and decree by the SRBA court from which no further appeal may be taken; and

(B) have been determined by the United States on behalf of the Tribe and the allottees, the Tribe, and the State of Idaho to be consistent in all material aspects with the Agreement.

(b) WAIVER AND RELEASE OF CLAIMS AGAINST THE UNITED STATES.—

(1) IN GENERAL.—In consideration of performance by the United States of all actions required by the Agreement and this Act, including the appropriation of all funds authorized under sections 8(h) and 9(d)(1), the Tribe shall execute a waiver and release of the United States from—

(A) all claims for water rights within the Snake River Basin, injuries to such water rights, or breach of trust claims for failure to protect, acquire, or develop such water rights that accrued at any time up to and including the effective date determined under paragraph (2);

(B) all claims for injuries to the Tribe's treaty fishing rights, to the extent that such injuries result or resulted from reductions in the quantity of water available in the Snake River Basin;

(C) all claims of breach of trust for failure to protect Nez Perce springs or fountains treaty rights reserved in article VIII of the Treaty of June 9, 1863 (14 Stat. 651); and

(D) all claims of breach of trust arising out of the negotiation of or resulting from the adoption of the Agreement.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The waiver and release contained in this subsection shall take effect on the date on which the amounts authorized under sections 8(h) and 9(d)(1) are appropriated.

(B) PERIODS OF LIMITATION; EQUITABLE CLAIMS.—

(i) IN GENERAL.—All periods of limitation and time-based equitable defenses applicable to the claims set forth in paragraph (1) are tolled for the period between the date of enactment of this Act until the earlier of—

(I) the date on which the amounts authorized under sections 8(h) and 9(d)(1) are appropriated; or

(II) October 1, 2017.

(ii) EFFECT OF SUBPARAGRAPH.—This subparagraph neither revives any claim nor tolls any period of limitation or time-based equitable defense that may have expired before the date of enactment of this Act.

(3) **DEFENSE.**—The making of the amounts of appropriations authorized under sections 8(h) and 9(d)(1) shall constitute a complete defense to any claim pending in any court of the United States on the date on which the appropriations are made.

(c) **RETENTION OF RIGHTS.**—

(1) **IN GENERAL.**—The Tribe shall retain all rights not specifically waived or released in the Agreement or this Act.

(2) **DWORSHAK PROJECT.**—Nothing in the Agreement or this Act constitutes a waiver by the Tribe of any claim against the United States resulting from the construction and operation of the Dworshak Project (Project PWI 05090), other than those specified in subparagraphs (A) and (B) of subsection (b)(1).

(3) **FUTURE ACQUISITION OF WATER RIGHTS.**—Nothing in the Agreement or this Act precludes the Tribe or allottees, or the United States as trustee for the Tribe or allottees, from purchasing or otherwise acquiring water rights in the future to the same extent as any other entity in the State.

SEC. 11. MISCELLANEOUS.

(a) **GENERAL DISCLAIMER.**—The parties expressly reserve all rights not specifically granted, recognized, or relinquished by the settlement described in the Agreement or this Act.

(b) **DISCLAIMER REGARDING OTHER AGREEMENTS AND PRECEDENT.**—

(1) **IN GENERAL.**—Subject to section 9(b)(3), nothing in this Act amends, supersedes, or preempts any State law, Federal law, Tribal law, or interstate compact that pertains to the Snake River Basin.

(2) **NO ESTABLISHMENT OF STANDARD.**—Nothing in this Act—

(A) establishes any standard for the quantification of Federal reserved water rights or any other Indian water claims of any other Indian tribes in any other judicial or administrative proceeding; or

(B) limits the rights of the parties to litigate any issue not resolved by the Agreement or this Act.

(3) **NO ADMISSION AGAINST INTEREST.**—Nothing in this Act constitutes an admission against interest against any party in any legal proceeding.

(c) **TREATY RIGHTS.**—Nothing in the Agreement or this Act impairs the treaty fishing, hunting, pasturing, or gathering rights of the Tribe except to the extent expressly provided in the Agreement or this Act.

(d) **OTHER CLAIMS.**—Nothing in the Agreement or this Act quantifies or otherwise affects the water rights, claims, or entitlements to water, or any other treaty right, of any Indian tribe, band, or community other than the Tribe.

(e) **RECREATION ON DWORSHAK RESERVOIR.**—

(1) **IN GENERAL.**—In implementing the provisions of the Agreement and this Act relating to the use of water stored in Dworshak Reservoir for flow augmentation purposes, the heads of the Federal agencies involved in the operational Memorandum of Agreement referred to in the Agreement shall implement a flow augmentation plan beneficial to fish and consistent with the Agreement.

(2) CONTENTS OF PLAN.—The flow augmentation plan may include provisions beneficial to recreational uses of the reservoir through maintenance of the full level of the reservoir for prolonged periods during the summer months.

(f) JURISDICTION.—

(1) NO EFFECT ON SUBJECT MATTER JURISDICTION.—Nothing in the Agreement or this Act restricts, enlarges, or otherwise determines the subject matter jurisdiction of any Federal, State, or Tribal court.

(2) CONSENT TO JURISDICTION.—The United States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement.

(3) EFFECT OF SUBSECTION.—Nothing in this subsection confers jurisdiction on any State court to—

(A) enforce Federal environmental laws regarding the duties of the United States; or

(B) conduct judicial review of Federal agency action.

DIVISION K—SMALL BUSINESS

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the “Small Business Reauthorization and Manufacturing Assistance Act of 2004”.

(b) TABLE OF CONTENTS.—The table of contents for this division is as follows:

Small Business
Reauthorization
and
Manufacturing
Assistance Act of
2004.
15 USC 631 note.

TITLE I—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING

Sec. 1. Short title; table of contents.

Subtitle A—Small manufacturers assistance

- Sec. 101. Express loans.
- Sec. 102. Loan guarantee fees.
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- Sec. 141. Service Corps of Retired Executives.
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- Sec. 201. Amendment to definition of equity capital with respect to issuers of participating securities.
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- Sec. 203. Surety bond amendments.
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TITLE I—SMALL BUSINESS REAUTHORIZATION AND MANUFACTURING

Subtitle A—Small Manufacturers Assistance

SEC. 101. EXPRESS LOANS.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

“(31) EXPRESS LOANS.—

“(A) DEFINITIONS.—As used in this paragraph:

“(i) The term ‘express lender’ means any lender authorized by the Administration to participate in the Express Loan Program.

“(ii) The term ‘express loan’ means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

“(iii) The term ‘Express Loan Program’ means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guaranty rate of not more than 50 percent.

“(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

“(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the

Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

“(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is \$350,000.

“(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act. 15 USC 636 note.

SEC. 102. LOAN GUARANTEE FEES.

(a) ADDITIONAL GUARANTEE FEE LEVEL.—Section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)) is amended to read as follows:

“(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

“(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

“(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

“(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.

“(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than \$1,000,000.”.

(b) CLERICAL AMENDMENT.—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended by striking subparagraph (C).

(c) YEARLY FEE.—Section 7(a)(23) of the Small Business Act (15 U.S.C. 636(a)(23)) is amended—

(1) in the heading, by striking “ANNUAL” and inserting “YEARLY”;

(2) by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration’s annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term ‘cost’

has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).”;

(3) in subparagraph (B), by striking “annual” and inserting “yearly”; and

(4) by adding at the end the following:

“(C) LOWERING OF BORROWER FEES.—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

“(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

“(ii) fees paid by small business borrowers shall not be increased above the levels in effect on the date of enactment of this subparagraph.”.

SEC. 103. INCREASE IN GUARANTEE AMOUNT AND INSTITUTION OF ASSOCIATED FEE.

(a) INCREASE IN AMOUNT PERMITTED TO BE OUTSTANDING AND COMMITTED.—Section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)) is amended by striking “\$1,000,000” and inserting “\$1,500,000”.

15 USC 636 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

SEC. 104. DEBENTURE SIZE.

Section 502(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended to read as follows:

“(2) MAXIMUM AMOUNT.—

“(A) IN GENERAL.—Loans made by the Administration under this section shall be limited to—

“(i) \$1,500,000 for each small business concern if the loan proceeds will not be directed toward a goal or project described in subparagraph (B) or (C);

“(ii) \$2,000,000 for each small business concern if the loan proceeds will be directed toward 1 or more of the public policy goals described under section 501(d)(3); and

“(iii) \$4,000,000 for each project of a small manufacturer.

“(B) DEFINITION.—As used in this paragraph, the term ‘small manufacturer’ means a small business concern—

“(i) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

“(ii) all of the production facilities of which are located in the United States.”.

SEC. 105. JOB REQUIREMENTS.

Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end the following:

“(e)(1) A project meets the objective set forth in subsection (d)(1) if the project creates or retains one job for every \$50,000 guaranteed by the Administration, except that the amount is \$100,000 in the case of a project of a small manufacturer.

“(2) Paragraph (1) does not apply to a project for which eligibility is based on the objectives set forth in paragraph (2) or (3) of subsection (d), if the development company’s portfolio of outstanding debentures creates or retains one job for every \$50,000 guaranteed by the Administration.

“(3) For projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas, as determined by the Secretary of Labor, and for other areas designated by the Administrator, the development company’s portfolio may average not more than \$75,000 per job created or retained.

“(4) Loans for projects of small manufacturers shall be excluded from calculations under paragraph (2) or (3).

“(5) Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of this subsection (other than paragraph (4)). With respect to any waiver the Administrator is prohibited from adopting a dollar amount that is lower than the amounts set forth in paragraphs (1), (2), and (3).

“(6) As used in this subsection, the term ‘small manufacturer’ means a small business concern—

“(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

“(B) all of the production facilities of which are located in the United States.”.

SEC. 106. REPORT REGARDING NATIONAL DATABASE OF SMALL MANUFACTURERS.

(a) **STUDY AND REPORT.**—The Administrator, in consultation with the Association of Small Business Development Centers authorized by section 21(k) of the Small Business Act (15 U.S.C. 648(k)), shall—

(1) study the feasibility of creating a national database of small manufacturers that institutions of higher education could access for purposes of meeting procurement needs; and

(2) not later than 1 year after the date of enactment of this Act, submit a report to the Congress regarding the findings and conclusions of such study.

(b) **COST ESTIMATE.**—The report referred to in subsection (a)(2) shall include an estimate of the cost of creating and maintaining the database described in subsection (a)(1).

(c) **DEFINITION.**—As used in this section, the term “small manufacturer” means a small business concern—

(1) the primary business of which is classified in sector 31, 32, or 33 of the North American Industrial Classification System; and

(2) all of the production facilities of which are located in the United States.

SEC. 107. INTERNATIONAL TRADE.

(a) **IN GENERAL.**—Section 7(a)(16) of the Small Business Act (15 U.S.C. 636(a)(16)) is amended to read as follows:

“(16) **INTERNATIONAL TRADE.**—

“(A) **IN GENERAL.**—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its

competitive position, the Administrator may make such loan to assist such concern in—

“(i) the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or

“(ii) the refinancing of existing indebtedness that is not structured with reasonable terms and conditions.

“(B) SECURITY.—Each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

“(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

“(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

“(i) is confronting increased competition with foreign firms in the relevant market; and

“(ii) is injured by such competition.

“(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974.”.

(b) LIMITATION INCREASE.—Section 7(a)(3)(B) of the Small Business Act (15 U.S.C. 636(a)(3)(B)) is amended—

(1) by striking “\$1,250,000” and inserting “\$1,750,000”; and

(2) by striking “\$750,000” and inserting “\$1,250,000”.

15 USC 636 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

Subtitle B—Authorizations

CHAPTER 1—PROGRAM AUTHORIZATION LEVELS AND ADDITIONAL REAUTHORIZATIONS

SEC. 121. PROGRAM AUTHORIZATION LEVELS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) in subsection (a)(1), by striking “certification” each place it appears in subparagraphs (D) and (E) and inserting “accreditation”; and

(2) by striking subsections (c) through (i) and inserting the following:

“(c) DISASTER MITIGATION PILOT PROGRAM.—The following program levels are authorized for loans under section 7(b)(1)(C):

“(1) \$15,000,000 for fiscal year 2005.

“(2) \$15,000,000 for fiscal year 2006.

“(d) FISCAL YEAR 2005.—

“(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2005:

“(A) For the programs authorized by this Act, the Administration is authorized to make—

“(i) \$75,000,000 in technical assistance grants, as provided in section 7(m); and

“(ii) \$105,000,000 in direct loans, as provided in 7(m).

“(B) For the programs authorized by this Act, the Administration is authorized to make \$23,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

“(i) \$16,500,000,000 in general business loans, as provided in section 7(a);

“(ii) \$6,000,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958;

“(iii) \$500,000,000 in loans, as provided in section 7(a)(21); and

“(iv) \$50,000,000 in loans, as provided in section 7(m).

“(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

“(i) \$4,250,000,000 in purchases of participating securities; and

“(ii) \$3,250,000,000 in guarantees of debentures.

“(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

“(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of \$7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

“(2) ADDITIONAL AUTHORIZATIONS.—

“(A) There are authorized to be appropriated to the Administration for fiscal year 2005 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

“(B) Notwithstanding any other provision of this paragraph, for fiscal year 2005—

“(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

“(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal

department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than \$2,000,000.

“(e) FISCAL YEAR 2006.—

“(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2006:

“(A) For the programs authorized by this Act, the Administration is authorized to make—

“(i) \$80,000,000 in technical assistance grants, as provided in section 7(m); and

“(ii) \$110,000,000 in direct loans, as provided in 7(m).

“(B) For the programs authorized by this Act, the Administration is authorized to make \$25,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

“(i) \$17,000,000,000 in general business loans, as provided in section 7(a);

“(ii) \$7,500,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958;

“(iii) \$500,000,000 in loans, as provided in section 7(a)(21); and

“(iv) \$50,000,000 in loans, as provided in section 7(m).

“(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

“(i) \$4,500,000,000 in purchases of participating securities; and

“(ii) \$3,500,000,000 in guarantees of debentures.

“(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

“(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of \$7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

“(2) ADDITIONAL AUTHORIZATIONS.—

“(A) There are authorized to be appropriated to the Administration for fiscal year 2006 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

“(B) Notwithstanding any other provision of this paragraph, for fiscal year 2006—

Grants.
Contracts.

“(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

“(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than \$2,000,000.”.

SEC. 122. ADDITIONAL REAUTHORIZATIONS.

(a) **DRUG-FREE WORKPLACE PROGRAM ASSISTANCE.**—Section 21(c)(3)(T) of the Small Business Act (15 U.S.C. 648(c)(3)(T)) is amended by striking “October 1, 2003” and inserting “October 1, 2006”.

(b) **SMALL BUSINESS DEVELOPMENT CENTERS.**—Section 21(a)(4)(C) of the Small Business Act (15 U.S.C. 648(a)(4)(C)) is amended—

(1) by striking clause (vii) and inserting the following:
“(vii) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this subparagraph—

“(I) \$130,000,000 for fiscal year 2005; and

“(II) \$135,000,000 for fiscal year 2006.”;

(2) by redesignating clause (viii) as clause (ix); and

(3) by inserting after clause (vii) the following:

“(viii) **LIMITATION.**—From the funds appropriated pursuant to clause (vii), the Administration shall reserve not less than \$1,000,000 in each fiscal year to develop portable assistance for startup and sustainability non-matching grant programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility down sizing or closing, which has resulted in the loss of jobs or small business instability. A non-matching grant under this clause shall not exceed \$100,000, and shall be used for small business development center personnel expenses and related small business programs and services.”.

CHAPTER 2—PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM AUTHORIZATIONS AND SUNDRY AMENDMENTS

SEC. 123. PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM AUTHORIZATION PROVISIONS.

(a) **IN GENERAL.**—Section 27(g)(1) of the Small Business Act (15 U.S.C. 654(g)(1)) is amended by striking “, \$5,000,000” in the first sentence and all that follows through “subsection” in the second sentence and inserting the following: “(other than subsection (b)(2)), \$5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph”.

(b) **LIMITATION ON AUTHORIZATION FOR SMALL BUSINESS DEVELOPMENT CENTERS.**—Section 27(g)(2) of the Small Business Act (15 U.S.C. 654(g)) is amended by striking “this subsection, not more than the greater of 10 percent or \$1,000,000” and inserting “paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or \$500,000”.

(c) **ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.**—Section 27(g) of the Small Business Act (15 U.S.C. 654(g)) is amended by adding at the end the following:

“(3) **ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.**—There are authorized to be appropriated to carry out subsection (b)(2), \$1,500,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.”.

(d) **LIMITATION ON ADMINISTRATIVE COSTS.**—Section 27(g) of the Small Business Act (15 U.S.C. 654(g)), as amended by subsection (c), is further amended by adding at the end the following:

“(4) **LIMITATION ON ADMINISTRATIVE COSTS.**—Not more than 5 percent of the total amount made available under this subsection for any fiscal year shall be used for administrative costs (determined without regard to the administrative costs of eligible intermediaries).”.

SEC. 124. GRANT PROVISIONS.

(a) **ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.**—Section 27(b) of the Small Business Act (15 U.S.C. 654) is amended—

(1) by striking “There is established” and inserting the following:

“(1) **IN GENERAL.**—There is established”; and

(2) by adding at the end the following new paragraph:

“(2) **ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.**—In addition to grants under paragraph (1), the Administrator may make grants to, or enter into cooperative agreements or contracts with, any grantee for the purpose of providing, in cooperation with one or more small business development centers, technical assistance to small business concerns seeking to establish a drug-free workplace program.”.

(b) **2-YEAR GRANTS.**—Section 27(b) of the Small Business Act (15 U.S.C. 654(b)), as amended by subsection (a), is further amended by adding at the end the following:

“(3) **2-YEAR GRANTS.**—Each grant made under this subsection shall be for a period of 2 years, subject to an annual performance review by the Administrator.”.

SEC. 125. DRUG-FREE COMMUNITIES COALITIONS AS ELIGIBLE INTERMEDIARIES.

Section 27(a)(2)(D) of the Small Business Act (15 U.S.C. 654(a)(2)) is amended to read as follows:

“(D)(i) the purpose of which is—

“(I) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

“(II) to provide other forms of assistance and services to small business concerns; or

“(ii) that is eligible to receive a grant under chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).”.

SEC. 126. PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTER-MEDIARIES.

Section 27(c) of the Small Business Act (15 U.S.C. 654(c)) is amended to read as follows:

“(c) PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTER-MEDIARIES.—

“(1) TECHNICAL ASSISTANCE AND INFORMATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and information to each eligible intermediary under subsection (b) regarding the most effective practices in establishing and carrying out drug-free workplace programs.

“(2) EVALUATION OF PROGRAM.—

“(A) DATA COLLECTION AND ANALYSIS.—Each eligible intermediary receiving a grant under this section shall establish a system to collect and analyze information regarding the effectiveness of drug-free workplace programs established with assistance provided under this section through the intermediary, including information regarding any increase or decrease among employees in drug use, awareness of the adverse consequences of drug use, and absenteeism, injury, and disciplinary problems related to drug use. Such system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe. Not more than 5 percent of the amount of each grant made under subsection (b) shall be used by the eligible intermediary to carry out this paragraph.

“(B) METHOD OF EVALUATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and guidance to each eligible intermediary receiving a grant under subsection (b) regarding the collection and analysis of information to evaluate the effectiveness of drug-free workplace programs established with assistance provided under this section, including the information referred to in paragraph (1). Such assistance shall include the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the concern’s employees and the identification of methods suitable for analyzing such information.”.

SEC. 127. REPORT TO CONGRESS.

Not later than March 31, 2006, the Administrator, in consultation with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall submit to Congress a report that—

- (1) analyzes the information collected under section 27(c) of the Small Business Act;
- (2) identifies trends in such information; and
- (3) evaluates the effectiveness of the drug-free workplace programs established with assistance under section 27 of the Small Business Act (15 U.S.C. 654).

Subtitle C—Administration Management

SEC. 131. LENDER EXAMINATION AND REVIEW FEES.

Section 5(b) of the Small Business Act (15 U.S.C. 634(b)) is amended—

- (1) in paragraph (12), by striking “and” at the end;
- (2) in paragraph (13), by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:

“(14) require any lender authorized to make loans under section 7 of this Act to pay examination and review fees, which shall be deposited in the account for salaries and expenses of the Administration, and shall be available for the costs of examinations, reviews, and other lender oversight activities.”.

SEC. 132. GIFTS AND CO-SPONSORSHIP OF EVENTS.

(a) IN GENERAL.—Section 4 of the Small Business Act (15 U.S.C. 633) is amended by adding at the end the following:

“(g) GIFTS.—

“(1) IN GENERAL.—The Administrator may, for purposes of this Act, the Small Business Investment Act of 1954, and title IV of the Women’s Business Ownership Act of 1988, solicit, accept, hold, administer, utilize, and dispose of gifts, devises, and bequests of cash, property (including tangible, intangible, real, and personal), subsistence, and services. Notwithstanding any other provision of law, the Administrator may utilize gifts, devises, or bequests for marketing and outreach activities, including the cost of promotional materials and wearing apparel.

“(2) AUDITS.—Any gift, devise, or bequest of cash accepted by the Administrator shall be held in a separate account and shall be subject to semi-annual audits by the Inspector General of the Administration who shall report his findings to the Congress.

“(3) CONFLICTS OF INTEREST.—No gift, devise, or bequest shall be solicited or accepted under the authority of this subsection if such solicitation or acceptance would, in the determination of the General Counsel, create a conflict of interest.

“(4) ACCEPTANCE OF SERVICES AND FACILITIES FOR DISASTER LOAN PROGRAM.—The Administrator may accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 7(b).

“(h) CO-SPONSORSHIP OF EVENTS.—

“(1) AUTHORIZATION.—The Administrator, after consultation with the General Counsel, may provide assistance for the benefit of small business through Administration-sponsored activities, through cosponsored activities with any eligible entity, or through such other activities that the Administrator determines to be appropriate, including recognition events.

“(2) ELIGIBLE ENTITY.—For purposes of this subsection, the term ‘eligible entity’ means any for-profit or not-for-profit entity, any Federal, State, or local government official, or any Federal, State, or local government entity.

“(3) PROHIBITION ON ENDORSEMENTS.—The Administrator shall ensure that the Administration and any eligible entities that cosponsor activities receive appropriate recognition for such cosponsorship, and that such recognition does not constitute or imply an endorsement by the Administration of any product or service of such entity.

“(4) AUTHORITY TO CHARGE FEES.—Notwithstanding any other provision of law, the Administrator may charge a participant in any activity sponsored or cosponsored by the Administration a minimal fee, and retain and use such fee to cover the costs of such activity.

“(5) LIMITED DELEGATION.—The Administrator may not delegate the authority described in this subsection except to the Deputy Administrator, an Associate Administrator, or an Assistant Administrator.

“(6) REPORT TO CONGRESS.—The Inspector General of the Administration shall report semi-annually to Congress on the Administrator’s use of authority under this subsection.

“(7) RULEMAKING.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall promulgate regulations to carry out the provisions of this subsection.”. Deadline.

(b) CONFORMING AMENDMENTS.—Section 8(b)(1)(A) of the Small Business Act (15 U.S.C. 637(b)(1)(A)) is amended—

(1) by striking clause (ii);

(2) by striking “(1)(A) to provide—” and all that follows through “business concerns—” and inserting the following:

“(1)(A) to provide technical, managerial, and informational aids to small business concerns—”;

(3) by redesignating subclauses (I) through (IV) as clauses (i) through (iv), respectively;

(4) by redesignating items (aa) and (bb) of clause (ii), as so redesignated by paragraph (3), as subclauses (I) and (II), respectively; and

(5) by striking “; and” at the end of clause (iv), as so redesignated by paragraph (3), and inserting a period.

(c) SUNSET PROVISION.—The amendments made by this section are repealed on October 1, 2006. 15 USC 633 and note, 637.

Subtitle D—Entrepreneurial Development Programs

CHAPTER 1—OFFICE OF ENTREPRENEURIAL DEVELOPMENT

SEC. 141. SERVICE CORPS OF RETIRED EXECUTIVES.

(a) IN GENERAL.—Section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B)) is amended—

(1) by striking “this Act; and to”, and inserting “this Act. To”;

(2) by striking “may maintain at its headquarters” and all that follows through “That any” and inserting “shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any”; and

(3) by striking the period at the end and inserting “and the management of the contributions received.”.

Deadline.
15 USC 637 note.

(b) REGULATIONS.—The Administration shall, not later than 180 days after the date of enactment of this Act, promulgate regulations to carry out the amendments made by subsection (a).

SEC. 142. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

(a) PRIVACY REQUIREMENTS.—Section 21(a) of the Small Business Act (15 U.S.C. 648(a)) is amended by adding at the end the following:

“(7) PRIVACY REQUIREMENTS.—

“(A) IN GENERAL.—A small business development center, consortium of small business development centers, or contractor or agent of a small business development center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

“(i) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

“(ii) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center, but a disclosure under this clause shall be limited to the information necessary for such audit.

“(B) ADMINISTRATOR USE OF INFORMATION.—This section shall not—

“(i) restrict Administrator access to program activity data; or

“(ii) prevent the Administrator from using client information to conduct client surveys.

“(C) REGULATIONS.—

“(i) IN GENERAL.—The Administrator shall issue regulations to establish standards—

“(I) for disclosures with respect to financial audits under subparagraph (A)(ii); and

“(II) for client surveys under subparagraph (B)(ii), including standards for oversight of such surveys and for dissemination and use of client information.

“(ii) MAXIMUM PRIVACY PROTECTION.—Regulations under this subparagraph, shall, to the extent practicable, provide for the maximum amount of privacy protection.

“(iii) INSPECTOR GENERAL.—Until the effective date of regulations under this subparagraph, any client survey and the use of such information shall be approved by the Inspector General who shall include such approval in his semi-annual report.”.

(b) TERM CHANGE.—Section 21(k) of the Small Business Act (15 U.S.C. 648(k)) is amended—

(1) by striking “CERTIFICATION” each place it appears and inserting “ACCREDITATION”; and

(2) by striking “certification” each place it appears and inserting “accreditation”.

CHAPTER 2—OFFICE OF VETERANS BUSINESS DEVELOPMENT

SEC. 143. ADVISORY COMMITTEE ON VETERANS BUSINESS AFFAIRS.

(a) **RETENTION OF DUTIES.**—Section 33(h) of the Small Business Act (15 U.S.C. 657c(h)) is amended by striking “October 1, 2004” and inserting “October 1, 2006”.

(b) **EXTENSION OF AUTHORITY.**—Section 203(h) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (15 U.S.C. 657b note) is amended by striking “September 30, 2004” and inserting “September 30, 2006”.

SEC. 144. OUTREACH GRANTS FOR VETERANS.

Section 8(b)(17) of the Small Business Act (15 U.S.C. 637(b)(17)) is amended by inserting before the period at the end the following: “, veterans, and members of a reserve component of the Armed Forces”.

SEC. 145. AUTHORIZATION OF APPROPRIATIONS.

Section 32 of the Small Business Act (15 U.S.C. 657b) is amended by adding at the end the following:

“(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section—

“(1) \$1,500,000 for fiscal year 2005; and

“(2) \$2,000,000 for fiscal year 2006.”.

SEC. 146. NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION.

Section 33(a) of the Small Business Act (15 U.S.C. 657c(a)) is amended by adding at the end the following: “Notwithstanding any other provision of law, the Corporation is a private entity and is not an agency, instrumentality, authority, entity, or establishment of the United States Government.”.

CHAPTER 3—MANUFACTURING AND ENTREPRENEURIAL DEVELOPMENT

SEC. 147. SMALL BUSINESS MANUFACTURING TASK FORCE.

15 USC 631c.

(a) **ESTABLISHMENT.**—The Administrator of the Small Business Administration (referred to in this subtitle as the “Administrator”) shall establish a Small Business Manufacturing Task Force (referred to in this section as the “Task Force”) to address the concerns of small manufacturers.

(b) **CHAIR.**—The Administrator shall assign a member of the Task Force to serve as chair of the Task Force.

(c) **DUTIES.**—The Task Force shall—

(1) evaluate and identify whether programs and services are sufficient to serve the needs of small manufacturers;

(2) actively promote the programs and services of the Small Business Administration that serve small manufacturers; and

(3) identify and study the unique conditions facing small manufacturers and develop and propose policy initiatives to support and assist small manufacturers.

(d) **MEETINGS.**—

(1) **FREQUENCY.**—The Task Force shall meet not less than 4 times per year, and more frequently if necessary to perform its duties.

(2) QUORUM.—A majority of the members of the Task Force shall constitute a quorum to approve recommendations or reports.

(e) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Task Force shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(2) DETAIL OF SBA EMPLOYEES.—Any employee of the Small Business Administration may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Task Force shall submit a report containing the findings and recommendations of the task force to—

- (1) the President;
- (2) the Committee on Small Business and Entrepreneurship of the Senate; and
- (3) the Committee on Small Business of the House of Representatives.

Subtitle E—HUBZone Program

SEC. 151. STREAMLINING AND REVISION OF HUBZONE ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—Section 3(p) of the Small Business Act (15 U.S.C. 632(p)) is amended—

(1) in paragraph (3)—

(A) by amending subparagraph (A) to read as follows:

“(A) a small business concern that is at least 51 percent owned and controlled by United States citizens;”

(B) in subparagraph (C), by striking “or” at the end;

(C) in subparagraph (D)(ii), by striking the period at the end and inserting “; or”; and

(D) by adding at the end the following:

“(E) a small business concern that is—

“(i) a small agricultural cooperative organized or incorporated in the United States;

“(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

“(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.”; and

(2) in paragraph (5)(A)(i)(I)(aa), by striking “or (D)” and inserting “(C), (D), or (E)”.

(b) CONFORMING AMENDMENT.—Section 3(j) of the Small Business Act (15 U.S.C. 632(j)) is amended by striking “of section 7(b)(2)”.

SEC. 152. EXPANSION OF QUALIFIED AREAS.

(a) TREATMENT OF CERTAIN AREAS AS HUBZONES.—

(1) BASE CLOSURE AREAS.—Section 3(p)(1) of the Small Business Act (15 U.S.C. 632(p)(1)) is amended—

- (A) in subparagraph (C), by striking “or” at the end;
- (B) in subparagraph (D), by striking the period at the end and inserting “; or”; and
- (C) by adding at the end the following:
“(E) base closure areas.”.

(2) HUBZONE STATUS TIME LINE AND COMMENCEMENT.— 15 USC 632 note.

A base closure area that has undergone final closure shall be treated as a HUBZone for purposes of the Small Business Act for a period of 5 years.

(3) DEFINITION.—Section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) is amended by adding at the end the following:

“(D) BASE CLOSURE AREA.—The term ‘base closure area’ means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

“(i) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

“(ii) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

“(iii) section 2687 of title 10, United States Code;

or

“(iv) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.”.

(b) QUALIFIED NONMETROPOLITAN COUNTY.—Section 3(p)(4)(B)(ii)(II) of the Small Business Act (15 U.S.C. 632(p)(4)(B)(ii)(II)) is amended to read as follows:

“(II) the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor.”.

(c) TEMPORARY QUALIFIED AREAS EXTENSION AND QUALIFIED AREAS STUDY.—

(1) REDESIGNATED AREA.—Section 3(p)(4)(C) of the Small Business Act (15 U.S.C. 632(p)(4)(C)) is amended by striking “only for the 3-year period following” and inserting the following: “only until the later of—

“(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

“(ii) 3 years after”.

(2) STUDY AND REPORT.—

(A) STUDY.—The Independent Office of Advocacy of the Small Business Administration shall conduct a study of the HUBZone program to measure the effectiveness of the definitions under section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) relating to HUBZone qualified

areas for the purposes of economic impact on small business development and jobs creation.

(B) REPORT.—Not later than May 1, 2008, the Independent Office of Advocacy shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

(i) the results of the study conducted under paragraph (1); and

(ii) any proposed changes to the existing definitions under section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) relating to HUBZone qualified areas.

SEC. 153. PRICE EVALUATION PREFERENCE.

Section 31(b)(3) of the Small Business Act (15 U.S.C. 657a(b)(3)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by adding at the end the following:

“(C) PROCUREMENT OF COMMODITIES FOR INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.”.

SEC. 154. HUBZONE AUTHORIZATIONS.

Section 31(d) of the Small Business Act (15 U.S.C. 657a(d)) is amended by striking “2001 through 2003” and inserting “2004 through 2006”.

15 USC 657g.

SEC. 155. PARTICIPATION IN FEDERALLY FUNDED PROJECTS.

Any small business concern that is certified, or otherwise meets the criteria for participation in any program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)), shall not be required by any State, or political subdivision thereof, to meet additional criteria or certification, unrelated to the capability to provide the requested products or services, in order to participate as a small disadvantaged business in any program or project that is funded, in whole or in part, by the Federal Government.

Subtitle F—Small Business Lending Companies

SEC. 161. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.

Section 23 of the Small Business Act (15 U.S.C. 650) is amended to read as follows:

“SEC. 23. SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.

“(a) IN GENERAL.—The Administrator is authorized—

“(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

“(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this Act; and

“(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 7(a) in accordance with the purposes of this Act.

“(b) CAPITAL DIRECTIVE.—

“(1) IN GENERAL.—If the Administrator determines that a small business lending company is being operated in an imprudent manner, the Administrator may, in addition to any other action authorized by law, issue a directive to such company to increase capital to such level as the Administrator determines will result in the safe and sound operation of such company.

“(2) DELEGATION.—The Administrator may not delegate the authority granted under paragraph (1) except to an Associate Deputy Administrator.

“(3) REGULATIONS.—The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital pursuant to paragraph (1).

“(c) CIVIL ACTION.—If a small business lending company violates this Act, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this Act.

“(d) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

“(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 7(a) of this Act—

“(A) for false statements knowingly made in any written submission required under this Act;

“(B) for omission of a material fact from any written submission required under this Act;

“(C) for willful or repeated violation of this Act;

“(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this Act; or

“(E) for violation of any cease and desist order of the Administrator under this section.

“(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f). The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

“(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f). If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

“(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority

of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

“(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

“(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in section 3105 of title 5, United States Code, the authority to conduct any hearing required under subsection (f). The Administrator shall base the decision to revoke on the record of the hearing.

“(e) CEASE AND DESIST ORDER.—

“(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this Act or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, the Administrator may order, after the opportunity for hearing pursuant to subsection (f), the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

“(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f). If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

“(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this Act.

“(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d).

“(f) PROCEDURE FOR REVOCATION OR SUSPENSION OF LOAN AUTHORITY AND FOR CEASE AND DESIST ORDER.—

“(1) Before revoking or suspending authority under subsection (d) or issuing a cease and desist order under subsection (e), the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5, United

States Code. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

“(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

“(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5, United States Code. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

“(g) REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIAL.—

“(1) DEFINITION.—In this section, the term ‘management official’ means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company’s or lender’s activities under section 7(a) of this Act.

“(2) REMOVAL OF MANAGEMENT OFFICIAL.—

“(A) NOTICE.—The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

“(i) willfully and knowingly commits a substantial violation of—

“(I) this Act;

“(II) any regulation issued under this Act;

“(III) a final cease-and-desist order under this Act; or

“(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this Act; or

“(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

“(B) CONTENTS OF NOTICE.—A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, will be held thereon.

“(C) HEARING.—

“(i) TIMING.—A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

Deadline.

“(I) the management official, and for good cause shown; or

“(II) the Attorney General.

“(ii) CONSENT.—Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A).

“(D) ORDER OF REMOVAL.—

“(i) IN GENERAL.—In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

“(ii) EFFECTIVENESS.—An order under clause (i) shall—

“(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

“(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

Effective date.

Notice.

“(3) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

“(A) IN GENERAL.—In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 7(a) of this Act.

“(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A)—

“(i) shall take effect upon service of notice under paragraph (2); and

“(ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

“(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

“(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

“(C) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2). Deadline.

“(4) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

“(A) IN GENERAL.—If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

“(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

“(C) AUTHORITY UPON CONVICTION.—If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

“(D) AUTHORITY UPON DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f).

“(5) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR A NON-FEDERALLY REGULATED LENDER.—Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

“(6) FINAL AGENCY ACTION AND JUDICIAL REVIEW.—

“(A) ISSUANCE OF ORDERS.—After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code. Deadline.

Deadline.

“(B) JUDICIAL REVIEW.—An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

“(h) APPOINTMENT OF RECEIVER.—

“(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C), the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver to hold and administer the assets of the company or lender.

“(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

“(i) POSSESSION OF ASSETS.—

“(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h).

“(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h).

“(j) PENALTIES AND FORFEITURES.—

“(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than \$5,000 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

“(2) The Administrator may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administrator finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administrator may for the purposes of this section make any alternative requirements appropriate to the situation.”.

SEC. 162. DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following new subsection:

“(r) **DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.**—As used in section 23 of this Act:

“(1) **SMALL BUSINESS LENDING COMPANY.**—The term ‘small business lending company’ means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

“(2) **NON-FEDERALLY REGULATED SBA LENDER.**—The term ‘non-Federally regulated SBA lender’ means a business concern if—

“(A) such concern is authorized by the Administrator to make loans under section 7;

“(B) such concern is subject to regulation by a State; and

“(C) the lending activities of such concern are not regulated by any Federal banking authority.”.

TITLE II—MISCELLANEOUS AMENDMENTS

SEC. 201. AMENDMENT TO DEFINITION OF EQUITY CAPITAL WITH RESPECT TO ISSUERS OF PARTICIPATING SECURITIES.

Section 303(g)(4) of the Small Business Investment Act of 1958 (15 U.S.C. 683 (g)(4)) is amended—

(1) in the first sentence, by striking “subsection” and inserting “Act”; and

(2) in the second sentence, by striking “contingent upon and limited to the extent of earnings” and inserting “from appropriate sources, as determined by the Administration”.

SEC. 202. INVESTMENT OF EXCESS FUNDS.

Section 308(b) of the Small Business Investment Act (15 U.S.C. 687(b)) is amended by striking the last sentence and inserting the following: “Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—

“(1) in direct obligations of, or obligations guaranteed as to principal and interest by, the United States;

“(2) in certificates of deposit or other accounts of federally insured banks or other federally insured depository institutions, if the certificates or other accounts mature or are otherwise fully available not more than 1 year after the date of the investment; or

“(3) in mutual funds, securities, or other instruments that consist of, or represent pooled assets of, investments described in paragraphs (1) or (2).”.

SEC. 203. SURETY BOND AMENDMENTS.

(a) **CLARIFICATION OF MAXIMUM SURETY BOND GUARANTEE.**—Section 411(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amended by striking “contract up to” and

inserting “total work order or contract amount at the time of bond execution that does not exceed”.

(b) **AUDIT FREQUENCY.**—Section 411(g)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 694b(g)(3)) is amended by striking “each year” and inserting “every three years”.

(c) **REPEAL.**—Section 207 of the Small Business Reauthorization and Amendment Act of 1988 (15 U.S.C. 694b note) is repealed.

SEC. 204. EFFECTIVE DATE FOR CERTAIN FEES.

Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)) is amended by striking “, but” and all that follows through the end and inserting a period.

Approved December 8, 2004.

LEGISLATIVE HISTORY—H.R. 4818 (S. 2812):

HOUSE REPORTS: Nos. 108–599 (Comm. on Appropriations) and 108–792 (Comm. of Conference).

SENATE REPORTS: No. 108–346 accompanying S. 2812 (Comm. on Appropriations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 13, 15, considered and passed House.

Sept. 23, considered and passed Senate, amended, in lieu of S. 2812.

Nov. 20, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Dec. 8, Presidential statement.



Public Law 108–448
108th Congress

An Act

To amend title XIX of the Social Security Act to extend medicare cost-sharing for the medicare part B premium for qualifying individuals through September 2005.

Dec. 8, 2004
[S. 2618]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF MEDICARE COST-SHARING FOR THE MEDICARE PART B PREMIUM FOR QUALIFYING INDIVIDUALS.

(a) IN GENERAL.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking “2004” and inserting “2005”.

(b) TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g) of the Social Security Act (42 U.S.C. 1396u–3(g)) is amended to read as follows:

“(g) SPECIAL RULES.—

“(1) IN GENERAL.—With respect to each period described in paragraph (2), a State shall select qualifying individuals, subject to paragraph (3), and provide such individuals with assistance, in accordance with the provisions of this section as in effect with respect to calendar year 2003, except that for such purpose—

“(A) references in the preceding subsections of this section to a year, whether fiscal or calendar, shall be deemed to be references to such period; and

“(B) the total allocation amount under subsection (c) for such period shall be the amount described in paragraph (2) for that period.

“(2) PERIODS AND TOTAL ALLOCATION AMOUNTS DESCRIBED.—For purposes of this subsection—

“(A) for the period that begins on January 1, 2004, and ends on September 30, 2004, the total allocation amount is \$300,000,000;

“(B) for the period that begins on October 1, 2004, and ends on December 31, 2004, the total allocation amount is \$100,000,000; and

“(C) for the period that begins on January 1, 2005, and ends on September 30, 2005, the total allocation amount is \$300,000,000.

“(3) RULES FOR PERIODS THAT BEGIN AFTER JANUARY 1.—For any specific period described in subparagraph (B) of paragraph (2), the following applies:

“(A) The specific period shall be treated as a continuation of the immediately preceding period in that calendar

year for purposes of applying subsection (b)(2) and qualifying individuals who received assistance in the last month of such immediately preceding period shall be deemed to be selected for the specific period (without the need to complete an application for assistance for such period).

“(B) The limit to be applied under subsection (b)(3) for the specific period shall be the same as the limit applied under such subsection for the immediately preceding period.

“(C) The ratio to be applied under subsection (c)(2) for the specific period shall be the same as the ratio applied under such subsection for the immediately preceding period.”.

Approved December 8, 2004.

LEGISLATIVE HISTORY—S. 2618:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 16, considered and passed Senate.

Nov. 19, considered and passed House.



Public Law 108–449
108th Congress

An Act

To amend and extend the Irish Peace Process Cultural and Training Program Act of 1998.

Dec. 10, 2004

[H.R. 2655]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT AND EXTENSION OF IRISH PEACE PROCESS CULTURAL AND TRAINING PROGRAM.

(a) IRISH PEACE PROCESS CULTURAL AND TRAINING PROGRAM ACT.—

(1) PROGRAM PARTICIPANT REQUIREMENTS.—Section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998 (8 U.S.C. 1101 note) is amended by adding at the end the following:

“(5) PROGRAM PARTICIPANT REQUIREMENTS.—An alien entering the United States as a participant in the program shall satisfy the following requirements:

“(A) The alien shall be a citizen of the United Kingdom or the Republic of Ireland.

“(B) The alien shall be between 21 and 35 years of age on the date of departure for the United States.

“(C) The alien shall have resided continuously in a designated county for not less than 18 months before such date.

“(D) The alien shall have been continuously unemployed for not less than 12 months before such date.

“(E) The alien may not have a degree from an institution of higher education.”

(2) EXTENSION OF PROGRAM.—Section 2 of the Irish Peace Process Cultural and Training Program Act of 1998 (8 U.S.C. 1101 note) is amended—

(A) in subsection (a)(3), by striking “the third program year and for the 4 subsequent years,” and inserting “each program year,”; and

(B) by amending subsection (d) to read as follows:

“(d) SUNSET.—

“(1) Effective October 1, 2008, the Irish Peace Process Cultural and Training Program Act of 1998 is repealed.

“(2) Effective October 1, 2008, section 101(a)(15)(Q) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(Q)) is amended—

“(A) by striking ‘or’ at the end of clause (i);

“(B) by striking ‘(i)’ after ‘(Q)’; and

“(C) by striking clause (ii).”

8 USC 1101.

Effective dates.

(3) COST-SHARING.—Section 2 of the Irish Peace Process Cultural and Training Program Act of 1998 (8 U.S.C. 1101 note), as amended by paragraph (2), is further amended—

8 USC 1101. (A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b), the following new subsection:

Verification. “(c) COST-SHARING.—The Secretary of State shall verify that the United Kingdom and the Republic of Ireland continue to pay a reasonable share of the costs of the administration of the cultural and training programs carried out pursuant to this Act.”.

(4) TECHNICAL AMENDMENTS.—The Irish Peace Process Cultural and Training Program Act of 1998 (8 U.S.C. 1101 note) is amended—

(A) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”; and

(B) by striking “Immigration and Naturalization Service” each place such term appears and inserting “Department of Homeland Security”.

(b) IMMIGRATION AND NATIONALITY ACT.—

(1) REQUIREMENTS FOR NONIMMIGRANT STATUS.—Section 101(a)(15)(Q) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(Q)) is amended—

(A) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”; and

(B) in clause (ii)(I)—

(i) by striking “35 years of age or younger having a residence” and inserting “citizen of the United Kingdom or the Republic of Ireland, 21 to 35 years of age, unemployed for not less than 12 months, and having a residence for not less than 18 months”; and

(ii) by striking “36 months” and inserting “24 months”.

(2) FOREIGN RESIDENCE REQUIREMENT.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(A) by redesignating the subsection (p) as added by section 1505(f) of Public Law 106-386 (114 Stat. 1526) as subsection (s); and

(B) by adding at the end the following:

“(t)(1) Except as provided in paragraph (2), no person admitted under section 101(a)(15)(Q)(ii)(I), or acquiring such status after admission, shall be eligible to apply for nonimmigrant status, an immigrant visa, or permanent residence under this Act until it is established that such person has resided and been physically present in the person’s country of nationality or last residence for an aggregate of at least 2 years following departure from the United States.

“(2) The Secretary of Homeland Security may waive the requirement of such 2-year foreign residence abroad if the Secretary determines that—

“(A) departure from the United States would impose exceptional hardship upon the alien’s spouse or child (if such spouse or child is a citizen of the United States or an alien lawfully admitted for permanent residence); or

“(B) the admission of the alien is in the public interest or the national interest of the United States.”.

Approved December 10, 2004.

LEGISLATIVE HISTORY—H.R. 2655:

HOUSE REPORTS: No. 108–260, Pt. 1 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Oct. 7, considered and passed House.

Vol. 150 (2004): Nov. 19, considered and passed Senate, amended.

Nov. 20, House concurred in Senate amendment.



Public Law 108–450
108th Congress

An Act

Dec. 10, 2004
[H.R. 4302]

District of
Columbia Mental
Health Civil
Commitment
Modernization
Act of 2004.

To amend title 21, District of Columbia Official Code, to enact the provisions of the Mental Health Civil Commitment Act of 2002 which affect the Commission on Mental Health and require action by Congress in order to take effect.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “District of Columbia Mental Health Civil Commitment Modernization Act of 2004”.

SEC. 2. COMPOSITION, APPOINTMENT, AND ORGANIZATION OF COMMISSION ON MENTAL HEALTH.

(a) IN GENERAL.—Section 21–502, District of Columbia Official Code, is amended to read as follows:

“§ 21–502. Commission on Mental Health; composition; appointment and terms of members; organization; chairperson; salaries

“(a) The Commission on Mental Health is continued. The Chief Judge of the Superior Court of the District of Columbia shall appoint the members of the Commission, and the Commission shall be composed of 9 members and an alternate chairperson. One member shall be a magistrate judge of the Court appointed pursuant to title 11, District of Columbia Official Code, who shall be a member of the bar of the Court and has engaged in active practice of law in the District of Columbia for a period of at least 5 years prior to his or her appointment. The magistrate judge shall be the Chairperson of the Commission and act as the administrative head of the Commission. The Chairperson shall preside at all hearings and direct all of the proceedings before the Commission. Eight members of the Commission shall be psychiatrists or qualified psychologists, as those terms are defined in section 21–501, who have not had less than 5 years of experience in the diagnosis and treatment of mental illness.

“(b)(1) Appointment of members of the Commission shall be for terms of 4 years.

“(2) The initial appointment of a psychiatrist or a qualified psychologist shall be for a probationary period of one year. After the initial one-year probationary appointment, subsequent appointments of the psychiatrist or qualified psychologist shall be for terms of 4 years.

“(c) The psychiatrist or qualified psychologist members of the Commission shall serve on a part-time basis and shall be rotated by assignment of the Chief Judge of the Court, so that at any

one time the Commission shall consist of the Chairperson and 2 members, each of whom is either a psychiatrist or a qualified psychologist. Members of the Commission who are psychiatrists or qualified psychologists may practice their professions during their tenures of office, but may not participate in the disposition of a case of a person in which they have rendered professional service or advice.

“(d) The Chief Judge of the Court shall appoint a magistrate judge of the Court to serve as an alternate Chairperson of the Commission. The alternate Chairperson shall serve on a part time basis and act as Chairperson in the absence of the permanent Chairperson.

“(e) The rate of compensation for the members of the Commission who are psychiatrists or qualified psychologists shall be fixed by the Executive Officer of the Court.”.

(b) CLERICAL AMENDMENT.—The item relating to section 21-502 in the table of sections for subchapter I of chapter 5 of title 21, District of Columbia Official Code, is amended to read as follows:

“21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairperson; salaries.”.

(c) EFFECTIVE DATE; TRANSITION FOR CURRENT MEMBERS.—The amendments made by this section shall take effect on the date of the enactment of this Act, except nothing in this section or the amendments made by this section may be construed to affect the appointment or term of service of any individual who serves as a member or alternate member of the Commission on Mental Health (including an individual who serves as the Chairperson or alternate Chairperson of the Commission) on such date.

SEC. 3. COMMISSION MEMBERS DEEMED COMPETENT AND COMPELLABLE WITNESSES AT MENTAL HEALTH PROCEEDINGS.

Section 21-503(b), District of Columbia Official Code, is amended by striking “The Commission, or any of the members thereof,” and inserting “Commission members who are psychiatrists or qualified psychologists”.

SEC. 4. DETENTION FOR EMERGENCY OBSERVATION AND DIAGNOSIS.

Section 21-526, District of Columbia Official Code, is amended by adding at the end the following new subsections:

“(c) The maximum period of time for detention for emergency observation and diagnosis may be extended for up to 21 days, if judicial proceedings under subchapter IV of this chapter have been commenced before the expiration of the order entered under section 21-524 and a psychiatrist or qualified psychologist has examined the person who is the subject of the judicial proceedings and is of the opinion that the person being detained remains mentally ill and is likely to injure himself or others as a result of the illness unless the emergency detention is continued. For good cause shown, the Court may extend the period of detention for emergency observation and diagnosis. The period of detention for emergency observation and diagnosis may be extended pursuant to section 21-543(b) or following a hearing before the Commission pursuant to subsections (d) and (e) of this section.

“(d) If the Commission, at the conclusion of its hearing pursuant to section 21-542, has found that the person with respect to whom the hearing was held is mentally ill and, because of the mental illness, is likely to injure himself or others if not committed, and has concluded that a recommendation of inpatient commitment

is the least restrictive alternative available to prevent the person from injuring himself or others, the detention for emergency observation and diagnosis may be continued by the Department or hospital—

“(1) pending the conclusion of judicial proceedings under subchapter IV of this chapter;

“(2) until the Court enters an order discharging the person; or

“(3) until the Department or hospital determines that continued hospitalization is no longer the least restrictive form of treatment appropriate for the person being detained.

“(e) If the Commission, at the conclusion of its hearing, finds that the person is mentally ill, is likely to injure himself or other persons as a result of mental illness if not committed, and that outpatient treatment is the least restrictive form of commitment appropriate, then, within 14 days of the date of the hearing, the person shall be discharged from inpatient status and shall receive outpatient mental health services or mental health supports as an emergency nonvoluntary patient consistent with this subchapter, pending the conclusion of judicial proceedings under subchapter IV of this chapter.”.

SEC. 5. REPRESENTATION BY COUNSEL OF PERSONS ALLEGED TO BE MENTALLY ILL.

Section 21-543, District of Columbia Official Code, is amended—

(1) in subsection (a) (as redesignated by section 2(r)(1) of the Mental Health Civil Commitment Act of 2002), by striking the last sentence; and

(2) by adding at the end the following new subsection:

“(b) The Commission may not grant a continuance for counsel to prepare his case for more than 5 days. The Commission may grant continuances for good cause shown for periods of up to 14 days. If the Commission grants a continuance, the emergency observation and detention of the person about whom the hearing is being held shall be extended for the duration of the continuance.”.

SEC. 6. HEARING AND DETERMINATION ON QUESTION OF MENTAL ILLNESS.

(a) IN GENERAL.—Section 21-545, District of Columbia Official Code, is amended—

(1) in subsection (a), by striking “jury trial” each place it appears and inserting “jury trial or a trial by the Court”;

(2) by amending subsection (b) to read as follows:

“(b)(1) If the Court or jury finds that the person is not mentally ill or is not likely to injure himself or others as a result of mental illness, the Court shall dismiss the petition and order the person’s release.

“(2) If the Court or jury finds that the person is mentally ill and, because of that mental illness, is likely to injure himself or others if not committed, the Court may order the person’s commitment to the Department or to any other facility, hospital, or mental health provider that the Court believes is the least restrictive alternative consistent with the best interests of the person and the public. An order of commitment issued pursuant to this paragraph shall be for a period of one year.”; and

(3) by adding at the end the following new subsections:

“(c) The psychiatrists and qualified psychologists who are members of the Commission shall be competent and compellable witnesses at a hearing or trial held pursuant to this chapter.

“(d) The jury to be used in any case where a jury trial is demanded under this chapter shall be impaneled, upon order of the Court, from the jurors in attendance upon other branches of the Court, who shall perform the services in addition to and as part of their duties in the Court.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to trials under section 21-545, District of Columbia Code, which are initiated on or after the date of the enactment of this Act.

SEC. 7. RENEWAL OF COMMITMENT STATUS BY COMMISSION.

(a) IN GENERAL.—Subchapter IV of chapter 5 of title 21, District of Columbia Official Code, is amended by inserting after section 21-545 the following new section:

“§ 21-545.01. Renewal of commitment status by commission; review by Court

Deadlines.

“(a) At least 60 days prior to the expiration of an order of commitment issued pursuant to section 21-545 or this section, the chief clinical officer of the Department, or the chief of service of the facility, hospital, or mental health provider to which the person is committed may petition the Commission for a renewal of the order of commitment for that person. For good cause shown, a petition of commitment may be filed within the last 60 days of the one-year period of commitment. The petition for renewal of commitment shall be supported by a certificate of a psychiatrist or qualified psychologist stating that he has examined the person and is of the opinion that the person is mentally ill, and, because of the illness, is likely to injure himself or other persons if not committed. The term of the renewed commitment order shall not exceed one year.

Certification.

“(b) Within 3 days of the filing of a petition under subsection (a) of this section, the Commission shall send a copy of the petition and supporting certificate by registered mail to the person with respect to whom the petition was filed and by regular mail to the person’s attorney.

“(c) The Commission shall promptly examine a person for whom a petition is filed under subsection (a) of this section, and, in accordance with the procedures described in sections 21-542 and 21-543, shall thereafter promptly hold a hearing on the issue of the person’s mental illness and whether, as a result of a mental illness, the person is likely to injure himself or other persons if not committed.

“(d) If the Commission finds, after a hearing under subsection (c) of this section, that the person with respect to whom the hearing was held is no longer mentally ill, or is not mentally ill to the extent that the person is likely to injure himself or other persons if not committed, the Commission shall immediately order the termination of the commitment and notify the Court of that fact in writing.

Notification.

“(e) If the Commission finds, after a hearing under subsection (c) of this section, that the person with respect to whom the hearing was held remains mentally ill to the extent that the person is likely to injure himself or others if not committed, the Commission

Reports.

shall order the renewal of the commitment of the person for an additional term not to exceed one year and shall promptly report that fact, in writing, to the Court. The report shall contain the Commission's findings of fact and conclusions of law. A copy of the report shall be served by registered mail on the person with respect to whom the hearing was held and by mail on the person's attorney.

"(f) If a petition for a renewal of an order of commitment is pending at the expiration of the commitment period ordered under section 21-545 or this section, the Court may, for good cause shown, extend the period of commitment pending resolution of the renewal petition.

Notification.

"(g) Within the last 30 days of the period of commitment, the chief clinical officer of the Department, or the chief of service of the facility, hospital, or mental health provider to which a person is committed, shall notify the Court which ordered the person's commitment pursuant to section 21-545 or this section of the decision not to seek renewal of commitment. Notice to the Court shall be in writing and a copy of the notice shall be mailed to the person who was committed and the person's attorney.

"(h)(1) A person for whom the Commission orders renewed commitment pursuant to subsection (e) of this section may seek a review of the Commission's order by the Superior Court of the District of Columbia, and the Commission, orally and in writing, shall advise the person of this right.

"(2) A review of the Commission's order of renewed commitment, in whole or in part, may be made by a judge of the appropriate division sua sponte and shall be made upon a motion of one of the parties made pursuant to procedures established by rules of the Court. The reviewing judge shall conduct such proceedings as required by the rules of the Court.

"(3) An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Court has reviewed the Commission's order of renewed commitment."

(b) CLERICAL AMENDMENT.—The table of sections of subchapter IV of chapter 5 of title 21, District of Columbia Official Code,

is amended by inserting after the item relating to section 21–545 the following:

“21–545.01. Renewal of commitment status by Commission; review by Court.”.

Approved December 10, 2004.

LEGISLATIVE HISTORY—H.R. 4302:

HOUSE REPORTS: No. 108–729 (Comm. on Government Reform).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Nov. 20, considered and passed Senate.



Public Law 108–451
108th Congress

An Act

Dec. 10, 2004
[S. 437]

Arizona Water
Settlements Act.

43 USC 1501
note.

To provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Arizona Water Settlements Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Arbitration.
- Sec. 4. Antideficiency.

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. General permissible uses of the Central Arizona Project.
- Sec. 104. Allocation of Central Arizona Project water.
- Sec. 105. Firming of Central Arizona Project Indian water.
- Sec. 106. Acquisition of agricultural priority water.
- Sec. 107. Lower Colorado River Basin Development Fund.
- Sec. 108. Effect.
- Sec. 109. Repeal.
- Sec. 110. Authorization of appropriations.
- Sec. 111. Repeal on failure of enforceability date under title II.

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

- Sec. 201. Short title.
- Sec. 202. Purposes.
- Sec. 203. Approval of the Gila River Indian Community Water Rights Settlement Agreement.
- Sec. 204. Water rights.
- Sec. 205. Community water delivery contract amendments.
- Sec. 206. Satisfaction of claims.
- Sec. 207. Waiver and release of claims.
- Sec. 208. Gila River Indian Community Water OM&R Trust Fund.
- Sec. 209. Subsidence remediation program.
- Sec. 210. After-acquired trust land.
- Sec. 211. Reduction of water rights.
- Sec. 212. New Mexico Unit of the Central Arizona Project.
- Sec. 213. Miscellaneous provisions.
- Sec. 214. Authorization of appropriations.
- Sec. 215. Repeal on failure of enforceability date.

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

- Sec. 301. Southern Arizona water rights settlement.
- Sec. 302. Southern Arizona water rights settlement effective date.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

Sec. 401. Effect of titles I, II, and III.

Sec. 402. Annual report.

Sec. 403. Authorization of appropriations.

SEC. 2. DEFINITIONS.

In titles I and II:

(1) **ACRE-FEET.**—The term “acre-feet” means acre-feet per year.

(2) **AFTER-ACQUIRED TRUST LAND.**—The term “after-acquired trust land” means land that—

(A) is located—

(i) within the State; but

(ii) outside the exterior boundaries of the Reservation; and

(B) is taken into trust by the United States for the benefit of the Community after the enforceability date.

(3) **AGRICULTURAL PRIORITY WATER.**—The term “agricultural priority water” means Central Arizona Project non-Indian agricultural priority water, as defined in the Gila River agreement.

(4) **ALLOTTEE.**—The term “allottee” means a person who holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Reservation; and

(B) held in trust by the United States.

(5) **ARIZONA INDIAN TRIBE.**—The term “Arizona Indian tribe” means an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) that is located in the State.

(6) **ASARCO.**—The term “Asarco” means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

(7) **CAP CONTRACTOR.**—The term “CAP contractor” means a person or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

(8) **CAP OPERATING AGENCY.**—The term “CAP operating agency” means the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

(9) **CAP REPAYMENT CONTRACT.**—

(A) **IN GENERAL.**—The term “CAP repayment contract” means the contract dated December 1, 1988 (Contract No. 14-0906-09W-09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

(B) **INCLUSIONS.**—The term “CAP repayment contract” includes all amendments to and revisions of that contract.

(10) **CAP SUBCONTRACTOR.**—The term “CAP subcontractor” means a person or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP system.

(11) **CAP SYSTEM.**—The term “CAP system” means—

(A) the Mark Wilmer Pumping Plant;

- (B) the Hayden-Rhodes Aqueduct;
- (C) the Fannin-McFarland Aqueduct;
- (D) the Tucson Aqueduct;

(E) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are associated with the features described in subparagraphs (A) through (D); and

(F) any extensions of, additions to, or replacements for the features described in subparagraphs (A) through (E).

(12) CENTRAL ARIZONA PROJECT.—The term “Central Arizona Project” means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(13) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term “Central Arizona Water Conservation District” means the political subdivision of the State that is the contractor under the CAP repayment contract.

(14) CITIES.—The term “Cities” means the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, and Scottsdale, Arizona.

(15) COMMUNITY.—The term “Community” means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

(16) COMMUNITY CAP WATER.—The term “Community CAP water” means water to which the Community is entitled under the Community water delivery contract.

(17) COMMUNITY REPAYMENT CONTRACT.—

(A) IN GENERAL.—The term “Community repayment contract” means Contract No. 6-0907-0903-09W0345 between the United States and the Community dated July 20, 1998, providing for the construction of water delivery facilities on the Reservation.

(B) INCLUSIONS.—The term “Community repayment contract” includes any amendments to the contract described in subparagraph (A).

(18) COMMUNITY WATER DELIVERY CONTRACT.—

(A) IN GENERAL.—The term “Community water delivery contract” means Contract No. 3-0907-0930-09W0284 between the Community and the United States dated October 22, 1992.

(B) INCLUSIONS.—The term “Community water delivery contract” includes any amendments to the contract described in subparagraph (A).

(19) CRR PROJECT WORKS.—

(A) IN GENERAL.—The term “CRR project works” means the portions of the San Carlos Irrigation Project located on the Reservation.

(B) INCLUSION.—The term “CRR Project works” includes the portion of the San Carlos Irrigation Project known as the “Southside Canal”, from the point at which the Southside Canal connects with the Pima Canal to the boundary of the Reservation.

(20) DIRECTOR.—The term “Director” means—

(A) the Director of the Arizona Department of Water Resources; or

(B) with respect to an action to be carried out under this title, a State official or agency designated by the Governor or the State legislature.

(21) ENFORCEABILITY DATE.—The term “enforceability date” means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 207(c).

(22) FEE LAND.—The term “fee land” means land, other than off-Reservation trust land, owned by the Community outside the exterior boundaries of the Reservation as of December 31, 2002.

(23) FIXED OM&R CHARGE.—The term “fixed OM&R charge” has the meaning given the term in the repayment stipulation.

(24) FRANKLIN IRRIGATION DISTRICT.—The term “Franklin Irrigation District” means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(25) GILA RIVER ADJUDICATION PROCEEDINGS.—The term “Gila River adjudication proceedings” means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled “In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source” W-091 (Salt), W-092 (Verde), W-093 (Upper Gila), W-094 (San Pedro) (Consolidated).

(26) GILA RIVER AGREEMENT.—

(A) IN GENERAL.—The term “Gila River agreement” means the agreement entitled the “Gila River Indian Community Water Rights Settlement Agreement”, dated February 4, 2003.

(B) INCLUSIONS.—The term “Gila River agreement” includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation Agreement, which is also an exhibit to the UVD Agreement); and

(ii) any amendment to that agreement or to an exhibit to that agreement made or added pursuant to that agreement consistent with section 203(a) or as approved by the Secretary.

(27) GILA VALLEY IRRIGATION DISTRICT.—The term “Gila Valley Irrigation District” means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(28) GLOBE EQUITY DECREE.—

(A) IN GENERAL.—The term “Globe Equity Decree” means the decree dated June 29, 1935, entered in United States of America v. Gila Valley Irrigation District, Globe Equity No. 59, et al., by the United States District Court for the District of Arizona.

(B) INCLUSIONS.—The term “Globe Equity Decree” includes all court orders and decisions supplemental to that decree.

(29) HAGGARD DECREE.—

(A) IN GENERAL.—The term “Haggard Decree” means the decree dated June 11, 1903, entered in United States of America, as guardian of Chief Charley Juan Saul and Cyrus Sam, Maricopa Indians and 400 other Maricopa

Indians similarly situated v. Haggard, et al., Cause No. 19, in the District Court for the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

(B) INCLUSIONS.—The term “Haggard Decree” includes all court orders and decisions supplemental to that decree.

(30) INCLUDING.—The term “including” has the same meaning as the term “including, but not limited to”.

(31) INJURY TO WATER QUALITY.—The term “injury to water quality” means any contamination, diminution, or deprivation of water quality under Federal, State, or other law.

(32) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term “injury to water rights” means an interference with, diminution of, or deprivation of water rights under Federal, State, or other law.

(B) INCLUSION.—The term “injury to water rights” includes a change in the underground water table and any effect of such a change.

(C) EXCLUSION.—The term “injury to water rights” does not include subsidence damage or injury to water quality.

(33) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term “Lower Colorado River Basin Development Fund” means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

(34) MASTER AGREEMENT.—The term “master agreement” means the agreement entitled “Arizona Water Settlement Agreement” among the Director, the Central Arizona Water Conservation District, and the Secretary, dated August 16, 2004.

(35) NM CAP ENTITY.—The term “NM CAP entity” means the entity or entities that the State of New Mexico may authorize to assume responsibility for the design, construction, operation, maintenance, and replacement of the New Mexico Unit.

(36) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(A) IN GENERAL.—The term “New Mexico Consumptive Use and Forbearance Agreement” means that agreement entitled the “New Mexico Consumptive Use and Forbearance Agreement,” entered into by and among the United States, the Community, the San Carlos Irrigation and Drainage District, and all of the signatories to the UVD Agreement, and approved by the State of New Mexico, and authorized, ratified, and approved by section 212(b).

(B) INCLUSIONS.—The “New Mexico Consumptive Use and Forbearance Agreement” includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation agreement, which is also an exhibit to the UVD agreement); and

(ii) any amendment to that agreement made or added pursuant to that agreement.

(37) NEW MEXICO UNIT.—The term “New Mexico Unit” means that unit or units of the Central Arizona Project authorized by sections 301(a)(4) and 304 of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(4), 1524) (as amended by section 212).

(38) NEW MEXICO UNIT AGREEMENT.—

(A) IN GENERAL.—The term “New Mexico Unit Agreement” means that agreement entitled the “New Mexico Unit Agreement,” to be entered into by and between the United States and the NM CAP entity upon notice to the Secretary from the State of New Mexico that the State of New Mexico intends to have the New Mexico Unit constructed or developed.

(B) INCLUSIONS.—The “New Mexico Unit Agreement” includes—

- (i) all exhibits to that agreement; and
- (ii) any amendment to that agreement made or added pursuant to that agreement.

(39) OFF-RESERVATION TRUST LAND.—The term “off-Reservation trust land” means land outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the Community as of the enforceability date.

(40) PHELPS DODGE.—The term “Phelps Dodge” means the Phelps Dodge Corporation, a New York corporation of that name, and Phelps Dodge’s subsidiaries (including Phelps Dodge Morenci, Inc., a Delaware corporation of that name), and Phelps Dodge’s successors or assigns.

(41) REPAYMENT STIPULATION.—The term “repayment stipulation” means the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions, filed with the United States District Court for the District of Arizona in Central Arizona Water Conservation District v. United States, et al., No. CIV 95–09625–09TUC–09WDB(EHC), No. CIV 95–091720–09PHX–09EHC (Consolidated Action), and that court’s order dated April 28, 2003, and any amendments or revisions thereto.

(42) RESERVATION.—

(A) IN GENERAL.—Except as provided in sections 207(d) and 210(d), the term “Reservation” means the land located within the exterior boundaries of the reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, chapter LXVI) and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915.

(B) EXCLUSION.—The term “Reservation” does not include the land located in sections 16 and 36, Township 4 South, Range 4 East, Salt and Gila River Base and Meridian.

(43) ROOSEVELT HABITAT CONSERVATION PLAN.—The term “Roosevelt Habitat Conservation Plan” means the habitat conservation plan approved by the United States Fish and Wildlife Service under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(B)) for the incidental taking of endangered, threatened, and candidate species resulting from the continued operation by the Salt River Project of Roosevelt Dam and Lake, near Phoenix, Arizona.

(44) ROOSEVELT WATER CONSERVATION DISTRICT.—The term “Roosevelt Water Conservation District” means the entity of that name that is a political subdivision of the State and an irrigation district organized under the law of the State.

(45) SAFFORD.—The term “Safford” means the city of Safford, Arizona.

(46) SALT RIVER PROJECT.—The term “Salt River Project” means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Users’ Association, an Arizona Territorial corporation.

(47) SAN CARLOS APACHE TRIBE.—The term “San Carlos Apache Tribe” means the San Carlos Apache Tribe, a tribe of Apache Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. 476).

(48) SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT.—The term “San Carlos Irrigation and Drainage District” means the entity of that name that is a political subdivision of the State and an irrigation and drainage district organized under the laws of the State.

(49) SAN CARLOS IRRIGATION PROJECT.—

(A) IN GENERAL.—The term “San Carlos Irrigation Project” means the San Carlos irrigation project authorized under the Act of June 7, 1924 (43 Stat. 475).

(B) INCLUSIONS.—The term “San Carlos Irrigation Project” includes any amendments and supplements to the Act described in subparagraph (A).

(50) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(51) SPECIAL HOT LANDS.—The term “special hot lands” has the meaning given the term in subparagraph 2.34 of the UVD agreement.

(52) STATE.—The term “State” means the State of Arizona.

(53) SUBCONTRACT.—

(A) IN GENERAL.—The term “subcontract” means a Central Arizona Project water delivery subcontract.

(B) INCLUSION.—The term “subcontract” includes an amendment to a subcontract.

(54) SUBSIDENCE DAMAGE.—The term “subsidence damage” means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling or cracking is caused by the pumping of underground water.

(55) TBI ELIGIBLE ACRES.—The term “TBI eligible acres” has the meaning given the term in subparagraph 2.37 of the UVD agreement.

(56) UNCONTRACTED MUNICIPAL AND INDUSTRIAL WATER.—The term “uncontracted municipal and industrial water” means Central Arizona Project municipal and industrial priority water that is not subject to subcontract on the date of enactment of this Act.

(57) UV DECREED ACRES.—

(A) IN GENERAL.—The term “UV decreed acres” means the land located upstream and to the east of the Coolidge Dam for which water may be diverted pursuant to the Globe Equity Decree.

(B) EXCLUSION.—The term “UV decreed acres” does not include the reservation of the San Carlos Apache Tribe.

(58) UV DECREED WATER RIGHTS.—The term “UV decreed water rights” means the right to divert water for use on UV decreed acres in accordance with the Globe Equity Decree.

(59) UV IMPACT ZONE.—The term “UV impact zone” has the meaning given the term in subparagraph 2.47 of the UVD agreement.

(60) UV SUBJUGATED LAND.—The term “UV subjugated land” has the meaning given the term in subparagraph 2.50 of the UVD agreement.

(61) UVD AGREEMENT.—The term “UVD agreement” means the agreement among the Community, the United States, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, Phelps Dodge, and other parties located in the upper valley of the Gila River, dated September 2, 2004.

(62) UV SIGNATORIES PARTIES.—The term “UV signatories” means the parties to the UVD agreement other than the United States, the San Carlos Irrigation and Drainage District, and the Community.

(63) WATER OM&R FUND.—The term “Water OM&R Fund” means the Gila River Indian Community Water OM&R Trust Fund established by section 208.

(64) WATER RIGHT.—The term “water right” means any right in or to groundwater, surface water, or effluent under Federal, State, or other law.

(65) WATER RIGHTS APPURTENANT TO NEW MEXICO 381 ACRES.—The term “water rights appurtenant to New Mexico 381 acres” means the water rights—

(A) appurtenant to the 380.81 acres described in the decree in *Arizona v. California*, 376 U.S. 340, 349 (1964); and

(B) appurtenant to other land, or for other uses, for which the water rights described in subparagraph (A) may be modified or used in accordance with that decree.

(66) WATER RIGHTS FOR NEW MEXICO DOMESTIC PURPOSES.—The term “water rights for New Mexico domestic purposes” means the water rights for domestic purposes of not more than 265 acre-feet of water for consumptive use described in paragraph IV(D)(2) of the decree in *Arizona v. California*, 376 U.S. 340, 350 (1964).

(67) 1994 BIOLOGICAL OPINION.—The term “1994 biological opinion” means the biological opinion, numbered 2-21-90-F-119, and dated April 15, 1994, relating to the transportation and delivery of Central Arizona Project water to the Gila River basin.

(68) 1996 BIOLOGICAL OPINION.—The term “1996 biological opinion” means the biological opinion, numbered 2-21-95-F-462 and dated July 23, 1996, relating to the impacts of modifying Roosevelt Dam on the southwestern willow flycatcher.

(69) 1999 BIOLOGICAL OPINION.—The term “1999 biological opinion” means the draft biological opinion numbered 2-21-91-F-706, and dated May 1999, relating to the impacts of the Central Arizona Project on Gila Topminnow in the Santa Cruz River basin through the introduction and spread of non-native aquatic species.

SEC. 3. ARBITRATION.

(a) NO PARTICIPATION BY THE UNITED STATES.—

(1) IN GENERAL.—No arbitration decision rendered pursuant to subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River agreement (including the joint control board agreement attached to exhibit 20.1) shall be considered invalid solely because the United States failed or refused to participate in such arbitration proceedings that resulted in such arbitration decision, so long as the matters in arbitration under subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River Agreement concern aspects of the water rights of the Community, the San Carlos Irrigation Project, or the Miscellaneous Flow Lands (as defined in subparagraph 2.18A of the UVD agreement) and not the water rights of the United States in its own right, any other rights of the United States, or the water rights or any other rights of the United States acting on behalf of or for the benefit of another tribe.

(2) ARBITRATION INEFFECTIVE.—If an issue otherwise subject to arbitration under subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River Agreement cannot be arbitrated or if an arbitration decision will not be effective because the United States cannot or will not participate in the arbitration, then the issue shall be submitted for decision to a court of competent jurisdiction, but not a court of the Community.

(b) PARTICIPATION BY THE SECRETARY.—Notwithstanding any provision of any agreement, exhibit, attachment, or other document ratified by this Act, if the Secretary is required to enter arbitration pursuant to this Act or any such document, the Secretary shall follow the procedures for arbitration established by chapter 5 of title 5, United States Code.

SEC. 4. ANTIDEFICIENCY.

The United States shall not be liable for failure to carry out any obligation or activity required by this Act, including all titles and all agreements or exhibits ratified or confirmed by this Act, funded by—

(1) the Lower Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543), if there are not enough monies in that fund to fulfill those obligations or carry out those activities; or

(2) appropriations, if appropriations are not provided by Congress.

Central Arizona
Project
Settlement Act of
2004.

43 USC 1501
note.

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the “Central Arizona Project Settlement Act of 2004”.

SEC. 102. FINDINGS.

Congress finds that—

(1) the water provided by the Central Arizona Project to Maricopa, Pinal, and Pima Counties in the State of Arizona, is vital to citizens of the State; and

(2) an agreement on the allocation of Central Arizona Project water among interested persons, including Federal and State interests, would provide important benefits to the Federal Government, the State of Arizona, Arizona Indian Tribes, and the citizens of the State.

SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL ARIZONA PROJECT.

In accordance with the CAP repayment contract, the Central Arizona Project may be used to transport nonproject water for—

(1) domestic, municipal, fish and wildlife, and industrial purposes; and

(2) any purpose authorized under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.).

SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT WATER.

(a) NON-INDIAN AGRICULTURAL PRIORITY WATER.—

(1) REALLOCATION TO ARIZONA INDIAN TRIBES.—

(A) IN GENERAL.—The Secretary shall reallocate 197,500 acre-feet of agricultural priority water made available pursuant to the master agreement for use by Arizona Indian tribes, of which—

(i) 102,000 acre-feet shall be reallocated to the Gila River Indian Community;

(ii) 28,200 acre-feet shall be reallocated to the Tohono O’odham Nation; and

(iii) subject to the conditions specified in subparagraph (B), 67,300 acre-feet shall be reallocated to Arizona Indian tribes.

(B) CONDITIONS.—The reallocation of agricultural priority water under subparagraph (A)(iii) shall be subject to the conditions that—

(i) such water shall be used to resolve Indian water claims in Arizona, and may be allocated by the Secretary to Arizona Indian Tribes in fulfillment of future Arizona Indian water rights settlement agreements approved by an Act of Congress. In the absence of an Arizona Indian water rights settlement that is approved by an Act of Congress after the date of enactment of this Act, the Secretary shall not allocate any such water until December 31, 2030. Any allocations made by the Secretary after such date shall be accompanied by a certification that the Secretary is making the allocation in order to assist in the resolution of an Arizona Indian water right claim. Any such water allocated to an Arizona Indian Tribe pursuant to a water delivery contract with the Secretary under this clause shall be counted on an acre-foot per acre-foot basis against any claim to water for that Tribe’s reservation;

(ii) notwithstanding clause (i), the Secretary shall retain 6,411 acre-feet of water for use for a future water rights settlement agreement approved by an Act of Congress that settles the Navajo Nation’s claims to water in Arizona. If Congress does not approve

Effective date.

this settlement before December 31, 2030, the 6,411 acre-feet of CAP water shall be available to the Secretary under clause (i); and

(iii) the agricultural priority water shall not, without specific authorization by Act of Congress, be leased, exchanged, forborne, or otherwise transferred by an Arizona Indian tribe for any direct or indirect use outside the reservation of the Arizona Indian tribe.

(C) REPORT.—The Secretary, in consultation with Arizona Indian tribes and the State, shall prepare a report for Congress by December 31, 2016, that assesses whether the potential benefits of subparagraph (A) are being conveyed to Arizona Indian tribes pursuant to water rights settlements enacted subsequent to this Act. For those Arizona Indian tribes that have not yet settled water rights claims, the Secretary shall describe whether any active negotiations are taking place, and identify any critical water needs that exist on the reservation of each such Arizona Indian tribe. The Secretary shall also identify and report on the use of unused quantities of agricultural priority water made available to Arizona Indian tribes under subparagraph (A).

(2) REALLOCATION TO THE ARIZONA DEPARTMENT OF WATER RESOURCES.—

(A) IN GENERAL.—Subject to subparagraph (B) and subparagraph 9.3 of the master agreement, the Secretary shall reallocate up to 96,295 acre-feet of agricultural priority water made available pursuant to the master agreement to the Arizona Department of Water Resources, to be held under contract in trust for further allocation under subparagraph (C).

(B) REQUIRED DOCUMENTATION.—The reallocation of agricultural priority water under subparagraph (A) is subject to the condition that the Secretary execute any appropriate documents to memorialize the reallocation, including—

(i) an allocation decision; and

(ii) a contract that prohibits the direct use of the agricultural priority water by the Arizona Department of Water Resources.

(C) FURTHER ALLOCATION.—With respect to the allocation of agricultural priority water under subparagraph (A)—

(i) before that water may be further allocated—

(I) the Director shall submit to the Secretary, and the Secretary shall receive, a recommendation for reallocation;

(II) as soon as practicable after receiving the recommendation, the Secretary shall carry out all necessary reviews of the proposed reallocation, in accordance with applicable Federal law; and

(III) if the recommendation is rejected by the Secretary, the Secretary shall—

(aa) request a revised recommendation from the Director; and

(bb) proceed with any reviews required under subclause (II); and

(ii) as soon as practicable after the date on which agricultural priority water is further allocated, the Secretary shall offer to enter into a subcontract for that water in accordance with paragraphs (1) and (2) of subsection (d).

(D) MASTER AGREEMENT.—The reallocation of agricultural priority water under subparagraphs (A) and (C) is subject to the master agreement, including certain rights provided by the master agreement to water users in Pinal County, Arizona.

(3) PRIORITY.—The agricultural priority water reallocated under paragraphs (1) and (2) shall be subject to the condition that the water retain its non-Indian agricultural delivery priority.

(b) UNCONTRACTED CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL PRIORITY WATER.—

(1) REALLOCATION.—The Secretary shall, on the recommendation of the Director, reallocate 65,647 acre-feet of uncontracted municipal and industrial water, of which—

(A) 285 acre-feet shall be reallocated to the town of Superior, Arizona;

(B) 806 acre-feet shall be reallocated to the Cave Creek Water Company;

(C) 1,931 acre-feet shall be reallocated to the Chaparral Water Company;

(D) 508 acre-feet shall be reallocated to the town of El Mirage, Arizona;

(E) 7,211 acre-feet shall be reallocated to the city of Goodyear, Arizona;

(F) 147 acre-feet shall be reallocated to the H2O Water Company;

(G) 7,115 acre-feet shall be reallocated to the city of Mesa, Arizona;

(H) 5,527 acre-feet shall be reallocated to the city of Peoria, Arizona;

(I) 2,981 acre-feet shall be reallocated to the city of Scottsdale, Arizona;

(J) 808 acre-feet shall be reallocated to the AVRA Cooperative;

(K) 4,986 acre-feet shall be reallocated to the city of Chandler, Arizona;

(L) 1,071 acre-feet shall be reallocated to the Del Lago (Vail) Water Company;

(M) 3,053 acre-feet shall be reallocated to the city of Glendale, Arizona;

(N) 1,521 acre-feet shall be reallocated to the Community Water Company of Green Valley, Arizona;

(O) 4,602 acre-feet shall be reallocated to the Metropolitan Domestic Water Improvement District;

(P) 3,557 acre-feet shall be reallocated to the town of Oro Valley, Arizona;

(Q) 8,206 acre-feet shall be reallocated to the city of Phoenix, Arizona;

(R) 2,876 acre-feet shall be reallocated to the city of Surprise, Arizona;

(S) 8,206 acre-feet shall be reallocated to the city of Tucson, Arizona; and

(T) 250 acre-feet shall be reallocated to the Valley Utilities Water Company.

(2) SUBCONTRACTS.—

(A) IN GENERAL.—As soon as practicable after the date of enactment of this Act, and in accordance with paragraphs (1) and (2) of subsection (d) and any other applicable Federal laws, the Secretary shall offer to enter into subcontracts for the delivery of the uncontracted municipal and industrial water reallocated under paragraph (1).

(B) REVISED RECOMMENDATION.—If the Secretary is precluded under applicable Federal law from entering into a subcontract with an entity identified in paragraph (1), the Secretary shall—

(i) request a revised recommendation from the Director; and

(ii) on receipt of a recommendation under clause (i), reallocate and enter into a subcontract for the delivery of the water in accordance with subparagraph (A).

(c) LIMITATIONS.—

(1) AMOUNT.—

(A) IN GENERAL.—The total amount of entitlements under long-term contracts (as defined in the repayment stipulation) for the delivery of Central Arizona Project water in the State shall not exceed 1,415,000 acre-feet, of which—

(i) 650,724 acre-feet shall be—

(I) under contract to Arizona Indian tribes;

or

(II) available to the Secretary for allocation to Arizona Indian tribes; and

(ii) 764,276 acre-feet shall be under contract or available for allocation to—

(I) non-Indian municipal and industrial entities;

(II) the Arizona Department of Water Resources; and

(III) non-Indian agricultural entities.

(B) EXCEPTION.—Subparagraph (A) shall not apply to Central Arizona Project water delivered to water users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

(2) TRANSFER.—

(A) IN GENERAL.—Except pursuant to the master agreement, Central Arizona Project water may not be transferred from—

(i) a use authorized under paragraph (1)(A)(i) to a use authorized under paragraph (1)(A)(ii); or

(ii) a use authorized under paragraph (1)(A)(ii) to a use authorized under paragraph (1)(A)(i).

(B) EXCEPTIONS.—

(i) LEASES.—A lease of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) under an Indian water rights settlement approved by an Act of Congress shall not

be considered to be a transfer for purposes of subparagraph (A).

(ii) EXCHANGES.—An exchange of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) shall not be considered to be a transfer for purposes of subparagraph (A).

(iii) Notwithstanding subparagraph (A), up to 17,000 acre-feet of CAP municipal and industrial water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, subcontract No. 3-07-30-W0307, dated November 7, 1993, may be reallocated to the Community on execution of an exchange and lease agreement among the Community, the United States, and Asarco.

(d) CENTRAL ARIZONA PROJECT CONTRACTS AND SUBCONTRACTS.—

(1) IN GENERAL.—Notwithstanding section 6 of the Reclamation Project Act of 1939 (43 U.S.C. 485e), and paragraphs (2) and (3) of section 304(b) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)), as soon as practicable after the date of enactment of this Act, the Secretary shall offer to enter into subcontracts or to amend all Central Arizona Project contracts and subcontracts in effect as of that date in accordance with paragraph (2).

(2) REQUIREMENTS.—All subcontracts and amendments to Central Arizona Project contracts and subcontracts under paragraph (1)—

(A) shall be for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d));

(B) shall have an initial delivery term that is the greater of—

(i) 100 years; or

(ii) a term—

(I) authorized by Congress; or

(II) provided under the appropriate Central Arizona Project contract or subcontract in existence on the date of enactment of this Act;

(C) shall conform to the shortage sharing criteria described in paragraph 5.3 of the Tohono O'odham settlement agreement;

(D) shall include the prohibition and exception described in subsection (e); and

(E) shall not require—

(i) that any Central Arizona Project water received in exchange for effluent be deducted from the contractual entitlement of the CAP contractor or CAP subcontractor; or

(ii) that any additional modification of the Central Arizona Project contracts or subcontracts be made as a condition of acceptance of the subcontract or amendments.

(3) APPLICABILITY.—This subsection does not apply to—

(A) a subcontract for non-Indian agricultural use; or

(B) a contract executed under paragraph 5(d) of the repayment stipulation.

(e) PROHIBITION ON TRANSFER.—

(1) IN GENERAL.—Except as provided in paragraph (2), no Central Arizona Project water shall be leased, exchanged, forborne, or otherwise transferred in any way for use directly or indirectly outside the State.

(2) EXCEPTIONS.—Central Arizona Project water may be—

(A) leased, exchanged, forborne, or otherwise transferred under an agreement with the Arizona Water Banking Authority that is in accordance with part 414 of title 43, Code of Federal Regulations; and

(B) delivered to users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

(3) EFFECT OF SUBSECTION.—Nothing in this subsection prohibits any entity from entering into a contract with the Arizona Water Banking Authority or a successor of the Authority under State law.

SEC. 105. FIRING OF CENTRAL ARIZONA PROJECT INDIAN WATER.

(a) FIRING PROGRAM.—The Secretary and the State shall develop a firing program to ensure that 60,648 acre-feet of the agricultural priority water made available pursuant to the master agreement and reallocated to Arizona Indian tribes under section 104(a)(1), shall, for a 100-year period, be delivered during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

(b) DUTIES.—

(1) SECRETARY.—The Secretary shall—

(A) firm 28,200 acre-feet of agricultural priority water reallocated to the Tohono O'odham Nation under section 104(a)(1)(A)(ii); and

(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).

(2) STATE.—The State shall—

(A) firm 15,000 acre-feet of agricultural priority water reallocated to the Community under section 104(a)(1)(A)(i);

(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii); and

(C) assist the Secretary in carrying out obligations of the Secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the duties of the Secretary under subsection (b)(1).

SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY WATER.

(a) APPROVAL OF AGREEMENT.—

(1) IN GENERAL.—Except to the extent that any provision of the master agreement conflicts with any provision of this title, the master agreement is authorized, ratified, and confirmed. To the extent that amendments are executed to make the master agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(2) **EXHIBITS.**—The Secretary is directed to and shall execute the master agreement and any of the exhibits to the master agreement that have not been executed as of the date of enactment of this Act.

(3) **DEBT COLLECTION.**—For any agricultural priority water that is not relinquished under the master agreement, the subcontractor shall continue to pay, consistent with the master agreement, the portion of the debt associated with any retained water under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and the Secretary shall apply such revenues toward the reimbursable section 9(d) debt of that subcontractor.

(4) **EFFECTIVE DATE.**—The provisions of subsections (b) and (c) shall take effect on the date of enactment of this Act.

(b) **NONREIMBURSABLE DEBT.**—

(1) **IN GENERAL.**—In accordance with the master agreement, the portion of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and identified in the master agreement as nonreimbursable to the United States, shall be nonreimbursable and nonreturnable to the United States in an amount not to exceed \$73,561,337.

(2) **EXTENSION.**—In accordance with the master agreement, the Secretary may extend, on an annual basis, the repayment schedule of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)) by CAP subcontractors.

(c) **EXEMPTION.**—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) and any other acreage limitation or full cost pricing provisions of Federal law shall not apply to—

(1) land within the exterior boundaries of the Central Arizona Water Conservation District or served by Central Arizona Project water;

(2) land within the exterior boundaries of the Salt River Reservoir District;

(3) land held in trust by the United States for an Arizona Indian tribe that is—

(A) within the exterior boundaries of the Central Arizona Water Conservation District; or

(B) served by Central Arizona Project water; or

(4) any person, entity, or land, solely on the basis of—

(A) receipt of any benefits under this Act;

(B) execution or performance of the Gila River agreement; or

(C) the use, storage, delivery, lease, or exchange of Central Arizona Project water.

SEC. 107. LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.

(a) **IN GENERAL.**—Section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) is amended by striking subsection (f) and inserting the following:

“(f) **ADDITIONAL USES OF REVENUE FUNDS.**—

“(1) **CREDITING AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.**—Funds credited to the development fund pursuant to subsection (b) and paragraphs (1) and (3) of subsection (c), the portion of revenues derived from the sale of power and energy for use in the State of Arizona pursuant to subsection (c)(2) in excess of the amount necessary to meet the requirements of paragraphs (1) and (2) of subsection

(d), and any annual payment by the Central Arizona Water Conservation District to effect repayment of reimbursable Central Arizona Project construction costs, shall be credited annually against the annual payment owed by the Central Arizona Water Conservation District to the United States for the Central Arizona Project.

“(2) FURTHER USE OF REVENUE FUNDS CREDITED AGAINST PAYMENTS OF CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—After being credited in accordance with paragraph (1), the funds and portion of revenues described in that paragraph shall be available annually, without further appropriation, in order of priority—

“(A) to pay annually the fixed operation, maintenance, and replacement charges associated with the delivery of Central Arizona Project water held under long-term contracts for use by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act) in accordance with clause 8(d)(i)(1)(i) of the Repayment Stipulation (as defined in section 2 of the Arizona Water Settlements Act);

“(B) to make deposits, totaling \$53,000,000 in the aggregate, in the Gila River Indian Community Water OM&R Trust Fund established by section 208 of the Arizona Water Settlements Act;

“(C) to pay \$147,000,000 for the rehabilitation of the San Carlos Irrigation Project, of which not more than \$25,000,000 shall be available annually consistent with attachment 6.5.1 of exhibit 20.1 of the Gila River agreement, except that the total amount of \$147,000,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

“(D) in addition to amounts made available for the purpose through annual appropriations, as reasonably allocated by the Secretary without regard to any trust obligation on the part of the Secretary to allocate the funding under any particular priority and without regard to priority (except that payments required by clause (i) shall be made first)—

“(i) to make deposits totaling \$66,000,000, adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, into the New Mexico Unit Fund as provided by section 212(i) of the Arizona Water Settlements Act in 10 equal annual payments beginning in 2012;

“(ii) upon satisfaction of the conditions set forth in subsections (j) and (k) of section 212, to pay certain of the costs associated with construction of the New Mexico Unit, in addition to any amounts that may be expended from the New Mexico Unit Fund, in a minimum amount of \$34,000,000 and a maximum amount of \$62,000,000, as provided in section 212 of the Arizona Water Settlements Act, as adjusted to

reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit;

“(iii) to pay the costs associated with the construction of distribution systems required to implement the provisions of—

“(I) the contract entered into between the United States and the Gila River Indian Community, numbered 6-07-03-W0345, and dated July 20, 1998;

“(II) section 3707(a)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4747); and

“(III) section 304 of the Southern Arizona Water Rights Settlement Amendments Act of 2004;

“(iv) to pay \$52,396,000 for the rehabilitation of the San Carlos Irrigation Project as provided in section 203(d)(4) of the Arizona Water Settlements Act, of which not more than \$9,000,000 shall be available annually, except that the total amount of \$52,396,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

“(v) to pay other costs specifically identified under—

“(I) sections 213(g)(1) and 214 of the Arizona Water Settlements Act; and

“(II) the Southern Arizona Water Rights Settlement Amendments Act of 2004;

“(vi) to pay a total of not more than \$250,000,000 to the credit of the Future Indian Water Settlement Subaccount of the Lower Colorado Basin Development Fund, for use for Indian water rights settlements in Arizona approved by Congress after the date of enactment of this Act, subject to the requirement that, notwithstanding any other provision of this Act, any funds credited to the Future Indian Water Settlement Subaccount that are not used in furtherance of a congressionally approved Indian water rights settlement in Arizona by December 31, 2030, shall be returned to the main Lower Colorado Basin Development Fund for expenditure on authorized uses pursuant to this Act, provided that any interest earned on funds held in the Future Indian Water Settlement Subaccount shall remain in such subaccount until disbursed or returned in accordance with this section;

“(vii) to pay costs associated with the installation of gages on the Gila River and its tributaries to measure the water level of the Gila River and its tributaries for purposes of the New Mexico Consumptive Use and Forbearance Agreement in an amount not to exceed \$500,000; and

“(viii) to pay the Secretary’s costs of implementing the Central Arizona Project Settlement Act of 2004;

“(E) in addition to amounts made available for the purpose through annual appropriations—

“(i) to pay the costs associated with the construction of on-reservation Central Arizona Project distribution systems for the Yavapai Apache (Camp Verde), Tohono O’odham Nation (Sif Oidak District), Pascua Yaqui, and Tonto Apache tribes; and

“(ii) to make payments to those tribes in accordance with paragraph 8(d)(i)(1)(iv) of the repayment stipulation (as defined in section 2 of the Arizona Water Settlements Act), except that if a water rights settlement Act of Congress authorizes such construction, payments to those tribes shall be made from funds in the Future Indian Water Settlement Subaccount; and

“(F) if any amounts remain in the development fund at the end of a fiscal year, to be carried over to the following fiscal year for use for the purposes described in subparagraphs (A) through (E).

“(3) REVENUE FUNDS IN EXCESS OF REVENUE FUNDS CREDITED AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—The funds and portion of revenues described in paragraph (1) that are in excess of amounts credited under paragraph (1) shall be available, on an annual basis, without further appropriation, in order of priority—

“(A) to pay annually the fixed operation, maintenance and replacement charges associated with the delivery of Central Arizona Project water under long-term contracts held by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act);

“(B) to make the final outstanding annual payment for the costs of each unit of the projects authorized under title III that are to be repaid by the Central Arizona Water Conservation District;

“(C) to reimburse the general fund of the Treasury for fixed operation, maintenance, and replacement charges previously paid under paragraph (2)(A);

“(D) to reimburse the general fund of the Treasury for costs previously paid under subparagraphs (B) through (E) of paragraph (2);

“(E) to pay to the general fund of the Treasury the annual installment on any debt relating to the Central Arizona Project under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), made nonreimbursable under section 106(b) of the Arizona Water Settlements Act;

“(F) to pay to the general fund of the Treasury the difference between—

“(i) the costs of each unit of the projects authorized under title III that are repayable by the Central Arizona Water Conservation District; and

“(ii) any costs allocated to reimbursable functions under any Central Arizona Project cost allocation undertaken by the United States; and

“(G) for deposit in the general fund of the Treasury.

“(4) INVESTMENT OF AMOUNTS.—

“(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the development fund as is not,

in the judgment of the Secretary of the Interior, required to meet current needs of the development fund.

“(B) PERMITTED INVESTMENTS.—

“(i) IN GENERAL.—Notwithstanding any other provision of law, including any provision requiring the consent or concurrence of any party, the investments referred to in subparagraph (A) shall include 1 or more of the following:

“(I) Any investments referred to in the Act of June 24, 1938 (25 U.S.C. 162a).

“(II) Investments in obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds.

“(III) The obligations referred to in section 201 of the Social Security Act (42 U.S.C. 401).

“(ii) LAWFUL INVESTMENTS.—For purposes of clause (i), obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds includes any of the following securities or securities with comparable language concerning the investment of federally managed funds:

“(I) Obligations of the United States Postal Service as authorized by section 2005 of title 39, United States Code.

“(II) Bonds and other obligations of the Tennessee Valley Authority as authorized by section 15d of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n-4).

“(III) Mortgages, obligations, or other securities of the Federal Home Loan Mortgage Corporation as authorized by section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452).

“(IV) Bonds, notes, or debentures of the Commodity Credit Corporation as authorized by section 4 of the Act of March 4, 1939 (15 U.S.C. 713a-4).

“(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

“(i) on original issue at the issue price; or

“(ii) by purchase of outstanding obligations at the market price.

“(D) SALE OF OBLIGATIONS.—Any obligation acquired by the development fund may be sold by the Secretary of the Treasury at the market price.

“(E) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the development fund shall be credited to and form a part of the development fund.

“(5) AMOUNTS NOT AVAILABLE FOR CERTAIN FEDERAL OBLIGATIONS.—None of the provisions of this section, including paragraphs (2)(A) and (3)(A), shall be construed to make any

of the funds referred to in this section available for the fulfillment of any Federal obligation relating to the payment of OM&R charges if such obligation is undertaken pursuant to Public Law 95-328, Public Law 98-530, or any settlement agreement with the United States (or amendments thereto) approved by or pursuant to either of those acts.”.

43 USC 1543
note.

(b) **LIMITATION.**—Amounts made available under the amendment made by subsection (a)—

(1) shall be identified and retained in the Lower Colorado River Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543); and

(2) shall not be expended or withdrawn from that fund until the later of—

Federal Register,
publication.

(A) the date on which the findings described in section 207(c) are published in the Federal Register; or

Deadline.

(B) January 1, 2010.

43 USC 1543.

(c) **TECHNICAL AMENDMENTS.**—The Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) is amended—

(1) in section 403(g), by striking “clause (c)(2)” and inserting “subsection (c)(2)”; and

(2) in section 403(e), by deleting the first word and inserting “Except as provided in subsection (f), revenues”.

SEC. 108. EFFECT.

Except for provisions relating to the allocation of Central Arizona Project water and the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), nothing in this title affects—

(1) any treaty, law, or agreement governing the use of water from the Colorado River; or

(2) any rights to use Colorado River water existing on the date of enactment of this Act.

SEC. 109. REPEAL.

Section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (102 Stat. 2559) is repealed.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There are authorized to be appropriated such sums as are necessary to comply with—

(1) the 1994 biological opinion, including any funding transfers required by the opinion;

(2) the 1996 biological opinion, including any funding transfers required by the opinion; and

(3) any final biological opinion resulting from the 1999 biological opinion, including any funding transfers required by the opinion.

(b) **CONSTRUCTION COSTS.**—Amounts made available under subsection (a) shall be treated as Central Arizona Project construction costs.

(c) **AGREEMENTS.**—

(1) **IN GENERAL.**—Any amounts made available under subsection (a) may be used to carry out agreements to permanently fund long-term reasonable and prudent alternatives in accepted biological opinions relating to the Central Arizona Project.

(2) **REQUIREMENTS.**—To ensure that long-term environmental compliance may be met without further appropriations, an agreement under paragraph (1) shall include a provision

requiring that the contractor manage the funds through interest-bearing investments.

SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE UNDER TITLE II.

43 USC 1501
note.

(a) IN GENERAL.—Except as provided in subsection (b), if the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void; and

Effective date.

(2) any amounts appropriated under section 110 that remain unexpended shall immediately revert to the general fund of the Treasury.

(b) EXCEPTION.—No subcontract amendment executed by the Secretary under the notice of June 18, 2003 (67 Fed. Reg. 36578), shall be considered to be a contract entered into by the Secretary for purposes of subsection (a)(1).

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

Gila River Indian
Community
Water Rights
Settlement Act of
2004.
43 USC 1501
note.

SEC. 201. SHORT TITLE.

This title may be cited as the “Gila River Indian Community Water Rights Settlement Act of 2004”.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to resolve permanently certain damage claims and all water rights claims among the United States on behalf of the Community, its members, and allottees, and the Community and its neighbors;

(2) to authorize, ratify, and confirm the Gila River agreement;

(3) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under the Gila River agreement;

(4) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under the Gila River agreement and this title; and

(5) to authorize and direct the Secretary to execute the New Mexico Consumptive Use and Forbearance Agreement to allow the Secretary to exercise the rights authorized by subsections (d) and (f) of section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524).

SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT.

(a) IN GENERAL.—Except to the extent that any provision of the Gila River agreement conflicts with any provision of this title, the Gila River agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the Gila River agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(b) EXECUTION OF AGREEMENT.—To the extent that the Gila River agreement does not conflict with this title, the Secretary

is directed to and shall execute the Gila River agreement, including all exhibits to the Gila River agreement requiring the signature of the Secretary and any amendments necessary to make the Gila River agreement consistent with this title, after the Community has executed the Gila River agreement and any such amendments.

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—In implementing the Gila River agreement, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE GILA RIVER AGREEMENT.—Execution of the Gila River agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the Gila River agreement.

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance.

(d) REHABILITATION AND OPERATION, MAINTENANCE, AND REPLACEMENT OF CERTAIN WATER WORKS.—

(1) IN GENERAL.—In addition to any obligations of the Secretary with respect to the San Carlos Irrigation Project, including any operation or maintenance responsibility existing on the date of enactment of this Act, the Secretary shall—

(A) in accordance with exhibit 20.1 to the Gila River agreement, provide for the rehabilitation of the San Carlos Irrigation Project water diversion and delivery works with the funds provided for under section 403(f)(2) of the Colorado River Basin Project Act; and

(B) provide electric power for San Carlos Irrigation Project wells and irrigation pumps at the Secretary's direct cost of transmission, distribution, and administration, using the least expensive source of power available.

(2) JOINT CONTROL BOARD AGREEMENT.—

(A) IN GENERAL.—Except to the extent that it is in conflict with this title, the Secretary shall execute the joint control board agreement described in exhibit 20.1 to the Gila River agreement, including all exhibits to the joint control board agreement requiring the signature of the Secretary and any amendments necessary to the joint control board agreement consistent with this title.

(B) CONTROLS.—The joint control board agreement shall contain the following provisions, among others:

(i) The Secretary, acting through the Bureau of Indian Affairs, shall continue to be responsible for the operation and maintenance of Picacho Dam and Coolidge Dam and Reservoir, and for scheduling and delivering water to the Community and the District through the San Carlos Irrigation Project joint works.

(ii) The actions and decisions of the joint control board that pertain to construction and maintenance of those San Carlos Irrigation Project joint works that are the subject of the joint control board agreement

Deadlines.

shall be subject to the approval of the Secretary, acting through the Bureau of Indian Affairs within 30 days thereof, or sooner in emergency situations, which approval shall not be unreasonably withheld. Should a required decision of the Bureau of Indian Affairs not be received by the joint control board within 60 days following an action or decision of the joint control board, the joint control board action or decision shall be deemed to have been approved by the Secretary.

(3) REHABILITATION COSTS ALLOCABLE TO THE COMMUNITY.—The rehabilitation costs allocable to the Community under exhibit 20.1 to the Gila River agreement shall be paid from the funds available under paragraph (2)(C) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(4) REHABILITATION COSTS NOT ALLOCABLE TO THE COMMUNITY.—

(A) IN GENERAL.—The rehabilitation costs not allocable to the Community under exhibit 20.1 to the Gila River agreement shall be provided from funds available under paragraph (2)(D)(iv) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(B) SUPPLEMENTARY REPAYMENT CONTRACT.—Prior to the advance of any funds made available to the San Carlos Irrigation and Drainage District pursuant to the provisions of this Act, the Secretary shall execute a supplementary repayment contract with the San Carlos Irrigation and Drainage District in the form provided for in exhibit 20.1 to the Gila River agreement which shall, among other things, provide that—

(i) in accomplishing the work under the supplementary repayment contract—

(I) the San Carlos Irrigation and Drainage District—

(aa) may use locally accepted engineering standards and the labor and contracting authorities that are available to the District under State law; and

(bb) shall be subject to the value engineering program of the Bureau of Reclamation established pursuant to OMB Circular A-131; and

(II) in accordance with FAR Part 48.101(b), the incentive returned to the contractor through this “Incentive Clause” shall be 55 percent after the Contractor is reimbursed for the allowable costs of developing and implementing the proposal and the Government shall retain 45 percent of such savings in the form of reduced expenditures;

(ii) up to 18,000 acre-feet annually of conserved water will be made available by the San Carlos Irrigation and Drainage District to the United States pursuant to the terms of exhibit 20.1 to the Gila River agreement; and

(iii) a portion of the San Carlos Irrigation and Drainage District’s share of the rehabilitation costs

specified in exhibit 20.1 to the Gila River agreement shall be nonreimbursable.

(5) **LEAD AGENCY.**—The Bureau of Reclamation shall be designated as the lead agency for oversight of the construction and rehabilitation of the San Carlos Irrigation Project authorized by this section.

(6) **FINANCIAL RESPONSIBILITY.**—Except as expressly provided by this section, nothing in this Act shall affect—

(A) any responsibility of the Secretary under the provisions of the Act of June 7, 1924 (commonly known as the “San Carlos Irrigation Project Act of 1924”) (43 Stat. 475); or

(B) any other financial responsibility of the Secretary relating to operation and maintenance of the San Carlos Irrigation Project existing on the date of enactment of this Act.

SEC. 204. WATER RIGHTS.

(a) **RIGHTS HELD IN TRUST; ALLOTTEES.**—

(1) **INTENT OF CONGRESS.**—It is the intent of Congress to provide allottees with benefits that are equal to or that exceed the benefits that the allottees currently possess, taking into account—

(A) the potential risks, cost, and time delay associated with the litigation that will be resolved by the Gila River agreement;

(B) the availability of funding under title I for the rehabilitation of the San Carlos Irrigation Project and for other benefits;

(C) the availability of water from the CAP system and other sources after the enforceability date, which will supplement less secure existing water supplies; and

(D) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), and this title to protect the interests of allottees.

(2) **HOLDING IN TRUST.**—The water rights and resources described in the Gila River agreement shall be held in trust by the United States on behalf of the Community and the allottees as described in this section.

(3) **ALLOTTED LAND.**—As specified in and provided for under this Act—

(A) agricultural allottees, other than allottees with rights under the Globe Equity Decree, shall be entitled to a just and equitable allocation of water from the Community for irrigation purposes from the water resources described in the Gila River agreement;

(B) allotted land with rights under the Globe Equity Decree shall be entitled to receive—

(i) a similar quantity of water from the Community to the quantity historically delivered under the Globe Equity Decree; and

(ii) the benefit of the rehabilitation of the San Carlos Irrigation Project as provided in this Act, a more secure source of water, and other benefits under this Act;

(C) the water rights and resources and other benefits provided by this Act are a complete substitution of any

rights that may have been held by, or any claims that may have been asserted by, the allottees before the date of enactment of this Act for land within the exterior boundaries of the Reservation;

(D) any entitlement to water of allottees for land located within the exterior boundaries of the Reservation shall be satisfied by the Community using the water resources described in subparagraph 4.1 in the Gila River agreement;

(E) before asserting any claim against the United States under section 1491(a) of title 28, United States Code, or under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), an allottee shall first exhaust remedies available to the allottee under the Community's water code and Community law; and

(F) following exhaustion of remedies on claims relating to section 7 of the Act of February 8, 1887 (25 U.S.C. 381), a claimant may petition the Secretary for relief.

(4) ACTIONS, CLAIMS, AND LAWSUITS.—

(A) IN GENERAL.—Nothing in this Act authorizes any action, claim, or lawsuit by an allottee against any person, entity, corporation, or municipal corporation, under Federal, State, or other law.

(B) THE COMMUNITY AND THE UNITED STATES.—Except as provided in subparagraphs (E) and (F) of paragraph (3) and subsection (e)(2)(C), nothing in this Act either authorizes any action, claim, or lawsuit by an allottee against the Community under Federal, State, or other law, or alters available actions pursuant to section 1491(a) of title 28, of the United States Code, or section 381 of title 25, of the United States Code.

(b) REALLOCATION.—

(1) IN GENERAL.—In accordance with this title and the Gila River agreement, the Secretary shall reallocate and contract with the Community for the delivery in accordance with this section of—

(A) an annual entitlement to 18,600 acre-feet of CAP agricultural priority water in accordance with the agreement among the Secretary, the Community, and Roosevelt Water Conservation District dated August 7, 1992;

(B) an annual entitlement to 18,100 acre-feet of CAP Indian priority water, which was permanently relinquished by Harquahala Valley Irrigation District in accordance with Contract No. 3-0907-0930-09W0290 among the Central Arizona Water Conservation District, the Harquahala Valley Irrigation District, and the United States, and converted to CAP Indian priority water under the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4480);

(C) on execution of an exchange and lease agreement among the Community, the United States, and Asarco, an annual entitlement of up to 17,000 acre-feet of CAP municipal and industrial priority water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, Subcontract No. 3-07-30-W0307, dated November 7, 1993; and

(D) as provided in section 104(a)(1)(A)(i), an annual entitlement to 102,000 acre-feet of CAP agricultural priority water acquired pursuant to the master agreement.

(2) **SOLE AUTHORITY.**—In accordance with this section, the Community shall have the sole authority, subject to the Secretary's approval pursuant to section 205(a)(2), to lease, distribute, exchange, or allocate the CAP water described in this subsection, except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land. Nothing in this paragraph shall affect the validity of any lease or exchange ratified in section 205(c) or 205(d).

(c) **WATER SERVICE CAPITAL CHARGES.**—The Community shall not be responsible for water service capital charges for CAP water.

(d) **ALLOCATION AND REPAYMENT.**—For the purpose of determining the allocation and repayment of costs of any stages of the Central Arizona Project constructed after the date of enactment of this Act, the costs associated with the delivery of water described in subsection (b), whether that water is delivered for use by the Community or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Community—

(1) shall be nonreimbursable; and

(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

(e) **APPLICATION OF PROVISIONS.**—

(1) **IN GENERAL.**—The water rights recognized and confirmed to the Community and allottees by the Gila River agreement and this title shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

(2) **WATER CODE.**—

(A) **IN GENERAL.**—Not later than 18 months after the enforceability date, the Community shall enact a water code, subject to any applicable provision of law (including subsection (a)(3)), that—

(i) manages, regulates, and controls the water resources on the Reservation;

(ii) governs all of the water rights that are held in trust by the United States; and

(iii) provides that, subject to approval of the Secretary—

(I) the Community shall manage, regulate, and control the water resources described in the Gila River agreement and allocate water to all water users on the Reservation pursuant to the water code;

(II) the Community shall establish conditions, limitations, and permit requirements relating to the storage, recovery, and use of the water resources described in the Gila River agreement;

(III) any allocation of water shall be from the pooled water resources described in the Gila River agreement;

(IV) charges for delivery of water for irrigation purposes to water users on the Reservation (including water users on allotted land) shall be assessed on a just and equitable basis without

Deadline.

regard to the status of the Reservation land on which the water is used;

(V) there is a process by which any user of or applicant to use water for irrigation purposes (including water users on allotted land) may request that the Community provide water for irrigation use in accordance with this title;

(VI) there is a due process system for the consideration and determination by the Community of any request by any water user on the Reservation (including water users on allotted land), for an allocation of water, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions; and

(VII) there is a requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States or petitioning the Secretary pursuant to subsection (a)(3)(F).

(B) APPROVAL.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to the approval of the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

(C) INCLUSION OF REQUIREMENT IN WATER CODE.—The Community is authorized to and shall include in the water code the requirement in subparagraph (A)(VII) that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States.

(3) ADMINISTRATION.—The Secretary shall administer all rights to water granted or confirmed to the Community and allottees by the Gila River agreement and this Act until such date as the water code described in paragraph (2) has been enacted and approved by the Secretary, at which time the Community shall have authority, subject to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), to manage, regulate, and control the water resources described in the Gila River agreement, subject to paragraph (2), except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land.

SEC. 205. COMMUNITY WATER DELIVERY CONTRACT AMENDMENTS.

(a) IN GENERAL.—The Secretary shall amend the Community water delivery contract to provide, among other things, in accordance with the Gila River agreement, that—

(1) the contract shall be—

(A) for permanent service (as that term is used in section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d)); and

(B) without limit as to term;

(2) the Community may, with the approval of the Secretary, including approval as to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381)—

(A) enter into contracts or options to lease (for a term not to exceed 100 years) or contracts or options to exchange, Community CAP water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties, Arizona, providing for the temporary delivery to others of any portion of the Community CAP water; and

(B) renegotiate any lease at any time during the term of the lease, so long as the term of the renegotiated lease does not exceed 100 years;

(3)(A) the Community, and not the United States, shall be entitled to all consideration due to the Community under any leases or options to lease and exchanges or options to exchange Community CAP water entered into by the Community; and

(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for—

(i) any funds received by the Community as consideration under any such leases or options to lease and exchanges or options to exchange; or

(ii) the expenditure of such funds;

(4)(A) all Community CAP water shall be delivered through the CAP system; and

(B) if the delivery capacity of the CAP system is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Community shall have the same CAP delivery rights as other CAP contractors and CAP subcontractors, if such CAP contractors or CAP subcontractors are allowed to take delivery of water other than through the CAP system;

(5) the Community may use Community CAP water on or off the Reservation for Community purposes;

(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the CAP operating agency the fixed OM&R charges associated with the delivery of Community CAP water, except for Community CAP water leased by others;

(7) the costs associated with the construction of the CAP system allocable to the Community—

(A) shall be nonreimbursable; and

(B) shall be excluded from any repayment obligation of the Community; and

(8) no CAP water service capital charges shall be due or payable for Community CAP water, whether CAP water is delivered for use by the Community or is delivered under any leases, options to lease, exchanges or options to exchange Community CAP water entered into by the Community.

(b) **AMENDED AND RESTATED COMMUNITY WATER DELIVERY CONTRACT.**—To the extent it is not in conflict with the provisions of this Act, the Amended and Restated Community CAP Water Delivery Contract set forth in exhibit 8.2 to the Gila River agreement is authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the contract. To the extent amendments are executed to make the Amended and Restated Community CAP Water Delivery Contract consistent with this title, such amendments are also authorized, ratified, and confirmed.

(c) **LEASES.**—To the extent they are not in conflict with the provisions of this Act, the leases of Community CAP water by the Community to Phelps Dodge, and any of the Cities, attached as exhibits to the Gila River agreement, are authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the leases. To the extent amendments are executed to make such leases consistent with this title, such amendments are also authorized, ratified, and confirmed.

(d) **RECLAIMED WATER EXCHANGE AGREEMENT.**—To the extent it is not in conflict with the provisions of this Act, the Reclaimed Water Exchange Agreement among the cities of Chandler and Mesa, Arizona, the Community, and the United States, attached as exhibit 18.1 to the Gila River agreement, is authorized, ratified, and confirmed, and the Secretary shall execute the agreement. To the extent amendments are executed to make the Reclaimed Water Exchange Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(e) **PAYMENT OF CHARGES.**—Neither the Community nor any recipient of Community CAP water through lease or exchange shall be obligated to pay water service capital charges or any other charges, payments, or fees for the CAP water, except as provided in the lease or exchange agreement.

(f) **PROHIBITIONS.**—

(1) **USE OUTSIDE THE STATE.**—None of the Community CAP water shall be leased, exchanged, forborne, or otherwise transferred in any way by the Community for use directly or indirectly outside the State.

(2) **USE OFF RESERVATION.**—Except as authorized by this section and subparagraph 4.7 of the Gila River agreement, no water made available to the Community under the Gila River agreement, the Globe Equity Decree, the Haggard Decree, or this title may be sold, leased, transferred, or used off the Reservation other than by exchange.

(3) **AGREEMENTS WITH THE ARIZONA WATER BANKING AUTHORITY.**—Nothing in this Act or the Gila River agreement limits the right of the Community to enter into any agreement with the Arizona Water Banking Authority, or any successor agency or entity, in accordance with State law.

SEC. 206. SATISFACTION OF CLAIMS.

(a) **IN GENERAL.**—The benefits realized by the Community, Community members, and allottees under this title shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Community, Community members, and allottees for water rights, injury to water rights, injury to water quality and subsidence damage, except as set forth in the Gila River agreement, under Federal, State, or other law with respect to land

within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

(b) **NO RECOGNITION OF WATER RIGHTS.**—Notwithstanding subsection (a) and except as provided in section 204(a), nothing in this title has the effect of recognizing or establishing any right of a Community member or allottee to water on the Reservation.

SEC. 207. WAIVER AND RELEASE OF CLAIMS.

(a) **IN GENERAL.**—

(1) **CLAIMS AGAINST THE STATE AND OTHERS.**—

(A) **CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE COMMUNITY AND THE UNITED STATES ON BEHALF OF THE COMMUNITY.**—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of their obligations under the Gila River agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee

land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or State law.

(B) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE UNITED STATES AS TRUSTEE FOR THE ALLOTTEES.—Except as provided in subparagraph 25.12 of the Gila River agreement, the United States, as trustee for the allottees, as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by allottees, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by allottees or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date.

(C) CLAIMS FOR INJURY TO WATER QUALITY BY THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims, and to agree to waive its right to request the United States to bring any claims, against the State (or any agency

or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i) past and present claims for injury to water quality (other than claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49-281 et seq. as amended) arising from time immemorial through December 31, 2002, for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land;

(ii) past, present, and future claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49-281 et seq.), arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(iii) claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement) arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49-9281 et seq.), that result from—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation, except that the waiver provided in this clause shall extend only to the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation to the extent that the person, entity, or corporation is engaged in an activity specified in this clause.

(D) PAST AND PRESENT CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of any claims arising from time immemorial through December 31, 2002, for injury to water quality where all of the following conditions are met:

(i) The claims are brought solely on behalf of the Community, members, or allottees.

(ii) The claims are brought against the State (or any agency or political subdivision of the State) or any person, entity, corporation, or municipal corporation.

(iii) The claims arise under Federal, State, or other law, including claims, if any, for trespass, nuisance, and real property damage, and claims, if any, under any current or future Federal, State, or other environmental laws or regulation, including under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49-281 et seq.).

(iv) The claimed injury is to land, water, or natural resources located on trust land within the exterior boundaries of the Reservation or on off-Reservation trust land.

(E) FUTURE CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, in its own right and as trustee for the Community, its members and allottees, as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of the following claims for injury or threat of injury to water quality arising after December 31, 2002, against the State (or any agency or political subdivision of the State) or any

other person, entity, corporation, or municipal corporation under Federal, State, or other law:

(i) All common law claims for injury or threat of injury to water quality where the injury or threat of injury asserted is to the Community's, Community members' or allottees' interests in trust land, water, or natural resources located within the exterior boundaries of the Reservation or within off-Reservation trust lands caused by—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(ii) All natural resource damage claims for injury or threat of injury to water quality where the United States, through the Secretary of the Interior or other designated officials, would act on behalf of the Community, its members or allottees as a natural resource trustee pursuant to the National Contingency Plan, (as currently set forth in section 300.600(b)(2) of title 40, Code of Federal Regulations, or as it may hereafter be amended), and where the claim is based on injury to natural resources or threat of injury to natural resources within the exterior boundaries of the Reservation or off-Reservation trust lands, caused by—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(F) CLAIMS BY THE COMMUNITY AGAINST THE SALT RIVER PROJECT.—

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the Community, on behalf of the Community and Community members (but not

members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community or its members.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

(III) The claims arise from time immemorial through the enforceability date.

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water quality, or injury to trust property located within the exterior boundaries of the Reservation.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subparagraph is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

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(G) CLAIMS BY THE UNITED STATES AGAINST THE SALT RIVER PROJECT.—

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community, members, or allottees.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

(III) The claims arise from time immemorial through the enforceability date.

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water

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quality, or injury to trust property located within the exterior boundaries of the Reservation.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subsection is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

(H) UNITED STATES ENFORCEMENT AUTHORITY.—Except as provided in subparagraphs (D), (E), and (G), nothing in this Act or the Gila River agreement affects any right of the United States, or the State, to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

(2) CLAIMS FOR SUBSIDENCE BY THE COMMUNITY, ALLOTTEES, AND THE UNITED STATES ON BEHALF OF THE COMMUNITY AND ALLOTTEES.—In accordance with the subsidence remediation program under section 209, the Community, a Community member, or an allottee, and the United States, on behalf of the Community, a Community member, or an allottee, as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of all claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation or municipal corporation under Federal, State, or other law for the damage claimed.

(3) CLAIMS AGAINST THE COMMUNITY.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this Act, the United States, in all its capacities (except as trustee for an Indian tribe other than the Community), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any and all claims against the Community, or any agency, official, or employee of the Community, under Federal, State, or any other law for—

(i) past and present claims for subsidence damage to trust land within the exterior boundaries of the Reservation, off-Reservation trust lands, and fee land arising from time immemorial through the enforceability date; and

(ii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II.

(4) CLAIMS AGAINST THE UNITED STATES.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of

any claim against the United States (or agencies, officials, or employees of the United States) under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or applicable law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II;

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or applicable law;

(v) past and present claims for failure to protect, acquire, or develop water rights for or on behalf of the Community and Community members arising before December 31, 2002; and

(vi) past, present, and future claims relating to failure to assert any claims expressly waived pursuant to section 207(a)(1) (C) through (E).

(B) EXHAUSTION OF REMEDIES.—To the extent that members in their capacity as allottees assert that this title impairs or alters their present or future claims to water or constitutes an injury to present or future water rights, the members shall be required to exhaust their

remedies pursuant to the tribal water code prior to asserting claims against the United States.

(5) CLAIMS AGAINST CERTAIN PERSONS AND ENTITIES IN THE UPPER GILA VALLEY.—

(A) BY THE COMMUNITY AND THE UNITED STATES.— Except as provided in the UVD agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States on behalf of the Community and Community members (but not members in their capacities as allottees), are authorized, as part of the performance of obligations under the UVD agreement, to execute a waiver and release of the following claims against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of the Community or Community members;

(ii)(I) past, present, and future claims for injuries to water rights for land within the exterior boundaries of the Reservation or the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of Community members, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project, resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement; and

(IV) claims for injury to water rights arising after the enforceability date for water rights transferred to the Project pursuant to section 211 resulting from the diversion, pumping or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres,

on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of and relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(B) BY THE UNITED STATES ON BEHALF OF ALLOTTEES.—Except as provided in the UVD agreement, to the extent consistent with this section, the United States as trustee for the allottees, as part of the performance under the UVD agreement, is authorized to execute a waiver and release of the following claims under Federal, State, or other law against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial, and thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors;

(ii)(I) past and present claims for injury to water rights for lands within the exterior boundaries of the Reservation arising from time immemorial, through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement; and

(III) claims for injury to water rights for land within the exterior boundaries of the Reservation arising after the enforceability date resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary

Records.

to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(C) ADDITIONAL WAIVER OF CERTAIN CLAIMS BY THE UNITED STATES.—Except as provided in the UVD Agreement, the United States (to the extent the waiver and release authorized by this subparagraph is not duplicative of the waiver and release provided in subparagraph (B) and to the extent the United States holds legal title to (but not the beneficial interest in) the water rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands) shall execute a waiver and release of the following claims under Federal, State or other law against the UV signatories and the UV Non-signatories (and the predecessors of each) for—

(i) past, present, and future claims for water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial, and thereafter, forever;

(ii)(I) past and present claims for injury to water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) claims for injury to water rights arising after the enforceability date for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands resulting from the diversion, pumping, or use of water in a manner that is consistent with

and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

Records.

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(6) TRIBAL WATER QUALITY STANDARDS.—The Community, on behalf of the Community and Community members, as part of the performance of its obligations under the Gila River agreement, is authorized to agree never to adopt any water quality standards, or ask the United States to promulgate such standards, that are more stringent than water quality standards adopted by the State if the Community's adoption of such standards could result in the imposition by the State or the United States of more stringent water quality limitations or requirements than those that would otherwise be imposed by the State or the United States on—

(A) any water delivery system used to deliver water to the Community; or

(B) the discharge of water into any such system.

(b) EFFECTIVENESS OF WAIVER AND RELEASES.—

(1) IN GENERAL.—The waivers under paragraphs (1) and (3) through (5) of subsection (a) shall become effective on the enforceability date.

Effective date.

(2) CLAIMS FOR SUBSIDENCE DAMAGE.—The waiver under subsection (a)(2) shall become effective on execution of the waiver by—

(A) the Community, a Community member, or an allottee; and

(B) the United States, on behalf of the Community, a Community member, or an allottee.

(c) ENFORCEABILITY DATE.—

(1) IN GENERAL.—This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

Effective date.
Federal Register,
publication.

(A) to the extent the Gila River agreement conflicts with this title, the Gila River agreement has been revised through an amendment to eliminate the conflict and the

Gila River agreement, so revised, has been executed by the Secretary and the Governor of the State;

(B) the Secretary has fulfilled the requirements of—

(i) paragraphs (1)(A)(i) and (2) of subsection (a) and subsections (b) and (d) of section 104; and

(ii) sections 204, 205, and 209(a);

(C) the master agreement authorized, ratified, and confirmed by section 106(a) has been executed by the parties to the master agreement, and all conditions to the enforceability of the master agreement have been satisfied;

(D) \$53,000,000 has been identified and retained in the Lower Colorado River Basin Development Fund for the benefit of the Community in accordance with section 107(b);

(E) the State has appropriated and paid to the Community any amount to be paid under paragraph 27.4 of the Gila River agreement;

(F) the Salt River Project has paid to the Community \$500,000 under subparagraph 16.9 of the Gila River agreement;

(G) the judgments and decrees attached to the Gila River agreement as exhibits 25.18A (Gila River adjudication proceedings) and 25.18B (Globe Equity Decree proceedings) have been approved by the respective courts;

(H) the dismissals attached to the Gila River agreement as exhibits 25.17.1A and B, 25.17.2, and 25.17.3A and B have been filed with the respective courts and any necessary dismissal orders entered;

(I) legislation has been enacted by the State to—

(i) implement the Southside Replenishment Program in accordance with subparagraph 5.3 of the Gila River agreement;

(ii) authorize the firming program required by section 105; and

(iii) establish the Upper Gila River Watershed Maintenance Program in accordance with subparagraph 26.8.1 of the Gila River agreement;

(J) the State has entered into an agreement with the Secretary to carry out the obligation of the State under section 105(b)(2)(A); and

(K) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95-625-TUC-WDB(EHC), No. CIV 95-1720PHX-EHC) (Consolidated Action) in accordance with the repayment stipulation.

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If, because of the failure of the enforceability date to occur by December 31, 2007, this section does not become effective, the Community, Community members, and allottees, and the United States on behalf of the San Carlos Irrigation and Drainage District, the Community, Community members, and allottees, shall retain the right to assert past, present, and future water rights claims, claims for injury to water rights, claims for injury to water quality, and claims for subsidence damage as to all land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

(d) ALL LAND WITHIN EXTERIOR BOUNDARIES OF THE RESERVATION.—Notwithstanding section 2(42), for purposes of this section, section 206, and section 210(d)—

(1) the term “land within the exterior boundaries of the Reservation” includes—

(A) land within the Reservation created pursuant to the Act of February 28, 1859, and modified by the executive orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915; and

(B) land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian; and

(2) the term “off-Reservation” refers to land located outside the exterior boundaries of the Reservation (as defined in paragraph (1)).

(e) NO RIGHTS TO WATER.—Upon the occurrence of the enforceability date—

(1) all land held by the United States in trust for the Community, Community members, and allottees and all land held by the Community within the exterior boundaries of the Reservation shall have no rights to water other than those specifically granted to the Community and the United States for the Reservation pursuant to paragraph 4.0 of the Gila River agreement; and

(2) all water usage on land within the exterior boundaries of the Reservation, including the land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian, upon acquisition by the Community or the United States on behalf of the Community, shall be taken into account in determining compliance by the Community and the United States with the limitations on total diversions specified in subparagraph 4.2 of the Gila River agreement.

SEC. 208. GILA RIVER INDIAN COMMUNITY WATER OM&R TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “Gila River Indian Community Water OM&R Fund”, to be managed and invested by the Secretary, consisting of \$53,000,000, the amount made available for this purpose under paragraph (2)(B) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(b) MANAGEMENT.—The Secretary shall manage the Water OM&R Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Community consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), hereafter referred to in this section as the “Trust Fund Reform Act”.

(c) INVESTMENT OF THE FUND.—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, chapter 41; 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a); and

(3) subsection (b).

(d) EXPENDITURES AND WITHDRAWALS.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Community may withdraw all or part of the Water OM&R Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Community only spend any funds, as provided in the Gila River agreement, to assist in paying operation, maintenance, and replacement costs associated with the delivery of CAP water for Community purposes.

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that the monies withdrawn from the Water OM&R Fund are used in accordance with this Act.

(3) LIABILITY.—If the Community exercises the right to withdraw monies from the Water OM&R Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Community shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this section that the Community does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Community remaining in the Water OM&R Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.

(5) ANNUAL REPORT.—The Community shall submit to the Secretary an annual report that describes all expenditures from the Water OM&R Fund during the year covered by the report.

(e) NO DISTRIBUTION TO MEMBERS.—No part of the principal of the Water OM&R Fund, or of the interest or income accruing on the principal, shall be distributed to any Community member on a per capita basis.

(f) FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY DATE.—Amounts in the Water OM&R Fund shall not be available for expenditure or withdrawal by the Community until the enforceability date, or until January 1, 2010, whichever is later.

SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.

(a) IN GENERAL.—Subject to the availability of funds and consistent with the provisions of section 107(a), the Secretary shall establish a program under which the Bureau of Reclamation shall repair and remediate subsidence damage and related damage that occurs after the enforceability date.

(b) DAMAGE.—Under the program, the Community, a Community member, or an allottee may submit to the Secretary a request for the repair or remediation of—

(1) subsidence damage; and

(2) damage to personal property caused by the settling of geologic strata or cracking in the earth's surface of any

length or depth, which settling or cracking is caused by pumping of underground water.

(c) REPAIR OR REMEDIATION.—The Secretary shall perform the requested repair or remediation if—

(1) the Secretary determines that the Community has not exceeded its right to withdraw underground water under the Gila River agreement; and

(2) the Community, Community member, or allottee, and the Secretary as trustee for the Community, Community member, or allottee, execute a waiver and release of claim in the form specified in exhibit 25.9.1, 25.9.2, or 25.9.3 to the Gila River agreement, as applicable, to become effective on satisfactory completion of the requested repair or remediation, as determined under the Gila River agreement.

(d) SPECIFIC SUBSIDENCE DAMAGE.—Subject to the availability of funds, the Secretary, acting through the Commissioner of Reclamation, shall repair, remediate, and rehabilitate the subsidence damage that has occurred to land before the enforceability date within the Reservation, as specified in exhibit 30.21 to the Gila River agreement.

SEC. 210. AFTER-ACQUIRED TRUST LAND.

(a) REQUIREMENT OF ACT OF CONGRESS.—The Community may seek to have legal title to additional land in the State located outside the exterior boundaries of the Reservation taken into trust by the United States for the benefit of the Community pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Community.

(b) WATER RIGHTS.—After-acquired trust land shall not include federally reserved rights to surface water or groundwater.

(c) SENSE OF CONGRESS.—It is the sense of Congress that future Acts of Congress authorizing land to be taken into trust under subsection (a) should provide that such land will have only such water rights and water use privileges as would be consistent with State water law and State water management policy.

(d) ACCEPTANCE OF LAND IN TRUST STATUS.—

(1) IN GENERAL.—If the Community acquires legal fee title to land that is located within the exterior boundaries of the Reservation (as defined in section 207(d)), the Secretary shall accept the land in trust status for the benefit of the Community upon receipt by the Secretary of a submission from the Community that provides evidence that—

(A) the land meets the Department of the Interior's minimum environmental standards and requirements for real estate acquisitions set forth in 602 DM 2.6, or any similar successor standards or requirements for real estate acquisitions in effect on the date of the Community's submission; and

(B) the title to the land meets applicable Federal title standards in effect on the date of the Community's submission.

(2) RESERVATION STATUS.—Land taken or held in trust by the Secretary under paragraph (1) shall be deemed part of the Community's reservation.

SEC. 211. REDUCTION OF WATER RIGHTS.

(a) REDUCTION OF TBI ELIGIBLE ACRES.—

(1) IN GENERAL.—Consistent with this title and as provided in the UVD agreement to assist in reducing the total water demand for irrigation use in the upper valley of the Gila River, the Secretary shall provide funds to the Gila Valley Irrigation District and the Franklin Irrigation District (hereafter in this section referred to as “the Districts”) for the acquisition of UV decreed water rights and the extinguishment of those rights to decrease demands on the Gila River, or severance and transfer of those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District in accordance with applicable law.

Deadlines.

(2) ACQUISITIONS.—

(A) REQUIRED PHASE I ACQUISITION.—Not later than December 31 of the third calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands).

(B) REQUIRED PHASE II ACQUISITION.—Not later than December 31 of the sixth calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands). The reduction of TBI eligible acres under this subparagraph shall be in addition to that accomplished under subparagraph (A).

(C) ADDITIONAL ACQUISITION IN CASE OF SETTLEMENT.—If the San Carlos Apache Tribe reaches a comprehensive settlement that is approved by Congress and finally approved by all courts the approval of which is required, the Secretary shall offer to acquire for fair market value the UV decreed water rights associated with not less than 500 nor more than 3,000 TBI eligible acres of land (other than special hot lands).

(D) METHODS OF ACQUISITION FOR RIGHTS ACQUIRED PURSUANT TO SUBPARAGRAPHS (A) AND (B).—

(i) DETERMINATION OF VALUE.—

(I) APPRAISALS.—Not later than December 31 of the first calendar year that begins after the enforceability date in the case of the phase I acquisition, and not later than December 31 of the fourth calendar year that begins after the enforceability date in the case of the phase II acquisition, the Districts shall submit to the Secretary an appraisal of the average value of water rights appurtenant to 1,000 TBI eligible acres.

Notification.

(II) REVIEW.—The Secretary shall review the appraisal submitted to ensure its consistency with the Uniform Appraisal Standards for Federal Land Acquisition and notify the Districts of the results of the review within 30 days of submission of the appraisal. In the event that the Secretary finds that the appraisal is not consistent with such standards, the Secretary shall so notify the Districts with a full explanation of the reasons for

that finding. Within 60 days of being notified by the Secretary that the appraisal is not consistent with such Standards, the Districts shall resubmit an appraisal to the Secretary that is consistent with such standards. The Secretary shall review the resubmitted appraisal to ensure its consistency with nationally approved standards and notify the Districts of the results of the review within 30 days of resubmission.

Notification.

(III) PETITION.—In the event that the Secretary finds that such resubmitted appraisal is not consistent with those Standards, either the Districts or the Secretary may petition a Federal court in the District of Arizona for a determination of whether the appraisal is consistent with nationally approved Standards. If such court finds the appraisal is so consistent, the value stated in the appraisal shall be final for all purposes. If such court finds the appraisal is not so consistent, the court shall determine the average value of water rights appurtenant to 1,000 TBI eligible acres.

(IV) NO OBJECTION.—If the Secretary does not object to an appraisal within the time periods provided in this clause (i), the value determined in the appraisal shall be final for all purposes.

(ii) APPRAISAL.—In determining the value of water rights pursuant to this paragraph, any court, the Districts, the Secretary, and any appraiser shall take into account the obligations the owner of the land (to which the rights are appurtenant) will have after acquisition for phreatophyte control as provided in the UVD agreement and to comply with environmental laws because of the acquisition and severance and transfer or extinguishment of the water rights.

(iii) PAYMENT.—No more than 30 days after the average value of water rights appurtenant to 1,000 acres of land has been determined in accordance with clauses (i) and (ii), the Secretary shall pay 125 percent of such values to the Districts.

(iv) REDUCTION OF ACREAGE.—No later than December 31 of the first calendar year that begins after each such payment, the Districts shall acquire the UV decreed water rights appurtenant to one thousand (1,000) acres of lands that would have been included in the calculation of TBI eligible acres (other than special hot lands), if the calculation of TBI eligible acres had been undertaken at the time of acquisition. To the extent possible, the Districts shall select the rights to be acquired in compliance with subsection 5.3.7 of the UVD agreement.

(3) REDUCTION OF TBI ELIGIBLE ACRES.—Simultaneously with the acquisition of UV decreed water rights under paragraph (2), the number of TBI eligible acres, but not the number of acres of UV subjugated land, shall be reduced by the number of acres associated with those UV decreed water rights.

(4) ALTERNATIVES TO ACQUISITION.—

(A) SPECIAL HOT LANDS.—After the payments provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with an owner of special hot lands to prohibit permanently future irrigation of the special hot lands if the UVD settling parties simultaneously—

(i) acquire UV decreed water rights associated with a like number of UV decreed acres that are not TBI eligible acres; and

(ii) sever and transfer those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District.

(B) FOLLOWING AGREEMENT.—After the payment provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with 1 or more owners of UV decreed acres and the UV irrigation district in which the acres are located, if any, under which—

(i) the number of TBI eligible acres is reduced; but

(ii) the owner of the UV decreed acres subject to the reduction is permitted to periodically irrigate the UV decreed acres under a following agreement authorized under the UVD agreement.

(5) DISPOSITION OF ACQUIRED WATER RIGHTS.—

(A) IN GENERAL.—Of the UV decreed water rights acquired by the Districts pursuant to subparagraphs (A) and (B) of paragraph (2), the Districts shall, in accordance with all applicable law and the UVD agreement—

(i) sever, and transfer to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with up to 900 UV decreed acres; and

(ii) extinguish the balance of the UV decreed water rights so acquired (except and only to the extent that those rights are associated with a following agreement authorized under paragraph (4)(B)).

(B) SAN CARLOS APACHE SETTLEMENT.—With respect to water rights acquired by the Secretary pursuant to paragraph (2)(C), the Secretary shall, in accordance with applicable law—

(i) cause to be severed and transferred to the San Carlos Irrigation Project, for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with 200 UV decreed acres;

(ii) cause to be extinguished the UV decreed water rights associated with 300 UV decreed acres; and

(iii) cause to be transferred the balance of those acquired water rights to the San Carlos Apache Tribe pursuant to the terms of the settlement described in paragraph (2)(C).

(6) MITIGATION.—To the extent the Districts, after the payments provided by paragraph (2)(D)(iii), do not comply with

the acquisition requirements of paragraph (2) or otherwise comply with the alternatives to acquisition provided by paragraph (4), the Districts shall provide mitigation to the San Carlos Irrigation Project as provided by the UVD agreement.

(b) ADDITIONAL REDUCTIONS.—

(1) COOPERATIVE PROGRAM.—In addition to the reduction of TBI eligible acres to be accomplished under subsection (a), not later than 1 year after the enforceability date, the Secretary and the UVD settling parties shall cooperatively establish a program to purchase and extinguish UV decreed water rights associated with UV decreed acres that have not been recently irrigated.

(2) FOCUS.—The primary focus of the program under paragraph (1) shall be to prevent any land that contains riparian habitat from being reclaimed for irrigation.

(3) FUNDS AND RESOURCES.—The program under this subsection shall not require any expenditure of funds, or commitment of resources, by the UVD signatories other than such incidental expenditures of funds and commitments of resources as are required to cooperatively participate in the program.

SEC. 212. NEW MEXICO UNIT OF THE CENTRAL ARIZONA PROJECT.

(a) REQUIRED APPROVALS.—The Secretary shall not execute the Gila River agreement pursuant to section 203(b), and the agreement shall not become effective, unless and until the New Mexico Consumptive Use and Forbearance Agreement has been executed by all signatory parties and approved by the State of New Mexico.

(b) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(1) IN GENERAL.—Except to the extent a provision of the New Mexico Consumptive Use and Forbearance Agreement conflicts with a provision of this title, the New Mexico Consumptive Use and Forbearance Agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the New Mexico Consumptive Use and Forbearance Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(2) EXECUTION.—To the extent the New Mexico Consumptive Use and Forbearance Agreement does not conflict with this title, the Secretary shall execute the New Mexico Consumptive Use and Forbearance Agreement, including all exhibits to which the Secretary is a party to the New Mexico Consumptive Use and Forbearance Agreement and any amendments to the New Mexico Consumptive Use and Forbearance necessary to make it consistent with this title.

(c) NEW MEXICO UNIT AGREEMENT.—The Secretary is authorized to execute the New Mexico Unit Agreement, which agreement shall be executed within 1 year of receipt by the Secretary of written notice from the State of New Mexico that the State of New Mexico intends to build the New Mexico Unit, which notice must be received not later than December 31, 2014. The New Mexico Unit Agreement shall, among other things, provide that—

(1) all funds from the Lower Colorado River Basin Development Fund disbursed in accordance with section 403(f)(2)(D)(i) and (ii) of the Colorado River Basin Project Act (as amended by section 107(a)) shall be nonreimbursable (and such costs

Deadlines.
Notice.

shall be excluded from the repayment obligation, if any, of the NM CAP entity under the New Mexico Unit Agreement);

(2) in determining payment for CAP water under the New Mexico Unit Agreement, the NM CAP entity shall be responsible only for its share of operations, maintenance, and replacement costs (and no capital costs attendant to other units or portions of the Central Arizona Project shall be charged to the NM CAP entity);

(3) upon request by the NM CAP entity, the Secretary shall transfer to the NM CAP entity the responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those responsibilities, provided that the Secretary shall not transfer the authority to divert water pursuant to the New Mexico Consumptive Use and Forbearance Agreement, provided further that the Secretary, shall remain responsible to the parties to the New Mexico Consumptive Use and Forbearance Agreement for the NM CAP entity's compliance with the terms and conditions of that agreement;

(4) the Secretary shall divert water and otherwise exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement solely for the benefit of the NM CAP entity and for no other purpose;

(5) the NM CAP entity shall own and hold title to all portions of the New Mexico Unit constructed pursuant to the New Mexico Unit Agreement; and

(6) the Secretary shall provide a waiver of sovereign immunity for the sole and exclusive purpose of resolving a dispute in Federal court of any claim, dispute, or disagreement arising under the New Mexico Unit Agreement.

(d) AMENDMENT TO SECTION 304.—Section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)) is amended—

Contracts.

(1) by striking paragraph (1) and inserting the following:

“(1) In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in the State of New Mexico, with the approval of its Interstate Stream Commission, or with the State of New Mexico, through its Interstate Stream Commission, for water from the Gila River, its tributaries and underground water sources in amounts that will permit consumptive use of water in New Mexico of not to exceed an annual average in any period of 10 consecutive years of 14,000 acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States in *Arizona v. California* (376 U.S. 340). Such increased consumptive uses shall continue only so long as delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this Act, in quantities sufficient to replace any diminution of their supply resulting from such diversion from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose, full consideration shall be given to any differences in the quality of the water involved.”;

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(e) COST LIMITATION.—In determining payment for CAP water under the New Mexico Consumptive Use and Forbearance Agreement, the NM CAP entity shall be responsible only for its share

of operations, maintenance, and repair costs. No capital costs attendant to other Units or portions of the Central Arizona Project shall be charged to the NM CAP entity.

(f) EXCLUSION OF COSTS.—For the purpose of determining the allocation and repayment of costs of the Central Arizona Project under the CAP Repayment Contract, the costs associated with the New Mexico Unit and the delivery of Central Arizona Project water pursuant to the New Mexico Consumptive Use and Forbearance Agreement shall be nonreimbursable, and such costs shall be excluded from the Central Arizona Water Conservation District's repayment obligation.

(g) NEW MEXICO UNIT CONSTRUCTION AND OPERATIONS.—The Secretary is authorized to design, build, and operate and maintain the New Mexico Unit. Upon request by the State of New Mexico, the Secretary shall transfer to the NM CAP entity responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those functions.

(h) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—Upon execution of the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT AND THE NEW MEXICO UNIT AGREEMENT.—Execution of the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement.

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance. Upon request by the State of New Mexico to the Secretary, the State of New Mexico shall be designated as joint lead agency with respect to environmental compliance.

(i) NEW MEXICO UNIT FUND.—The Secretary shall deposit the amounts made available under paragraph (2)(D)(i) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) into the New Mexico Unit Fund, a State of New Mexico Fund established and administered by the New Mexico Interstate Stream Commission. Withdrawals from the New Mexico Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration.

(j) ADDITIONAL FUNDING FOR NEW MEXICO UNIT.—The Secretary shall pay for an additional portion of the costs of constructing the New Mexico Unit from funds made available under paragraph

Deadlines.

(2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) on a construction schedule basis, up to a maximum amount under this subparagraph (j) of \$34,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, upon satisfaction of the conditions that—

Notices.

(1) the State of New Mexico must provide notice to the Secretary in writing not later than December 31, 2014, that the State of New Mexico intends to have constructed or developed the New Mexico Unit; and

Federal Register,
publication.

(2) the Secretary must have issued in the Federal Register not later than December 31, 2019, a Record of Decision approving the project based on an environmental analysis required pursuant to applicable Federal law and on a demonstration that construction of a project for the New Mexico Unit that would deliver an average annual safe yield, based on a 50-year planning period, greater than 10,000 acre feet per year, would not cost more per acre foot of water diverted than a project sized to produce an average annual safe yield of 10,000 acre feet per year. If New Mexico exercises all reasonable efforts to obtain the issuance of such Record of Decision, but the Secretary is not able to issue such Record of Decision by December 31, 2019, for reasons outside the control of the State of New Mexico, the Secretary may extend the deadline for a reasonable period of time, not to extend beyond December 31, 2030.

(k) RATE OF RETURN EXCEEDING 4 PERCENT.—If the rate of return on carryover funds held in the Lower Colorado Basin Development Fund on the date that construction of the New Mexico Unit is initiated exceeds an average effective annual rate of 4 percent for the period beginning on the date of enactment of this Act through the date of initiation of construction of the New Mexico Unit, the Secretary shall pay an additional portion of the costs of the construction costs associated with the New Mexico Unit, on a construction schedule basis, using funds made available under paragraph (2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)). The amount of such additional payments shall be equal to 25 percent of the total return on the carryover funds earned during the period in question that is in excess of a return on such funds at an annual average effective return of 4 percent, up to a maximum total of not more than \$28,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit.

(l) DISCLAIMER.—Nothing in this Act shall affect, alter, or diminish rights to use of water of the Gila River within New Mexico, or the authority of the State of New Mexico to administer such rights for use within the State, as such rights are quantified by article IV of the decree of the United States Supreme Court in *Arizona v. California* (376 U.S. 340).

(m) PRIORITY OF OTHER EXCHANGES.—The Secretary shall not approve any exchange of Gila River water for water supplied by the CAP that would amend, alter, or conflict with the exchanges authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

SEC. 213. MISCELLANEOUS PROVISIONS.

(a) **WAIVER OF SOVEREIGN IMMUNITY.**—If any party to the Gila River agreement or signatory to an exhibit executed pursuant to section 203(b) or to the New Mexico Consumptive Use and Forbearance Agreement brings an action in any court of the United States or any State court relating only and directly to the interpretation or enforcement of this title or the Gila River agreement (including enforcement of any indemnity provisions contained in the Gila River agreement) or the New Mexico Consumptive Use and Forbearance Agreement, and names the United States or the Community as a party, or if any other landowner or water user in the Gila River basin in Arizona (except any party referred to in subparagraph 28.1.4 of the Gila River agreement) files a lawsuit relating only and directly to the interpretation or enforcement of subparagraph 6.2, subparagraph 6.3, paragraph 25, subparagraph 26.2, subparagraph 26.8, and subparagraph 28.1.3 of the Gila River agreement, naming the United States or the Community as a party—

(1) the United States, the Community, or both, may be joined in any such action; and

(2) any claim by the United States or the Community to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement (including any indemnity provisions contained in the Gila River agreement).

(b) **EFFECT OF ACT.**—Nothing in this title quantifies or otherwise affects the water rights, or claims or entitlements to water, of any Indian tribe, band, or community, other than the Community.

(c) **LIMITATION ON CLAIMS FOR REIMBURSEMENT.**—The United States shall not make a claim for reimbursement of costs arising out of the implementation of this title or the Gila River agreement against any Indian-owned land within the Reservation, and no assessment shall be made in regard to those costs against that land.

(d) **NO EFFECT ON FUTURE ALLOCATIONS.**—Water received under a lease or exchange of Community CAP water under this title shall not affect any future allocation or reallocation of CAP water by the Secretary.

(e) **COMMUNITY REPAYMENT CONTRACT.**—To the extent it is not in conflict with this Act, the Secretary is directed to and shall execute Amendment No. 1 to the Community repayment contract, attached as exhibit 8.1 to the Gila River agreement, to provide, among other things, that the costs incurred under that contract shall be nonreimbursable by the Community. To the extent amendments are executed to make Amendment No. 1 consistent with this title, such amendments are also authorized, ratified, and confirmed.

(f) **SALT RIVER PROJECT RIGHTS AND CONTRACTS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the agreement between the United States and the Salt River Valley Water Users' Association dated September 6, 1917, as amended, and the rights of the Salt River Project to store water from the Salt River and Verde River at Roosevelt Dam, Horse Mesa Dam, Mormon Flat Dam, Stewart Mountain Dam, Horseshoe Dam, and Bartlett Dam and to deliver the stored water to shareholders of the Salt River Project and others for all beneficial uses and purposes recognized under State law and to

the Community under the Gila River agreement, are authorized, ratified, and confirmed.

(2) PRIORITY DATE; QUANTIFICATION.—The priority date and quantification of rights described in paragraph (1) shall be determined in an appropriate proceeding in State court.

(3) CARE, OPERATION, AND MAINTENANCE.—The Salt River Project shall retain authority and responsibility existing on the date of enactment of this Act for decisions relating to the care, operation, and maintenance of the Salt River Project water delivery system, including the Salt River Project reservoirs on the Salt River and Verde River, vested in Salt River Project under the 1917 agreement, as amended, described in paragraph (1).

(g) UV IRRIGATION DISTRICTS.—

(1) IN GENERAL.—As partial consideration for obligations the UV irrigation districts shall be undertaking, the obligation to comply with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) to the New Mexico Consumptive Use and Forbearance Agreement, the Gila Valley Irrigation District, in 2010, shall receive funds from the Secretary in an amount of \$15,000,000 (adjusted to reflect changes since the date of enactment of this Act in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(2) RESTRICTION.—The funds to be received by the Gila Valley Irrigation District shall be used solely for the purpose of developing programs or constructing facilities to assist with mitigating the risks and costs associated with compliance with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) of the New Mexico Consumptive and Forbearance Agreement, and for no other purpose.

(h) LIMITATION ON LIABILITY OF UNITED STATES.—

(1) IN GENERAL.—The United States shall have no trust or other obligation—

(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Community by any party to the Gila River agreement; or

(B) to review or approve the expenditure of those funds.

(2) INDEMNIFICATION.—The Community shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

(i) BLUE RIDGE PROJECT TRANSFER AUTHORIZATION.—

(1) DEFINITIONS.—In this subsection:

(A) BLUE RIDGE PROJECT.—The term “Blue Ridge Project” means the water storage reservoir known as “Blue Ridge Reservoir” situated in Coconino and Gila Counties, Arizona, consisting generally of—

(i) Blue Ridge Dam and all pipelines, tunnels, buildings, hydroelectric generating facilities, and other structures of every kind, transmission, telephone and

fiber optic lines, pumps, machinery, tools, and appliances; and

(ii) all real or personal property, appurtenant to or used, or constructed or otherwise acquired to be used, in connection with Blue Ridge Reservoir.

(B) SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.—The term “Salt River Project Agricultural Improvement and Power District” means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(2) TRANSFER OF TITLE.—The United States, acting through the Secretary of the Interior, shall accept from the Salt River Project Agricultural Improvement and Power District the transfer of title to the Blue Ridge Project. The transfer of title to the Blue Ridge Project from the Salt River Project Agricultural Improvement and Power District to the United States shall be without cost to the United States. The transfer, change of use or change of place of use of any water rights associated with the Blue Ridge Project shall be made in accordance with Arizona law.

(3) USE AND BENEFIT OF SALT RIVER FEDERAL RECLAMATION PROJECT.—

(A) IN GENERAL.—Subject to subparagraph (B), the United States shall hold title to the Blue Ridge Project for the exclusive use and benefit of the Salt River Federal Reclamation Project.

(B) AVAILABILITY OF WATER.—Up to 3,500 acre-feet of water per year may be made available from Blue Ridge Reservoir for municipal and domestic uses in Northern Gila County, Arizona, without cost to the Salt River Federal Reclamation Project.

(4) TERMINATION OF JURISDICTION.—

(A) LICENSING AND REGULATORY AUTHORITY.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Federal Energy Regulatory Commission shall have no further licensing and regulatory authority over Project Number 2304, the Blue Ridge Project, located within the State.

(B) ENVIRONMENTAL LAWS.—All other applicable Federal environmental laws shall continue to apply to the Blue Ridge Project, including the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(5) CARE, OPERATION, AND MAINTENANCE.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Salt River Valley Water Users’ Association and the Salt River Project Agricultural Improvement and Power District shall be responsible for the care, operation, and maintenance of the project pursuant to the contract between the United States and the Salt River Valley Water Users’ Association, dated September 6, 1917, as amended.

(6) C.C. CRAGIN DAM & RESERVOIR.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), Blue Ridge Dam and Reservoir shall thereafter be known as the “C.C. Cragin Dam and Reservoir”.

(j) EFFECT ON CURRENT LAW; JURISDICTION OF COURTS.—
Nothing in this section—

(1) alters law in effect on the day before the date of enactment of this Act with respect to pre-enforcement review of Federal environmental enforcement actions; or

(2) confers jurisdiction on any State court to interpret subparagraphs (D), (E), and (G) of section 207(a)(1) where such jurisdiction does not otherwise exist.

SEC. 214. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) REHABILITATION OF IRRIGATION WORKS.—

(A) IN GENERAL.—There is authorized to be appropriated \$52,396,000, adjusted to reflect changes since January 1, 2000, under subparagraph (B) for the rehabilitation of irrigation works under section 203(d)(4).

(B) ADJUSTMENT.—The amount under subparagraph (A) shall be adjusted by such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction required by the rehabilitation.

(2) BUREAU OF RECLAMATION CONSTRUCTION OVERSIGHT.—There are authorized to be appropriated such sums as are necessary for the Bureau of Reclamation to undertake the oversight of the construction projects authorized under section 203.

(3) SUBSIDENCE REMEDIATION PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out the subsidence remediation program under section 209 (including such sums as are necessary, not to exceed \$4,000,000, to carry out the subsidence remediation and repair required under section 209(d)).

(4) WATER RIGHTS REDUCTION.—There are authorized to be appropriated such sums as are necessary to carry out the water rights reduction program under section 211.

(5) SAFFORD FACILITY.—There are authorized to be appropriated such sums as are necessary to—

(A) retire \$13,900,000, minus any amounts appropriated for this purpose, of the debt incurred by Safford to pay costs associated with the construction of the Safford facility as identified in exhibit 26.1 to the Gila River agreement; and

(B) pay the interest accrued on that amount.

(6) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated—

(A) such sums as are necessary to carry out—

(i) all necessary environmental compliance activities undertaken by the Secretary associated with the Gila River agreement and this title;

(ii) any mitigation measures adopted by the Secretary that are the responsibility of the Community associated with the construction of the diversion and delivery facilities of the water referred to in section 204 for use on the reservation; and

(iii) no more than 50 percent of the cost of any mitigation measures adopted by the Secretary that are the responsibility of the Community associated

with the diversion or delivery of the water referred to in section 204 for use on the Reservation, other than any responsibility related to water delivered to any other person by lease or exchange; and

(B) to carry out the mitigation measures in the Roosevelt Habitat Conservation Plan, not more than \$10,000,000.

(7) UV IRRIGATION DISTRICTS.—There are authorized to be appropriated such sums as are necessary to pay the Gila Valley Irrigation District an amount of \$15,000,000 (adjusted to reflect changes since the date of enactment of the Arizona Water Settlements Act of 2004 in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(b) IDENTIFIED COSTS.—

(1) IN GENERAL.—Amounts made available under subsection (a) shall be considered to be identified costs for purposes of paragraph (2)(D)(v)(I) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(2) EXCEPTION.—Amounts made available under subsection (a)(4) to carry out section 211(b) shall not be considered to be identified costs for purposes of section 403(f)(2)(D)(v)(I) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(v)(I)) (as amended by section 107(a)).

SEC. 215. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

43 USC 1501
note.

If the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) except for section 213(i), this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void;

(2) any amounts appropriated under paragraphs (1) through (7) of section 214(a), together with any interest on those amounts, shall immediately revert to the general fund of the Treasury;

(3) any amounts made available under section 214(b) that remain unexpended shall immediately revert to the general fund of the Treasury; and

(4) any amounts paid by the Salt River Project in accordance with the Gila River agreement shall immediately be returned to the Salt River Project.

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT.

The Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274) is amended to read as follows:

Southern Arizona
Water Rights
Settlement
Amendments Act
of 2004.

“TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

“SEC. 301. SHORT TITLE.

“This title may be cited as the ‘Southern Arizona Water Rights Settlement Amendments Act of 2004’.

“SEC. 302. PURPOSES.

“The purposes of this title are—

“(1) to authorize, ratify, and confirm the agreements referred to in section 309(h);

“(2) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under those agreements; and

“(3) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under those agreements and this title.

“SEC. 303. DEFINITIONS.

“In this title:

“(1) ACRE-FOOT.—The term ‘acre-foot’ means the quantity of water necessary to cover 1 acre of land to a depth of 1 foot.

“(2) AFTER-ACQUIRED TRUST LAND.—The term ‘after-acquired trust land’ means land that—

“(A) is located—

“(i) within the State; but

“(ii) outside the exterior boundaries of the Nation’s Reservation; and

“(B) is taken into trust by the United States for the benefit of the Nation after the enforceability date.

“(3) AGREEMENT OF DECEMBER 11, 1980.—The term ‘agreement of December 11, 1980’ means the contract entered into by the United States and the Nation on December 11, 1980.

“(4) AGREEMENT OF OCTOBER 11, 1983.—The term ‘agreement of October 11, 1983’ means the contract entered into by the United States and the Nation on October 11, 1983.

“(5) ALLOTTEE.—The term ‘allottee’ means a person that holds a beneficial real property interest in an Indian allotment that is—

“(A) located within the Reservation; and

“(B) held in trust by the United States.

“(6) ALLOTTEE CLASS.—The term ‘allottee class’ means an applicable plaintiff class certified by the court of jurisdiction in—

“(A) the Alvarez case; or

“(B) the Tucson case.

“(7) ALVAREZ CASE.—The term ‘Alvarez case’ means the first through third causes of action of the third amended complaint in *Alvarez v. City of Tucson* (Civ. No. 93–09039 TUC FRZ (D. Ariz., filed April 21, 1993)).

“(8) APPLICABLE LAW.—The term ‘applicable law’ means any applicable Federal, State, tribal, or local law.

“(9) ASARCO.—The term ‘Asarco’ means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

“(10) ASARCO AGREEMENT.—The term ‘Asarco agreement’ means the agreement by that name attached to the Tohono O’odham settlement agreement as exhibit 13.1.

“(11) CAP REPAYMENT CONTRACT.—

“(A) IN GENERAL.—The term ‘CAP repayment contract’ means the contract dated December 1, 1988 (Contract No. 14-0906-09W-09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

“(B) INCLUSIONS.—The term ‘CAP repayment contract’ includes all amendments to and revisions of that contract.

“(12) CENTRAL ARIZONA PROJECT.—The term ‘Central Arizona Project’ means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

“(13) CENTRAL ARIZONA PROJECT LINK PIPELINE.—The term ‘Central Arizona Project link pipeline’ means the pipeline extending from the Tucson Aqueduct of the Central Arizona Project to Station 293+36.

“(14) CENTRAL ARIZONA PROJECT SERVICE AREA.—The term ‘Central Arizona Project service area’ means—

“(A) the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation District delivers Central Arizona Project water; and

“(B) any expansion of that area under applicable law.

“(15) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term ‘Central Arizona Water Conservation District’ means the political subdivision of the State that is the contractor under the CAP repayment contract.

“(16) COOPERATIVE FARM.—The term ‘cooperative farm’ means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c).

“(17) COOPERATIVE FUND.—The term ‘cooperative fund’ means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310.

“(18) DELIVERY AND DISTRIBUTION SYSTEM.—

“(A) IN GENERAL.—The term ‘delivery and distribution system’ means—

“(i) the Central Arizona Project aqueduct;

“(ii) the Central Arizona Project link pipeline; and

“(iii) the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water under the Central Arizona Project.

“(B) INCLUSIONS.—The term ‘delivery and distribution system’ includes pumping facilities, power plants, and electric power transmission facilities external to the boundaries of any farm to which the water is distributed.

“(19) EASTERN SCHUK TOAK DISTRICT.—The term ‘eastern Schuk Toak District’ means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area.

“(20) ENFORCEABILITY DATE.—The term ‘enforceability date’ means the date on which title III of the Arizona Water Settlements Act takes effect (as described in section 302(b) of the Arizona Water Settlements Act).

“(21) EXEMPT WELL.—The term ‘exempt well’ means a water well—

“(A) the maximum pumping capacity of which is not more than 35 gallons per minute; and

“(B) the water from which is used for—

“(i) the supply, service, or activities of households or private residences;

“(ii) landscaping;

“(iii) livestock watering; or

“(iv) the irrigation of not more than 2 acres of land for the production of 1 or more agricultural or other commodities for—

“(I) sale;

“(II) human consumption; or

“(III) use as feed for livestock or poultry.

“(22) FEE OWNER OF ALLOTTED LAND.—The term ‘fee owner of allotted land’ means a person that holds fee simple title in real property on the Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

“(23) FICO.—The term ‘FICO’ means collectively the Farmers Investment Co., an Arizona corporation of that name, and the Farmers Water Co., an Arizona corporation of that name.

“(24) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(25) INJURY TO WATER QUALITY.—The term ‘injury to water quality’ means any contamination, diminution, or deprivation of water quality under applicable law.

“(26) INJURY TO WATER RIGHTS.—

“(A) IN GENERAL.—The term ‘injury to water rights’ means an interference with, diminution of, or deprivation of water rights under applicable law.

“(B) INCLUSION.—The term ‘injury to water rights’ includes a change in the underground water table and any effect of such a change.

“(C) EXCLUSION.—The term ‘injury to water rights’ does not include subsidence damage or injury to water quality.

“(27) IRRIGATION SYSTEM.—

“(A) IN GENERAL.—The term ‘irrigation system’ means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm.

“(B) INCLUSIONS.—The term ‘irrigation system’, with respect to the cooperative farm, includes activities, procedures, works, and devices for—

“(i) rehabilitation of fields;

“(ii) remediation of sinkholes, sinks, depressions, and fissures; and

“(iii) stabilization of the banks of the Santa Cruz River.

“(28) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term ‘Lower Colorado River Basin Development Fund’ means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

“(29) M&I PRIORITY WATER.—The term ‘M&I priority water’ means Central Arizona Project water that has municipal and industrial priority.

“(30) NATION.—The term ‘Nation’ means the Tohono O’odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

“(31) NATION’S RESERVATION.—The term ‘Nation’s Reservation’ means all land within the exterior boundaries of—

“(A) the Sells Tohono O’odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);

“(B) the San Xavier Reservation established by the Executive order of July 1, 1874;

“(C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by the Executive order of June 17, 1909;

“(D) the Florence Village established by Public Law 95-361 (92 Stat. 595);

“(E) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and

“(F) all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation’s Reservation or granted reservation status in accordance with applicable Federal law before the enforceability date.

“(32) NET IRRIGABLE ACRES.—The term ‘net irrigable acres’ means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation and the Secretary.

“(33) NIA PRIORITY WATER.—The term ‘NIA priority water’ means Central Arizona Project water that has non-Indian agricultural priority.

“(34) SAN XAVIER ALLOTTEES ASSOCIATION.—The term ‘San Xavier Allottees Association’ means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of allottees.

“(35) SAN XAVIER COOPERATIVE ASSOCIATION.—The term ‘San Xavier Cooperative Association’ means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the cooperative farm.

“(36) SAN XAVIER DISTRICT.—The term ‘San Xavier District’ means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

“(37) SAN XAVIER DISTRICT COUNCIL.—The term ‘San Xavier District Council’ means the governing body of the San Xavier District, as established under the constitution of the Nation.

“(38) SAN XAVIER RESERVATION.—The term ‘San Xavier Reservation’ means the San Xavier Indian Reservation established by the Executive order of July 1, 1874.

“(39) SCHUK TOAK FARM.—The term ‘Schuk Toak Farm’ means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4).

“(40) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(41) STATE.—The term ‘State’ means the State of Arizona.

“(42) SUBJUGATE.—The term ‘subjugate’ means to prepare land for agricultural use through irrigation.

“(43) SUBSIDENCE DAMAGE.—The term ‘subsidence damage’ means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the earth of any length or depth, which settling or cracking is caused by the pumping of water.

“(44) SURFACE WATER.—The term ‘surface water’ means all water that is appropriable under State law.

“(45) TOHONO O’ODHAM SETTLEMENT AGREEMENT.—The term ‘Tohono O’odham settlement agreement’ means the agreement dated April 30, 2003 (including all exhibits of and attachments to the agreement).

“(46) TUCSON CASE.—The term ‘Tucson case’ means United States et al. v. City of Tucson, et al. (Civ. No. 75-0939 TUC consol. with Civ. No. 75-0951 TUC FRZ (D. Ariz., filed February 20, 1975)).

“(47) TUCSON INTERIM WATER LEASE.—The term ‘Tucson interim water lease’ means the lease, and any pre-2004 amendments and extensions of the lease, approved by the Secretary, between the city of Tucson, Arizona, and the Nation, dated October 24, 1992.

“(48) TUCSON MANAGEMENT AREA.—The term ‘Tucson management area’ means the area in the State comprised of—

“(A) the area—

“(i) designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and

“(ii) subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and

“(B) the portion of the Upper Santa Cruz Basin that is not located within the area described in subparagraph (A)(i).

“(49) TURNOUT.—The term ‘turnout’ means a point of water delivery on the Central Arizona Project aqueduct.

“(50) UNDERGROUND STORAGE.—The term ‘underground storage’ means storage of water accomplished under a project authorized under section 308(e).

“(51) UNITED STATES AS TRUSTEE.—The term ‘United States as Trustee’ means the United States, acting on behalf of the Nation and allottees, but in no other capacity.

“(52) VALUE.—The term ‘value’ means the value attributed to water based on the greater of—

“(A) the anticipated or actual use of the water; or

“(B) the fair market value of the water.

“(53) WATER RIGHT.—The term ‘water right’ means any right in or to groundwater, surface water, or effluent under applicable law.

“(54) 1982 ACT.—The term ‘1982 Act’ means the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the enforceability date.

“SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGATIONS.

“(a) WATER DELIVERY.—The Secretary shall deliver annually from the main project works of the Central Arizona Project, a total of 37,800 acre-feet of water suitable for agricultural use, of which—

“(1) 27,000 acre-feet shall—

“(A) be deliverable for use to the San Xavier Reservation; or

“(B) otherwise be used in accordance with section 309; and

“(2) 10,800 acre-feet shall—

“(A) be deliverable for use to the eastern Schuk Toak District; or

“(B) otherwise be used in accordance with section 309.

“(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The Secretary shall (without cost to the Nation, any allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the Central Arizona Project, design, construct, operate, maintain, and replace the delivery and distribution systems necessary to deliver the water described in subsection (a).

“(c) DUTIES OF THE SECRETARY.—

Deadlines.

“(1) COMPLETION OF DELIVERY AND DISTRIBUTION SYSTEM AND IMPROVEMENT TO EXISTING IRRIGATION SYSTEM.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall complete the design and construction of improvements to the irrigation system that serves the cooperative farm.

“(2) EXTENSION OF EXISTING IRRIGATION SYSTEM WITHIN THE SAN XAVIER RESERVATION.—

“(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, in addition to the improvements described in paragraph (1), the Secretary shall complete the design and construction of the extension of the irrigation system for the cooperative farm.

“(B) CAPACITY.—On completion of the extension, the extended cooperative farm irrigation system shall serve 2,300 net irrigable acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree on fewer net irrigable acres.

“(3) CONSTRUCTION OF NEW FARM.—

“(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall—

“(i) design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of that portion of the 27,000 acre-feet annually of water described in subsection (a)(1) that is not required for

the irrigation systems described in paragraphs (1) and (2) of subsection (c); or

“(ii) in lieu of the actions described in clause (i), pay to the San Xavier District \$18,300,000 (adjusted as provided in section 317(a)(2)) in full satisfaction of the obligations of the United States described in clause (i).

“(B) ELECTION.—

Notification.

“(i) IN GENERAL.—The San Xavier District Council may make a nonrevocable election whether to receive the benefits described under clause (i) or (ii) of subparagraph (A) by notifying the Secretary by not later than 180 days after the enforceability date or January 1, 2010, whichever is later, by written and certified resolution of the San Xavier District Council.

“(ii) NO RESOLUTION.—If the Secretary does not receive such a resolution by the deadline specified in clause (i), the Secretary shall pay \$18,300,000 (adjusted as provided in section 317(a)(2)) to the San Xavier District in lieu of carrying out the obligations of the United States under subparagraph (A)(i).

“(C) SOURCE OF FUNDS AND TIME OF PAYMENT.—

“(i) IN GENERAL.—Payment of \$18,300,000 (adjusted as provided in section 317(a)(2)) under this paragraph shall be made by the Secretary from the Lower Colorado River Basin Development Fund—

“(I) not later than 60 days after an election described in subparagraph (B) is made (if such an election is made), but in no event earlier than the enforceability date or January 1, 2010, whichever is later; or

“(II) not later than 240 days after the enforceability date or January 1, 2010, whichever is later, if no timely election is made.

“(ii) PAYMENT FOR ADDITIONAL STRUCTURES.—Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches, and irrigation works as are described in subparagraph (A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if an election is made to receive the benefits under subparagraph (A)(i).

“(4) IRRIGATION AND DELIVERY AND DISTRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK DISTRICT.—Except as provided in subsection (d), not later than 1 year after the enforceability date, the Secretary shall complete the design and construction of an irrigation system and delivery and distribution system to serve the farm that is constructed in the eastern Schuk Toak District.

“(d) EXTENSION OF DEADLINES.—

“(1) IN GENERAL.—The Secretary may extend a deadline under subsection (c) if the Secretary determines that compliance with the deadline is impracticable by reason of—

“(A) a material breach by a contractor of a contract that is relevant to carrying out a project or activity described in subsection (c);

“(B) the inability of such a contractor, under such a contract, to carry out the contract by reason of force majeure, as defined by the Secretary in the contract;

“(C) unavoidable delay in compliance with applicable Federal and tribal laws, as determined by the Secretary, including—

“(i) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

“(ii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

“(D) stoppage in work resulting from the assessment of a tax or fee that is alleged in any court of jurisdiction to be confiscatory or discriminatory.

“(2) NOTICE OF FINDING.—If the Secretary extends a deadline under paragraph (1), the Secretary shall—

“(A) publish a notice of the extension in the Federal Register; and

Federal Register,
publication.

“(B)(i) include in the notice an estimate of such additional period of time as is necessary to complete the project or activity that is the subject of the extension; and

“(ii) specify a deadline that provides for a period for completion of the project before the end of the period described in clause (i).

“(e) AUTHORITY OF SECRETARY.—

“(1) IN GENERAL.—In carrying out this title, after providing reasonable notice to the Nation, the Secretary, in compliance with all applicable law, may enter, construct works on, and take such other actions as are related to the entry or construction on land within the San Xavier District and the eastern Schuk Toak District.

“(2) EFFECT ON FEDERAL ACTIVITY.—Nothing in this subsection affects the authority of the United States, or any Federal officer, agent, employee, or contractor, to conduct official Federal business or carry out any Federal duty (including any Federal business or duty under this title) on land within the eastern Schuk Toak District or the San Xavier District.

“(f) USE OF FUNDS.—

“(1) IN GENERAL.—With respect to any funds received under subsection (c)(3)(A), the San Xavier District—

“(A) shall hold the funds in trust, and invest the funds in interest-bearing deposits and securities, until expended;

“(B) may expend the principal of the funds, and any interest and dividends that accrue on the principal, only in accordance with a budget that is—

“(i) authorized by the San Xavier District Council; and

“(ii) approved by resolution of the Legislative Council of the Nation; and

“(C) shall expend the funds—

“(i) for any subjugation of land, development of water resources, or construction, operation, maintenance, or replacement of facilities within the San Xavier Reservation that is not required to be carried out by the United States under this title or any other provision of law;

“(ii) to provide governmental services, including—

“(I) programs for senior citizens;

- “(II) health care services;
 - “(III) education;
 - “(IV) economic development loans and assistance; and
 - “(V) legal assistance programs;
 - “(iii) to provide benefits to allottees;
 - “(iv) to pay the costs of activities of the San Xavier Allottees Association; or
 - “(v) to pay any administrative costs incurred by the Nation or the San Xavier District in conjunction with any of the activities described in clauses (i) through (iv).
- “(2) NO LIABILITY OF SECRETARY; LIMITATION.—
- “(A) IN GENERAL.—The Secretary shall not—
- “(i) be responsible for any review, approval, or audit of the use and expenditure of the funds described in paragraph (1); or
 - “(ii) be subject to liability for any claim or cause of action arising from the use or expenditure, by the Nation or the San Xavier District, of those funds.
- “(B) LIMITATION.—No portion of any funds described in paragraph (1) shall be used for per capita payments to any individual member of the Nation or any allottee.

“SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES.

“(a) DELIVERY OF WATER.—

“(1) IN GENERAL.—The Secretary shall deliver water from the main project works of the Central Arizona Project, in such quantities, and in accordance with such terms and conditions, as are contained in the agreement of December 11, 1980, the 1982 Act, the agreement of October 11, 1983, and the Tohono O’odham settlement agreement (to the extent that the settlement agreement does not conflict with this Act), to 1 or more of—

- “(A) the cooperative farm;
 - “(B) the eastern Schuk Toak District;
 - “(C) turnouts existing on the enforceability date; and
 - “(D) any other point of delivery on the Central Arizona Project main aqueduct that is agreed to by—
- “(i) the Secretary;
 - “(ii) the operator of the Central Arizona Project; and
 - “(iii) the Nation.

“(2) DELIVERY.—The Secretary shall deliver the water covered by sections 304(a) and 306(a), or an equivalent quantity of water from a source identified under subsection (b)(1), notwithstanding—

- “(A) any declaration by the Secretary of a water shortage on the Colorado River; or
 - “(B) any other occurrence affecting water delivery caused by an act or omission of—
- “(i) the Secretary;
 - “(ii) the United States; or
 - “(iii) any officer, employee, contractor, or agent of the Secretary or United States.

“(b) ACQUISITION OF LAND AND WATER.—

“(1) DELIVERY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), if the Secretary, under the terms and conditions of the agreements referred to in subsection (a)(1), is unable, during any year, to deliver annually from the main project works of the Central Arizona Project any portion of the quantity of water covered by sections 304(a) and 306(a), the Secretary shall identify, acquire and deliver an equivalent quantity of water from, any appropriate source.

“(B) EXCEPTION.—The Secretary shall not acquire any water under subparagraph (A) through any transaction that would cause depletion of groundwater supplies or aquifers in the San Xavier District or the eastern Schuk Toak District.

“(2) PRIVATE LAND AND INTERESTS.—

“(A) ACQUISITION.—

“(i) IN GENERAL.—Subject to subparagraph (B), the Secretary may acquire, for not more than market value, such private land, or interests in private land, that include rights in surface or groundwater recognized under State law, as are necessary for the acquisition and delivery of water under this subsection.

“(ii) COMPLIANCE.—In acquiring rights in surface water under clause (i), the Secretary shall comply with all applicable severance and transfer requirements under State law.

“(B) PROHIBITION ON TAKING.—The Secretary shall not acquire any land, water, water rights, or contract rights under subparagraph (A) without the consent of the owner of the land, water, water rights, or contract rights.

“(C) PRIORITY.—In acquiring any private land or interest in private land under this paragraph, the Secretary shall give priority to the acquisition of land on which water has been put to beneficial use during any 1-year period during the 5-year period preceding the date of acquisition of the land by the Secretary.

“(3) DELIVERIES FROM ACQUIRED LAND.—Deliveries of water from land acquired under paragraph (2) shall be made only to the extent that the water may be transported within the Tucson management area under applicable law.

“(4) DELIVERY OF EFFLUENT.—

“(A) IN GENERAL.—Except on receipt of prior written consent of the Nation, the Secretary shall not deliver effluent directly to the Nation under this subsection.

“(B) NO SEPARATE DELIVERY SYSTEM.—The Secretary shall not construct a separate delivery system to deliver effluent to the San Xavier Reservation or the eastern Schuk Toak District.

“(C) NO IMPOSITION OF OBLIGATION.—Nothing in this paragraph imposes any obligation on the United States to deliver effluent to the Nation.

“(c) AGREEMENTS AND CONTRACTS.—To facilitate the delivery of water to the San Xavier Reservation and the eastern Schuk Toak District under this title, the Secretary may enter into a contract or agreement with the State, an irrigation district or project, or entity—

“(1) for—

“(A) the exchange of water; or

“(B) the use of aqueducts, canals, conduits, and other facilities (including pumping plants) for water delivery; or

“(2) to use facilities constructed, in whole or in part, with Federal funds.

“(d) COMPENSATION AND DISBURSEMENTS.—

“(1) COMPENSATION.—If the Secretary is unable to acquire and deliver sufficient quantities of water under section 304(a), this section, or section 306(a), the Secretary shall provide compensation in accordance with paragraph (2) in amounts equal to—

“(A)(i) the value of such quantities of water as are not acquired and delivered, if the delivery and distribution system for, and the improvements to, the irrigation system for the cooperative farm have not been completed by the deadline required under section 304(c)(1); or

“(ii) the value of such quantities of water as—

“(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the irrigation system; but

“(II) are not delivered in any calendar year;

“(B)(i) the value of such quantities of water as are not acquired and delivered, if the extension of the irrigation system is not completed by the deadline required under section 304(c)(2); or

“(ii) the value of such quantities of water as—

“(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the extension to the irrigation system; but

“(II) are not delivered in any calendar year; and

“(C)(i) the value of such quantities of water as are not acquired and delivered, if the irrigation system is not completed by the deadline required under section 304(c)(4); or

“(ii) except as provided in clause (i), the value of such quantities of water as—

“(I) are ordered by the Nation for use in the irrigation system, or for use by any person or entity (other than the San Xavier Cooperative Association); but

“(II) are not delivered in any calendar year.

“(2) DISBURSEMENT.—Any compensation payable under paragraph (1) shall be disbursed—

“(A) with respect to compensation payable under subparagraphs (A) and (B) of paragraph (1), to the San Xavier Cooperative Association; and

“(B) with respect to compensation payable under paragraph (1)(C), to the Nation for retention by the Nation or disbursement to water users, under the provisions of the water code or other applicable laws of the Nation.

“(e) NO EFFECT ON WATER RIGHTS.—Nothing in this section authorizes the Secretary to acquire or otherwise affect the water rights of any Indian tribe.

“SEC. 306. ADDITIONAL WATER DELIVERY.

“(a) IN GENERAL.—In addition to the delivery of water described in section 304(a), the Secretary shall deliver annually from the

main project works of the Central Arizona Project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which—

“(1) 23,000 acre-feet shall—

“(A) be delivered to, and used by, the San Xavier Reservation; or

“(B) otherwise be used by the Nation in accordance with section 309; and

“(2) 5,200 acre-feet shall—

“(A) be delivered to, and used by, the eastern Schuk Toak District; or

“(B) otherwise be used by the Nation in accordance with section 309.

“(b) STATE CONTRIBUTION.—To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute \$3,000,000—

“(1) in accordance with a schedule that is acceptable to the Secretary and the State; and

“(2) in the form of cash or in-kind goods and services.

“SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIVERY, REVENUE SHARING.

“(a) CONDITIONS ON ACTIONS OF SECRETARY.—The Secretary shall carry out section 304(c), subsections (a), (b), and (d) of section 305, and section 306, only if—

“(1) the Nation agrees—

“(A) except as provided in section 308(f)(1), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the San Xavier Reservation to not more than 10,000 acre-feet;

“(B) except as provided in section 308(f)(2), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the eastern Schuk Toak District to not more than 3,200 acre-feet;

“(C) to comply with water management plans established by the Secretary under section 308(d);

“(D) to consent to the San Xavier District being deemed a tribal organization (as defined in section 900.6 of title 25, Code of Federal Regulations (or any successor regulations)) for purposes identified in subparagraph (E)(iii)(I), as permitted with respect to tribal organizations under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

“(E) subject to compliance by the Nation with other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations), to consent to contracting by the San Xavier District under section 311(b), on the conditions that—

“(i)(I) the plaintiffs in the Alvarez case and Tucson case have stipulated to the dismissal, with prejudice, of claims in those cases; and

“(II) those cases have been dismissed with prejudice;

“(ii) the San Xavier Cooperative Association has agreed to assume responsibility, after completion of each of the irrigation systems described in paragraphs (1), (2), and (3) of section 304(c) and on the delivery

of water to those systems, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (25 U.S.C. 385); and

“(iii) with respect to the consent of the Nation to contracting—

“(I) the consent is limited solely to contracts for—

“(aa) the design and construction of the delivery and distribution system and the rehabilitation of the irrigation system for the cooperative farm;

“(bb) the extension of the irrigation system for the cooperative farm;

“(cc) the subjugation of land to be served by the extension of the irrigation system;

“(dd) the design and construction of storage facilities solely for water deliverable for use within the San Xavier Reservation; and

“(ee) the completion by the Secretary of a water resources study of the San Xavier Reservation and subsequent preparation of a water management plan under section 308(d);

“(II) the Nation shall reserve the right to seek retrocession or reassumption of contracts described in subclause (I), and recontracting under subpart P and other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations);

“(III) the Nation, on granting consent to such contracting, shall be released from any responsibility, liability, claim, or cost from and after the date on which consent is given, with respect to past action or inaction by the Nation, and subsequent action or inaction by the San Xavier District, relating to the design and construction of irrigation systems for the cooperative farm or the Central Arizona Project link pipeline; and

“(IV) the Secretary shall, on the request of the Nation, execute a waiver and release to carry out subclause (III);

“(F) to subjugate, at no cost to the United States, the land for which the irrigation systems under paragraphs (2) and (3) of section 304(c) will be planned, designed, and constructed by the Secretary, on the condition that—

“(i) the obligation of the Nation to subjugate the land in the cooperative farm that is to be served by the extension of the irrigation system under section 304(c)(2) shall be determined by the Secretary, in consultation with the Nation and the San Xavier Cooperative Association; and

“(ii) subject to approval by the Secretary of a contract with the San Xavier District executed under section 311, to perform that subjugation, a determination by the Secretary of the subjugation costs under clause (i), and the provision of notice by the San Xavier District to the Nation at least 180 days before the date

Deadlines.
Notice.
Certification.

on which the San Xavier District Council certifies by resolution that the subjugation is scheduled to commence, the Nation pays to the San Xavier District, not later than 90 days before the date on which the subjugation is scheduled to commence, from the trust fund under section 315, or from other sources of funds held by the Nation, the amount determined by the Secretary under clause (i); and

“(G) subject to business lease No. H54-16-72 dated April 26, 1972, of San Xavier Reservation land to Asarco and approved by the United States on November 14, 1972, that the Nation—

“(i) shall allocate as a first right of beneficial use by allottees, the San Xavier District, and other persons within the San Xavier Reservation—

“(I) 35,000 acre-feet of the 50,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1), including the use of the allocation—

“(aa) to fulfill the obligations prescribed in the Asarco agreement; and

“(bb) for groundwater storage, maintenance of instream flows, and maintenance of riparian vegetation and habitat;

“(II) the 10,000 acre-feet of groundwater identified in subsection (a)(1)(A);

“(III) the groundwater withdrawn from exempt wells;

“(IV) the deferred pumping storage credits authorized by section 308(f)(1)(B); and

“(V) the storage credits resulting from a project authorized in section 308(e) that cannot be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation’s Reservation;

“(ii) subject to section 309(b)(2), has the right—

“(I) to use, or authorize other persons or entities to use, any portion of the allocation of 35,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) outside the San Xavier Reservation for any period during which there is no identified actual use of the water within the San Xavier Reservation;

“(II) as a first right of use, to use the remaining acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) for any purpose and duration authorized by this title within or outside the Nation’s Reservation; and

“(III) subject to section 308(e), as an exclusive right, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation’s Reservation;

“(iii) shall issue permits to persons or entities for use of the water resources referred to in clause (i);

“(iv) shall, on timely receipt of an order for water by a permittee under a permit for Central Arizona Project water referred to in clause (i), submit the order to—

“(I) the Secretary; or

“(II) the operating agency for the Central Arizona Project;

“(v) shall issue permits for water deliverable under sections 304(a)(2) and 306(a)(2), including quantities of water reasonably necessary for the irrigation system referred to in section 304(c)(3);

“(vi) shall issue permits for groundwater that may be withdrawn from nonexempt wells in the eastern Schuk Toak District; and

“(vii) shall, on timely receipt of an order for water by a permittee under a permit for water referred to in clause (v), submit the order to—

“(I) the Secretary; or

“(II) the operating agency for the Central Arizona Project; and

“(2) the Alvarez case and Tucson case have been dismissed with prejudice.

“(b) RESPONSIBILITIES ON COMPLETION.—On completion of an irrigation system or extension of an irrigation system described in paragraph (1) or (2) of section 304(c), or in the case of the irrigation system described in section 304(c)(3), if such irrigation system is constructed on individual Indian trust allotments, neither the United States nor the Nation shall be responsible for the operation, maintenance, or replacement of the system.

“(c) PAYMENT OF CHARGES.—The Nation shall not be responsible for payment of any water service capital charge for Central Arizona Project water delivered under section 304, subsection (a) or (b) of section 305, or section 306.

“SEC. 308. WATER CODE; WATER MANAGEMENT PLAN; STORAGE PROJECTS; STORAGE ACCOUNTS; GROUNDWATER.

“(a) WATER RESOURCES.—Water resources described in clauses (i) and (ii) of section 307(a)(1)(G)—

“(1) shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381); and

“(2) shall be apportioned pursuant to clauses (i) and (ii) of section 307(a)(1)(G).

“(b) WATER CODE.—Subject to this title and any other applicable law, the Nation shall—

“(1) manage, regulate, and control the water resources of the Nation and the water resources granted or confirmed under this title;

“(2) establish conditions, limitations, and permit requirements, and promulgate regulations, relating to the storage, recovery, and use of surface water and groundwater within the Nation’s Reservation;

“(3) enact and maintain—

“(A) an interim allottee water rights code that—

“(i) is consistent with subsection (a);

“(ii) prescribes the rights of allottees identified in paragraph (4); and

“(iii) provides that the interim allottee water rights code shall be incorporated in the comprehensive water code referred to in subparagraph (B); and

“(B) not later than 3 years after the enforceability date, a comprehensive water code applicable to the water resources granted or confirmed under this title; Deadline.

“(4) include in each of the water codes enacted under subparagraphs (A) and (B) of paragraph (3)—

“(A) an acknowledgement of the rights described in subsection (a);

“(B) a process by which a just and equitable distribution of the water resources referred to in subsection (a), and any compensation provided under section 305(d), shall be provided to allottees;

“(C) a process by which an allottee may request and receive a permit for the use of any water resources referred to in subsection (a), except the water resources referred to in section 307(a)(1)(G)(ii)(III) and subject to the Nation’s first right of use under section 307(a)(1)(G)(ii)(II);

“(D) provisions for the protection of due process, including—

“(i) a fair procedure for consideration and determination of any request by—

“(I) a member of the Nation, for a permit for use of available water resources granted or confirmed by this title; and

“(II) an allottee, for a permit for use of—

“(aa) the water resources identified in section 307(a)(1)(G)(i) that are subject to a first right of beneficial use; or

“(bb) subject to the first right of use of the Nation, available water resources identified in section 307(a)(1)(G)(i)(II);

“(ii) provisions for—

“(I) appeals and adjudications of denied or disputed permits; and

“(II) resolution of contested administrative decisions; and

“(iii) a waiver by the Nation of the sovereign immunity of the Nation only with respect to proceedings described in clause (ii) for claims of declaratory and injunctive relief; and

“(E) a process for satisfying any entitlement to the water resources referred to in section 307(a)(1)(G)(i) for which fee owners of allotted land have received final determinations under applicable law; and

“(5) submit to the Secretary the comprehensive water code, for approval by the Secretary only of the provisions of the water code (and any amendments to the water code), that implement, with respect to the allottees, the standards described in paragraph (4).

“(c) WATER CODE APPROVAL.—

“(1) IN GENERAL.—On receipt of a comprehensive water code under subsection (b)(5), the Secretary shall—

“(A) issue a written approval of the water code; or

“(B) provide a written notification to the Nation that— Notification.

“(i) identifies such provisions of the water code that do not conform to subsection (b) or other applicable Federal law; and

“(ii) recommends specific corrective language for each nonconforming provision.

“(2) REVISION BY NATION.—If the Secretary identifies nonconforming provisions in the water code under paragraph (1)(B)(i), the Nation shall revise the water code in accordance with the recommendations of the Secretary under paragraph (1)(B)(ii).

“(3) INTERIM AUTHORITY.—Until such time as the Nation revises the water code of the Nation in accordance with paragraph (2) and the Secretary subsequently approves the water code, the Secretary may exercise any lawful authority of the Secretary under section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

“(4) LIMITATION.—Except as provided in this subsection, nothing in this title requires the approval of the Secretary of the water code of the Nation (or any amendment to that water code).

“(d) WATER MANAGEMENT PLANS.—

“(1) IN GENERAL.—The Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans that meet the requirements described in paragraph (2).

“(2) REQUIREMENTS.—Water management plans established under paragraph (1)—

Contracts.

“(A) shall be developed under contracts executed under section 311 between the Secretary and the San Xavier District for the San Xavier Reservation, and between the Secretary and the Nation for the eastern Schuk Toak District, as applicable, that permit expenditures, exclusive of administrative expenses of the Secretary, of not more than—

“(i) with respect to a contract between the Secretary and the San Xavier District, \$891,200; and

“(ii) with respect to a contract between the Secretary and the Nation, \$237,200;

“(B) shall, at a minimum—

“(i) provide for the measurement of all groundwater withdrawals, including withdrawals from each well that is not an exempt well;

“(ii) provide for—

Records.

“(I) reasonable recordkeeping of water use, including the quantities of water stored underground and recovered each calendar year; and

“(II) a system for the reporting of withdrawals from each well that is not an exempt well;

“(iii) provide for the direct storage and deferred storage of water, including the implementation of underground storage and recovery projects, in accordance with this section;

“(iv) provide for the annual exchange of information collected under clauses (i) through (iii)—

“(I) between the Nation and the Arizona Department of Water Resources; and

“(II) between the Nation and the city of Tucson, Arizona;

“(v) provide for—

“(I) the efficient use of water; and

“(II) the prevention of waste;

“(vi) except on approval of the district council for a district in which a direct storage project is established under subsection (e), provide that no direct storage credits earned as a result of the project shall be recovered at any location at which the recovery would adversely affect surface or groundwater supplies, or lower the water table at any location, within the district; and

“(vii) provide for amendments to the water plan in accordance with this title;

“(C) shall authorize the establishment and maintenance of 1 or more underground storage and recovery projects in accordance with subsection (e), as applicable, within—

“(i) the San Xavier Reservation; or

“(ii) the eastern Schuk Toak District; and

“(D) shall be implemented and maintained by the Nation, with no obligation by the Secretary.

“(e) UNDERGROUND STORAGE AND RECOVERY PROJECTS.—The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O’odham settlement agreement. The Secretary shall have no responsibility to fund or otherwise administer such projects.

“(f) GROUNDWATER.—

“(1) SAN XAVIER RESERVATION.—

“(A) IN GENERAL.—In accordance with section 307(a)(1)(A), 10,000 acre-feet of groundwater may be pumped annually within the San Xavier Reservation.

“(B) DEFERRED PUMPING.—

“(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 10,000 acre-feet of water not pumped under subparagraph (A) in a year—

“(I) may be withdrawn in a subsequent year; and

“(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O’odham settlement agreement as a debit to the deferred pumping storage account.

“(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

“(I) 50,000 acre-feet for any 10-year period;

or

“(II) 10,000 acre-feet in any year.

“(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the San Xavier Reservation all or a portion of the credits for water stored under a project described in subsection (e).

“(2) EASTERN SCHUK TOAK DISTRICT.—

“(A) IN GENERAL.—In accordance with section 307(a)(1)(B), 3,200 acre-feet of groundwater may be pumped annually within the eastern Schuk Toak District.

“(B) DEFERRED PUMPING.—

“(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 3,200 acre-feet of water not pumped under subparagraph (A) in a year—

“(I) may be withdrawn in a subsequent year; and

“(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O’odham settlement agreement as a debit to the deferred pumping storage account.

“(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

“(I) 16,000 acre-feet for any 10-year period; or

“(II) 3,200 acre-feet in any year.

“(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the eastern Schuk Toak District all or a portion of the credits for water stored under a project described in subsection (e).

“(3) INABILITY TO RECOVER GROUNDWATER.—

“(A) IN GENERAL.—The authorizations to pump groundwater in paragraphs (1) and (2) neither warrant nor guarantee that the groundwater—

“(i) physically exists; or

“(ii) is recoverable.

“(B) CLAIMS.—With respect to groundwater described in subparagraph (A)—

“(i) subject to paragraph 8.8 of the Tohono O’odham settlement agreement, the inability of any person to pump or recover that groundwater shall not be the basis for any claim by the United States or the Nation against any person or entity withdrawing or using the water from any common supply; and

“(ii) the United States and the Nation shall be barred from asserting any and all claims for reserved water rights with respect to that groundwater.

“(g) EXEMPT WELLS.—Any groundwater pumped from an exempt well located within the San Xavier Reservation or the eastern Schuk Toak District shall be exempt from all pumping limitations under this title.

“(h) INABILITY OF SECRETARY TO DELIVER WATER.—The Nation is authorized to pump additional groundwater in any year in which the Secretary is unable to deliver water required to carry out sections 304(a) and 306(a) in accordance with the Tohono O’odham settlement agreement.

“(i) PAYMENT OF COMPENSATION.—Nothing in this section affects any obligation of the Secretary to pay compensation in accordance with section 305(d).

“SEC. 309. USES OF WATER.

“(a) PERMISSIBLE USES.—Subject to other provisions of this section and other applicable law, the Nation may devote all water supplies granted or confirmed under this title, whether delivered by the Secretary or pumped by the Nation, to any use (including any agricultural, municipal, domestic, industrial, commercial,

mining, underground storage, instream flow, riparian habitat maintenance, or recreational use).

“(b) USE AREA.—

“(1) USE WITHIN NATION’S RESERVATION.—Subject to subsection (d), the Nation may use at any location within the Nation’s Reservation—

“(A) the water supplies acquired under sections 304(a) and 306(a);

“(B) groundwater supplies; and

“(C) storage credits acquired as a result of projects authorized under section 308(e), or deferred storage credits described in section 308(f), except to the extent that use of those storage credits causes the withdrawal of groundwater in violation of applicable Federal law.

“(2) USE OUTSIDE THE NATION’S RESERVATION.—

“(A) IN GENERAL.—Water resources granted or confirmed under this title may be sold, leased, transferred, or used by the Nation outside of the Nation’s Reservation only in accordance with this title.

“(B) USE WITHIN CERTAIN AREA.—Subject to subsection (c), the Nation may use the Central Arizona Project water supplies acquired under sections 304(a) and 306(a) within the Central Arizona Project service area.

“(C) STATE LAW.—With the exception of Central Arizona Project water and groundwater withdrawals under the Asarco agreement, the Nation may sell, lease, transfer, or use any water supplies and storage credits acquired as a result of a project authorized under section 308(e) at any location outside of the Nation’s Reservation, but within the State, only in accordance with State law.

“(D) LIMITATION.—Deferred pumping storage credits provided for in section 308(f) shall not be sold, leased, transferred, or used outside the Nation’s Reservation.

“(E) PROHIBITION ON USE OUTSIDE THE STATE.—No water acquired under section 304(a) or 306(a) shall be leased, exchanged, forborne, or otherwise transferred by the Nation for any direct or indirect use outside the State.

“(c) EXCHANGES AND LEASES; CONDITIONS ON EXCHANGES AND LEASES.—

“(1) IN GENERAL.—With respect to users outside the Nation’s Reservation, the Nation may, for a term of not to exceed 100 years, assign, exchange, lease, provide an option to lease, or otherwise temporarily dispose of to the users, Central Arizona Project water to which the Nation is entitled under sections 304(a) and 306(a) or storage credits acquired under section 308(e), if the assignment, exchange, lease, option, or temporary disposal is carried out in accordance with—

“(A) this subsection; and

“(B) subsection (b)(2).

“(2) LIMITATION ON ALIENATION.—The Nation shall not permanently alienate any water right under paragraph (1).

“(3) AUTHORIZED USES.—The water described in paragraph (1) shall be delivered within the Central Arizona Project service area for any use authorized under applicable law.

“(4) CONTRACT.—An assignment, exchange, lease, option, or temporary disposal described in paragraph (1) shall be executed only in accordance with a contract that—

“(A) is accepted by the Nation;

“(B) is ratified under a resolution of the Legislative Council of the Nation;

“(C) is approved by the United States as Trustee; and

“(D) with respect to any contract to which the United States or the Secretary is a party, provides that an action may be maintained by the contracting party against the United States and the Secretary for a breach of the contract by the United States or Secretary, as appropriate.

Applicability.

“(5) TERMS EXCEEDING 25 YEARS.—The terms and conditions established in paragraph 11 of the Tohono O’odham settlement agreement shall apply to any contract under paragraph (4) that has a term of greater than 25 years.

“(d) LIMITATIONS ON USE, EXCHANGES, AND LEASES.—The rights of the Nation to use water supplies under subsection (a), and to assign, exchange, lease, provide options to lease, or temporarily dispose of the water supplies under subsection (c), shall be exercised on conditions that ensure the availability of water supplies to satisfy the first right of beneficial use under section 307(a)(1)(G)(i).

“(e) WATER SERVICE CAPITAL CHARGES.—In any transaction entered into by the Nation and another person under subsection (c) with respect to Central Arizona Project water of the Nation, the person shall not be obligated to pay to the United States or the Central Arizona Water Conservation District any water service capital charge.

“(f) WATER RIGHTS UNAFFECTED BY USE OR NONUSE.—The failure of the Nation to make use of water provided under this title, or the use of, or failure to make use of, that water by any other person that enters into a contract with the Nation under subsection (c) for the assignment, exchange, lease, option for lease, or temporary disposal of water, shall not diminish, reduce, or impair—

“(1) any water right of the Nation, as established under this title or any other applicable law; or

“(2) any water use right recognized under this title, including—

“(A) the first right of beneficial use referred to in section 307(a)(1)(G)(i); or

“(B) the allottee use rights referred to in section 308(a).

“(g) AMENDMENT TO AGREEMENT OF DECEMBER 11, 1980.—The Secretary shall amend the agreement of December 11, 1980, to provide that—

“(1) the contract shall be—

“(A) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d)); and

“(B) without limit as to term;

“(2) the Nation may, with the approval of the Secretary—

“(A) in accordance with subsection (c), assign, exchange, lease, enter into an option to lease, or otherwise temporarily dispose of water to which the Nation is entitled under sections 304(a) and 306(a); and

“(B) renegotiate any lease at any time during the term of the lease if the term of the renegotiated lease does not exceed 100 years;

“(3)(A) the Nation shall be entitled to all consideration due to the Nation under any leases and any options to lease

or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation; and

“(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange;

“(4)(A) all of the Nation's Central Arizona Project water shall be delivered through the Central Arizona Project aqueduct; and

“(B) if the delivery capacity of the Central Arizona Project aqueduct is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Nation shall have the same Central Arizona Project delivery rights as other Central Arizona Project contractors and Central Arizona Project subcontractors, if the Central Arizona Project contractors or Central Arizona Project subcontractors are allowed to take delivery of water other than through the Central Arizona Project aqueduct;

“(5) the Nation may use the Nation's Central Arizona Project water on or off of the Nation's Reservation for the purposes of the Nation consistent with this title;

“(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the Central Arizona Project operating agency the fixed operation, maintenance, and replacement charges associated with the delivery of the Nation's Central Arizona Project water, except for the Nation's Central Arizona Project water leased by others;

“(7) the allocated costs associated with the construction of the delivery and distribution system—

“(A) shall be nonreimbursable; and

“(B) shall be excluded from any repayment obligation of the Nation;

“(8) no water service capital charges shall be due or payable for the Nation's Central Arizona Project water, regardless of whether the Central Arizona Project water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation;

“(9) the agreement of December 11, 1980, conforms with section 104(d) and section 306(a) of the Arizona Water Settlements Act; and

“(10) the amendments required by this subsection shall not apply to the 8,000 acre feet of Central Arizona Project water contracted by the Nation in the agreement of December 11, 1980, for the Sif Oidak District.

“(h) RATIFICATION OF AGREEMENTS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, each agreement described in paragraph (2), to the extent that the agreement is not in conflict with this Act—

“(A) is authorized, ratified, and confirmed; and

“(B) shall be executed by the Secretary.

“(2) AGREEMENTS.—The agreements described in this paragraph are—

“(A) the Tohono O’odham settlement agreement, to the extent that—

“(i) the Tohono O’odham settlement agreement is consistent with this title; and

“(ii) parties to the Tohono O’odham settlement agreement other than the Secretary have executed that agreement;

“(B) the Tucson agreement (attached to the Tohono O’odham settlement agreement as exhibit 12.1); and

“(C)(i) the Asarco agreement (attached to the Tohono O’odham settlement agreement as exhibit 13.1 to the Tohono O’odham settlement agreement);

“(ii) lease No. H54-0916-0972, dated April 26, 1972, and approved by the United States on November 14, 1972; and

“(iii) any new well site lease as provided for in the Asarco agreement; and

“(D) the FICO agreement (attached to the Tohono O’odham settlement agreement as Exhibit 14.1).

“(3) RELATION TO OTHER LAW.—

“(A) ENVIRONMENTAL COMPLIANCE.—In implementing an agreement described in paragraph (2), the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

“(B) EXECUTION OF AGREEMENT.—Execution of an agreement described in paragraph (2) by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing an agreement described in paragraph (2).

“(C) LEAD AGENCY.—The Bureau of Reclamation shall be the lead agency with respect to environmental compliance under the agreements described in paragraph (2).

“(i) DISBURSEMENTS FROM TUCSON INTERIM WATER LEASE.—The Secretary shall disburse to the Nation, without condition, all proceeds from the Tucson interim water lease.

“(j) USE OF GROSS PROCEEDS.—

“(1) DEFINITION OF GROSS PROCEEDS.—In this subsection, the term ‘gross proceeds’ means all proceeds, without reduction, received by the Nation from—

“(A) the Tucson interim water lease;

“(B) the Asarco agreement; and

“(C) any agreement similar to the Asarco agreement to store Central Arizona Project water of the Nation, instead of pumping groundwater, for the purpose of protecting water of the Nation; provided, however, that gross proceeds shall not include proceeds from the transfer of Central Arizona Project water in excess of 20,000 acre feet annually pursuant to any agreement under this

subparagraph or under the Asarco agreement referenced in subparagraph (B).

“(2) ENTITLEMENT.—The Nation shall be entitled to receive all gross proceeds.

“(k) STATUTORY CONSTRUCTION.—Nothing in this title establishes whether reserved water may be put to use, or sold for use, off any reservation to which reserved water rights attach.

“SEC. 310. COOPERATIVE FUND.

“(a) REAUTHORIZATION.—

“(1) IN GENERAL.—Congress reauthorizes, for use in carrying out this title, the cooperative fund established in the Treasury of the United States by section 313 of the 1982 Act.

“(2) AMOUNTS IN COOPERATIVE FUND.—The cooperative fund shall consist of—

“(A)(i) \$5,250,000, as appropriated to the cooperative fund under section 313(b)(3)(A) of the 1982 Act; and

“(ii) such amount, not to exceed \$32,000,000, as the Secretary determines, after providing notice to Congress, is necessary to carry out this title;

“(B) any additional Federal funds deposited to the cooperative fund under Federal law;

“(C) \$5,250,000, as deposited in the cooperative fund under section 313(b)(1)(B) of the 1982 Act, of which—

“(i) \$2,750,000 was contributed by the State;

“(ii) \$1,500,000 was contributed by the city of Tucson; and

“(iii) \$1,000,000 was contributed by—

“(I) the Anamax Mining Company;

“(II) the Cyprus-Pima Mining Company;

“(III) the American Smelting and Refining Company;

“(IV) the Duval Corporation; and

“(V) the Farmers Investment Company;

“(D) all interest accrued on all amounts in the cooperative fund beginning on October 12, 1982, less any interest expended under subsection (b)(2); and

“(E) all revenues received from—

“(i) the sale or lease of effluent received by the Secretary under the contract between the United States and the city of Tucson to provide for delivery of reclaimed water to the Secretary, dated October 11, 1983; and

“(ii) the sale or lease of storage credits derived from the storage of that effluent.

“(b) EXPENDITURES FROM FUND.—

“(1) IN GENERAL.—Subject to paragraph (2), upon request by the Secretary, the Secretary of the Treasury shall transfer from the cooperative fund to the Secretary such amounts as the Secretary determines are necessary to carry out obligations of the Secretary under this title, including to pay—

“(A) the variable costs relating to the delivery of water under sections 304 through 306;

“(B) fixed operation maintenance and replacement costs relating to the delivery of water under sections 304 through 306, to the extent that funds are not available from the

Lower Colorado River Basin Development Fund to pay those costs;

“(C) the costs of acquisition and delivery of water from alternative sources under section 305; and

“(D) any compensation provided by the Secretary under section 305(d).

“(2) EXPENDITURE OF INTEREST.—Except as provided in paragraph (3), the Secretary may expend only interest income accruing to the cooperative fund, and that interest income may be expended by the Secretary, without further appropriation.

“(3) EXPENDITURE OF REVENUES.—Revenues described in subsection (a)(2)(E) shall be available for expenditure under paragraph (1).

“(c) INVESTMENT OF AMOUNTS.—

“(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the cooperative fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals determined by the Secretary. Investments may be made only in interest-bearing obligations of the United States.

“(2) CREDITS TO COOPERATIVE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the cooperative fund shall be credited to and form a part of the cooperative fund.

“(d) TRANSFERS OF AMOUNTS.—

“(1) IN GENERAL.—The amounts required to be transferred to the cooperative fund under this section shall be transferred at least monthly from the general fund of the Treasury to the cooperative fund on the basis of estimates made by the Secretary of the Treasury.

“(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

“(e) DAMAGES.—Damages arising under this title or any contract for the delivery of water recognized by this title shall not exceed, in any given year, the amounts available for expenditure in that year from the cooperative fund.

“SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY; STUDIES; ARID LAND ASSISTANCE.

“(a) FUNCTIONS OF SECRETARY.—Except as provided in subsection (f), the functions of the Secretary (or the Commissioner of Reclamation, acting on behalf of the Secretary) under this title shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the same extent as if those functions were carried out by the Assistant Secretary for Indian Affairs.

“(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

“(1) IN GENERAL.—Subject to the consent of the Nation and other requirements under section 307(a)(1)(E), the San Xavier District shall be considered to be an eligible contractor for purposes of this title.

“(2) TECHNICAL ASSISTANCE.—The Secretary shall provide to the San Xavier District technical assistance in carrying

out the contracting requirements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

“(c) GROUNDWATER MONITORING PROGRAMS.—

Deadlines.

“(1) SAN XAVIER INDIAN RESERVATION PROGRAM.—

“(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the San Xavier Reservation.

“(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than \$215,000.

“(2) EASTERN SCHUK TOAK DISTRICT PROGRAM.—

“(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the eastern Schuk Toak District.

“(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than \$175,000.

“(3) DUTIES OF SECRETARY.—

“(A) CONSULTATION.—In carrying out paragraphs (1) and (2), the Secretary shall consult with representatives of—

“(i) the Nation;

“(ii) the San Xavier District and Schuk Toak District, respectively; and

“(iii) appropriate State and local entities.

“(B) LIMITATION ON OBLIGATIONS OF SECRETARY.—With respect to the groundwater monitoring programs described in paragraphs (1) and (2), the Secretary shall have no continuing obligation relating to those programs beyond the obligations described in those paragraphs.

“(d) WATER RESOURCES STUDY.—To assist the Nation in developing sources of water, the Secretary shall conduct a study to determine the availability and suitability of water resources that are located—

“(1) within the Nation’s Reservation; but

“(2) outside the Tucson management area.

“(e) ARID LAND RENEWABLE RESOURCES.—If a Federal entity is established to provide financial assistance to carry out arid land renewable resources projects and to encourage and ensure investment in the development of domestic sources of arid land renewable resources, the entity shall—

“(1) give first priority to the needs of the Nation in providing that assistance; and

“(2) make available to the Nation, San Xavier District, Schuk Toak District, and San Xavier Cooperative Association price guarantees, loans, loan guarantees, purchase agreements,

and joint venture projects at a level that the entity determines will—

“(A) facilitate the cultivation of such minimum number of acres as is determined by the entity to be necessary to ensure economically successful cultivation of arid land crops; and

“(B) contribute significantly to the economy of the Nation.

“(f) ASARCO LAND EXCHANGE STUDY.—

Deadline.

“(1) IN GENERAL.—Not later than 2 years after the enforceability date, the Secretary, in consultation with the Nation, the San Xavier District, the San Xavier Allottees’ Association, and Asarco, shall conduct and submit to Congress a study on the feasibility of a land exchange or land exchanges with Asarco to provide land for future use by—

“(A) beneficial landowners of the Mission Complex Mining Leases of September 18, 1959; and

“(B) beneficial landowners of the Mission Complex Business Leases of May 12, 1959.

“(2) COMPONENTS.—The study under paragraph (1) shall include—

“(A) an analysis of the manner in which land exchanges could be accomplished to maintain a contiguous land base for the San Xavier Reservation; and

“(B) a description of the legal status exchanged land should have to maintain the political integrity of the San Xavier Reservation.

“(3) LIMITATION ON EXPENDITURES.—In carrying out this subsection, the Secretary shall expend not more than \$250,000.

“SEC. 312. WAIVER AND RELEASE OF CLAIMS.

“(a) WAIVER OF CLAIMS BY THE NATION.—Except as provided in subsection (d), the Tohono O’odham settlement agreement shall provide that the Nation waives and releases—

“(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area, against—

“(A) the State (or any agency or political subdivision of the State);

“(B) any municipal corporation; and

“(C) any other person or entity;

“(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

“(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner

not in violation of the Tohono O'odham settlement agreement or State law against—

“(A) the United States;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity; and

“(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

“(A) the United States;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity.

“(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASSES.—The Tohono O'odham settlement agreement shall provide that each allottee class waives and releases—

“(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date for land within the San Xavier Reservation, against—

“(A) the State (or any agency or political subdivision of the State);

“(B) any municipal corporation; and

“(C) any other person or entity (other than the Nation);

“(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

“(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

“(A) the United States;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity;

“(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

“(A) the United States;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity; and

“(5) any and all past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees and fee owners of allotted land shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement with respect to uses within the San Xavier Reservation).

“(c) WAIVER OF CLAIMS BY THE UNITED STATES.—Except as provided in subsection (d), the Tohono O’odham settlement agreement shall provide that the United States as Trustee waives and releases—

“(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area against—

“(A) the Nation;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity;

“(2) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O’odham settlement agreement or State law against—

“(A) the Nation;

“(B) the State (or any agency or political subdivision of the State);

“(C) any municipal corporation; and

“(D) any other person or entity;

“(3) on and after the enforceability date, any and all claims on behalf of the allottees for injuries to water rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement with respect to uses within the San Xavier Reservation); and

“(4) claims against Asarco on behalf of the allottee class for the fourth cause of action in *Alvarez v. City of Tucson* (Civ. No. 93-039 TUC FRZ (D. Ariz., filed April 21, 1993)), in accordance with the terms and conditions of the Asarco agreement.

“(d) CLAIMS RELATING TO GROUNDWATER PROTECTION PROGRAM.—The Nation and the United States as Trustee—

“(1) shall have the right to assert any claims granted by a State law implementing the groundwater protection program described in paragraph 8.8 of the Tohono O’odham settlement agreement; and

“(2) if, after the enforceability date, the State law is amended so as to have a material adverse effect on the Nation, shall have a right to relief in the State court having jurisdiction

over Gila River adjudication proceedings and decrees, against an owner of any nonexempt well drilled after the effective date of the amendment (if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation), from the incremental effect of the groundwater pumping that exceeds that which would have been allowable had the State law not been amended.

“(e) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any party to the Tohono O’odham settlement agreement may waive and release, prohibit the assertion of, or agree not to assert, any claims (including claims for subsidence damage or injury to water quality) in addition to claims for water rights and injuries to water rights on such terms and conditions as may be agreed to by the parties.

“(f) RIGHTS OF ALLOTTEES; PROHIBITION OF CLAIMS.—

“(1) IN GENERAL.—As of the enforceability date—

“(A) the water rights and other benefits granted or confirmed by this title and the Tohono O’odham settlement agreement shall be in full satisfaction of—

“(i) all claims for water rights and claims for injuries to water rights of the Nation; and

“(ii) all claims for water rights and injuries to water rights of the allottees;

“(B) any entitlement to water within the Tucson management area of the Nation, or of any allottee, shall be satisfied out of the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement; and

“(C) any rights of the allottees to groundwater, surface water, or effluent shall be limited to the water rights granted or confirmed under this title and the Tohono O’odham settlement agreement.

“(2) LIMITATION OF CERTAIN CLAIMS BY ALLOTTEES.—No allottee within the San Xavier Reservation may—

“(A) assert any past, present, or future claim for water rights arising from time immemorial and, thereafter, forever, or any claim for injury to water rights (including future injury to water rights) arising from time immemorial and thereafter, forever, against—

“(i) the United States;

“(ii) the State (or any agency or political subdivision of the State);

“(iii) any municipal corporation; or

“(iv) any other person or entity; or

“(B) continue to assert a claim described in subparagraph (A), if the claim was first asserted before the enforceability date.

“(3) CLAIMS BY FEE OWNERS OF ALLOTTED LAND.—

“(A) IN GENERAL.—No fee owner of allotted land within the San Xavier Reservation may assert any claim to the extent that—

“(i) the claim has been waived and released in the Tohono O’odham settlement agreement; and

“(ii) the fee owner of allotted land asserting the claim is a member of the applicable allottee class.

“(B) OFFSET.—Any benefits awarded to a fee owner of allotted land as a result of a successful claim shall

be offset by benefits received by that fee owner of allotted land under this title.

“(4) LIMITATION OF CLAIMS AGAINST THE NATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no allottee may assert against the Nation any claims for water rights arising from time immemorial and, thereafter, forever, claims for injury to water rights arising from time immemorial and thereafter forever.

“(B) EXCEPTION.—Under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement.

“(g) CONSENT.—

“(1) GRANT OF CONSENT.—Congress grants to the Nation and the San Xavier Cooperative Association under section 305(d) consent to maintain civil actions against the United States in the courts of the United States under section 1346, 1491, or 1505 of title 28, United States Code, respectively, to recover damages, if any, for the breach of any obligation of the Secretary under those sections.

“(2) REMEDY.—

“(A) IN GENERAL.—Subject to subparagraph (B), the exclusive remedy for a civil action maintained under this subsection shall be monetary damages.

“(B) OFFSET.—An award for damages for a claim under this subsection shall be offset against the amount of funds—

“(i) made available by any Act of Congress; and

“(ii) paid to the claimant by the Secretary in partial or complete satisfaction of the claim.

“(3) NO CLAIMS ESTABLISHED.—Except as provided in paragraph (1), nothing in the subsection establishes any claim against the United States.

“(h) JURISDICTION; WAIVER OF IMMUNITY; PARTIES.—

“(1) JURISDICTION.—

“(A) IN GENERAL.—Except as provided in subsection (i), the State court having jurisdiction over Gila River adjudication proceedings and decrees, shall have jurisdiction over—

“(i) civil actions relating to the interpretation and enforcement of—

“(I) this title;

“(II) the Tohono O’odham settlement agreement; and

“(III) agreements referred to in section 309(h)(2); and

“(ii) civil actions brought by or against the allottees or fee owners of allotted land for the interpretation of, or legal or equitable remedies with respect to, claims of the allottees or fee owners of allotted land that are not claims for water rights, injuries to water rights or other claims that are barred or waived and released under this title or the Tohono O’odham settlement agreement.

“(B) LIMITATION.—Except as provided in subparagraph (A), no State court or court of the Nation shall have jurisdiction over any civil action described in subparagraph (A).

“(2) WAIVER.—

“(A) IN GENERAL.—The United States and the Nation waive sovereign immunity solely for claims for—

“(i) declaratory judgment or injunctive relief in any civil action arising under this title; and

“(ii) such claims and remedies as may be prescribed in any agreement authorized under this title.

“(B) LIMITATION ON STANDING.—If a governmental entity not described in subparagraph (A) asserts immunity in any civil action that arises under this title (unless the entity waives immunity for declaratory judgment or injunctive relief) or any agreement authorized under this title (unless the entity waives immunity for the claims and remedies prescribed in the agreement)—

“(i) the governmental entity shall not have standing to initiate or assert any claim, or seek any remedy against the United States or the Nation, in the civil action; and

“(ii) the waivers of sovereign immunity under subparagraph (A) shall have no effect in the civil action.

“(C) MONETARY RELIEF.—A waiver of immunity under this paragraph shall not extend to any claim for damages, costs, attorneys’ fees, or other monetary relief.

“(3) NATION AS A PARTY.—

“(A) IN GENERAL.—Not later than 60 days before the date on which a civil action under paragraph (1)(A)(ii) is filed by an allottee or fee owner of allotted land, the allottee or fee owner, as the case may be, shall provide to the Nation a notice of intent to file the civil action, accompanied by a request for consultation.

Deadline.
Notice.

“(B) JOINDER.—If the Nation is not a party to a civil action as originally commenced under paragraph (1)(A)(ii), the Nation shall be joined as a party.

“(i) REGULATION AND JURISDICTION OVER DISPUTE RESOLUTION.—

“(1) REGULATION.—The Nation shall have jurisdiction to manage, control, permit, administer, and otherwise regulate the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement—

“(A) with respect to the use of those resources by—

“(i) the Nation;

“(ii) individual members of the Nation;

“(iii) districts of the Nation; and

“(iv) allottees; and

“(B) with respect to any entitlement to those resources for which a fee owner of allotted land has received a final determination under applicable law.

“(2) JURISDICTION.—Subject to a requirement of exhaustion of any administrative or other remedies prescribed under the laws of the Nation, jurisdiction over any disputes relating to the matters described in paragraph (1) shall be vested in the courts of the Nation.

“(3) APPLICABLE LAW.—The regulatory and remedial procedures referred to in paragraphs (1) and (2) shall be subject to all applicable law.

“(j) FEDERAL JURISDICTION.—The Federal Courts shall have concurrent jurisdiction over actions described in subsection 312(h) to the extent otherwise provided in Federal law.

“SEC. 313. AFTER-ACQUIRED TRUST LAND.

“(a) IN GENERAL.—Except as provided in subsection (b)—

“(1) the Nation may seek to have taken into trust by the United States, for the benefit of the Nation, legal title to additional land within the State and outside the exterior boundaries of the Nation’s Reservation only in accordance with an Act of Congress specifically authorizing the transfer for the benefit of the Nation;

“(2) lands taken into trust under paragraph (1) shall include only such water rights and water use privileges as are consistent with State water law and State water management policy; and

“(3) after-acquired trust land shall not include Federal reserved rights to surface water or groundwater.

“(b) EXCEPTION.—Subsection (a) shall not apply to land acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798).

“SEC. 314. NONREIMBURSABLE COSTS.

“(a) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—For the purpose of determining the allocation and repayment of costs of any stage of the Central Arizona Project, the costs associated with the delivery of Central Arizona Project water acquired under sections 304(a) and 306(a), whether that water is delivered for use by the Nation or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Nation—

“(1) shall be nonreimbursable; and

“(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

“(b) CLAIMS BY UNITED STATES.—The United States shall—

“(1) make no claim against the Nation or any allottee for reimbursement or repayment of any cost associated with—

“(A) the construction of facilities under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.);

“(B) the delivery of Central Arizona Project water for any use authorized under this title; or

“(C) the implementation of this title;

“(2) make no claim against the Nation for reimbursement or repayment of the costs associated with the construction of facilities described in paragraph (1)(A) for the benefit of and use on land that—

“(A) is known as the ‘San Lucy Farm’; and

“(B) was acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798); and

“(3) impose no assessment with respect to the costs referred to in paragraphs (1) and (2) against—

“(A) trust or allotted land within the Nation’s Reservation; or

“(B) the land described in paragraph (2).

“SEC. 315. TRUST FUND.

“(a) REAUTHORIZATION.—Congress reauthorizes the trust fund established by section 309 of the 1982 Act, containing an initial deposit of \$15,000,000 made under that section, for use in carrying out this title.

“(b) EXPENDITURE AND INVESTMENT.—Subject to the limitations of subsection (d), the principal and all accrued interest and dividends in the trust fund established under section 309 of the 1982 Act may be—

“(1) expended by the Nation for any governmental purpose; and

“(2) invested by the Nation in accordance with such policies as the Nation may adopt.

“(c) RESPONSIBILITY OF SECRETARY.—The Secretary shall not—

“(1) be responsible for the review, approval, or audit of the use and expenditure of any funds from the trust fund reauthorized by subsection (a); or

“(2) be subject to liability for any claim or cause of action arising from the use or expenditure by the Nation of those funds.

“(d) CONDITIONS OF TRUST.—

“(1) RESERVE FOR THE COST OF SUBJUGATION.—The Nation shall reserve in the trust fund reauthorized by subsection (a)—

“(A) the principal amount of at least \$3,000,000; and

“(B) interest on that amount that accrues during the period beginning on the enforceability date and ending on the earlier of—

“(i) the date on which full payment of such costs has been made; or

“(ii) the date that is 10 years after the enforceability date.

“(2) PAYMENT.—The costs described in paragraph (1) shall be paid in the amount, on the terms, and for the purposes prescribed in section 307(a)(1)(F).

“(3) LIMITATION ON RESTRICTIONS.—On the occurrence of an event described in clause (i) or (ii) of paragraph (1)(B)—

“(A) the restrictions imposed on funds from the trust fund described in paragraph (1) shall terminate; and

“(B) any of those funds remaining that were reserved under paragraph (1) may be used by the Nation under subsection (b)(1).

“SEC. 316. MISCELLANEOUS PROVISIONS.

“(a) IN GENERAL.—Nothing in this title—

“(1) establishes the applicability or inapplicability to groundwater of any doctrine of Federal reserved rights;

“(2) limits the ability of the Nation to enter into any agreement with the Arizona Water Banking Authority (or a successor agency) in accordance with State law;

“(3) prohibits the Nation, any individual member of the Nation, an allottee, or a fee owner of allotted land in the San Xavier Reservation from lawfully acquiring water rights for use in the Tucson management area in addition to the water rights granted or confirmed under this title and the Tohono O’odham settlement agreement;

“(4) abrogates any rights or remedies existing under section 1346 or 1491 of title 28, United States Code;

“(5) affects the obligations of the parties under the Agreement of December 11, 1980, with respect to the 8,000 acre feet of Central Arizona Project water contracted by the Nation for the Sif Oidak District;

“(6)(A) applies to any exempt well;

“(B) prohibits or limits the drilling of any exempt well within—

“(i) the San Xavier Reservation; or

“(ii) the eastern Schuk Toak District; or

“(C) subjects water from any exempt well to any pumping limitation under this title; or

“(7) diminishes or abrogates rights to use water under—

“(A) contracts of the Nation in existence before the enforceability date; or

“(B) the well site agreement referred to in the Asarco agreement and any well site agreement entered into under the Asarco agreement.

“(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Central Arizona Project water under this title does not affect any future allocation or reallocation of Central Arizona Project water by the Secretary.

“(c) LIMITATION ON LIABILITY OF UNITED STATES.—

“(1) IN GENERAL.—The United States shall have no trust or other obligation—

“(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Nation or the San Xavier District under this Act; or

“(B) to review or approve the expenditure of those funds.

“(2) INDEMNIFICATION.—The Nation shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

“SEC. 317. AUTHORIZED COSTS.

“(a) IN GENERAL.—There are authorized to be appropriated—

“(1) to construct features of irrigation systems described in paragraphs (1) through (4) of section 304(c) that are not authorized to be constructed under any other provision of law, an amount equal to the sum of—

“(A) \$3,500,000; and

“(B) such additional amount as the Secretary determines to be necessary to adjust the amount under subparagraph (A) to account for ordinary fluctuations in the costs of construction of irrigation features for the period beginning on October 12, 1982, and ending on the date on which the construction of the features described in this subparagraph is initiated, as indicated by engineering cost indices applicable to the type of construction involved;

“(2) \$18,300,000 in lieu of construction to implement section 304(c)(3)(B), including an adjustment representing interest that would have been earned if this amount had been deposited in the cooperative fund during the period beginning on January 1, 2008, and ending on the date the amount is actually paid to the San Xavier District;

“(3) \$891,200 to develop and initiate a water management plan for the San Xavier Reservation under section 308(d);

“(4) \$237,200 to develop and initiate a water management plan for the eastern Schuk Toak District under section 308(d);

“(5) \$4,000,000 to complete the water resources study under section 311(d);

“(6) \$215,000 to develop and initiate a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1);

“(7) \$175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2);

“(8) \$250,000 to complete the Asarco land exchange study under section 311(f); and

“(9) such additional sums as are necessary to carry out the provisions of this title other than the provisions referred to in paragraphs (1) through (8).

“(b) TREATMENT OF APPROPRIATED AMOUNTS.—Amounts made available under subsection (a) shall be considered to be authorized costs for purposes of section 403(f)(2)(D)(iii) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section 107(a) of the Arizona Water Settlements Act).”.

SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT EFFECTIVE DATE.

(a) DEFINITIONS.—The definitions under section 301 of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) shall apply to this title.

(b) EFFECTIVE DATE.—This title and the amendments made by this title take effect as of the enforceability date, which is the date the Secretary publishes in the Federal Register a statement of findings that—

Federal Register,
publication.

(1)(A) to the extent that the Tohono O’odham settlement agreement conflicts with this title or an amendment made by this title, the Tohono O’odham settlement agreement has been revised through an amendment to eliminate those conflicts; and

(B) the Tohono O’odham settlement agreement, as so revised, has been executed by the parties and the Secretary;

(2) the Secretary and other parties to the agreements described in section 309(h)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) have executed those agreements;

(3) the Secretary has approved the interim allottee water rights code described in section 308(b)(3)(A) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(4) final dismissal with prejudice has been entered in each of the Alvarez case and the Tucson case on the sole condition that the Secretary publishes the findings specified in this section;

(5) the judgment and decree attached to the Tohono O’odham settlement agreement as exhibit 17.1 has been approved by the State court having jurisdiction over the Gila

River adjudication proceedings, and that judgment and decree have become final and nonappealable;

(6) implementation costs have been identified and retained in the Lower Colorado River Basin Development Fund, specifically—

(A) \$18,300,000 to implement section 304(c)(3);

(B) \$891,200 to implement a water management plan for the San Xavier Reservation under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(C) \$237,200 to implement a water management plan for the eastern Schuk Toak District under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(D) \$4,000,000 to complete the water resources study under section 311(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(E) \$215,000 to develop and implement a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(F) \$175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301); and

(G) \$250,000 to complete the Asarco land exchange study under section 311(f) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(7) the State has enacted legislation that—

(A) qualifies the Nation to earn long-term storage credits under the Asarco agreement;

(B) implements the San Xavier groundwater protection program in accordance with paragraph 8.8 of the Tohono O'odham settlement agreement;

(C) enables the State to carry out section 306(b); and

(D) confirms the jurisdiction of the State court having jurisdiction over Gila River adjudication proceedings and decrees to carry out the provisions of sections 312(d) and 312(h) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(8) the Secretary and the State have agreed to an acceptable firming schedule referred to in section 105(b)(2)(C); and

(9) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95-625-TUC-WDB(EHC), No. CIV 95-1720-PHX-EHC) (Consolidated Action) in accordance with the repayment stipulation as provided in section 207.

(c) FAILURE TO PUBLISH STATEMENT OF FINDINGS.—If the Secretary does not publish a statement of findings under subsection (a) by December 31, 2007—

Deadline.

- (1) the 1982 Act shall remain in full force and effect;
- (2) this title shall not take effect; and
- (3) any funds made available by the State under this title that are not expended, together with any interest on those funds, shall immediately revert to the State.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

SEC. 401. EFFECT OF TITLES I, II, AND III.

None of the provisions of title I, II, or III or the agreements, attachments, exhibits, or stipulations referenced in those titles shall be construed to—

- (1) amend, alter, or limit the authority of—

- (A) the United States to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its capacity as trustee for the San Carlos Apache Tribe, its members and allottees, or in any other capacity on behalf of the San Carlos Apache Tribe, its members, and allottees, in any judicial, administrative, or legislative proceeding; or

- (B) the San Carlos Apache Tribe to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its own behalf or on behalf of its members and allottees in any judicial, administrative, or legislative proceeding consistent with title XXXVII of Public Law 102–575 (106 Stat. 4600, 4740); or

- (2) amend or alter the CAP Contract for the San Carlos Apache Tribe dated December 11, 1980, as amended April 29, 1999.

SEC. 402. ANNUAL REPORT.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the status of efforts to reach a negotiated agreement covering the Gila River water rights claims of the San Carlos Apache Tribe.

(b) **TERMINATION.**—This section shall be of no effect after the later of—

- (1) the date that is 3 years after the date of enactment of this Act; or
- (2) the date on which the Secretary submits a third annual report under this section.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

(a) **SAN CARLOS APACHE TRIBE.**—There is authorized to be appropriated to assist the San Carlos Apache Tribe in completing comprehensive water resources negotiations leading to a comprehensive Gila River water settlement for the Tribe, including soil and water technical analyses, legal, paralegal, and other related efforts, \$150,000 for fiscal year 2006.

(b) **WHITE MOUNTAIN APACHE TRIBE.**—There is authorized to be appropriated to assist the White Mountain Apache Tribe in

completing comprehensive water resources negotiations leading to a comprehensive water settlement for the Tribe, including soil and water technical analyses, legal, paralegal, and other related efforts, \$150,000 for fiscal year 2006.

(c) OTHER ARIZONA INDIAN TRIBES.—There is authorized to be appropriated to the Secretary to assist Arizona Indian tribes (other than those specified in subsections (a) and (b)) in completing comprehensive water resources negotiations leading to a comprehensive water settlement for the Arizona Indian tribes, including soil and water technical analyses, legal, paralegal, and other related efforts, \$300,000 for fiscal year 2006.

(d) NO LIMITATION ON OTHER FUNDING.—Amounts made available under subsections (a), (b), and (c) shall not limit, and shall be in addition to, other amounts available for Arizona tribal water rights negotiations leading to comprehensive water settlements.

Approved December 10, 2004.

LEGISLATIVE HISTORY—S. 437 (H.R. 885):

HOUSE REPORTS: No. 108–793 (Comm. on Resources).

SENATE REPORTS: No. 108–360 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 10, considered and passed Senate.

Nov. 17, considered and passed House.



Public Law 108–452
108th Congress

An Act

To facilitate the transfer of land in the State of Alaska, and for other purposes.

Dec. 10, 2004

[S. 1466]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Alaska Land
Transfer
Acceleration Act.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

43 USC 1601
note.

(a) **SHORT TITLE.**—This Act may be cited as the “Alaska Land Transfer Acceleration Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—STATE SELECTIONS AND CONVEYANCES

- Sec. 101. Community grant selections and conveyances.
Sec. 102. Prioritization of land to be conveyed.
Sec. 103. Selection of certain reversionary interests held by the United States.
Sec. 104. Effect of hydroelectric withdrawals.
Sec. 105. Entitlement for the University of Alaska.
Sec. 106. Settlement of remaining entitlement.
Sec. 107. Effect of Federal mining claims.
Sec. 108. Land mistakenly relinquished or omitted.

TITLE II—ALASKA NATIVE CLAIMS SETTLEMENT ACT

- Sec. 201. Land available after selection period.
Sec. 202. Combined entitlements.
Sec. 203. Authority to convey by whole section.
Sec. 204. Conveyance of cemetery sites and historical places.
Sec. 205. Allocations based on population.
Sec. 206. Authority to withdraw land.
Sec. 207. Report on withdrawals.
Sec. 208. Automatic segregation of land for underselected Village Corporations.
Sec. 209. Settlement of remaining entitlement.

TITLE III—NATIVE ALLOTMENTS

- Sec. 301. Correction of conveyance documents.
Sec. 302. Title recovery of Native allotments.
Sec. 303. Native allotment revisions on land selected by or conveyed to a Native Corporation.
Sec. 304. Compensatory acreage.
Sec. 305. Reinstatements and reconstructions.
Sec. 306. Amendments to section 41 of the Alaska Native Claims Settlement Act.

TITLE IV—FINAL PRIORITIES; CONVEYANCE AND SURVEY PLANS

- Sec. 401. Deadline for establishment of regional plans.
Sec. 402. Deadline for establishment of village plans.
Sec. 403. Final prioritization of ANCSA selections.
Sec. 404. Final prioritization of State selections.

TITLE V—ALASKA LAND CLAIMS HEARINGS AND APPEALS

- Sec. 501. Alaska land claims hearings and appeals.

TITLE VI—REPORT AND AUTHORIZATION OF APPROPRIATIONS

- Sec. 601. Report.
Sec. 602. Authorization of appropriations.

43 USC 1602
note.

SEC. 2. DEFINITIONS.

In this Act:

(1) **NATIVE ALLOTMENT.**—The term “Native allotment” means an allotment claimed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469).

(2) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(3) **STATE.**—The term “State” means the State of Alaska.

TITLE I—STATE SELECTIONS AND CONVEYANCES

48 USC note
prec. 21.

SEC. 101. COMMUNITY GRANT SELECTIONS AND CONVEYANCES.

(a) **IN GENERAL.**—Section 6 of Public Law 85–508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 340) is amended by adding at the end the following:

“(n) The minimum tract selection size is waived with respect to a selection made by the State of Alaska under subsection (a) for the following selections:

National Forest Community Grant Application Number	Area Name	Est. Acres
209	Yakutat Airport Addition	111
264	Bear Valley (Portage)	120
284	Hyder-Fish Creek	61
310	Elfin Cove	37
384	Edna Bay Admin Site	37
390	Point Hilda	29.”.

(b) **COMMUNITY GRANT SELECTIONS.**—Section 6 of Public Law 85–508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 340) (as amended by subsection (a)) is amended by adding at the end the following:

“(o)(1) The State of Alaska may elect to convert a selection filed under subsection (b) to a selection under subsection (a) by notifying the Secretary of the Interior in writing.

“(2) If the State of Alaska makes an election under paragraph (1), the entire selection shall be converted to a selection under subsection (a).

“(3) The Secretary of the Interior shall not convey a total of more than 400,000 acres of public domain land selected under subsection (a) or converted under paragraph (1) to a public domain selection under subsection (a).

“(4) Conversion of a selection under paragraph (1) shall not increase the survey obligation of the United States with respect to the land converted.

“(p) All selection applications of the State of Alaska that are on file with the Secretary of the Interior under the public domain provisions of subsection (a) on the date of enactment of this subsection and any selection applications that are converted to a subsection (a) selection under subsection (o)(1) are approved as suitable for community or recreational purposes.”.

SEC. 102. PRIORITIZATION OF LAND TO BE CONVEYED.

Section 906(h)(2) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(h)(2)) is amended—

(1) by striking “(2) As soon as practicable” and inserting the following:

“(2)(A) As soon as practicable”;

(2) by striking “The sequence of” and inserting the following:

“(B)(i) The sequence of”; and

(3) by adding at the end the following:

“(ii) In establishing the priorities for tentative approval under clause (i), the State shall—

“(I) in the case of a selection under section 6(a) of Public Law 85-508 (commonly known as the ‘Alaska Statehood Act’) (72 Stat. 340), include all land selected; or

“(II) in the case of a selection under section 6(b) of that Act—

“(aa) include at least 5,760 acres; or

“(bb) if a waiver has been granted under section 6(g) of that Act or less than 5,760 acres of the entitlement remains, prioritize the selection in such increments as are available for conveyance.”.

SEC. 103. SELECTION OF CERTAIN REVERSIONARY INTERESTS HELD BY THE UNITED STATES.

43 USC 1635
note.

(a) **IN GENERAL.**—All reversionary interests held by the United States in land owned by the State or any political subdivision of the State and any Federal land leased by the State under the Act of August 23, 1950 (25 U.S.C. 293b), or the Act of June 4, 1953 (25 U.S.C. 293a), that is prioritized for conveyance by the State under section 906(h)(2) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(h)(2))—

(1) are deemed to be selected; and

(2) may, with the concurrence of the Secretary or the head of the Federal agency with administrative jurisdiction over the land, be conveyed under section 6 of Public Law 85-508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 340).

(b) **EFFECT ON ENTITLEMENT.**—If, before the date of enactment of this Act, the entitlement of the State has not been charged with respect to a parcel for which a reversionary interest is conveyed under subsection (a), the total acreage of the parcel shall be charged against the remaining entitlement of the State.

(c) **MINIMUM ACREAGE REQUIREMENT NOT APPLICABLE.**—The minimum acreage requirement under subsections (a) and (b) of section 6 of Public Law 85-508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 340) shall not apply to the selection of reversionary interests under subsection (a).

(d) **STATE WAIVER.**—On conveyance to the State of any reversionary interest selected under subsection (a), the State shall be deemed to have waived all right to any future credit should the reversion not occur.

(e) **LIMITATION.**—This section shall not apply to—

(1) reversionary interests in land acquired by the United States through the use of amounts from the Exxon Valdez Oil Spill Trust Fund; or

(2) reversionary interests in any land conveyed to the State as a result of the “Terms and Conditions for Land Consolidation and Management in Cook Inlet Area” as ratified by section 12 of Public Law 94-204 (43 U.S.C. 1611 note).

SEC. 104. EFFECT OF HYDROELECTRIC WITHDRAWALS.

(a) **LAND WITHDRAWN, RESERVED, OR CLASSIFIED FOR POWER SITE OR POWER PROJECT PURPOSES.**—If the State has filed a future selection application under section 906(e) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(e)) for land withdrawn, reserved, or classified for power site or power project purposes, notwithstanding the withdrawal, reservation, or classification for power site or power project purposes, the following parcels of land shall be deemed to be vacant, unappropriated, and unreserved within the meaning of Public Law 85-508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 339):

Serial Number	Area Name	General Selection Application Number
AKAA 058747	Bradley Lake	GS 5141
AKAA 058848	Bradley Lake	GS 44
AKAA 058266	Eagle River/Ship Creek/ Peters Creek	GS 1429
AKAA 058265	Eagle River/Ship Creek/ Peters Creek	GS 1209
AKAA 058374	Salmon Creek	GS 327
AKF 031321	Nenana River	GS 2182
AKAA 059056	Solomon Gulch at Valdez	GS 86
AKFF 085798	Kruzgamepa River Pass Creek	GS 4096.

(b) **LIMITATION.**—Subsection (a) does not apply to any land that is—

(1) located within the boundaries of a conservation system unit (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)); or

(2) otherwise unavailable for conveyance under Public Law 85-508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 339).

(c) **REQUIREMENT APPLICABLE TO NATIONAL FOREST SYSTEM LAND.**—Any land described in subsection (a) that is in a unit of the National Forest System shall not be conveyed unless the Secretary of Agriculture approved the State selection before January 3, 1994.

(d) **REQUIREMENTS APPLICABLE TO HYDROELECTRIC APPLICATIONS AND LICENSED PROJECTS.**—

(1) **HYDROELECTRIC APPLICATIONS.**—Any selection of land described in subsection (a) that is included in a hydroelectric application—

(A) shall be subject to the jurisdiction of the Federal Energy Regulatory Commission; and

(B) shall not be conveyed while the hydroelectric application is pending.

(2) **LICENSED PROJECT.**—Any selection of land described in subsection (a) that is included in a licensed project shall be subject to—

(A) the jurisdiction of the Federal Energy Regulatory Commission;

(B) the rights of third parties; and

(C) the right of reentry under section 24 of the Federal Power Act (16 U.S.C. 818).

(e) EFFECT OF SECTION.—Nothing in this section negates or diminishes any right of an applicant to petition for restoration and opening of land withdrawn or classified for power purposes under section 24 of the Federal Power Act (16 U.S.C. 818).

SEC. 105. ENTITLEMENT FOR THE UNIVERSITY OF ALASKA.

(a) IN GENERAL.—As of January 1, 2003, the remaining State entitlement for the benefit of the University of Alaska under the Act of January 21, 1929 (45 Stat. 1091, chapter 92), is 456 acres. 43 USC 852 note.

(b) REVERSIONARY INTERESTS.—The Act of January 21, 1929 (45 Stat. 1091, chapter 92), is amended by adding at the end the following: 43 USC 852 note.

“SEC. 3. (a) The State of Alaska (referred to in this Act as the ‘State’), acting on behalf of, and with the approval of, the University of Alaska, may select—

“(1) any mineral interest (including an interest in oil or gas) in land located in the State, the unreserved portion of which is owned by the University of Alaska; or

“(2) any reversionary interest held by the United States in land located in the State, the unreserved portion of which is owned by the University of Alaska.

“(b) The total acreage of any parcel of land for which a partial interest is conveyed under subsection (a) shall be charged against the remaining entitlement of the State under this Act.

“(c) In taking title to a reversionary interest, the State, with the approval of the University of Alaska, waives all right to any future acreage credit if the reversion does not occur.

“SEC. 4. The Secretary may survey any vacant, unappropriated, and unreserved land in the State for purposes of allowing selections under this Act.

“SEC. 5. The authorized outstanding selections under this Act shall be not more than—

“(1) 125 percent of the remaining entitlement; plus

“(2) the number of acres of land that are in conflict with land owned by the University of Alaska, as identified in Native allotment applications on record with the Bureau of Land Management.”.

SEC. 106. SETTLEMENT OF REMAINING ENTITLEMENT.

(a) IN GENERAL.—The Secretary may enter into a binding written agreement with the State with respect to—

(1) the exact number and location of acres of land remaining to be conveyed under each entitlement established or confirmed by Public Law 85–508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 340), from—

(A) the land selected by the State as of January 3, 1994; and

(B) selections under the Act of January 21, 1929 (45 Stat. 1091, chapter 92);

(2) the priority in which the land is to be conveyed;

(3) the relinquishment of selections which are not to be conveyed; and

43 USC 1635
note.

(4) the survey of the exterior boundaries of the land to be conveyed.

(b) CONSULTATION.—Before entering into an agreement under subsection (a), the Secretary shall ensure that any concerns or issues identified by any Federal agency potentially affected are given consideration.

(c) ERRORS.—The State, by entering into an agreement under subsection (a), shall receive any gain or bear any loss that results from errors in prior surveys, protraction diagrams, or the computation of the ownership of third parties on any land conveyed under an agreement entered into under subsection (a).

(d) AVAILABILITY OF AGREEMENTS.—Agreements entered into under subsection (a) shall be available for public inspection in the appropriate offices of the Department of the Interior.

(e) EFFECT.—Nothing in this section increases the entitlement provided to the State under Public Law 85-508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 340), or the Act of January 21, 1929 (45 Stat. 1091, chapter 92).

43 USC 1635
note.

SEC. 107. EFFECT OF FEDERAL MINING CLAIMS.

(a) CONDITIONAL RELINQUISHMENTS.—

(1) IN GENERAL.—To facilitate the conversion of Federal mining claims to State mining claims on land selected or topfiled by the State, a Federal mining claimant may file with the Secretary a voluntary relinquishment of the Federal mining claim conditioned on conveyance of the land to the State.

(2) CONVEYANCE OF RELINQUISHED CLAIM.—The Secretary may convey the land described in the relinquished Federal mining claim to the State if, with respect to the land—

(A) the State has filed as of January 3, 1994—

(i) a selection application under Public Law 85-508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 339); or

(ii) a future selection application under section 906(e) of the Alaska National Interest Lands Conservation Act 43 U.S.C. 1635(e); and

(B) the land addressed by the selection application or future selection application is conveyed to the State.

(3) OBLIGATIONS UNDER FEDERAL LAW.—Until the date on which the land is conveyed under paragraph (2), a Federal mining claimant shall be subject to any obligations relating to the land under Federal law.

(4) NO RELINQUISHMENT.—If the land previously encumbered by the relinquished Federal mining claim is not conveyed to the State under paragraph (2), the relinquishment of land under paragraph (1) shall be of no effect.

(b) RIGHTS-OF-WAY; OTHER INTEREST.—On conveyance to the State of a relinquished Federal mining claim under this section, the State shall assume authority over any leases, licenses, permits, rights-of-way, operating plans, other land use authorizations, or reclamation obligations applicable to the relinquished Federal mining claim on the date of conveyance.

SEC. 108. LAND MISTAKENLY RELINQUISHED OR OMITTED.

Notwithstanding the selection deadlines under section 6(a) of Public Law 85-508 (commonly known as the “Alaska Statehood Act”) (72 Stat. 340)—

(1) the State selection application AA-17607 NFCG 75, located in the Chugach National Forest, is reinstated to the parcels of land originally selected in 1978, which are more particularly described as—

(A) S $\frac{1}{2}$ sec. 14, T. 11 S., R. 11 W., of the Copper River Meridian;

(B) S $\frac{1}{2}$ sec. 15, T. 11 S., R. 11 W., of the Copper River Meridian;

(C) E $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 16, T. 11 S., R. 11 W., of the Copper River Meridian;

(D) E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 21, T. 11 S., R. 11 W., of the Copper River Meridian;

(E) N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 22, T. 11 S., R. 11 W., of the Copper River Meridian;

(F) N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 23, T. 11 S., R. 11 W., of the Copper River Meridian;

(G) NW $\frac{1}{4}$ sec. 27, T. 11 S., R. 11 W., of the Copper River Meridian; and

(H) N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 28, T. 11 S., R. 11 W., of the Copper River Meridian; and

(2) the following parcels of land are considered topfiled under section 906(e) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 1635(e)):

(A) The parcels of land omitted from the State's topfiling of the Utility and Transportation Corridor, and other parcels of land encompassing the Trans-Alaska Pipeline System, withdrawn by Public Land Order No. 5150 (except for any land within the boundaries of a conservation system unit), which are more particularly described as—

(i) secs. 1-30, 32-36, T. 27 N., R. 11 W., of the Fairbanks Meridian;

(ii) secs. 10, 13-18, 21-28, and 33-36, T. 20 N., R. 13 W., of the Fairbanks Meridian;

(iii) secs. 13, 14, and 15, T. 20 N., R. 14 W., of the Fairbanks Meridian;

(iv) secs. 1-5, 8-17, and 20-28, T. 19 N., R. 13 W., of the Fairbanks Meridian;

(v) secs. 29-32, T. 20 N., R. 16 W., of the Fairbanks Meridian;

(vi) secs. 5-11, 14-23, and 25-36, T. 19 N., R. 16 W., of the Fairbanks Meridian;

(vii) secs. 30 and 31, T. 19 N., R. 15 W., of the Fairbanks Meridian;

(viii) secs. 5 and 6, T. 18 N., R. 15 W., of the Fairbanks Meridian;

(ix) secs. 1-2 and 7-34, T. 16 N., R. 14 W., of the Fairbanks Meridian; and

(x) secs. 4-9, T. 15 N., R. 14 W., of the Fairbanks Meridian.

(B) Secs. 1, 2, 11-14, T. 10 S., R. 42 W., of the Seward Meridian.

TITLE II—ALASKA NATIVE CLAIMS SETTLEMENT ACT

43 USC 1611
note.

SEC. 201. LAND AVAILABLE AFTER SELECTION PERIOD.

(a) IN GENERAL.—To make certain Federal land available for conveyance to a Native Corporation that has sufficient remaining entitlement, the Secretary may waive the filing deadlines under sections 12 and 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611, 1615) if—

(1) the Federal land is—

(A) located in a township in which all or any part of a Native Village is located; or

(B) surrounded by—

(i) land that is owned by the Native Corporation;

or

(ii) selected land that will be conveyed to the Native Corporation;

(2) the Federal land—

(A) became available after the end of the original selection period;

(B)(i) was not selected by the Native Corporation because the Federal land was subject to a competing claim or entry; and

(ii) the competing claim or entry has lapsed; or

(C) was previously an unavailable Federal enclave within a Native selection withdrawal area;

(3)(A) the Secretary provides the Native Corporation with a specific time period in which to decline the Federal land; and

(B) the Native Corporation does not submit to the Secretary written notice declining the land within the period established under subparagraph (A); and

(4) the State has voluntarily relinquished any valid State selection or top-filing for the Federal land.

(b) CONGRESSIONAL ACTION.—Subsection (a) shall not apply to a parcel of Federal land if Congress has specifically made other provisions for disposition of the parcel of Federal land.

SEC. 202. COMBINED ENTITLEMENTS.

Section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611) is amended—

(1) in the second sentence of subsection (b), by striking “Regional Corporation shall” and inserting “Regional Corporation shall, not later than October 1, 2005,”; and

(2) by adding at the end the following:

“(f)(1) The entitlements received by any Village Corporation under subsection (a) and the reallocations made to the Village Corporation under subsection (b) may be combined, at the discretion of the Secretary, without—

“(A) increasing or decreasing the combined entitlement;

or

“(B) increasing the limitation on selections of Wildlife Refuge System land, National Forest System land, or State-selected land under subsection (a).”

“(2) The combined entitlement under paragraph (1) may be fulfilled from selections under subsection (a) or (b) without regard to the entitlement specified in the selection application.

“(3) All selections under a combined entitlement under paragraph (1) shall be adjudicated and conveyed in compliance with this Act.

“(4) Except in a case in which a survey has been contracted for before the date of enactment of this subsection, the combination of entitlements under paragraph (1) shall not require separate patents or surveys, to distinguish between conveyances made to a Village Corporation under subsections (a) and (b).”.

SEC. 203. AUTHORITY TO CONVEY BY WHOLE SECTION.

Section 14(d) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(d)) is amended—

(1) by striking “(d) the Secretary” and inserting the following:

“(d)(1) The Secretary”; and

(2) by adding at the end the following:

“(2) For purposes of applying the rule of approximation under this section, the largest legal subdivision that may be conveyed in excess of the applicable acreage limitation specified in subsection (a) shall be—

“(A) in the case of land managed by the Bureau of Land Management that is not within a conservation system unit, the next whole section;

“(B) in the case of land managed by an agency other than the Bureau of Land Management that is not within a conservation system unit, the next quarter-section and only with concurrence of the agency; or

“(C) in the case of land within a conservation system unit, a quarter of a quarter section, and if the land is managed by an agency other than the Bureau of Land Management, only with the concurrence of that agency.

“(3)(A) If the Secretary determines pursuant to paragraph (2) that an entitlement of a Village Corporation (other than a Village Corporation listed in section 16(a)) or a Regional Corporation may be fulfilled by conveying a specific tract of surveyed or unsurveyed land, the Secretary and the affected Village or Regional Corporation may enter into an agreement providing that all land entitlements under this Act shall be deemed satisfied by conveyance of the specifically identified and agreed upon tract of land.

“(B) An agreement entered into under subparagraph (A) shall be—

“(i) in writing;

“(ii) executed by the Secretary and the Village or Regional Corporation; and

“(iii) authorized by a corporate resolution adopted by the affected Village or Regional Corporation.

“(C) After execution of an agreement under subparagraph (A) and conveyance of the agreed upon tract to the affected Village or Regional Corporation—

“(i) the Secretary shall not make any further adjustments to calculations relating to acreage entitlements of the Village or Regional Corporation; and

“(ii) the Village or Regional Corporation shall not be entitled to any further conveyances under this Act.

“(D) A Village or Regional Corporation shall not be eligible to receive land under subparagraph (A) if the Village or Regional Corporation has received the full land entitlement of the Village or Regional Corporation through—

“(i) an actual conveyance of land; or

“(ii) a previous agreement.

“(E) If the calculations of the Secretary indicate that the final survey boundaries for any Village or Regional Corporation entitlement for which an agreement has not been entered into under this paragraph include acreage in a quantity that exceeds the statutory entitlement of the corporation by $\frac{1}{10}$ of 1 percent or less, but not more than the applicable acreage limitation specified in paragraph (2)—

“(i) the entitlement shall be considered satisfied by the conveyance of the surveyed area; and

“(ii) the Secretary shall not change the survey for the sole purpose of an acreage adjustment.

“(F) This paragraph does not limit or otherwise affect the ability of a Village or Regional Corporation to enter into land exchanges with the United States.”.

SEC. 204. CONVEYANCE OF CEMETERY SITES AND HISTORICAL PLACES.

Section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) is amended—

(1) by striking “(1) The Secretary” and inserting the following:

“(1)(A) The Secretary”;

(2) by striking “Only title” and inserting the following:

“(B) Only title”; and

(3) by adding at the end the following:

“(C)(i) Notwithstanding acreage allocations made before the date of enactment of this subparagraph, the Secretary may convey any cemetery site or historical place—

“(I) with respect to which there is an application on record with the Secretary on the date of enactment of this paragraph; and

“(II) that is eligible for conveyance.

Applicability.

“(ii) Clause (i) shall also apply to any of the 188 closed applications that are determined to be eligible and reinstated under Secretarial Order No. 3220 dated January 5, 2001.

“(D) No applications submitted for the conveyance of land under subparagraph (A) that were closed before the date of enactment of this paragraph may be reinstated other than those specified in subparagraph (C)(ii).

“(E) After the date of enactment of this paragraph—

“(i) no application may be filed for the conveyance of land under subparagraph (A); and

“(ii) no pending application may be amended, except as necessary to conform the application to the description in the certification of eligibility of the Bureau of Indian Affairs.

Deadline.

“(F) Unless, not later than 1 year after the date of enactment of this paragraph, a Regional Corporation that has filed an application for a historic place submits to

the Secretary a statement on the significance of and the location of the historic place—

“(i) the application shall not be valid; and

“(ii) the Secretary shall reject the application.

“(G) The State and the head of the Federal agency with administrative jurisdiction over the land shall have 30 days to provide written comments to the Secretary—

Deadline.

“(i) identifying any third party interest to which a conveyance under subparagraph (A) should be made subject; and

“(ii) describing any easements recommended for reservation.”.

SEC. 205. ALLOCATIONS BASED ON POPULATION.

Section 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)) is amended by adding at the end the following:

“(C)(i) Notwithstanding any other provision of this subsection, as soon as practicable after enactment of this subparagraph, the Secretary shall allocate to a Regional Corporation eligible for an allocation under subparagraph (A) the Regional Corporation’s share of 200,000 acres from lands withdrawn under this subsection, to be credited against acreage to be allocated to the Regional Corporation under subparagraph (A).

“(ii) Clause (i) shall apply to Chugach Alaska Corporation pursuant to the terms of the 1982 CNI Settlement Agreement.

Applicability.

“(iii) With respect to Cook Inlet Region, Inc., or Koniag, Inc.—

“(I) clause (i) shall not apply; and

“(II) the portion of the 200,000 acres allocated to Cook Inlet Region Inc. or Koniag, Inc., shall be retained by the United States.

“(iv) This subparagraph shall not affect any prior agreement entered into by a Regional Corporation other than the agreements specifically referred to in this subparagraph.”.

SEC. 206. AUTHORITY TO WITHDRAW LAND.

Section 14(h)(10) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(10)) is amended—

(1) by striking “(10) Notwithstanding” and inserting the following:

“(10)(A) Notwithstanding”; and

(2) by adding at the end the following:

“(B) If a Regional Corporation does not have enough valid selections on file to fulfill the remaining entitlement of the Regional Corporation under paragraph (8), the Secretary may use the withdrawal authority under subparagraph (A) to withdraw land that is vacant, unappropriated, and unreserved on the date of enactment of this subparagraph for selection by, and conveyance to, the Regional Corporation to fulfill the entitlement.”.

SEC. 207. REPORT ON WITHDRAWALS.

Not later than 18 months after the date of enactment of this Act, the Secretary shall—

Public
information.

(1) review the withdrawals made pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)) to determine if any portion of the lands withdrawn pursuant to that provision can be opened to appropriation under the public land laws or if their withdrawal is still needed to protect the public interest in those lands;

(2) provide an opportunity for public notice and comment, including recommendations with regard to lands to be reviewed under paragraph (1); and

(3) submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that identifies any portion of the lands so withdrawn that can be opened to appropriation under the public land laws consistent with the protection of the public interest in these lands.

SEC. 208. AUTOMATIC SEGREGATION OF LAND FOR UNDERSELECTED VILLAGE CORPORATIONS.

Section 22(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(j)) is amended by adding at the end the following:

“(3) In lieu of withdrawal under paragraph (2), land may be segregated from all other forms of appropriation for the purposes described in that paragraph if—

“(A) the Secretary and the Village Corporation enter into an agreement identifying the land for selection; and

“(B) the Village Corporation files an application for selection of the land.”.

43 USC 1611
note.

SEC. 209. SETTLEMENT OF REMAINING ENTITLEMENT.

(a) IN GENERAL.—The Secretary may enter into a binding written agreement with a Native Corporation relating to—

(1) the land remaining to be conveyed to the Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) from land selected as of September 1, 2004, or land made available under section 201, 206, or 208 of this Act;

(2) the priority in which the land is to be conveyed;

(3) the relinquishment of selections which are not to be conveyed;

(4) the selection entitlement to which selections are to be charged, regardless of the entitlement under which originally selected;

(5) the survey of the exterior boundaries of the land to be conveyed;

(6) the additional survey to be performed under section 14(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(c)); and

(7) the resolution of conflicts with Native allotment applications.

(b) REQUIREMENTS.—An agreement under subsection (a)—

(1) shall be authorized by a resolution of the Native Corporation entering into the agreement; and

(2) shall include a statement that the entitlement of the Native Corporation shall be considered complete on execution of the agreement.

(c) CORRECTION OF CONVEYANCE DOCUMENTS.—In an agreement under subsection (a), the Secretary and the Native Corporation may agree to make technical corrections to the legal description

in the conveyance documents for easements previously reserved so that the easements provide the access intended by the original reservation.

(d) CONSULTATION.—Before entering into an agreement under subsection (a), the Secretary shall ensure that the concerns or issues identified by the State and all Federal agencies potentially affected by the agreement are given consideration.

(e) ERRORS.—Any Native Corporation entering into an agreement under subsection (a) shall receive any gain or bear any loss resulting from errors in prior surveys, protraction diagrams, or computation of the ownership of third parties on any land conveyed.

(f) EFFECT.—

(1) IN GENERAL.—An agreement under subsection (a) shall not—

(A) affect the obligations of Native Corporations under prior agreements; or

(B) result in a Native Corporation relinquishing valid selections of land in order to qualify for the withdrawal of other tracts of land.

(2) EFFECT ON SUBSURFACE RIGHTS.—The terms of an agreement entered into under subsection (a) shall be binding on a Regional Corporation with respect to the location and quantity of subsurface rights of the Regional Corporation under section 14(f) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(f)).

(3) EFFECT ON ENTITLEMENT.—Nothing in this section increases the entitlement provided to any Native Corporation under—

(A) the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); or

(B) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

(g) BOUNDARIES OF A NATIVE VILLAGE.—An agreement entered into under subsection (a) may not define the boundaries of a Native Village.

(h) AVAILABILITY OF AGREEMENTS.—An agreement entered into under subsection (a) shall be available for public inspection in the appropriate offices of the Department of the Interior.

TITLE III—NATIVE ALLOTMENTS

SEC. 301. CORRECTION OF CONVEYANCE DOCUMENTS.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) is amended by adding at the end the following:

“(d)(1) If an allotment application is valid or would have been approved under section 905 of the Alaska National Interests Lands Conservation Act (43 U.S.C. 1634) had the land described in the application been in Federal ownership on December 2, 1980, the Secretary may correct a conveyance to a Native Corporation or to the State that includes land described in the allotment application to exclude the described allotment land with the written concurrence of the Native Corporation or the State.

“(2) A written concurrence shall—

“(A) include a finding that the land description proposed by the Secretary is acceptable; and

“(B) attest that the Native Corporation or the State has not—

“(i) granted any third party rights or taken any other action that would affect the ability of the United States to convey full title under the Act of May 17, 1906 (34 Stat. 197, chapter 2469); and

“(ii) stored or allowed the deposit of hazardous waste on the land.

“(3) On receipt of an acceptable written concurrence, the Secretary, shall—

“(A) issue a corrected conveyance document to the State or Native Corporation, as appropriate; and

“(B) issue a certificate of allotment to the allotment applicant.

“(4) No documents of reconveyance from the State or an Alaska Native Corporation or evidence of title, other than the written concurrence and attestation described in paragraph (2), are necessary to use the procedures authorized by this subsection.”.

43 USC 1617
note.

SEC. 302. TITLE RECOVERY OF NATIVE ALLOTMENTS.

(a) IN GENERAL.—In lieu of the process for the correction of conveyance documents available under subsection (d) of section 18 of the Alaska Native Claims Settlement Act (as added by section 301), any Native Corporation may elect to reconvey all of the land encompassed by an allotment claim or a portion of the allotment claim agreeable to the applicant in satisfaction of the entire claim by tendering a valid and appropriate deed to the United States.

(b) CERTIFICATE OF ALLOTMENT.—If the United States determines that the allotment application is valid or would have been approved under section 905 of the Alaska National Interests Lands Conservation Act (42 U.S.C. 1634) had the land described in the allotment application been in Federal ownership on December 2, 1980, and obtains title evidence acceptable under the Department of Justice title standards, the United States shall accept the deed from the Native Corporation and issue a certificate of allotment to the allotment applicant.

(c) PROBATE NOT REQUIRED.—If the Native Corporation reconveys the entire interest of the Native Corporation in the allotment claim of a deceased applicant, the United States may accept the deed and issue the certificate of allotment without waiting for a determination of heirs or the approval of a will.

(d) NO LIABILITY.—The United States shall not be subject to liability under Federal or State law for the presence of any hazardous substance in land or an interest in land solely as a result of any reconveyance to, and transfer by, the United States of land or interests in land under this section.

SEC. 303. NATIVE ALLOTMENT REVISIONS ON LAND SELECTED BY OR CONVEYED TO A NATIVE CORPORATION.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) (as amended by section 301) is amended by adding at the end the following:

“(e)(1) An allotment applicant who had an application pending before the Department of the Interior on December 18, 1971, and whose application is still open on the records of the Department of the Interior as of the date of enactment of this subsection may

revise the land description in the application to describe land other than the land that the applicant originally intended to claim if—

“(A) the application—

“(i) describes land selected by or conveyed by interim conveyance or patent to a Native Corporation formed to receive benefits under this Act; or

“(ii) otherwise conflicts with an interest in land granted to a Native Corporation by the United States;

“(B) the revised land description describes land selected by or conveyed by interim conveyance or patent to a Native Corporation of approximately equal acreage in substitution for the land described in the original application;

“(C) the Director of the Bureau of Land Management has not adopted a final plan of survey for the final entitlement of the Native Corporation or its successor in interest; and

“(D) the Native Corporation that selected the land or its successor in interest provides a corporate resolution authorizing reconveyance or relinquishment to the United States of the land, or interest in land, described in the revised application.

“(2) The land description in an allotment application may not be revised under this section unless the Secretary has determined—

“(A) that the allotment application is valid or would have been approved under section 905 of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1634) had the land in the allotment application been in Federal ownership on December 2, 1980;

“(B) in consultation with the administering agency, that the proposed revision would not create an isolated inholding within a conservation system unit (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)); and

“(C) that the proposed revision will facilitate completion of a land transfer in the State.

“(3)(A) On obtaining title evidence acceptable under Department of Justice title standards and acceptance of a reconveyance or relinquishment from a Native Corporation under paragraph (1), the Secretary shall issue a Native allotment certificate to the applicant for the land reconveyed or relinquished by the Native Corporation.

Certification.

“(B) Any allotment revised under this section shall, when allotted, be made subject to any easement, trail, right-of-way, or any third-party interest (other than a fee interest) in existence on the revised allotment land on the date of revision.”.

SEC. 304. COMPENSATORY ACREAGE.

(a) IN GENERAL.—The Secretary shall adjust the acreage entitlement computation records for the State or an affected Native Corporation to account for any difference in the amount of acreage between the corrected description and the previous description in any conveyance document as a result of actions taken under section 18(d) of the Alaska Native Claims Settlement Act (as added by section 301) or section 18(e) of the Alaska Native Claims Settlement Act (as added by section 303), or for other voluntary reconveyances to the United States for the purpose of facilitating land transfers in the State.

(b) LIMITATION.—No adjustment to the acreage conveyance computations shall be made where the State or an affected Native

Records.
43 USC 1617
note.

Corporation retains a partial estate in the described allotment land.

(c) AVAILABILITY OF ADDITIONAL LAND.—If, as a result of implementation under section 18(d) of the Alaska Native Claims Settlement Act (as added by section 301) or any voluntary reconveyance to facilitate a land transfer, a Village Corporation has insufficient remaining selections from which to receive its full entitlement under the Alaska Native Claims Settlement Act, the Secretary may use the authority and procedures available under paragraph (3) of section 22(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(j)) (as added by section 208) to make additional land available for selection by the Village Corporation.

SEC. 305. REINSTATEMENTS AND RECONSTRUCTIONS.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) (as amended by section 303) is amended by adding at the end the following:

“(f)(1) If an applicant for a Native allotment filed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469) petitions the Secretary to reinstate a previously closed Native allotment application or to accept a reconstructed copy of an application claimed to have been timely filed with an agency of the Department of the Interior, the United States—

“(A) may seek voluntary reconveyance of any land described in the application that is reinstated or reconstructed after the date of enactment of this subsection; but

“(B) shall not file an action in any court to recover title from a current landowner.

“(2) A certificate of allotment that is issued for any allotment application for which a request for reinstatement or reconstruction is received or accepted after the date of enactment of this subsection shall be made subject to any Federal appropriation, trail, right-of-way, easement, or existing third party interest of record, including third party interests created by the State, without regard to the date on which the Native allotment applicant initiated use and occupancy.”.

SEC. 306. AMENDMENTS TO SECTION 41 OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Section 41(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g(b)) is amended—

(1) in paragraph (1)(A), by inserting before the semicolon at the end the following: “(except that the term ‘nonmineral’, as used in that Act, shall for the purpose of this subsection be defined as provided in section 905(a)(3) of the Alaska National Interest Lands Conservation Act (42 U.S.C. 1634(a)(3)), except that such definition shall not apply to land within a conservation system unit)”;

(2) in paragraph (2)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and indenting the clauses appropriately;

(B) by inserting “(A)” after “(2)”;

(C) in clause (ii) (as redesignated by subparagraph (A)), by inserting after “Department of Veterans Affairs” the following: “or based on other evidence acceptable to the Secretary”; and

(D) by adding at the end the following:

“(B)(i) If the Secretary requests that the Secretary of Veterans Affairs make a determination whether a veteran died as a direct consequence of a wound received in action, the Secretary of Veterans Affairs shall, within 60 days of receipt of the request—

Deadline.
Records.

“(I) provide a determination to the Secretary if the records of the Department of Veterans Affairs contain sufficient information to support such a determination; or

“(II) notify the Secretary that the records of the Department of Veterans Affairs do not contain sufficient information to support a determination and that further investigation will be necessary.

Notification.

“(ii) Not later than 1 year after notification to the Secretary that further investigation is necessary, the Department of Veterans Affairs shall complete the investigation and provide a determination to the Secretary.”.

Deadline.

TITLE IV—FINAL PRIORITIES; CONVEYANCE AND SURVEY PLANS

SEC. 401. DEADLINE FOR ESTABLISHMENT OF REGIONAL PLANS.

43 USC 1611
note.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary, in coordination and consultation with Native Corporations, other Federal land management agencies, and the State, shall update and revise the 12 preliminary Regional Conveyance and Survey Plans.

(b) INCLUSIONS.—The updated and revised plans under subsection (a) shall identify any conflicts to be resolved and recommend any actions that should be taken to facilitate the finalization of land conveyances in a region by 2009.

SEC. 402. DEADLINE FOR ESTABLISHMENT OF VILLAGE PLANS.

43 USC 1611
note.

Not later than 30 months after the date of enactment of this Act, the Secretary, in coordination with affected Federal land management agencies, the State, and Village Corporations, shall complete a final closure plan with respect to the entitlements for each Village Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

SEC. 403. FINAL PRIORITIZATION OF ANCSA SELECTIONS.

43 USC 1611
note.
Deadlines.

(a) IN GENERAL.—Any Native Corporation that has not received its full entitlement or entered into a voluntary, negotiated settlement of final entitlement shall submit the final, irrevocable priorities of the Native Corporation—

(1) in the case of a Village, Group, or Urban Corporation entitlement, not later than 36 months after the date of enactment of this Act; and

(2) in the case of a Regional Corporation entitlement, not later than 42 months after the date of enactment of this Act.

(b) ACREAGE LIMITATIONS.—The priorities submitted under subsection (a) shall not exceed land that is the greater of—

(1) not more than 125 percent of the remaining entitlement; or

(2) not more than 640 acres in excess of the remaining entitlement.

Deadline.

(c) CORRECTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the priorities submitted under subsection (a) may not be revoked, rescinded, or modified by the Native Corporation.

(2) TECHNICAL CORRECTIONS.—Not later than 90 days after the date of receipt of a notification by the Secretary that there appears to be a technical error in the priorities, the Native Corporation may correct the technical error in accordance with any recommendations of, and in a manner prescribed by or acceptable to, the Secretary.

(d) RELINQUISHMENT.—

(1) IN GENERAL.—As of the date on which the Native Corporation submits its final priorities under subsection (a)—

(A) any unprioritized, remaining selections of the Native Corporation—

(i) are relinquished, but any part of the selections may be reinstated for the purpose of correcting a technical error; and

(ii) have no further segregative effect; and

(B) all withdrawals under sections 11 and 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1610, 1615) under the relinquished selections are terminated.

(2) RECORDS.—All relinquishments under paragraph (1) shall be included in Bureau of Land Management land records.

(e) FAILURE TO SUBMIT PRIORITIES.—If a Native Corporation fails to submit priorities by the deadline specified in subsection (a)—

(1) with respect to a Native Corporation that has priorities on file with the Secretary, the Secretary—

(A) shall convey to the Native Corporation the remaining entitlement of the Native Corporation, as determined based on the most recent priorities of the Native Corporation on file with the Secretary and in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(B) may reject any selections not needed to fulfill the entitlement; or

(2) with respect to a Native Corporation that does not have priorities on file with the Secretary, the Secretary shall satisfy the entitlement by conveying land selected by the Secretary, in consultation with the appropriate Native Corporation, the Federal land managing agency with administrative jurisdiction over the land to be conveyed, and the State, that, to the maximum extent practicable, is—

(A) compact;

(B) contiguous to land previously conveyed to the Native Corporation; and

(C) consistent with the applicable preliminary Regional Conveyance and Survey Plan referred to in section 401.

(f) PLAN OF CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall—

(A) identify any Native Corporation that does not have sufficient priorities on file;

(B) develop priorities for the Native Corporation in accordance with subsection (e); and

(C) provide to the Native Corporation a plan of conveyance based on the priorities developed under subparagraph (B).

(2) FINALIZED SELECTIONS.—Not later than 180 days after the date on which the Secretary provides a plan of conveyance to the affected Village, Group, or Urban Corporation and the Regional Corporation, the Regional Corporation shall finalize any Regional selections that are in conflict with land selected by the Village, Group, or Urban Corporation that has not been prioritized by the deadline under subsection (a)(1). Deadline.

(g) DISSOLVED OR LAPSED CORPORATIONS.—

(1)(A) If a Native Corporation is lapsed or dissolved at the time final priorities are required to be filed under this section and does not have priorities on file with the Secretary, the Secretary shall establish a deadline for the filing of priorities that shall be one year from the provisions of notice of the deadline. Deadline.

(B) To fulfill the notice requirement under paragraph (1), the Secretary shall— Notification.

(i) publish notice of the deadline to a lapsed or dissolved Native Corporation in a newspaper of general circulation nearest the locality where the affected land is located; and Publication.

(ii) seek to notify in writing the last known shareholders of the lapsed or dissolved corporation.

(C) If a Native Corporation does not file priorities with the Secretary before the deadline set pursuant to subparagraph (A), the Secretary shall notify Congress. Notification.

(2) If a Native Corporation with final priorities on file with the Bureau of Land Management is lapsed or dissolved, the United States—

(A) shall continue to administer the prioritized selected land under applicable law; but

(B) may reject any selections not needed to fulfill the lapsed or dissolved Native Corporation's entitlement.

SEC. 404. FINAL PRIORITIZATION OF STATE SELECTIONS.

43 USC 1635
note.

(a) FILING OF FINAL PRIORITIES.—

(1) IN GENERAL.—The State shall, not later than the date that is 4 years after the date of enactment of this Act, in accordance with section 906(f)(1) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(f)(1)), file final priorities with the Secretary for all land grant entitlements to the State which remain unsatisfied on the date of the filing. Deadline.

(2) RANKING.—All selection applications on file with the Secretary on the date specified in paragraph (1) shall—

(A) be ranked on a Statewide basis in order of priority; and

(B) include an estimate of the acreage included in each selection.

(3) INCLUSIONS.—The State shall include in the prioritized list land which has been top-filed under section 906(e) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(e)).

(4) ACREAGE LIMITATION.—

(A) IN GENERAL.—Acreage for top-filings shall not be counted against the 125 percent limitation established

under section 906(f)(1) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(f)(1)).

(B) RELINQUISHMENT.—

(i) IN GENERAL.—The State shall relinquish any selections that exceed the 125 percent limitation.

(ii) FAILURE TO RELINQUISH.—If the State fails to relinquish a selection under clause (i), the Secretary shall reject the selection.

(5) LOWER-PRIORITY SELECTIONS.—Notwithstanding the prioritization of selection applications under paragraph (1), if the Secretary reserves sufficient entitlements for the top-filed selections, the Secretary may continue to convey lower-priority selections.

(b) DEADLINE FOR PRIORITIZATION.—

(1) IN GENERAL.—The State shall irrevocably prioritize sufficient selections to allow the Secretary to complete transfer of 101,000,000 acres by September 30, 2009.

(2) REPRIORITIZATION.—Any selections remaining after September 30, 2009, may be reprioritized.

(c) FINANCIAL ASSISTANCE.—The Secretary may, using amounts made available to carry out this Act, provide financial assistance to other Federal agencies, the State, and Native Corporations and entities to assist in completing the transfer of land by September 30, 2009.

TITLE V—ALASKA LAND CLAIMS HEARINGS AND APPEALS

SEC. 501. ALASKA LAND CLAIMS HEARINGS AND APPEALS.

(a) ESTABLISHMENT.—The Secretary may establish a field office of the Office of Hearings and Appeals in the State to decide matters within the jurisdiction of the Department of the Interior involving hearings and appeals, and other review functions of the Secretary regarding land transfer decisions and Indian probates in the State.

(b) APPOINTMENTS.—For purposes of carrying out subsection (a), the Secretary shall appoint administrative law judges selected in accordance with section 3105 of title 5, United States Code, and members of the Interior Board of Land Appeals.

TITLE VI—REPORT AND AUTHORIZATION OF APPROPRIATIONS

SEC. 601. REPORT.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the status of the implementation of this Act.

(b) CONTENTS.—The report shall—

(1) describe the status of conveyances to Alaska Natives, Native Corporations, and the State; and

(2) include recommendations for completing the conveyances required by this Act.

SEC. 602. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

Approved December 10, 2004.

LEGISLATIVE HISTORY—S. 1466:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 10, considered and passed Senate.

Nov. 17, considered and passed House.



Public Law 108–453
108th Congress

An Act

Dec. 10, 2004
[S. 2192]

To amend title 35, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises.

Cooperative
Research and
Technology
Enhancement
(CREATE) Act of
2004.
35 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Cooperative Research and Technology Enhancement (CREATE) Act of 2004”.

SEC. 2. COLLABORATIVE EFFORTS ON CLAIMED INVENTIONS.

Section 103(c) of title 35, United States Code, is amended to read as follows:

“(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

“(2) For purposes of this subsection, subject matter developed by another person and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person if—

“(A) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;

“(B) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

“(C) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

“(3) For purposes of paragraph (2), the term ‘joint research agreement’ means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.”.

35 USC 103 note.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall apply to any patent granted on or after the date of the enactment of this Act.

(b) SPECIAL RULE.—The amendments made by this Act shall not affect any final decision of a court or the United States Patent

and Trademark Office rendered before the date of the enactment of this Act, and shall not affect the right of any party in any action pending before the United States Patent and Trademark Office or a court on the date of the enactment of this Act to have that party's rights determined on the basis of the provisions of title 35, United States Code, in effect on the day before the date of the enactment of this Act.

Approved December 10, 2004.

LEGISLATIVE HISTORY—S. 2192 (H.R. 2391):

HOUSE REPORTS: No. 108–425 accompanying H.R. 2391 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 25, considered and passed Senate.

Nov. 20, considered and passed House.



Public Law 108–454
108th Congress

An Act

Dec. 10, 2004
[S. 2486]

Veterans
Benefits
Improvement Act
of 2004.
38 USC 101 note.

To amend title 38, United States Code, to improve and extend housing, education, and other benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Veterans Benefits Improvement Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
Sec. 2. Reference to title 38, United States Code.

TITLE I—VETERANS EARN AND LEARN ACT

- Sec. 101. Short title.
Sec. 102. Modification of benefit entitlement charges for certain on-job training programs.
Sec. 103. Increase in benefit for individuals pursuing apprenticeship or on-job training.
Sec. 104. Authority for competency-based apprenticeship programs.
Sec. 105. Ten-year extension of delimiting period for survivors’ and dependents’ educational assistance for spouses of members who die on active duty.
Sec. 106. Availability of education benefits for payment for national admissions exams and national exams for credit at institutions of higher education.
Sec. 107. Requirement for coordination of data among the Departments of Veterans Affairs, Defense, and Labor with respect to on-job training.
Sec. 108. Pilot program to provide on-job benefits to train Department of Veterans Affairs’ claims adjudicators.
Sec. 109. Collection of payment for educational assistance under Montgomery GI Bill from members of the Selected Reserve called to active duty.
Sec. 110. Technical and conforming amendments.

TITLE II—EMPLOYMENT MATTERS

Subtitle A—Employment and Reemployment Rights

- Sec. 201. Two-year period of continuation of employer-sponsored health care coverage.
Sec. 202. Reinstatement of reporting requirements.
Sec. 203. Requirement for employers to provide notice of rights and duties under USERRA.
Sec. 204. Demonstration project for referral of USERRA claims against Federal agencies to the Office of Special Counsel.

Subtitle B—Other Matters

- Sec. 211. Report of employment placement, retention, and advancement of recently separated servicemembers.

TITLE III—BENEFITS MATTERS

- Sec. 301. Additional dependency and indemnity compensation for surviving spouses with dependent children.

- Sec. 302. Offset of veterans' disability compensation and dependency and indemnity compensation from awards under radiation exposure compensation program.
- Sec. 303. Exclusion of life insurance proceeds from consideration as income for veterans' pension purposes.
- Sec. 304. Certain service-connected disability benefits authorized for persons disabled by treatment or vocational rehabilitation provided by the Department of Veterans Affairs.
- Sec. 305. Effective date of death pension.
- Sec. 306. Codification of administrative actions relating to presumptions of service connection for veterans exposed to ionizing radiation.
- Sec. 307. Codification of cost-of-living adjustment provided in Public Law 108–47.
- Sec. 308. Cross-reference amendments relating to concurrent payment of retired pay and veterans' disability compensation.

TITLE IV—HOUSING MATTERS

- Sec. 401. Authority to provide specially adapted housing to certain disabled veterans.
- Sec. 402. Transitional housing amendments.
- Sec. 403. Increase in maximum amount of home loan guaranty for construction and purchase of homes and annual indexing of amount.
- Sec. 404. Extension of authority for guarantee of adjustable rate mortgages.
- Sec. 405. Extension and improvement of authority for guarantee of hybrid adjustable rate mortgages.
- Sec. 406. Termination of collection of loan fees from veterans rated eligible for compensation at pre-discharge rating examinations.
- Sec. 407. Three-year extension of Native American veteran housing loan pilot program.

TITLE V—MATTERS RELATING TO FIDUCIARIES

- Sec. 501. Definition of fiduciary.
- Sec. 502. Inquiry, investigations, and qualification of fiduciaries.
- Sec. 503. Misuse of benefits by fiduciaries.
- Sec. 504. Additional protections for beneficiaries with fiduciaries.
- Sec. 505. Annual report.
- Sec. 506. Annual adjustment in benefits thresholds.
- Sec. 507. Effective dates.

TITLE VI—MEMORIAL AFFAIRS MATTERS

- Sec. 601. Designation of Prisoner of War/Missing in Action National Memorial, Riverside National Cemetery, Riverside, California.
- Sec. 602. Lease of certain National Cemetery Administration property.
- Sec. 603. Exchanges of real property for national cemeteries.

TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

- Sec. 701. Clarification of meaning of “judgment” as used in the Act.
- Sec. 702. Requirements relating to waiver of rights under the Act.
- Sec. 703. Right of servicemember plaintiffs to request stay of civil proceedings.
- Sec. 704. Termination of leases.

TITLE VIII—OTHER MATTERS

- Sec. 801. Principal office of United States Court of Appeals for Veterans Claims.
- Sec. 802. Technical amendments relating to the United States Court of Appeals for Veterans Claims.
- Sec. 803. Extension of biennial report of Advisory Committee on Former Prisoners of War.
- Sec. 804. Availability of administrative and judicial redress for certain veterans denied opportunity to compete for Federal employment.
- Sec. 805. Report on servicemembers' and veterans' awareness of benefits and services available under laws administered by Secretary of Veterans Affairs.

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

Veterans Earn
and Learn Act of
2004.

TITLE I—VETERANS EARN AND LEARN ACT

38 USC 101 note.

SEC. 101. SHORT TITLE.

This title may be cited as the “Veterans Earn and Learn Act of 2004”.

SEC. 102. MODIFICATION OF BENEFIT ENTITLEMENT CHARGES FOR CERTAIN ON-JOB TRAINING PROGRAMS.

(a) IN GENERAL.—Section 3687 is amended by adding at the end the following new subsection:

“(e)(1) For each month that an individual (as defined in paragraph (3)) is paid a training assistance allowance under subsection (a), the entitlement of the individual shall be charged at a percentage rate (rounded to the nearest percent) that is equal to the ratio of—

“(A) the training assistance allowance for the month involved, to

“(B) the monthly educational assistance allowance otherwise payable for full-time enrollment in an educational institution.”.

“(2) For any month in which an individual fails to complete 120 hours of training, the entitlement otherwise chargeable under paragraph (1) shall be reduced in the same proportion as the monthly training assistance allowance payable is reduced under subsection (b)(3).

“(3) In this section, the term ‘individual’ means—

“(A) an eligible veteran who is entitled to monthly educational assistance allowances payable under section 3015(e) of this title, or

“(B) an eligible person who is entitled to monthly educational assistance allowances payable under section 3532(a) of this title,

as the case may be.”.

38 USC 3687
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to months beginning after September 30, 2005.

Effective dates.

SEC. 103. INCREASE IN BENEFIT FOR INDIVIDUALS PURSUING APPRENTICESHIP OR ON-JOB TRAINING.

38 USC 3032
note.

(a) MONTGOMERY GI BILL.—For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (c)(1) of section 3032 of title 38, United States Code, shall be applied as if—

(1) the reference to “75 percent” in subparagraph (A) were a reference to “85 percent”;

(2) the reference to “55 percent” in subparagraph (B) were a reference to “65 percent”; and

(3) the reference to “35 percent” in subparagraph (C) were a reference to “45 percent”.

38 USC 3233
note.

(b) POST-VIETNAM ERA VETERANS’ EDUCATIONAL ASSISTANCE.—For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (a) of section 3233 of title 38, United States Code, shall be applied as if—

(1) the reference to “75 percent” in paragraph (1) were a reference to “85 percent”;

(2) the reference to “55 percent” in paragraph (2) were a reference to “65 percent”; and

(3) the reference to “35 percent” in paragraph (3) were a reference to “45 percent”.

(c) SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.— 38 USC 3687 note.

(1) For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (b)(2) of section 3687 of title 38, United States Code, shall be applied as if—

(A) the reference to “\$574 for the first six months” were a reference to “\$650 for the first six months”; and

(B) the reference to “\$429 for the second six months” were a reference to “\$507 for the second six months”; and

(C) the reference to “\$285 for the third six months” were a reference to “\$366 for the third six months”.

(2) Subsection (d) of such section 3687 shall not apply with respect to the provisions of paragraph (1) for months occurring during fiscal year 2006.

(3) For months beginning on or after January 1, 2008, the Secretary shall carry out subsection (b)(2) of such section 3687 as if paragraphs (1) and (2) were not enacted into law.

(d) SELECTED RESERVE MONTGOMERY GI BILL.—For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (d)(1) of section 16131 of title 10, United States Code, shall be applied as if— 38 USC 16131 note.

(1) the reference to “75 percent” in subparagraph (A) were a reference to “85 percent”; and

(2) the reference to “55 percent” in subparagraph (B) were a reference to “65 percent”; and

(3) the reference to “35 percent” in subparagraph (C) were a reference to “45 percent”.

SEC. 104. AUTHORITY FOR COMPETENCY-BASED APPRENTICESHIP PROGRAMS.

(a) IN GENERAL.—Section 3672(c) is amended—

(1) by striking “(1)” and “(2)” and inserting “(A)” and “(B)”, respectively;

(2) by inserting “(1)” after “(c)”; and

(3) by adding at the end the following new paragraphs:

“(2) The period of a program of apprenticeship may be determined based upon a specific period of time (commonly referred to as a ‘time-based program’), based upon the demonstration of successful mastery of skills (commonly referred to as a ‘competency-based program’), or based upon a combination thereof.

“(3)(A) In the case of a competency-based program of apprenticeship, State approving agencies shall determine the period for which payment may be made for such a program under chapters 30 and 35 of this title and chapter 1606 of title 10. In determining the period of such a program, State approving agencies shall take into consideration the approximate term of the program recommended in registered apprenticeship program standards recognized by the Secretary of Labor.

“(B) The sponsor of a competency-based program of apprenticeship shall provide notice to the State approving agency involved of any such standards that may apply to the program and the proposed approximate period of training under the program.

“(4) The sponsor of a competency-based program of apprenticeship shall notify the Secretary upon the successful completion of Notification.

a program of apprenticeship by an individual under chapter 30 or 35 of this title, or chapter 1606 of title 10, as the case may be.”.

(b) **INCREASED USE OF APPRENTICESHIPS.**—Section 3672(d)(1) is amended by adding at the end the following new sentence: “The Secretary of Labor shall provide assistance and services to the Secretary, and to State approving agencies, to increase the use of apprenticeships.”.

(c) **FUNDING FOR DEPARTMENT COMPUTER SYSTEM MODIFICATIONS.**—From amounts appropriated to the Department of Veterans Affairs for fiscal year 2005 for readjustment benefits, the Secretary of Veterans Affairs shall use an amount not to exceed \$3,000,000 to modify computer systems and to develop procedures required to carry out the amendments made by subsection (a) and sections 102 and 103.

SEC. 105. TEN-YEAR EXTENSION OF DELIMITING PERIOD FOR SURVIVORS’ AND DEPENDENTS’ EDUCATIONAL ASSISTANCE FOR SPOUSES OF MEMBERS WHO DIE ON ACTIVE DUTY.

Section 3512(b)(1) is amended—

(1) in subparagraph (A), by striking “in subparagraph (B)” and inserting “in subparagraph (B) or (C)”; and

(2) by adding at the end the following new subparagraph: “(C) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(B) of this title by reason of the death of a person on active duty may be afforded educational assistance under this chapter during the 20-year period beginning on the date (as determined by the Secretary) such person becomes an eligible person within the meaning of such section.”.

SEC. 106. AVAILABILITY OF EDUCATION BENEFITS FOR PAYMENT FOR NATIONAL ADMISSIONS EXAMS AND NATIONAL EXAMS FOR CREDIT AT INSTITUTIONS OF HIGHER EDUCATION.

(a) **COVERED EXAMS.**—Sections 3452(b) and 3501(a)(5) are each amended by adding at the end the following new sentence: “Such term also includes national tests for admission to institutions of higher learning or graduate schools (such as the Scholastic Aptitude Test (SAT), Law School Admission Test (LSAT), Graduate Record Exam (GRE), and Graduate Management Admission Test (GMAT)) and national tests providing an opportunity for course credit at institutions of higher learning (such as the Advanced Placement (AP) exam and College-Level Examination Program (CLEP)).”.

(b) **AMOUNT OF PAYMENT.**—

(1) **CHAPTER 30.**—Section 3032 is amended by adding at the end the following new subsection:

“(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

“(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational

assistance, except for paragraph (1), such individual would otherwise be paid under subsection (a)(1), (b)(1), (d), or (e)(1) of section 3015 of this title, as the case may be.

“(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual’s available entitlement under this chapter.”.

(2) CHAPTER 32.—Section 3232 is amended by adding at the end the following new subsection:

“(d)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

“(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

“(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual’s available entitlement under this chapter.”.

(3) CHAPTER 35.—Section 3532 is amended by adding at the end the following new subsection:

“(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3501(a)(5) of this title is the amount of the fee charged for the test.

“(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

“(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual’s available entitlement under this chapter.”.

SEC. 107. REQUIREMENT FOR COORDINATION OF DATA AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING.

Section 3694 is amended—

(1) by striking “In carrying out” and inserting “(a) IN GENERAL.—In carrying out”; and

(2) by adding at the end the following new subsection:

“(b) COORDINATION OF INFORMATION AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING.—At the time of a servicemember’s discharge or release from active duty service, the Secretary of Defense shall furnish to the Secretary such pertinent information concerning each registered apprenticeship pursued by the servicemember during

the period of active duty service of the servicemember. The Secretary, in conjunction with the Secretary of Labor, shall encourage and assist States and private organizations to give credit to servicemembers for the registered apprenticeship program so pursued in the case of any related apprenticeship program the servicemember may pursue as a civilian.”.

SEC. 108. PILOT PROGRAM TO PROVIDE ON-JOB BENEFITS TO TRAIN DEPARTMENT OF VETERANS AFFAIRS’ CLAIMS ADJUDICATORS.

Section 3677 is amended by adding at the end the following new subsection:

“(d)(1) The Secretary may conduct a pilot program under which the Secretary operates a program of training on the job under this section for a period (notwithstanding subsection (c)(2)) of up to three years in duration to train employees of the Department to become qualified adjudicators of claims for compensation, dependency and indemnity compensation, and pension.

Deadlines.
Reports.

“(2)(A) Not later than three years after the implementation of the pilot project, the Secretary shall submit to Congress an initial report on the pilot project. The report shall include an assessment of the usefulness of the program in recruiting and retaining of personnel of the Department as well as an assessment of the value of the program as a training program.

“(B) Not later than 18 months after the date on which the initial report under subparagraph (A) is submitted, the Secretary shall submit to Congress a final report on the pilot project. The final report shall include recommendations of the Secretary with respect to continuation of the pilot project and with respect to expansion of the types of claims for which the extended period of on the job training is available to train such employees.”.

SEC. 109. COLLECTION OF PAYMENT FOR EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FROM MEMBERS OF THE SELECTED RESERVE CALLED TO ACTIVE DUTY.

(a) ACTIVE DUTY PROGRAM.—Section 3011(b) is amended—

(1) by striking “The basic pay” and inserting “(1) Except as provided in paragraph (2), the basic pay”;

(2) by designating the second sentence as paragraph (3) and in that paragraph by striking “this chapter” and inserting “this subsection”; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

“(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to \$1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.”.

(b) SELECTED RESERVE PROGRAM.—Section 3012(c) is amended—

(1) by striking “The basic pay” and inserting “(1) Except as provided in paragraph (2), the basic pay”;

(2) by designating the second sentence as paragraph (3) and in that paragraph by striking “this chapter” and inserting “this subsection”; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

“(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to \$1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.”

Deadline.

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITION OF TRAINING ESTABLISHMENT.—Section 3452(e), as amended by section 301 of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2658), is amended in paragraph (5) to read as follows:

“(5) The sponsor of a program of apprenticeship.”.

(b) CLARIFICATION OF APPLICABLE APPRENTICESHIP STANDARDS.—(1) Section 3672(c), as amended by section 105(a), is amended in subparagraph (A) by inserting “apprenticeship” before “standards”.

(2) Section 3672(d)(1) is amended by striking “of programs of training on the job (including programs of apprenticeship)” and inserting “of apprenticeship and on the job training programs”.

(c) RECORD-KEEPING REQUIREMENTS FOR QUALIFIED PROVIDERS OF ENTREPRENEURSHIP COURSES.—(1) Section 3675(c) is amended by adding at the end the following new paragraph:

“(4) Notwithstanding paragraph (3), a qualified provider of entrepreneurship courses shall maintain such records as the Secretary determines to be necessary to comply with reporting requirements that apply under section 3684(a)(1) of this title with respect to eligible persons and veterans enrolled in an entrepreneurship course offered by the provider.”.

(2) The amendment made by paragraph (1) shall take effect as if included in the enactment of section 305(a) of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2660).

Effective date.
38 USC 3675
note.

(d) AUTHORITY TO PAY REPORTING FEE.—Section 3684(c) is amended by striking “or to any joint apprenticeship training committee acting as a training establishment” and inserting “or to the sponsor of a program of apprenticeship”.

TITLE II—EMPLOYMENT MATTERS

Subtitle A—Employment and Reemployment Rights

SEC. 201. TWO-YEAR PERIOD OF CONTINUATION OF EMPLOYER-SPONSORED HEALTH CARE COVERAGE.

(a) IMPROVEMENT IN PERIOD OF COVERAGE.—Subsection (a)(1)(A) of section 4317 is amended by striking “18-month period” and inserting “24-month period”.

38 USC 4317
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to elections made under section 4317 of title 38, United States Code, on or after the date of the enactment of this Act.

SEC. 202. REINSTATEMENT OF REPORTING REQUIREMENTS.

Section 4332 is amended in the matter preceding paragraph (1) by striking “no later than February 1, 1996, and annually thereafter through 2000” and inserting “no later than February 1, 2005, and annually thereafter”.

SEC. 203. REQUIREMENT FOR EMPLOYERS TO PROVIDE NOTICE OF RIGHTS AND DUTIES UNDER USERRA.

(a) **NOTICE.**—Chapter 43 is amended by adding at the end the following new section:

“§ 4334. Notice of rights and duties

“(a) **REQUIREMENT TO PROVIDE NOTICE.**—Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.

“(b) **CONTENT OF NOTICE.**—The Secretary shall provide to employers the text of the notice to be provided under this section.”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“4334. Notice of rights and duties.”.

Deadline.
38 USC 4334
note.

(c) **IMPLEMENTATION.**—(1) Not later than the date that is 90 days after the date of the enactment of this Act, the Secretary of Labor shall make available to employers the notice required under section 4334 of title 38, United States Code, as added by subsection (a).

(2) The amendments made by this section shall apply to employers under chapter 43 of title 38, United States Code, on and after the first date referred to in paragraph (1).

Effective date.
38 USC 4301
note.

SEC. 204. DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL.

(a) **ESTABLISHMENT OF PROJECT.**—The Secretary of Labor and the Office of Special Counsel shall carry out a demonstration project under which certain claims against Federal executive agencies under the Uniformed Services Employment and Reemployment Rights Act under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim.

(b) **REFERRAL OF ALL PROHIBITED PERSONNEL ACTION CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.**—(1) Under the demonstration project, the Office of Special Counsel shall receive and investigate all claims under the Uniformed Services Employment and Reemployment Rights Act with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over related claims pursuant to section 1212 of title 5, United States Code.

(2) For purposes of paragraph (1), a related claim is a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under the Uniformed Services Employment and Reemployment Rights Act.

(c) REFERRAL OF OTHER CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES.—(1) Under the demonstration project, the Secretary—

(A) shall refer to the Office of Special Counsel all claims described in paragraph (2) made during the period of the demonstration project; and

(B) may refer any claim described in paragraph (2) filed before the demonstration project that is pending before the Secretary at the beginning of the demonstration project.

(2) A claim referred to in paragraph (1) is a claim under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social security account number with an odd number as its terminal digit, or, in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—(1) The Office of Special Counsel shall administer the demonstration project. The Secretary shall cooperate with the Office of Special Counsel in carrying out the demonstration project.

(2) In the case of any claim referred, or otherwise received by, to the Office of Special Counsel under the demonstration project, any reference to the “Secretary” in sections 4321, 4322, and 4326 of title 38, United States Code, is deemed a reference to the “Office of Special Counsel”.

(3) In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, the Office of Special Counsel shall retain administrative jurisdiction over the claim.

(e) PERIOD OF PROJECT.—The demonstration project shall be carried out during the period beginning on the date that is 60 days after the date of the enactment of this Act, and ending on September 30, 2007.

(f) EVALUATIONS AND REPORT.—(1) The Comptroller General of the United States shall conduct periodic evaluations of the demonstration project under this section.

(2) Not later than April 1, 2007, the Comptroller General shall submit to Congress a report on the evaluations conducted under paragraph (1). The report shall include the following information and recommendations:

(A) A description of the operation and results of the demonstration program, including—

(i) the number of claims described in subsection (c) referred to, or otherwise received by, the Office of Special Counsel, and the number of such claims referred to the Secretary of Labor; and

(ii) for each Federal executive agency, the number of claims resolved, the type of corrective action obtained, the period of time for final resolution of the claim, and the results obtained.

(B) An assessment of whether referral to the office of special counsel of claims under the demonstration project—

(i) improved services to servicemembers and veterans;
or

(ii) significantly reduced or eliminated duplication of effort and unintended delays in resolving meritorious claims of those servicemembers and veterans.

(C) An assessment of the feasibility and advisability of referring all claims under chapter 43 of title 38, United States Code, against Federal executive agencies to the Office of Special Counsel for investigation and resolution.

(D) Such other recommendations for administrative action or legislation as the Comptroller General determines appropriate.

(g) DEFINITIONS.—In this section:

(1) The term “Office of Special Counsel” means the Office of Special Counsel established by section 1211 of title 5, United States Code.

(2) The term “Secretary” means the Secretary of Labor.

(3) The term “Federal executive agency” has the meaning given that term in section 4303(5) of title 38, United States Code.

Subtitle B—Other Matters

SEC. 211. REPORT OF EMPLOYMENT PLACEMENT, RETENTION, AND ADVANCEMENT OF RECENTLY SEPARATED SERVICEMEMBERS.

(a) CONTRACT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall enter into a contract with a qualified entity to conduct a study of and prepare a report on the employment histories of recently separated servicemembers.

(b) CONTENT OF REPORT.—(1) The study conducted pursuant to subsection (a) shall consist of an analysis of employment-related data that have been collected with respect to recently separated servicemembers.

(2) In conducting the study, the qualified entity shall—

(A) determine whether the employment obtained by recently separated servicemembers is commensurate with training and education of those servicemembers;

(B) determine whether recently separated servicemembers received educational assistance or training and rehabilitation under programs administered by the Secretary of Veterans Affairs under chapter 30 or 31 of title 38, United States Code, or under chapter 1606 of title 10, United States Code;

(C) determine whether transition assistance services provided to recently separated servicemembers assisted those servicemembers in obtaining civilian employment;

(D) analyze trends in hiring of veterans by the private sector; and

(E) identify recently separated servicemembers who have reached senior level management positions.

(c) USE OF DATA.—In conducting the study under subsection (a), the qualified entity shall review data compiled and reported by the Bureau of Labor Statistics and shall collect additional data on the employment histories of recently separated servicemembers

available from such other sources as the qualified entity determines to be appropriate.

(d) CONTRACT REQUIREMENTS.—(1) The contract entered into under subsection (a) shall contain such terms and conditions as the Secretary may require. The contract shall require that the report on the study be submitted to the Secretary not later than 2 years after the date on which the contract was entered into.

Deadline.

(2) The report required under subsection (a) shall contain the findings and conclusions of the qualified entity on the study and specific recommendations to improve employment opportunities for veterans recently separated from service in the Armed Forces, including, if appropriate, recommendations for—

(A) the establishment of networks of contacts for employment of such veterans in the private sector;

(B) outreach to private sector leaders on the merits and sound business practice of hiring such veterans; and

(C) additional methods to facilitate communication between private sector employers and such veterans who are seeking employment.

(e) FUNDING.—Payment by the Secretary for the contract entered into under subsection (a)—

(1) shall be made from the Department of Veterans Affairs appropriations account from which payments for readjustment benefits are made; and

(2) may not exceed \$490,000.

(f) DEFINITIONS.—In this section:

(1) The term “qualified entity” means an entity or organization that meets the following requirements:

(A) Demonstrated experience in conducting employment surveys of recently separated servicemembers, including Internet-based surveys, that meet such quality assurance requirements as the Secretary determines appropriate.

(B) Demonstrated familiarity with veteran employment matters.

(C) Demonstrated ability in developing plans to market veterans as employment assets.

(D) Demonstrated ability to acquire services at no cost from other organizations, such as technology, staff services, and advertising services.

(E) Demonstrated ability to develop relationships, establish employment networks, and facilitate interaction between private and public sector leaders and veterans.

(2) The term “employment history” means, with respect to a recently separated servicemember, training, placement, retention, and advancement in employment of that servicemember.

(3) The term “recently separated servicemember” means any veteran (as defined in section 101(2) of title 38, United States Code) discharged or released from active duty in the Armed Forces of the United States during the 16-year period beginning on January 1, 1990.

TITLE III—BENEFITS MATTERS

SEC. 301. ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN.

(a) ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION.—Section 1311 is amended by adding at the end the following new subsection:

“(e)(1) Subject to paragraphs (2) and (3), if there is a surviving spouse with one or more children below the age of 18, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by \$250, regardless of the number of such children.

“(2) Dependency and indemnity compensation shall be increased under this subsection only for months occurring during the two-year period beginning on the date on which entitlement to dependency and indemnity compensation commenced.

“(3) The increase in dependency and indemnity compensation of a surviving spouse under this subsection shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of 18.

“(4) Dependency and indemnity compensation under this subsection is in addition to any other dependency and indemnity compensation payable under this chapter.”.

38 USC 1311
note.

(b) EFFECTIVE DATE.—Subsection (e) of section 1311 of title 38, United States Code, as added by subsection (a), shall take effect with respect to payments for the first month beginning after the date of the enactment of this Act.

SEC. 302. OFFSET OF VETERANS' DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION FROM AWARDS UNDER RADIATION EXPOSURE COMPENSATION PROGRAM.

(a) OFFSET IN LIEU OF FORFEITURE FROM DISABILITY COMPENSATION.—Subsection (c) of section 1112 is amended by adding at the end the following new paragraph:

“(4) A radiation-exposed veteran who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of compensation to which that veteran is entitled by reason of paragraph (1), but there shall be deducted from payment of such compensation the amount of the payment under that Act.”.

(b) OFFSET IN LIEU OF FORFEITURE FROM DEPENDENCY AND INDEMNITY COMPENSATION.—Section 1310 is amended by adding at the end the following new paragraph:

“(c) A person who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of dependency and indemnity compensation to which that person is otherwise entitled, but there shall be deducted from payment of such dependency and indemnity compensation the amount of the payment under that Act.”.

38 USC 1112
note.

(c) EFFECTIVE DATE.—Paragraph (4) of section 1112(c) of title 38, United States Code, as added by subsection (a), shall take effect with respect to compensation payments for months beginning

after March 26, 2002. Subsection (c) of section 1310 of such title, as added by subsection (b), shall take effect with respect to dependency and indemnity compensation payments for months beginning after March 26, 2002.

SEC. 303. EXCLUSION OF LIFE INSURANCE PROCEEDS FROM CONSIDERATION AS INCOME FOR VETERANS' PENSION PURPOSES.

Section 1503(a) is amended—

- (1) by striking “and” at the end of paragraph (9);
- (2) by striking the period at the end of the paragraph
- (10) and inserting “; and”; and
- (3) by adding at the end the following new paragraph:
“(11) lump-sum proceeds of any life insurance policy on a veteran, for purposes of pension under subchapter III of this chapter.”.

SEC. 304. CERTAIN SERVICE-CONNECTED DISABILITY BENEFITS AUTHORIZED FOR PERSONS DISABLED BY TREATMENT OR VOCATIONAL REHABILITATION PROVIDED BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) **AUTHORIZED BENEFITS.**—Section 1151 is amended by adding at the end the following new subsection:

“(c) A qualifying additional disability under this section shall be treated in the same manner as if it were a service-connected disability for purposes of the following provisions of this title:

- “(1) Chapter 21, relating to specially adapted housing.
- “(2) Chapter 39, relating to automobiles and adaptive equipment.”.

(b) **EFFECTIVE DATE.**—Subsection (c) of section 1151 of title 38, United States Code, as added by subsection (a), shall apply with respect to eligibility for benefits and services provided by the Secretary of Veterans Affairs on or after the date of the enactment of this Act.

38 USC 1151
note.

(c) **ADMINISTRATION OF OFFSET PROVISION.**—Subsection (b) of section 1151 is amended—

- (1) by inserting “(1)” after “(b)”;
- (2) by inserting “(except as otherwise provided in paragraph (2))” after “service-connected, then”; and
- (3) by adding at the end the following new paragraph:
“(2) In the case of a judgment, settlement, or compromise covered by paragraph (1) that becomes final on or after the date of the enactment of this paragraph and that includes an amount that is specifically designated for a purpose for which benefits are provided under chapter 21 or 39 of this title (hereinafter in this paragraph referred to as the ‘offset amount’), if such judgment, settlement, or compromise becomes final before the date of the award of benefits under chapter 21 or 39 for the purpose for which the offset amount was specifically designated—

“(A) the amount of such award shall be reduced by the offset amount; and

“(B) if the offset amount is greater than the amount of such award, the excess amount received pursuant to the judgment, settlement or compromise, shall be offset against benefits otherwise payable under this chapter.”.

SEC. 305. EFFECTIVE DATE OF DEATH PENSION.

Section 5110(d) is amended—

- (1) by striking “(1)”;

(2) by striking “death compensation or dependency and indemnity compensation” and inserting “death compensation, dependency and indemnity compensation, or death pension”; and

(3) by striking paragraph (2).

SEC. 306. CODIFICATION OF ADMINISTRATIVE ACTIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION FOR VETERANS EXPOSED TO IONIZING RADIATION.

(a) COVERED DISEASES.—Subsection (c)(2) of section 1112 is amended by adding at the end the following new subparagraphs:

“(Q) Cancer of the bone.

“(R) Cancer of the brain.

“(S) Cancer of the colon.

“(T) Cancer of the lung.

“(U) Cancer of the ovary.”.

(b) COVERED RADIATION-RISK ACTIVITIES.—Subsection (c)(3)(B) of such section is amended by adding at the end the following new clause:

“(iv) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of March 26, 2002.

38 USC 1112
note.

SEC. 307. CODIFICATION OF COST-OF-LIVING ADJUSTMENT PROVIDED IN PUBLIC LAW 108-47.

(a) VETERANS’ DISABILITY COMPENSATION.—Section 1114 is amended—

(1) by striking “\$104” in subsection (a) and inserting “\$106”;

(2) by striking “\$201” in subsection (b) and inserting “\$205”;

(3) by striking “\$310” in subsection (c) and inserting “\$316”;

(4) by striking “\$445” in subsection (d) and inserting “\$454”;

(5) by striking “\$633” in subsection (e) and inserting “\$646”;

(6) by striking “\$801” in subsection (f) and inserting “\$817”;

(7) by striking “\$1,008” in subsection (g) and inserting “\$1,029”;

(8) by striking “\$1,171” in subsection (h) and inserting “\$1,195”;

(9) by striking “\$1,317” in subsection (i) and inserting “\$1,344”;

(10) by striking “\$2,193” in subsection (j) and inserting “\$2,239”;

(11) in subsection (k)—

(A) by striking “\$81” both places it appears and inserting “\$82”; and

(B) by striking “\$2,728” and “\$3,827” and inserting “\$2,785” and “\$3,907”, respectively;

(12) by striking “\$2,728” in subsection (l) and inserting “\$2,785”;

(13) by striking “\$3,010” in subsection (m) and inserting “\$3,073”;

(14) by striking “\$3,425” in subsection (n) and inserting “\$3,496”;

(15) by striking “\$3,827” each place it appears in subsections (o) and (p) and inserting “\$3,907”;

(16) by striking “\$1,643” and “\$2,446” in subsection (r) and inserting “\$1,677” and “\$2,497”, respectively; and

(17) by striking “\$2,455” in subsection (s) and inserting “\$2,506”.

(b) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Section 1115(1) is amended—

(1) by striking “\$125” in subparagraph (A) and inserting “\$127”;

(2) by striking “\$215” and “\$64” in subparagraph (B) and inserting “\$219” and “\$65”, respectively;

(3) by striking “\$85” and “\$64” in subparagraph (C) and inserting “\$86” and “\$65”, respectively;

(4) by striking “\$101” in subparagraph (D) and inserting “\$103”;

(5) by striking “\$237” in subparagraph (E) and inserting “\$241”; and

(6) by striking “\$198” in subparagraph (F) and inserting “\$202”.

(c) CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.—Section 1162 is amended by striking “\$588” and inserting “\$600”.

(d) DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.—(1) Section 1311(a) is amended—

(A) by striking “\$948” in paragraph (1) and inserting “\$967”; and

(B) by striking “\$204” in paragraph (2) and inserting “\$208”.

(2) The table in section 1311(a)(3) is amended to read as follows:

Pay grade	Monthly rate	Pay grade	Monthly rate
E-1	\$967	W-4	\$1,157
E-2	\$967	O-1	\$1,022
E-3	\$967	O-2	\$1,056
E-4	\$967	O-3	\$1,130
E-5	\$967	O-4	\$1,195
E-6	\$967	O-5	\$1,316
E-7	\$1,000	O-6	\$1,483
E-8	\$1,056	O-7	\$1,602
E-9	\$1,102 ¹	O-8	\$1,758
W-1	\$1,022	O-9	\$1,881
W-2	\$1,063	O-10	\$2,063 ²
W-3	\$1,094

¹ If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be \$1,189.

² If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be \$2,213.

(3) Section 1311(b) is amended by striking “\$237” and inserting “\$241”.

(4) Section 1311(c) is amended by striking “\$237” and inserting “\$241”.

(5) Section 1311(d) is amended by striking “\$113” and inserting “\$115”.

(e) DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.—(1) Section 1313(a) is amended—

(A) by striking “\$402” in paragraph (1) and inserting “\$410”;

(B) by striking “\$578” in paragraph (2) and inserting “\$590”;

(C) by striking “\$752” in paragraph (3) and inserting “\$767”; and

(D) by striking “\$752” and “\$145” in paragraph (4) and inserting “\$767” and “\$148”, respectively.

(2) Section 1314 is amended—

(A) by striking “\$237” in subsection (a) and inserting “\$241”;

(B) by striking “\$402” in subsection (b) and inserting “\$410”; and

(C) by striking “\$201” in subsection (c) and inserting “\$205”.

SEC. 308. CROSS-REFERENCE AMENDMENTS RELATING TO CONCURRENT PAYMENT OF RETIRED PAY AND VETERANS’ DISABILITY COMPENSATION.

(a) PROHIBITION AGAINST DUPLICATION OF BENEFITS.—Section 5304(a)(1) is amended by inserting “as provided in section 1414 of title 10 or” after “Except”.

(b) WAIVER OF RETIRED PAY.—Section 5305 is amended by striking “Any” in the first sentence and inserting “Except as provided in section 1414 of title 10, any”.

TITLE IV—HOUSING MATTERS

SEC. 401. AUTHORITY TO PROVIDE SPECIALLY ADAPTED HOUSING TO CERTAIN DISABLED VETERANS.

The text of section 2101 is amended to read as follows:

“(a) ACQUISITION OF HOUSING WITH SPECIAL FEATURES.—(1) Subject to paragraph (3), the Secretary may assist a disabled veteran described in paragraph (2) in acquiring a suitable housing unit with special fixtures or movable facilities made necessary by the nature of the veteran’s disability, and necessary land therefor.

“(2) A veteran is described in this paragraph if the veteran is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability that meets any of the following criteria:

“(A) The disability is due to the loss, or loss of use, of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

“(B) The disability is due to—

“(i) blindness in both eyes, having only light perception, plus

“(ii) loss or loss of use of one lower extremity.

“(C) The disability is due to the loss or loss of use of one lower extremity together with—

“(i) residuals of organic disease or injury; or

“(ii) the loss or loss of use of one upper extremity, which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

“(D) The disability is due to the loss, or loss of use, of both upper extremities such as to preclude use of the arms at or above the elbows.

“(3) The regulations prescribed under subsection (c) shall require that assistance under paragraph (1) may be provided to a veteran only if the Secretary finds that—

“(A) it is medically feasible for the veteran to reside in the proposed housing unit and in the proposed locality;

“(B) the proposed housing unit bears a proper relation to the veteran’s present and anticipated income and expenses; and

“(C) the nature and condition of the proposed housing unit are such as to be suitable to the veteran’s needs for dwelling purposes.

“(b) ADAPTATIONS TO RESIDENCE OF VETERAN.—(1) Subject to paragraph (3), the Secretary shall assist any disabled veteran described in paragraph (2) (other than a veteran who is eligible for assistance under subsection (a))—

“(A) in acquiring such adaptations to such veteran’s residence as are determined by the Secretary to be reasonably necessary because of such disability; or

“(B) in acquiring a residence already adapted with special features determined by the Secretary to be reasonably necessary for the veteran because of such disability.

“(2) A veteran is described in this paragraph if the veteran is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability that meets either of the following criteria:

“(A) The disability is due to blindness in both eyes with 5/200 visual acuity or less.

“(B) The disability includes the anatomical loss or loss of use of both hands.

“(3) Assistance under paragraph (1) may be provided only to a veteran who the Secretary determines—

“(A) is residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran’s family; or

“(B) if the veteran’s residence is to be constructed or purchased, will be residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran’s family.

“(c) REGULATIONS.—Assistance under this section shall be provided in accordance with such regulations as the Secretary may prescribe.”.

SEC. 402. TRANSITIONAL HOUSING AMENDMENTS.

(a) USE OF VETERAN VOLUNTEERS.—Section 2051 is amended by adding at the end the following new subsection:

“(g) Notwithstanding any other provision of law, a multifamily transitional housing project that is funded by a loan guaranteed under this subchapter may accept uncompensated voluntary services performed by any eligible entity (as that term is defined in

section 2011(d) of this title) in connection with the construction, alteration, or repair of such project.”

(b) **AUTHORIZATION FOR COMMERCIALY-LEASED SPACE.**—Section 2052(c)(1) is amended by striking “services” and inserting “services, other commercial activities,”.

SEC. 403. INCREASE IN MAXIMUM AMOUNT OF HOME LOAN GUARANTY FOR CONSTRUCTION AND PURCHASE OF HOMES AND ANNUAL INDEXING OF AMOUNT.

(a) **MAXIMUM LOAN GUARANTY BASED ON 100 PERCENT OF FREDDIE MAC CONFORMING LOAN RATE.**—Section 3703(a)(1) is amended by striking “\$60,000” each place it appears in subparagraphs (A)(i)(IV) and (B) and inserting “the maximum guaranty amount (as defined in subparagraph (C))”.

(b) **DEFINITION.**—Such section is further amended by adding at the end the following new subparagraph:

“(C) In this paragraph, the term ‘maximum guaranty amount’ means the dollar amount that is equal to 25 percent of the Freddie Mac conforming loan limit limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.”.

SEC. 404. EXTENSION OF AUTHORITY FOR GUARANTEE OF ADJUSTABLE RATE MORTGAGES.

Section 3707(a) is amended by striking “during fiscal years 1993, 1994, and 1995” and inserting “during fiscal years 1993 through 2008”.

SEC. 405. EXTENSION AND IMPROVEMENT OF AUTHORITY FOR GUARANTEE OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) **EXTENSION OF AUTHORITY.**—Subsection (a) of section 3707A is amended by striking “during fiscal years 2004 and 2005” and inserting “during fiscal years 2004 through 2008”.

(b) **MODIFICATION OF INTEREST RATE ADJUSTMENT REQUIREMENTS.**—Subsection (c) of such section is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by striking paragraph (3) and inserting the following new paragraphs:

“(3) in the case of the initial contract interest rate adjustment—

“(A) if the initial contract interest rate remained fixed for less than 5 years, be limited to a maximum increase or decrease of 1 percentage point; or

“(B) if the initial contract interest rate remained fixed for 5 years or more, be limited to a maximum increase or decrease of such percentage point or points as the Secretary may prescribe;

“(4) in the case of any single annual interest rate adjustment after the initial contract interest rate adjustment, be limited to a maximum increase or decrease of 1 percentage point; and”;

(3) in paragraph (5), as so redesignated, by striking “5 percentage points” and all that follows and inserting “such number of percentage points as the Secretary shall prescribe for purposes of this section.”.

(c) **NO EFFECT ON GUARANTEE OF LOANS UNDER HYBRID ADJUSTABLE RATE MORTGAGE GUARANTEE DEMONSTRATION**

PROJECT.—The amendments made by this section shall not be construed to affect the force or validity of any guarantee of a loan made by the Secretary of Veterans Affairs under the demonstration project for the guarantee of hybrid adjustable rate mortgages under section 3707A of title 38, United States Code, as in effect on the day before the date of the enactment of this Act.

SEC. 406. TERMINATION OF COLLECTION OF LOAN FEES FROM VETERANS RATED ELIGIBLE FOR COMPENSATION AT PRE-DISCHARGE RATING EXAMINATIONS.

Section 3729(c) is amended—

(1) by inserting “(1)” before “A fee”; and

(2) by adding at the end the following new paragraph:

“(2) A veteran who is rated eligible to receive compensation as a result of a pre-discharge disability examination and rating shall be treated as receiving compensation for purposes of this subsection as of the date on which the veteran is rated eligible to receive compensation as a result of the pre-discharge disability examination and rating without regard to whether an effective date of the award of compensation is established as of that date.”.

SEC. 407. THREE-YEAR EXTENSION OF NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM.

Section 3761(c) is amended by striking “December 31, 2005” and inserting “December 31, 2008”.

TITLE V—MATTERS RELATING TO FIDUCIARIES

SEC. 501. DEFINITION OF FIDUCIARY.

(a) IN GENERAL.—(1) Chapter 55 is amended by adding at the end the following new section:

“§ 5506. Definition of ‘fiduciary’

“For purposes of this chapter and chapter 61 of this title, the term ‘fiduciary’ means—

“(1) a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant’s estate) or of a beneficiary (or a beneficiary’s estate); or

“(2) any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary.”.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“5506. Definition of ‘fiduciary’.”.

(b) CONFORMING AMENDMENTS TO SECTION 5502.—Section 5502 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “other person” and inserting “other fiduciary”; and

(B) in the second sentence of paragraph (2), by inserting “for benefits under this title” after “in connection with rendering fiduciary services”;

(2) in subsection (b), by striking “guardian, curator, conservator, or other person” each place it appears and inserting “fiduciary”; and

(3) in subsection (d), by striking “guardian, curator, or conservator” and inserting “fiduciary”.

(c) CONFORMING AMENDMENT TO SECTION 6101.—Section 6101(a) is amended by striking “guardian, curator,” and all that follows through “beneficiary,” and inserting “fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary,”.

SEC. 502. INQUIRY, INVESTIGATIONS, AND QUALIFICATION OF FIDUCIARIES.

(a) IN GENERAL.—Chapter 55, as amended by section 501(a)(1), is further amended by adding at the end the following new section:

“§ 5507. Inquiry, investigations, and qualification of fiduciaries

“(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary’s fiduciary under section 5502 of this title shall be made on the basis of—

“(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

“(A) to be conducted in advance of such certification;

“(B) to the extent practicable, to include a face-to-face interview with such person; and

“(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

“(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

“(3) the furnishing of any bond that may be required by the Secretary.

“(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

“(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

“(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

Applicability.

“(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

“(B) the spouse or parent of an incompetent beneficiary;

“(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

“(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title.

“(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the item added by section 501(a)(2) the following new item:

“5507. Inquiry, investigations, and qualification of fiduciaries.”.

SEC. 503. MISUSE OF BENEFITS BY FIDUCIARIES.

(a) PROTECTION OF VETERANS BENEFITS WHEN ADMINISTERED BY FIDUCIARIES.—(1) Chapter 61 is amended by adding at the end the following new sections:

“§ 6106. Misuse of benefits by fiduciaries

“(a) FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY FIDUCIARIES.—A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual’s benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual’s benefit.

“(b) MISUSE OF BENEFITS DEFINED.—For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary’s dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney’s fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

“(c) REGULATIONS.—The Secretary may prescribe by regulation the meaning of the term ‘use and benefit’ for purposes of this section.

“§ 6107. Reissuance of benefits

“(a) NEGLIGENT FAILURE BY SECRETARY.—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary’s successor

fiduciary an amount equal to the amount of benefits that were so misused.

“(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

“(A) A case in which the Secretary failed to review a fiduciary’s accounting within 60 days of the date on which that accounting is scheduled for review.

“(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification to terminate the fiduciary.

“(C) In any other case in which actual negligence is shown.

“(b) REISSUANCE OF MISUSED BENEFITS IN OTHER CASES.—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual’s benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary’s successor fiduciary an amount equal to the amount of such benefit so misused.

Applicability.

“(2) Paragraph (1) applies to a fiduciary that—

“(A) is not an individual; or

“(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

“(3) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary’s successor fiduciary as the case may be.

“(c) LIMITATION ON TOTAL AMOUNT PAID.—The total of the amounts paid to a beneficiary (or a beneficiary’s successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

“(d) RECOUPMENT OF AMOUNTS REISSUED.—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

“6106. Misuse of benefits by fiduciaries.

“6107. Reissuance of benefits.”.

SEC. 504. ADDITIONAL PROTECTIONS FOR BENEFICIARIES WITH FIDUCIARIES.

(a) ONSITE REVIEWS AND REQUIRED ACCOUNTINGS.—(1) Chapter 55, as amended by section 502(a), is further amended by adding at the end the following new sections:

“§ 5508. Periodic onsite reviews of institutional fiduciaries

“In addition to such other reviews of fiduciaries as the Secretary may otherwise conduct, the Secretary shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under laws administered by the Secretary to another individual pursuant to the appointment of such person or agency as a fiduciary under section 5502(a)(1) of this title in any case in which the fiduciary is serving in that capacity with respect to more than 20 beneficiaries and the total

annual amount of such benefits exceeds \$50,000, as adjusted pursuant to section 5312 of this title.

“§ 5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting

“(a) REQUIRED REPORTS AND ACCOUNTINGS.—The Secretary may require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

“(b) ACTIONS UPON FAILURE TO FILE.—In any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a), the Secretary may, after furnishing notice to such fiduciary and the beneficiary entitled to such payment of benefits, require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.”.

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 502(b) the following new items:

“5508. Periodic onsite reviews of institutional fiduciaries.

“5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting.”.

(b) JUDICIAL ORDERS OF RESTITUTION.—(1) Chapter 61, as amended by section 503(a), is further amended by adding at the end the following new section:

“§ 6108. Authority for judicial orders of restitution

“(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

“(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

“(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

“(d) Amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary shall be paid to the individual whose benefits were misused. If the Secretary has previously reissued the misused benefits, the amounts shall be treated in the same manner as overpayments recouped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.”.

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 503(b) the following new item:

“6108. Authority for judicial orders of restitution.”.

SEC. 505. ANNUAL REPORT.

(a) IN GENERAL.—Chapter 55, as amended by section 504(a)(1), is further amended by adding at the end the following new section:

“§ 5510. Annual report

“The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary’s Annual

Performance and Accountability Report information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following: —

“(1) The number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent).

“(2) The types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of this title).

“(3) The total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit.

“(4) The number of fiduciaries who are the spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian in fact, and supervised direct payees.

“(5) The number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.

“(6) How such cases of misuse of benefits were addressed by the Secretary.

“(7) The final disposition of such cases of misuse of benefits, including the number and dollar amount of any benefits reissued to beneficiaries.

“(8) The number of fiduciary cases referred to the Office of the Inspector General and the nature of the actions taken by the Inspector General.

“(9) The total amount of money recovered by the government in cases arising from the misuse of benefits by a fiduciary.

“(10) Such other information as the Secretary considers appropriate.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the items added by the amendment made by section 504(a)(2) the following new item:

“5510. Annual report.”.

SEC. 506. ANNUAL ADJUSTMENT IN BENEFITS THRESHOLDS.

Section 5312(b)(1) is amended by inserting “and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title,” after “(d)(3) of such section,”.

38 USC 5312
note.

SEC. 507. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, this title and the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of the enactment of this Act.

(b) SPECIAL RULES.—(1) Section 5510 of title 38, United States Code, as added by section 505(a), shall take effect on the date of the enactment of this Act.

(2) Sections 6106 and 6107 of title 38, United States Code, as added by section 503(a), shall apply with respect to any determinations by the Secretary of Veterans Affairs made after the date of the enactment of this Act of misuse of funds by a fiduciary.

TITLE VI—MEMORIAL AFFAIRS MATTERS

SEC. 601. DESIGNATION OF PRISONER OF WAR/MISSING IN ACTION 16 USC 431 note.
NATIONAL MEMORIAL, RIVERSIDE NATIONAL CEMETERY,
RIVERSIDE, CALIFORNIA.

(a) DESIGNATION.—The memorial to former prisoners of war and members of the Armed Forces listed as missing in action that is under construction at Riverside National Cemetery in Riverside, California, is hereby designated: “Prisoner of War/Missing in Action National Memorial”.

(b) EFFECT OF DESIGNATION.—Such national memorial designated by subsection (a) is not a unit of the National Park System, and the designation of the national memorial shall not be construed to require Federal funds to be expended for any purpose related to the national memorial.

SEC. 602. LEASE OF CERTAIN NATIONAL CEMETERY ADMINISTRATION
PROPERTY.

(a) IN GENERAL.—Chapter 24 is amended by adding at the end the following new section:

“§ 2412. Lease of land and buildings

“(a) LEASE AUTHORIZED.—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

“(b) TERM.—The term of a lease under subsection (a) may not exceed 10 years.

“(c) LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).

“(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

“(d) NOTICE.—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

“(e) NATIONAL CEMETERY ADMINISTRATION FACILITIES OPERATION FUND.—(1) There is established on the book of the Treasury an account to be known as the ‘National Cemetery Administration Facilities Operation Fund’ (in this section referred to as the ‘Fund’).

“(2) The Fund shall consist of the following:

“(A) Proceeds from the lease of land or buildings under this section.

“(B) Proceeds of agricultural licenses of lands of the National Cemetery Administration.

“(C) Any other amounts appropriated to or otherwise authorized for deposit in the Fund by law.

“(3) Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.

“(4) Amounts in the Fund shall remain available until expended.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2412. Lease of land and buildings.”.

SEC. 603. EXCHANGES OF REAL PROPERTY FOR NATIONAL CEMETERIES.

Section 2406 is amended by inserting “exchange,” after “agencies,”.

TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

SEC. 701. CLARIFICATION OF MEANING OF “JUDGMENT” AS USED IN THE ACT.

Section 101 of the Servicemembers Civil Relief Act (50 U.S.C. App. 511) is amended by adding at the end the following new paragraph:

“(9) JUDGMENT.—The term ‘judgment’ means any judgment, decree, order, or ruling, final or temporary.”.

SEC. 702. REQUIREMENTS RELATING TO WAIVER OF RIGHTS UNDER THE ACT.

Section 107 of the Servicemembers Civil Relief Act (50 U.S.C. App. 517) is amended—

(1) in subsection (a), by inserting after the first sentence the following new sentence: “Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.”;

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection (c):

“(c) PROMINENT DISPLAY OF CERTAIN CONTRACT RIGHTS WAIVERS.—Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.”.

SEC. 703. RIGHT OF SERVICEMEMBER PLAINTIFFS TO REQUEST STAY OF CIVIL PROCEEDINGS.

Section 202(a) of the Servicemembers Civil Relief Act (50 U.S.C. App. 522(a)) is amended by inserting “plaintiff or” before “defendant”.

SEC. 704. TERMINATION OF LEASES.

(a) JOINT LEASES.—Subsection (a) of section 305 of the Servicemembers Civil Relief Act (50 U.S.C. App. 535) is amended to read as follows:

“(a) TERMINATION BY LESSEE.—

“(1) IN GENERAL.—The lessee on a lease described in subsection (b) may, at the lessee’s option, terminate the lease at any time after—

“(A) the lessee’s entry into military service; or

“(B) the date of the lessee’s military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

“(2) JOINT LEASES.—A lessee’s termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.”.

(b) MOTOR VEHICLES LEASES.—

(1) APPLICABILITY TO PCS ORDERS FROM STATES OUTSIDE CONUS.—Subparagraph (B) of subsection (b)(2) of such section is amended by striking “military orders for” and all that follows through “or to deploy” and inserting “military orders—

“(i) for a change of permanent station—

“(I) from a location in the continental United States to a location outside the continental United States; or

“(II) from a location in a State outside the continental United States to any location outside that State; or

“(ii) to deploy”.

(2) DEFINITIONS.—Such section is further amended by adding at the end the following new subsection:

“(i) DEFINITIONS.—

“(1) MILITARY ORDERS.—The term ‘military orders’, with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember’s commanding officer, with respect to the servicemember’s current or future military duty status.

“(2) CONUS.—The term ‘continental United States’ means the 48 contiguous States and the District of Columbia.”.

(c) COVERAGE OF INDIVIDUAL DEPLOYMENTS.—Subsection (b) of such section is further amended in paragraph (1)(B) and paragraph (2)(B)(ii) (as designated by subsection (b) of this section) by inserting “, or as an individual in support of a military operation,” after “deploy with a military unit”.

TITLE VIII—OTHER MATTERS

SEC. 801. PRINCIPAL OFFICE OF UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

Section 7255 is amended by striking “District of Columbia” and inserting “Washington, D.C., metropolitan area”.

SEC. 802. TECHNICAL AMENDMENTS RELATING TO THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

(a) RESTORATION OF PRIOR PROVISION RELATING TO CHIEF JUDGE.—Section 7253(d)(1) is amended by inserting after “(1)” the following: “The chief judge of the Court is the head of the Court.”.

(b) CAPITALIZATION AMENDMENTS.—Section 7253(d)(4)(A) is amended by striking “court” in clauses (i) and (ii) and inserting “Court”.

(c) **DATE OF ENACTMENT REFERENCE.**—Section 7253(h)(4) is amended by striking “the date of the enactment of this subsection” and inserting “December 27, 2001.”

SEC. 803. EXTENSION OF BIENNIAL REPORT OF ADVISORY COMMITTEE ON FORMER PRISONERS OF WAR.

Section 541(c)(1) is amended by striking “2003” and inserting “2009”.

SEC. 804. AVAILABILITY OF ADMINISTRATIVE AND JUDICIAL REDRESS FOR CERTAIN VETERANS DENIED OPPORTUNITY TO COMPETE FOR FEDERAL EMPLOYMENT.

(a) **ADMINISTRATIVE REDRESS.**—Section 3330a(a)(1) of title 5, United States Code, is amended—

(1) by inserting “(A)” after “(1)”; and

(2) by adding at the end the following new subparagraph:

“(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.”.

5 USC 3330b.

(b) **JUDICIAL REDRESS.**—Section 3330b(a) is amended by inserting “, or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section,” after “a preference eligible”.

SEC. 805. REPORT ON SERVICEMEMBERS’ AND VETERANS’ AWARENESS OF BENEFITS AND SERVICES AVAILABLE UNDER LAWS ADMINISTERED BY SECRETARY OF VETERANS AFFAIRS.

(a) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a report setting forth a detailed description of (1) the outreach efforts of the Department of Veterans Affairs, as of the date of the enactment of this Act, to inform members of the uniformed services and veterans (and their family members and survivors) of the benefits and services to which they are entitled under laws administered by the Secretary, and (2) the current level of awareness of those members and veterans (and family members and survivors) of those benefits and services.

(b) **MATTERS TO BE INCLUDED.**—The report under subsection (a) shall include the following:

(1) A description of the outreach activities conducted by the Secretary in each of the three Administrations of the Department of Veterans Affairs and outreach activities conducted by other entities within the Department.

(2) The results of a national survey, conducted as described in subsection (c), to ascertain servicemembers’ and veterans’ level of awareness of benefits and services referred to in subsection (a) and whether servicemembers and veterans know how to access those benefits and services.

(3) Recommendations by the Secretary on how outreach and awareness activities to veterans and servicemembers may be improved.

(c) **CONDUCT OF SURVEY.**—The survey conducted for purposes of subsection (b)(2) shall be conducted in a manner to include a statistically valid sample of persons in each of the following groups:

(1) World War II veterans.

(2) Korean conflict era veterans.

- (3) Vietnam era veterans.
- (4) Persian Gulf era veterans.
- (5) Active duty servicemembers.
- (6) National Guard and Reserve members activated under title 10, United States Code.
- (7) Family members and survivors.

Approved December 10, 2004.

LEGISLATIVE HISTORY—S. 2486:

SENATE REPORTS: No. 108–352 (Comm. on Veterans' Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 8, considered and passed Senate.

Nov. 17, considered and passed House.



Public Law 108–455
108th Congress

An Act

Dec. 10, 2004
[S. 2873]

To extend the authority of the United States District Court for the Southern District of Iowa to hold court in Rock Island, Illinois.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. HOLDING OF COURT FOR THE SOUTHERN DISTRICT OF IOWA.

Section 11029 of the 21st Century Department of Justice Appropriations Authorization Act (28 U.S.C. 95 note; Public Law 107–273; 116 Stat. 1836) is amended by striking “July 1, 2005” and inserting “July 1, 2006”.

SEC. 2. HOLDING OF COURT AT CLEVELAND, MISSISSIPPI.

Section 104(a)(3) of title 28, United States Code, is amended in the second sentence by inserting “and Cleveland” after “Clarksdale”.

SEC. 3. PLACE OF HOLDING COURT IN TEXARKANA, TEXAS, AND TEXARKANA, ARKANSAS.

Sections 83(b)(1) and 124(c)(5) of title 28, United States Code, are each amended by inserting after “held at Texarkana” the following: “, and may be held anywhere within the Federal courthouse in Texarkana that is located astride the State line between Texas and Arkansas”.

SEC. 4. PLACE OF HOLDING COURT IN THE NORTHERN DISTRICT OF NEW YORK.

Section 112(a) of title 28, United States Code, is amended by striking “and Watertown” and inserting “Watertown, and Plattsburgh”.

SEC. 5. PLACE OF HOLDING COURT IN THE DISTRICT OF COLORADO.

Section 85 of title 28, United States Code, is amended by inserting “Colorado Springs,” after “Boulder,”.

Approved December 10, 2004.

LEGISLATIVE HISTORY—S. 2873:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 19, considered and passed Senate.

Nov. 20, considered and passed House.



Public Law 108–456
108th Congress

An Act

Dec. 10, 2004
[S. 3014]

To reauthorize the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Harmful Algal
Bloom and
Hypoxia
Amendments Act
of 2004.
16 USC 1451
note.

**TITLE I—HARMFUL ALGAL BLOOM AND
HYPOXIA AMENDMENTS ACT OF 2004**

SEC. 101. SHORT TITLE.

This title may be cited as the “Harmful Algal Bloom and Hypoxia Amendments Act of 2004”.

16 USC 1451
note.

SEC. 102. RETENTION OF TASK FORCE.

Section 603 of the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998 (16 U.S.C. 1451 nt) is amended by striking subsection (e). In developing the assessments, reports, and plans under the amendments made by this title, the Task Force shall consult with the coastal States, Indian tribes, local governments, appropriate industries (including fisheries, agriculture, and fertilizer), academic institutions, and nongovernmental organizations with expertise in coastal zone science and management.

16 USC 1451
note.

SEC. 103. PREDICTION AND RESPONSE REPORT.

Section 603 of such Act, as amended by section 102, is further amended by adding at the end the following:

“(d) REPORT TO CONGRESS ON HARMFUL ALGAL BLOOM IMPACTS.—

President.

“(1) DEVELOPMENT.—Not later than 12 months after the date of enactment of the Harmful Algal Bloom and Hypoxia Amendments Act of 2004, the President, in consultation with the chief executive officers of the States, shall develop and submit to the Congress a report that describes and evaluates the effectiveness of measures described in paragraph (2) that may be utilized to protect environmental and public health from impacts of harmful algal blooms. In developing the report, the President shall consult with the Task Force, the coastal States, Indian tribes, local governments, appropriate industries (including fisheries, agriculture, and fertilizer), academic institutions, and nongovernmental organizations with expertise in coastal zone science and management, and also consider the scientific assessments developed under this Act.

“(2) REQUIREMENTS.—The report shall—

“(A) review techniques for prediction of the onset, course, and impacts of harmful algal blooms including evaluation of their accuracy and utility in protecting environmental and public health and provisions for their development;

“(B) identify innovative research and development methods for the prevention, control, and mitigation of harmful algal blooms and provisions for their development; and

“(C) include incentive-based partnership approaches regarding subparagraphs (A) and (B) where practicable.

“(3) PUBLICATION AND OPPORTUNITY FOR COMMENT.—At least 90 days before submitting the report to the Congress, the President shall cause a summary of the proposed plan to be published in the Federal Register for a public comment period of not less than 60 days.

Deadline.
President.
Federal Register,
publication.

“(4) FEDERAL ASSISTANCE.—The Secretary of Commerce, in coordination with the Task Force and to the extent of funds available, shall provide for Federal cooperation with and assistance to the coastal States, Indian tribes, and local governments regarding the measures described in paragraph (2), as requested.”.

SEC. 104. LOCAL AND REGIONAL SCIENTIFIC ASSESSMENTS.

Section 603 of such Act, as amended by section 103, is further amended by adding at the end the following:

Deadlines.
16 USC 1451
note.

“(e) LOCAL AND REGIONAL SCIENTIFIC ASSESSMENTS.—

“(1) IN GENERAL.—The Secretary of Commerce, in coordination with the Task Force and appropriate State, Indian tribe, and local governments, to the extent of funds available, shall provide for local and regional scientific assessments of hypoxia and harmful algal blooms, as requested by States, Indian tribes, and local governments, or for affected areas as identified by the Secretary. If the Secretary receives multiple requests, the Secretary shall ensure, to the extent practicable, that assessments under this subsection cover geographically and ecologically diverse locations with significant ecological and economic impacts from hypoxia or harmful algal blooms. The Secretary shall establish a procedure for reviewing requests for local and regional assessments. The Secretary shall ensure, through consultation with Sea Grant Programs, that the findings of the assessments are communicated to the appropriate State, Indian tribe, and local governments, and to the general public.

“(2) PURPOSE.—Local and regional assessments shall examine—

“(A) the causes and ecological consequences, and the economic cost, of hypoxia or harmful algal blooms in that area;

“(B) potential methods to prevent, control, and mitigate hypoxia or harmful algal blooms in that area and the potential ecological and economic costs and benefits of such methods; and

“(C) other topics the Task Force considers appropriate.

“(f) SCIENTIFIC ASSESSMENT OF FRESHWATER HARMFUL ALGAL BLOOMS.—(1) Not later than 24 months after the date of enactment of the Harmful Algal Bloom and Hypoxia Amendments Act of 2004

the Task Force shall complete and submit to Congress a scientific assessment of current knowledge about harmful algal blooms in freshwater, such as the Great Lakes and upper reaches of estuaries, including a research plan for coordinating Federal efforts to better understand freshwater harmful algal blooms.

“(2) The freshwater harmful algal bloom scientific assessment shall—

“(A) examine the causes and ecological consequences, and the economic costs, of harmful algal blooms with significant effects on freshwater, including estimations of the frequency and occurrence of significant events;

“(B) establish priorities and guidelines for a competitive, peer-reviewed, merit-based interagency research program, as part of the Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) project, to better understand the causes, characteristics, and impacts of harmful algal blooms in freshwater locations; and

“(C) identify ways to improve coordination and to prevent unnecessary duplication of effort among Federal agencies and departments with respect to research on harmful algal blooms in freshwater locations.

“(g) SCIENTIFIC ASSESSMENTS OF HYPOXIA.—(1) Not less than once every 5 years the Task Force shall complete and submit to the Congress a scientific assessment of hypoxia in United States coastal waters including the Great Lakes. The first such assessment shall be completed not less than 24 months after the date of enactment of the Harmful Algal Bloom and Hypoxia Amendments Act of 2004.

“(2) The assessments under this subsection shall—

“(A) examine the causes and ecological consequences, and the economic costs, of hypoxia;

“(B) describe the potential ecological and economic costs and benefits of possible policy and management actions for preventing, controlling, and mitigating hypoxia;

“(C) evaluate progress made by, and the needs of, Federal research programs on the causes, characteristics, and impacts of hypoxia, including recommendations of how to eliminate significant gaps in hypoxia modeling and monitoring data; and

“(D) identify ways to improve coordination and to prevent unnecessary duplication of effort among Federal agencies and departments with respect to research on hypoxia.

“(h) SCIENTIFIC ASSESSMENTS OF HARMFUL ALGAL BLOOMS.—(1) Not less than once every 5 years the Task Force shall complete and submit to Congress a scientific assessment of harmful algal blooms in United States coastal waters. The first such assessment shall be completed not later than 24 months after the date of enactment of the Harmful Algal Bloom and Hypoxia Amendments Act of 2004 and shall consider only marine harmful algal blooms. All subsequent assessments shall examine both marine and freshwater harmful algal blooms, including those in the Great Lakes and upper reaches of estuaries.

“(2) The assessments under this subsection shall—

“(A) examine the causes and ecological consequences, and economic costs, of harmful algal blooms;

“(B) describe the potential ecological and economic costs and benefits of possible actions for preventing, controlling, and mitigating harmful algal blooms;

“(C) evaluate progress made by, and the needs of, Federal research programs on the causes, characteristics, and impacts of harmful algal blooms; and

“(D) identify ways to improve coordination and to prevent unnecessary duplication of effort among Federal agencies and departments with respect to research on harmful algal blooms.

“(i) NATIONAL SCIENTIFIC RESEARCH, DEVELOPMENT, DEMONSTRATION, AND TECHNOLOGY TRANSFER PLAN ON REDUCING IMPACTS FROM HARMFUL ALGAL BLOOMS.—(1) Not later than 12 months after the date of enactment of the Harmful Algal Bloom and Hypoxia Amendments Act of 2004, the Task Force shall develop and submit to Congress a plan providing for a comprehensive and coordinated national research program to develop and demonstrate prevention, control, and mitigation methods to reduce the impacts of harmful algal blooms on coastal ecosystems (including the Great Lakes), public health, and the economy.

“(2) The plan shall—

“(A) establish priorities and guidelines for a competitive, peer reviewed, merit based interagency research, development, demonstration, and technology transfer program on methods for the prevention, control, and mitigation of harmful algal blooms;

“(B) identify ways to improve coordination and to prevent unnecessary duplication of effort among Federal agencies and departments with respect to the actions described in paragraph (1); and

“(C) include to the maximum extent practicable diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Hispanics, Native Americans, Asian Pacific Americans, and other underrepresented populations.

“(3) The Secretary of Commerce, in conjunction with other appropriate Federal agencies, shall establish a research, development, demonstration, and technology transfer program that meets the priorities and guidelines established under paragraph (2)(A). The Secretary shall ensure, through consultation with Sea Grant Programs, that the results and findings of the program are communicated to State, Indian tribe, and local governments, and to the general public.”.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

16 USC 1451
note.

Section 605 of such Act is amended—

(1) by striking “and” after “2000,” in the first sentence and in the paragraphs (1), (2), (3), and (5);

(2) by inserting “\$23,500,000 for fiscal year 2005, \$24,500,000 for fiscal year 2006, \$25,000,000 for fiscal year 2007, and \$25,500,000 for fiscal year 2008,” after “2001,” in the first sentence;

(3) by inserting “, and \$2,500,000 for each of fiscal years 2005 through 2008” after “2001” in paragraph (1);

(4) by inserting “, and \$6,500,000, of which \$1,000,000 shall be used for the research program described in section 603(f)(2)(B), for each of fiscal years 2005 through 2008” after “2001” in paragraph (2);

(5) by striking “2001” in paragraph (3) and inserting “2001, and \$3,000,000 for each of fiscal years 2005 through 2008”;

(6) by striking “blooms;” in paragraph (3) and inserting “blooms and to carry out section 603(d);”;

(7) by striking “and 2001” in paragraph (4) and inserting “2001, and \$6,000,000 for each of fiscal years 2005 through 2008”;

(8) by striking “and” after the semicolon in paragraph (4);

(9) by striking “2001” in paragraph (5) and inserting “2001, \$4,000,000 for fiscal year 2005, \$5,000,000 for fiscal year 2006, \$5,500,000 for fiscal year 2007, and \$6,000,000 for fiscal year 2008”;

(10) by striking “Administration.” in paragraph (5) and inserting “Administration; and”; and

(11) by adding at the end the following:

“(6) \$1,500,000 for each of fiscal years 2005 through 2008 to carry out section 603(e).”.

TITLE II—MISCELLANEOUS

SEC. 201. AVAILABILITY OF NOAA REAL PROPERTY ON VIRGINIA KEY, FLORIDA.

(a) IN GENERAL.—The Secretary of Commerce may make available to the University of Miami real property under the administrative jurisdiction of the National Oceanic and Atmospheric Administration on Virginia Key, Florida, for development by the University of a Marine Life Science Center.

(b) MANNER OF AVAILABILITY.—The Secretary may make property available under this section by easement, lease, license, or long-term agreement with the University.

(c) AUTHORIZED USES BY UNIVERSITY.—

(1) IN GENERAL.—Property made available under this section may be used by the University (subject to paragraph (2)) to develop and operate facilities for multidisciplinary environmental and fisheries research, assessment, management, and educational activities.

(2) AGREEMENT.—Property made available under this section may not be used by the University (including any affiliate of the University) except in accordance with an agreement with the Secretary that—

(A) specifies—

(i) the conditions for non-Federal use of the property; and

(ii) the retained Federal interests in the property, including interests in access to and egress from the property by Federal personnel and preservation of existing rights-of-way;

(B) establishes conditions for joint occupancy of buildings and other facilities on the property by the University and Federal agencies; and

(C) includes provisions that ensure—

(i) that there is no diminishment of existing National Oceanic and Atmospheric Administration programs and services at Virginia Key; and

(ii) the availability of the property for planning, development, and construction of future Federal buildings and facilities.

(3) **TERMINATION OF AVAILABILITY.**—The availability of property under this section shall terminate immediately upon use of the property by the University—

(A) for any purpose other than as described in paragraph (1); or

(B) in violation of the agreement under paragraph (2).

(d) **USE OF FACILITIES BY SECRETARY.**—The Secretary may—

(1) subject to the availability of funding, enter into an agreement to occupy facilities constructed by the University on property made available under this section; and

(2) participate with the University in collaborative research at, or administered through, such facilities.

(e) **NO CONVEYANCE OF TITLE.**—This section shall not be construed to convey or authorize conveyance of any interest of the United States in title to property made available under this section.

SEC. 202. CONVEYANCE OF NOAA VESSEL WHITING.

Mexico.

(a) **IN GENERAL.**—The Secretary of Commerce shall convey to the Government of Mexico, without consideration, all right, title, and interest of the United States in and to the National Oceanic and Atmospheric Administration vessel WHITING—

(1) for use as a hydrographic survey platform in support of activities of the United States-Mexico Charting Advisors Committee; and

(2) to enhance coordination and cooperation between the United States and Mexico regarding hydrographic surveying and nautical charting activities in the border waters of both countries in the Gulf of Mexico and in the Pacific Ocean.

(b) **OPERATION AND MAINTENANCE.**—The Government of the United States shall not be responsible or liable for any remediation, maintenance, or operation of a vessel conveyed under this section after the date of the delivery of the vessel to the Government of Mexico.

(c) **DEADLINE.**—The Secretary shall seek to complete the conveyance by as soon as practicable after the date of the enactment of this Act.

(d) **DELIVERY OF VESSEL.**—The Secretary shall deliver the vessel **WHITING** pursuant to this section at the vessel's homeport location of Norfolk, Virginia, at no additional cost to the United States.

Approved December 10, 2004.

LEGISLATIVE HISTORY—S. 3014 (H.R. 1856):

HOUSE REPORTS: No. 108–326, Pt. 1, accompanying H.R. 1856 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 19, considered and passed Senate.

Nov. 20, considered and passed House.



Public Law 108–457
108th Congress

An Act

To amend the District of Columbia College Access Act of 1999 to reauthorize for 2 additional years the public school and private school tuition assistance programs established under the Act.

Dec. 17, 2004
[H.R. 4012]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. 5-YEAR REAUTHORIZATION OF TUITION ASSISTANCE PROGRAMS.

(a) PUBLIC SCHOOL PROGRAM.—Section 3(i) of the District of Columbia College Access Act of 1999 (sec. 38—2702(i), D.C. Official Code) is amended by striking “each of the five succeeding fiscal years” and inserting “each of the 7 succeeding fiscal years”.

(b) PRIVATE SCHOOL PROGRAM.—Section 5(f) of such Act (sec. 38—2704(f), D.C. Official Code) is amended by striking “each of the five succeeding fiscal years” and inserting “each of the 7 succeeding fiscal years”.

Approved December 17, 2004.

LEGISLATIVE HISTORY—H.R. 4012 (S. 2347):

HOUSE REPORTS: No. 108–527 (Comm. on Government Reform).

SENATE REPORTS: No. 108–349 accompanying S. 2347 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 14, considered and passed House.

Nov. 24, considered and passed Senate, amended.

Dec. 6, House concurred in Senate amendments.



Public Law 108–458
108th Congress

An Act

Dec. 17, 2004
[S. 2845]

To reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Intelligence
Reform and
Terrorism
Prevention Act of
2004.
50 USC 401 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Intelligence Reform and Terrorism Prevention Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

TITLE I—REFORM OF THE INTELLIGENCE COMMUNITY

Sec. 1001. Short title.

Subtitle A—Establishment of Director of National Intelligence

Sec. 1011. Reorganization and improvement of management of intelligence community.

Sec. 1012. Revised definition of national intelligence.

Sec. 1013. Joint procedures for operational coordination between Department of Defense and Central Intelligence Agency.

Sec. 1014. Role of Director of National Intelligence in appointment of certain officials responsible for intelligence-related activities.

Sec. 1015. Executive Schedule matters.

Sec. 1016. Information sharing.

Sec. 1017. Alternative analysis of intelligence by the intelligence community.

Sec. 1018. Presidential guidelines on implementation and preservation of authorities.

Sec. 1019. Assignment of responsibilities relating to analytic integrity.

Sec. 1020. Safeguard of objectivity in intelligence analysis.

Subtitle B—National Counterterrorism Center, National Counter Proliferation Center, and National Intelligence Centers

Sec. 1021. National Counterterrorism Center.

Sec. 1022. National Counter Proliferation Center.

Sec. 1023. National intelligence centers.

Subtitle C—Joint Intelligence Community Council

Sec. 1031. Joint Intelligence Community Council.

Subtitle D—Improvement of Education for the Intelligence Community

Sec. 1041. Additional education and training requirements.

Sec. 1042. Cross-disciplinary education and training.

Sec. 1043. Intelligence Community Scholarship Program.

Subtitle E—Additional Improvements of Intelligence Activities

Sec. 1051. Service and national laboratories and the intelligence community.

Sec. 1052. Open-source intelligence.

Sec. 1053. National Intelligence Reserve Corps.

Subtitle F—Privacy and Civil Liberties

Sec. 1061. Privacy and Civil Liberties Oversight Board.

Sec. 1062. Sense of Congress on designation of privacy and civil liberties officers.

Subtitle G—Conforming and Other Amendments

- Sec. 1071. Conforming amendments relating to roles of Director of National Intelligence and Director of the Central Intelligence Agency.
Sec. 1072. Other conforming amendments.
Sec. 1073. Elements of intelligence community under National Security Act of 1947.
Sec. 1074. Redesignation of National Foreign Intelligence Program as National Intelligence Program.
Sec. 1075. Repeal of superseded authority.
Sec. 1076. Clerical amendments to National Security Act of 1947.
Sec. 1077. Conforming amendments relating to prohibiting dual service of the Director of the Central Intelligence Agency.
Sec. 1078. Authority to establish inspector general for the Office of the Director of National Intelligence.
Sec. 1079. Ethics matters.
Sec. 1080. Construction of authority of Director of National Intelligence to acquire and manage property and services.
Sec. 1081. General references.

Subtitle H—Transfer, Termination, Transition, and Other Provisions

- Sec. 1091. Transfer of Community Management Staff.
Sec. 1092. Transfer of Terrorist Threat Integration Center.
Sec. 1093. Termination of positions of Assistant Directors of Central Intelligence.
Sec. 1094. Implementation plan.
Sec. 1095. Director of National Intelligence report on implementation of intelligence community reform.
Sec. 1096. Transitional authorities.
Sec. 1097. Effective dates.

Subtitle I—Other Matters

- Sec. 1101. Study of promotion and professional military education school selection rates for military intelligence officers.
Sec. 1102. Extension and improvement of authorities of Public Interest Declassification Board.
Sec. 1103. Severability.

TITLE II—FEDERAL BUREAU OF INVESTIGATION

- Sec. 2001. Improvement of intelligence capabilities of the Federal Bureau of Investigation.
Sec. 2002. Directorate of Intelligence of the Federal Bureau of Investigation.
Sec. 2003. Federal Bureau of Investigation intelligence career service.
Sec. 2004. Federal Bureau of Investigation Reserve Service.
Sec. 2005. Federal Bureau of Investigation mandatory separation age.
Sec. 2006. Federal Bureau of Investigation use of translators.

TITLE III—SECURITY CLEARANCES

- Sec. 3001. Security clearances.

TITLE IV—TRANSPORTATION SECURITY

Subtitle A—National Strategy for Transportation Security

- Sec. 4001. National Strategy for Transportation Security.

Subtitle B—Aviation Security

- Sec. 4011. Provision for the use of biometric or other technology.
Sec. 4012. Advanced airline passenger prescreening.
Sec. 4013. Deployment and use of detection equipment at airport screening checkpoints.
Sec. 4014. Advanced airport checkpoint screening devices.
Sec. 4015. Improvement of screener job performance.
Sec. 4016. Federal air marshals.
Sec. 4017. International agreements to allow maximum deployment of Federal air marshals.
Sec. 4018. Foreign air marshal training.
Sec. 4019. In-line checked baggage screening.
Sec. 4020. Checked baggage screening area monitoring.
Sec. 4021. Wireless communication.
Sec. 4022. Improved pilot licenses.
Sec. 4023. Aviation security staffing.

- Sec. 4024. Improved explosive detection systems.
- Sec. 4025. Prohibited items list.
- Sec. 4026. Man-Portable Air Defense Systems (MANPADs).
- Sec. 4027. Technical corrections.
- Sec. 4028. Report on secondary flight deck barriers.
- Sec. 4029. Extension of authorization of aviation security funding.

Subtitle C—Air Cargo Security

- Sec. 4051. Pilot program to evaluate use of blast resistant cargo and baggage containers.
- Sec. 4052. Air cargo security.
- Sec. 4053. Air cargo security regulations.
- Sec. 4054. Report on international air cargo threats.

Subtitle D—Maritime Security

- Sec. 4071. Watch lists for passengers aboard vessels.
- Sec. 4072. Deadlines for completion of certain plans, reports, and assessments.

Subtitle E—General Provisions

- Sec. 4081. Definitions.
- Sec. 4082. Effective date.

TITLE V—BORDER PROTECTION, IMMIGRATION, AND VISA MATTERS

Subtitle A—Advanced Technology Northern Border Security Pilot Program

- Sec. 5101. Establishment.
- Sec. 5102. Program requirements.
- Sec. 5103. Administrative provisions.
- Sec. 5104. Report.
- Sec. 5105. Authorization of appropriations.

Subtitle B—Border and Immigration Enforcement

- Sec. 5201. Border surveillance.
- Sec. 5202. Increase in full-time Border Patrol agents.
- Sec. 5203. Increase in full-time immigration and customs enforcement investigators.
- Sec. 5204. Increase in detention bed space.

Subtitle C—Visa Requirements

- Sec. 5301. In person interviews of visa applicants.
- Sec. 5302. Visa application requirements.
- Sec. 5303. Effective date.
- Sec. 5304. Revocation of visas and other travel documentation.

Subtitle D—Immigration Reform

- Sec. 5401. Bringing in and harboring certain aliens.
- Sec. 5402. Deportation of aliens who have received military-type training from terrorist organizations.
- Sec. 5403. Study and report on terrorists in the asylum system.

Subtitle E—Treatment of Aliens Who Commit Acts of Torture, Extrajudicial Killings, or Other Atrocities Abroad

- Sec. 5501. Inadmissibility and deportability of aliens who have committed acts of torture or extrajudicial killings abroad.
- Sec. 5502. Inadmissibility and deportability of foreign government officials who have committed particularly severe violations of religious freedom.
- Sec. 5503. Waiver of inadmissibility.
- Sec. 5504. Bar to good moral character for aliens who have committed acts of torture, extrajudicial killings, or severe violations of religious freedom.
- Sec. 5505. Establishment of the Office of Special Investigations.
- Sec. 5506. Report on implementation.

TITLE VI—TERRORISM PREVENTION

Subtitle A—Individual Terrorists as Agents of Foreign Powers

- Sec. 6001. Individual terrorists as agents of foreign powers.
- Sec. 6002. Additional semiannual reporting requirements under the Foreign Intelligence Surveillance Act of 1978.

Subtitle B—Money Laundering and Terrorist Financing

- Sec. 6101. Additional authorization for finCEN.

Sec. 6102. Money laundering and financial crimes strategy reauthorization.

Subtitle C—Money Laundering Abatement and Financial Antiterrorism Technical Corrections

- Sec. 6201. Short title.
- Sec. 6202. Technical corrections to Public Law 107–56.
- Sec. 6203. Technical corrections to other provisions of law.
- Sec. 6204. Repeal of review.
- Sec. 6205. Effective date.

Subtitle D—Additional Enforcement Tools

- Sec. 6301. Bureau of Engraving and Printing security printing.
- Sec. 6302. Reporting of certain cross-border transmittal of funds.
- Sec. 6303. Terrorism financing.

Subtitle E—Criminal History Background Checks

- Sec. 6401. Protect Act.
- Sec. 6402. Reviews of criminal records of applicants for private security officer employment.
- Sec. 6403. Criminal history background checks.

Subtitle F—Grand Jury Information Sharing

- Sec. 6501. Grand jury information sharing.

Subtitle G—Providing Material Support to Terrorism

- Sec. 6601. Short title.
- Sec. 6602. Receiving military-type training from a foreign terrorist organization.
- Sec. 6603. Additions to offense of providing material support to terrorism.
- Sec. 6604. Financing of terrorism.

Subtitle H—Stop Terrorist and Military Hoaxes Act of 2004

- Sec. 6701. Short title.
- Sec. 6702. Hoaxes and recovery costs.
- Sec. 6703. Obstruction of justice and false statements in terrorism cases.
- Sec. 6704. Clarification of definition.

Subtitle I—Weapons of Mass Destruction Prohibition Improvement Act of 2004

- Sec. 6801. Short title.
- Sec. 6802. Weapons of mass destruction.
- Sec. 6803. Participation in nuclear and weapons of mass destruction threats to the United States.

Subtitle J—Prevention of Terrorist Access to Destructive Weapons Act of 2004

- Sec. 6901. Short title.
- Sec. 6902. Findings and purpose.
- Sec. 6903. Missile systems designed to destroy aircraft.
- Sec. 6904. Atomic weapons.
- Sec. 6905. Radiological dispersal devices.
- Sec. 6906. Variola virus.
- Sec. 6907. Interception of communications.
- Sec. 6908. Amendments to section 2332b(g)(5)(b) of title 18, United States Code.
- Sec. 6909. Amendments to section 1956(c)(7)(d) of title 18, United States Code.
- Sec. 6910. Export licensing process.
- Sec. 6911. Clerical amendments.

Subtitle K—Pretrial Detention of Terrorists

- Sec. 6951. Short title.
- Sec. 6952. Presumption for pretrial detention in cases involving terrorism.

TITLE VII—IMPLEMENTATION OF 9/11 COMMISSION RECOMMENDATIONS

- Sec. 7001. Short title.

Subtitle A—Diplomacy, Foreign Aid, and the Military in the War on Terrorism

- Sec. 7101. Findings.
- Sec. 7102. Terrorist sanctuaries.
- Sec. 7103. United States commitment to the future of Pakistan.
- Sec. 7104. Assistance for Afghanistan.
- Sec. 7105. The relationship between the United States and Saudi Arabia.
- Sec. 7106. Efforts to combat Islamist terrorism.

- Sec. 7107. United States policy toward dictatorships.
- Sec. 7108. Promotion of free media and other American values.
- Sec. 7109. Public diplomacy responsibilities of the Department of State.
- Sec. 7110. Public diplomacy training.
- Sec. 7111. Promoting democracy and human rights at international organizations.
- Sec. 7112. Expansion of United States scholarship and exchange programs in the Islamic world.
- Sec. 7113. Pilot program to provide grants to American-sponsored schools in predominantly Muslim countries to provide scholarships.
- Sec. 7114. International Youth Opportunity Fund.
- Sec. 7115. The use of economic policies to combat terrorism.
- Sec. 7116. Middle East partnership initiative.
- Sec. 7117. Comprehensive coalition strategy for fighting terrorism.
- Sec. 7118. Financing of terrorism.
- Sec. 7119. Designation of foreign terrorist organizations.
- Sec. 7120. Report to Congress.
- Sec. 7121. Case-Zablocki Act requirements.
- Sec. 7122. Effective date.

Subtitle B—Terrorist Travel and Effective Screening

- Sec. 7201. Counterterrorist travel intelligence.
- Sec. 7202. Establishment of human smuggling and trafficking center.
- Sec. 7203. Responsibilities and functions of consular officers.
- Sec. 7204. International agreements to track and curtail terrorist travel through the use of fraudulently obtained documents.
- Sec. 7205. International standards for transliteration of names into the Roman alphabet for international travel documents and name-based watchlist systems.
- Sec. 7206. Immigration security initiative.
- Sec. 7207. Certification regarding technology for visa waiver participants.
- Sec. 7208. Biometric entry and exit data system.
- Sec. 7209. Travel documents.
- Sec. 7210. Exchange of terrorist information and increased preinspection at foreign airports.
- Sec. 7211. Minimum standards for birth certificates.
- Sec. 7212. Driver's licenses and personal identification cards.
- Sec. 7213. Social security cards and numbers.
- Sec. 7214. Prohibition of the display of social security account numbers on driver's licenses or motor vehicle registrations.
- Sec. 7215. Terrorist travel program.
- Sec. 7216. Increase in penalties for fraud and related activity.
- Sec. 7217. Study on allegedly lost or stolen passports.
- Sec. 7218. Establishment of visa and passport security program in the Department of State.
- Sec. 7219. Effective date.
- Sec. 7220. Identification standards.

Subtitle C—National Preparedness

- Sec. 7301. The incident command system.
- Sec. 7302. National capital region mutual aid.
- Sec. 7303. Enhancement of public safety communications interoperability.
- Sec. 7304. Regional model strategic plan pilot projects.
- Sec. 7305. Private sector preparedness.
- Sec. 7306. Critical infrastructure and readiness assessments.
- Sec. 7307. Northern command and defense of the United States homeland.
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Sec. 7601. Presidential transition.

Subtitle G—Improving International Standards and Cooperation to Fight Terrorist Financing

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TITLE VIII—OTHER MATTERS

Subtitle A—Intelligence Matters

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Sec. 8401. Amendments to Clinger-Cohen Act provisions to enhance agency planning for information security needs.

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TITLE I—REFORM OF THE INTELLIGENCE COMMUNITY

National Security Intelligence Reform Act of 2004.

SEC. 1001. SHORT TITLE.

This title may be cited as the “National Security Intelligence Reform Act of 2004”.

50 USC 401 note.

Subtitle A—Establishment of Director of National Intelligence

SEC. 1011. REORGANIZATION AND IMPROVEMENT OF MANAGEMENT OF INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by striking sections 102 through 104 and inserting the following new sections:

“DIRECTOR OF NATIONAL INTELLIGENCE

President.
Congress.
50 USC 403.

“SEC. 102. (a) DIRECTOR OF NATIONAL INTELLIGENCE.—(1) There is a Director of National Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate. Any individual nominated for appointment as Director of National Intelligence shall have extensive national security expertise.

“(2) The Director of National Intelligence shall not be located within the Executive Office of the President.

“(b) PRINCIPAL RESPONSIBILITY.—Subject to the authority, direction, and control of the President, the Director of National Intelligence shall—

“(1) serve as head of the intelligence community;

“(2) act as the principal adviser to the President, to the National Security Council, and the Homeland Security Council for intelligence matters related to the national security; and

“(3) consistent with section 1018 of the National Security Intelligence Reform Act of 2004, oversee and direct the implementation of the National Intelligence Program.

“(c) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of Director of National Intelligence shall not, while so serving, also serve as the Director of the Central Intelligence Agency or as the head of any other element of the intelligence community.

“RESPONSIBILITIES AND AUTHORITIES OF THE DIRECTOR OF NATIONAL INTELLIGENCE

50 USC 403-1.

“SEC. 102A. (a) PROVISION OF INTELLIGENCE.—(1) The Director of National Intelligence shall be responsible for ensuring that national intelligence is provided—

“(A) to the President;

“(B) to the heads of departments and agencies of the executive branch;

“(C) to the Chairman of the Joint Chiefs of Staff and senior military commanders;

“(D) to the Senate and House of Representatives and the committees thereof; and

“(E) to such other persons as the Director of National Intelligence determines to be appropriate.

“(2) Such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community and other appropriate entities.

“(b) ACCESS TO INTELLIGENCE.—Unless otherwise directed by the President, the Director of National Intelligence shall have access to all national intelligence and intelligence related to the national security which is collected by any Federal department, agency, or other entity, except as otherwise provided by law or, as appropriate, under guidelines agreed upon by the Attorney General and the Director of National Intelligence.

“(c) BUDGET AUTHORITIES.—(1) With respect to budget requests and appropriations for the National Intelligence Program, the Director of National Intelligence shall—

“(A) based on intelligence priorities set by the President, provide to the heads of departments containing agencies or organizations within the intelligence community, and to the

heads of such agencies and organizations, guidance for developing the National Intelligence Program budget pertaining to such agencies and organizations;

“(B) based on budget proposals provided to the Director of National Intelligence by the heads of agencies and organizations within the intelligence community and the heads of their respective departments and, as appropriate, after obtaining the advice of the Joint Intelligence Community Council, develop and determine an annual consolidated National Intelligence Program budget; and

“(C) present such consolidated National Intelligence Program budget, together with any comments from the heads of departments containing agencies or organizations within the intelligence community, to the President for approval.

“(2) In addition to the information provided under paragraph (1)(B), the heads of agencies and organizations within the intelligence community shall provide the Director of National Intelligence such other information as the Director shall request for the purpose of determining the annual consolidated National Intelligence Program budget under that paragraph.

“(3)(A) The Director of National Intelligence shall participate in the development by the Secretary of Defense of the annual budgets for the Joint Military Intelligence Program and for Tactical Intelligence and Related Activities.

“(B) The Director of National Intelligence shall provide guidance for the development of the annual budget for each element of the intelligence community that is not within the National Intelligence Program.

“(4) The Director of National Intelligence shall ensure the effective execution of the annual budget for intelligence and intelligence-related activities.

“(5)(A) The Director of National Intelligence shall be responsible for managing appropriations for the National Intelligence Program by directing the allotment or allocation of such appropriations through the heads of the departments containing agencies or organizations within the intelligence community and the Director of the Central Intelligence Agency, with prior notice (including the provision of appropriate supporting information) to the head of the department containing an agency or organization receiving any such allocation or allotment or the Director of the Central Intelligence Agency.

“(B) Notwithstanding any other provision of law, pursuant to relevant appropriations Acts for the National Intelligence Program, the Director of the Office of Management and Budget shall exercise the authority of the Director of the Office of Management and Budget to apportion funds, at the exclusive direction of the Director of National Intelligence, for allocation to the elements of the intelligence community through the relevant host executive departments and the Central Intelligence Agency. Department comptrollers or appropriate budget execution officers shall allot, allocate, reprogram, or transfer funds appropriated for the National Intelligence Program in an expeditious manner.

“(C) The Director of National Intelligence shall monitor the implementation and execution of the National Intelligence Program by the heads of the elements of the intelligence community that manage programs and activities that are part of the National Intelligence Program, which may include audits and evaluations.

Reports.
Deadlines.

“(6) Apportionment and allotment of funds under this subsection shall be subject to chapter 13 and section 1517 of title 31, United States Code, and the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.).

“(7)(A) The Director of National Intelligence shall provide a semi-annual report, beginning April 1, 2005, and ending April 1, 2007, to the President and the Congress regarding implementation of this section.

“(B) The Director of National Intelligence shall report to the President and the Congress not later than 15 days after learning of any instance in which a departmental comptroller acts in a manner inconsistent with the law (including permanent statutes, authorization Acts, and appropriations Acts), or the direction of the Director of National Intelligence, in carrying out the National Intelligence Program.

“(d) ROLE OF DIRECTOR OF NATIONAL INTELLIGENCE IN TRANSFER AND REPROGRAMMING OF FUNDS.—(1)(A) No funds made available under the National Intelligence Program may be transferred or reprogrammed without the prior approval of the Director of National Intelligence, except in accordance with procedures prescribed by the Director of National Intelligence.

“(B) The Secretary of Defense shall consult with the Director of National Intelligence before transferring or reprogramming funds made available under the Joint Military Intelligence Program.

“(2) Subject to the succeeding provisions of this subsection, the Director of National Intelligence may transfer or reprogram funds appropriated for a program within the National Intelligence Program to another such program.

“(3) The Director of National Intelligence may only transfer or reprogram funds referred to in subparagraph (A)—

“(A) with the approval of the Director of the Office of Management and Budget; and

“(B) after consultation with the heads of departments containing agencies or organizations within the intelligence community to the extent such agencies or organizations are affected, and, in the case of the Central Intelligence Agency, after consultation with the Director of the Central Intelligence Agency.

“(4) The amounts available for transfer or reprogramming in the National Intelligence Program in any given fiscal year, and the terms and conditions governing such transfers and reprogrammings, are subject to the provisions of annual appropriations Acts and this subsection.

“(5)(A) A transfer or reprogramming of funds or personnel may be made under this subsection only if—

“(i) the funds are being transferred to an activity that is a higher priority intelligence activity;

“(ii) the transfer or reprogramming supports an emergent need, improves program effectiveness, or increases efficiency;

“(iii) the transfer or reprogramming does not involve a transfer or reprogramming of funds to a Reserve for Contingencies of the Director of National Intelligence or the Reserve for Contingencies of the Central Intelligence Agency;

“(iv) the transfer or reprogramming results in a cumulative transfer or reprogramming of funds out of any department or agency, as appropriate, funded in the National Intelligence Program in a single fiscal year—

“(I) that is less than \$150,000,000, and

“(II) that is less than 5 percent of amounts available to a department or agency under the National Intelligence Program; and

“(v) the transfer or reprogramming does not terminate an acquisition program.

“(B) A transfer or reprogramming may be made without regard to a limitation set forth in clause (iv) or (v) of subparagraph (A) if the transfer has the concurrence of the head of the department involved or the Director of the Central Intelligence Agency (in the case of the Central Intelligence Agency). The authority to provide such concurrence may only be delegated by the head of the department or agency involved to the deputy of such officer.

“(6) Funds transferred or reprogrammed under this subsection shall remain available for the same period as the appropriations account to which transferred or reprogrammed.

“(7) Any transfer or reprogramming of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer or reprogramming for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer or reprogramming and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall be promptly notified of any transfer or reprogramming of funds made pursuant to this subsection in any case in which the transfer or reprogramming would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this subsection.

Reports.

Notification.

“(e) TRANSFER OF PERSONNEL.—(1)(A) In addition to any other authorities available under law for such purposes, in the first twelve months after establishment of a new national intelligence center, the Director of National Intelligence, with the approval of the Director of the Office of Management and Budget and in consultation with the congressional committees of jurisdiction referred to in subparagraph (B), may transfer not more than 100 personnel authorized for elements of the intelligence community to such center.

“(B) The Director of National Intelligence shall promptly provide notice of any transfer of personnel made pursuant to this paragraph to—

Notice.

“(i) the congressional intelligence committees;

“(ii) the Committees on Appropriations of the Senate and the House of Representatives;

“(iii) in the case of the transfer of personnel to or from the Department of Defense, the Committees on Armed Services of the Senate and the House of Representatives; and

“(iv) in the case of the transfer of personnel to or from the Department of Justice, to the Committees on the Judiciary of the Senate and the House of Representatives.

“(C) The Director shall include in any notice under subparagraph (B) an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

“(2)(A) The Director of National Intelligence, with the approval of the Director of the Office of Management and Budget and in accordance with procedures to be developed by the Director of National Intelligence and the heads of the departments and agencies

concerned, may transfer personnel authorized for an element of the intelligence community to another such element for a period of not more than 2 years.

“(B) A transfer of personnel may be made under this paragraph only if—

“(i) the personnel are being transferred to an activity that is a higher priority intelligence activity; and

“(ii) the transfer supports an emergent need, improves program effectiveness, or increases efficiency.

Notice.

“(C) The Director of National Intelligence shall promptly provide notice of any transfer of personnel made pursuant to this paragraph to—

“(i) the congressional intelligence committees;

“(ii) in the case of the transfer of personnel to or from the Department of Defense, the Committees on Armed Services of the Senate and the House of Representatives; and

“(iii) in the case of the transfer of personnel to or from the Department of Justice, to the Committees on the Judiciary of the Senate and the House of Representatives.

“(D) The Director shall include in any notice under subparagraph (C) an explanation of the nature of the transfer and how it satisfies the requirements of this paragraph.

“(3) It is the sense of Congress that—

“(A) the nature of the national security threats facing the United States will continue to challenge the intelligence community to respond rapidly and flexibly to bring analytic resources to bear against emerging and unforeseen requirements;

“(B) both the Office of the Director of National Intelligence and any analytic centers determined to be necessary should be fully and properly supported with appropriate levels of personnel resources and that the President’s yearly budget requests adequately support those needs; and

“(C) the President should utilize all legal and administrative discretion to ensure that the Director of National Intelligence and all other elements of the intelligence community have the necessary resources and procedures to respond promptly and effectively to emerging and unforeseen national security challenges.

“(f) TASKING AND OTHER AUTHORITIES.—(1)(A) The Director of National Intelligence shall—

“(i) establish objectives, priorities, and guidance for the intelligence community to ensure timely and effective collection, processing, analysis, and dissemination (including access by users to collected data consistent with applicable law and, as appropriate, the guidelines referred to in subsection (b) and analytic products generated by or within the intelligence community) of national intelligence;

“(ii) determine requirements and priorities for, and manage and direct the tasking of, collection, analysis, production, and dissemination of national intelligence by elements of the intelligence community, including—

“(I) approving requirements (including those requirements responding to needs provided by consumers) for collection and analysis; and

“(II) resolving conflicts in collection requirements and in the tasking of national collection assets of the elements of the intelligence community; and

“(iii) provide advisory tasking to intelligence elements of those agencies and departments not within the National Intelligence Program.

“(B) The authority of the Director of National Intelligence under subparagraph (A) shall not apply—

“(i) insofar as the President so directs;

“(ii) with respect to clause (ii) of subparagraph (A), insofar as the Secretary of Defense exercises tasking authority under plans or arrangements agreed upon by the Secretary of Defense and the Director of National Intelligence; or

“(iii) to the direct dissemination of information to State government and local government officials and private sector entities pursuant to sections 201 and 892 of the Homeland Security Act of 2002 (6 U.S.C. 121, 482).

“(2) The Director of National Intelligence shall oversee the National Counterterrorism Center and may establish such other national intelligence centers as the Director determines necessary.

“(3)(A) The Director of National Intelligence shall prescribe, in consultation with the heads of other agencies or elements of the intelligence community, and the heads of their respective departments, personnel policies and programs applicable to the intelligence community that—

Policies.

“(i) encourage and facilitate assignments and details of personnel to national intelligence centers, and between elements of the intelligence community;

“(ii) set standards for education, training, and career development of personnel of the intelligence community;

“(iii) encourage and facilitate the recruitment and retention by the intelligence community of highly qualified individuals for the effective conduct of intelligence activities;

“(iv) ensure that the personnel of the intelligence community are sufficiently diverse for purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals with diverse ethnic, cultural, and linguistic backgrounds;

“(v) make service in more than one element of the intelligence community a condition of promotion to such positions within the intelligence community as the Director shall specify; and

“(vi) ensure the effective management of intelligence community personnel who are responsible for intelligence community-wide matters.

“(B) Policies prescribed under subparagraph (A) shall not be inconsistent with the personnel policies otherwise applicable to members of the uniformed services.

“(4) The Director of National Intelligence shall ensure compliance with the Constitution and laws of the United States by the Central Intelligence Agency and shall ensure such compliance by other elements of the intelligence community through the host executive departments that manage the programs and activities that are part of the National Intelligence Program.

“(5) The Director of National Intelligence shall ensure the elimination of waste and unnecessary duplication within the intelligence community.

Requirements.	<p>“(6) The Director of National Intelligence shall establish requirements and priorities for foreign intelligence information to be collected under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and provide assistance to the Attorney General to ensure that information derived from electronic surveillance or physical searches under that Act is disseminated so it may be used efficiently and effectively for national intelligence purposes, except that the Director shall have no authority to direct or undertake electronic surveillance or physical search operations pursuant to that Act unless authorized by statute or Executive order.</p> <p>“(7) The Director of National Intelligence shall perform such other functions as the President may direct.</p> <p>“(8) Nothing in this title shall be construed as affecting the role of the Department of Justice or the Attorney General under the Foreign Intelligence Surveillance Act of 1978.</p>
Procedures.	<p>“(g) INTELLIGENCE INFORMATION SHARING.—(1) The Director of National Intelligence shall have principal authority to ensure maximum availability of and access to intelligence information within the intelligence community consistent with national security requirements. The Director of National Intelligence shall—</p> <p>“(A) establish uniform security standards and procedures;</p> <p>“(B) establish common information technology standards, protocols, and interfaces;</p> <p>“(C) ensure development of information technology systems that include multi-level security and intelligence integration capabilities;</p> <p>“(D) establish policies and procedures to resolve conflicts between the need to share intelligence information and the need to protect intelligence sources and methods;</p> <p>“(E) develop an enterprise architecture for the intelligence community and ensure that elements of the intelligence community comply with such architecture; and</p> <p>“(F) have procurement approval authority over all enterprise architecture-related information technology items funded in the National Intelligence Program.</p>
President.	<p>“(2) The President shall ensure that the Director of National Intelligence has all necessary support and authorities to fully and effectively implement paragraph (1).</p> <p>“(3) Except as otherwise directed by the President or with the specific written agreement of the head of the department or agency in question, a Federal agency or official shall not be considered to have met any obligation to provide any information, report, assessment, or other material (including unevaluated intelligence information) to that department or agency solely by virtue of having provided that information, report, assessment, or other material to the Director of National Intelligence or the National Counterterrorism Center.</p>
Deadline. Reports.	<p>“(4) Not later than February 1 of each year, the Director of National Intelligence shall submit to the President and to the Congress an annual report that identifies any statute, regulation, policy, or practice that the Director believes impedes the ability of the Director to fully and effectively implement paragraph (1).</p> <p>“(h) ANALYSIS.—To ensure the most accurate analysis of intelligence is derived from all sources to support national security needs, the Director of National Intelligence shall—</p>
Procedures.	<p>“(1) implement policies and procedures—</p>

“(A) to encourage sound analytic methods and tradecraft throughout the elements of the intelligence community;

“(B) to ensure that analysis is based upon all sources available; and

“(C) to ensure that the elements of the intelligence community regularly conduct competitive analysis of analytic products, whether such products are produced by or disseminated to such elements;

“(2) ensure that resource allocation for intelligence analysis is appropriately proportional to resource allocation for intelligence collection systems and operations in order to maximize analysis of all collected data;

“(3) ensure that differences in analytic judgment are fully considered and brought to the attention of policymakers; and

“(4) ensure that sufficient relationships are established between intelligence collectors and analysts to facilitate greater understanding of the needs of analysts.

“(i) PROTECTION OF INTELLIGENCE SOURCES AND METHODS.—

Guidelines.

(1) The Director of National Intelligence shall protect intelligence sources and methods from unauthorized disclosure.

“(2) Consistent with paragraph (1), in order to maximize the dissemination of intelligence, the Director of National Intelligence shall establish and implement guidelines for the intelligence community for the following purposes:

“(A) Classification of information under applicable law, Executive orders, or other Presidential directives.

“(B) Access to and dissemination of intelligence, both in final form and in the form when initially gathered.

“(C) Preparation of intelligence products in such a way that source information is removed to allow for dissemination at the lowest level of classification possible or in unclassified form to the extent practicable.

“(3) The Director may only delegate a duty or authority given the Director under this subsection to the Principal Deputy Director of National Intelligence.

“(j) UNIFORM PROCEDURES FOR SENSITIVE COMPARTMENTED INFORMATION.—The Director of National Intelligence, subject to the direction of the President, shall—

“(1) establish uniform standards and procedures for the grant of access to sensitive compartmented information to any officer or employee of any agency or department of the United States and to employees of contractors of those agencies or departments;

“(2) ensure the consistent implementation of those standards and procedures throughout such agencies and departments;

“(3) ensure that security clearances granted by individual elements of the intelligence community are recognized by all elements of the intelligence community, and under contracts entered into by those agencies; and

“(4) ensure that the process for investigation and adjudication of an application for access to sensitive compartmented information is performed in the most expeditious manner possible consistent with applicable standards for national security.

“(k) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the President and in a manner consistent with section

207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director of National Intelligence shall oversee the coordination of the relationships between elements of the intelligence community and the intelligence or security services of foreign governments or international organizations on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

Regulations.

“(1) ENHANCED PERSONNEL MANAGEMENT.—(1)(A) The Director of National Intelligence shall, under regulations prescribed by the Director, provide incentives for personnel of elements of the intelligence community to serve—

“(i) on the staff of the Director of National Intelligence;

“(ii) on the staff of the national intelligence centers;

“(iii) on the staff of the National Counterterrorism Center;

and

“(iv) in other positions in support of the intelligence community management functions of the Director.

“(B) Incentives under subparagraph (A) may include financial incentives, bonuses, and such other awards and incentives as the Director considers appropriate.

“(2)(A) Notwithstanding any other provision of law, the personnel of an element of the intelligence community who are assigned or detailed under paragraph (1)(A) to service under the Director of National Intelligence shall be promoted at rates equivalent to or better than personnel of such element who are not so assigned or detailed.

“(B) The Director may prescribe regulations to carry out this section.

“(3)(A) The Director of National Intelligence shall prescribe mechanisms to facilitate the rotation of personnel of the intelligence community through various elements of the intelligence community in the course of their careers in order to facilitate the widest possible understanding by such personnel of the variety of intelligence requirements, methods, users, and capabilities.

“(B) The mechanisms prescribed under subparagraph (A) may include the following:

“(i) The establishment of special occupational categories involving service, over the course of a career, in more than one element of the intelligence community.

“(ii) The provision of rewards for service in positions undertaking analysis and planning of operations involving two or more elements of the intelligence community.

“(iii) The establishment of requirements for education, training, service, and evaluation for service involving more than one element of the intelligence community.

“(C) It is the sense of Congress that the mechanisms prescribed under this subsection should, to the extent practical, seek to duplicate for civilian personnel within the intelligence community the joint officer management policies established by chapter 38 of title 10, United States Code, and the other amendments made by title IV of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433).

“(4)(A) Except as provided in subparagraph (B) and subparagraph (D), this subsection shall not apply with respect to personnel of the elements of the intelligence community who are members of the uniformed services.

“(B) Mechanisms that establish requirements for education and training pursuant to paragraph (3)(B)(iii) may apply with respect to members of the uniformed services who are assigned to an element of the intelligence community funded through the National Intelligence Program, but such mechanisms shall not be inconsistent with personnel policies and education and training requirements otherwise applicable to members of the uniformed services.

“(C) The personnel policies and programs developed and implemented under this subsection with respect to law enforcement officers (as that term is defined in section 5541(3) of title 5, United States Code) shall not affect the ability of law enforcement entities to conduct operations or, through the applicable chain of command, to control the activities of such law enforcement officers.

“(D) Assignment to the Office of the Director of National Intelligence of commissioned officers of the Armed Forces shall be considered a joint-duty assignment for purposes of the joint officer management policies prescribed by chapter 38 of title 10, United States Code, and other provisions of that title.

“(m) ADDITIONAL AUTHORITY WITH RESPECT TO PERSONNEL.—

(1) In addition to the authorities under subsection (f)(3), the Director of National Intelligence may exercise with respect to the personnel of the Office of the Director of National Intelligence any authority of the Director of the Central Intelligence Agency with respect to the personnel of the Central Intelligence Agency under the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), and other applicable provisions of law, as of the date of the enactment of this subsection to the same extent, and subject to the same conditions and limitations, that the Director of the Central Intelligence Agency may exercise such authority with respect to personnel of the Central Intelligence Agency.

“(2) Employees and applicants for employment of the Office of the Director of National Intelligence shall have the same rights and protections under the Office of the Director of National Intelligence as employees of the Central Intelligence Agency have under the Central Intelligence Agency Act of 1949, and other applicable provisions of law, as of the date of the enactment of this subsection.

“(n) ACQUISITION AUTHORITIES.—(1) In carrying out the responsibilities and authorities under this section, the Director of National Intelligence may exercise the acquisition and appropriations authorities referred to in the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) other than the authorities referred to in section 8(b) of that Act (50 U.S.C. 403j(b)).

“(2) For the purpose of the exercise of any authority referred to in paragraph (1), a reference to the head of an agency shall be deemed to be a reference to the Director of National Intelligence or the Principal Deputy Director of National Intelligence.

“(3)(A) Any determination or decision to be made under an authority referred to in paragraph (1) by the head of an agency may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final.

“(B) Except as provided in subparagraph (C), the Director of National Intelligence or the Principal Deputy Director of National Intelligence may, in such official’s discretion, delegate to any officer or other official of the Office of the Director of National Intelligence any authority to make a determination or decision as the head of the agency under an authority referred to in paragraph (1).

“(C) The limitations and conditions set forth in section 3(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c(d)) shall apply to the exercise by the Director of National Intelligence of an authority referred to in paragraph (1).

“(D) Each determination or decision required by an authority referred to in the second sentence of section 3(d) of the Central Intelligence Agency Act of 1949 shall be based upon written findings made by the official making such determination or decision, which findings shall be final and shall be available within the Office of the Director of National Intelligence for a period of at least six years following the date of such determination or decision.

“(o) CONSIDERATION OF VIEWS OF ELEMENTS OF INTELLIGENCE COMMUNITY.—In carrying out the duties and responsibilities under this section, the Director of National Intelligence shall take into account the views of a head of a department containing an element of the intelligence community and of the Director of the Central Intelligence Agency.

“(p) RESPONSIBILITY OF DIRECTOR OF NATIONAL INTELLIGENCE REGARDING NATIONAL INTELLIGENCE PROGRAM BUDGET CONCERNING THE DEPARTMENT OF DEFENSE.—Subject to the direction of the President, the Director of National Intelligence shall, after consultation with the Secretary of Defense, ensure that the National Intelligence Program budgets for the elements of the intelligence community that are within the Department of Defense are adequate to satisfy the national intelligence needs of the Department of Defense, including the needs of the Chairman of the Joint Chiefs of Staff and the commanders of the unified and specified commands, and wherever such elements are performing Government-wide functions, the needs of other Federal departments and agencies.

“(q) ACQUISITIONS OF MAJOR SYSTEMS.—(1) For each intelligence program within the National Intelligence Program for the acquisition of a major system, the Director of National Intelligence shall—

“(A) require the development and implementation of a program management plan that includes cost, schedule, and performance goals and program milestone criteria, except that with respect to Department of Defense programs the Director shall consult with the Secretary of Defense;

“(B) serve as exclusive milestone decision authority, except that with respect to Department of Defense programs the Director shall serve as milestone decision authority jointly with the Secretary of Defense or the designee of the Secretary; and

“(C) periodically—

“(i) review and assess the progress made toward the achievement of the goals and milestones established in such plan; and

“(ii) submit to Congress a report on the results of such review and assessment.

Reports.

President.

“(2) If the Director of National Intelligence and the Secretary of Defense are unable to reach an agreement on a milestone decision under paragraph (1)(B), the President shall resolve the conflict.

“(3) Nothing in this subsection may be construed to limit the authority of the Director of National Intelligence to delegate to any other official any authority to perform the responsibilities of the Director under this subsection.

“(4) In this subsection:

“(A) The term ‘intelligence program’, with respect to the acquisition of a major system, means a program that—

“(i) is carried out to acquire such major system for an element of the intelligence community; and

“(ii) is funded in whole out of amounts available for the National Intelligence Program.

“(B) The term ‘major system’ has the meaning given such term in section 4(9) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 403(9)).

“(r) PERFORMANCE OF COMMON SERVICES.—The Director of National Intelligence shall, in consultation with the heads of departments and agencies of the United States Government containing elements within the intelligence community and with the Director of the Central Intelligence Agency, coordinate the performance by the elements of the intelligence community within the National Intelligence Program of such services as are of common concern to the intelligence community, which services the Director of National Intelligence determines can be more efficiently accomplished in a consolidated manner.

“OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

“SEC. 103. (a) OFFICE OF DIRECTOR OF NATIONAL INTELLIGENCE.—There is an Office of the Director of National Intelligence.

Establishment.
50 USC 403-3.

“(b) FUNCTION.—The function of the Office of the Director of National Intelligence is to assist the Director of National Intelligence in carrying out the duties and responsibilities of the Director under this Act, the National Security Act of 1947 (50 U.S.C. 401 et seq.), and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law.

“(c) COMPOSITION.—The Office of the Director of National Intelligence is composed of the following:

“(1) The Director of National Intelligence.

“(2) The Principal Deputy Director of National Intelligence.

“(3) Any Deputy Director of National Intelligence appointed under section 103A.

“(4) The National Intelligence Council.

“(5) The General Counsel.

“(6) The Civil Liberties Protection Officer.

“(7) The Director of Science and Technology.

“(8) The National Counterintelligence Executive (including the Office of the National Counterintelligence Executive).

“(9) Such other offices and officials as may be established by law or the Director may establish or designate in the Office, including national intelligence centers.

“(d) STAFF.—(1) To assist the Director of National Intelligence in fulfilling the duties and responsibilities of the Director, the Director shall employ and utilize in the Office of the Director of National Intelligence a professional staff having an expertise in matters relating to such duties and responsibilities, and may establish permanent positions and appropriate rates of pay with respect to that staff.

“(2) The staff of the Office of the Director of National Intelligence under paragraph (1) shall include the staff of the Office of the Deputy Director of Central Intelligence for Community Management that is transferred to the Office of the Director of

National Intelligence under section 1091 of the National Security Intelligence Reform Act of 2004.

Effective date.

“(e) LIMITATION ON CO-LOCATION WITH OTHER ELEMENTS OF INTELLIGENCE COMMUNITY.—Commencing as of October 1, 2008, the Office of the Director of National Intelligence may not be co-located with any other element of the intelligence community.

“DEPUTY DIRECTORS OF NATIONAL INTELLIGENCE

President.
Congress.
50 USC 403-3a.

“SEC. 103A. (a) PRINCIPAL DEPUTY DIRECTOR OF NATIONAL INTELLIGENCE.—(1) There is a Principal Deputy Director of National Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

“(2) In the event of a vacancy in the position of Principal Deputy Director of National Intelligence, the Director of National Intelligence shall recommend to the President an individual for appointment as Principal Deputy Director of National Intelligence.

“(3) Any individual nominated for appointment as Principal Deputy Director of National Intelligence shall have extensive national security experience and management expertise.

“(4) The individual serving as Principal Deputy Director of National Intelligence shall not, while so serving, serve in any capacity in any other element of the intelligence community.

“(5) The Principal Deputy Director of National Intelligence shall assist the Director of National Intelligence in carrying out the duties and responsibilities of the Director.

“(6) The Principal Deputy Director of National Intelligence shall act for, and exercise the powers of, the Director of National Intelligence during the absence or disability of the Director of National Intelligence or during a vacancy in the position of Director of National Intelligence.

“(b) DEPUTY DIRECTORS OF NATIONAL INTELLIGENCE.—(1) There may be not more than four Deputy Directors of National Intelligence who shall be appointed by the Director of National Intelligence.

“(2) Each Deputy Director of National Intelligence appointed under this subsection shall have such duties, responsibilities, and authorities as the Director of National Intelligence may assign or are specified by law.

“(c) MILITARY STATUS OF DIRECTOR OF NATIONAL INTELLIGENCE AND PRINCIPAL DEPUTY DIRECTOR OF NATIONAL INTELLIGENCE.—(1) Not more than one of the individuals serving in the positions specified in paragraph (2) may be a commissioned officer of the Armed Forces in active status.

“(2) The positions referred to in this paragraph are the following:

“(A) The Director of National Intelligence.

“(B) The Principal Deputy Director of National Intelligence.

“(3) It is the sense of Congress that, under ordinary circumstances, it is desirable that one of the individuals serving in the positions specified in paragraph (2)—

“(A) be a commissioned officer of the Armed Forces, in active status; or

“(B) have, by training or experience, an appreciation of military intelligence activities and requirements.

“(4) A commissioned officer of the Armed Forces, while serving in a position specified in paragraph (2)—

“(A) shall not be subject to supervision or control by the Secretary of Defense or by any officer or employee of the Department of Defense;

“(B) shall not exercise, by reason of the officer’s status as a commissioned officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law; and

“(C) shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the military department of that officer.

“(5) Except as provided in subparagraph (A) or (B) of paragraph (4), the appointment of an officer of the Armed Forces to a position specified in paragraph (2) shall not affect the status, position, rank, or grade of such officer in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of such status, position, rank, or grade.

“(6) A commissioned officer of the Armed Forces on active duty who is appointed to a position specified in paragraph (2), while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for such position. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the Director of National Intelligence.

“NATIONAL INTELLIGENCE COUNCIL

“SEC. 103B. (a) NATIONAL INTELLIGENCE COUNCIL.—There is a National Intelligence Council.

Establishment.
50 USC 403–3b.

“(b) COMPOSITION.—(1) The National Intelligence Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the Director of National Intelligence.

“(2) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council, or as contractors of the Council or employees of such contractors, to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

Requirements.

“(c) DUTIES AND RESPONSIBILITIES.—(1) The National Intelligence Council shall—

“(A) produce national intelligence estimates for the United States Government, including alternative views held by elements of the intelligence community and other information as specified in paragraph (2);

“(B) evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production; and

“(C) otherwise assist the Director of National Intelligence in carrying out the responsibilities of the Director under section 102A.

“(2) The Director of National Intelligence shall ensure that the Council satisfies the needs of policymakers and other consumers of intelligence.

“(d) SERVICE AS SENIOR INTELLIGENCE ADVISERS.—Within their respective areas of expertise and under the direction of the Director

of National Intelligence, the members of the National Intelligence Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the United States Government.

“(e) **AUTHORITY TO CONTRACT.**—Subject to the direction and control of the Director of National Intelligence, the National Intelligence Council may carry out its responsibilities under this section by contract, including contracts for substantive experts necessary to assist the Council with particular assessments under this section.

“(f) **STAFF.**—The Director of National Intelligence shall make available to the National Intelligence Council such staff as may be necessary to permit the Council to carry out its responsibilities under this section.

“(g) **AVAILABILITY OF COUNCIL AND STAFF.**—(1) The Director of National Intelligence shall take appropriate measures to ensure that the National Intelligence Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence.

“(2) The Council shall be readily accessible to policymaking officials and other appropriate individuals not otherwise associated with the intelligence community.

“(h) **SUPPORT.**—The heads of the elements of the intelligence community shall, as appropriate, furnish such support to the National Intelligence Council, including the preparation of intelligence analyses, as may be required by the Director of National Intelligence.

“(i) **NATIONAL INTELLIGENCE COUNCIL PRODUCT.**—For purposes of this section, the term ‘National Intelligence Council product’ includes a National Intelligence Estimate and any other intelligence community assessment that sets forth the judgment of the intelligence community as a whole on a matter covered by such product.

“GENERAL COUNSEL

President.
Congress.
50 USC 403–3c.

“SEC. 103C. (a) **GENERAL COUNSEL.**—There is a General Counsel of the Office of the Director of National Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

“(b) **PROHIBITION ON DUAL SERVICE AS GENERAL COUNSEL OF ANOTHER AGENCY.**—The individual serving in the position of General Counsel may not, while so serving, also serve as the General Counsel of any other department, agency, or element of the United States Government.

“(c) **SCOPE OF POSITION.**—The General Counsel is the chief legal officer of the Office of the Director of National Intelligence.

“(d) **FUNCTIONS.**—The General Counsel shall perform such functions as the Director of National Intelligence may prescribe.

“CIVIL LIBERTIES PROTECTION OFFICER

Government
organization.
50 USC 403–3d.

“SEC. 103D. (a) **CIVIL LIBERTIES PROTECTION OFFICER.**—(1) Within the Office of the Director of National Intelligence, there is a Civil Liberties Protection Officer who shall be appointed by the Director of National Intelligence.

“(2) The Civil Liberties Protection Officer shall report directly to the Director of National Intelligence.

“(b) **DUTIES.**—The Civil Liberties Protection Officer shall—

“(1) ensure that the protection of civil liberties and privacy is appropriately incorporated in the policies and procedures

developed for and implemented by the Office of the Director of National Intelligence and the elements of the intelligence community within the National Intelligence Program;

“(2) oversee compliance by the Office and the Director of National Intelligence with requirements under the Constitution and all laws, regulations, Executive orders, and implementing guidelines relating to civil liberties and privacy;

“(3) review and assess complaints and other information indicating possible abuses of civil liberties and privacy in the administration of the programs and operations of the Office and the Director of National Intelligence and, as appropriate, investigate any such complaint or information;

“(4) ensure that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

“(5) ensure that personal information contained in a system of records subject to section 552a of title 5, United States Code (popularly referred to as the ‘Privacy Act’), is handled in full compliance with fair information practices as set out in that section;

“(6) conduct privacy impact assessments when appropriate or as required by law; and

“(7) perform such other duties as may be prescribed by the Director of National Intelligence or specified by law.

“(c) USE OF AGENCY INSPECTORS GENERAL.—When appropriate, the Civil Liberties Protection Officer may refer complaints to the Office of Inspector General having responsibility for the affected element of the department or agency of the intelligence community to conduct an investigation under paragraph (3) of subsection (b).

“DIRECTOR OF SCIENCE AND TECHNOLOGY

“SEC. 103E. (a) DIRECTOR OF SCIENCE AND TECHNOLOGY.—There is a Director of Science and Technology within the Office of the Director of National Intelligence who shall be appointed by the Director of National Intelligence.

Government
organization.
50 USC 403-3e.

“(b) REQUIREMENT RELATING TO APPOINTMENT.—An individual appointed as Director of Science and Technology shall have a professional background and experience appropriate for the duties of the Director of Science and Technology.

“(c) DUTIES.—The Director of Science and Technology shall—

“(1) act as the chief representative of the Director of National Intelligence for science and technology;

“(2) chair the Director of National Intelligence Science and Technology Committee under subsection (d);

“(3) assist the Director in formulating a long-term strategy for scientific advances in the field of intelligence;

“(4) assist the Director on the science and technology elements of the budget of the Office of the Director of National Intelligence; and

“(5) perform other such duties as may be prescribed by the Director of National Intelligence or specified by law.

“(d) DIRECTOR OF NATIONAL INTELLIGENCE SCIENCE AND TECHNOLOGY COMMITTEE.—(1) There is within the Office of the Director of Science and Technology a Director of National Intelligence Science and Technology Committee.

Government
organization.

“(2) The Committee shall be composed of the principal science officers of the National Intelligence Program.

“(3) The Committee shall—

“(A) coordinate advances in research and development related to intelligence; and

“(B) perform such other functions as the Director of Science and Technology shall prescribe.

“NATIONAL COUNTERINTELLIGENCE EXECUTIVE

Government
organization.
50 USC 403-3f.

“SEC. 103F. (a) NATIONAL COUNTERINTELLIGENCE EXECUTIVE.—The National Counterintelligence Executive under section 902 of the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107-306; 50 U.S.C. 402b et seq.) is a component of the Office of the Director of National Intelligence.

“(b) DUTIES.—The National Counterintelligence Executive shall perform the duties provided in the Counterintelligence Enhancement Act of 2002 and such other duties as may be prescribed by the Director of National Intelligence or specified by law.

“CENTRAL INTELLIGENCE AGENCY

50 USC 403-4.

“SEC. 104. (a) CENTRAL INTELLIGENCE AGENCY.—There is a Central Intelligence Agency.

“(b) FUNCTION.—The function of the Central Intelligence Agency is to assist the Director of the Central Intelligence Agency in carrying out the responsibilities specified in section 104A(c).

“DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

President.
Congress.
50 USC 403-4a.

“SEC. 104A. (a) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.—There is a Director of the Central Intelligence Agency who shall be appointed by the President, by and with the advice and consent of the Senate.

“(b) SUPERVISION.—The Director of the Central Intelligence Agency shall report to the Director of National Intelligence regarding the activities of the Central Intelligence Agency.

“(c) DUTIES.—The Director of the Central Intelligence Agency shall—

“(1) serve as the head of the Central Intelligence Agency; and

“(2) carry out the responsibilities specified in subsection (d).

“(d) RESPONSIBILITIES.—The Director of the Central Intelligence Agency shall—

“(1) collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

“(2) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

“(3) provide overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other departments, agencies, or elements of the United States Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that appropriate account is taken of the risks

to the United States and those involved in such collection;
and

“(4) perform such other functions and duties related to intelligence affecting the national security as the President or the Director of National Intelligence may direct.

“(e) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—(1) Notwithstanding the provisions of any other law, the Director of the Central Intelligence Agency may, in the discretion of the Director, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director deems the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

“(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.

“(f) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the Director of National Intelligence and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director of the Central Intelligence Agency shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments or international organizations on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.”.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

50 USC 403–4b
note.

(1) the human intelligence officers of the intelligence community have performed admirably and honorably in the face of great personal dangers;

(2) during an extended period of unprecedented investment and improvements in technical collection means, the human intelligence capabilities of the United States have not received the necessary and commensurate priorities;

(3) human intelligence is becoming an increasingly important capability to provide information on the asymmetric threats to the national security of the United States;

(4) the continued development and improvement of a robust and empowered and flexible human intelligence work force is critical to identifying, understanding, and countering the plans and intentions of the adversaries of the United States; and

(5) an increased emphasis on, and resources applied to, enhancing the depth and breadth of human intelligence capabilities of the United States intelligence community must be among the top priorities of the Director of National Intelligence.

(c) TRANSFORMATION OF CENTRAL INTELLIGENCE AGENCY.—The Director of the Central Intelligence Agency shall, in accordance with standards developed by the Director in consultation with the Director of National Intelligence—

50 USC 403–4b.

(1) enhance the analytic, human intelligence, and other capabilities of the Central Intelligence Agency;

(2) develop and maintain an effective language program within the Agency;

(3) emphasize the hiring of personnel of diverse backgrounds for purposes of improving the capabilities of the Agency;

(4) establish and maintain effective relationships between human intelligence and signals intelligence within the Agency at the operational level; and

(5) achieve a more effective balance within the Agency with respect to unilateral operations and liaison operations.

(d) REPORT.—(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Central Intelligence Agency shall submit to the Director of National Intelligence and the congressional intelligence committees a report setting forth the following:

(A) A strategy for improving the conduct of analysis (including strategic analysis) by the Central Intelligence Agency, and the progress of the Agency in implementing that strategy.

(B) A strategy for improving the human intelligence and other capabilities of the Agency, and the progress of the Agency in implementing that strategy.

(2)(A) The information in the report under paragraph (1) on the strategy referred to in paragraph (1)(B) shall—

(i) identify the number and types of personnel required to implement that strategy;

(ii) include a plan for the recruitment, training, equipping, and deployment of such personnel; and

(iii) set forth an estimate of the costs of such activities.

(B) If as of the date of the report under paragraph (1), a proper balance does not exist between unilateral operations and liaison operations, such report shall set forth the steps to be taken to achieve such balance.

SEC. 1012. REVISED DEFINITION OF NATIONAL INTELLIGENCE.

Paragraph (5) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended to read as follows:

“(5) The terms ‘national intelligence’ and ‘intelligence related to national security’ refer to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that—

“(A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and

“(B) that involves—

“(i) threats to the United States, its people, property, or interests;

“(ii) the development, proliferation, or use of weapons of mass destruction; or

“(iii) any other matter bearing on United States national or homeland security.”.

50 USC 403-1
note.

SEC. 1013. JOINT PROCEDURES FOR OPERATIONAL COORDINATION BETWEEN DEPARTMENT OF DEFENSE AND CENTRAL INTELLIGENCE AGENCY.

(a) DEVELOPMENT OF PROCEDURES.—The Director of National Intelligence, in consultation with the Secretary of Defense and the Director of the Central Intelligence Agency, shall develop joint procedures to be used by the Department of Defense and the Central Intelligence Agency to improve the coordination and deconfliction

of operations that involve elements of both the Armed Forces and the Central Intelligence Agency consistent with national security and the protection of human intelligence sources and methods. Those procedures shall, at a minimum, provide the following:

(1) Methods by which the Director of the Central Intelligence Agency and the Secretary of Defense can improve communication and coordination in the planning, execution, and sustenance of operations, including, as a minimum—

(A) information exchange between senior officials of the Central Intelligence Agency and senior officers and officials of the Department of Defense when planning for such an operation commences by either organization; and

(B) exchange of information between the Secretary and the Director of the Central Intelligence Agency to ensure that senior operational officials in both the Department of Defense and the Central Intelligence Agency have knowledge of the existence of the ongoing operations of the other.

(2) When appropriate, in cases where the Department of Defense and the Central Intelligence Agency are conducting separate missions in the same geographical area, a mutual agreement on the tactical and strategic objectives for the region and a clear delineation of operational responsibilities to prevent conflict and duplication of effort.

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of the Act, the Director of National Intelligence shall submit to the congressional defense committees (as defined in section 101 of title 10, United States Code) and the congressional intelligence committees (as defined in section 3(7) of the National Security Act of 1947 (50 U.S.C. 401a(7))) a report describing the procedures established pursuant to subsection (a) and the status of the implementation of those procedures.

SEC. 1014. ROLE OF DIRECTOR OF NATIONAL INTELLIGENCE IN APPOINTMENT OF CERTAIN OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES.

50 USC 403–6.

Section 106 of the National Security Act of 1947 (50 U.S.C. 403–6) is amended by striking all after the heading and inserting the following:

“(a) RECOMMENDATION OF DNI IN CERTAIN APPOINTMENTS.—

(1) In the event of a vacancy in a position referred to in paragraph (2), the Director of National Intelligence shall recommend to the President an individual for nomination to fill the vacancy.

“(2) Paragraph (1) applies to the following positions:

“(A) The Principal Deputy Director of National Intelligence.

“(B) The Director of the Central Intelligence Agency.

Applicability.

“(b) CONCURRENCE OF DNI IN APPOINTMENTS TO POSITIONS IN THE INTELLIGENCE COMMUNITY.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall obtain the concurrence of the Director of National Intelligence before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy. If the Director does not concur in the recommendation, the head of the department or agency concerned may not fill the vacancy or make the recommendation to the President (as the case may be). In the case in which the Director does not concur in such a recommendation, the Director and the head of the department

or agency concerned may advise the President directly of the intention to withhold concurrence or to make a recommendation, as the case may be.

Applicability.

“(2) Paragraph (1) applies to the following positions:

“(A) The Director of the National Security Agency.

“(B) The Director of the National Reconnaissance Office.

“(C) The Director of the National Geospatial-Intelligence Agency.

“(D) The Assistant Secretary of State for Intelligence and Research.

“(E) The Director of the Office of Intelligence of the Department of Energy.

“(F) The Director of the Office of Counterintelligence of the Department of Energy.

“(G) The Assistant Secretary for Intelligence and Analysis of the Department of the Treasury.

“(H) The Executive Assistant Director for Intelligence of the Federal Bureau of Investigation or any successor to that position.

“(I) The Assistant Secretary of Homeland Security for Information Analysis.

“(c) CONSULTATION WITH DNI IN CERTAIN POSITIONS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall consult with the Director of National Intelligence before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy.

Applicability.

“(2) Paragraph (1) applies to the following positions:

“(A) The Director of the Defense Intelligence Agency.

“(B) The Assistant Commandant of the Coast Guard for Intelligence.”.

SEC. 1015. EXECUTIVE SCHEDULE MATTERS.

(a) EXECUTIVE SCHEDULE LEVEL I.—Section 5312 of title 5, United States Code, is amended by adding at the end the following new item:

“Director of National Intelligence.”.

(b) EXECUTIVE SCHEDULE LEVEL II.—Section 5313 of title 5, United States Code, is amended by adding at the end the following new items:

“Principal Deputy Director of National Intelligence.

“Director of the National Counterterrorism Center.

“Director of the National Counter Proliferation Center.”.

(c) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(1) by striking the item relating to the Assistant Directors of Central Intelligence; and

(2) by adding at the end the following new item:

“General Counsel of the Office of the National Intelligence Director.”.

6 USC 485.

SEC. 1016. INFORMATION SHARING.

(a) DEFINITIONS.—In this section:

(1) INFORMATION SHARING COUNCIL.—The term “Information Sharing Council” means the Information Systems Council established by Executive Order 13356, or any successor body designated by the President, and referred to under subsection (g).

(2) INFORMATION SHARING ENVIRONMENT; ISE.—The terms “information sharing environment” and “ISE” mean an approach that facilitates the sharing of terrorism information, which approach may include any methods determined necessary and appropriate for carrying out this section.

(3) PROGRAM MANAGER.—The term “program manager” means the program manager designated under subsection (f).

(4) TERRORISM INFORMATION.—The term “terrorism information” means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities relating to—

(A) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism;

(B) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations;

(C) communications of or by such groups or individuals;

or

(D) groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

(b) INFORMATION SHARING ENVIRONMENT.—

President.

(1) ESTABLISHMENT.—The President shall—

(A) create an information sharing environment for the sharing of terrorism information in a manner consistent with national security and with applicable legal standards relating to privacy and civil liberties;

(B) designate the organizational and management structures that will be used to operate and manage the ISE; and

(C) determine and enforce the policies, directives, and rules that will govern the content and usage of the ISE.

(2) ATTRIBUTES.—The President shall, through the structures described in subparagraphs (B) and (C) of paragraph (1), ensure that the ISE provides and facilitates the means for sharing terrorism information among all appropriate Federal, State, local, and tribal entities, and the private sector through the use of policy guidelines and technologies. The President shall, to the greatest extent practicable, ensure that the ISE provides the functional equivalent of, or otherwise supports, a decentralized, distributed, and coordinated environment that—

(A) connects existing systems, where appropriate, provides no single points of failure, and allows users to share information among agencies, between levels of government, and, as appropriate, with the private sector;

(B) ensures direct and continuous online electronic access to information;

(C) facilitates the availability of information in a form and manner that facilitates its use in analysis, investigations and operations;

(D) builds upon existing systems capabilities currently in use across the Government;

(E) employs an information access management approach that controls access to data rather than just systems and networks, without sacrificing security;

(F) facilitates the sharing of information at and across all levels of security;

(G) provides directory services, or the functional equivalent, for locating people and information;

(H) incorporates protections for individuals' privacy and civil liberties; and

(I) incorporates strong mechanisms to enhance accountability and facilitate oversight, including audits, authentication, and access controls.

(c) PRELIMINARY REPORT.—Not later than 180 days after the date of the enactment of this Act, the program manager shall, in consultation with the Information Sharing Council—

(1) submit to the President and Congress a description of the technological, legal, and policy issues presented by the creation of the ISE, and the way in which these issues will be addressed;

Electronic
directory.

(2) establish an initial capability to provide electronic directory services, or the functional equivalent, to assist in locating in the Federal Government intelligence and terrorism information and people with relevant knowledge about intelligence and terrorism information; and

(3) conduct a review of relevant current Federal agency capabilities, databases, and systems for sharing information.

Deadline.
President.

(d) GUIDELINES AND REQUIREMENTS.—As soon as possible, but in no event later than 270 days after the date of the enactment of this Act, the President shall—

(1) leverage all ongoing efforts consistent with establishing the ISE and issue guidelines for acquiring, accessing, sharing, and using information, including guidelines to ensure that information is provided in its most shareable form, such as by using tearlines to separate out data from the sources and methods by which the data are obtained;

(2) in consultation with the Privacy and Civil Liberties Oversight Board established under section 1061, issue guidelines that—

(A) protect privacy and civil liberties in the development and use of the ISE; and

(B) shall be made public, unless nondisclosure is clearly necessary to protect national security; and

(3) require the heads of Federal departments and agencies to promote a culture of information sharing by—

(A) reducing disincentives to information sharing, including over-classification of information and unnecessary requirements for originator approval, consistent with applicable laws and regulations; and

(B) providing affirmative incentives for information sharing.

President.

(e) IMPLEMENTATION PLAN REPORT.—Not later than one year after the date of the enactment of this Act, the President shall, with the assistance of the program manager, submit to Congress a report containing an implementation plan for the ISE. The report shall include the following:

(1) A description of the functions, capabilities, resources, and conceptual design of the ISE, including standards.

(2) A description of the impact on enterprise architectures of participating agencies.

(3) A budget estimate that identifies the incremental costs associated with designing, testing, integrating, deploying, and operating the ISE.

(4) A project plan for designing, testing, integrating, deploying, and operating the ISE.

(5) The policies and directives referred to in subsection (b)(1)(C), as well as the metrics and enforcement mechanisms that will be utilized.

(6) Objective, systemwide performance measures to enable the assessment of progress toward achieving the full implementation of the ISE.

(7) A description of the training requirements needed to ensure that the ISE will be adequately implemented and properly utilized.

(8) A description of the means by which privacy and civil liberties will be protected in the design and operation of the ISE.

(9) The recommendations of the program manager, in consultation with the Information Sharing Council, regarding whether, and under what conditions, the ISE should be expanded to include other intelligence information.

(10) A delineation of the roles of the Federal departments and agencies that will participate in the ISE, including an identification of the agencies that will deliver the infrastructure needed to operate and manage the ISE (as distinct from individual department or agency components that are part of the ISE), with such delineation of roles to be consistent with—

(A) the authority of the Director of National Intelligence under this title, and the amendments made by this title, to set standards for information sharing throughout the intelligence community; and

(B) the authority of the Secretary of Homeland Security and the Attorney General, and the role of the Department of Homeland Security and the Attorney General, in coordinating with State, local, and tribal officials and the private sector.

(11) The recommendations of the program manager, in consultation with the Information Sharing Council, for a future management structure for the ISE, including whether the position of program manager should continue to remain in existence.

(f) PROGRAM MANAGER.—

(1) DESIGNATION.—Not later than 120 days after the date of the enactment of this Act, with notification to Congress, the President shall designate an individual as the program manager responsible for information sharing across the Federal Government. The individual designated as the program manager shall serve as program manager during the two-year period beginning on the date of designation under this paragraph unless sooner removed from service and replaced by the President (at the President's sole discretion). The program manager shall have and exercise governmentwide authority.

Deadline.
President.
Notification.

(2) DUTIES AND RESPONSIBILITIES.—

(A) IN GENERAL.—The program manager shall, in consultation with the Information Sharing Council—

(i) plan for and oversee the implementation of, and manage, the ISE;

(ii) assist in the development of policies, procedures, guidelines, rules, and standards as appropriate to foster the development and proper operation of the ISE; and

(iii) assist, monitor, and assess the implementation of the ISE by Federal departments and agencies to ensure adequate progress, technological consistency and policy compliance; and regularly report the findings to Congress.

(B) CONTENT OF POLICIES, PROCEDURES, GUIDELINES, RULES, AND STANDARDS.—The policies, procedures, guidelines, rules, and standards under subparagraph (A)(ii) shall—

(i) take into account the varying missions and security requirements of agencies participating in the ISE;

(ii) address development, implementation, and oversight of technical standards and requirements;

(iii) take into account ongoing and planned efforts that support development, implementation and management of the ISE;

(iv) address and facilitate information sharing between and among departments and agencies of the intelligence community, the Department of Defense, the homeland security community and the law enforcement community;

(v) address and facilitate information sharing between Federal departments and agencies and State, tribal, and local governments;

(vi) address and facilitate, as appropriate, information sharing between Federal departments and agencies and the private sector;

(vii) address and facilitate, as appropriate, information sharing between Federal departments and agencies with foreign partners and allies; and

(viii) ensure the protection of privacy and civil liberties.

(g) INFORMATION SHARING COUNCIL.—

(1) ESTABLISHMENT.—There is established an Information Sharing Council that shall assist the President and the program manager in their duties under this section. The Information Sharing Council shall serve during the two-year period beginning on the date of the initial designation of the program manager by the President under subsection (f)(1), unless sooner removed from service and replaced by the President (at the sole discretion of the President) with a successor body.

(2) SPECIFIC DUTIES.—In assisting the President and the program manager in their duties under this section, the Information Sharing Council shall—

(A) advise the President and the program manager in developing policies, procedures, guidelines, roles, and standards necessary to establish, implement, and maintain the ISE;

(B) work to ensure coordination among the Federal departments and agencies participating in the ISE in the

establishment, implementation, and maintenance of the ISE;

(C) identify and, as appropriate, recommend the consolidation and elimination of current programs, systems, and processes used by Federal departments and agencies to share information, and recommend, as appropriate, the redirection of existing resources to support the ISE;

(D) identify gaps, if any, between existing technologies, programs and systems used by Federal departments and agencies to share information and the parameters of the proposed information sharing environment;

(E) recommend solutions to address any gaps identified under subparagraph (D);

(F) recommend means by which the ISE can be extended to allow interchange of information between Federal departments and agencies and appropriate authorities of State and local governments; and

(G) recommend whether or not, and by which means, the ISE should be expanded so as to allow future expansion encompassing other relevant categories of information.

(3) CONSULTATION.—In performing its duties, the Information Sharing Council shall consider input from persons and entities outside the Federal Government having significant experience and expertise in policy, technical matters, and operational matters relating to the ISE.

(4) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Information Sharing Council shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

(h) PERFORMANCE MANAGEMENT REPORTS.—

(1) IN GENERAL.—Not later than two years after the date of the enactment of this Act, and annually thereafter, the President shall submit to Congress a report on the state of the ISE and of information sharing across the Federal Government.

(2) CONTENT.—Each report under this subsection shall include—

(A) a progress report on the extent to which the ISE has been implemented, including how the ISE has fared on the performance measures and whether the performance goals set in the preceding year have been met;

(B) objective system-wide performance goals for the following year;

(C) an accounting of how much was spent on the ISE in the preceding year;

(D) actions taken to ensure that procurement of and investments in systems and technology are consistent with the implementation plan for the ISE;

(E) the extent to which all terrorism watch lists are available for combined searching in real time through the ISE and whether there are consistent standards for placing individuals on, and removing individuals from, the watch lists, including the availability of processes for correcting errors;

(F) the extent to which State, tribal, and local officials are participating in the ISE;

(G) the extent to which private sector data, including information from owners and operators of critical infrastructure, is incorporated in the ISE, and the extent to which individuals and entities outside the government are receiving information through the ISE;

(H) the measures taken by the Federal government to ensure the accuracy of information in the ISE, in particular the accuracy of information about individuals;

(I) an assessment of the privacy and civil liberties protections of the ISE, including actions taken in the preceding year to implement or enforce privacy and civil liberties protections; and

(J) an assessment of the security protections used in the ISE.

(i) **AGENCY RESPONSIBILITIES.**—The head of each department or agency that possesses or uses intelligence or terrorism information, operates a system in the ISE, or otherwise participates (or expects to participate) in the ISE shall—

(1) ensure full department or agency compliance with information sharing policies, procedures, guidelines, rules, and standards established under subsections (b) and (f);

(2) ensure the provision of adequate resources for systems and activities supporting operation of and participation in the ISE;

(3) ensure full department or agency cooperation in the development of the ISE to implement governmentwide information sharing; and

(4) submit, at the request of the President or the program manager, any reports on the implementation of the requirements of the ISE within such department or agency.

(j) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$20,000,000 for each of fiscal years 2005 and 2006.

50 USC 403–1
note.

Deadline.
Establishment.
Guidelines.

SEC. 1017. ALTERNATIVE ANALYSIS OF INTELLIGENCE BY THE INTELLIGENCE COMMUNITY.

(a) **IN GENERAL.**—Not later than 180 days after the effective date of this Act, the Director of National Intelligence shall establish a process and assign an individual or entity the responsibility for ensuring that, as appropriate, elements of the intelligence community conduct alternative analysis (commonly referred to as “red-team analysis”) of the information and conclusions in intelligence products.

(b) **REPORT.**—Not later than 270 days after the effective date of this Act, the Director of National Intelligence shall provide a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee of the House of Representatives on the implementation of subsection (a).

50 USC 403 note.

SEC. 1018. PRESIDENTIAL GUIDELINES ON IMPLEMENTATION AND PRESERVATION OF AUTHORITIES.

The President shall issue guidelines to ensure the effective implementation and execution within the executive branch of the authorities granted to the Director of National Intelligence by this title and the amendments made by this title, in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments of the United States Government concerning such departments, including, but not limited to:

(1) the authority of the Director of the Office of Management and Budget; and

(2) the authority of the principal officers of the executive departments as heads of their respective departments, including, but not limited to, under—

(A) section 199 of the Revised Statutes (22 U.S.C. 2651);

(B) title II of the Department of Energy Organization Act (42 U.S.C. 7131 et seq.);

(C) the State Department Basic Authorities Act of 1956;

(D) section 102(a) of the Homeland Security Act of 2002 (6 U.S.C. 112(a)); and

(E) sections 301 of title 5, 113(b) and 162(b) of title 10, 503 of title 28, and 301(b) of title 31, United States Code.

SEC. 1019. ASSIGNMENT OF RESPONSIBILITIES RELATING TO ANALYTIC INTEGRITY.

50 USC 403–1a.

(a) **ASSIGNMENT OF RESPONSIBILITIES.**—For purposes of carrying out section 102A(h) of the National Security Act of 1947 (as added by section 1011(a)), the Director of National Intelligence shall, not later than 180 days after the date of the enactment of this Act, assign an individual or entity to be responsible for ensuring that finished intelligence products produced by any element or elements of the intelligence community are timely, objective, independent of political considerations, based upon all sources of available intelligence, and employ the standards of proper analytic tradecraft.

Deadline.

(b) **RESPONSIBILITIES.**—(1) The individual or entity assigned responsibility under subsection (a)—

(A) may be responsible for general oversight and management of analysis and production, but may not be directly responsible for, or involved in, the specific production of any finished intelligence product;

(B) shall perform, on a regular basis, detailed reviews of finished intelligence product or other analytic products by an element or elements of the intelligence community covering a particular topic or subject matter;

(C) shall be responsible for identifying on an annual basis functional or topical areas of analysis for specific review under subparagraph (B); and

(D) upon completion of any review under subparagraph (B), may draft lessons learned, identify best practices, or make recommendations for improvement to the analytic tradecraft employed in the production of the reviewed product or products.

(2) Each review under paragraph (1)(B) should—

(A) include whether the product or products concerned were based on all sources of available intelligence, properly describe the quality and reliability of underlying sources, properly caveat and express uncertainties or confidence in analytic judgments, properly distinguish between underlying intelligence and the assumptions and judgments of analysts, and incorporate, where appropriate, alternative analyses; and

(B) ensure that the analytic methodologies, tradecraft, and practices used by the element or elements concerned in the

production of the product or products concerned meet the standards set forth in subsection (a).

(3) Information drafted under paragraph (1)(D) should, as appropriate, be included in analysis teaching modules and case studies for use throughout the intelligence community.

(c) ANNUAL REPORTS.—Not later than December 1 each year, the Director of National Intelligence shall submit to the congressional intelligence committees, the heads of the relevant elements of the intelligence community, and the heads of analytic training departments a report containing a description, and the associated findings, of each review under subsection (b)(1)(B) during such year.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

50 USC 403-1a
note.
Deadline.

SEC. 1020. SAFEGUARD OF OBJECTIVITY IN INTELLIGENCE ANALYSIS.

(a) IN GENERAL.—Not later than 180 days after the effective date of this Act, the Director of National Intelligence shall identify an individual within the Office of the Director of National Intelligence who shall be available to analysts within the Office of the Director of National Intelligence to counsel, conduct arbitration, offer recommendations, and, as appropriate, initiate inquiries into real or perceived problems of analytic tradecraft or politicization, biased reporting, or lack of objectivity in intelligence analysis.

(b) REPORT.—Not later than 270 days after the effective date of this Act, the Director of National Intelligence shall provide a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on the implementation of subsection (a).

Subtitle B—National Counterterrorism Center, National Counter Proliferation Center, and National Intelligence Centers

SEC. 1021. NATIONAL COUNTERTERRORISM CENTER.

Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by adding at the end the following new section:

“NATIONAL COUNTERTERRORISM CENTER

50 USC 404o.

“SEC. 119. (a) ESTABLISHMENT OF CENTER.—There is within the Office of the Director of National Intelligence a National Counterterrorism Center.

President.
Congress.

“(b) DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—(1) There is a Director of the National Counterterrorism Center, who shall be the head of the National Counterterrorism Center, and who shall be appointed by the President, by and with the advice and consent of the Senate.

“(2) The Director of the National Counterterrorism Center may not simultaneously serve in any other capacity in the executive branch.

“(c) REPORTING.—(1) The Director of the National Counterterrorism Center shall report to the Director of National Intelligence with respect to matters described in paragraph (2) and the President with respect to matters described in paragraph (3).

“(2) The matters described in this paragraph are as follows:

“(A) The budget and programs of the National Counterterrorism Center.

“(B) The activities of the Directorate of Intelligence of the National Counterterrorism Center under subsection (h).

“(C) The conduct of intelligence operations implemented by other elements of the intelligence community; and

“(3) The matters described in this paragraph are the planning and progress of joint counterterrorism operations (other than intelligence operations).”.

“(d) PRIMARY MISSIONS.—The primary missions of the National Counterterrorism Center shall be as follows:

“(1) To serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism.

“(2) To conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement activities within and among agencies.

“(3) To assign roles and responsibilities as part of its strategic operational planning duties to lead Departments or agencies, as appropriate, for counterterrorism activities that are consistent with applicable law and that support counterterrorism strategic operational plans, but shall not direct the execution of any resulting operations.

“(4) To ensure that agencies, as appropriate, have access to and receive all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis.

“(5) To ensure that such agencies have access to and receive intelligence needed to accomplish their assigned activities.

“(6) To serve as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support.

“(e) DOMESTIC COUNTERTERRORISM INTELLIGENCE.—(1) The Center may, consistent with applicable law, the direction of the President, and the guidelines referred to in section 102A(b), receive intelligence pertaining exclusively to domestic counterterrorism from any Federal, State, or local government or other source necessary to fulfill its responsibilities and retain and disseminate such intelligence.

“(2) Any agency authorized to conduct counterterrorism activities may request information from the Center to assist it in its

responsibilities, consistent with applicable law and the guidelines referred to in section 102A(b).

“(f) DUTIES AND RESPONSIBILITIES OF DIRECTOR.—(1) The Director of the National Counterterrorism Center shall—

“(A) serve as the principal adviser to the Director of National Intelligence on intelligence operations relating to counterterrorism;

“(B) provide strategic operational plans for the civilian and military counterterrorism efforts of the United States Government and for the effective integration of counterterrorism intelligence and operations across agency boundaries, both inside and outside the United States;

“(C) advise the Director of National Intelligence on the extent to which the counterterrorism program recommendations and budget proposals of the departments, agencies, and elements of the United States Government conform to the priorities established by the President;

“(D) disseminate terrorism information, including current terrorism threat analysis, to the President, the Vice President, the Secretaries of State, Defense, and Homeland Security, the Attorney General, the Director of the Central Intelligence Agency, and other officials of the executive branch as appropriate, and to the appropriate committees of Congress;

“(E) support the Department of Justice and the Department of Homeland Security, and other appropriate agencies, in fulfillment of their responsibilities to disseminate terrorism information, consistent with applicable law, guidelines referred to in section 102A(b), Executive orders and other Presidential guidance, to State and local government officials, and other entities, and coordinate dissemination of terrorism information to foreign governments as approved by the Director of National Intelligence;

“(F) develop a strategy for combining terrorist travel intelligence operations and law enforcement planning and operations into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility;

“(G) have primary responsibility within the United States Government for conducting net assessments of terrorist threats;

“(H) consistent with priorities approved by the President, assist the Director of National Intelligence in establishing requirements for the intelligence community for the collection of terrorism information; and

“(I) perform such other duties as the Director of National Intelligence may prescribe or are prescribed by law.

“(2) Nothing in paragraph (1)(G) shall limit the authority of the departments and agencies of the United States to conduct net assessments.

“(g) LIMITATION.—The Director of the National Counterterrorism Center may not direct the execution of counterterrorism operations.

“(h) RESOLUTION OF DISPUTES.—The Director of National Intelligence shall resolve disagreements between the National Counterterrorism Center and the head of a department, agency, or element of the United States Government on designations, assignments, plans, or responsibilities under this section. The head of such a department, agency, or element may appeal the resolution

of the disagreement by the Director of National Intelligence to the President.

“(i) **DIRECTORATE OF INTELLIGENCE.**—The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Intelligence which shall have primary responsibility within the United States Government for analysis of terrorism and terrorist organizations (except for purely domestic terrorism and domestic terrorist organizations) from all sources of intelligence, whether collected inside or outside the United States.

Establishment.

“(j) **DIRECTORATE OF STRATEGIC OPERATIONAL PLANNING.**—(1) The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Strategic Operational Planning which shall provide strategic operational plans for counterterrorism operations conducted by the United States Government.

Establishment.

“(2) Strategic operational planning shall include the mission, objectives to be achieved, tasks to be performed, interagency coordination of operational activities, and the assignment of roles and responsibilities.

“(3) The Director of the National Counterterrorism Center shall monitor the implementation of strategic operational plans, and shall obtain information from each element of the intelligence community, and from each other department, agency, or element of the United States Government relevant for monitoring the progress of such entity in implementing such plans.”.

SEC. 1022. NATIONAL COUNTER PROLIFERATION CENTER.

Title I of the National Security Act of 1947, as amended by section 1021 of this Act, is further amended by adding at the end the following new section:

“NATIONAL COUNTER PROLIFERATION CENTER

“**SEC. 119A. (a) ESTABLISHMENT.**—Not later than 18 months after the date of the enactment of the National Security Intelligence Reform Act of 2004, the President shall establish a National Counter Proliferation Center, taking into account all appropriate government tools to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies.

Deadline.
President.
50 USC 404o–1.

“(b) **MISSIONS AND OBJECTIVES.**—In establishing the National Counter Proliferation Center, the President shall address the following missions and objectives to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies:

“(1) Establishing a primary organization within the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States pertaining to proliferation.

“(2) Ensuring that appropriate agencies have full access to and receive all-source intelligence support needed to execute their counter proliferation plans or activities, and perform independent, alternative analyses.

“(3) Establishing a central repository on known and suspected proliferation activities, including the goals, strategies, capabilities, networks, and any individuals, groups, or entities engaged in proliferation.

“(4) Disseminating proliferation information, including proliferation threats and analyses, to the President, to the appropriate departments and agencies, and to the appropriate committees of Congress.

“(5) Conducting net assessments and warnings about the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies.

“(6) Coordinating counter proliferation plans and activities of the various departments and agencies of the United States Government to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies.

“(7) Conducting strategic operational counter proliferation planning for the United States Government to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies.

“(c) NATIONAL SECURITY WAIVER.—The President may waive the requirements of this section, and any parts thereof, if the President determines that such requirements do not materially improve the ability of the United States Government to prevent and halt the proliferation of weapons of mass destruction, their delivery systems, and related materials and technologies. Such waiver shall be made in writing to Congress and shall include a description of how the missions and objectives in subsection (b) are being met.

President.

“(d) REPORT TO CONGRESS.—(1) Not later than nine months after the implementation of this Act, the President shall submit to Congress, in classified form if necessary, the findings and recommendations of the President’s Commission on Weapons of Mass Destruction established by Executive Order in February 2004, together with the views of the President regarding the establishment of a National Counter Proliferation Center.

“(2) If the President decides not to exercise the waiver authority granted by subsection (c), the President shall submit to Congress from time to time updates and plans regarding the establishment of a National Counter Proliferation Center.

“(e) SENSE OF CONGRESS.—It is the sense of Congress that a central feature of counter proliferation activities, consistent with the President’s Proliferation Security Initiative, should include the physical interdiction, by air, sea, or land, of weapons of mass destruction, their delivery systems, and related materials and technologies, and enhanced law enforcement activities to identify and disrupt proliferation networks, activities, organizations, and persons.”.

SEC. 1023. NATIONAL INTELLIGENCE CENTERS.

Title I of the National Security Act of 1947, as amended by section 1022 of this Act, is further amended by adding at the end the following new section:

“NATIONAL INTELLIGENCE CENTERS

50 USC 404o-2.

“SEC. 119B. (a) AUTHORITY TO ESTABLISH.—The Director of National Intelligence may establish one or more national intelligence centers to address intelligence priorities, including, but not limited to, regional issues.

“(b) RESOURCES OF DIRECTORS OF CENTERS.—(1) The Director of National Intelligence shall ensure that the head of each national

intelligence center under subsection (a) has appropriate authority, direction, and control of such center, and of the personnel assigned to such center, to carry out the assigned mission of such center.

“(2) The Director of National Intelligence shall ensure that each national intelligence center has appropriate personnel to accomplish effectively the mission of such center.

“(c) INFORMATION SHARING.—The Director of National Intelligence shall, to the extent appropriate and practicable, ensure that each national intelligence center under subsection (a) and the other elements of the intelligence community share information in order to facilitate the mission of such center.

“(d) MISSION OF CENTERS.—Pursuant to the direction of the Director of National Intelligence, each national intelligence center under subsection (a) may, in the area of intelligence responsibility assigned to such center—

“(1) have primary responsibility for providing all-source analysis of intelligence based upon intelligence gathered both domestically and abroad;

“(2) have primary responsibility for identifying and proposing to the Director of National Intelligence intelligence collection and analysis and production requirements; and

“(3) perform such other duties as the Director of National Intelligence shall specify.

“(e) REVIEW AND MODIFICATION OF CENTERS.—The Director of National Intelligence shall determine on a regular basis whether—

“(1) the area of intelligence responsibility assigned to each national intelligence center under subsection (a) continues to meet appropriate intelligence priorities; and

“(2) the staffing and management of such center remains appropriate for the accomplishment of the mission of such center.

“(f) TERMINATION.—The Director of National Intelligence may terminate any national intelligence center under subsection (a).

“(g) SEPARATE BUDGET ACCOUNT.—The Director of National Intelligence shall, as appropriate, include in the National Intelligence Program budget a separate line item for each national intelligence center under subsection (a).”.

Subtitle C—Joint Intelligence Community Council

SEC. 1031. JOINT INTELLIGENCE COMMUNITY COUNCIL.

Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 101 the following new section:

“JOINT INTELLIGENCE COMMUNITY COUNCIL

“SEC. 101A. (a) JOINT INTELLIGENCE COMMUNITY COUNCIL.—There is a Joint Intelligence Community Council.

50 USC 402–1.
Establishment.

“(b) MEMBERSHIP.—The Joint Intelligence Community Council shall consist of the following:

“(1) The Director of National Intelligence, who shall chair the Council.

“(2) The Secretary of State.

“(3) The Secretary of the Treasury.

“(4) The Secretary of Defense.

“(5) The Attorney General.

“(6) The Secretary of Energy.

“(7) The Secretary of Homeland Security.

“(8) Such other officers of the United States Government as the President may designate from time to time.

“(c) FUNCTIONS.—The Joint Intelligence Community Council shall assist the Director of National Intelligence in developing and implementing a joint, unified national intelligence effort to protect national security by—

“(1) advising the Director on establishing requirements, developing budgets, financial management, and monitoring and evaluating the performance of the intelligence community, and on such other matters as the Director may request; and

“(2) ensuring the timely execution of programs, policies, and directives established or developed by the Director.

“(d) MEETINGS.—The Director of National Intelligence shall convene regular meetings of the Joint Intelligence Community Council.

“(e) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) A member of the Joint Intelligence Community Council (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Director of National Intelligence to the President or the National Security Council, in the role of the Chairman as Chairman of the Joint Intelligence Community Council. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time the Chairman presents the advice of the Chairman to the President or the National Security Council, as the case may be.

Procedures.

“(2) The Chairman shall establish procedures to ensure that the presentation of the advice of the Chairman to the President or the National Security Council is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Council.

“(f) RECOMMENDATIONS TO CONGRESS.—Any member of the Joint Intelligence Community Council may make such recommendations to Congress relating to the intelligence community as such member considers appropriate.”.

Subtitle D—Improvement of Education for the Intelligence Community

50 USC 403–1b.

SEC. 1041. ADDITIONAL EDUCATION AND TRAINING REQUIREMENTS.

(a) FINDINGS.—Congress makes the following findings:

(1) Foreign language education is essential for the development of a highly-skilled workforce for the intelligence community.

(2) Since September 11, 2001, the need for language proficiency levels to meet required national security functions has been raised, and the ability to comprehend and articulate technical and scientific information in foreign languages has become critical.

(b) LINGUISTIC REQUIREMENTS.—(1) The Director of National Intelligence shall—

(A) identify the linguistic requirements for the Office of the Director of National Intelligence;

(B) identify specific requirements for the range of linguistic skills necessary for the intelligence community, including proficiency in scientific and technical vocabularies of critical foreign languages; and

(C) develop a comprehensive plan for the Office to meet such requirements through the education, recruitment, and training of linguists.

(2) In carrying out activities under paragraph (1), the Director shall take into account education grant programs of the Department of Defense and the Department of Education that are in existence as of the date of the enactment of this Act.

(3) Not later than one year after the date of the enactment of this Act, and annually thereafter, the Director shall submit to Congress a report on the requirements identified under paragraph (1), including the success of the Office of the Director of National Intelligence in meeting such requirements. Each report shall notify Congress of any additional resources determined by the Director to be required to meet such requirements.

Deadline.
Reports.

Notification.

(4) Each report under paragraph (3) shall be in unclassified form, but may include a classified annex.

(c) **PROFESSIONAL INTELLIGENCE TRAINING.**—The Director of National Intelligence shall require the head of each element and component within the Office of the Director of National Intelligence who has responsibility for professional intelligence training to periodically review and revise the curriculum for the professional intelligence training of the senior and intermediate level personnel of such element or component in order to—

(1) strengthen the focus of such curriculum on the integration of intelligence collection and analysis throughout the Office; and

(2) prepare such personnel for duty with other departments, agencies, and elements of the intelligence community.

SEC. 1042. CROSS-DISCIPLINARY EDUCATION AND TRAINING.

Title X of the National Security Act of 1947 (50 U.S.C. 441g) is amended by adding at the end the following new section:

“FRAMEWORK FOR CROSS-DISCIPLINARY EDUCATION AND TRAINING

“SEC. 1002. The Director of National Intelligence shall establish an integrated framework that brings together the educational components of the intelligence community in order to promote a more effective and productive intelligence community through cross-disciplinary education and joint training.”.

50 USC 441g–1.

SEC. 1043. INTELLIGENCE COMMUNITY SCHOLARSHIP PROGRAM.

Title X of the National Security Act of 1947, as amended by section 1042 of this Act, is further amended by adding at the end the following new section:

“INTELLIGENCE COMMUNITY SCHOLARSHIP PROGRAM

“SEC. 1003. (a) **ESTABLISHMENT.**—

50 USC 441g–2.

“(1) **IN GENERAL.**—The Director of National Intelligence, in consultation with the head of each agency of the intelligence community, shall establish a scholarship program (to be known as the ‘Intelligence Community Scholarship Program’) to award

scholarships to individuals that is designed to recruit and prepare students for civilian careers in the intelligence community to meet the critical needs of the intelligence community agencies.

“(2) SELECTION OF RECIPIENTS.—

“(A) MERIT AND AGENCY NEEDS.—Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit and the needs of the agency.

“(B) DEMONSTRATED COMMITMENT.—Individuals selected under this section shall have a demonstrated commitment to the field of study for which the scholarship is awarded.

“(3) CONTRACTUAL AGREEMENTS.—To carry out the Program the head of each agency shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the agency, for the period described in subsection (g)(1), in positions needed by the agency and for which the individuals are qualified, in exchange for receiving a scholarship.

“(b) ELIGIBILITY.—In order to be eligible to participate in the Program, an individual shall—

“(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education and be pursuing or intend to pursue undergraduate or graduate education in an academic field or discipline described in the list made available under subsection (d);

“(2) be a United States citizen; and

“(3) at the time of the initial scholarship award, not be an employee (as defined under section 2105 of title 5, United States Code).

“(c) APPLICATION.—An individual seeking a scholarship under this section shall submit an application to the Director of National Intelligence at such time, in such manner, and containing such information, agreements, or assurances as the Director may require.

“(d) PROGRAMS AND FIELDS OF STUDY.—The Director of National Intelligence shall—

“(1) make publicly available a list of academic programs and fields of study for which scholarships under the Program may be used; and

“(2) update the list as necessary.

“(e) SCHOLARSHIPS.—

“(1) IN GENERAL.—The Director of National Intelligence may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Director, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

“(2) LIMITATION ON YEARS.—An individual may not receive a scholarship under this section for more than 4 academic years, unless the Director of National Intelligence grants a waiver.

“(3) STUDENT RESPONSIBILITIES.—Scholarship recipients shall maintain satisfactory academic progress.

“(4) AMOUNT.—The dollar amount of a scholarship under this section for an academic year shall be determined under

regulations issued by the Director of National Intelligence, but shall in no case exceed the cost of tuition, fees, and other authorized expenses as established by the Director.

“(5) USE OF SCHOLARSHIPS.—A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Director of National Intelligence by regulation.

“(6) PAYMENT TO INSTITUTION OF HIGHER EDUCATION.—The Director of National Intelligence may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

“(f) SPECIAL CONSIDERATION FOR CURRENT EMPLOYEES.—

“(1) SET ASIDE OF SCHOLARSHIPS.—Notwithstanding paragraphs (1) and (3) of subsection (b), 10 percent of the scholarships awarded under this section shall be set aside for individuals who are employees of agencies on the date of enactment of this section to enhance the education of such employees in areas of critical needs of agencies.

“(2) FULL- OR PART-TIME EDUCATION.—Employees who are awarded scholarships under paragraph (1) shall be permitted to pursue undergraduate or graduate education under the scholarship on a full-time or part-time basis.

“(g) EMPLOYEE SERVICE.—

“(1) PERIOD OF SERVICE.—Except as provided in subsection (i)(2), the period of service for which an individual shall be obligated to serve as an employee of the agency is 24 months for each academic year for which a scholarship under this section is provided. Under no circumstances shall the total period of obligated service be more than 8 years.

“(2) BEGINNING OF SERVICE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

“(B) DEFERRAL.—In accordance with regulations established by the Director of National Intelligence, the Director or designee may defer the obligation of an individual to provide a period of service under paragraph (1) if the Director or designee determines that such a deferral is appropriate.

“(h) REPAYMENT.—

“(1) IN GENERAL.—Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Director of National Intelligence, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (i)(2). The

repayment period may be extended by the Director when determined to be necessary, as established by regulation.

“(2) LIABILITY.—Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Director of National Intelligence under subsection (i)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

“(A) the total amount of scholarships received by such individual under this section; and

“(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 3.

“(i) CANCELLATION, WAIVER, OR SUSPENSION OF OBLIGATION.—

“(1) CANCELLATION.—Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

“(2) WAIVER OR SUSPENSION.—The Director of National Intelligence shall prescribe regulations to provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

“(j) REGULATIONS.—The Director of National Intelligence shall prescribe regulations necessary to carry out this section.

“(k) DEFINITIONS.—In this section:

“(1) AGENCY.—The term ‘agency’ means each element of the intelligence community as determined by the Director of National Intelligence.

“(2) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the meaning given that term under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

“(3) PROGRAM.—The term ‘Program’ means the Intelligence Community Scholarship Program established under subsection (a).”.

Subtitle E—Additional Improvements of Intelligence Activities

SEC. 1051. SERVICE AND NATIONAL LABORATORIES AND THE INTELLIGENCE COMMUNITY.

The Director of National Intelligence, in cooperation with the Secretary of Defense and the Secretary of Energy, should seek to ensure that each service laboratory of the Department of Defense and each national laboratory of the Department of Energy may,

acting through the relevant Secretary and in a manner consistent with the missions and commitments of the laboratory—

(1) assist the Director of National Intelligence in all aspects of technical intelligence, including research, applied sciences, analysis, technology evaluation and assessment, and any other aspect that the relevant Secretary considers appropriate; and

(2) make available to the intelligence community, on a community-wide basis—

(A) the analysis and production services of the service and national laboratories, in a manner that maximizes the capacity and services of such laboratories; and

(B) the facilities and human resources of the service and national laboratories, in a manner that improves the technological capabilities of the intelligence community.

SEC. 1052. OPEN-SOURCE INTELLIGENCE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Director of National Intelligence should establish an intelligence center for the purpose of coordinating the collection, analysis, production, and dissemination of open-source intelligence to elements of the intelligence community;

(2) open-source intelligence is a valuable source that must be integrated into the intelligence cycle to ensure that United States policymakers are fully and completely informed; and

(3) the intelligence center should ensure that each element of the intelligence community uses open-source intelligence consistent with the mission of such element.

(b) REQUIREMENT FOR EFFICIENT USE BY INTELLIGENCE COMMUNITY OF OPEN-SOURCE INTELLIGENCE.—The Director of National Intelligence shall ensure that the intelligence community makes efficient and effective use of open-source information and analysis.

50 USC 403–1
note.

(c) REPORT.—Not later than June 30, 2005, the Director of National Intelligence shall submit to the congressional intelligence committees a report containing the decision of the Director as to whether an open-source intelligence center will be established. If the Director decides not to establish an open-source intelligence center, such report shall also contain a description of how the intelligence community will use open-source intelligence and effectively integrate open-source intelligence into the national intelligence cycle.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 1053. NATIONAL INTELLIGENCE RESERVE CORPS.

50 USC 403–1c.

(a) ESTABLISHMENT.—The Director of National Intelligence may provide for the establishment and training of a National Intelligence Reserve Corps (in this section referred to as “National Intelligence Reserve Corps”) for the temporary reemployment on a voluntary basis of former employees of elements of the intelligence community during periods of emergency, as determined by the Director.

(b) **ELIGIBLE INDIVIDUALS.**—An individual may participate in the National Intelligence Reserve Corps only if the individual previously served as a full time employee of an element of the intelligence community.

(c) **TERMS OF PARTICIPATION.**—The Director of National Intelligence shall prescribe the terms and conditions under which eligible individuals may participate in the National Intelligence Reserve Corps.

(d) **EXPENSES.**—The Director of National Intelligence may provide members of the National Intelligence Reserve Corps transportation and per diem in lieu of subsistence for purposes of participating in any training that relates to service as a member of the Reserve Corps.

(e) **TREATMENT OF ANNUITANTS.**—(1) If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby.

(2) An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84 of title 5, United States Code.

(f) **TREATMENT UNDER OFFICE OF DIRECTOR OF NATIONAL INTELLIGENCE PERSONNEL CEILING.**—A member of the National Intelligence Reserve Corps who is reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Office of the Director of National Intelligence.

Subtitle F—Privacy and Civil Liberties

5 USC 601 note.

SEC. 1061. PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) In conducting the war on terrorism, the Federal Government may need additional powers and may need to enhance the use of its existing powers.

(2) This potential shift of power and authority to the Federal Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life.

(b) **ESTABLISHMENT OF BOARD.**—There is established within the Executive Office of the President a Privacy and Civil Liberties Oversight Board (referred to in this section as the “Board”).

(c) **FUNCTIONS.**—

(1) **ADVICE AND COUNSEL ON DEVELOPMENT AND IMPLEMENTATION OF POLICY.**—For the purpose of providing advice to the President or to the head of any department or agency of the executive branch, the Board shall—

(A) review proposed regulations and executive branch policies related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines under subsections (d) and (f) of section 1016;

(B) review the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation from terrorism, including the implementation

of information sharing guidelines under subsections (d) and (f) of section 1016;

(C) advise the President and the head of any department or agency of the executive branch to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such regulations and executive branch policies; and

(D) in providing advice on proposals to retain or enhance a particular governmental power, consider whether the department, agency, or element of the executive branch concerned has explained—

(i) that there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties;

(ii) that there are adequate guidelines and oversight to properly confine the use of the power; and

(iii) that the need for the power, including the risk presented to the national security if the Federal Government does not take certain actions, is balanced with the need to protect privacy and civil liberties.

(2) OVERSIGHT.—The Board shall continually review—

(A) regulations, executive branch policies, and procedures (including the implementation of such regulations, policies, and procedures), related laws pertaining to efforts to protect the Nation from terrorism, and other actions by the executive branch related to efforts to protect the Nation from terrorism to ensure that privacy and civil liberties are protected; and

(B) the information sharing practices of the departments, agencies, and elements of the executive branch to determine whether or not such practices appropriately protect privacy and civil liberties and adhere to the information sharing guidelines under subsections (d) and (f) of section 1016 and to other applicable laws, regulations, and executive branch policies regarding the protection of privacy and civil liberties.

(3) SCOPE.—The Board shall ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism.

(4) REPORTS TO CONGRESS.—Not less frequently than annually, the Board shall prepare a report to Congress, unclassified to the greatest extent possible (with a classified annex, if necessary), on the Board's major activities during the preceding period.

(d) ACCESS TO INFORMATION.—

(1) AUTHORIZATION.—If determined by the Board to be necessary to carry out its responsibilities under this section, the Board is authorized, to the extent permitted by law, to—

(A) have access from any department or agency of the executive branch, or any Federal officer or employee of any such department or agency, to all relevant records, reports, audits, reviews, documents, papers, recommendations, or other relevant material, including classified information consistent with applicable law;

(B) interview or take statements from officers of any department or agency of the executive branch;

(C) request information or assistance from any State, tribal, or local government; and

(D)(i) request that persons (other than departments, agencies, and elements of the executive branch) produce for the Board relevant information, documents, reports, answers, records, accounts, papers, and other documentary and testimonial evidence; and

Deadline.
Notification.

(ii) if the person to whom such a request is directed does not comply with the request within 45 days of receipt of such request, notify the Attorney General of such person's failure to comply with such request, which notice shall include all relevant information.

(2) PRODUCTION OF INFORMATION AND EVIDENCE.—

(A) EXPLANATION OF NONCOMPLIANCE.—Upon receiving notification under paragraph (1)(D)(ii) regarding a request, the Attorney General shall provide an opportunity for the person subject to the request to explain the reasons for not complying with the request.

(B) ACTION BY ATTORNEY GENERAL.—Upon receiving notification under paragraph (1)(D)(ii) regarding a request, the Attorney General shall review the request and may take such steps as appropriate to ensure compliance with the request for the information, documents, reports, answers, records, accounts, papers, and other documentary and testimonial evidence covered by the request.

Reports.

(3) AGENCY COOPERATION.—Whenever information or assistance requested under subparagraph (A) or (B) of paragraph (1) is, in the judgment of the Board, unreasonably refused or not provided, the Board shall report the circumstances to the head of the department or agency concerned without delay. If the requested information or assistance may be provided to the Board in accordance with applicable law, the head of the department or agency concerned shall ensure compliance with such request.

(4) EXCEPTIONS FOR NATIONAL SECURITY.—

(A) IN GENERAL.—If the National Intelligence Director, in consultation with the Attorney General, determines that it is necessary to withhold information requested under paragraph (3) to protect the national security interests of the United States, the head of the department or agency concerned shall not furnish such information to the Board.

(B) CERTAIN INFORMATION.—If the Attorney General determines that it is necessary to withhold information requested under paragraph (3) from disclosure to protect sensitive law enforcement or counterterrorism information or ongoing operations, the head of the department or agency concerned shall not furnish such information to the Board.

(e) MEMBERSHIP.—

(1) MEMBERS.—

President.

(A) IN GENERAL.—The Board shall be composed of a chairman, a vice chairman, and three additional members appointed by the President.

President.
Congress.

(B) CHAIRMAN AND VICE CHAIRMAN.—The chairman and vice chairman shall each be appointed by the President, by and with the advice and consent of the Senate.

(C) APPOINTMENT REQUIREMENTS.—Any individual appointed to the Board shall be appointed from among trustworthy and distinguished citizens outside the Federal Government who are qualified on the basis of achievement, experience, and independence.

(D) FULL-TIME SERVICE OF CHAIRMAN.—The chairman may serve on a full-time basis.

(E) SERVICE AT PLEASURE OF PRESIDENT.—The chairman, vice chairman, and other members of the Board shall each serve at the pleasure of the President.

(2) INCOMPATIBLE OFFICE.—An individual appointed to the Board may not, while serving on the Board, be an elected official, officer, or employee of the Federal Government, other than in the capacity as a member of the Board.

(3) QUORUM AND MEETINGS.—The Board shall meet upon the call of the chairman or a majority of its members. Three members of the Board shall constitute a quorum.

(f) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—

(A) CHAIRMAN ON FULL-TIME BASIS.—If the chairman serves on a full-time basis, the rate of pay for the chairman shall be the annual rate of basic pay in effect for a position at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(B) CHAIRMAN AND VICE CHAIRMAN ON PART-TIME BASIS.—The chairman, if serving on a part-time basis, and the vice chairman shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay in effect for a position at level III of the Executive Schedule under section 5314 of title 5, United States Code, for each day during which such official is engaged in the actual performance of the duties of the Board.

(C) MEMBERS.—Each member of the Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(2) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for persons employed intermittently by the Federal Government under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(g) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The chairman, in accordance with rules agreed upon by the Board, shall appoint and fix the compensation of an executive director and such other personnel as may be necessary to enable the Board to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the

Executive Schedule under section 5316 of title 5, United States Code.

(2) **DETAILEES.**—Federal employees may be detailed to the Board without reimbursement from the Board, and such detailee shall retain the rights, status, and privileges of the detailee's regular employment without interruption.

(3) **CONSULTANT SERVICES.**—The Board may procure the temporary or intermittent services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates that do not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(h) **SECURITY CLEARANCES.**—The appropriate departments and agencies of the executive branch shall cooperate with the Board to expeditiously provide Board members and staff with appropriate security clearances to the extent possible under applicable procedures and requirements. Promptly upon commencing its work, the Board shall adopt, after consultation with the Secretary of Defense, the Attorney General, and the National Intelligence Director, rules and procedures of the Board for physical, communications, computer, document, personnel, and other security in relation to the work of the Board.

(i) **APPLICABILITY OF CERTAIN LAWS.**—

(1) **FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Board and its activities.

(2) **FREEDOM OF INFORMATION ACT.**—For purposes of the Freedom of Information Act, the Board shall be treated as an agency (as that term is defined in section 551(1) of title 5, United States Code).

(j) **CONSTRUCTION.**—Except as otherwise provided in this section, nothing in this section shall be construed to require any consultation with the Board by any department or agency of the executive branch or any Federal officer or employee, or any waiting period that must be observed by any department or agency of the executive branch or any Federal officer or employee, before developing, proposing, or implementing any legislation, law, regulation, policy, or guideline related to efforts to protect the Nation from terrorism.

(k) **PRESIDENTIAL RESPONSIBILITY.**—The Board shall perform its functions within the executive branch and under the general supervision of the President.

(l) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 1062. SENSE OF CONGRESS ON DESIGNATION OF PRIVACY AND CIVIL LIBERTIES OFFICERS.

It is the sense of Congress that each executive department or agency with law enforcement or antiterrorism functions should designate a privacy and civil liberties officer.

Subtitle G—Conforming and Other Amendments

SEC. 1071. CONFORMING AMENDMENTS RELATING TO ROLES OF DIRECTOR OF NATIONAL INTELLIGENCE AND DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

(a) NATIONAL SECURITY ACT OF 1947.—(1) The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by striking “Director of Central Intelligence” each place it appears in the following provisions and inserting “Director of National Intelligence”:

- (A) Section 101(h)(2)(A) (50 U.S.C. 402(h)(2)(A)).
- (B) Section 101(h)(5) (50 U.S.C. 402(h)(5)).
- (C) Section 101(i)(2)(A) (50 U.S.C. 402(i)(2)(A)).
- (D) Section 101(j) (50 U.S.C. 402(j)).
- (E) Section 105(a) (50 U.S.C. 403–5(a)).
- (F) Section 105(b)(6)(A) (50 U.S.C. 403–5(b)(6)(A)).
- (G) Section 105B(a)(1) (50 U.S.C. 403–5b(a)(1)).
- (H) Section 105B(b) (50 U.S.C. 403–5b(b)), the first place it appears.
- (I) Section 110(b) (50 U.S.C. 404e(b)).
- (J) Section 110(c) (50 U.S.C. 404e(c)).
- (K) Section 112(a)(1) (50 U.S.C. 404g(a)(1)).
- (L) Section 112(d)(1) (50 U.S.C. 404g(d)(1)).
- (M) Section 113(b)(2)(A) (50 U.S.C. 404h(b)(2)(A)).
- (N) Section 114(a)(1) (50 U.S.C. 404i(a)(1)).
- (O) Section 114(b)(1) (50 U.S.C. 404i(b)(1)).
- (P) Section 115(a)(1) (50 U.S.C. 404j(a)(1)).
- (Q) Section 115(b) (50 U.S.C. 404j(b)).
- (R) Section 115(c)(1)(B) (50 U.S.C. 404j(c)(1)(B)).
- (S) Section 116(a) (50 U.S.C. 404k(a)).
- (T) Section 117(a)(1) (50 U.S.C. 404l(a)(1)).
- (U) Section 303(a) (50 U.S.C. 405(a)), both places it appears.
- (V) Section 501(d) (50 U.S.C. 413(d)).
- (W) Section 502(a) (50 U.S.C. 413a(a)).
- (X) Section 502(c) (50 U.S.C. 413a(c)).
- (Y) Section 503(b) (50 U.S.C. 413b(b)).
- (Z) Section 504(a)(3)(C) (50 U.S.C. 414(a)(3)(C)).
- (AA) Section 504(d)(2) (50 U.S.C. 414(d)(2)).
- (BB) Section 506A(a)(1) (50 U.S.C. 415a–1(a)(1)).
- (CC) Section 603(a) (50 U.S.C. 423(a)).
- (DD) Section 702(a)(1) (50 U.S.C. 432(a)(1)).
- (EE) Section 702(a)(6)(B)(viii) (50 U.S.C. 432(a)(6)(B)(viii)).
- (FF) Section 702(b)(1) (50 U.S.C. 432(b)(1)), both places it appears.
- (GG) Section 703(a)(1) (50 U.S.C. 432a(a)(1)).
- (HH) Section 703(a)(6)(B)(viii) (50 U.S.C. 432a(a)(6)(B)(viii)).
- (II) Section 703(b)(1) (50 U.S.C. 432a(b)(1)), both places it appears.
- (JJ) Section 704(a)(1) (50 U.S.C. 432b(a)(1)).
- (KK) Section 704(f)(2)(H) (50 U.S.C. 432b(f)(2)(H)).
- (LL) Section 704(g)(1) (50 U.S.C. 432b(g)(1)), both places it appears.
- (MM) Section 1001(a) (50 U.S.C. 441g(a)).
- (NN) Section 1102(a)(1) (50 U.S.C. 442a(a)(1)).
- (OO) Section 1102(b)(1) (50 U.S.C. 442a(b)(1)).

- (PP) Section 1102(c)(1) (50 U.S.C. 442a(c)(1)).
- (QQ) Section 1102(d) (50 U.S.C. 442a(d)).
- (2) That Act is further amended by striking “of Central Intelligence” each place it appears in the following provisions:
 - (A) Section 105(a)(2) (50 U.S.C. 403-5(a)(2)).
 - (B) Section 105B(a)(2) (50 U.S.C. 403-5b(a)(2)).
 - (C) Section 105B(b) (50 U.S.C. 403-5b(b)), the second place it appears.
- (3) That Act is further amended by striking “Director” each place it appears in the following provisions and inserting “Director of National Intelligence”:
 - (A) Section 114(c) (50 U.S.C. 404i(c)).
 - (B) Section 116(b) (50 U.S.C. 404k(b)).
 - (C) Section 1001(b) (50 U.S.C. 441g(b)).
 - (D) Section 1001(c) (50 U.S.C. 441g(c)), the first place it appears.
 - (E) Section 1001(d)(1)(B) (50 U.S.C. 441g(d)(1)(B)).
 - (F) Section 1001(e) (50 U.S.C. 441g(e)), the first place it appears.
- (4) Section 114A of that Act (50 U.S.C. 404i-1) is amended by striking “Director of Central Intelligence” and inserting “Director of National Intelligence, the Director of the Central Intelligence Agency”
- (5) Section 504(a)(2) of that Act (50 U.S.C. 414(a)(2)) is amended by striking “Director of Central Intelligence” and inserting “Director of the Central Intelligence Agency”
- (6) Section 701 of that Act (50 U.S.C. 431) is amended—
 - (A) in subsection (a), by striking “Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence” and inserting “The Director of the Central Intelligence Agency, with the coordination of the Director of National Intelligence, may exempt operational files of the Central Intelligence Agency”; and
 - (B) in subsection (g)(1), by striking “Director of Central Intelligence” and inserting “Director of the Central Intelligence Agency and the Director of National Intelligence”.
- (7) The heading for section 114 of that Act (50 U.S.C. 404i) is amended to read as follows:

“ADDITIONAL ANNUAL REPORTS FROM THE DIRECTOR OF NATIONAL INTELLIGENCE”.

- (b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(1) The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended by striking “Director of Central Intelligence” each place it appears in the following provisions and inserting “Director of National Intelligence”:
 - (A) Section 6 (50 U.S.C. 403g).
 - (B) Section 17(f) (50 U.S.C. 403q(f)), both places it appears.
- (2) That Act is further amended by striking “of Central Intelligence” in each of the following provisions:
 - (A) Section 2 (50 U.S.C. 403b).
 - (B) Section 16(c)(1)(B) (50 U.S.C. 403p(c)(1)(B)).
 - (C) Section 17(d)(1) (50 U.S.C. 403q(d)(1)).
 - (D) Section 20(c) (50 U.S.C. 403t(c)).
- (3) That Act is further amended by striking “Director of Central Intelligence” each place it appears in the following provisions and inserting “Director of the Central Intelligence Agency”:

(A) Section 14(b) (50 U.S.C. 403n(b)).

(B) Section 16(b)(2) (50 U.S.C. 403p(b)(2)).

(C) Section 16(b)(3) (50 U.S.C. 403p(b)(3)), both places it appears.

(D) Section 21(g)(1) (50 U.S.C. 403u(g)(1)).

(E) Section 21(g)(2) (50 U.S.C. 403u(g)(2)).

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 101 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2001) is amended by striking paragraph (2) and inserting the following new paragraph (2):

“(2) DIRECTOR.—The term ‘Director’ means the Director of the Central Intelligence Agency.”.

(d) CIA VOLUNTARY SEPARATION PAY ACT.—Subsection (a)(1) of section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 2001 note) is amended to read as follows:

“(1) the term ‘Director’ means the Director of the Central Intelligence Agency;”.

(e) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking “Director of Central Intelligence” each place it appears and inserting “Director of National Intelligence”.

(f) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 9(a) of the Classified Information Procedures Act (5 U.S.C. App.) is amended by striking “Director of Central Intelligence” and inserting “Director of National Intelligence”.

(g) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 103–359.—Section 811(c)(6)(C) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359) is amended by striking “Director of Central Intelligence” and inserting “Director of National Intelligence”.

(2) PUBLIC LAW 107–306.—(A) The Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306) is amended by striking “Director of Central Intelligence, acting as the head of the intelligence community,” each place it appears in the following provisions and inserting “Director of National Intelligence”:

(i) Section 313(a) (50 U.S.C. 404n(a)).

(ii) Section 343(a)(1) (50 U.S.C. 404n–2(a)(1)).

(B) That Act is further amended by striking “Director of Central Intelligence” each place it appears in the following provisions and inserting “Director of National Intelligence”:

(i) Section 904(e)(4) (50 U.S.C. 402c(e)(4)).

(ii) Section 904(e)(5) (50 U.S.C. 402c(e)(5)).

(iii) Section 904(h) (50 U.S.C. 402c(h)), each place it appears.

(iv) Section 904(m) (50 U.S.C. 402c(m)).

(C) Section 341 of that Act (50 U.S.C. 404n–1) is amended by striking “Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency” and inserting “Director of National Intelligence shall establish within the Central Intelligence Agency”.

(D) Section 352(b) of that Act (50 U.S.C. 404–3 note) is amended by striking “Director” and inserting “Director of National Intelligence”.

(3) PUBLIC LAW 108–177.—(A) The Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177) is amended by striking “Director of Central Intelligence” each place it appears in the following provisions and inserting “Director of National Intelligence”:

- (i) Section 317(a) (50 U.S.C. 403–3 note).
- (ii) Section 317(h)(1).
- (iii) Section 318(a) (50 U.S.C. 441g note).
- (iv) Section 319(b) (50 U.S.C. 403 note).
- (v) Section 341(b) (28 U.S.C. 519 note).
- (vi) Section 357(a) (50 U.S.C. 403 note).
- (vii) Section 504(a) (117 Stat. 2634), both places it appears.

(B) Section 319(f)(2) of that Act (50 U.S.C. 403 note) is amended by striking “Director” the first place it appears and inserting “Director of National Intelligence”.

(C) Section 404 of that Act (18 U.S.C. 4124 note) is amended by striking “Director of Central Intelligence” and inserting “Director of the Central Intelligence Agency”.

SEC. 1072. OTHER CONFORMING AMENDMENTS

(a) NATIONAL SECURITY ACT OF 1947.—(1) Section 101(j) of the National Security Act of 1947 (50 U.S.C. 402(j)) is amended by striking “Deputy Director of Central Intelligence” and inserting “Principal Deputy Director of National Intelligence”.

(2) Section 105(a) of that Act (50 U.S.C. 403–5(a)) is amended by striking “The Secretary” in the matter preceding paragraph (1) and inserting “Consistent with sections 102 and 102A, the Secretary”.

(3) Section 105(b) of that Act (50 U.S.C. 403–5(b)) is amended by striking “103 and 104” in the matter preceding paragraph (1) and inserting “102 and 102A”.

(4) Section 112(d)(1) of that Act (50 U.S.C. 404g(d)(1)) is amended by striking “section 103(c)(6) of this Act” and inserting “section 102A(i) of this Act”.

(5) Section 116(b) of that Act (50 U.S.C. 404k(b)) is amended by striking “to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency, the Director may delegate such authority to the Deputy Director for Operations” and inserting “to the Principal Deputy Director of National Intelligence, or with respect to employees of the Central Intelligence Agency, to the Director of the Central Intelligence Agency”.

(6) Section 506A(b)(1) of that Act (50 U.S.C. 415a–1(b)(1)) is amended by striking “Office of the Deputy Director of Central Intelligence” and inserting “Office of the Director of National Intelligence”.

(7) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking “Office of the Director of Central Intelligence” and inserting “Office of the Director of National Intelligence”.

(8) Section 1001(b) of that Act (50 U.S.C. 441g(b)) is amended by striking “Assistant Director of Central Intelligence for Administration” and inserting “Office of the Director of National Intelligence”.

(b) CENTRAL INTELLIGENCE ACT OF 1949.—Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) is amended by striking “section 103(c)(7) of the National Security Act of 1947

(50 U.S.C. 403–3(c)(7))” and inserting “section 102A(i) of the National Security Act of 1947”.

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 201(c) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011(c)) is amended by striking “paragraph (6) of section 103(c) of the National Security Act of 1947 (50 U.S.C. 403–3(c)) that the Director of Central Intelligence” and inserting “section 102A(i) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(1)) that the Director of National Intelligence”.

(d) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 107–306.—(A) Section 343(c) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 404n–2(c)) is amended by striking “section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3((c)(6))” and inserting “section 102A(i) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(1))”.

(B)(i) Section 902 of that Act (also known as the Counterintelligence Enhancements Act of 2002) (50 U.S.C. 402b) is amended by striking “President” each place it appears and inserting “Director of National Intelligence”.

(ii) Section 902(a)(2) of that Act is amended by striking “Director of Central Intelligence” and inserting “Director of the Central Intelligence Agency”.

(C) Section 904 of that Act (50 U.S.C. 402c) is amended—

(i) in subsection (c), by striking “Office of the Director of Central Intelligence” and inserting “Office of the Director of National Intelligence”; and

(ii) in subsection (l), by striking “Office of the Director of Central Intelligence” and inserting “Office of the Director of National Intelligence”.

(2) PUBLIC LAW 108–177.—(A) Section 317 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 50 U.S.C. 403–3 note) is amended—

(i) in subsection (g), by striking “Assistant Director of Central Intelligence for Analysis and Production” and inserting “Deputy Director of National Intelligence”; and

(ii) in subsection (h)(2)(C), by striking “Assistant Director” and inserting “Deputy Director of National Intelligence”.

(B) Section 318(e) of that Act (50 U.S.C. 441g note) is amended by striking “Assistant Director of Central Intelligence for Analysis and Production” and inserting “Deputy Director of National Intelligence”.

SEC. 1073. ELEMENTS OF INTELLIGENCE COMMUNITY UNDER NATIONAL SECURITY ACT OF 1947.

Paragraph (4) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended to read as follows:

“(4) The term ‘intelligence community’ includes the following:

“(A) The Office of the Director of National Intelligence.

“(B) The Central Intelligence Agency.

“(C) The National Security Agency.

“(D) The Defense Intelligence Agency.

“(E) The National Geospatial-Intelligence Agency.

“(F) The National Reconnaissance Office.

“(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

“(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

“(I) The Bureau of Intelligence and Research of the Department of State.

“(J) The Office of Intelligence and Analysis of the Department of the Treasury.

“(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

“(L) Such other elements of any other department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.”.

SEC. 1074. REDESIGNATION OF NATIONAL FOREIGN INTELLIGENCE PROGRAM AS NATIONAL INTELLIGENCE PROGRAM.

(a) REDESIGNATION.—Paragraph (6) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended by striking “Foreign”.

(b) CONFORMING AMENDMENTS.—(1)(A) Section 506 of the National Security Act of 1947 (50 U.S.C. 415a) is amended—

(i) in subsection (a), by striking “National Foreign Intelligence Program” and inserting “National Intelligence Program”; and

(ii) in the section heading, by striking “FOREIGN”.

(B) Section 105 of that Act (50 U.S.C. 403-5) is amended—

(i) in paragraphs (2) and (3) of subsection (a), by striking “National Foreign Intelligence Program” and inserting “National Intelligence Program”; and

(ii) in the section heading, by striking “FOREIGN”.

(2) Section 17(f) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(f)) is amended by striking “National Foreign Intelligence Program” and inserting “National Intelligence Program”.

SEC. 1075. REPEAL OF SUPERSEDED AUTHORITY.

Section 111 of the National Security Act of 1947 (50 U.S.C. 404f) is repealed.

SEC. 1076. CLERICAL AMENDMENTS TO NATIONAL SECURITY ACT OF 1947.

The table of contents in the first section of the National Security Act of 1947 is amended—

(1) by striking the items relating to sections 102 through 105 and inserting the following new items:

“Sec. 101A. Joint Intelligence Community Council.

“Sec. 102. Director of National Intelligence.

“Sec. 102A. Responsibilities and authorities of the Director of National Intelligence.

“Sec. 103. Office of the Director of National Intelligence.

“Sec. 103A. Deputy Directors of National Intelligence.

“Sec. 103B. National Intelligence Council.

“Sec. 103C. General Counsel.

“Sec. 103D. Civil Liberties Protection Officer.

“Sec. 103E. Director of Science and Technology.

“Sec. 103F. National Counterintelligence Executive.

“Sec. 104. Central Intelligence Agency.

“Sec. 104A. Director of the Central Intelligence Agency.

“Sec. 105. Responsibilities of the Secretary of Defense pertaining to the National Intelligence Program.”;

(2) by striking the item relating to section 111;

(3) by striking the item relating to section 114 and inserting the following new item:

“Sec. 114. Additional annual reports from the Director of National Intelligence.”;

(4) by inserting after the item relating to section 118 the following new items:

“Sec. 119. National Counterterrorism Center.

“Sec. 119A. National Counter Proliferation Center.

“Sec. 119B. National intelligence centers.

(5) by striking the item relating to section 506 and inserting the following new item:

“Sec. 506. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.”;

and

(6) by inserting after the item relating to section 1001 the following new items:

“Sec. 1002. Framework for cross-disciplinary education and training.

“Sec. 1003. Intelligence Community Scholarship Program.”.

SEC. 1077. CONFORMING AMENDMENTS RELATING TO PROHIBITING DUAL SERVICE OF THE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

Section 1 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a) is amended—

(1) by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively; and

(2) by striking paragraph (2), as so redesignated, and inserting the following new paragraph (2):

“(2) ‘Director’ means the Director of the Central Intelligence Agency; and”.

SEC. 1078. AUTHORITY TO ESTABLISH INSPECTOR GENERAL FOR THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8J the following new section:

“AUTHORITY TO ESTABLISH INSPECTOR GENERAL OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

SEC. 8K. If the Director of National Intelligence determines that an Office of Inspector General would be beneficial to improving the operations and effectiveness of the Office of the Director of National Intelligence, the Director of National Intelligence is authorized to establish, with any of the duties, responsibilities, and authorities set forth in this Act, an Office of Inspector General.”.

SEC. 1079. ETHICS MATTERS.

(a) POLITICAL SERVICE OF PERSONNEL.—Section 7323(b)(2)(B)(i) of title 5, United States Code, is amended—

(1) in subclause (XII), by striking “or” at the end; and

(2) by inserting after subclause (XIII) the following new subclause:

“(XIV) the Office of the Director of National Intelligence; or”.

(b) **DELETION OF INFORMATION ABOUT FOREIGN GIFTS.**—Section 7342(f)(4) of title 5, United States Code, is amended—

(1) by inserting “(A)” after “(4)”;

(2) in subparagraph (A), as so designated, by striking “the Director of Central Intelligence” and inserting “the Director of the Central Intelligence Agency”; and

(3) by adding at the end the following new subparagraph:

“(B) In transmitting such listings for the Office of the Director of National Intelligence, the Director of National Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.”.

5 USC app. 105. (c) **EXEMPTION FROM FINANCIAL DISCLOSURES.**—Section 105(a)(1) of the Ethics in Government Act (5 U.S.C. App.) is amended by inserting “the Office of the Director of National Intelligence,” before “the Central Intelligence Agency”.

SEC. 1080. CONSTRUCTION OF AUTHORITY OF DIRECTOR OF NATIONAL INTELLIGENCE TO ACQUIRE AND MANAGE PROPERTY AND SERVICES.

Section 113(e) of title 40, United States Code, is amended—

(1) in paragraph (18), by striking “or” at the end;

(2) in paragraph (19), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new paragraph: “(20) the Office of the Director of National Intelligence.”.

50 USC 401 note. **SEC. 1081. GENERAL REFERENCES.**

(a) **DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF INTELLIGENCE COMMUNITY.**—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of National Intelligence.

(b) **DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF CIA.**—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of the Central Intelligence Agency.

(c) **COMMUNITY MANAGEMENT STAFF.**—Any reference to the Community Management Staff in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the staff of the Office of the Director of National Intelligence.

Subtitle H—Transfer, Termination, Transition, and Other Provisions

SEC. 1091. TRANSFER OF COMMUNITY MANAGEMENT STAFF.

50 USC 401 note.

(a) TRANSFER.—There shall be transferred to the Office of the Director of National Intelligence such staff of the Community Management Staff as of the date of the enactment of this Act as the Director of National Intelligence determines to be appropriate, including all functions and activities discharged by the Community Management Staff as of that date.

(b) ADMINISTRATION.—The Director of National Intelligence shall administer the Community Management Staff after the date of the enactment of this Act as a component of the Office of the Director of National Intelligence under section 103 of the National Security Act of 1947, as amended by section 1011(a) of this Act.

SEC. 1092. TRANSFER OF TERRORIST THREAT INTEGRATION CENTER.

50 USC 401 note.

(a) TRANSFER.—There shall be transferred to the National Counterterrorism Center the Terrorist Threat Integration Center (TTIC) or its successor entity, including all functions and activities discharged by the Terrorist Threat Integration Center or its successor entity as of the date of the enactment of this Act.

(b) ADMINISTRATION.—The Director of the National Counterterrorism Center shall administer the Terrorist Threat Integration Center after the date of the enactment of this Act as a component of the Directorate of Intelligence of the National Counterterrorism Center under section 119(i) of the National Security Act of 1947, as added by section 1021(a) of this Act.

SEC. 1093. TERMINATION OF POSITIONS OF ASSISTANT DIRECTORS OF CENTRAL INTELLIGENCE.

50 USC 401 note.

(a) TERMINATION.—The positions referred to in subsection (b) are hereby abolished.

(b) COVERED POSITIONS.—The positions referred to in this subsection are as follows:

(1) The Assistant Director of Central Intelligence for Collection.

(2) The Assistant Director of Central Intelligence for Analysis and Production.

(3) The Assistant Director of Central Intelligence for Administration.

SEC. 1094. IMPLEMENTATION PLAN.

President.
50 USC 401 note.

The President shall transmit to Congress a plan for the implementation of this title and the amendments made by this title. The plan shall address, at a minimum, the following:

(1) The transfer of personnel, assets, and obligations to the Director of National Intelligence pursuant to this title.

(2) Any consolidation, reorganization, or streamlining of activities transferred to the Director of National Intelligence pursuant to this title.

(3) The establishment of offices within the Office of the Director of National Intelligence to implement the duties and responsibilities of the Director of National Intelligence as described in this title.

(4) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations to be transferred to the Director of National Intelligence.

(5) Recommendations for additional legislative or administrative action as the President considers appropriate.

50 USC 401 note. **SEC. 1095. DIRECTOR OF NATIONAL INTELLIGENCE REPORT ON IMPLEMENTATION OF INTELLIGENCE COMMUNITY REFORM.**

(a) REPORT.—Not later than one year after the effective date of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees a report on the progress made in the implementation of this title, including the amendments made by this title. The report shall include a comprehensive description of the progress made, and may include such recommendations for additional legislative or administrative action as the Director considers appropriate.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

50 USC 401 note. **SEC. 1096. TRANSITIONAL AUTHORITIES.**

(a) IN GENERAL.—Upon the request of the Director of National Intelligence, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to the Director of National Intelligence.

(b) TRANSFER OF PERSONNEL.—In addition to any other authorities available under law for such purposes, in the fiscal year after the effective date of this Act, the Director of National Intelligence—

(1) is authorized within the Office of the Director of National Intelligence 500 new personnel billets; and

(2) with the approval of the Director of the Office of Management and Budget, may detail not more than 150 personnel funded within the National Intelligence Program to the Office of the Director of National Intelligence for a period of not more than 2 years.

50 USC 401 note. **SEC. 1097. EFFECTIVE DATES.**

(a) IN GENERAL.—Except as otherwise expressly provided in this Act, this title and the amendments made by this title shall take effect not later than six months after the date of the enactment of this Act.

(b) SPECIFIC EFFECTIVE DATES.—(1)(A) Not later than 60 days after the date of the appointment of the first Director of National Intelligence, the Director of National Intelligence shall first appoint individuals to positions within the Office of the Director of National Intelligence.

(B) Subparagraph (A) shall not apply with respect to the Principal Deputy Director of National Intelligence.

President. (2) Not later than 180 days after the effective date of this Act, the President shall transmit to Congress the implementation plan required by section 1094.

Regulations. (3) Not later than one year after the date of the enactment of this Act, the Director of National Intelligence shall prescribe

regulations, policies, procedures, standards, and guidelines required under section 102A of the National Security Act of 1947, as amended by section 1011(a) of this Act.

Subtitle I—Other Matters

SEC. 1101. STUDY OF PROMOTION AND PROFESSIONAL MILITARY EDUCATION SCHOOL SELECTION RATES FOR MILITARY INTELLIGENCE OFFICERS.

(a) **STUDY.**—The Secretary of Defense shall conduct a study of the promotion selection rates, and the selection rates for attendance at professional military education schools, of intelligence officers of the Armed Forces, particularly in comparison to the rates for other officers of the same Armed Force who are in the same grade and competitive category.

(b) **REPORT.**—The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report providing the Secretary's findings resulting from the study under subsection (a) and the Secretary's recommendations (if any) for such changes in law as the Secretary considers needed to ensure that intelligence officers, as a group, are selected for promotion, and for attendance at professional military education schools, at rates not less than the rates for all line (or the equivalent) officers of the same Armed Force (both in the zone and below the zone) in the same grade. The report shall be submitted not later than April 1, 2005.

SEC. 1102. EXTENSION AND IMPROVEMENT OF AUTHORITIES OF PUBLIC INTEREST DECLASSIFICATION BOARD.

(a) **DIRECTION.**—Section 703(a) of the Public Interest Declassification Act of 2000 (title VII of Public Law 106–567; 114 Stat. 2856; 50 U.S.C. 435 note) is amended—

(1) by inserting “(1)” after “ESTABLISHMENT.—”; and

(2) by adding at the end the following new paragraph:

“(2) The Board shall report directly to the President or, upon designation by the President, the Vice President, the Attorney General, or other designee of the President. The other designee of the President under this paragraph may not be an agency head or official authorized to classify information under Executive Order 12958, or any successor order.”

(b) **PURPOSES.**—Section 703(b) of that Act (114 Stat. 2856) is amended by adding at the end the following new paragraph:

“(5) To review and make recommendations to the President in a timely manner with respect to any congressional request, made by the committee of jurisdiction, to declassify certain records or to reconsider a declination to declassify specific records.”

(c) **RECOMMENDATIONS ON SPECIAL SEARCHES.**—Section 704(c)(2)(A) of that Act (114 Stat. 2860) is amended by inserting before the period the following: “, and also including specific requests for the declassification of certain records or for the reconsideration of declinations to declassify specific records”.

(d) **DECLASSIFICATION REVIEWS.**—Section 704 of that Act (114 Stat. 2859) is further amended by adding at the end the following new subsection:

“(e) DECLASSIFICATION REVIEWS.—If requested by the President, the Board shall review in a timely manner certain records or declinations to declassify specific records, the declassification of which has been the subject of specific congressional request described in section 703(b)(5).”.

(e) NOTIFICATION OF REVIEW.—Section 706 of that Act (114 Stat. 2861) is amended by adding at the end the following new subsection:

“(f) NOTIFICATION OF REVIEW.—In response to a specific congressional request for declassification review described in section 703(b)(5), the Board shall advise the originators of the request in a timely manner whether the Board intends to conduct such review.”.

(f) EXTENSION.—Section 710(b) of that Act (114 Stat. 2864) is amended by striking “4 years” and inserting “8 years”.

50 USC 401 note.

SEC. 1103. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other those to which such provision is held invalid shall not be affected thereby.

TITLE II—FEDERAL BUREAU OF INVESTIGATION

28 USC 532 note.

SEC. 2001. IMPROVEMENT OF INTELLIGENCE CAPABILITIES OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Commission on Terrorist Attacks Upon the United States in its final report stated that, under Director Robert Mueller, the Federal Bureau of Investigation has made significant progress in improving its intelligence capabilities.

(2) In the report, the members of the Commission also urged that the Federal Bureau of Investigation fully institutionalize the shift of the Bureau to a preventive counterterrorism posture.

(b) IMPROVEMENT OF INTELLIGENCE CAPABILITIES.—The Director of the Federal Bureau of Investigation shall continue efforts to improve the intelligence capabilities of the Federal Bureau of Investigation and to develop and maintain within the Bureau a national intelligence workforce.

(c) NATIONAL INTELLIGENCE WORKFORCE.—(1) In developing and maintaining a national intelligence workforce under subsection (b), the Director of the Federal Bureau of Investigation shall, develop and maintain a specialized and integrated national intelligence workforce consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, and rewarded in a manner which ensures the existence within the Federal Bureau of Investigation an institutional culture with substantial expertise in, and commitment to, the intelligence mission of the Bureau.

(2) Each agent employed by the Bureau after the date of the enactment of this Act shall receive basic training in both criminal justice matters and national intelligence matters.

(3) Each agent employed by the Bureau after the date of the enactment of this Act shall, to the maximum extent practicable,

be given the opportunity to undergo, during such agent's early service with the Bureau, meaningful assignments in criminal justice matters and in national intelligence matters.

(4) The Director shall—

(A) establish career positions in national intelligence matters for agents, analysts, and related personnel of the Bureau; and

(B) in furtherance of the requirement under subparagraph (A) and to the maximum extent practicable, afford agents, analysts, and related personnel of the Bureau the opportunity to work in the career specialty selected by such agents, analysts, and related personnel over their entire career with the Bureau.

(5) The Director shall carry out a program to enhance the capacity of the Bureau to recruit and retain individuals with backgrounds in intelligence, international relations, language, technology, and other skills relevant to the intelligence mission of the Bureau.

(6) The Director shall, to the maximum extent practicable, afford the analysts of the Bureau training and career opportunities commensurate with the training and career opportunities afforded analysts in other elements of the intelligence community.

(7) Commencing as soon as practicable after the date of the enactment of this Act, each direct supervisor of a Field Intelligence Group, and each Bureau Operational Manager at the Section Chief and Assistant Special Agent in Charge (ASAC) level and above, shall be a certified intelligence officer.

(8) The Director shall, to the maximum extent practicable, ensure that the successful discharge of advanced training courses, and of one or more assignments to another element of the intelligence community, is a precondition to advancement to higher level intelligence assignments within the Bureau.

(d) **FIELD OFFICE MATTERS.**—(1) In improving the intelligence capabilities of the Federal Bureau of Investigation under subsection (b), the Director of the Federal Bureau of Investigation shall ensure that each Field Intelligence Group reports directly to a field office senior manager responsible for intelligence matters.

(2) The Director shall provide for such expansion of the secure facilities in the field offices of the Bureau as is necessary to ensure the discharge by the field offices of the intelligence mission of the Bureau.

(3) The Director shall require that each Field Intelligence Group manager ensures the integration of analysts, agents, linguists, and surveillance personnel in the field.

(e) **DISCHARGE OF IMPROVEMENTS.**—(1) The Director of the Federal Bureau of Investigation shall carry out subsections (b) through (d) through the head of the Directorate of Intelligence of the Federal Bureau of Investigation.

(2) The Director of the Federal Bureau of Investigation shall carry out subsections (b) through (d) under the joint guidance of the Attorney General and the National Intelligence Director in a manner consistent with section 112(e).

(f) **BUDGET MATTERS.**—The Director of the Federal Bureau of Investigation shall, establish a budget structure of the Federal Bureau of Investigation to reflect the four principal missions of the Bureau as follows:

(1) Intelligence.

(2) Counterterrorism and counterintelligence.

(3) Criminal Enterprises/Federal Crimes.

(4) Criminal justice services.

(g) REPORTS.—(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to Congress a report on the progress made as of the date of such report in carrying out the requirements of this section.

(2) The Director shall include in each annual program review of the Federal Bureau of Investigation that is submitted to Congress a report on the progress made by each field office of the Bureau during the period covered by such review in addressing Bureau and national program priorities.

(3) Not later than 180 days after the date of the enactment of this Act, and every 12 months thereafter, the Director shall submit to Congress a report assessing the qualifications, status, and roles of analysts at Bureau headquarters and in the field offices of the Bureau.

(4) Not later than 180 days after the date of the enactment of this Act, and every 12 months thereafter, the Director shall submit to Congress a report on the progress of the Bureau in implementing information-sharing principles.

Government
organization.
28 USC 532 note.

SEC. 2002. DIRECTORATE OF INTELLIGENCE OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) DIRECTORATE OF INTELLIGENCE OF FEDERAL BUREAU OF INVESTIGATION.—The element of the Federal Bureau of Investigation known as of the date of the enactment of this Act as the Office of Intelligence is hereby redesignated as the Directorate of Intelligence of the Federal Bureau of Investigation.

(b) HEAD OF DIRECTORATE.—The head of the Directorate of Intelligence shall be the Executive Assistant Director for Intelligence of the Federal Bureau of Investigation.

(c) RESPONSIBILITIES.—The Directorate of Intelligence shall be responsible for the following:

(1) Supervision of all national intelligence programs, projects, and activities of the Bureau.

(2) The discharge by the Bureau of the requirements in section 105B of the National Security Act of 1947 (50 U.S.C. 403–5b).

(3) The oversight of Bureau field intelligence operations.

(4) Coordinating human source development and management by the Bureau.

(5) Coordinating collection by the Bureau against nationally-determined intelligence requirements.

(6) Strategic analysis.

(7) Intelligence program and budget management.

(8) The intelligence workforce.

(9) Any other responsibilities specified by the Director of the Federal Bureau of Investigation or specified by law.

(d) STAFF.—The Directorate of Intelligence shall consist of such staff as the Director of the Federal Bureau of Investigation considers appropriate for the activities of the Directorate.

28 USC 532 note.

SEC. 2003. FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE CAREER SERVICE.

(a) ESTABLISHMENT OF FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE CAREER SERVICE.—The Director of the Federal Bureau of Investigation may—

(1) in consultation with the Director of the Office of Personnel Management—

(A) establish positions for intelligence analysts, and prescribe standards and procedures for establishing and classifying such positions, without regard to chapter 51 of title 5, United States Code; and

(B) fix the rate of basic pay for such positions, without regard to subchapter III of chapter 53 of title 5, United States Code, if the rate of pay is not greater than the rate of basic pay payable for level IV of the Executive Schedule;

(2) appoint individuals to such positions; and

(3) establish a performance management system for such individuals with at least one level of performance above a retention standard.

(b) **REPORTING REQUIREMENT.**—Not less than 60 days before the date of the implementation of authorities authorized under this section, the Director of the Federal Bureau of Investigation shall submit an operating plan describing the Director's intended use of the authorities under this section to the appropriate committees of Congress.

(c) **ANNUAL REPORT.**—Not later than December 31, 2005, and annually thereafter for 4 years, the Director of the Federal Bureau of Investigation shall submit an annual report of the use of the permanent authorities provided under this section during the preceding fiscal year to the appropriate committees of Congress.

(d) **APPROPRIATE COMMITTEES OF CONGRESS DEFINED.**—In this section, the term “appropriate committees of Congress means”—

(1) the Committees on Appropriations, Homeland Security and Governmental Affairs, and the Judiciary and the Select Committee on Intelligence of the Senate; and

(2) the Committees on Appropriations, Government Reform, and the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 2004. FEDERAL BUREAU OF INVESTIGATION RESERVE SERVICE.

(a) **IN GENERAL.**—Chapter 35 of title 5, United States Code, is amended by adding at the end the following:

“SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

“§ 3598. Federal Bureau of Investigation Reserve Service

“(a) **ESTABLISHMENT.**—The Director of the Federal Bureau of Investigation may provide for the establishment and training of a Federal Bureau of Investigation Reserve Service (hereinafter in this section referred to as the ‘FBI Reserve Service’) for temporary reemployment of employees in the Bureau during periods of emergency, as determined by the Director.

“(b) **MEMBERSHIP.**—Membership in the FBI Reserve Service shall be limited to individuals who previously served as full-time employees of the Bureau.

“(c) **ANNUITANTS.**—If an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of such individual's service becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby.

An individual so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

“(d) NO IMPACT ON BUREAU PERSONNEL CEILING.—FBI Reserve Service members reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Bureau.

“(e) EXPENSES.—The Director may provide members of the FBI Reserve Service transportation and per diem in lieu of subsistence, in accordance with applicable provisions of this title, for the purpose of participating in any training that relates to service as a member of the FBI Reserve Service.

“(f) LIMITATION ON MEMBERSHIP.—Membership of the FBI Reserve Service is not to exceed 500 members at any given time.

“(g) LIMITATION ON DURATION OF SERVICE.—An individual may not be reemployed under this section for more than 180 days in connection with any particular emergency unless, in the judgment of the Director, the public interest so requires.”

(b) CLERICAL AMENDMENT.—The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end the following:

“SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

“3598. Federal Bureau of Investigation Reserve Service.”.

SEC. 2005. FEDERAL BUREAU OF INVESTIGATION MANDATORY SEPARATION AGE.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8335(b) of title 5, United States Code, is amended—

(1) by striking “(b)” and inserting “(b)(1)”; and

(2) by adding at the end the following:

“(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting ‘65 years of age’ for ‘60 years of age’. The Federal Bureau of Investigation may not grant more than 50 exemptions in any fiscal year in accordance with the preceding sentence, and the authority to grant such exemptions shall cease to be available after September 30, 2007.”.

(b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—Section 8425(b) of title 5, United States Code, is amended—

(1) by striking “(b)” and inserting “(b)(1)”; and

(2) by adding at the end the following:

“(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting ‘65 years of age’ for ‘60 years of age’. The Federal Bureau of Investigation may not grant more than 50 exemptions in any fiscal year in accordance with the preceding sentence, and the authority to grant such exemptions shall cease to be available after September 30, 2007.”.

SEC. 2006. FEDERAL BUREAU OF INVESTIGATION USE OF TRANS-LATORS.

Not later than 30 days after the date of the enactment of this Act, and annually thereafter, the Attorney General of the United States shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that contains, with respect to each preceding 12-month period—

Applicability.
Termination
date.

Deadline.
Reports.
28 USC 509 note.

(1) the number of translators employed, or contracted for, by the Federal Bureau of Investigation or other components of the Department of Justice;

(2) any legal or practical impediments to using translators employed by the Federal, State, or local agencies on a full-time, part-time, or shared basis;

(3) the needs of the Federal Bureau of Investigation for the specific translation services in certain languages, and recommendations for meeting those needs;

(4) the status of any automated statistical reporting system, including implementation and future viability;

(5) the storage capabilities of the digital collection system or systems utilized;

(6) a description of the establishment and compliance with audio retention policies that satisfy the investigative and intelligence goals of the Federal Bureau of Investigation; and

(7) a description of the implementation of quality control procedures and mechanisms for monitoring compliance with quality control procedures.

TITLE III—SECURITY CLEARANCES

SEC. 3001. SECURITY CLEARANCES.

50 USC 435b.

(a) DEFINITIONS.—In this section:

(1) The term “agency” means—

(A) an executive agency (as that term is defined in section 105 of title 5, United States Code);

(B) a military department (as that term is defined in section 102 of title 5, United States Code); and

(C) an element of the intelligence community.

(2) The term “authorized investigative agency” means an agency designated by the head of the agency selected pursuant to subsection (b) to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(3) The term “authorized adjudicative agency” means an agency authorized by law, regulation, or direction of the Director of National Intelligence to determine eligibility for access to classified information in accordance with Executive Order 12968.

(4) The term “highly sensitive program” means—

(A) a government program designated as a Special Access Program (as that term is defined in section 4.1(h) of Executive Order 12958 or any successor Executive order); or

(B) a government program that applies restrictions required for—

(i) restricted data (as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))); or

(ii) other information commonly referred to as “sensitive compartmented information”.

(5) The term “current investigation file” means, with respect to a security clearance, a file on an investigation or adjudication that has been conducted during—

(A) the 5-year period beginning on the date the security clearance was granted, in the case of a Top Secret Clearance, or the date access was granted to a highly sensitive program;

(B) the 10-year period beginning on the date the security clearance was granted in the case of a Secret Clearance; and

(C) the 15-year period beginning on the date the security clearance was granted in the case of a Confidential Clearance.

(6) The term “personnel security investigation” means any investigation required for the purpose of determining the eligibility of any military, civilian, or government contractor personnel to access classified information.

(7) The term “periodic reinvestigations” means investigations conducted for the purpose of updating a previously completed background investigation—

(A) every 5 years in the case of a top secret clearance or access to a highly sensitive program;

(B) every 10 years in the case of a secret clearance;

or

(C) every 15 years in the case of a Confidential Clearance.

(8) The term “appropriate committees of Congress” means—

(A) the Permanent Select Committee on Intelligence and the Committees on Armed Services, Homeland Security, Government Reform, and the Judiciary of the House of Representatives; and

(B) the Select Committee on Intelligence and the Committees on Armed Services, Homeland Security and Governmental Affairs, and the Judiciary of the Senate.

Deadline.
President.

(b) SELECTION OF ENTITY.—Not later than 90 days after the date of the enactment of this Act, the President shall select a single department, agency, or element of the executive branch to be responsible for—

(1) directing day-to-day oversight of investigations and adjudications for personnel security clearances, including for highly sensitive programs, throughout the United States Government;

(2) developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of security clearances and determinations for access to highly sensitive programs, including the standardization of security questionnaires, financial disclosure requirements for security clearance applicants, and polygraph policies and procedures;

(3) serving as the final authority to designate an authorized investigative agency or authorized adjudicative agency;

(4) ensuring reciprocal recognition of access to classified information among the agencies of the United States Government, including acting as the final authority to arbitrate and resolve disputes involving the reciprocity of security clearances and access to highly sensitive programs pursuant to subsection (d);

(5) ensuring, to the maximum extent practicable, that sufficient resources are available in each agency to achieve clearance and investigative program goals; and

(6) reviewing and coordinating the development of tools and techniques for enhancing the conduct of investigations and granting of clearances.

(c) PERFORMANCE OF SECURITY CLEARANCE INVESTIGATIONS.—

Deadline.
President.

(1) Notwithstanding any other provision of law, not later than 180 days after the date of the enactment of this Act, the President shall, in consultation with the head of the entity selected pursuant to subsection (b), select a single agency of the executive branch to conduct, to the maximum extent practicable, security clearance investigations of employees and contractor personnel of the United States Government who require access to classified information and to provide and maintain all security clearances of such employees and contractor personnel. The head of the entity selected pursuant to subsection (b) may designate other agencies to conduct such investigations if the head of the entity selected pursuant to subsection (b) considers it appropriate for national security and efficiency purposes.

(2) The agency selected under paragraph (1) shall—

(A) take all necessary actions to carry out the requirements of this section, including entering into a memorandum of understanding with any agency carrying out responsibilities relating to security clearances or security clearance investigations before the date of the enactment of this Act;

(B) as soon as practicable, integrate reporting of security clearance applications, security clearance investigations, and determinations of eligibility for security clearances, with the database required by subsection (e); and

(C) ensure that security clearance investigations are conducted in accordance with uniform standards and requirements established under subsection (b), including uniform security questionnaires and financial disclosure requirements.

(d) RECIPROCITY OF SECURITY CLEARANCE AND ACCESS DETERMINATIONS.—(1) All security clearance background investigations and determinations completed by an authorized investigative agency or authorized adjudicative agency shall be accepted by all agencies.

(2) All security clearance background investigations initiated by an authorized investigative agency shall be transferable to any other authorized investigative agency.

(3)(A) An authorized investigative agency or authorized adjudicative agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination) that exceed requirements specified in Executive Orders establishing security requirements for access to classified information without the approval of the head of the entity selected pursuant to subsection (b).

(B) Notwithstanding subparagraph (A), the head of the entity selected pursuant to subsection (b) may establish such additional requirements as the head of such entity considers necessary for national security purposes.

(4) An authorized investigative agency or authorized adjudicative agency may not conduct an investigation for purposes of determining whether to grant a security clearance to an individual where a current investigation or clearance of equal level already

	exists or has been granted by another authorized adjudicative agency.
	(5) The head of the entity selected pursuant to subsection (b) may disallow the reciprocal recognition of an individual security clearance by an agency under this section on a case-by-case basis if the head of the entity selected pursuant to subsection (b) determines that such action is necessary for national security purposes.
Procedures.	(6) The head of the entity selected pursuant to subsection (b) shall establish a review procedure by which agencies can seek review of actions required under this section.
Deadline. Establishment.	(e) DATABASE ON SECURITY CLEARANCES.—(1) Not later than 12 months after the date of the enactment of this Act, the Director of the Office of Personnel Management shall, in cooperation with the heads of the entities selected pursuant to subsections (b) and (c), establish and commence operating and maintaining an integrated, secure, database into which appropriate data relevant to the granting, denial, or revocation of a security clearance or access pertaining to military, civilian, or government contractor personnel shall be entered from all authorized investigative and adjudicative agencies.
	(2) The database under this subsection shall function to integrate information from existing Federal clearance tracking systems from other authorized investigative and adjudicative agencies into a single consolidated database.
	(3) Each authorized investigative or adjudicative agency shall check the database under this subsection to determine whether an individual the agency has identified as requiring a security clearance has already been granted or denied a security clearance, or has had a security clearance revoked, by any other authorized investigative or adjudicative agency.
	(4) The head of the entity selected pursuant to subsection (b) shall evaluate the extent to which an agency is submitting information to, and requesting information from, the database under this subsection as part of a determination of whether to certify the agency as an authorized investigative agency or authorized adjudicative agency.
	(5) The head of the entity selected pursuant to subsection (b) may authorize an agency to withhold information about certain individuals from the database under this subsection if the head of the entity considers it necessary for national security purposes.
	(f) EVALUATION OF USE OF AVAILABLE TECHNOLOGY IN CLEARANCE INVESTIGATIONS AND ADJUDICATIONS.—(1) The head of the entity selected pursuant to subsection (b) shall evaluate the use of available information technology and databases to expedite investigative and adjudicative processes for all and to verify standard information submitted as part of an application for a security clearance.
	(2) The evaluation shall assess the application of the technologies described in paragraph (1) for—
	(A) granting interim clearances to applicants at the secret, top secret, and special access program levels before the completion of the appropriate full investigation;
	(B) expediting investigations and adjudications of security clearances, including verification of information submitted by the applicant;

(C) ongoing verification of suitability of personnel with security clearances in effect for continued access to classified information;

(D) use of such technologies to augment periodic reinvestigations;

(E) assessing the impact of the use of such technologies on the rights of applicants to verify, correct, or challenge information obtained through such technologies; and

(F) such other purposes as the head of the entity selected pursuant to subsection (b) considers appropriate.

(3) An individual subject to verification utilizing the technology described in paragraph (1) shall be notified of such verification, shall provide consent to such use, and shall have access to data being verified in order to correct errors or challenge information the individual believes is incorrect.

(4) Not later than one year after the date of the enactment of this Act, the head of the entity selected pursuant to subsection (b) shall submit to the President and the appropriate committees of Congress a report on the results of the evaluation, including recommendations on the use of technologies described in paragraph (1).

Deadline.
Reports.

(g) **REDUCTION IN LENGTH OF PERSONNEL SECURITY CLEARANCE PROCESS.**—(1) The head of the entity selected pursuant to subsection (b) shall, within 90 days of selection under that subsection, develop, in consultation with the appropriate committees of Congress and each authorized adjudicative agency, a plan to reduce the length of the personnel security clearance process.

Deadlines.

(2)(A) To the extent practical the plan under paragraph (1) shall require that each authorized adjudicative agency make a determination on at least 90 percent of all applications for a personnel security clearance within an average of 60 days after the date of receipt of the completed application for a security clearance by an authorized investigative agency. Such 60-day average period shall include—

(i) a period of not longer than 40 days to complete the investigative phase of the clearance review; and

(ii) a period of not longer than 20 days to complete the adjudicative phase of the clearance review.

(B) Determinations on clearances not made within 60 days shall be made without delay.

(3)(A) The plan under paragraph (1) shall take effect 5 years after the date of the enactment of this Act.

(B) During the period beginning on a date not later than 2 years after the date after the enactment of this Act and ending on the date on which the plan under paragraph (1) takes effect, each authorized adjudicative agency shall make a determination on at least 80 percent of all applications for a personnel security clearance pursuant to this section within an average of 120 days after the date of receipt of the application for a security clearance by an authorized investigative agency. Such 120-day average period shall include—

(i) a period of not longer than 90 days to complete the investigative phase of the clearance review; and

(ii) a period of not longer than 30 days to complete the adjudicative phase of the clearance review.

(h) **REPORTS.**—(1) Not later than February 15, 2006, and annually thereafter through 2011, the head of the entity selected

pursuant to subsection (b) shall submit to the appropriate committees of Congress a report on the progress made during the preceding year toward meeting the requirements of this section.

(2) Each report shall include, for the period covered by such report—

(A) the periods of time required by the authorized investigative agencies and authorized adjudicative agencies for conducting investigations, adjudicating cases, and granting clearances, from date of submission to ultimate disposition and notification to the subject and the subject's employer;

(B) a discussion of any impediments to the smooth and timely functioning of the requirements of this section; and

(C) such other information or recommendations as the head of the entity selected pursuant to subsection (b) considers appropriate.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary for fiscal year 2005 and each fiscal year thereafter for the implementation, maintenance, and operation of the database required by subsection (e).

TITLE IV—TRANSPORTATION SECURITY

Subtitle A—National Strategy for Transportation Security

SEC. 4001. NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.

(a) IN GENERAL.—Section 114 of title 49, United States Code, is amended by adding at the end the following:

“(t) TRANSPORTATION SECURITY STRATEGIC PLANNING.—

“(1) IN GENERAL.—The Secretary of Homeland Security shall develop, prepare, implement, and update, as needed—

“(A) a National Strategy for Transportation Security;

and

“(B) transportation modal security plans.

“(2) ROLE OF SECRETARY OF TRANSPORTATION.—The Secretary of Homeland Security shall work jointly with the Secretary of Transportation in developing, revising, and updating the documents required by paragraph (1).

“(3) CONTENTS OF NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—The National Strategy for Transportation Security shall include the following:

“(A) An identification and evaluation of the transportation assets in the United States that, in the interests of national security and commerce, must be protected from attack or disruption by terrorist or other hostile forces, including modal security plans for aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, mass transit, over-the-road bus, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.

“(B) The development of risk-based priorities across all transportation modes and realistic deadlines for addressing security needs associated with those assets referred to in subparagraph (A).

“(C) The most appropriate, practical, and cost-effective means of defending those assets against threats to their security.

“(D) A forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, State, regional, and local authorities and establishes mechanisms for encouraging private sector cooperation and participation in the implementation of such plan.

“(E) A comprehensive delineation of response and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States.

“(F) A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital transportation assets.

“(4) SUBMISSIONS OF PLANS TO CONGRESS.—

“(A) INITIAL STRATEGY.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans, developed under this subsection to the appropriate congressional committees not later than April 1, 2005.

“(B) SUBSEQUENT VERSIONS.—After December 31, 2005, the Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans and any revisions to the National Strategy for Transportation Security and the transportation modal security plans, to appropriate congressional committees not less frequently than April 1 of each even-numbered year.

“(C) PERIODIC PROGRESS REPORT.—

“(i) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Transportation Security.

“(ii) CONTENT.—Each progress report under this subparagraph shall include, at a minimum, recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal security plans that the Secretary, in consultation with the Secretary of Transportation, considers appropriate.

“(D) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security or the transportation modal security plans that involve information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees separately in a classified format.

“(E) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term ‘appropriate congressional committees’ means the Committee on Transportation and Infrastructure and the Select Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and

Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate.

“(5) PRIORITY STATUS.—

“(A) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

“(B) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

“(i) the current National Maritime Transportation Security Plan under section 70103 of title 46;

“(ii) the report required by section 44938 of this title;

“(iii) transportation modal security plans required under this section; and

“(iv) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.”.

(b) AVIATION SECURITY PLANNING; OPERATIONAL CRITERIA.—Section 44904 of title 49, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by inserting after subsection (b) the following:

“(c) MODAL SECURITY PLAN FOR AVIATION.—In addition to the requirements set forth in subparagraphs (B) through (F) of section 114(t)(3), the modal security plan for aviation prepared under section 114(t) shall—

“(1) establish a damage mitigation and recovery plan for the aviation system in the event of a terrorist attack; and

“(2) include a threat matrix document that outlines each threat to the United States civil aviation system and the corresponding layers of security in place to address such threat.

“(d) OPERATIONAL CRITERIA.—Not later than 90 days after the date of the submission of the National Strategy for Transportation Security under section 114(t)(4)(A), the Assistant Secretary of Homeland Security (Transportation Security Administration) shall issue operational criteria to protect airport infrastructure and operations against the threats identified in the plans prepared under section 114(t)(1) and shall approve best practices guidelines for airport assets.”.

Deadline.
Guidelines.

Subtitle B—Aviation Security

SEC. 4011. PROVISION FOR THE USE OF BIOMETRIC OR OTHER TECHNOLOGY.

(a) USE OF BIOMETRIC IDENTIFIER TECHNOLOGY.—Section 44903(h) of title 49, United States Code, is amended—

(1) in paragraph (4)(E) by striking “may provide for” and inserting “shall issue, not later than March 31, 2005, guidance for”; and

(2) by adding at the end the following:

“(5) USE OF BIOMETRIC TECHNOLOGY IN AIRPORT ACCESS CONTROL SYSTEMS.—In issuing guidance under paragraph (4)(E), the Assistant Secretary of Homeland Security (Transportation Security Administration) in consultation with representatives of the aviation industry, the biometric identifier industry,

and the National Institute of Standards and Technology, shall establish, at a minimum—

“(A) comprehensive technical and operational system requirements and performance standards for the use of biometric identifier technology in airport access control systems (including airport perimeter access control systems) to ensure that the biometric identifier systems are effective, reliable, and secure;

“(B) a list of products and vendors that meet the requirements and standards set forth in subparagraph (A);

“(C) procedures for implementing biometric identifier systems—

“(i) to ensure that individuals do not use an assumed identity to enroll in a biometric identifier system; and

“(ii) to resolve failures to enroll, false matches, and false non-matches; and

“(D) best practices for incorporating biometric identifier technology into airport access control systems in the most effective manner, including a process to best utilize existing airport access control systems, facilities, and equipment and existing data networks connecting airports.

“(6) USE OF BIOMETRIC TECHNOLOGY FOR LAW ENFORCEMENT OFFICER TRAVEL.—

“(A) IN GENERAL.—Not later than 120 days after the date of enactment of this paragraph, the Assistant Secretary, in consultation with the Attorney General, shall—

Deadline.

“(i) establish a law enforcement officer travel credential that incorporates biometric identifier technology and is uniform across all Federal, State, local, tribal, and territorial government law enforcement agencies;

“(ii) establish a process by which the travel credential will be used to verify the identity of a Federal, State, local, tribal, or territorial law enforcement officer seeking to carry a weapon on board an aircraft, without unnecessarily disclosing to the public that the individual is a law enforcement officer;

“(iii) establish procedures—

Procedures.

“(I) to ensure that only Federal, State, local, tribal, and territorial government law enforcement officers are issued a law enforcement travel credential;

“(II) to resolve failures to enroll, false matches, and false non-matches relating to use of the law enforcement travel credential; and

“(III) to invalidate any law enforcement travel credential that is lost, stolen, or no longer authorized for use;

“(iv) begin issuance of the travel credential to each Federal, State, local, tribal, or territorial government law enforcement officer authorized by the Assistant Secretary to carry a weapon on board an aircraft; and

“(v) take such other actions with respect to the travel credential as the Assistant Secretary considers appropriate.

“(B) FUNDING.—There is authorized to be appropriated such sums as may be necessary to carry out this paragraph.

“(7) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) BIOMETRIC IDENTIFIER INFORMATION.—The term ‘biometric identifier information’ means the distinct physical or behavioral characteristics of an individual that are used for unique identification, or verification of the identity, of an individual.

“(B) BIOMETRIC IDENTIFIER.—The term ‘biometric identifier’ means a technology that enables the automated identification, or verification of the identity, of an individual based on biometric information.

“(C) FAILURE TO ENROLL.—The term ‘failure to enroll’ means the inability of an individual to enroll in a biometric identifier system due to an insufficiently distinctive biometric sample, the lack of a body part necessary to provide the biometric sample, a system design that makes it difficult to provide consistent biometric identifier information, or other factors.

“(D) FALSE MATCH.—The term ‘false match’ means the incorrect matching of one individual’s biometric identifier information to another individual’s biometric identifier information by a biometric identifier system.

“(E) FALSE NON-MATCH.—The term ‘false non-match’ means the rejection of a valid identity by a biometric identifier system.

“(F) SECURE AREA OF AN AIRPORT.—The term ‘secure area of an airport’ means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).”.

Appropriation
authorization.

(b) AVIATION SECURITY RESEARCH AND DEVELOPMENT.—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration \$20,000,000, in addition to any amounts otherwise authorized by law, for research and development of advanced biometric technology applications to aviation security, including mass identification technology.

(c) SENSE OF CONGRESS ON TRANSFER OF TECHNOLOGY.—It is the sense of Congress that the national intelligence community and the Department of Homeland Security should share information on and technological advancements to biometric systems, biometric technology, and biometric identifier systems obtained through research and development programs conducted by various Federal agencies.

Appropriation
authorization.

(d) BIOMETRIC CENTER OF EXCELLENCE.—There is authorized to be appropriated \$1,000,000, in addition to any amounts otherwise authorized by law, for the establishment of a competitive center of excellence that will develop and expedite the Federal Government’s use of biometric identifiers.

SEC. 4012. ADVANCED AIRLINE PASSENGER PRESCREENING.

(a) IN GENERAL.—

(1) DOMESTIC FLIGHTS.—Section 44903(j)(2) of title 49, United States Code, is amended by adding at the end the following:

“(C) ADVANCED AIRLINE PASSENGER PRESCREENING.— Deadlines.

“(i) COMMENCEMENT OF TESTING.—Not later than January 1, 2005, the Assistant Secretary of Homeland Security (Transportation Security Administration), or the designee of the Assistant Secretary, shall commence testing of an advanced passenger prescreening system that will allow the Department of Homeland Security to assume the performance of comparing passenger information, as defined by the Assistant Secretary, to the automatic selectee and no fly lists, utilizing all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government.

“(ii) ASSUMPTION OF FUNCTION.—Not later than 180 days after completion of testing under clause (i), the Assistant Secretary, or the designee of the Assistant Secretary, shall begin to assume the performance of the passenger prescreening function of comparing passenger information to the automatic selectee and no fly lists and utilize all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government in performing that function.

“(iii) REQUIREMENTS.—In assuming performance of the function under clause (ii), the Assistant Secretary shall—

“(I) establish a procedure to enable airline passengers, who are delayed or prohibited from boarding a flight because the advanced passenger prescreening system determined that they might pose a security threat, to appeal such determination and correct information contained in the system;

Procedures.

“(II) ensure that Federal Government databases that will be used to establish the identity of a passenger under the system will not produce a large number of false positives;

“(III) establish an internal oversight board to oversee and monitor the manner in which the system is being implemented;

Establishment.

“(IV) establish sufficient operational safeguards to reduce the opportunities for abuse;

“(V) implement substantial security measures to protect the system from unauthorized access;

“(VI) adopt policies establishing effective oversight of the use and operation of the system; and

“(VII) ensure that there are no specific privacy concerns with the technological architecture of the system.

“(iv) PASSENGER INFORMATION.—Not later than 180 days after the completion of the testing of the advanced passenger prescreening system, the Assistant Secretary, by order or interim final rule—

“(I) shall require air carriers to supply to the Assistant Secretary the passenger information needed to begin implementing the advanced passenger prescreening system; and

“(II) shall require entities that provide systems and services to air carriers in the operation of air carrier reservations systems to provide to air carriers passenger information in possession of such entities, but only to the extent necessary to comply with subclause (I).

“(D) SCREENING OF EMPLOYEES AGAINST WATCHLIST.—The Assistant Secretary of Homeland Security (Transportation Security Administration), in coordination with the Secretary of Transportation and the Administrator of the Federal Aviation Administration, shall ensure that individuals are screened against all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government before—

“(i) being certificated by the Federal Aviation Administration;

“(ii) being granted unescorted access to the secure area of an airport; or

“(iii) being granted unescorted access to the air operations area (as defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section) of an airport.

“(E) AIRCRAFT CHARTER CUSTOMER AND LESSEE PRESCREENING.—

Deadline.

“(i) IN GENERAL.—Not later than 90 days after the date on which the Assistant Secretary assumes the performance of the advanced passenger prescreening function under subparagraph (C)(ii), the Assistant Secretary shall establish a process by which operators of aircraft to be used in charter air transportation with a maximum takeoff weight greater than 12,500 pounds and lessors of aircraft with a maximum takeoff weight greater than 12,500 pounds may—

“(I) request the Department of Homeland Security to use the advanced passenger prescreening system to compare information about any individual seeking to charter an aircraft with a maximum takeoff weight greater than 12,500 pounds, any passenger proposed to be transported aboard such aircraft, and any individual seeking to lease an aircraft with a maximum takeoff weight greater than 12,500 pounds to the automatic selectee and no fly lists, utilizing all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government; and

“(II) refuse to charter or lease an aircraft with a maximum takeoff weight greater than 12,500 pounds to or transport aboard such aircraft any persons identified on such watch list.

Applicability.

“(ii) REQUIREMENTS.—The requirements of subparagraph (C)(iii) shall apply to this subparagraph.

“(iii) NO FLY AND AUTOMATIC SELECTEE LISTS.—The Secretary of Homeland Security, in consultation with the Terrorist Screening Center, shall design and review, as necessary, guidelines, policies, and operating procedures for the collection, removal, and updating

of data maintained, or to be maintained, in the no fly and automatic selectee lists.

“(F) APPLICABILITY.—Section 607 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 44903 note; 117 Stat. 2568) shall not apply to the advanced passenger prescreening system established under subparagraph (C).

“(G) APPEAL PROCEDURES.—

“(i) IN GENERAL.—The Assistant Secretary shall establish a timely and fair process for individuals identified as a threat under one or more of subparagraphs (C), (D), and (E) to appeal to the Transportation Security Administration the determination and correct any erroneous information.

“(ii) RECORDS.—The process shall include the establishment of a method by which the Assistant Secretary will be able to maintain a record of air passengers and other individuals who have been misidentified and have corrected erroneous information. To prevent repeated delays of misidentified passengers and other individuals, the Transportation Security Administration record shall contain information determined by the Assistant Secretary to authenticate the identity of such a passenger or individual.

“(H) DEFINITION.—In this paragraph, the term ‘secure area of an airport’ means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).”.

(2) INTERNATIONAL FLIGHTS.—Section 44909(c) of title 49, United States Code, is amended—

(A) by striking “paragraph (5),” in paragraph (4) and inserting “paragraphs (5) and (6),”; and

(B) by adding at the end the following:

“(6) PRESCREENING INTERNATIONAL PASSENGERS.—

“(A) IN GENERAL.—Not later than 60 days after date of enactment of this paragraph, the Secretary of Homeland Security, or the designee of the Secretary, shall issue a notice of proposed rulemaking that will allow the Department of Homeland Security to compare passenger information for any international flight to or from the United States against the consolidated and integrated terrorist watchlist maintained by the Federal Government before departure of the flight.

Deadline.

“(B) APPEAL PROCEDURES.—

“(i) IN GENERAL.—The Secretary of Homeland Security shall establish a timely and fair process for individuals identified as a threat under subparagraph (A) to appeal to the Department of Homeland Security the determination and correct any erroneous information.

“(ii) RECORDS.—The process shall include the establishment of a method by which the Secretary will be able to maintain a record of air passengers and other individuals who have been misidentified and have corrected erroneous information. To prevent repeated delays of misidentified passengers and other

individuals, the Department of Homeland Security record shall contain information determined by the Secretary to authenticate the identity of such a passenger or individual.”

(b) REPORT ON EFFECTS ON PRIVACY AND CIVIL LIBERTIES.—

(1) REQUIREMENT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Security Privacy Officer of the Department of Homeland Security shall submit a report assessing the impact of the automatic selectee and no fly lists on privacy and civil liberties to the Committee on the Judiciary, the Committee on Homeland Security and Governmental Affairs, and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on the Judiciary, the Committee on Government Reform, the Committee on Transportation and Infrastructure, and the Select Committee on Homeland Security of the House of Representatives.

(2) CONTENT.—The report submitted under paragraph (1) shall include—

(A) any recommendations for practices, procedures, regulations, or legislation that the Security Privacy Officer considers necessary to minimize adverse effects of automatic selectee and no fly lists on privacy, discrimination, due process, and other civil liberties;

(B) a discussion of the implications of applying those lists to other modes of transportation; and

(C) the effect that implementation of the recommendations would have on the effectiveness of the use of such lists to protect the United States against terrorist attacks.

Public
information.

(3) FORM.—To the greatest extent consistent with the protection of law enforcement-sensitive information and classified information, and the administration of applicable law, the report shall be submitted in unclassified form and shall be available to the public. The report may contain a classified annex if necessary.

(c) REPORT ON CRITERIA FOR CONSOLIDATED TERRORIST WATCH LIST.—

(1) IN GENERAL.—Within 180 days after the date of enactment of this Act, the Director of National Intelligence, in consultation with the Secretary of Homeland Security, the Secretary of State, and the Attorney General, shall submit to Congress a report on the Terrorist Screening Center consolidated screening watch list.

(2) CONTENTS.—The report shall include—

(A) the criteria for placing the name of an individual on the watch list;

(B) the minimum standards for reliability and accuracy of identifying information;

(C) the degree of information certainty and the range of threat levels that are to be identified for an individual; and

(D) the range of applicable consequences that are to apply to an individual, if located.

Public
information.

(3) FORM.—To the greatest extent consistent with the protection of law enforcement-sensitive information and classified information and the administration of applicable law, the report shall be submitted in unclassified form and shall be

available to the public. The report may contain a classified annex if necessary.

SEC. 4013. DEPLOYMENT AND USE OF DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.

(a) **IN GENERAL.**—Subchapter I of chapter 449, of title 49, United States Code, is amended by adding at the end the following:

“§ 44925. Deployment and use of detection equipment at airport screening checkpoints

“(a) **WEAPONS AND EXPLOSIVES.**—The Secretary of Homeland Security shall give a high priority to developing, testing, improving, and deploying, at airport screening checkpoints, equipment that detects nonmetallic, chemical, biological, and radiological weapons, and explosives, in all forms, on individuals and in their personal property. The Secretary shall ensure that the equipment alone, or as part of an integrated system, can detect under realistic operating conditions the types of weapons and explosives that terrorists would likely try to smuggle aboard an air carrier aircraft.

“(b) **STRATEGIC PLAN FOR DEPLOYMENT AND USE OF EXPLOSIVE DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.**—

“(1) **IN GENERAL.**—Not later than 90 days after the date of enactment of this section, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall submit to the appropriate congressional committees a strategic plan to promote the optimal utilization and deployment of explosive detection equipment at airports to screen individuals and their personal property. Such equipment includes walk-through explosive detection portals, document scanners, shoe scanners, and backscatter x-ray scanners. The plan may be submitted in a classified format.

Deadline.

“(2) **CONTENT.**—The strategic plan shall include, at minimum—

“(A) a description of current efforts to detect explosives in all forms on individuals and in their personal property;

“(B) a description of the operational applications of explosive detection equipment at airport screening checkpoints;

“(C) a deployment schedule and a description of the quantities of equipment needed to implement the plan;

“(D) a description of funding needs to implement the plan, including a financing plan that provides for leveraging of non-Federal funding;

“(E) a description of the measures taken and anticipated to be taken in carrying out subsection (d); and

“(F) a description of any recommended legislative actions.

“(c) **PORTAL DETECTION SYSTEMS.**—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration \$250,000,000, in addition to any amounts otherwise authorized by law, for research, development, and installation of detection systems and other devices for the detection of biological, chemical, radiological, and explosive materials.

Appropriation authorization.

“(d) **INTERIM ACTION.**—Until measures are implemented that enable the screening of all passengers for explosives, the Assistant Secretary shall provide, by such means as the Assistant Secretary

considers appropriate, explosives detection screening for all passengers identified for additional screening and their personal property that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 449 of title 49, United States Code, is amended by inserting after the item relating to section 44924 the following:

“44925. Deployment and use of detection equipment at airport screening checkpoints.”.

49 USC 44925
note.
Deadline.

SEC. 4014. ADVANCED AIRPORT CHECKPOINT SCREENING DEVICES.

(a) ADVANCED INTEGRATED AIRPORT CHECKPOINT SCREENING SYSTEM PILOT PROGRAM.—Not later than March 31, 2005, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall develop and initiate a pilot program to deploy and test advanced airport checkpoint screening devices and technology as an integrated system at not less than 5 airports in the United States.

(b) FUNDING.—Of the amounts appropriated pursuant to section 48301(a) of title 49, United States Code, for each of fiscal years 2005 and 2006, not more than \$150,000,000 shall be available to carry out subsection (a).

49 USC 44935
note.

SEC. 4015. IMPROVEMENT OF SCREENER JOB PERFORMANCE.

(a) REQUIRED ACTION.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall take such action as may be necessary to improve the job performance of airport screening personnel.

Deadline.
Reports.

(b) HUMAN FACTORS STUDY.—In carrying out this section, the Assistant Secretary shall provide, not later than 180 days after the date of the enactment of this Act, to the appropriate congressional committees a report on the results of any human factors study conducted by the Department of Homeland Security to better understand problems in screener performance and to improve screener performance.

49 USC 44917
note.

SEC. 4016. FEDERAL AIR MARSHALS.

(a) FEDERAL AIR MARSHAL ANONYMITY.—The Director of the Federal Air Marshal Service of the Department of Homeland Security shall continue operational initiatives to protect the anonymity of Federal air marshals.

(b) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Bureau of Immigration and Customs Enforcement, in addition to any amounts otherwise authorized by law, for the deployment of Federal air marshals under section 44917 of title 49, United States Code, \$83,000,000 for the 3 fiscal-year period beginning with fiscal year 2005. Such sums shall remain available until expended.

(c) FEDERAL LAW ENFORCEMENT COUNTERTERRORISM TRAINING.—

(1) AVAILABILITY OF INFORMATION.—The Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, shall make available, as practicable, appropriate information on in-flight counterterrorism and weapons handling procedures and tactics training to Federal

law enforcement officers who fly while in possession of a firearm.

(2) IDENTIFICATION OF FRAUDULENT DOCUMENTS.—The Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, in coordination with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall ensure that Transportation Security Administration screeners and Federal air marshals receive training in identifying fraudulent identification documents, including fraudulent or expired visas and passports. Such training shall also be made available to other Federal law enforcement agencies and local law enforcement agencies located in a State that borders Canada or Mexico.

SEC. 4017. INTERNATIONAL AGREEMENTS TO ALLOW MAXIMUM DEPLOYMENT OF FEDERAL AIR MARSHALS.

The President is encouraged to pursue aggressively international agreements with foreign governments to allow the maximum deployment of Federal air marshals on international flights.

SEC. 4018. FOREIGN AIR MARSHAL TRAINING.

Section 44917 of title 49, United States Code, is amended by adding at the end the following:

“(d) TRAINING FOR FOREIGN LAW ENFORCEMENT PERSONNEL.—

“(1) IN GENERAL.—The Assistant Secretary for Immigration and Customs Enforcement of the Department of Homeland Security, after consultation with the Secretary of State, may direct the Federal Air Marshal Service to provide appropriate air marshal training to law enforcement personnel of foreign countries.

“(2) WATCHLIST SCREENING.—The Federal Air Marshal Service may only provide appropriate air marshal training to law enforcement personnel of foreign countries after comparing the identifying information and records of law enforcement personnel of foreign countries against all appropriate records in the consolidated and integrated terrorist watchlists maintained by the Federal Government.

“(3) FEES.—The Assistant Secretary shall establish reasonable fees and charges to pay expenses incurred in carrying out this subsection. Funds collected under this subsection shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Assistant Secretary for purposes for which amounts in such account are available.”.

SEC. 4019. IN-LINE CHECKED BAGGAGE SCREENING.

49 USC 44901
note.

(a) IN-LINE BAGGAGE SCREENING EQUIPMENT.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall take such action as may be necessary to expedite the installation and use of in-line baggage screening equipment at airports at which screening is required by section 44901 of title 49, United States Code.

(b) SCHEDULE.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary shall submit to the appropriate congressional committees a schedule to expedite the installation and use of in-line baggage screening equipment

Deadline.

at such airports, with an estimate of the impact that such equipment, facility modification, and baggage conveyor placement will have on staffing needs and levels related to aviation security.

Deadline.

(c) **REPLACEMENT OF TRACE-DETECTION EQUIPMENT.**—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary shall establish and submit to the appropriate congressional committees a schedule for replacing trace-detection equipment, as soon as practicable and where appropriate, with explosive detection system equipment.

(d) **COST-SHARING STUDY.**—The Secretary of Homeland Security, in consultation with representatives of air carriers, airport operators, and other interested parties, shall submit to the appropriate congressional committees, in conjunction with the submission of the budget for fiscal year 2006 to Congress under section 1105(a) of title 31, United States Code—

(1) a proposed formula for cost-sharing among the Federal Government, State and local governments, and the private sector for projects to install in-line baggage screening equipment that reflects the benefits that each of such entities derive from such projects, including national security benefits and labor and other cost savings;

(2) recommendations, including recommended legislation, for an equitable, feasible, and expeditious system for defraying the costs of the in-line baggage screening equipment authorized by this title; and

(3) the results of a review of innovative financing approaches and possible cost savings associated with the installation of in-line baggage screening equipment at airports.

(e) **AUTHORIZATION FOR EXPIRING AND NEW LOIS.**—

(1) **IN GENERAL.**—Section 44923(i) of title 49, United States Code, is amended by striking “\$250,000,000 for each of fiscal years 2004 through 2007.” and inserting “\$400,000,000 for each of fiscal years 2005, 2006, and 2007.”.

49 USC 44923
note.

(2) **PERIOD OF REIMBURSEMENT.**—Notwithstanding any other provision of law, the Secretary may provide that the period of reimbursement under any letter of intent may extend for a period not to exceed 10 years after the date that the Secretary issues such letter, subject to the availability of appropriations. This paragraph applies to letters of intent issued under section 44923 of title 49, United States Code, and letters of intent issued under section 367 of the Department of Transportation and Related Agencies Appropriation Act, 2003 (49 U.S.C. 47110 note).

49 USC 44901
note.

SEC. 4020. CHECKED BAGGAGE SCREENING AREA MONITORING.

(a) **IN GENERAL.**—The Under Secretary for Border and Transportation Security of the Department of Homeland Security shall provide, subject to the availability of funds, assistance to airports at which screening is required by section 44901 of title 49, United States Code, and that have checked baggage screening areas that are not open to public view in the acquisition and installation of security monitoring cameras for surveillance of such areas in order to deter theft from checked baggage and to aid in the speedy resolution of liability claims against the Transportation Security Administration.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Homeland Security for fiscal

year 2005 such sums as may be necessary to carry out this section. Such sums shall remain available until expended.

SEC. 4021. WIRELESS COMMUNICATION.

(a) **STUDY.**—The Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Administrator of the Federal Aviation Administration, shall conduct a study to determine the viability of providing devices or methods, including wireless methods, to enable a flight crew to discreetly notify the pilot in the case of a security breach or safety issue occurring in the cabin.

(b) **MATTERS TO BE CONSIDERED.**—In conducting the study, the Transportation Security Administration and the Federal Aviation Administration shall consider technology that is readily available and can be quickly integrated and customized for use aboard aircraft for flight crew communication.

(c) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Transportation Security Administration shall submit to the appropriate congressional committees a report on the results of the study.

SEC. 4022. IMPROVED PILOT LICENSES.

(a) **IN GENERAL.**—Not later than one year after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall begin to issue improved pilot licenses consistent with the requirements of title 49, United States Code, and title 14, Code of Federal Regulations.

(b) **REQUIREMENTS.**—Improved pilots licenses issued under subsection (a) shall—

(1) be resistant to tampering, alteration, and counterfeiting;

(2) include a photograph of the individual to whom the license is issued; and

(3) be capable of accommodating a digital photograph, a biometric identifier, or any other unique identifier that the Administrator considers necessary.

(c) **TAMPERING.**—To the extent practical, the Administrator shall develop methods to determine or reveal whether any component or security feature of a license issued under subsection (a) has been tampered, altered, or counterfeited.

(d) **USE OF DESIGNEES.**—The Administrator may use designees to carry out subsection (a) to the extent feasible in order to minimize the burdens on pilots.

SEC. 4023. AVIATION SECURITY STAFFING.

(a) **AVIATION SECURITY STAFFING.**—Not later than 90 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall develop and submit to the appropriate congressional committees standards for determining the aviation security staffing for all airports at which screening is required under section 44901 of title 49, United States Code, necessary to—

(1) provide necessary levels of aviation security; and

(2) ensure that the average aviation security-related delay experienced by airline passengers is minimized.

(b) **GAO ANALYSIS.**—As soon as practicable after the date on which the Assistant Secretary has developed standards under subsection (a), the Comptroller General shall conduct an expedited analysis of, and submit a report to the appropriate congressional

49 USC 44703
note.
Deadline.

Deadline.
Standards.

Reports.

committees on, the standards for effectiveness, administrability, ease of compliance, and consistency with the requirements of existing law.

(c) **INTEGRATION OF FEDERAL AIRPORT WORKFORCE AND AVIATION SECURITY.**—The Secretary of Homeland Security shall conduct a study of the feasibility of combining operations of Federal employees involved in screening at commercial airports and aviation security-related functions under the authority of the Department of Homeland Security in order to coordinate security-related activities, increase the efficiency and effectiveness of those activities, and increase commercial air transportation security.

49 USC 44913
note.

SEC. 4024. IMPROVED EXPLOSIVE DETECTION SYSTEMS.

(a) **PLAN AND GUIDELINES.**—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall develop a plan and guidelines for implementing improved explosive detection system equipment.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration \$100,000,000, in addition to any amounts otherwise authorized by law, for the purpose of research and development of improved explosive detection systems for aviation security under section 44913 of title 49, United States Code.

Deadline.

SEC. 4025. PROHIBITED ITEMS LIST.

Not later than 60 days after the date of enactment of this Act, the Assistant Secretary for Homeland Security (Transportation Security Administration) shall complete a review of the list of items prohibited from being carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation set forth in section 1540 of title 49, Code of Federal Regulations, and shall release a revised list that includes—

- (1) butane lighters; and
- (2) any other modification that the Assistant Secretary considers appropriate.

22 USC 2751
note.

SEC. 4026. MAN-PORTABLE AIR DEFENSE SYSTEMS (MANPADS).

(a) **UNITED STATES POLICY ON NONPROLIFERATION AND EXPORT CONTROL.**—

(1) **TO LIMIT AVAILABILITY AND TRANSFER OF MANPADS.**—The President shall pursue, on an urgent basis, further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to limit the availability, transfer, and proliferation of MANPADSs worldwide.

(2) **TO LIMIT THE PROLIFERATION OF MANPADS.**—The President is encouraged to seek to enter into agreements with the governments of foreign countries that, at a minimum, would—

(A) prohibit the entry into force of a MANPADS manufacturing license agreement and MANPADS co-production agreement, other than the entry into force of a manufacturing license or co-production agreement with a country that is party to such an agreement;

(B) prohibit, except pursuant to transfers between governments, the export of a MANPADS, including any

component, part, accessory, or attachment thereof, without an individual validated license; and

(C) prohibit the reexport or retransfer of a MANPADS, including any component, part, accessory, or attachment thereof, to a third person, organization, or government unless the written consent of the government that approved the original export or transfer is first obtained.

(3) TO ACHIEVE DESTRUCTION OF MANPADS.—The President should continue to pursue further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to assure the destruction of excess, obsolete, and illicit stocks of MANPADSs worldwide.

(4) REPORTING AND BRIEFING REQUIREMENT.—

(A) PRESIDENT'S REPORT.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of diplomatic efforts under paragraphs (1), (2), and (3) and of efforts by the appropriate United States agencies to comply with the recommendations of the General Accounting Office set forth in its report GAO-04-519, entitled "Nonproliferation: Further Improvements Needed in U.S. Efforts to Counter Threats from Man-Portable Air Defense Systems".

(B) ANNUAL BRIEFINGS.—Annually after the date of submission of the report under subparagraph (A) and until completion of the diplomatic and compliance efforts referred to in subparagraph (A), the Secretary of State shall brief the appropriate congressional committees on the status of such efforts.

(b) FAA AIRWORTHINESS CERTIFICATION OF MISSILE DEFENSE SYSTEMS FOR COMMERCIAL AIRCRAFT.—

(1) IN GENERAL.—As soon as practicable, but not later than the date of completion of Phase II of the Department of Homeland Security's counter-man-portable air defense system (MANPADS) development and demonstration program, the Administrator of the Federal Aviation Administration shall establish a process for conducting airworthiness and safety certification of missile defense systems for commercial aircraft certified as effective and functional by the Department of Homeland Security. The process shall require a certification by the Administrator that such systems can be safely integrated into aircraft systems and ensure airworthiness and aircraft system integrity.

(2) CERTIFICATION ACCEPTANCE.—Under the process, the Administrator shall accept the certification of the Department of Homeland Security that a missile defense system is effective and functional to defend commercial aircraft against MANPADSs.

(3) EXPEDITIOUS CERTIFICATION.—Under the process, the Administrator shall expedite the airworthiness and safety certification of missile defense systems for commercial aircraft certified by the Department of Homeland Security.

(4) REPORTS.—Not later than 90 days after the first airworthiness and safety certification for a missile defense system for commercial aircraft is issued by the Administrator, and

annually thereafter until December 31, 2008, the Federal Aviation Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains a detailed description of each airworthiness and safety certification issued for a missile defense system for commercial aircraft.

(c) PROGRAMS TO REDUCE MANPADS.—

(1) IN GENERAL.—The President is encouraged to pursue strong programs to reduce the number of MANPADSs worldwide so that fewer MANPADSs will be available for trade, proliferation, and sale.

(2) REPORTING AND BRIEFING REQUIREMENTS.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of the programs being pursued under subsection (a). Annually thereafter until the programs are no longer needed, the Secretary of State shall brief the appropriate congressional committees on the status of programs.

(3) FUNDING.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

(d) MANPADS VULNERABILITY ASSESSMENTS REPORT.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Secretary of Homeland Security shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the Department of Homeland Security's plans to secure airports and the aircraft arriving and departing from airports against MANPADSs attacks.

(2) MATTERS TO BE ADDRESSED.—The Secretary's report shall address, at a minimum, the following:

(A) The status of the Department's efforts to conduct MANPADSs vulnerability assessments at United States airports at which the Department is conducting assessments.

(B) How intelligence is shared between the United States intelligence agencies and Federal, State, and local law enforcement to address the MANPADS threat and potential ways to improve such intelligence sharing.

(C) Contingency plans that the Department has developed in the event that it receives intelligence indicating a high threat of a MANPADS attack on aircraft at or near United States airports.

(D) The feasibility and effectiveness of implementing public education and neighborhood watch programs in areas surrounding United States airports in cases in which intelligence reports indicate there is a high risk of MANPADS attacks on aircraft.

(E) Any other issues that the Secretary deems relevant.

(3) FORMAT.—The report required by this subsection may be submitted in a classified format.

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Armed Services, the Committee on International Relations, and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) MANPADS.—The term “MANPADS” means—

(A) a surface-to-air missile system designed to be man-portable and carried and fired by a single individual; and

(B) any other surface-to-air missile system designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

SEC. 4027. TECHNICAL CORRECTIONS.

(a) ADMINISTRATIVE IMPOSITION OF PENALTIES.—Section 46301(d) of title 49, United States Code, is amended—

(1) in the first sentence of paragraph (2) by striking “46302, 46303,” and inserting “46302 (for a violation relating to section 46504),”;

(2) in the second sentence of paragraph (2)—

(A) by striking “Under Secretary of Transportation for Security” and inserting “Secretary of Homeland Security”; and

(B) by striking “44909)” and inserting “44909), 46302 (except for a violation relating to section 46504), 46303,”;

(3) in paragraphs (2), (3), and (4) by striking “Under Secretary or” each place it occurs and inserting “Secretary of Homeland Security or”; and

(4) in paragraph (4)(A) by moving clauses (i), (ii), and (iii) 2 ems to the left.

(b) COMPROMISE AND SETOFF FOR FALSE INFORMATION.—Section 46302(b)(1) of title 49, United States Code, is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security and, for a violation relating to section 46504, the Secretary of Transportation,”.

(c) CARRYING A WEAPON.—Section 46303 of title 49, United States Code, is amended—

(1) in subsection (b)(1) by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security”; and

(2) in subsection (c)(2) by striking “Under Secretary of Transportation for Security” and inserting “Secretary of Homeland Security”.

SEC. 4028. REPORT ON SECONDARY FLIGHT DECK BARRIERS.

Not later than 6 months after the date of the enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall submit to the appropriate congressional committees a report on the costs and benefits associated with the use of secondary flight deck barriers, including the recommendation of the Assistant Secretary whether or not the use of such barriers should be mandated for all air carriers. The report may be submitted in a classified form.

SEC. 4029. EXTENSION OF AUTHORIZATION OF AVIATION SECURITY FUNDING.

Section 48301(a) of title 49, United States Code, is amended by striking “and 2005” and inserting “2005, and 2006”.

Subtitle C—Air Cargo Security

49 USC 44901
note.

Deadline.

SEC. 4051. PILOT PROGRAM TO EVALUATE USE OF BLAST RESISTANT CARGO AND BAGGAGE CONTAINERS.

(a) **IN GENERAL.**—Beginning not later than 180 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall carry out a pilot program to evaluate the use of blast-resistant containers for cargo and baggage on passenger aircraft to minimize the potential effects of detonation of an explosive device.

(b) **INCENTIVES FOR PARTICIPATION IN PILOT PROGRAM.**—

(1) **IN GENERAL.**—As part of the pilot program, the Assistant Secretary shall provide incentives to air carriers to volunteer to test the use of blast-resistant containers for cargo and baggage on passenger aircraft.

(2) **APPLICATIONS.**—To volunteer to participate in the incentive program, an air carrier shall submit to the Assistant Secretary an application that is in such form and contains such information as the Assistant Secretary requires.

(3) **TYPES OF INCENTIVES.**—Incentives provided by the Assistant Secretary to air carriers that volunteer to participate in the pilot program shall include the use of, and financial assistance to cover increased costs to the carriers associated with the use and maintenance of, blast-resistant containers, including increased fuel costs.

(c) **TECHNOLOGICAL IMPROVEMENTS.**—The Secretary of Homeland Security, in cooperation with the Secretary of Transportation, shall support efforts to explore alternative technologies for minimizing the potential effects of detonation of an explosive device on cargo and passenger aircraft.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out subsections (a) and (b) \$2,000,000. Such sum shall remain available until expended.

49 USC 44901
note.

SEC. 4052. AIR CARGO SECURITY.

(a) **AIR CARGO SCREENING TECHNOLOGY.**—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall develop technology to better identify, track, and screen air cargo.

Appropriation
authorization.

(b) **IMPROVED AIR CARGO AND AIRPORT SECURITY.**—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration, in addition to any amounts otherwise authorized by law, for the purpose of improving aviation security related to the transportation of cargo on both passenger aircraft and all-cargo aircraft—

- (1) \$200,000,000 for fiscal year 2005;
- (2) \$200,000,000 for fiscal year 2006; and
- (3) \$200,000,000 for fiscal year 2007.

Such sums shall remain available until expended.

(c) **RESEARCH, DEVELOPMENT, AND DEPLOYMENT.**—To carry out subsection (a), there is authorized to be appropriated to the Secretary, in addition to any amounts otherwise authorized by law, for research and development related to enhanced air cargo security technology as well as for deployment and installation of enhanced air cargo security technology—

- (1) \$100,000,000 for fiscal year 2005;

- (2) \$100,000,000 for fiscal year 2006; and
- (3) \$100,000,000 for fiscal year 2007.

Such sums shall remain available until expended.

(d) **ADVANCED CARGO SECURITY GRANTS.**—

(1) **IN GENERAL.**—The Secretary shall establish and carry out a program to issue competitive grants to encourage the development of advanced air cargo security technology, including use of innovative financing or other means of funding such activities. The Secretary may make available funding for this purpose from amounts appropriated pursuant to subsection (c).

(2) **ELIGIBILITY CRITERIA, ETC.**—The Secretary shall establish such eligibility criteria, establish such application and administrative procedures, and provide for such matching funding requirements, if any, as may be necessary and appropriate to ensure that the technology is deployed as fully and rapidly as possible.

Procedures.

SEC. 4053. AIR CARGO SECURITY REGULATIONS.

Deadline.

Not later than 240 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall issue a final rule in Docket Number TSA-2004-19515 to amend transportation security regulations to enhance and improve the security of air cargo transported in both passenger and all-cargo aircraft.

SEC. 4054. REPORT ON INTERNATIONAL AIR CARGO THREATS.

(a) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in coordination with the Secretary of Defense and the Administrator of the Federal Aviation Administration, shall submit to the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that contains the following:

(1) A description of the current procedures in place to address the threat of an inbound all-cargo aircraft from outside the United States that intelligence sources indicate could carry explosive, incendiary, chemical, biological, or nuclear devices.

(2) An analysis of the potential for establishing secure facilities along established international aviation routes for the purposes of diverting and securing aircraft described in paragraph (1).

(b) **REPORT FORMAT.**—The Secretary may submit all, or part, of the report required by this section in such a classified and redacted format as the Secretary determines appropriate or necessary.

Subtitle D—Maritime Security

SEC. 4071. WATCH LISTS FOR PASSENGERS ABOARD VESSELS.

46 USC 70101
note.

(a) **WATCH LISTS.**—

(1) **IN GENERAL.**—As soon as practicable but not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall—

(A) implement a procedure under which the Department of Homeland Security compares information about

passengers and crew who are to be carried aboard a cruise ship with a comprehensive, consolidated database containing information about known or suspected terrorists and their associates;

(B) use the information obtained by comparing the passenger and crew information with the information in the database to prevent known or suspected terrorists and their associates from boarding such ships or to subject them to specific additional security scrutiny, through the use of “no transport” and “automatic selectee” lists or other means.

(2) **WAIVER.**—The Secretary may waive the requirement in paragraph (1)(B) with respect to cruise ships embarking at foreign ports if the Secretary determines that the application of such requirement to such cruise ships is impracticable.

Regulations.

(b) **COOPERATION FROM OPERATORS OF CRUISE SHIPS.**—The Secretary of Homeland Security shall by rulemaking require operators of cruise ships to provide the passenger and crew information necessary to implement the procedure required by subsection (a).

(c) **MAINTENANCE OF ACCURACY AND INTEGRITY OF “NO TRANSPORT” AND “AUTOMATIC SELECTEE” LISTS.**—

Guidelines.
Procedures.

(1) **WATCH LIST DATABASE.**—The Secretary of Homeland Security, in consultation with the Terrorist Screening Center, shall develop guidelines, policies, and operating procedures for the collection, removal, and updating of data maintained, or to be maintained, in the “no transport” and “automatic selectee” lists described in subsection (a)(1) that are designed to ensure the accuracy and integrity of the lists.

(2) **ACCURACY OF ENTRIES.**—In developing the “no transport” and “automatic selectee” lists under subsection (a)(1)(B), the Secretary shall establish a simple and timely method for correcting erroneous entries, for clarifying information known to cause false hits or misidentification errors, and for updating relevant information that is dispositive in the passenger and crew screening process. The Secretary shall also establish a process to provide an individual whose name is confused with, or similar to, a name in the watch list database with a means of demonstrating that such individual is not the person named in the database.

(d) **CRUISE SHIP DEFINED.**—In this section, the term “cruise ship” means a vessel on an international voyage that embarks or disembarks passengers at a port of United States jurisdiction to which subpart C of part 160 of title 33, Code of Federal Regulations, applies and that provides overnight accommodations.

SEC. 4072. DEADLINES FOR COMPLETION OF CERTAIN PLANS, REPORTS, AND ASSESSMENTS.

(a) **NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.**—Section 70103(a)(1) of title 46, United States Code, is amended by striking “The Secretary” and inserting “Not later than April 1, 2005, the Secretary”.

(b) **FACILITY AND VESSEL VULNERABILITY ASSESSMENTS.**—Section 70102(b)(1) of title 46, United States Code, is amended by striking “, the Secretary” and inserting “and by not later than December 31, 2004, the Secretary”.

(c) **STRATEGIC PLAN REPORTS.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(1) a comprehensive program management plan that identifies specific tasks to be completed, and deadlines for completion, for the transportation security card program under section 70105 of title 46, United States Code, that incorporates best practices for communicating, coordinating, and collaborating with the relevant stakeholders to resolve relevant issues, such as background checks;

(2) a report on the status of negotiations under section 103(a) of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70111);

(3) the report required by section 107(b) of the Maritime Transportation Security Act of 2002 (33 U.S.C. 1226 note); and

(4) a report on the status of the development of the system and standards required by section 111 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70116 note).

(d) **OTHER REPORTS.**—Not later than 90 days after the date of the enactment of this Act—

(1) the Secretary of Homeland Security shall submit to the appropriate congressional committees—

(A) a report on the establishment of the National Maritime Security Advisory Committee under section 70112 of title 46, United States Code; and

(B) a report on the status of the program required by section 70116 of title 46, United States Code, to evaluate and certify secure systems of international intermodal transportation;

(2) the Secretary of Transportation shall submit to the appropriate congressional committees the annual report required by section 905 of the International Maritime and Port Security Act (46 U.S.C. App. 1802) that includes information that should have been included in the last preceding annual report that was due under that section; and

(3) the Commandant of the United States Coast Guard shall submit to the appropriate congressional committees the report required by section 110(b) of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note).

Subtitle E—General Provisions

SEC. 4081. DEFINITIONS.

In this title (other than in sections 4001 and 4026), the following definitions apply:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

49 USC 44901
note.

(2) AVIATION DEFINITIONS.—The terms “air carrier”, “air transportation”, “aircraft”, “airport”, “cargo”, “foreign air carrier”, and “intrastate air transportation” have the meanings given such terms in section 40102 of title 49, United States Code.

(3) SECURE AREA OF AN AIRPORT.—The term “secure area of an airport” means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulations).

49 USC 114 note. **SEC. 4082. EFFECTIVE DATE.**

This title shall take effect on the date of enactment of this Act.

TITLE V—BORDER PROTECTION, IMMIGRATION, AND VISA MATTERS

Subtitle A—Advanced Technology Northern Border Security Pilot Program

8 USC 1712 note. **SEC. 5101. ESTABLISHMENT.**

The Secretary of Homeland Security may carry out a pilot program to test various advanced technologies that will improve border security between ports of entry along the northern border of the United States.

8 USC 1712 note. **SEC. 5102. PROGRAM REQUIREMENTS.**

(a) REQUIRED FEATURES.—The Secretary of Homeland Security shall design the pilot program under this subtitle to have the following features:

(1) Use of advanced technological systems, including sensors, video, and unmanned aerial vehicles, for border surveillance.

(2) Use of advanced computing and decision integration software for—

(A) evaluation of data indicating border incursions;

(B) assessment of threat potential; and

(C) rapid real-time communication, monitoring, intelligence gathering, deployment, and response.

(3) Testing of advanced technology systems and software to determine best and most cost-effective uses of advanced technology to improve border security.

(4) Operation of the program in remote stretches of border lands with long distances between 24-hour ports of entry with a relatively small presence of United States border patrol officers.

(5) Capability to expand the program upon a determination by the Secretary that expansion would be an appropriate and cost-effective means of improving border security.

(b) COORDINATION WITH OTHER AGENCIES.—The Secretary of Homeland Security shall ensure that the operation of the pilot program under this subtitle—

(1) is coordinated among United States, State, local, and Canadian law enforcement and border security agencies; and

(2) includes ongoing communication among such agencies.

SEC. 5103. ADMINISTRATIVE PROVISIONS.

8 USC 1712 note.

(a) **PROCUREMENT OF ADVANCED TECHNOLOGY.**—The Secretary of Homeland Security may enter into contracts for the procurement or use of such advanced technologies as the Secretary determines appropriate for the pilot program under this subtitle.

(b) **PROGRAM PARTNERSHIPS.**—In carrying out the pilot program under this subtitle, the Secretary of Homeland Security may provide for the establishment of cooperative arrangements for participation in the pilot program by such participants as law enforcement and border security agencies referred to in section 5102(b), institutions of higher education, and private sector entities.

SEC. 5104. REPORT.

8 USC 1712 note.

(a) **REQUIREMENT FOR REPORT.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report on the pilot program under this subtitle.

(b) **CONTENT.**—The report under subsection (a) shall include the following matters:

(1) A discussion of the implementation of the pilot program, including the experience under the pilot program.

(2) A recommendation regarding whether to expand the pilot program along the entire northern border of the United States and a timeline for the implementation of the expansion.

SEC. 5105. AUTHORIZATION OF APPROPRIATIONS.

8 USC 1712 note.

There is authorized to be appropriated such sums as may be necessary to carry out the pilot program under this subtitle.

Subtitle B—Border and Immigration Enforcement

SEC. 5201. BORDER SURVEILLANCE.

8 USC 1701 note.

(a) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the President and the appropriate committees of Congress a comprehensive plan for the systematic surveillance of the southwest border of the United States by remotely piloted aircraft.

(b) **CONTENTS.**—The plan submitted under subsection (a) shall include—

(1) recommendations for establishing command and control centers, operations sites, infrastructure, maintenance, and procurement;

(2) cost estimates for the implementation of the plan and ongoing operations;

(3) recommendations for the appropriate agent within the Department of Homeland Security to be the executive agency for remotely piloted aircraft operations;

(4) the number of remotely piloted aircraft required for the plan;

(5) the types of missions the plan would undertake, including—

(A) protecting the lives of people seeking illegal entry into the United States;

Deadline.

(B) interdicting illegal movement of people, weapons, and other contraband across the border;

(C) providing investigative support to assist in the dismantling of smuggling and criminal networks along the border;

(D) using remotely piloted aircraft to serve as platforms for the collection of intelligence against smugglers and criminal networks along the border; and

(E) further validating and testing of remotely piloted aircraft for airspace security missions;

(6) the equipment necessary to carry out the plan; and

(7) a recommendation regarding whether to expand the pilot program along the entire southwest border.

(c) **IMPLEMENTATION.**—The Secretary of Homeland Security shall implement the plan submitted under subsection (a) as a pilot program as soon as sufficient funds are appropriated and available for this purpose.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

Effective date.

In each of the fiscal years 2006 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not less than 2,000 the number of positions for full-time active-duty border patrol agents within the Department of Homeland Security above the number of such positions for which funds were allotted for the preceding fiscal year. In each of the fiscal years 2006 through 2010, in addition to the border patrol agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of border patrol agents equal to not less than 20 percent of the net increase in border patrol agents during each such fiscal year.

SEC. 5203. INCREASE IN FULL-TIME IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.

Effective date.

In each of fiscal years 2006 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not less than 800 the number of positions for full-time active duty investigators within the Department of Homeland Security investigating violations of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) above the number of such positions for which funds were made available during the preceding fiscal year.

SEC. 5204. INCREASE IN DETENTION BED SPACE.

Effective date.

(a) **IN GENERAL.**—Subject to the availability of appropriated funds, the Secretary of Homeland Security shall increase by not less than 8,000, in each of the fiscal years 2006 through 2010, the number of beds available for immigration detention and removal operations of the Department of Homeland Security above the number for which funds were allotted for the preceding fiscal year.

(b) **PRIORITY.**—The Secretary shall give priority for the use of these additional beds to the detention of individuals charged with removability under section 237(a)(4) of the Immigration and

Nationality Act (8 U.S.C. 1227(a)(4)) or inadmissibility under section 212(a)(3) of that Act (8 U.S.C. 1182(a)(3)).

Subtitle C—Visa Requirements

SEC. 5301. IN PERSON INTERVIEWS OF VISA APPLICANTS.

(a) REQUIREMENT FOR INTERVIEWS.—Section 222 of the Immigration and Nationality Act (8 U.S.C. 1202) is amended by adding at the end the following new subsection:

“(h) Notwithstanding any other provision of this Act, the Secretary of State shall require every alien applying for a non-immigrant visa—

“(1) who is at least 14 years of age and not more than 79 years of age to submit to an in person interview with a consular officer unless the requirement for such interview is waived—

“(A) by a consular official and such alien is—

“(i) within that class of nonimmigrants enumerated in subparagraph (A) or (G) of section 101(a)(15);

“(ii) within the NATO visa category;

“(iii) within that class of nonimmigrants enumerated in section 101(a)(15)(C)(iii) (referred to as the ‘C–3 visa’ category); or

“(iv) granted a diplomatic or official visa on a diplomatic or official passport or on the equivalent thereof;

“(B) by a consular official and such alien is applying for a visa—

“(i) not more than 12 months after the date on which such alien’s prior visa expired;

“(ii) for the visa classification for which such prior visa was issued;

“(iii) from the consular post located in the country of such alien’s usual residence, unless otherwise prescribed in regulations that require an applicant to apply for a visa in the country of which such applicant is a national; and

“(iv) the consular officer has no indication that such alien has not complied with the immigration laws and regulations of the United States; or

“(C) by the Secretary of State if the Secretary determines that such waiver is—

“(i) in the national interest of the United States;

or

“(ii) necessary as a result of unusual or emergent circumstances; and

“(2) notwithstanding paragraph (1), to submit to an in person interview with a consular officer if such alien—

“(A) is not a national or resident of the country in which such alien is applying for a visa;

“(B) was previously refused a visa, unless such refusal was overcome or a waiver of ineligibility has been obtained;

“(C) is listed in the Consular Lookout and Support System (or successor system at the Department of State);

“(D) is a national of a country officially designated by the Secretary of State as a state sponsor of terrorism,

except such nationals who possess nationalities of countries that are not designated as state sponsors of terrorism;

“(E) requires a security advisory opinion or other Department of State clearance, unless such alien is—

“(i) within that class of nonimmigrants enumerated in subparagraph (A) or (G) of section 101(a)(15);

“(ii) within the NATO visa category;

“(iii) within that class of nonimmigrants enumerated in section 101(a)(15)(C)(iii) (referred to as the ‘C-3 visa’ category); or

“(iv) an alien who qualifies for a diplomatic or official visa, or its equivalent; or

“(F) is identified as a member of a group or sector that the Secretary of State determines—

“(i) poses a substantial risk of submitting inaccurate information in order to obtain a visa;

“(ii) has historically had visa applications denied at a rate that is higher than the average rate of such denials; or

“(iii) poses a security threat to the United States.”.

SEC. 5302. VISA APPLICATION REQUIREMENTS.

Section 222(c) of the Immigration and Nationality Act (8 U.S.C. 1202(c)) is amended by inserting “The alien shall provide complete and accurate information in response to any request for information contained in the application.” after the second sentence.

8 USC 1202 note.

SEC. 5303. EFFECTIVE DATE.

Notwithstanding section 1086 or any other provision of this Act, sections 5301 and 5302 shall take effect 90 days after the date of enactment of this Act.

SEC. 5304. REVOCATION OF VISAS AND OTHER TRAVEL DOCUMENTATION.

(a) **LIMITATION ON REVIEW.**—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by adding at the end the following: “There shall be no means of judicial review (including review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 237(a)(1)(B).”.

(b) **CLASSES OF DEPORTABLE ALIENS.**—Section 237(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(B)) is amended by striking “United States is” and inserting the following: “United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 221(i), is”.

(c) **REVOCATION OF PETITIONS.**—Section 205 of the Immigration and Nationality Act (8 U.S.C. 1155) is amended—

(1) by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(2) by striking the final two sentences.

8 USC 1155 note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to revocations under sections 205 and 221(i) of the Immigration and Nationality Act (8 U.S.C. 1155, 1201(i)) made before, on, or after such date.

Subtitle D—Immigration Reform

SEC. 5401. BRINGING IN AND HARBORING CERTAIN ALIENS.

(a) CRIMINAL PENALTIES.—Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended by adding at the end the following:

“(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

“(A) the offense was part of an ongoing commercial organization or enterprise;

“(B) aliens were transported in groups of 10 or more; and

“(C)(i) aliens were transported in a manner that endangered their lives; or

“(ii) the aliens presented a life-threatening health risk to people in the United States.”.

(b) OUTREACH PROGRAM.—Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324), as amended by subsection (a), is further amended by adding at the end the following:

“(e) OUTREACH PROGRAM.—The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.”.

SEC. 5402. DEPORTATION OF ALIENS WHO HAVE RECEIVED MILITARY-TYPE TRAINING FROM TERRORIST ORGANIZATIONS.

Section 237(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)) is amended by adding at the end the following:

“(E) RECIPIENT OF MILITARY-TYPE TRAINING.—

“(i) IN GENERAL.—Any alien who has received military-type training from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in subclause (I) or (II) of section 212(a)(3)(B)(vi)), is deportable.

“(ii) DEFINITION.—As used in this subparagraph, the term ‘military-type training’ includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm, or other weapon, including any weapon of mass destruction (as defined in section 2332a(c)(2) of title 18, United States Code).”.

SEC. 5403. STUDY AND REPORT ON TERRORISTS IN THE ASYLUM SYSTEM.

(a) STUDY.—Commencing not later than 30 days after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study to evaluate the extent to which weaknesses in the United States asylum system and withholding of removal system have been or could be exploited by aliens connected to, charged in connection with, or tied to terrorist activity.

Deadline.

(b) ELEMENTS.—The study under subsection (a) shall address, but not be limited to, the following:

(1) The number of aliens connected to, tied to, charged in connection with, or who claim to have been accused of or charged in connection with terrorist activity who have applied for, been granted, or been denied asylum.

(2) The number of aliens connected to, tied to, charged in connection with, or who claim to have been accused of or charged in connection with terrorist activity who have applied for, been granted, or been denied release from detention.

(3) The number of aliens connected to, tied to, charged in connection with, or who claim to have been accused of or charged in connection with terrorist activity who have been denied asylum but who remain at large in the United States.

(4) The effect of the confidentiality provisions of section 208.6 of title 8, Code of Federal Regulations, on the ability of the United States Government to establish that an alien is connected to or tied to terrorist activity, such that the alien is barred from asylum or withholding of removal, is removable from the United States, or both.

(5) The effect that precedential decisions, if any, holding that the extrajudicial punishment of an individual connected to terrorism, or guerrilla or militant activity abroad, or threats of such punishment, constitute persecution on account of political opinion as defined in section 101(a)(42) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(42)), have had on the ability of the United States Government to remove aliens whom the United States Government believes are connected to or have ties to terrorism.

(6) The extent to which court precedents have affected the ability of the United States Government to determine or prove that an alien the United States Government believes to be connected to or tied to terrorism is in fact so connected or tied, including—

(A) so-called “imputed political opinion”;

(B) judicial review, reversal, or both of the credibility determinations of immigration judges; and

(C) the need to use classified information in removal proceedings against aliens suspected of connections or ties to terrorism.

(7) The likelihood that an alien connected to or with ties to terrorism has been granted asylum or withholding of removal.

(8) The likelihood that an alien connected to or with ties to terrorism has used the United States asylum system to enter or remain in the United States in order to plan, conspire, or carry out, or attempt to plan, conspire, or carry out, an act of terrorism.

(c) **CONSIDERATION AND ASSESSMENT.**—Solely for purposes of conducting the study under subsection (a), the Comptroller General shall consider the possibility, and assess the likelihood, that an alien whom the United States Government accuses or has accused of having a connection to or ties to terrorism is in fact connected to or tied to terrorism, notwithstanding any administrative or judicial determination to the contrary.

(d) **SCOPE.**—In conducting the study under subsection (a), the Comptroller General shall seek information from the Department of Homeland Security, the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Justice, foreign

governments, experts in the field of alien terrorists, and any other appropriate source.

(e) PRIVACY.—

(1) IN GENERAL.—Notwithstanding section 208.6 of title 8, Code of Federal Regulations, the Comptroller General shall, for purposes of the study under subsection (a), have access to the applications and administrative and judicial records of alien applicants for asylum and withholding of removal. Except for purposes of preparing the reports under subsection (f), such information shall not be further disclosed or disseminated, nor shall the names or personal identifying information of any applicant be released.

(2) SECURITY OF RECORDS.—The Comptroller General shall ensure that records received pursuant to this section are appropriately secured to prevent their inadvertent disclosure.

(f) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Comptroller General shall submit to the appropriate committees of Congress and the Secretary of Homeland Security a report on the findings and recommendations of the Comptroller General under the study under subsection (a).

(2) ELEMENTS.—The report under paragraph (1) shall include the following:

(A) The assessment of the Comptroller General on each matter specified in subsection (b).

(B) Any recommendations of the Comptroller General for such administrative action on any matter specified in subsection (a) as the Comptroller General considers necessary to better protect the national security of the United States.

(C) Any recommendations of the Comptroller General for such legislative action on any matter specified in subsection (a) as the Comptroller General considers necessary to better protect the national security of the United States.

(3) FORM.—If necessary, the Comptroller General may submit a classified and unclassified version of the report under paragraph (1).

(g) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Select Committee on Intelligence of the Senate; and

(2) the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives.

Subtitle E—Treatment of Aliens Who Commit Acts of Torture, Extrajudicial Killings, or Other Atrocities Abroad

SEC. 5501. INADMISSIBILITY AND DEPORTABILITY OF ALIENS WHO HAVE COMMITTED ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS ABROAD.

(a) INADMISSIBILITY.—Section 212(a)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)) is amended—

(1) in clause (ii), by striking “has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible” and inserting “ordered, incited, assisted, or otherwise participated in conduct outside the United States that would, if committed in the United States or by a United States national, be genocide, as defined in section 1091(a) of title 18, United States Code, is inadmissible”;

(2) by adding at the end the following:

“(iii) COMMISSION OF ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS.—Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

“(I) any act of torture, as defined in section 2340 of title 18, United States Code; or

“(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note),

is inadmissible.”; and

(3) in the subparagraph heading, by striking “PARTICIPANTS IN NAZI PERSECUTION OR GENOCIDE” and inserting “PARTICIPANTS IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING”.

(b) DEPORTABILITY.—Section 237(a)(4)(D) of such Act (8 U.S.C. 1227(a)(4)(D)) is amended—

(1) by striking “clause (i) or (ii)” and inserting “clause (i), (ii), or (iii)”;

(2) in the subparagraph heading, by striking “ASSISTED IN NAZI PERSECUTION OR ENGAGED IN GENOCIDE” and inserting “PARTICIPATED IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING”.

8 USC 1182 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offenses committed before, on, or after the date of enactment of this Act.

SEC. 5502. INADMISSIBILITY AND DEPORTABILITY OF FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

(a) GROUND OF INADMISSIBILITY.—Section 212(a)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(G)) is amended to read as follows:

“(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.”.

(b) **GROUND OF DEPORTABILITY.**—Section 237(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)) is amended by adding at the end the following:

“(E) PARTICIPATED IN THE COMMISSION OF SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien described in section 212(a)(2)(G) is deportable.”.

SEC. 5503. WAIVER OF INADMISSIBILITY.

Section 212(d)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(3)) is amended—

- (1) in subparagraph (A), by striking “and 3(E)” and inserting “and clauses (i) and (ii) of paragraph (3)(E)”; and
- (2) in subparagraph (B), by striking “and 3(E)” and inserting “and clauses (i) and (ii) of paragraph (3)(E)”.

SEC. 5504. BAR TO GOOD MORAL CHARACTER FOR ALIENS WHO HAVE COMMITTED ACTS OF TORTURE, EXTRAJUDICIAL KILLINGS, OR SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended—

- (1) by striking the period at the end of paragraph (8) and inserting “; or”; and
- (2) by adding at the end the following:

“(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) (relating to severe violations of religious freedom).”.

SEC. 5505. ESTABLISHMENT OF THE OFFICE OF SPECIAL INVESTIGATIONS.

(a) **AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.**—Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

“(h)(1) The Attorney General shall establish within the Criminal Division of the Department of Justice an Office of Special Investigations with the authority to detect and investigate, and, where appropriate, to take legal action to denaturalize any alien described in section 212(a)(3)(E).

“(2) The Attorney General shall consult with the Secretary of Homeland Security in making determinations concerning the criminal prosecution or extradition of aliens described in section 212(a)(3)(E).

“(3) In determining the appropriate legal action to take against an alien described in section 212(a)(3)(E), consideration shall be given to—

“(A) the availability of criminal prosecution under the laws of the United States for any conduct that may form the basis for removal and denaturalization; or

“(B) the availability of extradition of the alien to a foreign jurisdiction that is prepared to undertake a prosecution for such conduct.”.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out the additional duties established under section 103(h) of the Immigration and Nationality Act (as added by this subtitle) in order to ensure that the Office of Special Investigations fulfills its continuing obligations regarding Nazi war criminals.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

SEC. 5506. REPORT ON IMPLEMENTATION.

Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Secretary of Homeland Security, shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on implementation of this subtitle that includes a description of—

(1) the procedures used to refer matters to the Office of Special Investigations and other components within the Department of Justice and the Department of Homeland Security in a manner consistent with the amendments made by this subtitle;

(2) the revisions, if any, made to immigration forms to reflect changes in the Immigration and Nationality Act made by the amendments contained in this subtitle; and

(3) the procedures developed, with adequate due process protection, to obtain sufficient evidence to determine whether an alien may be inadmissible under the terms of the amendments made by this subtitle.

TITLE VI—TERRORISM PREVENTION

Subtitle A—Individual Terrorists as Agents of Foreign Powers

SEC. 6001. INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

(a) IN GENERAL.—Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended by adding at the end the following new subparagraph:

“(C) engages in international terrorism or activities in preparation therefore; or”.

(b) SUNSET.—The amendment made by subsection (a) shall be subject to the sunset provision in section 224 of Public Law 107–56 (115 Stat. 295), including the exception provided in subsection (b) of such section 224.

**SEC. 6002. ADDITIONAL SEMIANNUAL REPORTING REQUIREMENTS
UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT
OF 1978.**

(a) **ADDITIONAL REPORTING REQUIREMENTS.**—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

- (1) by redesignating—
 - (A) title VI as title VII; and
 - (B) section 601 as section 701; and
- (2) by inserting after title V the following new title:

50 USC 1801
note.

“TITLE VI—REPORTING REQUIREMENT

“SEC. 601. SEMIANNUAL REPORT OF THE ATTORNEY GENERAL.

50 USC 1871
note.

“(a) **REPORT.**—On a semiannual basis, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate, in a manner consistent with the protection of the national security, a report setting forth with respect to the preceding 6-month period—

“(1) the aggregate number of persons targeted for orders issued under this Act, including a breakdown of those targeted for—

- “(A) electronic surveillance under section 105;
- “(B) physical searches under section 304;
- “(C) pen registers under section 402; and
- “(D) access to records under section 501;

“(2) the number of individuals covered by an order issued pursuant to section 101(b)(1)(C);

“(3) the number of times that the Attorney General has authorized that information obtained under this Act may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding;

“(4) a summary of significant legal interpretations of this Act involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice; and

“(5) copies of all decisions (not including orders) or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this Act.

“(b) **FREQUENCY.**—The first report under this section shall be submitted not later than 6 months after the date of enactment of this section. Subsequent reports under this section shall be submitted semi-annually thereafter.”

(b) **CLERICAL AMENDMENT.**—The table of contents for the Foreign Intelligence Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to title VI and inserting the following new items:

“TITLE VI—REPORTING REQUIREMENT

“Sec. 601. Semiannual report of the Attorney General.

“TITLE VII—EFFECTIVE DATE

“Sec. 701. Effective date.”.

Subtitle B—Money Laundering and Terrorist Financing

SEC. 6101. ADDITIONAL AUTHORIZATION FOR FINCEN.

Subsection (d) of section 310 of title 31, United States Code, is amended—

(1) by striking “APPROPRIATIONS.—There are authorized” and inserting “APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized”; and

(2) by adding at the end the following new paragraph:

“(2) AUTHORIZATION FOR FUNDING KEY TECHNOLOGICAL IMPROVEMENTS IN MISSION-CRITICAL FINCEN SYSTEMS.—There are authorized to be appropriated for fiscal year 2005 the following amounts, which are authorized to remain available until expended:

“(A) BSA DIRECT.—For technological improvements to provide authorized law enforcement and financial regulatory agencies with Web-based access to FinCEN data, to fully develop and implement the highly secure network required under section 362 of Public Law 107–56 to expedite the filing of, and reduce the filing costs for, financial institution reports, including suspicious activity reports, collected by FinCEN under chapter 53 and related provisions of law, and enable FinCEN to immediately alert financial institutions about suspicious activities that warrant immediate and enhanced scrutiny, and to provide and upgrade advanced information-sharing technologies to materially improve the Government’s ability to exploit the information in the FinCEN data banks, \$16,500,000.

“(B) ADVANCED ANALYTICAL TECHNOLOGIES.—To provide advanced analytical tools needed to ensure that the data collected by FinCEN under chapter 53 and related provisions of law are utilized fully and appropriately in safeguarding financial institutions and supporting the war on terrorism, \$5,000,000.

“(C) DATA NETWORKING MODERNIZATION.—To improve the telecommunications infrastructure to support the improved capabilities of the FinCEN systems, \$3,000,000.

“(D) ENHANCED COMPLIANCE CAPABILITY.—To improve the effectiveness of the Office of Compliance in FinCEN, \$3,000,000.

“(E) DETECTION AND PREVENTION OF FINANCIAL CRIMES AND TERRORISM.—To provide development of, and training in the use of, technology to detect and prevent financial crimes and terrorism within and without the United States, \$8,000,000.”.

SEC. 6102. MONEY LAUNDERING AND FINANCIAL CRIMES STRATEGY REAUTHORIZATION.

(a) PROGRAM.—Section 5341(a)(2) of title 31, United States Code, is amended—

(1) by striking “February 1” and inserting “August 1”; and

(2) by striking “and 2003,” and inserting “2003, 2005, and 2007,”.

(b) REAUTHORIZATION OF APPROPRIATIONS.—Section 5355 of title 31, United States Code, is amended by adding at the end the following:

“2004	\$15,000,000.
“2005	\$15,000,000.”.

Subtitle C—Money Laundering Abatement and Financial Antiterrorism Technical Corrections

International
Money
Laundering
Abatement and
Financial
Antiterrorism
Technical
Corrections Act
of 2004.
31 USC 5301
note.

SEC. 6201. SHORT TITLE.

This subtitle may be cited as the “International Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004”.

SEC. 6202. TECHNICAL CORRECTIONS TO PUBLIC LAW 107–56.

(a) The heading of title III of Public Law 107–56 is amended to read as follows: 115 Stat. 296.

“TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTITERRORISM ACT OF 2001”.

(b) The table of contents for Public Law 107–56 is amended by striking the item relating to title III and inserting the following:

“TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTITERRORISM ACT OF 2001”.

(c) Section 302 of Public Law 107–56 is amended—

31 USC 5311
note.

(1) in subsection (a)(4), by striking the comma after “movement of criminal funds”;

(2) in subsection (b)(7), by inserting “or types of accounts” after “classes of international transactions”; and

(3) in subsection (b)(10), by striking “subchapters II and III” and inserting “subchapter II”.

(d) Section 303(a) of Public Law 107–56 is amended by striking “Anti-Terrorist Financing Act” and inserting “Financial Antiterrorism Act”. 31 USC 5311
note.

(e) The heading for section 311 of Public Law 107–56 is amended by striking “OR INTERNATIONAL TRANSACTIONS” and inserting “INTERNATIONAL TRANSACTIONS, OR TYPES OF ACCOUNTS”. 31 USC 5311
note.

(f) Section 314 of Public Law 107–56 is amended—

31 USC 5311
note.

(1) in paragraph (1)—

(A) by inserting a comma after “organizations engaged in”; and

(B) by inserting a comma after “credible evidence of engaging in”;

(2) in paragraph (2)(A)—

- (A) by striking “and” after “nongovernmental organizations,”; and
- (B) by inserting a comma after “unwittingly involved in such finances”;
- (3) in paragraph (3)(A)—
- (A) by striking “to monitor accounts of” and inserting “monitor accounts of,”; and
- (B) by striking the comma after “organizations identified”; and
- (4) in paragraph (3)(B), by inserting “financial” after “size, and nature of the”.
- 31 USC 5312. (g) Section 321(a) of Public Law 107-56 is amended by striking “5312(2)” and inserting “5312(a)(2)”.
- 31 USC 5318. (h) Section 325 of Public Law 107-56 is amended by striking “as amended by section 202 of this title,” and inserting “as amended by section 352,”.
- 12 USC 1842 note, 1828 note. (i) Subsections (a)(2) and (b)(2) of section 327 of Public Law 107-56 are each amended by striking “2001” and all that follows and inserting a period.
- 31 USC 5311 note. (j) Section 356(c)(4) of Public Law 107-56 is amended by striking “or business or other grantor trust” and inserting “, business trust, or other grantor trust”.
- 12 USC 1953. (k) Section 358(e) of Public Law 107-56 is amended—
- (1) by striking “Section 123(a)” and inserting “That portion of section 123(a)”;
- (2) by striking “is amended to read” and inserting “that precedes paragraph (1) of such section is amended to read”; and
- (3) in the amendment made in that subsection (e), by striking “person.” and inserting the following: “person—”.
- 22 USC 262p-4r. (l) Section 360 of Public Law 107-56 is amended—
- (1) in subsection (a), by inserting “the” after “utilization of the funds of”; and
- (2) in subsection (b), by striking “at such institutions” and inserting “at such institution”.
- 31 USC 310 note. (m) Section 362(a)(1) of Public Law 107-56 is amended by striking “subchapter II or III” and inserting “subchapter II”.
- 31 USC 5301. (n) Section 365 of Public Law 107-56 is amended—
- (1) by redesignating the second of the 2 subsections designated as subsection (c) (relating to a clerical amendment) as subsection (d); and
- (2) by redesignating subsection (f) as subsection (e).
- 31 USC 5331 note. (o) Section 365(d) of Public Law 107-56 (as so redesignated by subsection (n) of this section) is amended by striking “section 5332 (as added by section 112 of this title)” and inserting “section 5330”.

SEC. 6203. TECHNICAL CORRECTIONS TO OTHER PROVISIONS OF LAW.

- (a) Section 310(c) of title 31, United States Code, is amended by striking “the Network” each place such term appears and inserting “FinCEN”.
- (b) Section 5312(a)(3)(C) of title 31, United States Code, is amended by striking “sections 5333 and 5316” and inserting “sections 5316 and 5331”.
- (c) Section 5318(i) of title 31, United States Code, is amended—
- (1) in paragraph (3)(B), by inserting a comma after “foreign political figure” the second place such term appears; and

(2) in the heading of paragraph (4), by striking “DEFINITION” and inserting “DEFINITIONS”.

(d) Section 5318(k)(1)(B) of title 31, United States Code, is amended by striking “section 5318A(f)(1)(B)” and inserting “section 5318A(e)(1)(B)”.

(e) The heading for section 5318A of title 31, United States Code, is amended to read as follows:

“§ 5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern”.

(f) Section 5318A of title 31, United States Code, is amended—

(1) in subsection (a)(4)(A), by striking “, as defined in section 3 of the Federal Deposit Insurance Act,” and inserting “(as defined in section 3 of the Federal Deposit Insurance Act)”;

(2) in subsection (a)(4)(B)(iii), by striking “or class of transactions” and inserting “class of transactions, or type of account”;

(3) in subsection (b)(1)(A), by striking “or class of transactions to be” and inserting “class of transactions, or type of account to be”; and

(4) in subsection (e)(3), by inserting “or subsection (i) or (j) of section 5318” after “identification of individuals under this section”.

(g) Section 5324(b) of title 31, United States Code, is amended by striking “5333” each place such term appears and inserting “5331”.

(h) Section 5332 of title 31, United States Code, is amended—

(1) in subsection (b)(2), by striking “, subject to subsection (d) of this section”; and

(2) in subsection (c)(1), by striking “, subject to subsection (d) of this section,”.

(i) The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by striking the item relating to section 5318A and inserting the following:

“5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern.”.

(j) Section 18(w)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1828(w)(3)) is amended by inserting a comma after “agent of such institution”.

(k) Section 21(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(a)(2)) is amended by striking “recognizes that” and inserting “recognizing that”.

(l) Section 626(e) of the Fair Credit Reporting Act (15 U.S.C. 1681v(e)) is amended by striking “governmental agency” and inserting “government agency”.

SEC. 6204. REPEAL OF REVIEW.

Title III of Public Law 107–56 is amended by striking section 303 (31 U.S.C. 5311 note).

SEC. 6205. EFFECTIVE DATE.

The amendments made by this subchapter to Public Law 107–56, the United States Code, the Federal Deposit Insurance Act, and any other provision of law shall take effect as if such amendments had been included in Public Law 107–56, as of the date

12 USC 1828
note.

of enactment of such Public Law, and no amendment made by such Public Law that is inconsistent with an amendment made by this subchapter shall be deemed to have taken effect.

Subtitle D—Additional Enforcement Tools

SEC. 6301. BUREAU OF ENGRAVING AND PRINTING SECURITY PRINTING.

(a) PRODUCTION OF DOCUMENTS.—Section 5114(a) of title 31, United States Code (relating to engraving and printing currency and security documents), is amended—

(1) by striking “(a) The Secretary of the Treasury” and inserting:

“(a) AUTHORITY TO ENGRAVE AND PRINT.—

“(1) IN GENERAL.—The Secretary of the Treasury”; and

(2) by adding at the end the following new paragraphs:

“(2) ENGRAVING AND PRINTING FOR OTHER GOVERNMENTS.—

The Secretary of the Treasury may produce currency, postage stamps, and other security documents for foreign governments if—

“(A) the Secretary of the Treasury determines that such production will not interfere with engraving and printing needs of the United States; and

“(B) the Secretary of State determines that such production would be consistent with the foreign policy of the United States.

“(3) PROCUREMENT GUIDELINES.—Articles, material, and supplies procured for use in the production of currency, postage stamps, and other security documents for foreign governments pursuant to paragraph (2) shall be treated in the same manner as articles, material, and supplies procured for public use within the United States for purposes of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.; commonly referred to as the Buy American Act).”.

(b) REIMBURSEMENT.—Section 5143 of title 31, United States Code (relating to payment for services of the Bureau of Engraving and Printing), is amended—

(1) in the first sentence, by inserting “or to a foreign government under section 5114” after “agency”;

(2) in the second sentence, by inserting “and other” after “including administrative”; and

(3) in the last sentence, by inserting “, and the Secretary shall take such action, in coordination with the Secretary of State, as may be appropriate to ensure prompt payment by a foreign government of any invoice or statement of account submitted by the Secretary with respect to services rendered under section 5114” before the period at the end.

SEC. 6302. REPORTING OF CERTAIN CROSS-BORDER TRANSMITTAL OF FUNDS.

Section 5318 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(n) REPORTING OF CERTAIN CROSS-BORDER TRANSMITTALS OF FUNDS.—

“(1) IN GENERAL.—Subject to paragraphs (3) and (4), the Secretary shall prescribe regulations requiring such financial

Regulations.

institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.

“(2) LIMITATION ON REPORTING REQUIREMENTS.—Information required to be reported by the regulations prescribed under paragraph (1) shall not exceed the information required to be retained by the reporting financial institution pursuant to section 21 of the Federal Deposit Insurance Act and the regulations promulgated thereunder, unless—

“(A) the Board of Governors of the Federal Reserve System and the Secretary jointly determine that a particular item or items of information are not currently required to be retained under such section or such regulations; and

“(B) the Secretary determines, after consultation with the Board of Governors of the Federal Reserve System, that the reporting of such information is reasonably necessary to conduct the efforts of the Secretary to identify cross-border money laundering and terrorist financing.

“(3) FORM AND MANNER OF REPORTS.—In prescribing the regulations required under paragraph (1), the Secretary shall, subject to paragraph (2), determine the appropriate form, manner, content, and frequency of filing of the required reports.

“(4) FEASIBILITY REPORT.—

“(A) IN GENERAL.—Before prescribing the regulations required under paragraph (1), and as soon as is practicable after the date of enactment of the National Intelligence Reform Act of 2004, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that—

“(i) identifies the information in cross-border electronic transmittals of funds that may be found in particular cases to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing, and outlines the criteria to be used by the Secretary to select the situations in which reporting under this subsection may be required;

“(ii) outlines the appropriate form, manner, content, and frequency of filing of the reports that may be required under such regulations;

“(iii) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing; and

“(iv) discusses the information security protections required by the exercise of the Secretary’s authority under this subsection.

“(B) CONSULTATION.—In reporting the feasibility report under subparagraph (A), the Secretary may consult with

the Bank Secrecy Act Advisory Group established by the Secretary, and any other group considered by the Secretary to be relevant.

“(5) REGULATIONS.—

Deadline.

“(A) IN GENERAL.—Subject to subparagraph (B), the regulations required by paragraph (1) shall be prescribed in final form by the Secretary, in consultation with the Board of Governors of the Federal Reserve System, before the end of the 3-year period beginning on the date of enactment of the National Intelligence Reform Act of 2004.

Certification.

“(B) TECHNOLOGICAL FEASIBILITY.—No regulations shall be prescribed under this subsection before the Secretary certifies to the Congress that the Financial Crimes Enforcement Network has the technological systems in place to effectively and efficiently receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.”.

SEC. 6303. TERRORISM FINANCING.

(a) REPORT ON TERRORIST FINANCING.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the President, acting through the Secretary of the Treasury, shall submit to Congress a report evaluating the current state of United States efforts to curtail the international financing of terrorism.

(2) CONTENTS.—The report required by paragraph (1) shall evaluate and make recommendations on—

(A) the effectiveness and efficiency of current United States governmental efforts and methods to detect, track, disrupt, and stop terrorist financing;

(B) the relationship between terrorist financing and money laundering, including how the laundering of proceeds related to illegal narcotics or foreign political corruption may contribute to terrorism or terrorist financing;

(C) the nature, effectiveness, and efficiency of current efforts to coordinate intelligence and agency operations within the United States Government to detect, track, disrupt, and stop terrorist financing, including identifying who, if anyone, has primary responsibility for developing priorities, assigning tasks to agencies, and monitoring the implementation of policy and operations;

(D) the effectiveness and efficiency of efforts to protect the critical infrastructure of the United States financial system, and ways to improve the effectiveness of financial institutions;

(E) ways to improve multilateral and international governmental cooperation on terrorist financing, including the adequacy of agency coordination within the United States related to participating in international cooperative efforts and implementing international treaties and compacts; and

(F) ways to improve the setting of priorities and coordination of United States efforts to detect, track, disrupt, and stop terrorist financing, including recommendations for changes in executive branch organization or procedures, legislative reforms, additional resources, or use of appropriated funds.

(b) POSTEMPLOYMENT RESTRICTION FOR CERTAIN BANK AND THRIFT EXAMINERS.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following:

“(k) ONE-YEAR RESTRICTIONS ON FEDERAL EXAMINERS OF FINANCIAL INSTITUTIONS.—

“(1) IN GENERAL.—In addition to other applicable restrictions set forth in title 18, United States Code, the penalties set forth in paragraph (6) of this subsection shall apply to any person who—

“(A) was an officer or employee (including any special Government employee) of a Federal banking agency or a Federal reserve bank;

“(B) served 2 or more months during the final 12 months of his or her employment with such agency or entity as the senior examiner (or a functionally equivalent position) of a depository institution or depository institution holding company with continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company on behalf of the relevant agency or Federal reserve bank; and

“(C) within 1 year after the termination date of his or her service or employment with such agency or entity, knowingly accepts compensation as an employee, officer, director, or consultant from—

“(i) such depository institution, any depository institution holding company that controls such depository institution, or any other company that controls such depository institution; or

“(ii) such depository institution holding company or any depository institution that is controlled by such depository institution holding company.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘depository institution’ includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State; and

“(B) the term ‘depository institution holding company’ includes any foreign bank or company described in section 8(a) of the International Banking Act of 1978.

“(3) RULES OF CONSTRUCTION.—For purposes of this subsection, a foreign bank shall be deemed to control any branch or agency of the foreign bank, and a person shall be deemed to act as a consultant for a depository institution, depository institution holding company, or other company, only if such person directly works on matters for, or on behalf of, such depository institution, depository institution holding company, or other company.

“(4) REGULATIONS.—

“(A) IN GENERAL.—Each Federal banking agency shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines

Applicability.

to define the scope of persons referred to in paragraph (1)(B).

“(B) CONSULTATION REQUIRED.—The Federal banking agencies shall consult with each other for the purpose of assuring that the rules and regulations issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the supervisory programs utilized by the agencies for the supervision of depository institutions and depository institution holding companies.

“(5) WAIVER.—

“(A) AGENCY AUTHORITY.—A Federal banking agency may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of that agency, and the Board of Governors of the Federal Reserve System may grant a waiver of the restriction imposed by this subsection to any officer or employee of a Federal reserve bank, if the head of such agency certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the relevant Federal banking agency.

“(B) DEFINITION.—For purposes of this paragraph, the head of an agency is—

“(i) the Comptroller of the Currency, in the case of the Office of the Comptroller of the Currency;

“(ii) the Chairman of the Board of Governors of the Federal Reserve System, in the case of the Board of Governors of the Federal Reserve System;

“(iii) the Chairperson of the Board of Directors, in the case of the Corporation; and

“(iv) the Director of the Office of Thrift Supervision, in the case of the Office of Thrift Supervision.

“(6) PENALTIES.—

“(A) IN GENERAL.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever a Federal banking agency determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with a depository institution, depository institution holding company, or other company for which such agency serves as the appropriate Federal banking agency, the agency shall impose upon such person one or more of the following penalties:

“(i) INDUSTRY-WIDE PROHIBITION ORDER.—The Federal banking agency shall serve a written notice or order in accordance with and subject to the provisions of section 8(e)(4) for written notices or orders under paragraph (1) or (2) of section 8(e), upon such person of the intention of the agency—

“(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the depository institution, depository institution holding company, or other company for a period of up to 5 years; and

“(II) to prohibit any further participation by such person, in any manner, in the conduct of

Notice.

the affairs of any insured depository institution for a period of up to 5 years.

“(ii) CIVIL MONETARY PENALTY.—The Federal banking agency may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than \$250,000. Any administrative proceeding under this clause shall be conducted in accordance with section 8(i). In lieu of an action by the Federal banking agency under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

“(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under subparagraph (A)(i) shall be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under such section.

“(C) DEFINITIONS.—Solely for purposes of this paragraph, the ‘appropriate Federal banking agency’ for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency on whose behalf the person described in paragraph (1) performed the functions described in paragraph (1)(B).”.

(c) POSTEMPLOYMENT RESTRICTION FOR CERTAIN CREDIT UNION EXAMINERS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following:

“(w) ONE-YEAR RESTRICTIONS ON FEDERAL EXAMINERS OF INSURED CREDIT UNIONS.—

“(1) IN GENERAL.—In addition to other applicable restrictions set forth in title 18, United States Code, the penalties set forth in paragraph (5) of this subsection shall apply to any person who—

Applicability.

“(A) was an officer or employee (including any special Government employee) of the Administration;

“(B) served 2 or more months during the final 12 months of his or her employment with the Administration as the senior examiner (or a functionally equivalent position) of an insured credit union with continuing, broad responsibility for the examination (or inspection) of that insured credit union on behalf of the Administration; and

“(C) within 1 year after the termination date of his or her service or employment with the Administration, knowingly accepts compensation as an employee, officer, director, or consultant from such insured credit union.

“(2) RULE OF CONSTRUCTION.—For purposes of this subsection, a person shall be deemed to act as a consultant for an insured credit union only if such person directly works on matters for, or on behalf of, such insured credit union.

“(3) REGULATIONS.—

“(A) IN GENERAL.—The Board shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

“(B) CONSULTATION.—In prescribing rules or regulations under this paragraph, the Board shall, to the extent

it deems necessary, consult with the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) on regulations issued by such agencies in carrying out section 10(k) of the Federal Deposit Insurance Act.

“(4) WAIVER.—The Board may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of the Administration if the Chairman certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the Administration.

“(5) PENALTIES.—

“(A) IN GENERAL.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever the Board determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with an insured credit union, the Board shall impose upon such person one or more of the following penalties:

Notice.

“(i) INDUSTRY-WIDE PROHIBITION ORDER.—The Board shall serve a written notice or order in accordance with and subject to the provisions of subsection (g)(4) for written notices or orders under paragraph (1) or (2) of subsection (g), upon such person of the intention of the Board—

“(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the insured credit union for a period of up to 5 years; and

“(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured credit union for a period of up to 5 years.

“(ii) CIVIL MONETARY PENALTY.—The Board may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than \$250,000. Any administrative proceeding under this clause shall be conducted in accordance with subsection (k). In lieu of an action by the Board under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

“(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under this subparagraph (A)(i) shall be subject to paragraphs (5) and (7) of subsection (g) in the same manner and to the same extent as a person subject to an order issued under subsection (g).”

12 USC 1786
note.

(d) EFFECTIVE DATE.—Notwithstanding any other effective date established pursuant to this Act, subsection (a) shall become effective on the date of enactment of this Act, and the amendments made by subsections (b) and (c) shall become effective at the end of the 12-month period beginning on the date of enactment of this Act, whether or not final regulations are issued in accordance with the amendments made by this section as of that date of enactment.

Subtitle E—Criminal History Background Checks

SEC. 6401. PROTECT ACT.

Public Law 108–21 is amended—

(1) in section 108(a)(2)(A) by striking “an 18 month” and inserting “a 30-month”; and

42 USC 5119a
note.

(2) in section 108(a)(3)(A) by striking “an 18-month” and inserting “a 30-month”.

SEC. 6402. REVIEWS OF CRIMINAL RECORDS OF APPLICANTS FOR PRIVATE SECURITY OFFICER EMPLOYMENT.

Private Security
Officer
Employment
Authorization
Act of 2004.
28 USC 534 note.

(a) **SHORT TITLE.**—This section may be cited as the “Private Security Officer Employment Authorization Act of 2004”.

(b) **FINDINGS.**—Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

(c) **DEFINITIONS.**—In this section:

(1) **EMPLOYEE.**—The term “employee” includes both a current employee and an applicant for employment as a private security officer.

(2) **AUTHORIZED EMPLOYER.**—The term “authorized employer” means any person that—

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record

information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.—The term “private security officer”—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full or part time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this Act if the Attorney General determines by regulation that such exclusion would serve the public interest); but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term “security services” means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term “State identification bureau” means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(d) CRIMINAL HISTORY RECORD INFORMATION SEARCH.—

(1) IN GENERAL.—

(A) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this Act.

(B) EMPLOYEE RIGHTS.—

(i) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of the participating State the request to search the criminal history record information of the employee under this Act.

(ii) ACCESS.—An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this Act.

(C) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.—Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this Act, submitted through the State identification bureau of a participating State, the Attorney General shall—

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) USE OF INFORMATION.—

(i) IN GENERAL.—Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) TERMS.—In the case of—

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been—

Notification.

(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this Act in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) FREQUENCY OF REQUESTS.—An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this Act, including—

Deadline.

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) CRIMINAL PENALTIES FOR USE OF INFORMATION.—Whoever knowingly and intentionally uses any information obtained pursuant to this Act other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(4) USER FEES.—

(A) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

(i) collect fees to process background checks provided for by this Act; and

(ii) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) LIMITATIONS.—Any fee collected under this subsection—

(i) shall, consistent with Public Law 101-515 and Public Law 104-99, be credited to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in subparagraph (A);

(ii) shall be available for expenditure only to pay the costs of such activities and services; and

(iii) shall remain available until expended.

(C) STATE COSTS.—Nothing in this Act shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.

(5) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this Act by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.

SEC. 6403. CRIMINAL HISTORY BACKGROUND CHECKS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall report to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives regarding all statutory requirements for criminal history record checks that are required to be conducted by the Department of Justice or any of its components.

(b) DEFINITIONS.—As used in this section—

(1) the terms “criminal history information” and “criminal history records” include—

(A) an identifying description of the individual to whom the information or records pertain;

(B) notations of arrests, detentions, indictments, or other formal criminal charges pertaining to such individual; and

(C) any disposition to a notation described in subparagraph (B), including acquittal, sentencing, correctional supervision, or release; and

(2) the term “IAFIS” means the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation, which serves as the national depository for fingerprint, biometric, and criminal history information, through which fingerprints are processed electronically.

(c) IDENTIFICATION OF INFORMATION.—The Attorney General shall identify—

(1) the number of criminal history record checks requested, including the type of information requested;

(2) the usage of different terms and definitions regarding criminal history information; and

(3) the variation in fees charged for such information and who pays such fees.

Deadline.
Reports.

(d) RECOMMENDATIONS.—The Attorney General shall make recommendations to Congress for improving, standardizing, and consolidating the existing statutory authorization, programs, and procedures for the conduct of criminal history record checks for non-criminal justice purposes. In making these recommendations to Congress, the Attorney General shall consider—

Procedures.

(1) the effectiveness and efficiency of utilizing commercially available databases as a supplement to IAFIS criminal history information checks;

(2) any security concerns created by the existence of these commercially available databases concerning their ability to provide sensitive information that is not readily available about law enforcement or intelligence officials, including their identity, residence, and financial status;

(3) the effectiveness of utilizing State databases;

(4) any feasibility studies by the Department of Justice of the resources and structure of the Federal Bureau of Investigation to establish a system to provide criminal history information;

(5) privacy rights and other employee protections, including—

(A) employee consent;

(B) access to the records used if employment was denied;

(C) the disposition of the fingerprint submissions after the records are searched;

(D) an appeal mechanism; and

(E) penalties for misuse of the information;

(6) the scope and means of processing background checks for private employers utilizing data maintained by the Federal Bureau of Investigation that the Attorney General should be allowed to authorize in cases where the authority for such checks is not available at the State level;

(7) any restrictions that should be placed on the ability of an employer to charge an employee or prospective employee for the cost associated with the background check;

(8) which requirements should apply to the handling of incomplete records;

(9) the circumstances under which the criminal history information should be disseminated to the employer;

(10) the type of restrictions that should be prescribed for the handling of criminal history information by an employer;

(11) the range of Federal and State fees that might apply to such background check requests;

(12) any requirements that should be imposed concerning the time for responding to such background check requests;

(13) any infrastructure that may need to be developed to support the processing of such checks, including—

(A) the means by which information is collected and submitted in support of the checks; and

(B) the system capacity needed to process such checks at the Federal and State level;

(14) the role that States should play; and

(15) any other factors that the Attorney General determines to be relevant to the subject of the report.

(e) CONSULTATION.—In developing the report under this section, the Attorney General shall consult with representatives of State

criminal history record repositories, the National Crime Prevention and Privacy Compact Council, appropriate representatives of private industry, and representatives of labor, as determined appropriate by the Attorney General.

Subtitle F—Grand Jury Information Sharing

SEC. 6501. GRAND JURY INFORMATION SHARING.

(a) **RULE AMENDMENTS.**—Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)(ii), by striking “or state subdivision or of an Indian tribe” and inserting “, state subdivision, Indian tribe, or foreign government”;

(B) in subparagraph (D)—

(i) by inserting after the first sentence the following: “An attorney for the government may also disclose any grand jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate Federal, State, State subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities.”; and

(ii) in clause (i)—

(I) by striking “federal”; and

(II) by adding at the end the following: “Any State, State subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only consistent with such guidelines as the Attorney General and the Director of National Intelligence shall jointly issue.”; and

(C) in subparagraph (E)—

(i) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively;

(ii) by inserting after clause (ii) the following:

“(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation.”; and

(iii) in clause (iv), as redesignated—

(I) by striking “state or Indian tribal” and inserting “State, Indian tribal, or foreign”; and

(II) by striking “or Indian tribal official” and inserting “Indian tribal, or foreign government official”; and

(2) in paragraph (7), by inserting “, or of guidelines jointly issued by the Attorney General and the Director of National Intelligence pursuant to Rule 6,” after “Rule 6”.

(b) **CONFORMING AMENDMENT.**—Section 203(c) of Public Law 107–56 (18 U.S.C. 2517 note) is amended by striking “Rule 6(e)(3)(C)(i)(V) and (VI)” and inserting “Rule 6(e)(3)(D)”.

Subtitle G—Providing Material Support to Terrorism

Material Support
to Terrorism
Prohibition
Enhancement
Act of 2004.
18 USC 2331
note.

SEC. 6601. SHORT TITLE.

This subtitle may be cited as the “Material Support to Terrorism Prohibition Enhancement Act of 2004”.

SEC. 6602. RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.

Chapter 113B of title 18, United States Code, is amended by adding after section 2339C the following new section:

“§ 2339D. Receiving military-type training from a foreign terrorist organization

“(a) OFFENSE.—Whoever knowingly receives military-type training from or on behalf of any organization designated at the time of the training by the Secretary of State under section 219(a)(1) of the Immigration and Nationality Act as a foreign terrorist organization shall be fined under this title or imprisoned for ten years, or both. To violate this subsection, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (c)(4)), that the organization has engaged or engages in terrorist activity (as defined in section 212 of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

“(b) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section. There is jurisdiction over an offense under subsection (a) if—

“(1) an offender is a national of the United States (as defined in 101(a)(22) of the Immigration and Nationality Act) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act);

“(2) an offender is a stateless person whose habitual residence is in the United States;

“(3) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

“(4) the offense occurs in whole or in part within the United States;

“(5) the offense occurs in or affects interstate or foreign commerce; or

“(6) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

“(c) DEFINITIONS.—As used in this section—

“(1) the term ‘military-type training’ includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including

any weapon of mass destruction (as defined in section 2232a(c)(2));

“(2) the term ‘serious bodily injury’ has the meaning given that term in section 1365(h)(3);

“(3) the term ‘critical infrastructure’ means systems and assets vital to national defense, national security, economic security, public health or safety including both regional and national infrastructure. Critical infrastructure may be publicly or privately owned; examples of critical infrastructure include gas and oil production, storage, or delivery systems, water supply systems, telecommunications networks, electrical power generation or delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), and transportation systems and services (including highways, mass transit, airlines, and airports); and

“(4) the term ‘foreign terrorist organization’ means an organization designated as a terrorist organization under section 219(a)(1) of the Immigration and Nationality Act.”.

SEC. 6603. ADDITIONS TO OFFENSE OF PROVIDING MATERIAL SUPPORT TO TERRORISM.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended—

(1) in section 2332b(g)(5)(B)(i)—

(A) by inserting “1361 (relating to government property or contracts),” before “1362”; and

(B) by inserting “2156 (relating to national defense material, premises, or utilities),” before “2280”; and

(2) in section 2339A—

(A) by striking “or” before “section 46502”; and

(B) by inserting “or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B)” after “section 60123(b) of title 49.”.

(b) DEFINITIONS.—Section 2339A(b) of title 18, United States Code, is amended to read as follows:

“(b) DEFINITIONS.—As used in this section—

“(1) the term ‘material support or resources’ means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;

“(2) the term ‘training’ means instruction or teaching designed to impart a specific skill, as opposed to general knowledge; and

“(3) the term ‘expert advice or assistance’ means advice or assistance derived from scientific, technical or other specialized knowledge.”.

(c) ADDITION TO OFFENSE OF PROVIDING MATERIAL SUPPORT TO TERRORIST ORGANIZATIONS.—Section 2339B(a)(1) of title 18, United States Code, is amended—

(1) by striking “, within the United States or subject to the jurisdiction of the United States,”; and

(2) by adding at the end the following: “To violate this paragraph, a person must have knowledge that the organization

is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).”.

(d) FEDERAL AUTHORITY.—Section 2339B(d) of title 18 is amended by striking “There” and inserting the following:

“(1) IN GENERAL.—There is jurisdiction over an offense under subsection (a) if—

“(A) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)));

“(B) an offender is a stateless person whose habitual residence is in the United States;

“(C) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

“(D) the offense occurs in whole or in part within the United States;

“(E) the offense occurs in or affects interstate or foreign commerce; or

“(F) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).”.

“(2) EXTRATERRITORIAL JURISDICTION.—There”.

(e) DEFINITION.—Section 2339B(g)(4) of title 18, United States Code, is amended to read as follows:

“(4) the term ‘material support or resources’ has the same meaning given that term in section 2339A (including the definitions of ‘training’ and ‘expert advice or assistance’ in that section);”.

(f) ADDITIONAL PROVISIONS.—Section 2339B of title 18, United States Code, is amended by adding at the end the following:

“(h) PROVISION OF PERSONNEL.—No person may be prosecuted under this section in connection with the term ‘personnel’ unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include himself) to work under that terrorist organization’s direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization’s direction and control.

“(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States.

“(j) EXCEPTION.—No person may be prosecuted under this section in connection with the term ‘personnel’, ‘training’, or ‘expert advice or assistance’ if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act).”

18 USC 2332b
note.

(g) SUNSET PROVISION.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section and the amendments made by this section shall cease to be effective on December 31, 2006.

(2) EXCEPTION.—This section and the amendments made by this section shall continue in effect with respect to any particular offense that—

(A) is prohibited by this section or amendments made by this section; and

(B) began or occurred before December 31, 2006.

SEC. 6604. FINANCING OF TERRORISM.

(a) FINANCING TERRORISM.—Section 2339c(c)(2) of title 18, United States Code, is amended—

18 USC 2339C.

(1) by striking “, resources, or funds” and inserting “or resources, or any funds or proceeds of such funds”;

(2) in subparagraph (A), by striking “were provided” and inserting “are to be provided, or knowing that the support or resources were provided,”; and

(3) in subparagraph (B)—

(A) by striking “or any proceeds of such funds”; and

(B) by striking “were provided or collected” and inserting “are to be provided or collected, or knowing that the funds were provided or collected,”.

(b) DEFINITIONS.—Section 2339c(e) of title 18, United States Code, is amended—

18 USC 2339C.

(1) by striking “and” at the end of paragraph (12);

(2) by redesignating paragraph (13) as paragraph (14); and

(3) by inserting after paragraph (12) the following:

“(13) the term ‘material support or resources’ has the same meaning given that term in section 2339B(g)(4) of this title; and”.

Stop Terrorist
and Military
Hoaxes Act of
2004.

Subtitle H—Stop Terrorist and Military Hoaxes Act of 2004

18 USC 1 note.

SEC. 6701. SHORT TITLE.

This subtitle may be cited as the “Stop Terrorist and Military Hoaxes Act of 2004”.

SEC. 6702. HOAXES AND RECOVERY COSTS.

(a) PROHIBITION ON HOAXES.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1037 the following:

“§ 1038. False information and hoaxes

“(a) CRIMINAL VIOLATION.—

“(1) IN GENERAL.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505(b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49, shall—

“(A) be fined under this title or imprisoned not more than 5 years, or both;

“(B) if serious bodily injury results, be fined under this title or imprisoned not more than 20 years, or both; and

“(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

“(2) ARMED FORCES.—Any person who makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged—

“(A) shall be fined under this title, imprisoned not more than 5 years, or both;

“(B) if serious bodily injury results, shall be fined under this title, imprisoned not more than 20 years, or both; and

“(C) if death results, shall be fined under this title, imprisoned for any number of years or for life, or both.

“(b) CIVIL ACTION.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

“(c) REIMBURSEMENT.—

“(1) IN GENERAL.—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any state or local government, or private not-for-profit organization that provides fire or rescue service incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

“(2) LIABILITY.—A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

“(3) CIVIL JUDGMENT.—An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

“(d) ACTIVITIES OF LAW ENFORCEMENT.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.”

(b) CLERICAL AMENDMENT.—The table of sections as the beginning of chapter 47 of title 18, United States Code, is amended by adding after the item for section 1037 the following:

“1038. False information and hoaxes.”

SEC. 6703. OBSTRUCTION OF JUSTICE AND FALSE STATEMENTS IN TERRORISM CASES.

(a) ENHANCED PENALTY.—Section 1001(a) and the third undesignated paragraph of section 1505 of title 18, United States Code, are amended by striking “be fined under this title or imprisoned not more than 5 years, or both” and inserting “be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both”.

Deadline.
28 USC 994 note.

(b) SENTENCING GUIDELINES.—Not later than 30 days of the enactment of this section, the United States Sentencing Commission shall amend the Sentencing Guidelines to provide for an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves international or domestic terrorism, as defined in section 2331 of such title.

SEC. 6704. CLARIFICATION OF DEFINITION.

Section 1958 of title 18, United States Code, is amended—

(1) in subsection (a), by striking “facility in” and inserting “facility of”; and

(2) in subsection (b)(2), by inserting “or foreign” after “interstate”.

Weapons of Mass
Destruction
Prohibition
Improvement Act
of 2004.
18 USC 1 note.

Subtitle I—Weapons of Mass Destruction Prohibition Improvement Act of 2004

SEC. 6801. SHORT TITLE.

This subtitle may be cited as the “Weapons of Mass Destruction Prohibition Improvement Act of 2004”.

SEC. 6802. WEAPONS OF MASS DESTRUCTION.

(a) EXPANSION OF JURISDICTIONAL BASES AND SCOPE.—Section 2332a of title 18, United States Code, is amended—

(1) so that paragraph (2) of subsection (a) reads as follows:

“(2) against any person or property within the United States, and

“(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

“(B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

“(C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

“(D) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;”;

(2) in paragraph (3) of subsection (a), by striking the comma at the end and inserting “; or”;

(3) in subsection (a), by adding the following at the end:

“(4) against any property within the United States that is owned, leased, or used by a foreign government.”;

(4) at the end of subsection (c)(1), by striking “and”;

(5) in subsection (c)(2), by striking the period at the end and inserting “; and”; and

(6) in subsection (c), by adding at the end the following:

“(3) the term ‘property’ includes all real and personal property.”.

(b) RESTORATION OF THE COVERAGE OF CHEMICAL WEAPONS.—Section 2332a of title 18, United States Code, as amended by subsection (a), is further amended—

(1) in the section heading, by striking “certain”;

(2) in subsection (a), by striking “(other than a chemical weapon as that term is defined in section 229F)”;

(3) in subsection (b), by striking “(other than a chemical weapon (as that term is defined in section 229F))”.

(c) EXPANSION OF CATEGORIES OF RESTRICTED PERSONS SUBJECT TO PROHIBITIONS RELATING TO SELECT AGENTS.—Section 175b(d)(2) of title 18, United States Code, is amended—

(1) in subparagraph (G) by—

(A) inserting “(i)” after “(G)”;

(B) inserting “; or (ii) acts for or on behalf of, or operates subject to the direction or control of, a government or official of a country described in this subparagraph” after “terrorism”; and

(C) striking “or” after the semicolon.

(2) in subparagraph (H) by striking the period and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(I) is a member of, acts for or on behalf of, or operates subject to the direction or control of, a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)).”.

(d) CONFORMING AMENDMENT TO REGULATIONS.—

(1) Section 175b(a)(1) of title 18, United States Code, is amended by striking “as a select agent in Appendix A” and all that follows and inserting the following: “as a non-overlap or overlap select biological agent or toxin in sections 73.4 and 73.5 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not excluded under sections 73.4 and 73.5 or exempted under section 73.6 of title 42, Code of Federal Regulations.”.

(2) The amendment made by paragraph (1) shall take effect at the same time that sections 73.4, 73.5, and 73.6 of title 42, Code of Federal Regulations, become effective.

(e) ENHANCING PROSECUTION OF WEAPONS OF MASS DESTRUCTION OFFENSES.—Section 1961(1)(B) of title 18, United States Code,

Effective date.
18 USC 175b
note.

is amended by adding at the end the following: “sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials),”.

SEC. 6803. PARTICIPATION IN NUCLEAR AND WEAPONS OF MASS DESTRUCTION THREATS TO THE UNITED STATES.

(a) Section 57(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)) is amended by striking “in the production of any special nuclear material” and inserting “or participate in the development or production of any special nuclear material”.

(b) Section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) is amended—

(1) by inserting “, inside or outside of the United States,” after “for any person”; and

(2) by inserting “participate in the development of,” after “interstate or foreign commerce,”.

(c) Title 18, United States Code, is amended—

(1) in the table of sections at the beginning of chapter 39, by inserting after the item relating to section 831 the following:

“832. Participation in nuclear and weapons of mass destruction threats to the United States.”;

(2) by inserting after section 831 the following:

“§ 832. Participation in nuclear and weapons of mass destruction threats to the United States

“(a) Whoever, within the United States or subject to the jurisdiction of the United States, willfully participates in or knowingly provides material support or resources (as defined in section 2339A) to a nuclear weapons program or other weapons of mass destruction program of a foreign terrorist power, or attempts or conspires to do so, shall be imprisoned for not more than 20 years.

“(b) There is extraterritorial Federal jurisdiction over an offense under this section.

“(c) Whoever without lawful authority develops, possesses, or attempts or conspires to develop or possess a radiological weapon, or threatens to use or uses a radiological weapon against any person within the United States, or a national of the United States while such national is outside of the United States or against any property that is owned, leased, funded, or used by the United States, whether that property is within or outside of the United States, shall be imprisoned for any term of years or for life.

“(d) As used in this section—

“(1) ‘nuclear weapons program’ means a program or plan for the development, acquisition, or production of any nuclear weapon or weapons;

“(2) ‘weapons of mass destruction program’ means a program or plan for the development, acquisition, or production of any weapon or weapons of mass destruction (as defined in section 2332a(c));

“(3) ‘foreign terrorist power’ means a terrorist organization designated under section 219 of the Immigration and Nationality Act, or a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 or section 620A of the Foreign Assistance Act of 1961; and

“(4) ‘nuclear weapon’ means any weapon that contains or uses nuclear material as defined in section 831(f)(1).”; and

(3) in section 2332b(g)(5)(B)(i), by inserting after “nuclear materials,” the following: “832 (relating to participation in nuclear and weapons of mass destruction threats to the United States)”.

Subtitle J—Prevention of Terrorist Access to Destructive Weapons Act of 2004

Prevention of
Terrorist Access
to Destructive
Weapons Act of
2004.
18 USC 1 note.

SEC. 6901. SHORT TITLE.

This subtitle may be cited as the “Prevention of Terrorist Access to Destructive Weapons Act of 2004”.

SEC. 6902. FINDINGS AND PURPOSE.

18 USC 175c
note.

(a) **FINDINGS.**—Congress makes the following findings:

(1) The criminal use of man-portable air defense systems (referred to in this section as “MANPADS”) presents a serious threat to civil aviation worldwide, especially in the hands of terrorists or foreign states that harbor them.

(2) Atomic weapons or weapons designed to release radiation (commonly known as “dirty bombs”) could be used by terrorists to inflict enormous loss of life and damage to property and the environment.

(3) Variola virus is the causative agent of smallpox, an extremely serious, contagious, and sometimes fatal disease. Variola virus is classified as a Category A agent by the Centers for Disease Control and Prevention, meaning that it is believed to pose the greatest potential threat for adverse public health impact and has a moderate to high potential for large-scale dissemination. The last case of smallpox in the United States was in 1949. The last naturally occurring case in the world was in Somalia in 1977. Although smallpox has been officially eradicated after a successful worldwide vaccination program, there remain two official repositories of the variola virus for research purposes. Because it is so dangerous, the variola virus may appeal to terrorists.

(4) The use, or even the threatened use, of MANPADS, atomic or radiological weapons, or the variola virus, against the United States, its allies, or its people, poses a grave risk to the security, foreign policy, economy, and environment of the United States. Accordingly, the United States has a compelling national security interest in preventing unlawful activities that lead to the proliferation or spread of such items, including their unauthorized production, construction, acquisition, transfer, possession, import, or export. All of these activities markedly increase the chances that such items will be obtained by terrorist organizations or rogue states, which could use them to attack the United States, its allies, or United States nationals or corporations.

(5) There is no legitimate reason for a private individual or company, absent explicit government authorization, to produce, construct, otherwise acquire, transfer, receive, possess, import, export, or use MANPADS, atomic or radiological weapons, or the variola virus.

(b) **PURPOSE.**—The purpose of this subtitle is to combat the potential use of weapons that have the ability to cause widespread harm to United States persons and the United States economy

(and that have no legitimate private use) and to threaten or harm the national security or foreign relations of the United States.

SEC. 6903. MISSILE SYSTEMS DESIGNED TO DESTROY AIRCRAFT.

Chapter 113B of title 18, United States Code, is amended by adding after section 2332f the following:

“§ 2332g. Missile systems designed to destroy aircraft

“(a) UNLAWFUL CONDUCT.—

“(1) IN GENERAL.—Except as provided in paragraph (3), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

“(A) an explosive or incendiary rocket or missile that is guided by any system designed to enable the rocket or missile to—

“(i) seek or proceed toward energy radiated or reflected from an aircraft or toward an image locating an aircraft; or

“(ii) otherwise direct or guide the rocket or missile to an aircraft;

“(B) any device designed or intended to launch or guide a rocket or missile described in subparagraph (A); or

“(C) any part or combination of parts designed or redesigned for use in assembling or fabricating a rocket, missile, or device described in subparagraph (A) or (B).

“(2) NONWEAPON.—Paragraph (1)(A) does not apply to any device that is neither designed nor redesigned for use as a weapon.

“(3) EXCLUDED CONDUCT.—This subsection does not apply with respect to—

“(A) conduct by or under the authority of the United States or any department or agency thereof or of a State or any department or agency thereof; or

“(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof or with a State or any department or agency thereof.

“(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

“(1) the offense occurs in or affects interstate or foreign commerce;

“(2) the offense occurs outside of the United States and is committed by a national of the United States;

“(3) the offense is committed against a national of the United States while the national is outside the United States;

“(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

“(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

“(c) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than \$2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

“(2) OTHER CIRCUMSTANCES.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than \$2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

“(3) SPECIAL CIRCUMSTANCES.—If the death of another results from a person’s violation of subsection (a), the person shall be fined not more than \$2,000,000 and punished by imprisonment for life.

“(d) DEFINITION.—As used in this section, the term ‘aircraft’ has the definition set forth in section 40102(a)(6) of title 49, United States Code.”.

SEC. 6904. ATOMIC WEAPONS.

(a) PROHIBITIONS.—Section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) is amended—

- (1) by inserting at the beginning “a.” before “It”;
- (2) by inserting “knowingly” after “for any person to”;
- (3) by striking “or” before “export”;
- (4) by striking “transfer or receive in interstate or foreign commerce,” before “manufacture”;
- (5) by inserting “receive,” after “acquire,”;
- (6) by inserting “, or use, or possess and threaten to use,” before “any atomic weapon”; and
- (7) by inserting at the end the following:

“b. Conduct prohibited by subsection a. is within the jurisdiction of the United States if—

“(1) the offense occurs in or affects interstate or foreign commerce; the offense occurs outside of the United States and is committed by a national of the United States;

“(2) the offense is committed against a national of the United States while the national is outside the United States;

“(3) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

“(4) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.”.

(b) VIOLATIONS.—Section 222 of the Atomic Energy Act of 1954 (42 U.S.C. 2272) is amended by—

- (1) inserting at the beginning “a.” before “Whoever”;
- (2) striking “, 92,”; and
- (3) inserting at the end the following:

“b. Any person who violates, or attempts or conspires to violate, section 92 shall be fined not more than \$2,000,000 and sentenced to a term of imprisonment not less than 25 years or to imprisonment for life. Any person who, in the course of a violation of section 92, uses, attempts or conspires to use, or possesses and threatens to use, any atomic weapon shall be fined not more than \$2,000,000

and imprisoned for not less than 30 years or imprisoned for life. If the death of another results from a person's violation of section 92, the person shall be fined not more than \$2,000,000 and punished by imprisonment for life.”.

SEC. 6905. RADIOLOGICAL DISPERSAL DEVICES.

Chapter 113B of title 18, United States Code, is amended by adding after section 2332g the following:

“§ 2332h. Radiological dispersal devices

“(a) UNLAWFUL CONDUCT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

“(A) any weapon that is designed or intended to release radiation or radioactivity at a level dangerous to human life; or

“(B) any device or other object that is capable of and designed or intended to endanger human life through the release of radiation or radioactivity.

“(2) EXCEPTION.—This subsection does not apply with respect to—

“(A) conduct by or under the authority of the United States or any department or agency thereof; or

“(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof.

“(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

“(1) the offense occurs in or affects interstate or foreign commerce;

“(2) the offense occurs outside of the United States and is committed by a national of the United States;

“(3) the offense is committed against a national of the United States while the national is outside the United States;

“(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

“(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

“(c) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than \$2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

“(2) OTHER CIRCUMSTANCES.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than \$2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

“(3) SPECIAL CIRCUMSTANCES.—If the death of another results from a person’s violation of subsection (a), the person shall be fined not more than \$2,000,000 and punished by imprisonment for life.”.

SEC. 6906. VARIOLA VIRUS.

Chapter 10 of title 18, United States Code, is amended by inserting after section 175b the following:

“§ 175c. Variola virus

“(a) UNLAWFUL CONDUCT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, engineer, synthesize, acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use, variola virus.

“(2) EXCEPTION.—This subsection does not apply to conduct by, or under the authority of, the Secretary of Health and Human Services.

“(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

“(1) the offense occurs in or affects interstate or foreign commerce;

“(2) the offense occurs outside of the United States and is committed by a national of the United States;

“(3) the offense is committed against a national of the United States while the national is outside the United States;

“(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

“(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

“(c) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than \$2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

“(2) OTHER CIRCUMSTANCES.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than \$2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

“(3) SPECIAL CIRCUMSTANCES.—If the death of another results from a person’s violation of subsection (a), the person shall be fined not more than \$2,000,000 and punished by imprisonment for life.

“(d) DEFINITION.—As used in this section, the term ‘variola virus’ means a virus that can cause human smallpox or any derivative of the variola major virus that contains more than 85 percent of the gene sequence of the variola major virus or the variola minor virus.”.

SEC. 6907. INTERCEPTION OF COMMUNICATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (a), by inserting “2122 and” after “sections”;

(2) in paragraph (c), by inserting “section 175c (relating to variola virus),” after “section 175 (relating to biological weapons),”; and

(3) in paragraph (q), by inserting “2332g, 2332h,” after “2332f.”

SEC. 6908. AMENDMENTS TO SECTION 2332b(g)(5)(B) OF TITLE 18, UNITED STATES CODE.

Section 2332b(g)(5)(B) of title 18, United States Code, is amended—

(1) in clause (i)—

(A) by inserting before “2339 (relating to harboring terrorists)” the following: “2332g (relating to missile systems designed to destroy aircraft), 2332h (relating to radiological dispersal devices),”; and

(B) by inserting “175c (relating to variola virus),” after “175 or 175b (relating to biological weapons),”; and

(2) in clause (ii)—

(A) by striking “section” and inserting “sections 92 (relating to prohibitions governing atomic weapons) or”; and

(B) by inserting “2122 or” before “2284”.

SEC. 6909. AMENDMENTS TO SECTION 1956(c)(7)(D) OF TITLE 18, UNITED STATES CODE.

Section 1956(c)(7)(D), title 18, United States Code, is amended—

(1) by inserting after “section 152 (relating to concealment of assets; false oaths and claims; bribery),” the following: “section 175c (relating to the variola virus),”; and

(2) by inserting after “section 2332(b) (relating to international terrorist acts transcending national boundaries),” the following: “section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices),”; and

(3) striking “or” after “any felony violation of the Foreign Agents Registration Act of 1938,” and after “any felony violation of the Foreign Corrupt Practices Act”, striking “,” and inserting “, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)”.

SEC. 6910. EXPORT LICENSING PROCESS.

Section 38(g)(1)(A) of the Arms Export Control Act (22 U.S.C. 2778) is amended—

(1) by striking “or” before “(xi)”; and

(2) by inserting after clause (xi) the following: “or (xii) section 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal devices (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175b),”.

SEC. 6911. CLERICAL AMENDMENTS.

(a) CHAPTER 113B.—The table of sections for chapter 113B of title 18, United States Code, is amended by inserting the following after the item for section 2332f:

“2332g. Missile systems designed to destroy aircraft.
“2332h. Radiological dispersal devices.”.

(b) CHAPTER 10.—The table of sections for chapter 10 of title 18, United States Code, is amended by inserting the following item after the item for section 175b:

“175c. Variola virus.”.

Subtitle K—Pretrial Detention of Terrorists

Pretrial
Detention of
Terrorists Act of
2004.

SEC. 6951. SHORT TITLE.

This subtitle may be cited as the “Pretrial Detention of Terrorists Act of 2004”.

18 USC 3141
note.

SEC. 6952. PRESUMPTION FOR PRETRIAL DETENTION IN CASES INVOLVING TERRORISM.

Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e)—

(A) by inserting “or” before “the Maritime”; and

(B) by inserting “or an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed” after “or 2332b of this title,”; and

(2) in subsections (f)(1)(A) and (g)(1), by inserting “, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed” after “violence” each place such term appears.

TITLE VII—IMPLEMENTATION OF 9/11 COMMISSION RECOMMENDATIONS

9/11 Commission
Implementation
Act of 2004.

SEC. 7001. SHORT TITLE.

This title may be cited as the “9/11 Commission Implementation Act of 2004”.

6 USC 101 note.

Subtitle A—Diplomacy, Foreign Aid, and the Military in the War on Terrorism

SEC. 7101. FINDINGS.

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Long-term success in the war on terrorism demands the use of all elements of national power, including diplomacy, military action, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.

22 USC 2656
note.

(2) To win the war on terrorism, the United States must assign to economic and diplomatic capabilities the same strategic priority that is assigned to military capabilities.

(3) The legislative and executive branches of the Government of the United States must commit to robust, long-term investments in all of the tools necessary for the foreign policy of the United States to successfully accomplish the goals of the United States.

(4) The investments referred to in paragraph (3) will require increased funding to United States foreign affairs programs in general, and to priority areas as described in this title in particular.

SEC. 7102. TERRORIST SANCTUARIES.

22 USC 2656f
note.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Complex terrorist operations require locations that provide such operations sanctuary from interference by Government or law enforcement personnel.

(2) A terrorist sanctuary existed in Afghanistan before September 11, 2001.

(3) The terrorist sanctuary in Afghanistan provided direct and indirect value to members of al Qaeda who participated in the terrorist attacks on the United States on September 11, 2001, and in other terrorist operations.

(4) Terrorist organizations have fled to some of the least governed and most lawless places in the world to find sanctuary.

(5) During the 21st century, terrorists are often focusing on remote regions and failing states as locations to seek sanctuary.

(b) **SENSE OF CONGRESS ON UNITED STATES POLICY ON TERRORIST SANCTUARIES.**—It is the sense of Congress that it should be the policy of the United States—

(1) to identify foreign countries that are being used as terrorist sanctuaries;

(2) to assess current United States resources and tools being used to assist foreign governments to eliminate such sanctuaries;

(3) to develop and implement a coordinated strategy to prevent terrorists from using such foreign countries as sanctuaries; and

(4) to work in bilateral and multilateral fora to elicit the cooperation needed to identify and address terrorist sanctuaries that may exist today, but, so far, remain unknown to governments.

(c) **AMENDMENTS TO EXISTING LAW TO INCLUDE TERRORIST SANCTUARIES.**—

(1) **IN GENERAL.**—Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) is amended—

(A) by redesignating paragraph (5) as paragraph (6);

and

(B) by inserting after paragraph (4) the following:

“(5)(A) As used in paragraph (1), the term ‘repeatedly provided support for acts of international terrorism’ shall include

the recurring use of any part of the territory of the country as a sanctuary for terrorists or terrorist organizations.

“(B) In this paragraph—

“(i) the term ‘territory of a country’ means the land, waters, and airspace of the country; and

“(ii) the term ‘sanctuary’ means an area in the territory of a country—

“(I) that is used by a terrorist or terrorist organization—

“(aa) to carry out terrorist activities, including training, financing, and recruitment; or

“(bb) as a transit point; and

“(II) the government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory.”.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection or the amendments made by this subsection shall be construed as affecting any determination made by the Secretary of State pursuant to section 6(j) of the Export Administration Act of 1979 with respect to a country prior to the date of enactment of this Act.

50 USC app.
2405 note.

(3) IMPLEMENTATION.—The President shall implement the amendments made by paragraph (1) by exercising the authorities of the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

President.
50 USC app.
2405 note.

(d) AMENDMENTS TO GLOBAL PATTERNS OF TERRORISM REPORT.—

(1) IN GENERAL.—Section 140(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(a)(1)) is amended—

(A) by striking “(1)” and inserting “(1)(A)”;

(B) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively;

(C) in subparagraph (A)(iii) (as redesignated), by adding “and” at the end; and

(D) by adding at the end the following:

“(B) detailed assessments with respect to each foreign country whose territory is being used as a sanctuary for terrorists or terrorist organizations;”.

(2) CONTENTS.—Section 140(b) of such Act (22 U.S.C. 2656f(b)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “subsection (a)(1)” and inserting “subsection (a)(1)(A)”; and

(ii) by striking “and” at the end;

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following:

“(2) with respect to subsection (a)(1)(B)—

“(A) the extent of knowledge by the government of the country with respect to terrorist activities in the territory of the country; and

“(B) the actions by the country—

“(i) to eliminate each terrorist sanctuary in the territory of the country;

“(ii) to cooperate with United States antiterrorism efforts; and

- “(iii) to prevent the proliferation of and trafficking in weapons of mass destruction in and through the territory of the country;”;
- (D) in paragraph (3), as redesignated, by striking the period at the end and inserting a semicolon; and
- (E) by inserting after paragraph (3) the following:
- “(4) a strategy for addressing, and where possible eliminating, terrorist sanctuaries that shall include—
- “(A) a description of terrorist sanctuaries, together with an assessment of the priorities of addressing and eliminating such sanctuaries;
- “(B) an outline of strategies for disrupting or eliminating the security provided to terrorists by such sanctuaries;
- “(C) a description of efforts by the United States to work with other countries in bilateral and multilateral fora to address or eliminate terrorist sanctuaries and disrupt or eliminate the security provided to terrorists by such sanctuaries; and
- “(D) a description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanctuaries; and
- “(5) an update of the information contained in the report required to be transmitted to Congress under 7120(b) of the 9/11 Commission Implementation Act of 2004.”.
- (3) DEFINITIONS.—Section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)) is amended—
- (A) in paragraph (2), by striking “and” at the end;
- (B) in paragraph (3), by striking the period at the end and inserting a semicolon; and
- (C) by adding at the end the following:
- “(4) the terms ‘territory’ and ‘territory of the country’ mean the land, waters, and airspace of the country; and
- “(5) the terms ‘terrorist sanctuary’ and ‘sanctuary’ mean an area in the territory of the country—
- “(A) that is used by a terrorist or terrorist organization—
- “(i) to carry out terrorist activities, including training, fundraising, financing, and recruitment; or
- “(ii) as a transit point; and
- “(B) the government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory and is not subject to a determination under—
- “(i) section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A));
- “(ii) section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)); or
- “(iii) section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).”.
- (4) EFFECTIVE DATE.—The amendments made by this subsection apply with respect to the report required to be transmitted under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), by April 30, 2006, and by April 30 of each subsequent year.

SEC. 7103. UNITED STATES COMMITMENT TO THE FUTURE OF PAKISTAN.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The Government of Pakistan has a critical role to perform in the struggle against terrorism.

(2) Due to its location, topography, social conditions, and other factors, Pakistan can be attractive to extremists seeking refuge or opportunities to recruit or train, or a place from which to operate against Coalition Forces in Afghanistan.

(3) A stable Pakistan, with a moderate, responsible government that serves as a voice of tolerance in the Muslim world, is critical to stability in the region.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the United States should—

(1) help to ensure a promising, stable, and secure future for Pakistan over the long term;

(2) provide a comprehensive program of assistance to encourage and enable Pakistan—

(A) to continue and improve upon its commitment to combating extremists;

(B) to seek to resolve any outstanding difficulties with its neighbors and other countries in its region;

(C) to continue to make efforts to fully control its territory and borders;

(D) to progress toward becoming a more effective and participatory democracy;

(E) to participate more vigorously in the global marketplace and to continue to modernize its economy;

(F) to take all necessary steps to halt the spread of weapons of mass destruction;

(G) to improve and expand access to education for all citizens; and

(H) to increase the number and level of exchanges between the Pakistani people and the American people; and

(3) continue to provide assistance to Pakistan at not less than the overall levels requested by the President for fiscal year 2005.

(c) **EXTENSION OF PAKISTAN WAIVERS.**—The Act entitled “An Act to authorize the President to exercise waivers of foreign assistance restrictions with respect to Pakistan through September 30, 2003, and for other purposes”, approved October 27, 2001 (Public Law 107–57; 115 Stat. 403), as amended by section 2213 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1232), is further amended—

(1) in section 1(b)—

(A) in the heading, by striking “FISCAL YEAR 2004” and inserting “FISCAL YEARS 2005 and 2006”; and

(B) in paragraph (1), by striking “2004” and inserting “2005 or 2006”;

(2) in section 3(2), by striking “and 2004,” and inserting “2004, 2005, and 2006”; and

(3) in section 6, by striking “2004” and inserting “2006”.

115 Stat. 403.

115 Stat. 404.

115 Stat. 405.

Afghanistan
Freedom Support
Act Amendments
of 2004.
22 USC 7501
note.
22 USC 7511
note.

SEC. 7104. ASSISTANCE FOR AFGHANISTAN.

(a) **SHORT TITLE.**—This section may be cited as the “Afghanistan Freedom Support Act Amendments of 2004”.

(b) **COORDINATION OF ASSISTANCE.**—

(1) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(A) The United States and its allies in the international community have made progress in promoting economic and political reform within Afghanistan, including the establishment of a central government with a democratic constitution, a new currency, and a new army, the increase of personal freedom, and the elevation of the standard of living of many Afghans.

(B) A number of significant obstacles must be overcome if Afghanistan is to become a secure and prosperous democracy, and such a transition depends in particular upon—

- (i) improving security throughout the country;
 - (ii) disarming and demobilizing militias;
 - (iii) curtailing the rule of the warlords;
 - (iv) promoting equitable economic development;
 - (v) protecting the human rights of the people of Afghanistan;
 - (vi) continuing to hold elections for public officials;
- and
- (vii) ending the cultivation, production, and trafficking of narcotics.

(C) The United States and the international community must make a long-term commitment to addressing the unstable security situation in Afghanistan and the burgeoning narcotics trade, endemic poverty, and other serious problems in Afghanistan in order to prevent that country from relapsing into a sanctuary for international terrorism.

(2) **SENSE OF CONGRESS.**—It is the sense of Congress that the United States Government should take, with respect to Afghanistan, the following actions:

(A) Work with other nations to obtain long-term security, political, and financial commitments and fulfillment of pledges to the Government of Afghanistan to accomplish the objectives of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.), especially to ensure a secure, democratic, and prosperous Afghanistan that respects the rights of its citizens and is free of international terrorist organizations.

(B) Use the voice and vote of the United States in relevant international organizations, including the North Atlantic Treaty Organization and the United Nations Security Council, to strengthen international commitments to assist the Government of Afghanistan in enhancing security, building national police and military forces, increasing counter-narcotics efforts, and expanding infrastructure and public services throughout the country.

(C) Take appropriate steps to increase the assistance provided under programs of the Department of State and the United States Agency for International Development throughout Afghanistan and to increase the number of

personnel of those agencies in Afghanistan as necessary to support the increased assistance.

(c) COORDINATOR FOR ASSISTANCE.—

(1) FINDINGS.—Congress makes the following findings:

22 USC 7514
note.

(A) The Final Report of the National Commission on Terrorist Attacks Upon the United States criticized the provision of United States assistance to Afghanistan for being too inflexible.

(B) The Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.) contains provisions that provide for flexibility in the provision of assistance for Afghanistan and are not subject to the requirements of typical foreign assistance programs and provide for the designation of a coordinator to oversee United States assistance for Afghanistan.

(2) DESIGNATION OF COORDINATOR.—Section 104(a) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7514(a)) is amended in the matter preceding paragraph (1) by striking “is strongly urged to” and inserting “shall”.

(d) ASSISTANCE PLAN; INTERNATIONAL COORDINATION.—Section 104 of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7514) is amended by adding at the end the following:

“(c) ASSISTANCE PLAN.—

“(1) SUBMISSION TO CONGRESS.—The coordinator designated under subsection (a) shall annually submit the Afghanistan assistance plan of the Administration to—

Deadlines.

“(A) the Committee on Foreign Relations of the Senate;

“(B) the Committee on International Relations of the House of Representatives;

“(C) the Committee on Appropriations of the Senate; and

“(D) the Committee on Appropriations of the House of Representatives.

“(2) CONTENTS.—The assistance plan submitted under paragraph (1) shall describe—

“(A) how the plan relates to the strategy provided pursuant to section 304; and

“(B) how the plan builds upon United States assistance provided to Afghanistan since 2001.

“(d) COORDINATION WITH INTERNATIONAL COMMUNITY.—

“(1) IN GENERAL.—The coordinator designated under subsection (a) shall work with the international community and the Government of Afghanistan to ensure that assistance to Afghanistan is implemented in a coherent, consistent, and efficient manner to prevent duplication and waste.

“(2) INTERNATIONAL FINANCIAL INSTITUTIONS.—The coordinator designated under subsection (a), under the direction of the Secretary of State, shall work through the Secretary of the Treasury and the United States Executive Directors at the international financial institutions (as defined in section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2))) to coordinate United States assistance for Afghanistan with international financial institutions.

(e) GENERAL PROVISIONS RELATING TO THE AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.—

(1) ASSISTANCE TO PROMOTE ECONOMIC, POLITICAL AND SOCIAL DEVELOPMENT.—

22 USC 7513
note.

(A) **DECLARATION OF POLICY.**—Congress reaffirms the authorities contained in title I of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.), relating to economic and democratic development assistance for Afghanistan.

(B) **PROVISION OF ASSISTANCE.**—Section 103(a) of such Act (22 U.S.C. 7513(a)) is amended in the matter preceding paragraph (1) by striking “section 512 of Public Law 107-115 or any other similar” and inserting “any other”.

22 USC 7511
note.

(2) **DECLARATIONS OF GENERAL POLICY.**—Congress makes the following declarations:

(A) The United States reaffirms the support that it and other countries expressed for the report entitled “Securing Afghanistan’s Future” in their Berlin Declaration of April 2004. The United States should help enable the growth needed to create an economically sustainable Afghanistan capable of the poverty reduction and social development foreseen in the report.

(B) The United States supports the parliamentary elections to be held in Afghanistan by April 2005 and will help ensure that such elections are not undermined, including by warlords or narcotics traffickers.

(C) The United States continues to urge North Atlantic Treaty Organization members and other friendly countries to make much greater military contributions toward securing the peace in Afghanistan.

(3) **FORM OF REPORTS.**—Section 304 of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7554) is amended—

(A) by striking “The Secretary” and inserting the following:

“(a) **IN GENERAL.**—The Secretary”;

(B) by striking “The first report” and inserting the following:

“(b) **DEADLINE FOR SUBMISSION.**—The first report”; and

(C) by adding at the end the following:

“(c) **FORM OF REPORTS.**—Any report or other matter that is required to be submitted to Congress (including a committee of Congress) by this Act may contain a classified annex.”.

(4) **LONG-TERM STRATEGY.**—

(A) **STRATEGY.**—Title III of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7551 et seq.) is amended by adding at the end the following:

22 USC 7555.

“SEC. 305. FORMULATION OF LONG-TERM STRATEGY FOR AFGHANISTAN.

“(a) **STRATEGY.**—

Deadline.
President.

“(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this section, the President shall formulate a 5-year strategy for Afghanistan and submit such strategy to—

“(A) the Committee on Foreign Relations of the Senate;

“(B) the Committee on International Relations of the House of Representatives;

“(C) the Committee on Appropriations of the Senate; and

“(D) the Committee on Appropriations of the House of Representatives.

“(2) CONTENTS.—The strategy formulated under paragraph (1) shall include specific and measurable goals for addressing the long-term development and security needs of Afghanistan, including sectors such as agriculture and irrigation, parliamentary and democratic development, the judicial system and rule of law, human rights, education, health, telecommunications, electricity, women’s rights, counternarcotics, police, border security, anti-corruption, and other law-enforcement activities, as well as the anticipated costs and time frames associated with achieving those goals.

“(b) MONITORING.—

“(1) ANNUAL REPORT.—The President shall transmit on an annual basis through 2010 a report describing the progress made toward the implementation of the strategy required by subsection (a) and any changes to the strategy since the date of the submission of the last report to—

“(A) the Committee on Foreign Relations of the Senate;

“(B) the Committee on International Relations of the House of Representatives;

“(C) the Committee on Appropriations of the Senate; and

“(D) the Committee on Appropriations of the House of Representatives.”.

(B) CLERICAL AMENDMENT.—The table of contents for such Act (22 U.S.C. 7501 note) is amended by adding after the item relating to section 303 the following new item:

“Sec. 305. Formulation of long-term strategy for Afghanistan.”.

(f) EDUCATION, THE RULE OF LAW, AND RELATED ISSUES.—

(1) DECLARATION OF POLICY.—Congress declares that, although Afghanistan has adopted a new constitution and made progress on primary education, the United States must invest in a concerted effort in Afghanistan to improve the rule of law, good governance, and effective policing, to accelerate work on secondary and university education systems, and to establish new initiatives to increase the capacity of civil society.

(2) AMENDMENT.—Section 103(a)(5) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513(a)(5)) is amended to read as follows:

“(5) EDUCATION, THE RULE OF LAW, AND RELATED ISSUES.—

“(A) EDUCATION.—To assist in the development of the capacity of the Government of Afghanistan to provide education to the people of Afghanistan, including assistance such as—

“(i) support for an educated citizenry through improved access to basic education, with particular emphasis on basic education for children, especially orphans;

“(ii) programs to enable the Government of Afghanistan to recruit and train teachers, with special focus on the recruitment and training of female teachers;

“(iii) programs to enable the Government of Afghanistan to develop school curricula that incorporate relevant information such as landmine awareness, food security and agricultural education, civic

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22 USC 7513
note.

education, and human rights education, including education relating to religious freedom;

“(iv) programs to construct, renovate, or rebuild, and to equip and provide teacher training, for primary schools, secondary schools, and universities; and

“(v) programs to increase educational exchanges and partnerships between the United States and Afghanistan.

“(B) RULE OF LAW.—To assist in the development of the rule of law and good governance and reduced corruption in Afghanistan, including assistance such as—

“(i) support for the activities of the Government of Afghanistan to implement its constitution, to develop modern legal codes and court rules, to provide for the creation of legal assistance programs, and other initiatives to promote the rule of law in Afghanistan;

“(ii) support for improvements in the capacity and physical infrastructure of the justice system in Afghanistan, such as for professional training (including for women) to improve the administration of justice, for programs to enhance prosecutorial and judicial capabilities and to protect participants in judicial cases, for improvements in the instruction of law enforcement personnel (including human rights training), and for the promotion of civilian police roles that support democracy;

“(iii) support for rehabilitation and rebuilding of courthouses and detention facilities;

“(iv) support for the effective administration of justice at the national, regional, and local levels, including programs to improve penal institutions and the rehabilitation of prisoners, and to establish a responsible and community-based police force;

“(v) support to increase the transparency, accountability, and participatory nature of governmental institutions, including programs designed to combat corruption and other programs for the promotion of good governance, such as the development of regulations relating to financial disclosure for public officials, political parties, and candidates for public office, and transparent budgeting processes and financial management systems;

“(vi) support for establishment of a central bank and central budgeting authority;

“(vii) support for international organizations that provide civil advisers to the Government of Afghanistan; and

“(viii) support for Afghan and international efforts to investigate human rights atrocities committed in Afghanistan by the Taliban regime, opponents of such regime, and terrorist groups operating in Afghanistan, including the collection of forensic evidence relating to such atrocities.

“(C) CIVIL SOCIETY AND DEMOCRACY.—To support the development of democratic institutions in Afghanistan, including assistance for—

“(i) international monitoring and observing of, and the promotion of, free and fair elections;

“(ii) strengthening democratic political parties;

“(iii) international exchanges and professional training for members or officials of government, political, and civic or other nongovernmental entities;

“(iv) national, regional, and local elections and political party development;

“(v) an independent media;

“(vi) programs that support the expanded participation of women and members of all ethnic groups in government at national, regional, and local levels; and

“(vii) programs to strengthen civil society organizations that promote human rights, including religious freedom, freedom of expression, and freedom of association, and support human rights monitoring.

“(D) PROTECTION OF SITES.—To provide for the protection of Afghanistan’s culture, history, and national identity, including the rehabilitation of Afghanistan’s museums and sites of cultural significance.”.

(3) CONFORMING AMENDMENT.—Section 103(a)(4) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513(a)(4)) is amended—

(A) in subparagraph (K), by striking “and” at the end;

(B) in subparagraph (L), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(M) assistance in identifying and surveying key road and rail routes that are essential for economic renewal in Afghanistan and the region and support for the establishment of a customs service and training for customs officers.”.

(g) MONITORING OF ASSISTANCE FOR AFGHANISTAN.—Section 103 of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513), is amended by adding at the end the following:

“(d) MONITORING OF ASSISTANCE FOR AFGHANISTAN.—

“(1) REPORT.—

“(A) IN GENERAL.—The Secretary of State, in consultation with the Administrator for the United States Agency for International Development, shall submit to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report on the obligations of United States assistance for Afghanistan from all United States Government departments and agencies.

“(B) CONTENTS.—Each such report shall set forth, for the preceding annual period and cumulatively, a description of—

“(i) the activities and the purposes for which funds were obligated;

“(ii) the source of the funds stated specifically by fiscal year, agency, and program;

“(iii) the participation of each United States Government department or agency; and

“(iv) such other information as the Secretary considers appropriate to fully inform Congress on such matters.

“(C) ADDITIONAL REQUIREMENTS.—The first report submitted under this paragraph shall include a cumulative account of information described in subparagraph (B) from all prior periods beginning with fiscal year 2001. The first report under this paragraph shall be submitted not later than March 15, 2005. Subsequent reports shall be submitted every 12 months thereafter and may be included in the report required under section 206(c)(2).

“(2) SUBMISSION OF INFORMATION FOR REPORT.—The head of each United States Government agency referred to in paragraph (1) shall provide on a timely basis to the Secretary of State such information as the Secretary may reasonably require to allow the Secretary to prepare and submit the report required under paragraph (1).”.

(h) UNITED STATES POLICY TO SUPPORT DISARMAMENT OF PRIVATE MILITIAS AND EXPANSION OF INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.—

(1) UNITED STATES POLICY RELATING TO DISARMAMENT OF PRIVATE MILITIAS.—

(A) IN GENERAL.—It shall be the policy of the United States to take immediate steps to provide active support for the disarmament, demobilization, and reintegration of armed soldiers, particularly child soldiers, in Afghanistan, in close consultation with the President of Afghanistan.

(B) REPORT.—The report required under section 206(c)(2) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7536(c)(2)) shall include a description of the progress to implement paragraph (1).

(2) INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS.—Section 206 of such Act (22 U.S.C. 7536) is amended by adding at the end the following:

“(e) UNITED STATES POLICY RELATING TO INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS.—It shall be the policy of the United States to make every effort to support the expansion of international peacekeeping and security operations in Afghanistan in order to—

“(1) increase the area in which security is provided and undertake vital tasks related to promoting security, such as disarming warlords, militias, and irregulars, and disrupting opium production; and

“(2) safeguard highways in order to allow the free flow of commerce and to allow material assistance to the people of Afghanistan, and aid personnel in Afghanistan, to move more freely.”.

(i) EFFORTS TO EXPAND INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.—Section 206(d)(1) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7536(d)(1)) is amended to read as follows:

“(1) EFFORTS TO EXPAND INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.—

“(A) EFFORTS.—The President shall encourage, and, as authorized by law, enable other countries to actively participate in expanded international peacekeeping and

22 USC 7536
note.

President.

security operations in Afghanistan, especially through the provision of military personnel for extended periods of time.

“(B) REPORTS.—The President shall prepare and transmit a report on the efforts carried out pursuant to subparagraph (A) to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives. The first report under this subparagraph shall be transmitted not later than 60 days after the date of the enactment of the Afghanistan Freedom Support Act Amendments of 2004 and subsequent reports shall be transmitted every 6 months thereafter and may be included in the report required by subsection (c)(2).”.

(j) PROVISIONS RELATING TO COUNTERNARCOTICS EFFORTS IN AFGHANISTAN.—

(1) AUTHORIZATION OF ASSISTANCE.—Section 103(a)(3)(A) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513(a)(3)(A)) is amended—

(A) in clause (i), by striking “establish crop substitution programs,” and inserting “promote alternatives to poppy cultivation, including the introduction of high value crops that are suitable for export and the provision of appropriate technical assistance and credit mechanisms for farmers;”;

(B) in clause (ii), by inserting before the semicolon at the end the following: “, and to create special counternarcotics courts, prosecutors, and places of incarceration”;

(C) in clause (iii), by inserting before the semicolon at the end the following: “, in particular, notwithstanding section 660 of the Foreign Assistance Act of 1961 (22 U.S.C. 2420), by providing non-lethal equipment, training (including training in internationally recognized standards of human rights, the rule of law, anti-corruption, and the promotion of civilian police roles that support democracy), and payments, during fiscal years 2005 through 2008, for salaries for special counternarcotics police and supporting units”;

(D) in clause (iv), by striking “and” at the end;

(E) in clause (v), by striking the period at the end and inserting “; and”; and

(F) by adding after clause (v) the following:

“(vi) assist the Afghan National Army with respect to any of the activities under this paragraph.”.

(2) SENSE OF CONGRESS AND REPORT.—Title II of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7531 et seq.) is amended—

(A) by redesignating sections 207 and 208 as sections 208 and 209, respectively; and

22 USC 7537,
7538.

(B) by inserting after section 206 the following:

“SEC. 207. SENSE OF CONGRESS AND REPORT REGARDING COUNTER-DRUG EFFORTS IN AFGHANISTAN.

22 USC 7536a.

“(a) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) the President should make the substantial reduction of illegal drug production and trafficking in Afghanistan a priority in the Global War on Terrorism;

“(2) the Secretary of Defense, in coordination with the Secretary of State and the heads of other appropriate Federal

agencies, should expand cooperation with the Government of Afghanistan and international organizations involved in counter-drug activities to assist in providing a secure environment for counter-drug personnel in Afghanistan; and

“(3) the United States, in conjunction with the Government of Afghanistan and coalition partners, should undertake additional efforts to reduce illegal drug trafficking and related activities that provide financial support for terrorist organizations in Afghanistan and neighboring countries.

“(b) REPORT REQUIRED.—(1) The Secretary of Defense and the Secretary of State shall jointly prepare a report that describes—

“(A) the progress made toward substantially reducing poppy cultivation and heroin production capabilities in Afghanistan; and

“(B) the extent to which profits from illegal drug activity in Afghanistan are used to financially support terrorist organizations and groups seeking to undermine the Government of Afghanistan.

“(2) The report required by this subsection shall be submitted to Congress not later than 120 days after the date of the enactment of the 9/11 Recommendations Implementation Act.”.

(3) CLERICAL AMENDMENT.—The table of contents for such Act (22 U.S.C. 7501 note) is amended by striking the items relating to sections 207 and 208 and inserting the following:

“Sec. 207. Sense of Congress and report regarding counter-drug efforts in Afghanistan.

“Sec. 208. Relationship to other authority.

“Sec. 209. Authorization of appropriations.”.

(k) ADDITIONAL AMENDMENTS TO AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.—

(1) EXTENSION OF REPORTS ON IMPLEMENTATION OF STRATEGY.—Section 206(c)(2) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7536(c)(2)) is amended in the matter preceding subparagraph (A) by striking “2007” and inserting “2010”.

(2) TECHNICAL AMENDMENT.—Section 103(a)(7)(A)(xii) of such Act (22 U.S.C. 7513(a)(7)(A)(xii)) is amended by striking “National” and inserting “Afghan Independent”.

(l) REPEAL OF PROHIBITION ON ASSISTANCE.—Section 620D of the Foreign Assistance Act of 1961 (22 U.S.C. 2374; relating to prohibition on assistance to Afghanistan) is repealed.

(m) AUTHORIZATION OF APPROPRIATIONS.—Section 108(a) of the Afghanistan Freedom Assistance Act of 2002 (22 U.S.C. 7518(a)) is amended by striking “\$1,825,000,000 for fiscal year 2004” and all that follows and inserting “such sums as may be necessary for each of the fiscal years 2005 and 2006.”.

SEC. 7105. THE RELATIONSHIP BETWEEN THE UNITED STATES AND SAUDI ARABIA.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Despite a long history of friendly relations with the United States, there have been problems in cooperation between the United States and Saudi Arabia.

(2) The Government of Saudi Arabia has not always responded promptly or fully to United States requests for assistance in the global war on Islamist terrorism.

(3) The Government of Saudi Arabia has not done all it can to prevent financial or other support from being provided to, or reaching, extremist organizations in Saudi Arabia or other countries.

(4) Counterterrorism cooperation between the Governments of the United States and Saudi Arabia has improved significantly since the terrorist bombing attacks in Riyadh, Saudi Arabia, on May 12, 2003, and the Government of Saudi Arabia is now pursuing al Qaeda and other terror groups operating inside Saudi Arabia.

(5) The United States must enhance its cooperation and strong relationship with Saudi Arabia based upon a shared and public commitment to political and economic reform, greater tolerance and respect for religious and cultural diversity and joint efforts to prevent funding for and support of extremist organizations in Saudi Arabia and elsewhere.

(b) SENSE OF CONGRESS.—It is the sense of Congress that there should be a more robust dialogue between the people and Government of the United States and the people and Government of Saudi Arabia in order to improve the relationship between the United States and Saudi Arabia.

SEC. 7106. EFFORTS TO COMBAT ISLAMIST TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) While support for the United States has plummeted in the Islamic world, many negative views are uninformed, at best, and, at worst, are informed by coarse stereotypes and caricatures.

(2) Local newspapers in countries with predominantly Muslim populations and influential broadcasters who reach Muslim audiences through satellite television often reinforce the idea that the people and Government of the United States are anti-Muslim.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Government of the United States should offer an example of moral leadership in the world that includes a commitment to treat all people humanely, abide by the rule of law, and be generous to the people and governments of other countries;

(2) the United States should cooperate with governments of countries with predominantly Muslim populations to foster agreement on respect for human dignity and opportunity, and to offer a vision of a better future that includes stressing life over death, individual educational and economic opportunity, widespread political participation, contempt for violence, respect for the rule of law, openness in discussing differences, and tolerance for opposing points of view;

(3) the United States should encourage reform, freedom, democracy, and opportunity for Muslims; and

(4) the United States should work to defeat extremism in all its form, especially in nations with predominantly Muslim populations by providing assistance to governments, non-

governmental organizations, and individuals who promote modernization.

SEC. 7107. UNITED STATES POLICY TOWARD DICTATORSHIPS.

(a) **FINDING.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that short-term gains enjoyed by the United States through cooperation with repressive dictatorships have often been outweighed by long-term setbacks for the stature and interests of the United States.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) United States foreign policy should promote the importance of individual educational and economic opportunity, encourage widespread political participation, condemn violence, and promote respect for the rule of law, openness in discussing differences among people, and tolerance for opposing points of view; and

(2) the United States Government must encourage the governments of all countries with predominantly Muslim populations, including those that are friends and allies of the United States, to promote the value of life and the importance of individual education and economic opportunity, encourage widespread political participation, condemn violence and promote the rule of law, openness in discussing differences among people, and tolerance for opposing points of view.

22 USC 1431
note.

SEC. 7108. PROMOTION OF FREE MEDIA AND OTHER AMERICAN VALUES.

(a) **PROMOTION OF UNITED STATES VALUES THROUGH BROADCAST MEDIA.**—

(1) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(A) Although the United States has demonstrated and promoted its values in defending Muslims against tyrants and criminals in Somalia, Bosnia, Kosovo, Afghanistan, and Iraq, this message is neither convincingly presented nor widely understood.

(B) If the United States does not act to vigorously define its message in countries with predominantly Muslim populations, the image of the United States will be defined by Islamic extremists who seek to demonize the United States.

(C) Recognizing that many Muslim audiences rely on satellite television and radio, the United States Government has launched promising initiatives in television and radio broadcasting to the Islamic world, including Iran and Afghanistan.

(2) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(A) the United States must do more to defend and promote its values and ideals to the broadest possible audience in countries with predominantly Muslim populations;

(B) United States efforts to defend and promote these values and ideals are beginning to ensure that accurate expressions of these values reach large Muslim audiences and should be robustly supported;

(C) the United States Government could and should do more to engage Muslim audiences in the struggle of ideas; and

(D) the United States Government should more intensively employ existing broadcast media in the Islamic world as part of this engagement.

(b) **ENHANCING FREE AND INDEPENDENT MEDIA.**—

(1) **FINDINGS.**—Congress makes the following findings:

(A) Freedom of speech and freedom of the press are fundamental human rights.

(B) The United States has a national interest in promoting these freedoms by supporting free media abroad, which is essential to the development of free and democratic societies consistent with our own.

(C) Free media is undermined, endangered, or non-existent in many repressive and transitional societies around the world, including in Eurasia, Africa, and the Middle East.

(D) Individuals lacking access to a plurality of free media are vulnerable to misinformation and propaganda and are potentially more likely to adopt anti-United States views.

(E) Foreign governments have a responsibility to actively and publicly discourage and rebut unprofessional and unethical media while respecting journalistic integrity and editorial independence.

(2) **STATEMENT OF POLICY.**—It shall be the policy of the United States, acting through the Secretary of State, to—

(A) ensure that the promotion of freedom of the press and freedom of media worldwide is a priority of United States foreign policy and an integral component of United States public diplomacy;

(B) respect the journalistic integrity and editorial independence of free media worldwide; and

(C) ensure that widely accepted standards for professional and ethical journalistic and editorial practices are employed when assessing international media.

(c) **ESTABLISHMENT OF MEDIA NETWORK.**—

(1) **GRANTS FOR ESTABLISHMENT OF NETWORK.**—The Secretary of State shall, utilizing amounts authorized to be appropriated by subsection (e)(2), make grants to the National Endowment for Democracy (NED) under the National Endowment for Democracy Act (22 U.S.C. 4411 et seq.) for utilization by the Endowment to provide funding to a private sector group to establish and manage a free and independent media network as specified in paragraph (2).

(2) **MEDIA NETWORK.**—The media network established using funds under paragraph (1) shall provide an effective forum to convene a broad range of individuals, organizations, and governmental participants involved in journalistic activities and the development of free and independent media in order to—

(A) fund a clearinghouse to collect and share information concerning international media development and training;

(B) improve research in the field of media assistance and program evaluation to better inform decisions

regarding funding and program design for government and private donors;

(C) explore the most appropriate use of existing means to more effectively encourage the involvement of the private sector in the field of media assistance; and

(D) identify effective methods for the development of a free and independent media in societies in transition.

(d) **AUTHORIZATIONS OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There are authorized to be appropriated for each of fiscal years 2005 and 2006, unless otherwise authorized by Congress, such sums as may be necessary to carry out United States Government broadcasting activities consistent with this section under the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431 et seq.), the United States International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.), and the Foreign Affairs Reform and Restructuring Act of 1998 (22 U.S.C. 6501 et seq.), and to carry out other activities under this section consistent with the purposes of such Acts, unless otherwise authorized by Congress.

(2) **GRANTS FOR MEDIA NETWORK.**—In addition to the amounts authorized to be appropriated under paragraph (1), there are authorized to be appropriated for each of fiscal years 2005 and 2006, unless otherwise authorized by Congress, such sums as may be necessary for grants under subsection (c)(1) for the establishment of the media network described in subsection (c)(2).

SEC. 7109. PUBLIC DIPLOMACY RESPONSIBILITIES OF THE DEPARTMENT OF STATE.

(a) **IN GENERAL.**—The State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a et seq.) is amended by inserting after section 59 the following new section:

22 USC 2732.

“SEC. 60. PUBLIC DIPLOMACY RESPONSIBILITIES OF THE DEPARTMENT OF STATE.

“(a) **INTEGRAL COMPONENT.**—The Secretary of State shall make public diplomacy an integral component in the planning and execution of United States foreign policy.

“(b) **COORDINATION AND DEVELOPMENT OF STRATEGY.**—The Secretary shall make every effort to—

“(1) coordinate, subject to the direction of the President, the public diplomacy activities of Federal agencies; and

“(2) coordinate with the Broadcasting Board of Governors to—

“(A) develop a comprehensive and coherent strategy for the use of public diplomacy resources; and

“(B) develop and articulate long-term measurable objectives for United States public diplomacy.

“(c) **OBJECTIVES.**—The strategy developed pursuant to subsection (b) shall include public diplomacy efforts targeting developed and developing countries and select and general audiences, using appropriate media to properly explain the foreign policy of the United States to the governments and populations of such countries, with the objectives of increasing support for United States policies and providing news and information. The Secretary shall, through the most effective mechanisms, counter misinformation and propaganda concerning the United States. The Secretary shall continue

to articulate the importance of freedom, democracy, and human rights as fundamental principles underlying United States foreign policy goals.

“(d) IDENTIFICATION OF UNITED STATES FOREIGN ASSISTANCE.—In cooperation with the United States Agency for International Development (USAID) and other public and private assistance organizations and agencies, the Secretary should ensure that information relating to foreign assistance provided by the United States, nongovernmental organizations, and private entities of the United States is disseminated widely, and particularly, to the extent practicable, within countries and regions that receive such assistance. The Secretary should ensure that, to the extent practicable, projects funded by USAID not involving commodities, including projects implemented by private voluntary organizations, are identified as provided by the people of the United States.”.

(b) FUNCTIONS OF THE UNDER SECRETARY OF STATE FOR PUBLIC DIPLOMACY.—

(1) AMENDMENT.—Section 1(b)(3) of such Act (22 U.S.C. 2651a(b)(3)) is amended by adding at the end the following new sentence: “The Under Secretary for Public Diplomacy shall—

“(A) prepare an annual strategic plan for public diplomacy in collaboration with overseas posts and in consultation with the regional and functional bureaus of the Department;

“(B) ensure the design and implementation of appropriate program evaluation methodologies;

“(C) provide guidance to Department personnel in the United States and overseas who conduct or implement public diplomacy policies, programs, and activities;

“(D) assist the United States Agency for International Development and the Broadcasting Board of Governors to present the policies of the United States clearly and effectively; and

“(E) submit statements of United States policy and editorial material to the Broadcasting Board of Governors for broadcast consideration.”.

(2) CONSULTATION.—The Under Secretary of State for Public Diplomacy, in carrying out the responsibilities described in section 1(b)(3) of such Act (as amended by paragraph (1)), shall consult with public diplomacy officers operating at United States overseas posts and in the regional bureaus of the Department of State.

22 USC 2651a
note.

SEC. 7110. PUBLIC DIPLOMACY TRAINING.

22 USC 3922b.

(a) STATEMENT OF POLICY.—The following should be the policy of the United States:

(1) The Foreign Service should recruit individuals with expertise and professional experience in public diplomacy.

(2) United States chiefs of mission should have a prominent role in the formulation of public diplomacy strategies for the countries and regions to which they are assigned and should be accountable for the operation and success of public diplomacy efforts at their posts.

(3) Initial and subsequent training of Foreign Service officers should be enhanced to include information and training

on public diplomacy and the tools and technology of mass communication.

(b) PERSONNEL.—

(1) QUALIFICATIONS.—In the recruitment, training, and assignment of members of the Foreign Service, the Secretary of State—

(A) should emphasize the importance of public diplomacy and applicable skills and techniques;

(B) should consider the priority recruitment into the Foreign Service, including at middle-level entry, of individuals with expertise and professional experience in public diplomacy, mass communications, or journalism; and

(C) shall give special consideration to individuals with language facility and experience in particular countries and regions.

(2) LANGUAGES OF SPECIAL INTEREST.—The Secretary of State shall seek to increase the number of Foreign Service officers proficient in languages spoken in countries with predominantly Muslim populations. Such increase should be accomplished through the recruitment of new officers and incentives for officers in service.

(c) PUBLIC DIPLOMACY SUGGESTED FOR PROMOTION IN FOREIGN SERVICE.—Section 603(b) of the Foreign Service Act of 1980 (22 U.S.C. 4003(b)) is amended by adding at the end the following: “The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has demonstrated—

(1) a willingness and ability to explain United States policies in person and through the media when occupying positions for which such willingness and ability is, to any degree, an element of the member’s duties, or

(2) other experience in public diplomacy.

SEC. 7111. PROMOTING DEMOCRACY AND HUMAN RIGHTS AT INTERNATIONAL ORGANIZATIONS.

(a) SUPPORT AND EXPANSION OF DEMOCRACY CAUCUS.—

(1) IN GENERAL.—The President, acting through the Secretary of State and the relevant United States chiefs of mission, should—

(A) continue to strongly support and seek to expand the work of the democracy caucus at the United Nations General Assembly and the United Nations Human Rights Commission; and

(B) seek to establish a democracy caucus at the United Nations Conference on Disarmament and at other broad-based international organizations.

(2) PURPOSES OF THE CAUCUS.—A democracy caucus at an international organization should—

(A) forge common positions, including, as appropriate, at the ministerial level, on matters of concern before the organization and work within and across regional lines to promote agreed positions;

(B) work to revise an increasingly outmoded system of membership selection, regional voting, and decision-making; and

(C) establish a rotational leadership agreement to provide member countries an opportunity, for a set period

of time, to serve as the designated president of the caucus, responsible for serving as its voice in each organization.

(b) **LEADERSHIP AND MEMBERSHIP OF INTERNATIONAL ORGANIZATIONS.**—The President, acting through the Secretary of State, the relevant United States chiefs of mission, and, where appropriate, the Secretary of the Treasury, should use the voice, vote, and influence of the United States to—

(1) where appropriate, reform the criteria for leadership and, in appropriate cases, for membership, at all United Nations bodies and at other international organizations and multilateral institutions to which the United States is a member so as to exclude countries that violate the principles of the specific organization;

(2) make it a policy of the United Nations and other international organizations and multilateral institutions of which the United States is a member that a member country may not stand in nomination for membership or in nomination or in rotation for a significant leadership position in such bodies if the member country is subject to sanctions imposed by the United Nations Security Council; and

(3) work to ensure that no member country stand in nomination for membership, or in nomination or in rotation for a significant leadership position in such organizations, or for membership on the United Nations Security Council, if the government of the member country has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism.

(c) **INCREASED TRAINING IN MULTILATERAL DIPLOMACY.**—

22 USC 4029.

(1) **STATEMENT OF POLICY.**—It shall be the policy of the United States that training courses should be established for Foreign Service Officers and civil service employees of the State Department, including appropriate chiefs of mission, on the conduct of multilateral diplomacy, including the conduct of negotiations at international organizations and multilateral institutions, negotiating skills that are required at multilateral settings, coalition-building techniques, and lessons learned from previous United States multilateral negotiations.

(2) **PERSONNEL.**—

(A) **IN GENERAL.**—The Secretary shall ensure that the training described in paragraph (1) is provided at various stages of the career of members of the Service.

(B) **ACTIONS OF THE SECRETARY.**—The Secretary shall ensure that—

(i) officers of the Service receive training on the conduct of diplomacy at international organizations and other multilateral institutions and at broad-based multilateral negotiations of international instruments as part of their training upon entry into the Service; and

(ii) officers of the Service, including chiefs of mission, who are assigned to United States missions representing the United States to international organizations and other multilateral institutions or who are assigned in Washington, D.C., to positions that have as their primary responsibility formulation of policy toward such organizations and institutions or toward participation in broad-based multilateral

negotiations of international instruments, receive specialized training in the areas described in paragraph (1) prior to beginning of service for such assignment or, if receiving such training at that time is not practical, within the first year of beginning such assignment.

(3) **TRAINING FOR CIVIL SERVICE EMPLOYEES.**—The Secretary shall ensure that employees of the Department of State who are members of the civil service and who are assigned to positions described in paragraph (2) receive training described in paragraph (1) prior to the beginning of service for such assignment or, if receiving such training at such time is not practical, within the first year of beginning such assignment.

22 USC 2451
note.

SEC. 7112. EXPANSION OF UNITED STATES SCHOLARSHIP AND EXCHANGE PROGRAMS IN THE ISLAMIC WORLD.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Exchange, scholarship, and library programs are effective ways for the United States Government to promote internationally the values and ideals of the United States.

(2) Exchange, scholarship, and library programs can expose young people from other countries to United States values and offer them knowledge and hope.

(b) **DECLARATION OF POLICY.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress declares that—

(1) the United States should commit to a long-term and sustainable investment in promoting engagement with people of all levels of society in countries with predominantly Muslim populations, particularly with youth and those who influence youth;

(2) such an investment should make use of the talents and resources in the private sector and should include programs to increase the number of people who can be exposed to the United States and its fundamental ideas and values in order to dispel misconceptions; and

(3) such programs should include youth exchange programs, young ambassadors programs, international visitor programs, academic and cultural exchange programs, American Corner programs, library programs, journalist exchange programs, sister city programs, and other programs related to people-to-people diplomacy.

(c) **SENSE OF CONGRESS.**—It is the sense of Congress that the United States should significantly increase its investment in the people-to-people programs described in subsection (b).

(d) **AUTHORITY TO EXPAND EDUCATIONAL AND CULTURAL EXCHANGES.**—The President is authorized to substantially expand the exchange, scholarship, and library programs of the United States, especially such programs that benefit people in the Muslim world.

(e) **AVAILABILITY OF FUNDS.**—Of the amounts authorized to be appropriated in each of the fiscal years 2005 and 2006 for educational and cultural exchange programs, there shall be available to the Secretary of State such sums as may be necessary

to carry out programs under this section, unless otherwise authorized by Congress.

SEC. 7113. PILOT PROGRAM TO PROVIDE GRANTS TO AMERICAN-SPONSORED SCHOOLS IN PREDOMINANTLY MUSLIM COUNTRIES TO PROVIDE SCHOLARSHIPS.

22 USC 2452
note.

(a) **FINDINGS.**—Congress makes the following findings:

(1) During the 2003–2004 school year, the Office of Overseas Schools of the Department of State is financially assisting 189 elementary and secondary schools in foreign countries.

(2) United States-sponsored elementary and secondary schools are located in more than 20 countries with predominantly Muslim populations in the Near East, Africa, South Asia, Central Asia, and East Asia.

(3) United States-sponsored elementary and secondary schools provide an American-style education in English, with curricula that typically include an emphasis on the development of critical thinking and analytical skills.

(b) **STATEMENT OF POLICY.**—The United States has an interest in increasing the level of financial support provided to United States-sponsored elementary and secondary schools in countries with predominantly Muslim populations in order to—

(1) increase the number of students in such countries who attend such schools;

(2) increase the number of young people who may thereby gain at any early age an appreciation for the culture, society, and history of the United States; and

(3) increase the number of young people who may thereby improve their proficiency in the English language.

(c) **PILOT PROGRAM.**—The Secretary of State, acting through the Director of the Office of Overseas Schools of the Department of State, may conduct a pilot program to make grants to United States-sponsored elementary and secondary schools in countries with predominantly Muslim populations for the purpose of providing full or partial merit-based scholarships to students from lower-income and middle-income families of such countries to attend such schools.

(d) **DETERMINATION OF ELIGIBLE STUDENTS.**—For purposes of the pilot program, a United States-sponsored elementary and secondary school that receives a grant under the pilot program may establish criteria to be implemented by such school to determine what constitutes lower-income and middle-income families in the country (or region of the country, if regional variations in income levels in the country are significant) in which such school is located.

(e) **RESTRICTION ON USE OF FUNDS.**—Amounts appropriated to the Secretary of State pursuant to the authorization of appropriations in subsection (h) shall be used for the sole purpose of making grants under this section, and may not be used for the administration of the Office of Overseas Schools of the Department of State or for any other activity of the Office.

(f) **VOLUNTARY PARTICIPATION.**—Nothing in this section shall be construed to require participation in the pilot program by a United States-sponsored elementary or secondary school in a predominantly Muslim country.

(g) **REPORT.**—Not later than April 15, 2006, the Secretary of State shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign

Relations of the Senate a report on the pilot program. The report shall assess the success of the program, examine any obstacles encountered in its implementation, and address whether it should be continued, and if so, provide recommendations to increase its effectiveness.

(h) **FUNDING.**—There are authorized to be appropriated to the Secretary of State for each of the fiscal years 2005 and 2006, unless otherwise authorized by Congress, such sums as necessary to implement the pilot program under this section.

22 USC 2228.

SEC. 7114. INTERNATIONAL YOUTH OPPORTUNITY FUND.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Education that teaches tolerance, the dignity and value of each individual, and respect for different beliefs is a key element in any global strategy to eliminate terrorism.

(2) Education in the Middle East about the world outside that region is weak.

(3) The United Nations has rightly equated literacy with freedom.

(4) The international community is moving toward setting a concrete goal of reducing by half the illiteracy rate in the Middle East by 2010, through the implementation of education programs targeting women and girls and programs for adult literacy, and by other means.

(5) To be effective, efforts to improve education in the Middle East must also include—

(A) support for the provision of basic education tools, such as textbooks that translate more of the world's knowledge into local languages and local libraries to house such materials; and

(B) more vocational education in trades and business skills.

(6) The Middle East can benefit from some of the same programs to bridge the digital divide that already have been developed for other regions of the world.

(b) **INTERNATIONAL YOUTH OPPORTUNITY FUND.**—

(1) **ESTABLISHMENT.**—The Secretary of State is authorized to establish through an existing international organization, such as the United Nations Educational, Science and Cultural Organization (UNESCO) or other similar body, an International Youth Opportunity Fund to provide financial assistance for the improvement of public education in the Middle East and other countries of strategic interest with predominantly Muslim populations.

(2) **INTERNATIONAL PARTICIPATION.**—The Secretary should seek the cooperation of the international community in establishing and generously supporting the Fund.

SEC. 7115. THE USE OF ECONOMIC POLICIES TO COMBAT TERRORISM.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) While terrorism is not caused by poverty, breeding grounds for terrorism are created by backward economic policies and repressive political regimes.

(2) Policies that support economic development and reform also have political implications, as economic and political liberties are often linked.

(3) The United States is working toward creating a Middle East Free Trade Area by 2013 and implementing a free trade agreement with Bahrain, and free trade agreements exist between the United States and Israel and the United States and Jordan.

(4) Existing and proposed free trade agreements between the United States and countries with predominantly Muslim populations are drawing interest from other countries in the Middle East region, and countries with predominantly Muslim populations can become full participants in the rules-based global trading system, as the United States considers lowering its barriers to trade.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) a comprehensive United States strategy to counter terrorism should include economic policies that encourage development, open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children's future;

(2) one element of such a strategy should encompass the lowering of trade barriers with the poorest countries that have a significant population of Muslim individuals;

(3) another element of such a strategy should encompass United States efforts to promote economic reform in countries that have a significant population of Muslim individuals, including efforts to integrate such countries into the global trading system; and

(4) given the importance of the rule of law in promoting economic development and attracting investment, the United States should devote an increased proportion of its assistance to countries in the Middle East to the promotion of the rule of law.

SEC. 7116. MIDDLE EAST PARTNERSHIP INITIATIVE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2005 and 2006, (unless otherwise authorized by Congress) such sums as may be necessary for the Middle East Partnership Initiative.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, given the importance of the rule of law and economic reform to development in the Middle East, a significant portion of the funds authorized to be appropriated under subsection (a) should be made available to promote the rule of law in the Middle East.

SEC. 7117. COMPREHENSIVE COALITION STRATEGY FOR FIGHTING TERRORISM.

22 USC 2656
note.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Almost every aspect of the counterterrorism strategy of the United States relies on international cooperation.

(2) Since September 11, 2001, the number and scope of United States Government contacts with foreign governments concerning counterterrorism have expanded significantly, but such contacts have often been ad hoc and not integrated as a comprehensive and unified approach to counterterrorism.

(b) **IN GENERAL.**—The Secretary of State is authorized in consultation with relevant United States Government agencies, to negotiate on a bilateral or multilateral basis, as appropriate, international agreements under which parties to an agreement work in partnership to address and interdict acts of international terrorism.

(c) **INTERNATIONAL CONTACT GROUP ON COUNTERTERRORISM.**—

(1) **SENSE OF CONGRESS.**—It is the sense of Congress that the President—

(A) should seek to engage the leaders of the governments of other countries in a process of advancing beyond separate and uncoordinated national counterterrorism strategies to develop with those other governments a comprehensive multilateral strategy to fight terrorism; and

(B) to that end, should seek to establish an international counterterrorism policy contact group with the leaders of governments providing leadership in global counterterrorism efforts and governments of countries with sizable Muslim populations, to be used as a ready and flexible international means for discussing and coordinating the development of important counterterrorism policies by the participating governments.

President.
Establishment.

(2) **AUTHORITY.**—The President is authorized to establish an international counterterrorism policy contact group with the leaders of governments referred to in paragraph (1) for the following purposes:

(A) To meet annually, or more frequently as the President determines appropriate, to develop in common with such other governments important policies and a strategy that address the various components of international prosecution of the war on terrorism, including policies and a strategy that address military issues, law enforcement, the collection, analysis, and dissemination of intelligence, issues relating to interdiction of travel by terrorists, counterterrorism-related customs issues, financial issues, and issues relating to terrorist sanctuaries.

(B) To address, to the extent (if any) that the President and leaders of other participating governments determine appropriate, long-term issues that can contribute to strengthening stability and security in the Middle East.

SEC. 7118. FINANCING OF TERRORISM.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The death or capture of several important financial facilitators has decreased the amount of money available to al Qaeda, and has made it more difficult for al Qaeda to raise and move money.

(2) The capture of al Qaeda financial facilitators has provided a windfall of intelligence that can be used to continue the cycle of disruption.

(3) The United States Government has rightly recognized that information about terrorist money helps in understanding terror networks, searching them out, and disrupting their operations.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) a critical weapon in the effort to stop terrorist financing should be the targeting of terrorist financial facilitators by intelligence and law enforcement agencies; and

(2) efforts to track terrorist financing must be paramount in United States counterterrorism efforts.

SEC. 7119. DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.

(a) **PERIOD OF DESIGNATION.**—Section 219(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)) is amended—

(1) in subparagraph (A)—

(A) by striking “Subject to paragraphs (5) and (6), a” and inserting “A”; and

(B) by striking “for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B)” and inserting “until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c)”;

(2) by striking subparagraph (B) and inserting the following:

“(B) **REVIEW OF DESIGNATION UPON PETITION.**—

“(i) **IN GENERAL.**—The Secretary shall review the designation of a foreign terrorist organization under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

“(ii) **PETITION PERIOD.**—For purposes of clause (i)—

“(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

“(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

“(iii) **PROCEDURES.**—Any foreign terrorist organization that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.

“(iv) **DETERMINATION.**—

“(I) **IN GENERAL.**—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation. Deadline.

“(II) **CLASSIFIED INFORMATION.**—The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

Federal Register,
publication.

“(III) PUBLICATION OF DETERMINATION.—A determination made by the Secretary under this clause shall be published in the Federal Register.

“(IV) PROCEDURES.—Any revocation by the Secretary shall be made in accordance with paragraph (6).”; and

(3) by adding at the end the following:

“(C) OTHER REVIEW OF DESIGNATION.—

“(i) IN GENERAL.—If in a 5-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

“(ii) PROCEDURES.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

Federal Register,
publication.

“(iii) PUBLICATION OF RESULTS OF REVIEW.—The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.”.

(b) ALIASES.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

“(b) AMENDMENTS TO A DESIGNATION.—

“(1) IN GENERAL.—The Secretary may amend a designation under this subsection if the Secretary finds that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

Effective date.
Federal Register,
publication.
Applicability.

“(2) PROCEDURE.—Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Subparagraphs (B) and (C) of subsection (a)(2) shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection (a) shall also apply to an amended designation.

“(3) ADMINISTRATIVE RECORD.—The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

“(4) CLASSIFIED INFORMATION.—The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) is amended—

(1) in subsection (a)—

(A) in paragraph (3)(B), by striking “subsection (b)” and inserting “subsection (c)”;

(B) in paragraph (6)(A)—

(i) in the matter preceding clause (i), by striking “or a redesignation made under paragraph (4)(B)” and inserting “at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4)”;

(ii) in clause (i), by striking “or redesignation”;

(C) in paragraph (7), by striking “, or the revocation of a redesignation under paragraph (6),”; and

(D) in paragraph (8)—

(i) by striking “, or if a redesignation under this subsection has become effective under paragraph (4)(B),”; and

(ii) by striking “or redesignation”; and

(2) in subsection (c), as so redesignated—

(A) in paragraph (1), by striking “of the designation in the Federal Register,” and all that follows through “review of the designation” and inserting “in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review”;

(B) in paragraph (2), by inserting “, amended designation, or determination in response to a petition for revocation” after “designation”;

(C) in paragraph (3), by inserting “, amended designation, or determination in response to a petition for revocation” after “designation”; and

(D) in paragraph (4), by inserting “, amended designation, or determination in response to a petition for revocation” after “designation” each place that term appears.

(d) SAVINGS PROVISION.—For purposes of applying section 219 of the Immigration and Nationality Act on or after the date of enactment of this Act, the term “designation”, as used in that section, includes all redesignations made pursuant to section 219(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)(B)) prior to the date of enactment of this Act, and such redesignations shall continue to be effective until revoked as provided in paragraph (5) or (6) of section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

Applicability.
8 USC 1189 note.

SEC. 7120. REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the President shall submit to Congress a report on the activities of the Government of the United States to carry out the provisions of this subtitle.

President.

(b) CONTENTS.—The report required under this section shall include the following:

(1) TERRORIST SANCTUARIES.—A description of the strategy of the United States to address and, where possible, eliminate terrorist sanctuaries, including—

(A) a description of the terrorist sanctuaries that exist;

(B) an outline of strategies, tactics, and tools for disrupting or eliminating the security provided to terrorists by such sanctuaries;

(C) a description of efforts by the United States Government to work with other countries in bilateral and multilateral fora to elicit the cooperation needed to identify and address terrorist sanctuaries that may exist unknown to governments; and

(D) a description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanctuaries, such as supporting and strengthening host governments, reducing poverty, increasing economic development, strengthening civil society, securing borders, strengthening internal security forces, and disrupting logistics and communications networks of terrorist groups.

(2) SUPPORT FOR PAKISTAN.—A description of a United States strategy to engage with Pakistan and to support it over the long term, including—

(A) recommendations on the composition and levels of assistance required in future years, with special consideration of the proper balance between security assistance and other forms of assistance;

(B) a description of the composition and levels of assistance, other than security assistance, at present and in the recent past, structured to permit a comparison of current and past practice with that recommended for the future;

(C) measures that could be taken to ensure that all forms of foreign assistance to Pakistan have the greatest possible long-term positive impact on the welfare of the Pakistani people and on the ability of Pakistan to cooperate in global efforts against terror; and

(D) measures that could be taken to alleviate difficulties, misunderstandings, and complications in the relationship between the United States and Pakistan.

(3) COLLABORATION WITH SAUDI ARABIA.—A description of the strategy of the United States for expanding collaboration with the Government of Saudi Arabia on subjects of mutual interest and of importance, including a description of—

(A) steps that could usefully be taken to institutionalize and make more transparent government to government relationships between the United States and Saudi Arabia, including the utility of undertaking periodic, formal, and visible high-level dialogues between government officials of both countries to address challenges in the relationship between the 2 governments and to identify areas and mechanisms for cooperation;

(B) intelligence and security cooperation between the United States and Saudi Arabia in the fight against Islamist terrorism;

(C) ways to increase the contribution of Saudi Arabia to the stability of the Middle East and the Islamic world, particularly to the Middle East peace process, by eliminating support from or within Saudi Arabia for extremist groups or tendencies;

(D) political and economic reform in Saudi Arabia and throughout the Islamic world;

(E) ways to promote greater tolerance and respect for cultural and religious diversity in Saudi Arabia and throughout the Islamic world; and

(F) ways to assist the Government of Saudi Arabia in reversing the impact of any financial, moral, intellectual, or other support provided in the past from Saudi sources to extremist groups in Saudi Arabia and other countries, and to prevent this support from continuing in the future.

(4) STRUGGLE OF IDEAS IN THE ISLAMIC WORLD.—A description of a cohesive, long-term strategy of the United States to help win the struggle of ideas in the Islamic world, including the following:

(A) A description of specific goals related to winning this struggle of ideas.

(B) A description of the range of tools available to the United States Government to accomplish such goals and the manner in which such tools will be employed.

(C) A list of benchmarks for measuring success and a plan for linking resources to the accomplishment of such goals.

(D) A description of any additional resources that may be necessary to help win this struggle of ideas.

(E) Any recommendations for the creation of, and United States participation in, international institutions for the promotion of democracy and economic diversification in the Islamic world, and intraregional trade in the Middle East.

(F) An estimate of the level of United States financial assistance that would be sufficient to convince United States allies and people in the Islamic world that engaging in the struggle of ideas in the Islamic world is a top priority of the United States and that the United States intends to make a substantial and sustained commitment toward winning this struggle.

(5) OUTREACH THROUGH BROADCAST MEDIA.—A description of a cohesive, long-term strategy of the United States to expand its outreach to foreign Muslim audiences through broadcast media, including the following:

(A) The initiatives of the Broadcasting Board of Governors with respect to outreach to foreign Muslim audiences.

(B) An outline of recommended actions that the United States Government should take to more regularly and comprehensively present a United States point of view through indigenous broadcast media in countries with predominantly Muslim populations, including increasing appearances by United States Government officials, experts, and citizens.

(C) An assessment of the major themes of biased or false media coverage of the United States in foreign countries and the actions taken to address this type of media coverage.

(D) An assessment of potential incentives for, and costs associated with, encouraging United States broadcasters to dub or subtitle into Arabic and other relevant languages their news and public affairs programs broadcast in the

Muslim world in order to present those programs to a much broader Muslim audience than is currently reached.

(E) Any recommendations the President may have for additional funding and legislation necessary to achieve the objectives of the strategy.

(6) VISAS FOR PARTICIPANTS IN UNITED STATES PROGRAMS.—

A description of—

(A) any recommendations for expediting the issuance of visas to individuals who are entering the United States for the purpose of participating in a scholarship, exchange, or visitor program described in section 7111(b) without compromising the security of the United States; and

(B) a proposed schedule for implementing any recommendations described in subparagraph (A).

(7) BASIC EDUCATION IN MUSLIM COUNTRIES.—A description of a strategy, that was developed after consultation with non-governmental organizations and individuals involved in education assistance programs in developing countries, to promote free universal basic education in the countries of the Middle East and in other countries with predominantly Muslim populations designated by the President. The strategy shall include the following elements:

(A) A description of the manner in which the resources of the United States and the international community shall be used to help achieve free universal basic education in such countries, including—

(i) efforts of the United States to coordinate an international effort;

(ii) activities of the United States to leverage contributions from members of the Group of Eight or other donors; and

(iii) assistance provided by the United States to leverage contributions from the private sector and civil society organizations.

(B) A description of the efforts of the United States to coordinate with other donors to reduce duplication and waste at the global and country levels and to ensure efficient coordination among all relevant departments and agencies of the Government of the United States.

(C) A description of the strategy of the United States to assist efforts to overcome challenges to achieving free universal basic education in such countries, including strategies to target hard to reach populations to promote education.

(D) A listing of countries that the President determines might be eligible for assistance under the International Youth Opportunity Fund described in section 7114(b) and related programs.

(E) A description of the efforts of the United States to encourage countries in the Middle East and other countries with predominantly Muslim populations designated by the President to develop and implement a national education plan.

(F) A description of activities that could be carried out as part of the International Youth Opportunity Fund to help close the digital divide and expand vocational and business skills in such countries.

(G) An estimate of the funds needed to achieve free universal basic education by 2015 in each country described in subparagraph (D), and an estimate of the amount that has been expended by the United States and by each such country during the previous fiscal year.

(H) A description of the United States strategy for garnering programmatic and financial support from countries in the Middle East and other countries with predominantly Muslim populations designated by the President, international organizations, and other countries that share the objectives of the International Youth Opportunity Fund.

(8) ECONOMIC REFORM.—A description of the efforts of the United States Government to encourage development and promote economic reform in countries that have a predominantly Muslim population, including a description of—

(A) efforts to integrate countries with predominantly Muslim populations into the global trading system; and

(B) actions that the United States Government, acting alone and in partnership with governments in the Middle East, can take to promote intraregional trade and the rule of law in the region.

(c) FORM OF REPORT.—Any report or other matter that is required to be submitted to Congress (including a committee of Congress) under this section may contain a classified annex.

SEC. 7121. CASE-ZABLOCKI ACT REQUIREMENTS.

(a) AVAILABILITY OF TREATIES AND INTERNATIONAL AGREEMENTS.—Section 112a of title 1, United States Code, is amended by adding at the end the following:

“(d) The Secretary of State shall make publicly available through the Internet website of the Department of State each treaty or international agreement proposed to be published in the compilation entitled ‘United States Treaties and Other International Agreements’ not later than 180 days after the date on which the treaty or agreement enters into force.”.

Public
information.
Deadline.

(b) TRANSMISSION TO CONGRESS.—Section 112b(a) of title 1, United States Code, is amended by striking “Committee on Foreign Affairs” and inserting “Committee on International Relations”.

(c) REPORT.—Section 112b of title 1, United States Code, is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

“(d)(1) The Secretary of State shall annually submit to Congress a report that contains an index of all international agreements, listed by country, date, title, and summary of each such agreement (including a description of the duration of activities under the agreement and the agreement itself), that the United States—

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“(A) has signed, proclaimed, or with reference to which any other final formality has been executed, or that has been extended or otherwise modified, during the preceding calendar year; and

“(B) has not been published, or is not proposed to be published, in the compilation entitled ‘United States Treaties and Other International Agreements’.

“(2) The report described in paragraph (1) may be submitted in classified form.”.

(d) DETERMINATION OF INTERNATIONAL AGREEMENT.—Subsection (e) of section 112b of title 1, United States Code, as redesignated, is amended—

(1) by striking “(e) The Secretary of State” and inserting the following:

“(e)(1) Subject to paragraph (2), the Secretary of State”; and

(2) by adding at the end the following:

“(2)(A) An arrangement shall constitute an international agreement within the meaning of this section (other than subsection (c)) irrespective of the duration of activities under the arrangement or the arrangement itself.

“(B) Arrangements that constitute an international agreement within the meaning of this section (other than subsection (c)) include the following:

“(i) A bilateral or multilateral counterterrorism agreement.

“(ii) A bilateral agreement with a country that is subject to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).”.

1 USC 112b note. (e) ENFORCEMENT OF REQUIREMENTS.—Section 139(b) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 is amended to read as follows:

“(b) EFFECTIVE DATE.—Subsection (a) shall take effect 60 days after the date of enactment of the 911 Commission Implementation Act of 2004 and shall apply during fiscal years 2005, 2006, and 2007.”.

1 USC 112a note. **SEC. 7122. EFFECTIVE DATE.**

Notwithstanding any other provision of this Act, this subtitle shall take effect on the date of enactment of this Act.

Subtitle B—Terrorist Travel and Effective Screening

SEC. 7201. COUNTERTERRORIST TRAVEL INTELLIGENCE.

8 USC 1776 note. (a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Travel documents are as important to terrorists as weapons since terrorists must travel clandestinely to meet, train, plan, case targets, and gain access to attack sites.

(2) International travel is dangerous for terrorists because they must surface to pass through regulated channels, present themselves to border security officials, or attempt to circumvent inspection points.

(3) Terrorists use evasive, but detectable, methods to travel, such as altered and counterfeit passports and visas, specific travel methods and routes, liaisons with corrupt government officials, human smuggling networks, supportive travel agencies, and immigration and identity fraud.

(4) Before September 11, 2001, no Federal agency systematically analyzed terrorist travel strategies. If an agency had done so, the agency could have discovered the ways in which the terrorist predecessors to al Qaeda had been

systematically, but detectably, exploiting weaknesses in our border security since the early 1990s.

(5) Many of the hijackers were potentially vulnerable to interception by border authorities. Analyzing their characteristic travel documents and travel patterns could have allowed authorities to intercept some of the hijackers and a more effective use of information available in government databases could have identified some of the hijackers.

(6) The routine operations of our immigration laws and the aspects of those laws not specifically aimed at protecting against terrorism inevitably shaped al Qaeda's planning and opportunities.

(7) New insights into terrorist travel gained since September 11, 2001, have not been adequately integrated into the front lines of border security.

(8) The small classified terrorist travel intelligence collection and analysis program currently in place has produced useful results and should be expanded.

(b) STRATEGY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Director of the National Counterterrorism Center shall submit to Congress unclassified and classified versions of a strategy for combining terrorist travel intelligence, operations, and law enforcement into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility domestically and internationally. The report to Congress should include a description of the actions taken to implement the strategy and an assessment regarding vulnerabilities within the United States and foreign travel systems that may be exploited by international terrorists, human smugglers and traffickers, and their facilitators.

(2) COORDINATION.—The strategy shall be developed in coordination with all relevant Federal agencies.

(3) CONTENTS.—The strategy may address—

(A) a program for collecting, analyzing, disseminating, and utilizing information and intelligence regarding terrorist travel tactics and methods, and outline which Federal intelligence, diplomatic, and law enforcement agencies will be held accountable for implementing each element of the strategy;

(B) the intelligence and law enforcement collection, analysis, operations, and reporting required to identify and disrupt terrorist travel tactics, practices, patterns, and trends, and the terrorist travel facilitators, document forgers, human smugglers, travel agencies, and corrupt border and transportation officials who assist terrorists;

(C) the training and training materials required by consular, border, and immigration officials to effectively detect and disrupt terrorist travel described under subsection (c)(3);

(D) the new technology and procedures required and actions to be taken to integrate existing counterterrorist travel document and mobility intelligence into border security processes, including consular, port of entry, border patrol, maritime, immigration benefits, and related law enforcement activities;

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note.
Deadline.
Reports.

(E) the actions required to integrate current terrorist mobility intelligence into military force protection measures;

(F) the additional assistance to be given to the inter-agency Human Smuggling and Trafficking Center for purposes of combatting terrorist travel, including further developing and expanding enforcement and operational capabilities that address terrorist travel;

(G) the actions to be taken to aid in the sharing of information between the frontline border agencies of the Department of Homeland Security, the Department of State, and classified and unclassified sources of counterterrorist travel intelligence and information elsewhere in the Federal Government, including the Human Smuggling and Trafficking Center;

(H) the development and implementation of procedures to enable the National Counterterrorism Center, or its designee, to timely receive terrorist travel intelligence and documentation obtained at consulates and ports of entry, and by law enforcement officers and military personnel;

(I) the use of foreign and technical assistance to advance border security measures and law enforcement operations against terrorist travel facilitators;

(J) the feasibility of developing a program to provide each consular, port of entry, and immigration benefits office with a counterterrorist travel expert trained and authorized to use the relevant authentication technologies and cleared to access all appropriate immigration, law enforcement, and intelligence databases;

(K) the feasibility of digitally transmitting suspect passport information to a central cadre of specialists, either as an interim measure until such time as experts described under subparagraph (J) are available at consular, port of entry, and immigration benefits offices, or otherwise;

(L) the development of a mechanism to ensure the coordination and dissemination of terrorist travel intelligence and operational information among the Department of Homeland Security, the Department of State, the National Counterterrorism Center, and other appropriate agencies;

(M) granting consular officers and immigration adjudicators, as appropriate, the security clearances necessary to access law enforcement sensitive and intelligence databases; and

(N) how to integrate travel document screening for terrorism indicators into border screening, and how to integrate the intelligence community into a robust travel document screening process to intercept terrorists.

(c) FRONTLINE COUNTERTERRORIST TRAVEL TECHNOLOGY AND TRAINING.—

(1) TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.—

Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in conjunction with the Secretary of State, shall submit to Congress a plan describing how the Department of Homeland Security and the Department of State can acquire and deploy, to the maximum

Deadline.

extent feasible, to all consulates, ports of entry, and immigration benefits offices, technologies that facilitate document authentication and the detection of potential terrorist indicators on travel documents. To the extent possible, technologies acquired and deployed under this plan shall be compatible with systems used by the Department of Homeland Security to detect fraudulent documents and identify genuine documents.

(2) CONTENTS OF PLAN.—The plan submitted under paragraph (1) shall—

(A) outline the timetable needed to acquire and deploy the authentication technologies;

(B) identify the resources required to—

(i) fully disseminate these technologies; and

(ii) train personnel on use of these technologies;

and

(C) address the feasibility of using these technologies to screen every passport or other documentation described in section 7209(b) submitted for identification purposes to a United States consular, border, or immigration official.

(d) TRAINING PROGRAM.—

8 USC 1776.

(1) REVIEW, EVALUATION, AND REVISION OF EXISTING TRAINING PROGRAMS.—The Secretary of Homeland Security shall—

(A) review and evaluate the training regarding travel and identity documents, and techniques, patterns, and trends associated with terrorist travel that is provided to personnel of the Department of Homeland Security;

(B) in coordination with the Secretary of State, review and evaluate the training described in subparagraph (A) that is provided to relevant personnel of the Department of State; and

(C) in coordination with the Secretary of State, develop and implement an initial training and periodic retraining program—

(i) to teach border, immigration, and consular officials (who inspect or review travel or identity documents as part of their official duties) how to effectively detect, intercept, and disrupt terrorist travel; and

(ii) to ensure that the officials described in clause

(i) regularly receive the most current information on such matters and are periodically retrained on the matters described in paragraph (2).

(2) REQUIRED TOPICS OF REVISED PROGRAMS.—The training program developed under paragraph (1)(C) shall include training in—

(A) methods for identifying fraudulent and genuine travel documents;

(B) methods for detecting terrorist indicators on travel documents and other relevant identity documents;

(C) recognition of travel patterns, tactics, and behaviors exhibited by terrorists;

(D) effective utilization of information contained in databases and data systems available to the Department of Homeland Security; and

(E) other topics determined to be appropriate by the Secretary of Homeland Security, in consultation with the Secretary of State or the Director of National Intelligence.

(3) IMPLEMENTATION.—

(A) DEPARTMENT OF HOMELAND SECURITY.—

(i) IN GENERAL.—The Secretary of Homeland Security shall provide all border and immigration officials who inspect or review travel or identity documents as part of their official duties with the training described in paragraph (1)(C).

(ii) REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this Act, and annually thereafter for a period of 3 years, the Secretary of Homeland Security shall submit a report to Congress that—

(I) describes the number of border and immigration officials who inspect or review identity documents as part of their official duties, and the proportion of whom have received the revised training program described in paragraph (1)(C)(i);

(II) explains the reasons, if any, for not completing the requisite training described in paragraph (1)(C)(i);

(III) provides a timetable for completion of the training described in paragraph (1)(C)(i) for those who have not received such training; and

(IV) describes the status of periodic retraining of appropriate personnel described in paragraph (1)(C)(ii).

(B) DEPARTMENT OF STATE.—

(i) IN GENERAL.—The Secretary of State shall provide all consular officers who inspect or review travel or identity documents as part of their official duties with the training described in paragraph (1)(C).

(ii) REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this Act, and annually thereafter for a period of 3 years, the Secretary of State shall submit a report to Congress that—

(I) describes the number of consular officers who inspect or review travel or identity documents as part of their official duties, and the proportion of whom have received the revised training program described in paragraph (1)(C)(i);

(II) explains the reasons, if any, for not completing the requisite training described in paragraph (1)(C)(i);

(III) provides a timetable for completion of the training described in paragraph (1)(C)(i) for those who have not received such training; and

(IV) describes the status of periodic retraining of appropriate personnel described in paragraph (1)(C)(ii).

(4) ASSISTANCE TO OTHERS.—The Secretary of Homeland Security may assist States, Indian tribes, local governments, and private organizations to establish training programs related to terrorist travel intelligence.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for

each of the fiscal years 2005 through 2009 to carry out the provisions of this subsection.

(e) **ENHANCING CLASSIFIED COUNTERTERRORIST TRAVEL EFFORTS.**— 50 USC 403–1 note.

(1) **IN GENERAL.**—The Director of National Intelligence shall significantly increase resources and personnel to the small classified program that collects and analyzes intelligence on terrorist travel.

(2) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this subsection.

SEC. 7202. ESTABLISHMENT OF HUMAN SMUGGLING AND TRAFFICKING CENTER. 8 USC 1777.

(a) **ESTABLISHMENT.**—There is established a Human Smuggling and Trafficking Center (referred to in this section as the “Center”).

(b) **OPERATION.**—The Secretary of State, the Secretary of Homeland Security, and the Attorney General shall operate the Center in accordance with the Memorandum of Understanding entitled, “Human Smuggling and Trafficking Center (HSTC), Charter”.

(c) **FUNCTIONS.**—In addition to such other responsibilities as the President may assign, the Center shall—

(1) serve as the focal point for interagency efforts to address terrorist travel;

(2) serve as a clearinghouse with respect to all relevant information from all Federal Government agencies in support of the United States strategy to prevent separate, but related, issues of clandestine terrorist travel and facilitation of migrant smuggling and trafficking of persons;

(3) ensure cooperation among all relevant policy, law enforcement, diplomatic, and intelligence agencies of the Federal Government to improve effectiveness and to convert all information available to the Federal Government relating to clandestine terrorist travel and facilitation, migrant smuggling, and trafficking of persons into tactical, operational, and strategic intelligence that can be used to combat such illegal activities; and

(4) prepare and submit to Congress, on an annual basis, a strategic assessment regarding vulnerabilities in the United States and foreign travel system that may be exploited by international terrorists, human smugglers and traffickers, and their facilitators.

Reports.

(d) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the President shall transmit to Congress a report regarding the implementation of this section, including a description of the staffing and resource needs of the Center.

(e) **RELATIONSHIP TO THE NCTC.**—As part of its mission to combat terrorist travel, the Center shall work to support the efforts of the National Counterterrorism Center.

SEC. 7203. RESPONSIBILITIES AND FUNCTIONS OF CONSULAR OFFICERS.

(a) **INCREASED NUMBER OF CONSULAR OFFICERS.**—The Secretary of State, in each of fiscal years 2006 through 2009, may increase by 150 the number of positions for consular officers above the number of such positions for which funds were allotted for the preceding fiscal year.

(b) LIMITATION ON USE OF FOREIGN NATIONALS FOR VISA SCREENING.—

(1) IMMIGRANT VISAS.—Section 222(b) of the Immigration and Nationality Act (8 U.S.C. 1202(b)) is amended by adding at the end the following: “All immigrant visa applications shall be reviewed and adjudicated by a consular officer.”.

(2) NONIMMIGRANT VISAS.—Section 222(d) of the Immigration and Nationality Act (8 U.S.C. 1202(d)) is amended by adding at the end the following: “All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.”.

(c) TRAINING FOR CONSULAR OFFICERS IN DETECTION OF FRAUDULENT DOCUMENTS.—Section 305(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1734(a)) is amended by adding at the end the following: “In accordance with section 7201(d) of the 9/11 Commission Implementation Act of 2004, and as part of the consular training provided to such officers by the Secretary of State, such officers shall also receive training in detecting fraudulent documents and general document forensics and shall be required as part of such training to work with immigration officers conducting inspections of applicants for admission into the United States at ports of entry.”.

(d) ASSIGNMENT OF ANTI-FRAUD SPECIALISTS.—

(1) SURVEY REGARDING DOCUMENT FRAUD.—The Secretary of State, in coordination with the Secretary of Homeland Security, shall conduct a survey of each diplomatic and consular post at which visas are issued to assess the extent to which fraudulent documents are presented by visa applicants to consular officers at such posts.

(2) REQUIREMENT FOR SPECIALIST.—

Deadline.

(A) IN GENERAL.—Not later than July 31, 2005, the Secretary of State, in coordination with the Secretary of Homeland Security, shall identify the diplomatic and consular posts at which visas are issued that experience the greatest frequency of presentation of fraudulent documents by visa applicants. The Secretary of State shall assign or designate at each such post at least 1 full-time anti-fraud specialist employed by the Department of State to assist the consular officers at each such post in the detection of such fraud.

(B) EXCEPTIONS.—The Secretary of State is not required to assign or designate a specialist under subparagraph (A) at a diplomatic or consular post if an employee of the Department of Homeland Security, who has sufficient training and experience in the detection of fraudulent documents, is assigned on a full-time basis to such post under section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236).

22 USC 2656
note.**SEC. 7204. INTERNATIONAL AGREEMENTS TO TRACK AND CURTAIL TERRORIST TRAVEL THROUGH THE USE OF FRAUDULENTLY OBTAINED DOCUMENTS.**

(a) FINDINGS.—Congress makes the following findings:

(1) International terrorists travel across international borders to raise funds, recruit members, train for operations, escape capture, communicate, and plan and carry out attacks.

(2) The international terrorists who planned and carried out the attack on the World Trade Center on February 26,

1993, the attack on the embassies of the United States in Kenya and Tanzania on August 7, 1998, the attack on the USS Cole on October 12, 2000, and the attack on the World Trade Center and the Pentagon on September 11, 2001, traveled across international borders to plan and carry out these attacks.

(3) The international terrorists who planned other attacks on the United States, including the plot to bomb New York City landmarks in 1993, the plot to bomb the New York City subway in 1997, and the millennium plot to bomb Los Angeles International Airport on December 31, 1999, traveled across international borders to plan and carry out these attacks.

(4) Many of the international terrorists who planned and carried out large-scale attacks against foreign targets, including the attack in Bali, Indonesia, on October 11, 2002, and the attack in Madrid, Spain, on March 11, 2004, traveled across international borders to plan and carry out these attacks.

(5) Throughout the 1990s, international terrorists, including those involved in the attack on the World Trade Center on February 26, 1993, the plot to bomb New York City landmarks in 1993, and the millennium plot to bomb Los Angeles International Airport on December 31, 1999, traveled on fraudulent passports and often had more than 1 passport.

(6) Two of the September 11, 2001, hijackers were carrying passports that had been manipulated in a fraudulent manner.

(7) The National Commission on Terrorist Attacks Upon the United States, (commonly referred to as the 9/11 Commission), stated that “Targeting travel is at least as powerful a weapon against terrorists as targeting their money.”

(b) INTERNATIONAL AGREEMENTS TO TRACK AND CURTAIL TERRORIST TRAVEL.—

(1) INTERNATIONAL AGREEMENT ON LOST, STOLEN, OR FALSIFIED DOCUMENTS.—The President should lead efforts to track and curtail the travel of terrorists by supporting the drafting, adoption, and implementation of international agreements, and relevant United Nations Security Council resolutions to track and stop international travel by terrorists and other criminals through the use of lost, stolen, or falsified documents to augment United Nations and other international anti-terrorism efforts.

(2) CONTENTS OF INTERNATIONAL AGREEMENT.—The President should seek, as appropriate, the adoption or full implementation of effective international measures to—

(A) share information on lost, stolen, and fraudulent passports and other travel documents for the purposes of preventing the undetected travel of persons using such passports and other travel documents that were obtained improperly;

(B) establish and implement a real-time verification system of passports and other travel documents with issuing authorities;

(C) share with officials at ports of entry in any such country information relating to lost, stolen, and fraudulent passports and other travel documents;

(D) encourage countries—

(i) to criminalize—

(I) the falsification or counterfeiting of travel documents or breeder documents for any purpose;

(II) the use or attempted use of false documents to obtain a visa or cross a border for any purpose;

(III) the possession of tools or implements used to falsify or counterfeit such documents;

(IV) the trafficking in false or stolen travel documents and breeder documents for any purpose;

(V) the facilitation of travel by a terrorist; and

(VI) attempts to commit, including conspiracies to commit, the crimes specified in subclauses (I) through (V);

(ii) to impose significant penalties to appropriately punish violations and effectively deter the crimes specified in clause (i); and

(iii) to limit the issuance of citizenship papers, passports, identification documents, and similar documents to persons—

(I) whose identity is proven to the issuing authority;

(II) who have a bona fide entitlement to or need for such documents; and

(III) who are not issued such documents principally on account of a disproportional payment made by them or on their behalf to the issuing authority;

(E) provide technical assistance to countries to help them fully implement such measures; and

(F) permit immigration and border officials—

(i) to confiscate a lost, stolen, or falsified passport at ports of entry;

(ii) to permit the traveler to return to the sending country without being in possession of the lost, stolen, or falsified passport; and

(iii) to detain and investigate such traveler upon the return of the traveler to the sending country.

(3) INTERNATIONAL CIVIL AVIATION ORGANIZATION.—The United States shall lead efforts to track and curtail the travel of terrorists by supporting efforts at the International Civil Aviation Organization to continue to strengthen the security features of passports and other travel documents.

President.

(c) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and at least annually thereafter, the President shall submit to the appropriate congressional committees a report on progress toward achieving the goals described in subsection (b).

Certification.

(2) TERMINATION.—Paragraph (1) shall cease to be effective when the President certifies to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that the goals described in subsection (b) have been fully achieved.

SEC. 7205. INTERNATIONAL STANDARDS FOR transliteration OF NAMES INTO THE ROMAN ALPHABET FOR INTERNATIONAL TRAVEL DOCUMENTS AND NAME-BASED WATCHLIST SYSTEMS.

(a) FINDINGS.—Congress makes the following findings:

(1) The current lack of a single convention for translating Arabic names enabled some of the 19 hijackers of aircraft used in the terrorist attacks against the United States that occurred on September 11, 2001, to vary the spelling of their names to defeat name-based terrorist watchlist systems and to make more difficult any potential efforts to locate them.

(2) Although the development and utilization of terrorist watchlist systems using biometric identifiers will be helpful, the full development and utilization of such systems will take several years, and name-based terrorist watchlist systems will always be useful.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should seek to enter into an international agreement to modernize and improve standards for the transliteration of names into the Roman alphabet in order to ensure 1 common spelling for such names for international travel documents and name-based watchlist systems.

SEC. 7206. IMMIGRATION SECURITY INITIATIVE.

(a) IN GENERAL.—Section 235A(b) of the Immigration and Nationality Act (8 U.S.C. 1225a(b)) is amended—

(1) in the subsection heading, by inserting “AND IMMIGRATION SECURITY INITIATIVE” after “PROGRAM”;

(2) by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(3) by adding at the end the following: “Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.”.

Deadline.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security to carry out the amendments made by subsection (a)—

(1) \$25,000,000 for fiscal year 2005;

(2) \$40,000,000 for fiscal year 2006; and

(3) \$40,000,000 for fiscal year 2007.

SEC. 7207. CERTIFICATION REGARDING TECHNOLOGY FOR VISA WAIVER PARTICIPANTS.

Deadline.

Not later than October 26, 2006, the Secretary of State shall certify to Congress which of the countries designated to participate in the visa waiver program established under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) are developing a program to issue to individuals seeking to enter that country pursuant to a visa issued by that country, a machine readable visa document that is tamper-resistant and incorporates biometric identification information that is verifiable at its port of entry.

SEC. 7208. BIOMETRIC ENTRY AND EXIT DATA SYSTEM.

8 USC 1365b.

(a) FINDING.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) DEFINITION.—In this section, the term “entry and exit data system” means the entry and exit system required by applicable sections of—

(1) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208);

(2) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106-205);

(3) the Visa Waiver Permanent Program Act (Public Law 106-396);

(4) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173); and

(5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56).

(c) PLAN AND REPORT.—

(1) DEVELOPMENT OF PLAN.—The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system.

(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

(A) a description of the current functionality of the entry and exit data system, including—

(i) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;

(ii) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric exit data systems in use;

(iii) a listing of databases and data systems with which the entry and exit data system are interoperable;

(iv) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;

(II) identified deficiencies concerning technology associated with processing individuals through the system; and

(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit data system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;

(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and

exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and

(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the biometric entry and exit data system;

(D) a description of plans for improved or added interoperability with any other databases or data systems; and

(E) a description of the manner in which the Department of Homeland Security's US-VISIT program—

(i) meets the goals of a comprehensive entry and exit screening system, including both entry and exit biometric; and

(ii) fulfills the statutory obligations under subsection (b).

(d) COLLECTION OF BIOMETRIC EXIT DATA.—The entry and exit data system shall include a requirement for the collection of biometric exit data for all categories of individuals who are required to provide biometric entry data, regardless of the port of entry where such categories of individuals entered the United States.

(e) INTEGRATION AND INTEROPERABILITY.—

(1) INTEGRATION OF DATA SYSTEM.—Not later than 2 years after the date of enactment of this Act, the Secretary shall fully integrate all databases and data systems that process or contain information on aliens, which are maintained by—

(A) the Department of Homeland Security, at—

(i) the United States Immigration and Customs Enforcement;

(ii) the United States Customs and Border Protection; and

(iii) the United States Citizenship and Immigration Services;

(B) the Department of Justice, at the Executive Office for Immigration Review; and

(C) the Department of State, at the Bureau of Consular Affairs.

(2) INTEROPERABLE COMPONENT.—The fully integrated data system under paragraph (1) shall be an interoperable component of the entry and exit data system.

(3) INTEROPERABLE DATA SYSTEM.—Not later than 2 years after the date of enactment of this Act, the Secretary shall fully implement an interoperable electronic data system, as required by section 202 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1722) to provide current and immediate access to information in the databases of Federal law enforcement agencies and the intelligence community that is relevant to determine—

(A) whether to issue a visa; or

(B) the admissibility or deportability of an alien.

(f) MAINTAINING ACCURACY AND INTEGRITY OF ENTRY AND EXIT DATA SYSTEM.—

(1) POLICIES AND PROCEDURES.—

(A) ESTABLISHMENT.—The Secretary of Homeland Security shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the entry and exit data system that ensure the accuracy and integrity of the data.

(B) TRAINING.—The Secretary shall develop training on the rules, guidelines, policies, and procedures established under subparagraph (A), and on immigration law and procedure. All personnel authorized to access information maintained in the databases and data system shall receive such training.

(2) DATA COLLECTED FROM FOREIGN NATIONALS.—The Secretary of Homeland Security, the Secretary of State, and the Attorney General, after consultation with directors of the relevant intelligence agencies, shall standardize the information and data collected from foreign nationals, and the procedures utilized to collect such data, to ensure that the information is consistent and valuable to officials accessing that data across multiple agencies.

(3) DATA MAINTENANCE PROCEDURES.—Heads of agencies that have databases or data systems linked to the entry and exit data system shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, such databases or data systems that ensure the accuracy and integrity of the data and for limiting access to the information in the databases or data systems to authorized personnel.

(4) REQUIREMENTS.—The rules, guidelines, policies, and procedures established under this subsection shall—

(A) incorporate a simple and timely method for—

(i) correcting errors in a timely and effective manner;

(ii) determining which government officer provided data so that the accuracy of the data can be ascertained; and

(iii) clarifying information known to cause false hits or misidentification errors;

(B) include procedures for individuals to—

(i) seek corrections of data contained in the databases or data systems; and

(ii) appeal decisions concerning data contained in the databases or data systems;

(C) strictly limit the agency personnel authorized to enter data into the system;

(D) identify classes of information to be designated as temporary or permanent entries, with corresponding expiration dates for temporary entries; and

(E) identify classes of prejudicial information requiring additional authority of supervisory personnel before entry.

(5) CENTRALIZING AND STREAMLINING CORRECTION PROCESS.—

(A) IN GENERAL.—The President, or agency director designated by the President, shall establish a clearinghouse bureau in the Department of Homeland Security, to centralize and streamline the process through which members of the public can seek corrections to erroneous or inaccurate

President.
Establishment.

information contained in agency databases, which is related to immigration status, or which otherwise impedes lawful admission to the United States.

(B) TIME SCHEDULES.—The process described in subparagraph (A) shall include specific time schedules for reviewing data correction requests, rendering decisions on such requests, and implementing appropriate corrective action in a timely manner.

(g) INTEGRATED BIOMETRIC ENTRY-EXIT SCREENING SYSTEM.—The biometric entry and exit data system shall facilitate efficient immigration benefits processing by—

(1) ensuring that the system’s tracking capabilities encompass data related to all immigration benefits processing, including—

(A) visa applications with the Department of State;

(B) immigration related filings with the Department of Labor;

(C) cases pending before the Executive Office for Immigration Review; and

(D) matters pending or under investigation before the Department of Homeland Security;

(2) utilizing a biometric based identity number tied to an applicant’s biometric algorithm established under the entry and exit data system to track all immigration related matters concerning the applicant;

(3) providing that—

(A) all information about an applicant’s immigration related history, including entry and exit history, can be queried through electronic means; and

(B) database access and usage guidelines include stringent safeguards to prevent misuse of data;

(4) providing real-time updates to the information described in paragraph (3)(A), including pertinent data from all agencies referred to in paragraph (1); and

(5) providing continuing education in counterterrorism techniques, tools, and methods for all Federal personnel employed in the evaluation of immigration documents and immigration-related policy.

(h) ENTRY-EXIT SYSTEM GOALS.—The Department of Homeland Security shall operate the biometric entry and exit system so that it—

(1) serves as a vital counterterrorism tool;

(2) screens travelers efficiently and in a welcoming manner;

(3) provides inspectors and related personnel with adequate real-time information;

(4) ensures flexibility of training and security protocols to most effectively comply with security mandates;

(5) integrates relevant databases and plans for database modifications to address volume increase and database usage; and

(6) improves database search capacities by utilizing language algorithms to detect alternate names.

(i) DEDICATED SPECIALISTS AND FRONT LINE PERSONNEL TRAINING.—In implementing the provisions of subsections (g) and (h), the Department of Homeland Security and the Department of State shall—

(1) develop cross-training programs that focus on the scope and procedures of the entry and exit data system;

(2) provide extensive community outreach and education on the entry and exit data system's procedures;

(3) provide clear and consistent eligibility guidelines for applicants in low-risk traveler programs; and

(4) establish ongoing training modules on immigration law to improve adjudications at our ports of entry, consulates, and embassies.

(j) COMPLIANCE STATUS REPORTS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security, the Secretary of State, the Attorney General, and the head of any other department or agency subject to the requirements of this section, shall issue individual status reports and a joint status report detailing the compliance of the department or agency with each requirement under this section.

(k) EXPEDITING REGISTERED TRAVELERS ACROSS INTERNATIONAL BORDERS.—

(1) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(A) Expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority.

(B) The process of expediting known travelers across the borders of the United States can permit inspectors to better focus on identifying terrorists attempting to enter the United States.

(2) DEFINITION.—In this subsection, the term “registered traveler program” means any program designed to expedite the travel of previously screened and known travelers across the borders of the United States.

(3) REGISTERED TRAVEL PROGRAM.—

(A) IN GENERAL.—As soon as is practicable, the Secretary shall develop and implement a registered traveler program to expedite the processing of registered travelers who enter and exit the United States.

(B) PARTICIPATION.—The registered traveler program shall include as many participants as practicable by—

(i) minimizing the cost of enrollment;

(ii) making program enrollment convenient and easily accessible; and

(iii) providing applicants with clear and consistent eligibility guidelines.

(C) INTEGRATION.—The registered traveler program shall be integrated into the automated biometric entry and exit data system described in this section.

(D) REVIEW AND EVALUATION.—In developing the registered traveler program, the Secretary shall—

(i) review existing programs or pilot projects designed to expedite the travel of registered travelers across the borders of the United States;

(ii) evaluate the effectiveness of the programs described in clause (i), the costs associated with such programs, and the costs to travelers to join such programs;

(iii) increase research and development efforts to accelerate the development and implementation of a single registered traveler program; and

(iv) review the feasibility of allowing participants to enroll in the registered traveler program at consular offices.

(4) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the Department's progress on the development and implementation of the registered traveler program.

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

SEC. 7209. TRAVEL DOCUMENTS.

8 USC 1185 note.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Existing procedures allow many individuals to enter the United States by showing minimal identification or without showing any identification.

(2) The planning for the terrorist attacks of September 11, 2001, demonstrates that terrorists study and exploit United States vulnerabilities.

(3) Additional safeguards are needed to ensure that terrorists cannot enter the United States.

(b) PASSPORTS.—

(1) DEVELOPMENT OF PLAN.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)). This plan shall be implemented not later than January 1, 2008, and shall seek to expedite the travel of frequent travelers, including those who reside in border communities, and in doing so, shall make readily available a registered traveler program (as described in section 7208(k)).

Deadline.

(2) REQUIREMENT TO PRODUCE DOCUMENTATION.—The plan developed under paragraph (1) shall require all United States citizens, and categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of such Act, to carry and produce the documentation described in paragraph (1) when traveling from foreign countries into the United States.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—After the complete implementation of the plan described in subsection (b)—

(1) neither the Secretary of State nor the Secretary of Homeland Security may exercise discretion under section 212(d)(4)(B) of such Act to waive documentary requirements for travel into the United States; and

(2) the President may not exercise discretion under section 215(b) of such Act (8 U.S.C. 1185(b)) to waive documentary requirements for United States citizens departing from or entering, or attempting to depart from or enter, the United States except—

(A) where the Secretary of Homeland Security determines that the alternative documentation that is the basis for the waiver of the documentary requirement is sufficient to denote identity and citizenship;

(B) in the case of an unforeseen emergency in individual cases; or

(C) in the case of humanitarian or national interest reasons in individual cases.

(d) **TRANSIT WITHOUT VISA PROGRAM.**—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.

SEC. 7210. EXCHANGE OF TERRORIST INFORMATION AND INCREASED PREINSPECTION AT FOREIGN AIRPORTS.

8 USC 1225a
note.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The exchange of terrorist information with other countries, consistent with privacy requirements, along with listings of lost and stolen passports, will have immediate security benefits.

(2) The further away from the borders of the United States that screening occurs, the more security benefits the United States will gain.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the Federal Government should exchange terrorist information with trusted allies;

(2) the Federal Government should move toward real-time verification of passports with issuing authorities;

(3) where practicable, the Federal Government should conduct screening before a passenger departs on a flight destined for the United States;

(4) the Federal Government should work with other countries to ensure effective inspection regimes at all airports;

(5) the Federal Government should work with other countries to improve passport standards and provide foreign assistance to countries that need help making the transition to the global standard for identification; and

(6) the Department of Homeland Security, in coordination with the Department of State and other Federal agencies, should implement the initiatives called for in this subsection.

(c) **REPORT REGARDING THE EXCHANGE OF TERRORIST INFORMATION.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Secretary of State and the Secretary of Homeland Security, working with other Federal agencies, shall submit to the appropriate committees of Congress

a report on Federal efforts to collaborate with allies of the United States in the exchange of terrorist information.

(2) CONTENTS.—The report shall outline—

(A) strategies for increasing such collaboration and cooperation;

(B) progress made in screening passengers before their departure to the United States; and

(C) efforts to work with other countries to accomplish the goals described under this section.

(d) PREINSPECTION AT FOREIGN AIRPORTS.—

(1) IN GENERAL.—Section 235A(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225a(a)(4)) is amended to read as follows:

“(4) Subject to paragraph (5), not later than January 1, 2008, the Secretary of Homeland Security, in consultation with the Secretary of State, shall establish preinspection stations in at least 25 additional foreign airports, which the Secretary of Homeland Security, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively facilitate the travel of admissible aliens and reduce the number of inadmissible aliens, especially aliens who are potential terrorists, who arrive from abroad by air at points of entry within the United States. Such preinspection stations shall be in addition to those established before September 30, 1996, or pursuant to paragraph (1).”.

Deadline.
Establishment.

(2) REPORT.—Not later than June 30, 2006, the Secretary of Homeland Security and the Secretary of State shall submit a report on the progress being made in implementing the amendment made by paragraph (1) to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives;

(C) the Committee on Foreign Relations of the Senate;

(D) the Committee on International Relations of the House of Representatives;

(E) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(F) the Select Committee on Homeland Security of the House of Representatives (or any successor committee).

SEC. 7211. MINIMUM STANDARDS FOR BIRTH CERTIFICATES.

5 USC 301 note.

(a) DEFINITION.—In this section, the term “birth certificate” means a certificate of birth—

(1) for an individual (regardless of where born)—

(A) who is a citizen or national of the United States at birth; and

(B) whose birth is registered in the United States; and

(2) that—

(A) is issued by a Federal, State, or local government agency or authorized custodian of record and produced from birth records maintained by such agency or custodian of record; or

(B) is an authenticated copy, issued by a Federal, State, or local government agency or authorized custodian of

record, of an original certificate of birth issued by such agency or custodian of record.

(b) STANDARDS FOR ACCEPTANCE BY FEDERAL AGENCIES.—

Effective date.

(1) IN GENERAL.—Beginning 2 years after the promulgation of minimum standards under paragraph (3), no Federal agency may accept a birth certificate for any official purpose unless the certificate conforms to such standards.

(2) STATE CERTIFICATION.—

(A) IN GENERAL.—Each State shall certify to the Secretary of Health and Human Services that the State is in compliance with the requirements of this section.

(B) FREQUENCY.—Certifications under subparagraph (A) shall be made at such intervals and in such a manner as the Secretary of Health and Human Services, with the concurrence of the Secretary of Homeland Security and the Commissioner of Social Security, may prescribe by regulation.

(C) COMPLIANCE.—Each State shall ensure that units of local government and other authorized custodians of records in the State comply with this section.

(D) AUDITS.—The Secretary of Health and Human Services may conduct periodic audits of each State's compliance with the requirements of this section.

Deadline.
Regulations.

(3) MINIMUM STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall by regulation establish minimum standards for birth certificates for use by Federal agencies for official purposes that—

(A) at a minimum, shall require certification of the birth certificate by the State or local government custodian of record that issued the certificate, and shall require the use of safety paper or an alternative, equally secure medium, the seal of the issuing custodian of record, and other features designed to prevent tampering, counterfeiting, or otherwise duplicating the birth certificate for fraudulent purposes;

(B) shall establish requirements for proof and verification of identity as a condition of issuance of a birth certificate, with additional security measures for the issuance of a birth certificate for a person who is not the applicant;

(C) shall establish standards for the processing of birth certificate applications to prevent fraud;

(D) may not require a single design to which birth certificates issued by all States must conform; and

(E) shall accommodate the differences between the States in the manner and form in which birth records are stored and birth certificates are produced from such records.

(4) CONSULTATION WITH GOVERNMENT AGENCIES.—In promulgating the standards required under paragraph (3), the Secretary of Health and Human Services shall consult with—

(A) the Secretary of Homeland Security;

(B) the Commissioner of Social Security;

(C) State vital statistics offices; and

(D) other appropriate Federal agencies.

(5) **EXTENSION OF EFFECTIVE DATE.**—The Secretary of Health and Human Services may extend the date specified under paragraph (1) for up to 2 years for birth certificates issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under paragraph (1) but was unable to do so.

(c) **GRANTS TO STATES.**—

(1) **ASSISTANCE IN MEETING FEDERAL STANDARDS.**—

(A) **IN GENERAL.**—Beginning on the date a final regulation is promulgated under subsection (b)(3), the Secretary of Health and Human Services shall award grants to States to assist them in conforming to the minimum standards for birth certificates set forth in the regulation.

Effective date.

(B) **ALLOCATION OF GRANTS.**—The Secretary shall award grants to States under this paragraph based on the proportion that the estimated average annual number of birth certificates issued by a State applying for a grant bears to the estimated average annual number of birth certificates issued by all States.

(C) **MINIMUM ALLOCATION.**—Notwithstanding subparagraph (B), each State shall receive not less than 0.5 percent of the grant funds made available under this paragraph.

(2) **ASSISTANCE IN MATCHING BIRTH AND DEATH RECORDS.**—

(A) **IN GENERAL.**—The Secretary of Health and Human Services, in coordination with the Commissioner of Social Security and other appropriate Federal agencies, shall award grants to States, under criteria established by the Secretary, to assist States in—

- (i) computerizing their birth and death records;
- (ii) developing the capability to match birth and death records within each State and among the States; and
- (iii) noting the fact of death on the birth certificates of deceased persons.

(B) **ALLOCATION OF GRANTS.**—The Secretary shall award grants to qualifying States under this paragraph based on the proportion that the estimated annual average number of birth and death records created by a State applying for a grant bears to the estimated annual average number of birth and death records originated by all States.

(C) **MINIMUM ALLOCATION.**—Notwithstanding subparagraph (B), each State shall receive not less than 0.5 percent of the grant funds made available under this paragraph.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this section.

(e) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 656 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (5 U.S.C. 301 note) is repealed.

SEC. 7212. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS.

49 USC 30301
note.

(a) **DEFINITIONS.**—In this section:

(1) **DRIVER'S LICENSE.**—The term “driver's license” means a motor vehicle operator's license as defined in section 30301(5) of title 49, United States Code.

(2) **PERSONAL IDENTIFICATION CARD.**—The term “personal identification card” means an identification document (as defined in section 1028(d)(3) of title 18, United States Code) issued by a State.

(b) **STANDARDS FOR ACCEPTANCE BY FEDERAL AGENCIES.**—

(1) **IN GENERAL.**—

(A) **LIMITATION ON ACCEPTANCE.**—No Federal agency may accept, for any official purpose, a driver’s license or personal identification card newly issued by a State more than 2 years after the promulgation of the minimum standards under paragraph (2) unless the driver’s license or personal identification card conforms to such minimum standards.

(B) **DATE FOR CONFORMANCE.**—The Secretary of Transportation, in consultation with the Secretary of Homeland Security, shall establish a date after which no driver’s license or personal identification card shall be accepted by a Federal agency for any official purpose unless such driver’s license or personal identification card conforms to the minimum standards established under paragraph (2). The date shall be as early as the Secretary determines it is practicable for the States to comply with such date with reasonable efforts.

(C) **STATE CERTIFICATION.**—

(i) **IN GENERAL.**—Each State shall certify to the Secretary of Transportation that the State is in compliance with the requirements of this section.

(ii) **FREQUENCY.**—Certifications under clause (i) shall be made at such intervals and in such a manner as the Secretary of Transportation, with the concurrence of the Secretary of Homeland Security, may prescribe by regulation.

(iii) **AUDITS.**—The Secretary of Transportation may conduct periodic audits of each State’s compliance with the requirements of this section.

Deadline.
Regulations.

(2) **MINIMUM STANDARDS.**—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Homeland Security, shall by regulation, establish minimum standards for driver’s licenses or personal identification cards issued by a State for use by Federal agencies for identification purposes that shall include—

(A) standards for documentation required as proof of identity of an applicant for a driver’s license or personal identification card;

(B) standards for the verifiability of documents used to obtain a driver’s license or personal identification card;

(C) standards for the processing of applications for driver’s licenses and personal identification cards to prevent fraud;

(D) standards for information to be included on each driver’s license or personal identification card, including—

(i) the person’s full legal name;

(ii) the person’s date of birth;

(iii) the person’s gender;

(iv) the person’s driver’s license or personal identification card number;

- (v) a digital photograph of the person;
 - (vi) the person's address of principal residence;
- and

(vii) the person's signature;

(E) standards for common machine-readable identity information to be included on each driver's license or personal identification card, including defined minimum data elements;

(F) security standards to ensure that driver's licenses and personal identification cards are—

(i) resistant to tampering, alteration, or counterfeiting; and

(ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier; and

(G) a requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

(3) CONTENT OF REGULATIONS.—The regulations required by paragraph (2)—

(A) shall facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual;

(B) may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State;

(C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State;

(D) may not require a single design to which driver's licenses or personal identification cards issued by all States must conform; and

(E) shall include procedures and requirements to protect the privacy rights of individuals who apply for and hold driver's licenses and personal identification cards.

(4) NEGOTIATED RULEMAKING.—

(A) IN GENERAL.—Before publishing the proposed regulations required by paragraph (2) to carry out this title, the Secretary of Transportation shall establish a negotiated rulemaking process pursuant to subchapter IV of chapter 5 of title 5, United States Code (5 U.S.C. 561 et seq.).

(B) REPRESENTATION ON NEGOTIATED RULEMAKING COMMITTEE.—Any negotiated rulemaking committee established by the Secretary of Transportation pursuant to subparagraph (A) shall include representatives from—

(i) among State offices that issue driver's licenses or personal identification cards;

(ii) among State elected officials;

(iii) the Department of Homeland Security; and

(iv) among interested parties.

(C) **TIME REQUIREMENT.**—The process described in subparagraph (A) shall be conducted in a timely manner to ensure that—

(i) any recommendation for a proposed rule or report is provided to the Secretary of Transportation not later than 9 months after the date of enactment of this Act and shall include an assessment of the benefits and costs of the recommendation; and

(ii) a final rule is promulgated not later than 18 months after the date of enactment of this Act.

(c) **GRANTS TO STATES.**—

Effective date.

(1) **ASSISTANCE IN MEETING FEDERAL STANDARDS.**—Beginning on the date a final regulation is promulgated under subsection (b)(2), the Secretary of Transportation shall award grants to States to assist them in conforming to the minimum standards for driver's licenses and personal identification cards set forth in the regulation.

(2) **ALLOCATION OF GRANTS.**—The Secretary of Transportation shall award grants to States under this subsection based on the proportion that the estimated average annual number of driver's licenses and personal identification cards issued by a State applying for a grant bears to the average annual number of such documents issued by all States.

(3) **MINIMUM ALLOCATION.**—Notwithstanding paragraph (2), each State shall receive not less than 0.5 percent of the grant funds made available under this subsection.

(d) **EXTENSION OF EFFECTIVE DATE.**—The Secretary of Transportation may extend the date specified under subsection (b)(1)(A) for up to 2 years for driver's licenses issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under such subsection but was unable to do so.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Transportation for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.

42 USC 405 note.

SEC. 7213. SOCIAL SECURITY CARDS AND NUMBERS.

Deadlines.

(a) **SECURITY ENHANCEMENTS.**—The Commissioner of Social Security shall—

(1) not later than 1 year after the date of enactment of this Act—

(A) restrict the issuance of multiple replacement social security cards to any individual to 3 per year and 10 for the life of the individual, except that the Commissioner may allow for reasonable exceptions from the limits under this paragraph on a case-by-case basis in compelling circumstances;

(B) establish minimum standards for the verification of documents or records submitted by an individual to establish eligibility for an original or replacement social security card, other than for purposes of enumeration at birth; and

(C) require independent verification of any birth record submitted by an individual to establish eligibility for a social security account number, other than for purposes of enumeration at birth, except that the Commissioner

may allow for reasonable exceptions from the requirement for independent verification under this subparagraph on a case by case basis in compelling circumstances; and

(2) notwithstanding section 205(r) of the Social Security Act (42 U.S.C. 405(r)) and any agreement entered into thereunder, not later than 18 months after the date of enactment of this Act with respect to death indicators and not later than 36 months after the date of enactment of this Act with respect to fraud indicators, add death and fraud indicators to the social security number verification systems for employers, State agencies issuing driver's licenses and identity cards, and other verification routines that the Commissioner determines to be appropriate.

(b) INTERAGENCY SECURITY TASK FORCE.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall form an interagency task force for the purpose of further improving the security of social security cards and numbers. Not later than 18 months after the date of enactment of this Act, the task force shall establish, and the Commissioner shall provide for the implementation of, security requirements, including—

Establishment.

Deadline.

(1) standards for safeguarding social security cards from counterfeiting, tampering, alteration, and theft;

(2) requirements for verifying documents submitted for the issuance of replacement cards; and

(3) actions to increase enforcement against the fraudulent use or issuance of social security numbers and cards.

(c) ENUMERATION AT BIRTH.—

(1) IMPROVEMENT OF APPLICATION PROCESS.—As soon as practicable after the date of enactment of this Act, the Commissioner of Social Security shall undertake to make improvements to the enumeration at birth program for the issuance of social security account numbers to newborns. Such improvements shall be designed to prevent—

(A) the assignment of social security account numbers to unnamed children;

(B) the issuance of more than 1 social security account number to the same child; and

(C) other opportunities for fraudulently obtaining a social security account number.

(2) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Commissioner shall transmit to each House of Congress a report specifying in detail the extent to which the improvements required under paragraph (1) have been made.

(d) STUDY REGARDING PROCESS FOR ENUMERATION AT BIRTH.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Commissioner of Social Security shall conduct a study to determine the most efficient options for ensuring the integrity of the process for enumeration at birth. This study shall include an examination of available methods for reconciling hospital birth records with birth registrations submitted to agencies of States and political subdivisions thereof and with information provided to the Commissioner as part of the process for enumeration at birth.

(2) REPORT.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Commissioner shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study conducted under paragraph (1).

(B) CONTENTS.—The report submitted under subparagraph (A) shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for enumeration at birth.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commissioner of Social Security for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.

SEC. 7214. PROHIBITION OF THE DISPLAY OF SOCIAL SECURITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR MOTOR VEHICLE REGISTRATIONS.

(a) IN GENERAL.—Section 205(c)(2)(C)(vi) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi)) is amended—

(1) by inserting “(I)” after “(vi)”; and

(2) by adding at the end the following new subclause:

“(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver’s license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver’s license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).”.

42 USC 405 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall apply with respect to licenses, registrations, and identification cards issued or reissued 1 year after the date of enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commissioner of Social Security for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.

6 USC 123.

SEC. 7215. TERRORIST TRAVEL PROGRAM.

The Secretary of Homeland Security, in consultation with the Director of the National Counterterrorism Center, and consistent with the strategy developed under section 7201, shall establish a program to oversee the implementation of the Department’s responsibilities with respect to terrorist travel, including the analysis, coordination, and dissemination of terrorist travel intelligence and operational information—

(1) among appropriate subdivisions of the Department of Homeland Security, including—

(A) the Bureau of Customs and Border Protection;

(B) United States Immigration and Customs Enforcement;

(C) United States Citizenship and Immigration Services;

- (D) the Transportation Security Administration; and
- (E) any other subdivision, as determined by the Secretary; and
- (2) between the Department of Homeland Security and other appropriate Federal agencies.

SEC. 7216. INCREASE IN PENALTIES FOR FRAUD AND RELATED ACTIVITY.

Section 1028(b)(4) of title 18, United States Code, is amended by striking “25 years” and inserting “30 years”.

SEC. 7217. STUDY ON ALLEGEDLY LOST OR STOLEN PASSPORTS.

(a) **IN GENERAL.**—Not later than May 31, 2005, the Secretary of State, in consultation with the Secretary of Homeland Security, shall submit a report, containing the results of a study on the subjects described in subsection (b), to— Deadline.

- (1) the Committee on the Judiciary of the Senate;
- (2) the Committee on the Judiciary of the House of Representatives;
- (3) the Committee on Foreign Relations of the Senate;
- (4) the Committee on International Relations of the House of Representatives;
- (5) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (6) the Select Committee on Homeland Security of the House of Representatives (or any successor committee).

(b) **CONTENTS.**—The study referred to in subsection (a) shall examine the feasibility, cost, potential benefits, and relative importance to the objectives of tracking suspected terrorists’ travel, and apprehending suspected terrorists, of establishing a system, in coordination with other countries, through which border and visa issuance officials have access in real-time to information on newly issued passports to persons whose previous passports were allegedly lost or stolen.

(c) **INCENTIVES.**—The study described in subsection (b) shall make recommendations on incentives that might be offered to encourage foreign nations to participate in the initiatives described in subsection (b).

SEC. 7218. ESTABLISHMENT OF VISA AND PASSPORT SECURITY PROGRAM IN THE DEPARTMENT OF STATE. 22 USC 4807.

(a) **ESTABLISHMENT.**—There is established, within the Bureau of Diplomatic Security of the Department of State, the Visa and Passport Security Program (in this section referred to as the “Program”).

(b) **PREPARATION OF STRATEGIC PLAN.**—

(1) **IN GENERAL.**—The Assistant Secretary for Diplomatic Security, in coordination with the appropriate officials of the Bureau of Consular Affairs, the coordinator for counterterrorism, the National Counterterrorism Center, and the Department of Homeland Security, and consistent with the strategy mandated by section 7201, shall ensure the preparation of a strategic plan to target and disrupt individuals and organizations, within the United States and in foreign countries, that are involved in the fraudulent production, distribution, use, or other similar activity—

- (A) of a United States visa or United States passport;

(B) of documents intended to help fraudulently procure a United States visa or United States passport, or other documents intended to gain unlawful entry into the United States; or

(C) of passports and visas issued by foreign countries intended to gain unlawful entry into the United States.

(2) EMPHASIS.—The strategic plan shall—

(A) focus particular emphasis on individuals and organizations that may have links to domestic terrorist organizations or foreign terrorist organizations (as such term is defined in section 219 of the Immigration and Nationality Act (8 U.S.C. 1189));

(B) require the development of a strategic training course under the Antiterrorism Assistance Training (ATA) program of the Department of State (or any successor or related program) under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.) (or other relevant provisions of law) to train participants in the identification of fraudulent documents and the forensic detection of such documents which may be used to obtain unlawful entry into the United States; and

(C) determine the benefits and costs of providing technical assistance to foreign governments to ensure the security of passports, visas, and related documents and to investigate, arrest, and prosecute individuals who facilitate travel by the creation of false passports and visas, documents to obtain such passports and visas, and other types of travel documents.

(c) PROGRAM.—

(1) INDIVIDUAL IN CHARGE.—

(A) DESIGNATION.—The Assistant Secretary for Diplomatic Security shall designate an individual to be in charge of the Program.

(B) QUALIFICATION.—The individual designated under subparagraph (A) shall have expertise and experience in the investigation and prosecution of visa and passport fraud.

(2) PROGRAM COMPONENTS.—The Program shall include the following:

(A) ANALYSIS OF METHODS.—Analyze, in coordination with other appropriate government agencies, methods used by terrorists to travel internationally, particularly the use of false or altered travel documents to illegally enter foreign countries and the United States, and consult with the Bureau of Consular Affairs and the Secretary of Homeland Security on recommended changes to the visa issuance process that could combat such methods, including the introduction of new technologies into such process.

(B) IDENTIFICATION OF INDIVIDUALS AND DOCUMENTS.—Identify, in cooperation with the Human Trafficking and Smuggling Center, individuals who facilitate travel by the creation of false passports and visas, documents used to obtain such passports and visas, and other types of travel documents, and ensure that the appropriate agency is notified for further investigation and prosecution or, in the

case of such individuals abroad for which no further investigation or prosecution is initiated, ensure that all appropriate information is shared with foreign governments in order to facilitate investigation, arrest, and prosecution of such individuals.

(C) IDENTIFICATION OF FOREIGN COUNTRIES NEEDING ASSISTANCE.—Identify foreign countries that need technical assistance, such as law reform, administrative reform, prosecutorial training, or assistance to police and other investigative services, to ensure passport, visa, and related document security and to investigate, arrest, and prosecute individuals who facilitate travel by the creation of false passports and visas, documents used to obtain such passports and visas, and other types of travel documents.

(D) INSPECTION OF APPLICATIONS.—Randomly inspect visa and passport applications for accuracy, efficiency, and fraud, especially at high terrorist threat posts, in order to prevent a recurrence of the issuance of visas to those who submit incomplete, fraudulent, or otherwise irregular or incomplete applications.

(d) REPORT.—Not later than 90 days after the date on which the strategy required under section 7201 is submitted to Congress, the Assistant Secretary for Diplomatic Security shall submit to Congress a report containing—

(1) a description of the strategic plan prepared under subsection (b); and

(2) an evaluation of the feasibility of establishing civil service positions in field offices of the Bureau of Diplomatic Security to investigate visa and passport fraud, including an evaluation of whether to allow diplomatic security agents to convert to civil service officers to fill such positions.

SEC. 7219. EFFECTIVE DATE.

8 USC 1202 note.

Notwithstanding any other provision of this Act, this subtitle shall take effect on the date of enactment of this Act.

SEC. 7220. IDENTIFICATION STANDARDS.

49 USC 44901 note.

(a) PROPOSED STANDARDS.—

(1) IN GENERAL.—The Secretary of Homeland Security—

(A) shall propose minimum standards for identification documents required of domestic commercial airline passengers for boarding an aircraft; and

(B) may, from time to time, propose minimum standards amending or replacing standards previously proposed and transmitted to Congress and approved under this section.

(2) SUBMISSION TO CONGRESS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit the standards under paragraph (1)(A) to the Senate and the House of Representatives on the same day while each House is in session.

(3) EFFECTIVE DATE.—Any proposed standards submitted to Congress under this subsection shall take effect when an approval resolution is passed by the House and the Senate under the procedures described in subsection (b) and becomes law.

(b) CONGRESSIONAL APPROVAL PROCEDURES.—

(1) RULEMAKING POWER.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of such approval resolutions; and it supersedes other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2) APPROVAL RESOLUTION.—For the purpose of this subsection, the term “approval resolution” means a joint resolution of Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the proposed standards issued under section 7220 of the 9/11 Commission Implementation Act of 2004, transmitted by the President to the Congress on _____”, the blank space being filled in with the appropriate date.

Deadline.

(3) INTRODUCTION.—Not later than the first day of session following the day on which proposed standards are transmitted to the House of Representatives and the Senate under subsection (a), an approval resolution—

(A) shall be introduced (by request) in the House by the Majority Leader of the House of Representatives, for himself or herself and the Minority Leader of the House of Representatives, or by Members of the House of Representatives designated by the Majority Leader and Minority Leader of the House; and

(B) shall be introduced (by request) in the Senate by the Majority Leader of the Senate, for himself or herself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate.

(4) PROHIBITIONS.—

(A) AMENDMENTS.—No amendment to an approval resolution shall be in order in either the House of Representatives or the Senate.

(B) MOTIONS TO SUSPEND.—No motion to suspend the application of this paragraph shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this paragraph by unanimous consent.

(5) REFERRAL.—

Deadline.

(A) IN GENERAL.—An approval resolution shall be referred to the committees of the House of Representatives and of the Senate with jurisdiction. Each committee shall make its recommendations to the House of Representatives or the Senate, as the case may be, within 45 days after its introduction. Except as provided in subparagraph (B), if a committee to which an approval resolution has been referred has not reported it at the close of the 45th day

after its introduction, such committee shall be automatically discharged from further consideration of the resolution and it shall be placed on the appropriate calendar.

(B) FINAL PASSAGE.—A vote on final passage of the resolution shall be taken in each House on or before the close of the 15th day after the resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

(C) COMPUTATION OF DAYS.—For purposes of this paragraph, in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

(6) COORDINATION WITH ACTION OF OTHER HOUSE.—If prior to the passage by one House of an approval resolution of that House, that House receives the same approval resolution from the other House, then the procedure in that House shall be the same as if no approval resolution has been received from the other House, but the vote on final passage shall be on the approval resolution of the other House.

(7) FLOOR CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(A) MOTION TO PROCEED.—A motion in the House of Representatives to proceed to the consideration of an approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) DEBATE.—Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 4 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion to further limit debate shall not be debatable. It shall not be in order to move to recommit an approval resolution or to move to reconsider the vote by which an approval resolution is agreed to or disagreed to.

(C) MOTION TO POSTPONE.—Motions to postpone made in the House of Representatives with respect to the consideration of an approval resolution and motions to proceed to the consideration of other business shall be decided without debate.

(D) APPEALS.—All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an approval resolution shall be decided without debate.

(E) RULES OF THE HOUSE OF REPRESENTATIVES.—Except to the extent specifically provided in subparagraphs (A) through (D), consideration of an approval resolution shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.

(8) FLOOR CONSIDERATION IN THE SENATE.—

(A) MOTION TO PROCEED.—A motion in the Senate to proceed to the consideration of an approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order

to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) DEBATE ON RESOLUTION.—Debate in the Senate on an approval resolution, and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader, or their designees.

(C) DEBATE ON MOTIONS AND APPEALS.—Debate in the Senate on any debatable motion or appeal in connection with an approval resolution shall be limited to not more than 1 hour, which shall be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the Minority Leader or designee. Such leaders, or either of them, may, from time under their control on the passage of an approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(D) LIMIT ON DEBATE.—A motion in the Senate to further limit debate is not debatable. A motion to recommit an approval resolution is not in order.

(c) DEFAULT STANDARDS.—

Deadline.

(1) IN GENERAL.—If the standards proposed under subsection (a)(1)(A) are not approved pursuant to the procedures described in subsection (b), then not later than 1 year after rejection by a vote of either House of Congress, domestic commercial airline passengers seeking to board an aircraft shall present, for identification purposes—

(A) a valid, unexpired passport;

(B) domestically issued documents that the Secretary of Homeland Security designates as reliable for identification purposes;

(C) any document issued by the Attorney General or the Secretary of Homeland Security under the authority of 1 of the immigration laws (as defined under section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))); or

(D) a document issued by the country of nationality of any alien not required to possess a passport for admission to the United States that the Secretary designates as reliable for identifications purposes

(2) EXCEPTION.—The documentary requirements described in paragraph (1)—

(A) shall not apply to individuals below the age of 17, or such other age as determined by the Secretary of Homeland Security;

(B) may be waived by the Secretary of Homeland Security in the case of an unforeseen medical emergency.

Deadline.

(d) RECOMMENDATION TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall recommend to Congress—

(1) categories of Federal facilities that the Secretary determines to be at risk for terrorist attack and requiring minimum identification standards for access to such facilities; and

(2) appropriate minimum identification standards to gain access to those facilities.

Subtitle C—National Preparedness

SEC. 7301. THE INCIDENT COMMAND SYSTEM.

(a) **FINDINGS.**—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The attacks on September 11, 2001, demonstrated that even the most robust emergency response capabilities can be overwhelmed if an attack is large enough.

(2) Teamwork, collaboration, and cooperation at an incident site are critical to a successful response to a terrorist attack.

(3) Key decisionmakers who are represented at the incident command level help to ensure an effective response, the efficient use of resources, and responder safety.

(4) The incident command system also enables emergency managers and first responders to manage, generate, receive, evaluate, share, and use information.

(5) Regular joint training at all levels is essential to ensuring close coordination during an actual incident.

(6) In Homeland Security Presidential Directive 5, the President directed the Secretary of Homeland Security to develop an incident command system, to be known as the National Incident Management System (NIMS), and directed all Federal agencies to make the adoption of NIMS a condition for the receipt of Federal emergency preparedness assistance by States, territories, tribes, and local governments beginning in fiscal year 2005.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the United States needs to implement the recommendations of the National Commission on Terrorist Attacks Upon the United States by adopting a unified incident command system and significantly enhancing communications connectivity between and among all levels of government agencies, emergency response providers (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), and other organizations with emergency response capabilities;

(2) the unified incident command system should enable emergency managers and first responders to manage, generate, receive, evaluate, share, and use information in the event of a terrorist attack or a significant national disaster;

(3) emergency response agencies nationwide should adopt the Incident Command System known as NIMS;

(4) when multiple agencies or multiple jurisdictions are involved, they should follow a unified command system based on NIMS;

(5) the regular use of, and training in, NIMS by States and, to the extent practicable, territories, tribes, and local governments, should be a condition for receiving Federal preparedness assistance; and

(6) the Secretary of Homeland Security should require, as a further condition of receiving homeland security preparedness funds from the Office of State and Local Government Coordination and Preparedness, that grant applicants document

measures taken to fully and aggressively implement the Incident Command System and unified command procedures.

42 USC 5196
note.

SEC. 7302. NATIONAL CAPITAL REGION MUTUAL AID.

(a) DEFINITIONS.—In this section:

(1) AUTHORIZED REPRESENTATIVE OF THE FEDERAL GOVERNMENT.—The term “authorized representative of the Federal Government” means any individual or individuals designated by the President with respect to the executive branch, the Chief Justice with respect to the Federal judiciary, or the President of the Senate and Speaker of the House of Representatives with respect to Congress, or their designees, to request assistance under a mutual aid agreement for an emergency or public service event.

(2) CHIEF OPERATING OFFICER.—The term “chief operating officer” means the official designated by law to declare an emergency in and for the locality of that chief operating officer.

(3) EMERGENCY.—The term “emergency” means a major disaster or emergency declared by the President, or a state of emergency declared by the mayor of the District of Columbia, the Governor of the State of Maryland or the Commonwealth of Virginia, or the declaration of a local emergency by the chief operating officer of a locality, or their designees, that triggers mutual aid under the terms of a mutual aid agreement.

(4) EMPLOYEE.—The term “employee” means the employees of the party, including its agents or authorized volunteers, who are committed in a mutual aid agreement to prepare for or who respond to an emergency or public service event.

(5) LOCALITY.—The term “locality” means a county, city, or town within the State of Maryland or the Commonwealth of Virginia and within the National Capital Region.

(6) MUTUAL AID AGREEMENT.—The term “mutual aid agreement” means an agreement, authorized under subsection (b), for the provision of police, fire, rescue and other public safety and health or medical services to any party to the agreement during a public service event, an emergency, or pre-planned training event.

(7) NATIONAL CAPITAL REGION OR REGION.—The term “National Capital Region” or “Region” means the area defined under section 2674(f)(2) of title 10, United States Code, and those counties with a border abutting that area and any municipalities therein.

(8) PARTY.—The term “party” means the State of Maryland, the Commonwealth of Virginia, the District of Columbia, and any of the localities duly executing a Mutual Aid Agreement under this section.

(9) PUBLIC SERVICE EVENT.—The term “public service event”—

(A) means any undeclared emergency, incident or situation in preparation for or response to which the mayor of the District of Columbia, an authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality in the National Capital Region, or their designees, requests or provides assistance under a Mutual Aid Agreement within the National Capital Region; and

(B) includes Presidential inaugurations, public gatherings, demonstrations and protests, and law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and other support that require human resources, equipment, facilities or services supplemental to or greater than the requesting jurisdiction can provide.

(10) STATE.—The term “State” means the State of Maryland, the Commonwealth of Virginia, and the District of Columbia.

(11) TRAINING.—The term “training” means emergency and public service event-related exercises, testing, or other activities using equipment and personnel to simulate performance of any aspect of the giving or receiving of aid by National Capital Region jurisdictions during emergencies or public service events, such actions occurring outside actual emergency or public service event periods.

(b) MUTUAL AID AUTHORIZED.—

(1) IN GENERAL.—The mayor of the District of Columbia, any authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality, or their designees, acting within his or her jurisdictional purview, may, in accordance with State law, enter into, request or provide assistance under mutual aid agreements with localities, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, and any other governmental agency or authority for—

(A) law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and resource support in an emergency or public service event;

(B) preparing for, mitigating, managing, responding to or recovering from any emergency or public service event; and

(C) training for any of the activities described under subparagraphs (A) and (B).

(2) FACILITATING LOCALITIES.—The State of Maryland and the Commonwealth of Virginia are encouraged to facilitate the ability of localities to enter into interstate mutual aid agreements in the National Capital Region under this section.

(3) APPLICATION AND EFFECT.—This section—

(A) does not apply to law enforcement security operations at special events of national significance under section 3056(e) of title 18, United States Code, or other law enforcement functions of the United States Secret Service;

(B) does not diminish any authorities, express or implied, of Federal agencies to enter into mutual aid agreements in furtherance of their Federal missions; and

(C) does not—

(i) preclude any party from entering into supplementary Mutual Aid Agreements with fewer than all the parties, or with another party; or

(ii) affect any other agreement in effect before the date of enactment of this Act among the States

and localities, including the Emergency Management Assistance Compact.

(4) RIGHTS DESCRIBED.—Other than as described in this section, the rights and responsibilities of the parties to a mutual aid agreement entered into under this section shall be as described in the mutual aid agreement.

(c) DISTRICT OF COLUMBIA.—

(1) IN GENERAL.—The District of Columbia may purchase liability and indemnification insurance or become self insured against claims arising under a mutual aid agreement authorized under this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out paragraph (1).

(d) LIABILITY AND ACTIONS AT LAW.—

(1) IN GENERAL.—Any responding party or its officers or employees rendering aid or failing to render aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a mutual aid agreement authorized under this section, and any party or its officers or employees engaged in training activities with another party under such a mutual aid agreement, shall be liable on account of any act or omission of its officers or employees while so engaged or on account of the maintenance or use of any related equipment, facilities, or supplies, but only to the extent permitted under the laws and procedures of the State of the party rendering aid.

(2) ACTIONS.—Any action brought against a party or its officers or employees on account of an act or omission in the rendering of aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, or failure to render such aid or on account of the maintenance or use of any related equipment, facilities, or supplies may be brought only under the laws and procedures of the State of the party rendering aid and only in the Federal or State courts located therein. Actions against the United States under this section may be brought only in Federal courts.

(3) IMMUNITIES.—This section shall not abrogate any other immunities from liability that any party has under any other Federal or State law.

(e) WORKERS COMPENSATION.—

(1) COMPENSATION.—Each party shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a mutual aid agreement, or engaged in training activities under a mutual aid agreement, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

(2) OTHER STATE LAW.—No party shall be liable under the law of any State other than its own for providing for the payment of compensation and death benefits to injured

members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a mutual aid agreement or engaged in training activities under a mutual aid agreement.

(f) **LICENSES AND PERMITS.**—If any person holds a license, certificate, or other permit issued by any responding party evidencing the meeting of qualifications for professional, mechanical, or other skills and assistance is requested by a receiving jurisdiction, such person will be deemed licensed, certified, or permitted by the receiving jurisdiction to render aid involving such skill to meet a public service event, emergency or training for any such events.

SEC. 7303. ENHANCEMENT OF PUBLIC SAFETY COMMUNICATIONS INTEROPERABILITY. 6 USC 194.

(a) **COORDINATION OF PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS PROGRAMS.**—

(1) **PROGRAM.**—The Secretary of Homeland Security, in consultation with the Secretary of Commerce and the Chairman of the Federal Communications Commission, shall establish a program to enhance public safety interoperable communications at all levels of government. Such program shall—

(A) establish a comprehensive national approach to achieving public safety interoperable communications;

(B) coordinate with other Federal agencies in carrying out subparagraph (A);

(C) develop, in consultation with other appropriate Federal agencies and State and local authorities, appropriate minimum capabilities for communications interoperability for Federal, State, and local public safety agencies;

(D) accelerate, in consultation with other Federal agencies, including the National Institute of Standards and Technology, the private sector, and nationally recognized standards organizations as appropriate, the development of national voluntary consensus standards for public safety interoperable communications, recognizing—

(i) the value, life cycle, and technical capabilities of existing communications infrastructure;

(ii) the need for cross-border interoperability between States and nations;

(iii) the unique needs of small, rural communities; and

(iv) the interoperability needs for daily operations and catastrophic events;

(E) encourage the development and implementation of flexible and open architectures incorporating, where possible, technologies that currently are commercially available, with appropriate levels of security, for short-term and long-term solutions to public safety communications interoperability;

(F) assist other Federal agencies in identifying priorities for research, development, and testing and evaluation with regard to public safety interoperable communications;

(G) identify priorities within the Department of Homeland Security for research, development, and testing and

evaluation with regard to public safety interoperable communications;

(H) establish coordinated guidance for Federal grant programs for public safety interoperable communications;

(I) provide technical assistance to State and local public safety agencies regarding planning, acquisition strategies, interoperability architectures, training, and other functions necessary to achieve public safety communications interoperability;

(J) develop and disseminate best practices to improve public safety communications interoperability; and

(K) develop appropriate performance measures and milestones to systematically measure the Nation's progress toward achieving public safety communications interoperability, including the development of national voluntary consensus standards.

(2) OFFICE FOR INTEROPERABILITY AND COMPATIBILITY.—

(A) ESTABLISHMENT OF OFFICE.—The Secretary may establish an Office for Interoperability and Compatibility within the Directorate of Science and Technology to carry out this subsection.

(B) FUNCTIONS.—If the Secretary establishes such office, the Secretary shall, through such office—

(i) carry out Department of Homeland Security responsibilities and authorities relating to the SAFECOM Program; and

(ii) carry out section 510 of the Homeland Security Act of 2002, as added by subsection (d).

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection—

(A) \$22,105,000 for fiscal year 2005;

(B) \$22,768,000 for fiscal year 2006;

(C) \$23,451,000 for fiscal year 2007;

(D) \$24,155,000 for fiscal year 2008; and

(E) \$24,879,000 for fiscal year 2009.

(b) REPORT.—Not later than 120 days after the date of enactment of this Act, the Secretary shall report to the Congress on Department of Homeland Security plans for accelerating the development of national voluntary consensus standards for public safety interoperable communications, a schedule of milestones for such development, and achievements of such development.

(c) INTERNATIONAL INTEROPERABILITY.—Not later than 18 months after the date of enactment of this Act, the President shall establish a mechanism for coordinating cross-border interoperability issues between—

(1) the United States and Canada; and

(2) the United States and Mexico.

(d) HIGH RISK AREA COMMUNICATIONS CAPABILITIES.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

“SEC. 510. URBAN AND OTHER HIGH RISK AREA COMMUNICATIONS CAPABILITIES.

“(a) IN GENERAL.—The Secretary, in consultation with the Federal Communications Commission and the Secretary of Defense, and with appropriate governors, mayors, and other State and local

Deadline.
President.
Canada.
Mexico.

6 USC 321.

government officials, shall provide technical guidance, training, and other assistance, as appropriate, to support the rapid establishment of consistent, secure, and effective interoperable communications capabilities in the event of an emergency in urban and other areas determined by the Secretary to be at consistently high levels of risk from terrorist attack.

“(b) MINIMUM CAPABILITIES.—The interoperable communications capabilities established under subsection (a) shall ensure the ability of all levels of government agencies, emergency response providers (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101)), and other organizations with emergency response capabilities—

“(1) to communicate with each other in the event of an emergency; and

“(2) to have appropriate and timely access to the Information Sharing Environment described in section 1016 of the National Security Intelligence Reform Act of 2004.”.

(e) MULTIYEAR INTEROPERABILITY GRANTS.—

(1) MULTIYEAR COMMITMENTS.—In awarding grants to any State, region, local government, or Indian tribe for the purposes of enhancing interoperable communications capabilities for emergency response providers, the Secretary may commit to obligate Federal assistance beyond the current fiscal year, subject to the limitations and restrictions in this subsection.

(2) RESTRICTIONS.—

(A) TIME LIMIT.—No multiyear interoperability commitment may exceed 3 years in duration.

(B) AMOUNT OF COMMITTED FUNDS.—The total amount of assistance the Secretary has committed to obligate for any future fiscal year under paragraph (1) may not exceed \$150,000,000.

(3) LETTERS OF INTENT.—

(A) ISSUANCE.—Pursuant to paragraph (1), the Secretary may issue a letter of intent to an applicant committing to obligate from future budget authority an amount, not more than the Federal Government's share of the project's cost, for an interoperability communications project (including interest costs and costs of formulating the project).

(B) SCHEDULE.—A letter of intent under this paragraph shall establish a schedule under which the Secretary will reimburse the applicant for the Federal Government's share of the project's costs, as amounts become available, if the applicant, after the Secretary issues the letter, carries out the project before receiving amounts under a grant issued by the Secretary.

(C) NOTICE TO SECRETARY.—An applicant that is issued a letter of intent under this subsection shall notify the Secretary of the applicant's intent to carry out a project pursuant to the letter before the project begins.

(D) NOTICE TO CONGRESS.—The Secretary shall transmit a written notification to the Congress no later than 3 days before the issuance of a letter of intent under this section.

Deadline.

(E) LIMITATIONS.—A letter of intent issued under this section is not an obligation of the Government under section 1501 of title 31, United States Code, and is not deemed

to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

(F) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed—

(i) to prohibit the obligation of amounts pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued; or

(ii) to apply to, or replace, Federal assistance intended for interoperable communications that is not provided pursuant to a commitment under this subsection.

(f) INTEROPERABLE COMMUNICATIONS PLANS.—Any applicant requesting funding assistance from the Secretary for interoperable communications for emergency response providers shall submit an Interoperable Communications Plan to the Secretary for approval. Such a plan shall—

(1) describe the current state of communications interoperability in the applicable jurisdictions among Federal, State, and local emergency response providers and other relevant private resources;

(2) describe the available and planned use of public safety frequency spectrum and resources for interoperable communications within such jurisdictions;

(3) describe how the planned use of spectrum and resources for interoperable communications is compatible with surrounding capabilities and interoperable communications plans of Federal, State, and local governmental entities, military installations, foreign governments, critical infrastructure, and other relevant entities;

(4) include a 5-year plan for the dedication of Federal, State, and local government and private resources to achieve a consistent, secure, and effective interoperable communications system, including planning, system design and engineering, testing and technology development, procurement and installation, training, and operations and maintenance; and

(5) describe how such 5-year plan meets or exceeds any applicable standards and grant requirements established by the Secretary.

(g) DEFINITIONS.—In this section:

(1) INTEROPERABLE COMMUNICATIONS.—The term “interoperable communications” means the ability of emergency response providers and relevant Federal, State, and local government agencies to communicate with each other as necessary, through a dedicated public safety network utilizing information technology systems and radio communications systems, and to exchange voice, data, or video with one another on demand, in real time, as necessary.

(2) EMERGENCY RESPONSE PROVIDERS.—The term “emergency response providers” has the meaning that term has under section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).

(h) CLARIFICATION OF RESPONSIBILITY FOR INTEROPERABLE COMMUNICATIONS.—

(1) UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.—Section 502(7) of the Homeland Security Act of 2002 (6 U.S.C. 312(7)) is amended—

(A) by striking “developing comprehensive programs for developing interoperative communications technology, and”; and

(B) by striking “such” and inserting “interoperable communications”.

(2) OFFICE FOR DOMESTIC PREPAREDNESS.—Section 430(c) of such Act (6 U.S.C. 238(c)) is amended—

(A) in paragraph (7) by striking “and” after the semicolon;

(B) in paragraph (8) by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(9) helping to ensure the acquisition of interoperable communication technology by State and local governments and emergency response providers.”.

(i) SENSE OF CONGRESS REGARDING INTEROPERABLE COMMUNICATIONS.—

(1) FINDING.—The Congress finds that—

(A) many first responders working in the same jurisdiction or in different jurisdictions cannot effectively and efficiently communicate with one another; and

(B) their inability to do so threatens the public’s safety and may result in unnecessary loss of lives and property.

(2) SENSE OF CONGRESS.—It is the sense of Congress that interoperable emergency communications systems and radios should continue to be deployed as soon as practicable for use by the first responder community, and that upgraded and new digital communications systems and new digital radios must meet prevailing national, voluntary consensus standards for interoperability.

SEC. 7304. REGIONAL MODEL STRATEGIC PLAN PILOT PROJECTS.

6 USC 194 note.

(a) PILOT PROJECTS.—Consistent with sections 302 and 430 of the Homeland Security Act of 2002 (6 U.S.C. 182, 238), not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall establish not fewer than 2 pilot projects in high threat urban areas or regions that are likely to implement a national model strategic plan.

Deadline.

(b) PURPOSES.—The purposes of the pilot projects required by this section shall be to develop a regional strategic plan to foster interagency communication in the area in which it is established and coordinate the gathering of all Federal, State, and local first responders in that area, consistent with the national strategic plan developed by the Department of Homeland Security.

(c) SELECTION CRITERIA.—In selecting urban areas for the location of pilot projects under this section, the Secretary shall consider—

(1) the level of risk to the area, as determined by the Department of Homeland Security;

(2) the number of Federal, State, and local law enforcement agencies located in the area;

(3) the number of potential victims from a large scale terrorist attack in the area; and

(4) such other criteria reflecting a community's risk and vulnerability as the Secretary determines is appropriate.

(d) INTERAGENCY ASSISTANCE.—The Secretary of Homeland Security shall consult with the Secretary of Defense as necessary for the development of the pilot projects required by this section, including examining relevant standards, equipment, and protocols in order to improve interagency communication among first responders.

(e) REPORTS TO CONGRESS.—The Secretary of Homeland Security shall submit to Congress—

(1) an interim report regarding the progress of the interagency communications pilot projects required by this section 6 months after the date of enactment of this Act; and

(2) a final report 18 months after that date of enactment.

(f) FUNDING.—There are authorized to be made available to the Secretary of Homeland Security, such sums as may be necessary to carry out this section.

SEC. 7305. PRIVATE SECTOR PREPAREDNESS.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Private sector organizations own 85 percent of the Nation's critical infrastructure and employ the vast majority of the Nation's workers.

(2) Preparedness in the private sector and public sector for rescue, restart and recovery of operations should include, as appropriate—

(A) a plan for evacuation;

(B) adequate communications capabilities; and

(C) a plan for continuity of operations.

(3) The American National Standards Institute recommends a voluntary national preparedness standard for the private sector based on the existing American National Standard on Disaster/Emergency Management and Business Continuity Programs (NFPA 1600), with appropriate modifications. This standard establishes a common set of criteria and terminology for preparedness, disaster management, emergency management, and business continuity programs.

(4) The mandate of the Department of Homeland Security extends to working with the private sector, as well as government entities.

(b) SENSE OF CONGRESS ON PRIVATE SECTOR PREPAREDNESS.—It is the sense of Congress that the Secretary of Homeland Security should promote, where appropriate, the adoption of voluntary national preparedness standards such as the private sector preparedness standard developed by the American National Standards Institute and based on the National Fire Protection Association 1600 Standard on Disaster/Emergency Management and Business Continuity Programs.

SEC. 7306. CRITICAL INFRASTRUCTURE AND READINESS ASSESSMENTS.

(a) FINDINGS.—Congress makes the following findings:

(1) Under section 201 of the Homeland Security Act of 2002 (6 U.S.C 121), the Department of Homeland Security, through the Under Secretary for Information Analysis and Infrastructure Protection, has the responsibility—

(A) to carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States;

(B) to identify priorities for protective and supportive measures; and

(C) to develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(2) Under Homeland Security Presidential Directive 7, issued on December 17, 2003, the Secretary of Homeland Security was given 1 year to develop a comprehensive plan to identify, prioritize, and coordinate the protection of critical infrastructure and key resources.

(3) The report of the National Commission on Terrorist Attacks Upon the United States recommended that the Secretary of Homeland Security should—

(A) identify those elements of the United States' transportation, energy, communications, financial, and other institutions that need to be protected;

(B) develop plans to protect that infrastructure; and

(C) exercise mechanisms to enhance preparedness.

(b) **REPORTS ON RISK ASSESSMENT AND READINESS.**—Not later than 180 days after the date of enactment of this Act, and in conjunction with the reporting requirements of Public Law 108–330, the Secretary of Homeland Security shall submit a report to Congress on—

(1) the Department of Homeland Security's progress in completing vulnerability and risk assessments of the Nation's critical infrastructure;

(2) the adequacy of the Government's plans to protect such infrastructure; and

(3) the readiness of the Government to respond to threats against the United States.

SEC. 7307. NORTHERN COMMAND AND DEFENSE OF THE UNITED STATES HOMELAND.

It is the sense of Congress that the Secretary of Defense should regularly assess the adequacy of the plans and strategies of the United States Northern Command with a view to ensuring that the United States Northern Command is prepared to respond effectively to all military and paramilitary threats within the United States, should it be called upon to do so by the President.

SEC. 7308. EFFECTIVE DATE.

6 USC 194 note.

Notwithstanding any other provision of this Act, this subtitle shall take effect on the date of enactment of this Act.

Subtitle D—Homeland Security

SEC. 7401. SENSE OF CONGRESS ON FIRST RESPONDER FUNDING.

It is the sense of Congress that Congress must pass legislation in the first session of the 109th Congress to reform the system for distributing grants to enhance State and local government prevention of, preparedness for, and response to acts of terrorism.

SEC. 7402. COORDINATION OF INDUSTRY EFFORTS.

Section 102(f) of the Homeland Security Act of 2002 (Public Law 107-296; 6 U.S.C. 112(f)) is amended—

- (1) in paragraph (6), by striking “and” at the end;
- (2) in paragraph (7), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:
 - “(8) coordinating industry efforts, with respect to functions of the Department of Homeland Security, to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack;
 - “(9) coordinating with the Directorate of Border and Transportation Security and the Assistant Secretary for Trade Development of the Department of Commerce on issues related to the travel and tourism industries; and
 - “(10) consulting with the Office of State and Local Government Coordination and Preparedness on all matters of concern to the private sector, including the tourism industry.”.

SEC. 7403. STUDY REGARDING NATIONWIDE EMERGENCY NOTIFICATION SYSTEM.

(a) **STUDY.**—The Secretary of Homeland Security, in coordination with the Chairman of the Federal Communications Commission, and in consultation with the heads of other appropriate Federal agencies and representatives of providers and participants in the telecommunications industry, shall conduct a study to determine whether it is cost-effective, efficient, and feasible to establish and implement an emergency telephonic alert notification system that will—

- (1) alert persons in the United States of imminent or current hazardous events caused by acts of terrorism; and
- (2) provide information to individuals regarding appropriate measures that may be undertaken to alleviate or minimize threats to their safety and welfare posed by such events.

(b) **TECHNOLOGIES TO CONSIDER.**—In conducting the study, the Secretary shall consider the use of the telephone, wireless communications, and other existing communications networks to provide such notification.

(c) **REPORT.**—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit to Congress a report regarding the conclusions of the study.

SEC. 7404. PILOT STUDY TO MOVE WARNING SYSTEMS INTO THE MODERN DIGITAL AGE.

(a) **PILOT STUDY.**—The Secretary of Homeland Security, from funds made available for improving the national system to notify the general public in the event of a terrorist attack, and in consultation with the Attorney General, the Secretary of Transportation, the heads of other appropriate Federal agencies, the National Association of State Chief Information Officers, and other stakeholders with respect to public warning systems, shall conduct a pilot study under which the Secretary of Homeland Security may issue public warnings regarding threats to homeland security using a warning system that is similar to the AMBER Alert communications network.

(b) **REPORT.**—Not later than 9 months after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report regarding the findings, conclusions, and recommendations of the pilot study.

(c) **PROHIBITION ON USE OF HIGHWAY TRUST FUND.**—No funds derived from the Highway Trust Fund may be transferred to, made available to, or obligated by the Secretary of Homeland Security to carry out this section.

SEC. 7405. REQUIRED COORDINATION.

6 USC 112 note.

The Secretary of Homeland Security shall ensure that there is effective and ongoing coordination of Federal efforts to prevent, prepare for, and respond to acts of terrorism and other major disasters and emergencies among the divisions of the Department of Homeland Security, including the Directorate of Emergency Preparedness and Response and the Office for State and Local Government Coordination and Preparedness.

SEC. 7406. EMERGENCY PREPAREDNESS COMPACTS.

Section 611(h) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(h)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively;

(2) by indenting paragraph (2) (as so redesignated); and

(3) by striking the subsection designation and heading and inserting the following:

“(h) **EMERGENCY PREPAREDNESS COMPACTS.**—(1) The Director shall establish a program supporting the development of emergency preparedness compacts for acts of terrorism, disasters, and emergencies throughout the Nation, by—

“(A) identifying and cataloging existing emergency preparedness compacts for acts of terrorism, disasters, and emergencies at the State and local levels of government;

“(B) disseminating to State and local governments examples of best practices in the development of emergency preparedness compacts and models of existing emergency preparedness compacts, including agreements involving interstate jurisdictions; and

“(C) completing an inventory of Federal response capabilities for acts of terrorism, disasters, and emergencies, making such inventory available to appropriate Federal, State, and local government officials, and ensuring that such inventory is as current and accurate as practicable.”.

SEC. 7407. RESPONSIBILITIES OF COUNTERNARCOTICS OFFICE.

(a) **AMENDMENT.**—Section 878 of the Homeland Security Act of 2002 (6 U.S.C. 458) is amended to read as follows:

“SEC. 878. OFFICE OF COUNTERNARCOTICS ENFORCEMENT.

“(a) **OFFICE.**—There is established in the Department an Office of Counternarcotics Enforcement, which shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate.

Establishment.
President.
Congress.

“(b) **ASSIGNMENT OF PERSONNEL.**—

“(1) **IN GENERAL.**—The Secretary shall assign permanent staff to the Office, consistent with effective management of Department resources.

“(2) LIAISONS.—The Secretary shall designate senior employees from each appropriate subdivision of the Department that has significant counternarcotics responsibilities to act as a liaison between that subdivision and the Office of Counternarcotics Enforcement.

“(C) LIMITATION ON CONCURRENT EMPLOYMENT.—Except as provided in subsection (d), the Director of the Office of Counternarcotics Enforcement shall not be employed by, assigned to, or serve as the head of, any other branch of the Federal Government, any State or local government, or any subdivision of the Department other than the Office of Counternarcotics Enforcement.

“(d) ELIGIBILITY TO SERVE AS THE UNITED STATES INTERDICTION COORDINATOR.—The Director of the Office of Counternarcotics Enforcement may be appointed as the United States Interdiction Coordinator by the Director of the Office of National Drug Control Policy, and shall be the only person at the Department eligible to be so appointed.

“(e) RESPONSIBILITIES.—The Secretary shall direct the Director of the Office of Counternarcotics Enforcement—

“(1) to coordinate policy and operations within the Department, between the Department and other Federal departments and agencies, and between the Department and State and local agencies with respect to stopping the entry of illegal drugs into the United States;

“(2) to ensure the adequacy of resources within the Department for stopping the entry of illegal drugs into the United States;

“(3) to recommend the appropriate financial and personnel resources necessary to help the Department better fulfill its responsibility to stop the entry of illegal drugs into the United States;

“(4) within the Joint Terrorism Task Force construct to track and sever connections between illegal drug trafficking and terrorism; and

“(5) to be a representative of the Department on all task forces, committees, or other entities whose purpose is to coordinate the counternarcotics enforcement activities of the Department and other Federal, State or local agencies.

“(f) SAVINGS CLAUSE.—Nothing in this section shall be construed to authorize direct control of the operations conducted by the Directorate of Border and Transportation Security, the Coast Guard, or joint terrorism task forces.

“(g) REPORTS TO CONGRESS.—

“(1) ANNUAL BUDGET REVIEW.—The Director of the Office of Counternarcotics Enforcement shall, not later than 30 days after the submission by the President to Congress of any request for expenditures for the Department, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of such request. The review and evaluation shall—

“(A) identify any request or subpart of any request that affects or may affect the counternarcotics activities of the Department or any of its subdivisions, or that affects the ability of the Department or any subdivision of the Department to meet its responsibility to stop the entry of illegal drugs into the United States;

“(B) describe with particularity how such requested funds would be or could be expended in furtherance of counternarcotics activities; and

“(C) compare such requests with requests for expenditures and amounts appropriated by Congress in the previous fiscal year.

“(2) EVALUATION OF COUNTERNARCOTICS ACTIVITIES.—The Director of the Office of Counternarcotics Enforcement shall, not later than February 1 of each year, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of the counternarcotics activities of the Department for the previous fiscal year. The review and evaluation shall—

Deadline.

“(A) describe the counternarcotics activities of the Department and each subdivision of the Department (whether individually or in cooperation with other subdivisions of the Department, or in cooperation with other branches of the Federal Government or with State or local agencies), including the methods, procedures, and systems (including computer systems) for collecting, analyzing, sharing, and disseminating information concerning narcotics activity within the Department and between the Department and other Federal, State, and local agencies;

“(B) describe the results of those activities, using quantifiable data whenever possible;

“(C) state whether those activities were sufficient to meet the responsibility of the Department to stop the entry of illegal drugs into the United States, including a description of the performance measures of effectiveness that were used in making that determination; and

“(D) recommend, where appropriate, changes to those activities to improve the performance of the Department in meeting its responsibility to stop the entry of illegal drugs into the United States.

“(3) CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—Any content of a review and evaluation described in the reports required in this subsection that involves information classified under criteria established by an Executive order, or whose public disclosure, as determined by the Secretary, would be detrimental to the law enforcement or national security activities of the Department or any other Federal, State, or local agency, shall be presented to Congress separately from the rest of the review and evaluation.”.

(b) CONFORMING AMENDMENTS.—Section 103(a) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)) is amended—

(1) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

(2) by inserting after paragraph (7) the following:

“(8) A Director of the Office of Counternarcotics Enforcement.”.

(c) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts appropriated for the Department of Homeland Security for Departmental management and operations for fiscal year 2005, there is authorized up to \$6,000,000 to carry out section 878 of the Department of Homeland Security Act of 2002.

SEC. 7408. USE OF COUNTERNARCOTICS ENFORCEMENT ACTIVITIES IN CERTAIN EMPLOYEE PERFORMANCE APPRAISALS.

(a) **IN GENERAL.**—Subtitle E of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 411 et seq.) is amended by adding at the end the following:

6 USC 413.

“SEC. 843. USE OF COUNTERNARCOTICS ENFORCEMENT ACTIVITIES IN CERTAIN EMPLOYEE PERFORMANCE APPRAISALS.

“(a) **IN GENERAL.**—Each subdivision of the Department that is a National Drug Control Program Agency shall include as one of the criteria in its performance appraisal system, for each employee directly or indirectly involved in the enforcement of Federal, State, or local narcotics laws, the performance of that employee with respect to the enforcement of Federal, State, or local narcotics laws, relying to the greatest extent practicable on objective performance measures, including—

“(1) the contribution of that employee to seizures of narcotics and arrests of violators of Federal, State, or local narcotics laws; and

“(2) the degree to which that employee cooperated with or contributed to the efforts of other employees, either within the Department or other Federal, State, or local agencies, in counternarcotics enforcement.

“(b) **DEFINITIONS.**—For purposes of this section—

“(1) the term ‘National Drug Control Program Agency’ means—

“(A) a National Drug Control Program Agency, as defined in section 702(7) of the Office of National Drug Control Policy Reauthorization Act of 1998 (as last in effect); and

“(B) any subdivision of the Department that has a significant counternarcotics responsibility, as determined by—

“(i) the counternarcotics officer, appointed under section 878; or

“(ii) if applicable, the counternarcotics officer’s successor in function (as determined by the Secretary); and

“(2) the term ‘performance appraisal system’ means a system under which periodic appraisals of job performance of employees are made, whether under chapter 43 of title 5, United States Code, or otherwise.”.

(b) **CLERICAL AMENDMENT.**—The table of contents for the Homeland Security Act of 2002 is amended by inserting after the item relating to section 842 the following:

“Sec. 843. Use of counternarcotics enforcement activities in certain employee performance appraisals.”.

Subtitle E—Public Safety Spectrum

SEC. 7501. DIGITAL TELEVISION CONVERSION DEADLINE.

(a) **FINDINGS.**—Congress finds the following:

(1) Congress granted television broadcasters additional 6 megahertz blocks of spectrum to transmit digital broadcasts

simultaneously with the analog broadcasts they submit on their original 6 megahertz blocks of spectrum.

(2) Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) requires each television broadcaster to cease analog transmissions and return 6 megahertz of spectrum not later than—

(A) December 31, 2006; or

(B) the date on which more than 85 percent of the television households in the market of such broadcaster can view digital broadcast television channels using a digital television, a digital-to-analog converter box, cable service, or satellite service.

(3) Twenty-four megahertz of spectrum occupied by television broadcasters has been earmarked for use by first responders as soon as the television broadcasters return the spectrum broadcasters being used to provide analog transmissions. This spectrum would be ideal to provide first responders with interoperable communications channels.

(4) Large parts of the vacated spectrum could be auctioned for advanced commercial services, such as wireless broadband.

(5) The 85 percent penetration test described in paragraph (2)(B) could delay the termination of analog television broadcasts and the return of spectrum well beyond 2007, hindering the use of that spectrum for these important public safety and advanced commercial uses.

(6) While proposals to require broadcasters to return, on a date certain, the spectrum earmarked for future public safety use may improve the ability of public safety entities to begin planning for use of this spectrum, such proposals have certain deficiencies. The proposals would require the dislocation of up to 75 broadcast stations, which also serve a critical public safety function by broadcasting weather, traffic, disaster, and other safety alerts. Such disparate treatment of broadcasters would be unfair to the broadcasters and their respective viewers. Requiring the return of all analog broadcast spectrum by a date certain would have the benefit of addressing the digital television transition in a comprehensive fashion that treats all broadcasters and viewers equally, while freeing spectrum for advanced commercial services.

(7) The Federal Communications Commission should consider all regulatory means available to expedite the return of the analog spectrum.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Congress must act to pass legislation in the first session of the 109th Congress that establishes a comprehensive approach to the timely return of analog broadcast spectrum as early as December 31, 2006; and

(2) any delay in the adoption of the legislation described in paragraph (1) will delay the ability of public safety entities to begin planning to use this needed spectrum.

SEC. 7502. STUDIES ON TELECOMMUNICATIONS CAPABILITIES AND REQUIREMENTS.

(a) ALLOCATIONS OF SPECTRUM FOR EMERGENCY RESPONSE PROVIDERS.—The Federal Communications Commission shall, in consultation with the Secretary of Homeland Security and the National Telecommunications and Information Administration, conduct a

study to assess short-term and long-term needs for allocations of additional portions of the electromagnetic spectrum for Federal, State, and local emergency response providers, including whether or not an additional allocation of spectrum in the 700 megahertz band should be granted by Congress to such emergency response providers.

(b) **STRATEGIES TO MEET PUBLIC SAFETY TELECOMMUNICATIONS REQUIREMENTS.**—The Secretary of Homeland Security shall, in consultation with the Federal Communications Commission and the National Telecommunications and Information Administration, conduct a study to assess strategies that may be used to meet public safety telecommunications needs, including—

(1) the need and efficacy of deploying nationwide interoperable communications networks (including the potential technical and operational standards and protocols for nationwide interoperable broadband mobile communications networks that may be used by Federal, State, regional, and local governmental and nongovernmental public safety, homeland security, and other emergency response personnel);

(2) the capacity of public safety entities to utilize wireless broadband applications; and

(3) the communications capabilities of all emergency response providers, including hospitals and health care workers, and current efforts to promote communications coordination and training among emergency response providers.

(c) **STUDY REQUIREMENTS.**—In conducting the studies required by subsections (a) and (b), the Secretary of Homeland Security and the Federal Communications Commission shall—

(1) seek input from Federal, State, local, and regional emergency response providers regarding the operation and administration of a potential nationwide interoperable broadband mobile communications network; and

(2) consider the use of commercial wireless technologies to the greatest extent practicable.

(d) **REPORTS.**—(1) Not later than one year after the date of enactment of this Act, the Federal Communications Commission (in the case of the study required by subsection (a)) and the Secretary of Homeland Security (in the case of the study required by subsection (b)) shall submit to the appropriate committees of Congress a report on such study, including the findings of such study.

(2) In this subsection, the term “appropriate committees of Congress” means—

(A) the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Committee on Energy and Commerce and the Select Committee on Homeland Security of the House of Representatives.

Subtitle F—Presidential Transition

SEC. 7601. PRESIDENTIAL TRANSITION.

(a) **SERVICES PROVIDED PRESIDENT-ELECT.**—Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

(1) by adding after subsection (a)(8)(A)(iv) the following:

“(v) Activities under this paragraph shall include the preparation of a detailed classified, compartmented summary by the relevant outgoing executive branch officials of specific operational threats to national security; major military or covert operations; and pending decisions on possible uses of military force. This summary shall be provided to the President-elect as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.”;

(2) by redesignating subsection (f) as subsection (g); and

(3) by adding after subsection (e) the following:

“(f)(1) The President-elect should submit to the Federal Bureau of Investigation or other appropriate agency and then, upon taking effect and designation, to the agency designated by the President under section 115(b) of the National Intelligence Reform Act of 2004, the names of candidates for high level national security positions through the level of undersecretary of cabinet departments as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

President.

“(2) The responsible agency or agencies shall undertake and complete as expeditiously as possible the background investigations necessary to provide appropriate security clearances to the individuals who are candidates described under paragraph (1) before the date of the inauguration of the President-elect as President and the inauguration of the Vice-President-elect as Vice President.”.

(b) SENSE OF THE SENATE REGARDING EXPEDITED CONSIDERATION OF NATIONAL SECURITY NOMINEES.—It is the sense of the Senate that—

(1) the President-elect should submit the nominations of candidates for high-level national security positions, through the level of undersecretary of cabinet departments, to the Senate by the date of the inauguration of the President-elect as President; and

(2) for all such national security nominees received by the date of inauguration, the Senate committees to which these nominations are referred should, to the fullest extent possible, complete their consideration of these nominations, and, if such nominations are reported by the committees, the full Senate should vote to confirm or reject these nominations, within 30 days of their submission.

(c) SECURITY CLEARANCES FOR TRANSITION TEAM MEMBERS.—

50 USC 435b
note.

(1) DEFINITION.—In this section, the term “major party” shall have the meaning given under section 9002(6) of the Internal Revenue Code of 1986.

(2) IN GENERAL.—Each major party candidate for President may submit, before the date of the general election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect’s transition team.

(3) COMPLETION DATE.—Necessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified

information shall be completed, to the fullest extent practicable, by the day after the date of the general election.

3 USC 102 note.

(d) EFFECTIVE DATE.—Notwithstanding section 351, this section and the amendments made by this section shall take effect on the date of enactment of this Act.

Subtitle G—Improving International Standards and Cooperation to Fight Terrorist Financing

31 USC 5311 note.

SEC. 7701. IMPROVING INTERNATIONAL STANDARDS AND COOPERATION TO FIGHT TERRORIST FINANCING.

(a) FINDINGS.—Congress makes the following findings:

(1) The global war on terrorism and cutting off terrorist financing is a policy priority for the United States and its partners, working bilaterally and multilaterally through the United Nations, the United Nations Security Council and its committees, such as the 1267 and 1373 Committees, the Financial Action Task Force (FATF), and various international financial institutions, including the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), and the regional multilateral development banks, and other multilateral fora.

(2) The international financial community has become engaged in the global fight against terrorist financing. The Financial Action Task Force has focused on the new threat posed by terrorist financing to the international financial system, resulting in the establishment of the FATF's Eight Special Recommendations on Terrorist Financing as the international standard on combating terrorist financing. The Group of Seven and the Group of Twenty Finance Ministers are developing action plans to curb the financing of terror. In addition, other economic and regional fora, such as the Asia-Pacific Economic Cooperation (APEC) Forum, and the Western Hemisphere Financial Ministers, have been used to marshal political will and actions in support of combating the financing of terrorism (CFT) standards.

(3) FATF's Forty Recommendations on Money Laundering and the Eight Special Recommendations on Terrorist Financing are the recognized global standards for fighting money laundering and terrorist financing. The FATF has engaged in an assessment process for jurisdictions based on their compliance with these standards.

(4) In March 2004, the IMF and IBRD Boards agreed to make permanent a pilot program of collaboration with the FATF to assess global compliance with the FATF Forty Recommendations on Money Laundering and the Eight Special Recommendations on Terrorist Financing. As a result, anti-money laundering (AML) and combating the financing of terrorism (CFT) assessments are now a regular part of their Financial Sector Assessment Program (FSAP) and Offshore Financial Center assessments, which provide for a comprehensive analysis of the strength of a jurisdiction's financial system. These reviews assess potential systemic vulnerabilities, consider sectoral development needs and priorities, and review

the state of implementation of and compliance with key financial codes and regulatory standards, among them the AML and CFT standards.

(5) To date, 70 FSAPs have been conducted, with over 24 of those incorporating AML and CFT assessments. The international financial institutions (IFIs), the FATF, and the FATF-style regional bodies together are expected to assess AML and CFT regimes in up to 40 countries or jurisdictions per year. This will help countries and jurisdictions identify deficiencies in their AML and CFT regimes and help focus technical assistance efforts.

(6) Technical assistance programs from the United States and other nations, coordinated with the Department of State and other departments and agencies, are playing an important role in helping countries and jurisdictions address shortcomings in their AML and CFT regimes and bringing their regimes into conformity with international standards. Training is coordinated within the United States Government, which leverages multilateral organizations and bodies and international financial institutions to internationalize the conveyance of technical assistance.

(7) In fulfilling its duties in advancing incorporation of AML and CFT standards into the IFIs as part of the IFIs' work on protecting the integrity of the international monetary system, the Department of the Treasury, under the guidance of the Secretary of the Treasury, has effectively brought together all of the key United States Government agencies. In particular, United States Government agencies continue to work together to foster broad support for this important undertaking in various multilateral fora, and United States Government agencies recognize the need for close coordination and communication within our own Government.

(b) SENSE OF CONGRESS REGARDING SUCCESS IN MULTILATERAL ORGANIZATIONS.—It is the sense of Congress that the Secretary of the Treasury should continue to promote the dissemination of international AML and CFT standards, and to press for full implementation of the FATF 40 + 8 Recommendations by all countries in order to curb financial risks and hinder terrorist financing around the globe. The efforts of the Secretary in this regard should include, where necessary or appropriate, multilateral action against countries whose counter-money laundering regimes and efforts against the financing of terrorism fall below recognized international standards.

SEC. 7702. DEFINITIONS.

In this subtitle—

(1) the term “international financial institutions” has the same meaning as in section 1701(c)(2) of the International Financial Institutions Act;

(2) the term “Financial Action Task Force” means the international policy-making and standard-setting body dedicated to combating money laundering and terrorist financing that was created by the Group of Seven in 1989; and

(3) the terms “Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System” and “Interagency Paper” mean the interagency paper prepared by the Board of Governors of the Federal Reserve System, the

31 USC 5311
note.

Comptroller of the Currency, and the Securities and Exchange Commission that was announced in the Federal Register on April 8, 2003.

SEC. 7703. EXPANDED REPORTING AND TESTIMONY REQUIREMENTS FOR THE SECRETARY OF THE TREASURY.

(a) **REPORTING REQUIREMENTS.**—Section 1503(a) of the International Financial Institutions Act (22 U.S.C. 262o–2(a)) is amended by adding at the end the following:

“(15) Work with the International Monetary Fund to—

“(A) foster strong global anti-money laundering (AML) and combat the financing of terrorism (CFT) regimes;

“(B) ensure that country performance under the Financial Action Task Force anti-money laundering and counterterrorist financing standards is effectively and comprehensively monitored;

“(C) ensure note is taken of AML and CFT issues in Article IV reports, International Monetary Fund programs, and other regular reviews of country progress;

“(D) ensure that effective AML and CFT regimes are considered to be indispensable elements of sound financial systems; and

“(E) emphasize the importance of sound AML and CFT regimes to global growth and development.”.

(b) **TESTIMONY.**—Section 1705(b) of the International Financial Institutions Act (22 U.S.C. 262r–4(b)) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(4) the status of implementation of international anti-money laundering and counterterrorist financing standards by the International Monetary Fund, the multilateral development banks, and other multilateral financial policymaking bodies.”.

31 USC 5311
note.

SEC. 7704. COORDINATION OF UNITED STATES GOVERNMENT EFFORTS.

The Secretary of the Treasury, or the designee of the Secretary, as the lead United States Government official to the Financial Action Task Force (FATF), shall continue to convene the interagency United States Government FATF working group. This group, which includes representatives from all relevant Federal agencies, shall meet at least once a year to advise the Secretary on policies to be pursued by the United States regarding the development of common international AML and CFT standards, to assess the adequacy and implementation of such standards, and to recommend to the Secretary improved or new standards, as necessary.

Subtitle H—Emergency Financial Preparedness

SEC. 7801. DELEGATION AUTHORITY OF THE SECRETARY OF THE TREASURY.

Section 306(d) of title 31, United States Code, is amended by inserting “or employee” after “another officer”.

**SEC. 7802. TREASURY SUPPORT FOR FINANCIAL SERVICES INDUSTRY
PREPAREDNESS AND RESPONSE AND CONSUMER EDU-
CATION.**

(a) **FINDINGS.**—Congress finds that the Secretary of the Treasury—

(1) has successfully communicated and coordinated with the private-sector financial services industry about financial infrastructure preparedness and response issues;

(2) has successfully reached out to State and local governments and regional public-private partnerships, such as ChicagoFIRST, that protect employees and critical infrastructure by enhancing communication and coordinating plans for disaster preparedness and business continuity; and

(3) has set an example for the Department of Homeland Security and other Federal agency partners, whose active participation is vital to the overall success of the activities described in paragraphs (1) and (2).

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, other Federal agency partners, and private-sector financial organization partners, should—

(1) furnish sufficient personnel and technological and financial resources to educate consumers and employees of the financial services industry about domestic counterterrorist financing activities, particularly about—

(A) how the public and private sector organizations involved in such activities can combat terrorism while protecting and preserving the lives and civil liberties of consumers and employees of the financial services industry; and

(B) how the consumers and employees of the financial services industry can assist the public and private sector organizations involved in such activities; and

(2) submit annual reports to Congress on efforts to accomplish subparagraphs (A) and (B) of paragraph (1).

(c) **REPORT ON PUBLIC-PRIVATE PARTNERSHIPS.**—Before the end of the 6-month period beginning on the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing—

(1) information on the efforts that the Department of the Treasury has made to encourage the formation of public-private partnerships to protect critical financial infrastructure and the type of support that the Department has provided to such partnerships; and

(2) recommendations for administrative or legislative action regarding such partnerships, as the Secretary may determine to be appropriate.

SEC. 7803. EMERGENCY SECURITIES RESPONSE ACT OF 2004.

(a) **SHORT TITLE.**—This section may be cited as the “Emergency Securities Response Act of 2004”.

(b) **EXTENSION OF EMERGENCY ORDER AUTHORITY OF THE SECURITIES AND EXCHANGE COMMISSION.**—

Emergency
Securities
Response Act of
2004.
15 USC 78a note.

(1) EXTENSION OF AUTHORITY.—Section 12(k)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(k)(2)) is amended to read as follows:

“(2) EMERGENCY ORDERS.—

“(A) IN GENERAL.—The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

“(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

“(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

“(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of—

“(I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or

“(II) the transmission or processing of securities transactions (other than transactions in exempted securities).

“(B) EFFECTIVE PERIOD.—An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

“(C) EXTENSION.—An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

“(D) SECURITY FUTURES.—If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

“(E) EXEMPTION.—In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of—

“(i) section 19(c); or

“(ii) section 553 of title 5, United States Code.”.

(c) CONSULTATION; DEFINITION OF EMERGENCY.—Section 12(k)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(k)(6)) is amended to read as follows:

“(6) CONSULTATION.—Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and

consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

“(7) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘emergency’ means—

“(i) a major market disturbance characterized by or constituting—

“(I) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

“(II) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

“(ii) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

“(I) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

“(II) the transmission or processing of securities transactions; and

“(B) notwithstanding section 3(a)(47), the term ‘securities laws’ does not include the Public Utility Holding Company Act of 1935.”.

(d) PARALLEL AUTHORITY OF THE SECRETARY OF THE TREASURY WITH RESPECT TO GOVERNMENT SECURITIES.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5) is amended by adding at the end the following:

“(h) EMERGENCY AUTHORITY.—The Secretary may, by order, take any action with respect to a matter or action subject to regulation by the Secretary under this section, or the rules of the Secretary under this section, involving a government security or a market therein (or significant portion or segment of that market), that the Commission may take under section 12(k)(2) with respect to transactions in securities (other than exempted securities) or a market therein (or significant portion or segment of that market).”.

(e) JOINT REPORT ON IMPLEMENTATION OF FINANCIAL SYSTEM RESILIENCE RECOMMENDATIONS.—

(1) REPORT REQUIRED.—Not later than April 30, 2006, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Securities and Exchange Commission shall prepare and submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a joint report on the efforts of the private sector to implement the Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall—

(A) examine the efforts to date of private sector financial services firms covered by the Interagency Paper to implement enhanced business continuity plans;

(B) examine the extent to which the implementation of such business continuity plans has been done in a geographically dispersed manner, including an analysis of the

extent to which such firms have located their main and backup facilities in separate electrical networks, in different watersheds, in independent transportation systems, and using separate telecommunications centers, and the cost and technological implications of further dispersal;

(C) examine the need to cover a larger range of private sector financial services firms that play significant roles in critical financial markets than those covered by the Interagency Paper; and

(D) recommend legislative and regulatory changes that will—

(i) expedite the effective implementation of the Interagency Paper by all covered financial services entities; and

(ii) optimize the effective implementation of business continuity planning by the financial services industry.

(3) **CONFIDENTIALITY.**—Any information provided to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Securities and Exchange Commission for the purposes of the preparation and submission of the report required by paragraph (1) shall be treated as privileged and confidential. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section 552.

(4) **DEFINITION.**—As used in this subsection, the terms “Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System” and “Interagency Paper” mean the interagency paper prepared by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Securities and Exchange Commission that was announced in the Federal Register on April 8, 2003.

SEC. 7804. PRIVATE SECTOR PREPAREDNESS.

It is the sense of Congress that the insurance industry and credit-rating agencies, where relevant, should carefully consider a company’s compliance with standards for private sector disaster and emergency preparedness in assessing insurability and credit-worthiness, to ensure that private sector investment in disaster and emergency preparedness is appropriately encouraged.

TITLE VIII—OTHER MATTERS

Subtitle A—Intelligence Matters

50 USC 403–1
note.

SEC. 8101. INTELLIGENCE COMMUNITY USE OF NATIONAL INFRA-STRUCTURE SIMULATION AND ANALYSIS CENTER.

(a) **IN GENERAL.**—The Director of National Intelligence shall establish a formal relationship, including information sharing, between the elements of the intelligence community and the National Infrastructure Simulation and Analysis Center.

(b) **PURPOSE.**—The purpose of the relationship under subsection (a) shall be to permit the intelligence community to take full advantage of the capabilities of the National Infrastructure Simulation and Analysis Center, particularly vulnerability and consequence

analysis, for real time response to reported threats and long term planning for projected threats.

Subtitle B—Department of Homeland Security Matters

SEC. 8201. HOMELAND SECURITY GEOSPATIAL INFORMATION.

6 USC 343 note.

(a) FINDINGS.—Congress makes the following findings:

(1) Geospatial technologies and geospatial data improve government capabilities to detect, plan for, prepare for, and respond to disasters in order to save lives and protect property.

(2) Geospatial data improves the ability of information technology applications and systems to enhance public security in a cost-effective manner.

(3) Geospatial information preparedness in the United States, and specifically in the Department of Homeland Security, is insufficient because of—

- (A) inadequate geospatial data compatibility;
- (B) insufficient geospatial data sharing; and
- (C) technology interoperability barriers.

(b) HOMELAND SECURITY GEOSPATIAL INFORMATION.—Section 703 of the Homeland Security Act of 2002 (6 U.S.C. 343) is amended—

(1) by inserting “(a) IN GENERAL.—” before “The Chief Information”; and

(2) by adding at the end the following:

“(b) GEOSPATIAL INFORMATION FUNCTIONS.—

“(1) DEFINITIONS.—As used in this subsection:

“(A) GEOSPATIAL INFORMATION.—The term ‘geospatial information’ means graphical or digital data depicting natural or manmade physical features, phenomena, or boundaries of the earth and any information related thereto, including surveys, maps, charts, remote sensing data, and images.

“(B) GEOSPATIAL TECHNOLOGY.—The term ‘geospatial technology’ means any technology utilized by analysts, specialists, surveyors, photogrammetrists, hydrographers, geodesists, cartographers, architects, or engineers for the collection, storage, retrieval, or dissemination of geospatial information, including—

- “(i) global satellite surveillance systems;
- “(ii) global position systems;
- “(iii) geographic information systems;
- “(iv) mapping equipment;
- “(v) geocoding technology; and
- “(vi) remote sensing devices.

“(2) OFFICE OF GEOSPATIAL MANAGEMENT.—

“(A) ESTABLISHMENT.—The Office of Geospatial Management is established within the Office of the Chief Information Officer.

“(B) GEOSPATIAL INFORMATION OFFICER.—

“(i) APPOINTMENT.—The Office of Geospatial Management shall be administered by the Geospatial Information Officer, who shall be appointed by the Secretary and serve under the direction of the Chief Information Officer.

“(ii) FUNCTIONS.—The Geospatial Information Officer shall assist the Chief Information Officer in carrying out all functions under this section and in coordinating the geospatial information needs of the Department.

“(C) COORDINATION OF GEOSPATIAL INFORMATION.—The Chief Information Officer shall establish and carry out a program to provide for the efficient use of geospatial information, which shall include—

“(i) providing such geospatial information as may be necessary to implement the critical infrastructure protection programs;

“(ii) providing leadership and coordination in meeting the geospatial information requirements of those responsible for planning, prevention, mitigation, assessment and response to emergencies, critical infrastructure protection, and other functions of the Department; and

“(iii) coordinating with users of geospatial information within the Department to assure interoperability and prevent unnecessary duplication.

“(D) RESPONSIBILITIES.—In carrying out this subsection, the responsibilities of the Chief Information Officer shall include—

“(i) coordinating the geospatial information needs and activities of the Department;

“(ii) implementing standards, as adopted by the Director of the Office of Management and Budget under the processes established under section 216 of the E-Government Act of 2002 (44 U.S.C. 3501 note), to facilitate the interoperability of geospatial information pertaining to homeland security among all users of such information within—

“(I) the Department;

“(II) State and local government; and

“(III) the private sector;

“(iii) coordinating with the Federal Geographic Data Committee and carrying out the responsibilities of the Department pursuant to Office of Management and Budget Circular A-16 and Executive Order 12906; and

“(iv) making recommendations to the Secretary and the Executive Director of the Office for State and Local Government Coordination and Preparedness on awarding grants to—

“(I) fund the creation of geospatial data; and

“(II) execute information sharing agreements regarding geospatial data with State, local, and tribal governments.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each fiscal year.”.

Subtitle C—Homeland Security Civil Rights and Civil Liberties Protection

Homeland
Security Civil
Rights and Civil
Liberties
Protection Act of
2004.
6 USC 101 note.

SEC. 8301. SHORT TITLE.

This subtitle may be cited as the “Homeland Security Civil Rights and Civil Liberties Protection Act of 2004”.

SEC. 8302. MISSION OF DEPARTMENT OF HOMELAND SECURITY.

Section 101(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 111(b)(1)) is amended—

- (1) in subparagraph (F), by striking “and” after the semicolon;
- (2) by redesignating subparagraph (G) as subparagraph (H); and
- (3) by inserting after subparagraph (F) the following:

“(G) ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland; and”.

SEC. 8303. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

Section 705(a) of the Homeland Security Act of 2002 (6 U.S.C. 345(a)) is amended—

- (1) by amending the matter preceding paragraph (1) to read as follows:

“(a) IN GENERAL.—The Officer for Civil Rights and Civil Liberties, who shall report directly to the Secretary, shall—”;
- (2) by amending paragraph (1) to read as follows:

“(1) review and assess information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department;”;
- (3) in paragraph (2), by striking the period at the end and inserting a semicolon; and
- (4) by adding at the end the following:

“(3) assist the Secretary, directorates, and offices of the Department to develop, implement, and periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities;

“(4) oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department;

“(5) coordinate with the Privacy Officer to ensure that—

“(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

“(B) Congress receives appropriate reports regarding such programs, policies, and procedures; and

“(6) investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General.”.

SEC. 8304. PROTECTION OF CIVIL RIGHTS AND CIVIL LIBERTIES BY OFFICE OF INSPECTOR GENERAL.

Section 8I of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

“(f)(1) The Inspector General of the Department of Homeland Security shall designate a senior official within the Office of Inspector General, who shall be a career member of the civil service at the equivalent to the GS-15 level or a career member of the Senior Executive Service, to perform the functions described in paragraph (2).

“(2) The senior official designated under paragraph (1) shall—

“(A) coordinate the activities of the Office of Inspector General with respect to investigations of abuses of civil rights or civil liberties;

“(B) receive and review complaints and information from any source alleging abuses of civil rights and civil liberties by employees or officials of the Department and employees or officials of independent contractors or grantees of the Department;

“(C) initiate investigations of alleged abuses of civil rights or civil liberties by employees or officials of the Department and employees or officials of independent contractors or grantees of the Department;

“(D) ensure that personnel within the Office of Inspector General receive sufficient training to conduct effective civil rights and civil liberties investigations;

“(E) consult with the Officer for Civil Rights and Civil Liberties regarding—

“(i) alleged abuses of civil rights or civil liberties; and

“(ii) any policy recommendations regarding civil rights and civil liberties that may be founded upon an investigation by the Office of Inspector General;

“(F) provide the Officer for Civil Rights and Civil Liberties with information regarding the outcome of investigations of alleged abuses of civil rights and civil liberties;

“(G) refer civil rights and civil liberties matters that the Inspector General decides not to investigate to the Officer for Civil Rights and Civil Liberties;

“(H) ensure that the Office of the Inspector General publicizes and provides convenient public access to information regarding—

“(i) the procedure to file complaints or comments concerning civil rights and civil liberties matters; and

“(ii) the status of corrective actions taken by the Department in response to Office of the Inspector General reports; and

“(I) inform the Officer for Civil Rights and Civil Liberties of any weaknesses, problems, and deficiencies within the Department relating to civil rights or civil liberties.”.

SEC. 8305. PRIVACY OFFICER.

Section 222 of the Homeland Security Act of 2002 (6 U.S.C. 142) is amended—

(1) in the matter preceding paragraph (1), by inserting “, who shall report directly to the Secretary,” after “in the Department”;

(2) in paragraph (4), by striking “and” at the end;

- (3) by redesignating paragraph (5) as paragraph (6); and
- (4) by inserting after paragraph (4) the following:
 - “(5) coordinating with the Officer for Civil Rights and Civil Liberties to ensure that—
 - “(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and
 - “(B) Congress receives appropriate reports on such programs, policies, and procedures; and”.

SEC. 8306. PROTECTIONS FOR HUMAN RESEARCH SUBJECTS OF THE DEPARTMENT OF HOMELAND SECURITY.

6 USC 112 note.

The Secretary of Homeland Security shall ensure that the Department of Homeland Security complies with the protections for human research subjects, as described in part 46 of title 45, Code of Federal Regulations, or in equivalent regulations as promulgated by such Secretary, with respect to research that is conducted or supported by the Department.

Subtitle D—Other Matters

SEC. 8401. AMENDMENTS TO CLINGER-COHEN ACT PROVISIONS TO ENHANCE AGENCY PLANNING FOR INFORMATION SECURITY NEEDS.

Chapter 113 of title 40, United States Code, is amended—

- (1) in section 11302(b), by inserting “security,” after “use,”;
- (2) in section 11302(c), by inserting “, including information security risks,” after “risks” both places it appears;
- (3) in section 11312(b)(1), by striking “information technology investments” and inserting “investments in information technology (including information security needs)”; and
- (4) in section 11315(b)(2), by inserting “, secure,” after “sound”.

SEC. 8402. ENTERPRISE ARCHITECTURE.

28 USC 531 note.

(a) **ENTERPRISE ARCHITECTURE DEFINED.**—In this section, the term “enterprise architecture” means a detailed outline or blueprint of the information technology of the Federal Bureau of Investigation that will satisfy the ongoing mission and goals of the Federal Bureau of Investigation and that sets forth specific and identifiable benchmarks.

(b) **ENTERPRISE ARCHITECTURE.**—The Federal Bureau of Investigation shall—

- (1) continually maintain and update an enterprise architecture; and
- (2) maintain a state of the art and up to date information technology infrastructure that is in compliance with the enterprise architecture of the Federal Bureau of Investigation.

(c) **REPORT.**—Subject to subsection (d), the Director of the Federal Bureau of Investigation shall, on an annual basis, submit to the Committees on the Judiciary of the Senate and House of Representatives a report on whether the major information technology investments of the Federal Bureau of Investigation are in compliance with the enterprise architecture of the Federal Bureau of Investigation and identify any inability or expectation of inability to meet the terms set forth in the enterprise architecture.

(d) **FAILURE TO MEET TERMS.**—If the Director of the Federal Bureau of Investigation identifies any inability or expectation of inability to meet the terms set forth in the enterprise architecture in a report under subsection (c), the report under subsection (c) shall—

(1) be twice a year until the inability is corrected;

(2) include a statement as to whether the inability or expectation of inability to meet the terms set forth in the enterprise architecture is substantially related to resources; and

(3) if the inability or expectation of inability is substantially related to resources, include a request for additional funding that would resolve the problem or a request to reprogram funds that would resolve the problem.

(e) **ENTERPRISE ARCHITECTURE, AGENCY PLANS AND REPORTS.**—This section shall be carried out in compliance with the requirements set forth in section 1016(e) and (h).

SEC. 8403. FINANCIAL DISCLOSURE AND RECORDS.

Deadline.
Reports.

(a) **STUDY.**—Not later than 90 days after the date of enactment of this Act, the Office of Government Ethics shall submit to Congress a report—

(1) evaluating the financial disclosure process for employees of the executive branch of Government; and

(2) making recommendations for improving that process.

5 USC 1101 note.

(b) **TRANSMITTAL OF RECORD RELATING TO PRESIDENTIALLY APPOINTED POSITIONS TO PRESIDENTIAL CANDIDATES.**—

(1) **DEFINITION.**—In this section, the term “major party” has the meaning given that term under section 9002(6) of the Internal Revenue Code of 1986.

(2) **TRANSMITTAL.**—

Deadline.

(A) **IN GENERAL.**—Not later than 15 days after the date on which a major party nominates a candidate for President, the Office of Personnel Management shall transmit an electronic record to that candidate on Presidentially appointed positions.

(B) **OTHER CANDIDATES.**—After making transmittals under subparagraph (A), the Office of Personnel Management may transmit an electronic record on Presidentially appointed positions to any other candidate for President.

(3) **CONTENT.**—The record transmitted under this subsection shall provide—

(A) all positions which are appointed by the President, including the title and description of the duties of each position;

(B) the name of each person holding a position described under subparagraph (A);

(C) any vacancy in the positions described under subparagraph (A), and the period of time any such position has been vacant;

(D) the date on which an appointment made after the applicable Presidential election for any position described under subparagraph (A) is necessary to ensure effective operation of the Government; and

(E) any other information that the Office of Personnel Management determines is useful in making appointments.

(c) REDUCTION OF POSITIONS REQUIRING APPOINTMENT WITH SENATE CONFIRMATION.—

(1) DEFINITION.—In this subsection, the term “agency” means an Executive agency as defined under section 105 of title 5, United States Code.

(2) REDUCTION PLAN.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the head of each agency shall submit a Presidential appointment reduction plan to—

Deadline.

- (i) the President;
- (ii) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (iii) the Committee on Government Reform of the House of Representatives.

(B) CONTENT.—The plan under this paragraph shall provide for the reduction of—

- (i) the number of positions within that agency that require an appointment by the President, by and with the advice and consent of the Senate; and
- (ii) the number of levels of such positions within that agency.

(d) OFFICE OF GOVERNMENT ETHICS REVIEW OF CONFLICT OF INTEREST LAW.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Director of the Office of Government Ethics, in consultation with the Attorney General of the United States, shall conduct a comprehensive review of conflict of interest laws relating to executive branch employment and submit a report to—

Deadline.
Reports.

(A) the President;

(B) the Committees on Homeland Security and Governmental Affairs and the Judiciary of the Senate;

(C) the Committees on Government Reform and the Judiciary of the House of Representatives.

(2) CONTENTS.—The report under this subsection shall examine sections 203, 205, 207, and 208 of title 18, United States Code.

**SEC. 8404. EXTENSION OF REQUIREMENT FOR AIR CARRIERS TO
HONOR TICKETS FOR SUSPENDED AIR PASSENGER
SERVICE.**

Section 145(c) of the Aviation and Transportation Security Act (49 U.S.C. 40101 note) is amended by striking “more than” and all that follows and inserting “after November 19, 2005.”.

Approved December 17, 2004.

LEGISLATIVE HISTORY—S. 2845 (H.R. 10):

HOUSE REPORTS: Nos. 108–724, Pt. 1 (Permanent Select Comm. on Intelligence), Pt. 2 (Comm. on Armed Services), Pt. 3 (Comm. on Financial Services), Pt. 4 (Comm. on Government Reform), and Pt. 5 (Comm. on the Judiciary) all accompanying H.R. 10, and 108–796 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 27–30, Oct. 1, 4–6, considered and passed Senate.

Oct. 16, considered and passed House pursuant to H. Res. 827.

Dec. 7, House agreed to conference report.

Dec. 8, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Dec. 17, Presidential remarks and statement.



Public Law 108–459
108th Congress

An Act

To redesignate the facility of the United States Postal Service located at 747 Broadway in Albany, New York, as the “United States Postal Service Henry Johnson Annex”.

Dec. 21, 2004
[H.R. 480]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION.

The facility of the United States Postal Service located at 747 Broadway in Albany, New York, and known as the United States Postal Service Carrier Annex, shall be known and designated as the “United States Postal Service Henry Johnson Annex”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “United States Postal Service Henry Johnson Annex”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 480:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Sept. 22, considered and passed House.
Dec. 7, considered and passed Senate.



Public Law 108–460
108th Congress

An Act

Dec. 21, 2004
[H.R. 2119]

To provide for the conveyance of Federal lands, improvements, equipment, and resource materials at the Oxford Research Station in Granville County, North Carolina, to the State of North Carolina.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LAND CONVEYANCE, OXFORD RESEARCH STATION, GRANVILLE COUNTY, NORTH CAROLINA.

(a) **CONVEYANCE REQUIRED.**—The Secretary of Agriculture shall convey, without consideration, to the State of North Carolina all right, title, and interest of the United States in and to a parcel of Federal real property consisting of approximately 4.28 acres and administered as part of the Oxford Research Station in Granville County, North Carolina. The conveyance shall include all improvements, equipment, and resource materials at the research station.

(b) **DESCRIPTION OF REAL PROPERTY.**—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the State.

(c) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 2119:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–461
108th Congress

An Act

To designate the United States courthouse located at 125 Bull Street in Savannah, Georgia, as the “Tomochichi United States Courthouse”.

Dec. 21, 2004
[H.R. 2523]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The United States courthouse located at 125 Bull Street in Savannah, Georgia, shall be known and designated as the “Tomochichi United States Courthouse”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the “Tomochichi United States Courthouse”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 2523:

HOUSE REPORTS: No. 108–447 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

May 11, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–462
108th Congress

An Act

Dec. 21, 2004
[H.R. 3124]

To designate the facility of the United States Geological Survey and the United States Bureau of Reclamation located at 230 Collins Road, Boise, Idaho, as the “F.H. Newell Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Geological Survey and the United States Bureau of Reclamation located at 230 Collins Road, Boise, Idaho, shall be known and designated as the “F.H. Newell Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “F.H. Newell Building”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 3124:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Sept. 29, considered and passed House.
Dec. 7, considered and passed Senate.



Public Law 108–463
108th Congress

An Act

To designate the Federal building located at 324 Twenty-Fifth Street in Ogden,
Utah, as the “James V. Hansen Federal Building”.

Dec. 21, 2004
[H.R. 3147]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. DESIGNATION.

The Federal building located at 324 Twenty-Fifth Street in Ogden, Utah, shall be known and designated as the “James V. Hansen Federal Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the “James V. Hansen Federal Building”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 3147 (S. 2398):

HOUSE REPORTS: No. 108–449 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 21, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–464
108th Congress

An Act

Dec. 21, 2004
[H.R. 3204]

Benjamin
Franklin
Commemorative
Coin Act.
31 USC 5112
note.

To require the Secretary of the Treasury to mint coins in commemoration of the
tercentenary of the birth of Benjamin Franklin, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Benjamin Franklin Commemorative Coin Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Benjamin Franklin made historic contributions to the development of our Nation in a number of fields: government, business, science, communications, and the arts.

(2) Benjamin Franklin was the only Founding Father to sign all of our Nation’s organizational documents.

(3) Benjamin Franklin spent his career as a successful printer, which included printing the official currency for the colonies of Pennsylvania, Delaware, New Jersey and Maryland.

(4) Franklin’s “Essay on Paper Currency” of 1741 proposed methods to fix the rate of exchange between the colonies and Great Britain.

(5) Benjamin Franklin, during the American Revolution, designed the first American coin, the “Continental” penny.

(6) Franklin made “A Penny Saved is A Penny Earned” a household phrase to describe the American virtues of hard work and economical living.

(7) Franklin played a major role in the design of the Great Seal of the United States, which appears on the One Dollar Bill and other major American symbols.

(8) Before 1979, Benjamin Franklin was the only non-president of the United States whose image graced circulating coin and paper currency.

(9) The official United States half dollar from 1948–1963 showed Franklin’s portrait, as designed by John Sinnock.

(10) Franklin’s “Way to Wealth” has come to symbolize America’s commitment to free enterprise.

(11) The Franklin Institute Science Museum in Philadelphia houses the first steam printing machine for coinage, used by the United States Mint, which was placed in service in 1836, the 130th anniversary year of Franklin’s birth.

(12) In 1976, Franklin Hall in The Franklin Institute Science Museum in Philadelphia was named the Official National Monument to the great patriot, scientist and inventor.

(13) The Franklin Institute and four other major Franklin-related Philadelphia cultural institutions joined hands in 2000 to organize international programs to commemorate the forthcoming 300th anniversary of Franklin's birth in 2006.

(14) The Congress passed the Benjamin Franklin Tercentenary Act in 2002, creating a panel of distinguished Americans, with its Secretariat in Philadelphia, to work with the private sector in recommending appropriate Tercentenary programs.

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATIONS.—The Secretary of the Treasury (hereinafter in this Act referred to as the “Secretary”) shall mint and issue the following coins:

(1) \$1 SILVER COINS WITH YOUNGER FRANKLIN IMAGE ON OBVERSE.—Not more than 250,000 \$1 coins bearing the designs specified in section 4(a)(2), each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(2) \$1 SILVER COINS WITH OLDER FRANKLIN IMAGE ON OBVERSE.—Not more than 250,000 \$1 coins bearing the designs specified in section 4(a)(3), each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of section 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

(d) USE OF THE UNITED STATES MINT AT PHILADELPHIA, PENNSYLVANIA.—It is the sense of the Congress that the coins minted under this Act should be struck at the United States Mint at Philadelphia, Pennsylvania, to the greatest extent possible.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of the life and legacy of Benjamin Franklin.

(2) \$1 COINS WITH YOUNGER FRANKLIN IMAGE.—

(A) OBVERSE.—The obverse of the coins minted under section 3(a)(1) shall bear the image of Benjamin Franklin as a young man.

(B) REVERSE.—The reverse of the coins minted under section 3(a)(1) shall bear an image related to Benjamin Franklin's role as a patriot and a statesman.

(3) \$1 COINS WITH OLDER FRANKLIN IMAGE.—

(A) OBVERSE.—The obverse of the coins minted under section 3(a)(2) shall bear the image of Benjamin Franklin as an older man.

(B) REVERSE.—The reverse of the coins minted under section 3(a)(2) shall bear an image related to Benjamin Franklin's role in developing the early coins and currency of the new country.

(4) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act there shall be—

- (A) a designation of the value of the coin;
- (B) an inscription of the year “2006”; and
- (C) inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, and “E Pluribus Unum”.

(b) **SELECTION.**—The design for the coins minted under this Act shall be—

- (1) selected by the Secretary after consultation with the Commission of Fine Arts; and
- (2) reviewed by the Citizens Coinage Advisory Committee established under section 5135 of title 31, United States Code.

SEC. 5. ISSUANCE OF COINS.

(a) **QUALITY OF COINS.**—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) **COMMENCEMENT OF ISSUANCE.**—The Secretary may issue coins minted under this Act beginning January 1, 2006, except that the Secretary may initiate sales of such coins, without issuance, before such date.

(c) **TERMINATION OF MINTING AUTHORITY.**—No coins shall be minted under this Act after December 31, 2006.

SEC. 6. SALE OF COINS.

(a) **SALE PRICE.**—Notwithstanding any other provision of law, the coins issued under this Act shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, overhead expenses, and marketing).

(b) **BULK SALES.**—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) **PREPAID ORDERS AT A DISCOUNT.**—

(1) **IN GENERAL.**—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) **DISCOUNT.**—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(d) **SALES OF SINGLE COINS AND SETS OF COINS.**—Coins of each design specified under section 4 may be sold separately or as a set containing a coin of each such design.

SEC. 7. SURCHARGES.

(a) **SURCHARGE REQUIRED.**—All sales shall include a surcharge of \$10 per coin.

(b) **DISTRIBUTION.**—Subject to section 5134(f) of title 31, United States Code, all surcharges which are received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Franklin Institute for purposes of the Benjamin Franklin Tercentenary Commission.

(c) **AUDITS.**—The Franklin Institute shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received by the Institute pursuant to subsection (b).

(d) **LIMITATION.**—Notwithstanding subsection (a), no surcharge may be included with respect to the issuance under this Act of any coin during a calendar year if, as of the time of such issuance, the issuance of such coin would result in the number of commemorative coin programs issued during such year to exceed the annual 2 commemorative coin program issuance limitation under section

5112(m)(1) of title 31, United States Code (as in effect on the date of the enactment of this Act). The Secretary of the Treasury may issue guidance to carry out this subsection.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 3204:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 17, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–465
108th Congress

An Act

Dec. 21, 2004
[H.R. 3242]

To ensure an abundant and affordable supply of highly nutritious fruits, vegetables, and other specialty crops for American consumers and international markets by enhancing the competitiveness of United States-grown specialty crops, and for other purposes.

Specialty Crops
Competitiveness
Act of 2004.
Agriculture.
7 USC 3101 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Specialty Crops Competitiveness Act of 2004”.

7 USC 1621 note.

SEC. 2. FINDINGS AND PURPOSE.

(a) **FINDINGS.**—Congress finds the following:

(1) A secure domestic food supply is a national security imperative for the United States.

(2) A competitive specialty crop industry in the United States is necessary for the production of an abundant, affordable supply of highly nutritious fruits, vegetables, and other specialty crops, which are vital to the health and well-being of all Americans.

(3) Increased consumption of specialty crops will provide tremendous health and economic benefits to both consumers and specialty crop growers.

(4) Specialty crop growers believe that there are numerous areas of Federal agriculture policy that could be improved to promote increased consumption of specialty crops and increase the competitiveness of producers in the efficient production of affordable specialty crops in the United States.

(5) As the globalization of markets continues, it is becoming increasingly difficult for United States producers to compete against heavily subsidized foreign producers in both the domestic and foreign markets.

(6) United States specialty crop producers also continue to face serious tariff and non-tariff trade barriers in many export markets.

(b) **PURPOSE.**—It is the purpose of this Act to make necessary changes in Federal agriculture policy to accomplish the goals of increasing fruit, vegetable, and nut consumption and improving the competitiveness of United States specialty crop producers.

7 USC 1621 note.

SEC. 3. DEFINITIONS.

In this Act:

(1) The term “specialty crop” means fruits and vegetables, tree nuts, dried fruits, and nursery crops (including floriculture).

(2) The term “State” means the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) The term “State department of agriculture” means the agency, commission, or department of a State government responsible for agriculture within the State.

TITLE I—STATE ASSISTANCE FOR SPECIALTY CROPS

SEC. 101. SPECIALTY CROP BLOCK GRANTS.

7 USC 1621 note.

(a) **AVAILABILITY AND PURPOSE OF GRANTS.**—Subject to the appropriation of funds to carry out this section, the Secretary of Agriculture shall make grants to States for each of the fiscal years 2005 through 2009 to be used by State departments of agriculture solely to enhance the competitiveness of specialty crops.

(b) **GRANTS BASED ON VALUE OF PRODUCTION.**—Subject to subsection (c), the amount of the grant for a fiscal year to a State under this section shall bear the same ratio to the total amount appropriated pursuant to the authorization of appropriations in subsection (i) for that fiscal year as the value of specialty crop production in the State during the preceding calendar year bears to the value of specialty crop production during the preceding calendar year in all States whose application for a grant for that fiscal year is accepted by the Secretary under subsection (f).

(c) **MINIMUM GRANT AMOUNT.**—Subject to the appropriation of sufficient funds to carry out this subsection, each State shall receive at least \$100,000 each fiscal year as a grant under this section notwithstanding the amount calculated under subsection (b) for the State.

(d) **ELIGIBILITY.**—To be eligible to receive a grant under this section, a State department of agriculture shall prepare and submit, for approval by the Secretary of Agriculture, an application at such time, in such a manner, and containing such information as the Secretary shall require by regulation, including—

Regulations.

(1) a State plan that meets the requirements of subsection (e);

(2) an assurance that the State will comply with the requirements of the plan; and

(3) an assurance that grant funds received under this section shall supplement the expenditure of State funds in support of specialty crops grown in that State, rather than replace State funds.

(e) **PLAN REQUIREMENTS.**—The State plan shall identify the lead agency charged with the responsibility of carrying out the plan and indicate how the grant funds will be utilized to enhance the competitiveness of specialty crops.

(f) **REVIEW OF APPLICATION.**—In reviewing the application of a State submitted under subsection (d), the Secretary of Agriculture shall ensure that the State plan would carry out the purpose of grant program, as specified in subsection (a). The Secretary may accept or reject applications for a grant under this section.

(g) **EFFECT OF NONCOMPLIANCE.**—If the Secretary of Agriculture, after reasonable notice to a State, finds that there has

been a failure by the State to comply substantially with any provision or requirement of the State plan, the Secretary may disqualify, for one or more years, the State from receipt of future grants under this section.

Deadline.

(h) **AUDIT REQUIREMENTS.**—For each year that a State receives a grant under this section, the State shall conduct an audit of the expenditures of grant funds by the State. Not later than 30 days after the completion of the audit, the State shall submit a copy of the audit to the Secretary of Agriculture.

(i) **AUTHORIZATION OF APPROPRIATIONS.**—For each of the fiscal years 2005 through 2009, there is authorized to be appropriated to the Secretary of Agriculture \$44,500,000 to make grants under this section.

TITLE II—SPECIALTY CROP ADVANCEMENT

SEC. 201. TECHNICAL ASSISTANCE FOR SPECIALTY CROPS.

For each of the fiscal years 2005 through 2009, there is authorized to be appropriated to the Secretary of Agriculture \$2,000,000 to carry out section 3205 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5680). Amounts appropriated pursuant to this authorization of appropriations shall be in addition to any other funds made available to carry out such section.

7 USC 7712a.

SEC. 202. REDUCTION IN BACKLOG OF AGRICULTURAL EXPORT PETITIONS.

(a) **REDUCTION EFFORTS.**—To the maximum extent practicable, the Secretary of Agriculture shall endeavor to reduce the backlog in the number of applications for permits for the export of United States agricultural commodities. In achieving such reduction, the Secretary shall not dilute or diminish existing personnel resources that are currently managing sanitary and phytosanitary issues for—

(1) United States agricultural commodities for which exportation is sought; and

(2) interdiction and control of pests and diseases, including for the evaluation of pest and disease concerns of foreign agricultural commodities for which importation is sought.

(b) **REPORT.**—The Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report specifying, for the year covered by the report—

(1) the total number of applications processed to completion;

(2) the number of backlog applications processed to completion;

(3) the percentage of backlog applications processed to completion; and

(4) the number of backlog applications remaining.

SEC. 203. REPORT ON SANITARY AND PHYTOSANITARY EXPORT ISSUES.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report

on significant sanitary and phytosanitary issues that affect the export of specialty crops.

TITLE III—SPECIALTY CROP RESEARCH

SEC. 301. METHYL BROMIDE ALTERNATIVES.

7 USC 5925 note.

(a) **PRIORITY.**—The Secretary of Agriculture shall elevate the priority of current methyl bromide alternative research and extension activities and reexamine the risks and benefits of extending the phase-out deadline in effect on the date of the enactment of this Act, including the estimated cost to the grower or processor associated with any alternatives proposed.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—For each of the fiscal years 2005 through 2009, there is authorized to be appropriated to the Secretary of Agriculture \$5,000,000 to carry out this section.

SEC. 302. NATIONAL SPECIALTY CROP RESEARCH PROGRAM.

Section 1672(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925(e)) is amended by adding at the end of the following new paragraph:

“(45) **SPECIALTY CROP RESEARCH.**—Research and extension grants may be made under this section for the purpose of improving the efficiency, productivity, and profitability of specialty crop production in the United States.”.

SEC. 303. SPECIALTY CROP COMMITTEE.

The National Agricultural Research, Extension, and Teaching Policy Act of 1977 is amended by inserting after section 1408 (7 U.S.C. 3123) the following new section:

“SEC. 1408A. SPECIALTY CROP COMMITTEE.

7 USC 3123a.

“(a) **ESTABLISHMENT.**—Not later than 90 days after the date of the enactment of the Specialty Crops Competitiveness Act of 2004, the executive committee of the Advisory Board shall establish, and appoint the initial members of, a permanent specialty crops committee that will be responsible for studying the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry.

Deadline.

“(b) **MEMBERS.**—Individuals who are not members of the Advisory Board may be appointed as members of the specialty crops committee. Members of the specialty crops committee shall serve at the discretion of the executive committee.

“(c) **ANNUAL COMMITTEE REPORT.**—Not later than 180 days after the establishment of the specialty crops committee, and annually thereafter, the specialty crops committee shall submit to the Advisory Board a report containing the findings of its study under subsection (a). The specialty crops committee shall include in each report recommendations regarding the following:

“(1) Measures designed to improve the efficiency, productivity, and profitability of specialty crop production in the United States.

“(2) Measures designed to improve competitiveness in research, extension, and economics programs affecting the specialty crop industry.

“(3) Programs that would—

“(A) enhance the quality and shelf-life of fresh fruits and vegetables, including their taste and appearance;

“(B) develop new crop protection tools and expand the applicability and cost-effectiveness of integrated pest management;

“(C) prevent the introduction of foreign invasive pests and diseases;

“(D) develop new products and new uses of specialty crops;

“(E) develop new and improved marketing tools for specialty crops;

“(F) enhance food safety regarding specialty crops;

“(G) improve mechanization of production practices; and

“(H) enhance irrigation techniques used in specialty crop production.

“(d) CONSIDERATION BY SECRETARY.—In preparing the annual budget recommendations for the Department of Agriculture, the Secretary shall take into consideration those findings and recommendations contained in the most-recent report of the specialty crops committee that are adopted by the Advisory Board.

“(e) ANNUAL REPORT BY SECRETARY.—In the budget material submitted to Congress by the Secretary in connection with the budget submitted pursuant to section 1105 of title 31, United States Code, for a fiscal year, the Secretary shall include a report describing how the Secretary addressed each recommendation of the specialty crops committee described in subsection (d).”.

TITLE IV—PEST AND DISEASE RESPONSE FUND

7 USC 8321.

SEC. 401. PEST AND DISEASE RESPONSE FUND.

(a) ESTABLISHMENT.—There is established on the books of the Treasury an account to be known as the “Pest and Disease Response Fund”. There shall be deposited into the Fund any proceeds received by the Secretary of Agriculture as reimbursement for services provided by the Secretary using amounts in the Fund.

(b) AVAILABILITY.—Amounts in the Fund shall remain available until expended.

(c) USE OF FUND.—In implementing the Animal Health Protection Act (7 U.S.C. 8301 et seq.) and the Plant Protection Act (7 U.S.C. 7701 et seq.), the Secretary of Agriculture shall have complete discretion regarding the use of amounts in the Fund to support emergency eradication and research activities in response to economic and health threats posed by pests and diseases affecting agricultural commodities.

(d) AUTHORIZATION OF APPROPRIATIONS.—For each of the fiscal years 2005 through 2009, there is authorized to be appropriated to the Secretary of Agriculture \$1,000,000 for deposit in the Fund.

SEC. 402. IMPORT AND EXPORT REGULATION REVIEW.

Contracts.

(a) PEER REVIEW.—The Secretary of Agriculture shall enter into an agreement with the National Plant Board to obtain a peer review of the procedures and standards that govern the consideration of import and export requests under section 412 of the Plant Protection Act (7 U.S.C. 7712). The peer review shall be consistent with the guidance by the Office of Management and Budget pertaining to peer review and information quality.

(b) **ELEMENTS OF REVIEW.**—The peer review required by subsection (a) shall address, at a minimum—

(1) the preparation of risk assessments; and

(2) the sufficiency, type, and quality of data that should be submitted to the Secretary of Agriculture.

(c) **SUBMISSION OF RESULTS.**—The results of the peer review conducted under subsection (a) shall be submitted to the Secretary and Congress not later than 180 days after the date of the enactment of this Act.

SEC. 403. MAINTENANCE OF FREDERICKSBURG INSPECTION TRAINING CENTER. Virginia.

For each of the fiscal years 2005 through 2009, there is authorized to be appropriated to the Secretary of Agriculture \$1,500,000 for the maintenance of the Agricultural Marketing Service inspection training center in Fredericksburg, Virginia.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 3242:

HOUSE REPORTS: No. 108–750, Pt. 1 (Comm. on Agriculture).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Dec. 7, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Dec. 21, Presidential statement.



Public Law 108–466
108th Congress

An Act

Dec. 21, 2004
[H.R. 3734]

To designate the Federal building located at Fifth and Richardson Avenues in Roswell, New Mexico, as the “Joe Skeen Federal Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal building located at Fifth and Richardson Avenues in Roswell, New Mexico, shall be known and designated as the “Joe Skeen Federal Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the “Joe Skeen Federal Building”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 3734:

HOUSE REPORTS: No. 108–596 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 22, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–467
108th Congress

An Act

To designate the Federal building and United States courthouse located at 615 East Houston Street in San Antonio, Texas, as the “Hipolito F. Garcia Federal Building and United States Courthouse”.

Dec. 21, 2004
[H.R. 3884]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal building and United States courthouse located at 615 East Houston Street in San Antonio, Texas, shall be known and designated as the “Hipolito F. Garcia Federal Building and United States Courthouse”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in section 1 shall be deemed to be a reference to the “Hipolito F. Garcia Federal Building and United States Courthouse”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 3884:

HOUSE REPORTS: No. 108–557 (Comm. on Transportation and Infrastructure).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 21, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–468
108th Congress

An Act

Dec. 21, 2004
[H.R. 4232]

To redesignate the facility of the United States Postal Service located at 4025 Feather Lakes Way in Kingwood, Texas, as the “Congressman Jack Fields Post Office”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REDESIGNATION.

The facility of the United States Postal Service located at 4025 Feather Lakes Way in Kingwood, Texas, and known as the Kingwood Post Office, is hereby redesignated as the “Congressman Jack Fields Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Congressman Jack Fields Post Office”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 4232:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–469
108th Congress

An Act

To amend chapter 84 of title 5, United States Code, to provide for Federal employees to make elections to make, modify, and terminate contributions to the Thrift Savings Fund at any time, and for other purposes.

Dec. 21, 2004
[H.R. 4324]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELECTIONS FOR THRIFT SAVINGS PLAN CONTRIBUTIONS.

(a) **SHORT TITLE.**—This Act may be cited as the “Thrift Savings Plan Open Elections Act of 2004”.

(b) **IN GENERAL.**—Section 8432(b)(1)(A) of title 5, United States Code, is amended—

(1) in the first sentence—

(A) by inserting “(i)” before “The Executive Director”; and

(B) by striking “shall be afforded a reasonable period every 6 months to elect to” and inserting “may”;

(2) by striking the second sentence; and

(3) by adding at the end the following:

“(ii) An election to make contributions under this paragraph—

“(I) may be made at any time;

“(II) shall take effect on the earliest date after the election that is administratively feasible; and

“(III) shall remain in effect until modified or terminated.”.

(c) **CONTINUATION OF NOT MAKING IMMEDIATE AGENCY CONTRIBUTIONS.**—Section 8432(b)(4)(C) of title 5, United States Code, is amended—

(1) by inserting “(i)” after “(C)”; and

(2) by adding at the end the following:

“(ii) Notwithstanding subparagraph (A) or (B), contributions under paragraphs (1) and (2) of subsection (c) shall not begin to be made with respect to an employee or Member described under paragraph (2)(A) or (B) until the date that such contributions would have begun to be made in accordance with this paragraph as administered on the date preceding the date of enactment of the Thrift Savings Plan Open Elections Act of 2004.”.

(d) **TECHNICAL AND CONFORMING AMENDMENTS.**—

(1) **CIVIL SERVICE RETIREMENT SYSTEM PARTICIPATION.**—Section 8351(a)(2) of title 5, United States Code, is amended by striking “only during a period” and inserting “as”.

(2) **CONTRIBUTIONS BY PREVIOUSLY INELIGIBLE EMPLOYEES.**—Section 8432(b)(2) of title 5, United States Code, is amended—

Thrift Savings
Plan Open
Elections Act of
2004.
5 USC 101 note.

(A) in subparagraph (A), by striking “second period” and inserting “date”;

(B) in subparagraph (C), by striking “second period” and inserting “date”; and

(C) in subparagraph (D) by striking “other than during a period afforded” and inserting “as provided”.

(3) PROVISION OF INFORMATION.—Section 8439(c)(2) of title 5, United States Code, is amended by striking “at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title” and inserting “on a regular basis”.

(4) JUSTICES AND JUDGES.—Section 8440a(a)(2) of title 5, United States Code, is amended by striking “only during a period” and inserting “as”.

(5) BANKRUPTCY JUDGES AND MAGISTRATE JUDGES.—Section 8440b(a)(2) of title 5, United States Code, is amended by striking “only during a period” and inserting “as”.

(6) COURT OF FEDERAL CLAIMS JUDGES.—Section 8440c(a)(2) of title 5, United States Code, is amended by striking “only during a period” and inserting “as”.

(7) JUDGES OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.—Section 8440d(a)(2) of title 5, United States Code, is amended by striking “only during a period” and inserting “as”.

(8) MEMBERS OF THE UNIFORMED SERVICES.—Section 8440e(b)(2)(A) of title 5, United States Code, is amended—

(A) by striking “only during a period” and inserting “as”; and

(B) by striking all after section “8432(b)” and inserting a period.

5 USC 8350 note. **SEC. 2. ENHANCING FINANCIAL LITERACY.**

(a) IN GENERAL.—The Federal Retirement Thrift Investment Board (in this section referred to as the “Board”) shall periodically evaluate whether the tools available to participants provide the information needed to understand, evaluate, and compare financial products, services, and opportunities offered through the Thrift Savings Plan. The Board shall use these evaluations to improve its existing education program for Thrift Savings Plan participants.

(b) REPORT ON FINANCIAL LITERACY EFFORTS.—The Board shall annually report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on its Thrift Savings Plan education efforts on behalf of plan participants.

(c) STRATEGY.—As part of the retirement training offered by Office of Personnel Management under section 8350 of title 5, United States Code, the Office, in consultation with the Board, shall—

(1) not later than 6 months after the date of enactment of this Act, develop and implement a retirement financial literacy and education strategy for Federal employees that—

(A) shall educate Federal employees on the need for retirement savings and investment; and

(B) provide information related to how Federal employees can receive additional information on how to plan for retirement and calculate what their retirement

Deadline.

investment should be in order to meet their retirement goals; and

(2) submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the strategy described under paragraph (1). Reports.

SEC. 3. TECHNICAL CORRECTIONS.

Subchapter III of chapter 84 of title 5, United States Code, is amended—

(1) in section 8433(d)(1), by striking “paragraph (3)” and inserting “paragraph (2)”; and

(2) in section 8440b(b)—

(A) in paragraph (2), by striking “bankruptcy judge’s or magistrate’s” and inserting “bankruptcy judge’s or magistrate judge’s”; and

(B) in paragraphs (4)(B) and (8), by striking “bankruptcy judge or magistrate” each place it appears and inserting “bankruptcy judge or magistrate judge”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 4324:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 19, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–470
108th Congress

An Act

Dec. 21, 2004
[H.R. 4620]

To confirm the authority of the Secretary of Agriculture to collect approved State commodity assessments on behalf of the State from the proceeds of marketing assistance loans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

7 USC 7416a.

SECTION 1. CONFIRMATION OF AUTHORITY OF SECRETARY OF AGRICULTURE TO COLLECT STATE COMMODITY ASSESSMENTS.

(a) COLLECTION FROM MARKETING ASSISTANCE LOANS.—The Secretary of Agriculture may collect commodity assessments from the proceeds of a marketing assistance loan for a producer if the assessment is required to be paid by the producer or the first purchaser of a commodity pursuant to a State law or pursuant to an authority administered by the Secretary. This collection authority does not extend to a State tax or other revenue collection activity by a State.

(b) COLLECTION PURSUANT TO AGREEMENT.—The collection of an assessment under subsection (a) shall be made as specified in an agreement between the Secretary of Agriculture and the State requesting the collection.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 4620 (S. 2866):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–471
108th Congress

An Act

To designate the facility of the United States Postal Service located at 140 Sacramento Street in Rio Vista, California, as the “Adam G. Kinser Post Office Building”.

Dec. 21, 2004
[H.R. 4807]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 140 Sacramento Street in Rio Vista, California, shall be known and designated as the “Adam G. Kinser Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Adam G. Kinser Post Office Building”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 4807:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–472
108th Congress

An Act

Dec. 21, 2004
[H.R. 4847]

To designate the facility of the United States Postal Service located at 560 Bay Isles Road in Longboat Key, Florida, as the “Lieutenant General James V. Edmundson Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 560 Bay Isles Road in Longboat Key, Florida, shall be known and designated as the “Lieutenant General James V. Edmundson Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Lieutenant General James V. Edmundson Post Office Building”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 4847:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.
Dec. 7, considered and passed Senate.



Public Law 108–473
108th Congress

An Act

To designate the facility of the United States Postal Service located at 25 McHenry Street in Rosine, Kentucky, as the “Bill Monroe Post Office”.

Dec. 21, 2004
[H.R. 4968]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 25 McHenry Street in Rosine, Kentucky, shall be known and designated as the “Bill Monroe Post Office”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Bill Monroe Post Office”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 4968:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–474
108th Congress

An Act

Dec. 21, 2004
[H.R. 5360]

To authorize grants to establish academies for teachers and students of American history and civics, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

American History
and Civics
Education Act of
2004.
20 USC 6713
note.
20 USC 6713
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “American History and Civics Education Act of 2004”.

SEC. 2. PRESIDENTIAL ACADEMIES FOR TEACHING OF AMERICAN HISTORY AND CIVICS; CONGRESSIONAL ACADEMIES FOR STUDENTS OF AMERICAN HISTORY AND CIVICS.

(a) **ESTABLISHMENT.**—The Secretary of Education (referred to in this Act as the “Secretary”) may award not more than 12 grants, on a competitive basis—

(1) to entities to establish Presidential Academies for Teaching of American History and Civics that may offer workshops for both veteran and new teachers of American history and civics; and

(2) to entities to establish Congressional Academies for Students of American History and Civics.

(b) **APPLICATION.**—An entity that desires to receive a grant under subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) **DEMONSTRATED EXPERTISE.**—The Secretary shall require that each entity, to be eligible to receive a grant under this section, demonstrate expertise in historical methodology or the teaching of history.

(d) **AVAILABLE FUNDS.**—To carry out this section, the Secretary may use any funds appropriated for fiscal year 2005 or any subsequent fiscal year to carry out part D of title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7241 et seq.).

SEC. 3. NATIONAL HISTORY DAY PROGRAM.

20 USC 6713
note.

The Secretary may award grants to the National History Day Program for the purpose of continuing and expanding its activities to promote the study of history and improve instruction.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 5360:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 19, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–475
108th Congress

An Act

Dec. 21, 2004
[H.R. 5364]

To designate the facility of the United States Postal Service located at 5505 Stevens Way in San Diego, California, as the “Earl B. Gilliam/Imperial Avenue Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 5505 Stevens Way in San Diego, California, shall be known and designated as the “Earl B. Gilliam/Imperial Avenue Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Earl B. Gilliam/Imperial Avenue Post Office Building”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 5364:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 17, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–476
108th Congress

An Act

To treat certain arrangements maintained by the YMCA Retirement Fund as church plans for the purposes of certain provisions of the Internal Revenue Code of 1986, and for other purposes.

Dec. 21, 2004
[H.R. 5365]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN ARRANGEMENTS MAINTAINED BY THE YMCA RETIREMENT FUND TREATED AS CHURCH PLANS.

(a) RETIREMENT PLANS.—

(1) IN GENERAL.—For purposes of sections 401(a) and 403(b) of the Internal Revenue Code of 1986, any retirement plan maintained by the YMCA Retirement Fund as of January 1, 2003, shall be treated as a church plan (within the meaning of section 414(e) of such Code) which is maintained by an organization described in section 414(e)(3)(A) of such Code.

(2) TAX-DEFERRED RETIREMENT PLAN.—In the case of a retirement plan described in paragraph (1) which allows contributions to be made under a salary reduction agreement—

(A) such treatment shall not apply for purposes of section 415(c)(7) of such Code, and

(B) any account maintained for a participant or beneficiary of such plan shall be treated for purposes of such Code as a retirement income account described in section 403(b)(9) of such Code, except that such account shall not, for purposes of section 403(b)(12) of such Code, be treated as a contract purchased by a church for purposes of section 403(b)(1)(D) of such Code.

(3) MONEY PURCHASE PENSION PLAN.—In the case of a retirement plan described in paragraph (1) which is subject to the requirements of section 401(a) of such Code—

(A) such plan (but not any reserves held by the YMCA Retirement Fund)—

(i) shall be treated for purposes of such Code as a defined contribution plan which is a money purchase pension plan, and

(ii) shall be treated as having made an election under section 410(d) of such Code for plan years beginning after December 31, 2005, except that notwithstanding the election—

(I) nothing in the Employee Retirement Income Security Act of 1974 or such Code shall prohibit the YMCA Retirement Fund from commingling for investment purposes the assets of the electing plan with the assets of such Fund

and with the assets of any employee benefit plan maintained by such Fund, and

(II) nothing in this section shall be construed as subjecting any assets described in subclause (I), other than the assets of the electing plan, to any provision of such Act,

(B) notwithstanding section 401(a)(11) or 417 of such Code or section 205 of such Act, such plan may offer a lump-sum distribution option to participants who have not attained age 55 without offering such participants an annuity option, and

(C) any account maintained for a participant or beneficiary of such plan shall, for purposes of section 401(a)(9) of such Code, be treated as a retirement income account described in section 403(b)(9) of such Code.

(4) SELF-FUNDED DEATH BENEFIT PLAN.—For purposes of section 7702(j) of such Code, a retirement plan described in paragraph (1) shall be treated as an arrangement described in section 7702(j)(2).

(b) YMCA RETIREMENT FUND.—For purposes of this section, the term “YMCA Retirement Fund” means the Young Men’s Christian Association Retirement Fund, a corporation created by an Act of the State of New York which became law on April 30, 1921.

(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2003.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 5365:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 19, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–477
108th Congress

An Act

To designate the facility of the United States Postal Service located at 4985 Moorhead Avenue in Boulder, Colorado, as the “Donald G. Brotzman Post Office Building”.

Dec. 21, 2004
[H.R. 5370]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 4985 Moorhead Avenue in Boulder, Colorado, shall be known and designated as the “Donald G. Brotzman Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Donald G. Brotzman Post Office Building”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 5370:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Nov. 19, considered and passed House.
Dec. 7, considered and passed Senate.



Public Law 108–478
108th Congress

An Act

Dec. 21, 2004
[H.R. 4829]

To designate the facility of the United States Postal Service located at 103 East Kleberg in Kingsville, Texas, as the “Irma Rangel Post Office Building”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The facility of the United States Postal Service located at 103 East Kleberg in Kingsville, Texas, shall be known and designated as the “Irma Rangel Post Office Building”.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in section 1 shall be deemed to be a reference to the “Irma Rangel Post Office Building”.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.R. 4829:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–479
108th Congress

Joint Resolution

Recognizing the 60th anniversary of the Battle of Peleliu and the end of Imperial Japanese control of Palau during World War II and urging the Secretary of the Interior to work to protect the historic sites of the Peleliu Battlefield National Historic Landmark and to establish commemorative programs honoring the Americans who fought there.

Dec. 21, 2004
[H.J. Res. 102]

Whereas on December 7, 1941, Imperial Japan bombed the United States fleet at Pearl Harbor, Hawaii, forcing the United States to declare war on Japan;

Whereas by 1944, United States victories in the Southwest and Central Pacific were bringing the war ever closer to Japan;

Whereas on September 15, 1944, after three days of naval gunfire, United States forces landed on the beaches of Peleliu, in the Palau islands chain, with the objective of capturing a vital air field;

Whereas the battle for Peleliu lasted more than two months, during which the United States suffered over 10,000 casualties, including an estimated 1,250 Marines and 540 soldiers killed in action;

Whereas George H.W. Bush, the 41st President of the United States, served as a torpedo-bomber pilot in the Navy and sank an armed Japanese trawler during Operation Snapshot, an operation to weaken Japanese defenses on Peleliu before United States Marines invaded the island in September 1944;

George H.W.
Bush.

Whereas former Secretary of State George P. Shultz served as an officer in the Marine Corps detached to the 81st Infantry Division of the Army during the Battle of Peleliu and participated in the seizure, occupation, and defense of Angaur Island in the Palau islands chain;

George P. Shultz.

Whereas on February 4, 1985, the Secretary of the Interior officially designated the Peleliu battlefield as the “Peleliu Battlefield National Historic Landmark”;

Whereas the landmark plaque has been mounted and is now displayed in a prominent place in the village of Kloulkubed;

Whereas that designation as a national historic landmark attests not only to the significance of the battlefield site, but also to the integrity of the site;

Whereas the Peleliu battlefield today has considerable physical evidence of the battle, including about 100 identified individual cave sites occupied by the defending Japanese troops, as well as pill boxes, casemates, and large military equipment, both American and Japanese, which played a direct role in the battle for Peleliu; and

Whereas thanks to the sacrifices of members of the United States Armed Forces who participated in the Battle of Peleliu, the Republic of Palau today is an independent, democratic nation and a strong ally of the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress recognizes the bravery and courage of the members of the United States Armed Forces who participated in the Battle of Peleliu and of all veterans who fought in the Pacific Theater during World War II.

SEC. 2. The Congress urges the Secretary of the Interior—

(1) to recognize the year 2004 as the 60th anniversary of the Battle of Peleliu and the end of Imperial Japanese control of Palau during World War II;

(2) to work to protect the historic sites of the Peleliu Battlefield National Historic Landmark; and

(3) to establish commemorative programs honoring the Americans who fought at those sites.

Approved December 21, 2004.

LEGISLATIVE HISTORY—H.J. Res. 102:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Dec. 7, considered and passed Senate.



Public Law 108–480
108th Congress

An Act

To authorize funds for an educational center for the Castillo de San Marcos National Monument, and for other purposes.

Dec. 23, 2004
[H.R. 2457]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Florida.
16 USC 431 note.

TITLE I—CASTILLO DE SAN MARCOS NATIONAL MONUMENT PRESERVATION ACT

Castillo de San Marcos National Monument Preservation and Education Act.

SEC. 101. SHORT TITLE.

This title may be cited as the “Castillo de San Marcos National Monument Preservation and Education Act”.

SEC. 102. VISITOR CENTER.

(a) **AUTHORIZATION.**—Subject to the availability of appropriations and the project being prioritized in the National Park Services 5-year, line-item construction program, the Secretary of the Interior (referred to in this section as the “Secretary”) may design and construct a Visitor Center for the Castillo de San Marcos National Monument (referred to in this section as the “Monument”).

(b) **PREFERRED ALTERNATIVE.**—The Visitor Center authorized in subsection (a) shall be located and constructed in accordance with the Preferred Alternative identified in the Record of Decision for the General Management Plan for the Monument, expected to be signed in 2005.

SEC. 103. COOPERATIVE AGREEMENT.

The Secretary may enter into cooperative agreements with the City of St. Augustine, Florida, the Colonial St. Augustine Preservation Foundation, other Federal, State, and local departments or agencies, academic institutions, and non-profit entities for the planning and design, construction, management, and operation of the Visitor Center.

SEC. 104. BOUNDARY EXPANSION.

(a) **PROPERTY ACQUISITION.**—If the Preferred Alternative for the Visitor Center authorized by section 102 is located outside the boundary of the Monument, the Secretary is authorized to acquire the site for the Visitor Center, from willing sellers, by donation, purchase with donated or appropriated funds, or by exchange.

(b) ADMINISTRATION OF NEWLY ACQUIRED LAND.—Land added to the Monument pursuant to subsection (a) shall be administered by the Secretary in accordance with applicable laws and regulations.

(c) BOUNDARY MODIFICATION.—The boundary of the Monument shall be modified to reflect the acquisition of land authorized in subsection (a) after completion of the acquisition.

SEC. 105. PROJECT APPROVAL.

Prior to initiating any planning, design, or construction on the Visitor Center authorized by section 102, the project must be reviewed and approved by the National Park Service consistent with partnership construction guidelines established by that agency.

Castillo de San
Marcos National
Monument
Boundary
Adjustment Act
of 2004.

TITLE II—CASTILLO DE SAN MARCOS NATIONAL MONUMENT BOUNDARY MODIFICATION

SEC. 201. SHORT TITLE.

This title may be cited as the “Castillo de San Marcos National Monument Boundary Adjustment Act of 2004”.

SEC. 202. FINDINGS.

Congress finds the following:

(1) The early defense lines for Fort Marion, Florida, today known as the Castillo de San Marcos National Monument, included defenses extending in a line due west to the Sebastian River, a distance of about one half mile.

(2) In the 1830’s, during the Seminole Wars in Florida, these defensive lines were maintained, but as Florida became more settled they fell into disrepair and/or became obsolete.

(3) In 1908 the War Department deeded much of the property running west to the Sebastian River to the St. Johns County Board of Public Instruction. The portion of this property remaining in federal ownership today is occupied by Orange Street, a City of St. Augustine, Florida street.

(4) For nearly a century, the City of St. Augustine has maintained and managed Orange Street, a modern city street, and associated utilities in the Orange Street corridor.

(5) Any archeological remains that are still present on the property overlaid by Orange Street are adequately protected by the City’s archeological ordinances, and by the City having an archeologist on staff.

(6) Although the city currently operates Orange Street under a right-of-way from the National Park Service, from a management perspective it is appropriate for the City of St. Augustine to own Orange Street.

SEC. 203. BOUNDARY ADJUSTMENT.

(a) CONVEYANCE OF LAND.—The Secretary of the Interior shall convey, without consideration, to the City of St. Augustine, Florida, all right, title, and interest of the United States in and to the lands known as Orange Street, a portion of the Castillo de San Marcos National Monument (Monument), consisting of approximately 3.1 acres, as shown on the map entitled Castillo de San Marcos National Monument Boundary Adjustment and Correction, numbered 343/80060, and dated April 2003. Upon completion of

the conveyance, the Secretary shall revise the boundary of the Monument to exclude the land conveyed.

(b) BOUNDARY REVISION.—Effective on the date of the enactment of this Act, the boundary of the Monument is revised to include an area of approximately 0.45 acres, as shown on the map identified in subsection (a). The Secretary shall administer the lands included in the boundary as part of the national monument in accordance with applicable laws and regulations.

Effective date.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 2457:

HOUSE REPORTS: No. 108–639 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 13, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–481
108th Congress

An Act

Dec. 23, 2004
[H.R. 2619]

Kilauea Point
National Wildlife
Refuge
Expansion Act of
2004.
16 USC 668dd
note.

To provide for the expansion of Kilauea Point National Wildlife Refuge.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Kilauea Point National Wildlife Refuge Expansion Act of 2004”.

SEC. 2. EXPANSION OF KILAUEA POINT NATIONAL WILDLIFE REFUGE.

(a) IN GENERAL.—The Secretary of the Interior may acquire by donation, purchase with donated or appropriated funds, or exchange, all or a portion of the land or interests in land described in subsection (b), as depicted on a map on file with the United States Fish and Wildlife Service entitled “Kilauea Point Wildlife Refuge Expansion Area” and dated April 22, 2004.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) is the following:

(1) Parcel 1, consisting of approximately 12 acres known as the Kilauea Bay property.

(2) Parcel 2, consisting of approximately 40 acres known as the Kilauea Vistas property.

(3) Parcel 3, consisting of approximately 162 acres known as the Kilauea Falls Ranch.

(4) Parcel 4, consisting of approximately 5 acres known as the Kauai Public Land Trust Kahili Beach property.

(5) Parcel 5, comprised of lot 10c of the parcel known as Kilauea Garden Farms, and consisting of approximately 15 acres.

(c) BOUNDARY REVISIONS.—The Secretary may make such minor revisions in the boundaries of any of the parcels described in subsection (b) as may be appropriate to facilitate the acquisition of land or interests under subsection (a).

(d) INCLUSION IN REFUGE.—Land and interests acquired under this section shall become part of the Kilauea Point National Wildlife Refuge.

(e) MANNER OF ACQUISITION.—All acquisitions of land or waters under this Act shall be made in a voluntary manner and shall not be the result of forced takings.

(f) ADDITIONAL PURPOSES.—In addition to the purposes of the Refuge under other laws, regulations, Executive orders, and comprehensive conservation plans, the Refuge shall be managed for—

(1) the protection and recovery of endangered Hawaiian water birds and other endangered birds, including the Nene (Hawaiian goose); and

(2) the conservation and management of native coastal strand, riparian, and aquatic biological diversity.

(g) **PRIORITY GENERAL PUBLIC USES.**—Nothing in this Act shall be considered to affect any policy or requirement, under paragraph (3) or (4), respectively, of section 4(a) of the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd(a)), to treat compatible wildlife-dependent recreational uses as priority general public uses of the Refuge.

SEC. 3. ADMINISTRATION.

(a) **IN GENERAL.**—The Secretary shall administer all federally owned land, water, and interests in land and water that are located within the boundaries of the Kilauea Point National Wildlife Refuge in accordance with—

(1) the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.); and

(2) this Act.

(b) **ADDITIONAL AUTHORITY.**—The Secretary may, in the administration of the Kilauea Point National Wildlife Refuge, use such additional statutory authority available to the Secretary for the conservation of fish and wildlife, and the provision of opportunities for fish- and wildlife-dependent recreation, as the Secretary determines to be appropriate to carry out this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary—

(1) to acquire land and water within the Refuge under section 2(a); and

(2) to develop, operate, and maintain the Refuge.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 2619:

HOUSE REPORTS: No. 108–522 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 19, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–482
108th Congress

An Act

Dec. 23, 2004
[H.R. 3632]

To prevent and punish counterfeiting of copyrighted copies and phonorecords, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Intellectual Property Protection and Courts Amendments Act of 2004”.

Intellectual
Property
Protection and
Courts
Amendments Act
of 2004.
15 USC 1051
note.
Anti-
counterfeiting
Amendments Act
of 2004.
18 USC 2311
note.

**TITLE I—ANTI-COUNTERFEITING
PROVISIONS**

SEC. 101. SHORT TITLE.

This title may be cited as the “Anti-counterfeiting Amendments Act of 2004”.

SEC. 102. PROHIBITION AGAINST TRAFFICKING IN COUNTERFEIT COMPONENTS.

(a) IN GENERAL.—Section 2318 of title 18, United States Code, is amended—

(1) by striking the section heading and inserting the following:

“§ 2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging”;

(2) by striking subsection (a) and inserting the following:

“(a) Whoever, in any of the circumstances described in subsection (c), knowingly traffics in—

“(1) a counterfeit label or illicit label affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany—

“(A) a phonorecord;

“(B) a copy of a computer program;

“(C) a copy of a motion picture or other audiovisual work;

“(D) a copy of a literary work;

“(E) a copy of a pictorial, graphic, or sculptural work;

“(F) a work of visual art; or

“(G) documentation or packaging; or

“(2) counterfeit documentation or packaging, shall be fined under this title or imprisoned for not more than 5 years, or both.”;

(3) in subsection (b)—

(A) in paragraph (2), by striking “and” after the semicolon;

(B) in paragraph (3)—

(i) by striking “and ‘audiovisual work’ have” and inserting the following: “‘audiovisual work’, ‘literary work’, ‘pictorial, graphic, or sculptural work’, ‘sound recording’, ‘work of visual art’, and ‘copyright owner’ have”; and

(ii) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(4) the term ‘illicit label’ means a genuine certificate, licensing document, registration card, or similar labeling component—

“(A) that is used by the copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, a copy of a literary work, a copy of a pictorial, graphic, or sculptural work, a work of visual art, or documentation or packaging is not counterfeit or infringing of any copyright; and

“(B) that is, without the authorization of the copyright owner—

“(i) distributed or intended for distribution not in connection with the copy, phonorecord, or work of visual art to which such labeling component was intended to be affixed by the respective copyright owner; or

“(ii) in connection with a genuine certificate or licensing document, knowingly falsified in order to designate a higher number of licensed users or copies than authorized by the copyright owner, unless that certificate or document is used by the copyright owner solely for the purpose of monitoring or tracking the copyright owner’s distribution channel and not for the purpose of verifying that a copy or phonorecord is noninfringing;

“(5) the term ‘documentation or packaging’ means documentation or packaging, in physical form, for a phonorecord, copy of a computer program, copy of a motion picture or other audiovisual work, copy of a literary work, copy of a pictorial, graphic, or sculptural work, or work of visual art; and

“(6) the term ‘counterfeit documentation or packaging’ means documentation or packaging that appears to be genuine, but is not.”;

(4) in subsection (c)—

(A) by striking paragraph (3) and inserting the following:

“(3) the counterfeit label or illicit label is affixed to, encloses, or accompanies, or is designed to be affixed to, enclose, or accompany—

“(A) a phonorecord of a copyrighted sound recording or copyrighted musical work;

“(B) a copy of a copyrighted computer program;

“(C) a copy of a copyrighted motion picture or other audiovisual work;

“(D) a copy of a literary work;

“(E) a copy of a pictorial, graphic, or sculptural work;

“(F) a work of visual art; or

“(G) copyrighted documentation or packaging; or”; and

(B) in paragraph (4), by striking “for a computer program”; and

(5) in subsection (d)—

(A) by inserting “or illicit labels” after “counterfeit labels” each place it appears; and

(B) by inserting before the period at the end the following: “, and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels”.

(b) CIVIL REMEDIES.—Section 2318 of title 18, United States Code, is further amended by adding at the end the following:

“(f) CIVIL REMEDIES.—

“(1) IN GENERAL.—Any copyright owner who is injured, or is threatened with injury, by a violation of subsection (a) may bring a civil action in an appropriate United States district court.

“(2) DISCRETION OF COURT.—In any action brought under paragraph (1), the court—

“(A) may grant 1 or more temporary or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain a violation of subsection (a);

“(B) at any time while the action is pending, may order the impounding, on such terms as the court determines to be reasonable, of any article that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation of subsection (a); and

“(C) may award to the injured party—

“(i) reasonable attorney fees and costs; and

“(ii)(I) actual damages and any additional profits of the violator, as provided in paragraph (3); or

“(II) statutory damages, as provided in paragraph (4).

“(3) ACTUAL DAMAGES AND PROFITS.—

“(A) IN GENERAL.—The injured party is entitled to recover—

“(i) the actual damages suffered by the injured party as a result of a violation of subsection (a), as provided in subparagraph (B) of this paragraph; and

“(ii) any profits of the violator that are attributable to a violation of subsection (a) and are not taken into account in computing the actual damages.

“(B) CALCULATION OF DAMAGES.—The court shall calculate actual damages by multiplying—

“(i) the value of the phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging, by

“(ii) the number of phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging.

“(C) DEFINITION.—For purposes of this paragraph, the ‘value’ of a phonorecord, copy, or work of visual art is—

“(i) in the case of a copyrighted sound recording or copyrighted musical work, the retail value of an authorized phonorecord of that sound recording or musical work;

“(ii) in the case of a copyrighted computer program, the retail value of an authorized copy of that computer program;

“(iii) in the case of a copyrighted motion picture or other audiovisual work, the retail value of an authorized copy of that motion picture or audiovisual work;

“(iv) in the case of a copyrighted literary work, the retail value of an authorized copy of that literary work;

“(v) in the case of a pictorial, graphic, or sculptural work, the retail value of an authorized copy of that work; and

“(vi) in the case of a work of visual art, the retail value of that work.

“(4) STATUTORY DAMAGES.—The injured party may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for each violation of subsection (a) in a sum of not less than \$2,500 or more than \$25,000, as the court considers appropriate.

“(5) SUBSEQUENT VIOLATION.—The court may increase an award of damages under this subsection by 3 times the amount that would otherwise be awarded, as the court considers appropriate, if the court finds that a person has subsequently violated subsection (a) within 3 years after a final judgment was entered against that person for a violation of that subsection.

“(6) LIMITATION ON ACTIONS.—A civil action may not be commenced under section unless it is commenced within 3 years after the date on which the claimant discovers the violation of subsection (a).”.

(c) CONFORMING AMENDMENT.—The item relating to section 2318 in the table of sections for chapter 113 of title 18, United States Code, is amended to read as follows:

“2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging.”.

SEC. 103. OTHER RIGHTS NOT AFFECTED.

18 USC 2318
note.

(a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC TRANSMISSIONS.—The amendments made by this title—

(1) shall not enlarge, diminish, or otherwise affect any liability or limitations on liability under sections 512, 1201 or 1202 of title 17, United States Code; and

(2) shall not be construed to apply—

(A) in any case, to the electronic transmission of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title; and

(B) in the case of a civil action under section 2318(f) of title 18, United States Code, to the electronic transmission of a counterfeit label or counterfeit documentation or packaging defined in paragraph (1) or (6) of section 2318(b) of title 18, United States Code.

(b) FAIR USE.—The amendments made by this title shall not affect the fair use, under section 107 of title 17, United States Code, of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title.

Fraudulent
Online Identity
Sanctions Act.

15 USC 1051
note.

TITLE II—FRAUDULENT ONLINE IDENTITY SANCTIONS

SEC. 201. SHORT TITLE.

This title may be cited as the “Fraudulent Online Identity Sanctions Act”.

SEC. 202. AMENDMENT TO TRADEMARK ACT OF 1946.

Section 35 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

“(e) In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.”

SEC. 203. AMENDMENT TO TITLE 17, UNITED STATES CODE.

Section 504(c) of title 17, United States Code, is amended by adding at the end the following new paragraph:

“(3) (A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

“(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

“(C) For purposes of this paragraph, the term ‘domain name’ has the meaning given that term in section 45 of the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’

approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1127).”.

SEC. 204. AMENDMENT TO TITLE 18, UNITED STATES CODE.

(a) SENTENCING ENHANCEMENT.—Section 3559 of title 18, United States Code, is amended by adding at the end the following:

“(f)(1) If a defendant who is convicted of a felony offense (other than offense of which an element is the false registration of a domain name) knowingly falsely registered a domain name and knowingly used that domain name in the course of that offense, the maximum imprisonment otherwise provided by law for that offense shall be doubled or increased by 7 years, whichever is less.

“(2) As used in this section—

“(A) the term ‘falsely registers’ means registers in a manner that prevents the effective identification of or contact with the person who registers; and

“(B) the term ‘domain name’ has the meaning given that term is section 45 of the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’ approved July 5, 1946 (commonly referred to as the ‘Trademark Act of 1946’) (15 U.S.C. 1127).”.

(b) UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend the sentencing guidelines and policy statements to ensure that the applicable guideline range for a defendant convicted of any felony offense carried out online that may be facilitated through the use of a domain name registered with materially false contact information is sufficiently stringent to deter commission of such acts.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall provide sentencing enhancements for anyone convicted of any felony offense furthered through knowingly providing or knowingly causing to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation.

(3) DEFINITION.—For purposes of this subsection, the term “domain name” has the meaning given that term in section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1127).

28 USC 994 note.
Guidelines.

SEC. 205. CONSTRUCTION.

(a) FREE SPEECH AND PRESS.—Nothing in this title shall enlarge or diminish any rights of free speech or of the press for activities related to the registration or use of domain names.

(b) DISCRETION OF COURTS IN DETERMINING RELIEF.—Nothing in this title shall restrict the discretion of a court in determining damages or other relief to be assessed against a person found liable for the infringement of intellectual property rights.

15 USC 1117
note.

(c) DISCRETION OF COURTS IN DETERMINING TERMS OF IMPRISONMENT.—Nothing in this title shall be construed to limit the discretion of a court to determine the appropriate term of imprisonment for an offense under applicable law.

TITLE III—COURTS

SEC. 301. ADDITIONAL PLACE OF HOLDING COURT IN THE DISTRICT OF COLORADO.

Section 85 of title 28, United States Code, is amended by inserting “Colorado Springs,” after “Boulder,”.

SEC. 302. PLACE OF HOLDING COURT IN THE NORTHERN DISTRICT OF NEW YORK.

Section 112(a) of title 28, United States Code, is amended by inserting “Plattsburgh,” after “Malone,”.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 3632 (S. 2227):

HOUSE REPORTS: No. 108–600 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 21, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–483
108th Congress

An Act

To authorize the exchange of certain land in Everglades National Park.

Dec. 23, 2004

[H.R. 3785]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Florida.

SECTION 1. EVERGLADES NATIONAL PARK.

Section 102 of the Everglades National Park Protection and Expansion Act of 1989 (16 U.S.C. 410r–6) is amended—

(1) in subsection (a)—

(A) by striking “The park boundary” and inserting the following:

“(1) IN GENERAL.—The park boundary”;

(B) by striking “The map” and inserting the following:

“(2) AVAILABILITY OF MAP.—The map”; and

(C) by adding at the end the following:

“(3) ACQUISITION OF ADDITIONAL LAND.—

“(A) IN GENERAL.—The Secretary may acquire from 1 or more willing sellers not more than 10 acres of land located outside the boundary of the park and adjacent to or near the East Everglades area of the park for the development of administrative, housing, maintenance, or other park purposes.

“(B) ADMINISTRATION; APPLICABLE LAW.—On acquisition of the land under subparagraph (A), the land shall be administered as part of the park in accordance with the laws (including regulations) applicable to the park.”; and

(2) by adding at the end the following:

“(h) LAND EXCHANGES.—

“(1) DEFINITIONS.—In this subsection:

“(A) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of General Services.

“(B) COUNTY.—The term ‘County’ means Miami-Dade County, Florida.

“(C) COUNTY LAND.—The term ‘County land’ means the 2 parcels of land owned by the County totaling approximately 152.93 acres that are designated as ‘Tract 605–01’ and ‘Tract 605–03’.

“(D) DISTRICT.—The term ‘District’ means the South Florida Water Management District.

“(E) DISTRICT LAND.—The term ‘District land’ means the approximately 1,054 acres of District land located in the Southern Glades Wildlife and Environmental Area and identified on the map as ‘South Florida Water Management District Exchange Lands’.

“(F) GENERAL SERVICES ADMINISTRATION LAND.—The term ‘General Services Administration land’ means the approximately 595.28 acres of land designated as ‘Site Alpha’ that is declared by the Department of the Navy to be excess land.

“(G) MAP.—The term ‘map’ means the map entitled ‘Boundary Modification for C-111 Project, Everglades National Park’, numbered 160/80,007A, and dated May 18, 2004.

“(H) NATIONAL PARK SERVICE LAND.—The term ‘National Park Service land’ means the approximately 1,054 acres of land located in the Rocky Glades area of the park and identified on the map as ‘NPS Exchange Lands’.

“(2) EXCHANGE OF GENERAL SERVICES ADMINISTRATION LAND AND COUNTY LAND.—The Administrator shall convey to the County fee title to the General Services Administration land in exchange for the conveyance by the County to the Secretary of fee title to the County land.

“(3) EXCHANGE OF NATIONAL PARK SERVICE LAND AND DISTRICT LAND.—

“(A) IN GENERAL.—As soon as practicable after the completion of the exchange under paragraph (2), the Secretary shall convey to the District fee title to the National Park Service land in exchange for fee title to the District land.

“(B) USE OF NATIONAL PARK SERVICE LAND.—The National Park Service land conveyed to the District shall be used by the District for the purposes of the C-111 project, including restoration of the Everglades natural system.

“(C) BOUNDARY ADJUSTMENT.—On completion of the land exchange under subparagraph (A), the Secretary shall modify the boundary of the park to reflect the exchange of the National Park Service land and the District land.

“(4) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.”.

SEC. 2. BIG CYPRESS NATIONAL PRESERVE.

Subsection (d)(3) of the first section of Public Law 93-440 (16 U.S.C. 698f) is amended by striking “The amount described

in paragraph (1)” and inserting “The amount described in paragraph (2)”.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 3785 (S. 2046):

HOUSE REPORTS: No. 108–516 (Comm. on Resources).

SENATE REPORTS: No. 108–298 accompanying S. 2046 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 19, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–484
108th Congress

An Act

Dec. 23, 2004
[H.R. 3818]

To amend the Foreign Assistance Act of 1961 to improve the results and accountability of microenterprise development assistance programs, and for other purposes.

Microenterprise
Results and
Accountability
Act of 2004.
22 USC 2151
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Microenterprise Results and Accountability Act of 2004”.

22 USC 2211
note.

SEC. 2. FINDINGS AND POLICY.

Congress finds and declares the following:

(1) Congress has demonstrated its support for microenterprise development assistance programs through the enactment of two comprehensive microenterprise laws:

(A) The Microenterprise for Self-Reliance Act of 2000 (title I of Public Law 106–309; 114 Stat. 1082).

(B) Public Law 108–31 (an Act entitled “An Act to amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest people in developing countries under microenterprise assistance program under those Acts, and for other purposes”, approved June 17, 2003).

(2) The report on the effectiveness of the United States Agency for International Development’s microfinance program, prepared by the Consultative Group to Assist the Poor, rated the Agency in the top tier of the 17 donors in this field.

(3) The Comptroller General, in a report dated November 2003, found that the United States Agency for International Development has met some, but not all, of the key objectives of such microenterprise development assistance programs.

(4) The Comptroller General’s report found, among other things, the following:

(A) Microenterprise development assistance generally can help alleviate some impacts of poverty, improve income levels and quality of life for borrowers and provide poor individuals, workers, and their families with an important coping mechanism.

(B) Microenterprise development assistance programs of the United States Agency for International Development have encouraged women’s participation in microfinance projects and, according to data of the Agency, women have comprised two-thirds or more of the micro-loan clients in Agency-funded microenterprise projects since 1997.

(5)(A) The Comptroller General’s report recommends that the Administrator of the United States Agency for International Development review the Agency’s “microenterprise results reporting” system with the goal of ensuring that its annual reporting is complete and accurate.

(B) Specifically, the Administrator should review and reconsider the methodologies used for the collection, analysis, and reporting of data on annual spending targets, outreach to the very poor, sustainability of microfinance institutions, and the contribution of Agency’s funding to the institutions it supports.

SEC. 3. MICROENTERPRISE DEVELOPMENT ASSISTANCE.

Chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2166 et seq.) is amended by inserting after title V the following new title:

“TITLE VI—MICROENTERPRISE DEVELOPMENT ASSISTANCE

“SEC. 251. FINDINGS AND POLICY.

22 USC 2211.

“Congress finds and declares the following:

“(1) Access to financial services and the development of microenterprise are vital factors in the stable growth of developing countries and in the development of free, open, and equitable international economic systems.

“(2) It is therefore in the best interest of the United States to facilitate access to financial services and assist the development of microenterprise in developing countries.

“(3) Access to financial services and the development of microenterprises can be supported by programs providing credit, savings, training, technical assistance, business development services, and other financial services.

“(4) Given the relatively high percentage of populations living in rural areas of developing countries, and the combined high incidence of poverty in rural areas and growing income inequality between rural and urban markets, microenterprise programs should target both rural and urban poor.

“(5) Microenterprise programs have been successful and should continue to empower vulnerable women in the developing world. The Agency should work to ensure that recipients of microenterprise and microfinance development assistance under this title communicate and work with nongovernmental organizations and government organizations to identify and assist victims of trafficking as provided for in section 106(a)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(a)(1); Public Law 106–386) and women who are victims of or susceptible to other forms of exploitation and violence.

“(6) Given that microenterprise programs have been successful in empowering disenfranchised groups such as women, microenterprise programs should also target populations disenfranchised due to race or ethnicity in countries where a strong relationship between poverty and race or ethnicity has been demonstrated, such as countries in Latin America.

22 USC 2211a.

“SEC. 252. AUTHORIZATION; IMPLEMENTATION; TARGETED ASSISTANCE.

President.

“(a) AUTHORIZATION.—The President is authorized to provide assistance on a non-reimbursable basis for programs in developing countries to increase the availability of credit, savings, and other services to microfinance and microenterprise clients lacking full access to capital, training, technical assistance, and business development services, through—

“(1) assistance for the purpose of expanding the availability of credit, savings, and other financial and non-financial services to microfinance and microenterprise clients;

“(2) assistance for the purpose of training, technical assistance, and business development services for microenterprises to enable them to make better use of credit, to better manage their enterprises, to conduct market analysis and product development for expanding domestic and international sales, particularly to United States markets, and to increase their income and build their assets;

“(3) capacity-building for microfinance and microenterprise institutions in order to enable them to better meet the credit, savings, and training needs of microfinance and microenterprise clients; and

“(4) policy, regulatory programs, and research at the country level that improve the environment for microfinance and microenterprise clients and institutions that serve the poor and very poor.

“(b) IMPLEMENTATION.—

Establishment.

“(1) OFFICE OF MICROENTERPRISE DEVELOPMENT.—There is established within the Agency an office of microenterprise development, which shall be headed by a Director who shall be appointed by the Administrator and who should possess technical expertise and ability to offer leadership in the field of microenterprise development.

“(2) ADDITIONAL PROVISIONS.—

“(A) USE OF IMPLEMENTING PARTNER ORGANIZATIONS.—Assistance under this section shall emphasize the use of implementing partner organizations that best meet the requirements of subparagraph (C).

“(B) USE OF CENTRAL FUNDING MECHANISMS.—

“(i) PROGRAM.—In order to ensure that assistance under this title is distributed effectively and efficiently, the office shall also seek to implement a program of central funding under which assistance is administered directly by the office, including through targeted core support for microfinance and microenterprise networks and other practitioners.

“(ii) FUNDING.—Of the amount made available to carry out this subtitle for a fiscal year, not less than \$25,000,000 should be made available to carry out clause (i).

“(C) EFFICIENCY AND COST-EFFECTIVENESS.—Assistance under this section shall meet high standards of efficiency, cost-effectiveness, and sustainability and shall especially provide the greatest possible resources to the poor and very poor. When administering assistance under this section, the Administrator shall—

“(i) take into consideration the percentage of funds a provider of assistance intends to expend on administrative costs;

“(ii) take all appropriate steps to ensure that the provider of assistance keeps administrative costs as low as practicable to ensure the maximum amount of funds are used for directly assisting microfinance and microenterprise clients, for establishing sustainable microfinance and microenterprise institutions, or for advancing the microenterprise development field; and

“(iii) give preference to proposals from providers of assistance that are the most technically competitive and have a reasonable allocation to overhead and administrative costs.

“(3) APPROVAL OF STRATEGIC PLANS.—With respect to assistance provided under this section, the office shall be responsible for concurring in the microenterprise development components of strategic plans of missions, bureaus, and other offices of the Agency and providing technical support to field missions to help the missions prepare such components.

“(c) TARGETED ASSISTANCE.—In carrying out sustainable poverty-focused programs under subsection (a), 50 percent of all microenterprise resources shall be targeted to clients who are very poor. Specifically, until September 30, 2006, such resources shall be used for—

Termination
date.

“(1) support of programs under this section through practitioner institutions that—

“(A) provide credit and other financial services to clients who are very poor, with loans in 1995 United States dollars of—

“(i) \$1,000 or less in the Europe and Eurasia region;

“(ii) \$400 or less in the Latin America region; and

“(iii) \$300 or less in the rest of the world; and

“(B) can cover their costs in a reasonable time period;

or

“(2) demand-driven business development programs that achieve reasonable cost recovery that are provided to clients holding poverty loans (as defined by the regional poverty loan limitations in paragraph (1)(A)), whether they are provided by microfinance institutions or by specialized business development services providers.

“SEC. 253. MONITORING SYSTEM.

22 USC 2211b.

“(a) IN GENERAL.—In order to maximize the sustainable development impact of assistance authorized under section 252(a), the Administrator of the Agency, acting through the Director of the office, shall strengthen its monitoring system to meet the requirements of subsection (b).

“(b) REQUIREMENTS.—The requirements referred to in subsection (a) are the following:

“(1) The monitoring system shall include performance goals for the assistance and expresses such goals in an objective and quantifiable form, to the extent feasible.

“(2) The monitoring system shall include performance indicators to be used in measuring or assessing the achievement of the performance goals described in paragraph (1) and the objectives of the assistance authorized under section 252.

“(3) The monitoring system provides a basis for recommendations for adjustments to the assistance to enhance the sustainability and the impact of the assistance, particularly the impact of such assistance on the very poor, particularly poor women.

“(4) The monitoring system adopts the widespread use of proven and effective poverty assessment tools to successfully identify the very poor and ensure that they receive adequate access to microenterprise loans, savings, and assistance.

22 USC 2211c.

“SEC. 254. DEVELOPMENT AND CERTIFICATION OF POVERTY MEASUREMENT METHODS; APPLICATION OF METHODS.

“(a) DEVELOPMENT AND CERTIFICATION.—

“(1) IN GENERAL.—The Administrator of the Agency, in consultation with microenterprise institutions and other appropriate organizations, shall develop no fewer than two low-cost methods for implementing partner organizations to use to assess the poverty levels of their current incoming or prospective clients. The Administrator shall develop poverty indicators that correlate with the circumstances of the very poor.

“(2) FIELD TESTING.—The Administrator shall field-test the methods developed under paragraph (1). As part of the testing, institutions and programs may use the methods on a voluntary basis to demonstrate their ability to reach the very poor.

Deadline.

“(3) CERTIFICATION.—Not later than April 1, 2005, the Administrator shall, from among the low-cost poverty measurement methods developed under paragraph (1), certify no fewer than two such methods as approved methods for measuring the poverty levels of current, incoming, or prospective clients of microenterprise institutions for purposes of assistance under section 252.

Effective date.

“(b) APPLICATION.—The Administrator shall require that, with reasonable exceptions, all implementing partner organizations applying for microenterprise assistance under this title use one of the certified methods, beginning not later than October 1, 2006, to determine and report the poverty levels of current, incoming, or prospective clients.

22 USC 2211d.

“SEC. 255. ADDITIONAL AUTHORITIES.

“Notwithstanding any other provision of law, amounts made available for assistance for microenterprise development assistance under any provision of law other than this title may be provided to further the purposes of this title. To the extent assistance described in the preceding sentence is provided in accordance with such sentence, the Administrator of the Agency shall include, as part of the report required under section 258, a detailed description of such assistance and, to the extent applicable, the information required by paragraphs (1) through (11) of subsection (b) of such section with respect to such assistance.”.

SEC. 4. MICROENTERPRISE DEVELOPMENT CREDITS.

22 USC 2212.

(a) TRANSFER.—Section 108 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151f) is hereby—

(1) transferred from chapter 1 of part I of the Foreign Assistance Act of 1961 to title VI of chapter 2 of part I of such Act (as added by section 3 of this Act); and

(2) inserted after section 255 of the Foreign Assistance Act of 1961.

(b) REDESIGNATION.—Title VI of chapter 2 of part I of the Foreign Assistance Act of 1961 is amended by redesignating section 108 (as added by subsection (a)) as section 256. 22 USC 2151f, 2212.

(c) CONFORMING AMENDMENTS.—Title VI of chapter 2 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by inserting after the title heading the following:

“Subtitle A—Grant Assistance”;

(2) by inserting after section 255 the following:

“Subtitle B—Credit Assistance”; and

(3) in section 256 (as redesignated by subsection (b))— 22 USC 2212.

(A) in the matter preceding paragraph (1) of subsection (c), by striking “Administrator of the agency primarily responsible for administering this part” and inserting “Administrator of the Agency”; and

(B) in subsection (f)(1)—

(i) by striking “section 131” and inserting “this part”; and

(ii) by striking “\$1,500,000 for each of fiscal years 2001 through 2004” and inserting “such sums as may be necessary for each of the fiscal years 2005 through 2009”.

SEC. 5. UNITED STATES MICROFINANCE LOAN FACILITY.

(a) TRANSFER.—Section 132 of the Foreign Assistance Act of 1961 (22 U.S.C. 2152b) is hereby— 22 USC 2213.

(1) transferred from chapter 1 of part I of the Foreign Assistance Act of 1961 to title VI of chapter 2 of part I of such Act (as added by section 3 of this Act); and

(2) inserted after section 256 of the Foreign Assistance Act of 1961 (as added by section 4 of this Act).

(b) REDESIGNATION.—Title VI of chapter 2 of part I of the Foreign Assistance Act of 1961 is amended by redesignating section 132 (as added by subsection (a)) as section 257. 22 USC 2152b, 2213.

(c) CONFORMING AMENDMENTS.—Title VI of chapter 2 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by inserting after section 256 the following:

“Subtitle C—United States Microfinance Loan Facility”; and

(2) in section 257 (as redesignated by subsection (b))— 22 USC 2213.

(A) in subsection (b)(3), by striking “2001 and 2002” and inserting “2005 through 2009”;

(B) in the matter preceding subparagraph (A) of subsection (d)(1), by striking “this part for the fiscal year 2001, up to \$5,000,000” and inserting “this part for each of the fiscal years 2005 through 2009, such sums as may be necessary”; and

(C) by striking subsection (e).

SEC. 6. MISCELLANEOUS PROVISIONS.

Title VI of chapter 2 of part I of the Foreign Assistance Act of 1961 (as added by section 3 of this Act and amended by sections 4 and 5 of this Act) is further amended by adding at the end the following new subtitle:

“Subtitle D—Miscellaneous Provisions

22 USC 2214.

“SEC. 258. REPORT.

“(a) **IN GENERAL.**—Not later than June 30, 2006, and each June 30 thereafter, the Administrator of the Agency, acting through the Director of the office, shall submit to the appropriate congressional committees a report that contains a detailed description of the implementation of this title for the previous fiscal year.

“(b) **CONTENTS.**—The report shall contain the following:

“(1) The number of grants, cooperative agreements, contracts, contributions, or other form of assistance provided under section 252, with a listing of—

“(A) the amount of each grant, cooperative agreement, contract, contribution, or other form of assistance;

“(B) the name of each recipient and each developing country with respect to which projects or activities under the grant, cooperative agreement, contract, contribution, or other form of assistance were carried out; and

“(C) a listing of the number of countries receiving assistance authorized by section 252.

“(2) The results of the monitoring system required under section 253.

“(3) The process of developing and applying poverty assessment procedures required under section 254.

“(4) The percentage of assistance furnished under section 252 that was allocated to the very poor based on the data collected using the certified methods required by section 254.

“(5) The estimated number of the very poor reached with assistance provided under section 252.

“(6) The amount of assistance provided under section 252 through central mechanisms.

“(7) The name of each country that receives assistance under section 256 and the amount of such assistance.

“(8) Information on the efforts of the Agency to ensure that recipients of United States microenterprise and microfinance development assistance work closely with nongovernmental organizations and foreign governments to identify and assist victims or potential victims of severe forms of trafficking in persons and women who are victims of or susceptible to other forms of exploitation and violence.

“(9) Any additional information relating to the provision of assistance authorized by this title, including the use of the poverty measurement tools required by section 254, or additional information on assistance provided by the United States to support microenterprise development under this title or any other provision of law.

“(10) An estimate of the percentage of beneficiaries of assistance under this title in countries where a strong relationship between poverty and race or ethnicity has been demonstrated.

“(11) The level of funding provided through contracts, the level of funding provided through grants, contracts, and cooperative agreements that is estimated to be subgranted or subcontracted, as the case may be, to direct service providers, and an analysis of the comparative cost-effectiveness and sustainability of projects carried out under these mechanisms.

“(c) AVAILABILITY TO PUBLIC.—The report required by this section shall be made available to the public on the Internet website of the Agency.

Internet.

“SEC. 259. DEFINITIONS.

22 USC 2214a.

“ In this title:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Agency.

“(2) AGENCY.—The term ‘Agency’ means the United States Agency for International Development.

“(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

“(4) BUSINESS DEVELOPMENT SERVICES.—The term ‘business development services’ means support for the growth of microenterprises through training, technical assistance, marketing assistance, improved production technologies, and other related services.

“(5) DIRECTOR.—The term ‘Director’ means the Director of the office.

“(6) IMPLEMENTING PARTNER ORGANIZATION.—The term ‘implementing partner organization’ means an entity eligible to receive assistance under this title which is—

“(A) a United States or an indigenous private voluntary organization;

“(B) a United States or an indigenous credit union;

“(C) a United States or an indigenous cooperative organization;

“(D) an indigenous governmental or nongovernmental organization;

“(E) a microenterprise institution;

“(F) a microfinance institution; or

“(G) a practitioner institution.

“(7) MICROENTERPRISE INSTITUTION.—The term ‘microenterprise institution’ means a not-for-profit entity that provides services, including microfinance, training, or business development services, for microenterprise clients in foreign countries.

“(8) MICROFINANCE INSTITUTION.—The term ‘microfinance institution’ means a not-for-profit entity or a regulated financial intermediary that directly provides, or works to expand, the availability of credit, savings, and other financial services to microfinance and microenterprise clients in foreign countries.

“(9) MICROFINANCE NETWORK.—The term ‘microfinance network’ means an affiliated group of practitioner institutions that provides services to its members, including financing, technical assistance, and accreditation, for the purpose of promoting the financial sustainability and societal impact of microenterprise assistance.

“(10) OFFICE.—The term ‘office’ means the office of microenterprise development established under section 252(b)(1).

“(11) PRACTITIONER INSTITUTION.—The term ‘practitioner institution’ means a not-for-profit entity or a regulated financial intermediary, including a microfinance network, that provides services, including microfinance, training, or business development services, for microfinance and microenterprise clients, or provides assistance to microenterprise institutions in foreign countries.

“(12) PRIVATE VOLUNTARY ORGANIZATION.—The term ‘private voluntary organization’ means a not-for-profit entity that—

“(A) engages in and supports activities of an economic or social development or humanitarian nature for citizens in foreign countries; and

“(B) is incorporated as such under the laws of the United States, including any of its states, territories or the District of Columbia, or of a foreign country.

“(13) UNITED STATES-SUPPORTED MICROFINANCE INSTITUTION.—The term ‘United States-supported microfinance institution’ means a financial intermediary that has received funds made available under this part for fiscal year 1980 or any subsequent fiscal year.

“(14) VERY POOR.—The term ‘very poor’ means those individuals—

“(A) living in the bottom 50 percent below the poverty line established by the national government of the country in which those individuals live; or

“(B) living on less than the equivalent of \$1 per day (as calculated using the purchasing power parity (PPP) exchange rate method).”.

22 USC 2211
note.

SEC. 7. SENSE OF CONGRESS.

It is the sense of Congress that, in carrying out title VI of chapter 2 of part I of the Foreign Assistance Act of 1961 (as added by section 3 of this Act and amended by sections 4 through 6 of this Act), the Administrator of the United States Agency for International Development—

(1) where applicable, should ensure that microenterprise development assistance provided under such title is matched by recipients with an equal amount of assistance from non-United States Government sources, including private donations, multilateral funding, commercial and concessional borrowing, savings, and program income;

(2) should include in the report required by section 258 of the Foreign Assistance Act of 1961 (as added by section 6 of this Act) a description of all matching assistance (as described in paragraph (1)) provided for the prior year by recipients of microenterprise development assistance under such title;

(3) should ensure that recipients of microenterprise development assistance under such title do not expend an unreasonably large percentage of such assistance on administrative costs;

(4) should not use recipients of microenterprise development assistance under such title to carry out critical management functions of the Agency, including functions such as strategy development or overall management of programs in a country; and

(5) should consult with the appropriate congressional committees with respect to the implementation of title VI of chapter 2 of part I of the Foreign Assistance Act of 1961 not later than 90 days after the date of the enactment of this Act. Deadline.

SEC. 8. REPEALS.

(a) FOREIGN ASSISTANCE ACT OF 1961.—Section 131 of the Foreign Assistance Act of 1961 (22 U.S.C. 2152a) is hereby repealed.

(b) PUBLIC LAW 108–31.—

(1) IN GENERAL.—Section 4 of Public Law 108–31 (22 U.S.C. 2151f note) is amended by striking subsection (b).

(2) CONFORMING AMENDMENT.—Section 4 of Public Law 108–31 is amended by striking “(a)” and all that follows through “Not later” and inserting “Not later”.

22 USC 2151f
note.

SEC. 9. REFERENCES.

Any reference in a law, regulation, agreement, or other document of the United States to section 108, 131, or 132 of the Foreign Assistance Act of 1961 shall be deemed to be a reference to subtitle B of title VI of chapter 2 of part I of the Foreign Assistance Act of 1961, subtitle A of title VI of chapter 2 of part I of such Act, or subtitle C of title VI of chapter 2 of part I of such Act, respectively.

22 USC 2211
note.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 3818 (S. 3027):

HOUSE REPORTS: No. 108–459 (Comm. on International Relations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 20, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–485
108th Congress

An Act

Dec. 23, 2004
[H.R. 4027]

To authorize the Secretary of Commerce to make available to the University of Miami property under the administrative jurisdiction of the National Oceanic and Atmospheric Administration on Virginia Key, Florida, for use by the University for a Marine Life Science Center.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AVAILABILITY OF NOAA REAL PROPERTY ON VIRGINIA KEY, FLORIDA.

(a) IN GENERAL.—The Secretary of Commerce may make available to the University of Miami real property under the administrative jurisdiction of the National Oceanic and Atmospheric Administration on Virginia Key, Florida, for development by the University of a Marine Life Science Center.

(b) MANNER OF AVAILABILITY.—The Secretary may make property available under this section by easement, lease, license, or long-term agreement with the University.

(c) AUTHORIZED USES BY UNIVERSITY.—

(1) IN GENERAL.—Property made available under this section may be used by the University (subject to paragraph (2)) to develop and operate facilities for multidisciplinary environmental and fisheries research, assessment, management, and educational activities.

(2) AGREEMENT.—Property made available under this section may not be used by the University (including any affiliate of the University) except in accordance with an agreement with the Secretary that—

(A) specifies—

(i) the conditions for non-Federal use of the property; and

(ii) the retained Federal interests in the property, including interests in access to and egress from the property by Federal personnel and preservation of existing rights-of-way;

(B) establishes conditions for joint occupancy of buildings and other facilities on the property by the University and Federal agencies; and

(C) includes provisions that ensure—

(i) that there is no diminishment of existing National Oceanic and Atmospheric Administration programs and services at Virginia Key; and

(ii) the availability of the property for planning, development, and construction of future Federal buildings and facilities.

(3) **TERMINATION OF AVAILABILITY.**—The availability of property under this section shall terminate immediately upon use of the property by the University—

(A) for any purpose other than as described in paragraph (1); or

(B) in violation of the agreement under paragraph (2).

(d) **USE OF FACILITIES BY SECRETARY.**—The Secretary may—

(1) subject to the availability of funding, enter into an agreement to occupy facilities constructed by the University on property made available under this section; and

(2) participate with the University in collaborative research at, or administered through, such facilities.

(e) **NO CONVEYANCE OF TITLE.**—This section shall not be construed to convey or authorize conveyance of any interest of the United States in title to property made available under this section.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 4027:

HOUSE REPORTS: No. 108–665 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 13, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–486
108th Congress

An Act

Dec. 23, 2004
[H.R. 4116]

American Bald
Eagle Recovery
and National
Emblem
Commemorative
Coin Act.
31 USC 5112
note.

To require the Secretary of the Treasury to mint coins celebrating the recovery and restoration of the American bald eagle, the national symbol of the United States, to America's lands, waterways, and skies and the great importance of the designation of the American bald eagle as an "endangered" species under the Endangered Species Act of 1973, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Bald Eagle Recovery and National Emblem Commemorative Coin Act".

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The bald eagle was designated as the national emblem of the United States on June 20, 1782, by our country's Founding Fathers at the Second Continental Congress.

(2) The bald eagle is the greatest visible symbol of the spirit of freedom and democracy in the world.

(3) The bald eagle species is unique to North America and represents the American values and attributes of freedom, courage, strength, spirit, loyalty, justice, equality, democracy, quality, and excellence.

(4) The bald eagle is the central image used in the Great Seal of the United States and the seal of many branches and departments of the United States Government, including the President and the Vice President of the United States, the United States Congress, the Department of Defense, the Department of the Treasury, the Department of Justice, the Department of State, the Department of Commerce, the Department of Homeland Security, and the United States Postal Service.

(5) The bald eagle's image and symbolism have played a profound role in establishing and honoring American beliefs and traditions.

(6) The bald eagle's image and symbolism have influenced American art, music, history, literature, commerce, and culture since the founding of our Nation.

(7) The bald eagle species was once threatened with possible extinction in the lower 48 States but is now making a gradual, encouraging recovery within America's lands, waterways, and skies.

(8) The bald eagle was federally classified as an "endangered" species in 1973 under the Endangered Species Act of

1973, and, in 1995, was removed from the “endangered” species list and upgraded to the less imperiled “threatened” status under such Act.

(9) The administration is likely to officially delist the bald eagle from both the “endangered” and “threatened” species lists under the Endangered Species Act of 1973 by no later than 2008.

(10) The initial recovery of the bald eagle population in the United States was accomplished by the vigilant efforts of numerous caring agencies, corporations, organizations, and citizens.

(11) The continued caring and concern of the American people and the further restoration and protection of the bald eagle and its habitat is necessary to guarantee the full recovery and survival of this precious national treasure for future generations.

(12) Since the Endangered Species Act of 1973 requires that delisted species be administratively monitored for a 5-year period, the bald eagle nests in 49 States will require continual monitoring after the bald eagle is removed from the protection of such Act; and such efforts will require substantial funding to the Federal and State agencies and private organizations that will conduct such monitoring.

(13) Due to Federal and State budget cutting and balancing trends, funding for on-going bald eagle care, restoration, monitoring, protection, and enhancement programs has diminished annually.

(14) In anticipation of the nationwide observance of the official removal, by 2008, of the bald eagle from the “threatened” species list under the Endangered Species Act of 1973, and the 35th anniversary, in 2008, of the Endangered Species Act of 1973 and the designation of the bald eagle as an “endangered” species under such Act, Congress wishes to offer the opportunity for all persons to voluntarily participate in raising funds for future bald eagle recovery, monitoring, and preservation efforts and to contribute to a special American Eagle Fund endowment managed by the not-for-profit American Eagle Foundation of Tennessee in the United States, in cooperation with fund management experts.

(15) It is appropriate for Congress to authorize coins—

(A) celebrating the recovery and restoration of the bald eagle, the living symbol of freedom in the United States, to America’s lands, waterways, and skies;

(B) commemorating the removal of the bald eagle from the “endangered” and “threatened” species lists under the Endangered Species Act of 1973; and

(C) commemorating the 35th anniversary of the enactment of the Endangered Species Act of 1973 and the designation of the bald eagle as an “endangered” species under such Act.

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATIONS.—In celebration of the recovery of the bald eagle, the national living symbol of freedom, to America’s lands, waterways, and skies and in commemoration of the 35th anniversary of the enactment of the Endangered Species Act of 1973 and the placement of the bald eagle on the endangered species

list under such Act, the Secretary of the Treasury (hereafter in this Act referred to as the “Secretary”) shall mint and issue the following coins:

- (1) \$5 GOLD COINS.—Not more than 100,000 \$5 coins, which shall—
 - (A) weigh 8.359 grams;
 - (B) have a diameter of 0.850 inches; and
 - (C) contain 90 percent gold and 10 percent alloy.
- (2) \$1 SILVER COINS.—Not more than 500,000 \$1 coins, which shall—
 - (A) weigh 26.73 grams;
 - (B) have a diameter of 1.500 inches; and
 - (C) contain 90 percent silver and 10 percent copper.
- (3) HALF DOLLAR CLAD COINS.—Not more than 750,000 half dollar coins which shall—
 - (A) weigh 11.34 grams;
 - (B) have a diameter of 1.205 inches; and
 - (C) be minted to the specifications for half dollar coins contained in section 5112(b) of title 31, United States Code.
- (b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.
- (c) NUMISMATIC ITEMS.—For purposes of sections 5134 and 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. DESIGN OF COINS.

- (a) DESIGN REQUIREMENTS.—
 - (1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of the bald eagle and its history, natural biology, and national symbolism.
 - (2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act there shall be—
 - (A) a designation of the value of the coin;
 - (B) an inscription of the year “2008” ; and
 - (C) inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, and “E Pluribus Unum”.
- (b) SELECTION.—The design for the coins minted under this Act shall be—
 - (1) selected by the Secretary after consultation with the Commission of Fine Arts, and the American Eagle Foundation of Tennessee in the United States; and
 - (2) reviewed by the Citizens Coinage Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

- (a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.
- (b) MINT FACILITY.—Only 1 facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.
- (c) PERIOD FOR ISSUANCE.—The Secretary may issue coins minted under this Act only during the 1-year period beginning on January 1, 2008.

SEC. 6. SALE OF COINS.

- (a) SALE PRICE.—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

- (1) the face value of the coins;
- (2) the surcharge provided in section 7(a) with respect to such coins; and
- (3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

SEC. 7. SURCHARGES.

(a) IN GENERAL.—All sales of coins minted under this Act shall include a surcharge as follows:

- (1) A surcharge of \$35 per coin for the \$5 coin.
- (2) A surcharge of \$10 per coin for the \$1 coin.
- (3) A surcharge of \$3 per coin for the half dollar coin.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the American Eagle Foundation of Tennessee in the United States to further its works.

(c) AUDITS.—The American Eagle Foundation of Tennessee in the United States and the American Eagle Fund shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received by the Foundation or the Fund under subsection (b).

(d) LIMITATION.—Notwithstanding subsection (a), no surcharge may be included with respect to the issuance under this Act of any coin during a calendar year if, as of the time of such issuance, the issuance of such coin would result in the number of commemorative coin programs issued during such year to exceed the annual 2 commemorative coin program issuance limitation under section 5112(m)(1) of title 31, United States Code (as in effect on the

date of the enactment of this Act). The Secretary of the Treasury may issue guidance to carry out this subsection.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 4116:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Dec. 7, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–487
108th Congress

An Act

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Dec. 23, 2004
[H.R. 4548]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This title may be cited as the “Intelligence Authorization Act for Fiscal Year 2005”.

Intelligence
Authorization
Act for Fiscal
Year 2005.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

- Sec. 101. Authorization of appropriations.
- Sec. 102. Classified schedule of authorizations.
- Sec. 103. Personnel ceiling adjustments.
- Sec. 104. Intelligence Community Management Account.
- Sec. 105. Incorporation of reporting requirements.
- Sec. 106. Specific authorization of funds for intelligence or intelligence-related activities for which fiscal year 2004 appropriations exceed amounts authorized.
- Sec. 107. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense and Department of Energy.

**TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND
DISABILITY SYSTEM**

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

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- Sec. 501. National Security Agency Emerging Technologies Panel.
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TITLE VI—EDUCATION

Subtitle A—National Security Education Program

- Sec. 601. Annual funding.
- Sec. 602. Improvements to National Flagship Language Initiative.
- Sec. 603. Scholarship program for English language studies for heritage community citizens of the United States within National Security Education Program.

Subtitle B—Improvement in Intelligence Community Foreign Language Skills

- Sec. 611. Foreign language proficiency for certain senior level positions in the Central Intelligence Agency.
- Sec. 612. Advancement of foreign languages critical to the intelligence community.
- Sec. 613. Pilot project on Civilian Linguist Reserve Corps.
- Sec. 614. Report on status, consolidation, and improvement of intelligence education programs.
- Sec. 615. Report on recruitment and retention of qualified instructors of the Defense Language Institute.

TITLE VII—TERRORISM MATTERS

- Sec. 701. Information on terrorist groups that seek weapons of mass destruction and groups that have been designated as foreign terrorist organizations.

TITLE VIII—OTHER MATTERS

- Sec. 801. Effective date.
- Sec. 802. Construction of references to Director of Central Intelligence.
- Sec. 803. Savings provisions relating to discharge of certain functions and authorities.

TITLE I—INTELLIGENCE ACTIVITIES**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 2005 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.
- (2) The Department of Defense.
- (3) The Defense Intelligence Agency.
- (4) The National Security Agency.
- (5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
- (6) The Department of State.
- (7) The Department of the Treasury.
- (8) The Department of Energy.
- (9) The Department of Justice.
- (10) The Federal Bureau of Investigation.
- (11) The National Reconnaissance Office.
- (12) The National Geospatial-Intelligence Agency.
- (13) The Coast Guard.
- (14) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2005, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill H.R. 4548 of the One Hundred Eighth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

President.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of National Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2005 under section 102 when the Director of National Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of National Intelligence shall promptly notify the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives whenever the Director exercises the authority granted by this section.

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of National Intelligence for fiscal year 2005 the sum of \$310,466,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2006.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of National Intelligence are authorized 310 full-time personnel as of September 30, 2005. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2005 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2006.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2005, there are also authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year

2005 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of National Intelligence.

21 USC 873 note.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), \$42,322,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2006, and funds provided for procurement purposes shall remain available until September 30, 2007.

(2) TRANSFER OF FUNDS.—The Director of National Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

SEC. 105. INCORPORATION OF REPORTING REQUIREMENTS.

(a) IN GENERAL.—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill H.R. 4548 of the One Hundred Eighth Congress, or in the classified annex to this Act, is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 106. SPECIFIC AUTHORIZATION OF FUNDS FOR INTELLIGENCE OR INTELLIGENCE-RELATED ACTIVITIES FOR WHICH FISCAL YEAR 2004 APPROPRIATIONS EXCEED AMOUNTS AUTHORIZED.

Funds appropriated for an intelligence or intelligence-related activity of the United States Government for fiscal year 2004 in excess of the amount specified for such activity in the classified Schedule of Authorizations prepared to accompany the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2599) shall be deemed to be specifically authorized by Congress for purposes of section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)). Such funds shall remain available until September 30, 2005.

SEC. 107. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF ENERGY.

50 USC 415b
note.

(a) CONSULTATION IN PREPARATION.—(1) The Director of National Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations referred to in section 102(a) or the classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or the Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or the Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or the Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) SUBMITTAL.—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees or subcommittees of Congress, as appropriate:

(1) The Committee on Armed Services, the Subcommittee on Defense of the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

(2) The Committee on Armed Services, the Subcommittee on Defense of the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2005 the sum of \$239,400,000.

TITLE III—GENERAL PROVISIONS

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

SEC. 303. CHIEF INFORMATION OFFICER.

(a) **ESTABLISHMENT.**—(1) Title I of the National Security Act of 1947, as amended by section 1011(a) of the National Security Intelligence Reform Act of 2004, is further amended by inserting after section 103F the following new section:

“CHIEF INFORMATION OFFICER

President.
Congress.
50 USC 403–3g.

“SEC. 103G. (a) **CHIEF INFORMATION OFFICER.**—To assist the Director of National Intelligence in carrying out the responsibilities of the Director under this Act and other applicable provisions of law, there shall be within the Office of the Director of National Intelligence a Chief Information Officer who shall be appointed by the President, by and with the advice and consent of the Senate.

“(b) **CHIEF INFORMATION OFFICER OF INTELLIGENCE COMMUNITY.**—The Chief Information Officer shall serve as the chief information officer of the intelligence community.

“(c) **DUTIES AND RESPONSIBILITIES.**—Subject to the direction of the Director of National Intelligence, the Chief Information Officer shall—

“(1) manage activities relating to the information technology infrastructure and enterprise architecture requirements of the intelligence community;

“(2) have procurement approval authority over all information technology items related to the enterprise architectures of all intelligence community components;

“(3) direct and manage all information technology-related procurement for the intelligence community; and

“(4) ensure that all expenditures for information technology and research and development activities are consistent with the intelligence community enterprise architecture and the strategy of the Director for such architecture.

“(d) **PROHIBITION ON SIMULTANEOUS SERVICE AS OTHER CHIEF INFORMATION OFFICER.**—An individual serving in the position of Chief Information Officer may not, while so serving, serve as the chief information officer of any other department or agency, or component thereof, of the United States Government.”.

(2) The table of contents in the first section of the National Security Act of 1947, as amended by the National Security Intelligence Reform Act of 2004, is further amended by inserting after the item relating to section 103F the following new item:

“Sec. 103G. Chief Information Officer.”.

50 USC 403–3g
note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the effective date of the National Security Intelligence Reform Act of 2004, as provided in section 801 of this Act.

SEC. 304. IMPROVEMENT OF AUTHORITIES RELATING TO NATIONAL VIRTUAL TRANSLATION CENTER.

(a) **FUNCTION OF CENTER.**—Section 313 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306; 116 Stat. 2391; 50 U.S.C. 404n) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

“(c) **FUNCTION.**—The element established under subsection (a) shall provide for timely and accurate translations of foreign intelligence for all elements of the intelligence community through—

“(1) the integration of the translation capabilities of the intelligence community;

“(2) the use of remote-connection capabilities; and

“(3) the use of such other capabilities as the Director considers appropriate.”.

(b) **LOCATION OF DISCHARGE OF FUNCTION.**—Subsection (d) of such section, as so redesignated, is amended by adding at the end the following new paragraph:

“(3) Personnel of the element established under subsection (a) may carry out the duties and functions of the element at any location that—

“(A) has been certified as a secure facility by a department or agency of the United States Government; or

“(B) the Director has otherwise determined to be appropriate for such duties and functions”.

SEC. 305. INTELLIGENCE ASSESSMENT ON SANCTUARIES FOR TERRORISTS.

(a) **ASSESSMENT REQUIRED.**—Not later than the date specified in subsection (b), the Director of National Intelligence shall submit to Congress an intelligence assessment that identifies and describes each country or region that is a sanctuary for terrorists or terrorist organizations. The assessment shall be based on current all-source intelligence.

(b) **SUBMITTAL DATE.**—The date of the submittal of the intelligence assessment required by subsection (a) shall be the earlier of—

(1) the date that is six months after the date of the enactment of this Act; or

(2) June 1, 2005.

SEC. 306. SENSE OF CONGRESS ON AVAILABILITY TO CONGRESS OF INFORMATION ON IRAQ OIL-FOR-FOOD PROGRAM OF THE UNITED NATIONS.

It is the sense of Congress that the head of each element of the intelligence community, including the Central Intelligence Agency, the Federal Bureau of Investigation, and the intelligence elements of the Department of Defense, the Department of State, and the Department of the Treasury should make available to any committee of Congress with jurisdiction over matters relating to the Office of the Iraq Oil-for-Food Program of the United Nations, upon the request of such committee, any information and documents in the possession or control of such element in connection with any investigation of that Office by such committee.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. PERMANENT EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION INCENTIVE PROGRAM.

(a) **IN GENERAL.**—Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4 note) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(b) **TERMINATION OF FUNDS REMITTANCE REQUIREMENT.**—(1) Section 2 of such Act is further amended by striking subsection (i).

(2) Section 4(a)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 8331 note) is amended by striking “, or section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103–36; 107 Stat. 104)”.

SEC. 402. INTELLIGENCE OPERATIONS AND COVER ENHANCEMENT AUTHORITY.

The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended by adding at the end the following:

“INTELLIGENCE OPERATIONS AND COVER ENHANCEMENT AUTHORITY

50 USC 403w.

“SEC. 23. (a) **DEFINITIONS.**—In this section—

“(1) the term ‘designated employee’ means an employee designated by the Director of the Central Intelligence Agency under subsection (b); and

“(2) the term ‘Federal retirement system’ includes the Central Intelligence Agency Retirement and Disability System, and the Federal Employees’ Retirement System (including the Thrift Savings Plan).

“(b) **IN GENERAL.**—

“(1) **AUTHORITY.**—Notwithstanding any other provision of law, the Director of the Central Intelligence Agency may exercise the authorities under this section in order to—

“(A) protect from unauthorized disclosure—

“(i) intelligence operations;

“(ii) the identities of undercover intelligence officers;

“(iii) intelligence sources and methods; or

“(iv) intelligence cover mechanisms; or

“(B) meet the special requirements of work related to collection of foreign intelligence or other authorized activities of the Agency.

“(2) **DESIGNATION OF EMPLOYEES.**—The Director of the Central Intelligence Agency may designate any employee of the Agency who is under nonofficial cover to be an employee to whom this section applies. Such designation may be made with respect to any or all authorities exercised under this section.

“(c) **COMPENSATION.**—The Director of the Central Intelligence Agency may pay a designated employee salary, allowances, and other benefits in an amount and in a manner consistent with the nonofficial cover of that employee, without regard to any limitation that is otherwise applicable to a Federal employee. A designated employee may accept, utilize, and, to the extent authorized by regulations prescribed under subsection (i), retain any salary, allowances, and other benefits provided under this section.

“(d) **RETIREMENT BENEFITS.**—

“(1) **IN GENERAL.**—The Director of the Central Intelligence Agency may establish and administer a nonofficial cover employee retirement system for designated employees (and the spouse, former spouses, and survivors of such designated

employees). A designated employee may not participate in the retirement system established under this paragraph and another Federal retirement system at the same time.

“(2) CONVERSION TO OTHER FEDERAL RETIREMENT SYSTEM.—

“(A) IN GENERAL.—A designated employee participating in the retirement system established under paragraph (1) may convert to coverage under the Federal retirement system which would otherwise apply to that employee at any appropriate time determined by the Director of the Central Intelligence Agency (including at the time of separation of service by reason of retirement), if the Director of the Central Intelligence Agency determines that the employee’s participation in the retirement system established under this subsection is no longer necessary to protect from unauthorized disclosure—

“(i) intelligence operations;

“(ii) the identities of undercover intelligence officers;

“(iii) intelligence sources and methods; or

“(iv) intelligence cover mechanisms.

“(B) CONVERSION TREATMENT.—Upon a conversion under this paragraph—

“(i) all periods of service under the retirement system established under this subsection shall be deemed periods of creditable service under the applicable Federal retirement system;

“(ii) the Director of the Central Intelligence Agency shall transmit an amount for deposit in any applicable fund of that Federal retirement system that—

“(I) is necessary to cover all employee and agency contributions including—

“(aa) interest as determined by the head of the agency administering the Federal retirement system into which the employee is converting; or

“(bb) in the case of an employee converting into the Federal Employees’ Retirement System, interest as determined under section 8334(e) of title 5, United States Code; and

“(II) ensures that such conversion does not result in any unfunded liability to that fund; and

“(iii) in the case of a designated employee who participated in an employee investment retirement system established under paragraph (1) and is converted to coverage under subchapter III of chapter 84 of title 5, United States Code, the Director of the Central Intelligence Agency may transmit any or all amounts of that designated employee in that employee investment retirement system (or similar part of that retirement system) to the Thrift Savings Fund.

“(C) TRANSMITTED AMOUNTS.—

“(i) IN GENERAL.—Amounts described under subparagraph (B)(ii) shall be paid from the fund or appropriation used to pay the designated employee.

“(ii) OFFSET.—The Director of the Central Intelligence Agency may use amounts contributed by the

designated employee to a retirement system established under paragraph (1) to offset amounts paid under clause (i).

“(D) RECORDS.—The Director of the Central Intelligence Agency shall transmit all necessary records relating to a designated employee who converts to a Federal retirement system under this paragraph (including records relating to periods of service which are deemed to be periods of creditable service under subparagraph (B)) to the head of the agency administering that Federal retirement system.

“(e) HEALTH INSURANCE BENEFITS.—

“(1) IN GENERAL.—The Director of the Central Intelligence Agency may establish and administer a nonofficial cover employee health insurance program for designated employees (and the family of such designated employees). A designated employee may not participate in the health insurance program established under this paragraph and the program under chapter 89 of title 5, United States Code, at the same time.

“(2) CONVERSION TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.—

“(A) IN GENERAL.—A designated employee participating in the health insurance program established under paragraph (1) may convert to coverage under the program under chapter 89 of title 5, United States Code, at any appropriate time determined by the Director of the Central Intelligence Agency (including at the time of separation of service by reason of retirement), if the Director of the Central Intelligence Agency determines that the employee’s participation in the health insurance program established under this subsection is no longer necessary to protect from unauthorized disclosure—

“(i) intelligence operations;

“(ii) the identities of undercover intelligence officers;

“(iii) intelligence sources and methods; or

“(iv) intelligence cover mechanisms.

“(B) CONVERSION TREATMENT.—Upon a conversion under this paragraph—

“(i) the employee (and family, if applicable) shall be entitled to immediate enrollment and coverage under chapter 89 of title 5, United States Code;

“(ii) any requirement of prior enrollment in a health benefits plan under chapter 89 of that title for continuation of coverage purposes shall not apply;

“(iii) the employee shall be deemed to have had coverage under chapter 89 of that title from the first opportunity to enroll for purposes of continuing coverage as an annuitant; and

“(iv) the Director of the Central Intelligence Agency shall transmit an amount for deposit in the Employees’ Health Benefits Fund that is necessary to cover any costs of such conversion.

“(C) TRANSMITTED AMOUNTS.—Any amount described under subparagraph (B)(iv) shall be paid from the fund or appropriation used to pay the designated employee.

“(f) LIFE INSURANCE BENEFITS.—

“(1) IN GENERAL.—The Director of the Central Intelligence Agency may establish and administer a nonofficial cover employee life insurance program for designated employees (and the family of such designated employees). A designated employee may not participate in the life insurance program established under this paragraph and the program under chapter 87 of title 5, United States Code, at the same time.

“(2) CONVERSION TO FEDERAL EMPLOYEES GROUP LIFE INSURANCE PROGRAM.—

“(A) IN GENERAL.—A designated employee participating in the life insurance program established under paragraph (1) may convert to coverage under the program under chapter 87 of title 5, United States Code, at any appropriate time determined by the Director of the Central Intelligence Agency (including at the time of separation of service by reason of retirement), if the Director of the Central Intelligence Agency determines that the employee’s participation in the life insurance program established under this subsection is no longer necessary to protect from unauthorized disclosure—

“(i) intelligence operations;

“(ii) the identities of undercover intelligence officers;

“(iii) intelligence sources and methods; or

“(iv) intelligence cover mechanisms.

“(B) CONVERSION TREATMENT.—Upon a conversion under this paragraph—

“(i) the employee (and family, if applicable) shall be entitled to immediate coverage under chapter 87 of title 5, United States Code;

“(ii) any requirement of prior enrollment in a life insurance program under chapter 87 of that title for continuation of coverage purposes shall not apply;

“(iii) the employee shall be deemed to have had coverage under chapter 87 of that title for the full period of service during which the employee would have been entitled to be insured for purposes of continuing coverage as an annuitant; and

“(iv) the Director of the Central Intelligence Agency shall transmit an amount for deposit in the Employees’ Life Insurance Fund that is necessary to cover any costs of such conversion.

“(C) TRANSMITTED AMOUNTS.—Any amount described under subparagraph (B)(iv) shall be paid from the fund or appropriation used to pay the designated employee.

“(g) EXEMPTION FROM CERTAIN REQUIREMENTS.—The Director of the Central Intelligence Agency may exempt a designated employee from mandatory compliance with any Federal regulation, rule, standardized administrative policy, process, or procedure that the Director of the Central Intelligence Agency determines—

“(1) would be inconsistent with the nonofficial cover of that employee; and

“(2) could expose that employee to detection as a Federal employee.

“(h) TAXATION AND SOCIAL SECURITY.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, a designated employee—

“(A) shall file a Federal or State tax return as if that employee is not a Federal employee and may claim and receive the benefit of any exclusion, deduction, tax credit, or other tax treatment that would otherwise apply if that employee was not a Federal employee, if the Director of the Central Intelligence Agency determines that taking any action under this paragraph is necessary to—

“(i) protect from unauthorized disclosure—

“(I) intelligence operations;

“(II) the identities of undercover intelligence officers;

“(III) intelligence sources and methods; or

“(IV) intelligence cover mechanisms; and

“(ii) meet the special requirements of work related to collection of foreign intelligence or other authorized activities of the Agency; and

“(B) shall receive social security benefits based on the social security contributions made.

Procedures.

“(2) INTERNAL REVENUE SERVICE REVIEW.—The Director of the Central Intelligence Agency shall establish procedures to carry out this subsection. The procedures shall be subject to periodic review by the Internal Revenue Service.

“(i) REGULATIONS.—The Director of the Central Intelligence Agency shall prescribe regulations to carry out this section. The regulations shall ensure that the combination of salary, allowances, and benefits that an employee designated under this section may retain does not significantly exceed, except to the extent determined by the Director of the Central Intelligence Agency to be necessary to exercise the authority in subsection (b), the combination of salary, allowances, and benefits otherwise received by Federal employees not designated under this section.

“(j) FINALITY OF DECISIONS.—Any determinations authorized by this section to be made by the Director of the Central Intelligence Agency or the Director’s designee shall be final and conclusive and shall not be subject to review by any court.

“(k) SUBSEQUENTLY ENACTED LAWS.—No law enacted after the effective date of this section shall affect the authorities and provisions of this section unless such law specifically refers to this section.”.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

SEC. 501. NATIONAL SECURITY AGENCY EMERGING TECHNOLOGIES PANEL.

The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by adding at the end the following new section:

Establishment.

“SEC. 19. (a) There is established the National Security Agency Emerging Technologies Panel. The Panel is a standing panel of the National Security Agency. The Panel shall be appointed by, and shall report directly to, the Director of the National Security Agency.

“(b) The Panel shall study and assess, and periodically advise the Director on, the research, development, and application of existing and emerging science and technology advances, advances in encryption, and other topics.

“(c) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Panel.”.

SEC. 502. USE OF FUNDS FOR COUNTERDRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.

(a) **AUTHORITY.**—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities for fiscal year 2005 or 2006, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available—

(1) to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)); and

(2) to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations.

(b) **APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.**—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Section 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8076 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 988).

(3) The numerical limitations on the number of United States military personnel and United States individual civilian contractors contained in section 1021(c) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2042).

(c) **LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.**—No United States Armed Forces personnel or United States civilian contractor employed by the United States Armed Forces may participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or during the course of search and rescue operations for United States citizens.

TITLE VI—EDUCATION

Subtitle A—National Security Education Program

SEC. 601. ANNUAL FUNDING.

(a) **IN GENERAL.**—Section 810 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1910) is amended by adding at the end the following new subsection:

“(c) **FUNDING FROM INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT FOR FISCAL YEARS BEGINNING WITH FISCAL YEAR 2005.**—In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, the Director of National Intelligence shall transfer to the Secretary from amounts appropriated

for the Intelligence Community Management Account for each fiscal year, beginning with fiscal year 2005, \$8,000,000 to carry out the scholarship, fellowship, and grant programs under subparagraphs (A), (B), and (C), respectively, of section 802(a)(1).”.

(b) CONFORMING AMENDMENT.—Section 802(a)(2) of that Act (50 U.S.C. 1902(a)(2)) is amended in the matter preceding subparagraph (A) by inserting “or from a transfer under section 810(c)” after “National Security Education Trust Fund”.

SEC. 602. IMPROVEMENTS TO NATIONAL FLAGSHIP LANGUAGE INITIATIVE.

(a) REQUIREMENT FOR EMPLOYMENT AGREEMENTS.—(1) Section 802(i) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902(i)) is amended by adding at the end the following new paragraphs:

“(5) An undergraduate or graduate student who participates in training in a program under paragraph (1) and has not already entered into a service agreement under subsection (b) shall enter into a service agreement under subsection (b) applicable to an undergraduate or graduate student, as the case may be, with respect to participation in such training in a program under paragraph (1).

“(6)(A) An employee of a department or agency of the Federal Government who participates in training in a program under paragraph (1) shall agree in writing—

“(i) to continue in the service of the department or agency of the Federal Government employing the employee for the period of such training;

“(ii) to continue in the service of such department or agency, following completion by the employee of such training, for a period of two years for each year, or part of the year, of such training;

“(iii) if, before the completion by the employee of such training, the employment of the employee is terminated by such department or agency due to misconduct by the employee, or by the employee voluntarily, to reimburse the United States for the total cost of such training (excluding the employee’s pay and allowances) provided to the employee; and

“(iv) if, after the completion by the employee of such training but before the completion by the employee of the period of service required by clause (ii), the employment of the employee by such department or agency is terminated either by such department or agency due to misconduct by the employee, or by the employee voluntarily, to reimburse the United States in an amount that bears the same ratio to the total cost of such training (excluding the employee’s pay and allowances) provided to the employee as the unserved portion of such period of service bears to the total period of service required by clause (ii).

“(C) Subject to subparagraph (D), the obligation to reimburse the United States under an agreement under subparagraph (A) is for all purposes a debt owing the United States.

“(D) The head of the element of the intelligence community concerned may release an employee, in whole or in part, from the obligation to reimburse the United States under an agreement under subparagraph (A) when, in the discretion of the head of

the element, the head of the element determines that equity or the interests of the United States so require.”.

(2) The amendment made by paragraph (1) shall apply to training under section 802(i) of the David L. Boren National Security Act of 1991 that begins on or after the date that is 90 days after the date of the enactment of this Act.

Applicability.
50 USC 1902
note.

(b) INCREASE IN ANNUAL FUNDING.—Section 811 of that Act (50 U.S.C. 1911) is amended by striking subsection (b) and inserting the following new subsections:

“(b) FUNDING FROM INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT FOR FISCAL YEARS BEGINNING WITH FISCAL YEAR 2005.—In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, the Director of National Intelligence shall transfer to the Secretary from amounts appropriated for the Intelligence Community Management Account for each fiscal year, beginning with fiscal year 2005, \$6,000,000 to carry out the grant program for the National Flagship Language Initiative under section 802(a)(1)(D).

“(c) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts made available under this section shall remain available until expended.”.

(c) INCREASE IN NUMBER OF PARTICIPATING EDUCATIONAL INSTITUTIONS.—The Secretary of Defense shall take such actions as the Secretary considers appropriate to increase the number of qualified educational institutions that receive grants under the National Flagship Language Initiative under section 802(i) of the David L. Boren National Security Education Act of 1991 to establish, operate, or improve activities designed to train students in programs in a range of disciplines to achieve advanced levels of proficiency in those foreign languages that the Secretary identifies as being the most critical to the national security of the United States.

50 USC 1902
note.

(d) CLARIFICATION OF AUTHORITY TO SUPPORT STUDIES ABROAD.—Educational institutions that receive grants under the National Flagship Language Initiative may support students who pursue total immersion foreign language studies overseas of foreign languages that are critical to the national security of the United States.

50 USC 1902
note.

SEC. 603. SCHOLARSHIP PROGRAM FOR ENGLISH LANGUAGE STUDIES FOR HERITAGE COMMUNITY CITIZENS OF THE UNITED STATES WITHIN NATIONAL SECURITY EDUCATION PROGRAM.

(a) SCHOLARSHIP PROGRAM.—(1) Subsection (a)(1) of section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

- (A) by striking “and” at the end of subparagraph (C);
- (B) by striking the period at the end of subparagraph (D) and inserting “; and”; and
- (C) by adding at the end the following new subparagraph:

“(E) awarding scholarships to students who—

“(i) are United States citizens who—

“(I) are native speakers (referred to as ‘heritage community citizens’) of a foreign language that is identified as critical to the national security interests of the United States who should be actively recruited for employment by Federal security agencies with a need for linguists; and

“(II) are not proficient at a professional level in the English language with respect to reading, writing, and other skills required to carry out the national security interests of the United States, as determined by the Secretary, to enable such students to pursue English language studies at an institution of higher education of the United States to attain proficiency in those skills; and “(ii) enter into an agreement to work in a position in a similar manner (as determined by the Secretary) as agreements entered into pursuant to subsection (b)(2)(A).”.

(2) The matter following subsection (a)(2) of such section is amended—

(A) in the first sentence, by inserting “or for the scholarship program under paragraph (1)(E)” after “under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i)”; and

(B) by adding at the end the following: “For the authorization of appropriations for the scholarship program under paragraph (1)(E), see section 812.”.

(3) Section 803(d)(4)(E) of such Act (50 U.S.C. 1903(d)(4)(E)) is amended by inserting before the period the following: “and section 802(a)(1)(E) (relating to the scholarship program for advanced English language studies by heritage community citizens)”.

(b) FUNDING.—The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended by adding at the end the following new section:

50 USC 1912.

“SEC. 812. FUNDING FOR SCHOLARSHIP PROGRAM FOR ADVANCED ENGLISH LANGUAGE STUDIES BY HERITAGE COMMUNITY CITIZENS.

“(a) FUNDING FROM INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.—In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, the Director of National Intelligence shall transfer to the Secretary from amounts appropriated for the Intelligence Community Management Account for each fiscal year, beginning with fiscal year 2005, \$2,000,000 to carry out the scholarship programs for English language studies by certain heritage community citizens under section 802(a)(1)(E).

“(b) AVAILABILITY OF FUNDS.—Amounts made available under subsection (a) shall remain available until expended.”.

Subtitle B—Improvement in Intelligence Community Foreign Language Skills

SEC. 611. FOREIGN LANGUAGE PROFICIENCY FOR CERTAIN SENIOR LEVEL POSITIONS IN THE CENTRAL INTELLIGENCE AGENCY.

50 USC 403–4a.

(a) IN GENERAL.—Section 104A of the National Security Act of 1947, amended by section 1011(a) of the National Security Intelligence Reform Act of 2004, is further amended by adding at the end the following new subsection:

“(g) FOREIGN LANGUAGE PROFICIENCY FOR CERTAIN SENIOR LEVEL POSITIONS IN CENTRAL INTELLIGENCE AGENCY.—(1) Except

as provided pursuant to paragraph (2), an individual may not be appointed to a position in the Senior Intelligence Service in the Directorate of Intelligence or the Directorate of Operations of the Central Intelligence Agency unless the Director of the Central Intelligence Agency determines that the individual—

“(A) has been certified as having a professional speaking and reading proficiency in a foreign language, such proficiency being at least level 3 on the Interagency Language Roundtable Language Skills Level or commensurate proficiency level using such other indicator of proficiency as the Director of the Central Intelligence Agency considers appropriate; and

“(B) is able to effectively communicate the priorities of the United States and exercise influence in that foreign language.

“(2) The Director of the Central Intelligence Agency may, in the discretion of the Director, waive the application of paragraph (1) to any position or category of positions otherwise covered by that paragraph if the Director determines that foreign language proficiency is not necessary for the successful performance of the duties and responsibilities of such position or category of positions.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to appointments made on or after the date that is one year after the date of the enactment of this Act.

50 USC 403–4a
note.

(c) REPORT ON WAIVERS.—The Director of the Central Intelligence Agency shall submit to Congress a report that identifies positions within the Senior Intelligence Service in the Directorate of Intelligence or the Directorate of Operations of the Central Intelligence Agency that are determined by the Director to require waiver from the requirements of section 104A(g) of the National Security Act of 1947, as added by subsection (a). The report shall include a rationale for any waiver granted under section 104A(g)(2), as so added, for each position or category of positions so identified.

SEC. 612. ADVANCEMENT OF FOREIGN LANGUAGES CRITICAL TO THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Title X of the National Security Act of 1947 (50 U.S.C. 441g) is amended—

(1) by inserting before section 1001 (50 U.S.C. 441g) the following:

“SUBTITLE A—SCIENCE AND TECHNOLOGY”;

and

(2) by adding at the end the following new subtitles:

“SUBTITLE B—FOREIGN LANGUAGES PROGRAM

“PROGRAM ON ADVANCEMENT OF FOREIGN LANGUAGES CRITICAL TO THE INTELLIGENCE COMMUNITY

“SEC. 1011. (a) IN GENERAL.—The Secretary of Defense and the Director of National Intelligence may jointly carry out a program to advance skills in foreign languages that are critical to the capability of the intelligence community to carry out the national security activities of the United States (hereinafter in this subtitle referred to as the ‘Foreign Languages Program’).

50 USC 441j.

“(b) IDENTIFICATION OF REQUISITE ACTIONS.—In order to carry out the Foreign Languages Program, the Secretary of Defense and the Director of National Intelligence shall jointly identify actions required to improve the education of personnel in the intelligence community in foreign languages that are critical to the capability of the intelligence community to carry out the national security activities of the United States and to meet the long-term intelligence needs of the United States.

“EDUCATION PARTNERSHIPS

50 USC 441j-1.

“SEC. 1012. (a) IN GENERAL.—In carrying out the Foreign Languages Program, the head of a covered element of the intelligence community may enter into one or more education partnership agreements with educational institutions in the United States in order to encourage and enhance the study in such educational institutions of foreign languages that are critical to the capability of the intelligence community to carry out the national security activities of the United States.

“(b) ASSISTANCE PROVIDED UNDER EDUCATIONAL PARTNERSHIP AGREEMENTS.—Under an educational partnership agreement entered into with an educational institution pursuant to this section, the head of a covered element of the intelligence community may provide the following assistance to the educational institution:

“(1) The loan of equipment and instructional materials of the element of the intelligence community to the educational institution for any purpose and duration that the head of the element considers appropriate.

“(2) Notwithstanding any other provision of law relating to the transfer of surplus property, the transfer to the educational institution of any computer equipment, or other equipment, that is—

“(A) commonly used by educational institutions;

“(B) surplus to the needs of the element of the intelligence community; and

“(C) determined by the head of the element to be appropriate for support of such agreement.

“(3) The provision of dedicated personnel to the educational institution—

“(A) to teach courses in foreign languages that are critical to the capability of the intelligence community to carry out the national security activities of the United States; or

“(B) to assist in the development for the educational institution of courses and materials on such languages.

“(4) The involvement of faculty and students of the educational institution in research projects of the element of the intelligence community.

“(5) Cooperation with the educational institution in developing a program under which students receive academic credit at the educational institution for work on research projects of the element of the intelligence community.

“(6) The provision of academic and career advice and assistance to students of the educational institution.

“(7) The provision of cash awards and other items that the head of the element of the intelligence community considers appropriate.

“VOLUNTARY SERVICES

“SEC. 1013. (a) AUTHORITY TO ACCEPT SERVICES.—Notwithstanding section 1342 of title 31, United States Code, and subject to subsection (b), the Foreign Languages Program under section 1011 shall include authority for the head of a covered element of the intelligence community to accept from any dedicated personnel voluntary services in support of the activities authorized by this subtitle. 50 USC 441j–2.

“(b) REQUIREMENTS AND LIMITATIONS.—(1) In accepting voluntary services from an individual under subsection (a), the head of a covered element of the intelligence community shall—

“(A) supervise the individual to the same extent as the head of the element would supervise a compensated employee of that element providing similar services; and

“(B) ensure that the individual is licensed, privileged, has appropriate educational or experiential credentials, or is otherwise qualified under applicable law or regulations to provide such services.

“(2) In accepting voluntary services from an individual under subsection (a), the head of a covered element of the intelligence community may not—

“(A) place the individual in a policymaking position, or other position performing inherently governmental functions; or

“(B) compensate the individual for the provision of such services.

“(c) AUTHORITY TO RECRUIT AND TRAIN INDIVIDUALS PROVIDING SERVICES.—The head of a covered element of the intelligence community may recruit and train individuals to provide voluntary services under subsection (a).

“(d) STATUS OF INDIVIDUALS PROVIDING SERVICES.—(1) Subject to paragraph (2), while providing voluntary services under subsection (a) or receiving training under subsection (c), an individual shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

“(A) Section 552a of title 5, United States Code (relating to maintenance of records on individuals).

“(B) Chapter 11 of title 18, United States Code (relating to conflicts of interest).

“(2)(A) With respect to voluntary services under paragraph (1) provided by an individual that are within the scope of the services accepted under that paragraph, the individual shall be deemed to be a volunteer of a governmental entity or nonprofit institution for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

“(B) In the case of any claim against such an individual with respect to the provision of such services, section 4(d) of such Act (42 U.S.C. 14503(d)) shall not apply.

“(3) Acceptance of voluntary services under this section shall have no bearing on the issuance or renewal of a security clearance.

“(e) REIMBURSEMENT OF INCIDENTAL EXPENSES.—(1) The head of a covered element of the intelligence community may reimburse an individual for incidental expenses incurred by the individual in providing voluntary services under subsection (a). The head of a covered element of the intelligence community shall determine

which expenses are eligible for reimbursement under this subsection.

“(2) Reimbursement under paragraph (1) may be made from appropriated or nonappropriated funds.

“(f) **AUTHORITY TO INSTALL EQUIPMENT.**—(1) The head of a covered element of the intelligence community may install telephone lines and any necessary telecommunication equipment in the private residences of individuals who provide voluntary services under subsection (a).

“(2) The head of a covered element of the intelligence community may pay the charges incurred for the use of equipment installed under paragraph (1) for authorized purposes.

“(3) Notwithstanding section 1348 of title 31, United States Code, the head of a covered element of the intelligence community may use appropriated funds or nonappropriated funds of the element in carrying out this subsection.

“REGULATIONS

50 USC 441j-3.

“**SEC. 1014. (a) IN GENERAL.**—The Secretary of Defense and the Director of National Intelligence shall jointly prescribe regulations to carry out the Foreign Languages Program.

“(b) **ELEMENTS OF THE INTELLIGENCE COMMUNITY.**—The head of each covered element of the intelligence community shall prescribe regulations to carry out sections 1012 and 1013 with respect to that element including the following:

“(1) Procedures to be utilized for the acceptance of voluntary services under section 1013.

“(2) Procedures and requirements relating to the installation of equipment under section 1013(f).

“DEFINITIONS

50 USC 441j-4.

“**SEC. 1015.** In this subtitle:

“(1) The term ‘covered element of the intelligence community’ means an agency, office, bureau, or element referred to in subparagraphs (B) through (L) of section 3(4).

“(2) The term ‘educational institution’ means—

“(A) a local educational agency (as that term is defined in section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)));

“(B) an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) other than institutions referred to in subsection (a)(1)(C) of such section); or

“(C) any other nonprofit institution that provides instruction of foreign languages in languages that are critical to the capability of the intelligence community to carry out national security activities of the United States.

“(3) The term ‘dedicated personnel’ means employees of the intelligence community and private citizens (including former civilian employees of the Federal Government who have been voluntarily separated, and members of the United States Armed Forces who have been honorably discharged, honorably separated, or generally discharged under honorable circumstances and rehired on a voluntary basis specifically to perform the activities authorized under this subtitle).

“SUBTITLE C—ADDITIONAL EDUCATION PROVISIONS

“ASSIGNMENT OF INTELLIGENCE COMMUNITY PERSONNEL AS
LANGUAGE STUDENTS

“SEC. 1021. (a) IN GENERAL.—The Director of National Intelligence, acting through the heads of the elements of the intelligence community, may assign employees of such elements in analyst positions requiring foreign language expertise as students at accredited professional, technical, or other institutions of higher education for training at the graduate or undergraduate level in foreign languages required for the conduct of duties and responsibilities of such positions. 50 USC 441m.

“(b) AUTHORITY FOR REIMBURSEMENT OF COSTS OF TUITION AND TRAINING.—(1) The Director of National Intelligence may reimburse an employee assigned under subsection (a) for the total cost of the training described in that subsection, including costs of educational and supplementary reading materials.

“(2) The authority under paragraph (1) shall apply to employees who are assigned on a full-time or part-time basis. Applicability.

“(3) Reimbursement under paragraph (1) may be made from appropriated or nonappropriated funds.

“(c) RELATIONSHIP TO COMPENSATION AS AN ANALYST.—Reimbursement under this section to an employee who is an analyst is in addition to any benefits, allowances, travel expenses, or other compensation the employee is entitled to by reason of serving in such an analyst position.”.

(b) CLERICAL AMENDMENT.—The table of contents for the National Security Act of 1947 is amended by striking the item relating to section 1001 and inserting the following new items:

“Subtitle A—Science and Technology

“Sec. 1001. Scholarships and work-study for pursuit of graduate degrees in science and technology.

“Subtitle B—Foreign Languages Program

“Sec. 1011. Program on advancement of foreign languages critical to the intelligence community.

“Sec. 1012. Education partnerships.

“Sec. 1013. Voluntary services.

“Sec. 1014. Regulations.

“Sec. 1015. Definitions.

“Subtitle C—Additional Education Provisions

“Sec. 1021. Assignment of intelligence community personnel as language students.”.

SEC. 613. PILOT PROJECT ON CIVILIAN LINGUIST RESERVE CORPS.

50 USC 403–1b
note.

(a) PILOT PROJECT.—The Director of National Intelligence shall conduct a pilot project to assess the feasibility and advisability of establishing a Civilian Linguist Reserve Corps comprised of United States citizens with advanced levels of proficiency in foreign languages who would be available upon the call of the Director to perform such service or duties with respect to such foreign languages in the intelligence community as the Director may specify.

(b) CONDUCT OF PROJECT.—Taking into account the findings and recommendations contained in the report required under section 325 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2393), in conducting the pilot project under subsection (a) the Director of National Intelligence shall—

(1) identify several foreign languages that are critical for the national security of the United States;

(2) identify United States citizens with advanced levels of proficiency in the foreign languages identified under paragraph (1) who would be available to perform the services and duties referred to in subsection (a); and

(3) when considered necessary by the Director, implement a call for the performance of such services and duties.

(c) DURATION OF PROJECT.—The pilot project under subsection (a) shall be conducted for a three-year period.

(d) AUTHORITY TO ENTER INTO CONTRACTS.—The Director of National Intelligence may enter into contracts with appropriate agencies or entities to carry out the pilot project under subsection (a).

(e) REPORTS.—(1) The Director of National Intelligence shall submit to Congress an initial and a final report on the pilot project conducted under subsection (a).

(2) Each report required under paragraph (1) shall contain information on the operation of the pilot project, the success of the pilot project in carrying out the objectives of the establishment of a Civilian Linguist Reserve Corps, and recommendations for the continuation or expansion of the pilot project.

(3) The final report shall be submitted not later than six months after the completion of the pilot project.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Director of National Intelligence for each of fiscal years 2005, 2006, and 2007 in order to carry out the pilot project under subsection (a) such sums as are specified in the classified Schedule of Authorizations referred to in section 102.

SEC. 614. REPORT ON STATUS, CONSOLIDATION, AND IMPROVEMENT OF INTELLIGENCE EDUCATION PROGRAMS.

(a) REPORT.—Not later than June 1, 2005, the Director of National Intelligence shall submit to Congress a report setting forth—

(1) the status of each intelligence education program, including the statutory, regulatory, or administrative authority under which such program is carried out; and

(2) such recommendations as the Director considers appropriate for legislative or administrative action to consolidate, enhance the coordination of, or otherwise improve such intelligence education programs.

(b) INTELLIGENCE EDUCATION PROGRAM DEFINED.—In this section, the term “intelligence education program” means any grant, scholarship, education, or similar program (whether authorized by statute, regulation, or administrative order) that—

(1) is supported, funded, or carried out by a department, agency, or element of the intelligence community; or

(2) is otherwise intended to aid in the recruitment, retention, or training of intelligence community personnel.

SEC. 615. REPORT ON RECRUITMENT AND RETENTION OF QUALIFIED INSTRUCTORS OF THE DEFENSE LANGUAGE INSTITUTE.

(a) STUDY.—The Secretary of Defense shall conduct a study on mechanisms to improve the recruitment and retention of qualified foreign language instructors at the Foreign Language Center of the Defense Language Institute. In conducting the study, the Secretary shall consider, in the case of a foreign language instructor

who is an alien, the appropriateness of expeditious adjustment of the status of the alien under applicable immigration law from a temporary status to that of an alien lawfully admitted for permanent residence.

(b) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on the study conducted under subsection (a). The report shall include such recommendations for such legislative or administrative action as the Secretary considers appropriate.

(c) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the Select Committee on Intelligence and the Committee on Armed Services of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

TITLE VII—TERRORISM MATTERS

SEC. 701. INFORMATION ON TERRORIST GROUPS THAT SEEK WEAPONS OF MASS DESTRUCTION AND GROUPS THAT HAVE BEEN DESIGNATED AS FOREIGN TERRORIST ORGANIZATIONS.

(a) **INCLUSION IN REPORTS.**—Section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f) is amended—

(1) in subsection (a)(2)—

(A) by inserting “any terrorist group known to have obtained or developed, or to have attempted to obtain or develop, weapons of mass destruction,” after “during the preceding five years,”; and

(B) by inserting “any group designated by the Secretary as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189),” after “Export Administration Act of 1979,”;

(2) in subsection (b)—

(A) in paragraph (1)(C)—

(i) in clause (iii), by striking “and” at the end;

(ii) by redesignating clause (iv) as clause (v); and

(iii) by inserting after clause (iii) the following new clause (iv):

“(iv) providing weapons of mass destruction, or assistance in obtaining or developing such weapons, to terrorists or terrorist groups;”;

(B) in paragraph (2)—

(i) by redesignating subparagraphs (C), (D), and

(E) as subparagraphs (D), (E), and (F), respectively;

(ii) by inserting after subparagraph (B) the following new subparagraph (C):

“(C) efforts by those groups to obtain or develop weapons of mass destruction;”;

(iii) in subparagraph (F), as so redesignated, by striking the period and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

“(3) to the extent practicable, complete statistical information on the number of individuals, including United States citizens and dual nationals, killed, injured, or kidnapped by each terrorist group during the preceding calendar year; and

“(4) an analysis, as appropriate, of trends in international terrorism, including changes in technology used, methods and targets of attack, demographic information on terrorists, and other appropriate information.”.

22 USC 2656f
note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply beginning with the first report under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 that is submitted more than one year after the date of the enactment of this Act.

TITLE VIII—OTHER MATTERS

22 USC 2656f
note.

SEC. 801. EFFECTIVE DATE.

Except as otherwise expressly provided in this Act, this Act (and the amendments made by this Act) shall take effect on the date of the enactment of this Act.

50 USC 401 note.

SEC. 802. CONSTRUCTION OF REFERENCES TO DIRECTOR OF CENTRAL INTELLIGENCE.

Except as otherwise specifically provided or otherwise provided by context, any reference in this Act, or in the classified annex to accompany this Act, to the Director of Central Intelligence shall be deemed to be a reference to the Director of Central Intelligence as head of the intelligence community.

50 USC 401 note.

SEC. 803. SAVINGS PROVISIONS RELATING TO DISCHARGE OF CERTAIN FUNCTIONS AND AUTHORITIES.

Effective date.
Termination
date.

(a) **HEAD OF INTELLIGENCE COMMUNITY.**—(1) During the period beginning on the date of the enactment of this Act and ending on the date of the appointment of the Director of National Intelligence under section 102 of the National Security Act of 1947, as amended by section 1011(a) of the National Security Intelligence Reform Act of 2004, the Director of Central Intelligence may, acting as the head of the intelligence community, discharge the functions and authorities provided in this Act, and the amendments made by this Act, to the Director of National Intelligence.

(2) During the period referred to in paragraph (1) any reference in this Act or the amendments made by this Act to the Director of National Intelligence shall be considered to be a reference to the Director of Central Intelligence, as the head of the intelligence community.

(3) Upon the appointment of an individual as Director of National Intelligence under section 102 of the National Security Act of 1947, as so amended, any reference in this Act, or in the classified annex to accompany this Act, to the Director of Central Intelligence as head of the intelligence community shall be deemed to be a reference to the Director of National Intelligence.

Effective date.
Termination
date.

(b) **HEAD OF CENTRAL INTELLIGENCE AGENCY.**—(1) During the period beginning on the date of the enactment of this Act and ending on the date of the appointment of the Director of the Central Intelligence Agency under section 104A of the National Security Act of 1947, as amended by section 1011(a) of the National Security Intelligence Reform Act of 2004, the Director of Central Intelligence

may, acting as the head of the Central Intelligence Agency, discharge the functions and authorities provided in this Act, and the amendments made by this Act, to the Director of the Central Intelligence Agency.

(2) Upon the appointment of an individual as Director of the Central Intelligence Agency under section 104A of the National Security Act of 1947, as so amended, any reference in this Act, or in the classified annex to accompany this Act, to the Director of Central Intelligence as head of the Central Intelligence Agency shall be deemed to be a reference to the Director of the Central Intelligence Agency.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 4548 (S. 2386):

HOUSE REPORTS: Nos. 108–558 (Permanent Select Comm. on Intelligence and 108–798 (Comm. of Conference).

SENATE REPORTS: Nos. 108–258 (Select Comm. on Intelligence) and 108–300 (Comm. on Armed Services), both accompanying S. 2386.

CONGRESSIONAL RECORD, Vol. 150 (2004):

June 23, considered and passed House.

Oct. 11, considered and passed Senate, amended, in lieu of S. 2386.

Dec. 7, House agreed to conference report.

Dec. 8, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Dec. 23, Presidential statement.



Public Law 108–488
108th Congress

An Act

Dec. 23, 2004
[H.R. 4569]

To provide for the development of a national plan for the control and management of Sudden Oak Death, a tree disease caused by the fungus-like pathogen *Phytophthora ramorum*, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

7 USC 7720.

**SECTION 1. NATIONAL PLAN FOR CONTROL AND MANAGEMENT OF
SUDDEN OAK DEATH.**

(a) **DEVELOPMENT OF NATIONAL PLAN.**—Subject to the availability of appropriated funds for this purpose, the Secretary of Agriculture, acting through the Animal Plant and Health Inspection Service, shall develop a national plan for the control and management of Sudden Oak Death, a forest disease caused by the fungus-like pathogen *Phytophthora ramorum*.

(b) **PLAN ELEMENTS.**—In developing the plan, the Secretary shall specifically address the following:

(1) Information derived by the Department of Agriculture from ongoing efforts to identify hosts of *Phytophthora ramorum* and survey the extent to which Sudden Oak Death exists in the United States.

(2) Past and current efforts to understand the risk posed by *Phytophthora ramorum* and the results of control and management efforts regarding Sudden Oak Death, including efforts related to research, control, quarantine, and hazardous fuel reduction.

(3) Such future efforts as the Secretary considers necessary to control and manage Sudden Oak Death, including cost estimates for the implementation of such efforts.

(c) **CONSULTATION.**—The Secretary shall develop the plan in consultation with other Federal agencies that have appropriate expertise regarding the control and management of Sudden Oak Death.

(d) **IMPLEMENTATION OF PLAN.**—The Secretary shall complete the plan and commence implementation as soon as practicable after the date on which funds are first appropriated pursuant to the authorization of appropriations in subsection (e) to carry out this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 4569 (S. 2575):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 5, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–489
108th Congress

An Act

Dec. 23, 2004
[H.R. 4657]

District of
Columbia
Retirement
Protection
Improvement Act
of 2004.

To amend the Balanced Budget Act of 1997 to improve the administration of Federal pension benefit payments for District of Columbia teachers, police officers, and fire fighters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “District of Columbia Retirement Protection Improvement Act of 2004”.

SEC. 2. ESTABLISHMENT OF DISTRICT OF COLUMBIA FEDERAL PENSION FUND FOR PAYMENT OF FEDERAL BENEFIT PAYMENTS TO DISTRICT OF COLUMBIA TEACHERS, POLICE OFFICERS, AND FIRE FIGHTERS.

(a) IN GENERAL.—Subtitle A of title XI of the Balanced Budget Act of 1997 (sec. 1—801.01 et seq., D.C. Official Code) is amended—

- (1) by redesignating chapter 9 as chapter 10;
- (2) by redesignating sections 11081 through 11087 as sections 11091 through 11097; and
- (3) by inserting after chapter 8 the following new chapter:

“CHAPTER 9—DISTRICT OF COLUMBIA FEDERAL PENSION FUND

“SEC. 11081. CREATION OF FUND.

“(a) ESTABLISHMENT.—There is established on the books of the Treasury the District of Columbia Teachers, Police Officers, and Firefighters Federal Pension Fund (hereafter referred to as the ‘D.C. Federal Pension Fund’), consisting of the following:

“(1) The assets transferred pursuant to section 11083.

“(2) The annual Federal payments deposited pursuant to section 11084.

“(3) Any amounts otherwise appropriated to such Fund.

“(4) Any income earned on the investment of the assets of such Fund pursuant to subsection (b).

“(b) INVESTMENT OF ASSETS.—The Secretary shall invest such portion of the assets of the D.C. Federal Pension Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the D.C. Federal Pension Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

“(c) **RECORDKEEPING FOR ACTUARIAL STATUS.**—The Secretary shall provide for the keeping of such records as are necessary for determining the actuarial status of the D.C. Federal Pension Fund.

“SEC. 11082. USES OF AMOUNTS IN FUND.

“(a) **IN GENERAL.**—Amounts in the D.C. Federal Pension Fund shall be used—

“(1) to make Federal benefit payments under this subtitle;

“(2) subject to subsection (b), to cover the reasonable and necessary administrative expenses incurred by any person in administering the D.C. Federal Pension Fund and carrying out this chapter;

“(3) for the accumulation of funds in order to finance obligations of the Federal Government for future benefits; and

“(4) for such other purposes as are specified in this subtitle.

“(b) **BUDGETING, CERTIFICATION, AND APPROVAL OF ADMINISTRATIVE EXPENSES.**—The administrative expenses of the D.C. Federal Pension Fund shall be paid in accordance with an annual budget set forth by the Pension Fund Trustee which shall be subject to certification and approval by the Secretary.

“SEC. 11083. TRANSFER OF ASSETS AND OBLIGATIONS OF TRUST FUND AND FEDERAL SUPPLEMENTAL FUND.

Effective dates.

“(a) **TRANSFER OF OBLIGATIONS.**—Effective October 1, 2004, all obligations to make Federal benefit payments shall be transferred from the Trust Fund to the D.C. Federal Pension Fund.

“(b) **TRANSFER OF ASSETS.**—Effective October 1, 2004, all assets of the Trust Fund and all assets of the Federal Supplemental Fund as of such date shall be transferred to the D.C. Federal Pension Fund.

“SEC. 11084. DETERMINATION OF ANNUAL FEDERAL PAYMENTS INTO D.C. FEDERAL PENSION FUND.

“(a) **ANNUAL AMORTIZATION AMOUNT.**—

“(1) **IN GENERAL.**—At the end of each fiscal year (beginning with fiscal year 2005), the Secretary shall promptly pay into the D.C. Federal Pension Fund from the general fund of the Treasury an amount equal to the annual amortization amount for the year (which may not be less than zero).

Effective date.

“(2) **DETERMINATION OF AMOUNT.**—For purposes of paragraph (1)—

“(A) the ‘original unfunded liability’ is the present value as of the effective date of this Act of expected future benefits payable from the Federal Supplemental Fund; and

“(B) the ‘annual amortization amount’ means the amount determined by the enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized)—

“(i) the original unfunded liability over a 30-year period,

“(ii) a net experience gain or loss over a 10-year period, and

“(iii) any other changes in actuarial liability over a 20-year period.

“(3) **SCHEDULE FOR AMORTIZATION.**—In determining the annual amortization amount under paragraph (2)(B), the enrolled actuary shall include amounts necessary to complete

the amortization schedules used for determining the annual amortization amount for payments into the Federal Supplemental Fund under section 11053 (as in effect prior to the enactment of this chapter).

Effective date.

“(b) ADMINISTRATIVE EXPENSES.—During each fiscal year (beginning with fiscal year 2009), the Secretary shall pay into the D.C. Federal Pension Fund from the general fund of the Treasury the amounts necessary to pay the reasonable and necessary administrative expenses described in section 11082(a)(2) for the year.

“SEC. 11085. ADMINISTRATION THROUGH PENSION FUND TRUSTEE.

“(a) IN GENERAL.—The Secretary shall select a Pension Fund Trustee to carry out the responsibilities and duties specified in this subtitle in accordance with the contract described in subsection (b).

“(b) CONTRACT.—The Secretary shall enter into a contract with the Pension Fund Trustee to provide for the auditing of D.C. Federal Pension Fund assets, the making of Federal benefit payments under this subtitle from the D.C. Federal Pension Fund, and such other matters as the Secretary deems appropriate. The Secretary shall enforce the provisions of the contract and otherwise monitor the administration of the D.C. Federal Pension Fund.

“(c) SUBCONTRACTS.—Notwithstanding any provision of a District Retirement Program or any other law, rule, or regulation, the Pension Fund Trustee may, with the approval of the Secretary, enter into one or more subcontracts with the District Government or any person to provide services to the Pension Fund Trustee in connection with its performance of the contract. The Pension Fund Trustee shall monitor the performance of any such subcontract and enforce its provisions.

“(d) DETERMINATION BY THE SECRETARY.—Notwithstanding subsection (b) or any other provision of this subtitle, the Secretary may determine, with respect to any function otherwise to be performed by the Pension Fund Trustee, that in the interest of economy and efficiency such function shall be performed by the Secretary rather than the Pension Fund Trustee.

“(e) REPORTS.—The Pension Fund Trustee shall report to the Secretary, in a form and manner and at such intervals as the Secretary may prescribe, on any matters under the responsibility of the Pension Fund Trustee as the Secretary may prescribe.

“SEC. 11086. APPLICABILITY OF OTHER PROVISIONS TO D.C. FEDERAL PENSION FUND.

“The following provisions of this subtitle shall apply with respect to the D.C. Federal Pension Fund in the same manner as such provisions applied with respect to the Trust Fund prior to October 1, 2004:

“(1) Section 11023(b) (relating to the repayment by the District Government of costs attributable to errors or omissions in transferred records).

“(2) Section 11034 (relating to the treatment of the Trust Fund under certain laws).

“(3) Section 11061 (relating to annual valuations and reports by the enrolled actuary), except that in applying section 11061(b) to the D.C. Federal Pension Fund, the annual report required under such section shall include a determination of

the annual payment to the D.C. Federal Pension Fund under section 11084.

“(4) Section 11062 (relating to reports by the Comptroller General).

“(5) Section 11071 (relating to judicial review).

“(6) Section 11074 (relating to the treatment of misappropriation of Trust Fund amounts as a Federal crime).”.

(b) TERMINATION OF CURRENT FUNDS.—

(1) DISTRICT OF COLUMBIA FEDERAL PENSION LIABILITY TRUST FUND.—Chapter 4 of subtitle A of title XI of such Act (sec. 1—807.01 et seq., D.C. Official Code) is amended by adding at the end the following new section:

“SEC. 11036. TERMINATION OF TRUST FUND.

“Effective upon the transfer of the obligations and assets of the Trust Fund to the D.C. Federal Pension Fund under section 11083—

“(1) the Trust Fund shall terminate; and

“(2) the obligation to make Federal benefit payments from the Trust Fund, and any duty imposed on any person with respect to the Trust Fund, shall terminate.”.

(2) FEDERAL SUPPLEMENTAL DISTRICT OF COLUMBIA PENSION FUND.—Chapter 6 of subtitle A of title XI of such Act (sec. 1—811.01 et seq., D.C. Official Code) is amended by adding at the end the following new section:

“SEC. 11056. TERMINATION OF FEDERAL SUPPLEMENTAL FUND.

“Effective upon the transfer of the assets of the Federal Supplemental Fund to the D.C. Federal Pension Fund under section 11083—

“(1) the Federal Supplemental Fund shall terminate; and

“(2) any duty imposed on any person with respect to the Federal Supplemental fund shall terminate.”.

(c) CONFORMING DEFINITIONS.—

(1) TRUSTEE.—Section 11003(16) of such Act (sec. 1—801.02(16), D.C. Official Code) is amended by striking the period at the end and inserting the following: “, or, beginning October 1, 2004, the Pension Fund Trustee selected by the Secretary under section 11085.”.

(2) D.C. FEDERAL PENSION FUND.—Section 11003 of such Act (sec. 1—801.02, D.C. Official Code) is amended—

(A) by redesignating paragraphs (3) through (16) as paragraphs (4) through (17); and

(B) by inserting after paragraph (2) the following new paragraph:

“(3) The term ‘D.C. Federal Pension Fund’ means the District of Columbia Teachers, Police Officers, and Firefighters Federal Pension Fund established under section 11081.”.

(d) OTHER CONFORMING AMENDMENT.—Section 11041(b) of such Act (sec. 1—809.01(b), D.C. Official Code) is amended in the heading by striking “FROM TRUST FUND”.

(e) CLERICAL AMENDMENTS.—The table of contents of subtitle A of title XI of such Act is amended—

(1) by adding at the end of the items relating to chapter 4 the following:

“Sec. 11036. Termination of Trust Fund.”;

(2) by adding at the end of the items relating to chapter 6 the following:

“Sec. 11056. Termination of Federal Supplemental Fund.”;

(3) by redesignating the item relating to chapter 9 as relating to chapter 10;

(4) by redesignating the items relating to sections 11081 through 11087 as relating to sections 11091 through 11097; and

(5) by inserting after the items relating to chapter 8 the following:

“CHAPTER 9—DISTRICT OF COLUMBIA FEDERAL PENSION FUND

“Sec. 11081. Creation of Fund.

“Sec. 11082. Uses of Amounts in Fund.

“Sec. 11083. Transfer of Assets and Obligations of Trust Fund and Federal Supplemental Fund.

“Sec. 11084. Determination of Annual Federal Payment Into D.C. Federal Pension Fund.

“Sec. 11085. Administration Through Pension Fund Trustee.

“Sec. 11086. Applicability of Other Provisions to D.C. Federal Pension Fund.”.

SEC. 3. ADMINISTRATION OF DISTRICT OF COLUMBIA JUDICIAL RETIREMENT AND SURVIVORS ANNUITY FUND.

(a) PROCEDURES FOR RESOLVING DENIED BENEFIT CLAIMS.—

(1) IN GENERAL.—Section 11—1570(c), D.C. Official Code, is amended by adding at the end the following new paragraph:

“(3)(A) In accordance with procedures approved by the Secretary, the Secretary shall provide to any individual whose claim for a benefit under this subchapter has been denied in whole or in part—

“(i) adequate written notice of such denial, setting forth the specific reasons for the denial in a manner calculated to be understood by the average participant in the program of benefits under this subchapter; and

“(ii) a reasonable opportunity for a full and fair review of the decision denying such claim.

“(B) Any factual determination made by the Secretary pursuant to this paragraph shall be presumed correct unless rebutted by clear and convincing evidence. The Secretary’s interpretation and construction of the benefit provisions of this subchapter shall be entitled to great deference.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to claims for benefits which are made after the date of the enactment of this Act.

(b) TREATMENT OF MISAPPROPRIATION OF FUND AMOUNTS AS FEDERAL CRIME.—

(1) IN GENERAL.—Section 11—1570, D.C. Official Code, is amended by adding at the end the following new subsection:

“(1) The provisions of section 664 of title 18, United States Code (relating to theft or embezzlement from employee benefit plans), shall apply to the Fund.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

SEC. 4. ADMINISTRATION OF RETIREMENT PROGRAM FOR POLICE OFFICERS, FIRE FIGHTERS, AND TEACHERS BY OTHER THAN CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—Section 424(c)(21) of the District of Columbia Home Rule Act (sec. 1—204.24c(21), D.C. Official Code) is amended

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by striking “systems” and inserting the following: “systems (other than the retirement system for police officers, fire fighters, and teachers)”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 4657:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 28, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–490
108th Congress

An Act

Dec. 23, 2004
[H.R. 5204]

To amend section 340E of the Public Health Service Act (relating to children’s hospitals) to modify provisions regarding the determination of the amount of payments for indirect expenses associated with operating approved graduate medical residency training programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DISREGARD OF NEWBORN BASSINETS IN CALCULATING CASE MIX FOR RECEIPT BY CHILDREN’S HOSPITALS OF FUNDING FOR GRADUATE MEDICAL EDUCATION PROGRAMS.

(a) IN GENERAL.—Section 340E(d) of the Public Health Service Act (42 U.S.C. 256e(d)) is amended—

(1) in paragraph (1), by striking “related to” and inserting “associated with”; and

(2) in paragraph (2)(A)—

(A) by inserting “ratio of the” after “hospitals and the”; and

(B) by inserting at the end before the semicolon “to beds (but excluding beds or bassinets assigned to healthy newborn infants)”.

42 USC 256e
note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments for periods beginning with fiscal year 2005.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 5204:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 6, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–491
108th Congress

An Act

To authorize salary adjustments for Justices and judges of the United States for
fiscal year 2005.

Dec. 23, 2004
[H.R. 5363]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

**SECTION 1. AUTHORIZATION OF SALARY ADJUSTMENTS FOR FEDERAL
JUSTICES AND JUDGES.** 28 USC 461 note.

Pursuant to section 140 of Public Law 97–92, Justices and
judges of the United States are authorized during fiscal year 2005
to receive a salary adjustment in accordance with section 461 of
title 28, United States Code.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 5363:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 17, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–492
108th Congress

An Act

Dec. 23, 2004
[H.R. 5382]

To promote the development of the emerging commercial human space flight industry, and for other purposes.

Commercial
Space Launch
Amendments Act
of 2004.
49 USC 70101
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commercial Space Launch Amendments Act of 2004”.

SEC. 2. AMENDMENTS.

(a) FINDINGS AND PURPOSES.—Section 70101 of title 49, United States Code, is amended—

(1) in subsection (a)(3), by inserting “human space flight,” after “microgravity research,”;

(2) in subsection (a)(4)—

(A) by striking “satellite”; and

(B) by striking “services now available from” and inserting “capabilities of”;

(3) in subsection (a)(8), by striking “and” at the end;

(4) in subsection (a)(9), by striking the period and inserting a semicolon;

(5) by adding at the end of subsection (a) the following new paragraphs:

“(10) the goal of safely opening space to the American people and their private commercial, scientific, and cultural enterprises should guide Federal space investments, policies, and regulations;

“(11) private industry has begun to develop commercial launch vehicles capable of carrying human beings into space and greater private investment in these efforts will stimulate the Nation’s commercial space transportation industry as a whole;

“(12) space transportation is inherently risky, and the future of the commercial human space flight industry will depend on its ability to continually improve its safety performance;

“(13) a critical area of responsibility for the Department of Transportation is to regulate the operations and safety of the emerging commercial human space flight industry;

“(14) the public interest is served by creating a clear legal, regulatory, and safety regime for commercial human space flight; and

“(15) the regulatory standards governing human space flight must evolve as the industry matures so that regulations

neither stifle technology development nor expose crew or space flight participants to avoidable risks as the public comes to expect greater safety for crew and space flight participants from the industry.”;

(6) in subsection (b)(2)—

(A) by striking “and” at the end of subparagraph (A);

(B) by inserting “and” after the semicolon in subparagraph (B); and

(C) by adding at the end the following new subparagraph:

“(C) promoting the continuous improvement of the safety of launch vehicles designed to carry humans, including through the issuance of regulations, to the extent permitted by this chapter;”;

(7) in subsection (b)(3), by striking “issue and transfer” and inserting “issue permits and commercial licenses and transfer”.

(b) DEFINITIONS.—Section 70102 of title 49, United States Code, is amended—

(1) by redesignating paragraphs (2) through (17) as paragraphs (3), (4), (5), (6), (7), (8), (9), (10), (12), (13), (14), (15), (16), (18), (21), and (22), respectively;

(2) by inserting after paragraph (1) the following new paragraph:

“(2) ‘crew’ means any employee of a licensee or transferee, or of a contractor or subcontractor of a licensee or transferee, who performs activities in the course of that employment directly relating to the launch, reentry, or other operation of or in a launch vehicle or reentry vehicle that carries human beings.”;

(3) in paragraph (4), as so redesignated by paragraph (1) of this subsection, by inserting “, crew, or space flight participant” after “any payload”;

(4) in paragraph (6)(A), as so redesignated by paragraph (1) of this subsection, by striking “and payload” and inserting “, payload, crew (including crew training), or space flight participant”;

(5) in paragraph (8)(A), as so redesignated by paragraph (1) of this subsection, by inserting “or human beings” after “place a payload”;

(6) by inserting after paragraph (10), as so redesignated by paragraph (1) of this subsection, the following new paragraph:

“(11) except in section 70104(c), ‘permit’ means an experimental permit issued under section 70105a.”;

(7) in paragraph (13), as so redesignated by paragraph (1) of this subsection, by inserting “crew, or space flight participants,” after “and its payload,”;

(8) in paragraph (14)(A), as so redesignated by paragraph (1) of this subsection, by striking “and its payload” inserting “and payload, crew (including crew training), or space flight participant”;

(9) by inserting after paragraph (16), as so redesignated by paragraph (1) of this subsection, the following new paragraph:

“(17) ‘space flight participant’ means an individual, who is not crew, carried within a launch vehicle or reentry vehicle.”;

(10) by inserting after paragraph (18), as so redesignated by paragraph (1) of this subsection, the following new paragraphs:

“(19) unless and until regulations take effect under section 70120(c)(2), ‘suborbital rocket’ means a vehicle, rocket-propelled in whole or in part, intended for flight on a suborbital trajectory, and the thrust of which is greater than its lift for the majority of the rocket-powered portion of its ascent.

“(20) ‘suborbital trajectory’ means the intentional flight path of a launch vehicle, reentry vehicle, or any portion thereof, whose vacuum instantaneous impact point does not leave the surface of the Earth.”; and

(11) in paragraph (21), as so redesignated by paragraph (1) of this subsection—

(A) by striking “or” at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph (D) and inserting “; or”; and

(C) by adding at the end the following new subparagraph:

“(E) crew or space flight participants.”.

(c) COMMERCIAL HUMAN SPACE FLIGHT.—(1) Section 70103(b)(1) of title 49, United States Code, is amended by inserting “, including those involving space flight participants” after “private sector”.

(2) Section 70103 of title 49, United States Code, is amended by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

“(c) SAFETY.—In carrying out the responsibilities under subsection (b), the Secretary shall encourage, facilitate, and promote the continuous improvement of the safety of launch vehicles designed to carry humans, and the Secretary may, consistent with this chapter, promulgate regulations to carry out this subsection.”.

(3) Section 70104(a) of title 49, United States Code, is amended—

(A) by striking “License Requirement.—A license issued or transferred under this chapter” and inserting “Requirement.—A license issued or transferred under this chapter, or a permit,”; and

(B) by inserting after paragraph (4) the following: “Notwithstanding this subsection, a permit shall not authorize a person to operate a launch site or reentry site.”.

(4) Section 70104(b) of title 49, United States Code, is amended by inserting “or permit” after “holder of a license”.

(5) Section 70104 of title 49, United States Code, is amended by adding at the end the following new subsection:

“(d) SINGLE LICENSE OR PERMIT.—The Secretary of Transportation shall ensure that only 1 license or permit is required from the Department of Transportation to conduct activities involving crew or space flight participants, including launch and reentry, for which a license or permit is required under this chapter. The Secretary shall ensure that all Department of Transportation regulations relevant to the licensed or permitted activity are satisfied.”.

(6) Section 70105(a) of title 49, United States Code, is amended—

(A) in paragraph (1), by striking “a license is not issued” and inserting “the Secretary has not taken action on a license application”; and

(B) in paragraph (2), by inserting “(including approval procedures for the purpose of protecting the health and safety of crews and space flight participants, to the extent permitted by subsections (b) and (c))” after “or personnel”.

(7) Section 70105(b)(1) of title 49, United States Code, is amended by inserting “or permit” after “for a license”.

(8) Section 70105(b)(2)(B) of title 49, United States Code, is amended by striking “an additional requirement necessary to protect” and inserting “any additional requirement necessary to protect”.

(9) Section 70105(b)(2)(C) of title 49, United States Code, is amended—

(A) by inserting “or permit” after “for a license”; and

(B) by striking “and” at the end thereof.

(10) Section 70105(b)(2) of title 49, United States Code, is amended by redesignating subparagraph (D) as subparagraph (E) and inserting after subparagraph (C) the following new subparagraph:

“(D) additional license requirements, for a launch vehicle carrying a human being for compensation or hire, necessary to protect the health and safety of crew or space flight participants, only if such requirements are imposed pursuant to final regulations issued in accordance with subsection (c); and”.

(11) Section 70105(b)(2)(E) of title 49, United States Code, as so redesignated by paragraph (11) of this subsection, is amended by inserting “or permit” after “for a license”.

(12) Section 70105(b)(3) of title 49, United States Code, is amended by adding at the end the following: “The Secretary may not grant a waiver under this paragraph that would permit the launch or reentry of a launch vehicle or a reentry vehicle without a license or permit if a human being will be on board.”.

(13) Section 70105(b) of title 49, United States Code, is amended by adding at the end the following new paragraphs:

“(4) The holder of a license or a permit under this chapter may launch or reenter crew only if—

“(A) the crew has received training and has satisfied medical or other standards specified in the license or permit in accordance with regulations promulgated by the Secretary;

“(B) the holder of the license or permit has informed any individual serving as crew in writing, prior to executing any contract or other arrangement to employ that individual (or, in the case of an individual already employed as of the date of enactment of the Commercial Space Launch Amendments Act of 2004, as early as possible, but in any event prior to any launch in which the individual will participate as crew), that the United States Government has not certified the launch vehicle as safe for carrying crew or space flight participants; and

“(C) the holder of the license or permit and crew have complied with all requirements of the laws of the United States that apply to crew.

“(5) The holder of a license or a permit under this chapter may launch or reenter a space flight participant only if—

“(A) in accordance with regulations promulgated by the Secretary, the holder of the license or permit has

informed the space flight participant in writing about the risks of the launch and reentry, including the safety record of the launch or reentry vehicle type, and the Secretary has informed the space flight participant in writing of any relevant information related to risk or probable loss during each phase of flight gathered by the Secretary in making the determination required by section 70112(a)(2) and (c);

“(B) the holder of the license or permit has informed any space flight participant in writing, prior to receiving any compensation from that space flight participant or (in the case of a space flight participant not providing compensation) otherwise concluding any agreement to fly that space flight participant, that the United States Government has not certified the launch vehicle as safe for carrying crew or space flight participants;

“(C) in accordance with regulations promulgated by the Secretary, the space flight participant has provided written informed consent to participate in the launch and reentry and written certification of compliance with any regulations promulgated under paragraph (6)(A); and

“(D) the holder of the license or permit has complied with any regulations promulgated by the Secretary pursuant to paragraph (6).

“(6)(A) The Secretary may issue regulations requiring space flight participants to undergo an appropriate physical examination prior to a launch or reentry under this chapter. This subparagraph shall cease to be in effect three years after the date of enactment of the Commercial Space Launch Amendments Act of 2004.

“(B) The Secretary may issue additional regulations setting reasonable requirements for space flight participants, including medical and training requirements. Such regulations shall not be effective before the expiration of 3 years after the date of enactment of the Commercial Space Launch Amendments Act of 2004.”

(14) Section 70105 of title 49, United States Code, is amended by redesignating subsection (c) as subsection (d), and by adding after subsection (b) the following new subsection:

“(c) SAFETY REGULATIONS.—(1) The Secretary may issue regulations governing the design or operation of a launch vehicle to protect the health and safety of crew and space flight participants.

“(2) Regulations issued under this subsection shall—

“(A) describe how such regulations would be applied when the Secretary is determining whether to issue a license under this chapter;

“(B) apply only to launches in which a vehicle will be carrying a human being for compensation or hire;

“(C) be limited to restricting or prohibiting design features or operating practices that—

“(i) have resulted in a serious or fatal injury (as defined in 49 CFR 830, as in effect on November 10, 2004) to crew or space flight participants during a licensed or permitted commercial human space flight;

or

“(ii) contributed to an unplanned event or series of events during a licensed or permitted commercial

Termination
date.

human space flight that posed a high risk of causing a serious or fatal injury (as defined in 49 CFR 830, as in effect on November 10, 2004) to crew or space flight participants; and

“(D) be issued with a description of the instance or instances when the design feature or operating practice being restricted or prohibited contributed to a result or event described in subparagraph (C).

“(3) Beginning 8 years after the date of enactment of the Commercial Space Launch Amendments Act of 2004, the Secretary may propose regulations under this subsection without regard to paragraph (2)(C) and (D). Any such regulations shall take into consideration the evolving standards of safety in the commercial space flight industry.

Effective date.

“(4) Nothing in this subsection shall be construed to limit the authority of the Secretary to issue requirements or regulations to protect the public health and safety, safety of property, national security interests, and foreign policy interests of the United States.”.

(15) Section 70105(d) of title 49, United States Code, as so redesignated by paragraph (15) of this subsection, is amended by inserting “or permit” after “of a license”.

(16) Chapter 701 of title 49, United States Code, is amended by inserting after section 70105 the following new section:

“§ 70105a. Experimental permits

Deadlines.

“(a) A person may apply to the Secretary of Transportation for an experimental permit under this section in the form and manner the Secretary prescribes. Consistent with the protection of the public health and safety, safety of property, and national security and foreign policy interests of the United States, the Secretary, not later than 120 days after receiving an application pursuant to this section, shall issue a permit if the Secretary decides in writing that the applicant complies, and will continue to comply, with this chapter and regulations prescribed under this chapter. The Secretary shall inform the applicant of any pending issue and action required to resolve the issue if the Secretary has not made a decision not later than 90 days after receiving an application. The Secretary shall transmit to the Committee on Science of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate a written notice not later than 15 days after any occurrence when the Secretary has failed to act on a permit within the deadline established by this section.

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“(b) In carrying out subsection (a), the Secretary may establish procedures for safety approvals of launch vehicles, reentry vehicles, safety systems, processes, services, or personnel that may be used in conducting commercial space launch or reentry activities pursuant to a permit.

“(c) In order to encourage the development of a commercial space flight industry, the Secretary may when issuing permits use the authority granted under section 70105(b)(2)(C).

“(d) The Secretary may issue a permit only for reusable sub-orbital rockets that will be launched or reentered solely for—

“(1) research and development to test new design concepts, new equipment, or new operating techniques;

“(2) showing compliance with requirements as part of the process for obtaining a license under this chapter; or

“(3) crew training prior to obtaining a license for a launch or reentry using the design of the rocket for which the permit would be issued.

“(e) Permits issued under this section shall—

“(1) authorize an unlimited number of launches and reentries for a particular suborbital rocket design for the uses described in subsection (d); and

“(2) specify the type of modifications that may be made to the suborbital rocket without changing the design to an extent that would invalidate the permit.

“(f) Permits shall not be transferable.

“(g) A permit may not be issued for, and a permit that has already been issued shall cease to be valid for, a particular design for a reusable suborbital rocket after a license has been issued for the launch or reentry of a rocket of that design.

“(h) No person may operate a reusable suborbital rocket under a permit for carrying any property or human being for compensation or hire.

“(i) For the purposes of sections 70106, 70107, 70108, 70109, 70110, 70112, 70115, 70116, 70117, and 70121 of this chapter—

“(1) a permit shall be considered a license;

“(2) the holder of a permit shall be considered a licensee;

“(3) a vehicle operating under a permit shall be considered to be licensed; and

“(4) the issuance of a permit shall be considered licensing. This subsection shall not be construed to allow the transfer of a permit.”.

(17) Section 70106(a) of title 49, United States Code, is amended—

(A) by inserting “at a site used for crew or space flight participant training,” after “assemble a launch vehicle or reentry vehicle,”; and

(B) by striking “section 70104(c)” and inserting “sections 70104(c), 70105, and 70105a”.

(18) Section 70107(b) of title 49, United States Code, is amended—

(A) by inserting “(1)” before “On the initiative”; and

(B) by adding the following new paragraph at the end:

“(2) The Secretary shall modify a license issued or transferred under this chapter whenever a modification is needed for the license to be in conformity with a regulation that was issued pursuant to section 70105(c) after the issuance of the license. This paragraph shall not apply to permits.”.

(19) Section 70107 of title 49, United States Code, is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

“(d) ADDITIONAL SUSPENSIONS.—(1) The Secretary may suspend a license when a previous launch or reentry under the license has resulted in a serious or fatal injury (as defined in 49 CFR 830, as in effect on November 10, 2004) to crew or space flight participants and the Secretary has determined that continued operations under the license are likely to cause additional serious or fatal injury (as defined in 49 CFR 830, as in effect on November 10, 2004) to crew or space flight participants.

“(2) Any suspension imposed under this subsection shall be for as brief a period as possible and, in any event, shall cease when the Secretary—

“(A) has determined that the licensee has taken sufficient steps to reduce the likelihood of a recurrence of the serious or fatal injury; or

“(B) has modified the license pursuant to subsection (b) to sufficiently reduce the likelihood of a recurrence of the serious or fatal injury.

“(3) This subsection shall not apply to permits.”.

(20) Section 70110(a)(1) of title 49, United States Code, is amended by inserting “or 70105a” after “70105(a)”.

(21) Section 70112(b)(2) of title 49, United States Code, is amended—

(A) by inserting “crew, space flight participants,” after “transferee, contractors, subcontractors,”; and

(B) by inserting “or by space flight participants,” after “its own employees”.

(22) Section 70113(a)(1) of title 49, United States Code, is amended by inserting “but not against a space flight participant,” after “subcontractor of a customer,”.

(23) Section 70113(f) of title 49, United States Code, is amended by inserting at the end the following: “This section does not apply to permits.”.

(24) Section 70115(b)(1)(D)(i) of title 49, United States Code, is amended by inserting “crew or space flight participant training site,” after “site of a launch vehicle or reentry vehicle,”.

(25) Section 70120 of title 49, United States Code, is amended by adding at the end the following new subsections:

“(c) AMENDMENTS.—(1) Not later than 12 months after the date of enactment of the Commercial Space Launch Amendments Act of 2004, the Secretary shall publish proposed regulations to carry out that Act, including regulations relating to crew, space flight participants, and permits for launch or reentry of reusable suborbital rockets. Not later than 18 months after such date of enactment, the Secretary shall issue final regulations.

“(2)(A) Starting 3 years after the date of enactment of the Commercial Space Launch Amendments Act of 2004, the Secretary may issue final regulations changing the definition of suborbital rocket under this chapter. No such regulation may take effect until 180 days after the Secretary has submitted the regulation to the Congress.

“(B) The Secretary may issue regulations under this paragraph only if the Secretary has determined that the definition in section 70102 does not describe, or will not continue to describe, all appropriate vehicles and only those vehicles. In making that determination, the Secretary shall take into account the evolving nature of the commercial space launch industry.

“(d) EFFECTIVE DATE.—(1) Licenses for the launch or reentry of launch vehicles or reentry vehicles with human beings on board and permits may be issued by the Secretary prior to the issuance of the regulations described in subsection (c).

“(2) As soon as practicable after the date of enactment of the Commercial Space Launch Amendments Act of 2004, the Secretary shall issue guidelines or advisory circulars to

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guide the implementation of that Act until regulations are issued.

“(3) Notwithstanding paragraphs (1) and (2), no licenses for the launch or reentry of launch vehicles or reentry vehicles with human beings on board or permits may be issued starting three years after the date of enactment of the Commercial Space Launch Amendments Act of 2004 unless the final regulations described in subsection (c) have been issued.”.

(26) The table of sections for chapter 701 of title 49, United States Code, is amended by inserting after the item relating to 70105 the following new item:

“70105a. Experimental permits.”.

Contracts.

SEC. 3. STUDIES.

Deadline.

(a) **RISK SHARING.**—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall enter into an arrangement with a nonprofit entity for the conduct of an independent comprehensive study of the liability risk sharing regime in the United States for commercial space transportation under section 70113 of title 49, United States Code. To ensure that Congress has a full analysis of the liability risk sharing regime, the study shall assess methods by which the current system could be eliminated, including an estimate of the time required to implement each of the methods assessed. The study shall assess whether any alternative steps would be needed to maintain a viable and competitive United States space transportation industry if the current regime were eliminated. In conducting the assessment under this subsection, input from commercial space transportation insurance experts shall be sought. The study also shall examine liability risk sharing in other nations with commercial launch capability and evaluate the direct and indirect impact that ending this regime would have on the competitiveness of the United States commercial space launch industry in relation to foreign commercial launch providers and on United States assured access to space.

Reports.

(b) **SAFETY.**—The Secretary of Transportation, in consultation with the Administrator of the National Aeronautics and Space Administration, shall enter into an arrangement with a nonprofit entity for a report analyzing safety issues related to launching human beings into space. In designing the study, the Secretary should take into account any recommendations from the Commercial Space Transportation Advisory Committee and the National Aeronautics and Space Administration’s Aerospace Safety Advisory Panel. The report shall be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science within 4 years of the date of enactment of this Act. The report shall analyze and make recommendations about—

Deadline.

(1) the standards of safety and concepts of operation that should guide the regulation of human space flight and whether the standard of safety should vary by class or type of vehicle, the purpose of flight, or other considerations;

(2) the effectiveness of the commercial licensing and permitting regime under chapter 701 of title 49, United States Code, particularly in ensuring the safety of the public and of crew and space flight participants during launch, in-space transit, orbit, and reentry, and whether any changes are needed to that chapter;

(3) whether there is a need for commercial ground operations for commercial space flight, including provision of launch support, launch and reentry control, mission control, range operations, and communications and telemetry operations through all phases of flight, and if such operations developed, whether and how they should be regulated;

(4) whether expendable and reusable launch and reentry vehicles should be regulated differently from each other, and whether either of those vehicles should be regulated differently when carrying human beings;

(5) whether the Federal Government should separate the promotion of human space flight from the regulation of such activity;

(6) how third parties could be used to evaluate the qualification and acceptance of new human space flight vehicles prior to their operation;

(7) how nongovernment experts could participate more fully in setting standards and developing regulations concerning human space flight safety; and

(8) whether the Federal Government should regulate the extent of foreign ownership or control of human space flight companies operating or incorporated in the United States.

SEC. 4. TECHNICAL AMENDMENT.

Section 102(c) of the Commercial Space Act of 1998 is repealed.

49 USC 70105
note.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 5382 (S. 1260):

SENATE REPORTS: No. 108–111 accompanying S. 1260 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 19, 20, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–493
108th Congress

An Act

Dec. 23, 2004
[H.R. 5394]

To amend the Internal Revenue Code of 1986 to modify the taxation of arrow components.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCISE TAX ON ARROWS.

Applicability.
Ante, p. 1477.

(a) **REPEAL.**—Subsection (b) of section 332 of the American Jobs Creation Act of 2004, and the amendments made by such subsection, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsection and amendments had never been enacted.

26 USC 4161.

(b) **TAX ON ARROW SHAFTS.**—Paragraph (2) of section 4161(b) of the Internal Revenue Code of 1986 (relating to arrows) is amended to read as follows:

“(2) **ARROWS.**—

“(A) **IN GENERAL.**—There is hereby imposed on the first sale by the manufacturer, producer, or importer of any shaft (whether sold separately or incorporated as part of a finished or unfinished product) of a type used in the manufacture of any arrow which after its assembly—

“(i) measures 18 inches overall or more in length,

or

“(ii) measures less than 18 inches overall in length but is suitable for use with a bow described in paragraph (1)(A),

a tax equal to 39 cents per shaft.

“(B) **ADJUSTMENT FOR INFLATION.**—

“(i) **IN GENERAL.**—In the case of any calendar year beginning after 2005, the 39-cent amount specified in subparagraph (A) shall be increased by an amount equal to the product of—

“(I) such amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘2004’ for ‘1992’ in subparagraph (B) thereof.

“(ii) **ROUNDING.**—If any increase determined under clause (i) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent.”.

(c) **ARROW POINTS.**—Clause (ii) of section 4161(b)(1)(B) (relating to archery equipment) of such Code is amended by striking “quiver or broadhead” and inserting “quiver, broadhead, or point”.

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall apply to articles sold by the manufacturer, producer, or importer after March 31, 2005. 26 USC 4161 note.

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 5394:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Dec. 6, considered and passed House.

Dec. 8, considered and passed Senate.



Public Law 108–494
108th Congress

An Act

Dec. 23, 2004
[H.R. 5419]

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to improve, enhance, and promote the Nation’s homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E–911 calls, and to support in the construction and operation of a ubiquitous and reliable citizen activated system; and to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—E–911

Ensuring Needed
Help Arrives
Near Callers
Employing 911
Act of 2004.
47 USC 901 note.

SEC. 101. SHORT TITLE.

This title may be cited as the “Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004” or the “ENHANCE 911 Act of 2004”.

47 USC 942 note.

SEC. 102. FINDINGS.

The Congress finds that—

(1) for the sake of our Nation’s homeland security and public safety, a universal emergency telephone number (911) that is enhanced with the most modern and state-of-the-art telecommunications capabilities possible should be available to all citizens in all regions of the Nation;

(2) enhanced emergency communications require Federal, State, and local government resources and coordination;

(3) any funds that are collected from fees imposed on consumer bills for the purposes of funding 911 services or enhanced 911 should go only for the purposes for which the funds are collected; and

(4) enhanced 911 is a high national priority and it requires Federal leadership, working in cooperation with State and local governments and with the numerous organizations dedicated to delivering emergency communications services.

47 USC 942 note.

SEC. 103. PURPOSES.

The purposes of this title are—

(1) to coordinate 911 services and E–911 services, at the Federal, State, and local levels; and

(2) to ensure that funds collected on telecommunications bills for enhancing emergency 911 services are used only for the purposes for which the funds are being collected.

SEC. 104. COORDINATION OF E-911 IMPLEMENTATION.

Part C of title I of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended by adding at the end the following:

“SEC. 158. COORDINATION OF E-911 IMPLEMENTATION.

47 USC 942.

“(a) E-911 IMPLEMENTATION COORDINATION OFFICE.—

“(1) ESTABLISHMENT.—The Assistant Secretary and the Administrator of the National Highway Traffic Safety Administration shall—

“(A) establish a joint program to facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E-911 services; and

“(B) create an E-911 Implementation Coordination Office to implement the provisions of this section.

“(2) MANAGEMENT PLAN.—The Assistant Secretary and the Administrator shall jointly develop a management plan for the program established under this section. Such plan shall include the organizational structure and funding profiles for the 5-year duration of the program. The Assistant Secretary and the Administrator shall, within 90 days after the date of enactment of this Act, submit the management plan to the Committees on Energy and Commerce and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

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“(3) PURPOSE OF OFFICE.—The Office shall—

“(A) take actions, in concert with coordinators designated in accordance with subsection (b)(3)(A)(ii), to improve such coordination and communication;

“(B) develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of E-911 services;

“(C) advise and assist eligible entities in the preparation of implementation plans required under subsection (b)(3)(A)(iii);

“(D) receive, review, and recommend the approval or disapproval of applications for grants under subsection (b); and

“(E) oversee the use of funds provided by such grants in fulfilling such implementation plans.

“(4) REPORTS.—The Assistant Secretary and the Administrator shall provide a joint annual report to Congress by the first day of October of each year on the activities of the Office to improve coordination and communication with respect to the implementation of E-911 services.

“(b) PHASE II E-911 IMPLEMENTATION GRANTS.—

“(1) MATCHING GRANTS.—The Assistant Secretary and the Administrator, after consultation with the Secretary of Homeland Security and the Chairman of the Federal Communications

Commission, and acting through the Office, shall provide grants to eligible entities for the implementation and operation of Phase II E-911 services.

“(2) MATCHING REQUIREMENT.—The Federal share of the cost of a project eligible for a grant under this section shall not exceed 50 percent. The non-Federal share of the cost shall be provided from non-Federal sources.

“(3) COORDINATION REQUIRED.—In providing grants under paragraph (1), the Assistant Secretary and the Administrator shall require an eligible entity to certify in its application that—

“(A) in the case of an eligible entity that is a State government, the entity—

“(i) has coordinated its application with the public safety answering points (as such term is defined in section 222(h)(4) of the Communications Act of 1934) located within the jurisdiction of such entity;

“(ii) has designated a single officer or governmental body of the entity to serve as the coordinator of implementation of E-911 services, except that such designation need not vest such coordinator with direct legal authority to implement E-911 services or manage emergency communications operations;

“(iii) has established a plan for the coordination and implementation of E-911 services; and

“(iv) has integrated telecommunications services involved in the implementation and delivery of phase II E-911 services; or

“(B) in the case of an eligible entity that is not a State, the entity has complied with clauses (i), (iii), and (iv) of subparagraph (A), and the State in which it is located has complied with clause (ii) of such subparagraph.

“(4) CRITERIA.—The Assistant Secretary and the Administrator shall jointly issue regulations within 180 days after the date of enactment of the ENHANCE 911 Act of 2004, after a public comment period of not less than 60 days, prescribing the criteria for selection for grants under this section, and shall update such regulations as necessary. The criteria shall include performance requirements and a timeline for completion of any project to be financed by a grant under this section.

“(c) DIVERSION OF E-911 CHARGES.—

“(1) DESIGNATED E-911 CHARGES.—For the purposes of this subsection, the term ‘designated E-911 charges’ means any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve E-911 services.

“(2) CERTIFICATION.—Each applicant for a matching grant under this section shall certify to the Assistant Secretary and the Administrator at the time of application, and each applicant that receives such a grant shall certify to the Assistant Secretary and the Administrator annually thereafter during any period of time during which the funds from the grant are available to the applicant, that no portion of any designated E-911 charges imposed by a State or other taxing jurisdiction within which the applicant is located are being obligated or expended for any purpose other than the purposes for which

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such charges are designated or presented during the period beginning 180 days immediately preceding the date of the application and continuing through the period of time during which the funds from the grant are available to the applicant.

“(3) CONDITION OF GRANT.—Each applicant for a grant under this section shall agree, as a condition of receipt of the grant, that if the State or other taxing jurisdiction within which the applicant is located, during any period of time during which the funds from the grant are available to the applicant, obligates or expends designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented, all of the funds from such grant shall be returned to the Office.

“(4) PENALTY FOR PROVIDING FALSE INFORMATION.—Any applicant that provides a certification under paragraph (1) knowing that the information provided in the certification was false shall—

“(A) not be eligible to receive the grant under subsection (b);

“(B) return any grant awarded under subsection (b) during the time that the certification was not valid; and

“(C) not be eligible to receive any subsequent grants under subsection (b).

“(d) AUTHORIZATION; TERMINATION.—

“(1) AUTHORIZATION.—There are authorized to be appropriated to the Department of Transportation, for the purposes of grants under the joint program operated under this section with the Department of Commerce, not more than \$250,000,000 for each of the fiscal years 2005 through 2009, not more than 5 percent of which for any fiscal year may be obligated or expended for administrative costs.

“(2) TERMINATION.—The provisions of this section shall cease to be effective on October 1, 2009.

“(e) DEFINITIONS.—As used in this section:

“(1) OFFICE.—The term ‘Office’ means the E-911 Implementation Coordination Office.

“(2) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the National Highway Traffic Safety Administration.

“(3) ELIGIBLE ENTITY.—

“(A) IN GENERAL.—The term ‘eligible entity’ means a State or local government or a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))).

“(B) INSTRUMENTALITIES.—Such term includes public authorities, boards, commissions, and similar bodies created by one or more eligible entities described in subparagraph (A) to provide E-911 services.

“(C) EXCEPTION.—Such term does not include any entity that has failed to submit the most recently required certification under subsection (c) within 30 days after the date on which such certification is due.

“(4) E-911 SERVICES.—The term ‘E-911 services’ means both phase I and phase II enhanced 911 services, as described in section 20.18 of the Commission’s regulations (47 C.F.R. 20.18), as in effect on the date of enactment of the ENHANCE

911 Act of 2004, or as subsequently revised by the Federal Communications Commission.

“(5) PHASE II E-911 SERVICES.—The term ‘phase II E-911 services’ means only phase II enhanced 911 services, as described in such section 20.18 (47 C.F.R. 20.18), as in effect on such date, or as subsequently revised by the Federal Communications Commission.

“(6) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.”.

SEC. 105. GAO STUDY OF STATE AND LOCAL USE OF 911 SERVICE CHARGES.

Deadline.

(a) IN GENERAL.—Within 60 days after the date of enactment of this Act, the Comptroller General shall initiate a study of—

(1) the imposition of taxes, fees, or other charges imposed by States or political subdivisions of States that are designated or presented as dedicated to improve emergency communications services, including 911 services or enhanced 911 services, or related to emergency communications services operations or improvements; and

(2) the use of revenues derived from such taxes, fees, or charges.

(b) REPORT.—Within 18 months after initiating the study required by subsection (a), the Comptroller General shall transmit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce setting forth the findings, conclusions, and recommendations, if any, of the study, including—

(1) the identity of each State or political subdivision that imposes such taxes, fees, or other charges; and

(2) the amount of revenues obligated or expended by that State or political subdivision for any purpose other than the purposes for which such taxes, fees, or charges were designated or presented.

SEC. 106. REPORT ON THE DEPLOYMENT OF E-911 PHASE II SERVICES BY TIER III SERVICE PROVIDERS.

Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate detailing—

(1) the number of tier III commercial mobile service providers that are offering phase II E-911 services;

(2) the number of requests for waivers from compliance with the Commission’s phase II E-911 service requirements received by the Commission from such tier III providers;

(3) the number of waivers granted or denied by the Commission to such tier III providers;

(4) how long each waiver request remained pending before it was granted or denied;

(5) how many waiver requests are pending at the time of the filing of the report;

(6) when the pending requests will be granted or denied;

(7) actions the Commission has taken to reduce the amount of time a waiver request remains pending; and

(8) the technologies that are the most effective in the deployment of phase II E–911 services by such tier III providers.

SEC. 107. FCC REQUIREMENTS FOR CERTAIN TIER III CARRIERS.

(a) **IN GENERAL.**—The Federal Communications Commission shall act on any petition filed by a qualified Tier III carrier requesting a waiver of compliance with the requirements of section 20.18(g)(1)(v) of the Commission’s rules (47 C.F.R. 20.18(g)(1)(v)) within 100 days after the Commission receives the petition. The Commission shall grant the waiver of compliance with the requirements of section 20.18(g)(1)(v) of the Commission’s rules (47 C.F.R. 20.18(g)(1)(v)) requested by the petition if it determines that strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.

(b) **QUALIFIED TIER III CARRIER DEFINED.**—In this section, the term “qualified Tier III carrier” means a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001.

TITLE II—SPECTRUM RELOCATION

SEC. 201. SHORT TITLE.

This title may be cited as the “Commercial Spectrum Enhancement Act”.

Commercial
Spectrum
Enhancement
Act.
47 USC 901 note.

SEC. 202. RELOCATION OF ELIGIBLE FEDERAL ENTITIES FOR THE RE-ALLOCATION OF SPECTRUM FOR COMMERCIAL PURPOSES.

Section 113(g) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)) is amended by striking paragraphs (1) through (3) and inserting the following:

“(1) **ELIGIBLE FEDERAL ENTITIES.**—Any Federal entity that operates a Federal Government station assigned to a band of frequencies specified in paragraph (2) and that incurs relocation costs because of the reallocation of frequencies from Federal use to non-Federal use shall receive payment for such costs from the Spectrum Relocation Fund, in accordance with section 118 of this Act. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a), are eligible to receive payment under this paragraph.

“(2) **ELIGIBLE FREQUENCIES.**—The bands of eligible frequencies for purposes of this section are as follows:

“(A) the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band of frequencies; and

“(B) any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except for bands of frequencies previously identified by

the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95-32 (1995).

“(3) DEFINITION OF RELOCATION COSTS.—For purposes of this subsection, the term ‘relocation costs’ means the costs incurred by a Federal entity to achieve comparable capability of systems, regardless of whether that capability is achieved by relocating to a new frequency assignment or by utilizing an alternative technology. Such costs include—

“(A) the costs of any modification or replacement of equipment, software, facilities, operating manuals, training costs, or regulations that are attributable to relocation;

“(B) the costs of all engineering, equipment, software, site acquisition and construction costs, as well as any legitimate and prudent transaction expense, including outside consultants, and reasonable additional costs incurred by the Federal entity that are attributable to relocation, including increased recurring costs associated with the replacement facilities;

“(C) the costs of engineering studies, economic analyses, or other expenses reasonably incurred in calculating the estimated relocation costs that are provided to the Commission pursuant to paragraph (4) of this subsection;

“(D) the one-time costs of any modification of equipment reasonably necessary to accommodate commercial use of such frequencies prior to the termination of the Federal entity’s primary allocation or protected status, when the eligible frequencies as defined in paragraph (2) of this subsection are made available for private sector uses by competitive bidding and a Federal entity retains primary allocation or protected status in those frequencies for a period of time after the completion of the competitive bidding process; and

“(E) the costs associated with the accelerated replacement of systems and equipment if such acceleration is necessary to ensure the timely relocation of systems to a new frequency assignment.

“(4) NOTICE TO COMMISSION OF ESTIMATED RELOCATION COSTS.—

“(A) The Commission shall notify the NTIA at least 18 months prior to the commencement of any auction of eligible frequencies defined in paragraph (2). At least 6 months prior to the commencement of any such auction, the NTIA, on behalf of the Federal entities and after review by the Office of Management and Budget, shall notify the Commission of estimated relocation costs and timelines for such relocation.

“(B) Upon timely request of a Federal entity, the NTIA shall provide such entity with information regarding an alternative frequency assignment or assignments to which their radiocommunications operations could be relocated for purposes of calculating the estimated relocation costs and timelines to be submitted to the Commission pursuant to subparagraph (A).

“(C) To the extent practicable and consistent with national security considerations, the NTIA shall provide the information required by subparagraphs (A) and (B)

by the geographic location of the Federal entities' facilities or systems and the frequency bands used by such facilities or systems.

“(5) NOTICE TO CONGRESSIONAL COMMITTEES AND GAO.—The NTIA shall, at the time of providing an initial estimate of relocation costs to the Commission under paragraph (4)(A), submit to Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a copy of such estimate and the timelines for relocation. Unless disapproved within 30 days, the estimate shall be approved. If disapproved, the NTIA may resubmit a revised initial estimate.

Deadline.

“(6) IMPLEMENTATION OF PROCEDURES.—The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities' spectrum-related operations from frequencies defined in paragraph (2) to frequencies or facilities of comparable capability. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems by relocating to a new frequency assignment or by utilizing an alternative technology, the NTIA shall terminate the entity's authorization and notify the Commission that the entity's relocation has been completed. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation submitted by the Director of the Office of Management and Budget under section 118(d)(2)(B).”.

Notification.

SEC. 203. MINIMUM AUCTION RECEIPTS AND DISPOSITION OF PROCEEDS.

(a) AUCTION DESIGN.—Section 309(j)(3) of the Communications Act of 1934 (47 U.S.C. 309(j)(3)) is amended—

- (1) by striking “and” at the end of subparagraph (D);
- (2) by striking the period at the end of subparagraph (E) and inserting “; and”; and
- (3) by adding at the end the following new subparagraph:

“(F) for any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)), the recovery of 110 percent of estimated relocation costs as provided to the Commission pursuant to section 113(g)(4) of such Act.”.

(b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE FREQUENCIES.—Section 309(j) of such Act is further amended by adding at the end the following new paragraph:

“(15) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE FREQUENCIES.—

“(A) SPECIAL REGULATIONS.—The Commission shall revise the regulations prescribed under paragraph (4)(F) of this subsection to prescribe methods by which the total cash proceeds from any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall at least equal 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act.

Deadline.

“(B) CONCLUSION OF AUCTIONS CONTINGENT ON MINIMUM PROCEEDS.—The Commission shall not conclude any auction of eligible frequencies described in section 113(g)(2) of such Act if the total cash proceeds attributable to such spectrum are less than 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act. If the Commission is unable to conclude an auction for the foregoing reason, the Commission shall cancel the auction, return within 45 days after the auction cancellation date any deposits from participating bidders held in escrow, and absolve such bidders from any obligation to the United States to bid in any subsequent reauction of such spectrum.

“(C) AUTHORITY TO ISSUE PRIOR TO DEAUTHORIZATION.—In any auction conducted under the regulations required by subparagraph (A), the Commission may grant a license assigned for the use of eligible frequencies prior to the termination of an eligible Federal entity’s authorization. However, the Commission shall condition such license by requiring that the licensee cannot cause harmful interference to such Federal entity until such entity’s authorization has been terminated by the National Telecommunications and Information Administration.”.

(c) DEPOSIT OF PROCEEDS.—Paragraph (8) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) in subparagraph (A), by inserting “or subparagraph (D)” after “subparagraph (B)”; and

(2) by adding at the end the following new subparagraph:

“(D) DISPOSITION OF CASH PROCEEDS.—Cash proceeds attributable to the auction of any eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall be deposited in the Spectrum Relocation Fund established under section 118 of such Act, and shall be available in accordance with that section.”.

SEC. 204. ESTABLISHMENT OF FUND AND PROCEDURES.

Part B of the National Telecommunications and Information Administration Organization Act is amended by adding after section 117 (47 U.S.C. 927) the following new section:

47 USC 928.

“SEC. 118. SPECTRUM RELOCATION FUND.

“(a) ESTABLISHMENT OF SPECTRUM RELOCATION FUND.—There is established on the books of the Treasury a separate fund to be known as the ‘Spectrum Relocation Fund’ (in this section referred to as the ‘Fund’), which shall be administered by the Office of Management and Budget (in this section referred to as ‘OMB’), in consultation with the NTIA.

“(b) CREDITING OF RECEIPTS.—The Fund shall be credited with the amounts specified in section 309(j)(8)(D) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(D)).

“(c) USED TO PAY RELOCATION COSTS.—The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation costs, as defined in section 113(g)(3) of this Act, of an eligible Federal entity incurring such costs with respect to relocation from those frequencies.

“(d) FUND AVAILABILITY.—

“(1) APPROPRIATION.—There are hereby appropriated from the Fund such sums as are required to pay the relocation costs specified in subsection (c).

“(2) TRANSFER CONDITIONS.—None of the funds provided under this subsection may be transferred to any eligible Federal entity—

“(A) unless the Director of OMB has determined, in consultation with the NTIA, the appropriateness of such costs and the timeline for relocation; and

“(B) until 30 days after the Director of OMB has submitted to the Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a detailed plan describing specifically how the sums transferred from the Fund will be used to pay relocation costs in accordance with such subsection and the timeline for such relocation.

Unless disapproved within 30 days, the amounts in the Fund shall be available immediately. If the plan is disapproved, the Director may resubmit a revised plan.

Deadline.

“(3) REVERSION OF UNUSED FUNDS.—Any auction proceeds in the Fund that are remaining after the payment of the relocation costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury not later than 8 years after the date of the deposit of such proceeds to the Fund.

Deadline.

“(e) TRANSFER TO ELIGIBLE FEDERAL ENTITIES.—

“(1) TRANSFER.—

“(A) Amounts made available pursuant to subsection (d) shall be transferred to eligible Federal entities, as defined in section 113(g)(1) of this Act.

“(B) An eligible Federal entity may receive more than one such transfer, but if the sum of the subsequent transfer or transfers exceeds 10 percent of the original transfer—

“(i) such subsequent transfers are subject to prior approval by the Director of OMB as required by subsection (d)(2)(A);

“(ii) the notice to the committees containing the plan required by subsection (d)(2)(B) shall be not less than 45 days prior to the date of the transfer that causes such excess above 10 percent;

Deadline.

“(iii) such notice shall include, in addition to such plan, an explanation of need for such subsequent transfer or transfers; and

“(iv) the Comptroller General shall, within 30 days after receiving such plan, review such plan and submit to such committees an assessment of the explanation for the subsequent transfer or transfers.

Deadline.

“(C) Such transferred amounts shall be credited to the appropriations account of the eligible Federal entity which has incurred, or will incur, such costs, and shall, subject to paragraph (2), remain available until expended.

“(2) RETRANSFER TO FUND.—An eligible Federal entity that has received such amounts shall report its expenditures to OMB and shall transfer any amounts in excess of actual relocation costs back to the Fund immediately after the NTIA has

Reports.

notified the Commission that the entity’s relocation is complete, or has determined that such entity has unreasonably failed to complete such relocation in accordance with the timeline required by subsection (d)(2)(A).”.

SEC. 205. TELECOMMUNICATIONS DEVELOPMENT FUND.

Section 714(f) of the Communications Act of 1934 (47 U.S.C. 614(f)) is amended to read as follows:

“(f) LENDING AND CREDIT OPERATIONS.—Loans or other extensions of credit from the Fund shall be made available to an eligible small business on the basis of—

“(1) the analysis of the business plan of the eligible small business;

“(2) the reasonable availability of collateral to secure the loan or credit extension;

“(3) the extent to which the loan or credit extension promotes the purposes of this section; and

“(4) other lending policies as defined by the Board.”.

47 USC 921 note. **SEC. 206. CONSTRUCTION.**

Nothing in this title is intended to modify section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65).

47 USC 928 note. **SEC. 207. ANNUAL REPORT.**

The National Telecommunications and Information Administration shall submit an annual report to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General on—

(1) the progress made in adhering to the timelines applicable to relocation from eligible frequencies required under section 118(d)(2)(A) of the National Telecommunications and Information Administration Organization Act, separately stated on a communication system-by-system basis and on an auction-by-auction basis; and

(2) with respect to each relocated communication system and auction, a statement of the estimate of relocation costs required under section 113(g)(4) of such Act, the actual relocations costs incurred, and the amount of such costs paid from the Spectrum Relocation Fund.

SEC. 208. PRESERVATION OF AUTHORITY; NTIA REPORT REQUIRED.

47 USC 923 note. (a) SPECTRUM MANAGEMENT AUTHORITY RETAINED.—Except as provided with respect to the bands of frequencies identified in section 113(g)(2)(A) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)(A)) as amended by this title, nothing in this title or the amendments made by this title shall be construed as limiting the Federal Communications Commission’s authority to allocate bands of frequencies that are reallocated from Federal use to non-Federal use for unlicensed, public safety, shared, or non-commercial use.

(b) NTIA REPORT REQUIRED.—Within 1 year after the date of enactment of this Act, the Administrator of the National Telecommunications and Information Administration shall submit to the Energy and Commerce Committee of the House of Representatives and the Commerce, Science, and Transportation Committee

of the Senate a report on various policy options to compensate Federal entities for relocation costs when such entities' frequencies are allocated by the Commission for unlicensed, public safety, shared, or non-commercial use.

SEC. 209. COMMERCIAL SPECTRUM LICENSE POLICY REVIEW.

(a) **EXAMINATION.**—The Comptroller General shall examine national commercial spectrum license policy as implemented by the Federal Communications Commission, and shall report its findings to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 270 days.

Reports.
Deadline.

(b) **CONTENT.**—The report shall address each of the following:

(1) An estimate of the respective proportions of electromagnetic spectrum capacity that have been assigned by the Federal Communications Commission—

(A) prior to enactment of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) providing to the Commission's competitive bidding authority,

(B) after enactment of that section using the Commission's competitive bidding authority, and

(C) by means other than competitive bidding, and a description of the classes of licensees assigned under each method.

(2) The extent to which requiring entities to obtain licenses through competitive bidding places those entities at a competitive or financial disadvantage to offer services similar to entities that did not acquire licenses through competitive bidding.

(3) The effect, if any, of the use of competitive bidding and the resulting diversion of licensees' financial resources on the introduction of new services including the quality, pace, and scope of the offering of such services to the public.

(4) The effect, if any, of participation in competitive bidding by incumbent spectrum license holders as applicants or investors in an applicant, including a discussion of any additional effect if such applicant qualified for bidding credits as a designated entity.

(5) The effect on existing license holders and consumers of services offered by these providers of the Administration's Spectrum License User Fee proposal contained in the President's Budget of the United States Government for Fiscal Year 2004 (Budget, page 299; Appendix, page 1046), and an evaluation of whether the enactment of this proposal could address, either in part or in whole, any possible competitive disadvantages described in paragraph (2).

(c) **FCC ASSISTANCE.**—The Federal Communications Commission shall provide information and assistance, as necessary, to facilitate the completion of the examination required by subsection (a).

TITLE III—UNIVERSAL SERVICE

SEC. 301. SHORT TITLE.

This title may be cited as the “Universal Service Antideficiency Temporary Suspension Act”.

Universal Service
Antideficiency
Temporary
Suspension Act.

SEC. 302. APPLICATION OF CERTAIN TITLE 31 PROVISIONS TO UNIVERSAL SERVICE FUND.

Effective date.
Termination
date.

(a) **IN GENERAL.**—During the period beginning on the date of enactment of this Act and ending on December 31, 2005, section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply—

(1) to any amount collected or received as Federal universal service contributions required by section 254 of the Communications Act of 1934 (47 U.S.C. 254), including any interest earned on such contributions; nor

(2) to the expenditure or obligation of amounts attributable to such contributions for universal service support programs established pursuant to that section.

(b) **POST-2005 FULFILLMENT OF PROTECTED OBLIGATIONS.**—Section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply after December 31, 2005, to an expenditure or obligation described in subsection (a)(2) made or authorized during the period described in subsection (a).

Approved December 23, 2004.

LEGISLATIVE HISTORY—H.R. 5419 (S. 1250):

SENATE REPORTS: No. 108–130 accompanying S. 1250 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 20, considered and passed House.

Dec. 8, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Dec. 23, Presidential statement.



Public Law 108–495
108th Congress

An Act

To amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, and for other purposes.

Dec. 23, 2004
[S. 1301]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Video Voyeurism Prevention Act of 2004”.

SEC. 2. PROHIBITION OF VIDEO VOYEURISM.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 87 the following new chapter:

“CHAPTER 88—PRIVACY

“Sec.
“1801. Video voyeurism.

“§ 1801. Video voyeurism

“(a) Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.

“(b) In this section—

“(1) the term ‘capture’, with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;

“(2) the term ‘broadcast’ means to electronically transmit a visual image with the intent that it be viewed by a person or persons;

“(3) the term ‘a private area of the individual’ means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;

“(4) the term ‘female breast’ means any portion of the female breast below the top of the areola; and

“(5) the term ‘under circumstances in which that individual has a reasonable expectation of privacy’ means—

“(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or

“(B) circumstances in which a reasonable person would believe that a private area of the individual would not

Video Voyeurism
Prevention Act of
2004.
18 USC 1801
note.

be visible to the public, regardless of whether that person is in a public or private place.

“(c) This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.”.

(b) AMENDMENT TO PART ANALYSIS.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 87 the following new item:

“88. Privacy 1801”.

Approved December 23, 2004.

LEGISLATIVE HISTORY—S. 1301:

HOUSE REPORTS: No. 108–504 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Sept. 25, considered and passed Senate.

Vol. 150 (2004): Sept. 21, considered and passed House, amended.
Dec. 7, Senate concurred in House amendment.



Public Law 108–496
108th Congress

An Act

To amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes.

Dec. 23, 2004
[S. 2657]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Employee Dental and Vision Benefits Enhancement Act of 2004”.

SEC. 2. ENHANCED DENTAL BENEFITS FOR FEDERAL EMPLOYEES.

Subpart G of part III of title 5, United States Code, is amended by inserting after chapter 89 the following:

Federal
Employee Dental
and Vision
Benefits
Enhancement
Act of 2004.
5 USC 101 note.

“CHAPTER 89A—ENHANCED DENTAL BENEFITS

- “Sec.
- “8951. Definitions.
- “8952. Availability of dental benefits.
- “8953. Contracting authority.
- “8954. Benefits.
- “8955. Information to individuals eligible to enroll.
- “8956. Election of coverage.
- “8957. Coverage of restored survivor or disability annuitants.
- “8958. Premiums.
- “8959. Preemption.
- “8960. Studies, reports, and audits.
- “8961. Jurisdiction of courts.
- “8962. Administrative functions.

“§ 8951. Definitions

“In this chapter:

“(1) The term ‘employee’ means an employee defined under section 8901(1).

“(2) The terms ‘annuitant’, ‘member of family’, and ‘dependent’ have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

“(3) The term ‘eligible individual’ refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

“(4) The term ‘Office’ means the Office of Personnel Management.

“(5) The term ‘qualified company’ means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider

organization, health maintenance organization, or discount dental programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

“(6) The term ‘employee organization’ means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

“(7) The term ‘State’ includes the District of Columbia.

“§ 8952. Availability of dental benefits

“(a) The Office shall establish and administer a program through which an eligible individual may obtain dental coverage to supplement coverage available through chapter 89.

“(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

“(c) Nothing in this chapter shall be construed to prohibit the availability of dental benefits provided by health benefits plans under chapter 89.

“§ 8953. Contracting authority

“(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8954 without regard to section 5 of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

“(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

“(b) Each contract under this section shall contain—

“(1) the requirements under section 8902(d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

“(2) the terms of the enrollment period; and

“(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

“(c) Nothing in this chapter shall, in the case of an individual electing dental supplemental benefit coverage under this chapter after the expiration of such individual’s first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

“(d)(1) Each contract under this chapter shall require the qualified company to agree—

“(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

“(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

“(i) to establish internal procedures designed to expeditiously resolve such disputes; and Procedures.

“(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

“(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

“(3) For purposes of applying the Contract Disputes Act of 1978 to disputes arising under this chapter between a qualified company and the Office—

“(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c) of such Act); and

“(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1) of such Act relative to such a dispute.

“(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.

“(f) Contracts under this chapter shall be for a uniform term of 7 years and may not be renewed automatically.

“§ 8954. Benefits

“(a) The Office may prescribe reasonable minimum standards for enhanced dental benefits plans offered under this chapter and for qualified companies offering the plans.

“(b) Each contract may include more than 1 level of benefits that shall be made available to all eligible individuals.

“(c) The benefits to be provided under enhanced dental benefits plans under this chapter may be of the following types:

“(1) Diagnostic.

“(2) Preventive.

“(3) Emergency care.

“(4) Restorative.

“(5) Oral and maxillofacial surgery.

“(6) Endodontics.

“(7) Periodontics.

“(8) Prosthodontics.

“(9) Orthodontics.

“(d) A contract approved under this chapter shall require the qualified company to cover the geographic service delivery area specified by the Office. The Office shall require qualified companies to include dentally underserved areas in their service delivery areas.

“(e) If an individual has dental coverage under a health benefits plan under chapter 89 and also has coverage under a plan under this chapter, the health benefits plan under chapter 89 shall be the first payor of any benefit payments.

“§ 8955. Information to individuals eligible to enroll

“(a) The qualified companies at the direction and with the approval of the Office, shall make available to each individual eligible to enroll in a dental benefits plan information on services and benefits (including maximums, limitations, and exclusions), that the Office considers necessary to enable the individual to make an informed decision about electing coverage.

“(b) The Office shall make available to each individual eligible to enroll in a dental benefits plan, information on services and benefits provided by qualified companies participating under chapter 89.

“§ 8956. Election of coverage

“(a) An eligible individual may enroll in a dental benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

Regulations.

“(b) The Office shall prescribe regulations under which—

“(1) an eligible individual may enroll in a dental benefits plan; and

“(2) an enrolled individual may change the self-only, self plus one, or self and family coverage of that individual.

“(c)(1) Regulations under subsection (b) shall permit an eligible individual to cancel or transfer the enrollment of that individual to another dental benefits plan—

“(A) before the start of any contract term in which there is a change in rates charged or benefits provided, in which a new plan is offered, or in which an existing plan is terminated; or

“(B) during other times and under other circumstances specified by the Office.

“(2) A transfer under paragraph (1) shall be subject to waiting periods provided under a new plan.

“§ 8957. Coverage of restored survivor or disability annuitants

“A surviving spouse, disability annuitant, or surviving child whose annuity is terminated and is later restored, may continue enrollment in a dental benefits plan subject to the terms and conditions prescribed in regulations issued by the Office.

“§ 8958. Premiums

“(a) Each eligible individual obtaining supplemental dental coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

Regulations.

“(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

“(c) The amount necessary to pay the premiums for enrollment may—

“(1) in the case of an employee, be withheld from the pay of such an employee; or

“(2) in the case of an annuitant, be withheld from the annuity of such an annuitant.

“(d) All amounts withheld under this section shall be paid directly to the qualified company.

“(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

“(f)(1) The Employee Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

“(2)(A) There is established in the Employees Health Benefits Fund a Dental Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

“(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Dental Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

“§ 8959. Preemption

“The terms of any contract that relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to dental benefits, insurance, plans, or contracts.

“§ 8960. Studies, reports, and audits

“(a) Each contract shall contain provisions requiring the qualified company to—

“(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

“(2) permit the Office and representatives of the Government Accountability Office to examine such records of the qualified company as may be necessary to carry out the purposes of this chapter.

“(b) Each Federal agency shall keep such records, make such certifications, and furnish the Office, the qualified company, or both, with such information and reports as the Office may require.

Records.

“(c) The Office shall conduct periodic reviews of plans under this chapter, including a comparison of the dental benefits available under chapter 89, to ensure the competitiveness of plans under this chapter. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

“§ 8961. Jurisdiction of courts

“The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States under this chapter after such administrative remedies as required under section 8953(d) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

“§ 8962. Administrative functions

Regulations.

“(a) The Office shall prescribe regulations to carry out this chapter. The regulations may exclude an employee on the basis of the nature and type of employment or conditions pertaining to it.

“(b) The Office shall, as appropriate, provide for coordinated enrollment, promotion, and education efforts as appropriate in consultation with each qualified company. The information under this subsection shall include information relating to the dental benefits available under chapter 89, including the advantages and disadvantages of obtaining additional coverage under this chapter.”.

SEC. 3. ENHANCED VISION BENEFITS FOR FEDERAL EMPLOYEES.

Subpart G of part III of title 5, United States Code, is amended by inserting after chapter 89A (as added by section 2 of this Act) the following:

“CHAPTER 89B—ENHANCED VISION BENEFITS

“Sec.

“8981. Definitions.

“8982. Availability of vision benefits.

“8983. Contracting authority.

“8984. Benefits.

“8985. Information to individuals eligible to enroll.

“8986. Election of coverage.

“8987. Coverage of restored survivor or disability annuitants.

“8988. Premiums.

“8989. Preemption.

“8990. Studies, reports, and audits.

“8991. Jurisdiction of courts.

“8992. Administrative functions.

“§ 8981. Definitions

“In this chapter:

“(1) The term ‘employee’ means an employee defined under section 8901(1).

“(2) The terms ‘annuitant’, ‘member of family’, and ‘dependent’ have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

“(3) The term ‘eligible individual’ refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

“(4) The term ‘Office’ means the Office of Personnel Management.

“(5) The term ‘qualified company’ means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount vision programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

“(6) The term ‘employee organization’ means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

“(7) The term ‘State’ includes the District of Columbia.

“§ 8982. Availability of vision benefits

“(a) The Office shall establish and administer a program through which an eligible individual may obtain vision coverage to supplement coverage available through chapter 89.

“(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

“(c) Nothing in this chapter shall be construed to prohibit the availability of vision benefits provided by health benefits plans under chapter 89.

“§ 8983. Contracting authority

“(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8984 without regard to section 5 of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

“(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

“(b) Each contract under this section shall contain—

“(1) the requirements under section 8902 (d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

“(2) the terms of the enrollment period; and

“(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

“(c) Nothing in this chapter shall, in the case of an individual electing vision supplemental benefit coverage under this chapter after the expiration of such individual’s first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

“(d)(1) Each contract under this chapter shall require the qualified company to agree—

“(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

“(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

“(i) to establish internal procedures designed to expeditiously resolve such disputes; and

“(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

Procedures.

“(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under

this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

“(3) For purposes of applying the Contract Disputes Act of 1978 to disputes arising under this chapter between a qualified company and the Office—

“(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c) of such Act); and

“(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1) of such Act relative to such a dispute.

“(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.

“(f) Contracts under this chapter shall be for a uniform term of 7 years and may not be renewed automatically.

“§ 8984. Benefits

“(a) The Office may prescribe reasonable minimum standards for enhanced vision benefits plans offered under this chapter and for qualified companies offering the plans.

“(b) Each contract may include more than 1 level of benefits that shall be made available to all eligible individuals.

“(c) The benefits to be provided under enhanced vision benefits plans under this chapter may be of the following types:

“(1) Diagnostic (to include refractive services).

“(2) Preventive.

“(3) Eyewear.

“(d) A contract approved under this chapter shall require the qualified company to cover the geographic service delivery area specified by the Office. The Office shall require qualified companies to include visually underserved areas in their service delivery areas.

“(e) If an individual has vision coverage under a health benefits plan under chapter 89 and also has coverage under a plan under this chapter, the health benefits plan under chapter 89 shall be the first payor of any benefit payments.

“§ 8985. Information to individuals eligible to enroll

“(a) The qualified companies at the direction and with the approval of the Office, shall make available to each individual eligible to enroll in a vision benefits plan information on services and benefits (including maximums, limitations, and exclusions), that the Office considers necessary to enable the individual to make an informed decision about electing coverage.

“(b) The Office shall make available to each individual eligible to enroll in a vision benefits plan, information on services and benefits provided by qualified companies participating under chapter 89.

“§ 8986. Election of coverage

“(a) An eligible individual may enroll in a vision benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self plus one or self and family.

An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

“(b) The Office shall prescribe regulations under which—

Regulations.

“(1) an eligible individual may enroll in a vision benefits plan; and

“(2) an enrolled individual may change the self-only, self plus one, or self and family coverage of that individual.

“(c)(1) Regulations under subsection (b) shall permit an eligible individual to cancel or transfer the enrollment of that individual to another vision benefits plan—

“(A) before the start of any contract term in which there is a change in rates charged or benefits provided, in which a new plan is offered, or in which an existing plan is terminated; or

“(B) during other times and under other circumstances specified by the Office.

“(2) A transfer under paragraph (1) shall be subject to waiting periods provided under a new plan.

“§ 8987. Coverage of restored survivor or disability annuitants

“A surviving spouse, disability annuitant, or surviving child whose annuity is terminated and is later restored, may continue enrollment in a vision benefits plan subject to the terms and conditions prescribed in regulations issued by the Office.

“§ 8988. Premiums

“(a) Each eligible individual obtaining supplemental vision coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

“(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

Regulations.

“(c) The amount necessary to pay the premiums for enrollment may—

“(1) in the case of an employee, be withheld from the pay of such an employee; or

“(2) in the case of an annuitant, be withheld from the annuity of such an annuitant.

“(d) All amounts withheld under this section shall be paid directly to the qualified company.

“(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

“(f)(1) The Employee Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

“(2)(A) There is established in the Employees Health Benefits Fund a Vision Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

“(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Vision Benefits Administrative Account as necessary to ensure that the reasonable

anticipated expenses of the Office in administering this chapter during such year are defrayed.

“§ 8989. Preemption

“The terms of any contract that relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to vision benefits, insurance, plans, or contracts.

“§ 8990. Studies, reports, and audits

“(a) Each contract shall contain provisions requiring the qualified company to—

“(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

“(2) permit the Office and representatives of the Government Accountability Office to examine such records of the qualified company as may be necessary to carry out the purposes of this chapter.

Records.

“(b) Each Federal agency shall keep such records, make such certifications, and furnish the Office, the qualified company, or both, with such information and reports as the Office may require.

“(c) The Office shall conduct periodic reviews of plans under this chapter, including a comparison of the vision benefits available under chapter 89, to ensure the competitiveness of plans under this chapter. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

“§ 8991. Jurisdiction of courts

“The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States under this chapter after such administrative remedies as required under section 8983(d) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

“§ 8992. Administrative functions

Regulations.

“(a) The Office shall prescribe regulations to carry out this chapter. The regulations may exclude an employee on the basis of the nature and type of employment or conditions pertaining to it.

“(b) The Office shall, as appropriate, provide for coordinated enrollment, promotion, and education efforts as appropriate in consultation with each qualified company. The information under this subsection shall include information relating to the vision benefits available under chapter 89, including the advantages and disadvantages of obtaining additional coverage under this chapter.”.

SEC. 4. TECHNICAL AND CONFORMING AMENDMENT.

The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 89 the following:

“89A. Enhanced Dental Benefits	8951
“89B. Enhanced Vision Benefits	8981”.

SEC. 5. APPLICATION TO POSTAL SERVICE EMPLOYEES.

Section 1005(f) of title 39, United States Code, is amended in the second sentence by striking “chapters 87 and 89” and inserting “chapters 87, 89, 89A, and 89B”.

SEC. 6. REQUIREMENT TO STUDY HEALTH BENEFITS COVERAGE FOR DEPENDENT CHILDREN WHO ARE FULL-TIME STUDENTS.

Deadline.
Reports.

Not later than 6 months after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report describing and evaluating options whereby benefits under chapter 89 of title 5, United States Code, could be made available to an unmarried dependent child under 25 years of age who is enrolled as a full-time student at an institution of higher education as defined under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

SEC. 7. EFFECTIVE DATE.

5 USC 8951 note.

The amendments made by this Act shall take effect on the date of enactment of this Act and shall apply to contracts that take effect with respect to the calendar year 2006.

Approved December 23, 2004.

LEGISLATIVE HISTORY—S. 2657 (H.R. 5295):

SENATE REPORTS: No. 108–393 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Nov. 20, considered and passed Senate.

Dec. 6, considered and passed House.



Public Law 108–497
108th Congress

An Act

Dec. 23, 2004
[S. 2781]

To express the sense of Congress regarding the conflict in Darfur, Sudan, to provide assistance for the crisis in Darfur and for comprehensive peace in Sudan, and for other purposes.

Comprehensive
Peace in Sudan
Act of 2004.
50 USC 1701
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Comprehensive Peace in Sudan Act of 2004”.

50 USC 1701
note.

SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) GOVERNMENT OF SUDAN.—The term “Government of Sudan” means the National Congress Party, formerly known as the National Islamic Front, government in Khartoum, Sudan, or any successor government formed on or after the date of the enactment of this Act (other than the coalition government agreed upon in the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004).

(3) JEM.—The term “JEM” means the Justice and Equality Movement.

(4) SLA.—The term “SLA” means the Sudan Liberation Army.

(5) SPLM.—The term “SPLM” means the Sudan People’s Liberation Movement.

50 USC 1701
note.

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) A comprehensive peace agreement for Sudan, as envisioned in the Sudan Peace Act (50 U.S.C. 1701 note) and the Machakos Protocol of 2002, could be in jeopardy if the parties do not implement and honor the agreements they have signed.

(2) Since seizing power through a military coup in 1989, the Government of Sudan repeatedly has attacked and dislocated civilian populations in southern Sudan in a coordinated policy of ethnic cleansing and genocide that has cost the lives of more than 2,000,000 people and displaced more than 4,000,000 people.

(3) In response to two decades of civil conflict in Sudan, the United States has helped to establish an internationally supported peace process to promote a negotiated settlement to the war that has resulted in a framework peace agreement, the Nairobi Declaration on the Final Phase of Peace in the Sudan, signed on June 5, 2004.

(4) At the same time that the Government of Sudan was negotiating for a comprehensive and all inclusive peace agreement, enumerated in the Nairobi Declaration on the Final Phase of Peace in the Sudan, it refused to engage in any meaningful discussion with regard to its ongoing campaign of ethnic cleansing and genocide in the Darfur region of western Sudan.

(5) The Government of Sudan reluctantly agreed to attend talks to bring peace to the Darfur region only after considerable international pressure and outrage was expressed through high level visits by Secretary of State Colin Powell and others, and through United Nations Security Council Resolution 1556 (July 30, 2004).

(6) The Government of the United States, in both the executive branch and Congress, has concluded that genocide has been committed and may still be occurring in the Darfur region, and that the Government of Sudan and militias supported by the Government of Sudan, known as the Janjaweed, bear responsibility for the genocide.

(7) Evidence collected by international observers in the Darfur region between February 2003 and November 2004 indicate a coordinated effort to target African Sudanese civilians in a scorched earth policy, similar to that which was employed in southern Sudan, that has destroyed African Sudanese villages, killing and driving away their people, while Arab Sudanese villages have been left unscathed.

(8) As a result of this genocidal policy in the Darfur region, an estimated 70,000 people have died, more than 1,600,000 people have been internally displaced, and more than 200,000 people have been forced to flee to neighboring Chad.

(9) Reports further indicate the systematic rape of thousands of women and girls, the abduction of women and children, and the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves.

(10) Despite the threat of international action expressed through United Nations Security Council Resolutions 1556 (July 30, 2004) and 1564 (September 18, 2004), the Government of Sudan continues to obstruct and prevent efforts to reverse the catastrophic consequences that loom over the Darfur region.

(11) In addition to the thousands of violent deaths directly caused by ongoing Sudanese military and government-sponsored Janjaweed attacks in the Darfur region, the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter.

(12) The Government of Sudan’s continued support for the Janjaweed and their obstruction of the delivery of food, shelter, and medical care to the Darfur region is estimated by the World Health Organization to be causing up to 10,000 deaths per month and, should current conditions persist, is projected to escalate to thousands of deaths each day by December 2004.

(13) The Government of Chad served an important role in facilitating the humanitarian cease-fire (the N’Djamena Agreement dated April 8, 2004) for the Darfur region between the Government of Sudan and the two opposition rebel groups in the Darfur region (the JEM and the SLA), although both sides have violated the cease-fire agreement repeatedly.

(14) The people of Chad have responded courageously to the plight of over 200,000 Darfur refugees by providing assistance to them even though such assistance has adversely affected their own means of livelihood.

(15) On September 9, 2004, Secretary of State Colin Powell stated before the Committee on Foreign Relations of the Senate: “When we reviewed the evidence compiled by our team, along with other information available to the State Department, we concluded that genocide has been committed in Darfur and that the Government of Sudan and the [Janjaweed] bear responsibility—and genocide may still be occurring.”

(16) The African Union has demonstrated renewed vigor in regional affairs through its willingness to respond to the crisis in the Darfur region, by convening talks between the parties and deploying several hundred monitors and security forces to the region, as well as by recognizing the need for a far larger force with a broader mandate.

(17) The Government of Sudan’s complicity in the atrocities and genocide in the Darfur region raises fundamental questions about the Government of Sudan’s commitment to peace and stability in Sudan.

50 USC 1701
note.

SEC. 4. SENSE OF CONGRESS REGARDING THE CONFLICT IN DARFUR, SUDAN.

(a) **SUDAN PEACE ACT.**—It is the sense of Congress that the Sudan Peace Act (50 U.S.C. 1701 note) remains relevant and should be extended to include the Darfur region of Sudan.

(b) **ACTIONS TO ADDRESS THE CONFLICT.**—It is the sense of Congress that—

(1) a legitimate countrywide peace in Sudan will only be possible if those principles enumerated in the 1948 Universal Declaration of Human Rights, that are affirmed in the Machakos Protocol of 2002 and the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004, are applied to all of Sudan, including the Darfur region;

(2) the parties to the N’Djamena Agreement (the Government of Sudan, the JEM, and the SLA) must meet their obligations under that Agreement to allow safe and immediate delivery of all humanitarian assistance throughout the Darfur region and must expedite the conclusion of a political agreement to end the genocide and conflict in the Darfur region;

(3) the United States should continue to provide humanitarian assistance to the areas of Sudan to which the United States has access and, at the same time, implement a plan

to provide assistance to the areas of Sudan to which access has been obstructed or denied;

(4) the international community, including African, Arab, and Muslim nations, should immediately provide resources necessary to save the lives of hundreds of thousands of individuals at risk as a result of the crisis in the Darfur region;

(5) the United States and the international community should—

(A) provide all necessary assistance to deploy and sustain an African Union Force to the Darfur region; and

(B) work to increase the authorized level and expand the mandate of such forces commensurate with the gravity and scope of the problem in a region the size of France;

(6) the President, acting through the Secretary of State and the Permanent Representative of the United States to the United Nations, should—

(A) condemn any failure on the part of the Government of Sudan to fulfill its obligations under United Nations Security Council Resolutions 1556 (July 30, 2004) and 1564 (September 18, 2004), and press the United Nations Security Council to respond to such failure by immediately imposing the penalties suggested in paragraph (14) of United Nations Security Council Resolution 1564;

(B) press the United Nations Security Council to pursue accountability for those individuals who are found responsible for orchestrating and carrying out the atrocities in the Darfur region, consistent with relevant United Nations Security Council Resolutions; and

(C) encourage member states of the United Nations to—

(i) cease to import Sudanese oil; and

(ii) take the following actions against Sudanese Government and military officials and other individuals, who are planning, carrying out, or otherwise involved in the policy of genocide in the Darfur region, as well as their families, and businesses controlled by the Government of Sudan and the National Congress Party:

(I) freeze the assets held by such individuals or businesses in each such member state; and

(II) restrict the entry or transit of such officials through each such member state;

(7) the President should impose targeted sanctions, including a ban on travel and the freezing of assets, on those officials of the Government of Sudan, including military officials, and other individuals who have planned or carried out, or otherwise been involved in the policy of genocide in the Darfur region, and should also freeze the assets of businesses controlled by the Government of Sudan or the National Congress Party;

(8) the Government of the United States should not normalize relations with Sudan, including through the lifting of any sanctions, until the Government of Sudan agrees to, and takes demonstrable steps to implement, peace agreements for all areas of Sudan, including the Darfur region;

(9) those individuals found to be involved in the planning or carrying out of genocide, war crimes, or crimes against

humanity should not hold leadership positions in the Government of Sudan or the coalition government established pursuant to the agreements reached in the Nairobi Declaration on the Final Phase of Peace in the Sudan; and

(10) the Government of Sudan has a primary responsibility to guarantee the safety and welfare of its citizens, which includes allowing them access to humanitarian assistance and providing them protection from violence.

50 USC 1701
note.

SEC. 5. AMENDMENTS TO THE SUDAN PEACE ACT.

(a) ASSISTANCE FOR THE CRISIS IN DARFUR AND FOR COMPREHENSIVE PEACE IN SUDAN.—

(1) IN GENERAL.—The Sudan Peace Act (50 U.S.C. 1701 note) is amended by adding at the end the following new section:

President.

“SEC. 12. ASSISTANCE FOR THE CRISIS IN DARFUR AND FOR COMPREHENSIVE PEACE IN SUDAN.

“(a) ASSISTANCE.—

“(1) AUTHORITY.—Notwithstanding any other provision of law, the President is authorized to provide assistance for Sudan as authorized in paragraph (5) of this section—

“(A) subject to the requirements of this section, to support the implementation of a comprehensive peace agreement that applies to all regions of Sudan, including the Darfur region; and

“(B) to address the humanitarian and human rights crisis in the Darfur region and eastern Chad, including to support the African Union mission in the Darfur region, provided that no assistance may be made available to the Government of Sudan.

“(2) CERTIFICATION FOR THE GOVERNMENT OF SUDAN.—Assistance authorized under paragraph (1)(A) may be provided to the Government of Sudan only if the President certifies to the appropriate congressional committees that the Government of Sudan has taken demonstrable steps to—

“(A) ensure that the armed forces of Sudan and any associated militias are not committing atrocities or obstructing human rights monitors or the provision of humanitarian assistance;

“(B) demobilize and disarm militias supported or created by the Government of Sudan;

“(C) allow full and unfettered humanitarian assistance to all regions of Sudan, including the Darfur region;

“(D) allow an international commission of inquiry to conduct an investigation of atrocities in the Darfur region, in a manner consistent with United Nations Security Council Resolution 1564 (September 18, 2004), to investigate reports of violations of international humanitarian law and human rights law in the Darfur region by all parties, to determine also whether or not acts of genocide have occurred and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable;

“(E) cooperate fully with the African Union, the United Nations, and all other observer, monitoring, and protection missions mandated to operate in Sudan;

“(F) permit the safe and voluntary return of displaced persons and refugees to their homes and rebuild the communities destroyed in the violence; and

“(G) implement the final agreements reached in the Naivasha peace process and install a new coalition government based on the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004.

“(3) CERTIFICATION WITH REGARD TO SPLM’S COMPLIANCE WITH A PEACE AGREEMENT.—If the President determines and certifies in writing to the appropriate congressional committees that the SPLM has not engaged in good faith negotiations, or has failed to honor the agreements signed, the President shall suspend assistance authorized in this section for the SPLM, except for health care, education, and humanitarian assistance.

“(4) SUSPENSION OF ASSISTANCE.—If, on a date after the President transmits the certification described in paragraph (2), the President determines that the Government of Sudan has ceased taking the actions described in such paragraph, the President shall immediately suspend the provision of any assistance to such Government under this section until the date on which the President transmits to the appropriate congressional committees a further certification that the Government of Sudan has resumed taking such actions.

“(5) AUTHORIZATION OF APPROPRIATIONS.—

“(A) IN GENERAL.—In addition to any other funds otherwise available for such purposes, there are authorized to be appropriated to the President—

“(i) \$100,000,000 for fiscal year 2005, and such sums as may be necessary for each of the fiscal years 2006 and 2007, unless otherwise authorized, to carry out paragraph (1)(A); and

“(ii) \$200,000,000 for fiscal year 2005 to carry out paragraph (1)(B), provided that no amounts appropriated under this authorization may be made available for the Government of Sudan.

“(B) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subparagraph (A) are authorized to remain available until expended.

“(b) GOVERNMENT OF SUDAN DEFINED.—In this section, the term ‘Government of Sudan’ means the National Congress Party, formerly known as the National Islamic Front, government in Khartoum, Sudan, or any successor government formed on or after the date of the enactment of the Comprehensive Peace in Sudan Act (other than the coalition government agreed upon in the Nairobi Declaration on the Final Phase of Peace in the Sudan signed on June 5, 2004).”.

(2) CONFORMING AMENDMENTS.—Section 3 of such Act (50 U.S.C. 1701 note) is amended—

(A) in paragraph (2), by striking “The” and inserting “Except as provided in section 12, the”; and

(B) by adding at the end the following new paragraph:

“(4) SPLM.—The term ‘SPLM’ means the Sudan People’s Liberation Movement.”.

(b) REPORTING AMENDMENT.—The Sudan Peace Act (50 U.S.C. 1701 note) is amended by striking section 8 and inserting the following:

“SEC. 8. REPORTING REQUIREMENTS.

“(a) **REPORT ON COMMERCIAL ACTIVITY.**—Not later than 30 days after the date of the enactment of the Comprehensive Peace in Sudan Act of 2004, and annually thereafter until the completion of the interim period outlined in the Machakos Protocol of 2002, the Secretary of State, in consultation with relevant United States Government departments and agencies, shall submit to the appropriate congressional committees a report regarding commercial activity in Sudan that includes—

“(1) a description of the sources and current status of Sudan’s financing and construction of infrastructure and pipelines for oil exploitation, the effects of such financing and construction on the inhabitants of the regions in which the oil fields are located and the ability of the Government of Sudan to finance the war in Sudan with the proceeds of the oil exploitation;

“(2) a description of the extent to which that financing was secured in the United States or with the involvement of United States citizens; and

“(3) a description of the relationships between Sudan’s arms industry and major foreign business enterprises and their subsidiaries, including government-controlled entities.

“(b) **REPORT ON THE CONFLICT IN SUDAN, INCLUDING THE DARFUR REGION.**—Not later than 30 days after the date of the enactment of the Comprehensive Peace in Sudan Act of 2004, and annually thereafter until the completion of the interim period outlined in the Machakos Protocol of 2002, the Secretary of State shall prepare and submit to the appropriate congressional committees a report regarding the conflict in Sudan, including the conflict in the Darfur region. Such report shall include—

“(1) the best estimates of the extent of aerial bombardment of civilian centers in Sudan by the Government of Sudan, including targets, frequency, and best estimates of damage; and

“(2) a description of the extent to which humanitarian relief in Sudan has been obstructed or manipulated by the Government of Sudan or other forces, and a contingency plan to distribute assistance should the Government of Sudan continue to obstruct or delay the international humanitarian response to the crisis in Darfur.

“(c) **DISCLOSURE TO THE PUBLIC.**—The Secretary of State shall publish or otherwise make available to the public each unclassified report, or portion of a report that is unclassified, submitted under subsection (a) or (b).”.

President.
50 USC 1701
note.
Effective date.

SEC. 6. SANCTIONS IN SUPPORT OF PEACE IN DARFUR.

(a) **SANCTIONS.**—Beginning on the date that is 30 days after the date of enactment of this Act, the President shall, notwithstanding paragraph (1) of section 6(b) of the Sudan Peace Act (50 U.S.C. 1701 note), implement the measures set forth in subparagraphs (A) through (D) of paragraph (2) of such section.

Effective date.

(b) **BLOCKING OF ASSETS.**—Beginning on the date that is 30 days after the date of enactment of this Act, the President shall, consistent with the authorities granted in the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block the assets of appropriate senior officials of the Government of Sudan.

(c) **WAIVER.**—The President may waive the application of subsection (a) or (b) if the President determines and certifies to the appropriate congressional committees that such a waiver is in the national interest of the United States.

Certification.

(d) **CONTINUATION OF RESTRICTIONS.**—Restrictions against the Government of Sudan that were imposed pursuant to title III and sections 508, 512, and 527 of the Foreign Operations, Export Financing, and Related Programs Act, 2004 (division D of Public Law 108–199; 118 Stat. 143), or any other similar provision of law, shall remain in effect against the Government of Sudan and may not be lifted pursuant to such provisions of law unless the President transmits a certification to the appropriate congressional committees in accordance with paragraph (2) of section 12(a) of the Sudan Peace Act (as added by section 5(a)(1) of this Act).

(e) **DETERMINATION.**—Notwithstanding subsection (a) of this section, the President shall continue to transmit the determination required under section 6(b)(1)(A) of the Sudan Peace Act (50 U.S.C. 1701 note).

SEC. 7. ADDITIONAL AUTHORITIES.

Notwithstanding any other provision of law, the President is authorized to provide assistance, other than military assistance, to areas that were outside of the control of the Government of Sudan on April 8, 2004, including to provide assistance for emergency relief, development and governance, or to implement any program in support of any viable peace agreement at the local, regional, or national level in Sudan.

President.
50 USC 1701
note.

SEC. 8. TECHNICAL CORRECTION.

Section 12 of the International Organizations Immunities Act (22 U.S.C. 288f–2) is amended by striking “Organization of African Unity” and inserting “African Union”.

50 USC 1701
note.

Approved December 23, 2004.

LEGISLATIVE HISTORY—S. 2781 (H.R. 5061):

CONGRESSIONAL RECORD, Vol. 150 (2004):

Sept. 23, considered and passed Senate.

Nov. 19, considered and passed House, amended.

Dec. 7, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 40 (2004):

Dec. 23, Presidential statement.



Public Law 108–498
108th Congress

An Act

Dec. 23, 2004
[S. 2856]

To limit the transfer of certain Commodity Credit Corporation funds between conservation programs for technical assistance for the programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 1241 of the Food Security Act of 1985 (16 U.S.C. 3841) is amended by striking subsection (b) and inserting the following:

“(b) TECHNICAL ASSISTANCE.—Effective for fiscal year 2005 and each subsequent fiscal year, Commodity Credit Corporation funds made available for each of the programs specified in paragraphs (1) through (7) of subsection (a)—

“(1) shall be available for the provision of technical assistance for the programs for which funds are made available; and

“(2) shall not be available for the provision of technical assistance for conservation programs specified in subsection (a) other than the program for which the funds were made available.”.

16 USC 3841
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2004.

Approved December 23, 2004.

LEGISLATIVE HISTORY—S. 2856:

CONGRESSIONAL RECORD, Vol. 150 (2004):

Oct. 11, considered and passed Senate.

Dec. 6, considered and passed House.

